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ACHIEVING JUSTICE IN MEDIATION: A CROSS CULTURAL PERSPECTIVE

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ABSTRACT

The notion of *justice* has been a highly debatable, constructed notion. In mediation, both mediators and participants rely on their ideas of justice to seek emotionally and practically fair outcomes. However, 'justice' is a socially-constructed concept, embedded in social and cultural norms and reflecting ways of knowing that arise from our cultural learning. Research shows that one area, in which cultural perceptions of distributive and procedural justice are significant, is in family dispute resolution. Separating family members rely on notions of justice to ensure that their needs and interests are met and that their voices are heard. Cultural perceptions of justice play an important role in this process as family mediators work to facilitate parties to resolve, manage and transform their relationships together. In this work, mediators must act as intermediaries who help each party to understand the cultural framework of the 'other' and how justice operates in the other's conceptual system. This paper aims to provide a cross-cultural context of justice in family mediation - particularly contrasting Asian and Western cultures - highlighting the issues and challenges in working cross-culturally within a social psychological 'justice' framework. It will discuss the skills that are integral for the culturally fluent family mediator (LeBaron, 2003) and the implications of these skills for family mediation in cross-cultural settings in the Asia Pacific.

Keywords: Justice; Mediation; Cultural Issues; Family.

INTRODUCTION

In this paper we will explore the concept of 'justice' and its application to mediation within a multicultural family context. We will first consider issues of culture where we will explore the diversity of culture and its manifestations. Our discussion will then turn to the definitions of 'justice' and discuss how the concept is perceived to operate during dispute resolution processes, focusing on whether 'justice' in its different forms can be applied universally or whether it is more usefully applied to specific cultural and social contexts. We will then consider the relationship between perceptions of justice in a Western cultural context, contrasting these perceptions with those that may apply in traditional non-Western cultures, and especially Chinese and Indian cultures in the Asia Pacific region. We will argue that concepts of 'justice' differ between cultures, and between families, and that in many situations, Western understandings will not easily apply. The paper will conclude with a tentative formulation of a 'different' concept of 'justice' that may apply when mediating with non-Western family members, and suggest some mediator skills that might accompany this alternative formulation.

CULTURE IN CONFLICT AND MEDIATION

As Crotty (1998, p. 53) has stated, "culture is best seen as the source rather than the result of human thought and behaviour". One way or another, social values involved in conflict and how one views conflict is clearly dependent on the culture one comes from (DiMaggio, 1997). LeBaron (2003, p. 118) noted that "our kaleidoscopes of cultural lenses lead us to see conflict in different ways and to label it differently". This leads to the differences in which conflict is culturally experienced. Bonta (1996) explains that a conflict can be culturally considered as a shared hostile or antagonistic experience based on incompatible needs, differing demands, contradicting wishes, diverging interests and opposing beliefs; or can be experienced as a time for transformation, change, hope and dynamic optimism (LeBaron, 2003; Brigg, 2003). Conflicts can also be experienced in a relational context, where people engage or repel from one another, bringing them closer or further from others (LeBaron, 2003). Conflicts can happen between two people and groups; or even within the self and the group that vary in degrees of emotional and sensational intensity. This often creates the perception that there are conflicts which may seem trivial, but there are others which are intractable.

Past research involving the social psychology of culture in conflict highlights that there are multiple aspects that contribute to a person's or group's experience of conflict. Hall (in LeBaron, 2003), for example, asserts the context perspective in which the experience of conflict is relied on high- or low-context communication styles emphasised across cultures. Both styles involve degrees of verbal and non-verbal cues to facilitate meaning making. In high-context communication, conflict is culturally communicated indirectly, relying on symbols and shared beliefs, norms and values in social environments to infuse the experience of conflict with meaning (LeBaron, 2003). Cultures that emphasise high-contexts use non-verbal cues and signals to communicate in the absence or in addition to local cultural terms to mediate within their groups. In low-context communication, conflicts are culturally communicated with literal explicitness and specificity rather than paying attention to symbolism and shared ideas (LeBaron, 2003). Low-context communicators emphasise linearity and favour 'cause and effect' explanations of conflicts, as that gives certainty of people's actions and behaviours.

Several authors have mentioned that there is also a relational aspect of culture in conflict where past studies have demonstrated how people see themselves and their relationships across cultural contexts. Drawing on many influential studies, cross-cultural researchers demonstrate that conflicts are influenced by degrees of individualism and collectivism (Pedersen & Jandt, 1996). Individualism and collectivism are two different ways of existing in social contexts. Individualism involves ideas which relegate the self as strongly independent, self-directed or autonomous (Oerter et al., 1996). People, who learn and develop from individualism, see individual goal setting and action as an achievement or adopt the view that every action has a reaction. How one chooses to make those achievements happen, is a matter of personal choice and the individual is accountable for choosing their own paths. People from individualist cultures are thus known to be confrontational, direct and assertive in conflicts (Oerter et al., 1996). Collectivism, on the other hand, relegates the self as part of interconnected webs and social relations. People who are enculturated in a collective environment view their identities interdependently with members of their groups. Thus, collectivists see social harmony as an important facet in preserving their relationships with people and accommodate, avoid and/or cooperate when conflicts are experienced (Oerter et al., 1996).

The Face Negotiation Theory developed by Ting-Toomey and her colleagues demonstrates that the experience of conflicts is not just because our identities are situated within

individualistic-collectivistic or high-low context situations (Oetzel & Ting-Toomey, 2003). More importantly, Ting Toomey emphasises that cultures are known to manifest themselves in notions of 'face'. 'Face' is attached with many aspects of the self that correlate with honour, valour, respect and social status. We instinctively become concerned to protect our face values by giving, saving and losing the part of the self that situates us in an interactional environment. Our concern for face value is for the most part determined by our interdependence and/or independence with others. Therefore, cultures oriented to high *individualism* are concerned of their independence from other individual's notion with face and more concerned with their own 'self-face' (Oetzel & Ting-Toomey, 2003). This often results in a dominating style of conflict resolution where individuals adopt an adversarial approach to assume power and superiority. On the other hand, highly *collectivistic* cultures are more concerned about maintaining others' face to maintain their interdependence with others in their social group and less concerned about their own 'self-face' (Oetzel & Ting-Toomey, 2003). Oetzel and Ting Toomey (2003) demonstrated that collectivists are more inclined to adopt a more integrating and avoiding style of conflict management in order to deescalate emotional and sensational intensities through face negotiation while aiming to preserve the relational orders.

As we note that conflict is experienced differently from one culture to the next, we find that each culture has different ways of resolving, managing and transforming their conflicts in diverse mediation approaches and styles. Mediation approaches vary across cultures as conflicts are experienced differently because of different relational and contextual influences (Pedersen & Jandt, 1996). For example, several authors implicate that Western mediators have a cultural tendency to advocate as a "neutral" agent who primarily would conduct mediation in formalised procedures and legal institutions (for a good example, see Moore, 2003). This is manifested in many 'standard definitions' of mediation in Western countries. For instance, NADRAC's (2003, p. 9) definition of mediation was framed in an Anglo-Australian manner emphasising the importance of the individual roles of the mediator and the participants:

"... a process in which the parties to a dispute, with the assistance of a dispute resolution practitioner (the mediator), identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement. The mediator has no advisory or determinative role in regard to the content of the dispute or the outcome of its resolution, but may advise on or determine the process of mediation whereby

resolution is attempted. Mediation may be undertaken voluntarily, under a court order, or subject to an existing contractual agreement.”

The former definition illustrates that Western mediation approaches often emphasise the formalities of a linear, staged mediation process aligning with ideas of resolving differing individual interests and rights through procedures and institutions (Brigg, 2003). In contrast to Western mediation, non-Western cultural mediation depends on informalities and a greater emphasis on authority and interconnections with others (Honeyman, Goh & Kelly, 2003). Much of the research on non-Western cultural mediations have indicated that people in conflict heavily depend on an informal, ‘fuzzy’¹ mediation approach whereby the mediation of conflict(s) follows a quick resolution and dissolution of substantive issues when issues of relationships are discussed in ethical-moral frames. From many non-Western viewpoints (i.e. Confucianism, Hinduism, etc.), the resolution or dissolution of conflict in an informal setting by a mediator (given the primacy of relationships) are vital to make and build peace, and provide a strong foundation for a society. Mediators in non-Western cultures see themselves as the representative of their families and communities, who are actors authorised and sanctioned by their people to help achieve justice as a “respected insider”. It is their role as such to know and understand the way things are, particularly in their culture (Leone & Giannini, 2005).

To the best of our knowledge, the cultural concern for justice in mediation and conflict resolution has been a limited exercise (Black & Avruch, 1999). As cultures name and frame conflict according to their social reality, they facilitate the way justice is perceived in varying emotional and sensational intensities. The next section reviews the question of contextualising justice and how justice has been positioned in the mediation literature.

‘JUSTICE’ IN MEDIATION

According to Sourdin (2002), it is not easy to define the concept of ‘justice.’ This is because there appear to be many constructions of justice and many different ways of perceiving it. For example, ‘justice’ has been linked to ideas of retribution, where punishment of some kind is extracted for perceived wrongdoing, and of restoration, where the damage done to others is

¹ This refers to the idea that non-Western mediation approaches and styles are not fixed within a linear, staged process. Rather, mediators and the people in dispute are able to move fluidly and work towards achieving social justice.

repaired (Barsky, 2007; Ife, 2001). Others link 'justice' to concepts of 'fairness' (Folberg & Taylor, 1984; Gunning, 2004). In other forums, debate has focussed on whether justice resides in what mediators do or how participants perceive the chosen conflict resolution approach (Sourdin, 2002). Yet others ask whether justice is manifested in the dispute resolution process itself or in the outcomes of the approach taken (Fisher & Brandon, 2002; Gunning, 2004). Boulle (1996) suggests that it might be found in the speed of the process, the informality of the setting, the level of responsiveness of the process to the parties' needs, and the degree of accessibility afforded by the approach itself. Thus, attempts to define the concept of 'justice' yield very different results depending on the focus taken.

Much research into the relationship between mediation and justice has focussed on two concepts of justice: procedural (that is, whether the process is perceived as fair) and distributive (whether the resulting outcome is perceived as fair); and, for some, these two concepts seem intertwined. Menkel-Meadow (2004) argues, for example, that mediation can deliver both just processes and fair outcomes, while Fisher and Brandon (2002, p. 18) describe a mediation process that they suggest might be used by mediators to deliver a "fair and just resolution." Maiese (2004) argued that the application of procedural justice results in greater compliance with the outcome and a fairer distribution of available resources and goods. Gunning (2004), too, implies that both procedural and distributive justice are closely aligned when she urges that mediators attend to both outcome and procedure in their work. A similar argument is presented by Thibaut and Walker (1978), who suggest that procedures that focus on full disclosure of information will lead to positive outcomes for participants.

Others, though, present an argument that separates these two types of justice. Howieson (2002) suggests, for example, that an early research focus on distributive justice shifted towards procedural justice as research activities increased. She reports that later research indicated that participant satisfaction is related to perceptions of the fairness of the procedure irrespective of outcome. The conclusion that 'just processes' can stand on their own, irrespective of the outcome that might result or the process that is used, has been mirrored in other research as well. For example, Smith, Bond and Kagitcibasi (2006) describe research that focused specifically on procedural justice in isolation from research into distributive forms of justice. The research suggests that just procedures relate to a degree of participant self-determination (Folberg & Taylor, 1984; Thibaut & Walker, 1978), the centralising of participants' 'voices' (Brockner, Ackerman, Greenberg, Gelfand et al, 2001), the production of a respectful and dignified approach to, and management of, the participants' issues (Smith,

Bond & Kagitcibasi, 2006; Welsh, 2007) and the level of transparency of the process (Maiese, 2004), while just distribution relates to whether the goods and resources were apportioned fairly between the disputants (Thibaut & Walker, 1978).

There is also a discussion in the literature about the ways in which both procedural and distributive justice are measured. Miller (2002) describes three different foci that can be employed to assess the effectiveness of justice, based on the goals of the process chosen to resolve the dispute. These foci relate to whether participants' rights are considered as paramount, or whether instead participants' entitlements are the focus. The third measure described by Miller relates to whether all participants were treated equally or received an equal share of the distributed goods and resources. The application of one of these foci in preference to the other two will achieve different outcomes and perhaps rely on different processes to reach those outcomes.

Concepts of 'justice' can also differ with regard to the person, or group of people, whose perspective we consider. Boule (1996), for example, takes a legal perspective, arguing that a 'system' of justice would contain identifiable features that include clear rules and regulations, applied equally to all participants by an independent body or person who uses a 'fair' and transparent process that leads to positive and soundly-formulated outcomes. Boule argues that while these features may not seem as clear in mediation compared to a court-based intervention, they can be applied to mediation, thus ensuring 'legislative' fairness. A different, and similarly valid, way of considering the concept is through the eyes of those who participate in the mediation process. Gunning (2004), for example, advocates for mediators to discuss with clients their definitions of 'fairness' and 'justice', and then to work within the frameworks suggested by the participants. This approach may look very different from the legalistic approach of Boule, especially where participants' perceptions of what is fair may include the mediator demonstrating that she is far from 'independent,' for example. Yet another view of 'justice' is afforded by lawyers engaged in the processes. Throughout the development of 'justice' approaches to the resolution of conflict, lawyers have been instrumental in defining what the concept means. Indeed, Howieson (2002) suggests that lawyers have a significant role in shaping their clients' understandings of what justice is. She argues that when lawyers actively endorsed court-annexed mediation, participants viewed it as more legitimate than whether or not the approach of the mediator managed a 'just' process.

From an historical viewpoint, the concept of justice does not appear to be a fixed, unchanging phenomenon. Up to the 1960s in Australia, for example, it was considered 'just' to execute murderers; and, while this practice has been discontinued in Australia, it is still considered 'just' in other parts of the world. Similarly, Gunning (2004) refers to the unjust legal practices that operated in the United States during the 1960s and 1970s to marginalise and oppress African Americans. She points out that while some sections of the community perceived these practices as 'just', they were not at all 'just' for those who were both coloured and poor. The point is that these practices do not remain fixed, and change with changing social and political values. Changes in our concepts of justice accompany these practice changes, making it difficult to define the concept of justice exactly.

Not only can the concept of justice change over time, but it can also change in different situations. For example, the work of some authors suggests that justice can be manipulated within a mediation approach, depending on what the participants bring to the work. Thibaut and Walker (1978) argue that mediator roles and levels of 'control' may alter depending on the kind of dispute that is presented. In their view, where there is a high degree of substantive fact in the issue (in relation to the amount to be distributed, for example, or the facts of an action or event that has led to the conflict), then participants would have less control over the content and processes of the approach than in situations where there were far fewer substantive facts and the participants instead brought to the table high levels of interest in the issue. The practice of 'justice' would alter as a result of the different focus taken by the mediator. Miller (2002) strongly supports this argument by suggesting that the principles that underlie the concept of 'justice' must necessarily change depending on the situation, the dimensions of the conflict itself and the specific issue under consideration. If this is so, then the ability to negotiate a single definition of 'justice' becomes extremely difficult.

A number of authors focus on the significance of 'voice' in mediation that focuses on procedural justice (Brockner et al, 2001; Howieson, 2002; Menkel-Meadow, 2004). The concept of 'voice' is related to the participants feeling heard and having the time to tell their story. For Welsh (2007), the issue of 'voice' is integral to the participants' levels of satisfaction with feeling respected in the interaction with the mediator, and being heard and treated fairly. Gunning (2004) implies a slightly different perception of the significance of 'voice' for mediation participants, suggesting that participants' satisfaction with the process is closely linked to their having been heard. A further perspective on 'voice' is provided by Brigg (2003), who describes the story-telling phase of mediation as akin to a Christian

confession. Brigg suggests that during the story-telling, participants receive an opportunity to address past hurts and 'transgressions', the result of which could be a feeling of absolution from the mediator, who doesn't judge what is said in any way. In all of these arguments, the concept of procedural justice is central; it is suggested that the way in which the mediator manages the process assures the level of 'voice' that participants achieve.

One potential modifier of the impact of 'voice' on mediation is what Brockner et al (2001) call 'power distance.' According to these authors, the concept of 'power distance' refers to participants' expectations of the mediation process. Low power distance (a roughly egalitarian view of society) raises expectations that a participant will have a substantial 'say' (and a louder 'voice') in what happens in mediation, while high power distance (for example, those who hold authority figures in high esteem) suggests that participants will expect to have very little say, either in what happens in the session or in the outcome of the mediation, and thus a very much softer voice. This argument raises issues around the significance of 'voice' in all situations, and brings into question whether concepts of 'justice' can be applied in a general way to all situations or whether it is perceived as different depending on the situation in which it is applied and the issues under consideration.

These concerns prompted Miller (2002) to ask whether concepts of 'justice' can be applied universally or whether they are indeed specific to the contexts in which they are applied. Miller highlights the difficulties that scholars of 'justice' experience when they try to build a universal definition of 'justice;' the concept seems slippery and dependent on many different factors, both internal to the construct of 'justice' and external to situations, issues and cultures in which it is applied. He concludes that a universal concept of 'justice' is not very useful because of the different contexts in which justice is considered, and argues instead for a contextual and 'local' concept of justice that will change according to the situation, the issues being considered, the values and understandings of the participants in the conflict and the culture in which the conflict is occurring.

One issue that arises for those who review the literature on justice in mediation, concerns the focus in which discussions take place. Much of the literature takes a Western focus, where, it may be argued, individuality is highly prized. Thus, 'justice' is applied from the point of view of an autonomous, individual and separate participant who operates largely on his or her own initiative within mediation. We argue that this might not always be appropriate. In the following sections of this paper, we discuss that cultural values and beliefs strongly

determine how an individual perceives her or himself within the world, and perceptions of justice can be markedly different within and between worlds. We argue that this has significant implications for those who work cross-culturally in a mediation context.

HOW MIGHT JUSTICE BE PERCEIVED IN TRADITIONAL NON WESTERN CULTURES?

An increasing number of authors have researched on the contextual (high-low context) and relational (individualism-collectivism) differences that give rise to justice and its perceptions in non-Western cultures (Chiu & Hong, 1997; Kim, 1997; Leung & Fan, 1997; Krishnan, 1997; Karnik & Suri, 1995). As mentioned previously, justice is tied by shared meanings that are consistent with moral characteristics, substance and procedure. Our ideas of justice can be universal or contextual depending on how we have been influenced by our cultural upbringings. In this section, we argue that unlike Western cultures, non-Western cultures depend on *unwritten* rules and edicts of justice that are coded based on moral-relational components (Goh, 2002). Our focus of non-Western cultural perceptions of justice looks at the Chinese and Indian cultures as examples within the Asia Pacific.

Chinese perceptions of justice

Kim (1997) writes that Chinese culture relies on shared Confucian ideals, norms and values to inform their moral perception of justice. According to Kim (1997, p. 157), Confucian thoughts and processes encouraged the Chinese to “harness self-interests and personal goals which were oriented towards promoting social harmony and collective good”. This is reflected in the way a person demonstrates virtuosity and moral integrity. The perception of justice in Chinese culture is best related to the Chinese virtue of *li* which translates to be “observing proper ritual etiquette in relational environments” (Ames & Rosemont, 1998, p. 51).

Ames and Rosemont (1998) strongly suggested that *li* acts as “social grammar that provides each member with a defined place and status within the family, community and polity” (Ames & Rosemont, 1998, p. 51). Social grammar in this context represents spoken and unspoken relational rules that are part of every human relationship. Xiao (2002) has revealed that the true nature of *li* is to provide a set of relational rules that should be appropriately practiced at all times by an individual as an internal ‘constitutive’ dynamic mechanism. Xiao (2002, p. 42) elaborates that *li* creates a sense of benevolence and helps inform members of

the family, community and polity about one's moral competence, maturity and socially fluent skills (Liu, 2004).

Injustices and conflicts often occur in Chinese groups when *li* is broken. This is usually associated with a lack of shared collective responsibility where the individual has failed to demonstrate respect and reciprocity² (Xiao, 2002). Goh (2002) asserts that every individual should uphold a sense of collective responsibility to their immediate and extended family to restore harmony and achieve social justice. This was similarly expressed by Chiu and Hong (1997, p. 170) who discussed that "when one person in a group was directly responsible for the occurrence of an incident, other members of the group would share the responsibility for the incident as well".

Goh (2002) observes that the family, the basic social unit of traditional Chinese culture is a prime example of where the notion of collective responsibilities can be applied. In the traditional Chinese family, intergenerational relationships bond individuals together as a group. Such relationships are further complicated when there is a strong communal involvement by the clan or the village who may or may not be blood related to the traditional Chinese family. As relations within the traditional Chinese family are complex, conflicts are settled within the family to promote collective responsibility. Chiu and Hong (1997) describe this as a way to contain the magnitude of any injustice observed in conflicts as well as minimising whatever social psychological impact and pressures that it may have on the family.

The containment of conflict and the injustices that accompany it are further reflective of the need for Chinese people to achieve justice in informal *mediation* styles that are separate to formal legal institutions (Goh, 2002). In an informal resolution of family conflicts, justice is ideally achieved when face values are considered and sustained to preserve relationships. This includes the mediator as well as the disputants, who would engage in *face-saving* strategies to ensure the relational salience of all parties (Chang & Holt, 1994, p. 115). Face-saving strategies were applied as a norm to avoid the stigma of 'shame' which was a very powerful social sanction in traditional Chinese culture (Goh, 2002, p. 53). In connection with this, face was 'frequently used as a metaphor for renegotiating mutual rights and obligations'

² Respect was described by Xiao as humbling oneself and giving honour to others as part of one's face, while reciprocity was 'dealing with someone as he deals with you' (Xiao, 2002, p. 45).

(Chang & Holt, 1994, p. 116) in Chinese cultural mediation. It is in this moral practice in Chinese cultural mediation that we can observe the Chinese concern for *collective justice*.

Indian perceptions of justice

Krishnan (1997, p. 189) notes that the closest sense of conceiving the traditional Indian view of justice is “*getting or giving what one deserves*” [emphasis in the original] that is embedded in the Hindu tradition of *karma*. According to Karnik and Suri (1995), karma is a core Hindu, Indian value that explains one’s life inequalities and pains. It is karma that traditionally provides a “value-oriented explanation for an individual’s life condition where that individual assumes moral responsibility for his/her own deeds” (Karnik & Suri, 1995, p. 365-366). Krishnan (1997) asserted that the law of karma relates to the achievement of justice in traditional Indian Hindu culture. She argued that the law of karma allows individuals to be rewarded when they act in accordance to the unwritten rules of paternalism and kinship. Paternalism and kinship are two key issues that are attached to the process of obtaining reasonable justice in the family.

Krishnan (1997) eloquently demonstrates that when one breaks the tradition of paternalism and kinship, he/she would ‘suffer’ in the current life that they have chosen to live and their spiritual reincarnation. The notion of suffering (particularly self suffering) in karma teaches that one has to strive to overcome the interpersonal barriers that create injustices. Leung and Fan (1997) suggest that the aim of suffering was to put a feeling of guilt on one’s self to elicit a strong sense of moral decadence. This was done in a non-violent manner that encouraged tolerance, non-cooperation, boycott, civil disobedience and fasting (Leung & Fan, 1997) in times of injustices and conflicts (Leung & Fan, 1997). In conflict resolution and mediation, this could perhaps infer that traditional Indian culture perceives *justice as suffering*.

IMPLICATIONS FOR THE FAMILY MEDIATOR

Pluralistic societies are groups in which we find people from all sorts of cultures, each of which has similarities to and differences from other cultures. From a cross-cultural perspective, it is imperative that we recognise and respect those similarities and differences in advancing our ways of knowing and in so doing, advancing a common mutual goal for each other. This common mutual goal is what we call “justice” particularly when there is a need to resolve, manage and transform conflict between members of cultural groups.

To resolve, manage and transform conflict in a mediating role is indeed a hard task to achieve if we are not aware of how justice is operated or conceived in certain cultures and sub-cultures (Black & Avurch, 1999). In this paper we demonstrated that traditional Chinese and Indian cultures view justice in terms of relationships that precede procedural outcomes and processes. Scholars have demonstrated that justice is highly *distributive* within traditional Chinese and Indian cultures because “justice” is based on social hierarchy, status and paternity within families (Goh, 2002; Chiu & Hong, 1997; Kim, 1997; Leung & Fan, 1997; Krishnan, 1997; Karnik & Suri, 1995). This way of thinking about justice seems different from the way Western writers view it, as having to do with fair distribution of goods without an emphasis on other issues such as relationships between people. Thus, both cultures seemingly have different ways of expressing how justice should be made or built. In traditional Chinese culture, the virtue of *li* informs the practice in which Chinese families develop a sense of collective responsibility. This collective responsibility encourages a shared sense of cooperation and conflict containment in order to achieve fairness within the group. The traditional Indian culture, on the other hand, features justice through the law of *karma* which demonstrates that one will suffer if one breaks the traditional code of honouring paternalism and kinship. If one is to suffer injustice within a family conflict, then one is to reclaim their sense of honour by doing good works in a peaceful, non-violent way to make and build justice.

Many features of Chinese cultural mediation and traditional Indian mediation are informed by the underpinning philosophies and their perceptions of justice. It appears that much discussion has elucidated that justice is relational and dynamic, learned and constructed within familial environments. We argue that this could have significant implications for Western family mediators who, because of their prescribed training, emphasise a strict sense of procedural justice in their work. We propose that family mediators, Western or not, must act as intermediaries who help each party to understand the cultural framework of the other and how justice operates in the other’s conceptual system. This can be done, as LeBaron (2003, p. 140) says, through *dynamic engagement* which “involves attending to conflict, dialoguing, and designing processes that reflect the cultural common sense of the parties” in the following ways:

- An increased awareness and a broadened perspective allow mediators to attend and assess conflicts, exposing implicit and explicit meanings that are embedded in cultural perceptions of justice. By attending and assessing to the cultural sensitivities in the

meanings of justice, mediators can collaboratively share their experiences and awareness that respect the cultural needs of the society.

- Mediators have the transformative capacity to co-create shared meanings as they acknowledge and deepen their understanding of their own cultural perceptions and worldviews of justice, as well as their disputants. They can reflectively observe and evaluate their processes of engagement, while not being fixed on staged, linear models.
- Mediators need to acknowledge that rituals of justice in both Western and non-Western contexts provide containers for feelings, offering ways to acknowledge and share them even when there are losses, celebrations and change. It is those rituals of justice that mark the shift from an enemy to a friend or an adversary to a family member.
- Mediators should explore and challenge myths and stereotypes of justice that are deeply embedded in cultural constructions to stimulate change and work within cultural dialogues whilst bearing in mind that they will never comprehensively understand a particular cultural group's conception of justice.

CONCLUSIONS

In conclusion, family mediation is a contentious arena where theorists and practitioners need to be mindful of the cultural perceptions in justice making and building. As we have suggested, we consider justice to be culturally relative and mediators play a pivotal role of bridging cultural conflicts to create a shared sense of justice. Building and making a shared sense of justice in cross cultural conflicts is an art that is continually shifting and developing as we fluidly move in and out of cultural territories. Nonetheless, achieving this is never easy as there are social and material relationship issues that affect the way in which we dynamically engage as family mediators to achieve effective outcomes. Dynamic engagement allows each of us to integrate and apply our understandings of values, beliefs and norms that account for individual and collective responsibilities, honour and face saving as well as other cultural factors that influence where justice fits within a social psychological frame. We need to depart from Western models of mediation that prescribe the training and encouragement of interests and rights-based approaches in cross-cultural conflict resolution and immerse ourselves in cultural reflexivity. We need to see that justice is not a means to an end, and

neither is it an end to a means in family mediation. Instead we need to transcend justice to a level that would include the cultural essence of human relationships.

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