

Bridging the Theory-and-Practice Gap: Mediator Power in Practice

Gerami, A. (2009). Bridging the theory-and-practice gap: Mediator power in practice. *Conflict Resolution Quarterly*, 26(4), 433-451.

Gerami (2009) argues that “there is a growing gap between the theory and practice of mediation” (p. 434). Gerami states that significant tension exists between the mediator’s effective fulfillment of his/her functions and the mediator’s maintaining impartiality throughout the mediation process. In this article, Gerami strives to demonstrate the need to fully explore and better understand the delicate and complex dynamic of power between the parties and the mediator.

What Is Mediation?

Although mediation has many variations and comprises of a range of practices and procedures, the distinguishing characteristic of mediation is its goal to produce a voluntary and consensual outcome, and the mediator’s lack of authority to impose a settlement on the parties (Macfarlane, 2003).

The Neutral and Impartial Mediator?

Impartiality and neutrality are considered the “critical defining characteristics” of an independent mediator (Macfarlane, 2003, p. 298).

The Impartial Mediator? The Canadian Bar Association defines *impartial* as “being and being seen as unbiased toward parties to a dispute, toward their interests and toward the options they present for settlement” (Canadian Bar Association Code of Conduct, [http: www.cba.org/CBA/activities/code/](http://www.cba.org/CBA/activities/code/)). The meaning of the term *impartial* has been summed up by Marris (1997) as “the quality of being principled enough to remain equally committed to the legitimate interests of all parties” (p. 321). Gerami argues that the mediator is theoretically held out to be impartial, but in practice this is very difficult to sustain. Overall, it has been questioned that mediators influence both the process and outcome of the mediation by affecting the legitimacy of each party’s point of view through their interventions, determination of the order of speaking, caucusing, and reframing of parties’ statements (Fuller, Kimsey & McKinney, 1992). Also, the mediator is influenced by his/her own professional agenda and interest in settling cases.

The Neutral Mediator? Even though mediator neutrality is considered central to the theory and practice of mediation, Gerami and scholars such as Cobb and Rifkin and Cohen, Dattner, and Luxenburg question if anyone can really be neutral in a conflict situation. Cobb and Rifkin (1991) argue that the absence of practical guidelines for the practice of neutrality functions to “obscure the workings of power in mediation” (p. 41). Also, Cobb and Rifkin note that “the practice of neutrality is fraught with paradox, raising dilemmas for mediators” (p. 48).

Various Dimensions of Mediator Power

Definition of Power: Defining power is a useful starting point for understanding its meaning in the context of mediation. Definitions of power include: the ability to do, act, or produce; the ability to control others; authority; sway; influence; a person or thing having great influence, force, or authority; the ability to regulate, restrain, or curb; and the capability of a person or group to modify the outcome of a situation.

Nature of Mediator’s Power: The mediator is an “active and influential agent of change” (Morris, 1997, p. 347). Gulliver (1977) found that “mediators regularly exercise influence, either passively or actively, and that such influence serves to assist in an outcome palatable to the mediator” (p. 15). To achieve their goals, mediators need to exercise a measure of control, authority, and influence.

Dimension of Mediator Power	Examples
Exercise of Power Through Mediator Knowledge and Expertise	<ol style="list-style-type: none"> 1) Having knowledge of the subject matter and its underlying issues and complexities can place the mediator in a position of power. 2) The knowledge and skill of the mediator engenders a certain amount of respect as the parties may come to view the mediator as someone whom they can trust to help solve their dispute.
Exercise of Power Through Designing and Controlling the Process	<ol style="list-style-type: none"> 1) The mediator may encourage discussion of certain topics to build common ground or keep certain topics off the table if s/he anticipates a clash of views and positions. 2) The mediator decides on the particular approach they will be taking (e.g., an interest-based approach, a rights-based approach, etc.) 3) The mediator decides how to steer the wheel and move the parties through the mediation process.
Exercise of Power Through Reframing	<ol style="list-style-type: none"> 1) In the reframing process, the mediator is exercising power by reshaping the discourse and changing the language used to describe the conflict. 2) The mediator uses the technique of <i>reframing</i> to “alter the language used to describe the dispute” (Smith, 1998, p. 12). 3) The mediator uses the technique of <i>reframing</i> to alter “the perceptions, and current frames of the behaviour, attitudes or issues in the dispute” (Candlin & Maley, 1994, p. 80).
Exercise of power Through Imposing Pressure to Settle	<ol style="list-style-type: none"> 1) The mediator has the power to direct the parties by “focusing discussion, procedurally and substantively, toward settlement” (Silbey & Sally, 2001, p. 14). 2) The mediator gears the parties toward settlement by controlling communication and interactions in the mediation. 3) Caucusing gives the mediator significant power to alter the parties’ perceptions and to transmit his/her message indirectly. 4) The mediator uses reality checking to point out the time and energy that has been invested in the mediation process and the progress that has been made in order to pressure the parties toward reaching a settlement. 5) The mediator, when s/he deems it necessary, threatens to withdraw from negotiations or actually doing so in order to pressure parties toward settlement (Macfarlane, 1997).

Conclusion: Revisiting the Responsibility to Mediate Ethically

Considering some of the challenges faced by mediators in balancing the exercise of power, Gerami (2009) makes the following recommendations.

- See the role of the mediator for what it really is, instead of what it is theoretically imagined or wished to be.
- Considering the contradictions, complexities, and risks entailed in the mediation process, it may be time to engage in a reassessment of the mediation practice.
- Mediators need guidance such as promulgated model codes of conduct to better carry out their role.
- Examine the realities of the mediation process through discussion with mediators and other affected parties to determine whether mediation needs to change or stay the same.

(Summary prepared by Yea-Wen Chen, FDR Graduate Assistant)