

# Mediation and Inequality Reconsidered: Bringing the Discussion to the Table

Wing, L. (2009). Mediation and inequality reconsidered: Bringing the discussion to the table. *Conflict Resolution Quarterly*, 26(4), 383-404.

Wing (2009) argues that, while the field of mediation has developed useful frameworks and practices, the field needs to address “the growing scholarship on inequality experienced by mediation participants” (p. 385). The author reviews several examples of failure to provide a truly accessible, fair, and empowering process for all, which challenge underlying assumptions in the field about neutrality, equality, and fairness to all.

- Mediators offer disparate opportunities for referrals to mediation on the basis of race (Cooper, 2001).
- Patterns exist favoring whites in the quantitative benefits they receive from mediation outcomes (Hermann, 2001; Wing, 2008).
- Mediation processes more often than not reflect the dominant culture’s paradigm (Goldberg, 2009).

For the goal of encouraging mediation practices that are more socially and culturally responsible, Wing explores how the reliance on neutrality and self-determination operates in mediation and serves some better than others.

## Addressing Claims of Inequality in Mediation Practice

Examining how the mediation field addresses claims of inequality in its processes and outcomes, Wing (2009) argues that the internal logic of the dominant paradigm embraced by the field can protect scholars and practitioners from reexamining what is lacking or missing.

Wing summarizes that there are three common responses given for why inequality may occur during mediation (p. 387).

- 1) A fundamental tenet of mediation is the self-determination of all parties; therefore, participants are responsible for empowering themselves by raising issues of concern and *choosing their outcomes* in light of the options they have.
- 2) Inequality in participants’ experience of the process or the outcome can occur if an aspect of the mediation process is not carried out properly.
- 3) Mediators and the mediation process are not responsible for societal, organizational, or interpersonal imbalances in power.

Belief in the agency of the individual participant and the importance of self-determination are the values central to the internal logic of the dominant mediation paradigm. Wing questions the premise of this approach that counts on participants to make self-empowering choices and mediators to be capable of setting aside their biases in the service of disputant self-determination. Wing questions such complete focus and faith placed solely on the individuals involved in mediation. Also, Wing argues that such core values of the field are protected from critical interrogation as a result of its internal logic. The internal logic of the current paradigm argues that mediators do not need to attend to complaints of inequality as long as the mediators uphold neutrality. In order to understand the impact of hegemonic practices in mediation, Wing seeks to question the relationship between equality and mediation theory and practice, particularly in terms of neutrality and self-empowerment.

## Exploring and Critiquing Mediator’s Core Values

Neutrality and self-determination are at the center of an underlying set of beliefs that cut across disparate mediation goals. Frequently, **mediation** is defined as a process in which a neutral third party facilitates communication and aids in the resolution of a conflict that is designed by the parties (Association for Conflict Resolution, 2004).

Examination of both the critiques and problems of the dominant mediation paradigm uncovers repetition of hegemonic cultural norms and struggles regarding power and neutrality. Wing (2009) finds that critiques centering on issues of power are inextricably tied to neutrality and self-determination. Overall, Wing (2009) argues that neutrality is viewed as unrealistic and unachievable by many in the field; yet it continues to be highly valued.

Neutrality: Neutrality is made possible by two components: *impartiality* and *equidistance*. *Impartiality* is “the condition in which a mediator is not taking sides regarding the topic under dispute or the content of any potential agreement” (p. 390). *Equidistance* is “the condition of being equally removed from and remaining unbiased toward each party” (p. 390).

Neutrality and Power: The potential consequences of a mediator attempting to treat “equally” those participants who enter the mediation on uneven ground include:

- It fails to take into account the social context and specific circumstances that can place severe limitations on a party’s ability to access or use its power.
- The mediator’s ineffective engagement with the realities of one’s worldview, oppression, limited resources, or violence can be actively disempowering to a party and influence the party’s engagement in the process (Grillow, 1991).
- The passive acceptance of neutrality hinders possibilities of seeking from other worldviews what they may offer as solutions.

Power and Reenactment of Domination in Mediation: Four themes outline the problems emerging with regard to the role of power and the reenactment of domination in mediation (p. 395-396).

- Neutrality and self-determination do not ensure equal access to creating a narrative that will not be marginalized by the mediator or others in the mediation process.
- Procedural symmetry fails to offer symmetrical experiences.
- Bias, common in human nature and society, can and does have an impact on mediation practices.
- The hegemonic paradigm of mediation does not respond effectively to the material realities of many who are in lower-power groups.

### **Performing Power: Using Strategies That Can (Re)Produce Substantive and Procedural Inequality**

Understanding the circulation of power through the narration of stories in mediation is critical. The following are several examples demonstrating how a mediator’s micro-level decisions can significantly influence a story’s development and therefore have an impact on party empowerment in a session.

- 1) First-Speaker Domination: In more than 80% of the cases, the first speaker’s story became the blueprint for mediators and the agreements they facilitated (Rifkin, Millen, & Cobb, 1991).
- 2) Dominant Cultural Stories of Society: An alliance exists between a party’s story and the master narrative that can add strength to a story’s stability at the mediation table (Cobb, 1994). Also, this dominance can be further exacerbated if the narrative is also mirrored by the worldview and life experiences of the mediator (Goldberg, 2009).
- 3) Equal Amount of Time Allocation: The attempt to allot the same amount of time to all participants can end up privileging the party whose story is most familiar to a mediator and resonates with the master narrative. Articulating a counternarrative so that it is truly understood by those unfamiliar or uncomfortable with it is likely to require more interpretation and therefore more time.
- 4) Mediators: The majority of mediators are from dominant social groups (Baker, French, Trujillo, & Wing, 2000; Cooper, 2001; Pipkin & Rifkin, 1984).

### **Joining the Call for Change**

The author stresses that the strategies and processes grounded in the dominant mediation paradigm have disproportionately privileged some over others, Wing (2009) issues the following calls for change:

- What new opportunities, paradigms, and challenges might emerge from the arena of technological innovations?
- How are patterns of inequality replicated? How does the field of mediation enhance training and teaching methodologies, intervention models, and programmatic structures to effectively respond to all parties’ needs?

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