

## **Moral perspectives on gender and successful mediation**

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### **Executive summary**

This paper will explore whether men and women have different moral perspectives which come into play and which might allow one to have advantages over the other in the different forms of dispute resolution. For example; in the morality of justice where the parties are treated equally or in the morality of care whereby relationships are preserved.

### **Introduction**

On the 9<sup>th</sup> October 2006 I attended the Alexandra Lecture on Conflicts of Interest and Ethics given by The Right Honourable Lord Woolf Former Lord Chief Justice. It was inevitable that his presentation would deal comprehensively with the ethical dilemmas facing arbitrators and mediators and it is absolutely not the purpose of this paper to cover the same ground.

In addition to the duties imposed by the parties or by law, it is generally considered that an arbitrator or mediator has certain ethical duties. Whereas the International Bar Association (IBA) has developed some guidelines in their "Rule of Ethics for International Arbitrators", there is at present there is no internationally accepted "code of conduct", that defines the mandatory ethical standards required.

The IBA rules say that arbitrators should be impartial, independent, competent, diligent and discreet. It is argued by some that any such code, should achieve voluntary acceptance. Also that the real test of acceptance for such a code would be if failure to comply with it would be seen as sufficient grounds by arbitral institutions and national courts when considering challenge to arbitrators on the grounds of alleged misconduct.

But does the arbitrator or mediator also have moral duties and are these different to ethical duties.

The Chambers dictionary defines morals to be *"of or relating to principals of good and evil, or right or wrong"* and ethics as *"the moral system or set of principals particular to a certain person, community, group. From Greek ethikos, from ethos, custom, character"*.

Wikipedia says that *"morality refers to the concept of human ethics which pertains to matters of good and evil —also referred to as "right or wrong", used within three contexts: individual conscience; systems of principles and judgments — sometimes called moral values —shared within a cultural, religious, secular, Humanist, or philosophical community; and codes of*

*behaviour or conduct. Personal morality defines and distinguishes among right and wrong intentions, motivations or actions, as these have been learned, engendered, or otherwise developed within each individual”.*

From these definitions it can be seen that we must decide what is moral before we can decide what is ethical. For example we may say that a moral precept is not to cause harm and in arbitration and mediation by being impartial we may achieve this ethically. These two words “*morality*” and “*ethics*” are therefore not interchangeable and morality (moral values) is something which has a cultural dimension.

Morality is a first order set of beliefs and practices about how to live a good life and ethics is a second order conscious reflection on the adequacy of our moral beliefs. Morality is generally associated with a personal view of values and can reflect the influence of religion, culture, family and friends. Ethics is concerned with how a moral person should behave.

### **Development of morality**

During the 20<sup>th</sup> Century there was significant research on moral development, some of the main theories that have been developed are those of Jean Piaget, Lawrence Kohlberg, Elliot Turiel and Carol Gilligan.

#### Lawrence Kohlberg

Kohlberg consistent with Piaget proposed that children form ways of thinking through their experiences which include understanding of moral concepts such as justice, rights, equality and human welfare but he determined that the process of attaining moral maturity was more gradual and longer than Piaget proposed.

Kohlberg created a map by which he charted the stages of moral development. His six stages of moral development can be summarised as :-

- Stage 1 “obey or pay”. Obedience to authority to avoid punishment is the most important value. If I do what I am told I will stay out of trouble.
- Stage 2 “self-interest”. Each person looks after themselves. I should look out for myself and only be nice to those who are nice to me.
- Stage 3 “win approval of others by helping them”. By being good I will win the approval of other people. This means conforming to stereotypical images of the majority.
- Stage 4 “law and order”. Being good means obeying the laws set down by those in authority; this will help maintain the fixed order of the system.
- Stage 5 “respect individual rights and abide by critically examined values”. Society rules exist by mutual agreement and for the benefit of all. I am part of a social contract which places importance on equality and mutual obligations.

- Stage 6 “act in accordance with logically developed and universally accepted principals”. Here general universal principals determine right from wrong. The principals are determined by individual reflection and are decisions of conscience. These self chosen ethical principals relate to the rights and dignity of others.

The higher stages involve decisions based on principal rather than convention and are characterised by reasoning based on fairness, impartiality, abstract thinking and the ability to apply universal principles. Kohlberg concluded that only a minority of adults reached the last stage and usually only after the age of twenty. Perhaps more controversially he also said that boys and men reach higher levels of moral development than girls and women.

Research carried out in the in the early 1970's began to reveal anomalies in the Kohlberg stage sequence and some tried to address these discrepancies through adjustment of the stage sequence. This led to work by Elliot Turiel who advanced the domain theory which distinguishes between morality and convention.

#### Carol Gilligan

A second major critique of Kohlberg's work was offered by Carol Gilligan (1982) where she suggested that because Kohlberg used only males in his studies, his theories were biased against women. Gilligan offered that a morality of care can serve in place of a morality of justice and rights, as put forward by Kohlberg. The essence of Gilligan's theory is that the morality of care (not to turn away from someone in need) and the morality of justice (not to treat someone unfairly) are distinct although potentially connected.

“In a Different Voice” she wrote *“The conception of morality as concerned with the activity of care centers moral development around the understanding of responsibility and relationships, just as the conception of morality as fairness ties moral development to the understanding of rights and rules”*. This essential difference that women's morality is *“according to criteria of ethics of care and that men make decisions according to an ethic of rights”* distinguishes the female values of interpersonal connectedness, care, sensitivity, and responsibility to people.

It is a theme of feminine approaches to morality that traditional Western moral theories, principles, practices, and policies are deficient to the degree that they want for, take no notice of, belittle, or lower those personality traits and qualities of character that are culturally associated with women.

Also In a Different Voice Gilligan said *“To have a voice is to be human. To have something to say is to be a person. But speaking depends on listening and being heard; it is an intensely relational act. By voice I mean something like what people mean when they speak of the core of the self. Voice is natural and also cultural. It is composed of breath and sound, words,*

*rhythm, and language and voice is a powerful psychological instrument and channel, connecting inner and outer worlds”.*

At the level of community mediation (at least in Milton Keynes) women make a substantial contribution where over 70% of mediators are female. However despite the year 2000 UN Security Council Resolution 1325 on women, peace and security; on the international stage and involved with today peace processes hardly any mediators are women. SCR 1325 reaffirms *“women’s central role in the prevention and resolution of conflicts and in peace building”*, and stresses *“the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security, and the need to increase their role in decision-making with regard to conflict prevention and resolution”*.

There are conflicting theories on the relationship women have to war and peace and these continue to evolve. Although the spectrum of behaviour is wide Augsburger says some central tendencies have emerged :-

- Women view violence in social, relational, or political matters negatively and it is increasingly seen as a symbol of male domination.
- Women view negotiation, verbal bargaining and non violent protest positively compared to power, coercion or violence.
- In both Eastern and Western cultures, women are less inclined to be argumentative.
- Women make more use of communications networks to effect non violent social change.
- When in conflict women’s core identities are more secure than men. They are less fragile, less delicate in ego and closer to actual interpersonal realities.

From the above it is clear that men and women do have different moral perspectives which come into play and which might allow one to have advantages over the other in the different forms of dispute resolution. Lawrence M. Hillman at the University of San Diego summarised the differences between men’s moral voices and women’s moral voices.

#### **Men**

- Justice
- Rights
- Treating everyone fairly and the same
- Apply rules impartially to everyone
- Responsibility toward abstract codes of conduct

#### **Women**

- Care
- Responsibility
- Caring about everyone’s suffering
- Preserve emotional connectedness
- Responsibility towards real individuals

There appears to be relatively little research on “gender and mediation”. There is however some research available in the analogous but different context of “gender and negotiation” and good negotiations skills are an essential part of good mediation. CEDR say *“Having emphasised the neutrality of the mediator, it may seem strange to introduce the concept of a*

*mediator being a negotiator. However, the more skilled a mediator is at negotiation the more effective he or she will be".*

In their research Kray and Thompson say that one reason that moral values are relevant to negotiations is that they are likely to affect the negotiator's preferences for equity *"If men place a higher premium on justice-based morality than do women, then it could lead men to prefer to resolve disputes through rights-based arguments. In contrast, women's tendency to view morality through a care-based perspective might promote an interests-based approach to resolving disputes. As interests-based approaches tend to be more integrative, more satisfying, and less costly than rights-based approaches (Ury, Brett & Goldgerg, 1988), women may be more effective at resolving disputes than men"*.

### **Conclusion**

It is quite well known that only a small percentage of the men and women who invest in and successfully complete mediation training by becoming accredited mediators actually practice as mediators. These people have demonstrated that they have the necessary skills and qualities such as self awareness, neutrality, patience, process management and are good communicators.

This paper has looked at the different moral orientation of men and women and suggests that women are better at avoiding and resolving disputes than men. The reasoning is that men may have a justice-based approach to morality, leading them to prefer to resolve disputes through rights-based arguments. In contrast, the care-based morality associated with women leads to an interests-based approach to resolving disputes. It can be argued that this approach is more integrative, more in line with facilitative dispute resolution processes, and therefore that women may be better mediators than men.

However, when the Chartered Institute of Arbitrators asked about 7,000 of its members via NewsWatch "Are women better mediators than men?"; 21% said yes; 55% said no and 24% responded don't know. (The C.I.Arb. membership is split 8% women and 92% men).

In disputes there are often many things that are beyond the control of the mediator (man or woman) but there are other success factors such as the skills and qualities listed above, patterns of behaviour and personality traits that may be developed with knowledge, self examination and work.

Whilst there are no simple answers, the debate stimulated by this paper suggests reflection that men and women do have different moral voices which affect their work as mediators provides a learning opportunity for both.

### Bibliography

Augsburger, D. W. (1992). *Conflict Mediation Across Cultures*. WJK Press.

Avruch, K. (2002). *Culture & Conflict Resolution*. United States Institute of Peace Press.

CEDR. (2004) *The CEDR Mediator Handbook*.

Gilligan, C. (1993). *In a Different Voice: Psychological Theory and Women's Development*. Harvard University Press.

Kray, L. J. Thompson, L. Gender Stereotypes and Negotiation Performance : An Examination of Theory and Research.

Leung, K. (1987). *Some determinants of reactions to protocol models for conflict resolution : a cross national study*. Journal of Personality and Social Psychology.

Lewis, R. D. (2000). *When Cultures Collide*. WSOY

Strasser, F. Randolph, P. (2004). *Mediation. A Psychological Insight into Conflict Resolution*. Continuum.

Thomas, K. (1976). *Conflict and Conflict Management*.