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** Topic: The Culture of Mediation **

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THE CULTURE OF MEDIATION

by Kenneth Cloke

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"Through a curious transposition peculiar to our times it is innocence that is called upon to justify itself," wrote Albert Camus. Today it is not violence or even law that calls itself to account, but mediation. We mediate not in the abstract, but within a given society and culture which define the parameters of what is possible and acceptable. These parameters are paradigms which limit our capacity to respond creatively to conflict. For this reason, Amilcar Cabral said that "liberation is necessarily an act of culture."

Conflict and conflict resolution necessarily takes place within a cultural context. In a high-context culture like mediation, most of the meaning lies in the context. In a low-context culture like law, most of the meaning is apparent in the words. Law seeks to abolish context, while in mediation, context is everything. To understand mediation, it is necessary to look beyond the words that are used to the context in which they are spoken.

There are two ways to approach disputes: fearfully with a desire to avoid or suppress it; or as an opportunity for transformation through dialogue and problem solving, with a desire to promote conflict.

In the first approach one seeks to mollify the opposition without examining the underlying causes of the dispute. One seeks settlement for settlement's sake. In the second, one seeks to bring about a deeper level of understanding through honest communication about the causes of the dispute. The first leads to sullen acceptance; the second to resolution, forgiveness and reconciliation.

The interaction between conflict and resolution brings change. For example, anti-slavery opinion necessarily generates conflict in slave society; and, through opposition, expands opportunities for emancipation. To repress or settle such conflicts in order to avoid opposition is to do so within slave society, i.e., unequally, and therefore to support the status quo. To draw slave owners into an open and public dialogue with their slaves over whether slavery should be continued is to use the conflict to help bring about a resolution of the causes, which is outside the assumptions of slave society and therefore in opposition to the status quo.

When mediating between the master and the slave, it is important that the slave speak first, not for reasons of sympathy or ideological correctness, but because for the slave the master is a human being, whereas for the master, the slave is merely an object. Here the master is the enslaved and the slave is master. In order to resolve the issue of slavery, the master must learn humility and the slave learn freedom. Each party in a conflict can be seen as a teacher uniquely able to communicate what the other party needs to learn. This is Ghandi's satyagraha, "speaking truth to power". This dilemma is not restricted to conflicts between masters and slaves, but is found in smaller issues where values and ethics typically reside. The master and the slave appear wherever power is distributed hierarchically, as in the family and the workplace.

Laura Nader has written in critique of mediation that it trades justice for harmony, that its purpose is pacification, not peace. Certainly there are individuals who, in fear of conflict or in pursuit of profits or privilege, will promote peace at any price. Yet there are others who would not discourage the slaves from communicating anger or resolve, but seek instead to empower them, through mediation which permits each side to choose a better alternative to negotiated settlement. Many battles have less to do with justice than with the other sources of human strife. For these, mediation is far superior to power or rights-based resolution systems,

and a mediated settlement is less likely to be one that endangers justice.

This is the problem for mediators: how do we know when we are promoting social peace over social justice? The culture of conflict, in which we participate, is one of demonization and victimisation. Mediation may be unbiased but it is not value- neutral. The values which flow from the settlement process are those of impatience and conformity, of giving up what is important so the conflict will go away, of surrendering to expediency. A different set of values flow from the resolution process. We need a culture in which conflict is integrated and accepted, where it is celebrated and honoured, where settlement is the least virtue and resolution merely a beginning.

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