The Pervasiveness of Culture in Conflict[*]

By Pat K. Chew[**]

Mahiki is the process of examining one layer at a time, of inching toward the source of trouble to untangle emotions, actions, and motivations, which will, in turn, uncover yet another, deeper layer of the same. In the process of mahiki, the haku deals with only one problem at a time, tracing it from start to finish until it can be fully understood. Imagine mahiki as peeling back the layers of an onion. It is the heart of a ho'oponopono, the process that enables the family to come closer to *mihi* (forgiveness) through the identification of *hala* (fault or transgression) and *hihia* (entangled emotions).[1]

Introduction

While others argue whether the concept of "culture" should be considered at all in the study of conflict, I begin with a different and perhaps controversial proposition.[2] This proposition is that culture is the "perception-shaping lens" through which we experience

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[1]"Mahiki" is a part of the native Hawaiian dispute resolution process, "ho'oponopono." *See* Manu Aluli Meyer, *To Set Right Ho'oponopono, a Native Hawaiian Way of Peacemaking*, from COMPLEAT LAWYER 30-35 (Fall 1995).

[2]For instance, as we later discuss, some feminist scholars have described "culture" as a coercive and false justification for the repression of women's human rights. In this essay, I assume that culture is a reality that needs to be understood, while recognizing that the concept of "culture" like any other concept, can be manipulated in harmful and undesirable ways. By recognizing and better understanding the role of culture in conflict, I believe we are in a better position to learn to use it constructively and positively. For further discussion on the study of culture and conflict *see* THE CONFLICT & CULTURE READER (Pat K. Chew ed., NYU Press 2001).

conflict.[3] Thus, I take as a given that culture is critically important and move ahead with these salient questions: To what extent do we recognize the pervasiveness of culture in understanding conflict? In what ways do we use our recognition to help resolve conflict more constructively?

The concept of "culture" has been the focus of much scholarly attention and debate, particularly in anthropology.[4] My own evolving definition is that "culture" is a common system of knowledge and experiences that result in a set of rules or standards; these rules and standards in turn result in behavior and beliefs that the group considers acceptable. Consistent with this broad definition, I suggest that individuals of different races, ethnic groups, religions, genders, and socioeconomic classes, for instance, have distinct cultures and cultural profiles. Furthermore, our culture shapes how we approach conflict and conflict resolution—including our values, norms, and conduct. It even influences how we define conflict itself and what we consider acceptable or desirable goals of problem-solving.

At the same time, my definition of culture recognizes the multiplicity, fluidity, and saliency of culture. Thus, it assumes that we are simultaneously a member of myriad cultural groups (multiplicity) and that our membership in a cultural group may change over time (fluidity). In addition, the extent to which we identify or are influenced by a particular cultural group may change depending on the situations in which we find ourselves (salience). This view of culture also is sensitive to the risk of overgeneralizing. Because you are a member of a

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[3]For further discussion, *see* Kevin Avruch & Peter W. Black, *Conflict Resolution in Intercultural Settings Problems and Prospects*, in CONFLICT RESOLUTION THEORY AND PRACTICE: INTEGRATION AND APPLICATION 131-140 (Denis J. Sandole & Huge van der Merwe ed., Manchester Univ. 1993).

[4]MICHELLE LEBARON, ERIN MCCANLESS & STEPHEN GARON, CONFLICT AND CULTURE: A LITERATURE REVIEW AND BIBLIOGRAPHY (1992-1998 Update) (George Mason Univ. Institute for Conflict Analysis 1998).

particular culture does not necessarily mean that in any specific situation you would adhere to the rules or norms typically characteristic of that culture.

This essay offers a beginning roadmap for exploring the cultural context of conflict. In Part I, it begins by understanding our own cultural profile (noting some useful social science constructs for describing distinct cultural profiles) and then we continue with a discussion of how our perception of others' cultural profiles makes a difference. The cultural landscape becomes both more realistic and complicated when we take into account the interactive dynamics between the cultural profiles of the multiple participants (including parties, agents and decision-makers) in a typical dispute resolution process. Then moving beyond the more apparent "people" components of culture, the essay introduces the idea of governing institutions in which conflicts occur, noting that these institutions too have relevant cultural profiles.

Part II identifies the tensions between, on one hand, the pervasiveness of culture in conflict, and, on the other hand, American legal traditions that appear contrary to the incorporation of culture into dispute resolution processes. I note examples of social-political and philosophical dilemmas. Finally, there are practical challenges to utilizing this recognition of the pervasiveness of culture into our teaching and practice of conflict resolution.

Part I: Understanding the Cultural Context

A.   Our Own Cultural Profile: Who am I?

Social science research offers provocative insights into the way culture creates the backdrop for conflict. Social scientists have identified and studied constructs that can be used to describe approaches to conflict. These constructs are particularly useful in providing us with a conceptual basis to better understand and critique our own cultural profile and those of other cultures. They help us to answer the question: Who am I?

These constructs identify patterns and attributes that distinguish one group of people from another—offering contrasts between how individuals approach conflict or conflict resolution. The constructs of individualism/collectivism and high-context/low-context illustrate.

Individual-Collectivism. One of the most widely-researched of these social science constructs, the construct of individualism and collectivism has been used to analyze cultural differences in a range of contexts, both domestic and international.[5] This construct focuses on what individuals value and how they orient their lives. Collectivists pay the most attention to their own cultural groups (their "in-groups"), which tend to be homogeneous and hierarchical. They adhere to group norms and emphasize group harmony and interests. While self-identifying with their group, they simultaneously look for ways that make them distinct from out-groups.

While individualist cultures also have in-groups and out-groups, individualists emphasize personal goals over in-group goals. In disputes, for example, they are driven more by their personal likes and dislikes and cost-benefits analyses. In contrast to collectivist cultures that prize duty, interdependence, and obedience, individualist cultures value self-reliance and independent thinking.

Hi-context and Low-context Cultures. Edward Hall and others have studied how groups and individuals think, act, feel, and interpret communication differently.[6] In particular, they contrast the communication patterns and meanings of high-context cultures (associated with, for examples, Chinese, Japanese, and Vietnamese) and low-context cultures (associated with, for

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[5]Harry Triandis, Christopher McCusker & C. Harry Hui, *Multimethod Probes of Individualism and Collectivism*, 59 J. PERSONALITY & SOC. PSYCHOL. 1006-09, 1020 (1990) (also noting societal antecedents and consequences of these cultural approaches).

[6]Stella Ting-Toomey, *Toward a Theory of Conflict and Culture*, in COMMUNICATION, CULTURE, AND ORGANIZATIONAL PROCESSES 71, 75-82 (W. Gudykuns, L. P. Stewart & S. Ting-Toomey eds., Sage Publication 1985).

examples, North Americans, Germans, and Scandinavians). In high-context cultures, the

meaning of a message is embedded in the implicitly shared social and cultural knowledge of the

group. Often what is not said and non-verbal communication are more revealing than the literal

words. In low-context cultures, communication and meaning are more literal and direct—what is

said is the actual message. The parties do not customarily intend nor seek interpretations beyond

that.

Building on these premises, conflict also is manifested differently. As Stella Ting-

Toomey describes:[7]

> In viewing the same conflict episode, for example, in an organizational setting
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> concerning the rejection of a sales proposal by a North American supervisor in the
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> [low-context culture] context, a North American subordinate will probably view
>
> the conflict episode very differently than a Japanese subordinate who has
>
> submitted the proposal. The North American subordinate will probably enter the
>
> conflict situation with heated discussion and issue-oriented arguments. He or she
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> will probably produce facts, figures, and graphs to illustrate his or her case. In
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> contrast, the Japanese subordinate will probably be dumbfounded by the direct,
>
> outright rejection and will then proceed to analyze the conflict episode as a
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> personal attack or a sign of mistrust. In fact, he or she will probably resign as
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> soon as possible.

Thus, low-context individuals are better able to disassociate the person involved in the

dispute from the conflict issue. They "can fight and scream at one another over a task-oriented

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[7]*Id.*

point and yet be able to remain friends afterwards."[8] High-context individuals, however, bring to

the table presumptions about appropriate roles and conduct for individuals of that stature and

background that are inseparable from the specific conflict. The often-heard American principle

of "separate the people from the problem,"[9] hence, would be a cultural mismatch in a high-

context culture.

In addition to individualism/collectivism and low-context/high-context, there are myriad

other constructs. Power distance (indicating how disparities in power and equality are

perceived), masculinity/femininity (indicating the extent to which individuals are expected to

conform to designated social roles of men and women), and uncertainty avoidance (indicating

how individuals react to the lack of structure and clarity) are examples of constructs that social

scientists are currently researching.[10]

Research illustrates how these constructs can help us understand our own cultural

profiles. For example, one study found that decision-makers from collectivist and high-context

cultures were more cooperative, expected others to be more cooperative, and were more likely to

use "equal allocation distribution" rules to resolve social dilemmas than decision-makers in

individualist and low-context cultures.[11] In another study, the negotiation approaches of buyers

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[8]*Id.*

[9]*See* ROGER FISHER, WILLIAM URY & BRUCE PATTON, GETTING TO YES: NEGOTIATED AGREEMENT WITHOUT GIVING IN (2d ed. Penguin 1991).

[10]Geert Hofstede, *The Cultural Relativity of the Quality of Life Concept*, in CULTURE, COMMUNICATION AND CONFLICT: READINGS IN INTERCULTURAL RELATIONS 131 (Gary R. Weaver ed., 1994).

[11]Kimberly A. Wade-Benzoni & Max H. Bazerman, *Cognition and Behavior in Asymmetric Social Dilemmas: A Comparison of Two Cultures and Behaviors*, Working paper, Division of Research, Harvard Business School, 2001.

and sellers in low-context and high-context cultures were compared. Individuals from the high-context culture (the Philippines) were less confrontational and emphasized interpersonal interactions more than the individuals from the low-context culture (the United States). Consistent with a Filipino cultural profile, negotiators were inclined to consider the other party ("pakikisama"—camaraderie) and to reciprocate behaviors demonstrated by the other party ("utang-na-loob")—traits more consistent with a cooperative problem-solving approach. In contrast, the American negotiators were more competitive and self-serving.[12]

While these varied constructs provide a framework for comparing and understanding how individuals from different cultures approach conflict, some emerging social science research aids our understanding of how our cultural profiles are directly relevant to legal disputes. For example, dozens of empirical studies in a range of occupations confirm that women and men perceive workplace conflict and harassment differently. This rich research is relevant, for instance, to the laws of sexual harassment. When selecting a "reasonableness" standard for determining whether the supervisor or co-worker's conduct toward the employee was "severe and pervasive harassment," this research clearly indicates that whether the standard is a gender-neutral "reasonable person" or a "reasonable woman" makes a difference.

B.   Our Perception of Others' Cultural Profiles: Who are They?

Not only our own cultural profiles, but our perception of others' cultural profiles affects the cultural landscape in conflict situations. Consider these illustrations:

Situation One. Imagine that you are waiting in a modest but modern office for the bank officer to arrive to re-negotiate the terms on your 20-year house mortgage, which has become

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[12]Alma Mintu-Wimsatt & Jule B. Gassenheimer, *The Moderating Effects of Cultural Context in Buyer-Seller Negotiation*, 20 J. PERSONAL SELLING & SALES MGT. 1 (2000).

increasingly burdensome. The officer enters the room confidently and with a formal but friendly greeting. She has a dark olive complexion with graying mid-length hair, not too tall, wearing a sari, and speaking with an accent you can not quite discern but that you conclude is not "standard English."

What assumptions do you make about how she will handle the negotiations? Do you anticipate that she will be rule-bound or flexible about your financial problems? And why do you make those assumptions? What if instead of being the bank officer, she is the customer and you are the bank officer? What is your assessment of her cultural profile? Which of her cultural characteristics would be salient in your consideration of her creditworthiness?

Situation Two. Suppose instead that you are a party in a mediation. You and your soon-to-be former spouse are bitterly contesting custody of your three children and the distribution of sizeable assets. You have "everything" at stake—both personally and financially. The mediator walks in the door. He is a young Black man, dressed casually but neatly, with closely-cropped hair. He nods first to your spouse, then to you. What assumptions do you make about his values, norms, and sense of fairness? Or suppose instead that the Black man is your spouse's attorney and has accompanied your spouse to the mediation. What are you thinking?

Drawing on what we see, hear, and know about someone in a dispute or problem-solving process, we make assumptions about her or his cultural profile.[13] Depending on our role in the dispute, these assumptions have different consequences. As the customer in the mortgage negotiation situation above, it could affect the way you present and what you disclose about your

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[13]*See*, *e.g.*, the work of Mahzarin Banaji and others. M. R. Banaji & R. Bhaskar, *Implicit Stereotypes and Memory: The Bounded Rationality of Social Beliefs*, in MEMORY, BRAIN, AND BELIEF 139-175 (D. L. Schacter & E. Scarry eds., Cambridge, MA: Harvard Univ. Press 2000); and R. P. Abelson, N. Dasgupta, J. Park, & M. R. Banaji, *Perceptions of the Collective Other*, 2 PERSONALITY & SOC. PSYCHOL. REV. 243-250 (1998).

financial and personal situation. It could also shape your satisfaction with and your perception of the fairness of the banker's decisions. As the bank officer, it shapes your assessment of the customer's creditworthiness, including your ultimate decision on the transaction's terms. When the Black man is in the role of mediator or in the role of opposing counsel in the dispute over custody and the distribution of assets, it could shape your and your lawyer's mediation strategy.[14]

In a legal case, for instance, the judge's perception of the plaintiff's cultural profile may well affect the outcome. My recent research on racial harassment in the workplace illustrates these points, including the judge's challenge of correctly gauging others' and his or her own cultural profiles. Recall that under the federal civil rights laws, the court is asked to determine whether the plaintiff-employee's perception that he or she was racially harassed is "reasonable," in contrast to the employee being hypersensitive, idiosyncratic, or even delusional.

In making this judicial determination, whose frame of reference is used? Most courts refer to a hypothetical "reasonable person" in the plaintiff's position; that is, would a reasonable person find the supervisor's or co-worker's treatment racially harassing? The courts, however, do not make clear who they have in mind when "standing in the shoes" of this reasonable person. What cultural profile and beliefs does this reasonable person possess? Does the reasonable person personify society at large, individuals in that profession or industry, or both men and women? Or is the standard what this particular judge or judges' collectively considerable reasonable? Furthermore, courts do not offer an empirical basis to substantiate that their standard accurately reflects the perception of any of these groups. At the same time, as the sexual harassment research indicates, whose perspective you use might well make a difference.

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[14]Our cultural profiles affect, for instance, our perceptions of procedural justice and distributive justice. *E.g.*, Cynthia Lee, Madan Pilutla & Kenneth S. Law, *Power Distance, Gender and Organizational Justice*, 26 J. MGT. 685, July-Aug. 2000.

In contrast to this generic reasonable person standard, some courts, most notably in the Ninth Circuit, have adopted the perspective of a reasonable victim with this plaintiff-employee's specific attributes, particularly the plaintiff's race. This presents the judge with a formidable challenge: the judge must correctly gauge the employee's cultural profile and the cultural profile of the racial group to which the employee belongs.

Consider the situation described in a Ninth Circuit case, where the plaintiff-employee—an Asian-American woman over 40 years old of Asian Indian national origin, employed as a nurse in a rehabilitative hospital for mental illness—stands before the judge arguing that she was racially harassed.[15] The judge is obligated to use the perspective of the plaintiff—that is, the perspective of a reasonable Indian-American women of this age in this occupational setting. What does that mean? It is ironic that the law is asking the judge, who in this case is a seventy-year-old White male looking through his own cultural lens, to determine the cultural profile of Indian-American women in general, and then to assess whether this particular Indian-American woman's cultural profile is consistent with that group profile. He ultimately (but perhaps not surprisingly) concludes that the plaintiff was not reasonable in her own assessment of racial harassment. Without empirical evidence of what a "reasonable Indian American woman" would conclude, he is left to deduce his own sense of what her sense of reasonableness should be.

This case prompts numerous empirical inquiries. For example, would a judge that belongs to the same gender or racial group as the employee reach a different or more accurate

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[15]Prem Chaudhary v. Telecare Corporation, 200 U.S. Dist. LEXIS 17729 (N.D. Ca. 2000).
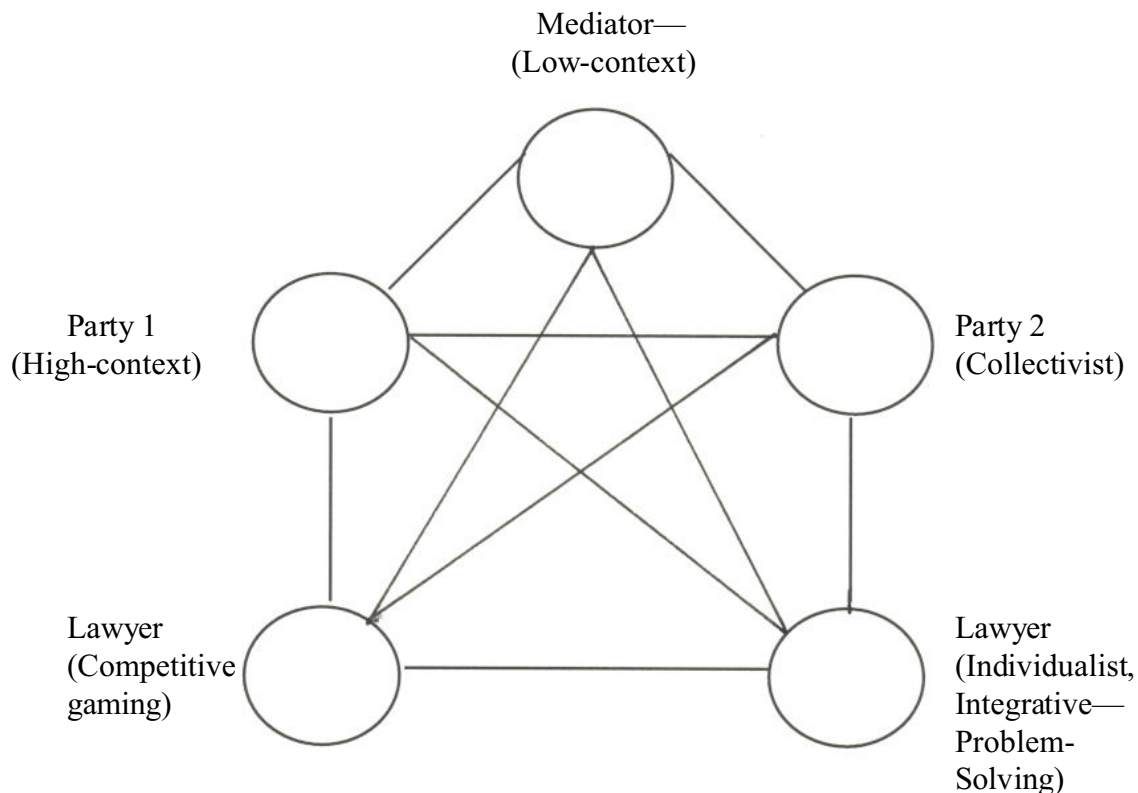
conclusion? Which of the judge's cultural groups is most salient in this decision-making process?

C.   Interactive Dynamics: Who are We Together?

A thorough and realistic assessment of the cultural context of disputes is even more complicated than understanding your own cultural profile and reflecting on your perception of others' cultural profiles. The interactive dynamics and varied roles of the participants trigger a whole array of inter-dependent cultural profiles.

Consider a hypothetical alternative dispute resolution (ADR) process, as depicted in the Illustration. There are two parties, each party is represented by agents (presumably lawyers), and there is an arbitrator or mediator. But what are each of their cultural profiles, and how do they conflict or complement each other?

Illustration of Interactive Dynamics of Cultural Profiles

Mediator—
(Low-context)

Party 1
(High-context)

Party 2
(Collectivist)

Lawyer
(Competitive
gaming)

Lawyer
(Individualist,
Integrative—
Problem-
Solving)

If a lawyer and her client have different profiles (for instance, what if the lawyer is more individualist-oriented but the client is more collectivist-oriented), what agency-principal issues will arise? How will they prioritize objectives and strategies differently, given their varied values and conflict resolution styles? Given the critical role of the mediator, what if his or her cultural profile is distinctly different from one or both of the parties? For instance, if one party uses a high-context style of communication, but the mediator is more low-context oriented and is generally not conscious of a high-context style, will that increase the probability that the mediator misconstrues the party's literal (and non-literal) communication and hence misunderstand the fundamental dispute or the party's underlying interests? As we consider other individual characteristics, such as age, race, class, occupation, or religion, how might that reconfigure each person's cultural profile? In what ways will each participant "frame" the dispute (defining the conflict, the interests of the disputing parties, and their own underlying interests) and then "game" the dispute (determining their strategy and how to implement that strategy)?

Once the framing and gaming strategies begin to emerge, how will the cultural profiles of the participants affect their interpretations and reactions to the amalgamation? How will each participant's perception (whether accurate or not) of every other participant cultural profile affect the dynamics? What are the interactive effects and how will they affect the options generated and any movement toward resolution?

D.   Governing Institutions: What is the Broader Context?

In addition to the more apparent "people" components of the cultural context, we also should consider the institutional frameworks in which disputes occur. These frameworks provide the broader infrastructure—the rules, organizations, systems in which conflicts operate. These

institutions may be formal with codified rules (such as legal statutes) and sanctioned

interpretations and polices (such as those found in court opinions). In the alternative, these

institutions may be creations of non-government private organizations—such as industries,

neighborhoods, professional groups, religious groups, political groups—that have evolved over

time to address business, moral, or social issues. These private institutions also have

distinguishable values and rules of conduct, although they may not be directly articulated.

I posit that these "governing institutions" have cultural profiles of their own and may be

critical in shaping the dispute resolution process. Two examples of types of governing

institutions, the legal systems and industry groups, illustrate:

Legal System. Each legal system has its own distinctive attributes, embodied in both its

procedural and substantive rules as well as the ways in which those rules are interpreted and

enforced. Thus, the U.S. system with its particular historical basis and philosophy, is generally

characterized by advocacy and adversarialness, adheres to the common law principle of

precedents, and is theoretically predicated on notions of justice and individual rights.[16] This

cultural profile of the American legal system is apparent, for instance, in the resolution of legal

disputes in the litigation process.[17]

Particular subject areas of U.S. laws offer more specific cultural distinctions. In state

corporate laws, for example, courts and statutes address disputes between shareholders and

corporate management over whether executives have breached their fiduciary duties. What the

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[16]JEROLD S. AUERBACH, JUSTICE WITHOUT LAW? 69-93 (Oxford Univ. Press 1983); Carrie Menkel-Meadow, *The Trouble with the Adversary System in a Post-Modern, Multi-Cultural World*, 1 J. INST. FOR THE STUDY OF LEGAL ETHICS 49 (1996).

[17]There are exceptions to this cultural model, such as ho'oponopono, as illustrated at the beginning of this essay. *See* note 1.

courts value is apparent: managerial discretion, entrepreneurship, and risk-taking in the interest of the corporation's and shareholders' economic profits. Given this cultural profile, it is not surprising that the actual legal standard for directors' and officers' decision-making and fiduciary duties is low.[18] Employment laws, although much more eclectic that state corporate laws, also generally prize managerial discretion but sometimes try to balance it against societal innovation and individual rights.[19] Even ADR law is developing its own cultural profile, or perhaps more aptly labeled, its own "personality conflict." In its evolving jurisprudence, it struggles over ADR's original promise of efficiency and predictability versus its idealized aspiration to be a fairer and more humane forum than that offered by traditional litigation.

Industry. Industries and occupational areas often have their own distinct cultural profiles in resolving disputes. Within these industries and occupations, identifiable sub-cultures also emerge. For instance, the events surrounding the Enron debacle offered dramatic and timely examples of the cultural profile of the management of some large corporations. Sherron Watkins, former Enron vice-president, describes Enron's executives' culture of flamboyance, disregard for proprieties, and high-living.[20] The cultural profiles of politicians, legislators, and the securities industry also are being revealed in their attempts to address the management and accounting problems that Enron revealed.[21]

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[18]*See* PAT K. CHEW, DIRECTOR'S & OFFICE'S LIABILITY § 2:6 (Practising Law Institute 1993, updated 2002).

[19]*E.gs.*, Karpinski v. Ingrasci, 268 N.E.2d 751 (Ct. App. N.Y. 1971); Outsource Int'l, Inc. v. Barton & Barton Staffing Solutions, 192 F.3d 662 (7th Cir. 1999).

[20]MIMI SWARTZ with SHERRON WATKINS, POWER FAILURE: THE INSIDE STORY OF THE COLLAPSE OF ENRON (Doubleday 2003).

[21]*See supra* CHEW at note 18, § 2:7.3 (describing these groups' emphasis on increased oversight by government and internal audit boards aimed at management accountability and

In an almost surrealistic way, the Iraqui War offered daily examples of the cultural profiles of two industries: the military (of both the U.S. and Iraq) and the media (of both the U.S. and other countries) covering the conflict. While utilizing advanced technology in its weaponry, the U.S. Coalition forces also adhered to strategies and priorities that are consistent with its culture and history.[22] In prior American military campaigns, for example, the tactics of leapfrogging over enemy concentrations in route to an ultimate target and in focusing on the capital city as the ultimate target even while other major parts of the country are unconquered, have been time-tested although not always successful strategies.

The War also revealed aspects of the media's cultural profile.[23] A newspaper analysis of CNN (a U.S. media station based in Atlanta) and Al-Jazeera (a Pan-Arab media station based in Doha, Qatar) revealed the priorities and official positions typical of media enterprises, no matter their nationalities. Both stations are "business operations competing for viewers and advertisers against increasingly aggressive rival and avidly seeking to please their target audiences."[24] While they must make judgement calls, they both regard themselves as unbiased and politically independent. The comparative analysis, however, also revealed distinct traits of the cultural

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disclosure).

[22]Bob Davis, Glenn R. Simpson & Yaroslav Trofimov, *U.S. Tactics May Seem Novel, But History Offers Some Lessons*, WALL ST. J., Mar. 28, 2003, at A1, col. 4.

[23]Another example of media culture was of journalist Peter Arnett, who apparently crossed the cultural norms of his industry and was fired. He reportedly made "pro-Iraqi" public remarks that infuriated viewers. "Arnett became the story . . . That was a mistake," explained his former employer, National Geographic Ventures. Joe Flint, *Arnett's Firing: "Celebrity" News Has Its Peril*, WALL ST. J., Apr. 1, 2003, at B1.

[24]Emily Nelson, *Battle for Viewers Colors TV Picture Coming From Iraq*, WALL ST. J., Apr. 4, 2003, at A1, col. 6.

profiles of each station and their audiences. Offering numerous examples, it documented the

"different lenses" through which the same conflict was seen.[25] For instance:

Thursday, March 27: 6 a.m. EST, 2 p.m. in Baghdad. On CNN,

American paratroopers jump from a plane to open up the northern front in Iraq.

On Al-Jazeera, a little Iragi girl in a pink sweater stares out from her Baghdad

hospital bed.

Part II: Tensions Between the Proposition and American Legal Traditions

While accepting the proposition that culture is pervasive in conflict, I also am sensitive to

the caveats and tensions that this proposition presents. Broadly labeled, these tensions may be of

a social and political, philosophical, and practical nature.

A.   Social and Political Tensions

Definitional and interpretive issues abound. Determining the meaning of the concept of

"culture" itself is a challenge. Assessing the values, norms, and attributes of a particular culture

also depends on one's perspective. An "insider," for instance, has a distinguishable frame of

reference from an "outsider" to the culture. John Paul Lederach describes how a cultural analysis

may be more prescriptive (comparing another culture to our culture and using our culture as the

model by which other cultures are to be judged) or more elicitive (viewing another culture as the

natural order and model from which we try to understand). "Their way of being and doing, their

immediate situation, their past heritage, and their language are seen as the seedbed . . ." and the

core concepts of the culture, although alien to the observer, are the beginning points of analysis

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[25]*Id.*

and understanding.[26] A "culture" also is not static with clear parameters; rather it is more accurately described as fluid with evolving borders. Furthermore, the saliency of a particular cultural trait will vary depending on the circumstances.

An example illustrates. Mary Patrice Erdmans describes the substantial and growing Polish American community in Chicago, emphasizing their dynamic and complex cultural identities.[27] While noting the common ancestry, she explains the divisions within the group. Immigrants from different time periods (1870-1913, 1939-1959, 1965-1989) left Poland for different reasons (political, economic, or both political and economic reasons), and had dramatically different commitments to and identification with a national Polish identity. These varied cultural profiles reflect in part the political, economic and geographic faces of Poland during the relevant emigration periods—shaping who immigrated and their reasons for doing so. Moreover, as an immigrant evolves into an "ethnic-American," their values are transformed.

Another political and social tension is the importance of identifying and studying "cultures" while recognizing the risks of overgeneralization and stereotyping. As Erdman's research demonstrates, a particular individual within a cultural group does not necessarily have the cultural profile of that group. A third-generation Polish American's commitment to Polish nationalism may be quite negligible or even negative as compared to the Polish American community in general. While stereotyping can be a convenient way to simplify a complex world, it also deprives us of understanding the individuality of those involved in the conflict.

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[26]JOHN PAUL LEDERACH, PREPARING FOR PEACE: CONFLICT TRANSFORMATION ACROSS CULTURES 3, 63-69, 89-92 (Syracuse Univ. Press, 1995).

[27]Mary Patrice Erdmans, *Immigrants and Ethnics: Conflict and Identity in Chicago Polonia*, 36(1) SOC. Q. 175-82, 190 (1995).

B.   Philosophical Tensions

American legal tradition is predicated on principles of universalism. Rights, duties, and

remedies are based on uniform principles and assumptions about what is most valued.[28]

Desirable attributes for dispute resolution processes, for instance, are predictability, efficiency,

fairness (in process and substance) and effectiveness. A fundamental attribute of our common

law system is following precedents, thus ensuring that these universal rules will be repeatedly

enforced and reinforced. This tradition of universalism reflects both philosophical and historic

doctrines as well as a national self-confidence (perhaps an egotism) that Americans know what is

right and most principled.

Recognizing the relevance of culture in resolving legal disputes raises the uncomfortable

possibility that universalist principles might not be apt or that the way to define and to resolve a

dispute may be dependent on the cultural context in which the dispute occurs. This prospect of

"cultural relativism" has been viewed as a challenge to the hallowed legal and societal traditions

of American jurisprudence, and thus a direction to be carefully scrutinized.

Two examples illustrate this tension: one is found in criminal law and the other in

feminist jurisprudence. Under the theory of the "cultural defense" in criminal law, the defense

presents and the court considers cultural evidence as an explanation for what would otherwise be

criminal conduct of immigrant defendants. As Doriane Lambelet Coleman describes:[29]

> [t]he rationale is that "the moral culpability of an immigrant defendant would be
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> judged according to his or her own cultural standards, rather than those of the

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[28]*See supra* note 16.

[29]Doriane Lambelet Coleman, *Individualizing the Justice through Multiculturalism*, 9 COLUM. L. REV. 1093, 1099, 1156-65 (1996).

relevant jurisdiction." While the cultural defense is consistent with "progressive"

criminal defense philosophy which advocates that justice should be as

individualized as possible, it must be balanced against the "risks of dangerous

balkanization of criminal law, where non-immigrant Americans are subject to one

set of laws and immigrant Americans to another.

Tracey Higgins similarly describes the theoretical and practical tension among feminist

scholars between universalism and cultural relativism.[30] Western civil rights activists have long

argued for the universality of human rights—a core of rights that transcends countries and

cultures. In fact, to the extent that religion and culture are cited as justifications for denying

women a range of rights (including the rights to be educated, travel, seek paid employment, and

protection from domestic violence), feminists have argued that these cultural arguments are

obstacles to broader political goals. On the other hand, feminist jurisprudence has been grounded

in the importance of valuing differences and listening to and accounting for the particular

experiences of all women; that is, to be non-exclusionary and non-essentialist. Recognizing the

legitimacy of cultural practices in other countries would be consistent with this aspect of feminist

philosophy and with cultural relativism.

C.   Practical Challenges

Recognizing and accepting in the abstract that culture is pervasive in conflict is very

different from determining what to do with this recognition. We are still left with many practical

queries. Consider these examples.

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[30]Tracy E. Higgins, *Anti-Essentialism, Relativism, and Human Rights*, 19 HARV. WOMEN'S L.J. 89-105, 111-15 (1996).

As this essay demonstrates, legal scholars are still in the early stages of acquiring knowledge on the relationship between culture and conflict. While anthropologists and other social scientists have studied the topic in a range of contexts, their focus has not been in areas that are most relevant to us—disputes that involve legal issues and the affect of culture on dispute resolution processes such as arbitration and mediation. A practical challenge then is deciding what information we need and how to acquire that information.

Furthermore, as we acquire the necessary knowledge, how will we utilize it? What skills do we need to apply this knowledge to our work? How will we relate it to our legal studies, our classrooms, and our practice of dispute resolution? In my courses that consider conflict and culture, I wonder about whether and how to relate discussions of culture and research on the topic with more traditional and typical legal discussions. Students recognize that the topic is nonroutine, some considering it tangential, irrelevant, or distracting from the "real" substantive issues. The material in the Appendix illustrates some teaching ideas on how to link the topic to students' lives. When I use social science research to provide more specificity, documentation, and relevance—I acknowledge that students are often faced with unfamiliar concepts and methodology. "Thinking like a lawyer" is not the same thing as "thinking like a cultural social scientist," but the question for us is whether the former should include the latter.

Conclusion

Culture is pervasive in conflict. Culture is the "lens" through which we define, experience, and resolve conflict. We begin to understand the cultural landscape by recognizing that each participant brings to conflict and dispute resolution processes her or his own cultural profile. The interactive dynamics of the participants' myriad cultural profiles are influenced by each participant's perception of the other participants' cultural profiles. While these perceptions

may or may not be accurate, they nonetheless have consequences for how the participants "frame and game" the conflict and ultimately influences the outcome of the dispute resolution process. The cultural context is further shaped by the cultural profiles of the governing institutions, such as the legal, political, industry, and social systems in which conflicts occur.

While culture is pervasive, there are a range of social-political, philosophical tensions, and practical challenges to constructively incorporating and utilizing culture in our study and practice of conflict. There are substantial issues in defining culture, in not overgeneralizing cultural profiles, and in distinguishing it from its potentially coercive political uses. Some traditional tenets to American law, at least in the abstract, appear inconsistent with the incorporation of culture in resolving disputes. Our challenge is to explore how we can best learn about and most constructively apply to our teaching and practice the pervasiveness of culture in conflict.

Appendix

Teaching Ideas[31]

1. Think of a heated dispute where different parties experienced and described the conflict differently. How did these differences come about? How did the individuals involved, the cultural norms, or the event itself contribute to these differences? How did the first person to describe the conflict shape the resolution process and outcome? If you were the mediator, how would these factors have influenced you, your way of handling the dispute, or the eventual outcome?

2. There are many ways in which we acquire our own, individual "culture," including the stories that we grew up with. Identify a favorite family story that deals with a conflict or dispute, either taken from a book or passed down orally. Reflect on how the story transmitted important values and approaches to resolving conflict.

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[31]These teaching ideas are excepted from THE CONFLICT & CULTURE READER (Pat K. Chew ed., NYU Press 2001). This book offers interdisciplinary readings in four parts. Each part includes introductory material, commentary on research, and teaching ideas linked to the readings. The tensions between cultural relativism and universalism are addressed throughout the book.

Part I introduces some *fundamental inquiries*: What is culture? What is conflict? Why should we study their relationship?

Part II considers how *gender and conflict* are interrelated and the ensuing implications of these interrelationships—noting various ways in which individuals of different genders may approach confliction resolution differently and be differentially impacted.

Part III surveys issues on *race, ethnicity, and conflict*, particularly in the United States. Readings explore dispute resolution approaches and different perceptions of conflict between Whites and Blacks, between different minority groups, and within ethnic groups.

Part IV explores *global perspectives* on culture and conflict, drawing from a range of geographical contexts—noting for instance, cultures which prioritize peacefulness over other goals and the cultural contrast between the Middle East and Western philosophies of conflict.

3. Graphically depict your own "cultural map." You might begin by identifying key cultural groups to which you belong. For this exercise, you can define "cultural group" broadly to include groups that have influenced how you perceive the world and what is important to you. These might include your family, ethnic, religious, school, or occupational group. Be creative in how you depict your map. It might be a circle with free-flowing lines to depict the relative importance of and interrelationships between each group.