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MEDIATION THEORY AND PRACTICE

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ABSTRACT

Psychologist Maoton Duestch and other scholars such as Frank sander, Lon Fulle and Roger Fisher in their pursuit to study the human behavior and nature presented theories that human conflict would be resolved by used of a constructive third part to aid in the resolution process. The third part is mandated to reduce the irrationality in the conflicting parties by preventing personal recrimination. The party has to base on the actual issue at hand, must explore the possible alternative solutions, and make the parties have concessions in a peaceful and respectable manner. The third parties are the mediators in the conflict and focus on ensuring the parties understand the impacts of the conflict that must be undertaken with a lot of competence, fairness, and integrity. This paper looks at mediation theory and practice in psychology.

INTRODUCTION

Psychologist Maoton Duestch and other scholars such as Frank sander, Lon Fulle and Roger Fisher in their pursuit to study the human behavior and nature presented theories that human conflict would be resolved by used of a constructive third part to aid in the resolution process (Folberg, Milne & Salem, 2004) . The third part is mandated to reduce the irrationality in the conflicting parties by preventing personal recrimination. The party has to base on the actual issue at hand, must explore the possible alternative solutions, and make the parties have concessions in a peaceful and respectable manner. The third parties are the mediators in the conflict and focus on ensuring the parties understand the impacts of the conflict that must be

undertaken with a lot of competence, fairness, and integrity (Kressel, 2007).

Mediation is thus defined by Folberg (2016) and his colleagues as a personalized process of conflict resolution whereby the conflicting parties are given an opportunity to learn from each other mistakes, acknowledging their mistakes are resolving the conflict by the aid of a neutral third party (Mediator). On the other hand, Moore (1996) defined mediation as “the intervention in a negotiation or a conflict of an acceptable third party who has limited and no authoritative decision-making power but who assists the involved parties in voluntarily reaching a mutually acceptable settlement of the issues in the dispute”. Folberg and his colleagues further caution readers not to confuse negotiation, arbitration, and therapy to mediation.

Arbitration occurs where the third part investigates the conflicts and makes decisions for the conflicting parties based on the findings unlike in mediation where the third part is neutral and only moderates the resolution process. In negotiations, the parties involved bargain their issues out and does not necessarily need a third part to officiate the process unless under special occasions (Brooker, 2007). Unlike therapy, mediations are not diagnostic hence does not evaluate the past behaviors and history of the conflict parties but only aims at enabling the conflicting parties to reach a consensus by changing the personality patterns of the parties. Mediation helps the parties to jointly solve the problem and reach decisions that both are satisfied with without biases from external factors (Bush & Folger, 1994).

The ultimate authority of the decision made during a mediation process lies in the hand of the parties thus a mediator only helps them to come to that decision. The primary aim of mediation is neither to establish who is wrong and who is right but to arrive at a workable resolution that meets all the needs of the disputing parties (Saphira, 2016). Mediation has been with humankind for centuries as the nature of humans, conflicts with one another are inevitable and mediation has been sorted ought to resolve the disagreements and has proved to be a successful approach. All social sectors at one time or another seek the work of mediators to help the parties to deliberate on their conflicts. Mediation is pursued as a profession and the practitioners have a big responsibility to their clients, which include fairness, competence, confidentiality, respect, honesty, diligence, professional integrity, impartiality, and unbiasedness (Mayer B. S., 2004).

There is three main type of meditation: the facilitative mediation, the narrative mediation, and the transformative mediation. The primary focus of this paper shall be on the facilitative mediation. In a transformative mediation, the mediator calls upon the parties to discuss their problems, he/she may a friend or a person whom the parties respect and he has identified the problem among the parties. The mediator listens, directs and moderates the conversation, supports empowerment and acknowledgment of the shifts in the discussion that enable them to come to a consensus (Manning, 2006). The principles of narrative mediation demand that the mediator meets the parties

separately enabling each to discuss their views of the problem after when both the parties and the mediator have a joint session. The mediator first builds confidence and trust with the parties and let them know his/her work is to facilitate the dialogue and it is only the parties that shall make the decision on the subject matter Saphira (2016) argues.

Facilitative Mediation

Mayer (2004) defines facilitative mediation as a process where the third party supplies the parties with the process that enable them to consolidate and deliberate on their voices, feelings, thoughts and views on the problem. The perception and the feelings of the parties to the problem are most emphasized and the mediator enables them to harmonize the factors together effectively and harmoniously. It is undeniable that facilitative mediation is the mother of the other two types as it is the starting point and the building point of all the mediations. The mediator is not to persuade the parties to reach a consensus but guides them through to determine a fairly and workable solution to all of them. Mayer further argues that a facilitative mediation inclines on the description rather than prescription hence the values and the goals of the process are based on a thoroughly formulated approach. Different approaches can be used in facilitative mediation, which can be structured, open-ended, outcome oriented, process-based, passive or interventionist (Lande, 2000).

Facilitative mediation is one of the most practiced approaches in the mediation field. It is also referred as “interest-based mediation: where the neutral third party helps the parties in dispute to settle the conflict. It seeks to address the needs and the interests of the parties while the mediator’s job is to formulate the agreement by validating and normalizing their views. The mediator also educates the parties’ about their strengths and weaknesses as per the claims presented and outlines the possible consequences of not resolving the matter (Kressel, 2007). The process is achievable on two fronts: the narrow and the broad end. In the narrow end approach, the mediator is entirely focused on the position where the parties are aided in the development of proposals and their alternatives hence the parties are only helped in carrying out their own evaluative position based

course (Ridley-Duff & Bennett, 2010). The broad end spectrum demands that the mediator should first understand the interests of the parties thereafter developing a variety of options and help them, to determine the most integrative solution.

Characteristics of Facilitative Mediation

Facilitative mediation is characterized by four distinct elements, which give it its definition of being an interest-based process. This approach is processed based in that the mediator focuses on the interaction process. Even if the mediator is an expert, they are not allowed to show their professionalism. In the process, approach the mediator moderates the dialogue to enable the parties to deliberate on the issue and come up with their own solutions and he/she only makes recommendations on the solutions but do not choose which one. The second properties, the approach is client centered, the mediator helps the parties understand their situation from a narrow and broader view and help them narrow down to the most viable and feasible solution to them (Riskin, 1996). The clients are the determinants of the verdict of the resolution process while the intermediary only evaluates their decision and approves it.

Facilitative mediation focuses on communication, the intermediaries work is to ensure an effective and harmonious communication prevails between the parties during the resolution process. The primary goal is to aid the parties in finding an effective way in which they can communicate to each other to a point they can hear out the views of the other party. The success of all mediation process anchor on the effectiveness of the communication hence it is the most imperative tool a mediator must ensure he/she possesses during the dialogue. As the definition of facilitative mediation states, it is an interest-based process where the facilitator helps the clients communicate their interest. Through the guide of the intermediary, the clients are able to clearly understand their own concerns, needs and interest hence focusing on the most integrative and workable option for them all (Manning, 2006).

Facilitative Mediator Orientation

As indicate earlier, the facilitative mediation has two main orientation: the narrow end orientation

and the broad end. Ion the narrow approach the mediator's key point of focus is to help the clients understand their weaknesses and strengths as well as the possible implication of not solving the difference. The burden of the decision made lies to the clients but the mediator may engage the clients through asking questions to enable them to understand their rights, stands and the implication of the clash. The facilitator also helps the clients develop their own narrow proposals, help the exchange the proposals and evaluate them. The clients are encouraged to understand the matter, their own views, and that of the other party and develop a sense of their ability to deliberate on their choices and problems. However, the options in this approach are limited as compared to the broad end mediation (Riskin, 1996).

In the facilitative broad end mediation, the mediator helps the clients in the definition of the problem as per the underlying demand and interests of the parties and helping them draw the suitable solutions to trade off the interests. The clients are also helped to develop alternatives that shall help them counter the clash (Brooker, 2007). While developing the interest-based alternatives for the settlement, the intermediary helps them focus on the relevant interests and aids them in the generation of the possible solutions. After identification of the options, they are helped to choose, combine, and modify the options where necessary as per the developed interest based proposals. The selected option is then evaluated jointly with the help of the facilitator to validate the contentedness of each party of the settlement terms. According to the Riskin (1996) diagram, the facilitative mediation increases is narrow on the litigation-based issues and broads to business issues, personal, relational/professional issues and then the community issues.

One of the assumptions and the value of the facilitative mediation attributed by many scholars and mediators are the approaches inclines on the clients as the only persons who are able to solve the difference between them effectively and sufficiently. The primary role of the intermediary is to guide them and moderate the dialogue for them to iron out their disagreements and choose the solution that satisfies both their interests most. The clients are empowered in making their own

decisions as per their situations putting into consideration the decision they make would affect other parties (Manning, 2006). They are helped to understand each decision one makes must factor other parties so not to clash and should to serve the general good of all. Empowering parties to make decisions at their own free will is the paramount advantage of this approach as both consent to it and leave satisfied unlike where the decision of their conflict is deliberated upon based on true and biased factors that the other party may not conform to (Drews, 2008).

Demerits and Critics of the Facilitative Mediation

According to the definition of facilitative mediation, the role of the mediators is to create an ample atmosphere and process that allows the clients to deliberate on their differences rather than extra roles of educators, counselors, and option generators. The mediators do not use their professional skills that would help the clients make prudent decisions as compared to the decisions allowed to make on their own. It is argued that if the facilitators assume the roles of their field of expertise they may deviate from the objective of the process but the provision of some information as counselors and educators possibly help the parties to make a better decision as they have a broader scope of the options (Moore, 1996).

Communication is a common problem with the most mediation process, creating an ample and harmonious communication among conflicting parties is not always an easy task to mediators. They may be often disrupted halting the settlement process and time aggravating the disagreement more. The facilitator is forced to seek for an integrative communication approach that may take time to establish it coherently (Riskin, 1996). Other challenges emanate from the options and the demands that each party tables for discussion. Some of the options provided by the clients may be hard to deliberate on without legal proceedings and may be conflicting. Some of the interests are complex; the parties may be forced to deviate from the conflict at hand forcing the third part to represent a shift in the paradigm on how the clients view the solution of the conflict (Saphira, 2016).

Provision of information and advice often collide, a facilitator may be giving information about the legal implication of the consequences of not solving the clash and at the same giving advice and recommendation of the decisions the clients are to make. According to the principles of this approach, the clients are supposed to make the decisions independently and only moderated by the intermediary rather than recommending. The mediators are prone to providing information, advice, and recommendations that help in the crafting of the settlement terms hence deviating from their original role (Drews, 2008). The role of the facilitator is more of helping the clients to identify the information they require rather than being the primary disseminators of the information. The mediators also face challenges of sticking to the client's interest-based options even if they contradict with their beliefs, principles, and legal laws. They are not supposed to interfere with the decisions of the clients but only provide them with the information they require in coming up with the decision. Decision-making is centered to the clients and not the facilitator (Mayer, 2004).

The facilitative mediation faces criticism in which the prevalent cogent criticism emanates from the conflicting ends of the continuum. The evaluate mediation theory proponents have alluded that the facilitative mediation fails to provide the disputing parties with op legal option and awareness they need they are open to them. They argue that the facilitative mediators derive power from the clients incapacitating their ability to seek more prudent and realistic option. They further argue that at the end of a mediation process, the disputants are supposed to have gained some knowledge on the available legal options outside the settlement context (Ridley-Duff & Bennett, 2010; Riskin, 1996). Nevertheless, the approach is viewed to enable the clients take responsibility and be able to solve their problems unlike if the decisions were formulated for them.

The second critique emanates from the view that facilitative mediation is more inclined on the outcome at the expense of empowering the clients. The proponents of the transformative mediation theory Bush and Folger (1994) articulate that the objective of the theory being based on achieving the interests and concerns of the clients it is outcome

oriented hence failing to transform the potential of the client. In their argument, the process is flawed as the facilitators struggle so hard to ensure the outcome is achieved with the assumption it is the objective the clients want from the mediation (Bush & Folger, 1994). They believe that with the approach, mediation process shall become rigid and defense as at the end of the process the outcome on the subject matter is achieved but the client remained untransformed and unequipped with boarder skills and point of viewing and handling things as well as lacking adequate and quality information (Drews, 2008).

CONCLUSION

Mediation is a very fascination field bewildered with a variety of activities. Every institution whichever it may be requires the services of mediators at one time or another the employees, friends, family members or man-animal relationship clash. Conflicts are inevitable and comprise a big part of us. The political instabilities witnessed all over the world, the cases flooded in the judicial systems, the cases reported of brother slashing brother, daughter killing the father, and much more emanate from lack of that participant seeking to advise from mediators (certified or not) who would have helped to solve the issue. Mediation is a very crucial tool in the life of humans thus; he should embrace and inculcate it in his system for a better and peaceful continent. This approach is the most common method in the field of mediation where the mediator listens to the views of each client and from the views helps them deliberate on the problem they have. The parties participate fully in the mediation and the outcome is unbiased and is a true representation of their desires. The parties have struggle and tangle each other with the moderation of the mediator but at the end of the day, the outcome is integrative and comprehensive as it would have been being influenced to make the decision. The drawback of the approach is the inability of the facilitator to give his/her view of some of the issues of a neutral professional point, which the clients may fail to comprehend. The mediators with limit should have been allowed to provide extra options and advice on some matters as he/she may help deliberate on a matter that in future may have more setbacks because of the inhibition of interference.

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