A Transnational Family Mediator: Seeking Avenues, Envisioning Features

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ABSTRACT

Because of the unique challenges and complexities presented by transnational marriages, the importance of mediation for resolving disputes in such families has become more and more recognized; there is an increasing need for skilled professionals who can navigate cultural, linguistic, and legal differences to facilitate effective communication between multicultural/transnational spouses. This article assumes to bring a unique body of knowledge and set of skills to the field based on researcher's own skills and experience. This combination presents an especially informing role of the mediator in resolving disputes in transnational marriages. The article suggests a model for effective transnational mediation and introduces a figure of such a transnational mediator. However, there is a pressing need for more research on the subject of transnational mediation and dispute resolving.

Keywords: Cultural competence, Multiculturalism, Religious pluralism, and Transnational families.

INTRODUCTION:

It has become commonplace to say that we live in a transnational world; the augmenting flow of world capital and the rising independence of national economies worldwide have brought about 'trans-national legal processes', which affect the state, the law, the institutions, and the networks of experts and normative frames (Shaffer, 2012). The unprecedented technological advances in communication, global-ization, and migration trends resulted in a no less unprecedented increase in transnational marriages; those marriages, with their unique dynamics and challenges, have raised new issues and opened new horizons in international family law and mediation. Furthermore, in response to transnationalism, dispute resolution practices have become more sophisticated and versatile, prompting a new kind of expertise required from a mediator (Sweet & Grisel, 2017).

Dispute resolution is one of the oldest domains of law; methods other than litigation have always been used for settling conflicts and resolving disputes. Some claims were not even 'pronounced' to prevent the offender from alienating, while others were resolved by such mechanisms as the village priest or the family friend (Felstiner, 1984). Mediation practices sought to create a more constructive communication to enable more effective conflict resolution between different parties. In the case of transnational families a new sociological, cultural, and legal phenomenon engen-dered by globalization, a family mediator's role is central to helping them navigate between the complexities of transnational existence outside and inside the family. Thus, a transnational mediator is a model for some ideal expert in mediation. Marital disputes may emerge out of a wide variety of sources. Still, in transnational families, especially when

spouses belong to different cultures, most discord is culturally, socially, or religiously grounded, with the derivative patterns of thinking, acting, and communicating: those patterns, informed by cultural biases and religious differences, lead to escalation of those discords converting them into conflicts, and, quite too often, lead to dissolutions of those marriages.

Some of those conflicts are dysfunctional and lead to family dissolution, while other disputes may constitute a part of the family dynamics in accordance with the cultural worldview. To be able to navigate effectively within the intricate dynamics of the transnational family, a transnational mediator should be culturally competent, that is, familiar on the intimate level with the nuancing of the disputing cultures; their bicultural origin is an advantage. A mediator's role is to clarify, legitimize, and reframe cultural values as complementary rather than opposed; in addition, s/he ought to be able to identify the underlying "symptoms" i.e. ideologies and thinking patterns, disguised as cultural stereotypes (Crippen & Brew, 2007). A mediator must be able to give a new, different frame to ideas and concepts to make the parties see the conflict from a different perspective. By doing so, a mediator expands the parties' frames of reference, thereby converting a confrontation into a foundation for dialogue and designing a plan for cooperation.

Moreover, a transnational mediator should be sensitive and attentive to the factors of socioeconomic differences and class consciousness that may play a role in marital discords and constitute an underlying source of conflicts beyond cultural differences or discrepancies. Given the significant role of religious differences in marital discords and post-separation issues, a mediator should be well-versed in the religions in question, as well as in the nuances of intra-group religious differences, to be able to navigate a dialogue not only with different religions but also about different religions with the parties, making them recognize the common points of departure towards drafting a compromise. The article addresses the complexities of transnational marriages, which may provoke disputes and conflicts; and the competencies and skills of a transnational mediator are discussed with their relevance to the mediation in transnational families. Transnational Marriages and Their Discontents One's

culture another's crime? While isolated communities with little change used to experience few challenges when resolving family disputes, there are fewer and fewer such isolated communities in the world, with more and more problems resulting from cultural clashes (Dabbagh). Individuals tend to define themselves by the families they grew up in, group affiliations, and larger social environments. All these elements shape their notions of right and wrong and understanding of how one should behave in a society. By and large, within a shared group, the individuals hold the same basic ideas and beliefs regarding right and wrong, as well as notions of how things should be governed. Those outside the group who do not share the same notions are perceived as other, different, and even as enemies if their worldviews are so different that they threaten the notions of right or wrong within the group. Within a family, culture defines boundaries, expectations, rules for interaction, ways of defining problems, communication patterns, and specific coping skills (Thomas, 1998).

Culture does not only define but also limits one's perceptions of reality outside the particular cultural discourse; as Summer put it, "kinship is, in fact, the most important societal concept which the primitive man thought out, and it would be such even if we were now compelled to reject it as erroneous (Schneider, 1984). That is to say, one would rather give up on one's culture than risk one's belonging to the group. One's world is centered on one's culture, considered ideal, while all others are inevitably viewed as inferior, other, and hostile. Naturally, multiculturalism shattered many notions among cultures which were previously considered axiomatic, as various cultures came into an ongoing interaction on multiple levels. The Western perception of conflict and violence in mediation practice as destructive and unhelpful contradicts the constitutive and productive view of conflict in many non-Western traditions and practices (Brigg, 2003). Coleman, (2004) suggested five paradigms of conflict, in accordance with five world viewpoints (Coleman, 2004) (**Table 1**). The process of multi-culturalization, better known as integration, involves various stages and strategies, from full acculturation to alienation and marginalization. In contemporary society, various cultures are found in an

ongoing process of interpenetration, exchanging, clas-

hing, and coping with the forces of resistance.

Table 1: The Five Paradigms of Conflict.

Paradigm	Realism	Human Relations	Medical Model	Post-Modernism	Systems
Strategies	Deterrence & Force	Interdependence & cooperation	Based on disease and pathology	Interactions are socially constructed realities with communication	Nested levels with interconnectedness
Purpose	To provide for stability and security	To satisfy needs leading to reconciliation and tolerance	Addresses malignant systems, hidden agendas & deep-rooted trauma	Socialization plays a critical role	To sequence initiative and order chaos

Globalization only intensifies the encounters between different values, traditions, and languages of the various members of the transnational family (Lanza & Curdt-Christiansen, 2018). Various cultures influence communication, as well as define the subject matters of their disputes in a marital context. Cultural customs may lay the foundation for the dissolution of a marriage when parents disagree on child-rearing ideas (Benokraitis, 2014). The evidence demonstrates that the level of conflict is quite significant within multicultural families when it comes to disputes centred on parenting ideals.

Even though the rate of divorce in bicultural marriages is higher than in mono-cultural families, the rate of bicultural marriages is on the increase (Donovan, 2004). Others do not share one's reality: there is no one shared reality across people; however, we expect people to act from the same beliefs and values that we have, and when they do not, they have a conflict. Capra, (2002) refers to this clash as culture (Capra, 2004). When each person assumes that their opponent acts out of the same motives, a violent clash may be inevitable. Winning trust is also culturally contingent, that is, the willingness to make yourself vulnerable to the other party, mostly by sharing information; there is a great variation in the extent to which negotiators trust each other or a mediator; thus, in the United States, there is a quick trust culture, based on the belief that the other party is trustworthy until proven otherwise; in Asia, however, a culture of slow trust is more common: the other party has to prove their trustworthiness first. Trust is crucial, as in order to reach an agreement, the parties need to share information about their interests and priorities (Goldberg *et al.,* 2020). In collectivist-oriented cultures that employ

a mediator to shuttle back and forth between parties, they are a trusted and known entity. They are even looked to for guidance in recommending desired courses of action. In these situations, there is an implicit understanding and sometimes stated exclamation that the conflict impacts a wider circle of people than those directly involved and, therefore, it is in everyone's best interest that they resolve the issue (Fisher-Yoshida, 2005). Thus, a transnational family mediator is required to be knowledgeable of and respectful of cultural dilemmas faced by all parties involved in the mediation.

The same communicative strategy may be interpreted differently by different cultures, which may result in misunderstanding while handling an intercultural conflict (Dai & Chen, 2022). That is to say, the main requirement for a successful mediation is cultural competency and an understanding of intimate cultural practices in terms of childbirth, parenting, gender and so forth. Only such competency can bring forth a meaningful dialogue and, eventually, a creative solution to the dispute (Dabbagh).

"Speaking tongues" - natively multilingual

The communication profiles of mixed cultures suggest that at least one party speaks a language different from their native language (Cools, 2006). Some multilingual families have been only recently created, while others have co-existed for generations. Language practices in those families are shaped by language ideologies, both explicit and implicit; in turn, those ideologies are embodied by those language practices. Thus, the social aspirations of the family are mediated through language, which may often bring confrontation within the family (Lanza & Curdt-Christiansen, 2018). A multilingual family creates its multilingual repertoire,

called familylect (Van Mensel & De Meulder, 2021). Different languages have different communication styles, which may in it be a source of conflict within the family; there are additional opportunities to escalate the conflicts. By examining the practices of language learning, maintenance and management, we can learn about constructing and negotiating agency. The agency is defined as "the socio-culturally mediated capacity to act" and is seen as inseparable from power. The degree of agency one has depends upon where one sees the locus of control, internal or external; it is a different belief in being proactive and making a difference between feelings that decisions are made outside the subject and beyond one's control. It is a spectrum between powerless and empowered subject positions. This is expressed in the linguistic behavior of the family members (Obojska & Purkarthofer, 2018; Franjić S., 2023). With that in mind, a transnational mediator is expected to be fully proficient in several languages, which include knowledge of idiomatic expressions, cultural puns, and double meanings, understanding subtleties of various discourses, and expertise in sociolinguistics. By learning foreign languages, a mediator becomes engaged in the intercultural communication, as linguistic expectations and cultural assumptions are embedded in the process of learning a foreign language (Tong & Cheung, 2011).

Reframing the Difference, Framing the E Solution

Beyond cultural competence and multilingualism, a mediator is able to reframe notions and ideas within a certain cultural context. Reframing is a technique in argumentation aimed at persuading parties to abandon their previous standpoints (Jermini-Martinez Soria, 2021). Reframing is by no means limited to substituting words with synonyms or paraphrasing; in all disciplines, the concept has been employed (psychology, linguistics, sociology), and reframing signifies a metaphor to describe changes in perspective, i.e. changing a frame. According to Putnam's definition, reframing means a "shift in levels of abstraction"(Putnam, 2004); the shift could be from individual to species, from the content of the discussion to the appreciation of its value (meta-pragmatic shift), from intrinsic quality to external condition and so forth (Jermini-Martinez Soria, 2021).

Reframing is aimed at conflict transformation. It refers to a restructuring of discourse in accordance with the mediator's strategic considerations, which helps advance the discussion in a non-conflictual way and resolve potential impasses (Aakhus, 2003). An example of reframing taking place in other types of interactions is journalism, the same event may be framed very differently by different titles, and people may frame the same social issues very differently. Understanding how reframing works helps us understand how people's perception of reality changes depending on the informational source they use. When all involved parties repeat the same narrative about what happened, with the opposing party always playing a villain's role, they will not be ready to explore any possible solution for their conflict. However, when an alternative version of the story is introduced to the parties, they may change their way of perceiving it and then accept an additional interpretation of their dispute, thereby allowing them to proceed towards seeking a solution (Jermini-Martinez Soria, 2021).

Religious Discords, Managing Agreement

One of the most complex and nuanced aspects of self is religious identity; even though interfaith distinctions are envisaged on a macro-religious level, e.g. Christian vs Muslim, within-group religious differences are no less significant, such as liberal Christian theology versus traditional-conservative Christian theology and practices. The interactions and relationships in interfaith families are often affected by intergroup distinctions, as well as by different value orientations within a specific religious group. Interfaith conflicts constitute one of the most complex areas of multicultural disputes; they usually emerge in the framework of child custody disputes. It is especially challenging for the court when each parent subscribes to a different religion, but both give their child religious training. In such cases, courts have to decide which religion is best in the interests of a child (Lane, 2009). The more significant the difference in parental cultures and faith is the higher is the risk for a child to be abducted. The majority of international parental kidnappings occurred in families with parents originating from different countries, with the abducting parent returning to his country of origin

with the child after marital break-up (Johnston, 2001). Research has identified a number of characteristics found in abducting families, including the notion that parental abductors believe that they know what is best for the child above all others. It is therefore highly advised that a solution be created in the framework of mediation outside the court; mediation would allow both parents to develop their collaborative solutions for interfaith child custody disputes by creating a sustainable parenting plan and mediation agreement (Lane, 2009). As a consequence, there is a pressing need for interfaith conflict resolution training for family mediators, in particular those participating in international child custody disputes and international family mediation. The transnational mediator should, therefore, incorporate the religious interests of the parties involved and include consideration of all relevant factors related to religion. The immense advantage of mediation is minding the mental and emotional well-being of all the parties. Courts recognize that "emotional distress to a child arising from a parental dispute over her religious upbringing may depend more on the manner in which the dispute is conducted, that the theological aspects of the dispute itself" (Volokh, 2006). Mediation may also mitigate the psychologically damaging effects of divorce for parents by focusing on reaching an agreement perceived as fair. Furthermore, mediation is less of a financial burden, which may reduce the general stress about the dissolution of marriage and thereby facilitate a more effective resolution. In the process of mediation, the parties are allowed to express the perceived differences in their respective religions that may have on the child. In this way, a mediator gains a better understanding of the nature of the religious conflict, as well as identifies additional underlying interests of the parties.

CONCLUSION:

It is a transnational mediator's responsibility to demonstrate a nuanced understanding of the unique complexities featuring transnational families and the conflicts within them. Thus, a mediator must be well-versed in the linguistic, religious, and cultural discourses of those families, with all the awareness of cultural biases, thinking and behavioural patterns shaping and shaped by those discourses. While recog-

nizing the maladaptive patterns of the parties for mediation, a mediator should be able to create, formulate and encourage adopting new patterns of communication. Transnational family mediation is much more than handling cases of visitation across international borders or international divorces. It is a broad and expanding area of expertise in family mediation that aims at the complexities of multi-cultural and transnational populations.

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REFERENCES:

1) Aakhus, M. (2003). Neither naïve nor critical reconstruction: Dispute mediators, impasse, and the design of argumentation. *Argumentation*, **17**, 265-290.
https://doi.org/10.1023/A:1025112227381

2) Benokraitis, N. V. (2014). Marriages and Familes. *Pearson*.
https://lazytrader.org/wp-content/uploads/2023/07/9780134720166-p.pdf

3) Brigg, M. (2003). Mediation, power, and cultural difference. Conflict Resolution Quarterly, **20**(3), 287-306. https://doi.org/10.1002/crq.26

4) Capra, F. (2004). The hidden connections: A science for sustainable living. *Anchor*.
https://doi.org/10.1017/CBO9780511895555

5) Coleman, P. T. (2004). Paradigmatic framing of protracted, intractable conflict: Toward the development of a meta-framework-II. *Peace and Conflict*, **10**(3), 197-235.
https://doi.org/10.1207/s15327949pac1003_1

6) Cools, C. A. (2006). Relational communication in intercultural couples. Language and intercultural communication, **6**(3-4), 262-274.
https://doi.org/10.2167/laic253.0

7) Crippen, C., & Brew, L. (2007). Intercultural parenting and the transcultural family: A literature review. *The family journal*, **15**(2), 107-115.
https://doi.org/10.1177/1066480706297

8) Dabbagh, M. Cross Borr Family Miation.

9) Dai, X., & Chen, G.-M. (2022). Conflict management and intercultural communication: The art of intercultural harmony. *Taylor & Francis*.

10) Donovan, S. P. (2004). Stress and coping techniques in successful intercultural marriages Virginia Tech].

11) Franjić S. (2023). Family violence negatively affects all family members involved, *Asian J. Soc. Sci. Leg. Stud.*, **5**(6), 224-229. https://doi.org/10.34104/ajssls.023.02240229

12) Felstinr, W. L. (1984). The Logic of Mediation. In Toward a General Theory of Social Control (pp. 251-269). *Elsevier*. https://doi.org/10.1016/B978-0-12-102801-5.50015-7

13) Fisher-Yoshida, B. (2005). Reframing conflict: Intercultural conflict as potential transformation. *J. of Intercultural Communication*, **8**(1), 1-16.

14) Goldberg, S. B., Sander, F. E., & Cole, S. R. (2020). Dispute resolution: Negotiation, mediation, arbitration, and other processes. *Aspen Publishing*. https://aspenpublishing.com/products/goldberg-adr7

15) Jermini-Martinez Soria, C. (2021). Reframing as an argumentative competence in dispute mediation Università della Svizzera italiana]. https://n2t.net/ark:/12658/srd1319195

16) Johnston, J. R. (2001). Early identification of risk factors for parental abduction. US Department of Justice, Office of Justice Programs, Office of Juvenile. https://www.ojp.gov/pdffiles1/ojjdp/185026.pdf

17) Lane, C. (2009). For Heaven's Sake, Give the Child a Voice: An ADR Approach to Interfaith Child Custody Disputes. *Pepp. Disp. Resol. LJ*, **10**, 623.

18) Lanza, E., & Curdt-Christiansen, X. L. (2018). Multilingual families: Aspirations and challenges. In (Vol. **15**, pp. 231-232): *Taylor & Francis*. https://doi.org/10.1080/14790718.2018.1477091

19) Obojska, M. A., & Purkarthofer, J. (2018). 'And all of a sudden, it became my rescue': language and agency in transnational families in Norway. *Inter J. of Multilingualism*, **15**(3), 249-261. https://doi.org/10.1080/14790718.2018.1477103

20) Putnam, L. L. (2004). Transformations and critical moments in negotiations. *Negotiation J.*, **20**(2), 275-295. https://doi.org/10.1111/j.1571-9979.2004.00023.x

21) Schneider, D. M. (1984). A Critique of the Study of Kinship. *University of Michigan Press*.

22) Shaffer, G. (2012). Transnational legal process and state change. *Law & Social Inquiry*, **37**(2), 229-264. https://doi.org/10.1111/j.1747-4469.2011.01265.x

23) Sweet, A. S., & Grisel, F. (2017). The evolution of international arbitration: judicialization, governance, legitimacy. *Oxford University Press*.

24) Thomas, A. J. (1998). Understanding culture and woridview in family systems: Use of the multicultural genogram. *The family journal*, **6**(1), 24-32. https://doi.org/10.1177/1066480798061005

25) Tong, H. K., & Cheung, L. H. (2011). Cultural identity and language: A proposed framework for cultural globalisation and glocalisation. *J. of Multilingual and Multicultural Development*, **32**(1), 55-69. https://doi.org/10.1080/01434632.2010.527344

26) Van Mensel, L., & De Meulder, M. (2021). Exploring the multilingual family repertoire: ethnographic approaches. In (Vol. **42**, pp. 693-697): *Taylor & Francis*. https://doi.org/10.1080/01434632.2021.1954933

27) Volokh, E. (2006). Parent-child speech and child custody speech restrictions. *NYUL Rev.*, **81**, 631. https://heinonline.org/HOL/LandingPage?handle=hein.journals/nylr81&div=27&id=&page