THE ROLE OF CULTURE IN CONFLICT MEDIATION: TOUBABS AND GAMBIANS CANNOT BE THE SAME

By

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by

Mark Davidheiser
Blessed are the peacemakers, for they will be called children of God
This book is dedicated to all mediators
ACKNOWLEDGMENTS

I began thinking about these issues while working under one of my professors, Dr. Mohammed Abu-Nimer, to whom, along with Dr. Vernie Davis, I owe my first debt of thanks. Mohammed and Vernie were instrumental in starting me along this path by bringing me into the field of conflict analysis and resolution. I would like to refer those interested in the issues raised here to Mohammed’s own sophisticated work on similar questions of culture, religion, and conflict management.

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TABLE OF CONTENTS

ACKNOWLEDGMENTS ........................................................................................................ iv
LIST OF TABLES .................................................................................................................. xi
ABSTRACT .......................................................................................................................... xii

CHAPTER
1 OF DJINNS, TAPESTRIES, AND CULTURE: STUDYING MEDIATION IN THE GAMBIA ............................................................................................................. 1
   Background of the Problem .......................................................................................... 2
   Project Location and Methodology .............................................................................. 3
   Findings ........................................................................................................................ 7
   Organization of the Dissertation ............................................................................... 14

2 “RAUCOUS DEBATE” AND “STUDIED AGNOSTICISM”: A LITERATURE REVIEW OF CULTURE AND MEDIATION ...................................................................... 16
   Introduction ................................................................................................................. 16
   Statement of the Problem ........................................................................................... 17
   Conflict Resolution, Alternative Dispute Resolution, and Mediation ......................... 19
   Defining Mediation ..................................................................................................... 23
   Perspectives on the Structuring of the Mediation Process ........................................... 24
      First Perspective: Mediation As A Universal Generic Process ............................. 25
      Second Perspective: Mediation As A Variable Process ....................................... 30
   Conceptualizing Culture .............................................................................................. 33
   Some Potential Sources of Variation and Patterning in Mediation ............................ 35
      Ethnicity .................................................................................................................. 35
      Religion ................................................................................................................. 37
      Gender .................................................................................................................... 38
      Age ....................................................................................................................... 38
      Individual Identity, Personality, and Style ............................................................. 39
      Type of Dispute ..................................................................................................... 41
   American Models of Mediation .................................................................................. 42
   American Modalities of Mediation ............................................................................. 46
   Alternative Approaches .............................................................................................. 50
      Transformative Mediation ...................................................................................... 52
<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power and Mediation – Nader’s Critique of ADR</td>
<td>54</td>
</tr>
<tr>
<td>Narrative Mediation</td>
<td>54</td>
</tr>
<tr>
<td>Examples of Models from the Ethnographic Literature</td>
<td>55</td>
</tr>
<tr>
<td>U.S., Canada, and Tanzania – Gulliver’s Cross-cultural Model</td>
<td>56</td>
</tr>
<tr>
<td>Questioning the Universalistic Paradigm: A Middle Eastern Perspective</td>
<td>59</td>
</tr>
<tr>
<td>Studies from Lebanon</td>
<td>60</td>
</tr>
<tr>
<td>Ho’oponopono in Hawai’i</td>
<td>63</td>
</tr>
<tr>
<td>The Bechara’ of the Semai of Malaysia</td>
<td>66</td>
</tr>
<tr>
<td>A Mediation in Mali Among Mandinka from Mali and Guinea</td>
<td>67</td>
</tr>
<tr>
<td>The Need for More Studies</td>
<td>68</td>
</tr>
<tr>
<td>Africa and “Traditional” Conflict Management</td>
<td>69</td>
</tr>
<tr>
<td>Conclusion</td>
<td>73</td>
</tr>
<tr>
<td>3 THE SMILING COAST OF WEST AFRICA: THE MANDINKA, MANJAGO,</td>
<td>74</td>
</tr>
<tr>
<td>AND JOLA OF SOUTHERN WESTERN GAMBIA</td>
<td></td>
</tr>
<tr>
<td>Introduction</td>
<td>74</td>
</tr>
<tr>
<td>The Gambia</td>
<td>75</td>
</tr>
<tr>
<td>Kombo South District</td>
<td>81</td>
</tr>
<tr>
<td>Dispute Management in Kombo South</td>
<td>83</td>
</tr>
<tr>
<td>Population</td>
<td>85</td>
</tr>
<tr>
<td>Religion and belief systems of the population</td>
<td>85</td>
</tr>
<tr>
<td>Modes of subsistence</td>
<td>86</td>
</tr>
<tr>
<td>Ethnic diversity</td>
<td>87</td>
</tr>
<tr>
<td>Overview of the Three Target Ethnic Groups</td>
<td>90</td>
</tr>
<tr>
<td>The Mandinka</td>
<td>90</td>
</tr>
<tr>
<td>The Jola</td>
<td>93</td>
</tr>
<tr>
<td>The Manjago</td>
<td>98</td>
</tr>
<tr>
<td>Overview of the Communities Included in the Project</td>
<td>102</td>
</tr>
<tr>
<td>Sotoko</td>
<td>102</td>
</tr>
<tr>
<td>Konoto</td>
<td>103</td>
</tr>
<tr>
<td>Fole</td>
<td>104</td>
</tr>
<tr>
<td>Naneh</td>
<td>106</td>
</tr>
<tr>
<td>Anyup and Katacha</td>
<td>107</td>
</tr>
<tr>
<td>Conclusion</td>
<td>108</td>
</tr>
<tr>
<td>4 IN THE REALM OF THE DJINN: SOCIO-CULTURAL ANALYSIS AND</td>
<td>110</td>
</tr>
<tr>
<td>RESEARCH METHODOLOGY</td>
<td></td>
</tr>
<tr>
<td>Introduction</td>
<td>110</td>
</tr>
<tr>
<td>Data Collection</td>
<td>112</td>
</tr>
<tr>
<td>Sampling</td>
<td>113</td>
</tr>
<tr>
<td>Interviews</td>
<td>117</td>
</tr>
<tr>
<td>Empirical data</td>
<td>119</td>
</tr>
<tr>
<td>Panel Sessions</td>
<td>122</td>
</tr>
<tr>
<td>Data Analysis</td>
<td>124</td>
</tr>
<tr>
<td>Translation and Transcription</td>
<td>124</td>
</tr>
</tbody>
</table>
# LIST OF TABLES

<table>
<thead>
<tr>
<th>Table</th>
<th>page</th>
</tr>
</thead>
<tbody>
<tr>
<td>3-1</td>
<td>General differences between the Mandinka, Manjago, and Jola .................. 90</td>
</tr>
<tr>
<td>4-1</td>
<td>Research Assistants ............................................................................. 116</td>
</tr>
<tr>
<td>4-2</td>
<td>Key Informants .................................................................................... 119</td>
</tr>
<tr>
<td>4-3</td>
<td>Empirical Cases ................................................................................... 122</td>
</tr>
<tr>
<td>4-4</td>
<td>Panel Sessions .................................................................................... 124</td>
</tr>
<tr>
<td>6-1</td>
<td>Common Gambian mediation activities – Caucuses ................................ 210</td>
</tr>
<tr>
<td>6-2</td>
<td>Common Gambian mediation activities – Group meetings ....................... 211</td>
</tr>
<tr>
<td>6-3</td>
<td>Facilitative mediation by Ethnicity .................................................... 237</td>
</tr>
<tr>
<td>6-4</td>
<td>State Guilt by Ethnicity ....................................................................... 238</td>
</tr>
<tr>
<td>6-5</td>
<td>Negotiate by Ethnicity ......................................................................... 241</td>
</tr>
<tr>
<td>6-6</td>
<td>Directive by Religion ........................................................................... 246</td>
</tr>
<tr>
<td>6-7</td>
<td>Ritualization by Religion ..................................................................... 252</td>
</tr>
<tr>
<td>6-8</td>
<td>State Guilt by Gender ........................................................................... 254</td>
</tr>
<tr>
<td>6-9</td>
<td>Caucusing by Age .................................................................................. 256</td>
</tr>
</tbody>
</table>
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THE ROLE OF CULTURE IN CONFLICT MEDIATION: TOUBABS AND GAMBIANS CANNOT BE THE SAME

By

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August 2004

Chair:  Art Hansen
Department:  Anthropology

What impact does culture have on the process of conflict mediation? Variation in cultural perspective is a fundamental component of anthropological inquiry. The challenge of delineating the boundary between a universal core and the diverse domains of human social behavior continues to be an ongoing task in social science. This puzzle is particularly salient in the field of conflict resolution, a highly significant area of cultural production and reproduction. In mediation the construction, reinforcement, and reworking of ideologies, values, and norms is at its most explicit. Cultural analyses of peacemaking offer great promise for advancing social and conflict resolution theory and for addressing urgent questions of practical and ethical significance.

This research, funded by the United States Institute of Peace, examines culture, structure, and variation in mediation among three ethnic groups -- the Mandinka, Manjago, and Jola -- and various sub-sectors of the population of southwestern Gambia, West Africa. Multiple characteristics of mediation participants and a variety of contextual
factors are included in the study. The Gambian data are compared against each other at a number of different levels of analysis using participatory, qualitative, and quantitative techniques. Both etic and emic perspectives are incorporated into the interpretive process. The findings generated from the Gambian data are then compared to mediation as institutionalized in the USA with reference to practices in other societies.

Culture emerges as a crucial factor in mediation. Variance in mediation preferences was found between members of different ethnic, religious, and age groups and even on the level of individual mediators. The effects of culture are multidimensional and complicated, but they are also profound. Cultural perspectives are associated with how mediation is conceptualized and carried out, and the resulting variation cannot be considered as merely stylistic. Instead, shared values influence the very nature of mediation. This finding has many implications for conflict transformation praxis. The dissertation discusses these implications and makes an argument for a flexible and inclusive approach to mediation. The discussion also illuminates questions of social organization and power in the context of a rural system undergoing enormous change.
Conflict management is an ancient art. Interpersonal human conflict has existed since the emergence of the homo sapiens species and our hominid ancestors also had means for dealing with disputes. In fact, scientists have observed mechanisms for managing interpersonal and inter-group conflicts among primates (Aureli and de Wall 2000). Conflict mitigation is thus a universal human social domain found in all societies.

A universalistic analytical paradigm has been central to the emergent scholarly discipline of conflict resolution. Many scholars and practitioners have subscribed to the view that problem-solving and peacemaking are essentially the same across cultures. To what degree this is true is the subject of the following pages.

In Western societies adjudication represents the primary arena for settling conflicts. Other forums and techniques have long been used, but have not been institutionalized to the same degree. However, this began to change in the 1960s, as conflict resolution became an increasingly established field of study and practice and interest in Alternative Dispute Resolution (ADR) grew. The *Journal of Conflict Resolution* appeared in 1957, and in the 1970s, Community Mediation Centers began appearing across the U.S. Mediation has since become the most popular form of ADR and is being used in a variety of contexts (Jaffe 1989).

Mediation is now institutionalized in many contexts nationally and is also being exported overseas. Conflict resolution has become a part of the development narrative
and experts have been dispatched to various spots around the globe to train people in mediation. This has occurred despite gaps in knowledge about fundamental aspects of the mediation process that directly relate to whether mediation as conceptualized and practiced in the U.S. represents a folk model, and how applicable it may be in other societal contexts.

**Background of the Problem**

With the growth of the field has come increased debate over the nature of the mediation process and the role of culture. There are fundamental disagreements between prominent practitioners and authors about this issue. One pervasive and long-standing perspective presents culture as peripheral. In this view, mediation is composed of a set of intrinsic activities that occur regardless of set or setting. Sometimes culture is simply not mentioned in discussions of mediation, while in others it is dismissed as superficial. Various theories have contributed to this idea, including that mediation is essentially a process of negotiated problem-solving, irrespective of cultural context. Paradigms such as rational choice and game theory de-emphasize culture, as does the opposing view that variation is so pervasive in social life that any hypotheses of societal trends are artificial constructs.

Another perspective emphasizes the patterned heterogeneity of mediation. Culture is a key element of this framework and the focus is most often on ethnicity as a marker of culture. This has produced hypotheses about ethnic groups having different mediation preferences. Variance among religious, gender, and age groups has also been explored in the literature. Interviews of individual mediators within the U.S. have revealed fluctuations in how mediators conceptualize mediation and perceive their role.
Among those who recognize culture as significant, many describe it as having a stylistic effect, influencing the way in which mediation activities are carried out but not significantly altering the essential structure of the process itself. For example, some ethnic groups may be uncomfortable with face-to-face confrontations. Members of these groups would prefer to conduct the negotiation and other activities that make up mediation in private meetings or caucuses with the mediators. The implication is that the mediation process as institutionalized in the West can be adjusted to fit the needs of those from different societal backgrounds. These different backgrounds are often grouped together into one large non-Western category described as high-context, traditional, or communalistic cultures.

Another possibility is that the process is endlessly variable, or that there are so many factors involved in mediation that it is hopeless to attempt to determine which of them are significant. Scholars have puzzled over these issues, calling for further research. We are left with a number of questions. How structured is the process of conflict mediation? Are there intrinsic components of the mediation process that occur in all mediations? If the mediation process is variable, then is the variation stochastic or is it associated with particular identifiable factors? Is culture significant? Do members of different groups mediate in the same manner?

**Project Location and Methodology**

Fieldwork was conducted over twenty-six months in southwestern Gambia, an ethnically diverse non-Western location where conflict mediation is popular. In The Gambia, the British model of indirect rule was carried out to the highest degree. The

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1 Note that The Gambia contains seven main ethno-linguistic groups. In the context of this study the term “Gambian” refers to members of the three sampled ethnic groups residing in the southwest of the country.
post-colonial history of The Gambia followed this pattern meaning that local authorities have long been in both de facto and de jure control of the management of most local-level conflict. Although it would be fallacious to argue that the colonial and post-colonial regimes and globalizing processes have not exerted any influence on grassroots dispute settlement, the history of governance in The Gambia adds to its suitability as the field site of this study. In addition, community members generally prefer to settle their disputes without the help of even local authorities such as village headmen, thereby further situating conflict mediation in the local arena.

The sample group included members from three ethno-linguistic groups with diverse socio-political histories, the Mandinka, Manjago, and Jola. The Mandinka are a good example of those West African groups who formed complex state-level societies with an agrarian base during the pre-colonial era. Their historic high level of social stratification is reflected in contemporary Mandinka society. The Mandinka are overwhelmingly Muslim.

The Jola are a fairly diverse group, never having been centralized under one system of governance. Their pre-colonial authority structures were much less stratified than those of the Mandinka. In many areas these structures were acephalous, consisting of councils of elders, rather than single leaders. Jola social organization is less hierarchical than that of the Mandinka with fewer status categories that are based on lineage. Jola modes of production typically include a great deal of collecting and hunting. Their engagement with Islam is much more recent and uneven than that of the Mandinka, and many of them are still non-Muslim.
The Manjago have a shorter history in The Gambia, having migrated to the area from Guinea-Bissau during the colonial and post-colonial era. In Guinea-Bissau, kings and nobles can be found among the Manjago, but they do not have a caste system comparable to that of the Mandinka. Manjago social organization in The Gambia is the least stratified of all the groups with only nominal leaders. Many Gambian Manjago do not own land, and they rely the least on agriculture and the most on other activities – most notably collecting palm products. The vast majority of the Manjago are non-Muslim.

Following the proposition that culture should not be reduced to ethnicity, other factors were examined for potential relevance during the initial stages of the project. These included deductively derived characteristics such as gender, religion, age, education, profession, and socio-economic status, and inductively generated attributes such as village of residence and clan affiliation. The factors that did prove to be significant were ethnicity, religion, gender, and age, and the data were further subdivided according to these characteristics.

Descriptive and empirical data were collected using interviews, panel sessions with Gambian experts, and the observation and recording of live mediation events. Ethnographic interviews were conducted to gain an understanding of the target domain – local interpersonal conflict mediation – and to explore the range of that field and identify emic concepts and categories. That information provided the foundation for the construction of an interview guide for semi-structured interviews with local mediators. Empirical data were collected through the meticulous recording, translating, and
transcribing of actual cases of mediation. These data provided a rich source of information that was useful in interpreting the statements of informants.

By the last six months of the over two-year field research period, a considerable amount of data had been collected, and project participants had discussed the topic in great detail and in relation to numerous specific cases. Valuable qualitative comparisons were undertaken through analytic interviews with research assistants and key informants. These discussions were very rich. Participants drew on and referenced three sources of data – their personal experience, interviews with other respondents, and cases of mediation they had observed and translated over the course of the project. Engaging the study populations in the analysis process and gathering emic understandings of the data lessened the potential for inter-subjective bias by including different perspectives in the interpretive process.

Panel sessions with prolific mediators contributed to the participatory analysis. The panels were stratified by the same characteristics used to group the data into sets – ethnicity, religion, gender, and age. The panel sessions followed a similar sequence as the interviewing protocol. First, grand tour questions were asked in order to elicit baseline responses about mediation. The questions became increasingly specific as the conversation progressed. In the latter part of the panel sessions, analytic questions were posed and issues of how, why, and when mediations may vary were explored. Debate between panel members offered clues as to the limits of cultural consensus and where variation was most likely to be found.

Micro-level mediations were the focus of this inquiry; although data on large group-level mediations were collected, the analysis here is based on interventions
between individuals or small groups. Mediations dealt with conflicts between family and clan members, spouses, neighbors, friends, and relative strangers. The disputes encompassed a variety of issues such as land disputes, cases of agricultural fields damaged by domestic animals, marital and domestic conflicts, and fights over personal insults and slights.

The data were analyzed with qualitative and quantitative methods. Coding was done on the empirical data using The Ethnograph processing and qualitative analysis package. Cases of mediation were coded according to the activities that occurred throughout the mediation process. Each case was tagged according to the characteristics of the participants, the dispute, and the mediation. The cases were divided into different sets according to these tags and were searched for themes, patterns, and areas of variation. This process was used to identify relevant variables that deserved further investigation.

Data sets were imported into the popular statistical package, SPSS, for further analysis. Many of the potential independent variables were nominal so cross-tabulation was used to compare and contrast what activities occurred in different sets of cases. The variation was analyzed for statistical significance using chi-squared and Fisher’s Exact Tests.

Findings

The resulting picture of mediation in The Gambia is a shimmering mosaic – seemingly whole, but constantly shifting. The number of factors involved in mediation, and the complex way in which they are interrelated evoke an image of an intricately detailed, yet loosely woven tapestry. Some strands of this tapestry are woven in discernible patterns. However, the level of movement is remarkable, making a mockery
of the thought of a single model or process of mediation. In the discussion of the findings every effort was made to avoid the temptations of over-simplifying and over-
generalizing, and the descriptions of patterns may appear confusing and even contradictory at times. Hopefully, readers will recognize in this the dynamics of trying to realistically portray multiplex social phenomena that are highly diverse and, in fact, at times contradictory.

The overall level of contextual variation in the data was truly remarkable, suggesting, that rather than following an intrinsic processual structure, mediators construct their interventions based on the situation at hand. The fact that the same individuals mediated in multiple ways illustrates the flexibility and heterogeneity of praxis. Some mediators carefully planned their interventions in advance based on the particular characteristics of a case, thereby demonstrating the agency of mediators and the significance of context. Mediation practices could be described as “embedded,” linked to macro- and micro-level influences and varying according to the specific context and characteristics of each case. The type of dispute in question, the nature of the social relations between the participants, the participants’ personalities, and many other factors played a role in shaping mediator behavior.

However, some trends in mediation approaches were discernible between members of different ethnic and other population groups, indicating that socio-cultural perspective is indeed significant. Mediators construct their strategies based on their experience, which is shaped in part by their identities within a social system. One salient level of influence was identified in ethnic identities. Gambian ethnic groups share some features, but they also have particular sets of norms, values, and behaviors that appeared to impact
how they mediated. The Mandinka and the Manjago exhibited the most differentiation in their overall approaches to mediation. Although the primary goal of this dissertation is to explore whether variation between populations exists, rather than to explain the causes of such variation, we may hypothesize that the variation between the Mandinka and Manjago is related to their abbreviated history of interaction with each other, adherence to different belief systems, and divergent social norms.

The Jola presented less of a contrast to the other groups. In retrospect this is not surprising since the Jola were located between the Mandinka and Manjago in terms of their social and religious systems. However, the Jola generally exhibited more concern with bargaining and negotiation of substantive issues than the other two ethnic groups.

Several other variables were also associated with variations in mediation behavior. Some variance in practice with regard to gender was found. Gambian females tended to be less prolific mediators than males, and the female data set was relatively small so the finding of gender variance should be viewed as tentative. Respondents suggested that women are more directive, judgmental, and direct in their approach to mediation than men, and this pattern was substantiated by the empirical data. This trend is intriguing because it contradicts conventional wisdom and the current view in our field. Whereas some Northern American scholars portray female mediators as more facilitative and integrative than males (Dewhurst and Wall 1994; Weingarten and Douvan 1985), the Gambian data suggest the opposite. This finding highlights the socially constructed nature of gender roles, and the need to place all behavioral patterns in their socio-cultural context.
The findings in regard to the religious affiliation of the sample populations are qualified by similar methodological challenges. The syncretic nature of belief systems in The Gambia and the confluence of ethnicity and religion complicate the analysis of this variable. Nonetheless, there are intriguing indicators in the descriptive, empirical, and analytic data suggesting that Muslims tend to prefer less evaluative mediation styles. The apparent preference of Muslim mediators for avoiding direct confrontations and their concern with saving face are quite similar to the Mandinka and male modalities. Although isolating the influence of confessional affiliation is complicated by the confluence of religion and ethnicity, it is worth noting that these associations correspond with group-level degrees of Islamicization. The Mandinka are generally the most Islamicized of the three ethnic groups so the parallels between their mediation preferences and the Muslim modality is not surprising. Similarly, Gambian women are generally considered to be much less Islamicized than men. These variables could likely have mutually reinforcing effects. In the case of women, for example, their more direct style may be reinforced both by their overall lower level of adherence to orthodox Islam, and by general behavioral conventions related to their gender identity.

The age group of mediators was related to similar preferences with older mediators tending toward more directive styles than young ones. Strong cross-ethnic trends in the data indicate that younger mediators are less likely to employ directive techniques such as assigning blame, proscribing discussion of events that led to the conflict, and threatening sanctions if the disputants refuse to reconcile. Older mediators more often brought disputants together for face-to-face meetings than younger mediators. Elderly
mediators less frequently concentrated on helping the disputants to negotiate compromise proposals.

Analyzing the mediating styles of individual mediators revealed an additional level of patterning. Individuals had their own preferences for how mediations should be conducted, apparently as a result of their idiosyncratic experiences and personalities. This is another area of variation, yet one that should not be seen as completely divorced from culture. The more characteristics individual mediators shared, the more similar their preferences in mediation tended to be.

An example can be found in the comparison of four young and devoutly Muslim men who, in addition to other similarities, overlapped considerably in their approaches to mediation. The styles of two of these men who were both Mandinka and closely related were not identical, but exhibited strikingly similar characteristics. A third Mandinka mediator from a different village and family tended to mediate in a like, yet somewhat different, manner. The modality of the fourth mediator, a Jola, was the most dissimilar of the four. Experience, personality, identity, and culture are mutually constitutive, so while we may acknowledge that idiosyncratic influences are at play, we should not dismiss societal patterning.

As mentioned previously, the context in which mediations took place was also linked to the nature of mediators’ intervention. A comprehensive analysis of potentially significant situational factors is not attempted here, but several stood out. These include the type of dispute being mediated, the relative social status of the disputants and of the mediator, and whether the mediation was done in private with only a few participants, or in public with many participants.
Adopting a broader perspective reveals variation on the meta-level as well as the micro one. When viewed as a group, the Gambian mediations reveal marked differences in praxis from the dominant model of practice in the U.S. Although Gambian mediation techniques were heterogenous and situational, Gambian mediators were rarely impersonal or professional third-parties. They were generally insiders linked to the disputants and they approached the task from a highly relational perspective. They were more concerned with upholding social norms, preserving social ties, and achieving reconciliation than with trying to facilitate constructive problem-solving through the use of a specific process as is common in the U.S.

Returning to our example of indirect and direct negotiation styles, many Gambians preferred indirect negotiations through caucuses. However, negotiation was minimal or absent in many Gambian mediations, suggesting that merely adjusting the mediation process as conceptualized in the U.S. to fit other societies is an insufficient approach. Some activities common in The Gambia, such as promoting forgiveness and assigning blame, are not found in American models. This further highlights societal variance in the process.

The Gambian data illustrate that shared values have a profound effect on how mediation is practiced and on the nature of the process itself. However, this impact is multi-dimensional and resists easy generalization. Some of the features of the portrait formed out of the Gambian data resembled descriptions of mediation in other non-Western societies; however, differences were also found. The overall amount of variation within the Gambian data implies that great caution should be used in descriptions of societal patterns. While it is true that there appear to be meta-level normative differences
in orientations to mediation in the West and elsewhere, there is also great heterogeneity in both of these areas. Dichotomizing mediation praxis according to whether the practitioners are Western or non-Western, traditional or modern, high- or low-context communicators, glosses over the multiplicity of practice found outside the realm of theory and dramatically over-simplifies a complex picture.

Scholars of mediation would do well to treat sweeping comparisons and explanatory, predictive, and prescriptive models with great care. A more robust study of mediation will develop if scholars use empirical as well as descriptive data, do not restrict their analytic lenses to a particular type of group, and incorporate individual level variation in analysis and theory. It is hoped that the analysis here will offer a useful perspective to those interested in contributing to the refinement of mediation theory.

The overall conclusion of this dissertation is that in terms of mediation, culture is profoundly significant. Cultural variation is not merely stylistic. Different groups conceptualize conflict and mediation in very dissimilar manners and this affects the nature of their practice. Although cross-cultural commonalities in mediation exist, they are not absolute or universal except at the most general level.

Culture operates on a variety of levels and is continually at work, although its effects may not always be observable. The metaphor of the *djinn* – ephemeral beings found in Muslim and in African cosmologies – is used as a medium for conceptualizing culture. The *djinn* are located between the temporal and the spiritual realm and are rarely seen, but are omnipresent. They appear in many different forms, and although they fade in and out of view, they are continually exerting their influence. This dissertation attempts to provide a sense of the dynamic nature of cultural influences in mediation.
One of the contradictory aspects of the relationship between culture and mediation relates to questions of unity and harmony versus contestation and change. This study found that the influence of cultural perspectives is highly complex, yet despite the complexity it became apparent that mediation has multiple and contradictory social functions. In mediation existing structures are foregrounded. Gambian mediations created an arena in which the values, norms, and conventions that underlie social institutions and relations were both reaffirmed and contested.

Mediation can be a medium for the transmittal and reinforcement of hegemonic beliefs and social hierarchies. That, in fact, is the standard view of African conflict resolution – advanced first by structural-functionalists (e.g. Max Gluckman) and reproduced in Marxian garb by conflict or critical theorists (such as Laura Nader). However, careful analysis revealed that mediations also create an opportunity for alternative perspectives to be heard and dominant norms to be questioned and renegotiated. The continual interplay between these dynamics is interwoven into the discussions that follow in the coming chapters.

**Organization of the Dissertation**

In Chapter 2 the research problem is situated in terms of the literature. Chapter 3 focuses on the research location – The Gambia – and the specific site within the nation, the southwestern coastal region. The Mandinka, Manjago, and Jola are discussed along with a presentation of the villages where data were collected. Chapter 4 underscores the methodology of the study including how the data were collected, translated, coded, and analyzed.

The next two chapters discuss study findings from a variety of perspectives. Chapter 5 takes a broad view of the question of culture, focusing on meta-level
differences in American and Gambian mediation activities. After identifying areas of
difference between the designs in the two tapestries, the Gambian data are applied to two
power-related critiques by American scholars. In Chapter 6, the tapestry of Gambian
mediation is unraveled from a variety of perspectives. After using activities such as
collecting disputant testimonies and assigning blame for a dispute as examples of
commonalities and divergence within Gambian mediation, an overview is given of some
of the most apparent sources of variation. These include ethnicity, religion, gender, age,
and some prominent situational variables. Variation at the individual level is also
discussed. The conclusion chapter summarizes the study findings, discusses some of their
implications for theory and practice, and considers a few final thoughts.
CHAPTER 2
“RAUCOUS DEBATE” AND “STUDIED AGNOSTICISM”:
A LITERATURE REVIEW OF CULTURE AND MEDIATION

Introduction

The past two decades have seen a remarkable growth in specialized literature on managing interpersonal conflict. This literature review begins with a statement of the problem that outlines the context of the research objective. Next is an introduction to various terms that have been applied to this field – conflict resolution, conflict management, conflict transformation, and Alternative Dispute Resolution. After noting the popularity of mediation process, the challenge of defining mediation is discussed.

The differing perspectives on the mediation process – that it has an intrinsic underlying structure and that it is variable – are then introduced. Culture is a key concern of those who view mediation as variable. We then summarize the literature on factors that may be associated with cultural variation in mediation. Ethnicity – the most common marker of culture – is first, followed by religion, gender, age, individual personalities, and, finally the contextual variable of type of dispute.

Next, we turn to American models of the mediation process and the problem-solving framework that they are based upon. The problem-solving approach is a product of the universalistic paradigm and constitutes the dominant paradigm in the literature and in American mediation. After discussing two alternative approaches – transformative and narrative mediation – we move to an overview of the ethnographic literature. A comprehensive survey of the ethnographic literature is not possible here. However,
several examples of recent and detailed studies of mediation in other societies are summarized. The review concludes with an explanation of the suitability of the African context for the study of cultural perspectives in mediation.

**Statement of the Problem**

…we know far less about [mediation] than we imagine. Systematic analyses, let alone empirical studies, of third-party intervention in general and mediation in particular have been very rare. The phenomenon has for too long remained little studied and poorly understood. (Bercovitch and Houston 1996: 11)

There has been a dramatic increase in interest in Alternative Dispute Resolution (ADR) since the 1970s. The United Nations, regional organizations, the World Bank, non-governmental organizations, development agencies, and others now want to be involved in, or associated with, “conflict resolution.” One of the main tools of this field is conflict mediation (Jaffe 1989). Mediation has been integrated into the American legal system, and it is being exported from the West to other nations around the world. Mediation has considerable potential for mitigating some of the limitations of the adversarial dispute resolution model of the legal system. However, many scholars have pointed out that mediation theory is still stunted and requires a stronger foundation (Bercovitch 1996; Kressel and Pruitt 1989; Scimecca 1991; Touval and Zartman 1989).

One of the main gaps in mediation theory is a lack of knowledge about the structuring of mediations. Is the mediation process inherently patterned in one or more ways? How and why does the mediation process vary? Two opposing perspectives exist on this subject. Due to a lack of empirically based research, it is not clear which of these perspectives is more accurate, or if an entirely new approach is needed.
Some scholars argue that mediation is: “a universal activity conducted according to generally held assumptions and conventions” (Cohen 1996: 110). Others disagree, arguing that mediation is inherently variable, or that it is patterned according to different population attributes. William Zartman has referred to the conversation as “raucous debate between the poles of cultural relativism and human universalism” on the “mercurial subject of culture” (Zartman 2000: 7). Kevin Avruch effectively sums up the lack of knowledge in this area:

…in the face of presuming easy universal truths for processes of conflict resolution—“negotiation looks the same everywhere”—our response should be studied agnosticism. At this stage in our collective knowledge about resolution in other cultures, such agnosticism represents both humility as well as a spur to further, empirical, research. (1991: 15)

Conflict mediation has been widely implemented without a comprehensive clarification and exploration of certain key questions (such as the role of culture in mediation). The use of mediation in many different contexts raises a number of theoretical and applied questions. These issues cannot be analyzed or investigated properly without a much-needed understanding of the structuring of the mediation process. If the mediation process is not universally structured, then it is possible that the process promoted in much of the literature is the product of a particular population or society. If scholars, practitioners, and organizations have been advocating a folk model based on hegemonic Western norms, values, and habituated patterns of action (Avruch 1998), then the theoretical, ethical, and practical dimensions of current mediation practice must be re-examined.
Conflict Resolution, Alternative Dispute Resolution, and Mediation

The term “conflict resolution” emerged during the mid-20th century as academics became increasingly interested in formally studying efforts to resolve disputes outside of the realm of the justice system and adjudication. Kenneth Boulding, one of the first to use the term in the U.S., was instrumental in the founding of The Journal of Conflict Resolution in 1957 and the Center for Conflict Resolution in 1959. As interest in the field continued to grow, other terms have emerged for addressing disputes in a constructive way such as “conflict management” and “conflict transformation.”

Scholars have critiqued “conflict resolution” because of several conceptual implications of the term. One objection is that the term carries a normative connotation – that conflict is negative and that it must be resolved. Nader and others have pointed out that conflict can be positive at times; conflict can be necessary for empowerment and justice; conflict can be productive; and it is a natural facet of life. Focusing solely on settling or terminating conflicts can thus be counterproductive. The assumptions underlying conflict resolution can lead to what Nader calls “coercive harmony” – the pressuring or pushing of people or groups to resolve their disputes and resolve them outside of the court system even when that might not be in their best interest (Nader 1991, 1997). To some, the term also implies that conflict is static rather than dynamic.

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1 Other terms such as “conflict prevention” (used by John Burton) and “conflict mitigation” also appear in the literature, but have not reached the same level of popularity as the four main terms above.

2 Conflict avoidance is a behavioral pattern of some cultural groups and some individuals (Hollan 1997; Robarchek 1997). Many training programs emphasize that conflict avoidance can be harmful and dangerous because it can lead to problems or the suppression of legitimate demands, needs, desires that can then erupt when the situation becomes intolerable. The normative assumption that conflicts must be resolved may therefore be ethnocentric.
The term “conflict resolution” has fallen out of favor with some scholars who feel that it sends the wrong message.

The main replacement term was “conflict management,” used as a generic replacement for “conflict resolution.” The term “conflict management” avoids some of the biases inherent in the “conflict resolution” label and it has been widely used among academics and practitioners. However, some analysts argue that “conflict management” implies a limited approach to peacemaking in which conflict is managed and controlled (Lederach 1989, 1995a). Some have begun to move away from this term as it has begun to be linked with managing the periodic disputes or eruptions that come from conflict situations rather than addressing the underlying causes of disputes. “Conflict resolution” has recently been rehabilitated by scholars such as Kevin Avruch (1998) who have attempted to differentiate it from conflict management by referring to that distinction and stating that conflict resolution addresses the root causes of conflicts.

Other scholars prefer the term “conflict transformation.” John Paul Lederach was one of the first and strongest proponents of this term. Lederach argues that “conflict transformation” avoids the pitfalls of both “conflict management” and “conflict resolution” (1989, 1995a, 1995b). This term presents conflict as a dynamic process and avoids the normative connotation that it must be resolved. He asserts that “conflict management” projects an unrealistic view of peacemaking by implying that we can predict and control human behavior. According to Lederach, “conflict transformation” presents a more realistic picture of conflict as a process that is both created by humans
and that transforms them. Proponents of the new alternative approach of transformative mediation also prefer this term and it has gained in popularity over the past ten years.³

The term “alternative dispute resolution” (ADR) is used most often by those connected to the legal system. Like the other terms, ADR and conflict resolution can be used interchangeably (as is done on occasion in this dissertation); however, they do have slightly different connotations. ADR usually refers to conflict resolution processes that have been incorporated into the judicial system. The U.S. government began using processes such as arbitration and mediation as alternatives to adjudication in the late 19th century. In the 1960s, interest grew in Alternative Dispute Resolution (ADR) and it became an increasingly established field of study. The 1976 Pound conference on ADR brought together many scholars and practitioners and galvanized the field. During the 1970s, Community Mediation Centers began appearing across the U.S. Many of these centers have court-annex programs in which judges refer certain types of cases for mediation.

The most popular ADR techniques are negotiation, arbitration, and mediation. Negotiation is a dyadic situation in which the disputants work on addressing their dispute by themselves. Negotiation has not been as substantially incorporated into the legal system as arbitration and especially mediation (Stempel 2002).

In the two latter processes the disputants are assisted by third parties. In arbitration the third party examines the evidence, listens to the disputants, and then judges between them, deciding how the dispute or situation should be resolved. In binding arbitration the disputants must agree before the process begins to accept the decision of the arbiter. The

³ Transformative mediation is discussed later in this chapter.
disputants may reject the judgment of the arbiter in non-binding arbitration. If the parties choose to reject the judgment they must usually return to litigation as is also the case in court-annex mediations.

In mediation the third party acts as a facilitator who assists the parties in working through the dispute and deciding how to settle it. The Association for Conflict Resolution describes mediation in the following manner:

> voluntary and confidential process in which a neutral third-party facilitator helps people discuss difficult issues and negotiate an agreement. Basic steps in the process include gathering information, framing the issues, developing options, negotiating, and formalizing agreements. Parties in mediation create their own solutions and the mediator does not have any decision-making power over the outcome. ([http://www.acrnet.org/about/CR-FAQ.htm#types](http://www.acrnet.org/about/CR-FAQ.htm#types), accessed 3/28/04)

Mediation has become the most popular form of ADR and is being used in a variety of contexts (see Gerenscer 1998; cf. Jaffe 1989).

A mediation-arbitration hybrid known as med-arb is also used in ADR. In med-arb, collaborative mediation is undertaken at first in order to see if the parties can settle the dispute. If that fails then arbitration is used to decide the case.4

The terms conflict resolution, management, and transformation are applied to both the international and interpersonal levels.5 The term ADR usually refers to intra-societal mediations (the focus of this dissertation). References will be made to international and

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4 Some also further divide conflict resolution processes into categories such as conciliation, restorative justice, facilitation, good offices, and so forth. These categories vary considerably in different presentations with no standardized list. Many of them could be considered as mediation. Throughout the dissertation, the argument is made for an integrative approach to mediation. The broad conceptualization of mediation used in this dissertation is described further in the following section.

5 “Peace studies” is another label used to describe activities within this interdisciplinary field. Peace studies usually refers to activities within the academy, with less of an applied connotation than the other terms. One of the milestones of Peace Studies was the founding of the Journal of Peace Research in 1964.
inter-group mediation – as in the discussions of the work of Zartman and of Burton. However, the analysis presented in this dissertation refers to micro-level interpersonal mediations.6

**Defining Mediation**

The many definitions of mediation in the literature vary in their level of elaboration. There is much contention among scholars over the exact characteristics of the mediation process, making definition at all but the most basic level problematic (cf. Bercovitch 1996; Wall and Lynn 1993). For example, some definitions of mediation rest upon controversial issues such as the question of mediator neutrality.7

It is probably premature to employ a detailed definition at this point in the field’s development. When striving to map out fundamental characteristics of a phenomenon, it is best to begin at the most basic level possible – complexity and specificity of definition should follow the establishment of a firm foundation. Analysts have called for research that avoids potential culture-bound biases and investigates the potential range of mediator roles and activities (Bercovitch 1996; Cohen 1996; Gulliver 1979).

Mediation is conceptualized here in its most fundamental sense – as the intervention outside of the legal domain of one or more individuals into an interpersonal or inter-group dispute in order to manage or resolve a conflict. This conceptualization invokes the essential nature of the process thereby facilitating comparative research.

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6 Interestingly, in a comparison of mediation at different levels, Milburn posits that there are many generic aspects of mediation common to both the interpersonal and international level (Milburn 1996).

7 There has been vigorous debate over the concept of mediator neutrality. The dominant view has been that mediators must be neutral. However, recently scholars have argued that this view is a product of a particular ideology and set of values (cf. Bercovitch and Houston 1996; Cohen 1996; Gulliver 1979; Kochman 1981). Social scientists have also argued that non-neutral mediators are actually quite common in other societies (Cloke 1990; Evans-Pritchard 1940; Gulliver 1979; Lund et al. 1994; Merry 1989). We will return to this question in other chapters.
Eminent scholar and practitioner, Leonard Doob, has provided a similarly broad definition of mediation as “the effort of one or more persons to affect one or more other persons when … the former, the latter or both perceive a problem requiring a resolution” (Doob 1993: 1). Given that mediation theory is still stunted in key areas, it is fruitful to begin with this broad view of mediation and from there explore patterns, commonalities, and sources of variation. Such a conceptualization is appropriate here since the objective of this study is to address some fundamental questions about the process of conflict mediation that have not yet been resolved (despite the increasing implementation of mediation in international contexts). A key issue is whether the mediation process has an intrinsic structure and to what extent it can vary.

**Perspectives on the Structuring of the Mediation Process**

…scholars from disciplines as diverse as anthropology, psychology, political science, sociology, law, and communications have all attempted to further understanding of how mediation works and under what conditions it is effective. Their collective efforts have often been bedeviled by the immensity of the scope of mediation, the secrecy that normally surrounds it, and the difficulty of studying mediation, and especially international mediation, in its natural setting. The upshot of all this is minimal consensus on a definition of mediation or on the best method of conducting research on mediation… (Bercovitch 1996: 2)

As the above quote indicates, various theoretical perspectives have been employed in the study of conflict resolution and mediation. Despite the different terminologies and labels that are used, it is possible to distinguish between two opposing perspectives on conflict resolution and the structuring of mediations. These perspectives are: 1) mediation is a generic process composed of universal information exchange, bargaining, and
problem-solving activities; and 2) the mediation process is context-specific and can exhibit considerable variation.

**First Perspective: Mediation As A Universal Generic Process**

The universalistic or generic approach to mediation either entirely ignores the role of population or societal characteristics and culture in the mediation process or dismisses them as superficial (e.g. Doob 1973; Rubin and Sander 1991). The neglect of culture in mediation is related to pervasive trends in mainstream social theory, positivistic currents expressed most visibly in organizational, behavioral, and economic approaches. Most of the prescriptive literature can be included here as can many of the past contributions to conflict resolution by political scientists, economists, and psychologists. In this section we will give a brief overview of some of the many theoretical strands that have contributed to the discounting of culture in conflict resolution. Readers interested in more on this perspective are referred to Avruch’s detailed review where many of these ideas are elucidated at length.

The prescriptive literature refers to “how-to” books and manuals and includes such classics as Fisher and Ury’s (1981) *Getting to Yes* (see also Burton 1990a; Folberg and Taylor 1984; Goldberg et al. 1985; Katz and Lawyer 1985). Such publications typically do not include a substantive consideration of cultural differences. Indeed, some of them do not discuss this issue at all or only mention it briefly in passing. The prescriptive literature is discussed further in the section on American models of mediation.

The most prominent example from political science is the work of William I. Zartman. Unlike many others who simply overlook culture, Zartman has actually explicitly dismissed it as irrelevant (1993; Berman and Zartman 1982; Touval and Zartman 1989). Zartman has strongly argued against privileging culture in theory and
analysis. Much of Zartman’s work deals with mediation and negotiation at the inter-state level. In one study, Zartman compared a number of international negotiations and concluded that the negotiations were fundamentally the same (1982). One of his points is that the existence of a universal diplomatic culture obviates the relevance of cultural differences in international negotiations.8

Zartman has stated his position very forcefully, “Culture is indeed relevant to the understanding of the negotiation process, every bit as relevant as [the] breakfast [the negotiators ate], and to much the same extent” (Zartman 1993: 227). Instead of culture, Zartman concentrates on contextual factors such as whether conflicts are “ripe” for mediation (1986). The following quote by Zartman sums up the view of many of the scholars who gloss over societal differences and indeed variation in the negotiation process: “[negotiation] is a universal process, using a finite number of behavioral patterns, and… cultural differences are simply differences in style and language” (Zartman and Berman 1982: 226).9

Zartman’s large body of work has contributed a great deal to our understanding of conflict resolution. He recently edited a volume on local-level African conflict management techniques indicating a possible broadening of his view on societal variation (2000). Zartman’s introduction to the volume does accept that culture can have some influence on conflict resolution, although he leaves open what that influence is and how powerful it may be. In keeping with his earlier work, he includes the statement that “traditional” African peacemaking procedures are examples of universal processes.

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8 See Appendix A for several models of international mediation and negotiation.

9 Zartman’s work is based largely upon archival data, rather than systematically collected empirical information.
However, he does note that this question requires testing and he calls for studies (such as this one) to investigate universal and particular aspects of dispute management (2000).

Bargaining theory is largely based upon econometric theories. These perspectives promote a generic view of humanity in which individuals make choices based upon a benefit-cost analysis of their actions and the consequences. Bargaining theory has contributed to the prominence of the problem-solving perspective on mediation. The work of Howard Raiffa (1982), a mathematician who has been very influential in applying game theory and decision analysis to the study of negotiations, has profoundly influenced mediation theory (Zeckhauser et al. 1997).

The strategic choice theory of negotiation is an example of negotiation models derived from bargaining and rational choice theory. The strategic choice model espoused by some social psychologists employs decision analysis to analyze behavior in mediations. Negotiators do attempt to maximize their benefits, but according to the dual concern model they perceive benefits according to their concern for their own outcomes and for the other parties’ outcomes (Carnevale 1986; Carnevale and Rhoades 1999). Negotiators choose an approach – contentious, problem-solving, accommodating, and avoidance – based on these concerns. For example, those who are indifferent to the well-being of the other party, but very focused on their own, will be contentious negotiators while those who privilege the other party’s concerns will be accommodating. The feasibility model posits that the negotiators also consider how successful such negotiation strategies will be and modify their behavior accordingly (Pruitt 1991).

Bargaining is often conceptualized as distributive with the parties attempting to maximize their gains and minimize their losses. Integrative bargaining or principled
negotiation presents a different approach that has been subsumed into mediation training and praxis. The most influential discussion of principled negotiation comes from Fisher and Ury’s *Getting to Yes* (1981), a text that has been incorporated into mediation training and is required reading for many prospective mediators.

Fisher and Ury’s approach is designed to change the focus from zero sum outcomes to “win-win” solutions. It has four main components. The first is to separate the people from the problem. This involves identifying and focusing on the key substantive issues at the heart of the dispute. The second is to deal with interests and not positions, to move away from positional bargaining, and to address the essential underlying interests of the parties. The third maxim is to invent options for mutual gain, to search for solutions that will address the essential interests of both parties. The fourth is to use objective criteria (established precedents and so forth) to evaluate the options and decide which is best. These activities are found in the predominant model of mediation practiced in the U.S. as will be illustrated below. Fisher and Ury originally ignored culture and then in response to questions largely glossed over the issue of culture in the second edition of their book (1991, cf. Avruch 1998). Based on his observations from “a series of trips to more than two dozen countries” one of the adherents of their approach states that he has found it to be “reasonably robust” around the world (Senger 2002: 234).

Burton (1986, 1990b), Doob (1971, 1973, 1974, 1993), and Kelman’s (1972, 1976, 1979) analytical problem-solving workshops are other prominent examples of generic approaches to conflict mediation from the field of social psychology. This process is also known as third-party consultation. It calls for a panel of experts such as scholars and practitioners to meet with the disputants to discuss, analyze, and try to resolve disputes.
They have been used for intra-societal conflicts in the U.S. (often in the business sphere) and international conflicts such as Northern Ireland.

Burton has also produced a generic theory of conflict – the human needs theory (1990a). According to this theory, humans have a set of basic human needs and conflict occurs when they are not fulfilled. The generic nature of conflict in this perspective suggests that culture is not significant and the problem-solving workshops are also purported to transcend culture since analytical processes and reasoning are universal. Burton’s list of needs goes beyond the material realm encompassing issues related to identity, meaning that the workshops deal with more than distributive matters. Rational choice theories have clearly influenced Burton, however, since the process is based on logic, reason, and cost-benefit analysis.

Some of the communication literature may arguably be included here. This body of work has highlighted the relevance of culture in communication and disputing, but it has also contributed to the notion of cultural differences in mediation as a stylistic issue, rather than a fundamental influence on the actual process of mediation. Building on the work of Edward Hall (1969, 1973, 1976), the communication literature has explored the difficulties inherent in communicating across cultures (see for example, Condon and Yousef, 1975; Gudykunst and Kim 1984; Singer 1987) and the effects that this can have on conflict management (e.g. Cohen 1987, 1991; Ting-Toomey 1985, 1988). The communication literature has enhanced our approach to cross-cultural negotiations by elucidating the dynamics and challenges of discussions in such contexts. By framing the effect of culture on conflict management as a matter of communication preferences, some of this literature gives the impression that the essential nature of conflict mediation may
not vary across cultures. We will mention this treatment of cultural variance again in reference to the “general principles of mediation” discussed in the section on the problem-solving model.

Despite the dearth of empirical studies on mediation the generic approach to mediation has dominated the field. This approach minimizes concerns about using mediation in multicultural settings. It implies that the focus should be on fine-tuning the mediation process commonly promoted in the literature by, for example, enhancing one’s communication skills so as to avoid cross-cultural dissonances and misunderstandings.

**Second Perspective: Mediation As A Variable Process**

Recently, critiques of the dominant approaches to mediation theory and praxis have intensified, prompting renewed interest in alternative models and heterogeneity – particularly in terms of socio-cultural variation. Some scholars focus on variation rather than homogeneity. In this approach context is emphasized and attributes such as ethnicity, gender, religion, and age-set are seen as potentially significant. Some have described mediation as an “art” rather than a science (Meyer 1960). From this perspective mediation is inherently variable and every mediation is potentially different. Meyer used the metaphor of a captain sailing without maps and relying primarily on intuition to describe the dynamic and situational nature of the process. Others posit that the variables affecting mediation are simply so numerous that no meaningful analysis of trends is possible. They affirm that due to the complexity and situational nature of mediation comparing cases is fruitless (Simkin 1970; cf. Bercovitch 1996).

A more popular view within this perspective is that variation in mediation is patterned and culture may be involved. Many scholars have approached the question of culture by using various categories and dimensions to differentiate between different
kinds of societies. A common tendency is to use dichotomies such as individualist versus
collectivist cultures and high- and low-context cultures, to categorize societal influences
on disputing (e.g. Cohen 1996; Goldstein 1986; Lund et al. 1994; Myers and Filner
1997; Ting-Toomey 1988).

Members of low-context cultures directly communicate their messages in their
statements. Messages from members of high-context cultures use the situational context,
symbolism, and non-verbal cues with less reliance on explicit statements. According to
Ting-Toomey (1985), low-context and high-context cultures differ in their disputing.
Disputes among members of low-context cultures are more instrumental and tend to
focus on substantive issues. This is expressed in the widespread (see, for example,
Mitchell 1981 and Nader and Todd 1978) definition of conflict as a matter of
incompatible goals. Conflict among members of high-context cultures is relational in
nature, centered on the relationships between the disputants.

The well-known distinction between individualist and collectivist or communalist
societies distinguishes between cultures where the individual is highly valued, and
individual rights and identities are privileged, and those where the individual concerns
are clearly subordinate to those of the community or group (Hofstede 1984; Lund et al
1994). Others have extended this perspective by using other dimensions to further
explicate how shared values can vary. For example, Goldstein’s conflict communication
scale includes confrontation, public-private behavior, emotional expression, conflict
approach/avoidance, and self-disclosure (1999). Confrontation refers to social norms
regarding whether disputing and debating should be done directly or indirectly. Low-
context cultures are thought to prefer direct confrontation while the opposite is true for
high-context groups. Public-private behavior is similar with the idea being that individualistic cultures are less concerned with privacy than communalistic cultures. Emotional expression refers to the degree of comfort found in a society regarding the open communication of feelings with low-context societies being associated with restraint in this area. Societal perspectives on conflict and how negatively or positively it is viewed is the crux of conflict approach/avoidance. Members of groups that view conflict very negatively tend to avoid conflict as much as possible, while those who do not (typically thought to be high-context) are more likely to be willing to deal with it (and do so openly). Self-disclosure refers to the willingness of a party to be open about what they think, feel, believe, and do (Goldstein 1999).

Other dimensions have also been used. One is attitudes towards time – whether orientations to time are flexible and long-term or more short-term and rigid (Galtung 1997; Goldstein 1986). Risk-taking and uncertainty avoidance is another, referring to the degree of tolerance for ambiguity and willingness to take risks (Hofstede 1984).

Studies that employ these dimensions as a tool for cultural analysis usually suggest a contrast between Eurocentric and other societies. For example, Galtung’s analysis contrasts Western and Eastern cosmologies and orientations towards conflict resolution (1997). Although such tools for examining the conflict styles of different cultural groups can be useful, they have not been applied to the question of whether there are indeed universal components to the mediation process, a question that remains to be answered.

Many theorists now believe that culture does play a role in shaping mediations. Due to a lack of empirically-based and systematic comparative research, it is not clear how significant any variation may be, and this is currently an area of considerable
discussion and controversy (Avruch et al. 1991; Bercovitch 1996; Irani 1999). There is no agreement on what exactly culture does, how frequently it does it, and to what extent. Publications that deal with this subject almost invariably end with a plea for more research and exploration of this question (e.g. Abu Nimer 1996a, 1996b; Pendzich et al. 1994; Wall and Lynn 1994).

**Conceptualizing Culture**

There are over 160 different definitions of culture (Avruch 1998). The following are two classic examples from prominent anthropologists:

Culture consists in patterned ways of thinking, feeling and reaction, acquired and transmitted mainly by symbols, constituting the distinctive achievements of human groups, including their embodiments in artifacts; the essential core of culture consists of traditional (i.e. historically derived and selected) ideas and especially their attached values. (Clyde Kluckhohn 1951)

…the configuration of learned behavior and results of behavior whose components and elements are shared and transmitted by the members of a particular society. (Edward Linton 1945)

With the advent of post-structuralist perspectives in social science the culture construct has come under increasing criticism. As we attempt to make sense of the endlessly complex and heterogenous world around us we develop models and theories that help us understand and predict past, present, and future events. Indeed, as Clifford Geertz and others have pointed out, this is one of the main functions of culture (Geertz 1973). Like other domains of human behavior, social science and other forms of inquiry have evolved out of particular patterns of thought and are related to Western cognitive
perspectives and understandings of the world. The problem is that model building and theory-making can lead to over-generalization. Some anthropologists are questioning the heuristic value of the culture construct, pointing out that it has often been applied in a reductionist manner, and speculating whether it may cause more harm than good.

In response to this, a recent trend in anthropology has been to emphasize complexities, contradictions, and variations in cultural systems, shifting the focus from “meta cultures” to subcultures and even to the individual level. In this perspective, culture cannot simply be determined by ethnic identity and/or region of origin. Instead, individuals have multiple overlapping identities that all contribute to “culture.” For example, in a recent review of this problem, Handwerker emphasizes the need to recognize individual variation in life experience and the significance of that to culture (2002). Handwerker notes how membership in particular sectors of society and factors such as occupation, gender, and age can affect people’s experiences and their outlook and “set of cognitions, emotions, and behavior” that undergird “culture” (2002: 109).

Although focusing on “social and cognitive processing” (Avruch 1998: 5) is significant in its own right, completely dismissing the idea of culture and patterning

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10 The question of whether science can be purely objective and free of societal influence (cf. Nader 1997; Sahlins 1996) will be alluded to repeatedly throughout the dissertation.

11 For discussions of whether “culture” should be abandoned see Abu-Lughod (1991, 1999) and the Current Anthropology Special Issue of February 1999 entitled “Culture – A Second Chance?”

12 See Avruch 1998 and Tully 1995 for recent examples and Sapir 1932 for a seminal work that laid the foundation for this perspective.

13 For a detailed contemporary analysis of the culture construct see Handwerker’s article, “The Construct Validity of Cultures: Cultural Diversity, Culture Theory, and a Method for Ethnography.”
would be premature. Indeed “social processing” implies patterning. We know that individual experience is significant because it interacts with “culture” at the cognitive level to shape perceptions, conceptualizations, and behavior. We also know that there can be great heterogeneity within groups conceptualized as “cultures.” The recognition that “culture” may be linked to behavioral and cognitive patterns is not incompatible with the notion that individuals may have multiple and overlapping cultural identities. Nor is it incompatible with the conceptualization of “culture” as dynamic and of cultural identities as constantly being re-negotiated on the individual level (and the group level as well).

However, the point that dichotomies and broad generalizations should be applied cautiously is well taken. The research design of this project included a careful and multi-dimensional approach to culture. The following section elaborates on the perspective of mediation as variable with an overview of factors found in the research literature that may be associated with cultural structuring of the mediation process.

**Some Potential Sources of Variation and Patterning in Mediation**

**Ethnicity**

Discussions of cultural variation in mediation have focused primarily on ethnicity. For example, scholars have written about Middle Eastern (Abu-Nimer 1996a, 1996b, 1999; Irani 1999) and African conflict resolution (Hagberg et al. 1995; Mengisteab 2002; Rugege 1995). Several fascinating projects have investigated the role of ethnicity in

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14. Rather than rejecting culture, scholars should take up the fascinating challenge of trying to tease out how cultural identities can be reflected in behavior and which elements of such identities are relevant in specific contexts and domains. Some speculation along these lines will be included in later chapters.

15. The variables below do not provide an exhaustive list. In the U.S., for example, socio-economic status, profession, and other variables affect cultural identities and communication styles and, therefore, possibly mediation as well (cf. Goldstein 1986). However, these variables are not significant in the context of rural Gambia.
influencing conflict, problem-solving, and reconciliation behavior in the U.S. Kochman (1981), Gadlin (1994), and Davidson (2002) examined differences between White and African-American conflict behavior and dispute management. Interestingly, Kochman and Davidson concentrated on elucidating ethnic differences, while Gadlin emphasized that making generalizations based on race and ethnicity may be problematic.

An intriguing pilot project on culture and mediation in Canada found ethnicity to be quite significant in influencing the appropriateness of certain mediation activities (Duryea and Grundison 1993; Lund et al. 1994). For example, their research indicated that disputants from some cultural backgrounds may be uncomfortable with the face-to-face interactions that characterize North American mediations. According to Lund and colleagues, such individuals prefer indirect mediation with the mediator shuttling back and forth between the different disputants.16 They also note that two other common precepts of the American approach – the neutrality of mediators and communication techniques that involve direct confrontation – may be of limited use in other cultural settings. They hypothesize that “the linear staged model prevalent throughout North America” may not always be compatible with other cultural orientations (1994:5).

Returning to the international level, Nader has forcefully critiqued Zartman’s assertion about the existence of a universal diplomatic culture, arguing that it is actually a product of dominant American ideologies. She connects the universalistic view with a

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16 This is known as “caucusing.” Goldstein notes a similar preference in Asian societies (1996, see also Lebra 1984 for a study of this preference among Japanese). She also reviewed a study by Bond et al. in which Hong Kong Chinese recommended caucusing and Americans recommended face-to-face meetings as a strategy for dealing with business disputes (Bond et al. 1985 cited in Goldstein 1986). Caucusing is also a prominent feature of many Gambian mediations.
study by Gulliver (1979) that we will discuss in the section on the ethnographic literature.

In her inimitable prose she asserts:

Many writers on international negotiation imply the existence of a ‘universal diplomatic culture’ of negotiators. Sometimes justification for such a view is attributed to anthropological research on negotiation, notably the work of Philip Gulliver (1979). However, what is claimed to be universal here is instead hegemonic, developed in the United States in the 1970s and exported worldwide by an expanding alternative dispute resolution industry; it is a coercive harmony whose primary function is producing order of a repressive sort. (1997: 715)

Religion

While no studies have been sourced that deal explicitly with the relationship of religion to mediation behavior, some work has been done on the role of religion in conflict resolution. An article by Galtung (1997) discusses the influence of Abrahamic and Buddhist cosmologies on Western and Eastern conflict and conflict management behavior. On the other hand, Witty’s study of mediation in Lebanon and New York (1980 cf. King-Irani 2000) suggests that similarities in style can exist across religious groups (in this case Christians and Muslims). Abu-Nimer (1996, 2001), Irani (1999), and Rosen (1989) have described Islamic approaches to conflict management, and Merry (2000) undertook a cultural analysis of Mennonite conventions in peacemaking. With the exception of Witty, all these authors share the perspective that there are distinctive aspects to the conflict resolution techniques of different religious communities.

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17 Galtung uses the previously mentioned dimensions of individualistic versus communalistic and bounded versus fluid orientations towards time (Galtung 1997).

18 Interestingly, Galtung lumps Christianity and Islam together under the label “Christianity” in his analysis (1997).

19 See Abu-Nimer (2001) for a good discussion of the significance of religion in conflict management.
Gender

The research record on gender is mixed. Watson and Kasten assert that the gender of the participants significantly affected behavioral variation in negotiation (1989). Studies by Gourley (1994), Picard (2002), and Weingarten and Douvan (1985) indicate that North American male and female mediators conceptualize their roles and responsibilities, and therefore the mediation process, in a dissimilar fashion. There is also evidence that in North America female mediators are more facilitative in style and more oriented toward relationships and reconciliation, while males are more likely to focus on the immediate problem that brought about the mediation attempt (Dewhurst and Wall 1994; Weingarten and Douvan 1985).

Others have argued against focusing on gender as a source of variation in conflict management (Keashly 1994; Ruble and Schneer 1994; Watson 1994). Both sides refer to studies that support their view, while other studies have produced mixed results (cf. Dewhurst and Wall 1994). A recent study and review of gender in mediation was undertaken by Picard, who concluded that further research is required (2002).

Age

Several studies from the field of social psychology have examined age and conflict resolution. Fry studied cognitive development and reconciliation goals, strategies, and behaviors among children. He found that as children get older these skills evolve (2000). Osterman et al. reviewed the literature on this subject and concluded that among children and adolescents “conflict resolution skills improve with age” (1996:186; see also Kolominski and Zhiznevskii 1992; Leyva and Furth 1986). Their own study produced similar findings to Fry’s, linking psychological and cognitive development to conflict management skills and techniques.
**Individual Identity, Personality, and Style**

As previously discussed, some anthropologists now advocate looking at culture on the individual level. The idea is that, despite the existence of some group-level patterns and structures, individuals have their own multi-layered identities and sets of experiences. Group-level generalizations overlook the role of such variables in cognitive processing and behavioral patterning.

The conflict management literature has raised the possibility of variation on the individual level influencing mediations. Rubin and Sander (1991) privilege the individual level of analysis arguing that negotiators deal with each other as individuals, moving beyond the level of ethnic or group identification. Picard found that educational background and length of experience as a mediator were associated with variance in Canadian mediators’ perceptions of the purpose of mediation and role of mediators (2002). Most of these mediators were trained to follow basically the same model or set of mediation activities. Thus her study raises the possibility that individual-level factors do influence mediation practice.

Similarly, Leonard Riskin has spearheaded a debate about different mediator styles – evaluative or directive and facilitative or elicitive – among mediators in the U.S. (1996, 2003). His thesis is that variation in mediator roles can be classified along two continuums. The first axis is split between two poles – the facilitative/elicitive one and the evaluative/directive one. In the elicitive approach, mediators have minimal influence on the content of discussions, focusing instead on using the mediation process to enable the disputants to identify the issues that need to be dealt with and possible solutions. Directive mediators actively participate in the discussions and influence their content. The second axis is the problem definition continuum, split between narrow and broad
problem identification. This refers to whether problems are defined as specific substantive issues between the immediate parties, or whether the definition encompasses less concrete concerns that may extend beyond the immediate parties.

Riskin’s framework has come under some criticism since its publication in 1996 (e.g. Birke 2000). Most of the criticism was based on the fact that, by suggesting that mediators evaluate, Riskin challenges some of the most hallowed concepts of mediation – those associated with the predominant facilitative ideology (e.g. Kovach and Love 1996, 1998). The other major criticism concerns whether the grid is too simplistic. For example, Stempel argues that the evaluative – facilitative dichotomy is overstated since mediators are actually more flexible and eclectic in practice than the grid suggests (1997, 2000a, 2000b). In response, Riskin has proposed a new set of grids with increased emphasis on the situational nature of actual mediation praxis, and he substituted the terms “directive” for “evaluative” and “elicitive” for “facilitative” (2003). As Riskin synthesized many of the previous attempts to identify mediator styles, his dimensions are useful tools for analysis and will be referenced in later parts of the dissertation.

Riskin intended similar meanings for his terms. The former two have been cited frequently in the literature, and the new and old terms will occasionally be used interchangeably in the discussion chapters. It should be noted, however, that there are some nuanced differences in the terms. For example, “evaluative” refers more to the type of statements by mediators about how a court or the authorities might react to a case. “Directive” connotes mediators trying to impose their own opinions, beliefs, ideas, plans, etc. on the disputants.
A number of other theorists have also discussed variation in American mediator styles or strategies (eg. Silbey and Merry 1986; Kressel et al. 1994). Overall, these studies indicate that, although individuals may employ varying styles in different contexts, they do tend to have a particular style to which they generally adhere. Gourley (1994), Picard (2002), Silbey and Merry (1986), and Weingarten and Douvan (1985) have identified a number of factors that may be associated with this variation: gender, educational background, and length of time as a mediator. The findings of these studies suggest a need to move beyond group-level generalizations and models. A sophisticated analysis of patterning in mediation should incorporate the possibility of variation on the individual level.

**Type of Dispute**

Type of dispute is not related to identity, but is believed by some to be a key contextual factor associated with mediator behavior. Several studies have suggested that mediators may adopt different styles according to what kind of disputes they are involved in. Picard (2002) found that Canadians who mediated different kinds of disputes – business, workplace, community, and family – described their role and functions as mediators differently. Although this does not necessarily signify that these mediators actually employ different mediation processes (different sets of activities in different orders), it does raise interesting questions about the role of type of dispute in mediation. Other studies also suggest that dispute type plays a role in determining mediators’ choice of styles or approach to the mediation (e.g. Kressel et al. 1994; Silbey and Merry 1986).

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20 Riskin’s article provides a good overview of these discussions (1996).

21 Within the micro-community of mediators if one specializes in a certain type of dispute that might actually be a component of one’s identity. Mediators might self-identify as a divorce mediator, for example.
There are also implicit assumptions in the field about dispute type as a significant variable. The mediation literature and mediator training and praxis are often divided according to type of dispute: divorce mediation, employment mediation, victim-offender reconciliation mediation, and so on. There are programs that train people to work as mediators for specific types of disputes; and there are sub-sets in the literature that deal exclusively with such types (cf. Dunlop and Zack 1997; Haynes 1981; Folberg and Milne 1985; Kuretzky and MacKenzie 2001). At the international level many scholars have suggested that the types in question are associated with the success or failure of mediations (see Bercovitch and Houston 1996 for a review of this literature). Dispute type is a factor that requires further exploration in terms of its effects on the mediation process. Adopting dispute type as a control variable can help bring into focus the role of population attributes in variation in the mediation process.

**American Models of Mediation**

A number of models in the literature purport to represent the mediation process. Although the number of stages that they divide the process into varies – between three and twelve – this is usually due to how many activities are lumped into a single phase. Most models then are variants of the same procedure with essentially the same conceptualization of the process. That is, they include the same activities in the same order, representing the foundation of institutionalized mediation practice in the U.S. (cf. Della Noce et al. 2001; Myers and Filner 1997).\(^\text{22}\) As noted above, the models are usually presented (especially in the prescriptive literature), without any discussion of the possibility of socio-cultural variation in mediation.

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\(^{22}\) See Della Noce (2001) for an overview of additional models to the ones below.
All of the following models deal with mediation at the interpersonal level. The first three of the models below represent attempts to synthesize the different models and highlight the essential themes they share.

Myers and Filner summarized the stages that are included in most models as follows:

1. Opening the Mediation – mediator explanation of the process and the ground rules
2. Information Sharing and Issue Identification – disputants give their narratives (with interruptions forbidden), mediator reviews and summarizes major issues
3. Exchange and Negotiation – options generated, evaluated, refined, and the optimal course of action selected
4. Agreement and Conclusion – agreement written up, should be based on “specific and practical” behavioral changes rather than “attitudes and promises”

(Myers and Filner 1997: 52-57)

Donahue’s literature review produced the following phases.

1. Orientation, providing disputants with an understanding of mediation rules and procedures and the role of the mediator
2. Gathering background information as a means of developing the information foundation of the dispute
3. Identifying key issues, including those issues that can serve as roadblocks to cooperative interaction
4. Developing proposals including creating options, gaining accommodations, or providing some educational debriefing about the implications of disputant agreements

(Donahue 1989: 336)

Pruitt, McGillicuddy, Welton, and Fry offer the following model of how mediations are conducted at community mediation centers, noting that caucuses can occur at any time after the disputants vent in stage two.

23 Several models of international mediation can be found in Appendix A.
5. Mediator explains procedure, assures disputants of his/her neutrality, and the confidentiality of the meeting

6. Then the disputants get a chance to ventilate, to tell their stories in turn

7. After that the issues are analyzed, alternatives are developed, and the disputants should come to a decision

8. If a decision is made the mediator writes it out for the disputants to sign

(Pruitt et al. 1989: 369)

Kovach’s nine-stage model takes many of the activities lumped together in the more abbreviated models and makes them into discrete stages of their own. These stages are:

1. Preliminary arrangements
2. Introduction by the mediator, explanation of the ground rules, etc.
3. Opening statements by the parties
4. Information gathering
5. Issue identification
6. Option generation
7. Bargaining and negotiation
8. Agreement
9. Closure

(Kovach 1994, cited in Della Noce 2001: 73)

Christopher Moore’s model from *The Mediation Process: Practical Strategies for Resolving Conflict* is widely known and is more elaborate and comprehensive than most other models. Note that only stages six through twelve describe what I term group meetings – sessions in which the parties and the mediators meet together. The other stages refer to pre-meeting contact with the disputant parties in which the mediator sets up the mediation session. The inclusion of activities prior to the meeting makes this model unusually elaborate and comprehensive. However, although Moore’s model is more amenable to pre-meeting caucusing than most, discussion, negotiations, bargaining, generating options, and so forth are done in the group meeting. Moore’s model is:
• Stage 1: Initial contacts with the Disputing Parties
  o making initial contacts with the parties
  o building credibility
  o promoting rapport
  o educating the parties about the process
  o increasing commitment to the procedure

• Stage 2: Selecting a Strategy to Guide Mediation
  o assisting the parties to assess various approaches
  o assisting the parties to select an approach (litigation or arbitration, accommodation, avoidance, negotiated compromise, interest-based bargaining [through mediation]) to decide whether mediation is appropriate
  o coordinating the approaches of the parties

• Stage 3: Collecting and Analyzing Background Information
  o collecting and analyzing relevant data about the people, dynamics, and substance of a conflict
  o verifying accuracy of data
  o minimizing the impact of inaccurate or unavailable data

• Stage 4: Designing a Detailed Plan for Mediation
  o identifying strategies and consequent non-contingent moves that will enable the parties to move toward agreement
  o identifying contingent moves to respond to situations peculiar to the specific conflict

• Stage 5: Building Trust and Cooperation
  o preparing disputants psychologically to participate in negotiations on substantive issues
  o handling strong emotions
  o checking perceptions and minimizing effects of stereotypes
  o building recognition of the legitimacy of the parties and issues
  o building trust
  o clarifying communications

• Stage 6: Beginning the Mediation Session
  o opening negotiations
  o establishing an open and positive tone
  o establishing ground rules and behavioral guidelines
  o assisting the parties in venting emotions
o delimiting topic areas and issues for discussion
o assisting the parties in exploring commitments, salience, and influence

- Stage 7: Defining Issues and Setting an Agenda
  o identifying broad topic areas of concern to the parties
  o obtaining agreement on the issues to be discussed
  o determining the sequence for handling the issues

- Stage 8: Uncovering Hidden Interests of the Disputing Parties
  o identifying the substantive, procedural, and psychological interests of the parties
  o educating the parties about each other’s interests

- Stage 9: Generating Options for Settlement
  o developing an awareness among the parties of the need for options
  o lowering commitments to positions or sole alternatives
  o generating options using either positional or interest-based bargaining

- Stage 10: Assessing Options for Settlement
  o reviewing the interests of the parties
  o assessing how interests can be met by available options
  o assessing the costs and benefits of selecting options

- Stage 11: Final Bargaining
  o reaching agreement through either incremental convergence of positions, final leaps to package settlements, development of a consensual formula, or establishment of a procedural means to reach a substantive agreement

- Stage 12: Achieving Formal Settlement
  o identifying procedural steps to operationalize the agreement
  o establishing an evaluation and monitoring procedure
  o formalizing the settlement and creating an enforcement and commitment mechanism

(taken from Moore 1986: 32-33)

American Modalities of Mediation

The models shown above reflect underlying themes that have profoundly influenced American conceptualizations of mediation. Although the field is far from
homogenous, certain commonalities are woven throughout it. Some of these commonalities, such as the idealization of the neutral outsider mediator are found in virtually every model of mediation, including the alternative approaches.

The majority approach in American theory and praxis is based on a conceptual framework that has been variously labeled the structuralist, problem-solving, and content approach. Crocker et al. (1999) use the label “structuralist” to refer to the paradigm in which conflict is considered to be the product of objective issues or problems. A classic way of describing such problems is the existence of goal incompatibility between individuals or groups (Mitchell 1981). In this model the goal of mediators is to help the parties work through the problems separating them and find a negotiated solution to the issues at hand. Kressel and Pruitt (1989) refer to this as a “task-oriented” style and note that it is characterized by a focus on finding workable proposals for resolution of the conflict. Similarly, content mediations deal with “substantive issues” (Picard 2002: 267) and the mediator should help the parties analyze their interests and work out “win-win” solutions.

In this framework mediators are usually seen as facilitators who take the parties through the activities outlined in the interest-based negotiation approach (also known as principled negotiation) of Fisher and Ury (1991). Fisher and Ury’s work was partially responsible for the popularization of mediation and they have greatly influenced the field. For example, all of the models above state that mediators help parties identify key issues – as proposed by Fisher and Ury’s maxims of separating people from the problem and focusing on issues and not positions. The goal is a win-win outcome.
Myers and Filner’s *Conflict Resolution Across Cultures* includes a list of general principles of mediation that exemplify some of the touchstones of the mainstream American approach, including how the problem of culture is dealt with. Some of these principles are:

- For a mediation to occur, there must be a discrete dispute. Mediators remain outside the dispute, behaving impartially and seldom giving advice or suggestions. The mediation process is designed to address future behaviors (1997: 51).

- Mediation encourages people to choose options for resolving conflict based on jointly agreed upon and acceptable standards, without regard to the mediator’s values.

- With the help of the mediator, parties generate workable and unique options for resolving specific conflicts.

- Disputants control the content of conflict issues and make the decisions (1997: 53).

These principles are not described as American or even Western; instead they are termed “general principles.” The authors do mention that culture can be significant in mediation, but not in terms of these principles or the structure of the mediation process. Instead, mediation is proposed as a good tool for solving conflicts across cultures as long as the mediators consider aspects of other cultures, such as: “People are measured by family and origin, greater emphasis is placed on spiritual issues, directness and open criticism are considered offensive; intermediaries are often used” (Myers and Filner 1997: 79). In this view, using mediation in other cultural contexts requires being sensitive to different styles of communication and values. The process can remain essentially the same, but the mediator should be careful not to misinterpret messages from the parties, should take non-verbal behaviors into account, and so forth. This is a common way of conceptualizing the problem of culture in mediation.
The above general principles reflect fundamental tenets of the ideologies surrounding mediation that exist in the literature – that mediators should be neutral facilitators who use their procedural expertise to assist parties in generating specific solutions to specific problems. Also, the mediation process is structured around direct face-to-face discussions (Kressel 1985). Kelly’s summary of Bennet and Herman’s (1996) description of mediation aptly evokes key themes of the standard approach to mediation. She writes,

In problem-solving mediation, the traditional method of interpersonal conflict resolution, the parties come into the resolution territory with a problem or set of related problems, and the mediator utilizes skills such as active listening, paraphrasing, and maintaining conversational neutrality, in order to nurture the dialogue toward a mutually-agreeable settlement of the problem. (2000: 1)

Kelly also notes that success is defined by the achievement of a settlement and reconciliation is not essential.

The bulk of mediation in the U.S. is based on the conventions described above. We will use the above label of “problem-solving model” to refer to these pervasive trends in American mediation theory and praxis. This label is somewhat problematic as it may be misunderstood, since it has been used in a more restricted sense elsewhere. Some of the proponents of the transformative approach use “problem-solving models” when contrasting unilinear staged models to their stage-free model (e.g. Della Noce 2001, 2002, Della Noce et al. 2001a). The way the term is used here encompasses those models
and also the trends in American mediation that transcend those models, some of which have affected even the alternative approaches such as transformative mediation.24

Some variation is to be expected in a field as large as mediation. As we previously noted, several analysts (e.g. Kressel and Pruitt 1989; Riskin 1996, 2003) have found that American mediators can in practice be more assertive – or in Riskin’s terms directive. This of course contradicts the predominant notion that mediators must be facilitators who are not supposed to influence decision-making (cf. Cohen 1996; Merry 1989). The evaluative or directive activity that does occur is often attributed to lawyers who have become engaged in mediation and find it hard to abandon behaviors learned in the judicial system.

The techniques and models described above are not exact representations of every approach and theory ever developed in the U.S. Instead they reflect commonalities pervasive in the field. Nevertheless, these commonalities are widespread and the problem-solving model remains the dominant paradigm that the vast majority of literature, training, and praxis is based upon (Della Noce 2002; Stempel 2002).

Alternative Approaches

All cultural systems have multiple and sometimes contradictory ideological and behavioral currents. The problem-solving model is linked to the positivist tradition of rationality and scientific modes of thinking with roots in behavioral, economic, and organizational theory.25 Counter-hegemonic approaches to mediation with roots in the

24 The concept of mediator neutrality and the facilitative role proposed for mediators are two examples of dominant concepts in American mediation that are also reflected in the alternative approach of transformative mediation.

disciplines of psychology and therapy have been garnering attention. After an introduction to the conceptual framework that the alternative approaches are rooted in, we will review two prominent examples – transformative and narrative mediation. The implications of these models on Nader’s critique of ADR will also be highlighted.

Theories of conflict resolution are ultimately derived from theories of conflict causation. Mitchell’s discussion of different theories of conflict provides a useful description of some of the paradigms that underlie the different theories described here (1981). Briefly, the instrumental approach is based on the premise that conflicts occur as a result of goal incompatibility between individuals and/or groups. Scarcity and competition are two factors that often contribute to situations of goal incompatibility. The instrumental approach has been a key influence in the problem-solving perspective of mediation and its emphasis on identifying and addressing underlying issues.

In the transformative, socioemotional, expressive, or process perspective, communication and miscommunication, beliefs, values, and misperception play a major role. Conflict may be seen as a product of human aggressive drives and frustration. Specific issues are still significant, but they are influenced by the subjective nature of reality and factors such as different perceptions, misunderstandings, value differences and so forth. In this type of mediation changing perceptions, attitudes, and orientations are significant tasks. Mediators strive to help clear up misunderstandings, defuse tensions, and empower the parties and they are more likely to describe their task as conflict “transformation” than conflict “resolution.”

Bush and Folger (1994, 2001) bemoan the dominance of the problem-solving school of mediation and enthusiastically espouse the latter approach, calling it the
transformative model. Crocker et al. (1998) refer to this as the “social-psychological” school and Kressel and Pruitt (1989) label this the “socioemotional” style of mediation. When contrasted with content mediation, this approach has also been called “process” mediation.²⁶

Historically most mediators who have a more socioemotional style have used the types of structured models portrayed above. In other words, they would rely on the same unilinear models, but might express themselves differently than problem-solving mediators. Recently, however, transformative mediation has emerged as a particularly emphatic expression of the socioemotional perspective offering a less structured alternative to the staged models.

**Transformative Mediation**

The goal of the transformative approach is to empower the parties and increase recognition. Empowerment is conceptualized as providing the disputants with increased confidence and capacity for analysis and decision-making. Recognition refers to increasing interpersonal awareness, to "strengthen people's capacity to see and consider the perspectives of others" (Bush and Folger 1996: 264). Michelle LeBaron, John Paul Lederach, and Robert Baruch Bush and Joe Folger are prominent proponents of the transformative perspective. Bush and Folger’s version of transformative mediation is perhaps the most widely known.

²⁶ See Riskin (1996) for a comprehensive listing of such dichotomies and categories that are used to distinguish between different views of mediation. It should be noted that these dichotomies relate to the question of variability in the mediation process. The problem-solving/structuralist/task-oriented/content framework tends to be associated with bargaining theory and a more generic view of mediation. The transformative/socio-emotional/process approach is much more amenable to the idea of variation in the mediation process.
In transformative mediation the elicitive possibilities of triadic social interaction are emphasized. Transformative mediators are encouraged to allow the parties to control the process. The mediators should not seek to find concrete solutions to the problem, rather they encourage the parties themselves to define relevant issues and propose how they should be addressed. In this way the transformative framework heightens the emphasis on the facilitative role of the mediator.

Transformative mediation avoids several potential criticisms of mainstream mediation. The fact that conventional models of mediation are based on a set of ground rules and a highly structured process model raises the question of whether they do not lead to the imposition of a particular population’s shared norms, values, and behavioral patterns on the parties. Transformative theory is much more open-ended recognizing the significance of context. The proponents of the transformative approach encourage mediators to be reflexive and recognize that praxis is based on norms and values (Della Noce et al. 2001). Success is defined by any increase in the parties’ empowerment and interpersonal awareness, even if the conflict is not settled (Bush and Folger 1996). Transformative mediators therefore focus less on “resolving conflict” and achieving

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27 Context appears in some other theories, but within the more standard approach to mediation. For example, contingency theorists (e.g. Shapiro et al. 1985) argue that mediation behavior is not purely process-driven. Contingency theory is strongly linked to social psychology and usually offers models of what sort of behavior or what sort of intervention models are appropriate for different situations (e.g. Keashly and Fisher 1996; Keashly et al. 1993; cf. Webb et al. 1996).

28 Transformative mediation is based on the “relational” world-view – a consciously counter-hegemonic response to the prevalence of individualism in American society. This approach draws on works by authors such as Scott Peck and Robert Bellah who have written influential works promoting communalistic trends in American society. See for example, Peck’s *The Different Drum* (1987) and Bellah et al. *Habits of the Heart: Individualism and Commitment in American Life* (1985). We will return to transformative mediation in later chapters.

**Power and Mediation – Nader’s Critique of ADR**

Nader has questioned whether ADR is in fact beneficial or is a mechanism for “coercive harmony” or repression that serves the interests of dominant sectors of the global population. She asserts that harmony models are integral to conflict resolution and they discourage disputing and right seeking. In her view, the focus on achieving agreement can lead to weaker parties being pressured into compromising on and/or dropping legitimate grievances that they may have, thereby contributing to the reinforcement of existing social inequalities and hierarchies.

Several studies of marital mediations support Nader’s argument. For example, Grillo (1991) argues that in divorce cases mediators often side with husbands, an assertion supported by Conley and O’Barr (1998) in their examination of mediation transcripts. Transformative mediators are not called to push for agreement, settlement, or compromise (Bush and Folger 1996).

**Narrative Mediation**

Power is a central concern of another alternative approach to mediation that draws heavily on the works of Michel Foucault and post-structuralist theory. The narrative approach is described most fully in Winslade and Monk’s book *Narrative Mediation: A New Approach to Conflict Resolution* (2000; cf. Bagshaw 2003; Cobb 1994). Narrative mediators employ a social constructionist perspective, acknowledging that meaning,

²⁹ The above discussion deals with Bush and Folger’s style of transformative mediation. As mentioned in the above section on conflict resolution, Lederach also espouses a transformative view of dealing with conflict (1989a, 1995a, 1995b). Lederach’s version of conflict transformation has many similarities to transformative mediation a la Bush and Folger, but there are several nuanced differences. Interested readers should see the Lederach publications in the references cited sections for more information.
truth, and facts are subjective and located in socio-cognitive webs of meaning. Such mediators do not try to find out the “truth” or the “facts” in a conflict, instead they focus on the relations between the disputants.

In the first phase of the process, narrative mediators establish a relational context – the engagement phase. They then get the disputants to tell their stories. They then deconstruct the narratives of the disputants (phase two) and try to bring out the elements in their discourse that promote an alternative story (phase three) – one of cooperation rather than conflict. As the discourse is reframed and cooperation emphasized over conflict the mediator may then build on this momentum by moving into problem-solving with the parties. Finally, “because dominant stories can be expected to reassert themselves after a meeting with the mediator is over,” a written record should document the content of the mediation (Winslade and Monk 2000: 91). The narrative approach is strongest in Australia, but it is still relatively unknown outside the field of therapy, and is not widely practiced in the U.S.

**Examples of Models from the Ethnographic Literature**

Anthropologists have long investigated dispute management in other societies. However, according to Brenda Danet, “Most of the anthropological literature is insufficiently detailed to permit precise statements about the nature of the procedure” (Danet 1980: 516-518). In addition empirically based, quantitative, and comparative studies have been rare complicating the task of searching for cross-cultural patterning in process. Most of the ethnographic literature offers a single process model without much discussion of variance or alternative procedures.

The following are summaries of several fairly recent studies of mediation in other societies including several comparative ones (Gulliver, Abu-Nimer, and to a lesser extent
Witty). We begin with Gulliver’s influential model of cross-cultural negotiations. Gulliver is followed by Abu Nimer’s contrast between American and Muslim mediation conventions. Then overviews are presented of Witty and King-Irani’s studies on mediation in Lebanon, followed by another clearly structured model that provided deductive codes for the project codebook, Shook’s model of ho’oponopono in Hawai’i. We conclude with Robarchek’s portrayal of becharaa’ in Malaysia and a description of a mediation event among Mandinka from Mali and Guinea reported by Hoffman.

**U.S., Canada, and Tanzania – Gulliver’s Cross-cultural Model**

Philip Gulliver published his cross-cultural model of the negotiation process in *Disputes and Negotiations: A Cross-Cultural Perspective* (1979). Negotiations are the foundation of mediation and many of the cases that Gulliver discusses are in fact mediations, so his observations are quite relevant to the question of structure in mediation. For example, relatives of the disputants were involved in the Tanzanian negotiations and mediated the negotiations between the two disputants. Because of their links with the disputants, the disputants’ relatives do not fit into the standard American conceptualization of mediators as impartial third parties. However, when the insistence on outsider mediators is removed, the relatives can be considered as mediators.\(^30\)

Gulliver’s processual model of the negotiation process is based on what he saw as cross-cultural information exchanging and bargaining activities (1979). The model is based on his fieldwork in Tanzania with the Arusha and Ndenduli and his study of public-policy and labor negotiations in Canada and the U.S. He therefore compared different types of disputes and disputes at different levels. For example, one of his cases

\(^30\) Insider mediators are found in many non-Western societies.
from Tanzania was a border dispute between two neighbors negotiated with the mediating influence of the kinfolk of the two disputants. Public policy and labor disputes involved groups of disputants who dealt with issues of immediate interest to them all. Gulliver’s linear, staged model corresponds closely to the model of mediation predominant in the literature and in mediation programs.

Gulliver’s model consists of 8 stages:

1. Search for arena. In this stage the parties establish where the negotiation will take place. This is fraught with symbolic and practical significance as the arena of the negotiation “may affect the recruitment and composition of disputant’s teams as well as the pattern of their interaction” (1979: 125). This model does not really correspond to mediation in court-annex programs since such mediations generally take place in mediation centers.

2. Composition of agenda and definition of issues. In this stage the parties work out what will actually be on the table for negotiation. The agenda definition is significant in determining how the problem is framed and approached. This stage corresponds with the nearly identically named second stage of mediation sessions in The Mediation Process (Moore 1986).

3. Exploring the field. Exploring the field involves the disputants giving their explanations of the situation. At this point the disputants emphasize their differences by focusing on the causes for disagreement. Gulliver also refers to this as “establishing the maximal limits to issues in dispute” as the disputants tend to take extreme positions and make extreme demands (1979: 135). This phase is similar to the third stage of the mediation sessions, uncovering hidden interests of the parties, in The Mediation Process.
4. **Narrowing differences.** Here the parties begin to move towards cooperation. As in the generating options for agreement stage in *The Mediation Process* the parties begin to explore areas of potential agreement. Gulliver sees this as the stage in which minor issues are resolved or dismissed and the major sticking points are identified.

5. **Preliminaries to final bargaining.** This stage involves one or more of the following: “the search for a viable bargaining range, the refining of persistent differences or deciding on the specifics that will be dealt with, the testing of trading possibilities, and the construction of a bargaining formula” (1978: 153). Again this is similar to *The Mediation Process* with its assessing options for settlement stage.

6. **Final bargaining.** *The Mediation Process* uses the same label for this part of the process. In fact, both Gulliver and Moore use the phrase, “incremental convergence” [of positions] when describing one way in which agreements can be reached. Agreement can also be reached by “jumps” (Gulliver 1978: 163) or “leaps” (Moore 1986: 33) toward settlement through a package deal, or an acceptable formula or procedure for the arrangement.

7. **Ritualization of outcome.** Ritualization of agreements is a common feature of the ethnographic literature on mediation. Ritualization is also described in the Lebanese context by Witty and in the Hawaiian context by Shook. The American practice of formalizing settlements through the preparation and signature of a document described by Moore (1984), and common to court-annex mediation programs, could be seen as ritualization in a legalistic society.

8. **Execution of outcome.** Gulliver illustrates the nature of these stages with convincing examples from specific cases. He is careful to supply the “proper caveats
concerning chronology” and he recognizes the “possibilities of overlapping phases.” He
does, however, argue that “there nevertheless remains a general and significant
correlation between chronological time and the sequence of phased sets of interaction and
purpose” (1979: 173). In this regard Gulliver’s model is consistent with the view of the
process as essentially linear. Due to its close resemblance to dominant American models,
Gulliver’s model has been used to support the idea of a transcultural processual template
of negotiation and mediation (Nader 1997).

**Questioning the Universalistic Paradigm: A Middle Eastern Perspective**

An opposing perspective is provided by Abu-Nimer. His contrast of Islamic and
Western approaches to peacemaking is a lucid comparison of the two orientations worth
reviewing here (1996a, 1996b, 1999, 2001). Abu-Nimer states that his work is a response
to a widespread desire among policy-makers and practitioners to export American
mediation expertise overseas. He critiques this desire, arguing that the American
approach may not be universally applicable to other societies. In one article, Abu-Nimer
mentions many of the conventions described above in his list of basic Western
assumptions of conflict resolution, including the following:

- Since everything is based on rational reasoning, any conflict can be settled and
  managed through rational planning. Every Western conflict resolution model has
  between four to twelve stages of intervention.

- The individual’s interest, position, needs, and desires are the essence of the conflict
  resolution process.

- Material resources are often the codes which Western parties and mediators use to
  describe or establish a process of conflict resolution.

- Achieving a task and focusing on the negotiable issues (materialistic aspects of the
  dispute) is an important element in the steps toward agreement (taken from Abu-

Some examples from Abu-Nimer’s list of Middle Eastern assumptions are:
Spontaneous and emotional acts characterize Middle Eastern processes of conflict management, particularly in regard to the parties’ interaction. Such behavior is an integral part of the mediation and negotiation strategies.

Social norms and values rather than legal forms are the main rules of commitment.

Unity is the ultimate and common goal for groups. Unity means agreeing on the same ideas, principles, and actions.

Conflict resolution and mediation are based on hierarchical authoritarian procedures and structure (older people, males, and powerful officials).

Processes and outcomes are more relationship-oriented than task-oriented (taken from Abu-Nimer 1996a: 30).

Many of Abu-Nimer’s distinctions between the two approaches follow the contrasts between low- and high-context cultures as with the contrast between substantive/material and relational concerns. The individualistic and communalistic distinction is also clearly reflected in his model as is the contrast between rationality versus emotional expression. Abu-Nimer concludes his insightful article in the way that most writers on culture do, by calling for more research in order to move towards “a fuller understanding of commonality and difference in conflict resolution efforts across cultures” (Abu-Nimer 1996a, cf. 1996).

Studies from Lebanon

In Mediation and Society: Conflict Management in Lebanon, Cathie Witty described mediation in a village in central Lebanon populated by both Christians and Muslims (1980). Unlike Gulliver and Shook, Witty’s description of mediation is less unilinear than some other examples and she does not present a chart of stages of the local mediation process. According to Witty, the mediators caucus with each of the disputants and consult witnesses in order to hear both sides of the story and gather information about the dispute. There are then lengthy discussions among the mediators and the
disputants until an agreement emerges about the case. Finally, the disputants are brought together to finalize and ritualize the agreement in a joint meeting.31

Witty also discusses a mediation program conducted by members of a community of African- and Irish-Americans. Witty notes that the mediators were trained by a New York firm and does not elaborate on the background of the trainers, but she describes the community as mostly working-class. The Irish-American population was composed of second or third-generation Catholic immigrants.

We can therefore consider these populations as “minorities” as they do not represent the dominant sector of American society. Let us posit that: a) communication styles are influenced by culture (as hypothesized by Hall, Ting-Toomey, et al.); b) mediation is a formal communication event; and c) mainstream mediation is an institutionalized feature of the justice system and will therefore reflect dominant societal norms, values, and behavioral patterns (cf. Nader 1991, 1997). If these propositions are correct, then we should expect that the working class African- and Irish-American mediators would employ a style somewhat dissimilar from the predominant model of mediation in the U.S.

Despite the potentially confounding influence of the training provided to the mediators, Witty’s account does reveal two significant areas of variation from mainstream American mediation practice. For example, the mediators allowed the disputants to get more expressive (in fact they apparently encouraged demonstrative

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31 Although Witty notes that previously common ritual involving hair-shaving and the presentation of a white robe was becoming rare, she describes the parties and mediators sharing food, drink, and/or tobacco after they reached an agreement. In one case, for example, the dispute was only considered resolved when all of the parties had drunk tea together. One disputant initially refused to drink his tea and when he did so it “was psychologically the end of the dispute” (1980: 75).
communication styles) than is usually permitted in the dominant problem-solving model which tends to encourage rationality and logic over emotions. Although the American mediators did explain the model’s ground rule of no interruptions, interruptions were common and the mediators only attempted to stop them in extreme cases. They also apparently allowed the disputants to talk directly to each other. According to Witty, “There is no attempt to edit language style, profanity, gestures, or other forms of expression from the verbal exchange” (1980: 111). Such an expressive style of communication is congruent with Kochman’s analysis of differences between Black and White American modalities of conflict behavior and dispute management (1981).

Witty also compares the American mediators’ use of caucusing to that of the Lebanese villagers. In both settings caucusing was a key feature of the process with the mediators willing to caucus as many times as necessary. Although the American mediators would begin the mediation by meeting with both disputants (unlike the Lebanese mediators who also often began with caucuses), in both settings the parties tended to be separated while the negotiating took place and were brought together after agreement was essentially reached. Caucusing is not such a prominent part of mediation in the predominant problem-solving model.

King-Irani provides another description of Lebanese mediation, *sulha*, that is used by all religious groups in rural areas (2000). The first stage consists of fact-finding as the mediators meet individually (or caucus) with the disputing parties, hear them out, and also consult other individuals. In their caucuses with the mediators the disputants are able to express their viewpoint to a sympathetic or at least impartial audience (the mediators)
and vent their negative emotions about the conflict. The expression and affirmation of the parties’ complaints includes the recognition of blame on the part of one of the parties.

The second stage involves the injured party forgiving the other party in a group meeting. The parties and their representatives (the individual judged guilty may not actually be present, but his/her representatives are) meet at the house of the injured party. The mediators make speeches promoting forgiveness and reconciliation. The guilty party’s representative praises the other party and may give them a gift or money. The final stage consists of a public reconciliation ceremony.

Ho’oponopono in Hawai’i

In Ho’oponopono: Contemporary Uses of a Hawaiian Problem-Solving Process, Victoria Shook offers a model of a local mediation process that has been adapted for use in contemporary Hawai’i (1985). Shook is careful to point out that there is a heterogeneity of practice, noting that the concept of adaptation is linked with variation and that each of the case studies in her work differed somehow from the “traditional pattern” (1985: 81). Although her interviews indicated that each practitioner has their own approach to the process Shook argues that there is a “general sequence of steps in ho’oponopono,” namely:

1. opening phase
2. discussion phase
3. resolution phase
4. closing phase

In the chapter, “Variations in Ho’oponopono,” Shook includes a flow chart of ho’oponopono that emerged from interviews with two key informants. The chart thus presents an “ideal type” rather than a reflection of findings generated from empirical data. Shook describes this as a “simplified flow chart that shows how the process generally
proceeds [that] includes ‘feedback loops’ that represent alternative paths in the process” (1985: 88).

The chart presented the mediation process as beginning with an opening prayer (pule). Next comes problem identification when the topic for discussion is identified. Discussion of the topic occurs next. If the disputants are ready for confession and forgiveness then that is done and the closing prayer is made. If the disputants are not ready to reconcile then the discussion continues or there is a break to cool off and regroup. Plans can be made to meet again in the future. A closing prayer finishes off meetings whether they end at the cooling off and regrouping stage or achieve settlement.

Aspects of this model are similar to those of the other models. The pule or opening prayer is part of the “opening phase” or introduction stage. It is likely that the introduction stage is a common element in virtually all mediations – it seems counter-intuitive that a mediation could begin without some sort of introduction. In mainland U.S., most training teaches that meetings should begin with an activity called “setting the stage,” in which mediators give an overview of the process, describe the goals and ground rules for the mediation, and so forth. In The Mediation Process these activities are grouped together as part of “Beginning the Mediation Session” (1986: 32). One could argue that in the U.S., a legalistic society where prayer is supposed to be relegated to the private sphere, the laying out of ground rules constitutes a sort of ritualization and formalization activity. The purpose of this stage is to create an atmosphere conducive to productive discussion and eventual agreement. In Shook’s words the pule “sets a serious

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32 One exception is the case of immediate interventions when a third party intervenes while a dispute is occurring. In such a situation, one can imagine that there would not always be a need and/or opportunity for an introduction. In general, this study refers to pre-planned interventions.
tone for the group effort to follow” (1986: 90). In some of the cases described by Witty, the meetings begin with the disputants sharing tea, tobacco, and/or coffee (1980). Given the symbolic significance of sharing food this could also be considered as ritualization.

The problem identification activity also appears in models from other cultural contexts, for example in the defining the issues and setting the agenda stage in Gulliver and Moore. Mediators in the U.S. are taught to strive to identify the problem and – in one of Fisher and Ury’s widely used formulations – “to separate the people from the problem” and focus on underlying interests.

The discussion phase is where the bulk of the information exchange (considered by Gulliver as one of the most essential features of negotiations) occurs. According to Shook, this stage is generally the longest in duration. “Cooling off” or ho’omalú is similar to the caucuses that many mediators in the U.S. call when emotions run high during meetings. Ho’omalú is similar to the mainland US model of caucusing in that it is used while the meeting is underway. Ho’omalú allows mediators to work individually with disputants to calm them down and iron out sticking points in the negotiations.

Next is the resolution phase. If the dispute requires restitution on the part of one or more of the parties, then that is discussed and decided upon at this time. The parties also “admit their wrongdoing” and are forgiven by the others (1986: 92). If other problems are still unresolved, then the group moves back to the problem identification and discussion stages.

In the closing phase the parties pray and share food. According to Shook, the sharing of food helps the parties “reenter more normal patterns of interaction” (1986: 93). This presumes that the parties were previously close and Shook appears to be thinking
specifically of ho’oponopono involving family members here. Indeed the case that she
describes thoroughly in her work is a family mediation.

The Becharaa’ of the Semai of Malaysia

Robarchek described the becharaa’ procedure of the Semai – a society that he
views as very peaceful and communalistic (1997). However, conflicts do occur and they
are dealt with through becharaa’. In the becharaa’ the disputants and their respective
kinfolk gather before the village headman in order to resolve a conflict. Prior to the
formal beginning of the becharaa’ the participants chat about unrelated matters and then
an elder gives a speech emphasizing communal and interpersonal dependence and
relevant social norms and values. Then the disputants explain their perspectives on the
matter and a marathon discussion led by the disputants’ kinfolk commences. After the
lengthy discussion in which the matter has been repeatedly rehashed and all of the issues
gone over at great length, the village headman pronounces the group’s judgment on the
matter. He lectures one or both of the parties on where they have gone wrong. He also
advises them on proper behavior for the future and possibly imposes a fine of some sort
on one or both disputants.

Robarchek sees becharaa’ as a therapeutic process that deals with all the
components of a conflict, the affective, the substantial, and the social. He places a lot of
emphasis on the “dissipation of the emotional content of the dispute” (Robarchek 1997:
56). Through the lengthy discussion of the conflict catharsis is achieved and the
disputants are able to then settle the substantive issues at hand. The lengthy discussion is
vital,

the principals and their supporters tell their stories over and
over, symbolically reexperiencing the precipitating
incidents until they no longer have the capacity to elicit an
emotional response in anyone. The Semai stress that a becharaa’ should end only when no one feels the need to say anything more. (Robarchek 1997: 56)

The process results in reconciliation of the opposing parties and the parties with the community.

A Mediation in Mali Among Mandinka from Mali and Guinea


Hoffman analyzes the fluid nature of tradition, citing Hobsbawm’s work on invented traditions. Hoffman asserts that there are different “traditions” or customs within a single population and acknowledges the contested nature of narrative, custom, history, and tradition.

She explains that historically nobles would remain silent in public meetings and only the griots would speak. Also, in the social context of this particular meeting (a meeting of griots), the speakers would be designated by a particular person (a member of the Kuyate clan), and two speakers are selected. The mediators stated that there would be no testimony or narratives by the disputants, no judging, and that the purpose of this meeting is to end the dispute, by having everyone forgive and drop it.

There are modifications to this plan, however, as participants other than the two specified by the Kuyate griot ended up speaking. One speaker suggested “that the level of frustration and anger still active in the griot community will only be relieved when everyone has ‘unloaded’ or set aside recriminations” (Hoffman 2000: 205). One group of participants wanted the mediation to be simply a matter of reconciliation with everyone
agreeing to end the dispute and forgive all past transgressions. The statement above, however, challenged that approach by suggesting that there should be wider participation in the meeting in order to enable the disputants to get over their frustration.\textsuperscript{33} Indeed, one of the disputants, Jeli Fili, the leader of the group that could be seen as the “losing party,” did give his side of the story.

Jeli Fili also referenced a different pattern or set of norms and conventions in Mande conflict management behavior, one that is also prominent in the Gambian data (actual mediations and also mentioned by many respondents). He did defer to the admonitions of the previous speakers by beginning with a formal statement of forgiveness and reconciliation. Jeli Fili and his opponent shook hands in a gesture apparently common across the Mande world signifying the end of a dispute and the existence of positive relations. However, he continued on to state his grievances, and rebuked the previous speakers for saying that no one should discuss the particulars of the dispute, saying: “I think that, two children, when they fight over something, if it hasn’t been snatched away from both of them, they should explain it” (Hoffman 2000: 228). Hoffman was not able to listen to the rest of the meeting and her account ends with Jeli Fili explaining his perspective and stating his grievances.

**The Need for More Studies**

The above selection of studies provides a body of work to reference in the discussion sections. The selection is not exhaustive as many other studies have been done on dispute management in other societies. However, all scholars agree that more studies

\textsuperscript{33} This statement is an interesting emic expression of the frustration-aggression hypothesis of psychology. That hypothesis has been instrumental in the development of problem-solving workshops of Burton and the alternative approach of transformative mediation.
are needed. In their literature review, Wolfe and Yang (1996) note that most studies of non-Western mediation have been ethnographic and ideographic (e.g. Bohannon 1989). More thoroughly comparative studies on mediation with clear applied links are necessary for the advancement of conflict management theory and associated policies (McCall et al. 1997; Wolfe and Yang 1996). Many scholars are also calling for more case studies (e.g. Abu-Nimer 1996; Helander et al. 1995; Irani 1999; Pendzich et al. 1994; Wall and Lynn 1994; Wolfe and Yang 1996). Bercovitch convincingly argues that empirical data from other societies are urgently needed to explore what commonalities there are in mediation and to advance the field (1996).

Africa and “Traditional” Conflict Management

The question of cross-cultural patterning in ADR is particularly relevant to Africa. The recent history of many nations in post-colonial Africa has spurred interest in the devolution of government functions. In fact decentralization and legal reform are currently top priorities for leading agencies such as the United States Agency for International Development. Most African nations have failed to build strong sustainable centralized democratic governments prompting increased consideration of grassroots institutions by donors, agencies, and analysts. As the Western legal and top-down model has clearly failed to effectively address the conflicts and disputes that occur in much of Africa, investigating local and regional institutions and mechanisms for conflict mitigation and management is very appropriate.

The existence of historical traditions of mediation in Africa has become widely accepted in academia. Legal pluralists have asserted that African modes of conflict settlement survived colonialism and have continued to flourish through the present (Comaroff and Roberts 1981; Merry 1988). There are well-known studies on dispute
management in other locations, but African societies feature prominently in the literature. Many of the classic works of non-Western dispute resolution deal with African societies, e.g. Bohannon (1989), Beattie (1957); Evans-Pritchard (1940); Gibbs (1973); Gluckman (1967); Gulliver (1979).

These classic studies were based on structural-functionalist perspectives, portraying the observed techniques and institutions as maintaining balance in the social system. Theorists have described local African dispute resolution as harmony and reconciliation oriented, and essentially based on the same win-win model that is supposed to be the foundation of mediation as practiced in the West (e.g. Gibbs 1973; Gluckman 1967; Maquet 1972; Mengisteab 2002; Rugege 1995).

The idea of a local, “indigenous,” or “traditional” propensity for the use of mediation-type dispute resolution processes in Africa has been critiqued by Martin Chanock (1985). Chanock asserts that prior to the colonial era, local conflict management was not, typically, collaborative or integrative. Instead conflict cessation was often achieved through the imposition of force and/or resulted in win-lose outcomes.

According to Chanock, the view of African dispute resolution as traditional or locally developed is wrong. Social scientists and lawyers cooperated with African elites in promulgating this belief, but “customary” dispute resolution was actually constructed by powerful interests such as missionaries, colonial authorities, and local figures such as chiefs who were often appointed by colonialists. He critiques the views that have been

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34 See, for example, Barton 1969; Malinowski 1926; and Nader and Todd 1978.

35 Many contemporary theorists would prefer terms such as “reworked” and “reinvented” that invoke the constructivist view of custom to “traditional.”
enshrined in the literature and in academia since the 20th century arguing that they have reinforced a one-dimensional conceptualization of African customary law and society.

Nader repeatedly referenced Chanock, sometimes going into his work at some length (e.g. 1991). His emphasis on the influence of powerful elites exerting control over others is congruent with her stance as a critical theorist. The implication that harmony ideology became dominant in Africa largely due to Western intervention also supports her position.

According to Nader, harmony ideology has been exported from Western countries to other nations as a method of control employed by powerful interests. Her portrayal of Western society as relatively harmony oriented contradicts an enormous body of work that argues the exact opposite. Many theorists perceive Westerners as more comfortable with disputing than members of other societies.\footnote{36} In Western countries conflict is often seen as a natural component of society, and is sometimes recognized as potentially productive (Abu-Nimer 1996; Fisher and Ury 1991; Duryea and Lund 1993; Myers and Filner 1997).\footnote{37} From an Africanist’s point of view, Nader’s suggestion that American society is characterized by relatively high levels of conformity strikes a dissonant note, at least in terms of its comparative component.

\footnote{36} For example, this comparison has been made in relation to Asian (Goldstein 1985; Barnes 2001) and Middle Eastern (Abu-Nimer 1996) societies. A full review of this voluminous literature is not possible here. However, one body of work that reflects this perspective is that which employs well-known distinctions such as high versus low context communicators and individualistic or communalistic groups (see, for example, Goldstein 1985, 1997; Ting-Toomey 1985, 1988).

\footnote{37} For example, many ADR training programs emphasize that conflicts should be addressed and not smoothed over in favor of maintaining appearances of harmony. Conflict avoidance can be harmful and dangerous because it can lead to problems or the suppression of legitimate demands, needs, desires that can then erupt when the situation becomes intolerable. Another expression of the complexity of Western perceptions of conflict can be found in the widespread criticism during the late 1980s and the 1990s of the phrase “conflict resolution” and the suggestions that it be replaced with other labels such as “conflict management” and “conflict transformation.”
The disparities in the views of the role and functions of customary African conflict resolution can be characterized, to some degree, as an illustration of how different observers often have varying perceptions of the same phenomenon.\textsuperscript{38} The theoretical and ideological lenses of structural functionalists led them to expect and to find traditions of integration and cohesion. Critical theorists (such as Chanock and Nader) privilege cleavages and tend to see struggle and domination where others see cooperation.

Nader considers grassroots attachment to ideals of harmony a product of controlling processes – a more sophisticated version of the classic notion of false consciousness. Nader’s work aptly elucidates how these processes are a force in social life – another example she provides is how women participate in the commodification of their bodies (Nader 1997). However, most observers do not locate the origins of African harmony ideologies in the West.

An alternative view to Nader’s, for example, suggests that the high value placed on harmony in many Africans societies constitutes an autochthonous socio-cultural response to local environments. Africanist scholars have traced the evolution of indigenous harmony models to a combination of specific environmental and technological conditions (see Bohannan 1968, 1989; Meillasoux 1981; Polanyi 1967). Historically, land has been relatively bountiful in West Africa, and local modes of production relied on intensive labor inputs. Wealth, status, and prestige were gained primarily through controlling

\textsuperscript{38} The Redfield – Lewis debate is a telling example. In 1930, Robert Redfield published an ethnographic study of the village of Tepotzlan. In his “Study of Folk Life” he described a peaceful village where harmony prevailed. Twenty-one years later, Oscar Lewis’ study of the same village was published and its portrayal of Tepotzlan was fundamentally different. Where Redfield saw cooperation, Lewis perceived competition and conflict. There may have been some situational changes since Redfield’s study that contributed to the two scientists’ disparate perceptions of the same location. However, the dramatic contrast in their descriptions exemplifies how, as proposed by inter-subjectivity theory, scholars’ theoretical and personal cognitive frameworks influence their scholarship.
people, rather than land, leading to the development of harmony ideologies. The great value placed on social cohesion served to minimize out-migration and maintain the labor pool.

The controversy about harmony ideology and the prevailing interest in African dispute mitigation made Africa an intriguing site for this study and we will return to these questions in Chapter 5. Due to its history of a weak central state and indirect rule The Gambia was a particularly promising location. This idea is elaborated in the beginning of the next chapter.

**Conclusion**

…research is only beginning to touch the question of what particular attributes and skills of intervenors are universal and what are culture specific. Also still unknown is the extent to which there are common procedural and substantive elements necessary for any system of conflict resolution, whether the legal system or a system of community mediation. (Lund et al. 1994: 4)

The debates in the literature raise a number of questions. Is mediation ultimately based on transcultural processes of problem-solving and information exchange? Are there indeed general principles of mediation or intrinsic components to the mediation process? What, if any, are the effects of culture? The field would greatly benefit from a deeper understanding of what attributes are significant in mediation and how they may interact. As most research has focused on the U.S., data from other societies will help illuminate these questions and contribute to the growth of the field (Abu-Nimer 1996a, 2001; Irani 1999; Pendzich et al 1994; Scimecca 1991; Wall and Lynn 1994). In the chapters that follow these questions will be explored in relation to the data collected during the field research period of this work. In preparation for this, the next chapter will introduce the field site of southwestern Gambia.
CHAPTER 3
THE SMILING COAST OF WEST AFRICA:
THE MANDINKA, MANJAGO, AND JOLA OF SOUTHWESTERN GAMBIA

Introduction

Southwestern Gambia provided an excellent location for this study. The Gambia is located on the western coast of Africa – a continent that is noted for its indigenous modes of conflict mediation. The Gambia represented the apex of the British indirect rule model resulting in local authorities largely being in charge of dispute management. Although colonialism greatly influenced The Gambia, the lack of British interest and activity in the country arguably lessened their impact in comparison to other nations where the colonial project and European involvement was more extensive.

The southwestern region of The Gambia is demographically diverse with villages dominated by relatively dissimilar ethnic groups. This area, although varied in terms of its inhabitants, is quite small, thereby facilitating the efficient collection of appropriate data. The presence of three ethno-linguistic groups – the Mandinka, Manjago, and Jola – was of vital importance as these three groups have very different histories in terms of their social, political, and religious organization.

The overwhelmingly Muslim Mandinka formed stratified state-level societies with agricultural bases. The Jola remained predominately animist until fairly recently. Missionaries in Senegal were able to convert portions of the Jola to Christianity, although most still practice animism. However, Islam has become more widespread since the forcible conversion of many Jola by the Mandinka during the Marabou-Soninke wars.
Although Islamicization is continuing to spread among the Jola they are more diverse in terms of religious affiliation than the Mandinka or Manjago. The pre-colonial Jola political system was largely segmentary, consisting of villages and groups of villages based on extended kinship and descent from particular elders. The Jola engaged in much more hunting and gathering than the Mandinka and their society was considerably less complex.

The Manjago are a fairly insular immigrant group who are newcomers to The Gambia. They have a much less intensive history of interaction with the Mandinka than the Jola. The Manjago did form some small polities around the area of present day Guinea-Bissau. Unlike the Jola, they do recognize nobles and kings in Guinea-Bissau, although they never had the elaborate caste system that characterized other Gambian ethnic groups. The Manjago of The Gambia do not share the hierarchies based on lineage or other attributes found in Guinea-Bissau and are, in fact, the least stratified of the three groups. The location of this study, Kombo South, offered a site where all three groups are found in relative abundance.

The chapter begins with an introduction to The Gambia and to Kombo South district. Next is an overview of the population of Kombo South. Then the three target ethnicities and their links to one another are discussed. We conclude with sketches of the communities where data collection was conducted. These communities are referred to by pseudonyms in order to protect the anonymity of project participants.

The Gambia

The Gambia was an intriguing study site, being located in Africa, an area where customary forms of dispute mediation are thought to be widespread. Additionally, The Gambia has a colonial and contemporary history of a minimal state system. Grassroots
dispute settlement has not been marginalized. It has instead remained pervasive and has even been promoted by colonial and post-colonial governments (cf. Darboe 1980).

The Gambia is a small country of 11,300 square kilometers with slightly over one million inhabitants located on the coast of West Africa. Its geography is peculiar, consisting of a long thin strip of land bisected by the River Gambia. When one looks at the map it somewhat resembles a smile and this – in conjunction with the affability of the population and an ambitious tourist industry – has led to its nickname as the “smiling coast.”

In pre-colonial times, parts of modern-day Gambia were settled by acephalous groups such as the Bainunka and the Jola. Around the time of the destruction of the Empire of Ghana in 1076, populations from more stratified and agrarian based societies such as the Mandinka, Wolof, and Serahule also migrated to The Gambia (Sonko-Godwin 1997). Portions of The Gambia were subsumed in the Empires of Ghana, Songhai, and Mali. A number of local states such as the Jollof and Kaabu Empires and the kingdoms of Wuli and Jarra also developed in the Senegambian region. Other parts, particularly the western part of the southern bank of the River Gambia, remained dominated by acephalous groups such as the Jola until the Marabou-Soninke wars in the second half of the 19th century (Faal 1999; Godwin-Sonko 1994, 1997).

European contact with The Gambia and involvement in Gambian affairs began after Portuguese sponsored expeditions entered the area in the 15th century. Significant trade with the British and the French commenced in the 16th century. After centuries of trade, very limited settlement, and power struggles between various European and local

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1 Like infrastructural development and other trappings of the central state, the tourist presence has remained largely confined to the more urbanized areas to the north of Kombo South.
powers, the British purchased the island of Bathurst from Tomani Bojang, the King of Kombo, and the formal colonial era began (Faal 1999).

The Gambia was a colony of the United Kingdom from 1816 to 1965. The Gambia never supported much of a settler or Western population, due perhaps in part because of its reputation as “the white man’s grave.” In the mid-nineteenth century, there were only 190 European inhabitants in the capital of Bathurst. In fact, the British ruled the colony of The Gambia from Sierra Leone from 1821 to 1843 and from 1866 to 1888. Tiny Gambia had little strategic importance to the British and was an economic liability rather than an asset (Faal 1999). Many of the big projects that the British sponsored through their Colonial Development Corporation failed and attempts at mining also proved unprofitable (Faal 1999). The British were never particularly interested in The Gambia and repeatedly tried to trade it to France for other properties.

British colonial authorities generally employed a system of indirect rule, particularly in colonies such as The Gambia where there was no significant influx of European settlers. In this system the colonial government relied on local figures and authorities for the management of “native areas.” In West Africa the British typically established “Native Tribunals” for non-Muslim areas, and in regions where Islam was strong they made use of Islamic courts (Anderson 1970).

In The Gambia the colonial state was particularly limited. The British did not establish a robust and widespread formal, legal-rational governmental and judicial system. Instead they managed with minimal infrastructure and centralization and left most affairs in the hands of local officials (M’Bai 1992). They appointed village headmen (alkalos) in Jola settlements that had historically been acephalous, using councils of
elders as their authorities. The colonial authorities appointed a Qadi who was responsible for Muslim subjects – both for disputes and “uncontentious” matters such as marriage, civil status, and wills. Both the tribunals and the Islamic court drew upon both Maliki Islamic law as interpreted locally and Gambian customary law and norms (Anderson 1970: 225).

During the colonial era, there was little government intervention dispute management in rural areas. Areas outside of the greater Bathurst region were referred to as the “provinces,” and outside of government bases or enclaves like Georgetown things were largely left to the locals and their leaders. The central government and a formal legal-rational system of law were therefore never extended deeply into the fabric of Gambian society. The colonial experience codified the model of dispute management through local authorities and institutions.

Widespread and robust folk systems of dispute management are a legacy of the colonial era. The post-colonial regimes of The Gambia have not been particularly extensive or powerful. Formal institutions for addressing disputes have continued to be somewhat inaccessible outside of major urban areas. Many villages do not have courts or police stations (Darboe 1982). In fact, in the Gambian case, the term “Alternative Dispute Resolution” may be more appropriate for the formal legal system.

2 Bathurst is now named Banjul and Georgetown, one of the few upriver outposts of the colonial government, is now Janjangbureh.

3 One should note that there is interaction between alternative dispute resolution and formal dispute resolution. Customary law and formal law have a dialectical relationship and affect each other (Darboe 2002; Geertz 1968). Folk systems, no matter how “traditional” they may be, do not exist in a vacuum and are not static. However, the historical lack of a hegemonic state in The Gambia has meant that folk systems of dispute management have remained prominent in rural areas, and that they have been less influenced by Western practices than would otherwise be the case.
The colonial and post-colonial Gambian judicial system incorporates English common law, Islamic law, and customary law. The Gambia is characterized by legal pluralism – there are a number of different forums available for addressing disputes (cf. Darboe 1982). There is a Bar Association in The Gambia and judges in the higher courts wear the regalia of the British such as the white powdered wig. The Gambia has a Supreme Court, some extradition laws and recognizes the International Court of Justice. Gambians can take their disputes to the heads of their compounds, extended families, or clans, to a religious figure such as a marabout, Imam, or priest, to the village headman or the police, to the district tribunal or the magistrate court at the division capital, or to the Qadi at the Islamic court in Kanifing.

In rural areas, village headmen (alkalos) are the first vanguard of the state and the law. They have a lot of flexibility in this role and tend to refer mainly to local custom rather than to written law (that they are often unfamiliar with). Village headmen can, and sometimes do, impose fines and punishments, but they also focus on reconciling disputants and restoring harmony to the community. Tribunals are often deeply involved in ADR and some police and court officials explicitly encourage it. Social norms in The Gambia explicitly discourage use of the formal legal system so this has long been the case in rural areas. Local tribunals deal with most cases and they are run by the district chief and the village headmen (alkalos).

The Greater Banjul Area has always been the focus of government attention and it is the area that the state has captured to the largest degree. Many areas outside of the

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4 In keeping with the historically gerontocratic social structures of The Gambia the alkalo is usually the eldest male from the family line of the village founder. Older Gambians are much less likely to have been educated in Western-style schools, instead most were talibes or Islamic students. They are therefore usually illiterate, or literate in Arabic rather than English, the language of government and law.
Greater Banjul Area and away from divisional centers are still left relatively detached from the state in many domains. The legal infrastructure of the upriver areas (referred to as “the provinces” since colonial times) is so minimal that in some areas there are no judges stationed there permanently and they are served by traveling judges who rotate through such regions.⁵

On July 22, 1994, a coup d’etat overthrew the long-standing regime of Sir Dawda Jawara, ushering in the APRC era.⁶ President Al-Hajji Yahya Jammeh, a young man, and the APRC have shaken up existing power hierarchies by promoting the status of women in society and establishing institutions like Village Development Committees.⁷ The current regime of Al-Hajji Yahya Jammeh and the APRC has attempted to extend the influence of the government through youth organizations such as the July 22⁰ Movement (which has since been outlawed) and the APRC youth wing.

At the same time, the APRC government has followed the indirect rule model and further codified it through an official policy of decentralization. The decentralization program delegates more power and authority to local institutions such as Municipal Councils, Divisional Coordinating Committees, and Village Development Committees. The policy also extends to dispute settlement. Recently, the central government, through

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⁵ See Darboe (1982) and Sagnia (1983) for lengthy discussions of pre- and post-colonial forms of law and informal methods of dispute settlement in The Gambia.

⁶ After the coup the new regime called itself the Armed Forces Provisional Ruling Council (AFPRC). With the ascension of Al-Hajji Yahya Jammeh to the position of unquestioned leader, and the transition to civilian rule, this group became the Alliance for Patriotic Reorientation and Construction (APRC).

⁷ The Village Development Committees provide an avenue for young educated people to gain power and authority. The previous PPP regime tended to reinforce the gerontocratic hierarchies common to The Gambia. Jammeh’s ethnic identity as a Jola has also served to bolster the status of this historically disadvantaged minority group.
speeches and newspaper articles, has been actively encouraging citizens to handle their disputes outside of the penal system.\(^8\)

**Kombo South District**

The Gambia is an ethnically diverse nation with eight national language groups and nationalities. It is divided into 5 rural divisions and 2 municipal urban centers with 42 districts. Kombo South is the southernmost district of the Western Division. It borders the Atlantic Ocean to the west, the Casamance region of Senegal to the south, the district of Kombo East to the east, and the district of Kombo Central to the north.

The capital of Western Division is Brikama. Sotoko, the capital of Kombo South district, is approximately 20 kilometers south of Brikama. Although the physical distance between Kombo South and the urban centers to the north are slight, in the minds of the locals they are very different. Locals tend to view Brikama as a distant and different or exotic place and for many locals traveling there is an event of some significance.\(^9\)

Residents of Kombo South often refer to the urban areas in Mandinka as *tubabo banco*, meaning “white person’s land or area,” emphasizing the contrast between their life and that of urban dwellers.

The national electrical and utilities grid has not been extended to Kombo South, and telephones are still quite rare there. Travel to Brikama or the urban areas is often necessary for the purchase of certain goods or to access some governmental and non-

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\(^8\) For examples of newspaper articles promoting dispute resolution outside the court system see “Adopting the spirit of reconciliation” (2000); “Talinding people discuss conflict prevention” (2000); and “Jalamang Keita’s successor meets elders” (2000).

\(^9\) People say that they are planning on “traveling” when they go to Brikama or the other urban areas. Traveling means that normal activities are postponed and, when one returns, one is expected to bring a *silafandoo* or small gift (if possible).
governmental services. There are only two paved roads that link Kombo South to the rest of the country and these roads were unpaved until 2002. Prior to that, these roads were in very bad shape making travel difficult and time consuming. Most developmental efforts of the Brikama Area Council focus on areas around Brikama rather than Kombo South.

The 1993 government census listed the population of Kombo South as almost 40,000. This number included only Gambian citizens and is almost certainly an underestimation. The district’s population has expanded significantly since then, and has at least doubled. The relatively high rainfall of coastal Gambia makes it one of the most productive areas for farming in the country. The availability of marine and forest resources also acts as a pull factor to migrants from upriver Gambia, Senegal, and other countries (Gamble 1988). The area is currently experiencing rapid population growth leading to a scarcity of resources (considered by many conflict theorists as a primary cause of conflict). The construction of new tar roads linking the southwestern corner of the country with the urban areas to the north has also led to a spike in land sales. Indeed, there has been a recent spike in disputes over the use, management, and sale of land, forest products, and other natural resources.

The diversity of Kombo South’s population and the presence of ethnically distinct communities made it a good choice for this project. This study incorporated three very different Senegambian ethnic groups, the Mandinka, Manjago, and Jola, all of which have a significant presence in Kombo South. This enabled the investigation of mediation practices in several different contexts and the comparison of multiple data sets. The target populations of this study are discussed more below.
**Dispute Management in Kombo South**

Kombo South and rural Gambia in general are characterized by a system of legal pluralism. In Kombo South, villagers can choose between mediation and using the legal system. They can take their dispute to the village headman or *Alkalo*,\(^{10}\) to the tribunal court in the capital of the district, Sotoko,\(^{11}\) to the magistrate’s court in the division capital of Brikama, and for Muslims to the Qadi or Islamic judge in Kanifing (near Banjul). Although residents can avail themselves of these different options and engage in forum shopping, they usually opt for mediation.

All of the options other than mediation involve significant transaction costs in terms of time, money, and potential social sanctions.\(^{12}\) Most villages in Kombo South do not have police stations or a permanent police presence. There are monetary expenses related to accessing the police and the local judicial system. Locals must often travel to meet the police, pay any transportation costs for the police during their investigation, pay a fee to summon someone to court, and so forth. All this adds up to a significant amount for most locals.

The district tribunal is located in Sotoko. If people from other villages become involved in a court case, they have to travel there and the local transportation system is

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\(^{10}\) In Jola villages, the *Alkalo* is assisted by a Council of Elders. This may also occur in Mandinka villages, but is more informal than in Jola villages.

\(^{11}\) The tribunal court is supposed to meet once a week, but in practice meets about every other week. The district Chief or “*sayfoe*” is a Mandinka from Sotoko, but he lives in the greater Banjul urban area where he has a full-time job. He presides over the tribunal court, but is rarely in Sotoko.

\(^{12}\) Local social norms discourage the use of the formal legal system and locals speak disparagingly of it. People frequently say that if you take someone to the government (formal legal system) it will cause a permanent break in your relations with them.
quite limited. There are only two paved roads in the district at present and they were just completed in 2002. The magistrate’s court in Brikama is even farther away and the Islamic court in Kanifing is a full day’s journey. Thus, residents of Kombo South who choose to address their disputes through the legal system incur formidable transaction costs in terms of time and money.

Following the lead of the central government, the District Chief and tribunal officials encourage citizens to turn to mediation as an alternative to using the formal legal system. Elders sometimes attend the court sessions and intervene in cases. They often consult with the Chief who frequently delays hearing such cases to give the mediator(s) opportunities for resolving the problem. There are also strong local beliefs and norms that discourage people from taking disputes to the formal judicial system. Mediation is therefore a very popular way of addressing conflict in the district.

One could say that there is socio-cultural pre-disposition to mediation because the use of mediators is a common feature of social life. Gambians commonly communicate through intermediaries when dealing with certain matters. For example, Gambians arrange marital unions (marriages) through a *sila tiyo* or marriage mediator. The normal expectation in the case of marriage disputes is for intervention by a mediator. In some cases (for example in certain Jola households), there is an informal taboo on contact between a husband and the fictive and biological stepparents of his wives.

It would be fallacious to suggest that mediation practices have remained static over the centuries, unconnected to local, regional, and global processes of change. All cultural systems change and none are single bounded units, hermetically sealed from the rest of the world. However, given the relative isolation of Kombo South and its particular
history, it is possible that local mediation has been somewhat less influenced by the massive forces of change introduced by European involvement in Africa than other areas with a more intensive colonial and post-colonial history.

**Population**

Kombo South’s population demographics made it a good site for this study. A heterogeneous population facilitated the exploration of societal influences on conflict mediation within The Gambia, as well as between The Gambia and other countries. The population of Kombo South is markedly diverse in terms of ethnicity, mode of subsistence, and religion. The only other rural region (other than Kombo Central) with such a comparable population of non-Muslims is the Fogny area.

Until the rise of the great West African states and the fall of the Ghana Empire, the Kombo South region was primarily settled by acephalous groups that made heavy use of forest and marine products, such as the Bainunka and the ancestors of the Jola. The first Mandinka migrants to The Gambia were non-Muslim migrants from Mali and Guinea and were considered guests of the resident population. With the increase of Mandinka migration to the Senegambia after the era of the legendary leader, Sundiata Keita, the area became more and more influenced by the Mandinka. When the Kaabu Empire sent an army to assist the local Mandinka, the Kombo kingdoms and states were established (Sonko-Godwin 1994, 1997). The *Marabou*-Soninke wars of the second half of the 19th century brought about widespread conversion to Islam (Faal 1999).

**Religion and belief systems of the population**

Kombo South is more religiously diverse than most other rural regions of The Gambia. Large numbers of Muslims are found throughout The Gambia, but this area contains more non-Muslims than other rural parts of the country. The Gambian
government generally states that Muslims comprise 95% of the population. The World Factbook describes the population as 90% Muslim, 9% Christian, and 1% adhering to indigenous beliefs (2003). The Christians are mostly Manjago, Caroninka Jola, Jola from the Basse Casamance region of Senegal, and Aku and Serer in the urban areas. The figure of one percent of the population as adherents of “indigenous beliefs” is quite low as much of the population adheres to animist practices and beliefs to some degree.

Animist practices are more noticeable among nominally Christian populations because many customs have been thoroughly incorporated into local Islam. This has been the case for many Mandinka customs, for example. The Jola consider the Mandinka the doyens of Islam, and the spread of Islam among them has led to their Mandingization. The Mandinka have been instrumental in the forcible (and ongoing voluntary) conversion of the Jola, and the Muslim Jola are taking on many Mandinka customs as part of their practice of Islam. Gambian Manjago have not participated as much in this process of cultural diffusion as they have remained predominantly non-Muslim, with the exception of the small Manjago population in the Niumi province on the north bank of the River Gambia.

Religious affiliation constitutes a very significant link between Mandinka and Muslim Jola. Members of different religions have common beliefs and practices and mix regularly at ceremonial occasions. One of the reasons Manjago are so different from and keep so separate from Mandinka and to a lesser degree Jola is that in Kombo South almost none of them are Muslims.

**Modes of subsistence**

The rural population of the Kombo districts has a more diversified set of production strategies than other areas that are generally dominated by agriculture and herding. Many
people in the Kombos also engage intensively in the collection and sale of marine and forest products (cf. Madge 1990, 2000). Kombo South contains a major river, the Allahein, that constitutes the border with the Casamance region. The coastal southern region of The Gambia receives more rainfall and is more forested than most other parts of the country. The forests of Kombo South account in part for the relatively large number of Jola and Manjago there, as they can engage in their customary collecting activities of palm oil and wine and other forest products.

As implied above, the societal diversity in southwestern Gambia is due in part to the environmental conditions there. Ethnicity and mode of subsistence are closely linked in Kombo South. Historically, the Mandinka have been groundnut farmers and artisans; the Jola have been rice farmers who also made heavy use of forest products; the Fula concentrated on pastoralism and petty trade; and the Serer and Lebu fished. The historical patterning in subsistence strategies is still commonly practiced today and is mediated by changes in religious affiliation. Muslim Jola tend to concentrate more on farming than non-Muslim Jola.

**Ethnic diversity**

The ethnic diversity of Kombo South is also notable. According to the census conducted by the Central Statistics Office of The Gambian government, in 1993, there were 33,361 Gambian citizens residing in Kombo South. 19,238 of these resident citizens were Mandinka; 7,231 were Jola; 2612 were Fula; and 1,909 were Manjago. Wolof, Serahule, Serer, Bambara, and Creole-Aku were also present in smaller numbers.

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13 The term “Fula” is the Gambian label for the ethnic group – found in many parts of West Africa – that is also known as the Pulaar, Fulbe, Fulani, Peuhl, etc.
Informants unanimously agreed that ethnicity was a major determinant of beliefs, norms, and behavior. However, there are institutions that link people across ethnic groups such as clan affiliation, religious status, and village affiliation. The patriclans or *kabilos* have their own customs and practices regarding such issues as marriage and circumcision procedures. Some *kabilos* are multi-ethnic; migrants become integrated into patriclans when they are given land.¹⁴ Villages have their own particular customs and village membership is an aspect of personal identity. Most villages are multi-ethnic (although small villages that are fairly homogeneous do exist in the region). Locals sometimes invoke shared village citizenship as a unifying bond during mediations.

Kombo South’s relatively large populations of Mandinka, Jola, and Manjago made it an ideal site for this study. The Mandinka, Manjago, and Jola represent some of the most diverse populations of The Gambia in terms of pre-colonial socio-political organization. Dispute management customs are firmly linked to socio-political organization and these three groups are diverse in a way that other major Gambian ethnic groups are not.

The Mandinka created highly stratified state-level agrarian societies and kingdoms. Pre-colonial Jola society was acephalous and less stratified, and members engaged in more hunting and gathering than the Mandinka. The Jola are the only historically acephalous group from The Gambia. Although village chiefs were imposed on them during the colonial era, their chiefs are less influential than those in Mandinka villages

¹⁴ *“Kabilo”* can also be translated as “ward.” This term is fitting because *kabilos* are made up of people from different lineages and *kabilo* members tend to be concentrated in certain areas. Villages are divided into wards that often bear the name of the founding patrilineages such as *Touray Kunda, Ceesay Kunda* and so forth. Other wards are named after their location in the village or a particular landmark, but are still usually led by the members of the founding lineage.
and share authority with councils of elders. The Jola are more religiously diverse than the Mandinka – the Mandinka forcibly converted many of them to Islam, but large animist and Christian-animist populations remain. The Manjago are a good control group for this study. They mainly comprise relatively recent immigrants that are overwhelmingly non-Muslim. There has been a great deal of interaction and intermarriage between the Jola and Mandinka, but this is not the case with the Manjago of Kombo South. In southern Gambia, Manjago settlements are often clustered around Mandinka and Jola areas and their communities are much more insular than those of the other two groups.

Other than the neighboring district of Kombo Central, the only other rural area with such a large population of Manjago and Jola is the Fogny region. The Fogny Jola are considered to be heavily influenced by Mandinka customs and would have made for a less dramatic comparison group than the Jola of Kombo South and Central (Sonko-Godwin 1997; Ansu Badjie interview 5/13/2001). Other areas of The Gambia are also ethnically diverse, but are populated mostly by ethnic groups with a history of highly stratified social organization similar to that of the Mandinka.15

In summation, Kombo South was a good field site for this study because it is an area away from urban centers where the formal legal system is stronger, mediation is less prevalent, and an urban, more hybridized, culture has sprung up. Mediation is popular and is used widely. Moreover, the diversity of the population facilitated cultural analysis.

15 The Wolof, Serahule (or Soninke), and Fula (or Fulani or Fulbe) are the other major ethnic groups that reside in rural areas. These ethnic groups all have a history of state formation and highly stratified political and social organization (Sonko-Godwin 1997).
Table 3-1. General differences between the Mandinka, Manjago, and Jola

<table>
<thead>
<tr>
<th></th>
<th>MANDINKA</th>
<th>MANJAGO</th>
<th>JOLA</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Belief systems</strong></td>
<td>Muslim (syncretized with local beliefs)</td>
<td>Christian-animist</td>
<td>Mixed</td>
</tr>
<tr>
<td><strong>Governance &amp; social organization</strong></td>
<td>Highly stratified</td>
<td>Formal authority structures largely absent</td>
<td>Historically acephalous, now some stratification</td>
</tr>
<tr>
<td><strong>Primary subsistence strategy</strong></td>
<td>Agro-pastoralism</td>
<td>Collecting and marketing palm wine, little agro-pastoralism</td>
<td>Agro-pastoralism, forest products are vital to subsistence</td>
</tr>
</tbody>
</table>

**Overview of the Three Target Ethnic Groups**

**The Mandinka**

The Mandinka are found in many countries of West Africa where they established a number of different empires and kingdoms. There are approximately 915,000 Mandinka with 350,000 located in The Gambia (Grimes 1996). They began migrating to the area from Mali, Guinea, and the Casamance after the fall of the Ghana Empire in the 11th century (Sonko-Godwin 1997). Pre-colonial Mandinka social organization was stratified and hierarchical with kings, nobles, professionals such as traders, peasants, soldiers, *marabouts*, the artisans and *griots*, and slaves (Sonko-Godwin 1997).

The Mandinka are the largest group in The Gambia. They have historically dominated Gambian society and politics. The Mandinka controlled much of The Gambia during the time of the Mali Empire. When it began to wane in 1580, the Kaabu Empire and its allies gained control of most of the southern bank of the River Gambia. They maintained that control until the defeat of the Kaabu Empire in the eighteenth century. After independence in 1965, the president, Sir Dawda Jawara, was Mandinka until the coup de etat of 1994.
The various regions of The Gambia have their own local socio-political hierarchies, but the Mandinka can also be considered the dominant social group of the southern Kombo region. They are the largest group in the area and Mandinka is used as the trade language of the region (Central Statistics Department 1993). Many members of other groups have been assimilated into Mandinka society through conversion and land grants. As the Jola were converted to Islam, some of them joined Mandinka *kabilos* (patriclans or wards) and gradually assumed a Mandinka identity.

The Mandinka have dominated southern Kombo since the Kaabu Empire sent an army to help them overcome the Bainunka and establish supremacy over southern coastal Gambia (Sonko-Godwin 1997). The era of Foday Sillah and the *Marabou*-Soninke wars increased the Mandinka influence over the southern and central Kombo region. Sillah was a Jahanka, a small group descended from the Serahule who speak a dialect of Mandinka, and who have been largely subsumed into the Mandinka ethnicity in some areas. In Kombo South, the jihads in the area led to the Mandinka being perceived as the harbingers of Islam. The Jola looked to (and often still do) the Mandinka for religious leadership and guidance. In Jola villages the *marabous* are usually Mandinka, for example. Islamicization and Mandingization went hand in hand in southwestern Gambia.

The control of much of the land by Mandinka *kabilos* is one factor in their local dominance. The Mandinka claimed much of the land in the area with ownership going to the first settlers to clear a particular parcel. According to one informant, after the defeat of the Bainunka, the Mandinka leaders set fires in different areas and granted the land burned by the fire to their followers. These “owners” then gave land grants to immigrants and petitioners who would bring them kola nuts and ask for land. The usual procedure
was for a family head or small group of migrants to go to the recognized owner of the land with a gift of kola nuts and ask for usufruct rights. They would then often become part of the owner’s clan and sometimes gradually assumed their language and customs. The land parcels have been passed down to the male descendants of the patriclans and their dependents.

Mandinka histories constitute the dominant narratives in the region. Some factors that contribute to the primacy of the Mandinka perspective are the extensive oral histories in Mandinka society, the relatively early adoption of the Arabic script by the Mandinka, and the adoption of Mandinka viewpoints by colonial authorities and Europeans. The colonialists viewed the Mandinka as more developed and sophisticated than other local groups such as the Jola. Even prior to the use of the Arabic script, the Mandinka *griot* or praise-singer caste preserved and promulgated local genealogies and Mandinka versions of history. The Manjago and Jola have no comparable caste and, therefore, do not have such extensive and elaborate oral histories.

The Mandinka were the first of these three groups to convert to Islam and are considered the Islamic leaders of the area. They also have a kind of religious authority among Muslims because they were converted to Islam long ago and fought to convert the Jola and other non-Muslims. The Imams and *marabouts* of the region are almost exclusively Mandinka. Muslim Jola draw their religious authorities (*marabouts*, Islamic teachers, and Imams) from the Mandinka; a Mandinka is the Imam of the Jola village of Naneh for example. Their relatively early conversion to Islam also gave them access to
the Arabic script. *Marabouts* and local scribes wrote local history in Arabic and in
Mandinka thereby creating written records that have been consulted by local historians.16

The complexity, stratification, and agrarian nature of Mandinka society led
historians and colonial authorities to believe that the Mandinka were more “civilized” and
“advanced” than the acephalous and hunting and gathering Jola and Manjago (Madge
2000). The Mandinka have used these advantages to promote and partially codify their
historical perspectives. This has helped them maintain local dominance as they have been
able to claim that they are the owners of the land, that they are the historical authorities of
the area, and that the Jola are immigrants to the area, etc.17

The Jola

The Jola are found in Senegal, The Gambia, and Guinea-Bissau. According to *The
Ethnologue* there are approximately 60,000 Jola in The Gambia (Hopkins 1995 cited in
Grimes 1996). This number seems quite low. *The World Factbook* states that 10% of The
Gambia’s 1,500,000 population is Jola, indicating that a better estimate may be more like
150,000.

The Jola are the third largest group in Kombo South. The 1993 census listed the
number of Jola with Gambian citizenship in Kombo South as 1088. The number of Jola
living in the area is much higher – many of them are migrants from the Casamance who

16 For more information on the Mandinka see Gamble (1988), Hoffman (2000), and Sagna (1983). Patience
Sonko-Godwin’s publications (1994, 1997) are excellent sources of information on both the Mandinka and
the Jola.

17 Some historians such as Dawda Fall (1999) posit that the Jolas were the original inhabitants of Gambia
and Kombo South (cf. Madge 1990). After the conquest of the Kombo region with the assistance of the
Kaabu Empire and during the Marabou – Soninke wars the Mandinka drove many Jola out of Kombo South
into the Casamance. The Jola village of Naneh bases its land claim on a grant from a Mandinka *kabilo* in a
neighboring village, for example. Some Mandinka feel that the Jola and Manjago do not have any right to
claim permanent ownership of land and they have been fairly successful in promulgating a popular view of
the Jola and Manjago as “immigrants.”
live in The Gambia. Immigration has continued since 1993 with the vibrant market economy of The Gambia acting as a pull factor and civil war and banditry in the Casamance acting as a push factor. Shortly before this researcher returned to the U.S., there was a wave of fighting in northern Casamance and thousands of Jola moved into Kombo South and Central districts.

The Jola have been variously described as having originated in areas to the south of The Gambia and migrating northward, and as having come from the north and migrating southwards (Sonko-Godwin 1994, 1997). According to one version of their oral history, they are related to the Serer of northern Senegal, a group with whom they maintain a special affinity relationship.18 There are some similarities between the Serer and the Jola that support this theory, such as the focus on rice in farming and the ritual significance of that crop in these riverine and coastal societies. However, most scholars agree that the preponderance of evidence suggests that the origins of the Jola are most likely to the south of The Gambia (Linares 1971; Madge 1990; Sagnia 1984). According to this theory, the Jola moved north into the Senegambia, subsuming the existing populations as they did so (Sagnia 1984; Madge 1990).

The “Jola” identity was constructed out of a variety of sources, and the Jola consist of a loose grouping of societies speaking similar linguistic dialects with many cultural affinities (Sagnia 1984; Madge 1990). One scholar even argues that the Jola identity was constructed by Europeans during the colonial era (Mark 1992). According to Gambians,

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18 These relationships are sometimes referred to as joking kinship. They include mutual obligations and are commonly manifested in semi-ritualized banter, usually revolving around food, where individuals who share such ties will tease each other about their big bellies and love of eating. Individuals who share such an affinity should not anger each other and they should help each other or bad things will befall them. In several observed mediations between Jola disputants, Serer mediators successfully invoked their special relationship with the Jola and were able to dampen the conflict. We will discuss joking relations further in Chapter 5.
the name “Jola” is derived from the Mandinka language and means “those who pay back.” Some say that the name carries a negative connotation. It has become the accepted name for this group in The Gambia and Senegal, illustrating Mandinka hegemony in the construction of historical narratives. According to Gamble, “the Jola refer to themselves as Ayamat” (1988: xvii). Local informants stated that they used names denoting their region of origin in the Casamance such as Caroninka, Mbuluf, Essil, Casa, etc.

In pre-colonial times Jola society was acephalous and organized around segmented lineages settled in particular villages and areas. The villages of a particular area were loosely allied and had their own dialects. Before the Marabou-Soninke wars (1850 - 1890) the Jola were largely independent and non-Muslim (Godwin-Sonko 1994, 1997).

It is worth noting that the Jola are the only major group that is considered to be indigenous to The Gambia that is historically an acephalous group. Pre-colonial Jola society was not purely egalitarian as “shrine heads, blacksmith lineages, village priests, domestic slaves and ‘big men’” were found in some areas (Madge 2000:144; Mark 1992). However, the Jola social structure was not characterized by the elaborate caste system and stratification found in Mandinka society, thereby providing an interesting case for comparison.

Colonial authorities imposed village headmen on the Jola; previously councils of elders were responsible for managing village affairs. Colonialists tended to view acephalous and hunting-gathering type societies as inferior to state building societies. In the first stages of colonial rule over the Jola the colonial authorities actually used Mandinka chiefs in their indirect rule over the Jola (Madge 1990). Later the alkalos or village headmen were chosen from among Jola villagers. In contemporary Jola villages
the power of the *alkalo* tends to be less than in Mandinka villages and councils of elders often continue to play an important role.

The Jola mode of production also differs from that of the Mandinka including more hunting and gathering. In Kombo South most Jola rely much more on forest products and on rice production, although they also grow groundnuts, cassava, millet, and other crops (Madge 1990, 1994, 1995, 2000). Non-Muslim Jola frequently engage in palm wine collection in addition to all the other collecting activities.

European mission work has succeeded in officially converting a relatively large portion of the Jola to Christianity (usually Catholicism). Indeed, the Jola, Manjago, and Aku are the only major Gambian ethnicities with relatively large non-Muslim populations. In the Casamance region of southern Senegal, Jola to the north of the Casamance River are now predominately Muslim – with the notable exception of the Caroninka who have a large presence in The Gambia.¹⁹ South of the river in areas such as Kasa Christianity is widespread. Animist practices are still common among all the groups.

Since the widespread conversion of many northern Jola during the *Marabou-Soninke* wars of the nineteenth century Islamic authorities have become another locus of power in Jola villages. This has contributed to the ongoing Mandingization as the Jola look to the Mandinka for their Imams and *marabouts*.²⁰ The general perception of most

¹⁹ Karon – the homeland of the Caroninka – is just south of Kombo South in the Casamance. Many Caroninka have migrated to The Gambia and they were an important source of non-Muslim data for this study.

²⁰ While the Jola are continuing to be influenced by the Mandinka, historically the Jola have had a reputation of being fiercely independent and of clinging to their traditions and customs (Madge 1990, 2000;
Gambians is that the Jola are newcomers to Islam and their knowledge of the religion is fairly superficial.

The Jola were also relatively marginalized in the post-colonial state. The history of The Gambia and the power dynamic interacted with ethnicity and ethnic identification. During former president Jawara’s time, other Gambians often looked down on the Jola and mocked them when they spoke their language in public vehicles. In response many Jola claimed a Mandinka identity. There was a widespread feeling among some Gambians that the Jola were less civilized and less Islamic than other ethnic groups.

Current president Al-Hajji Yahya Jammeh is a Jola from the Fogny region. The Jola have become much less marginalized in the APRC era with many prominent Jola government officials. There is a renewed sense of pride among the Jola and many locals assert that families who once identified themselves as Mandinka have rediscovered their Jola roots. Now that there is a Jola president, some people who previously identified themselves as Mandinka are now calling themselves Jola. However, according to personal observation and anecdotal data, some people still seem to feel that being asked if they are Jola is an insult, and they strenuously deny that.

Interruption between Jola and Mandinka is fairly common. In the vast majority of cases such marriages consist of unions between Mandinka men and Jola women. Ethnic identity is patrilineal so the children of these unions consider themselves Mandinka.

Sonko-Godwin 1994, 1997). For example, the Jola region of Fogny retained its independence from the Kaabu Empire while other areas on the southern bank of the River Gambia were conquered.
Despite this intermingling, many Jola retain their fierce independence and maintain distinct customs and values.\(^{21}\)

**The Manjago**

In the 1990s, there were approximately 209,300 Manjago located mostly in Guinea-Bissau, Senegal, and The Gambia. The Manjago are a minority group in The Gambia; in 1991 their population was estimated to be 14,100 (Vanderaa 1991 cited in Grimes 1996). According to the Gambian census of 1983 they were estimated to make up 1.7% of the national population (Central Statistics Department 1983), but their numbers have risen dramatically since the political troubles of the late 1990s in Guinea-Bissau. The Manjago have a long history of very widespread migration. The Gambia’s relatively strong economy and opportunities for marketing rubber, palm wine, and palm oil have acted as a strong pull factor since colonial times (Gable 1990). Recent instability in the Casamance and Guinea-Bissau has led to marked increases in already high migration rates.

The vast majority of the Manjago in The Gambia are found in either the urban centers in the Western District or in the southern Kombos and the Fogny area. There are also some Muslim Manjago in the Niumi region across the Gambian River from Banjul. There are very few Manjago residents in the inland urban and rural settlements (*The Gambia* 1995).

Opinions differ on whether the Manjago are a historical Gambian ethnic group. Although many were born elsewhere the Manjago presence does date back to the colonial era when they came to tap rubber and sell palm oil. Bathurst (known as Banjul in independent Gambia) was a major trading center in the region where the Manjago could

\(^{21}\) Baum (1999), Linares (1978), and Madge (1990, 1994, 1995, 2000) are good sources for further information on the Jola.
sell these products at a high price. Some would travel back to Guinea-Bissau and others settled in the urban areas (especially Bathurst, Barra, and Lamin) and went out into the rural areas to collect forest products. The permanent settlement of Manjago in the Kombo South area started around the time of the two world wars. At that time Manjago began planting crops such as groundnuts and millet in addition to their gathering activities. The war of independence in Guinea-Bissau sent another wave of migrants north and the migrants continue to come. Elderly Manjago who were born in Guinea-Bissau sometimes refer to “the born sons of The Gambia” when complaining about younger men who were born in that country. This label is used in a disparaging way and often carries the connotation that locally born Gambian Manjago are poor workers.

Many Manjago have not established firm roots in The Gambia. Some Manjago tend to view The Gambia as something like a temporary home and consider Guinea-Bissau as their ancestral homeland and “real home.” They frequently travel back there, despite the distance, expense, and dangers of the road in the Casamance.

Manjago pre-colonial social organization differed from that of both the Mandinka and the Jola. They were more stratified than the Jola, but less so than the Mandinka. They did have kingship and nobles (Burgosin), but did not have a caste system comparable to that of the Mandinka. In Guinea-Bissau the institutions of kingship and aristocracy have persisted to the present. However, members of these groups are not respected and have little actual authority (Gable 1990).²²

These categories are not recognized among Gambian Manjago who do not differentiate between people based on their lineage. Although Manjago settlements

²² See Gable (1990) and Crowley (1990) for more information on the Manjago.
sometimes have nominal leaders, the position of village headman is not a hereditary one as among the Mandinka and Jola. The Manjago *Alkalos* tend to have little power and mainly act as representatives of their communities when necessary. The Manjago tend to resent central authority (cf. Gable 1990), and their Gambian settlements do not have much formal organization. Debating among the Manjago is contentious and public discussions for decision-making are rare.

The fact that the Manjago are immigrants and that they tend to mix less with the other ethnic groups makes them a good control group for this study. In Kombo South Manjago communities are very insular and are not multi-ethnic in the way that other communities are. Generally there are no Mandinka, Wolof, Fula, Serer, Serahule, or Aku inhabitants in Manjago settlements. Non-Manjago residents tend to be Balanta or members of other ethnic groups from Guinea-Bissau.\(^\text{23}\) The Manjago in Kombo South tend to live in settlements in the “bush” or on the outskirts of large villages. In fact, there is a sort of indirect rule at the village level in Kombo South. Village headmen of large Mandinka dominated villages delegate the responsibility of community affairs to “headmen” in the Manjago settlements near their villages.

The Manjago have a much shorter and less intensive history of interaction with the Mandinka than the Jola. Manjago generally have few ties through marriage, shared religious and clan identity, and interaction with the Mandinka and Jola. The religious difference is very significant since shared confessional affiliation is one of the main cross-ethnic links in the country. Shared religious affiliation encourages regular

\(^{23}\) Occasionally a member of another ethnic group (often a Fula) who is sanctioned for his drinking will go and live with the Manjago for a while.
interaction through meetings at the mosque, attendance at each other’s ceremonies (Muslims), and other junctures.

As all the above suggests, the Manjago are not integrated into many of the networks and institutions that link other Gambians. In terms of kinship and most social and religious institutions the Manjago are generally connected only to non-Muslim Jola and other minorities and not to the majority of the residents in Kombo South. Manjago share some customs with non-Muslim Jola pertaining to palm wine and animist religious practices and their modes of subsistence are similar. However, the Caroninka and other non-Muslim Jola are more integrated with the rest of Gambian society than the Manjago. Unlike the Manjago, female non-Muslim Jola do marry Mandinka (after converting), and non-Muslim Jola are more active in village affairs and politics and are members of local kabilos. Although those from the Casamance do feel that it is their ancestral homeland, they are less likely to view themselves as temporary migrants.

The Manjago are also even more marginalized than the Jola in the Gambian context. There is a Manjago member of parliament representing Kombo South, but he is a member of the APRC ruling party and received the support of most of the Jola and of the non-Muslim population as well as other party supporters. In general, other Gambians look down on the Manjago and consider them somewhat uncivilized.

Muslim Gambians sometimes express resentment toward the Manjago because of their collecting and distribution of oil palm products. For example, in local communities people often complain that the price for palm oil is too high. They also assert that the Manjago are tapping too much palm wine thereby killing palm trees and preventing palm oil collection from the trees. During the study period, such tensions rose to the point
where the Mandinka and other Muslims of one village stormed a Manjago settlement and poured out their palm wine and other alcohol. Accounts of drunken Manjago being beaten by Mandinka and other Muslims when they venture into central portions of villages were occasionally heard. According to one Jola informant, that is why his village had a sizeable Manjago quarter – the Jola (in his village at least), although predominately Muslim, were kinder to the Manjago.

**Overview of the Communities Included in the Project**

**Sotoko**

Sotoko is the capital of Kombo South district. The figures from the 1993 census estimate 10,000 residents, approximately 8,000 of whom have Gambian citizenship: 5,782 of these are Mandinka, 1,088 are Jola, and 12 are Manjago. This figure does not include the Manjago settlements on the outskirts of the village. Sotoko has one of the largest fishing centers in The Gambia, and there is large scale immigration to Sotoko from Senegal and other parts of The Gambia. In 2001, estimates for the population by a local NGO and Gambian government officials were 15,000 residents.

The Mandinka population forms the core of Sotoko today and they hold the important political posts in the village. The post of *Alkalo* is held by a Mandinka lineage and the Imam and members of the semi-informal Council of Elders are also Mandinka. The official “owners” of the village and most of the land are the eight major *kabilos* (clans or wards). All of these are led by Mandinka patrilineages although they have

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24 The following descriptions are based on data from 2001 and 2002. These communities are changing rapidly due to high birth rates and immigration.

25 Data collection for this project concentrated on born citizens and long-term residents.
incorporated many members from other ethnic groups through giving them land to settle and farm on.

Sotoko has a reputation as a regional center of Islam. Several well-known Islamic scholars and teachers are located there, and the town was the Mandinka leader Foday Kaba’s base of operations during the Marabou-Soninke wars. Indeed, Sotoko played a central role in the beginning of these battles (Dawda Faal 1999). Sotoko also has a Catholic church that serves the primarily Caroninka and Manjago Christian population.

Sotoko’s size gives it a lot of power over other smaller communities. A section of the population of Sotoko is embroiled in land disputes with two neighboring villages, including Naneh. Sotoko is one of the largest settlements in the country without electricity or solar powered pumps, a fact that some locals attribute to its reputation as a regional center of support for opposition parties.

**Konoto**

Konoto is located approximately ten kilometers north of Sotoko. Its population of Gambian citizens was listed as 2990 in the 1999 census, of whom 1623 were Mandinka; 849 were Jola; and 166 were Manjago. The current population is probably about 7,000. The Allahein River separates Konoto from the Casamance. The river offers some aquatic resources and the land is relatively fertile (as in the rest of the coastal region).

Many of the newcomers to Konoto are refugees from the Casamance. Until 2002 the Office of the United Nations High Commissioner for Refugees maintained a camp in Konoto. The refugees were recently moved to an upriver province on the north bank of the River Gambia. The refugees vigorously protested against this move, but Gambian and UN officials felt it was necessary to move them farther from the Casamance in order to prevent them from moving back and forth and possibly adding to the destabilization of
that region. Many refugees settled with friends and kin and remain in Konoto. The surge in fighting in the spring of 2002 drove many more Senegalese into Konoto.

Konoto is also a Mandinka dominated community. The founding lineage is a Mandinka one and the position of Alkalo is currently held by a Mandinka patrilineage. Konoto also has a reputation as a regional center of Islam that they earned when a relatively famous marabou settled there. That man, now deceased, converted many locals to Islam and was the teacher of another man who is now a well-known marabou in Senegal. His eldest son is the current Imam of Konoto, and the Imams of several villages in the region studied Islam in that compound.

Konoto contains two distinguished elders who are noted repositories of information and history, and who acted as informants and participants in this study. The Alkalo of Konoto is one of the longest sitting Alkalos of all Gambia. He was Alkalo even in colonial times, before the coming of independence in 1965. The Imam of Konoto is well-known in the area and is one of the oldest Imams in the country. These two elders were excellent sources of historical as well as contemporary data.

**Fole**

Fole is the largest of the small Manjago settlements clustered around Konoto and probably the largest in Kombo South. The 1993 census lists its population of Gambian citizens as 80 Manjago. It is currently inhabited by several hundred Manjago, a few Balanta, and a heavy drinker who is a member of the Fula ethnic group.
The village consists of ten compounds with a series of houses in each one. Fole was permanently settled about 40 years ago.\textsuperscript{26} Prior to that time, seasonal workers would go there and stay for a while before moving on or returning to their homes.

Fole is a good example of typical Manjago settlement patterns. The migration from Guinea-Bissau and the Casamance that led to the establishment of Fole is still ongoing. Many Manjago come to Fole and other settlements from Guinea-Bissau and stay for a while and then proceed on to Serekunda (the nation’s commercial capital) or return to their homeland. Because they drink alcohol and keep pigs, Manjago tend to settle in little enclaves outside villages like Konoto and Sotoko. They are not considered as official villages in their own right and are formally under the \textit{Alkalo} and leadership of the larger towns.

Fole is considered as a part of Konoto, for example, as that land was given to them by citizens of Konoto. The \textit{Alkalo} of Konoto prefers the Manjago to settle their own disputes and he does not attempt to intervene in their internal affairs except when they impact other members of the village. They in turn do not consult him for assistance in their internal affairs and are seen as a separate and very insular community.

There are two other small Manjago settlements around Konoto and there are two Manjago settlements deeper in the bush. Data collection was also conducted in Katacha, the other major Manjago area outside of Konoto, and a seaside settlement near Sotoko. Their history, population, and social organization are very similar to that of Fole.

\textsuperscript{26} Local conceptions of time are not always precise. One elder said Fole was settled 40 years ago and another put the figure at 42 years.
Naneh

Naneh is a Jola village located near Sotoko. In 1993, it had a population of Gambian citizens of whom 58 were Mandinka; 506 were Jola; and 50 were Manjago. Virtually all of the Mandinka residents are members of the Imam’s clan and have adopted many Jola customs.

Naneh was founded about 128 years ago. The founder came there from Casamance to collect oysters from the Allahein River, and after he had done so he would return to Casamance. After some time he decided to settle permanently in the neighboring village of Silo and he did so. He had a lot of cattle - so many that it was difficult for him to live in Silo. The cattle disturbed the local farmers so they decided to give him a piece of land away from the village and their fields. They asked him to choose a place and he chose the area that is now Naneh. He then went back to Casamance and convinced some young men from his family to settle there with him and help develop the land.

Naneh has experienced rapid growth due to the high local birth rate, improvements in regional medical care, and immigration. There is significant immigration from Jola and to a lesser extent Manjago, Fula, and Mandinka from Casamance who are either fleeing the civil war in the Casamance or seeking greener pastures. Some people also move to Naneh from the urban settlements of The Gambia in search of a lower cost of living and/or the opportunity to sell wood and other forest products and engage in rural to urban trade. According to many different informants, the Jola are considered honest and hospitable by members of other ethnic groups. It has been, and still is, easy to get land in Naneh without paying for it. To do this, one goes to the Alkalo with kola nuts and asks him for land which he usually grants. This practice is outdated in Konoto and Sotoko as people have realized that they can get significant amounts of money by selling land and
are increasingly reluctant to give it away. In Naneh, it is still possible to get land in this way and this helps to attract new migrants to the village.

The Manjago feel more welcome in Naneh than in other communities as the Jola are less discriminatory toward them than other ethnicities. There is also a growing population of Fula migrants there. They are shopkeepers, small business-people, herders, and farmers. They settle in Naneh due to the special affinity *dangkuto* relationship that their ethnic group maintains with the Jola. The *dangkuto* makes it easy for them to obtain land from the Jola for temporary or even long-term use.

Naneh is the most cohesive village of all of those included in this study. Residents have a strong sense of their identities as citizens of the village. The discrimination the Jola have faced as a historically disadvantaged minority group has added to their sense of unity as has an ongoing land dispute with the much larger village of Sotoko. An unfavorable outcome in the land dispute could result in their disenfranchisement and loss of their land and homes. If the opposition had won in the 2002 elections, for example, they would have faced serious difficulties and some local UDP supporters had threatened to “send the Jolas back to the Casamance” if they won. Naneh has maintained some communal Senegambian customs that have become rare in many district villages, such as having an active *bantaba* or village meeting place.

**Anyup and Katacha**

Two sites outside of Kombo South were included in the study in order to increase the size of the Manjago sample. These two settlements in neighboring Kombo Central were not villages in their own right; rather they were Manjago enclaves located outside of the main area of the village. They consisted of several compounds clustered together and the inhabitants had a network of contacts with the Manjago of surrounding villages.
These settlements were established in the early 1970s during the war of independence from Portugal in Guinea-Bissau. Manjago are known for being frequent migrants and the fighting that took place during the war for independence spurred many of them to migrate at that time. The disruption of the time and the fear of being considered overly sympathetic to the Portugese by other Guineans acted as push factor for many of the Manjago. The relatively vibrant market economy of The Gambia made it a desirable location (cf. Gable 1990).27

These settlements of three or four compounds were considered parts of the larger villages, but the Manjago viewed themselves as being part of the network of local Churr Manjago. They were mostly members of the Churr sub-group, meaning that their relatives came from that part of Guinea-Bissau and they spoke a similar dialect. They had an informal leadership that consisted of the elders, and several younger educated men also had some influence. These people viewed themselves as a group and they regularly interacted for ceremonies, business, and social events. The informants from these areas consisted of three elders, two of whom were considered the leaders of the community, and a younger educated man.

**Conclusion**

A study of culture in conflict resolution could be conducted virtually anywhere, although some locations may be more interesting than others. Given prevailing interest in Africa, and the specific history of indirect rule in The Gambia, Kombo South was an excellent site. In this rural area with a minimal infrastructure related to the legal-rational

27 The economy of Guinea-Bissau is relatively stagnant. Many Manjago have migrated to their immediate neighbor, the Casamance region of Senegal. The Casamance has had a long-running civil war which has led to some banditry, however, and the strength of the Gambian economy has led some Manjago to move farther north to The Gambia.
system of the state, mediation was both popular and arguably less influenced by
globalizing processes. The diversity in the population in that small area made it possible
to collect data on populations with dissimilar histories, social structures, belief systems,
and subsistence strategies, who were nevertheless located in the same geo-political frame.
The next chapter will explain how the data were collected and analyzed.
CHAPTER 4
IN THE REALM OF THE DJINN:
SOCIO-CULTURAL ANALYSIS AND RESEARCH METHODOLOGY

Introduction

This chapter presents an overview of the research design and methodology of this project. We begin by reviewing the principles that guided the design. This is followed by a discussion of the data collection techniques, beginning with the sampling framework. We then review the main sources of the data – interviews, observed and recorded mediations, and panel sessions with experienced mediators. The following section on data analysis opens with an explanation of how the translation and transcription of the data were conducted. After presenting the coding framework, we turn to how the data were analyzed using qualitative strategies. The chapter ends with a summary of the quantitative techniques used in the analysis.

The research design of this study was shaped by three propositions. The first is the previously mentioned idea of culture as multidimensional and highly variable. Socially transmitted norms, values, and habituated patterns of action may cut across ethnic boundaries and may vary considerably within these boundaries. The project codebook therefore included a variety of relevant participant characteristics such as religion, gender, home village, and age-set, rather than focusing only on ethnicity. Examining other variables, such as dispute type and mediator and disputant status, made it possible to control for other potential sources of variation in mediation activities. Different levels of analysis were used to deepen the investigation of patterning and elucidate what
relationships were significant. Mediation behavior was thus examined at the individual level, the intra-group level, and the inter-group level.

The second proposition is that methodological triangulation – using a variety of research strategies – enables a deeper investigation of complex social phenomena. Accordingly, both descriptive and empirical data were collected and the data were analyzed using participatory, qualitative, and quantitative methods. Interviews and panel sessions with Gambian mediators were used to identify categories, stages, and activities common to local mediations, to establish what constitutes normal procedures versus outlying divergences, and to control for inter-subjectivity bias. Observed and recorded mediation events provided a rich source of empirical data amenable to multiple types of analysis.

Third, the project design also addresses problems of idealized representations of behavior and informant (in)accuracy. Respondents’ representations of social phenomena may be influenced by ideological factors or may serve utilitarian purposes. They may describe behaviors in terms of how they would like them to be or how they think they should be, or they may de-emphasize or conceal certain behaviors while focusing on others. Studies have also revealed problems with informant recall and accuracy when answering questions based on memory (Bernard et al 1994).

Several scholars of dispute management have also raised this concern. In a classic work, Malinowski pointed out that informants’ accounts are not always be accurate and argued for the use of empirical data (1921). More recently, Kressel and Pruitt found that there is “often weak correspondence between retrospective accounts and what actually happened in mediation” (Kressel and Pruitt 1989: 430). In their study, mediators were
given checklists of activities to fill out immediately after they ended a mediation session. When these lists were compared to empirical data on those mediations, significant discrepancies were found (Kressel and Pruitt 1989). Due to such problems, conflict scholars have called for empirical data on what mediators actually do (e.g. Avruch 1991; Bercovitch and Houston 1996), and the collection process focused on such data.

Data Collection

The 26 months of fieldwork for this project were conducted in southwestern Gambia in the summer of 1999 and between March 2000 and May 2002. The first stages were primarily ethnographic in nature. I built relationships with key informants and community members, gathered background information on the different population groups included in the study, and field tested and refined my research techniques and instruments. Gaining an understanding of local social organization, social structures, institutions, associational life, and interpretive frameworks allowed me to fine-tune my inquiries and contextualize my discoveries. Later stages involved semi-structured interviewing, the collection of empirical data, and panel sessions with experienced mediators.

Building relationships with local communities and mediators was a major task. Dispute resolution is a sensitive and often private topic and establishing trust was necessary for collecting accurate and detailed information. Establishing close relationships with local mediators provided me with access to the empirical data. Mediators were usually respected individuals and they functioned as gatekeepers. Disputants trusted them and were more willing to participate in the project when the mediators introduced me. Gaining a reputation in the communities as a friendly, yet
respectful person, and being able to communicate somewhat in local languages was also beneficial.

**Sampling**

When scholars analyze culture in diverse nations such as The Gambia, they commonly use ethno-linguistic identity as the main marker of culture. Past studies on culture in mediation have used ethnicity to differentiate between different cultures (e.g. Cohen 1991, 1996; Lund, Morris, and Duryea 1994). The primary target populations for the study were the three ethnic groups described in Chapter 3, the Mandinka, Manjago, and Jola.

One would expect that the proximity of the populations to one another would lead to cultural diffusion and this has certainly been the case. Ongoing interaction and intermarriage between the populations have led to processes of cultural contact and diffusion. These groups should not be viewed as bounded entities entirely set off from one another.

However, from the perspective of the groups concerned, they are discrete populations with many distinct characteristics. The Jola are renowned within The Gambia for clinging to their customs and for their fiercely independent spirit (cf. Madge 1990). The Jola data were collected in a community that consciously differentiated itself from its Mandinka neighbors. The Manjago settlements were geographically isolated from the other communities and quite insular. As noted in Chapter 4, the Manjago generally keep to themselves more than other residents of the region, and their interaction with the Mandinka is especially limited. Ultimately, the emic view was that ethnicity was significant, and my own observations confirmed the validity of dividing the population by ethnicity.
The sampling frame for this study was Kombo South. Working within a single district meant that many potentially confounding variables were held constant, as the sample populations were located in the same general area and overall socio-political landscape. If their disputes were dealt with in a more formal forum rather than through mediation, the members of the sample shared the same district court, chief, and police officials for example. However, gathering data from the Manjago proved to be relatively difficult. In order to bolster the size of that data set, cases from the neighboring district of Kombo Central were collected and added to the Kombo South Manjago cases. Fortunately, this did not seem to substantially influence the analysis.

This study is based on cultural data so a rigidly crafted random sample was not essential (Handwerker and Wozniak 1997). In addition, the topic of this research meant that using the normal strategies to generate a purely random sample was not possible. The highly personal nature of dispute resolution and the strong emphasis on privacy in local society made it necessary to employ an alternative approach to sampling.

A strategic and purposive sampling strategy was used to maximize the data quality and quantity and maintain appropriate sample diversity. I identified active mediators in the target communities and worked with those who were willing and able to participate effectively in the project. Initially, I concentrated on formal and informal village officials such as alkalos and nyansingbaa (the leader of girls’ circumcision and socialization). Interviews with such high-status individuals constituted one point of approach. The ethnographic interviews generated lists of active mediators and I quickly found that many individuals without any formal title or position were also prolific peacemakers. By
making connections with many different people I avoided limiting myself to specific networks.

It was necessary to be constantly vigilant to avoid being overwhelmed by Mandinka perspectives. Researchers construct their understandings of social phenomena based on their own interpretive schema and the fruits born of their research setting and strategy and chance circumstances. Reliance on individual research assistants and focusing on “key informants” can lead to sample bias and to a skewing of the data and of the researchers’ interpretations of phenomena. I addressed this potential problem by working with a variety of individuals and continually seeking out new sources of data.

In the case of comparative studies, researchers must also be cognizant of the danger of population biases developing in their perspective. Kombo South’s character is highly influenced by the Mandinka, and to some degree they dominate Kombo South. The Mandinka constitute the bulk of the district’s population; they are at the top of the local socio-political structure, and Mandinka is the trade language of the area. The high rate of immigration is altering the landscape of Kombo South, but the Mandinka power hierarchy dominates the socio-political landscape, and theirs is the dominant historical narrative. In addition, my African hosts and fictive kin were Mandinka; I learned more of the Mandinka language than I did of Manjago and Jola; and I spent more time with Mandinka than with members of those ethnic groups.

My strategy for dealing with these problems was to construct many different networks, making my web of contacts and the identities of the research participants as diverse as possible. Through conscious effort – spending nights in Jola and Manjago villages, regularly attending women’s *kafo* meetings, etc. – I diversified my “participant
observation” and broadened my perspective. In addition, multiple research assistants and key informants from each ethnic group, religion, gender, and age group participated in the project. We made every effort to work with every sector of the target populations and to gather alternative or counter-hegemonic perspectives and narratives. I strove to incorporate them all into my conceptual framework and to give them their respective due in the analysis.

The participatory analysis discussed below provided additional safeguards against interpretive bias. The panels included analytical conversations about hypotheses and interpretations developed during the fieldwork. The panels helped to identify what values, beliefs, and behaviors were widespread versus uncommon. Most panel members had not been interviewed previously so they provided a fresh perspective on the data and on the perspectives collected from others, and assisted in differentiating between modal and idiosyncratic traits. We will return to the panels momentarily.

Due to the vagaries of data collection on private topics, the sample composition was not equal across the data sets. Some of the comparisons made in Chapters 5 and 6 are therefore based on a subset of the populations. For example, observing mediations among Mandinka and Manjago women was difficult, so the gender comparisons are primarily focused on the Jola. These issues are noted when such comparisons are made.

<table>
<thead>
<tr>
<th>Table 4-1. Research Assistants</th>
<th>Mandinka: 5 total</th>
<th>Manjago: 6 total</th>
<th>Jola: 6 total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>4</td>
<td>5</td>
<td>3</td>
</tr>
<tr>
<td>Female</td>
<td>1</td>
<td>1</td>
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</tr>
<tr>
<td>Muslim</td>
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<td></td>
<td>3</td>
</tr>
<tr>
<td>Non-Muslim</td>
<td></td>
<td>6</td>
<td>3</td>
</tr>
</tbody>
</table>
Interviews

Initial interviews (N = 54) were ethnographic in nature, providing a general sense of the domain and range of mediation in Kombo South and exploring local typologies, concepts, and categories related to mediation. The early interviews began with a “grand tour question” and were very open-ended. This allowed me to field-test interview questions and techniques.

After completing a number of ethnographic interviews with all the population groups, I discussed with my research assistants whether the interviews could be restructured and the questions rephrased in order to increase informant accuracy, avoid influencing respondents’ answers to questions, get beyond superficial answers, and enhance the quality of the data. We reviewed translation issues, striving to reduce interpreter bias by discussing how to phrase the questions most effectively in the local languages and how to most accurately translate transcripts of interviews and of mediations.

We also explored interview strategies and incorporated what we had learned into our research protocols. For example, as type of dispute was a locally significant variable we tried beginning interviews by asking mediators what kinds of disputes they had been involved in. I would then ask the informants to describe some of each type of cases as carefully as possible. After this, I would ask them to compare those cases to other ones from their body of experience.

Later interviews (N = 39) were more structured and followed an interview guide.1 The guide was formed in consideration of both the deductive and inductive data and was

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1 See Appendix B for a list of questions used in the interviews.
refined with the help of research assistants. However, no interview or panel session was so rigidly structured that additional questions could not be added to the list. Highly formal approaches are inherently limiting, as one is restricted to the prepared questions and cannot modify the interview based on the context or the data received during the interview. Very structured interviews could therefore actually increase inter-subjective bias, as researchers may be unable to pursue concepts and categories raised in interviews that may not be included in the list of questions included in the survey. Additionally, if one accepts the proposition that beliefs, norms, and behaviors may vary at the individual as well as group level, then it follows that adopting a rigidly structured approach may eliminate potentially significant data and limit one’s investigation to the group level of analysis. Therefore, although respondents were asked a certain set of questions derived from the interview guide, new questions were added to interviews when appropriate and any new concepts and categories raised by respondents were discussed at length.

Interview questions were so phrased as to encourage mediators to consider and discuss actual mediation events that they had seen or participated in. This was done in order to reduce purely hypothetical thinking and responses based on ideal types. Respondents tended to describe mediation in an abstract manner, elucidating how it should be done. Such information was useful in establishing a baseline procedure that members of various groups agreed on as the way to mediate. Moving the discussion beyond hypothetical or prescriptive behavior to actual past actions addressed the real – ideal behavior gap and increased the accuracy of the data. When possible, I collected recalled descriptions of past mediations (N = 66) and strove to elicit specific examples,
rather than simply asking general questions, such as “How do the Manjago mediate disputes?”

Some of the most fruitful interviews consisted of lengthy and detailed sessions with certain key informants. I was able to conduct many repeated interviews of some prolific mediators allowing me to deeply explore their approach to mediation, how they planned their interventions, and how they responded to different contexts and cases. These interviews went well beyond the interview guides and provided me with some of my richest insights.

In general, the descriptive data were useful in providing contextual information, exploring confusing and contradictory phenomena, and they complemented the empirical data nicely. However, some informants did make statements that were inconsistent with observed phenomena and/or events. It was necessary to critically evaluate interview responses, particularly when they involved generalizations such as “all Muslims do this in mediation.” This is the reason for my focus on the difficult and time consuming process of collecting cases of actual mediation events.

<table>
<thead>
<tr>
<th>Table 4-2. Key Informants</th>
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<tr>
<td></td>
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<tr>
<td>Male</td>
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<tr>
<td>Female</td>
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<tr>
<td>Muslim</td>
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<tr>
<td>Non-Muslim</td>
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**Empirical data**

This is one of the first comparative studies of mediation that is based on empirical data. The literature is full of calls for such research and despite the inevitable limitations

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2 The interviews and descriptions of recalled mediations were recorded and carefully translated. Additional data were collected through innumerable casual interviews, observations of the local tribunal court, and other less formal methods.
of the data occasioned by research outside of a laboratory, this study bolsters the research record. Collecting empirical data was difficult and time-consuming. A great deal of preparatory work and confidence-building measures was necessary to secure access to such data. Even when permission to collect such data was granted, complications remained as delays and re-scheduling of mediation sessions were not uncommon.

In addition to collecting information data about recalled cases, my assistants and I observed and recorded 121 mediations. By developing networks of contacts, I was able to learn of planned mediations. I attended these sessions whenever possible, however some took place suddenly, or occurred at times when I could not be present. In such cases, trusted research assistants recorded the meetings on my behalf. In order to maintain a high level of confidence in the data, I spent considerable time training my assistants in data collection.

Some mediations encompassed a number of different sessions. The majority of my assistants were active mediators, meaning that they were generally the mediators in these cases and were present throughout the peacemakings they were involved in. However, in some cases it was impossible to observe and record all portions of the intervention. In such instances, the recorded data were supplemented with recalled data from the mediators. I took great care to maximize the accuracy of the recalled data through meticulous and thorough interviews with all of the involved mediators.³

One might expect that the presence of a foreigner with a tape recorder would influence the behavior of the disputants. Some did seem a bit shy or self-conscious at

³ I also conducted occasional tests to further verify the accuracy of the data by cross-checking them against other sources (e.g. speaking with other mediation participants and asking others about the incident). I am very confident in the accuracy of the collected data.
first, but they generally seemed become comfortable rather quickly, particularly when they began to discuss the conflict. After sessions, I often asked the mediators if they thought that my presence was constraining, or if it altered the nature of the session in any way, and the answer was usually negative. Several times mediators who were not very familiar with me seemed to make their introductions and ritual flourishes a bit more elaborate than usual, but this was rare and fairly easy to detect and control for.

Collecting Manjago cases proved to be challenging. Manjago populations in Kombo South are relatively small, more widely dispersed, and located in more remote locations than those of the Mandinka and the Jola. In addition, the Manjago tended to be the most suspicious of my motives, and I received more refusals to participate from that population than any other. Strenuous efforts on my part did succeed in surmounting these challenges to some degree, but I found it necessary to include Manjago from the neighboring district of Kombo Central. The Manjago populations of Kombo South and Central are similar, both being immigrant communities with limited roots in the area. By incorporating Kombo Central Manjago into the sample, I was able to engage the assistance of several key informants who proved invaluable in boosting the empirical Manjago data.

Collecting empirical data from women was also difficult. The highly gendered nature of local society and the dichotomization of many domains of social life according to gender complicated my access. In addition, men are the most active mediators. Several prolific Mandinka and Manjago female mediators participated in the project, but their
mediation sessions usually included men. I was able to gather a fair amount of recalled data and some empirical cases on exclusively female mediation among Mandinka and Manjago women, but most of the observed data that involved only women came from the Jola sample. This limitation was taken into account during the analyses.

<table>
<thead>
<tr>
<th>Ethnicity</th>
<th>Total: 121</th>
</tr>
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<tbody>
<tr>
<td>Mixed</td>
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</tr>
<tr>
<td>Mandinka</td>
<td>45</td>
</tr>
<tr>
<td>Manjago</td>
<td>24</td>
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<tr>
<td>Jola</td>
<td>33</td>
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**Panel Sessions**

The panel sessions were conducted in the final phase of the fieldwork and were quite structured in that they included a certain set of questions for each group based on a reworked interview guide. However, if a new or intriguing item emerged, I would pursue it and temporarily deviate from the interview guide in order to explore that topic. Debate was encouraged, and I attempted to elicit perspectives from every member of the panel and to prevent particular panel members from dominating the discussion.

The panels were stratified according to ethnicity, age-set, gender, village of residence, and religion. The panel discussions started with a grand tour question in order to let the respondents range over the topic and speak with the least possible leading influence from my questioning. This usually elicited a description of the most common mediation procedures, which was instructive in itself as it gave me an idea of baseline procedures and areas of common consensus. This approach also provided an opening for

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4 For example, one of my key Manjago informants was a woman and she was a very prolific mediator. However, she frequently worked together with men, thereby eliminating the chance to use much of the empirical data that I gleaned from her in the quantitative tests of gender influence.

5 See Appendix B for the interview guide used in the panel session.
the participants to express ideas or approaches that I may not have thought of or encountered. The initial query was followed by more focused questions inquiring into specific aspects of the process mentioned in the mediators’ statements.

The answers to the grand tour question determined the sequencing of the sessions as I adjusted the order of questions according to the content of the responses and the rhythm of the discussion. As with the interviews, the mediators were asked to describe their experience in the field and to refer to it during the discussions. This was intended to reduce speculation and generalizations on the part of the participants and elicit more accurate responses. By establishing their experience, I was also able to explore their range of knowledge and focus in on areas where they had the most expertise.

In order to enable comparisons of the panel data, each panel was asked to respond to all the questions in the final interview guide. For example, the panels were questioned about common areas of variation in Gambian mediations, such as the collection of disputant narratives, judging and assigning blame, and their use of caucuses and group meetings. The mediators were also asked to describe how they had dealt with common types of cases, such as marital conflicts, disputes over material concerns, and quarrels that resulted from insults or issues of face and honor.

Among other things, the panels compared and contrasted different approaches to mediation, described the factors linked to the different approaches, and estimated the frequency of occurrence for each approach. This was useful as it provided another means for addressing possible sample bias. Certain mediation techniques may have been more common in the empirical data due to the makeup of the sample sets, and gathering
information on the prevalence of different approaches to mediation helped me to control for this.

The panel sessions were explicitly analytical as the participants were asked to compare and contrast different situations and what kinds of mediation procedures are appropriate for them. The mediators were also prompted to comment on and evaluate my emerging hypotheses to them about observed patterns in the process. This provided an emic perspective on my nascent interpretations of the data as well as further descriptive information. Special interest questions were added to the protocol for particular groups.

<table>
<thead>
<tr>
<th>Table 4-4. Panel Sessions</th>
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<tr>
<td></td>
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<td>Female</td>
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<td>Muslim</td>
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<td>Non-Muslim</td>
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**Data Analysis**

**Translation and Transcription**

It could be argued that translation is the first stage of analysis. The translation for this project was done with great care, making it a major time expenditure. Although I was able to become proficient in Mandinka and learn bits of Jola and Manjago, translators were always used to ensure accuracy. I employed various strategies to reduce interpreter bias and to ensure that transcripts were accurate. It was my great fortune to be able to recruit high quality research assistants with prior experience in translation and social science research. I conducted my own training sessions with all research assistants.

At first we did the translation in groups so as to standardize procedures, agree on common meanings and terminologies, and increase accuracy. We drew up an instruction sheet for translating and reviewed it before beginning sessions. After we became
comfortable with the procedure, I began working with individual translators. In order to ensure the quality of the data, I periodically engaged in back-translation and conducted spot checks of translated data to verify that the transcripts were accurate.

We translated the cassettes as early as possible after recording them and strove to capture every statement. The assistants related exactly what the participants said and then added their own ideas and interpretations, which I included in the transcripts as parenthetical notes. My ethnographic surveys of the societies in question were essential for accurate translation as it allowed me to contextualize the data and construct embedded transcripts. In addition, Gambian English is somewhat creolized with a number of local expressions and idioms. Knowledge of local social organization was necessary in order to be able to accurately interpret phrases such as “small mother.”

**Data Coding**

Meticulously coding the enormous amount of empirical data proved to be a major task that took almost a year to complete. While transcribing the data, I engaged in precoding in order to help maintain an analytical perspective and to take advantage of the freshness of the mediation events in my mind. My two later rounds of coding using The Ethnograph helped ensure that the coding was thorough and consistent.\(^6\)

In the literature, the mediation process is usually modeled as a set of specific activities that take place in a certain order (Donahue 1980).\(^7\) As the units of analysis were

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\(^6\) The Ethnograph is a qualitative data processing and analysis computer package.

\(^7\) The transformative approach described in Chapter 2 is less structured than the prevailing problem-solving approach. It offers an alternative view of mediation without such clearly defined stages. However, most mediation literature, training, and practice is based on the problem-solving approach and linear staged models (Della Noce 2002; Stempel 2002).
mediations, I coded each case according to the activities that occurred during the intervention. The codebook included both deductively and inductively generated activities. Codes such as setting the stage, establishing the ground rules, clarifying issues, negotiation or bargaining, and exploring options for settlement were derived from my training and experience as a mediator and from the prescriptive literature (e.g. Moore 1986). Gulliver’s cross-cultural negotiation model and Shook’s model of Hawaiian ho’oponopono provided other deductive sources.8 Stating positions, problem identification, defining the agenda, discussion, and ritualization are examples of codes taken from them. It quickly became apparent that this deductive approach was not sufficient and codes based on the inductive data were added to the codebook. Examples of the inductive codes are advising and appeasing disputants, passing messages between the disputants, pushing for forgiveness, ordering disputants not to tell their stories, threatening sanctions, and stating guilt.

The final product was a very large codebook that included 163 codes in order to account for all the potential components of mediation process and their sequencing. Incorporating so many codes enabled great specificity in analyzing what took place during mediations. For example, each activity had two codes in order to specify whether the activity took place during caucuses or group meetings. This facilitated the finding that the Mandinka tended to frequently gather disputant narratives during caucuses and in group meetings often avoided going over the events that led up to the dispute.

8 See Chapter 2 for an overview of models from the prescriptive literature and those of Gulliver and Shook.
Codes were also differentiated by what party they occurred in relation to. For example, the activity of caucusing was further tagged to indicate which party the caucusing took place with. This made it possible to identify whether caucusing took place with all, or only some, of the parties. By coding the disputants according to their relative social status I was also able to investigate questions such as whether mediators caucused with higher status disputants more than with lower status disputants.

The analysis was lengthy and far-reaching and some of the found patterns were not relevant enough to the central research problem to warrant mention here. During the quantitative analysis it was at times necessary to group some of the codes together. However, I found that taking the time to be very elaborate in differentiating between activities deepened my understanding of local processes and increased the analytical robustness of my perspective.

The cases were also coded according to a set of potential independent variables derived from the literature, my applied background in mediation, and the inductive data. This set included the population characteristics of the participants. The data were subdivided by variables highlighted in the conflict resolution literature that were also locally relevant – namely age, gender, and religion. The ethnographic data were useful in reducing the vast number of potential comparisons and matrices. For example, it became clear that differentiating between Christians and animists was largely an artificial exercise as many Christians also frequently engaged in animist practices.9 I therefore

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9 Muslims also engaged in animist practices, but generally much less frequently and to a much lesser degree than non-Muslims. An interesting future project would be to measure the Islamicization of various individuals and investigate whether that had any impact on conflict transformation praxis.
collapsed the categories of religious affiliation into Muslim and non-Muslim. The inductive data also indicated that three common survey categories, educational level, occupation, and income, were not significant and I eliminated them from the codebook.\textsuperscript{10}

The empirical cases were also coded according to their contextual characteristics. These tags included the type of dispute in question; the forums in which the interventions took place; the level of formality of the intervention effort; the village where the mediation took place; the identities of the mediators; the nature of the social relations between the disputants and between the disputants and the mediators; the number and type of sessions that took place; the numbers of caucuses and group meetings in each case; the length of the meetings; the number of disputants involved; and the type of disputants and mediators. The goal was to identify and control for variables that may affect mediation behavior and throw cultural influences into relief.

**Qualitative Work**

Data analysis began while I was still in The Gambia. According to inter-subjectivity theory, scientific hypotheses are not pure representations of social realities, but are products of the cognitive makeup of those who produce them. I attempted to mitigate this influence through the use of the delphi technique – engaging in consultation with project participants about my impressions and findings.

\textsuperscript{10} These 3 standard survey categories could act as surrogate measurements of a variable that is difficult to directly measure, namely, “globalization.” It would be fascinating to do a continuation on this study examining the extent of globalization and the penetration of Western culture, and what effects if any they have on mediation. In addition, there has not yet been a thorough exploration of the role of socio-economic class in conflict mediation. A good starting point for this would be an empirical investigation of Goldstein’s (1986) speculations on this issue. My readings and experience indicate that in some socio-cultural contexts (such as the U.S.) socio-economic status may be significant. However, the inductive data indicated that this attribute does not have the behavioral and societal significance in rural Gambia that it has in the U.S. (cf. Darboe 1982: 59). Consequently this variable was not included in the data collection and analysis for this project.
During the final phase of the fieldwork, I engaged in analytical panel discussions and exit interviews with key informants and research assistants. The conversations were remarkably productive as these individuals had observed and translated many mediation events in the course of our work. My research assistants – who were already practicing mediators – had in fact become experts in the field as we had worked together for up to 26 months on this topic during which time they had been actively observing and thinking about mediation.11 By the end of the project, we were able to engage in detailed analytical conversations in which we compared a substantial group of mediations that my assistants had been involved in, had observed, and/or had translated over the course of the research period. Due to the lengthy period in which my assistants had been consciously thinking about mediation styles and the broad base of data that they were able to access, these discussions provided me with a very rich body of folk knowledge. Bringing my assistants and key informants into the analytical process made it possible for me to broaden my understanding beyond the limits of my own perceptual and cosmological framework.

I began these sessions by asking very general questions about what patterns and variations they had noticed in our work and in their experiences in general. In order to elicit novel ideas I always allowed my conversation partners to speak at length before asking targeted questions. After we discussed their observations, I would point out trends that I had noticed and solicited their feedback. I had previously refrained from getting too explicit in such discussions with the mediators who helped me collect cases because I

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11 One of my interpreters, a young man, often spoke of how he was eager to be a prominent mediator in his community when he was older and referred to his work for this project as a sort of apprenticeship.
wanted to avoid prejudicing the data as much as possible. We discussed specific cases, general themes, and what caused the patterning and variance that we observed.

Sophisticated thinking about other people, particularly members of other societies, is always challenging. Researchers’ understandings of other societies is greatly limited if, as is common, their cognitive filters and etic perspectives are the overwhelming influence in the analysis. In expanding this study beyond the limits of my own experience and cognition, I relied upon the participatory data from with the panels, key informants, and research assistants. Their knowledge contributed greatly to the analytical robustness of this project and their perspectives are woven into the subsequent pages and chapters.

After returning to the U.S., I continued analyzing the data. During the long and careful coding process, I attached analytic memos to the texts with observations and notes. Using The Ethnograph qualitative data analysis package, I searched the data for themes and patterns. When I found interesting features of a case, or indicators of relationships or linkages, I searched for their occurrence in other locations. I compiled my observations of patterns into cross-referenced documents for each potential independent variable and mediation activity.

The powerful processing and search capabilities of the package allowed me to divide the cases into numerous different sets according to the different variables of interest. Comparing these sets in the content analysis allowed me to identify common procedures and locate variation deserving of further exploration. In addition to examining the cases according to population characteristics, I also compared them in relation to the contextual factors listed previously. Having collected numerous cases from particular mediators, I was able to subdivide those cases according to mediator identity and
investigate whether significant variation occurred at the individual level. Comparisons of cases mediated by the same individuals explored the strength of individual tendencies in mediation and the significance of case characteristics and contextual factors.

Quantitative Analysis

The qualitative analysis was supplemented with quantitative work. The quantitative methods employed here are intended to broaden the analysis of the research problem and to contextualize trends found in the qualitative analysis. I am most comfortable with qualitative methods. As I subscribe to inter-subjectivity theory, it is my belief that the concept of truly objective science is a cultural construct. Research and theory cannot be divorced from the social, ideological, and cognitive frameworks in which they are produced. That being said, investigations of complex multidimensional social phenomena benefit from the use of multiple methods. The quantitative analysis employed in this project provides additional verification of the research results and enables dialogue with those who may dismiss purely qualitative findings.

The qualitative work revealed a variety of potential mediation procedures and offered indications of why, when, and how often they might be used. The quantitative work enabled the investigation of these indicators from another angle. The qualitative analysis identified clusters of activities that occurred only in some of the Gambian cases and produced hypotheses about when certain activities were most likely to occur.

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12 See “The Sweetness of Sadness: The Native Anthropology of Western Cosmology” by Marshall Sahlins (1996) for an excellent analysis of how “science” is a Western construct infused with culturally-rooted systems of thought, rather than an objective sphere that exists outside of the rest of life (cf. Nader 1997).

13 Examples of activities that did not occur in a significant proportion of the cases include caucusing, assigning blame for a dispute, and bargaining. Some examples of qualitatively produced hypotheses are that women are more directive mediators than men, non-Muslims are more directive than Muslims, and
The Ethnograph, I was able to produce matrices of the frequency counts of each activity for each of the cases. I exported the case-by-activity matrices from The Ethnograph to SPSS to calculate the presence or absence of each of the potential mediation activities, and of their predicted sequencing within and across the sets of cases. Using SPSS, I investigated the frequency of occurrence of mediation activities and identified what variables were associated with their occurrence.

As the majority of the variables in question were nominal, cross-tabulation and chi-squared tests were the appropriate tools for measuring association between the variables and determining whether the association was significant. The first task was dividing the data into many different sets according to potentially relevant variables and factors such as ethnicity, religion, age, gender, individual identity, the type of dispute being mediated, the number and relative social status of the mediation participants, and so forth. Then I generated cross-tabulation tables measuring many different dimensions of the data. The cross-tabulation tables measured the association between mediation activities and the various potential independent and control variables. The utilization of a variety of mediator, case, and situational characteristics suggested what characteristics were associated with variance in mediation activities.

Chi-squared tests measured whether the relationships with the various variables were significant or not. Using Fisher’s Exact Test made it possible to test relationships elders are more procedurally elaborate in their mediation style than younger mediators. The quantitative analysis substantiated the first two hypotheses, which are therefore discussed in Chapter 6, but did not support the third hypothesis, which was abandoned. Due to the need to remain purposive, a comprehensive list of all hypotheses and relationships is not possible. The most significant are discussed in the following chapters, however.
even when dealing with relatively small subsets of cases that were not appropriate for standard chi-squared tests.

The statistical work made a vital contribution to the analytical process. However, this process was multifaceted; the results of the tests conducted on the empirical data were not by themselves sufficient indicators of possible relationships or lack thereof. This was not a laboratory study. Instead it dealt with highly sensitive matters in the social domain, and there were myriad situational and other variables at play. Some results were at times contradictory, which is not surprising as social phenomena are not clear-cut and homogenous. Humans are inconsistent creatures and human behavior is dynamic and full of paradoxes. Hypothesizing based on the statistical test results alone, without the framework provided by the other data, would have been problematic.

Personal observations, the descriptive data, and the qualitative analysis were invaluable in contextualizing and interpreting the test results. Several hypotheses generated from the qualitative domain were discarded after viewing the results of the quantitative tests, and the quantitative results were in turn placed into the qualitative interpretive framework. The discussion in the following two chapters is based on a combination of the results from the empirical data with the statements of experienced mediators, the analytical conversations with panels of experts and research assistants, and the qualitative analyses conducted with and without The Ethnograph.
CHAPTER 5
“TUBABS AND AFRICANS ARE NOT THE SAME”:
AMERICAN AND GAMBIAN MEDIATION

In this chapter we take a broad view, turning to overall trends in Gambian mediation and comparing them to popular American approaches. The “tubabs and Africans are not the same” quote in the chapter title reflects Gambians’ firm belief in major societal differences between Europeans and Americans (tubabs) and Africans. In a panel session, for example, after hearing how the author was trained to mediate, some Gambians expressed that it would be difficult for them to resolve disputes in the same manner and said, “A black man cannot be a tubab.” They stressed that the proscription against advising and evaluating prevalent in American mediation ideologies would be particularly difficult.

The emic analysis of the panel participants was borne out in the data – Gambian mediations do differ from the processes promoted in the literature and training of American mediators. However, the intention here is not to set up a strict dichotomy between Gambian and American mediation styles. A range of praxis exists in both contexts, and there are some similarities between the practices of Gambians and that called for by American models. Activities such as setting the stage, gathering information, and formalizing agreements are common to both domains. Moreover, at times, Gambians employed techniques that are taught to American mediators, such as addressing less contentious issues first and highlighting areas of potential or actual agreement in order to create positive momentum.
However, Gambian mediators also engaged in activities not found in mainstream American models, such as advising disputants, assigning blame, promoting forgiveness, and evaluating and proposing plans. In general the mediation style of Gambians tends to be more personalized, engaged, directive, and reconciliation-oriented than the style of mediation used in most American training programs. The variance is not just stylistic, but affects virtually all aspects of mediation. Reference will be made at times to the ethnographic literature to further illustrate some areas of contrast between Gambian and American mediation.

We begin this chapter with a discussion of activities that Gambians and Americans use when mediating. The next section addresses general differences in orientation to conflict and mediation between these two populations. We draw on the variance in mediation activities to illustrate the overall differences in approach, necessitating the repetition of some points. The Gambian pattern is then compared to the alternative American models of mediation introduced in Chapter 2. The penultimate section offers a brief response to two critiques of mediation related to issues of power. The chapter concludes with a summary of its main points.

**The Threads of the Tapestry: Gambian and American Mediation Activities**

This section consists of a comparison of common Gambian and American mediation activities and identifies points of convergence and divergence. It is worth re-emphasizing that this discussion deals with general trends rather than absolute behavioral patterns. We will review the variance found in Gambian mediation in Chapter Six. Portraying American mediation as homogenous would be inaccurate. There are different spheres of practice such as industrial, court-annex, and public policy mediation. Studies by scholars such as Kressel et al. (1994), Riskin (1996, 2003), and Silbey and Merry
(1989) indicate that there is a range of practice in America. To some degree then, the American modality discussed here could be viewed as an ideal model.

However, certain trends in mediation are quite widespread and have exerted a powerful and continuing influence on the field (Abu-Nimer 1996a; Avruch 1998; Cohen 1996; Della Noce 2002; Merry 1989; Stempel 2002). Dominant trends in the literature are reflected in many training programs and materials, including those encountered by the author in his experience as a practitioner. The predominant approach to American mediation that is based on these trends is often labeled as the problem-solving model. The activities discussed below in relation to American mediation are derived from the problem-solving model, which in turn constitutes the framework of the vast majority of the process models in the literature (such as those reviewed in Chapter 2). We will turn to the alternative models in the latter part of this chapter.

According to the prescriptive literature, the first task of mediators is to set the stage for the mediation by creating an atmosphere conducive to constructive discussion and problem solving. In the U.S. setting the stage consists of the mediator building credibility with the disputants, promoting rapport, educating the parties about the process, explaining the ground rules, and increasing commitment to the procedure (Moore 1986: 32-33). Setting the stage is usually conceptualized as the first step of the group meeting, as in the models by Kovach (1994) and Myers and Filner (1997) discussed in Chapter 2.

Gambian mediators share the goals of establishing an appropriate atmosphere and getting the parties to become invested in the peacemaking. In 40% of the collected cases Gambian mediators set the stage by doing things like discussing the social ties between themselves and the disputants and those between the disputants. Mediators prayed and
joked with the disputants in order to relax them and establish a good tone for their interventions. They also emphasized their right to mediate, made calming statements and discussed social norms relating to peace, patience, and harmony. For example, mediators made statements such as “All bad things will have their end,” and quoted proverbs such as “A knife cannot save its own head,” meaning that a doctor cannot heal herself and that everyone needs help.

Gambian mediators tended to focus more on reconciliation rather than concentrating on problem solving like Americans. They were also less procedurally oriented and did not often set any ground rules, except in those group meetings when they asked the disputants to avoid going over what happened. In cases with multiple caucuses and meetings setting the stage could occur repeatedly, as a preface to each discussion.

When Gambians set the stage, there is a strong relational dimension. Mediators often reviewed the social ties between themselves and the disputants. These links could be expanded to include extended families and incorporate any real, fictive, or imagined collective ties and identities. When mediators thought it would be difficult to get the disputant to agree to settlement, they often reviewed their history of relationships and reciprocity in great detail in order to remind the disputants of their obligations to each other. The construction of narratives of mutual obligation was a powerful tool used by mediators and one that was not necessarily confined to a single introductory phase. Setting the stage types of activities took place during both caucuses and group meetings, and, although they were most common in the beginning phase, they occurred at all stages of meetings.
Information gathering and exchange is a central task of American models of mediation. The mediators ask the disputants to explain their perspectives on the dispute. They stress that part of the ground rules are that each of the parties will be able to present their narrative and speak until they have finished without fear of interruption.

The collection of disputant narratives, though not universal, was also widespread in The Gambia. Ninety-three percent of the observed cases included the collection of at least one of the disputants’ narratives. As one mediator told a disputant, “If something happens you must hear from both sides so that it will be easy for you to know what to do.” Mediators sometimes referenced proverbs that encouraged disputants to tell their stories, such as, “The song of the bush-fowl is sweetest when you hear it from its own mouth.”

However, the manner in which mediators collected disputant narratives was qualitatively different from the models promoted in the U.S. As will be discussed further, among two of the three ethnic groups, disputant testimonies were usually gathered in private caucuses with the parties, rather than in a group meeting with all participants present. Interruptions were fairly common in the Gambian cases. Mediators would occasionally admonish disputants when they interrupted each other, but they generally allowed it to occur.\(^1\) Additionally, disputants were never guaranteed unlimited time to present all their views. Gambian mediators sometimes limited disputant testimony or cut it off when they felt that it was becoming repetitive or counter-productive, or was touching on subjects that could hamper the peacemaking effort.

\(^1\) In *Black and White Styles in Conflict*, Kochman explores societal influences on discursive norms and their effect in conflict management within the U.S. (1981). He concludes that White Americans favor turn-taking and more structured narrative processes, while African-Americans are less rule-oriented in their approach. According to Kochman, the force of the argument and the persuasive prowess of the speaker influence the turn-taking protocol among African-Americans. Gambian mediators did occasionally prevent disputants from interrupting each other, but in general they seem to share a similar perspective to the African-American one.
One of the most unusual patterns identified in the Gambian data consisted of mediators attempting to prevent disputants from presenting their narrative explanations at any point during the process. In one case the mediators said, “There is no need to explain what happened because that is already past; we are here to make peace between you so that you can live together harmoniously. There is no need to explain what happened and we do not want to ask you about it. We have not come for judgment.” This was fairly rare, occurring in only about 10% of the cases. In addition, in three of the 12 cases in which this occurred, the disputants ignored that injunction of the mediator and proceeded to describe the circumstances surrounding the conflict. However, multiple mediators described this as a legitimate mediation technique that they and others use, indicating that this is an accepted activity and established pattern. This was a fairly unique aspect of Gambian mediations, but, as we will note in the section on forgiveness and compromise, the proscription of disputant narratives has been observed in a few other settings as well.

Most American models include defining the issues and setting the agenda as part of the process (e.g. Moore 1986). Mediators are expected to help the parties identify subjects that require discussion and establish the order in which those topics will be discussed. A common technique taught to mediators is to try to begin with easier areas in order to generate momentum by getting the parties to agree on some points before tackling more difficult issues.

Gambian mediators stated the agenda in about half of the collected cases. They did so in a less elaborate manner than American mediators, sometimes only making very general statements about their plans for how the mediation will proceed. During a caucus, for example, a mediator explained to a husband, “I think that my mother will tell you
some of the complaints that [your wife] made here. Then we can discuss it the way that we should.” He goes on to explain that they will then know “who is right and who is not” and be able to say what should be done.

Gambian mediators did not usually set the order for the discussion of different issues. In fact, mediators often mentioned reconciliation and settlement before substantive discussions of any of the issues began. However, mediators did sometimes deal with easier aspects of conflicts first. No Gambian mentioned this as a part of mediation, implying that this may be an almost unconscious maneuver on the part of experienced mediators.

During the discussion phase of the American model, the participants continue identifying issues of concern and clarifying the major interests of the parties. The various topics raised by the disputants are addressed in the specified order. The most widespread view is that mediators should act as facilitators using their training in the process to help disputants to communicate in a productive manner. Most training materials and programs in the U.S. instruct mediators to avoid making and especially expressing evaluations of the dispute and of the disputants’ actions and positions (Merry 1989). American mediators are instructed to act as facilitators and to avoid expressing their own opinions, emotions, and assessments. A mediator describing the profession in the newsletter of the main professional and scholarly organization in the field, the Association for Conflict Resolution, explained it in this way, “Part of our job as mediators is to encourage the parties to vent their emotions while we must suppress our own” (Hoffman 2003: 31).

Most Gambian mediations included discussions of the issue. Gambians sometimes used methods employed by American mediators such as asking follow-up questions,
probing to get more information, and paraphrasing disputants’ statements and positions in order to ensure that they understood them correctly. The last technique is similar to the technique of reflective listening taught to American mediators. As with all of the activities, non-Manjago Gambian mediators often conducted their discussions privately with each of the parties, rather than in a group session, as is the case in the U.S. In addition, mediators were generally active participants in the discussions, contributing to their content and moving beyond the facilitator role recommended for American mediators. We will return to this contrast in the section entitled “American and Gambian Modalities.”

The Gambian data revealed mediation activities common among the targeted populations that are not a part of the predominant mediation models used in the U.S. One of these consists of the mediators advising the disputants. Gambian mediators almost invariably stated that mediators should advise disputants during mediation. This involves explaining where the disputants went wrong, what they should have done and/or what they should do in the future.

The empirical data bolstered the assertions of the respondents who identified advising as a common behavior in Gambian mediations since two-thirds of the cases included it. This activity was common across all three ethnic groups. Gambian mediators strive to uphold shared norms and values and enhance social solidarity by promoting pro-social behavior. Indeed, mediators did not just confine themselves to advising the “guilty” party (although the faulty parties did tend to receive the most advice). Instead, they advised all participants, using the mediation as an opportunity to reproduce and reinforce dominant social norms.
This reinforcement of norms was an integral part of mediation, suggesting that the functionalist paradigm of the past retains some heuristic strength in contemporary Gambia. On the other hand, current anthropological thinking emphasizes conflict, change, and heterogeneity. Mediations do involve re-negotiation of social norms. There is no single set of immutable shared values for any group that are transmitted without change. However, remarkably widespread agreement exists on such issues as appropriate behavior.

For example, young Gambians tend to be the most obvious challengers of dominant societal norms. To some degree this questioning of established institutions is part of the patterning of social behavior by age group; young people are expected to behave outside the boundaries of behavior defined acceptable by hegemonic value structures, particularly when they are unmarried. The majority of youths in the sample actually shared most of the beliefs commonly invoked by mediators and acknowledged that they are correct. In fact, they felt that, as they get older and become more senior members of the society, they will in turn uphold these same norms.

According to the empirical data, the notion of mediators invoking and striving to uphold social norms is not merely an idealized representation of how respondents believe that mediations should proceed, but is actually empirically valid. In addition, disputants generally used normative language when presenting their positions and ideas. However, while normative discourse was central to Gambian mediations, the situation could hardly be characterized as one of unanimous cultural consensus on static societal conventions. Disputants challenged each other’s interpretations and at times there were noticeable differences in the narratives of the various parties, including the mediators. Mediation
and contestation are discussed further towards the end of this chapter in the section on harmony ideology and power.

A related activity prevalent in the Gambian context is judging the guilt of disputants or the assignment of blame for the conflict. Gambians expressed a firm belief that in a dispute someone must be at fault, and many of them asserted that this must be addressed for mediations to succeed. When questioned about this, respondents generally stated that mediators must “tell the truth” and make explicit judgments about the case. They affirmed that this is an integral part of the mediation and resolution process, often adding that if one does not tell the parties who is right and who is wrong, then the conflict will never end. As they said in Mandinka, “Ning boloota a la bolooo diaalaa” – “give the person who is right his right” – meaning that those who are on the right in a conflict should be told so, and the guilty party should have their faults explained as well.

Although Manjago and women were more evaluative than other mediators, judging type activity was pervasive among all three ethnic groups, occurring in approximately half of the collected cases.

According to American models, the discussion stage segues into the next phase of the American model, in which the participants look for possible solutions to the problem. Mediators are expected to assist the parties in generating and then evaluating options for settlement. Negotiation and bargaining may have begun during the discussion phase and they intensify during this stage.

Bargaining was often done during caucuses by Gambian mediators. As will be discussed further in the second half of this chapter, Gambian mediators did not conduct this activity in the manner suggested for American mediators. The former were usually
primarily directive rather than elicitive in their approach to generating options and plans for possible settlement. The prescriptive literature places great emphasis on mediators helping parties to explore options. This is supposed to be an entirely elicitive activity with the mediator acting only as a facilitator while the parties generate ideas for possible settlements or amicable outcomes. Gambian mediators tended to be much more active and less elicitive than Western models prescribe. They evaluated disputants’ proposals and often made their own. In fact, mediators usually urged, and sometimes pressured, the disputants to follow their advice or recommendations.

Gambian plans for settlement were sometimes more vague than the specific agreements called for by Americans. In American mediations, “Agreements are focused around behavior changes that are specific and practical rather than attitudes and promises to ‘be nice’ that only lead to further misunderstanding” (Myers and Filner 1997:53). Some Gambian mediations did result in compromise agreements with specific provisions, such as a marital mediation in which the husband agreed to begin going to the bush to cut wood every day if his wife would stop going to the beach to work. However, Gambian mediators sometimes make very vague plans such as promising to speak with the opposing party and advise them.²

Some might presume that such general plans might not result in a sustainable resolution of the conflict; however, they could actually be quite effective. For example, in another marital mediation an aggrieved wife made many specific complaints about her

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² Mediators sometimes told disputants that they would take certain actions, but in the end they never carried them out. In several marital mediations, for example, the mediators told wives that they would speak to a household member of the aggrieved wife. After seeing that the reconciliation had taken effect, however, they did not do so. One mediator explained that since the parties were now interacting well, there was no need to raise the issue again since that might bring up bad feelings.
spouse during caucuses with mediators. They told her only that they would speak to her husband about her concerns. The wife later told one of the mediators, “I do not know what they told my husband, but there has been some real improvement there.” In other cases the plan consisted only of disputants accepting that they were wrong and perhaps asking for forgiveness. This could take place in private caucuses or in the presence of all the parties. As will be discussed below, bargaining and negotiations over substantive issues are not integral to Gambian mediation.

Dealing with issues of forgiveness is another activity that is not found in American models. It is a well-established ingredient of Gambian mediations, occurring in approximately half of the collected cases. This will be elucidated in Chapter 6 in the discussion of the term “sabaro,” used by some mediators to encourage disputants to forgive. Often, one of the first things that people said to disputants is “sabari,” and mediators frequently urged the disputants to forgive each other. “Forgiving” often entails one or more of the disputants dropping their demands and agreeing to reconcile.³ Participants in mediations often make statements such as “If you forgive now then when you (or your child or animal) make a similar mistake, people will be willing to forgive you” and speak of divine rewards for forbearance.⁴

³ Mandinka mediators often make statements such as: “No matter how angry you are and how difficult the situation is, you must leave it.”

⁴ As mentioned earlier, dispute type did influence what took place in specific instances of mediation. Negotiation type activities were most prevalent in cases over material disputes and mediators tended to focus on forgiveness somewhat more in cases over issues of honor or face. However, disputants seeking forgiveness occurred in all types of cases, occurring in almost a third of the conflicts over material resources, for example.
Returning to American models, after the options have been generated, the best option should be selected. Many training materials specify that the selection process should rely on “objective criteria” (e.g. Fisher and Ury 1991; Myers and Lund 1997). Some models also include final bargaining in this stage as the settlement proposal is finalized (e.g. Gulliver 1979; Moore 1996).

Gambian mediators tended to use persuasion rather than relying upon supposedly objective criteria. In addition, disputants may have negotiated over what the agreement would be or may have simply accepted the mediators’ proposals for settlement. Alternatively, some disputants also simply agreed to reconcile without any options or proposals ever having been debated.

The final activity in the American approach is the formalization of the agreement. Although many models do not use this term, the writing up of an agreement and signing it constitutes a kind of ritualization in the context of American society. Agreements may be legally binding as in the case of court annex programs.

Ritualization is an established part of Gambian mediations as well, occurring in the majority of the collected cases. Some respondents stated that they had never participated in, or heard of, mediations without ritualization. Although such peacemakings were found in the observed data, they appeared to be due to situational factors.

As with the process in general, Gambian ritualization was laden with affect. The least symbolically charged ritualization activities consisted of the disputants shaking hands, while in other cases disputants shared food and drinks, knelt in front of their former opponents and formally asked for forgiveness, or prayed together.5 In the next

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5 Highly stylized rituals of reconciliation are found in many societies. Witty describes a Lebanese ritual performed in successful mediations in which the party judged guilty shaves the head of the other party
section we will discuss how the different activities used by Gambians and Americans, and the dissimilar nature of how they perform some of the same activities, are illustrative of overall differences in orientation to mediation.

**Differences in Design: American and Gambian Modalities**

Using this high level of abstraction when comparing mediation activities, and how they are carried out, illuminates several broad dissimilarities between mainstream American and Gambian perspectives on conflict management. Gambian mediators have a wider and more relational view of conflict, its causes, and solutions and are more focused on reconciliation than the American problem-solving paradigm dictates. The professional, impartial, and disengaged facilitative and elicitive orientation promoted in the U.S. is not shared by Gambians as they favor a more engaged, personalized, evaluative, and directive approach. The preference for direct, face-to-face negotiations is also less prevalent in The Gambia, being primarily favored by only certain sectors of the population (such as women and the Manjago).

**Different Conceptualizations of Conflict, Different Methods of Conflict Mediation**

In societies where the mode of production is labor-intensive, perceptions of conflict and conflict mitigation tend to vary from those in industrialized societies. In many Western countries conflict is seen as a natural component of society and is sometimes even seen as potentially productive (Abu-Nimer 1996; Fisher and Ury 1991; Duryea and Lund 1993; Myers and Filner 1997).

Legal anthropology has historically presented African societies and customary dispute resolution as harmony and reconciliation oriented (e.g. Elias 1956; Gibbs 1973; (1980). In prior research conducted by the author in Eritrea, Kunama informants explained how, traditionally, former disputants exchanged hair-pics at the conclusion of a mediation.
Gluckman 1967; Maquet 1972). Chanock’s critique that this is an artificial construct is well taken; Africans can be vigorous and enthusiastic in their disputing. Large and small groups of Africans can be riven by conflict despite the presence of customary mechanisms for conflict mitigation and social norms that promote harmony. The application of African customary law can also result in settlements that favor particular parties and do not bring about reconciliation (Chanock 1985, cf. Nader 1991, 1997). However, recent studies, including this one, have confirmed the harmony and reconciliation orientation of many African societies (e.g. Darboe 1982; Hoffman 2000; Mengisteab 2002; Rugege 1995). Gambian and American perceptions of conflict certainly do differ, and that influences conflict management.

The question of causality is not the central focus of this inquiry. However, it seems likely that this variance is related in part to historically rooted systems of social organization. In highly variable environments people use dense social networks as coping strategies to reduce their vulnerability to disaster (Blaikie, Cannon, Davis, and Wisner 1994). The climactic conditions of the Sahel region of West Africa can vary greatly with periods of drought, floods, and other extreme conditions (Behnke and Scones 1992; Ellis and Swift 1988; Freudenberger 1995). Groups and individuals whose crops fail and animals die often survive by calling upon others with whom they maintain relationships of reciprocity. In times of want people may receive shelter, food, seeds, animals, and other resources from those with whom they are connected by customary and invented ties (Bassett 1988; Guéye 1994). The development of societies that value harmonious relationships is therefore a “rational” socio-cultural adaptation to an unpredictable environment.
In Gambian villages interpersonal interaction is constant; economic interdependence is the norm; individuals are part of multiple networks of cross-cutting social ties; and interpersonal harmony is highly valued (Darboe 1982). Locals sometimes say “everyone in The Gambia is related to one another,” and the complexity of social networks is truly amazing. Conflict is a threat to the social ties that Gambians use to avail themselves of help in times of need.

Rural Gambians are primarily engaged in labor-intensive agro-pastoralism. In the local economy of affection maintaining good relations with others is vital to the production and distribution of farm products. For example, cooperative work-groups assist farmers at key times in plowing fields and transplanting and harvesting crops. Such groups work for very little pay, or for food, and will not work for people on bad terms with the community.

Some respondents were quite explicit about how conflict is dangerous and increases the vulnerability of disputants. In the collectivist orientation of the Mandinka and the Jola in particular, interpersonal cleavages could easily affect numerous people and could be a real disadvantage for all concerned. Not making enemies and staying on good terms with others meant that you can call on people for help and resources when needed, in times of want, or for help in arranging a marriage or other costly event.

Scholars have argued that in African societies spirituality is integrated into every aspect of life (e.g. Maquet 1972; Mazrui 1993). Perhaps it is natural then that Gambians share beliefs about supernatural forces rewarding harmonious behavior and punishing quarrelsome persons. In interviews conducted by this researcher, members of all three

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6 See Hyden (1983) and James Scott’s *The Moral Economy of the Peasant* (1976) for a thorough explanation of such systems.
targeted ethno-linguistic groups expressed strong views about the dangers of disputing. Muslims often cite *hadiths* (sayings of the Prophet Mohammed) about how they should be peaceful and avoid disputes, and members of all three ethnic groups cite proverbs with similar connotations. Gambians hold common beliefs about divine rewards for peaceful people and temporal punishment for those who dispute with others.\(^7\)

Conflict is also potentially hazardous because one can be attacked spiritually by antagonists. Disputants can go to *marabouts*\(^8\) and/or animist shrines to ask for their intercession, thereby endangering the well-being of their opponents. The maintenance of good relations with others is thus both spiritually and economically important. Gambians have developed their own logics that are appropriate for their social and physical environments. These systems of thought were reflected when participants in mediations made statements such as “some day I will need you or you will need them” that invoked the sense of interdependency that pervades local cosmologies.

In general, there is a widespread consensus among Gambians that conflict is negative and should be avoided. Interpersonal and communal harmony are highly valued in the cosmologies of rural Gambians. In such a context conflict represents a potentially threatening disturbance in the social field. Therefore, the emphasis in conflict management is on relationships and reconciliation rather than “objective” problem

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\(^7\) For example, mediators told disputants that they would not receive the normal blessings from undertaking the *Hajj* pilgrimage to Mecca if they had an ongoing interpersonal conflict when they went there.

\(^8\) *Marabouts* are local Islamic figures who have some training in Islamic studies and/or in magic and healing techniques (many *marabouts* say that they learned their skills “in the bush”). They assist people by praying for them, making charms (referred to as *gris gris* in the literature and *saffo* in Mandinka), and so forth. The choice of a *marabout* as a mediator is illustrative of the Gambian conceptualization of who should mediate. For Gambians, the ideal mediator is not a professionally trained outsider who will be objective. Instead, the optimal mediator is someone who is high status and/or linked to the other party, and can therefore exert influence upon them. We will return to this point throughout this chapter and in Chapter 6.
solving through negotiation. These different ways of conceptualizing conflict are related to the variance in mediation between Gambians and Americans.

**Personalized versus Impersonal Mediation**

The practice of law in America and the industrialized countries of the West is, in its ideal form, based on abstract principles and carried out in impersonal forums (Holleman 1974, cited in Darboe 1982). This paradigm extends to ADR and mediation. We have discussed the dominance of what is often called the problem-solving approach. The purpose of this model is to facilitate the identification of essential underlying issues and the negotiation of a “win–win outcome.” Mediators are instructed to “separate the people from the problem” and enable “principled negotiation (Fisher and Ury 1991). Counter-hegemonic currents exist, but the problem-solving approach has long dominated the field.

In The Gambia the approach to dispute mediation can be quite different. Gambian mediation, as with most African customary law, approaches conflict from a relational perspective rather than being issue-driven. “Separating the people from the problem” is contrary to the Gambian world-view in which one’s identity and status are of great significance. As one village headman stated, “The purpose of sitting together and talking is to emphasize the unity, links, and sameness between everyone [the participants in the mediation] as we are all one. We are all the same, we are all from the same families, village, place, and blood.”

Who the disputants are is of great concern to mediators. For Gambians, social status is linked to behavioral roles and norms, and mediators operate very much within the framework of local values. In Chapter 6 we will examine how this can influence peacemaking with mediators adapting their approach according to the relative social status of the disputants. Mediators are usually not viewed as impersonal and neutral third-
parties; instead their status and relationships with the disputants are of primary importance. In marital disputes, for example, wives often asked their husbands’ friends to mediate.

Partisan mediators who were clearly more strongly linked to one or the other of the parties handled some cases, and they sometimes even expressed their support for one of the parties.9 This did not preclude agreement, however, as such interventions often resulted in the cessation of the conflict to the apparent satisfaction of both parties. Disputants did not usually seek out impersonal mediators; instead they turned to people who were linked to their social networks. The most common and effective peacemakers in the Gambian context are insider mediators who have strong ties with the disputants, rather than the professional neutrals idealized in the Western literature.10

Gambian mediators rely on social ties to influence disputants and gain leverage over them. Such leverage is often essential in getting disputants to reconcile, even in the absence of a compromise agreement. Mediators often highlighted interpersonal ties when they began mediating, and when they called for the disputants to reconcile and/or forgive their opponents.

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9 Although the contrast between Gambian insider mediators and American outsider third parties is quite stark, Gambians did appreciate fairness in their mediators. In some cases partisan mediators were accepted by the disputants and proved efficient. However, respondents tended to agree that mediators should try to be fair. During mediations, mediators sometimes stated that they were going to judge fairly. A commonly listed quality of a good mediator was someone who was not afraid to tell the truth, no matter what the consequences might be.

10 Gambian mediators in turn are invested in the process, being active participants from the beginning to the end of the procedure. Successful mediators gain worldly prestige and spiritual blessings that will benefit them in the temporal world and the after-life. One mediator often gave small sums of money to disputants after they reconciled in order to show his pleasure and “make [the disputants] happy.”
The aforementioned setting the stage phase found in most models of mediation (e.g. Burton 1986; Moore 1986; Myers and Filner 1997) exemplifies the procedural focus of American mediations as opposed to the relational priorities of Gambians. In the U.S, setting the stage usually entails explaining the nature of the process, going over the ground rules of the mediation, and so forth. Stage setting activities were quite common in Gambian mediations, but were more contextual and personalized than procedural in nature. In establishing an appropriate atmosphere many mediators discussed their ties with the disputants, reviewing the history of relations between their families and relatives and mentioning any other connections that they might have. They cited friendships between their ancestors or current members of their families, and/or any relevant specific relationships.  

The use of social ties in mediation was prevalent across all the Gambian ethnicities, although the nature of the social ties that they drew upon varied somewhat. In order to illustrate this phenomenon we shall use the Mandinka as an example. Mandinka mediators have a wealth of potential bonds to choose from such as the karamo – talibe (Islamic teacher – student relations), talibeeyaa or ties between individuals who study the Quran together, seeynyoyaa or neighborliness, Muslimeyaa the common bond between Muslims, hadameiyaa fictive kinship based on the idea of common descent from Adam and Eve, or baadiiyaa another broad fictive kinship.

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11 The following example is a short excerpt taken from a lengthy setting the stage speech by the mediator Landing: “It is not something bad. As the saying goes, bad things are not many. We may think that something is bad. But God knows why that problem occurred… Our relation together has a long history. Initially, I did not know how I am related to you, or that you are related to my mother… It is your duty to help me when I have a problem and I must help you when you have a difficulties.”
Gambians can be very creative in constructing and inventing kinship and collective identities and can get quite general making statements like, “We are all of the same village; we are all of the same ethnic group; we are all Africans.” In the local political and moral economy, such relationships imply mutual responsibilities. When the mediators appeal to the disputants to forgive and reconcile, they strengthen the appeal by invoking such ties.

To continue with the example of the Mandinka, one of the most powerful bonds is that of joking kinship (sanaweeya or dangkutoo). When mediators use joking kinships, they invoke an established history of relations. Such relationships provide a script for cooperative interaction with varying degrees of reciprocal obligation. When invoked, joking relations provide mediators with considerable leverage over disputants.

The use of joking kinship by mediators provides a good example of the affective and personalized approach favored by Gambians. Joking relationships invoke religion as well as custom and tradition. In The Gambia, Islam has been intertwined with local practices and beliefs. Before Islam, Gambians who are now Muslims practiced animism. Respect for elders and one’s ancestors is still very strong, making the concept of ancestors swearing an oath binding their descendants very potent.

In another example of the syncretism prevalent in local belief systems, joking kinships have been incorporated into Islamic practice as well. One informant, a griot, related the joking kinship between his patronym, Camara Kunda and Seesay Kunda, to Islam by saying that their ancestors lived in Mecca, then moved to Mali, and from there to The Gambia. Other informants asserted that mamariiyaa, or joking between grandparents and grandchildren, originated with the Prophet Mohammed (PBUH). They
explained that Mohammed’s grandchildren would disturb him by pulling on his shirt and playfully pushing him while he was praying. Eventually the angel Gabriel appeared to Mohammed and told him to better train his grandchildren. Mohammed then began “beating them gently” with a stick when they disturbed him and they learned respect.

Mandinka social organization has historically been highly hierarchical with numerous behavioral constraints on its members. Prior to the pre-colonial era and widespread Islamicization the caste system facilitated conflict mediation and social cohesion. The nyamoolooluu, or members of the artisanal classes (griots, leatherworkers, and blacksmiths), were allowed greater behavioral latitude than nobles and peasants (Janson 2002; Sonko-Godwin 1997). The mediation of disputes was a part of the conventional activities of the nyamoolooluu caste. They were highly effective mediators due to their ability to speak relatively freely, to criticize even powerful people without fear of retribution, and to browbeat people into reconciliation (Sidia Jatta personal communication 1999; Hoffman 2000). Islamicization and Northern influences have diminished the significance of caste relations in contemporary Gambia. The behavioral restrictions found in Mandinka society are still extensive, however.

Mediators’ use of joking relations can open up liminal space in which the transcendance of ordinary boundaries and scripts becomes possible. The application of the mediators’ leverage in this liminal space heightens possibilities for attitudinal shifts and conflict transformation. This phenomenon of mediators using a social institution associated with increased behavioral latitude and with spiritual sanctions to resolve disputes is reminiscent of the role of the nyamoolooluu in pre-colonial society. The institution of joking kinships may therefore be providing some continuity in a social
function previously provided by the *nyamoolooluu*. In the Mandinka states of the past, peasants and rulers were expected to heed the advice of the *nyamoolooluu*; contemporary Gambians are expected to accede to the wishes of their joking partners.

The social capital of joking kinships is used quite deliberatively by Gambians. A special affinity relationship is the reason that a migrant from Kaabu, Fa Mamodou, joined the *sate keybaalu* (council of elders) of Sotoko. The other village elders are heads of the seven main clans or wards of Gunjur. Fa Mamodou was included because of the *dangkutoo* that he as a descendant of the rulers of the Kaabuu Empire had with the people of Kombo (Faal 1999).

Fa Mamodou’s *dangkutoo* with the Mandinka of the coastal region of The Gambia made him an especially effective mediator there, and he intervened in disputes all over the region. He claimed a very high success rate, and the position appears to be evolving into a hereditary one.

Although the social category of *nyamooloo* has lost much of its significant in day-to-day life in The Gambia, people often turn to mediators with special status or those who command great respect. The frequent use of elders and *marabous* as mediators is highlighted in the section on individual mediators in Chapter 6. This is another dynamic found in other non-Western societies. In the ethnographic literature, examples of mediators who appear to be chosen by dint of their special position in local societies include the leopard-skin chief of the Nuer (Evans-Pritchard 1934) and the Ifuago *monkalun* head-hunter (Merry 1989). Hoffman also noted the historical role of *griots* as mediators in her work in Mali (2000). The contrast between Gambian insider mediators

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12 Fa Mamodou’s surname identifies him as a descendent of the *Nyanchoo* noble class of the Kaabu empire (cf. Faal 1999). The *dangkutoo* between the peoples of Kombo and Kaabu originated when the Kaabu Empire sent military help to the Kombonka Mandinka, thereby helping them to overcome the Jola and Bainunka who were in charge of the area.
and American professional outsider mediators is linked to the issue discussed in the next section: whether or not mediators inject themselves into discussions, negotiations, and decision-making, or remain outside of them.

**Directive and Evaluative Orientation of Gambian Mediators**

The use of leverage and persuasive techniques by Gambian mediators illustrates their tendency to be directive, another major difference in the roles proposed for American mediators. Gambian mediators frequently engaged in activities that are not included in dominant American models of praxis. Such activities include advising disputants, limiting disputant testimony, expressing judgments about cases, and suggesting and/or attempting to impose their own settlement plans on the disputants. One aspect of the directive orientation of Gambians is their evaluative stance.

One axis of Riskin’s grid of mediator styles is the continuum between the poles of directive and elicitive approaches (1996, 2003). The ideology that dominates the literature and most training materials in the U.S. encourages mediators to avoid evaluating disputant statements and actions, or, at a minimum to avoid expressing any evaluations that they may form.\(^{13}\) The assumption that mediators should be neutral facilitators who do things like use “objective criteria” to help “separate the people from the problem” (Fisher and Ury 1991) is deeply ingrained in Western mediation ideology (Cohen 1996; Della Noce 2002).\(^{14}\) The proponents of this view conceptualize mediation

\(^{13}\) In fact, some scholars argue that “real mediation” is purely facilitative or elicitive (e.g. Kovach and Love 1998; Love 1996). This is discussed near the end of the chapter.

\(^{14}\) The prescriptive literature presents an ideal model that does dominate the field, but does not represent the full range of practice in the U.S. In fact, despite the prevalence of the facilitative ideology, American mediators can be evaluative and directive. Several researchers have acknowledged this, and as a former mediator the author has witnessed it personally (cf. Conley and Barr 1998; Kressel and Pruitt 1989; Riskin
as a process that enables mediators to facilitate communication between the disputants, allowing them to identify their essential underlying interests, generate their own options for addressing those interests, and select the best option. Indeed, “trust the process” is a common injunction in the field. For example, trainers invoke that saying when soothing the fears of beginning mediators about how they can succeed in helping people resolve conflict if they are only leading them through a series of steps and are not actively intervening in the discussions.

We have already noted how Gambian mediators are not impersonal facilitators. Instead, they participate in the shaping of the content of discussions. Gambians take a very different stance than the one prescribed for Americans, responding to the statements of disputants, evaluating them, comparing them to their own experiences, expressing sympathy, and so forth. Almost two-thirds of the Gambian cases included explicit advising, indicative of a more therapeutic, evaluative, and active role in mediation as opposed to the facilitative ideology that dominates the field in the U.S. and Western countries.

Gambian mediators do not simply listen to the disputants and help them clarify their concerns. Instead, they express their opinions on the actions, ideas, and grievances

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1996; see the foreword of this dissertation for more on the author’s experience). Because many practicing mediators have been trained as attorneys they bring a background in evaluative dispute settlement to the field. Some of this variance in American praxis may therefore reflect influences that originated outside of the conflict resolution field. Mediators trained in the classic style without a legal background may be more likely to adhere to the ideal model of praxis. Riskin, the scholar arguably most responsible for bringing evaluative activity by American mediators to the attention of a wide audience, has a law degree and is a member of the part of the field that is closely linked to the legal system. Riskin teaches in the University of Missouri Law School’s Center for Dispute Resolution, which has a Master’s program in Dispute Resolution.

15 In mediations with caucuses, mediators often reworked or invented disputant messages when passing information between the parties. They de-emphasized some aspects of what disputants said and emphasized other parts. They sometimes even completely altered the disputant statements, or constructed fictitious messages.
of the disputants. They exhibit great concern for the maintenance of community norms and values and apply these to the dispute, praising and criticizing the disputants in relation to their actions’ conformity with societal conventions. In this manner, they resemble mediators found in other non-industrialized societies (cf. Faure 2000). The most vivid example of this is found in Cloke’s description of mediation in China (1990).

According to Cloke, mediation is extremely widespread in China and is integrated into the state apparatus with over 800,000 neighborhood mediation committees and approximately one million officially recognized mediators in 1990. In China, as in The Gambia, mediators discuss the dispute “not as an isolated incident, but as a social phenomena” (1990: 321). They “may remind the participants of their mutually shared values, criticize wrongdoing, or praise correct action” (1990: 322). This description parallels very closely the usual approach employed by Gambian mediators.

The tendency among Gambians to assign blame for disputes provides another example of their active stance, and a further contrast to the American style. The predominant ideology in The Gambia is that mediators should make explicit judgments about a case. Mediators are often expected to “tell the truth” and “give the party their rights.” When questioned about this, respondents generally stated that it was an integral

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16 Although establishing the guilt of disputants may make such mediations appear to resemble adjudication, this activity is simply a common component of the Gambian mediation process. Adjudication is notorious within The Gambia, and elsewhere, for its negative effect on interpersonal relationships (Merry 1989; Nader and Todd 1978). Assigning blame is part of the Gambian framework in which forgiveness and the restoration of harmonious relationships is the paramount concern. One disputant said while soliciting mediation, “The reason why we want you to speak between us is that we want you to clear up our differences before we start ignoring each other in the street, or in public gatherings. You tell the truth to those who are wrong so that the innocent people will be happy, and they can forgive.”

17 These phrases are taken from interviews and are used quite frequently by Gambians.
part of the resolution process, often adding that if one does not tell the parties who is right and who is wrong, then the conflict will never end.

Mediators in the U.S. are strongly proscribed from making judgments in mediation. The idea of a mediator telling disputants that they are guilty would horrify most American mediators. This is one of the greatest taboos in the American paradigm and is found in all American models, including recent counter-hegemonic approaches.

Other cultures do not exhibit the same preference. The ethnographic literature is replete with examples of judgmental mediators. The non-evaluative orientation that dominates American mediation appears to be a product of particular ideological currents in American society combined with the historical context of ADR in which mediation arose as an alternative approach to the adjudicatory model of the formal judicial system.

In the aforementioned Mandinka mediation from *Griots at War*, one of the disputants, Jeli Fili, rejected the efforts of the mediators to simply bring about reconciliation without discussion of what occurred. He invoked the convention that mediators should state who is at fault. Jeli Fili told the mediators who were attempting to reconcile the disputants without discussing the issues at length, “The one who is right, they [the mediators] should say that; the one who is wrong, they should say that. And they should plead for forgiveness in addition” (Hoffman 2000: 228). In that statement Jeli Fili referred to a notion expressed by many respondents in this study, the belief that a dispute cannot end until the disputants have explained what happened and the mediators have delineated what actions were right and what actions were wrong.

The view of culpability as an inherent part of disputing and as an issue that must be dealt with in dispute management has been mentioned in reference to other West African
societies as well. For example, Davidson and Buah describe the pre-colonial Ibo process of dispute settlement as based on “the deeply-rooted conviction that it takes two to make a quarrel. The elders, therefore, seldom acted as judges pronouncing guilt and innocence but as arbiters assessing the degree of guilt of each party and punishing them both accordingly” (Davidson and Buah 1966: 179). Descriptions of mediation from other African and non-industrialized societies also include evaluative activity (e.g. Bourideu 1965; Cloke 1990; Davidson 1966; Evans-Pritchard 1940; King-Irani 2000; Robarchek 1997; Tuso 2000). The prevalence of assigning blame in the ethnographic record suggests that the concept of mediator neutrality may be a Western construct.

In fact, the dominant American ideology of the disengaged mediator who is strictly a facilitator and does not impose herself on the disputants, constitutes an ideal model that is not always practiced. Practicing mediators, particularly those who are also trained as lawyers, do not always follow these prescriptions (Riskin 1996). For example, Kressel

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18 Although the Ibo elders do resemble Gambian mediators in terms of their evaluative stance, their manner of judging culpability differs from that of Gambians. Gluckman (1965) has also described dispute resolution in “tribal societies” as producing compromise judgments (cf. Deng 2000). Such outcomes occurred in a minority of the Gambian mediations, and mediators emphasized categorical, and not compromise judgments in interviews. One of the interview questions inquired whether mediators had ever dealt with a dispute where both disputants, rather than a single party, were to blame. The response of many mediators was in the negative. Generalizing about African or non-Western conflict resolution is a scholarly tradition in some sectors of the literature. In fact, the discussion in this dissertation occasionally drifts into that mode. That type of analysis is such an established feature of the cross-cultural literature that it is difficult to completely avoid, but these concepts should be problematized, and investigated further.

19 The concept of the neutral, professional, disinterested, and disengaged mediator is linked to beliefs regarding rationality and objectivity that under-gird the problem-solving model of mediation. Applying Kochman’s work on Black and White conflict styles to mediation suggests that the valorization of the impartial mediator stems from a dominant ideology that does not extend to all ethnic groups within the U.S. This issue is especially problematic in relation to issues of power and social stratification. For example, according to Kochman many African-Americans approach communication and discussion by taking stances on issues and consequently may be suspicious of claims of mediator impartiality. "Because blacks admit they deal from a point of view, they are disinclined to believe whites who claim not to have a point of view" (Kochman 1981: 21).
and Pruitt note, “Pressure tactics are efforts to push the disputants toward agreement. A prevailing ideology, especially in community and family mediation, views such tactics as alien to good mediation. Instead, so this view goes, the mediator’s principal tools are reason and compassion” (Kressel and Pruitt 1989b: 418). Despite this, Kressel and Pruitt found that some practicing mediators claimed that they find pressure tactics useful in some cases.

Gambian mediators tended to seize opportunities to pressure the disputants, invoking social norms, religious beliefs, relationships that included obligations, and any other social capital they could marshal to push the parties towards settlement. In general, directive activities were very widespread in the Gambian mediations. Over 60% percent of the collected cases included some evaluative activity. Directive activities include threatening sanctions, assigning blame, telling disputants not to explain their perspective on what happened, and urging them to just forget about their grievances and reconcile. In Chapter 6, we describe Sankung, a less directive mediator than most other Gambians. However, half of his mediations included one or more of the above activities, demonstrating how established the directive approach is.

20 Some populations were more consistently directive than others. This is elaborated on in Chapter 6.

21 The threatening of sanctions done by mediators is different from the imposition of punishments by judges in courts. Mediators do not usually fine disputants or jail them, but they may tell stubborn disputants that they will stop helping them as they have in the past if the disputants do not agree to reconcile with their opponents. In many cases, the mediators were closely connected to the disputants in a relationship of patronage or reciprocity. The leverage that such mediators have over the disputants because of their relationship is part of the potency of the insider mediator. Gambian cosmologies and the local political economy places great value on such ties. Even if the threat to withdraw support is not explicit, it may be implied. Disputants are aware that mediators are happy when the disputants follow their advice and disappointed when they do not.
The propensity of Gambian mediators for active participation in the generation and selection of settlement plans is one of the most vivid examples of their directive orientation. Mediators often presented their ideas for settlement, rather than merely encouraging the disputants to come up with their own options. This was a widespread pattern. Mediators explicitly solicited disputant suggestions on how the conflict could be resolved in only 17 out of the 121 collected mediations.

Nevertheless, disputants could and did object to proposed options or suggest modifications. Roughly half of the collected cases featured negotiations and debate over settlement proposals. In some cases the disputants themselves suggested plans for how reconciliation could be achieved. The essential difference is that Gambian mediators do not merely prompt the disputants to generate options for settlement and select the best one. Instead they are active participants in the plan-making.\textsuperscript{22}

Another notable difference was that in many cases Gambian plan-making was not primarily geared towards negotiated settlements as in the U.S. Plans for settlement often consisted merely of the disputants apologizing to each other and/or agreeing to reconcile. The tendency of Gambian mediators to promote less specific settlement agreements is linked to their broader view of conflict and its causes.

**Broad and Narrow Problem Identification**

The other axis on Riskin’s grid of different mediation styles is problem identification (1996, 2003). American mediation tends to deal with specific and discrete

\textsuperscript{22} The active stance of Gambian mediators does not mean that they are actually arbitrators. In Chapter 6, we will see that some mediators are less likely to be directive than others and how directive mediators are depends in part on the characteristics of the case and of the participants. However, the frequency with which Gambian mediators do employ directive techniques provides a marked contrast to the ideal model of the U.S. The prevalence of directive approaches in the ethnographic literature suggests that the non-directive ideology may be an ideological construct peculiar to Euro-American society. This issue is discussed at the end of the Alternative Approaches to Mediation section.
events and to look for root causes of conflicts. The alternative approaches of transformative and narrative mediation are relational, but focus on the relationship between the immediate individuals in a dispute.

As mentioned previously, Gambians tend to have a broader outlook that acknowledges the interconnectedness of people and they may label negative supernatural forces, “saytano,” as the causes of conflict. Discussions during mediation often proceeded beyond the specific quarrel between the immediate parties to other related problems and issues. These could include matters of community interest. Mediators can include as stakeholders many other people than the main disputants (as in the example of marital mediations given in Chapter 6). The primary goal of Gambian mediators is to address disturbances in the social field, rather than to work out a specific problem between discrete individuals. Indeed, the contrast between the focus on the negotiation of substantive issues in the American framework and the reconciliation orientation of Gambians is another major area of variance.

Facilitating Negotiation or Facilitating Reconciliation

In the U.S., the training and literature focus on bargaining, negotiating win-win solutions that deal with the underlying issues in a conflict and satisfy the essential interests of the parties. Mediators are encouraged to try and facilitate “interest-based negotiations.” Many scholars define mediation as “third-party facilitated negotiation” (e.g. Doob 1993; Mitchell 1981; Riskin 2003; Touval and Zartman 1989). American

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23 In “The Sweetness of Sadness: The Native Anthropology of Western Cosmology” Sahlins describes the ethnocentrism of much scholarship, illustrating how cultural constructs become enshrined as science (1996). Influential Western concepts about individualism, rationality, and human nature are fundamental to much social science theory and have profoundly shaped the development of ADR. Economics has had a huge impact on the field of conflict resolution through rational choice theory, game theory, decision analysis, and bargaining theory (see the work of Howard Raiffa for examples, cf. Zeckhauser et al 1997). In this paradigm human behavior including conflict management is portrayed as a matter of benefit-cost
mediators are often urged to “trust the process” – the idea being that they have been trained in facilitation techniques that they apply using a unilinear staged model. These models are designed to allow the disputants to explain their viewpoints, exchange ideas about their needs and desires and generate options for a mutually beneficial settlement agreement.

In areas with labor-intensive modes of production where society is less atomized, mediators tend to emphasize maintaining and restoring good relations with others. Gambian mediators focus more on reinforcing social solidarity than addressing substantive issues (cf. Darboe 1982). They emphasize maintaining and restoring good relations with others, and this can take precedence over negotiating agreements about substantive or concrete issues. In the Gambian worldview a win-win outcome may in some cases simply consist of conflict cessation; that may be the main issue that the participants feel must be dealt with. One reason that mediation is popular and effective in The Gambia is that it is consistent with local cosmologies of conflict; it is integrated into the fabric of society and consistent with attendant beliefs and norms.

As Gambians conceptualize conflict primarily as a disruption in the social network, they are able to conceive of mediation in which addressing the issues signifies reconciling the disputants. If they feel that discussing specific issues might hinder the primary goal of reconciliation, Gambians may avoid that and the negotiation that would follow from it. In the Gambian framework, reconciliation takes precedence over negotiating agreements about material or concrete issues.

analysis in order to reach desired goals. The view of mediation as a matter of enabling the negotiation of agreements that will satisfy the parties’ essential interests is a product of this theoretical framework.
That is not to say that negotiations do not take place at all. In several cases, Sankung – the mediator whose stylistic preferences were closest to the ideal American model – engaged in collaborative problem-solving. He urged both sides to be patient, focused them on the issues that had to be overcome, and explored options for settlement. He tended to do this during caucuses rather than group meetings, however, an approach used by many other Gambian mediators. Negotiations are found in the Gambian data sets; however, they tend to be qualitatively different.

In interviews, Gambian mediators invariably described their task as a matter of “bringing the disputants back together,” not as facilitating negotiations as the task of mediators is commonly glossed in the U.S. Some mediators preferred to put off the discussion of the specific problems until the reconciliation was pretty much assured. Many negotiations addressed who was at fault and how to reconcile, rather than the distribution of resources, or even specific behavioral arrangements.

Gambian mediators were more likely to use persuasion to reconcile disputants and may, or may not, have worked out an agreement relating to the issues. Mediators often concentrated their energies on other tasks such as appeasing disputants, emphasizing the importance of positive inter-communal relationships, and urging the disputants to forgive and forget.24 One mediator put it this way, “It is all about nice words, putting it nicely, and begging. You beg them [to reconcile] and tell them sweet words and say things like I want you to finish this problem so that we can continue with our usual harmonious interactions, interrelatedness, and positive relationships as well.”

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24 Appeasing disputants refers to such things as making the disputants feel that they have been heard, restoring face by listening sympathetically, and making the disputants feel that they were right.
Negotiations over substantive issues occurred much less frequently than adherents of the problem-solving model might expect. Such negotiations are a central feature of the process in only 20% of the collected cases. Sankung, the most elicitive mediator from among the project participants, facilitated negotiations between the disputants over compromises about concrete issues or specific courses of action in roughly 30% of his mediations. Like other mediators, he commonly used affective techniques asking disputants to “put their anger aside,” often talking about reconciliation before moving into discussing the issues and how to resolve the situation.

Other mediators were even less likely to focus on negotiation. Often mediators urged disputants to be patient and forgive – or told them how the dispute should be resolved – without giving them a chance to negotiate with each other. This differs considerably from the American emphasis on negotiations in which working out a negotiated settlement to the issues is often the paramount consideration.

**Forgiveness over Compromise**

The goal of negotiations is often to achieve a compromise agreement. Mediators in the U.S. frequently encourage compromise as a way to bring about a mutually acceptable settlement. Compromises are a common outcome of American mediations and are sought after by many mediators.

Gambian mediators promoted compromise agreements in only 21% of the collected cases. Instead, they often focused on forgiveness. Over 50% of the collected cases included explicit references to forgiveness. As one mediator told disputants, “Anything that you see in this world, no matter how hard it is, people should make you forgive and leave it.”
For example, in a marital dispute a senior wife was upset because her husband gave his junior wife a refrigerator, an item that the senior wife had asked for but never received. To add insult to injury the junior wife taunted her about it. The matter was resolved without an agreement to rectify the disparity. In a private discussion after the mediation, the senior wife stated that she was satisfied because her husband accepted that he was guilty and was admonished for his actions.25

In many cases, after appeals from mediators (and sometimes the opposing parties), injured disputants completely dropped their demands for compensation in order to maintain good relations. Participants in such mediations often made statements along the lines of, “Now when your domestic animal (or relative) makes a similar mistake, people will be willing to forgive you” and spoke of spiritual and temporal rewards for such forgiveness. The aforementioned use of the sabari construct by mediators exemplifies how Gambians do not view conflict mediation through the same lens of negotiation and win-win outcomes commonly used in the U.S.26

The most dramatic expression of the sidelining of negotiation in the drive for conciliation can be found in the cases in which the mediators attempted to prevent the disputants from presenting their narrative explanations on the dispute (see Chapter 6). Soliciting and listening to disputant explanations and viewpoints are an integral part of the mediation processes described in the ethnographic and prescriptive literature. This activity is part of the information gathering and exchange process that some consider

25 Was the wife well served by this mediation since she did not get her refrigerator? This incident raises the question of fairness and justice discussed by Laura Nader in her critique of harmony models on ADR (1991, 1997). We will return to this point near the end of the chapter.

26 Recent American works have begun recognizing the potential power of apologies and forgiveness in mediation (e.g. Cloke 2001; Schneider 2000). However, this is an unconventional approach that deviates from mainstream practice and is resisted by some (e.g. Kirchaven 2003).
vital to the negotiation process (e.g. Gulliver 1979). The discussion serves several purposes as it enables negotiation and the re-framing of disputes through the exchange of viewpoints, feelings, and perhaps via previously unavailable or misunderstood information.

In some of the Gambian cases, however, the mediators told the disputants that they did not want to hear their narratives, or discuss the issues at all. These mediators were concerned only with ending the dispute and bringing about reconciliation. This pattern is associated with specific factors, but forgiveness was a common theme across the different sets of cases. This style of mediation has been observed elsewhere, however, suggesting that this pattern is not limited to the Gambian context.

For example, in the aforementioned mediation between *griots* in Mali, the head mediator attempted to prevent the disputants from discussing the details of the dispute. Mediators may use this technique outside of the Mande world as well. Veteran intercultural mediator, Richard Salem, observed female mediators known as “mamas” in South Africa instructing disputants to refrain from going into the particulars of their disputes (personal communication 5/10/03).

This pattern is quite different from the prevailing view of conflict mediation in the literature. According to Deng’s summary of the observations of anthropologists and other

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27 For example, cases in which mediators told the disputants not to explain what happened in the dispute were usually ones where the mediators were of higher status than the disputants, or had a joking relationship or other strong bond with them.

28 Hoffman offers a fascinating interpretation of why some of the Malian mediators feel that narratives, debate and recriminations should be avoided. In the high-tension situation with a backdrop of destructive conflict and participants who have spiritual powers (*griots*) such discussions could release harmful energies and be dangerous. Viewed through the prism of the Gambian data an additional factor emerges, namely the specific social and power relations between the parties. Jeli Fili was a powerful disputant and the mediators did not have sufficient leverage through status differentials or specific social ties to successfully adopt such a directive approach.
scholars of Africa, “Only when an issue in dispute has been thoroughly discussed, analyzed, and evaluated, and a conclusion is reached that the parties to the dispute recognize as a fair and just settlement can a conflict be said to have been resolved” (Deng 2000: 98). Many other scholars have described African societies where a detailed and lengthy discussion is expected and indeed is a central part of dispute resolution. Examples include Evans-Pritchard in terms of the leopard skin chief’s mediation among the Nuer (1940), Tuso in regard to the Gada process of the Oromo (2000), and detailed discussion is also a part of the village moots described in the literature by scholars such as Hamer (who studied the Sidama, 1998).

All of the models from the ethnographic literature in Chapter 2 included disputant narratives and the discussion of them. For example, Shook describes the discussion stage as the lengthiest part of ho’oponopono. In terms of the becharaa’ of the Semai, Robarchek refers to:

The extended discussion by all interested parties and from all conceivable perspectives… The feelings generated by the conflict are repeatedly elicited anew and finally dissipated through the repeated recalling and reexperiencing of the events that precipitated them. The principals and their supporters tell their stories over and over, symbolically reexperiencing the precipitating incidents until they no longer have the capacity to elicit an emotional response in anyone. The Semai stress that a becharaa’ should end only when no one feels the need to say anything more.” (Robarchek 1997: 56)

That description of becharaa’ is very different from the pattern found in the Gambian data of avoiding direct confrontation between the disputants. The Mandinka in particular exhibited a marked preference for avoiding discussions of what took place when both disputants are present. The Jola also often mentioned this in their descriptions of mediation and practiced it in some of their collected cases. This illustrates the dangers
of generalizing about societal variance.29 Let us turn to the issue of direct and indirect mediation techniques.

**Face-to-Face Problem-solving versus Indirect Conciliation**

Another major area of difference between Gambian and American styles concerns the prevalence of face-to-face versus caucus-based mediation. An examination of the literature reveals a tendency to concentrate on group meetings as the foundation of the mediation process (cf. Goldstein 1986). Some theorists lump caucuses in with “pre-mediation activities,” while others ignore caucuses completely. For example, the American models in Chapter 2 are all based on group meetings. Christopher Moore’s (1986) model is more amenable to caucusing than most and actually resembles one of the Gambian approaches in which the mediators caucus with both parties before bringing them together. However, as with the vast majority of North American models, in Moore’s formulation, negotiation and bargaining are expected to take place in the group session.

Some analyses of mediation in other societies also privilege group meetings with little or no discussion of caucuses (e.g. Robarchek 1997). In others, the model is consistent with praxis in court-annex programs in the U.S. where caucuses are typically only an optional adjunct of the group meeting. Mediators call them during group meetings if they feel that they are needed to overcome a stalemate, or if the discussion gets out of hand. For example, in Shook’s presentation of Hawaiian ho’oponopono, mediators may call a ho’omalu, or “cooling off period,” if tensions get high during the group meeting with much anger being expressed (1995). In ho’omalu the mediators take the angry disputants aside and help them vent their negative emotions.

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29 The pattern of not collecting disputant narratives is another example of how describing characteristics of a single non-Western style of mediation can be problematic.
However, greater attention should be paid to caucuses as they can play a more important role than a reading of the literature may suggest. To illustrate this, we will recapitulate the uses of caucuses by Gambian mediators. In the Gambian data caucuses played a very prominent role. Over 60 percent of the Gambian cases included caucuses. One marital mediation included 18 caucus events.

Caucuses were often essential to Gambian mediation efforts. Mediators used caucuses to solicit the permission of the disputants to mediate, listen to the disputants’ testimony and narratives, discuss the situation, collect and pass on messages for and from the other party, and/or employ a variety of persuasive tactics to encourage the disputants to settle. The caucuses sometimes included plan-making. Agreements reached during the caucuses may or may not have been ritualized in group meetings; some mediations consisted solely of caucuses.

By talking with the disputants before bringing them together, mediators were able to prepare the way for effective group meetings in which the disputants could easily overcome the remaining obstacles to reconciliation. Pre-meeting caucuses helped prevent a breakdown of the group meetings by identifying and dealing with contentious issues in a calmer atmosphere where attitudinal change and conflict transformation were more likely.

In caucuses mediators could appease disputants by listening to them and expressing sympathy without fear of alienating the other party. Mediators were able to advise the disputants on how to behave around the other parties and on what to expect and to do in any planned group meetings. They could also give the disputant the impression (whether true or false) that the other party regretted their actions and that they were eager to settle.
Caucuses enabled the circumlocution of social norms that can inhibit the reconciliation process. Disputants could express viewpoints and emotions that would be inappropriate in a group meeting. Caucuses therefore play a vital role in the reconciliation process and the therapeutic aspect of mediation, as they allow disputants to vent negative emotions without violating social mores.

When Gambian mediations did include negotiations, they frequently took place in caucuses. Caucuses made the negotiation process easier as bargaining could take place outside of the high-pressure setting of a face-to-face meeting. Resulting agreements could be ritualized in a group meeting, or left as is.

In other societal settings caucuses also play a prominent role.\(^\text{30}\) The focus on group meetings in some of the ethnographic literature may be due more to conventions and precedents within the field than ethnographic realities. Some scholars have noted a lack of comfort in face-to-face meetings between disputants and a preference for caucuses among Japanese and members of other Asian societies (Goldstein 1986; Duryea and Grundison 1993). Witty (1980) and King-Irani’s (2000) Lebanon studies also showed frequent caucusing. Other examples from non-Western societies abound (cf. Merry 1989). The less prominent role of group meetings in some non-Western societies is an observable difference if one dichotomizes mediation praxis into Western and non-Western. However, the variance in Gambians’ use of caucuses also illustrates the challenges of generalizing about societal patterns.

\(^{30}\) It should be reiterated that caucuses occurred frequently in mediations of all types of disputes, but were most pervasive among the Mandinka. The preference for caucusing was lower, in varying degrees, among women, non-Muslims, the Jola, and, most notably, the Manjago. Caucuses were also less central to more formal mediation efforts conducted by groups of elders and village headmen. Caucuses did occur in some more formal cases, but group meetings were much more likely to make up the bulk of the mediation effort, and cases handled only through caucuses were rare.
Gambian Styles and Alternative Western Approaches to Mediation

In Chapter 2 we introduced two counter-hegemonic approaches to mediation – transformative and narrative models. Although they are less influential than the predominant problem-solving approach (Stempel 2002), the transformative model in particular has been attracting recent interest. This section briefly compares these models to Gambian modalities.

Transformative, narrative, and Gambian mediation share a relational focus and include attitudes, perceptions, values, and beliefs in their frameworks. All three privilege relationships over specific or concrete issues. However, Gambian mediators tend to use a broader perspective that moves beyond the relationships between the immediate parties to include other stakeholders and even community concerns. Transformative and narrative mediation are based on the Western worldview in which individuals can be separated out from the broader social networks in which they are located and viewed as distinct entities.

One of the hallmarks set for transformative mediators is that they should not pressure the parties to settle their conflict. Even if the conflict is not settled, they will regard the outcome as a success if there is any improvement in the parties’ empowerment, no matter how slight (Bush and Folger 1996). Gambian peacemakers would not regard a case in which the parties were empowered as a success, unless the conflict was also resolved and reconciliation achieved.

The normative stance of Gambian peacemakers provides a very strong contrast with the transformative and narrative approaches. Another hallmark of transformative mediation is that the mediator should not evaluate the disputants’ views, choices, and decisions. A primary goal of the transformative model is to empower the parties through
its elicitive approach and avoid directive behavior on the part of mediators (Bush and Folger 1994, 1996). Transformative mediation relies on neutral third-party facilitators. The Gambian preference is for strong and engaged mediators who do not limit themselves to procedural matters. As noted, Gambians are quite evaluative and contribute to the discussions of the issues, thereby moving far beyond the facilitator role suggested for transformative and narrative mediators.

Transformative and narrative mediators are neutral professionals rather than the insider partial mediators used by Gambians. Although narrative and transformative mediators are more likely to be reflexive and acknowledge their own value biases than mainstream mediators, they are proscribed from injecting their preferences into the process and certainly should not assign blame for a dispute. The elicitive focus of these models is quite different from the Gambian tendency to evaluate, provide suggestions, encourage settlement, employ persuasion, modify content in the passing of messages between disputants, and so forth.

The fact that the transformative approach gives the responsibility for managing the dispute to the disputants also contrasts with the Gambian modalities. Morgan Brigg’s discussion of the Western roots of facilitative mediation elucidates how that approach is derived from a certain view of selfhood and community. One of his points is that “focusing on process instead of providing advice encourages the party to accept individual responsibility for the dispute and its resolution” (2003: 296). As we have seen with the discussion of saytano, for example, such a conceptualization of disputing and peacemaking may seem fitting in individualistic societies, but diverges from that found in The Gambia.
In summation, alternative models of mediation do resemble Gambian mediation in terms of sharing a more relational approach to problem identification. These approaches are the exceptions in the field rather than the rule, however. Narrative mediation is largely unknown in the U.S., and, as of now, transformative mediation has attracted more interest than practitioners (cf. Stempel 2002). All cultures have multiple patterns and variation in any phenomenon is to be expected. The existence of non-standard and outlying phenomena do not invalidate conclusions based on primary patterns. In addition, Gambian mediation styles and the alternative American approaches do differ, thereby reaffirming the finding of societal variance between these two meta-groups.

Judging and Justice – Mediation and Power

Before concluding, it may be useful to respond to a potential and an actual critique related to issues of power. The potential argument is that due to the prevalence of evaluative activity Gambians are best viewed as arbitrators, rather than mediators, of disputes. The actual argument is Nader’s proposal that mediation may be harmful by encouraging compromise, and this may harm weaker parties. Let us turn first to the issue of evaluation and mediation.

Arbitration, Evaluation, and Mediation

Riskin’s suggestion that some mediators may, at times, act in an evaluative and directive manner rather than limiting themselves to purely facilitative roles has raised a firestorm of criticism (1996). One of the strongest critiques has come from scholars who argue that “real mediation” is purely facilitative without any evaluation (e.g. Kovach and

31 One major program based on the transformative model has emerged, the REDRESS program used by the United States Postal Service. The Institute for the Study of Transformative Mediation is actively promoting their approach. It will be interesting to see what lasting effects this counter-hegemonic movement will have on the field.
Love 1998; Love 1996). This argument could be extended to assert that, because of their frequent adoption of an evaluative stance, Gambians do not mediate, but actually arbitrate instead.

Refusing to recognize what Gambians do as mediation on the basis of the evaluative activity common to them would be problematic for several reasons. First, although it was quite common, not all Gambian mediations included evaluative activity. Even if that had been the case, judging the behavior of others based on standards developed in a particular socio-cultural context is perilous. In addition, Gambian mediation differs from arbitration in several profound ways.

Gambians use affective tactics and persuasion to encourage disputants to agree with them and follow their plans for settlement. In arbitration the parties must submit to the judgment of the arbiter, or in non-binding arbitration they can choose to disregard the arbitrator’s judgment and return to litigation. When Gambian mediators did assign blame and/or proposed what should be done, they did not leave it at that, striving instead to get the disputants to agree with them. Even village headmen who had the authority to impose judgments upon disputants were generally unwilling to do so if the disputants would not agree to them. Instead, they often used normative arguments, or tactics of appeasement or persuasion, in order to convince the parties to accept their judgment of blame, or the negotiated agreement. Although Gambian mediators do evaluate, disputants are generally able to dialogue with them and participate in the decision-making process.32

Gambian mediations in which disputants negotiate these issues could fit in to one of the most common definitions of mediation – facilitated negotiation (although the

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32 In cases conducted in public, onlookers and even passersby can contribute to the dialogue and decision-making. This occurred in multiple observed mediations.
mediators actively participate in the negotiations unlike American mediators). The content of the negotiations tends to focus more on questions of culpability and reconciliation than on distributive issues, or even “measurable behavior rather than vague attitude shifts” (Myers and Filner 1997: 52). Arbitration in America (and a great deal of court-annex mediation as well) focuses on material and concrete issues, rather than reconciliation and forgiveness. Arbitrators do not advise and counsel disputants, or adopt the sort of therapeutic stance observed by marabou mediators who dealt simultaneously with specific problems and the spiritual well-being of disputants.

The historical context of American mediation is relevant here. Mediation was developed as an alternative to the adversarial model of the judicial system with the intent to provide a very different process and approach from adjudication and adversarial approaches. One of the main contrasts that U.S. mediators draw between their work and that of judges is avoiding the assignment of blame. Given the political economy of mediation, it is not surprising that the predominant ideology in the mediation literature promotes collaborative problem-solving and facilitation, rather than evaluation (cf. Stempel 2002; Merry 1989, 2000).

Imposing etic constructs on the Gambian data raises the specter of societal and ideological biases influencing analysis. Several scholars have asserted that the value-free

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33 The quote about specific measurable behavior as the outcome that is negotiated in mediation is a description of one of the “general principles of mediation,” according to two scholar-practitioners writing about cultural issues (Myers and Filner 1997: 51, see Chapter 2). It is hoped that the discussion here has shown that variation in mediation goes well beyond styles of communication, and that the supposed general principle is actually a general American principle of mediation.

34 Some of the founders of the field were attempting to counter individualistic and zero-sum ideologies in American society. That particular ideological root of mediation is the progenitor of the transformative approach, leading the promoters of that framework to depict it as the true expression of “the promise of mediation” (Bush and Folger 1994). See Merry (2000) for an interesting tracing of the various influences on the historical development of American mediation.
neutral facilitator-only role is a product of dominant American values, rather than of culture-free scientific endeavors (e.g. Bercovitch and Houston 1996; Cohen 1996; Stempel 2002 for discussions about this). As stated by Wall and Lynn, “…if we find a strong mediator controlling the parties outcomes… it seems pointless to debate whether that action is mediation. Rather, it is more fruitful to call this action ‘mediation’ and classify it as an assertive technique by a powerful mediator” (Wall and Lynn 1994: 187).

The arguments of those who call for a purely facilitative approach are compelling. Purely facilitative mediation is appealing from an ethical standpoint and such a technique certainly deserves a place in the peacemaking pantheon. However, we should not allow subjective views and definitions of mediation to exclude the efforts of those who have other perspectives. Although Gambian mediators do evaluate more than is generally called for in America, to reject that they are mediators would be a mistake.

Narrowly conceptualizing mediation is not only exclusionary, but also limits its potential use and efficacy. Gambian mediators respond to conflict situations in a flexible way, tailoring their approach for maximum efficacy in the context at hand. Kressel and Pruitt (1989), Merry and Silbey (1986), Stempel (2002), and others have also noted this in regard to American mediators. Removing some of the tools from the mediation toolkit would reduce the potential of mediation as a means for resolving conflict.

**ADR, Mediation, and Control**

Before we conclude, let us briefly return to Nader’s critique about the influence of harmony models on ADR (1991, 1994, 1997). Her potent criticism has been widely read and stands out in the growing body of work critical of ADR, casting a shadow over the field. While she has identified an area of valid concern, it should be recognized that
mediation can help weak actors, rather than inevitably contributing to the reinforcement of inequalities.

Nader is also concerned about issues of power (1991, 1997). Drawing in part on Grillo’s suggestion that mediation may disadvantage wives, Nader argues that the ideological bias towards agreement and harmony in conflict resolution can disempower subalterns and contribute to the maintenance of social stratification. The focus on agreement and harmony in mediation and other forms of ADR may result in weak parties being pressured to settle. The weak parties may have serious grievances that need to be addressed and that should not be compromised. Not only may weak parties be pushed into compromising on vital concerns, the resulting agreements may be unequal as ADR can favor stronger parties.

Nader’s argument is a global one and she illustrated her point with references from a variety of areas, including Africa. However, when the Gambian data are applied to Nader’s argument her portrayal of mediation emerges as a one-sided caricature of a very complex process. Discursive processes are imbued with power, but they open the door to contestation and retooling of existing structures. Nader is familiar with this idea (see her discussion of James Scott’s work, 1997) but she has not substantially integrated it into her analysis. In addition, her understanding of harmony models is flawed as she does not account for their multifarious potential, particularly in settings where mediators are not expected to be impartial neutrals.

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35 Conley and O’Barr analyzed transcripts of divorce mediations and found a similar bias towards agreeing with husbands on the part of mediators (1998).
The Gambia and harmony ideology

Nader’s description of harmony ideology as something brought to Africa from elsewhere does not reflect the situation in The Gambia. We previously mentioned the analysis of how the combination of West African environmental conditions (bountiful land) and production technology (labor intensive agriculture) led to indigenous harmony models. A forthcoming publication will elucidate how, in the Sahel region of Africa, the widespread emphasis on cohesion and harmony is partly a socio-cultural response to a fluctuating environment characterized by regular periods of scarcity and extreme conditions (Davidheiser 2004). Africans use relationships of reciprocity to reduce their risk to disaster and cope with shortages when they occur. Conflict can disrupt the webs of reciprocity that Africans use to avail themselves of help in times of need. The Gambia is also characterized by an economy of affection and maintaining good relations with others is vital to production, trade, and marketing.

African cosmologies, including beliefs about the dangers of disputing, are logical in the context of their cognitive frameworks, which are, in part, contemporary expressions of historically developed responses to local conditions. When Gambian farmers were willing to forgo compensation for damaged crops in favor of forgiveness, thereby shoring up ties with others, they may have had good reasons for doing so. In mediations and interviews Gambians discussed how agreeing to settle often led to the reinforcement of relationships that provided future benefits. As one villager said during a mediation, “People do forgive for reasons.” It would be patronizing and ethnocentric to assume that their privileging of relationships and willingness to forgive was due to harmony models imported from the North and bolstered by local elites.
Perceptual differences due to theoretical and ideological lenses notwithstanding, variance in levels of attachment to harmony models is clearly too complex for broad generalizations about their dynamics and origins. The Mandinka and Jola exhibited great concern for harmony and unity, while the Manjago were fairly agonistic and seemed to somewhat enjoy quarreling (cf. Gable 1990). Making blanket statements about all Africans is questionable. However, at least some (if not all) African societies generated their own harmony ideologies that predated European intervention on that continent.

Missionaries, colonial authorities, and other Westerners have obviously promoted (and continue to promote) order and cohesion in The Gambia and elsewhere in Africa. However, contemporary beliefs about harmony have long and tangled roots. These beliefs are not only related to external control, but also serve grassroots purposes.

**Gambian mediations and power**

It is true that a focus on reconciliation can lead to the sidelining of significant disputant concerns, and policy-makers should keep this in consideration. Power imbalances are a universal challenge in ADR (cf. Bercovitch and Houston 1996; Merry 1989; White 1985). Mediation may, at times, play a role as one of many components of the “controlling processes” (Nader’s 1997 term) pervasive in all social groups.

This is certainly true in The Gambia. In Chapter 6 we will discuss the role of social hierarchies in influencing mediator behavior. One of the provided examples describes a mediation between a Mandinka father and daughter. The daughter was at a serious disadvantage and did not participate as actively as her father in the process. However, issues of power disparities varied across Gambian groups; the Manjago exhibited a marked tendency to mediate with much less regard to the relative social status of disputants. Human social dynamics are amazingly complex and the most heuristic
scholarly perspectives are usually situated somewhere between opposing theoretical poles. So it is in this case, as mediation may act as a medium for the activities proposed by both critical scholars and structural-functionalists.

Gambians used local-level mediation as an efficient forum for addressing their interpersonal disputes. Observed mediations included examples of harmony ideology being used to achieve a variety of outcomes. Several of the widely cited works on power issues in mediation have dealt primarily with marital mediations (Bryan 1992; Conley and O’Barr 1999; Grillo 1991; Woods 1985) and we will use this type of dispute as our example for this discussion. Mediations between spouses in The Gambia reflected a wide range of dynamics and outcomes. These ranged from wives being told they should forgive and forget to strong condemnations of husbands and subsequent agreements to make specific changes requested by the wives. How Gambians dealt with these disputes exemplifies their preference for normative and evaluative mediation styles. Such approaches can be coercive, but they can also be used to counter-weigh power imbalances.

The concern raised by North American scholars about gender bias in marital mediation does resonate in The Gambia. Interviews and focus groups suggested that the view of women as subservient to men was widespread. As in the U.S., beliefs about gender roles could translate into women’s interests being de-emphasized. In the 33 observed marital cases collected during this study, mediators urged wives to be patient and forbearing more than they did husbands.

However, women also sought out and benefited from mediations. Wives often solicited mediation, doing so, for example, when they felt that their husbands were failing
to provide them with enough money; their husbands were neglecting them; or they were being physically mistreated or were dissatisfied in some way. Women used the high value placed on harmony to get local community members to intervene when they had marital problems.

A common problem in critical analysis is a tendency to over-privilege material causes and issues. From the Marxian perspective material conditions are the primary causal force in society. Critiques of harmony models (taken from concepts of hegemony and false consciousness) often portray ideology as a tool used to gain or maintain control of material resources and power.

We know that disputing has many symbolic components and it is not clear that concrete material concerns are always paramount in peacemaking. For example, John Burton’s (1990) human needs theory proposes that the essential interests of parties in conflict extend far beyond the material realm encompassing issues of identity, security, recognition, and so forth. Gambians frequently emphasized relational and symbolic aspects of mediation; disputants often sought affirmation, apologies, and reconciliation as much as they did specific concessions.

Mediations not only allowed women to express their viewpoints and feel that they had been validated; they were also able to gain specific benefits from agreements. For example, observed peacemakings resulted in wives receiving money, beds and other goods, and behavioral concessions from their partners. Women would not turn to mediation if they did not feel that it was a forum in which they could seek redress, present their grievances, and achieve positive outcomes.
The fact that Gambian mediators tended to be evaluative and directive often enabled weak disputants to gain concessions. Gambian mediation discourse was normative, with custom, religion, and shared values being invoked by both the parties and the mediators. Mediators used shared norms both to promote forgiveness and to pressure stronger parties to accede to demands made by weak disputants.

Harmony ideology can actually provide a supporting discourse for the invocation of rights and discussions of justice. This may be rarer in some contexts than others, but the two concerns are not inherently incompatible, as noted in Neal Milner’s discussion of a Mental Health Roundtable in Hawaii. Milner noted that there was a tension between the two domains; bringing ADR into rights talk was difficult and rights were “worrisome things” for those schooled in the mainstream ADR ideology of the time (1991:11). However, he suggested that there was also some symbiosis between the two narratives; “The general discourse about rights in fact fostered the development of harmony” (Milner 1991: 25).

In The Gambia where mediation discourse was usually explicitly normative (with few protestations of strict neutrality), rights were a common topic of discussion. During a marital mediation, for example, a male peacemaker emphasized spousal rights saying, “[Your wife] is not your slave. She is your path to a brighter future. She is the woman who is bearing your children.” Mediators highly emphasized the dangers of conflict, but they also frequently argued that disputants needed to respect each other’s rights in order to maintain harmony. Mediators often urged husbands to follow accepted norms in dealing with their wives in order to restore conflict and avoid problems.
Mediations also gave women a forum for presenting their viewpoints and challenging existing relations and practices. In the observed mediations wives and female mediators repeatedly argued for women’s rights. Male mediators also took part in this. For example, one young Muslim man frequently used religious arguments to militate for improved conditions for wives. He could be highly critical of husbands’ behavior and often spoke at length about better treatment of women. In addition to speaking about the problems raised by wives, he often added his own advice such as telling husbands they should discuss their plans with their wives, treat their wives as their partners in household management, and even joke with them to put them at ease.

Harmony ideology reconsidered

Valorization of harmony need not lead only to the suppression of dissent, but as in The Gambia, may serve to further the interests of disadvantaged disputants. When social norms and values are the main frame of reference existing social structures are frequently reinforced. However, weak disputants can argue for their rights within those structures or present alternative interpretations of custom and beliefs.

Members of disadvantaged sectors of Gambian society usually turned to people they knew when they sought mediators to help address their problems. Insider mediators can use their relationships with the stronger parties to persuade or pressure them to forgive, change, and compromise. This can level the playing field and provide an easily accessible medium for change.

Gambian marital mediations in which wives asked friends of their husbands to intervene in their domestic disputes illustrate how ADR may not always result in the further marginalization of subalterns. In the patriarchal communities of The Gambia wives usually have less power than their husbands. By asking individuals who have
leverage over their husbands to mediate, wives were able to force their spouses to take their grievances seriously. Wives often asked friends of their husbands to mediate between themselves and their spouses. The mediators often concluded that the husbands were in the wrong and criticized their friends (the husbands), pointing out their duties to their wives, and pressuring them to improve their behavior towards their spouses. The outcome of one such marital case was an agreement that not only satisfied the demands of the wife, but at the suggestion of the mediator the husband also helped his wife start a business of her own – an action that went far beyond her expectations.

The personalized approach favored by Gambians can benefit members of disadvantaged sectors of society. In the interdependent social realm of The Gambia insider mediators are able to exert their influence in favor of weaker parties. For example, in the aforementioned marital mediation after berating the husband as being wrong in his actions toward his wife, the young male peacemaker urged him to take specific actions to fulfill his obligations to his wife. He even threatened to terminate his assistance to his friend if he did not accede to his wife’s demands saying, “I am the one who helps you with your financial difficulties. If you do not change your ways with [your wife] then and I will stop that and I will not visit you because I will have no place here.” Shared values and the importance placed on harmonious relations provided mediators with the language and the justification they needed to intervene in disputes and promote more equitable relations.

In fact, mediation is, at times, a ritual that facilitates change. The seminal work of Max Gluckman drew our attention to the ritual aspects of peacemaking in Africa (1965, 1967). Ritualization activities were common in Gambian mediations, illustrating that
Gluckman’s analysis retains contemporary relevance. As a structural-functionalist, he viewed these rituals as a tool for maintaining social cohesion. They did have that effect in contemporary Gambia, but they also provided a means for enacting change.

Change can be challenging for humans who often use ritual as a tool for working through transformations. For example, Victor Turner has shown how Africans use ritual in the modification of social relations (1969). In his analysis of age grade ceremonies, Turner showed how the participants entered into an intermediary zone, or liminal space, where structures temporarily lost their usual rigidity. After the ritual, the participants emerged as changed individuals with a new social status.

We have previously alluded to how mediations produce liminal space. In this space discursive processes opened up existing structures, power relations, and interpretations to rearrangement. The disputants then emerged into a new interactional framework or relationship (or returned to a harmonious one that existed prior to the conflict) that was reified through prayer, drinking, or other methods. The dynamic social functions of mediation bridge the cleavages in social theory between structural functionalism, conflict perspectives, and post-structuralism.

**ADR or Courts?**

A shortcoming of Nader’s critique is that she offers no alternative to harmony ideologies other than the court system. Although Nader states that she does not want to “valorize an adversarial model,” her analysis suggests that courts may be better able to address the concerns of weak parties and bring about compliance by strong parties to standards of justice (1997: 714). The high transaction costs and various shortcomings of the court system make reliance on the court system for justice unattractive. In The Gambia at least, ADR appears to be the option of greatest promise.
Many nations, including The Gambia, have a limited legal-rational judicial system where access to formal judicial forums is difficult. The use of such forums entails significant material and social transaction costs. Even if disputants are able to shoulder these costs unbiased treatment of disputants is by no means guaranteed, and courts may actually be less likely to produce a substantive outcome than local-level mediation.

For example, a Gambian woman describing a mediation that took place after her child’s garden was destroyed by cows dismissed the idea that a court may have helped her child receive compensation for the damage. She explained the benefit of mediation by saying, “The reason why we mediated it is because if you go to the government level they will not do anything about it. They will twist and turn and in the end nothing will come out of it.” Mediation may provide a vital means for underprivileged disputants to seek redress and in some cases may actually empower them.36

In addition, the problem of power in dispute settlement is not limited to ADR. Written law can offer formal guarantees for weak disputants, but they may not be implemented as foreseen and legal rules may themselves be less than equitable. Judges and juries of all nations are social beings. They are situated in socio-cultural frameworks and are affected by societal prejudices and preconceptions. Although written laws offer a set of precedents that are supposed to guide later decisions, they can be interpreted in different ways and in fact are undergoing continual renegotiation and reworking. This reconfiguration does not take place in a vacuum as the evolution of legal precepts attests. Legal officials’ interpretation of law takes place through the filter of their cognitive frameworks, thereby returning us to the realm of culture. In countries where courts

36 In the U.S. mediators are not paid as much as lawyers, so even if it is necessary to pay the mediator, it may be easier for an impoverished person to address conflict through ADR than in a court.
clearly reinforce structural inequalities (consider, for example, the application of Islamic law in Northern Nigeria), ADR may actually offer a more empowering option for marginalized citizens.

The enforcement of law can also be skewed by power imbalances. In the U.S., for example, litigants with more money may hire better lawyers, bring in experts to testify on their behalf, and powerful disputants may apply pressure on legal officials. As members of a social system, law-makers, judges, and lawyers respond to ideological, social, and pragmatic concerns (cf. Conley and O’Barr 1998).

Nader criticized the view that the international diplomatic culture of negotiators is universal, arguing that it is instead part of a coercive hegemonic ideology exported from the West. However, the same could be said of the court system. The problem of hegemony and power imbalances applies to any system of dispute management and is not particular to conflict resolution.

Nader sees moves to bring ADR into the international sphere as a move to maintain dominance over other societies. As she puts it, “Now that the ‘primitives’ have courts we move to alternative dispute resolution” (1997: 715). However, the formal legal systems of formerly colonized nations often reflect Western cosmologies more than local ones. In The Gambia the contemporary judicial system is largely based on the arrangements set up by the British during the colonial era (Darboe 1981). The post-colonial regimes have enacted some modifications, but have basically maintained the same framework as the British, including key features such as rural district tribunals run by chiefs (a position invented during the colonial era).
Informal dispute resolution outside of the realm of the state is actually a way in which local people have maintained a great deal of control over their own lives and resisted controlling forces. In interviews and panel discussions villagers expressed a strong preference for mediating their own disputes rather than going to courts, even local ones. In countries such as The Gambia dispute settlement outside the court system better serves the needs of locals.

When peacemakers utilize social institutions, such as joking kinship or other ties, to exert leverage on more powerful disputants it can have a transformative effect upon the social field. Some social ties create a liminal space in which normal social hierarchies may be de-emphasized and opportunities for conflict resolution are opened up. For example, a Gambian explained that his historically rooted joking relationship with a husband allowed him to intervene in a marital dispute that a man was having with his wives. The husband was a highly feared marabout and people were unwilling to mediate, as is usually done when a marital conflict arises. The interviewee stated that he was only able to approach the marabout because of the dangkutoo between them, and he used it to convince the marabout not to divorce his wife. Their reconciliation was a lasting one as they were still together years later. Court officials, who share the belief systems of the citizenry, may not have been willing to intervene at all in that dispute because of the marabout’s fearsome reputation.

In addition, Gambians strongly feel that court cases produce lasting ruptures in relationships, one of the reasons that mediation is so vital in their interdependent social field. To continue with our example of marital disputes, not all marriages are workable and divorce may be an optimal outcome in some cases. Some Gambian wives were
adamant about having their marriages end and resisted attempts at reconciliation. One woman did not agree to return to her husband despite the mediation efforts of village elders, religious leaders, friends, and family. However, in general, Gambian wives see divorce as a last resort; what they ordinarily desire are improvements in the state of their marriages. Courts are unable to provide this, but mediation can.\footnote{In the first section of Chapter 6 (“Common Patterns in Gambian Mediation”) a peacemaking between a husband and a wife is summarized. The wife most emphatically did not desire a divorce, but she did want to shore up her relationship with her husband and she had a specific demand for the return of her bed. The mediation succeeded in providing her with both of these outcomes illustrating how ADR ably serves local needs. The case took place roughly eight months before the end of the project, and follow-up investigations indicated that the reconciliation had held through that time.}

While we should recognize the potential for disenfranchisement in mediation, we must also be careful about applying hegemonic cultural norms and notions of “justice” on other contexts. The concept of “justice” is socially constructed and deeply embedded in cognitive frameworks, and is therefore subject to ideological and cultural influences. To individualistic Americans reconciliation without substantive redress for wrongs that were committed may seem unjust, however, to Gambians such a settlement may be a win-win outcome.

It is worth noting that most Gambian disputants expressed satisfaction with mediation outcomes.\footnote{How to determine whether a mediation was a success is a complex and thorny subject. Not only do scholars disagree on how to define success (cf. Bercovitch 1996), the whole notion of “success” is highly subjective and linked to ideological factors. Transformative mediators define success in a much different manner than problem-solving mediators, for example (Bush and Folger 1994, 2001). In this study, statements by made by disputants – in the absence of the other mediation participants – that they were pleased with the outcome of the mediation were taken as indicators of success.} Some Gambian disputants who agreed to forgo compensation explained that they expected that decision to bring them a variety of benefits. They cited a number of reasons why forgiving was a good choice such as strengthening their relations with the mediators and/or the other parties and creating goodwill that would
make it easier for them to gain assistance in the future when they needed it. Gambian attitudes about just outcomes are related not only to harmony ideology, but also to their generally collectivist socio-economic system. Their valorization of harmony and reconciliation is therefore not simply an expression of their manipulation through controlling processes, but reflects shrewd decision-making conducted in cognitive frameworks with internal systems of logic and reason. The fact that other goal hierarchies of others may differ significantly from our own should not lead us to dismiss their priorities and concerns.

The Gambian situation implies that mediation should not be mechanically exported to other societies without careful consideration of its impact. Promoting ADR on a global level should be an integrative exercise rather than an expression of the current dominance of the West. The development and assistance field is currently preoccupied with issues of decentralization, governance, and legal reform. Policy-makers should avoid following the colonial model that has led to courts being such a rarely used option in The Gambia. As development agencies pursue legal reform and peacebuilding in other nations they should be open to other modes of being and should not simply impose their ideas of positive reform on other peoples. Integrating with, enhancing, or building upon local structures, practices, and resources may be the most effective way of contributing to a better system of governance.

Nader has incisively commented on the subjective nature of knowledge and science as part of her examination of how knowledge and power interact. She states, for example, “What we know depends in part on how knowledge or knowing is produced and by whom and when and how it is filtered by experience” (1997: 721). As Nader suggests,
this is as true in social science as elsewhere. Academic production is not a domain bereft of ideological bias, cognitive filters, or interpersonal competition spurred on by potential symbolic, social, and material rewards. Nader was concerned with how science has been used to justify hegemonic ideas. Another way of responding to Nader’s call to “study up” is exploring how alternative ideologies can also profoundly influence cognition, perception, and theorizing. As we alluded to previously, counter-hegemonic epistemologies have their own biases.

Legal centralists and others concerned with power often take a top-down view of processes of social change. By exposing the influence forces associated with colonialism had upon grassroots African dispute resolution, Chanock made a significant contribution to the scholarship of law. At times, however, this perspective appears to overprivilege the power of colonial and post-colonial governmental authorities, missionaries, anthropologists, and other elites at the expense of other actors (cf. Rugege 1995).

We know from social theorists such as Giddens and Bourdieu that both structure and agency are significant. Many scholars have shown how subalterns employ agency in resisting, undermining, and modifying globalizing influences and attempts at control. In fact, Nader mentions the anthropological literature on resistance and James Scott’s notable work (1990) on this subject in her 1997 article, but mainly in terms of how it reinforces her argument about power and dominance. Although she acknowledges that “cumulative tinkering can be a two-way process” (1997: 712), her focus is primarily on control, leaving this reader with the impression that she may have a tendency to give the influence, or “weapons of the weak,” (Scott 1985) short shrift. The machinations of

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39 See, for example, Escobar (1992) and Watts (1992).
global elites are a key factor in the course of events, but powerful interests do not control that course. A more accurate approach would be to integrate other actors into the equation and examine levels of influence and the interplay of various narratives.

Nader is correct in pointing out that the use of mediation presents challenges to those interested in equitable peacemaking. Mediations at the grassroots level may not immediately change the structural violence inherent in stratified societies. That, in fact, is a main objection of critical scholars. However, structural violence may persist despite the intervention of courts – only the most naïve observers would claim that the abolition of Jim Crow laws ended structural violence against African-Americans. One need only turn to recent history to find evidence of the limitations of top-down dispute settlement on conflict manifested at the grassroots level. Consider, for example, the failure of the Oslo Accords and other agreements enacted between political leaders that were undermined by a failure to enact systemic attitudinal change among the affected populations.

Effective and sustainable social change cannot simply be mandated from above. A single mediation may not abruptly change national patterns. However, such peacemakings may contribute to a retooling of existing social conditions, especially in small nations such as The Gambia, where it is said that everyone is related to each other. At the very least, by providing a forum for which such micro-level alterations may take place, mediation does provide a medium for gradual change – something that the court system fails to do.

Mediation is indeed closely linked to power. However, this relationship is multilinear and can both exacerbate and ameliorate social inequalities. ADR can provide effective mechanisms for addressing the concerns of both high and low status peoples.
What impact local-level mediations can have on the structural violence of societies remains an open question; however, extra-judicial conflict resolution can clearly benefit even marginalized disputants.40

Conclusion

The variance in Gambian and American modalities of mediation illuminates the significance of societal influences in mediation. The contrast between predominant Gambian and American styles indicates that the mediation process is not composed of a set of intrinsic and universal activities. Instead, mediation activities are linked to values, norms, ideological currents, historical contexts, and the specifics of cases. A multiplicity of praxes exists in both contexts. However, from our comparative perspective we can discern differences in the weave and design of the tapestries. The dissimilarities that stand out are not relevant to every mediator in either setting but reflect general trends. These differences include the direct mediation style common in America and the more indirect one favored by many Gambians; the American focus on negotiation, bargaining, and problem-solving and the Gambian emphasis on forgiveness and reconciliation; the impersonal, neutral, facilitator role of the American third-party and the personalized, engaged, directive, and normative approach of the Gambian insider mediator.

Mediator behavior is socially constructed – mediators are human beings who do not act in a vacuum. A mediator shapes her actions according to her experiences as an individual. These experiences may be somewhat idiosyncratic, but the human individual

40 The power dynamics of the Gambian mediations raises an intriguing notion – rather than simply dismissing ADR as inappropriate in cases of power imbalances should we consider using less facilitative procedures? While we cannot simply assume that Gambian phenomena are applicable in the American context, we can learn from their approach. When mediation is explicitly evaluative leveling the playing field and discussing rights is not so out of place. It is possible that weak disputants might be best served by more evaluative or directive styles of mediation. A methodology for dealing with power imbalances may require the use of different types of mediation and/or the development of new hybrid approaches.
is also a member of identity groups. Individuals therefore have a set of experiences that they share with others, and they are expected to behave in certain ways. Although mediators do respond to specific contextual factors and case characteristics, their perspective and actions are based on their experience, which is inextricably intertwined with its social background and societal setting.

The findings from this level of analysis support the argument that culture is significant and that there are two broad cultural types of conflict resolution – namely Western and non-Western. That is currently the standard approach to multiculturalism in conflict resolution. In the next chapter we adjust our lens to focus in on the Gambian data and, as a result, find additional layers of patterning that problematize a dichotomizing approach.
CHAPTER 6
“WE ARE ALL BLACKS AND WE ARE ALL AFRICANS”: CONTEXT, CONTRADICTIONS, AND COMMONALITIES IN GAMBIAN MEDIATION

Introduction

Observing mediation events, interviewing mediators, and continually thinking and talking about mediation provided a sense of general themes in Gambian mediation. Participatory analysis in situ and systematic analysis in the reflective atmosphere of the home office both enhanced and muddied the picture. Although there are commonalities, there is no single model of mediation employed by the Gambians of Kombo South. In fact, there is no single model of mediation that could be attributed to each ethnicity, population group, or particular context in question. Patterned variation occurred between and within population groups and sets of cases. Broadening or narrowing the lens to examine different units of analysis found variation at all levels.

Observable variance in mediation praxis was present even on the individual level of analysis, as in some instances the same mediator employed varied techniques in different cases. However, mediation practices in the target populations tended to follow certain outlines. A variety of factors from the ethnicity, religion, gender, and age of mediators and the type of dispute in question to individual personality and constellations of social relations influenced mediation activity. Most notably, the Manjago were the most likely
to employ directive and evaluative approaches to mediation and the Mandinka exhibited the strongest preference for indirect face-saving ones.\(^1\)

The social world, like the natural one, is incredibly complex, diverse, and ever changing. In this sense cultural analysis is like dealing with the *djinn* – ephemeral creatures in Gambian cosmologies that are rarely seen, but are always present. Although the *djinn* may fade in and out of focus, they are continually exercising great influence on human affairs. It is easy to make assertions about the *djinn*, but one is nagged by a sense of inadequacy as one struggles to describe shape-shifting creatures that are always reconstituting themselves in new forms.

Culture is like the *djinn* in that it occupies an intermediate zone between the human and the metaphysical realm. Although we know that culture is continually at work, identifying and accurately describing that influence is a challenge not suitable for those of faint heart or mind. Human beings are active agents who draw from their experience and creativity when mediating. As with personalities, another relevant factor, this experience is shaped by their location within a socio-cultural framework, but is also idiosyncratic to some degree. We could compare mediators to cooks preparing a dish – they draw from the ingredients commonly used by their companions and peers and leave out additives that might run counter to group tastes and norms. They also consider the

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\(^1\) “Evaluative,” “directive,” “elicitive,” and “facilitative” are terms derived from Riskin (1996, 2003). Although Riskin’s grid has been criticized, it represents a seminal attempt to bridge the gap between theory and praxis in mediation and is widely known. The Gambian data suggest that mediators do have particular orientations or preferences, and Riskin’s grid provides a useful tool for describing aspects of them. Riskin’s terms are therefore used here. See Chapter 2 for an explanation of the terms, but note that there are some differences in what these terms connote in the Gambian context. For example, when American mediators evaluate they are often explaining to disputants what the outcome may be if they choose to abandon mediation and the case returns to court. In the Gambian context, mediators generally evaluate in terms of personal, societal, and normative assessments. The Gambian variants on these terms will become apparent in the discussions where the terms appear.
specifics of whom they are cooking for and what the occasion is, and they may make choices based on their personal preferences and add their own idiosyncratic flourishes.

This chapter begins with a description of several common patterns in Gambian mediations. Two tables listing Gambian mediation activities, one for caucuses and another for group meetings, follow this. We then proceed to the variation that occurred in relation to several key activities – how mediations are structured in caucuses and group meetings, the gathering of disputant narratives regarding the conflict, and the assignment of blame. These activities are discussed in detail and factors that are associated with the variance are identified. The next section deals with such factors by reviewing the variables that correlated with the patterning of mediator behavior. There are sub-sections on ethnicity, religion, gender, age, and context. Finally, there is a discussion of individual level variation and then the conclusion.

The purpose of this dissertation is to investigate whether groups use the same process when mediating. Accordingly, the goal of this chapter is to describe significant variation that was found and to note where it occurred, and not to attribute the variation to causal factors. Although the causes of variation among the populations were not tested, occasional speculations on this are interwoven into the narrative.

Common Patterns in Gambian Mediation

Each mediation was unique in some way, but there are recognizable themes in the data. These commonalities are summarized here. Mediators from every sample population mentioned certain activities. When asked to describe how they have managed disputes, mediators tended to describe similar procedures.

The most frequent response to the grand tour question of how mediators resolved disputes was that they called the disputants together, asked them what happened, listened
to and discussed their narratives, advised them, told the faulty party that they are wrong, and then asked them to forgive each other and return to normal relations. Many respondents also mentioned some sort of ritualization activity to mark the end of the conflict. In-depth questioning elicited other common patterns that were also found in the collected data. These patterns are outlined below.

One procedure was to first caucus with the parties on an individual basis and then bring them together for a group meeting and ritualization. There may have been a single caucus with each party or multiple caucuses as the mediators strove to work out issues and/or convince the disputants to reconcile. In some of these cases the group meeting followed the model presented above from discussions of the dispute to ritualization.

A Mandinka marital mediation offers a good example of this type of mediation. The two mediators (an elderly woman and her son) at first spoke separately with the two spouses. The first caucus was initiated by the wife who came to the mediators and explained that she was having a problem with her husband. She gave her perspective on the dispute and its causes and the mediators asked her questions to clarify points they considered significant. They discussed the matter with her and gave their reactions to her account of what had occurred. Then they told her that they would speak with her husband about the matter.

In their discussion with the husband the mediators began by setting the stage, explaining their purpose and agenda, highlighting their suitability as mediators, and clarifying their good intentions. They then paraphrased in detail the grievances of the wife and solicited his testimony about the matter. After the husband’s explanation they discussed the matter again asking questions as necessary. The mediators expressed
sympathy with the husband regarding some matters and criticized and advised him about others. They began making plans for settlement by telling him some things that he should do, but they also made plans for a group meeting. The husband in turn explained what he wanted to occur in the group meeting and they agreed on how it should proceed. The mediators strongly urged the husband to reconcile with his wife and to try and get along with her as best at possible.

The group meeting was arranged for the next day and it began with the senior mediator leading a prayer. Then the husband gave a short introductory statement saying that his wife should explain her side of the story. The wife did so, shrewdly addressing the senior mediator as a fellow wife who knows the difficult lot of married women. The husband then gave his complaints about his wife. His statement was also strategic in that he did not try to rebut all of her allegations against him, focusing instead on issues that he has with her where he knows the mediators are sympathetic to his view (such as her use of bleaching skin creams). The wife then began rebutting her husband’s statements, but the senior mediator interrupted her with advice about the areas where she felt that the husband was correct.

The mediators asserted that the wife was faulty and told her that she must change some of her behaviors. They also emphasized their right to mediate by stressing their social ties with the disputants and the religious education of the junior mediator. They emphatically urged the wife to end the problem with her husband and to interact nicely with him. They then turned to the husband and told him that he must concede to one of his wife’s requests (for her own bed) and advised him about being fair to his wives.
The husband then spoke again saying that he tries to be fair with his wives and extending several more complaints. The mediators then further advised the wife. She spoke next, answering some of her husband’s allegations, and went into a long explanation of several issues. At that point, the mediators said that it would be fruitless to keep discussing what happened. They reviewed the settlement plan, repeating the actions they wanted each party to take, and further advised both disputants. They urged the parties to resolve their differences, forgive each other, and reconcile. The spouses agreed to do so and they ritualized the agreement with prayer.²

In other cases, the negotiations were concluded in the caucuses, and the group meeting was largely a matter of formalizing the agreement or reconciliation. The vast majority of this type of mediation occurred with Mandinka participants who had significant status differentials related to age and/or other elements of the social structure. In these interventions the mediator(s) did most of the talking during the group meetings.

They usually set the stage and gave a short discussion of the situation (without going into particulars) and the need for settlement. Sometimes, the mediator(s) re-stated judgments arrived at during the caucusing process, and in other instances they just gave general advice to both disputants. They usually did not go into the details of the dispute. The disputants generally did not say much in such meetings other than to perhaps make a formal statement about the reconciliation.³ These group meetings almost invariably

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² This case is a good illustration about the dynamic nature of sequencing. In this mediation, there is no clear progression from testimony to judging and advising and discussion of compromises and then on to plan acceptance and ritualization. Instead, the mediators suggest a compromise, but then the disputants go back into giving lengthy narratives about their complaints, issues, responding to the mediators and to each other, and so forth.
³ In cases with substantial power imbalances between the disputants, however, the senior disputants sometimes went into their narratives as described below in the case between the young man and his mother’s friend.
concluded with ritualization activities such as hand-shaking, the exchange of kola nuts, goods, or money, prayer, and the sharing of food.

In this procedure, caucuses are used to “set the stage” for group meetings. Informants explained that caucusing can make interventions easier by giving mediators more leeway in their statements and actions before the meeting and reducing the chance of the disputants scuttling the effort by quarreling during the group meeting. Caucuses also allow disputants to express thoughts and feelings and make concessions to the mediators without having the other disputant there. Mediators used caucuses to appease disputants and reduce their loss of face and to organize meetings where arguing and debate over contentious issues would be minimal.

One mediation managed in this manner involved a young Mandinka man engaged in a conflict with a friend of his mother – a person that he should respect and show deference to. The youth was eager to move past the dispute and solicited the assistance of a marabou. He explained what happened to the mediator and expressed his strong desire to return to positive relations with the woman. The marabou questioned him, discussed the issue, and told him that he would go to meet the woman and try to convince her to settle the matter.

The marabou then went and caucused with the woman. Before broaching the subject, he exchanged lengthy greetings with her and reviewed his connections with her and her family. He discussed their mutual obligations to each other, including religious and social norms relating to conflict management. He then raised the topic with her explaining that he had talked with the young man who was eager to reconcile with her. He stressed how important it is to be forgiving and to maintain good relations with others.
The woman expressed dismay that he heard about the conflict. She explained her views on the subject, and he responded in a sympathetic manner. He continued pressing her to agree to forgive and reconcile with the man. She resisted at first, but after repeated urging finally agreed. The mediator then told her that he would bring the youth with a conciliatory gift of kola nuts to her and they would finalize the matter. The woman briefly questioned the need for the meeting and stated that she did not like kola nuts, but agreed to follow the mediator’s plan. The mediator explained that there should not be much talking at the meeting, as it would just be a matter of the youth asking for forgiveness. They then prayed together and he went back to meet the young man.

In his second caucus with the man, the mediator did not bother with setting the stage type activities or an elaborate introduction. Instead, he began by explaining that he had met with the woman and described their discussion. He then detailed his plan for the meeting, stating that they should not go over what happened, but that the youth should just ask for forgiveness and give the woman some kola nuts as an expression of his regret about the dispute. The youth agreed and they parted ways.

The group meeting was in fact fairly brief. It started with the mediator giving an opening statement summarizing the situation and defining the agenda of the meeting. The woman then spoke saying that the problem should never have arisen and she prayed that such a bad thing would not happen again. The youth made a very brief statement presenting the kola nuts to the woman and asking her for forgiveness which she granted. They then prayed together, chatted a bit about casual matters, and dispersed.\footnote{This mediation exhibits a number of common patterns that will be elaborated on during this chapter. For example, the senior disputant, the older woman, did give a statement summarizing her perspective on the situation, though she somewhat followed the mediator’s request not to rehash everything that happened. The young man said only three sentences, blaming the dispute on evil forces (saytan), asking for
Caucuses could also make up the whole mediation effort. In this approach any negotiation, discussion, and plan-making that took place occurred during the caucuses. The disputants agreed to reconcile without ever meeting face-to-face.

In an example of this type of procedure, two Jola mediators intervened in a dispute between the older and younger members of a work group from a refugee community in their village. The younger men had missed a work session, and the older men had fined them ten *dalasi* each. The youths refused to pay, causing a schism in the work group.

After hearing about the conflict, the mediators talked with the older disputants. They set the stage by highlighting their respect for them and underlining the ties that existed between themselves and the disputants. They then explained their intention to try and resolve the conflict with the younger men and asked the older men to explain what had happened. After the disputants did so, the mediators empathized with them and urged them to be patient and to allow them to meet with the younger men to try to settle the problem.

The mediators then caucused with the younger men. After setting the stage, they explained their agenda and goal of settling the conflict. They summarized what the older men had told them about the cause of the dispute (leaving out the more inflammatory statements) and called on the younger men to reconcile with their elders.

The younger men then described their perspective on the matter and were questioned on several points by the mediators. The younger men offered a compromise proposal saying that they could pay five *dalasi* each. The mediators appeased them, forgiveness, and saying that it would not happen again. The reticence of the junior disputant follows Mandinka social norms. The emphasis on forgiveness and reconciliation is also typical of Gambian mediations.
expressing their empathy and saying they understood how difficult it can be to deal with elders. The mediators again exhorted the youths to reconcile and the youths reiterated that they would be willing to do so if the fine could be lowered to five dalasi. There followed a lengthy discussion of the whole matter that extended into other issues of cooperation and harmony within the community. The mediators then told the youths that they would speak again to the elders, gave final advice to the disputants, and then made a short prayer.

Returning to the elders for another caucus, the mediators began by appeasing them and expressing their understanding of their concerns. They then gave a very selective summary of what the youths said (again leaving out any potentially problematic points) and extended their offer to pay five dalasi. The elders at first rejected this, but, after strong requests by the mediators to reconsider, agreed to accept it, adding several minor stipulations about when the fine had to be paid. The mediators then conveyed that outcome to the youths, and the matter was settled accordingly, without any further involvement by the mediators.

Disputes were also settled without any caucusing. When asked about mediation, many respondents would first describe procedures in which the mediators bring the disputants together for a group discussion. Observed cases of this type usually began with the mediators setting the stage and outlining their goals for the intervention and the desired outcome. They would then ask the disputants to explain how the dispute came about. After the disputants did so, they would discuss the situation and how it could be resolved. When the disputants were ready to agree to resolve the issue, the meeting usually concluded with some sort of ritualization.
The following mediation of a dispute between two middle-aged brothers offers a good example of how cases proceed when there is no caucusing. An elder had heard that the brothers were on bad terms and called an age-mate and benefactor of theirs to assist him in reconciling them. The meeting began with setting the stage through prayer and a discussion of the importance of helping others when they have problems. The elder made a number of typical statements such as “all bad things will end someday” and “I am calling you only for peace, not for something bad.” These are common introductory remarks by mediators used for the general introduction and setting the stage kind of statements before going into the discussion of the specific problems. The mediator clarified the purpose of the meeting as an event designed to reconcile the two brothers and stated his understanding of what the problem was. He advised the brothers on the need for them to be united and cooperative. The younger mediator spoke briefly, and then the elder asked the older brother (the senior disputant) to explain what happened.

The older brother explained his litany of complaints about the younger brother. He ended with a strong position statement, saying that he could not cope with his brother if he did not change his ways. The younger brother then spoke. Despite attempts by the mediator to prevent it, the older brother interrupted his sibling’s narrative at several points.

After the younger brother’s speech, the mediators reacted to what they heard. They advised both of the disputants at length on how they should behave towards one another. They stated that the younger brother was in the wrong, but qualified that judgment by saying that his being ill was a mitigating factor. The disputants actively participated in the discussion and agreed to respect each other in the future. The younger brother agreed
to be more responsive to his older brother’s requests for assistance for help with work projects. Prayer was used to ritualize the reconciliation between the brothers, and the mediators added a final bit of advice for the younger brother before everyone dispersed.

**Outline of Gambian Mediation Activities**

As implied above, certain activities were recurring features of the collected data, and they are listed below. The outline of activities should be seen as a simplification of widespread patterns in the Gambian data. It cannot be emphasized enough that, although mediations often progressed through the activities in roughly the order that they are listed in below, they did not always follow a common sequence. Meetings jumped back and forth between activities and stages, skipped certain of them entirely, and in general differed considerably from the procedures outlined below. The process was not homogenous or unilinear.

Tables 6-1 and 6-2 offer a view of common trends in the Gambian mediations. Most theorists have created models with numbered stages or steps. The model outlined in the tables is not numbered and is relatively unstructured in an attempt to more accurately portray the dynamic nature of the mediation process. The activities represent possible components of mediations; cases generally included a selection of them.
Table 6-1. Common Gambian mediation activities – Caucuses

<table>
<thead>
<tr>
<th>Pre-intervention activities:</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Initiation of mediation effort</td>
</tr>
<tr>
<td>- Information gathering</td>
</tr>
<tr>
<td>- Mediator plan-making and in some cases mediator strategy sessions to plan their intervention</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Caucus activities:</th>
</tr>
</thead>
<tbody>
<tr>
<td>NOTE THAT CAUCUSES AND MEDIATIONS TEND TO HAVE A SIMILAR SEQUENCE OF ACTIVITIES. SEE TABLE 6-2 FOR MORE INFORMATION ON HOW EACH OF THE ACTIVITIES BELOW IS CARRIED OUT.</td>
</tr>
<tr>
<td>- Setting the stage, creating a mood or atmosphere conducive to constructive discussion and dispute transformation</td>
</tr>
<tr>
<td>- Introducing the topic and/or defining the agenda</td>
</tr>
<tr>
<td>- Soliciting and gathering disputant narratives and perspectives</td>
</tr>
<tr>
<td>- Transmitting information from the other party or other stakeholders</td>
</tr>
<tr>
<td>- Discussing the situation</td>
</tr>
<tr>
<td>- Expressing sympathy and appeasing the disputants</td>
</tr>
<tr>
<td>- Advising and admonishing disputants</td>
</tr>
<tr>
<td>- Bargaining and negotiation</td>
</tr>
<tr>
<td>- Encouraging and/or pressuring disputants to reconcile</td>
</tr>
<tr>
<td>- Making plans for settlement and/or reconciliation (may be generated in a collaborative fashion or crafted by the mediators)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Uses of caucuses:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Caucusing may have taken place with some or all of the parties. In some disputes mediators conducted pre-meeting caucuses only with those parties they felt might present a problem in a group meeting.</td>
</tr>
<tr>
<td>Mediators also utilized caucuses to facilitate communication between the parties, to work out issues, and/or to plan for a group meeting. Mediators shuttled back and forth between the disputants, repeating some of the above caucus activities, relaying messages, ideas, and proposals from the other parties.</td>
</tr>
<tr>
<td>In some cases, caucusing continued until the mediators felt that the disputants had given their firm agreement to move beyond the dispute. Mediators then either planned for a group meeting, or they finalized the intervention in the caucuses, obtaining the disputants’ agreement to end conflict behavior and/or ritualizing the agreement in the caucus setting.</td>
</tr>
<tr>
<td>When mediators used the caucuses to plan for the group meetings, they sometimes instructed the disputants, especially less-powerful ones, on how to behave, what to say, and what not to say during the group meeting.</td>
</tr>
<tr>
<td>In other cases, mediators restricted their caucus activities to gathering information and planning a group meeting. In this procedure the substantive negotiating, plan-making, and discussions took place in the group meeting.</td>
</tr>
</tbody>
</table>
Table 6-2. Common Gambian mediation activities – Group meetings

Group meetings occurred after caucuses or without them. In some cases group meetings took place before caucuses, but this was rare.

Setting the stage
- creating a mood or atmosphere conducive to constructive discussion and dispute transformation (e.g., joking, praying,
- emphasizing right of mediators to intervene
- reviewing social ties between the mediators and the disputants and between the disputants
- discussing shared norms relating to peace, patience, and harmony: “every problem has a solution;” “we are all members of group X and we are obligated to help each other”

Introduction
- making calming statements and framing the conversation
- introducing the problem and issue
- defining the agenda and clarifying the mission of the mediator
- soliciting disputant testimony

DISPUTANT TESTIMONIES AND NARRATIVES
- disputants explain what happened, present their viewpoints

Discussion
- mediator questions to clarify certain points or prompt disputants for further information
- mediator responses to testimony
- disputant responses to each other’s narratives and to the contributions of the mediators
- mediators evaluating disputant actions, positions, statements
- judging, stating guilt, advising disputants

Negotiation, bargaining, making plans, exploring options, promoting forgiveness, narrowing differences (if not concluded during caucuses)
- revising positions
- exploring options for agreement, resolution, reconciliation
- proposing, debating, rejecting, and reworking plans
- repeated pressuring or urging from mediators to agree or to forgive (usually occurs throughout the process)
- promoting, soliciting, and expressing forgiveness and/or reconciliation

If agreement is not reached, the intervention effort may be abandoned, or the mediators may schedule another group meeting or caucus with the disputants. If one or more of the disputants are refusing to agree, then the mediators may repeatedly caucus with them until they change their stance. Ritualization usually occurs only when settlement has been achieved.

Ritualization of agreement
- shaking hands, prayer, exchanging kola nuts, sharing alcohol, kneeling before wronged disputant, etc.
- eating and/or drinking alcohol together
- friendly chatting, (re)establishing precedent or script of harmonious interaction
The lists of activities in Tables 6-1 and 6-2 represent only a sketch of what occurred during mediations conducted by members of the target groups. In some mediations certain activities were left out, done repeatedly, or occurred at unusual times. For example, among elderly religious Mandinka, prayer – generally an introductory or ritualization activity – sometimes occurred during the body of meetings, rather than in the introduction and/or final phases of meetings. Mediations also did not necessarily include all of the above activities. The following section provides examples of key areas where variation occurred.

Examples of Areas of Significant Variation

In interviews and panel sessions, respondents tended to emphasize structure and homogeneity, making sweeping statements such as, “we are all blacks and we are all Africans and this is how we mediate.” The procedures that mediators described when asked “grand-tour” questions exhibited a good deal of convergence. However, thorough questioning elicited data on variance and the significance of contextual factors. Accounts of actual mediations and the observed data revealed diversity in praxis that did not appear to be stochastic. Instead, variation generally occurred in relation to certain activities and factors. In the following discussion, several aspects of the mediation are discussed in detail as examples of the patterning and variation that occurred. These are the significance of caucuses and group meetings in the process, whether or not the mediators collected disputant testimonies, and whether they explicitly blamed one of the parties for the conflict.

5 Grand-tour questions are very general and open-ended questions designed to draw out emic perspectives on an issue.
Caucuses and Group Meetings

As indicated above, the Gambian mediations demonstrated considerable variety in the use of caucuses and group meetings. Some mediations involved only caucusing with the disputants never meeting with the mediator at the same time. In other cases the mediators caucused with the disputants individually first, and then brought them together for a group meeting.

Sixty percent of the empirical cases included caucuses. In 16% of them there was only one caucus; in 20% there were two; and in 24% there were three or more. In these mediations the information gathering and exchange often took place during caucuses. The mediators shuttled back and forth between the disputants, sometimes carrying messages between them and always encouraging them to settle.

One common pattern was to first caucus with the parties and then bring them together for a group meeting. Mandinka respondents described this as the most common approach to mediation and approximately a quarter of the observed Mandinka cases were conducted that way. This procedure was also fairly common among the Jola, but was relatively infrequent among the Manjago.

Later, we will mention the case of a mediator who caucused with the disputants, told them the other was eager to reconcile, and then left them to meet each other for tea. That case was more about face than concrete or substantive issues and did not require substantive negotiation. However, some disputes over material issues that required bargaining also consisted only of caucuses. The mediators conducted the negotiations and discussions over how (and whether) to resolve the dispute separately with the disputants, often shuttling between them with messages and/or proposals, or simply pressuring or appealing to the disputants until they agreed to forgive their opponents.
We now turn to the mediations that were conducted entirely through caucuses with the disputants never meeting together. Thirty-one percent of the observed cases were conducted in this manner. There were significant ethnic differences in relation to this type of mediation. Only 8% of the Manjago cases did not include a group meeting compared to 49% of the Mandinka cases, and 16% amongst the Jola.

It seems likely that social structures and their attendant values are linked to the Mandinka tendency to privilege caucuses in their peacemaking, and to the Manjago reliance on face-to-face meetings. Mandinka society is stratified with many behavioral taboos and social norms that impact disputing and peacemaking. One likely reason for why caucuses are so frequent among the Mandinka is that they allow the mediators to interact with disputants in ways that would not be permissible when the other disputant is present. For example, sons should not criticize their fathers. In a Mandinka mediation between a father and his son, the son was entirely submissive during the group meeting, asking only for his father’s forgiveness and apologizing.

Manjago tend to be much more direct and blunt and freer in their speech, both within mediations and in general. In some Manjago mediations junior disputants openly confronted their opponent in ways that would have caused great opprobrium had they been Mandinka. The hierarchical nature of Mandinka society thus appears to contribute to the greater role of caucusing in their mediations. The Jola and Manjago are not purely egalitarian societies by any means, but Jola social organization has historically been much less stratified than that of the Mandinka. This may be associated with their greater willingness to engage in direct discussions and deal more openly with disputes. The Manjago are also less stratified than the Mandinka, and they have a reputation for being
very assertive both within The Gambia and elsewhere (cf. Gable 1990). We will return repeatedly to the impact of social organization and hierarchies since that relates to many of the different dimensions discussed in this chapter.

Type of dispute was also a significant variable in the structuring of mediations, illustrating how contextual variables beyond population characteristics are significant in mediation. Examining cases that fell into one of three common types – marital, material, and face or honor issues – revealed significant variation in how mediators structured their interventions. In cases over issues of honor or face, both caucuses and group meetings were common, being used in 69% and 72% of the cases, respectively. Caucusing was much more frequent in marital mediations, being used in 88% of the cases, while only 49% included group meetings. In material disputes mediators relied heavily on group meetings, caucusing with the disputants in only 41% of the cases and bringing them together in 82% of the disputes.

Face disputes were generally sensitive matters. The high rate of both caucuses and group meetings reflects how mediators frequently used the tactic described above of first caucusing with the disputants, obtaining their agreement to resolve the dispute, and then bringing them together to formalize the reconciliation. Many Mandinka and some Jola mediators stressed that it is best to caucus with disputants before bringing them together for a group meeting; otherwise they could offend each other and worsen the situation. This is especially true in cases where people’s sense of honor has been violated.6

Marital disputes often involve very private matters and can be embarrassing to mediation participants. There are many taboos about keeping the secrets of the household

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6 The Mandinka concern with face and their circumspect style of mediation is discussed further in the section on ethnicity.
within the household, and this is linked to the lower rate of group meetings in these cases. Meeting privately with the spouses can allow the mediator to delve into sensitive issues in a less high-pressure environment. Respondents were most likely to describe caucusing in relation to marital cases. Many mediators stated that they had gone first to talk with husbands and then proceeded to caucus with their wives.

The different ethnic groups varied in their response to marital issues. Marital disputes handled entirely through caucuses were relatively frequent among the Mandinka. Every one of the 18 Mandinka marital cases included caucuses and only 44% included group meetings. The observed case that included the most caucuses – 18 in all – was a Mandinka marital mediation.

Group meetings are central to Manjago marital mediations. Seven out of eight or 88% of the observed Manjago marital mediations included group meetings (as compared to 44% among the Mandinka). Only one (12.5%) of the Manjago marital mediations was handled through caucuses alone (the figure for the Mandinka is 56%). This was consistent with the statements of Manjago mediators who unanimously focused on group meetings in their explanation of how they mediate and their descriptions of past mediations.

Sixty-three percent of the Manjago marital cases also included caucuses (as compared to 100% among the Mandinka). Many of these consisted of the wife, and occasionally the husband, reporting a problem to mediators after which the mediators called a group meeting. Unlike the Mandinka, the mediators often did not caucus with the other spouse, preferring to proceed directly to group meetings. In the one Manjago case conducted entirely through caucuses, mediators spoke with a husband who had returned
his wife to her parents and convinced him to try taking his wife back. They then went to her parents and were able to persuade them to allow their daughter to return to her husband. In these more informal interventions, there was no ritualization in the common manner of drinking alcohol after agreement has been achieved.

Only two instances of exclusively Jola marital mediations were observed. One consisted entirely of caucuses and the other entirely of group meetings. In interviews Jola respondents did describe caucuses as a significant part of transforming marital conflicts and related past mediations that they carried out using them.

Forty-one percent of the material disputes included caucuses and 82% included group meetings. Conflicts over property, possessions, or money are often handled in more formal forums such as at the Alkalo, or village headman, level. This is probably in part because Alkalos can theoretically order disputants to pay compensation.

The forum where the mediation takes place is also related to the composition of mediation efforts. Cases handled by the village headmen, and his advisors or council of elders, constitute the most standardized set of cases. All of them included group meetings.

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7 Several Mandinka cases followed this pattern as well.

8 However, mediations led by Alkalos often did not result in compensation being paid to the disputants. Mediations by Alkalos resulted in some sort of punishment in only 14% of the cases. Alkalos explicitly appealed for reconciliation and forgiveness only slightly less than other mediators. Like other mediators, Alkalos preferred to persuade disputants to come to terms with each other and/or scold them if they were wrong, rather than impose judgments upon them. Alkalos, like other Gambians, tended to focus more on reconciliation than distributive issues and frequently urged disputants to forgive each other. We will return to this point momentarily.

9 The usual procedure in such cases is testimony by all the disputing parties, discussion and evaluation of the disputants’ statements and suggestions for what if anything should be done. Alkalo cases are the most likely to lack setting the stage activities. Statements of culpability were present in 76% of these cases. Alkalos had the authority to impose sanctions, fines, or other punishments; however, in practice they did not usually do so, focusing instead on reconciliation.
Group meetings were much less pivotal in cases conducted by another locus of power in Muslim villages – the Imam (leader of the Muslim community) – suggesting that the status of the Alkalo as a village official is associated with the more formal approach. However, although village headmen represented the first vanguard of the formal legal system, they preferred to mediate rather than adjudicate disputes. The difference is that cases mediated by Alkalos were more formal than those handled by other mediators and had a more established script.

Women were less likely to use caucuses than men. The male Jola panels unanimously described caucusing with the parties and then a group meeting as the most common procedure, although they noted that some disputes can be resolved through caucusing alone. Female panels, on the other hand, usually described bringing the disputants together without caucuses as the main way to mediate. They noted that one could also use caucuses, but stated that this was rare, particularly in regards to cases that only included women. A common theme in the Jola interviews was that caucusing is dangerous because it can cause the disputants to suspect the motives of the mediator. As one woman said, “As far as I can understand we women are very worried about suspicions. That is why we always try to bring the 2 parties together for mediation.” Males did not bring up this point, but, in a few of the empirical cases, male Mandinka

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10 The preference for mediation over adjudication is widespread among all levels of the Gambian administration and population (cf. Darboe 1982). Judging by Alkalos tends to be a participatory and negotiated process. Participants can respond to the Alkalo’s suggestions, and the Alkalo’s original plan can undergo significant modifications, or be dismissed in favor of an altogether different idea. Attendant elders and community members also participate in the debate of what should be done in some cases. In fact, in several cases people who had come to observe the mediation rejected the Alkalos’ suggestions for what should be done and, ultimately, totally different courses of action were taken. This dynamic extends to other cases as well. In this dissertation, the term “judging” should be understood to refer to a dialectical process in which plans and the apportionment of blame are negotiated, rather than to a summary judgment by mediators.
mediators were observed denying having caucused with the opposite party, although they had already done so.

Men tended to think of caucusing as the first angle of approach to mediating a conflict, in contrast to women who tended to conceptualize group meetings as their primary tool. Female respondents made many statements such as, “Dealing with the disputants separately is sensitive and it is only done in special cases,” and “There are only a few cases in which you can meet with the disputants separately. This is when it is with hot-tempered people and you have to talk to them separately. Even if you meet with them separately, you will have to bring them together and give them advice.”

**Disputant Narratives**

Gambian mediators included the solicitation and collection of disputant narratives in their explanations of mediation, and this activity was common in the empirical data as well. The American and ethnographic mediation literature asserts that disputants should present their narratives (e.g. Gulliver 1979; Kovach 1994; Moore 1986; Robarchek 2000; Winslade and Monk 2000). Disputants telling their stories is thought to be central to the facilitation of conflict resolution by enabling such things as the collection of information that may be vital to resolving the conflict, and the expulsion of negative emotions. Gambians also have such beliefs, as reflected in the Mandinka saying, “Kumo mim be kono nii maa foo a kanfa buka bo – “If you do not say what is in you, the anger will not go.”

In the vast majority of the collected cases, the disputants did provide their perspectives on the causes and nature of the conflict. In some mediations disputant narratives were collected in the caucuses and then presented again in the group meetings. This was most common among the Manjago, and in cases conducted in more formal
group settings such as club meetings,¹¹ or meetings conducted by the village headmen and councils of elders. The Mandinka were more likely to gather disputant narratives during caucuses and then attempt (sometimes unsuccessfully) to conduct group meetings without statements from the disputants about the events surrounding the conflict. In a meeting between members of a household, for example, a mediator said, “If we ask you about how this problem happened, then it will bring another problem again.” In four out of thirty-three Jola cases, the mediators also tried to prevent the disputants from giving their testimonies in group meetings by saying that they were already acquainted with the causes of the problem and that they were not there to go back over them.

Disputants did not always heed the instructions of the mediators. Sometimes they narrated their takes on the matter (occasionally at great length) despite being asked not to, thereby highlighting the significance of this activity. Mediators also attempted to limit or halt disputant testimony when they felt that it was becoming repetitive, bringing forth negative emotions, or contravening proper behavior.

Mediations without any presentation of disputant narratives constituted an interesting divergence from the modal pattern. In interviews and panel sessions some mediators stated that sometimes they instructed the disputants not to relate the details of the dispute. This pattern occurred in the empirical cases as well and was associated with particular contextual variables.

One such variable was related to Gambian social structures and corresponding cultural norms. In some Mandinka and Jola cases with disputants of significant status

¹¹ *Kafos* are very popular features of Mandinka and Jola social organization. They are either groupings of people by attributes such as age or clan affiliation, or voluntary associations. “Kafos” is sometimes translated as “society” or “club.” They are particularly prevalent among women who use them as cooperative workgroups, rotating credit associations, and more.
disparities, the lower status disputant did not provide her viewpoint in the presence of the senior disputant. According to the interviews, there were ethnic differences in relation to this variance. The descriptive data indicated that Mandinka were the most likely to instruct disputants not to go into their testimonies, and the Manjago the least likely. Multiple Mandinka and, to a lesser extent, Jola mediators described instances in which they instructed the disputants to refrain from presenting their explanations of the conflict. Manjago respondents, however, strongly emphasized the need to hear out the disputants and then judge them. This is consistent with the overall greater emphasis for face-saving among the Mandinka than the Manjago.

The trend in the descriptive data was borne out in the empirical data. Although the numbers were small for all the ethnic groups, the Mandinka data set contained the highest proportion of cases that did not include disputant narratives (13% as compared to 3% and 4% for the Jola and Manjago). A small number of mediations from each of the ethnic groups featured the peacemakers asking the disputants not to go into their testimony. There were, however, qualitative differences in how they did so. The Mandinka frequently asked the disputants to avoid going over the causes of the dispute during group meetings, something that the other two groups did not often do. This again illustrates the circumspect style of the Mandinka and their concerns about maintaining the disputants’ face and avoiding open conflict, patterns discussed in the section on ethnicity in this chapter. Also, their requests generally were taken more seriously by the mediators themselves and the disputants.

When Manjago and Jola mediators told disputants they did not want to hear their narratives, they were more likely to be ignored and/or chided by other mediators who
asked them how they expected to mediate without giving the disputants a chance to clarify their perspectives on what happened. Manjago and Jola mediators who asked disputants to refrain from narrating their stories seemed more interested in limiting disputation statements in order to prevent emotions from flaring up, rather than attempting to completely bypass this activity. One Jola mediator linked this approach to the level of anger on the parts of the disputants. She said:

Well I can remember some [mediations] that were difficult. If the case is very difficult we do not ask the parties about it. After the greetings we pray, and then we do not ask any party about it. We say, ‘We do not want you to explain. We know everything that happened. Please we do not want this to happen anymore.’

Mandinka mediators were more likely to agree that mediation could be done in the absence of testimony, without qualifying that assertion by referring to particular circumstances that would require such an approach. Mandinka disputants in caucuses did sometimes narrate their perspectives on the dispute to mediators when asked not to do so, but they usually did not do so during group meetings. Unlike the members of the other ethnic groups, when in the collected cases a Mandinka mediator said that the disputants should not explain what happened, the other mediators did not challenge that.

The likelihood of mediators asking the disputants to refrain from sharing their perspectives on the conflict varied somewhat by type of dispute in question. This activity occurred in 6% of mediations over questions of face, 12% of cases about material issues, and 18% of marital cases. Although this difference is not statistically significant, it follows the comments made by mediators during interviews and panel sessions. Several mediators explained that they often avoid asking about what happened in marital conflicts because it can lead to the discussion of embarrassing topics. Mandinka mediators
sometimes cited a relevant saying, “Ni muso ni a ke moi sonko la kani yeningka mun ne keita,” if you hear a wife and her husband quarreling, do not ask them what happened.\(^\text{12}\)

Six Mandinka mediators (both male and female) and one male Jola mediator stated that they avoid inquiring into the specifics of the problem when dealing with husbands and wives. However, in the empirical data the mediators usually asked for testimony in marital mediations. Dividing the marital cases by ethnicity revealed that only 13% of the Manjago marital cases and 18% of the Mandinka cases did not follow this pattern.\(^\text{13}\) Only two Jola marital cases were collected and the mediators attempted to prevent the disputants from presenting their narratives in one of them.

The level of formality of the mediation effort was also relevant to the provision of disputant statements. The scripts for formal mediation efforts, such as cases mediated by the village headmen (Alkalos), include disputant testimony. Disputants were expected to narrate their perspectives on the conflict in these forums and they did so in 100% of the Alkalo-level cases. Several cases did diverge from the usual pattern due to contextual factors. For example, in one such case one of the disputants was a relative of the Alkalo and the tie between them made the Alkalo take a stance of a chiding father. He seemed eager to avoid disputant testimony in that case (perhaps to minimize potentially embarrassing disclosures). Some of those present at that session grumbled about that, illustrating how this was a divergence from the expected pattern. In fact, Alkalos tried to

\(^{12}\) Sometimes the private nature of marital issues is highlighted even more when the saying is lengthened to, “If you hear a wife and her husband quarreling in their room at night do not ask them what happened.”

\(^{13}\) The Manjago mediators’ request to the disputants to avoid going over what happened appeared to be a tactic to relax the disputants, and, in fact, the disputants did give their viewpoints in those cases.
minimize disputant narratives in less than ten percent of the cases they mediated, and the disputants ended up giving at least some testimony anyway.

Among the Mandinka and, to a lesser extent, the Jola the nature of the social ties between the participants is the most influential factor in whether the disputants give their perspectives. High status mediators were more likely to attempt to prevent the disputants from describing the dispute. For example, in one marital dispute the mediators were a group of old Mandinka women who were the leaders of the women of their clan. Although they caucused separately with the spouses they instructed them not to speak about the cause of the problem, and they were able to reconcile them without their ever having done so.

Power and status imbalances between the disputants were also associated with the lack of disputant narratives during mediation efforts. In non-Manjago cases some junior disputants did not provide their viewpoint in the presence of the senior disputant. This meant that, if there were no caucuses during which the junior disputants were able to relate their account of the matter privately to the mediators, they were not able to do so at all.

In many cases, particularly marital ones, the junior disputants did provide their testimony during caucuses and then refrained from making anything but reconciliatory statements during group meetings. In one case the lower-status disputant gave his perspective on the problem after the mediation. In Gambian societies there are strong beliefs regarding the relationship between parents and children. In the aforementioned case of the father and son, the mediator was informed about the dispute by the son’s brother, but was not given much detail about the conflict. The mediator caucused with the
father and then called the son in for a group meeting. The father repeated his explanation of the dispute in the group meeting, but the son said nothing other than begging for forgiveness and promising that he would never dispute with his father again. The meeting ended successfully with ritualization of the reconciliation. Interestingly, after the meeting ended, the son walked the mediator part of the way towards his home. During that walk he expressed his view of the conflict.

In some cases the mediators disagreed over whether to ask for disputant narratives or not. The occurrence of debate among mediators over whether to collect disputant testimonies demonstrates that, although disputant testimony is a mainstay of the process, variance in relation to this activity is an established pattern in Gambian mediation praxis. Further discussion of this issue can be found in Chapter 5.

Assigning Blame

Whether mediators assigned blame in a dispute provides an excellent example of societal influences in mediation. The Manjago exhibited a clear preference for a more directive style of mediation than the Mandinka. The Jola seem to be located between the two groups with women having a stronger evaluative orientation than men.

Evaluating who was to blame for the dispute was a surprisingly common mediation activity that occurred both in caucuses and group meetings.\(^\text{14}\) There is widespread cultural consensus among all the surveyed groups that in a conflict there will be a faulty party. As one mediator said during a public-policy case, “In every dispute there must be

\(^\text{14}\) As discussed in Chapter 5, a widespread ideology in the U.S. stipulates that mediators should not judge the disputants and state who is at fault in a conflict. Gambian respondents’ strong emphasis on judging, and frequent statements that judging is absolutely necessary for true resolution of a conflict, were therefore somewhat surprising. The principal investigator’s experience with mediation training in America resulted in a tenacious expectation that more mediators would qualify their assertions about judging as an integral part of mediation than actually did.
someone guilty and someone innocent.” When respondents answered grand tour questions about how disputes are mediated, they invariably mentioned judging activity on the part of the mediators as part of the process. However, despite some participants’ claims to the contrary, mediators did not invariably assign blame or judge disputes. Whether they did so or not was linked to their ethnicity, gender, the level of formality of the mediation effort, the power balance between the involved parties, and the context of the conflict.

One indicator of the strong cultural influence regarding evaluative activity in mediation is the ethnic variance in mediators’ responses to follow-up questions about judging. Mediators of all three groups typically mentioned judging between the disputants when asked how they had mediated past disputes.15 After further questions (and sometimes without them) some Mandinka and, to a lesser extent Jola, mediators explained that judging had to be done carefully, or was not always appropriate. The most common clarification was that explicit evaluation might anger the disputants judged guilty and block reconciliation.

The Manjago, however, overwhelmingly re-stated that mediators must declare who is at fault; otherwise any reconciliation or agreement they brought about would not be sustainable. All segments of the Manjago population agreed on the necessity of mediator evaluation with no appreciable variation by gender. The qualifications and reservations expressed by some Mandinka about mediators expressing their evaluations of who was responsible for a conflict were also absent. The Manjago simply emphasized that this was a necessary part of the process, period.

15 As discussed in Chapter 5, this is quite different from the dominant ideology of Western mediation providing further evidence of societal variance.
The empirical data were congruent with trends in the statements made by mediators on these points. Eighty-eight percent, or 22 out of 24, of the Manjago cases did clearly include this activity, indicating the widespread expectation and acceptance of evaluation in Manjago mediation. In the two other cases the mediators attempted to relax the disputants by telling them that they were not there to judge between them. These disputes were over highly contentious issues, and the mediators apparently factored the difficulty of the mediation attempt into their behavior and tried not to antagonize any of the disputants. However, despite those statements, they ended up assigning blame during the course of the mediation.

Some Manjago disputants explicitly solicited judging from the mediators, further illustrating its prevalence in mediation. Establishing which party is faulty is linked to a near-universal feature of Manjago cases – the ritualization activity of sharing alcohol after a settlement has been reached. The party termed guilty by the mediators is the one who is responsible for purchasing the alcohol to “wash the mediators’ feet” after agreement has been reached.

By contrast only 16 of 45 (36%) collected Mandinka cases included statements of guilt by the mediators. In general the Mandinka clearly prefer a less confrontational style of mediation than the other two groups and are therefore less likely to deal with issues of disputant culpability. Mandinka mediators frequently avoided explicit evaluation by

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16 For example, near the beginning of a group meeting a Manjago disputant said, “We called the clan here today and they are sitting with us here and they are going to judge between us and advise us.”

17 In one case the alcohol was purchased and shared before agreement had been reached. An old woman had been termed as the guilty party by the mediators and she was very unhappy with their assessment. Although she did not accept that she was guilty, the mediators went ahead with the ritualization asking the other party, a young man, to purchase the palm wine and moonshine. They disregarded his protests that he should not be responsible for buying the wine as he was not at fault and he did pay for it. This mediation was ultimately unsuccessful and another more effective attempt took place months later.
blaming negative supernatural forces rather than individuals. The strength of Islam in Mandinka society is relevant here as the concept and term that they used, “saytano,” is derived from the Arabic term for Satan, “sheitan.” Mandinka mediators frequently made statements such as “This problem was just caused by saytano.” Such statements defused the situation by diffusing guilt, shifting the blame for the conflict to an external force and reducing the culpability of the disputants. Invoking religion also increased the normative power of the mediators’ attempts to get the parties to reconcile. Blaming saytan was consistent with the Mandinka preference for saving face. Jola mediators were much less likely to invoke saytan, while the Manjago almost never mentioned it.

The relationship between parties was of paramount relevance to whether evaluating culpability occurred or not in the Mandinka cases. Social hierarchies are the most pronounced, and norms regarding social status are strictest, among the Mandinka, which was reflected in mediation praxis. Mandinka mediators found it difficult to express judgments if they were of lower or equal status to the disputants. If they did so, it would contradict social norms in which subalterns are supposed to maintain a high level of respect for their social superiors.

The Jola were located between the Mandinka and the Manjago in terms of evaluative activity (as with other components of mediation) with it occurring in 19 out of 33 Jola cases (58). For the Jola cases, the link between presence or absence of the judging activity and contextual factors was particularly apparent. The two most prominent factors are type of dispute and the forum in which the dispute is mediated. Most of the cases in which evaluation was present were public policy issues, kafı mediations, and Alkalo cases, indicating the significance of the forum in which mediation takes place and the
type of dispute in question. The scripts for large or public mediation attempts include judging, although it is not inevitable, as several such cases did not include evaluation.

The cases in which judging did not occur generally dealt with private matters and were mediated in a private forum. In several cases the dispute was about a larger group issue, but the case was mediated privately. In those cases the type of forum (a private discussion) was more significant than whether the dispute was over a group issue, and there was no judging. There are only two Jola cases in which there is no apparent contextual explanation for why judging did not occur. For the other 20 cases the occurrence of the judging activity follows the patterns described above.

Gender and blame

According to both male and female Jola informants, women are more likely to judge cases than men.18 Women said that “men do not want to tell the truth” and that they are more concerned with smoothing over bad feelings than dealing directly with the issue. The women vigorously rejected this approach saying that mediators should “tell the person on the right that they are right and tell the faulty person that they are wrong.” The empirical data were consistent with this trend as the female mediations did include more blaming than those of men (100% versus 43%). The gap was even greater when the Alkalo-level cases (which frequently included judging) were excluded from the male sample.

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18 Due to the sample composition, the gender comparison is restricted to the Jola ethnic group. However, the descriptive data from the other two ethnic groups are congruent with the finding that women prefer evaluative styles.
Blame and social status

As with many other aspects of mediation, the relationships between the participants and their relative social status influenced evaluative and directive activity. Most Mandinka and many Jola respondents stated that lower status disputants (wives, younger siblings, children, and others) should not be told that the other higher status disputant (husbands, elder siblings, parents) is guilty. Instead the lower-status disputant should be criticized for having a conflict with her social superior. For example, multiple Mandinka mediators said that, when mediating between two brothers, they would always tell the younger brother that he was wrong because he had to respect his elder. They stated that they would do this regardless of how big – years, months, or days – the age difference between the brothers (or step-brothers) was. Some mediators of both sexes said that, if the senior disputant was actually responsible for the dispute, they would tell that to the senior disputant privately in a caucus. Others simply insisted that the junior disputant should always be blamed.

Jola mediators tended to agree with the Mandinka view, but Jola women were somewhat more likely to assert that guilty parties should be clearly identified without regard to social status. Expected variation along gender lines in response rates to questions about marital disputes was rarer than expected, as many Mandinka and Jola female mediators agreed that wives should not be told that they are right in disputes with their husbands. The variation by gender was anticipated because many Gambian women are quite assertive and do not hesitate to criticize men. In fact in the observed mediations it was not uncommon for Mandinka and Jola mediators to conclude that the husband was at fault. In the empirical data, Jola women did advise and criticize senior disputants.
slightly more than Jola men, but the difference is not large enough to be considered
significant.

Both gender groups did this infrequently, as blaming the senior disputant occurred
in only 8% of the female and 5.7% of the male mediated cases. Given the low level of
sex-based variance, we cannot conclude that gender affected how mediators responded to
power inequalities in their judgments. There were some indications of gender variance in
the descriptive data, however, and this would be an interesting area for further
investigation.

Ethnic identity was significant. Manjago respondents did not share the perspective
that disputant status must be considered when assigning blame. Manjago mediators
overwhelmingly agreed that judgments must be fair, and this was borne out in the
empirical data with junior disputants at times being told that they were the correct ones in
a conflict. In two different panel sessions a participant said that lower-status disputants
should be told that they are guilty even if this was not so, but the other mediators
immediately challenged these individuals on this. The majority Manjago opinion was
clearly that social status differences were not relevant to judging guilt, while among the
Mandinka the majority opinion was the opposite. Across all the cases lower status parties
were more frequently judged to be guilty, but the opposite also occurred.19

19 The statements by mediators that they term less powerful disputants as guilty regardless of whether they
were in fact the faulty party returns us to the questions posed by Nader about problems of fairness in ADR
(1991, 1994, 1997, see Chapter 5). The ethnic variance in the Gambian data regarding the issue of power
suggests that there is a cultural dimension to this problem, and that dimension would be a productive area
for investigation. Also, in the empirical data mediators from all participating groups were observed
criticizing more powerful disputants at times. This does not mean that social hierarchies do not influence
mediator behavior; instead their influence is situational, rather than absolute. Though largely out of the
scope of this dissertation, issues of power and justice represent an area that deserves further attention.
The aforementioned social norms related to societal stratification contributed to the ethnic variance in dealing with status inequalities. Although all three societies have a gerontocratic social hierarchy, the Mandinka are the most stratified, while the Manjago value outspokenness and are more rebellious and individualistic. The place of the Manjago in the Gambian socio-political landscape may also encourage evaluative activity. The Manjago are the most marginal of the three groups, and in most of their settlements they do not have a strong central leader such as an Alkalo. There are nominal Alkalos in some Manjago settlements; however, they are frequently not recognized by the central government and do not wield the same kind of authority as those in Mandinka villages. Manjago Alkalos have little or no power over their constituents and do not usually try to wield any.

Many Manjago villagers are officially under Mandinka or Jola Alkalos, but they do not feel connected to them and generally do not avail themselves of their potential for dispute management. Mediation by Alkalos and their assisting elders is more likely to include the assignment of blame than mediation conducted by ordinary Mandinka and Jola. The Manjago rarely take their disputes to Alkalos, which may play a role in the high rate of evaluative behavior among them if they are compensating for the lack of the Alkalo forum by engaging in a similar type of dispute settlement. We will return to the issue of social status in the section on context.

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20 Caste, lineage, familial and ancestral ties, and a myriad of other factors also influence relative social status. The section on age includes some elaboration on this.

21 Many Manjago settlements are not recognized as official villages by the government, making any claims of their inhabitants to land very tenuous.

22 In fact, there are a number of similarities between cases mediated by Alkalos and large Manjago mediations. Both tend to be centered around group meetings and usually include testimony by all the disputing parties, discussion, evaluation of the disputants’ statements, and suggestions for what may be
Size and formality of mediations

The formality of the mediation effort also influenced whether judging occurred or not. Mediations with more participants were more formal in tone and more likely to include evaluation than those conducted by one to three mediators. The script for these larger mediations was more pronounced and defined than that for small cases mediated in more private settings. This script includes a group meeting with testimony by the parties, judging by the mediators, and ritualization.23 These activities occurred in cases with fewer mediators as well, but not as frequently. There was less expectation of conformity in smaller cases and the mediators were freer to improvise and shape the mediation according to the context and their personal preferences.

For example, when asked why she did not assign blame in a dispute as she usually did, a Manjago woman said that the case was not a true gulentuu case; it was just a small puhbancham plent. Gulentuu is a word in the Churr dialect of the Manjago language that can be translated as mediation and seems to connote larger and more formal mediation events. By saying that the mediation was not a gulentuu, the woman meant that it was not a “real mediation,” i.e., there were fewer mediators and participants, and it was very informal. Interestingly, that case followed the model more widespread among the Mandinka in that she caucused with the disputants before bringing them together for a group meeting. Other respondents did not make these kinds of distinctions, or even

done by the mediators. There are more participants in these meetings and, unlike in other meetings, the Mandinka do not necessarily expect privacy. One difference is that large Manjago mediations almost invariably included ritualization, while only 62% of the Alkalo cases did.

23 Many such cases among the Mandinka and Jola were Alkalo-level cases (thus having some semblance to a court proceeding), but the others also usually followed this pattern. As always there are exceptions, 20% of the Alkalo and Council of Elders cases did not include judging, for example, but the majority did and the activity pattern is quite pronounced.
recognize the *gulentuu – puhbancham plent* one, but the empirical data did indicate that shared conventions in regard to how mediations should be carried out are most influential in larger, more formal cases.

Clearly, there is no easy formula for determining whether or not mediators will blame one of the parties for a dispute. The above discussion should convey a sense of the complexity of mediator decision-making and of the numerous salient factors that are involved in that process. A thorough analysis that incorporates contextual factors does not mean that cultural factors must be discarded, however. Context and culture act upon each other and are inextricably linked. The data indicate that societal preferences do not exist in a vacuum and are continually mediated by the situation at hand. However, the strengths of these preferences vary, and the sampled groups tended to respond to some circumstances in a dissimilar manner. We will further illustrate this idea in the following overview of the group-level preferences that were found. The section is organized according to the societal and other variables that exhibited strong associations with how mediators settled disputes.

**Overview of Independent Variables Related to Culture**

The preceding discussion provided in-depth examples of how specific mediation activities can vary, and how that variation is often linked to certain factors. Although context was certainly relevant in the variation, the sample groups did exhibit varying patterns in their mediation activities (and in how they responded to situational factors). We will review other areas of variation here.
The significance of multiple components of cultural identities demonstrates that societal variation in mediation is relevant. Occupation, income-level, and education\textsuperscript{24} had no observable associations with mediation behavior; however, such association existed for ethnicity, religion, gender, and age-set. These relationships, which revealed different tendencies in overall orientations to mediation among the various groups, are summarized below.

**Ethnicity**

The ethnic identity of participants was significant with the three groups varying in their levels of preference for specific mediation activities. They were not totally divergent in approach as there were commonalities among the three groups. There was no significant variation among ethnic groups in terms of some common activities such as introduction, defining the agenda, and ritualization. However, there were differences that indicated that members of the three ethno-linguistic groups tended to favor divergent mediation styles. In general the Mandinka were more circumspect and conscious of face-saving than the Jola and the Manjago. The Manjago preferred a more direct and evaluative style. The Jola were the most focused on problem-solving and bargaining.

Mandinka mediators were the most careful, demonstrating the highest concern for the face of the disputants, and the most consideration for their status (this latter aspect will be discussed in the section on context). The Mandinka frequently employed an indirect style of mediation, avoiding direct confrontations between the parties. They were

\textsuperscript{24} Education is meant to refer to Western style education in government-run schools. Levels of Islamic education were associated with mediation behavior, as will be discussed in the passage on Islamicization below. Similarly, when occupation impacts Islamicization it may also be linked to mediation styles. This is only the case for a few professions, however, such as Islamic teachers (\textit{ustadhs}), leaders (\textit{Imams}), and healers or holy men (\textit{marabouts}).
the least likely to bring disputants together for face-to-face discussions, doing so in only half of the collected cases.

Mandinka mediators were also the most likely to proscribe discussions over what happened to cause the problem when the disputants were together. Disputants did not narrate their stories about the dispute in 26% of the Mandinka mediations that included group meetings, almost twice the 14% figure for Jola and the Manjago. Mandinka mediators often acted as bridges for communication, passing along messages and information between the parties in almost 50% of their cases, as compared to less than 20% for the Jola and Manjago. They also strove to appease disputants the most, making explicit attempts to do so almost 30% of the time, as compared to 4% for the Manjago and 12% for the Jola.

Hoffman’s portrayal of the Mandinka mediation in *Griots At War* is relevant here (2000). It is worth noting that the Malian case exemplifies some of the characteristics associated with the Gambian Mandinka data set. At the beginning of the meeting, the head mediator listed who was to speak and stipulated that there should be no discussion of what had passed, saying that they should simply agree to reconcile. This resembles the frequent proscription among the Mandinka of discussion of conflict events during group meetings.

One of the goals of this chapter is to demonstrate the embedded nature of mediation practices and the significance of situational and micro-level factors. However, local-level influences do not necessarily preclude the potential relevance of macro-level variables. The similarities in the mediation style between Mandinka from Mali, Guinea, and The Gambia suggest that shared cosmologies, cognitive patterns, values extend far beyond
local boundaries, as does their influence on peacemaking. While one should not equate
ethnicity and culture, ethnic identities can clearly be quite significant, especially when
backed by shared experience. We will return to Hoffman later.

The Manjago ethnic group provides a strong contrast to Mandinka preferences,
thereby further highlighting the potential significance of ethnicity. The Manjago relied
the most on direct discussions between the disputants and were the most evaluative of the
three groups. Manjago mediators were often directive, employing related tactics (such as
passing judgment, threatening sanctions, etc.) in two-thirds of the collected cases. As
shown below in Table 6-3, the Mandinka and Jola were much more facilitative.

<table>
<thead>
<tr>
<th>Ethnicity</th>
<th>Actual and Expected Counts</th>
<th>Facilitate</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mixed</td>
<td>Count</td>
<td>8</td>
<td>11</td>
</tr>
<tr>
<td></td>
<td>Expected Count</td>
<td>10.7</td>
<td>8.3</td>
</tr>
<tr>
<td>Jola</td>
<td>Count</td>
<td>15</td>
<td>18</td>
</tr>
<tr>
<td></td>
<td>Expected Count</td>
<td>18.5</td>
<td>14.5</td>
</tr>
<tr>
<td>Manjago</td>
<td>Count</td>
<td>20</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>Expected Count</td>
<td>13.5</td>
<td>10.5</td>
</tr>
<tr>
<td>Mandinka</td>
<td>Count</td>
<td>25</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td>Expected Count</td>
<td>25.3</td>
<td>19.7</td>
</tr>
</tbody>
</table>

In the table above the “1” column represents the number of cases for each ethnic
category that include facilitative activity at some point during the process. The zero
column represents the number of cases that did not include any facilitation. Note that the
Manjago count is less than half of the expected count while the Mandinka and Jola have
more cases in which the mediators employed a facilitative style than expected.

It is worth briefly putting this relationship between meta-level ethnic identity and shared norms into
context. The Mandinka are not only an imagined community; they share a long history with many common
elements in their experience. The Gambian Mandinka trace their origins back to Mali and share a similar
belief system, system of social organization, and more (see Chapter 3) with their counterparts in other
nations of West Africa. It appears that the differentiation of the Mandinka experience brought about by the
colonial project, and continued in the post-colonial era, does not eliminate the significance of the shared
historical features of Mandinka society.
The Manjago preference for directive mediation is vividly expressed in their attitude towards the assignment of blame for conflicts. They were the most evaluative of the groups, as shown below in Table 6-4.

<table>
<thead>
<tr>
<th>Ethnicity</th>
<th>Actual and Expected Counts</th>
<th>State Guilt</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Mixed</td>
<td></td>
<td>9</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td>Expected Count</td>
<td>9.3</td>
<td>9.7</td>
</tr>
<tr>
<td>Jola</td>
<td>Count</td>
<td>14</td>
<td>19</td>
</tr>
<tr>
<td></td>
<td>Expected Count</td>
<td>16.1</td>
<td>16.9</td>
</tr>
<tr>
<td>Manjago</td>
<td>Count</td>
<td>7</td>
<td>17</td>
</tr>
<tr>
<td></td>
<td>Expected Count</td>
<td>11.7</td>
<td>12.3</td>
</tr>
<tr>
<td>Mandinka</td>
<td>Count</td>
<td>29</td>
<td>16</td>
</tr>
<tr>
<td></td>
<td>Expected Count</td>
<td>21.9</td>
<td>23.1</td>
</tr>
</tbody>
</table>

The Manjago assigned blame 71% of the time as compared to 58% and 36% for the Jola and Mandinka, respectively. In the table above, and all those that follow, the numbers in the zero column represent the number of cases in which the activity (here assigning blame) did not occur. The numbers in the one column represent the number of cases for each category in which the activity did occur. As mentioned previously the total number of cases is 121. The influence of the independent variable (here ethnicity) can be seen in the discrepancies between the expected and the actual counts.

The Manjago were also the least likely to engage the disputants in the making of settlement plans, doing so in only 17% of the cases, while the Mandinka and Jola did so 55% and 44% of the time. Contrary to the other groups – especially the Mandinka – the Manjago showed little concern for matters of face and were observed judging frequently, doing their mediations in public, and rarely appeasing disputants. These differences in the empirical data matched the findings from the interview data.
As previously mentioned, Manjago mediators tended to approach their task in a direct manner and did not take pains to avoid open confrontations between disputants. Ninety-two percent of their mediations included group meetings (the figure for the Mandinka is about 50%), and they did not attempt to prevent the disputants from explaining their perspectives during them. Unlike the Mandinka, when Manjago did caucus, those discussions were usually peripheral to the overall mediation effort.

Another striking contrast between the Mandinka and the Manjago was found in the level of privacy of their mediation efforts. The Mandinka evinced great concern for secrecy, often going to great lengths to prevent others from learning about their peacemakings. Manjago meetings tended to be more open. In several observed mediations people would come and go during peacemakings, sometimes joining, interrupting, or even disturbing the proceedings. Although some interventions were done privately, Manjago did not express that this was such an important factor as the Mandinka who often stressed this.

The Manjago frequently held larger group meetings. Issues of all types were often dealt with in public in contrast to the Jola, who mainly did this with issues of public concern, and the Mandinka, who usually attempted to keep their mediations quiet. Although the Jola were not as open as the Manjago, they were also less private than the Mandinka. Several Jola mediations did take place within earshot of others. In a marital

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26 In one Manjago case, for example, an inebriated man arrived near the completion of a meeting and insisted that the mediators go back to the beginning and have the disputants explain everything all over again. He was so insistent that the meeting had to end abruptly with him protesting vigorously all the while.
caucus, for example, the mediators debated whether to go into the house, but decided to remain outside within hearing range of a woman.27

This is quite unlike the Mandinka who arranged for meetings to occur in private. The Mandinka generally openly dealt with disputes only at the Alkalo-level, and other mediators usually maintained a very low profile in their undertakings. The Manjago clearly demonstrated a stronger preference for evaluative public mediations based on group meetings, as compared to the overall more private and circumspect orientation of the Mandinka.

Scholars have contrasted therapeutic and problem-solving approaches, differentiating between mediations that deal with specific and substantive issues and those that have a more psychological or affective focus (e.g. Robarchek 1997). Although the Jola style was less pronounced than the contrasts between the Mandinka and Manjago, the Jola were the most problem-solving oriented of the three groups. The sample composition complicated the analysis, but, as shown below in Table 6-5, the empirical data were consistent with observations and descriptive data in indicating that the Jola are more oriented towards bargaining than the other groups.

As shown below, the Jola focused the most on negotiating settlement agreements. This included bargaining, compromise offers, and also problem-solving behavior of the mediators, such as soliciting and discussing disputants’ ideas for settlement proposals. It is striking that the expected count for the Jola is almost half of the actual count, while the actual counts for the Mandinka and Manjago are much lower than expected.

27 The mediator who was in favor of going inside was the most Islamicized of the four participants providing more anecdotal evidence that religious affiliation may be linked to patterned variation in mediation. We will turn to this point shortly.
Table 6-5. Negotiate by Ethnicity

<table>
<thead>
<tr>
<th>Ethnicity</th>
<th>Actual and Expected Counts</th>
<th>Negotiate</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Count</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Mixed</td>
<td></td>
<td>13</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>Expected Count</td>
<td>13.7</td>
<td>5.3</td>
</tr>
<tr>
<td>Jola</td>
<td>Count</td>
<td>16</td>
<td>17</td>
</tr>
<tr>
<td></td>
<td>Expected Count</td>
<td>23.7</td>
<td>9.3</td>
</tr>
<tr>
<td>MJ</td>
<td>Count</td>
<td>21</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>Expected Count</td>
<td>17.3</td>
<td>6.7</td>
</tr>
<tr>
<td>MK</td>
<td>Count</td>
<td>37</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>Expected Count</td>
<td>32.4</td>
<td>12.6</td>
</tr>
</tbody>
</table>

The Jola cases included the largest proportion of material cases, but their relative preference for negotiation remained constant when type of dispute was controlled for. For example, none of the four Mandinka material cases included negotiations while over half of the Jola material cases did. The Jola engaged in the most substantive negotiations in all the dispute type categories, except for the face type. The difference was not large as none of the ethnic groups did much bargaining in conflicts over issues of face. The difference was especially large (and statistically significant) for the “other” category of type of dispute. The Jola negotiated in 65% of the mediations of cases that did not fall into the three main categories of dispute type, while the figure for the Mandinka is only 17% and 14% for the Manjago. A test of statistical significance substantiated the existence of the relationship between ethnicity and negotiation at a 99.8% level of certainty.

The Jola were the least therapeutically oriented, appeasing disputants and/or focusing on forgiveness and reconciliation in 46% of the cases as compared to 75% of the Manjago and 67% of the Mandinka cases. Over a fourth of their mediations included bargaining as compared to roughly one-tenth of those of the Mandinka and Manjago. When straight-forward bargaining activity is combined with pushing for compromise and
exploring options with the disputants, the difference is even larger; the Jola did at least one of these 52% of the time, the Mandinka 18%, and the Manjago 13%.

The Jola were the most elicitive of the groups, soliciting disputant perspectives on how the case could be resolved in roughly a fourth of the cases as compared to approximately 5% of the Mandinka and Manjago cases. Jola mediators pressed for compromise settlements in more than one-third of the cases they mediated while Mandinka and Manjago did so only a little more than 10% of the time.

Although the gap was not very large, the Jola were also the least likely to push the disputants to refrain from explaining their perspective on the dispute and/or to drop their concerns and simply reconcile with their opponents. They usually did not just ask disputants to forgive, rarely invoking sabaro, a concept we will describe in the section on religion. Sabaro means forgive and its use is widespread among the Mandinka. In fact, Jola mediators asked the disputants to drop their grievances in only 3% of their cases, a relatively low number.

The Jola tended to be less focused on forgiveness and reconciliation than the other groups. In roughly a third of the Jola cases, the mediators strove only for forgiveness as compared to over half of the Mandinka and the Manjago ones. Although these relationships were not statistically significant, when taken together they do suggest a greater preference for problem-solving among the Jola.

**Possible causes of the ethnic variance**

Given the divergent pre-colonial social structures of the Mandinka and Jola one might expect that their mediation styles would be the most differentiated. Pre-colonial Mandinka society was hierarchical with kings, castes, slaves, marriage taboos, and more.
Jola social organization was much less stratified\textsuperscript{28} with *Alkalos* appearing only during the colonial era as the British imposed their model of indigenous leadership and organization upon them. In the precolonial and contemporary eras in parts of Guinea-Bissau, Manjago society has been differentiated by lineage with royal and noble families (Gable 1990). However, it is between the Mandinka and the Manjago that the most variance occurs. Examining the socio-historical landscape uncovers possible causes for this.

One such cause is that Manjago communities in southwestern Gambia are not stratified by lineage or descent. The social cleavages of Manjago society in Guinea-Bissau appear to be largely absent in The Gambia. Widespread agreement that parents and elders should be respected did exist, but differentiation based on ascribed status was not observed. In fact, local Manjago social organization appears to be less stratified than that of the Jola (who have historically been singled out by scholars as a relatively egalitarian group). Manjago in southwestern Gambia did not display the same respect for founding lineages and village headmen as Mandinka and Jola. Manjago village headmen are largely figureheads who represent their communities when it is necessary to fill that expected social role. They do not have substantial authority and decision-making powers.

\textsuperscript{28} How much less stratified is the subject of debate. Some believe that the Jola did have a blacksmith caste (but not all the other castes, such as *griots*, found among pre-colonial Mandinka), village priests, and some other stratification (e.g. Mark 1992). However, their stratification was less than the Mandinka; their polities were much smaller often consisting of a single village or small group of villages; and they tended towards a more participatory model of decision-making. For example, instead of being led by a single leader, councils of elders often played a large role in decision-making (cf. Sonko-Godwin 1994, 1997). This is consistent with their greater reliance on hunting and gathering, as opposed to the agrarian activities that formed the base of the large-scale pre-colonial states of the Mandinka. Agrarian societies have historically been associated with more stratified societies while the opposite is true for hunter-gathers.
In addition, the Manjago value assertiveness and outspokenness more than the other two groups. These qualities may account for the direct style of Manjago mediators and their emphasis on testimony and judging. This also relates to their relative indifference for hierarchies (the relationship between social inequalities and mediation is discussed in the section on context). In fact, in Guinea-Bissau they mock their king and compare their nobles to a parasitic plant (Gable 1990).

In addition, the lengthy interaction between the Mandinka and Jola and resulting cultural diffusion may account for the greater contrast. The Jola and Mandinka have a lengthy history of intensive interaction and cultural exchange and diffusion between them has been quite pronounced. The Mandinka are the largest and most prominent group in southern coastal Gambia. The Manjago, as more recent and more insular inhabitants of the area, have less exposure to Mandinka norms. Intermarriage between Jola and Mandinka is not uncommon, particularly in terms of Mandinka men marrying Jola women. However, marriages between Mandinka and Manjago are very rare.

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29 Gable describes the Manjago of Guinea-Bissau as agonistic in much of their behavior. It is worth noting that Gambian informants from other ethnic groups also viewed the Manjago as confrontational and combative.

30 There may be a material component to why the Mandinka are more focused on face and harmony and less on problem-solving than the other two groups who are more confrontational and willing to negotiate. The Mandinka have a long history as agro-pastoralists while the Jola and Manjago engage much more in hunting and gathering forest and marine products. The local agrarian mode of production is labor-intensive and farmers often rely on the help of groups of people to plow, transplant, weed, and harvest their crops. Interpersonal conflict can threaten production by limiting farmers’ access to local labor that often works for a nominal fee. The two latter groups originate from the dense forests of the Casamance region of southern Senegal and of Guinea-Bissau. Their production strategies have historically been less labor intensive, requiring less cooperation with others. Although both are increasingly engaging in farming, collected products remain a significant part of their livelihoods (cf. Madge 1990, 1994). Currently, the Manjago rely the most on collecting activities, notably of palm oil and palm wine. It is worth noting that joking kinship, a type of social linkage widespread among other Gambian groups that encourages reciprocity, conflict avoidance, and reconciliation, is not a feature of Manjago society.
The ongoing large-scale conversion of the Jola to Islam adds a major point of convergence with Mandinka values, behaviors, norms, and beliefs. The large-scale conversion of sectors of the Jola population to Islam has intensified the interaction of the two communities. In southwestern Gambia the Mandinka are seen as the leaders of the Muslim community, and converts often assume Mandinka institutions along with Islam.\(^{31}\)

**Religion**

The relationship between religious affiliation and mediation behavior is a topic that deserves further investigation. Anything stronger than a very tentative hypothesis in regard to this association is unrealistic because of several complications. Religious differences coincide with ethnic ones, making it difficult to isolate this variable.\(^{32}\) The majority of the collected non-Muslim cases involved Manjago, making the predominance of directive styles in the non-Muslim cases associated with religion as well as ethnicity. The most heuristic comparison is thus between Jola with different religious affiliations. However, cases involving non-Muslim Jola often had Muslim participants as well, and, despite valiant efforts, success in collecting a large body of cases with only non-Muslim Jola participants proved elusive.\(^{33}\)

\(^{31}\) Although some Jola informants asserted that the Mandinka have influenced the Jola more than the reverse, it would be fallacious to posit a one-way flow. The cultural exchange between these groups has affected both of them.

\(^{32}\) In general, the vast majority of Mandinka are Muslim while the Manjago are overwhelmingly non-Muslim. In terms of this study, all Mandinka participants were Muslim and all Manjago were non-Muslim. Although more Jola are Muslim than not, non-Muslim Jola do form a substantial minority. However, the majority of them in The Gambia are Caroninka who originate from an isolated island region in the deltas of northwestern Casamance. Some Caroninka reject the label “Jola” and some Gambians differentiate them from other Jola in a way that they do not for other Jola sub-groups, such as the Essilinka.

\(^{33}\) Conversion to Islam continues to take place among the non-Muslim Jola population. Formal and informal associations identified with the non-Muslim community usually contained some Muslims.
In addition, the syncretic nature of belief systems in The Gambia complicates analysis. The Abrahamic faiths have penetrated The Gambia in a very uneven manner and are undergoing continual hybridization with local beliefs and practices. “Muslims” and “Christians” vary widely in their level of adherence to these faiths and to more indigenous cosmologies. Disentangling the relationships among mediation, belief systems, and the levels of Islamicization of the identity groups is a task worthy of a study of its own. Future work by the researcher will further investigate the apparent relationship between belief systems and mediation styles.

However, there are indications in both the descriptive and empirical data that, in the Gambian context, the level of Islamicization of mediators is associated with how direct and evaluative they are. The proportion of non-Muslim Jola cases that included directive activities, 62%, is twice that of Muslim Jola cases (see Table 6-6 for the numbers of such cases in each category).

Table 6-6. Directive by Religion

<table>
<thead>
<tr>
<th>Jola cases only</th>
<th>Actual and Expected Counts</th>
<th>Directive Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Non-Muslim</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Muslim</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The discrepancy between the expected and actual counts of cases in which the mediators adopted a directive style indicates the association between religious identities and directive mediation.

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34 Our metaphor for culture – the *djinn* – is an example of a feature found in the Quran that has been syncretized with local beliefs about ancestors and spirits.

35 One aspect of this work will involve measuring the Islamicization of mediators.
Non-Muslim Jola mediators assigned blame for disputes much more than Muslims (77% versus 45%) and did not appease disputants in any of the observed cases. Muslim Jola mediators appeased disputants in 20% of the observed cases suggesting that the statements of two key informants that Muslims are more careful of the feelings of disputants are accurate. The fact that all 13 of the non-Muslim cases included group meetings supported the assertions of non-Muslim respondents that they rarely used caucuses.

In addition, all the non-Muslim and less-Islamicized data sets had higher rates of confrontational and evaluative activity than Muslim or more-Islamicized sets. We have already noted how the Mandinka (Muslims) are more circumspect mediators than the Manjago (non-Muslims). In addition, portions of the Muslim population with less formal religious education (women and Jola) tended to be more directive than more educated Muslims (men and Mandinka). Within the Jola Muslim population, for example, women were generally less Islamicized than the Jola men, and, as discussed in the gender analysis section, the Jola women were more evaluative than the Jola men.

The Mandinka use of Muslim constructs in their non-confrontational approach illustrates how they are more Islamicized than the Jola. As previously discussed, the Muslim Mandinka use the Islamic concept of saytano to diffuse guilt and avoid assigning blame. They also used another term derived from Arabic, sabaro, to encourage disputants to forgive and reconcile, often without confronting each other to work out their differences.

“Sabaro” – a word derived from the Arabic “sabarr” meaning patience – is a concept that is frequently invoked during mediations. As with much of Islam, the term
“sabarr” has been reinterpreted in the Gambian context with the local meaning connoting forbearance and forgiveness. The Mandinka marabout Landing (discussed in the section below on individual mediators) was fond of bolstering the persuasive power of his appeals for reconciliation by quoting Arabic proverbs such as “Inna Allah ma es-sabarrīn” ("God is with the patient/forgiving ones"), and “Es-sabr miftahul farajj” ("patience or forbearance is the key to success").

In general, mediators invoked the sabaro concept to promote reconciliation. When mediators said “sabari” they were trying to get disputants to calm down and forgive. They used sabaro as a tool for minimizing evaluative activity and bargaining in order to focus on reconciliation.

Mandinka – the most Islamicized group – frequently invoked the sabaro construct in their mediations. Their utilization of sabaro was a further example of the propensity for more Islamicized groups to limit potentially embarrassing scenarios and preserve the face of participants. Jola and Manjago mediators rarely mentioned sabaro or saytano and were more willing to engage in negotiations, evaluation, and detailed discussions of problems. Forgiving and maintaining the status quo rather than dealing with grievances can favor more powerful parties and disadvantage the weaker ones. The Mandinka use of sabaro and preference for forgiving is another example of how Islam in The Gambia contributes to the reification and reinforcement of social status hierarchies.

Another potential linkage between religion and mediation styles is discussed in the section on the mediation styles of individuals. The young male mediators described in that section are all well-educated Muslims. They were less directive than other Muslim mediators who had not studied Islam, or who had studied it to a much lesser extent.
The emic qualitative analysis also produced results that converged with the findings from the comparisons of the empirical data. For example, a Muslim Jola respondent gave a particularly lucid explanation of why non-Muslims may be more evaluative than Muslims, pinpointing religious differences as the cause. Gambians see assigning blame in a dispute as “telling the truth.” Multiple respondents asserted that in Islam it is not necessary to tell the truth if duplicity will serve the greater good.\(^{36}\)

In one rather unique mediation effort, a young Jola man who was well-educated in Islam mediated between two friends who had terminated their relationship because of a serious argument. The young man conducted the mediation entirely through caucuses and his technique resembled the circumspect style used by Mandinka. He met with each of them, listened to their account of the events, reviewed their history of positive interaction, and told them that he had met with the other disputant already. He stated that the other disputant felt badly about the dispute and wanted to reconcile but had been shy about making the first move. He told each disputant that the other had expressed a desire to just move past the dispute and to get together and drink *attaya* (green tea that friends like to make and drink when they get together). The disputants had actually not told him that, but the tactic worked, and both disputants agreed to just forget about the conflict. The disputants met on their own, drank *attaya*, and were reconciled without ever discussing the particulars of what happened or apologizing to each other. In an analytical interview this mediator acknowledged that his approach in this case was unusual for the Jola, and he attributed it to his devout belief in Islam.

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\(^{36}\)Gambians describe this saying as a *hadith* or saying of the Prophet Mohammed (PBUH). According to Middle Eastern scholars, this *hadith* refers only to exceptional situations, specifically in cases of war when a leader is killed or severely injured, for example (Dr. Aida Bamia personal communication 12/5/03).
Marital mediations also illustrate how shared religious customs can affect the mediation process. The length and scope of marital mediations is influenced by marriage institutions and ceremonies. The Mandinka, Manjago, and Jola share many ideas about how courtship, marriage, and divorce should proceed, but there are differences related to cultural practices and religious affiliation and these have a bearing on what must be done in order to reconcile feuding spouses. Mandinka and Islamic practices have become thoroughly intertwined, blurring the boundaries between the two domains, but the procedures below are considered by locals to be Muslim ones.

The marital mediations of the Mandinka are often more elaborate than those of the Manjago residing in Kombo South, for example, because there are more structural considerations in marital negotiations among Muslims than non-Muslims. For example, new Mandinka brides are given marriage fathers or guardians (the *jahtteoo* or *wuleeyoo*) whom the wife is to consult in case she has any problems. That person and/or the one who acted as the husband’s intermediary (the *silah tiiyoo*) is often consulted and/or incorporated into the mediation effort in some way.

Many aspects of Mandinka divorce procedures are derived from Islam. A husband who divorces his wife is expected to follow certain procedures. These can include such actions as returning the *nunkungo* (a very small symbolic payment for the bride) to the wife or her family and writing (or having someone write) a divorce letter. Mandinka mediators often must address these matters during a marriage mediation, extending the information gathering and negotiation components of the mediation. There is also a three-month waiting period (the *aydo*) before divorces become official, giving mediators a window of time in which to work. If the three-month period passes, or the divorce is
judged to have officially taken effect for other reasons, then custom dictates that there be a “re-tying” of the marriage. This entails making another (though usually much smaller than the original) payment of money, gifts, and kola nuts and carrying out the formal marriage ceremony at the Imam’s compound, or the mosque, again.

Among the non-Muslim Manjago in Kombo South, divorces are less procedurally elaborate. Divorce is generally only a matter of the wife going back to her parents’ house. Bride-price is not as widespread an obligation among the Manjago as it is for the Mandinka, and it is not refundable. Divorces therefore do not result in the return of the bride-price as they do among Muslims. Remarriages do not usually require any ceremony other than perhaps the purchase of some alcohol for the wife’s family. Manjago mediators therefore have fewer issues to negotiate, and their mediations tend to be shorter and more straightforward, dealing more with the spouses’ grievances than the various marriage and divorce customs and procedures.

As the influence of Islam among the Jola continues to grow, they are adopting many aspects of the Mandinka-Muslim marriage process, and these are being incorporated into mediation. Islam is not as thoroughly institutionalized among the Jola as the Mandinka, but they are increasingly following Mandinka marriage and divorce customs. Muslim Jola now commonly pay the nunkungo, have marriage ceremonies performed at the mosque, and so forth.

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37 In the past Manjago men would plow their prospective bride’s fields and provide them with other labor. Currently, there is a very widespread obligation to send alcohol to the paternal uncle of the bride and some Manjago also do charge a bride-price, but they tend to be lower than those charged by Mandinka or Jola.

38 Jola customs call for the wife to go immediately to her husband’s compound after marrying rather than remaining at her parents’ compound until the manyo bito ceremony has been performed as among the Mandinka. Jola brides also dance on the second day of their wedding ceremony. These customs are still in practice among most of the Jola in Kombo South and will likely continue for at least the foreseeable future, despite the spread of Mandinka practices.
Some mediation activities were not related to religious identities. For example, the incidences of setting the stage and ritualization were basically the same in the Muslim and non-Muslim Jola cases, as illustrated below in Table 6-7.³⁹

<table>
<thead>
<tr>
<th>Jola cases only</th>
<th>Actual and Expected Counts</th>
<th>Ritual</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Religion</td>
<td>Non-Muslim</td>
<td>5</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>Expected Count</td>
<td>4.7</td>
<td>8.3</td>
</tr>
<tr>
<td>Muslim</td>
<td>Count</td>
<td>7</td>
<td>13</td>
</tr>
<tr>
<td></td>
<td>Expected Count</td>
<td>7.3</td>
<td>12.7</td>
</tr>
</tbody>
</table>

Note how the actual and expected counts are almost identical indicating the lack of association between religious identities and ritualization of agreements.

There were many indicators that belief systems were salient and these came from a variety of sources including all the different (emic, etic, participatory, qualitative, and quantitative) analyses. Religious identities do correlate with local conflict styles. Despite the syncretic nature of religion, belief systems are a factor in Gambian orientations to mediation.

**Gender**

Gender was another influence in the shaping of mediator behavior. This conclusion is based both on the descriptive and empirical data. However, the female empirical data-

³⁹ There is some religious-based variation in how the groups carry out the same activities, but this is a matter of style rather than substance. For example, various groups had different expressions of the activity of ritualization. Older Mandinka and Jola usually prayed after concluding a successful peacemaking while younger Mandinka and Jola rarely prayed together but did sometimes shake hands and/or share food or tea. The Manjago and, to a lesser extent, non-Muslim Jola almost invariably ritualized by drinking alcohol, commonly purchased by the disputant judged to be guilty or by the lower status disputant. Palm wine is the idealized drink for such an occasion, but in practice cashew wine, sum-sum (a locally produced hard liquor), or even brandy or gin, are also used. Some of the wine is poured on the ground before drinking as an offering to the ancestors. This was very common among Manjago, observed in all but the most informal mediations, but was less frequent among the surveyed non-Muslim Jola and Caroninka who generally used alcohol only in more formal mediations. In general, ritualization was fairly constant across the religious and ethnic groups, offering an example of an activity that cut across those identity groups, one that, incidentally, is also found in much of the ethnographic literature.
set is quite small. Men were much more prolific mediators than women. Younger women usually mediated only among themselves, while some of the collected cases involved men intervening between women. In rare cases elderly women did mediate between men, or more commonly between men and women, but they usually did this in conjunction with male mediators. Exclusively female mediations were collected primarily among the Jola, limiting the discussion here mainly to that ethnic group.

The most obvious relationship was between gender and directive activities. Female mediators were more likely to employ direct and evaluative approaches to mediation than men. Both men and women stated that women preferred to confront problems head-on and deal with them in a straightforward fashion. As we noted earlier, women contrasted their approach to that of men who “do not want to tell the truth,” who worry about offending people, and who favor their friends.

The empirical data support the statements of participants, indicating that female mediators are more likely than male mediators to advise the parties, judge cases and assign blame, and seek to impose their own plans on the disputants. For example, women advised the parties in over three-fourths of their cases as compared to over half of the male ones. They assigned blame in 100% of their mediations as compared to 48% among the men. The relationship between gender and stating guilt is shown in Table 6-8.

40 The most prolific female mediator in this study was Aminata, a Manjago. We will discuss her in the section on individual mediators. She is a Manjago and the fact that she frequently mediated all kinds of cases, regardless of the gender of the participants, is a further illustration of the less stratified nature of Manjago society discussed elsewhere.

41 As with other patterns, this was not universal, but does represent a trend in the data. As described below in the section on individual level analysis, an elderly Jola mediator from Berending, Binta, was quite facilitative in her style. Her more elicitive approach seemed to be linked to her easy-going and thoughtful personality. Elderly Mandinka males (such as Ibrahim who will also be described below) were also frequently directive and judgmental. However, even when age is controlled for, men were more likely than
Table 6-8. State Guilt by Gender

<table>
<thead>
<tr>
<th>Gender</th>
<th>Male cases</th>
<th>Female cases</th>
<th>Mixed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Count</td>
<td>11</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Expected Count</td>
<td>8.9</td>
<td>2.5</td>
<td>2.5</td>
</tr>
<tr>
<td>Total</td>
<td>21</td>
<td>6</td>
<td>6</td>
</tr>
</tbody>
</table>

This trend from the Jola may be applicable to the other ethnic groups as well. In interviews and panels more Mandinka women than men described mediating without disputant testimonies (a directive technique) as a method that they had used and considered valid. Manjago women were unanimous in their assertions regarding the necessity of “fair” judging based only on the specifics of the case. The two Manjago respondents who suggested in panels that one should take power hierarchies into consideration when assigning blame were male, but their fellow male Manjago disagreed strongly, and as all Manjago respondents emphasized directive and evaluative techniques the difference was not great.

Based on the data at hand, it is hypothesized here that gender is a significant variable in Gambian mediations. Both the inductive and deductive analyses suggest this, with the relationship between evaluative activity and gender being particularly stark. However, due to the difficulties of gender analysis in stratified societies, the findings here

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42 In Chapter 2 we mentioned that some scholars in the U.S. assert that female mediators are more oriented towards facilitative approaches and are less confrontational than men (Picard 2000; Stempel 2002; Weingarten and Douvan 1985). The Gambian data suggest an opposite trend indicating that, if accurate, the gender effect described in the literature may be particular to the socio-cultural context of the West. That would provide further evidence of how socialization affects mediator behavior. Including cross-cultural considerations would enhance the burgeoning field of gender analysis in ADR. See Tables 5-20 through 5-23, and the section on assigning blame in this chapter, for more discussion of the gender variance in the Gambian data.
should be explored further. It is strongly suggested that researchers interested in further analysis along these lines include principal investigators from both gender groups.

Age

Age-sets are a prominent historical and contemporary feature of social organization, playing a major role in associational life and the social structure (cf. Sonko-Godwin 1994, 1997). Two areas of difference were observed in mediations by elders and by younger mediators. Mediations conducted by older mediators tended to be more formal and more directive than those conducted by younger persons.

Elders were more likely than youths to strike a formal tone in their mediation efforts. For example, youths were less likely to engage in ritualization of agreements than the elderly. Mediations conducted by younger mediators in which the disputants were youths tended to be less formal than that of elders, being more likely to consist of such gestures as shaking hands and sharing food than prayer or sharing alcohol. Similarly, elderly Mandinka sometimes included prayer in their setting the stage activities, while younger mediators were more likely to joke with the disputants and try to establish their right to mediate. However, these differences were stylistic and did not impact the answer to the research question.

A more significant area of variance concerned the occurrence of direct and evaluative mediation activities. Older mediators tended to approach mediations in a more direct and evaluative manner than younger ones. Elders were less likely to engage in the indirect mediation style in which the mediators shuttle back and forth between disputants.

As noted in Chapter 4, the data were stratified and compared according to multiple age categories. However, during the analysis process it became clear that condensing the age categories into elder and non-elder was the most appropriate approach. This judgment was made only after the empirical analysis paralleled the statements of project participants who suggested this dichotomization of age groups.
acting as conduits for information and negotiation. Eighty-three percent of the cases mediated by elders included group meetings as compared to just over 50% of those by younger mediators. Elders acted as conduits for information and/or negotiation only 18% of the time, while the figure for younger mediators is almost 50%. The relationship between age and indirect mediation is show in the discrepancies between the expected and actual counts shown below in Table 6-9.

Table 6-9. Caucusing by Age

<table>
<thead>
<tr>
<th>Age</th>
<th>All ethnic groups</th>
<th>Actual and Expected Counts</th>
<th>Caucusing</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Count</td>
<td>21</td>
<td>9</td>
<td>30</td>
</tr>
<tr>
<td>mixed</td>
<td>Expected Count</td>
<td>20.1</td>
<td>9.9</td>
<td>30.0</td>
</tr>
<tr>
<td>elder</td>
<td>Count</td>
<td>33</td>
<td>7</td>
<td>40</td>
</tr>
<tr>
<td></td>
<td>Expected Count</td>
<td>26.8</td>
<td>13.2</td>
<td>40.0</td>
</tr>
<tr>
<td>youth, young, middle</td>
<td>Count</td>
<td>27</td>
<td>24</td>
<td>51</td>
</tr>
<tr>
<td></td>
<td>Expected Count</td>
<td>34.1</td>
<td>16.9</td>
<td>51.0</td>
</tr>
</tbody>
</table>

Elders were also more likely to judge the disputants, tell them what to do, instruct them not to go into their narratives, and so forth. They were almost twice as likely as younger mediators to employ one of the directive activities – such as assigning blame and threatening sanctions – doing so in well over half of the mediations they conducted. Elders tended to be less concerned with trying to encourage compromise decisions than younger mediators (15% rather than nearly twice that). They took the very directive action of telling the disputants to just give up their grievances and reconcile in 20% of their cases (five times as much as younger mediators). They asked disputants to avoid testimony and/or simply drop their grievances in approximately a third of the cases they handled, roughly ten times as frequently as younger mediators.

Younger mediators were almost twice as likely to attempt to appease disputants. Cases mediated by younger Gambians were more often elicitive. Some facilitative
activity occurred in over half of the younger mediators’ cases, as compared to slightly over a third of those handled by elders.

As mentioned, all three ethnic groups can be described as gerontocracies. Elders have high status and are seen as authorities who are expected to guide the younger members of society. It is more appropriate for elders to be controlling in mediation, ordering disputants not to explain what happened, judging the disputants, and telling the disputants what they should do rather than eliciting their suggestions.

In addition, among the Muslims who participated in this project, the younger mediators tended to be better educated in Islam than elderly ones. If, as hypothesized, Islamicization is related to evaluative mediation styles in The Gambia, the overall lower level of Islamic education of participating elders may also have contributed to their preference for directive styles. The influence of mediator age is discussed further in the section on individual level variation.

Context

Population characteristics are associated with variation in mediation indicating that socio-cultural perspectives are a significant variable. Contextual factors were also

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44 The modern state and Western education have contributed to the development of other nodes of influence and status in Gambian society. The current President, Al-Hajji Yahya Jammeh, is a young man, a fact that has occasioned considerable comment in the country. Educated younger men, and increasingly women, now hold most of the positions of power in the formal state apparatus. In rural areas the government has mandated the formation of village development committees who are supposed to be in charge of some local projects. These committees are usually composed of younger, more educated villagers. Despite these ongoing changes, respect for elders is still very strong and younger people cannot easily challenge them. The tensions between the different sectors of society were exemplified by the difficulties of a young local official, who, in describing the troubles he had with older constituents, exclaimed, “Although I am a young man they must listen to me!”

45 Expectations for behavior and attitude vary strongly by age-set in The Gambia. Most young people anticipate becoming like their elders when they reach that stage of life. Youths commonly asserted that they would change their ways and adopt behavioral patterns associated with elders when they are older. Their assertions were bolstered by anecdotal data and life histories collected during the ethnographic stage of the project. The variation by age-set may therefore reflect differences in social roles and expectations, and perhaps in religious education, as well as ongoing processes of generational and other social change.
significant, however. The factors that can affect mediator decision-making in The Gambia are too lengthy to list, and this study does not pretend to comprehensively cover them all. Taking a moment to review how context can impact mediation is warranted, however. Situational factors do shape mediator behavior, and in order to accurately identify the impact of culture it is necessary to control for these variables.

Many situational variables have already been mentioned in this chapter. We will further explore two particularly significant factors – type of dispute and the exact constellation of social ties between the participants in a mediation – in this section to illustrate how mediators respond to contextual factors. The social status variable will also exemplify how these responses are in turn linked to the shared values that inform mediator decision-making.

**Type of Dispute**

Type of dispute is an influential contextual variable. The Gambian data were divided into categories representing types of conflicts that were frequently mediated, and variance was found among three of these, namely questions of face or honor, material issues, and marital problems. Mediators tended to respond to these disputes in somewhat different ways.

As previously mentioned, the sort of conflict in question had implications for how mediations were structured. Caucuses were most frequent in marital cases and least common in material cases, and the opposite was true in terms of group meetings. Face disputes occupied a middle ground between these two poles with both caucuses and group meetings occurring in over two-thirds of the cases.

The intersection of religion and marital disputes has been mentioned as one locus of variation in mediation. Across all the ethnic and religious groups, marital mediations
typically involved more elaborate consultations than other disputes. In The Gambia, as elsewhere in Africa, marriage is often considered an alliance and tie between families, rather than between two individuals alone. Thus, Gambians are apt to identify multiple stakeholders in martial disputes. In such cases mediators frequently met with the agnatic relatives of the spouses. Muslim mediators sometimes also included various individuals who may have been involved in the marriage in their efforts, such as the mediator for the marriage arrangement (*sila teeyo*) and the marriage father of the bride (*jahteeoo*).

Another notable link was between the type of case in question and whether mediators helped the disputants negotiate. Problem-solving and bargaining took place most frequently in mediations over material issues. Fifty-three percent of mediations over material goods, 40% of marital, and 8% of face mediations included bargaining.

However, mediator identities impacted responses to situational variables. Roughly half of the seventeen material cases were mediated by Jola who were relatively inclined toward negotiation. The four material cases mediated by Mandinka, on the other hand, did not include any negotiation. There is a complex interrelationship between context and culture with the two impacting strongly on each other.

The type of conflict was also associated with whether the mediators attempted to bypass discussion of the issues or to bring about reconciliation without bargaining. The frequency of mediators urging disputants not to present their narratives, and/or to simply drop their demands and reconcile without negotiating a compromise, was highest in marital cases. That occurred in roughly one-third of the marital cases, as compared to 11% of face disputes and 18% of the material cases.
The fact that mediators were more likely to urge disputants to forgive in marital disputes than in other cases points us to another contextual variable. Activities such as bargaining and simply forgiving and reconciling are linked with social status. In The Gambia bargaining is less likely to occur in situations of power imbalances, such as those inherently present in Gambian marital mediations.

**Relative Social Status and Power**

As emphasized throughout this discussion, the highly relational nature of Gambian cosmologies and cognitive processes contributes to the situational dynamism of mediation praxis. Gambian identities are multi-faceted and dynamic and are shaped by the social interactional context at hand. Aspects of Gambian identities are brought out and emphasized based on whom individuals interact with – their ethnicity, religious affiliation, lineage, region of origin, etc. The multiplex relations between the disputants, and between the disputants and the mediators, are factors that mediators considered in their interventions.

Two young male Mandinka key informants were particularly explicit in their explanations of how they took this into account when planning and carrying out mediations. When working with relatively high status disputants or individuals with whom they had an important tie, they were more cautious and careful than usual. In such cases they emphasized setting the stage, appeasing the disputants, and they engaged in more elicitive activities than usual. One of the reasons why older mediators tended to be more assertive is that their relatively high status reduces their apprehension of offending people by intervening in their disputes.

When there are significant power imbalances between the disputants, mediators are likely to be more evaluative and directive. In the discussion on judging it was noted that
mediators are more likely to assign blame when one party is senior to the other.
Mediators are also more likely to urge the lower status disputant to forgive, drop their
demands, and be patient.

For example, parents are of much higher status than their children. The relationship
of this hierarchy to disputing is expressed by a Mandinka saying, “Dingoo mu sisay
keeloo le ti, wurulaa mu beroo le ti, na takitalaa tana,” meaning “A child is like an egg
and his/her parents or elders are like stones. If they hit each other, then it will be a
problem for the child.” Children who are in conflict with their parents or elders can
expect to be afflicted with spiritual misfortune and are viewed with disapproval by the
community.

In a Mandinka case between a father and a daughter, for example, the asymmetric
power relations between the disputants meant that one disputant, the father, was able to
speak and act relatively freely. He was able to fully explain his views about what
happened and be very assertive in the plan-making process. The daughter was of much
lower status than the mediator and her opposing party, and that made it difficult for her to
withdraw from the mediation or to raise serious objections. The father spoke a lot during
a caucus prior to the group meeting and during the group meeting itself. The daughter
never provided her full perspective on the dispute and reluctantly agreed to the
mediator’s insistence that she move back in with her family. The mediator was directive
with her father as well, but she was a much less active participant in the process than her
father.

Issues of power imbalance were common in marital disputes, as these societies are
patriarchal with wives being viewed as subservient to their husbands. Mediators
frequently told the less powerful partner, i.e. the wife, such things as she should be patient and forbearing and should try to bear with the difficulties of the marriage for the sake of her children. Disputants soliciting forgiveness from the opposing party took place the most during marital mediations, occurring in roughly two-thirds of them as compared to approximately one-third of the material cases. Wives were often encouraged to ask their husbands for forgiveness, even if the wife was not judged to be at fault. This is one way that mediators incorporate local cosmologies into their strategies.

As with all aspects of the process, the specific characteristics of the case were of paramount importance. For example, one mediation occurred after a Mandinka husband had rejected his wife for the third time and then changed his mind. By nominally divorcing her three times, alienating her family, and making it clear to all concerned that he was at fault, he weakened his position. In that case the wife made repeated and specific demands that the mediators took very seriously and the husband carried them out.

When wives returned to their family compounds the power balance between the spouses shifted. Husbands are supposed to maintain great respect for their bitang or in-laws. When a wife returns to her family, then mediators must usually negotiate with the family in addition to, or instead of, the woman herself. A wife’s position is much stronger when her family represents her. This holds true across the ethnic groups, but the varied levels of stratification among the ethnic groups did appear to impact how members of the different groups mediated when the disputants were of unequal status.

The fact that mediators were more likely to urge less powerful parties to forgive again raises questions of fairness and justice. Although critical perspectives on mediation can be disappointingly one-dimensional (e.g. Nader’s controlling process thesis), the problem of power differentials should concern those of us in ADR.
Ethnicity, social status, and power

The influence of the power variable was mediated by the stratification and related social norms of the different ethnic groups. While Mandinka mediators were quite concerned with power issues, the Manjago were much less so. Manjago society is not egalitarian by any means, status differentials based on factors such as age and gender do exist. However, Manjago hierarchies are much less pronounced and the behavioral constraints on lower-status individuals are much less than among the Mandinka.

For example, a Manjago mediation in which two young men came to mediate between the parents of one of their wives exemplifies the more casual Manjago approach to social hierarchies. The young men asked the spouses to explain what happened, saying that they would then advise them. They also said, “Although we are your children, now we see that we are your elders because now you and your wife have become children (because of the dispute).” Such a scenario is almost impossible to imagine among the Mandinka whose social structure is more elaborate and rigid. Young Mandinka would not usually attempt to mediate between older people, much less their *bitang* or the family of one’s wife for whom one is supposed to maintain maximum respect.

During the early stages of the project, it was quite surprising when Manjago disputants openly challenged and criticized their seniors, such as parents and elders. Personal experience with the Mandinka and Jola made roles such as the resigned wife, the dutiful son, and the repentant and shy young person, very familiar. Manjago scripts can be quite different, and the Manjago were more assertive and less concerned with status and power imbalances.

The relatively low regard for social hierarchies among the Manjago is consistent with their ethos of being outspoken and engaging in a lot of questioning and sharp debate.
According to Gable, in Guinea-Bissau the Manjago have a “certain paranoia about power” (1990: 237). Although elders are higher status and have more authority than youths, the Manjago exhibited a certain resentment of authority and did not hesitate to challenge established hierarchies. Manjago mediators tended to be directive and evaluative in general with less of a link between that approach and social status.

**Religion, stratification, and power**

The unequal distribution of confessional affiliation among the population contributed to the ethnic variance in responses to situations of status inequalities. Islamicization was associated with variance in how the groups responded to social inequalities. Consider, for example, the aforementioned use by Mandinka mediators of Islamic constructs (*saytan* and *sabaro*) as tools for avoiding the assignment of blame and promoting forgiveness. Forgiving and maintaining the status quo rather than dealing with grievances can favor more powerful parties and disadvantage the weaker ones. This is one way in which local interpretations of Islam can be used to reinforce social hierarchies, such as age and gender inequality.

Marital mediations offer a striking example of the intersection of religious systems, status inequalities, and mediation practice. Muslim mediators sometimes invoked Islam, the Quran, and/or sayings of the Prophet (PBUH) when urging wives to reconcile with their husbands despite their differences. For example, in caucuses with wives Muslim mediators often cited the belief that it is through being a good spouse that a woman is able to enter paradise after death as a reason why wives should practice forbearance. This was most common among the Mandinka. Some Muslim Jola mediators did this as well,

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47 Gable (1990) also describes the Manjago as “agonistic” and argumentative.
but Islam has not penetrated Jola society to the same degree and Jola mediators used such arguments much less frequently. When they did invoke Islam as a reason why wives should be willing to forgive their husbands, it seemed to carry much less persuasive force with the Jola wives.

The empirical data reinforced qualitative observations of religious groups varying in their approach to marital cases. For example, none of the non-Muslim mediators asked the spouses to simply drop their grievances, while Muslims did so in 16% of the marital cases in which they intervened. Muslim mediators appeased husbands in 40% of the cases, while non-Muslims did not do so at all.

Gender (and other) inequalities certainly also exist among non-Muslims and the Manjago and Jola, but the gender role in those groups appears somewhat less rigid, and such women tend to be somewhat more assertive and empowered. According to informants, wife-beating is much less common among the Jola than among the Mandinka and other groups with lengthier and more intensive histories of Islamicization, such as the Fula. In fact, according to anecdotal data, the reverse phenomenon of wives beating their husbands is not unknown in non-Muslim Jola and Manjago households (particularly when the husbands are very drunk). No such reports emerged from the Muslim community.

In general, Manjago and Jola couples appeared to be more informal in their relations, often joking with each other, for example. As one wife said, “In our Manjago way if you do not joke with your husband it is not marriage.” In another of many examples of the relationship between Islam and more constrained gender roles, non-Muslim women are able to move about more freely without angering their husbands and
risking social opprobrium as might happen for Muslim women. Mandinka and other Muslim husbands sometimes travel for days without informing their wives before leaving.

In mediations, non-Muslim women were less frequently judged as faulty than Muslim women in marital disputes. Several Manjago marital mediations contained a unique feature, the mediators telling husbands that their wives are not servants, but are human beings who deserve respect and consideration. In comparison Mandinka mediators were less likely to focus on how wives should be respected and more likely to emphasize that husbands should respect the trust and hope that the wife’s parents had for them. They often urged husbands to consider the family who gave their daughter to them as a wife.

The hypothesized differences in ethnic and religious stratification, social roles, and empowerment should be seen as relative, rather than as polar opposites. The Manjago do not have a completely egalitarian society. Non-Muslim women are not fully liberated women enjoying equal status with men. However, although Manjago society is stratified, their social organization does appear to be much less hierarchical than that of the Mandinka. Similarly, non-Muslim (and less-Islamicized) women seem to face fewer constraints than Muslim (and more-Islamicized) women.

The nexus of religious and ethnic differences assists in the illustration of societal variance, but makes it difficult to isolate specific causes. However, the finding that members of different groups have varied mediation preferences is significant in itself. The fact that mediator behavior is dynamic and that situational factors interact with these preferences should not obfuscate recognition of group-level preferences. Comparing the
styles or tendencies of individual mediators demonstrates how factors beyond group identities also influence praxis.

**Individual Level Analysis**

In Chapter 2, we noted that some anthropologists argue that cultural analysis should focus on the individual, rather than the group level (e.g. Avruch 1998, Handwerker 2002). A number of other theorists have also discussed variation in mediator styles or strategies (e.g. Silbey and Merry 1986; Kressel et al. 1994; Riskin 1996, 2003). These scholars hypothesized that, although individuals may employ varying styles in different contexts, they do tend to have a particular style to which they generally adhere.

This study incorporated this level of investigation by examining individual level patterns and variation in mediation. In The Gambia, as elsewhere, culture is transmitted on the group level, but is constructed within individual cognitive frameworks. Personality type and character traits are influenced by a myriad of factors, including both structural and highly specific ones. Scholars, most notably Ruth Benedict, have suggested that cultural systems mold the personalities of their members (1934). This appeared to be somewhat valid amongst the three ethnic groups surveyed in The Gambia. However, micro-level factors are also significant variables to the extent that a single dramatic event (such as a great trauma) may also shape a personality.48 Age, clan affiliation, ethnicity, social status, religion, gender, village and regional ties of origin and residence, and particular experiences are some of the multifarious components of Gambian identities.

Analyzing mediation styles of individual Gambian mediators revealed that the assertions put forth by Kressel et al. and Riskin regarding American mediators are

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48 Consider, for example, the case of a rape victim who becomes fearful, withdrawn, and mistrustful after being victimized.
applicable to other contexts as well. Gambian mediators did exhibit personal preferences in mediation. Similarities attributable to shared aspects of socialization, status, and experience were found. The personality and character of mediators also influenced their mediation preferences.

Thirty-five cases were collected from three individuals who shared many attributes and characteristics. They were all young married Mandinka males of the same age-set (fundingke in Mandinka). They lived in neighboring villages and had reputations for being honest and having religious credentials as good Muslims. They all had a relatively robust Islamic education and had at some point worked as Quranic scholars teaching children about Islam. They were all viewed as good, hard-working men from respected families who provided labor for village and clan projects and were in good standing in the community. These men tended to mediate in a similar manner, particularly the two who were from the same clan who shared very similar upbringings, experiences, and social standing.

At approximately 40 years of age, Sankung was the oldest of the three, a marabou and the younger brother of the Imam. He often acted as the Imam’s emissary and spokesman, and was considered a herbalist as well as a marabou. Patient, calm, honest, and gentle, Sankung was frequently sought after by people having problems, and he was an active mediator.

Landing, in his late thirties, was a more distant relative of the Imam’s household. Having grown up in the same extended family or clan and having being raised by many of the same people, his background, education, and social milieu were nearly identical to those of Sankung. Due in large part to the commonalities in their experience and
socialization, they had a similar habitus,\textsuperscript{49} and others expected them to behave in a like manner. Landing was a little less patient and mild than Sankung, but they were very similar and in fact collaborated together on many projects, sometimes including mediation. Many people sought out Landing in order to receive his help as a marabou.

Buba, in his mid-thirties, was the youngest of the three. He was a junior member of the founding lineage of his village. Like the other two, he was calm and kindly and was known as a devout Muslim. He was not a marabou or healer, but he had studied the Quran and worked as an ustadh or Quranic teacher for several years in Guinea-Bissau. He lived with his parents who were popular mediators, and he often assisted in their efforts. He also intervened on his own in cases concerning younger people.

All three were prolific mediators that people approached when they were engaged in conflicts. The most common scenario was for a wife of an acquaintance or friend to come to one of these men and solicit his help with marital problems. They also sometimes intervened in disputes on their own accord when they heard about situations that they felt they could intervene in. Although there were commonalities in their praxis some differences can be identified, and these help illustrate the variance in mediation that occurs at the micro-level.

As might be expected, Sankung and Landing – the closest of the three in terms of age, social standing, occupation, and socialization – exhibited the most similarities in mediation style. Before beginning a mediation, they both usually thought about how to approach the problem, especially in terms of how to initiate discussion with parties that they had not yet caucused with. They sometimes mulled it over for several days, planning

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\textsuperscript{49} The habitus concept is derived from the work of the noted sociologist Pierre Bourdieu.
their strategy. Among the factors they said they considered were whether the disputants knew that they were aware of any or all aspects of the dispute, the nature of their relationship to the disputants, how angry the disputants were, and how sensitive the topic was. They also worried about where to meet the disputants. How to begin the mediation was of particular significance, in particular how to first broach the topic and explain their knowledge of the situation. Buba seemed somewhat less deliberative in his approach, needing less time to plot out his strategy in advance.

The two marabous were often concerned about meeting all of the different stakeholders. This was especially true for Sankung, but Landing shared this trait. In marital mediations, for example, they almost always met with other household members and/or agnatic relatives of the spouses. In one case Sankung caucused with different stakeholders 18 times and Landing did so 12 times in a single peacemaking. Again Buba did not engage as much in this kind of behavior, focusing his efforts more on the immediate disputants, rather than extensive discussions with their relatives or other possible stakeholders.

All three tended to go into lengthy introductory speeches setting the stage for the mediation effort and emphasizing their right, and even obligation, to intervene. How directive they were appeared to depend heavily on the characteristics and relative standing of the disputants. The nature of their relationship to the disputants and the disputants’ personalities influenced how explicit and emphatic the mediators could be in advising the disputants, suggesting courses of action, and pressuring them to settle. If they were of higher status than the disputants and did not owe them special respect, then they tended to be more directive in their efforts. They were also less directive with
disputants whom they knew to be stubborn, demonstrating the relevance of participant personality and the situational nature of mediation.

Their mediation activities also varied in relation to their own social status, indicating how this factor shapes mediators’ approaches. Sankung and Landing advised and counseled the disputants in 40% and 36% of the cases they were involved in and Buba in 24%. These numbers reflect the nexus between the relative status of the mediator and how directive and evaluative they are. The oldest and highest status mediator, Sankung, did the most advising while the youngest one with the least religious-based prestige, Buba, did the least. While Sankung and Landing occasionally attempted to get the disputants to simply drop their grievance (in 21% and 10% of their cases), Buba never did this. As a lower-status mediator, he did not have the social standing essential to convince disputants to reconcile without addressing their grievances in some manner. In fact, Buba focused only on reconciliation in 13% of the observed mediations he conducted as compared to 36% and 20% of Sankung and Landing’s cases, respectively.

Buba employed a facilitative style more frequently than any of the others, doing so 75% of the time. Of all the participating mediators in the study, he was the most likely to discuss settlement plans with the disputants rather than seeking simply to impose his own solutions or ideas on them. Again, this is consistent with Mandinka social norms and the finding that lower-status mediators are less likely to be directive.

Sankung and Landing’s cases did not follow this pattern, however – a phenomenon attributable to Sankung’s somewhat unusual personality. Although Sankung was of higher status than Landing, he was also frequently facilitative rather than directive, using that style in 64% of his mediations as compared to 40% for Landing. Sankung is a very
gentle person, and his personality appeared to account for his more facilitative orientation. Similarly, if one did not know these three individuals, one would expect that Sankung, as the mediator with the highest status, would be the most judgmental or evaluative of them. Instead, he was the least so, assigning blame in only 21% of the cases he mediated as compared to 40% for Landinka and 38% for Buba.

In fact, Sankung repeatedly took an unusually elicitive approach that is rather uncommon among the Gambians. Many mediators commonly attempt to make plans for the disputants, but Sankung tended to carefully hear out disputants and to incorporate their perspectives. In several cases Sankung engaged in pre-mediation consultations with various stakeholders to find out their feelings regarding whether there should even be a mediation. He was more apt than other mediators to encourage disputants to think about the problem and try to generate solutions or ideas for dealing with the dispute. Sankung often engaged disputants in exploring options, rather than simply urging them to “drop it” or telling them what to do. Sankung’s mediations were notable for statements such as, “So I want you to put your anger aside and let us think about better ways to make this work;” “So what can we do to finish this thing;” “If we do not think about this thing together and figure out ways that we can solve it, then it will definitely not succeed;” and “so now let us sit together and think about it well.”

Because these were somewhat uncharacteristic expressions for Gambian mediators, they stood out. Most mediators did not make such explicit attempts to engage the disputants in collaborative decision-making. Other mediators were more likely to listen to the disputants and then judge between them or say something like, “Now this is what I want” or start making plans and telling the disputants what they wanted them to do.
Sankung also sometimes engaged in “reflective listening,” a communication technique also taught to Western mediators. Reflective listening involves paraphrasing statements by the disputants and repeating them in order to ensure that one’s understanding of their feelings is accurate. It was clear to both my research assistants and myself that Sankung’s style was unusual and a product of his personality.

These three young men exhibited a marked tendency to be very deliberate and cautious in their approach. Nuha, a young male Jola of 34 years, exhibited a very similar style in his mediation efforts. Within his village, Nuha was known for his piety as a Muslim and he was a very active member of his community and was involved in many village affairs.

Nuha’s mediation style was quite similar to that of the young Mandinka with whom he shared so many traits, including age grade, Islamic piety, and similar relationships to their communities. The only appreciable difference in his approach was that he focused less on caucusing than the Mandinka to whom caucuses were often central. For example, in his marital mediations he repeatedly mediated without caucuses. That is particularly striking since the three Mandinka mediators did a great deal of caucusing in that type of dispute, only bringing the disputants together towards the end of the mediation, if at all. Like the three Mandinka, in several cases he never did bring the disputants together face-to-face. However, he was less likely than they were to mediate through caucuses alone, a pattern reflected in all the Jola data. Although he was more willing to push settlement plans than Sankung, the ways in which Nuha approached mediations were quite similar to those of the young Mandinka men. They all tended to be more facilitative in style than
both their contemporaries and than older and less Islamicized mediators of all the sampled populations.\textsuperscript{50}

Comparing three older mediators further demonstrates how mediator tendencies transcend group identities. Although older mediators are generally more directive than their younger counterparts, this trend is moderated by personality and experience. Thus, we see that two elderly mediators with forceful personalities are particularly directive, while a more gentle person, who is actually older than the other two, is a much more elicitive mediator.

Ibrahim was a Mandinka male of approximately 60 years who was somewhat notorious for having been a stubborn and rebellious young man. He had had a perfunctory Quranic education, but is known more for his wild past than his religious knowledge. As an elder, he now frequently intervenes in disputes including cases at the district tribunal. He sometimes attended the bi-weekly district tribunal court meetings, and in certain cases he called aside the disputants and spoke to them, seeing if he could get them to work out their differences and withdraw the case. The chief appreciated his efforts and sometimes postponed hearings in order to provide Ibrahim with some time to carry out his efforts.\textsuperscript{51}

\textsuperscript{50} Nuha was undoubtedly influenced by his mother who, as discussed below, is also strikingly facilitative in relation to other elders and to her fellow female Jola.

\textsuperscript{51} Ibrahim’s relationship with the court resembles the court-annex mediation programs of the U.S. where the court sends cases to be mediated and, if the effort is unsuccessful, the disputants must return to the court. As is common in the U.S., some of Ibrahim’s mediations resulted in agreements regarding compensation by money or labor exchange. However, Ibrahim also frequently pressed the disputants to simply reconcile and drop their claims against each other. This exemplifies the variance in the goals of American and Gambian mediators that is discussed in Chapter 5. Ibrahim was also similar to American mediators in claiming a very high success rate.
Ibrahim also mediated disputes that did not reach the court. His approach to mediation was substantially different from that of the three younger Mandinka. He almost always advised the disputants, unlike the younger Mandinka mediators who did so less than 50% of the time. It is more socially acceptable for him as an elder to advise disputants than it is for the younger mediators. His directive, evaluative, and somewhat brash style was also a product of his personality, but he would not have been able to express it in mediations if he had not been a high status member of the local society. His high status made it more acceptable for him to lecture and criticize disputants and strongly pressure them into settling. He was more forceful than other mediators in pressing for reconciliation.

Several times, Ibrahim employed a tactic not observed among the three younger mediators – fabricating arguments in favor of settlement. For example, Ibrahim repeatedly told a wife that he had spoken about her situation with a fortune-teller who had said that, if she remained with her husband, then she would greatly benefit from her son in the future. He explained to me that this was to encourage her to settle and that such tactics were acceptable in Islam since they contributed to the greater good. Ibrahim also tended to be more direct and less cautious, doing much less setting the stage and introduction than Sankung, Landing, Buba, or Nuha. Again, this was congruent with both his personality and social status. As an elder he had more prerogative to mediate, and he did not need to expend as much time and energy making the case for his intervention. His mediation style fits perfectly with his general outlook and mode of interaction.

A prolific Manjago mediator provides another example of a highly evaluative elder with a strong personality. Aminata was a female of approximately 60 years of age. Like
many of the other Manjago residing in the area, she had been born in Guinea-Bissau. She
left Guinea-Bissau in the 1970s during the struggle for independence from Portugal and
moved to The Gambia. Aminata was very outspoken and had a very forceful personality.
Her personality and age have led her to become one of the leaders of the Manjago of her
area.

In mediations, Aminanta usually judged between the disputants, often criticizing
them and urging them to follow her advice, plans, and ideas. Aminata appeared to be
more able to mediate in a wide context without the assistance of a man than Mandinka
and Jola women, but she often collaborated with a male leader of the local Manjago
community, Kawsu. More data were collected from Aminata than Kawsu, but it seemed
that he is somewhat less directive in his approach to mediation. This is consistent with the
finding that women tend to be more evaluative and directive than men, but is also likely
related to Aminata’s strong personality and will.

A contradictory example is presented by Nuha’s mother, Binta, who offers an
illustrative example of how group-level trends do not always extend to the individual
level. Binta, an easy-going, thoughtful, and considerate elderly Jola woman, was
generally facilitative in her approach. She tended to be gentle with disputants and is more
likely to help them seek out a mutually beneficial settlement than to judge the case and
seek to impose her own ideas for settlement. In this way she went against the general
tendency of other elderly mediators to be relatively directive. She also contradicted the
pattern of females being more directive than men. In fact, her husband was considerably
more evaluative than she in his approach. The fact that Binta was more elicitive appeared
to be due to her personality and made her somewhat sought after as a mediator.
In general, mediators did exhibit personal preferences in how they did their work. Some mediators were relatively facilitative and elicitive, with a greater tendency to encourage negotiation and to collaborate with the disputants in exploring options for settlement. Other mediators more often judged the disputants, told them what to do, and employed directive and pressure tactics.

There are also stylistic differences and heterogeneity in focus or areas of emphasis. Some mediators tended to begin their meetings with elaborate introductions, setting the stage and defining the agenda, while others usually quickly proceeded to the issues at hand. Since experience and personality are shaped in part by structural factors and characteristics – such as age, social status, ethnicity, gender, and religion – meta-level influences are associated with these choices.

However, some mediators, such as Binta, contradict general group-level trends illustrating the limitations of generalization. In fact, the same individuals also mediated differently in various observed cases, thereby illustrating their flexibility in responding to particular circumstances. In other words, individuals’ mediation styles are not absolute or monolithic. Although individual personalities and experiences may lead to the foregrounding of certain tendencies, mediators adapt their approach to the context of the case in question.

The individual level of analysis was the most heuristic when it came to identifying the relevance of context. For example, examining mediator responses to type of dispute was complicated by the fact that the types of cases were not evenly distributed across the ethnic or other identity categories. Sample sizes could become quite small when control variables were introduced, further complicating the quantitative work on context at the
inter-group level. However, the quantitative analysis of how individuals dealt with
different cases was very revealing of the situational nature of praxis. The rich qualitative
data gleaned from repeated in-depth interviews with key informants also highlighted the
flexibility of mediator behavior. The question of whether mediators adapt to the situation
at hand came into its clearest focus at the level of the individual mediator.

The findings above show that the hypothesis of individual variation in mediation
styles in America is valid in the Gambian context. This dynamic cannot be identified or
investigated without extensive fieldwork and the sort of rich data obtained from a variety
of collection and analysis methods. Perhaps this accounts for the lack of attention paid to
this factor in the cross-cultural and ethnographic literature. Groups are composed of
individuals, and analysis at the individual level can deepen the understanding of group
preferences. In the preceding chapter we saw that commonly used meta-level
comparisons such as the distinction between individualist and collectivist societies do
have some heuristic value. However, as the structuring of mediation that occurs at the
micro-level demonstrates, more studies that incorporate analysis at the individual level
would increase the robustness of the research record and further delineate the role of
culture in mediation.

**Conclusion**

The analysis of the Gambian data identified a dynamic range of mediation praxis,
and this chapter provided a view of that shifting tapestry. Without multi-level analysis
one cannot see all the threads and designs in the tapestry and will be left with only a
blurry view of its outline. From that perspective cultural variation appears dichotomous,
as a matter of differences between “traditional” and “modern” (see Lederach 1986),
industrialized and non-industrialized (Merry’s 1989 distinction), high- or low-context
(Ting-Toomey 1985, 1988), collectivist or individualistic (Augsburger 1992), or Western and non-Western societies.

However, the Gambian data exhibit considerable internal variation that correlates with numerous salient factors. Most notably, the ethnicity, religion, gender, and age of mediators correlated with how they approached mediation. The Mandinka tended to be rather circumspect mediators. They often caucused with disputants and frequently avoided direct confrontations and negotiations. The Manjago tended to prefer an opposite approach. They favored group meetings, direct negotiations, and explicit statements of who was to blame for a conflict. The Jola were more concerned with resolving specific issues than the other two groups. Their mediations were more likely to include negotiations and to produce agreements that addressed substantive issues.

Non-Muslims shared a similar set of preferences with the Manjago modality. The same focus on direct discussions and evaluation was also found in less Islamicized sectors of Muslim groups. Women – a group whose members undergo much less formal Islamic education than men – provide a prominent example of a less Islamicized sector of a Muslim population. Gender identity did correspond with the level of direct and directive activities used by mediators. The age group of mediators was also significant in regard to this dimension as older mediators were also more directive.

None of the variance was absolute, however, as members of all the groups did, at times, follow at least the general outlines of mediation procedures used by the other populations. In this sense the primary variance is in the frequency with which particular procedures were used. For example, all groups utilized the procedure with testimony, extended discussion, evaluation, and ritualization that the Bachurr Manjago call *gulentuu*. 
That process was used for all types of cases among the Manjago, was also popular with Jola women, and was much less common among the Mandinka, generally occurring when the dispute had reached a public level. The target groups did not mediate in completely dissimilar fashions, but varied in the level of frequency with which they used specific procedures.

Context is highly significant as mediators may adjust their strategies based on the specifics of the case at hand. Individual mediators also have personal preferences that shape their praxis. Ultimately, the finding that mediations do vary and are not uniform or random in structure is significant in and of itself. However, we may go further and state that socially transmitted norms and cosmologies, in other words culture, do affect mediation. The contrasts in Mandinka and Manjago mediation styles are a particularly vivid illustration of this.

The trends here should not be considered conclusive representations of how any given group, or even individual, mediates. However, the observed trends do underline the significance of societal influences. It is clear that culture does matter when activities as pivotal as the collection of disputant narratives and the assignment of blame for the dispute varied in accordance with group identities.

The effects of cultural variables are highly specific, linked to and mediated by the particular circumstances and situations in question. Although patterned tendencies do exist, they are not absolute as contradictions and exceptions abound. Context, experience, and group and individual identities are mutually constitutive and interact in a multi-dimensional way with the choices made by mediators and disputants.
The range of variation within the Gambian data highlights the limitations of dichotomous approaches to cultural pluralism in conflict resolution. Simplistic cultural comparisons or generalizations are not sufficient tools for representing the diversity, dynamism, and creativity of mediators. In order to gain a realistic picture of mediation it is necessary to engage in analysis at different levels. Such analysis is very difficult and requires a great deal of resources. This may be one reason that the dimensions mentioned above (e.g. high- and low-context) remain so popular within the literature on culture. While discussing the value of these tools for understanding cultural variation meticulous scholars, such as Michelle LeBaron, include qualifying statements noting that the categories are not perfect and that there may be intra-group variation (e.g. Duryea and Grundison 1993; LeBaron 1998). However, the majority of the work on the challenges of cross-cultural mediation continues to rely heavily on these dichotomies. Cultural preferences in conflict resolution are not two-dimensional. Crafting a theory and an approach that adequately capture this complexity is one of the top challenges currently facing scholars and practitioners.
CHAPTER 7
DANCING WITH THE DJINN:
CONCLUSIONS, CHALLENGES, AND FUTURE DIRECTIONS

Introduction

This project examined the significance of culture in conflict mediation. There has been much disagreement about the role of culture, which has been described as both significant and insignificant to the structuring of the mediation process. Questions abound on how much the mediation process varies and what the effects of cultural perspectives are. In this study, empirical and descriptive data were used to compare how members of three ethno-linguistic groups, and various sub-sectors of the population, of southwestern Gambia mediate. The findings were then compared to popular American models of mediation.

In culture we found a shape-shifting djinn that operates on multiple levels and is continually reconfiguring itself. In our pursuit of this will o’ wisp we saw different details at every vantage point from which we gazed upon our tapestries of mediation. However, one thing is clear: there is significant variation in conflict mediation. The data refute the argument that there is an intrinsic structure to the mediation process and suggest that cultural perspectives have a profound effect on the way in which actors mediate.

Although some of the same mediation activities may occur in both the American and the Gambian contexts, they are often carried out in a very dissimilar manner. Moreover, some common Gambian activities, such as the assignment of blame, are
absent from American models. Components of the American model thought to be intrinsic to mediation, such as negotiation, were also absent from many of the Gambian cases.

The project findings are briefly reviewed in the following sections. We begin with the contrast of Gambian and American mediation styles and then list the major outcomes of the intra-Gambian comparisons. The next section summarizes the conclusions regarding the activities that make up the structure of the mediation process. We end with several methodological, applied, and theoretical implications of the findings, and a few final thoughts.

**Findings**

**Meta-level Comparison of Modalities**

Comparing the Gambian data as a whole and the ideal model of Western praxis uncovers significant differences in approach. The conceptual frameworks from which Gambians and Americans view mediation are dissimilar. In the Gambian context conflict is a disruption in the social network, not a matter of specific issues or incompatible goals. Gambians are thus much more relational in their approach than American mediators. However, the Gambian mediation style also contrasts with alternative American models of mediation that are more relational than the conventional modality. For example, Gambian mediators are often insiders who actively engage in discussions and evaluation, rather than restricting themselves to facilitation.

These different perspectives affect the structuring of the mediation process. Gambians are often explicitly evaluative and do not pay the sort of attention to facilitative techniques that Western models call for. They may judge between disputants, express sympathy, agreement, or disagreement with disputants, appease and advise the parties,
and pressure the disputants to agree. These activities are not found in the American models. Unlike American models, Gambian mediations do not always include bargaining, or the generation and selection of options for agreements that will end the conflict.

There are many shared aspects of West African cultural systems. These shared values are linked to the overall differences in the mediation styles found in The Gambia and in the prescriptive models of mediation in the U.S. Although they are often presented as value-free, the prescriptive models should be considered as the products of specific socio-cultural and historical contexts that reflect particular ideological influences.

**Intra-Gambian Comparisons**

Narrowing the focus to concentrate on the Gambian data illuminates varied tendencies among the three ethno-linguistic groups. The clearest contrast is between the Mandinka and the Manjago. Manjago mediators tend to be the most evaluative of the three groups and they depend the most on face-to-face interaction in their negotiations. The Mandinka tend to have the strongest focus on reconciliation and frequently attempt to resolve disputes through caucuses alone.

Patterning related to characteristics other than ethnicity was also discovered. Variance in belief systems associated with religious affiliation may contribute to the shaping of mediation behavior. Most notably, non-Muslim and less Islamicized populations tended to use more direct and evaluative approaches. Gender identity was also significant in this regard with women showing a stronger preference for directive approaches than men. In The Gambia the relationship of gender on mediation appears to be the reverse of that hypothesized for the U.S., where women are seen as more facilitative mediators than men. Age groups also exhibited dissimilarities in their
approaches with younger mediators tending to be more elicitive and indirect than their elders.

Adjusting the lens to focus on the micro-level uncovered still more variation. Individual mediators have their own cognitive frameworks that color their preferences and praxis. Such preferences are a product of both societal and structural variables and also of the idiosyncratic, particular, and experiential framework and personalities of the mediator concerned. These preferences do not mean that these individuals always mediate in the same way. On the contrary they can employ quite different approaches depending on the situation in question. However, individual tendencies to favor certain styles are discernible.

**Summation: Mediation Activities in a Comparative Perspective**

Let us summarize what the findings suggest in respect to the question of whether there are intrinsic components of the mediation process. Returning to our operationalization of the mediation process as a cluster of activities, we find that there are only two where there is no apparent societal variance. Other mediation activities do exhibit associations with group preferences.

Setting the stage and ritualization are activities common to most mediations in diverse settings. These activities are widespread in the Gambian cases, American models, and the ethnographic literature and do not appear to be linked to ethnicity. Activities used by mediators after setting the stage and before concluding with ritualization are much more varied. These points are briefly explained below using a very wide angle for our analytical lens.
Near-universal Components – Setting the Stage and Ritualization

Setting the stage, or at least some sort of introductory phase, occurred in most Gambian cases. Introductory statements of mediators could be of varying length and complexity, but they took place both in caucuses and group meetings. All of the target populations employed setting the stage activities with variation in the rate of occurrence associated primarily with situational factors rather than group identities.

The ethnographic literature is also replete with this activity. For example, in Hawaiian *ho’oponopono*, the *pule* or opening prayer represents a similar activity (Shook 1986). The Semai chat about other matters prior to the discussion of the conflict in order to establish a relaxed atmosphere, and the preliminary speech by the elders introduces a tone of cooperation and harmony (Robarchek 1997). One might also consider the pre-meeting caucuses in Lebanese *sulha* (and also common in the Gambian mediations) in which the mediators meet privately with the disputants before bringing them together as setting the stage (Witty 1980; King-Irani 2000). The caucuses are used to create a positive environment, thereby preparing the way for the group meetings when the disputants are brought together.

Most of the American models include setting the stage and introductory activities, such as explaining the mediation process and the ground rules and building trust. We may therefore hypothesize that introductory setting the stage activities are, if not universal, very widespread components of mediation. No discernible societal variation was found in relation to setting the stage.

At the other end of the mediation process is the ritualization of the agreement or reconciliation. This is also common in all of the Gambian data sets. Ritualization did not
occur in every single Gambian case, but that was attributable to contextual considerations, with no apparent links to group or even individual identities.

Gulliver’s model includes ritualization of the agreement (1979). Ritualization is also part of sulha (Witty 1980, King-Irani 2000), ho’oponopono (Shook 1986), and most of the other models in the ethnographic literature. In becharaa’, ritualization is effected by a series of formal speeches and the proscription of ever discussing the matter again (Robarchek 1997).

In the U.S., mediations usually conclude with the writing up and signing of a formal contract or document of some sort (narrative mediation does not call for a legal contract, but does call for codification of the outcome in writing). In the large post-industrial societies of North America, the writing and signing of a document could be considered as ritualization. Ritualization, or at least some formalization of the resolution of the conflict, therefore appears to largely transcend societal boundaries.

More Variable Components – the Body of the Mediation

What occurs in between the two activities that frame the mediation process is much more subject to variation. What mediators do after setting the stage and before ritualizing does appear to be linked to societal setting. The heterogeneity of mediation praxis casts doubt on the notion of creating a comprehensive list of mediation activities. However, the findings regarding some common components of mediation are summarized below.

Gathering and discussing disputant narratives is included in most models of mediation. Although this activity is widespread in The Gambia, it is less common among the Mandinka suggesting there are societal influences at play. Hoffman’s description of Mandinka mediators in Mali also trying, albeit unsuccessfully in that case, to mediate without listening to the disputants’ stories, is another example of this pattern (2000).
Most models from the ethnographic literature do include disputant narratives. One of the most elaborate examples is found in *becharaa’*, in which the events that took place before the mediation are described and re-narrated from every conceivable perspective (Robarchek 1997). However, noted scholar-practitioner Richard Salem observed mediation without the explication of disputant perspectives in South Africa (personal communication May 2002). As noted by Merry, “Mediators in non-industrial societies bring to the mediation session considerable knowledge of the events in the dispute and the character of the disputants” (1989: 85). Mediators with such knowledge, who often wield normative power, are able to de-emphasize disputant stories and focus on resolution. Taken as a whole, the evidence suggests that disputant explanations of what occurred are a part of the majority of mediation procedures, but this activity is not independent of culture.

Evaluating disputant positions, advising disputants, and proposing plans for settlement are very common components of non-Western mediations where mediators often take a normative and active stance. This is true for all the Gambian groups, as well as for other groups such as the Semai (Robarchek 1997), the Lebanese (Witty 1980; King-Irani 2000), the Chinese (Cloke 1990), and the Nuer (Evans-Pritchard 1940). Patterns of mediation from non-Western societies with disengaged mediators who limit their role to the procedural domain have not been found.

We have discussed the pervasive American ideology proscribing mediators from partaking in shaping the content of discussions. American mediators are not supposed to intervene from a normative position and many mediators adhere to that (Merry 1989). However, some researchers have found that some American mediators do explicitly
evaluate disputant statements and positions and advise the disputants (e.g. Kressel and Pruitt 1989; Kressel et al. 1994; Riskin 1996, 2003). Intra-societal variance thus occurs in relation to the advising activity.

Promoting forgiveness and reconciliation is another potential mediation activity found widely in non-Western settings. These were common in the Gambian data and variance in their occurrence was linked more to situational factors than group identities. Other non-Western societies also include asking for and granting forgiveness as with the previously mentioned examples from Malaysia, Lebanon, and Hawaii (cf. Cloke 1990).

American models of mediation do not include activities related to the disputants forgiving each other and reconciling. This may change if the relational perspectives of the more alternative models become more widespread. There has been recent interest in incorporating novel techniques into American mediation, such as apologies and forgiveness (see Cloke 2001; Schneider 2000). However, this represents a fringe approach attributable to variation in cultural systems inherent in all societies, and especially apparent in large-scale complex ones.

Other mediation activities such as issue identification and bargaining vary considerably within the Gambian mediations. Mediators may or may not try to identify issues and help the disputants negotiate in a substantive manner. Whether or not they did so was associated with ethnic identity, being most frequent among the Jola population, and least pervasive among the Mandinka. The conclusion that negotiation is a culturally rooted component of mediation is supported by the contrast with American models. While bargaining occurred in less than half of the Gambian cases, mainstream American

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1 See Kirchaven 2003 for a more conventional view with an argument against apologies.
models always include negotiation, as do many of the models of the ethnographic literature (e.g. Gulliver 1979; Merry 1989).

The fact that the majority of the activities that may occur in mediation do vary in association with culture leads us to the conclusion that cultural perspectives are highly significant. The level of heterogeneity in the process makes the suggestion of an intrinsic structure to the mediation process untenable. The proposition that other societies undertake essentially the same mediation activities but in their own preferred styles is also unsustainable. Although in some Gambian cases negotiations occurred in caucuses rather than in group meetings, in more than half of them no negotiations occurred. While cultural perspectives may well affect how mediation activities are carried out, their effects also go well beyond that. The very nature of the mediation process is subject to cultural influences.

**Implications**

**A Call for Inclusive Theorizing and Praxis**

Another implication of this study is that the ongoing re-evaluation of established mediation models is highly appropriate. There has been considerable debate between proponents of problem-solving and transformative mediation over which approach is the right one. Cross-cultural perspectives add to this debate and can be used to analyze cultural influences, as old orthodoxies are challenged and new ideas come forth. Alternative approaches to alternative dispute resolution should continue to be investigated and explored.

The heterogeneous and situational nature of Gambian mediation praxis also strongly suggests that the nature of the debate is somewhat misguided. The fact that there are many approaches to mediation and that there are variations associated with group
identities suggests that the study and practice of single mediation models limits the robustness and efficacy of our efforts. Rather than debating which single approach to mediation should be codified as the praxis model, we should discuss how existing approaches can be refined, when they are appropriate, and what other process models we can use. Academia thrives on dogmatism and the pressures and temptations for scholars to choose or promote a single perspective or approach are considerable. The multiplicity found in this study strongly suggests that the dismissive attitude towards eclecticism pervasive in some circles will further the divide between elegant, yet artificial theories and models and the real-life social arenas in which conflicts are generated and addressed.

Econometric, behavioral, and decision-making models fail to fully portray the dynamic nature of mediator strategizing and actions. Similarly, two-dimensional societal categories do not capture the diverse nature of societal, collective, group, or cultural influences. The variation within Gambian groups implies that cross-cultural classification tools must be used in a sophisticated manner. Simplistic generalizing techniques for analyzing and addressing cultural variance should only be used as a starting point for a more complex and context-driven approach to theorizing and praxis. The problem is an intricate one and we would do well to beware of easy answers and formulae.

Findings such as the cross-cultural variance in the relationship between mediation preferences and gender not only provide further evidence of societal variation, they also illustrate the wide-ranging influence of cultural perspectives. Gender and cultural analysis should not be divorced from one another; gender studies would benefit from the inclusion of a cultural component and perspective. Culture is not restricted to ethnic identities, but infuses all aspects and levels of the mediation process. Not only do
different populations have different mediation preferences, these preferences vary according to socio-cultural context. Investigations of mediator identities should be situated in the framework of cultural analysis and include societal variables, such as ethnicity and class. Most studies of mediation would benefit from the incorporation of cultural analysis.

Applying the Gambian data to critical perspectives on conflict resolution further illustrates how mediation is not only “Janus-faced” (to use a popular scholarly term from Roman mythology for phenomena that exhibit opposing effects), but can be even more multifarious. Mediation can be used to reify or to rearrange existing structures; it may simultaneously produce both effects, or may impact social relations in myriad other ways. The outcomes of mediation are highly diverse, making categories and two-dimensional ranges inadequate conceptual tools. Using a variety of tools to analyze empirical data highlights the multidimensionality of mediation and the limitations of past work based on dichotomies. The physical sciences have been revolutionized by quantum theory, but most conflict resolution theorizing has yet to move beyond the mechanistic realm. More complex and dynamic approaches are necessary for the conceptualization and practice of mediation in both an empirically realistic and a multicultural manner.

**Mediator training**

In order to adequately prepare mediators for the intricacy and contradictions of the real world, mediation programs should de-emphasize process models. Mediation training programs should emphasize the flexible use of skill-sets, rather than particular models. For example, mediators could be given a background in various conflict and conflict management theories and strategies. Trainers should recognize and explain the benefits of adapting to the context at hand, rather than encouraging dogmatic reliance on a single
process model. The goal should be to identify what tools are most useful for various situations and how they can be used in the appropriate manner.

In the international arena, American approaches to mediation should be recognized as products of dominant ideologies in Northern societies and should not be exported piece-meal to other countries. International and intercultural mediations should incorporate local mediation techniques, resources, and institutions in order to draw on social capital that may assist in transforming the dispute. The efficacy of insider mediators, for example joking partners, suggests that training local stakeholders and encouraging them to adapt mediation techniques to their socio-cultural context is a very fruitful approach.

We have already noted that cultural variation deeply affects mediation, indicating that merely adjusting communication styles, or other superficial alterations, are insufficient means for addressing cultural differences. The breadth of the variation between and within Gambian identity groups also suggests that training programs should not simply tack on general suggestions for process modifications when group X or group Y is concerned. The range of mediation practices found in the Gambian context implies that popular dichotomies in the analysis of culture and peacemaking must be employed with extreme caution.

In Chapter 5 we mentioned that there are broad patterns that do conform to some of the hypothesized cultural patterns of individualist and collectivist meta-values and high- and low-context communication styles. However, a thorough examination of the Gambian data reveals the limitations of these categories. The variance in mediation practice between and within various Gambian populations illustrates how such
dichotomies may dramatically over-simplify highly complex social systems and reduce their value for analyzing phenomena such as mediation. Although they could all be classified as having a communistic cosmology and high-context communication style, different Gambian populations exhibited variance in the approaches to mediation that they favored.

In one of the most dramatic examples, consider the Manjago preference for direct mediation. The Manjago communication style could be considered high-context. They are very symbolic in their communication and use proverbs, oblique hints and references, and so forth to convey their messages. Therefore, following the prevailing theory, one would expect them to favor indirect mediation. However, the Manjago are very direct in their approach. Mediation training programs that suggested indirect negotiations when working with high-context African populations would not necessarily result in a more multicultural process model.

An elicitive approach – in which the mediators consult with the disputants about how they want the intervention to proceed – can help overcome cultural differences when the mediators and participants have disparate backgrounds. A problem that needs to be addressed is how to manage a situation in which the disputants are from different backgrounds and have strong but divergent preferences for how mediations should progress. How should a mediator handle a session between Mandinka and Manjago disputants? This would be a productive area for further inquiry.

Intra-societal variation of the kind observed in The Gambia illuminates the relevance of adaptive and elicitive praxis for the intra-national context. The variation in Gambian mediation praxis demonstrates that nationality, or even ethnic identity, are not
comprehensive markers of mediation preferences. Although this finding is derived from The Gambia, we may posit that the same holds for the U.S.

Dominant ideologies do not represent the beliefs and values of all sectors of national populations, raising the same concerns about the ethics and efficacy of using particular models. The cross-cultural training suggestions above are applicable to the domestic arena. The program in New York described by Witty where members of local neighborhoods were trained as mediators is an approach that has unfortunately not been widely replicated within the U.S. Community mediation centers should adapt their training and praxis to the populations of the communities in which they are situated.

The growth in popularity and in institutionalization of mediation in American society has been accompanied by efforts to standardize it. Mediator certification programs such as that implemented in Florida have made training more uniform. Efforts to establish standards for mediation training and praxis also include the Uniform Mediation Act, which has been adopted by several states and is pending in several more. While setting standards for praxis has potential benefits, it should be done with the utmost care, if at all. Sharon Press has noted that the institutionalization of mediation could lead to less flexibility for mediators (1997). To this, let us add that it could also result in emic or folk models of mediation being further codified, leading to the further imposition of the conventions of dominant social groups on others. The incorporation of mediation into the legal system makes this a serious concern. One would hope that Alternative Dispute Resolution would offer a more inclusive approach that would not further marginalize already disempowered members of the populace.
All mediators should be aware of societal influences in praxis. The existence of local mediation techniques should be recognized and training programs should be adapted accordingly in order to avoid adding to the colonial legacy of imposition of foreign models on African societies. Training programs should consist of more collaborative efforts that aim to create hybrid procedures and/or draw from the best aspects of different approaches. Might it be possible to combine the affective power of Gambian style mediation with the strengths of American models? Can we formulate hybrid methods combining the strengths of different approaches? Certainly, this is worthy of further exploration.

**Neutrality, facilitation, and ideology**

An inclusive approach to mediation might well incorporate both evaluative and elicitive and other styles of third-party peacemaking. There are, however, intriguing indicators that the facilitative ideology represents an ideal model and does not reflect actual practice. Gambians clearly do not believe that mediators should be neutral, disengaged facilitators and the ethnographic literature is replete with examples of societies whose mediators are directive. In fact, Gulliver, the author of one of the first truly comparative studies, concluded that the notion of the non-directive mediator is one of the “strong cultural stereotypes and subjective dogmatic assumptions” found in the North American literature (1979: 211; cf. Cohen 1996).

A central contribution of narrative theory has been the underlining of the limitations of neutrality – everyone has a perspective and maintaining a truly neutral stance as a facilitator may be beyond our capacities. We have discussed a number of studies that suggest that many American mediators actually deviate from the facilitative approach. These include the studies of different American mediation styles (e.g. Kressel...
et. al. 1994; Riskin 1996; Silbey and Merry 1986) and the gender analysts who posit that men are more evaluative than women (see, for example, Gourley 1994; Picard 2002; Weingarten and Douvan 1985). Gender analysts and critical scholars have exposed how societal preconceptions and biases can creep into ostensibly neutral mediation (e.g. Grillo 1991 and Conley and O’Barr 1998). Scholars such as Tom Fisher (2001) have also explicated how mediators wedded to the idea of neutral facilitation actually often move beyond that role to shape the discourse of the parties. These are only a few examples and the number of such studies suggests that this divergence is probably a fairly widespread phenomenon for mediators operating within the problem-solving model. Most of these studies, like most research on mediation, are based on interview data (Conley and O’Barr’s excepted) and empirical research should be done to confirm their findings.

As mentioned, transformative and narrative mediators remain largely outside of the mainstream of praxis. As the body of mediators who use these approaches grows, content analyses of actual mediations along the lines of the method applied in Conley and O’Barr’s study would be instructive. Examining how closely mediators trained in the transformative approach adhere to ideal practices would help illuminate the degree to which elicitive mediation is an ideological construct that mediators pay homage to, but do not always follow in practice. Exploring such issues would further throw into relief the nexus among culture, ideology, and mediation. In addition, the emphasis on neutral facilitation has contributed to the critique of conflict resolution – in cases of dramatic disputant inequality leaving decision-making to the parties can be problematic. A deeper examination of these issues could enhance our approach to the question of power disparities in conflict resolution.
Research Methodology

This project exposed a number of issues relevant to future study of mediation and culture. For example, the importance of using empirical data was revealed, as many of the assertions of mediators were not congruent with observed phenomena. If common statements such as “all Muslims mediate in the same manner” had been taken at face value, dissimilarities in Mandinka and Muslim Jola and male and female mediation modalities would have been overlooked. Empirical studies of mediation have been rare (Bercovitch 1996), hampering our understanding of the process.

The data also underlined the need to approach culture from a variety of angles. Had this project examined only the ethnic identity of Gambians and excluded other factors, a much more limited picture of cultural patterning in mediation would have emerged. Analyses that incorporate a variety of population characteristics and different levels of approach will be better able to evaluate cultural influence. Scholars have examined gender, educational background, and other potential areas of variance in intra-societal studies (e.g. Picard 2002), but this has been lacking in the cross-cultural literature.

Additionally, components of personal identities such as education and social class that are arguably significant in the West were not relevant in terms of how Gambians mediate, meaning that the approach to cultural analysis should be adapted to the target social system. Although variables such as village of residence and clan affiliation were not significant, religion, gender, and age group were. The found variance in mediation included, yet also transcended, ethnicity, illustrating the significance of multiple aspects of identity in socio-cultural analysis. Studies from the cross-cultural level that have analyzed mediation styles at the individual level are lacking. These gaps in the research
record should be addressed in order to enhance our understanding of culture and its significance in conflict management.

The field would benefit from more widespread incorporation of sophisticated techniques of social research. For example, researchers should use control variables in order to lessen potentially confounding influences that may skew test results. The results of several tests were discarded when further analysis using control variables revealed that the apparent variation could have been produced by sample bias or contextual factors and not the identities of the mediation participants. A failure to take situational variables into account would make the already daunting task of cultural analysis even more untenable. Scholars should also strive to integrate participatory methodologies and other strategies whose potential heuristic value have, at this point, been largely untapped in Peace Studies. If we are to adequately address a subject as intricate as cultural variation we must employ all the resources at our disposal.

**Final Thoughts**

This dissertation covers a lot of ground and suggests many questions that deserve lengthy treatment. In fact, it offers more questions than answers. The conclusions in these pages should not be regarded as final or definite, save perhaps for the finding that culture is significant. Instead, these conclusions should be viewed as a contribution to the ongoing exploration of a very complex problem, as brush-strokes adding to the painting in progress on our scholarly canvas. Due to a variety of constraints it was not possible to thoroughly address all the issues raised in the preceding pages. Readers are encouraged to look for forthcoming publications by the author on these topics, contact the author for more information, and, most importantly, add their own investigations to the research record.
In regard to the main research question of whether or not we should dismiss cultural variation as superficial, the answer is a resounding no. The goal here was to explicate to the reader that culture is a relevant and even central factor in mediation. Describing a dynamic phenomenon is always challenging. The challenge is enhanced if one is willing to sacrifice the pleasing elegance of a simplistic theoretical model, with one or two clearly defined relationships, in order to avoid glossing over the wondrous multiplicity that is found when one observes social phenomena in an open-minded fashion. Hopefully, the attempts to realistically portray mediation practice will not obscure recognition of the fact that, despite all the heterogeneity, societal patterning is significant.

**New Directions for Anthropology and Conflict Resolution**

The colonial-era association between anthropology and domination has been widely documented, particularly by critical scholars such as Nader and Ch Hancock. A clear-eyed intermingling of conflict resolution and anthropology – fields that have great potential for symbiotic thinking – is long overdue (cf. Wolfe and Yang 1996). Productive cross-pollination between anthropology and conflict resolution would have enormous benefits for both areas of inquiry.

Conflict management is a social domain that offers great potential insights for cultural anthropologists. Conflict is at the heart of cultural production and reproduction. In mediation shared conventions, rules, and expectations are starkly illuminated. Mediation is not only affected by culture, it also represents a domain in which cultural values are invoked, challenged, reinforced, and reconstituted. The crucible of conflict transformation offers an ideal arena for those interested in observing how societies transmit, reproduce, and rework their scripts and norms. As we noted in our discussion of
contestation, control, and change, conflict resolution offers an ideal analytical domain for the concatenation of paradigmatic cleavages in social theory.

The relationship should be symbiotic as mediators also have a great deal to learn from anthropologists. The anthropological perspective should be considered indispensable to the field of conflict transformation. American society is becoming increasingly multicultural and the media abound with projections that White middle-class Americans will soon be a minority group (cf. Williams 1994). The fact that the bulk of mediation training and praxis in this country is grounded in dominant cultural values is troubling. Alternative models such as narrative and transformative mediation are helpful, but, as of now, they represent techniques based on different constellations of ideologies, rather than universally relevant approaches.

Conflict resolution has also become part of the development and assistance framework, raising still more problems as experts seek to reform the peacemaking practices of other societies. The range of human behavior is startling in its breadth and depth. Anthropologists can help identify what conflict management strategies may resonate most with different populations, thereby assisting in the design of interventions that may succeed where conventional methods, diplomacy, and even alternative dispute resolution techniques might fail.

In summation, viewing mediation through a comparative lens provides fresh perspectives on the challenge of conflict transformation. The author anticipates continuing this line of inquiry and hopes to participate in the development of more diverse and robust repertoires of mediation. In a world characterized by increasingly destructive and dangerous conflicts such a development offers great promise.
APPENDIX A
MORE MODELS OF THE MEDIATION PROCESS:
THE INTERNATIONAL LEVEL

Introduction

This appendix presents several more examples of influential models of mediation from the literature. Burton’s and Shephard’s models are applicable to both the domestic and international sphere, while the others relate solely to the inter-state level. Some of the models have been largely copied from the original while others have been constructed out of the narrative explanations of the mediation process found in the sources.

A. Kriesberg’s 12 mediator activities for international mediation between groups

1. Selecting issues
2. Selecting parties
3. Providing good offices
4. Communicating each side’s views
5. Reframing conflict to problem
6. Suggesting new options
7. Raising costs of failing to de-escalate
8. Adding resources to settlement
9. Helping to create parity
10. Building trust and credibility
11. Fostering recognition
12. Legitimating and helping to implement proposal or agreement
(adapted from Kiesberg 1996: 224-225)

B. Kriesberg’s 4 stage model of international negotiation

1. Pre-negotiation
   Activities – Exploring which parties are ready to discuss de-escalation and which can be excluded without undermining a possible agreement

2. Preparation
Activities – Helping undertake discussions among the parties

3. Negotiation

Activities

a. Making the adversaries’ negotiations more acceptable

b. Giving legitimacy to offers and to options for settlement

c. Very strong parties may try to impose settlement and may fail

4. Implementation

Activities – Going back to the constituencies and seeking to win support for proposals

(adapted from Kriesberg 1996: 228-229)

C. McDonald’s model of international mediations

1. Pre-negotiation phase – parties decide to seek a negotiated solution, can include generating an agenda to work with during the actual negotiation stage

2. Preparations for formal negotiations – setting up the negotiations, can include generating an agenda to work with during the actual negotiation stage

3. The Negotiations – can include an opening ceremony, group meeting, can include following agenda, parties state their (initial) positions, discussion ensues, there can be multiple sessions

4. The Post-negotiation period – implementation, follow-up

(MacDonald 1986: 146-150)

D. Burton’s “The Procedures of Conflict Resolution” from International Conflict Resolution

1. Set the stage – define what is going to happen, how the mediation will go, etc.

2. Invite each party to state its position

3. The party gives its testimony, position appealing to history, morality, etc.
4. Each party is invited to pose questions – strictly for information purposes, w/out debate

5. The panel poses questions to bring up aspects of the conflict that have not been discussed yet

6. Discussion – the analytical process goes on for days and the mediators meet among themselves to discuss the situation at times

(from Burton 1986 p. 107)


Stage 1. Definition

1. Select resolution procedure
2. Feel out parties’ emotional state
3. Define what is in dispute
4. Identify relevant information
5. Identify possible alternatives for settlement

Stage 2. Discussion (of the different alternatives)

6. Present relevant information
7. Present arguments for each alternative
8. Clarify information and arguments

Stage 3. Alternative Selection

9. Decide validity of information and arguments
10. Select the solution

Stage 4. Reconciliation

11. Reconcile parties with solution
12. Enforce decisions

13. Hear appeals

(Shephard 1984)
This appendix provides copies of the interview guides used in the collection of the descriptive data. These guides were used after the ethnographic stage during which interviews were unstructured. The ethnographic interviews provided a base of knowledge and experience regarding local categories and concepts related to conflict, how to best phrase questions, what types of questions elicited useful responses, and so forth. The following guides were built using that experience.

The first guide is the one used for the semi-structured interviews. It is split into two sections, general questions and mediator history questions. The next guide was used for the collection of recalled cases. The final section consists of the reworked guide used in the panel sessions.

All collection of descriptive data was done in a semi-structured manner. Although the goal was to ask all of the questions in the interview guide, other questions were added as needed. The sequencing of the questions was also flexible and was adjusted in order to follow the narrative flow of respondents and explore whatever issues they raised.

**Interview Guide for Semi-structured Interviews**

Have you been involved in mediations?

I want you to think about the mediations you were involved in when you answer the following questions.

In the mediations you were involved in what happened? How did they go? Was it always similar, was it usually similar, were they always different?
In the mediations you were involved in did the procedure differ sometimes or was it always the same?

How often did it differ (rarely, occasionally, frequently, almost always)?

If there are differences then describe them, how would the procedure vary?

Are there different procedures for different situations or do the meetings differ randomly?

(After their description) Was the procedure different for some of the cases? Was the procedure different sometimes? Were there different procedures?

Is that the way it usually went, was it sometimes different than that way that you just described and if so how were they different?

How so?

When and why?

When you talked between people did you talk to them separately? Did you bring them together for a group meeting? What happened at the group meeting? When did you have group meetings and when did you not? What happened during the group meetings? Were they very similar or did they vary a lot? When they were different how were they different?

Did you ask the disputants a lot of questions so that you could know all the details of the dispute or did you get a general idea of the issue without asking a lot of questions?

When mediating disputes did you have the disputants speak, narrate what happened, tell their side of the story?

Did you do this privately with the different disputants or in a group meeting with all the disputants together?

Were there cases when you did not ask the disputants to narrate what happened? What kinds of situations should this happen in?

When you have talked between people to settle a dispute did you blame one or more of the disputants and tell one or more of them that they were faulty/guilty?

Did you tell one or more of the disputants that they were on the right in the dispute?

When did you do this and when did you not do that?

What kind of cases did you do that in and what kind of ones did you not do it in?

Did you make the ones at fault to admit that they are guilty? Did you make them admit it to you only or did you make them admit that in the presence of the other disputant(s)?

Have you ever been involved in a case where none of the parties were guilty?

When you talked between people to settle a dispute between them did you advise them?

What kind of advice did you give them? When have you advised disputants and when did
you not do so? Why? Did you advise them when you met with them separately or when you met with all of them or both?

Is punishment ever a part of a mediation or do mediators ever arrange that one or more of the disputants pays something to the other disputant or works for them or so forth?

When the disputes were over material resources such as land, money, or possessions did it affect the procedure at all? Did that play any role in getting the disputants to agree? Did it affect what kind of agreement was made?

Did you ever come up with different ideas about how it could be settled and go over them with the disputants? Did they ever reject some of your ideas?

Have you ever given the disputants money when you were mediating in the dispute? Why? When?

Have you ever mediated between people that you did not know? Was it different from times when you knew the disputants? How was it different?

**Are there different ways of mediating? Are there different ways of “talking between people?” If yes describe them.**

When you mediated cases, did the type of dispute (cows getting into gardens, co-wives, husband and wife, kafo mates, land dispute, etc…) affect the mediation procedure?

Have you seen other people mediate in a different way from how you have done it?

Do women ever mediate between men, do men ever mediate between women?

Have you ever mediated a dispute or been involved in a mediation in a different village? Was it different at all from your experiences here?

Has the mediation procedure changed at all in your lifetime? Are there things that people used to do when mediating disputes that they do not do now and are there things that they do now that they did not use to do? Are there any changes that you are aware of that you could describe to me?

**Can you think of any cases where you have talked between the people and it was different from other times when you did that?**

How did the meetings end? (General grand tour type question, let them answer and then proceed with the questions below)
Did you pray during peacemakings? When and when not?
Did you have the disputants shake hands?
Did you or the disputants exchange money, wine, kola nuts, or other things? Did different meetings end differently or did they all have the same ending?

Do you know of any people who mediate differently from how you do it? Are there any people in this village who do it differently?

Are there different ways of mediating disputes? Have you done it different ways, used different procedures?

Do you have any suggestions of other people that I should speak with, people who are involved in this or who have a lot of knowledge or experience in this field?

**Mediator History Questions**

How many mediations would you estimate that you have been involved in?

Can you think of any cases that you were involved in that were unusual/interesting? Describe them. What was unusual about them?

What was the last case that you were involved in? Describe.

Have you ever been involved in making peace between people when the case has gone to the Mansa (Alkali, Chief, police or other authorities)? Were such cases different from the other ones that you have been involved in?

Have you ever been involved in a case where there were many meetings – where the issue was not settled easily and it took a lot of talking? Describe. How was it different from other ones?

What was the most difficult case that you have ever mediated? Describe it.

What was the most unique (different) mediation that you have ever been involved in? How was it different from others?

Out of all the mediations you have been involved in is there one that you are most proud of or that you feel the best about?

When did you start mediating, when did you mediate your first case?

Have you tried to make peace between people and failed? Why? How often has that occurred? Can you think of reasons why cases fail?

I am done with my questions, but I found what you all said very interesting. As I am trying to understand all the different ways that mediation can go and get all your ideas if you can think of anything else to add to what you have already said I would be most grateful.
Is there anything else that we have not discussed?

Is there anything that I did not ask about?

**Interview Guide for Collecting Recalled Cases**

Tell me about some mediations that you were involved in that you remember very well. Tell me just briefly what the dispute was about and then tell me everything about the mediation. Tell me what happened from when you or the mediators first opened your mouth about it till the end of the mediation and everyone dispersed. Tell me exactly how the mediation went as best as you can remember – how many different meetings there were, where the people met, how many people were there, what each person said and so on. Do not just summarize, tell me I would like to hear everything that you can remember about how the mediation went. Please start from the beginning – when the mediators first opened their mouth what happened. Please continue from there as if you are a tape recorder – tell us everything that you remember. If you do not remember something it is no problem just tell me that. Do tell me as much as you remember about the mediation or peacemaking and tell me when you do not remember something clearly. I need as much as you can remember from the first word to the last word.

What was the last mediation, talking between people to help them resolve their dispute that you were involved in? Tell me what the dispute was about and then tell me everything about the mediation. Tell me what happened from when you first opened your mouth about it till the end of the mediation and everyone dispersed. Tell me exactly how the mediation went as best as you can remember – how many different meetings there were, where the people met, how many people were there, what each person said and so on. I would like to hear everything that you can remember about how the mediation went. Was anything about the mediation procedure in that case different from other cases you have been involved in?

What was the most difficult mediation that you have been involved in? Tell me what the dispute was about and then tell me everything about the mediation. Tell me what happened from when you first opened your mouth about it till the end of the mediation and everyone dispersed. Tell me exactly how the mediation went as best as you can remember – how many different meetings there were, where the people met, how many people were there, what each person said and so on. I would like to hear everything that you can remember about how the mediation went. Was anything about the mediation procedure in that case different from other cases you have been involved in? Did you or the other mediators do anything special to try and overcome the challenges of that case?

What was the most interesting mediation case that you were involved in?

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1 Add other questions as appropriate. Ask lots of follow-up and comparative questions.
Tell me what the dispute was about and then tell me everything about the mediation. Tell me what happened from when you first opened your mouth about it till the end of the mediation and everyone dispersed. Tell me exactly how the mediation went as best as you can remember – how many different meetings there were, where the people met, how many people were there, what each person said and so on. I would like to hear everything that you can remember about how the mediation went.

What was interesting about that mediation? Was anything about the mediation procedure in that case different from other cases you have been involved in?

Describe a time when you tried to talk between people to help them solve their dispute and it failed.

Tell me what the dispute was about and then tell me everything about the mediation. Tell me what happened from when you first opened your mouth about it till the end of the mediation and everyone dispersed. Tell me exactly how the mediation went as best as you can remember – how many different meetings there were, where the people met, how many people were there, what each person said and so on. I would like to hear everything that you can remember about how the mediation went.

Was anything about the mediation procedure in that case different from other cases you have been involved in? Why do you think the mediation was not successful?

What was the longest mediation that you have been involved in?

Tell me what the dispute was about and then tell me everything about the mediation. Tell me what happened from when you first opened your mouth about it till the end of the mediation and everyone dispersed. Tell me exactly how the mediation went as best as you can remember – how many different meetings there were, where the people met, how many people were there, what each person said and so on. I would like to hear everything that you can remember about how the mediation went.

Was anything about the mediation procedure in that case different from other cases you have been involved in? Did people do things differently in this mediation or did they do things in this one that they did not do in other mediations?

**Interview Guide for Panel Sessions**

Now when I ask the questions I want you to think about the actual mediations that you have been involved in, or that you have observed. I want you to take your time and think about their experiences when answering the questions. There are no right or wrong answers here. Whatever you have experienced or seen is right. I want to hear from all of you and I hope that you will all contribute all of your ideas. As I am interested in all the different ways that people talk between people, I hope that you will think carefully and explain all the different things that you have seen. If one person explains something, and you have seen or experienced something different, then please explain what you have seen also so that I will not miss that. So think about your ideas, and if while we are going along you have any questions, or want to add anything at any point, feel free. Finally let me remind you that I do not know anything about this and that is why I came here to learn from you all today. So if you can make your explanations as thorough and detailed as possible it will help me to understand. If you do not understand a question ask about it and I will clarify it. That is no problem.
Questions for Expert Panels

When you have talked between people to help them settle their disputes, solve their problems, come together if they had been on bad terms what happened? What was the mediation procedure? How did the process go?

Take notes on what they say. Do they mention caucuses, judging, group meetings, prayer, etc. Note the interesting features of their statements and refer to them during the discussions of the different kinds of disputes they have been involved in. Also make questions about them and either ask these new questions immediately, or after the discussion of the different kinds of disputes.

When they mention different ways of mediating ask about them. Ask why and when the different techniques were used. Ask which techniques they have used the most and which they used the least.

Now I want you all to think back to your experience. What kinds of disputes have you all mediated and what kinds of disputes have you seen being mediated by others?

After asking this question wait. If they do not understand then supply examples – “For example have you ever mediated between people who were quarreling over who was going to garden or farm on a specific piece of land, when someone’s animal destroyed someone’s crops, when 2 family members quarreled over a bag, when there was kuyah between 2 people who used to be on good terms, arguments between co-wives or relatives or any other kind of dispute. What disputes have you mediated or seen other mediate”

Go through the different types of disputes that they have mediated with the following questions:

In the mediations that you saw or were involved in for \textit{X kind of disputes} what happened? What was the mediation procedure?

If they give a brief explanation explain, “I would like you to explain as thoroughly and is as much detail as you can exactly what you did in those mediations. Please describe as carefully as you can who you would met with and what happened during the meetings. How did the X kind of mediations start? After the greetings what happened?”

What happened next?

What happened next?

After X happened did you all just disperse or did anything else happen?

Did you do all of those X kind of mediations that way or did you do any of them differently?
Repeat the questions “How did you mediate the X kind of disputes that you were involved in?” If they give a brief explanation explain, “I would like you to explain as thoroughly and is as much detail as you can exactly what you did in those mediations. Please describe as carefully as you can who you would met with and what happened during the meetings. How did the X kind of mediations start?” “Did you do all of those X kind of mediations that way or did you do any of them differently.” Do that with each kind of mediation they mention.

In the mediations that you have seen or been involved in, was there always judging or was there any time that neither of the disputants were told that they were wrong and the other one was right?

What have you seen more of – cases in which there was judging or cases when there was no judging? How much more did type X occur – a lot? A little? Or what?

What happened if the person on the wrong is an elder and the one on the right is a youth or if the one on the wrong is a husband and the one on the right is a wife?

Have you ever seen or been involved in a case where all the disputants were faulty or none of the disputants were faulty?

If yes – how did that affect the mediation procedure?

In the mediations that you have seen or been involved in did the mediators ever speak to the disputants (the people having the problem) separately? Did that ever happen or did the mediators always bring the disputants together at one place?

In the mediations that you have seen or been involved in did the mediators ever just speak to the disputants separately and never actually bring them together?

What kind of mediation is the most common? In your experience when mediating disputes was it more common for you and the mediators to bring the disputants together or to speak to them separately? How much more did you do type X – a lot? A little? Or what?

Get details of caucuses and group meetings – how did each of them go?

In the mediations that you have seen or been involved in did the mediators always ask the disputants to explain what happened or were there ever cases when the mediators did not ask the disputants to explain?

How much more have you done or seen type X occur – a lot? A little? Or what?

Do you have a preferred way of doing it?
Have you ever mediated between people when there were bad feelings between them? How did that procedure go?

Have you ever mediated between co-wives? How did it go?

Have you ever mediated between a husband and a wife who had a problem? I do not just mean stopping the husband and wife from quarreling when you find them quarreling, but actually helping them to resolve their disputes, solve their problems, or be reconciled if they were estranged. How did it go? Please explain as carefully as possible.

If yes – how were those disputes handled?

This question is for all of you. Was it always like that or were there any times that the process went differently?

Which way have you used the most often?

Think about all the times that you mediated between husbands and wives – was the peace-making procedure (i.e. what you did in the peacemaking) always the same or did it differ?

Have you ever mediated between people when there was a dispute caused by someone’s animal destroying someone else’s crops or vegetables?

If yes – how were those disputes handled?

This question is for all of you. Was it always like that or were there any times that the process went differently?

Which way have you used the most often?

Have you ever been involved in or seen a mediation between groups of people like different kafos or different groups of kafo members, kabilo members, or other large groups of people?

If yes – how were those disputes handled?

This question is for all of you. Was it always like that or were there any times that the process went differently?

Which way have you used the most often?

Have you ever mediated a dispute together with women/men only? Was that different from when you mediated with men/women only?

If yes – how were those disputes handled?
This question is for all of you. Was it always like that or were there any times that the 
process went differently?

Which way have you used the most often?

Are there different ways of mediating, talking between people to help them settle their 
disputes, solve their problems and bring them together after there has been a 
misunderstanding between them?

Which way have you used the most often?

Are you aware of any different ways of mediating from the way that you mediate?

Have you ever seen anyone mediate/talk between people to help them resolve their 
disputes differently from the way that you described?

From what you have seen and experienced is there any difference in the mediation 
procedure when women mediate and when men mediate?

From what you have seen and experienced is there any difference in the mediation 
procedure people from different tribes mediate?

From what you have seen and experienced is there any difference in the mediation 
procedure when people from different religions mediate?

From what you have seen and experienced is there any difference in the mediation 
procedure when people from different religions mediate?

Do you know of anyone who mediates in a different way from how you do, who follows 
a different mediation procedure or who does anything about the mediation differently?

Do you know anyone who is experienced in mediation that I could talk to?

Have you ever mediated a dispute that involved money or who owned something? How 
did you deal with that issue?

Have you ever been involved in making peace between people when the case has gone to 
the Mansa (Alkali, Chief, police or other authorities)?
Were such cases different from the other ones that you have been involved in?

What was the last case that you were involved in?

Describe.
I am done with my questions, but I found what you all said very interesting. As I am trying to understand all the different ways that mediation can go and get all your ideas; if you can think of anything else to add to what you have already said I would be most grateful.

Is there anything else that we have not discussed?

Is there anything that I did not ask about?
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BIOGRAPHICAL SKETCH

Mark Davidheiser, a proud redhead, has studied conflict analysis and resolution at multiple institutions, been trained as a mediator and an inter-cultural negotiator, volunteered as a mediator in a Victim-Offender Reconciliation Program, and assisted in the training of prospective mediators. As of 2004, he has been involved with issues of conflict transformation, development, Africa and the African Diaspora, and research design and methodology for over ten years. His field research has examined conflict management and mediation in the Navajo Nation, Eritrea, The Gambia, and Senegal.

Mark received his Bachelor of Arts in sociology/anthropology with concentrations in Peace and Justice and in Education from Guilford College in 1995. He earned his Master of Arts in socio-cultural Anthropology from the University of Florida (U.F.) in 1998. In 2004 Mark received his second degree from U.F., a Ph.D. in socio-cultural anthropology with specializations in conflict analysis and resolution and in Islamic African societies.

Mark is burdened with great quantities of enthusiasm and curiosity, making a complete listing of his interests impossible. However, some additional ones to those mentioned above are pastoralist systems, farmer-herder conflict, rural systems, international assistance, governance, displacement and resettlement, legal reform, Islam, Arabic, multiculturalism, coalition-building, community relations, and research. Mark is a gregarious and outgoing person who would be happy to discuss these, and other topics, with interested persons (mdavidhe@yahoo.com).