

Power: The Art of Mediation?

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This essay aims to present various points of view about the most important asset of any mediator, having to choose between impartiality and power. Given the long list of ideal mediator characteristics, it is very difficult to reach a solid conclusion about the above statement. Therefore, the discussion will start with a brief, but necessary, explanation of the notion of mediation. After clarifying the concept, a description of mediator features will be provided with a particular focus on power and impartiality, and how they relate to trust. It is important to stress that trust is also at the heart of debates regarding mediation because it is unclear whether it is only related to impartiality. Last but not least, a case study that draws arguments from the Arab – Israeli conflict is included in order to examine how the debate is formulated in a practical and real-life example.

It is necessary to provide at least a brief explanation of the term mediation. Mediation takes place voluntarily and this feature distinguishes it from other forms of third party intervention, such as arbitration and adjudication (Bercovitch 1997; Siniver 2006; Zartman and Touval 1996). Other characteristics are that it does not embrace violence and that it aims for suggestions; there is nothing binding or obligatory to the results of the process, for example.

Mediator Characteristics

Another topic, which researchers that focus on third party mediation grapple with, is the ideal type of mediator, to attempt to distinguish which characteristics relate to a successfully mediated result. According to Roberts (2007) various authors have pinpointed a number of desired qualities that a mediator should have:

- Originality of ideas
- Appropriate sense of humour
- Ability to act unobtrusively
- The mediator as “one of us”
- The mediator as respected authority (that is, personal prestige)
- Ability to understand quickly the complexities of a dispute
- Accumulated knowledge
- Control over feelings
- Attitudes towards persistent and patient effort invested in the work of mediating
- Faith in voluntarism (in contrast to dictation)
- Physical endurance
- The hide of a rhinoceros
- The wisdom of Solomon
- The patience of Job
- Capacity to appreciate the dynamics of the environment in which the dispute is occurring
- Intelligence (both “process” skills and “content” knowledge)

However, the list of required attributes can be endless due to the difficulty of mediation. Bercovitch and Schneider (2000) argue that in general, a political actor is asked to act as a mediator in cases when there is a specific and clarified reason, and if he or she is acceptable and knowledgeable. In another study, Bercovitch (1984) found that the most crucial characteristics for mediators internationally were sense of humour, intelligence, stamina, and patience

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(Bercovitch and Schneider 2000, p. 148).

Siniver (2006) notes that regardless of the typology or methodology used to evaluate desired mediator characteristics and qualifications, it goes without saying that the mediator's power (often called leverage) and impartiality are fundamental preconditions of success. Additionally, Smith (1994) argues that these abilities are closely interrelated and very often the presence of one of these characteristics during the mediation process can be explained by the lack of the other. In the following sections there is an explanation and clarification of both power and impartiality.

Power

Roberts (2007) argues that mediator power is one of the most crucial practical problems. Zartman and Touval (1996, p. 455) describe power or leverage in mediation as the ability of the mediator to move a party in its intended direction. Bercovitch and Schneider (2000) note that mediators are asked to act in such a demanding role because they are considered to have the ability to promote an agreement by using their leverage, power potential, and influence, and not because of attributes such as neutrality. Leverage is considered to be a large variety of means and resources which can be used in order to achieve a desired outcome. The mediators' aims are dual: to change the physical circumstances of the conflict and to shape the final outcome of the resolution (Bercovitch and Schneider 2000, p. 149). The question that arises from these arguments is how these objectives are best met?

Zartman and Touval (1985) believe that a precondition of success is not the demonstration of neutrality, but the possession of resources that the other party regards as valuable. Given this argument, the mediator is judged by his/her potential influence which could be considered as a form of power. Moreover, as previously mentioned, the mediator is considered to be a respected authority.

It seems like a challenge for a mediator to gain respect, which can be closely linked to impartiality, and at the same time be an authority figure, a notion closely related to power. In addition, as was mentioned previously, it has a non-binding and a non-violent nature, and the real power to initiate and terminate the procedure is in the hands of the parties that are in dispute. The mediator needs to be accepted by these parties and possess the ability to satisfy their needs. So, the more powerful the mediator is, the more resources he or she can employ to change the disputants' attitudes and perceptions (Siniver 2006, p. 811), or to influence them.

Bercovitch and Schneider (2000) argue that any mediation mandates are the result of the power position of the actor, or can be the impact of factors like reputation and experience. Moreover, the analysis of this argument is very difficult because of the complexity of mediation as a practical matter.

Significance of Trust and Impartiality

Many scholars of mediation strongly believe that building trust is a key factor for a successful mediation result (Poitras 2009, Bercovitch and Schneider 2000). A review of academic and practitioner perspectives regarding trust illuminates six areas that are crucial for mediations.

The first issue is the role of "chemistry" between a mediator and the parties involved. This "chemistry" can be created by the attraction of the mediator and the identification of common experiences that the mediator and the parties share. The second issue is a mediator's reputation, and professional and intellectual credibility, which can create a strong mediation motivator. The third issue is the mediator's goodwill and empathy, which signifies that the mediator has a strong interest in the parties' concerns and needs. The fourth factor is the management of the mediation process which involves matters of confidentiality, and a deep understanding of the ways of relevant procedures. The fifth factor is the degree of comfort and trust between the mediator and the other parties which can be created through time spent together.

Last but not least, Poitras (2009) indicates that a mediator needs to demonstrate neutrality and impartiality consistently, because the parties tend to trust those mediators that do not act in favor of any specific party. Deutsch (1958) states that it is more likely for an individual to show trust if they have the belief a person has nothing to gain

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from untrustworthy behavior (Poitras 2009, p. 308). In regard to partiality, Poitras (2009, p. 317) argued that partiality could be a factor sufficient enough to make parties mistrust their mediators. Welton and Pruitt (1987) used a similar argument to reinforce the significance of this factor by showing that parties who face strong biased behavior on behalf of the mediator toward the other party, were much less accepting of the mediator's interventions and observations. So, mediation as a channel can malfunction under these circumstances.

However, in the same research, Poitras (2009) found that impartiality was not as significant a contributor as it was expected to be. By impartiality, he meant that both parties needed equal opportunities to express their beliefs and points of view, without showing any particular bias towards a specific party. Research in other areas and issues, such as justice and impartial management, has shown that they are closely related (Zaheer, McEvily and Perrone 1998). Moreover, mediators can be impartial by neutrally informing all parties involved, and by preserving equality at all levels of the procedures while being in charge of all processes. Smith (1994, p. 445) also underlines the fact that "a growing body of literature argues against the necessity of mediator impartiality" and pinpoints Saadia Touval as perhaps "the most renown critic of impartiality" because he does not share the belief that neutrality is a precondition of success.

It is suggested that it is not necessary for the mediator to demonstrate impartiality, but rather, it is important that the mediator not do or say anything that could create the impression that he or she is taking sides (Poitras 2009). Roberts (2007) argues that impartiality depends on a variety of factors such as skills, knowledge, personal integrity, and the commitment of the mediator. She also adds that credibility is closely related to the impartiality of the mediator. Young (1967, p. 81) claims that "a high score in such areas as impartiality would seem to be at the heart of successful interventions in many situations."

A variety of research demonstrates the importance of trust in mediation processes, but according to Kydd (2006) the existing literature has not yet reached a conclusion about an ideal combination of factors that a successful mediation will possess, either in general terms or more specifically regarding trust building. However, power and impartiality seem to be accepted as fundamental elements in the mediation process and contributors to the result, whether it is a success or a failure.

Case study: The Mediation Processes in the Middle-East

In order to have a better picture about the relevant discussion regarding impartiality and power, it is useful to include a case that it is commonly used by many authors who focus on third party mediation. This is why the case of the Middle-East was chosen. Siniver (2006, p. 806) regards it as "the most intricate and protracted conflict of the 20th century." The author looked into three specific elements which have been translated into three hypotheses. First, he examines whether the degree of power (leverage) the mediator has over the disputants is related to the likelihood of success in the mediation process. He then tests the attribute of impartiality and its role in success, and last he argues that the timing of the mediation is very significant.

His first point is that none of the features are sufficient by themselves to lead to success, as history has different statements to make. The Arab-Israeli conflict has been ongoing since 1948, and both powerful and unbiased mediators have attempted, in vain, to produce a viable solution at various stages of the process. Perhaps one of the most interesting points that he makes is the question regarding the extent of the necessity of these attributes (Siniver 2006). The notions of power, impartiality, and timing have been lying at the heart of numerous debates, but few can deny that they have relevance to any mediation attempts.

By reviewing the long history of mediation in regard to the Arab-Israeli conflict, it is clear that the four successful interventions only partially confirmed the hypothesis that mediators who are both powerful and impartial, and participate in the process at a later stage have a better chance to be successful. At the start of the conflict, the UN sent Dr. Ralph Bunche to settle peace agreements between Israel and Egypt, Lebanon, Jordan, and Syria. He was the only mediator that could confirm all three hypotheses, whereas all the other mediators confirmed only two out of the three hypotheses. Dr. Henry Kissinger was the specialist who was called when the Yom Kippur War started, and as a mediator engaged in a more gradual approach and therefore confirmed the timing and power preconditions.

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Indeed, it is said (Siniver 2006, p. 812) that power was “the quintessential element in his mediation style.” However, the situation was slightly different with the Camp David Accords, which took place five years later under US President Carter, as they confirmed the hypotheses of power and impartiality, focusing on achieving the first peace treaty between the disputants. Lastly, after the first Gulf War, were the highly controversial Oslo Accords, which failed to confirm the hypothesis of power, but the Norwegians as mediators were somewhat successful regarding timing and impartiality.

Given these points, Siniver (2006) argues that mediators that had significant leverage ability were much more successful than mediators who did not have this ability, in the specific case of the Arab-Israeli conflict. The lack of this element in the Oslo Accords can be used to explain their “ultimate failure” (Siniver 2006, p. 822). The author relates the lack of power with the implementation and the monitoring of the agreement. Especially regarding Oslo, the selection of words like “process” is indicative of not delivering a desired result. The powerless mediators were in fact unable to monitor and secure the implementation of the agreement.

Siniver (2006) concludes that historical events demonstrate that a mediator’s impartiality or bias has no decisive impact on the success of a mediation process, despite the fact that in this specific case three out of four attempts involved power strategies to bring leverage during discussions. Turning back to the original question of whether the power of impartiality is the most important asset of a mediator, when the discussion focuses on the specific Arab-Israeli conflict, it seems that power is more significant than impartiality.

More specifically in regard to the four attempts, it seems that UN mediator Count Folke Bernadote, the first mediator of the Arab-Israeli conflict, was a bad choice because it was proven that he had neither the proper qualifications nor the suitable dynamic personality for such a demanding task. It seems that he had very few of the ideal characteristics that a mediator must possess (Siniver 2006). Bunche, his deputy, exploited not only his perceived impartiality as a UN mediator, but also his close connection with the US in order to establish peace agreements. Kissinger neither denied that he was Jewish, nor did he ever hide that there was something more between the US and Israel. These issues were never an obstacle for him, though, and he succeeded in producing three agreements in eighteen months (Siniver 2006, p. 823). Carter had built a close relationship with President Sadat based on trust and confidence. Carter had a deep understanding of the cultural particularities of Sadat’s country and he knew how to exploit the patron-client relations that prevailed in his country. This was the work of a powerful mediator and not of a “pure/unbiased” one. After all, the US was the most powerful country of the world (Siniver 2006).

At some point, Norway was judged as a more suitable state to host the mediation process because of its perceived impartiality, which was a catalyst for better communication between Israel and the PLO. However, as was mentioned earlier, the lack of power led to poor monitoring of the implementation of the agreements, which put in jeopardy not only the Oslo agreements, but also the previous attempts. The author also notes that the participants in the conflict tended to “engage constructively” with the mediator if they shared the belief that he could bring a positive change in the nature of their interaction. It is doubtful whether trust originates from impartiality only, he adds (Siniver 2006, p. 823). It seems that apart from these attributes that have to do with mediators, timing seems to have played a significant role, as suggested initially in the hypotheses.

Conclusion: Is it a Matter of Definition?

Smith (1994, p. 447) argues that the discussion should not be built on incomplete questions like “is impartiality necessary for effective mediation?” and “how effective is mediation?” but to look at the matter from a different standpoint. Questions like “is pure mediation effective?”, “is power mediation effective?”, and “is impartiality necessary in pure mediation?” are more suitable. It is important to distinguish between these types of mediation when discussing such important issues. This way it is easier to give an answer regarding the necessity of impartiality in mediation because it depends on whether the talk is about pure or power mediation. Regarding power mediation, though, the answer is negative.

A number of authors even believe that any mediator who is regarded as a power mediator cannot, at the same time, be a pure mediator. Smith (1994) does not engage with the word “debate,” but with “chimera,” in order to stress how

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important it is to clarify the type of mediation before deciding on whether power or impartiality is the most fundamental asset of a mediator.

Regarding the example that was included in this essay, it is apparent that power was higher in the hierarchy of importance for all mediators that were involved in the procedures and in various stages. However, it depends on the case, and there is still no general rule on whether impartiality or power is the ideal asset of any mediator. A useful conclusion could be that these characteristics depend on both the mediation style that an individual should follow, and the type of mediation process that will be followed (Exon 2007).

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