

Spiritual Practices for Mediation Challenges:

**Pragmatic Mediation Applications from
Five Major World Religious Traditions**

By: Heidi M. Tauscher

Submitted on May 25, 2003

2003 James Boskey Dispute Resolution Essay Competition

Advisors: Dr. Jon Gunnemann and Dr. Theophus H. Smith

I. Introduction:

Over the last twenty-five years, mediation has become an increasingly popular means of resolving legal disputes in the United States. From 1996-1999, 87% of the largest U.S. corporations used mediation services.¹ In 1998, the Congress passed the Alternative Dispute Resolution Act requiring all federal district courts to authorize the use of alternative dispute resolution in civil actions and bankruptcy adversary proceedings.² Mediation has proven to be an inexpensive, relatively fast and efficient alternative means of resolving disputes. Further, the process provides parties with a means to preserve their relationships and greater flexibility to tailor results to their immediate needs. Growing evidence indicates that parties are more likely to abide by the resolutions that they help to formulate. For all these reason, lawyers who champion alternative dispute resolution increasingly prefer mediation over arbitration according to a recent survey conducted by the *National Law Journal*.³

Concurrent with this rise in mediation popularity, there has been an increasingly urgent cry for the identification of effective mediation practice tools. While mediators have looked to the fields of psychology and counseling for guidance, the separation of church and state has discouraged many from seriously considering spiritual traditions as a potential source for mediation practices. Further, increased awareness of religious conflicts has focused attention on the elements of sacred traditions that promote exclusion and violence. Yet, these religions also possess a treasure of indispensable peacemaking tools and conflict resolution strategies that can inspire openness, fairness, empathy, compassion, and imagination.⁴ These prosocial practices can

¹ Philip Zimmerman, "From Training to Practice as Neutral", CPA Consultant, Vol. 13, Issue 6 (Jersey City: May 1999), p. 9.

² 28 U.S.C. 651-658 (1998).

³ Lisa Brennan, "What Lawyers Like: Mediation", *National Law Journal*, Vo. 22, Issue 12 (New York: Nov. 15, 1999), p. A1.

⁴ See Marc Gopin, *From Eden to Armageddon* (Oxford: Oxford University Press 2000), pp. 199-203.

be used by mediators to generate methods and devices for addressing the interpersonal challenges that arise in the mediation process.

It is the goal of this study to identify some of the practical mediation tools revealed in five of the world's major religious traditions, as well as to examine how those skills are relevant to the four stages of the mediation process. Pragmatic application of these spiritual tools and practices offers the mediator another set of insights, practices, and skills to assist him/her in his/her peacemaking. While this paper is offered to provoke further thought on peacemaking, it is not intended to be a definitive catalogue of the spiritual tools available through religious traditions.

In order to address mediation effectively, this paper will review each stage of the mediation process. The problems that mediators typically experience at each particular mediation stage will be identified. Then, specific spiritual conceptions, practices, and skills will be introduced which target these challenges. An attempt will be made to equally represent five of the major religious traditions present within our pluralistic society. Only positive aspects of the spiritual traditions will be cited.

Finally, it is important to note that these spiritual practices and skills will be offered from an *etic* or outsider's perspective. These concepts are not offered for purposes of proselytization or conversion, but rather to furnish the mediator with another dimension of peacemaking skills. Because these spiritual concepts are presented from an *etic* perspective, the descriptions lack the complexity and subtlety that ground them in the faith of true believers. The challenge remains for the mediator to translate these concepts and his/her own *emic* or insider understandings of peacemaking into the context of his/her mediations, as well as to teach and inspire the mediating parties to utilize these practices and their own peacemaking skills to affect lasting resolutions.⁵

⁵ Robert J. Schreier, *Constructing Local Theologies* (Maryknoll, NY: Orbis Books 1985), p. 57. The anthropologic term *etic* denotes the perspective of one outside a religious culture, while *emic* describes the view of an insider.

II. Mediation Challenges and Spiritual Responses:

Mediation is the process wherein a neutral third part is invited by disputing parties to assist them in voluntarily reaching a mutually agreed settlement of their issues.⁶ While the mediator has no decision-making power, his or her intervention is sought by the parties for purposes of overcoming impasse and assisting them in amicably resolving the conflict under acceptable terms.⁷ The mediator's negotiation skills and ability to inspire understanding directly impact the settlement efforts expended by the parties and thereby the nature of their final agreement.

The mediation process is loosely constructed in four successive stages. In the first stage, the mediator and parties commence the process through opening statements. Stage two is the time for negotiation between the parties facilitated by the mediator's diplomacy. Once negotiations elicit potential settlement options, stage three involves assessment of the potential resolutions. Finally, stage four engages the parties in producing an enforceable settlement agreement.

Each one of these mediation stages presents the mediator with its own unique set of challenges for the mediator. While first stage issues center on building rapport between the parties, stage two requires the mediator to create an atmosphere of trust. In stage three, the mediator must inspire receptiveness if the parties are to reach any lasting understanding. The fourth stage requires the mediator to call the parties to produce a fair, enforceable and settlement on terms which they intend to uphold.

In the following text, these mediation stages will be reviewed in further detail and spiritual concepts will be introduced to assist with the requisite challenges. The presented spiritual practices will be drawn from one of five major religions: Buddhism, Hinduism, Judaism,

⁶ Christopher W. Moore, *The Mediation Process* (San Francisco: Jossey-Bass, Inc. 1996, 2nd ed.), p. 8.

⁷ Theodore W. Kheel, *The Keys to Conflict Resolution* (New York: Four Walls Eight Windows 1999), p. 49.

Christianity, or Islam. The treatment of these religious beliefs will be far from exhaustive and will involve an *etic*/outsider's view of these traditions.

A. Stage One: Opening Statements & Establishing Rapport and Trust

Stage one of the mediation process involves opening statements. The mediator uses his/her opening statement to introduce the parties to the mediation process and establish the ground rules for their negotiations. Next, the mediating parties present their initial statement reciting their versions of the case facts, identifying areas of agreement and disagreement, and indicating their desired solution to the problem at hand. After the parties have finished their opening presentations, the mediator will summarize the points made by both parties and attempt to frame the specific issues the parties seek to resolve during mediation. Then, the mediator will establish a plan for the course of negotiations and settlement. Throughout stage one, the mediator's challenge is to establish rapport and create trust between the parties and himself/herself.⁸

As the mediator enters the mediation process, practicing the spiritual art of compassionate awareness can be extremely helpful. This Buddhist practice of *karuna* (compassion) involves taking the time to empathetically focus one's attention on the participants in the room. With conscious intent, the mediator approaches the others in the room with compassionate awareness for their thoughts and feelings.⁹ As a neutral third party, the mediator is open to connecting with the both disputants' feelings of frustration about the conflict, anger at their opponent, fear of the

⁸ See Moore, pp. 89-90, 194, 203; Jay Folberg and Alison Taylor, *Mediation: A Comprehensive Guide to Resolving Conflicts without Mediation* (San Francisco: Jossey-Bass 1984), p. 38.

⁹ Dalai Lama and Howard C. Cutler, M.D., *The Art of Happiness* (New York: Riverhead Books 1998), pp. 69, 87; Thich Nhat Hanh, *Essential Writings* (Maryknoll, NY: Orbis Books 2001), pp. 99, 155. The Buddhist *Metta Sutta* states "you should develop unlimited thoughts of sympathy for all beings in the world above, below, and across, unmarred by hate or enmity ... this is called the hold state. When you hold on to opinions no more, when you are endowed with good conduct and true insight, when you have expelled all craving for pleasures, you will be reborn no more." "Metta Sutta", *Suttanipata* (London: Pali Text Society Publications 1985), pp. 143-152. Note that the goal of Buddhist spirituality is to avoid rebirth. Buddhism explicitly links compassion with the practice of meditation, which together are "culminate in an 'unlimited' mind with respect to all beings." Luis O. Gomez, "Nonviolence and the Self in Early Buddhism", *Inner Peace, World Peace: Essays in Buddhism and Nonviolence*, Kenneth Kraft, ed. (Albany, NY: State University of New York Press 1992).

mediation process, and hope for a positive outcome. This spiritual practice gives the mediator an understanding of the dynamics in the mediation and a basis upon which to respond.¹⁰ Attentive to the attitudes and feelings of the parties, the mediator may begin to reduce fear, engender respect, and encourage hope in the outcome. Through personal warmth and compassionate respect, the mediator builds rapport with the parties. The mediator consciously models the type of behavior that the parties will be encouraged to show one another during the course of the mediation.

The mediator's greeting of the parties will create an initial impression that sets the tone for the mediation process. Judaism teaches the importance of commencing interpersonal gestures through its tradition of the *shalom* greeting. The Jewish address of *shalom* bids a welcome of kinship and peace. It is a greeting that connotes confidence in the future realization of a full communal relationship. *Shalom* greets the other with hope that their relationship might be one of respect and integrity, peace and justice, wholeness and flourishing.¹¹ This is not to suggest that the mediator use the word *shalom*, but that he/she is mindful of the rapport his/her initial welcome establishes with the parties. From Jewish spirituality, the mediator learns that the initial greeting of the parties can convey one's own respect and integrity as well as good will for the others' mutual relationship. A welcome that conveys reciprocal respect and hope for future relationship not only establishes rapport, but begins to win trust in the mediator, confidence in the mediation process, respect between adversaries, and anticipation of a positive outcome. A greeting of peace and respect allows the mediator to draw the parties out of themselves and toward constructive resolution.

¹⁰ Dalai Lama and Cutler, p. 69. The Dalai Lama indicates that the attitude of compassion allows one to approach the other in a positive, friendly manner that permits a positive response from the other and a certain flexibility to change approach. However, the other can be closed, irritated, or indifferent without the attitude of compassion.

¹¹ Rabbi Steven S. Schwarzschild, "Shalom", *The Challenge of Shalom*, M. Polner and N. Goodman, eds. (Philadelphia, PA: New Society Publishers 1994), pp. 17-18; Dr. Eugene Carson Blake, "Development", *Religion for Peace: Proceedings of the Kyoto Conference on Religion and Peace* (New Delhi: Gandhi Peace Foundation and Bombay: Bharatiya Vidya Bhavan 1973), p. 16.

In the initial statements, the mediator will need to introduce the mediation process, establish the governing procedures, and create the ground rules. The Islamic concept of *hikmah* can be useful. *Hikmah* means wisdom and refers to the conflict intervention style of third party interveners. The qualified intervener, known as the *hakam*, is trustworthy, impartial, and possesses a deep knowledge of conflict. Due to his wisdom, the *hakam* possesses the necessary esteem to set procedures and the general authority to fairly establish ground rules. The intervener is expected to learn the facts and then act accordingly, leading the parties to a resolution that is both legal and moral.¹² While arbitration is the typical form of Islamic conflict resolution between individuals, the concept of *hikmah* provides valuable insights for the mediator.¹³ In introducing the mediation process, the mediator's manner must betray trustworthiness and impartiality, as well as a confident knowledge for handling conflict. Such wisdom or *hikmah* allows the mediator to gain the confidence and trust of the parties, as well as engender respect and adherence to the mediation procedures.

During the initial interactions with the parties and their opening statements, the mediator can begin to neutralize feelings of anger, hatred, and shame. Christian spirituality imparts the discipline of nonaccusation. This is the practice of neutrality in the face of accusation, blame, or shame. The Christian admonition to "judge not, lest ye be judged" can be instructive.¹⁴ Through this practice, the mediator learns to listen openly, reserve judgment and to deal impartially with the parties. In this way, the mediator remains open to deal fairly and flexibly with the parties. At the same time, the mediator models a refusal to be mired in controversy and blinded by blame.

¹² Ahmed Moussalli, "An Islamic Model for Political Conflict Resolution: *Tahkim*", *Peace and Conflict Resolution in Islam*, A.A. Said, N.C. Funk, and A.S. Kadayifci, eds. (Lanham, MY: University Press of America 2001), p. 146. Ralph H. Salmi, Cesar Adib Majul, and George K. Tanham, *Islam and Conflict Resolution* (Lanham, MY: University Press of America 1998), pp. 131-132.

¹³ Salmi, pp. 131-132.

¹⁴ Matt. 7:1, Lk. 6:37; John 7:24; John 8:15. In Christian theology, the importance of nonaccusation is underscored by the words of Jesus on the cross, when he referred to his crucifiers praying, "Father forgive them; for they do not know what they are doing." Lk. 23:34.

Such interaction allows the mediator to neutralize the tension and focus on the constructive process of clarifying facts and narrowing issues.

In beginning to prepare the parties to move toward resolution, the mediator must establish optimism concerning the outcome. The Hindu practice of *ahimsa* provides a model for creating such a positive attitude. *Ahimsa* literally means noninjury. Often translated as nonviolence, *ahimsa* actually connotes a positive antidote to violence. Gandhi defined *ahimsa* as equanimity toward all living beings. For Gandhi, it meant an active process of transforming human hearts so that they value the life force within other beings. The result is compassion, harmony, and liberation.¹⁵ Through this intentional practice of transformation, the mediator may inspire the parties' compassion for one another and optimism in the mediated possibilities.

Using these spiritual practices, the mediator establishes trust and rapport through compassionately assessing the situation and graciously greeting the parties. Further, the mediator creates respect and confidence by wisely introducing the parties to the process and by empathetically establishing the procedures. In a spirit of nonaccusation, the mediator also listens to the parties recount the facts and assists them in narrowing the issues without resort to accusation, blame, or shame. Finally, the mediator engenders compassion and optimism concerning the outcome of the mediation. After this initial joint session with the parties, the mediator will initiate stage two negotiations.

B. Stage Two: Negotiations & Fostering Creativity in a Cooperative Atmosphere

In stage two of the mediation process, the parties begin negotiation of their dispute in earnest. Party negotiations are carried out with the aid of the intermediary. Through the use of both joint

¹⁵ Gavin Flood, *An Introduction to Hinduism* (Cambridge: Cambridge University Press 1996), p. 97; Sunanda Y. Shastri and Yajneshwar S. Shastri, "Ahimsa and the Unity of All Things: A Hindu View of Nonviolence", *Subverting Hatred: The Challenge of Nonviolence in Religious Traditions*, D. L. Smith-Christopher, ed. (Maryknoll, NY: Orbis Books 1998), pp. 67-69, 83; M.K. Gandhi, *Nonviolence in Peace and War*, Vol. 1 (Ahmedabad: Navajivan Publishing House 1948), p. 49.

sessions and private meetings (caucuses), the mediator works with the parties to understand their various perspectives on the dispute and to assist them in understanding their opponents' viewpoint. Further, the mediator attempts to identify the various parties' interests and priorities, as well as their preferred resolution for the conflict. Throughout the negotiation process, the mediator questions the parties and tests their resolve to better understand their positions and identify settlement options. When possible, the mediator brings the parties together to listen and share their different perceptions on the issues and ideas for resolution. During this phase, the mediator seeks to develop the parties' awareness of the need for settlement options and to detach them from recalcitrant positions. Throughout stage two, the mediator's challenge is to create an atmosphere of cooperation between the mediator and parties that fosters the openness, flexibility, interaction, and creativity necessary to identify options for dispute resolution.¹⁶

As the mediator assists the parties with negotiations, there is the need to foster respect and trust. In Judaism, the concept of *mahloket* is helpful. *Mahloket* denotes constructive conflict of a type that honors both sides of the debate, as opposed to persistent disagreement. While mutual respect does not eliminate conflict, it does help to positively reformulate the character of the dispute. *Mahloket* allows for civility because it anticipates that friendship will survive the conflict.¹⁷ Through respect and optimistic anticipation of an amicable resolution, the mediator can set the stage for civility, honorable negotiation, earnest conciliation, and the peaceful resolution of the parties.

During the negotiations, the mediator will want to inspire equanimity between the parties. Muslim spirituality is founded upon the concept of *al-islam*. Translated as peace, *al-islam*

¹⁶ Moore, pp. 231, 244.

¹⁷ Gopin, pp. 127, 178.

represents concord founded upon social and personal equilibrium. Focusing upon peace, Islamic spirituality recognizes an interrelationship between social equanimity and spiritual balance.¹⁸ Understanding social equanimity as a basis for peace, the mediator can act in an evenhanded manner inspiring the parties' trust in the intervener and confidence in the process. Impartiality inspires the parties to begin to share their experiences and perceptions with both the mediator and one another.

As the parties negotiate, it is important for the mediator to model genuine receptiveness and responsiveness. The Buddhist practices of "empathetic listening" and "mindful speech" engender such behavior. Through "empathetic listening", one attempts to hear compassionately without judging or reacting. The object is to refrain from speaking any word of discord or any utterance that breaks the communicative bond between the parties. Receptive silence and empathetic listening are encouraged before responding with speech. No word is spoken by the listener until after the speaker has fully communicated and the listener has fully heard. Then, the listener responds with "mindful speech", aware of the impact of his/her words upon the audience.¹⁹ In such communication, words are only spoken with the compassionate understanding gained from careful, deliberate listening.²⁰ "Empathetic listening" and "mindful speech" allow the mediator to hear the emotional needs behind the disputants' words, to become aware of the issues that must be addressed to resolve the controversy, and to respectfully communicate the desire to help the parties to reach a lasting settlement. Applying these practices, the mediator may wish to begin the negotiation process by acknowledging the parties' courage to mediate and complimenting their willingness to resolve their dispute. Through this type of interaction, the mediator

¹⁸ Seyyed Hossein Nasr, "Male and Female in Islamic Perspective," *The Ways of Religion*, Roger Eastman, ed. (New York: Oxford University Press 1999), p. 440.

¹⁹ Hahn, pp. 154, 160.

²⁰ Dalai Lama and Cutler, pp. 89, 96.

encourages the parties to share their perceptions of the conflict and their emotional investment in the outcome. By listening carefully and asking responsive questions, the mediator and the parties can learn more about the source of their conflict and the means to resolve it.

Successful negotiation requires the parties to understand their own perceptions of the conflict, as well as the other parties' views. Thus, it is important for the mediator to motivate the parties to speak about their dispute in narrative form. Through the story, both the mediator and the parties can begin to understand the unique personalities involved, the emotions experienced, and potential resolution options. In order to inspire such deep sharing, it will be important for both mediator and the opposing party to control their desire to interject, correct, or shame the speaker. The *satyagraha* practice of discipline may be helpful in this regard. Calling it "soul-force", Gandhi created *satyagraha* out of the two words: *satya* meaning Truth and *graha* referring to "holding onto" or force.²¹ Gandhi recognized that rational discussion was important, but too often talk is motivated by insincerity and posturing. So, Gandhi used the power of *satyagraha* to discipline his senses to overcome anger and violence so that the other's words could be heard. *Satyagraha* discipline is dedicated to revealing truth and justice. Through patient, perceptive listening and honest questioning, Gandhi sought to bring moral accountability to the discussion. Through the practice of *satyagraha*, both mediator and parties can use open receptivity and truthful response as appeals to the conscience of the opponent for a truthful accounting and a moral reconciliation.²²

²¹ M.K. Gandhi, *Nonviolent Resistance (Satyagraha)*, Bharatan Kumarappa (New York: Schocken Books 1961), p. 6; M.K. Gandhi, "From Yeravda Mandir", *Gandhi: Selected Writings*, Ronald Duncan, ed. (New York: Harper & Row Publishers 1972), p. 41.

²² Bhikhu Parekh, "Gandhi's Quest for a Nonviolent Political Philosophy", *Celebrating Peace*, Leroy s. Rouner (Notre Dame, IN: University of Notre Dame Press 1990), p. 173; *See also* John J. Ansbro, *Martin Luther King, Jr.: The Making of a Mind* (Maryknoll, NY: Orbis Books 1982), pp. 3-7.

Finally, the mediator must inspire the parties to open their minds and hearts to alternative perceptions and new possibilities. In seeking to transform the present situation, the mediator must excite the parties' imagination. Appreciation for the Christian understanding of *metanoia* may prove helpful in this instance. Often translated as repentance, *metanoia* literally means "change of mind" and refers to "the casting off the old mind and taking on a new mind."²³ Through a change of heart, a new consciousness is acquired. The mediator will need to encourage the parties to cultivate an open mind throughout the negotiations. To aid this process, the mediator may point out unspoken perceptions and identify unspoken attitudes among the parties. By giving voice to these silent aspects of the dispute, the mediator uncovers tacit hurdles to the resolution process and assists in upsetting old mindsets. The mediator disrupts the old perceptions opening the way for new conceptions and inspiring the parties to create innovative solutions. Together, the mediator and parties can begin to break free of entrenched problems and to envision possible positive solutions.

While not all of the identified solutions will be feasible, the mediator strives to encourage the imaginative process and to record as many settlement options as possible. By inspiring the parties to think creatively, the mediator assists the parties in exploring potential changes in their relationship. Assessing these options will be the subject of the next stage of the mediation process.

C. Stage Three: Assessing Options in Caucus & Inviting Receptivity

The third mediation phase involves the assessment of mediation options generated during negotiations. In this stage, the mediator assists the parties in evaluating how their interests will

²³ Matt. 4:17; Rev. Emmanuel Charles McCarthy *All Things Flee Thee For Thou Fleest Me* (Wiliminton, DE: Center for Christian Nonviolence 2003), p. 9.10.

be met in relation to the various settlement options available. Then, the parties must determine which alternative best meets their needs. In this phase, the parties will work together and separately with the mediator to evaluate, modify, integrate, combine, eliminate, and exchange options in an attempt to reach a final settlement. During this process, the mediator assists the parties in moderating inflated expectations and assessing potential resolutions in light of the likely outcome.²⁴ In this way, the mediator helps the parties to arrive at their own range of settlement options. In doing so, the mediator must inspire the parties to honestly accept their own limitations and openly receive their opponent's proposals.

A principle of collective responsibility may aid the mediator and the parties in realistically assessing available settlement options. In the Hindu tradition, such a concept is *yajna* or sacrifice.²⁵ According to Gandhi, it is not possible for one person or group to harm another without injuring themselves. Human beings are interdependent. All persons owe their humanity to others and their existence to a world they did not create. For this reason, Gandhi believed all persons to be debtors unable to repay the benefits of their existence. So, he believed people must do continual *yajna* by accepting collective responsibility to live peacefully. As Gandhi said, no one "takes another down a pit without descending into it himself and sinning in the bargain."²⁶

This understanding of *yajna* provides a means for the mediator to encourage the parties to realistically assess the options presented by their opponent, and to honestly assess the impact of their own settlement offers. The wise mediator will invite the parties separately to do a reality check, asking them whether the other party is likely to accept their offer. Also, the mediator will inquire as to whether a particular settlement option will foster further disagreement or otherwise

²⁴ Moore, pp. 269, 275-276.

²⁵ Flood, p. 40.

²⁶ Parekh, p. 170.

negatively impact the parties' ongoing relationship. This process helps the parties to honestly assess and to realistically evaluate the long-term effect of available settlement options.

As much as possible, the mediator will want to encourage the parties to interact directly with one another. Such face to face interaction reduces the chances of miscommunication of settlement terms by the mediator to the parties. Also it serves to facilitate the reconciliation process by humanizing the parties one to another. To assist constructive interaction, Buddhism offers the practice of *metta*.²⁷ Also known as loving kindness, *metta* involves cultivating goodwill toward others.²⁸ This is accomplished through compassionate actions performed in a spirit of compassion for the other. The mediator can model loving kindness both by the way in which he treats the parties and by the means he uses to enforce mediation procedures. It may be necessary for the mediator to positively monitor and guide the parties' interactions if bullying or other disrespectful interchange occurs. Gently, the mediator can attempt to diffuse irritation at offers through the interjection of humor and perspective. Further, the mediator can encourage caring exchange over difficult issues and diverse offers.

In the process of evaluating settlements, the potential of mutually beneficial solutions should be considered. Through shuttle diplomacy, the mediator may point the parties toward mutually beneficial solutions. The Jewish tradition offers two models helpful in this process: the *rodef shalom* and the win-win solution. The *rodef shalom* means "pursuer of peace."²⁹ Like Aaron, the high priest and brother of Moses, the peace pursuer is expected to seek out each party to a conflict. Once present with one of the disputants, the *rodef shalom* elicits that person's perspective on the conflict and listens to his/her pain. The peacemaker soothes the party, waiting

²⁷ Christopher Queen, "The Peace Wheel: Nonviolent Activism in the Buddhist Tradition", *Subverting Hatred: The Challenge of Nonviolence in Religious Traditions*, D. L. Smith-Christopher, ed. (Maryknoll, NY: Orbis Books 1998), p. 30.

²⁸ Hahn, pp. 105, 156.

²⁹ *Abot de Rabbi Nathan XII*; Gopin, pp. 137-138, 182-186.

for him/her to release all emotion. Then, the *rodef shalom* goes in search of the opponent to render the same care. Over lengthy separate engagements with both parties, the *rodef shalom* builds rapport. Later, the peacemaker uses this trust to convey positive messages between the parties and to begin encouraging efforts to reconcile. The *rodef shalom* is usually successful in assisting the parties to find resolutions beneficial to both parties, leaving each one better off. While mediators usually encourage the parties to directly engage one another, mediators are often forced to engage in shuttle diplomacy, conveying messages back and forth between party caucuses.³⁰ Learning from Jewish tradition, the mediator can use these opportunities to draw off excess emotions, convey messages in the most positive light, and encourage the parties to find win-win solutions to their problems.

While mediators can not require the parties to forgive one another, the best resolutions often come after genuine forgiveness and reconciliation. Christianity can be particularly instructive in this regard. The Christian scripture admonishes “forgive and you shall be forgiven.”³¹ The prayer authored by Jesus asked God to “forgive us our trespasses as we have forgiven our trespassers.”³² As Christianity’s exemplar, Jesus forgave both his friends for their cowardice and betrayal, as well as his persecutors for his crucifixion.³³ In the Christian tradition, forgiveness is understood as a necessity for the health of all, including the forgiver, the one forgiven and the community. The Greek word reconciliation means to “walk together again.”³⁴ And so, Christian tradition calls all people to peacefully walk together as brothers and sisters rather than separately as

³⁰ Rabbi Everett E. Gendler, “...Therefore Choose Life”, *The Challenge of Shalom*, M. Polner and N. Goodman, eds. (Philadelphia, PA: New Society Publishers 1994) , pp 12-13.

³¹ Lk. 6:31; *See also* Mt. 6:14 and Mk. 11:25.

³² Mt. 6:12; Lk. 11:4.

³³ Lk. 21:31; Lk. 23:34.

³⁴ Megan McKenna, *Rites of Justice* (Maryknoll, NY: Orbis Books 1997), p. 128.

enemies.³⁵ Understanding the healing affect of forgiveness and reconciliation, mediators can encourage the parties to release their anger, bury their grievances, and forgive one another. In this way, the parties are able to progress beyond mere settlement to a lasting reconciliation of their differences. Such a result not only benefits the parties, but results in an increased sense of peace and harmony within the larger community.

The mediator aspires to bring the parties to a lasting settlement if not peaceful reconciliation. Mediation is focused upon salvaging the relationship between the parties as well as within the community. The Arabic word for community is *'umma*, which connotes a united people or the nation. Through Islamic traditions around *'umma*, the mediator can learn that community always includes a modicum of dissent, but that the key to reconciliation is to restore the social order and reintegrate the disputants into the larger community. In the Qur'an, it states, "if two parties of believers fall to fighting, then make peace between them."³⁶ Peace between two parties is seen as benefiting the larger community. Such understanding inspires the mediator to encourage the parties to negotiate fairly, propose just terms, evaluate outcomes realistically, and seek a settlement that will benefit the parties, their families, and their community.

D. Stage Four: Creating Enforceable Settlements & Inspiring Fairness and Fidelity

The fourth stage of mediation involves final bargaining of a mutually acceptable and enforceable settlement. During this phase, the parties must establish the terms of the final settlement, formalize the agreement, and design the implementation and monitoring procedures. Typically, the settlement agreement is reduced to a written form that addresses its terms, implementation, monitoring, and enforcement. The finality and enforceability of this agreement will directly impact the ongoing relationship between the parties, as well as the need for them to

³⁵ This insight is not limited to the Christian tradition, but exists in some form in all five of the major world religions.

³⁶ Qur'an 49:9.

invest further time, money, or resources in this conflict. For this reason, the mediator must motivate the parties to voluntarily adopt fair terms that each commits to uphold. Further, the mediators often need to help parties signal termination of their dispute through gestures, signs, rituals, or ceremonies.³⁷

Together, mediator and parties work to finalize the terms of the settlement. By reducing the terms to writing, the parties endeavor to establish enforceable conditions. The Islamic concept of *sulh* is a form of just contract that ends conflict and belligerence so that the parties may conduct their relationship in peace and amity.³⁸ Under Islamic law (*Shari'a*), the terms of this contract (*'aqd*) are legally binding upon both the individual and community. The stringent conditions of the *sulh* are understood to be definitive and binding. Once the *sulh* is in place, hostilities end and the parties pledge to forget past occurrences, initiating new amicable relations.³⁹

Sulh can be an instructive concept for mediators and the parties. In a similar manner, the settlement terms adopted by the parties of the mediation need to be just. The terms must also be recognized as definitive and binding by the parties. The mediator can assist the parties in finalizing fair terms and reducing them to writing. Further, the mediator will want to ensure that the settlement has monitoring and enforcement provisions. However, the mediator will need to impress upon the parties both the seriousness of their intent to abide by the settlement and the impending nature of the consequences if they voluntarily breach the terms. Also, the mediator will attempt to convince the parties of the need to redefine their relationship in a new and positive light. For this reason, negative threats of sanctions are not as effective as positive motivations.

³⁷ Moore, pp. 280, 301, 303, 304, 307, 316.

³⁸ George E. Irani and Nathan C. Funk, "Rituals of Reconciliation: Arab-Islamic Perspectives", *Peace and Conflict Resolution in Islam*, A.A. Said, N.C. Funk, and A.S. Kadayifci, eds. (Lanham, MY: University Press of America 2001), p.182.

³⁹ Id., p. 183.

It may help for the parties to understand that the terms of their settlement establish a trust between them. Jewish tradition has developed the concept of covenant. Denoting a sacred relationship, covenant is based upon an understanding of fidelity to the unbreakable terms and conditions upon which a particular affiliation is based. In covenant, mutuality and reciprocity are understood.⁴⁰ Through covenant, the mediator and parties are provided with a robust understanding of relational loyalty that can be applied to mediated agreements. Using this concept, the mediator can easily impress upon the parties the binding nature of their settlement. In addition, the mediator can demonstrate that breach of their covenant will negatively impact that parties' ongoing relationship.

Implementation of the agreed settlement will require the parties to act with fairness and self-control. Buddhist practice places much emphasis on cultivating inner discipline.⁴¹ Emphasis is placed upon training the self to behave responsibly and to act compassionately. Such practice is viewed by Buddhists as transformational.⁴² The Buddhist conception helps the mediator to understand that implementation of the settlement can be a transformational process for the parties. Through their discipline of meeting the terms of their agreement, the parties are not only changing their behavior but their way of relating to one another. By explaining this to the parties, the mediator may ease the implementation process and increase the parties' desire to abide by their new agreement.

After implementation, monitoring and enforcement become relevant issues. At the time the agreement is formulated, the mediator needs to clearly explain the terms to the parties and impress upon them the dire consequences if the settlement is breached. The mediator might also

⁴⁰ Gen. 9:1-7; Gen. 17: 1-22; Deut. 6:4-9; Deut. 28: 1-69; Deut. 33:4; Num. 12: 1-9. *See also* John Corrigan, Frederick M. Denny, Carlos M.N. Eire, and Martin S. Jaffee, *Jews, Christians, Muslims* (Upper Saddle River, NJ: Prentice Hall 1998), pp. 158-159.

⁴¹ Dalai Lama and Cutler, p. 311.

⁴² Hahn, pp. 155, 161.

assist the parties in understanding their moral and ethical duty to abide by the agreed terms. The Hindu faith possesses a particularly relevant understanding of duty. *Dharma* is understood to be one's worldly obligation.⁴³ Under this concept, one's virtue is directly tied to upholding one's duty or obligation. A person has a moral responsibility to perform correct and responsible actions that meet his/her duty and thereby maintain the stability of society.⁴⁴ Informed by the concept of *dharma*, a mediator better understands that the parties' obligation to uphold their settlement agreement is linked to the wellbeing of society. If the parties breach their agreement, it will not only impact them but also their relatives, friends, and neighbors. In explaining the monitoring and enforcement provisions of the agreement, the mediator may be wise to explain the affects of their breach upon others.

Once the settlement agreement is understood, finalized, and signed, the mediator has one remaining obligation. The mediator must assist the parties in signaling the end of their dispute. This may be accomplished through a gesture, sign, or ceremony. In this regard, the Christian concept of table fellowship is helpful. Based upon the last supper shared by Jesus and his disciples, Christians have developed the sacred ritual of the communion meal.⁴⁵ Enmity is consciously set aside and food is shared in a spirit of fellowship and equanimity.⁴⁶ This ritual provides one source of inspiration for the mediator in devising a closing ritual. The mediator may choose to lead the parties in a toast of their finalized agreement, share a final meal, or simply

⁴³ Flood, pp. 11-12, p. 52-53. Note that *dharma* more specifically refers to the duty of high-caste Hindus with regard to their social position (caste or class, known as *varna*) and their stage of life (*asrama*). See also Parekh, p. 173.

⁴⁴ *Anushasanaparva* of the *Mahabharata* XIII.116.37-41; XIII.114.8. cited in Shastri and Shastri, p. 73.

⁴⁵ Mt. 26: 17-29; Mk. 14: 12-25; Lk. 22: 7-23; Jn. 13: 21-31; Cor. 11:23-34. The agape or love feast was open to all members of the community, who participated in the ritual as equals. Any animosity was expected to be settled prior to the parties' participation in the meal.

⁴⁶ Note that the Christian communion or eucharist is understood differently among Christian denominations. Some, such as Orthodox and Roman Catholics understand the bread and wine as literally the body and blood of Christ. Protestant denominations generally understand the communion bread and wine as merely signifying Christ's body and blood. However, all Christians understand this meal to be the sacred basis for Christian fellowship. See Corrigan, Denny, Eire, and Jaffee, pp. 241-242, 249.

preside over a handshake. It is most important that the mediator and parties find a comfortable and congenial way to celebrate the fruit of their efforts and to signal a lasting change in the parties' relationship.

III. Conclusion:

Through this study, spiritual tools are shown to have practical value to mediators and parties engaged in the mediation process. Insights from the various religious traditions have been applied directly to the problems facing mediators in particular stages of the mediation process. These tools are not intended as a definitive list of the practices available from the different religious traditions. Many of the cited insights resemble similar wisdom in the other major religions. These spiritual practices are not meant to replace the insights of psychology or counseling, but only to provide another means of understanding and dealing with mediation challenges.

In our increasingly pluralistic society, religious traditions provide an invaluable resource for conflict management and resolution. Yet, we have just begun the process of tapping spiritual practices for the insights, practices, and skills which they can engender. This paper represents a preliminary attempt to explore the spiritual traditions of five major religions. More work needs to be done to harness the wisdom of religion for practical application to conflict resolution. Our willingness to investigate these spiritual sources of wisdom must not be inhibited by a prejudice toward religion nor an irrational fear of the separation of church and state. Rather, concerted work needs to be done to mine religious sources for the wisdom that they possess. Efforts must be made to understand the *emic*/insider perspectives as well as the *etic*/outsider translations of religious knowledge. Mediators and parties to conflict resolution have much to gain from the insight captured by religious texts and the understanding of the world's spiritual sages.

Bibliography

- Ansbro, John J. *Martin Luther King, Jr.: The Making of a Mind* (Maryknoll, NY: Orbis Books 1982),
- Blake, Dr. Eugene Carson. "Development", *Religion for Peace: Proceedings of the Kyoto Conference on Religion and Peace* (New Delhi: Gandhi Peace Foundation and Bombay: Bharatiya Vidya Bhavan 1973), p
- Brennan, Lisa. "What Lawyers Like: Mediation", *National Law Journal*, Vo. 22, Issue 12 (New York: Nov. 15, 1999), p. A1-A10.
- Corrigan, John; Denny, Frederick M.; Eire, Carlos M.N. and Jaffee, Martin S. *Jews, Christians, Muslims* (Upper Saddle River, NJ: Prentice Hall 1998).
- Dalai Lama and Cutler, Howard C. *The Art of Happiness* (New York: Riverhead Books 1998).
- Flood, Gavin. *An Introduction to Hinduism* (Cambridge: Cambridge University Press 1996).
- Folberg, Jay and Taylor, Alison. *Mediation: A Comprehensive Guide to Resolving Conflicts without Mediation* (San Francisco: Jossey-Bass 1984),
- Gandhi, M.K. "From Yeravda Mandir", *Gandhi: Selected Writings*, Ronald Duncan, ed. (New York: Harper & Row Publishers 1972), p. 41.
- Gandhi, M.K. *Nonviolence in Peace and War*, Vol. 1 (Ahmedabad: Navajivan Publishing House 1948).
- Gandhi, M.K. *Nonviolent Resistance (Satyagraha)*, Bharatan Kumarappa, ed. (New York: Schocken Books 1961).
- Gendler, Rabbi Everett E. "...Therefore Choose Life", *The Challenge of Shalom*, M. Polner and N. Goodman, eds. (Philadelphia, PA: New Society Publishers 1994), pp. 8-15.
- Gomez, Luis O. "Nonviolence and the Self in Early Buddhism", *Inner Peace, World Peace: Essays in Buddhism and Nonviolence*, Kenneth Kraft, ed. ((Albany, NY: State University of New York Press 1992), pp. 31-48.
- Gopin, Marc *From Eden to Armageddon* (Oxford: Oxford University Press 2000).
- Hanh, Thich Nhat. *Essential Writings* (Maryknoll, NY: Orbis Books 2001).

- George E. Irani and Nathan C. Funk, “Rituals of Reconciliation: Arab-Islamic Perspectives”, *Peace and Conflict Resolution in Islam*, A.A. Said, N.C. Funk, and A.S. Kadayifci, eds. (Lanham, MY: University Press of America 2001), pp. 169-191.
- Kheel, Theodore W. *The Keys to Conflict Resolution* (New York: Four Walls Eight Windows 1999).
- “Metta Sutta”, *Suttanipata* (London: Pali Text Society Publications 1965), pp. 143-152.
- Moore, Christopher W. *The Meditation Process* (San Francisco: Jossey-Bass, Inc. 1996, 2nd ed.).
- Moussalli, Ahmed. “An Islamic Model for Political Conflict Resolution: *Tahkim*”, *Peace and Conflict Resolution in Islam*, A.A. Said, N.C. Funk, and A.S. Kadayifci, eds. (Lanham, MY: University Press of America 2001), pp. 143-167.
- Nasr, Seyyed Hossein. “Male and Female in Islamic Perspective”, *The Ways of Religion*, Roger Eastman, ed. (New York: Oxford University Press 1999),
- Parekh, Bhikhu. “Gandhi’s Quest for a Nonviolent Political Philosophy”, *Celebrating Peace*, Leroy s. Rouner (Notre Dame, IN: University of Notre Dame Press 1990), pp. 162-178.
- Queen, Christopher. “The Peace Wheel: Nonviolent Activism in the Buddhist Tradition”, *Subverting Hatred: The Challenge of Nonviolence in Religious Traditions*, D. L. Smith-Christopher, ed. (Maryknoll, NY: Orbis Books 1998), pp. 25-47.
- Salmi, Ralph H.; Majul, Cesar Adib; and Tanham, George K. *Islam and Conflict Resolution* (Lanham, MY: University Press of America 1998).
- Schreiter, Robert J. *Constructing Local Theologies* (Maryknoll, NY: Orbis Books 1985).
- Schwarzschild, Rabbi Steven S. “Shalom”, *The Challenge of Shalom*, M. Polner and N. Goodman, eds. (Philadelphia, PA: New Society Publishers 1994), pp. 16-25.
- Shastri, Sunanda Y. and Shastri, Yajneswar S. “Ahimsa and the Unity of All Things: A Hindu View of Nonviolence”, *Subverting Hatred: The Challenge of Nonviolence in Religious Traditions*, D. L. Smith-Christopher, ed. (Maryknoll, NY: Orbis Books 1998), pp.67-84.
- Zimmerman, Philip. “From Training to Practice as Neutral”, *CPA Consultant*, Vol. 13, Issue 6 (Jersey City: May 1999), p. 9-10.