THIRD PARTY INTERVENTIONS ACROSS CULTURES: NO "ONE BEST CHOICE"

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ABSTRACT

In this article, we focus on alternative dispute resolution procedures, in particular third party procedures. We describe eight different procedures and provide examples of how these procedures are used in different cultural contexts. We then evaluate the procedures in terms of how they impact four key criteria that have been noted in the literature related to negotiation: process criteria, settlement criteria, issue-related criteria, and relationship criteria. We subsequently explore the potential impact of culture on evaluations of these criteria. We finish with a discussion of future directions for research and practice, emphasizing that procedural recommendations should be made carefully when the criteria for effectiveness and applicability are derived from US-centric research. In other words, there is not "one best choice" for third party procedures universal to the myriad cultures on our planet.

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INTRODUCTION

In the last three decades, there has been a growing acceptance of the use of alternative dispute resolution (ADR) procedures in lieu of litigation for business and other types of disputes (Coltri, 2004), as well as intra-organizational disputes (Brown, 1983). With this acceptance have come a wide variety of third party ADR procedures: some of these are traditional and commonly used for business disputes and labor–management relations; others are novel and tend to be used for specific types of disputes (e.g., insurance claims disputes). In some contexts, case intake officials or the disputants themselves may have a variety of ADR procedural choices at their disposal to resolve a conflict (Edelman, 1984). As the field of ADR has evolved into a plethora of options for parties in dispute, the ability of researchers, policy makers, and consumers to distinguish between, evaluate, and ultimately choose between various third party procedures becomes not only increasingly important, but is also increasingly complex.

This variation in third party procedures becomes even more complex when one goes beyond the organizational setting of dispute resolution to consider the influence of culture and cultural context on ADR procedural preferences (Diamant, 2000; Sacks, Reichert, & Proffitt, 1999). The influence of culture in disputes is no longer an issue solely relevant to global business people who travel to and set up contracts in other countries. The business and organizational environments in which we find ourselves today are often cross-cultural or global in their nature, even for individuals who might not actually cross cultural boundaries physically. For example, an E-bay seller sitting at home in the USA might be drawn into a dispute by an E-bay buyer located in Europe, India, or Australia, with the initial choice of procedure and type of third party potentially impacting the speed and success of the resolution. Given that dispute resolution procedures are embedded within culture (Brett, 2001), the reality of our global world requires that we begin to systematically explore how ADR procedures and their associated criteria apply across cultures and cultural boundaries. We argue that the assumptions for procedural recommendations from culturally bound research about how disputes should be settled may not hold across cultural context.

Different cultures have characteristic profiles that are manifested in norms, values, assumptions, institutions, and systems (Lytle, Brett, Barsness, Tinsley, & Janssens, 1995). In this paper, we focus on selected cultural dimensions that have been commonly used in previous research, such as individualism vs. collectivism (Hofstede, 1980; Schwartz, 1994; Triandis, 1995) and power distance or egalitarianism vs. hierarchy (Hofstede, 1980;

Schwartz & Bilsky, 1990). Although there are undoubtedly other dimensions of culture that are important and relevant, we have limited most of our discussion to several dimensions that have been the subject of empirical research and we believe particularly salient to ADR procedural preferences.

In this paper, we first describe a range of widely used and cited third party procedures and present examples of where and how these procedures are implemented across different cultural contexts. We then suggest that procedural choice is built upon preferences across a number of key criteria from the literature, and explore the potential impact of culture on evaluations of these criteria. We argue that a given procedure may be viewed idiosyncratically through the lens of a given set of cultural norms. Thus criteria cannot be assumed consistent across cultures (Tinsley, 2004).[1] We finish with a discussion of future directions for research and practice, emphasizing that procedural recommendations should be made carefully when the criteria for effectiveness and applicability are derived from US-centric research. This paper serves to stimulate thinking and research about how culture changes the implementation of ADR practices, emphasizing that there is not "one best choice" for third party procedures universal to the myriad cultures on our planet.

Types of Third Party Procedures

As the popularity of ADR has grown, so has the number of possible procedural choices. Below, we briefly review contractual third party procedures that are in relatively common use in business or community disputes as alternatives to going to court. Many of these procedures are also widely used for public-sector labor management relations where avoiding labor strikes is a high priority. While other procedures exist (10 different species of ADR, 1993), many of those are only slight variations in the procedures described here.

Mediation

Mediation is a procedure where a third party assists disputants in achieving a voluntary settlement. While mediation was once thought of as a procedure most frequently used in industrial relations and international relations disputes, its use has grown dramatically in the last twenty years. Mediation is found in a host of environments, including business disputes, legal disputes, labor management negotiation, environmental disputes, family and divorce proceedings, community disputes, landlord–tenant disputes,

bioethics and medical disputes, and international relations (Moore, 2003; Slaikeu, 1996; Dubler & Liebman, 2004). In addition, mediation in its many variations has been a traditional part of some culture's communities and societies for centuries (i.e., Rudin, 2002; Chan, 1997; Chia, Partridge, & Cong, 2004). Examples of mediation have been described or studied in such countries as China (Diamant, 2000; Wall & Blum, 1991), Korea (Woo, 1999; Kim, Wall, Sohn, & Kim, 1993), Malaysia (Mansor, 1998; Wall, Blum, & Callister, 1999), Thailand (Roongrengsuke & Chansuthus, 1998), Japan (Callister & Wall, 1997), and in cultural groups such as the Navajo Nation (Meyer, 2002) and Aboriginal Canadians (Rudin, 2002).

Kressel and Pruitt (1985) suggest that mediation frequently follows several "stages" where mediators focus on different sets of activities. "Stage" models of mediation suggest that mediators typically (1) begin with actions designed to establish a relationship between the disputants and the mediator (e.g., Kolb, 1985), followed by (2) an effort to build trust and cooperation between the disputants (e.g., Moore, 2003), and then (3) move to consideration of the substantive issues under dispute (e.g., Carnevale, 1986). It is in this last stage that proposals for settlement might be proposed by the third party and some pressure in the form of positive or negative incentives might be applied to convince parties to make concessions (see Moore, 2003 or Kressel & Pruitt, 1985, for examples of stage models of mediation). There is wide variation in how much attention mediators pay to building relationships vs. finding settlements (Bush & Folger, 1994). In truth, mediators can influence dispute settlement in many ways, for a mediator is free to choose the inclusion and sequence of stages that he or she wants in an effort to help the parties reach a settlement.

It is worth noting here that the procedure we call mediation is implemented in different ways by the "mediator" outside of the US cultural context. For example, in the traditional "mediation" processes used in rural China, the third party is often a village elder or state authority who controls the process and imposes a solution onto the parties (Peerenboom & Scanlon, 2005). As well, in traditional mediation in the Singaporean Malay community, the third party is a community elder or high status individual known to the parties who starts with airing of the problem or issues in the first stage followed by an administering of punishment if there is an admission of wrongdoing (Chia et al., 2004). Such examples show that not only is there variety in the methods that mediators use to implement mediations *within* cultures, but also differences in the role itself and its scope *across* some cultures.

Of the different methods of third party interaction, mediation is generally the least costly and the outcome often produces considerable disputant

satisfaction in the US (Brett, Barsness, & Goldberg, 1996). Mediation can remove barriers to finding a solution and enhance the outcome of a negotiation (Lewicki, Saunders, & Minton, 1999). Voluntary settlement rates between 60 and 80% are typical (Brett, 2001; Kressel & Pruitt, 1989) though there is sometimes high variance in settlement rates. A variety of factors can influence whether mediation will be successful. Wall, Stark, and Standifer (2001) highlight three factors that can influence mediation success. First, contextual features within which dispute resolution is embedded play a role. This factor includes variables such as culture, the status of the mediator and the parties, the time that the mediation takes place, and the interdependence of the disputants. For example, in some cultures research has shown that there are norms for seeking the assistance of third parties to resolve (or help resolve) conflicts, and so disputants may feel comfortable and motivated to initiate third party interventions (i.e., Brett, 2001; Chan, 1998; Mansor, 1998; Callister & Wall, 1997).

Second, characteristics of the mediator matter (Kolb, 1985; Bowling & Hoffman, 2003). This factor includes the formal training of the mediator, the mediator's expertise in substantive issues in dispute (Arnold & O'Connor, 1999; Arnold, 2000), level of bias or neutrality (Conlon & Ross, 1993), the particular "approach" that the mediator takes to resolving the dispute (Ross, Conlon, & Lind, 1990), and the disputants' acceptance of the rules and norms that govern the mediation procedure (McGrath, 1966). Especially in more hierarchical or traditional cultural settings, the preferred mediator is often a well-respected community member or someone with high status (Rudin, 2002; Chia et al., 2004, Meyer, 2002).

Finally, characteristics of the disputants play a role in mediation success. The relative power of the disputants, the emotional hostility of the parties, and the trust or mistrust they feel toward each other all affect the mediation process (Coltri, 2004; Carnevale, Lim, & McLaughlin, 1989). For example, mediation is usually more effective when the conflict is mild (Carnevale & Pruitt, 1992); as the level of conflict increases, the probability of settlement decreases (Depner, Canata, & Ricci, 1994).

Although mediation may be effective in many disputes, particularly when the level of hostility is not extreme, it does not always produce a settlement, at least in cultures that abide by the "formal' definition of mediation where disputants have outcome control. The implementation of mediation in some cultural contexts rarely leads to impasses, because either the "mediator" has a mandate from the collective to subordinate the individual interests to those of the group, or in hierarchical cultures, a higher authority is expected to make the decision and disputants would be expected to comply (Meyer, 2002;

Woo, 1999; Chia et al., 2004; Rudin, 2002). In modern-day Korea, for example, mediators have decision-making authority in civil mediations with the power to hand down a decision if the parties do not agree or the mediator thinks the decision to which they have agreed is judged unreasonable (Woo, 1999). In this sense, such processes do not allow disputants real outcome control, in which case, mediation in some cultures is not necessarily the same as mediation by the formal definition consistent with a US-centric conceptualization. In cultures where mediators have a high degree of decision-making authority, a US-centric view of this process would more closely approximate arbitration, which we discuss next.

Arbitration

Arbitration is one of the most widely known and used third party procedures (Lewicki et al., 1999). In arbitration a third party holds a hearing at which time the disputants state their positions on the issues, call witnesses, and offer supporting evidence for their respective positions. After evaluating the evidence and considering other relevant factors, the third party issues a binding settlement (Elkouri, Elkouri, Goggin, & Volz, 1997). *Grievance arbitration* settles a very narrow dispute, most commonly over either the interpretation or the application of a specific clause in an existing contract within an ongoing contractual relationship. *Interest arbitration* is a broader focused form of arbitration (Olson & Rau, 1997), that does not focus on contract language interpretation and is the focus in our analysis (hereafter we simply refer to interest arbitration as "arbitration"). Arbitration is used to resolve small claims business disputes, consumer complaint disputes such as in the securities industry, contested insurance claims, and disputes over automobile "lemons" (cf. Kressel & Pruitt, 1989; Lewicki et al., 1999; Podd, 1997), in addition to its history of use in the labor relations field.

Whereas there is considerable literature surrounding the behavior of mediators, there is much less surrounding the behavior of arbitrators. This is because arbitrators do not usually exert as much influence over the *process* of dispute settlement as do mediators. Generally speaking, arbitrators do not engage in the various tactics used by mediators described previously. Compared with a mediator, an arbitrator more closely resembles a judge hearing evidence and casting a ruling. An arbitrator's focus is on producing an outcome, which the procedure always does, either through a binding settlement imposed by the arbitrator, or by the disputants who may reach an agreement on their own prior to the arbitrator's ruling. While arbitration always produces a settlement, it is not without problems. In low power distance, individualist cultures in particular, disputants may not be as likely

to comply with or implement an involuntary decision against their individual interests if it is not legally or otherwise enforceable. Alternatively, in hierarchical, collectivist cultures, disputants may feel pressured to comply with the decision of a high status third party for the collective interest regardless of other explicit forms of enforcement.

Binding Arbitration

The above description of arbitration is most applicable to a version of the procedure known as conventional, or binding arbitration. In binding arbitration, the third party is free to craft any outcome that he or she perceives to be fair. While the assumption is that the final positions advocated by each party in the arbitration hearing phase may determine the range within which the arbitrator will determine the outcome, this is only an assumption. In fact, binding arbitration allows the third party considerable flexibility to make any decision, inside or outside the range suggested by the parties' proposals.

Binding arbitration is widely used across many different cultural contexts; for example, recent practitioner articles on arbitration discuss the procedure in Brazil (Pucci, 2005), China (Chan, 1997), Germany and Switzerland (Montaqu-Smith, 1998), New Zealand (McAndrew, 2003), and Mexico (Buckley, 2005) in addition to the United States. However, the implementation of binding arbitration across cultures may differ depending on the legal philosophies and cultural environments in which it exists. For example, in European countries, where civil law is the basis for proceedings, the arbitrator's role is to *decide* based on legislation, policies, and general principles, while in common law countries like the United States, the arbitrator's role is to *settle* based on precedent of previous cases and the merits of each party's case (Montaqu-Smith, 1998). In addition, German arbitrators have a specific expectation that they have the responsibility to find conciliation if at all possible between the parties (Montaqu-Smith, 1998).

Final Offer Arbitration

Several other forms of arbitration have grown out of conventional or binding arbitration. The first of these is final offer arbitration (FOA), sometimes called "baseball arbitration" in the United States because it is used for salary adjustments in that sport. FOA has also been used to set prices in the water sector in Chile to reduce the chance of the parties (the regulator and the regulated firm) submitting widely divergent offers (Montero, 2005), and for police compensation disputes in New Zealand to encourage voluntary settlements where the costs of strikes are high (McAndrew, 2003). In FOA,

disputing parties negotiate and then submit their "last, best offers" (final offer) to the arbitrator (Lewicki, Weiss, & Lewin, 1992; Feuille, 1975). The arbitrator then must choose which of the two offers will be imposed on the parties.

FOA was developed with the goal of encouraging parties to make more "reasonable" final offers than they sometimes do in binding arbitration. In *binding* arbitration parties may have an incentive to cease making concessions in the expectation that the arbitrator's outcome will "split" the difference between the two last offers, thereby resulting in a more advantageous outcome to the disputant. While the evidence is mixed, some research suggests that *final offer* arbitration does encourage parties to make more reasonable final offers, reducing what the literature refers to as the "chilling effect" (Hebdon, 1996; Feuille, 1975; Stokes, 1999). This reduction in the "chilling effect" is expected because each side has heightened concern over the potential costs incurred if the arbitrator rules for the other side – the risk of "losing it all" looms large.

A second objective of FOA is to encourage parties to find their own voluntary settlements rather than becoming dependent on the arbitrator to resolve disputes. Rather than risk the uncertainty inherent in FOA, disputants would be highly motivated to reach their own agreements, thereby reducing what the literature refers to as the "narcotic effect" (Olson, 1988). This is the rationale behind using FOA to settle labor disputes in some public sector organizations in approximately 10 states in the US (Crawford, 1981; Serrin, 1983). However, from the perspective of the third party, FOA provides little discretion to the third party, as their ability to craft what they feel is truly a fair settlement is severely constrained. All they can do is choose from one of the two outcomes.

FOA is particularly popular in the US, where a common-law system results in proceedings that tend to have a more aggressive approach (Montaqu-Smith, 1998). Perhaps because of the associated individualistic values as well as a focus on individual positions coupled with low uncertainty avoidance, we find that US disputants are likely to want to "bet" everything that they will "win" in the process. Therefore, they would rather put their own offers on the table than have the arbitrator "split the solution down the middle" as often happens in binding arbitration (Brams & Merrill, 1986). On the other hand, we do not find this procedure to be popular in European countries with a civil-law tradition, or in Asian countries where there is more concern for relationship or principles than "who gets what" (Montaqu-Smith, 1998).

Double Final Offer Arbitration

Double FOA (Van de Kragt, Stark, Notz, & Boschman, 1989) is similar to FOA in that the third party must choose from submitted final offers and cannot craft a unique settlement as in binding arbitration. In double FOA, however, the disputant submits two final offers of roughly equivalent value to the arbitrator; the opposing side does the same. The arbitrator then determines which side's offers are to be imposed and then the losing party chooses the final outcome (e.g., the arbitrator chooses the union's two offers and management chooses which of the two are implemented) from the two submitted by the successful party (Van de Kragt et al., 1989). A recent study found that one benefit of double FOA compared with both binding and regular FOA is that there is less of a "narcotic" effect in repeated bargaining situations, and therefore a higher degree of voluntary settlement (Dickinson, 2004). Another benefit of double FOA is that decision acceptance by the "losing" party should be higher, as they at least get to choose the form of the unpleasant outcome that they will have to endure. Therefore, this procedure might be especially appropriate in contexts (cultural or otherwise) where the need for face saving and desire to push forward individual interests is high, as then the losing party is able to appear to gain face by having some control and choice over the implemented outcome.

Night Baseball Arbitration

A third variation on FOA is the use of "night baseball" arbitration (Ross, 2005; Coltri, 2004). Here, the disputants put their final offer(s) in sealed envelopes. They present arguments, evidence, and expert testimony to support their unarticulated positions on the issues. This is so that the arbitrator can decide the issues based on the evidence without being distracted by the formal positions taken by each side (10 different species of ADR, Nov./Dec. 1993, p. 19). The arbitrator then adjourns to create a non-binding opinion; because the opinion is not limited to any specific proposals, it is, in this sense, like binding arbitration. Next, the arbitrator opens the two envelopes containing the final offers and compares the offers with his or her own non-binding opinion. The final offer that is closest to the arbitrator's own opinion is selected and becomes the binding agreement. Although less widespread than FOA, this procedure has been used in insurance disputes (e.g., medical malpractice claims), personal injury disputes, and division of ownership of intellectual property disputes (Montaqu-Smith, 1998), often where only one – generally a distributive – issue is involved (e.g., how much money should be paid).

Final Offer Arbitration by Issue vs. Package

A final note of complexity to add to these forms of FOA is that one can also decide whether to use the final offers of the parties "by issue" vs. final offer "by package". In final offer by package (or double final offer by package or night baseball by package), the third party is constrained to picking one side's entire set of offers across all issues in dispute. In final offer by issue, the arbitrator can pick some offers made by each disputant, selecting, for example, management's final offer on salary adjustments but the union's final offer on health care co-payments. A "final offer by package" procedure can be difficult to implement, as parties can put in attractive solutions on a key issue or issues to lure the arbitrator to their solution, but then also include more extreme or "unfair" solutions to other issues (Zack, 2003). Therefore, some practitioners suggest that FOA and its derivatives are more fairly used across single issues than for packages (Zack, 2003).

Fact Finding

This procedure has historically been used in some states in the US (e.g., Iowa) for public-sector labor contract negotiations. Here, a third party or panel of third parties holds hearings to identify the issues and the positions of the parties, resulting in a non-binding but formal recommendation that may guide disputants as to what an arbitrated settlement might look like (Dickinson & Hunnicutt, 2005). The fact finders may employ mediation tactics, or they may function more like a board of inquiry. Typically, the fact finders will issue a report in which the members of the panel recommend a settlement for the dispute (Olson, 1988; Schneider, 1988). This report may go only to the parties themselves (providing a "prominent solution" for continuing bilateral negotiations), or it may also go to an external decision maker (e.g., a state legislature's budget committee for public-sector labor disputes). A recent study has shown that fact-finding as a process prior to binding arbitration increases the rate of voluntary negotiated settlements relative to the use of binding arbitration alone, as the non-binding recommendation serves as a focal point for the disputants on which they anchor (Dickinson & Hunnicutt, 2005). These authors suggest that the formalized suggestion or explicit recommendation as a preliminary step to any ADR procedure may be a key element to encouraging voluntary settlements.

Comparing this focal point element of fact finding with mediation procedures brings into consideration an interesting point. Mediators may also serve a similar function of establishing focal points by suggesting possible

agreements. Recall that mediators have wide latitude in the stages they include and the sequence of those stages. Thus, we may view fact finding as an ADR method in a stand-alone fashion, or we may see it as a component of mediation.

Mediation-Arbitration

Mediation-arbitration (hereafter called "med-arb") consists of (1) mediation, followed by (2) arbitration if mediation fails to secure an agreement by a predetermined deadline (Ross & Conlon, 2000). The same third party serves as both mediator and arbitrator, and may use either binding or final-offer forms of arbitration (Kagel, 1976; Brewer & Mills, 1999). The procedure is incremental: only if mediation fails to produce an agreement does the arbitration phase occur, which culminates with the third party imposing a binding settlement on the parties. This temporal arrangement matches the suggestions of many scholars (e.g., Ury, Brett, & Goldberg, 1988) who argue that dispute resolution procedures should be arranged in a "low-to-high-cost sequence" for the users (pp. 62–63). Others have also suggested that mediation precede arbitration because it removes less control over the ultimate outcome from the disputants (e.g., Starke & Notz, 1981). Finally, a field experiment comparing med-arb with straight mediation found that med-arb led disputants to be less hostile and more problem-solving oriented in their behavior, though there was no difference in voluntary (mediated) settlement rates (McGillicuddy, Welton, & Pruitt, 1987). In the California Nurses Association collective bargaining in 1971, for example, med-arb was used to avert a strike by keeping communications on track and focusing parties on problem-solving (Polland, 1973).

There are examples of the med-arb procedure across a variety of cultural contexts. In civil law-oriented countries such as Germany and Switzerland, med-arb fits with the expectation that an arbitrator will first try to find conciliation, and then decide on the appropriate way to apply laws, rules, legislation, or principles (Montaqu-Smith, 1998). The China International and Economic Trade Arbitration Commission has chosen a single-third party med-arb procedure to deal with foreign related construction disputes, reflecting the Chinese preference to first try to resolve disputes through amicable mechanisms and increased understanding before the third party hands down a binding decision (Chan, 1997). In civil mediation procedures in Korea, the court appoints a mediator, who then has decision-making authority if he/she thinks the decision is not reasonable or the parties cannot

come to agreement (Woo, 1999). The lines between mediation and arbitration blur in some cultural environments, as mediation sometimes looks like arbitration, and arbitration sometimes looks like mediation. That is, a high status third party may take a very directive and potentially controlling role in resolving disputes while simultaneously taking care to maintain harmony and minimize social disruption along the way to resolution.

Arbitration-Mediation

A second hybrid procedure, arbitration-mediation (hereafter called "arb-med"), consists of three phases. In phase one, the third party holds an arbitration hearing. At the end of this phase, the third party makes a decision, which is placed in a sealed envelope and is not revealed to the parties. The second phase consists of mediation. Only if mediation fails to produce a voluntary agreement by a specified deadline do the parties enter the third phase, called the ruling phase. Here, the third party removes the ruling from the envelope and reveals the binding ruling to the disputants (Cobbledick, 1992; Robertson, 1991). To assure that the envelope contains the original ruling and not a later ruling (e.g., a ruling created after the mediation phase), the third party may ask each side to sign the envelope across the seal at the beginning of mediation. The benefits of arb-med are around time and the maintenance of relationships. Arb-med is efficient with a rapid, binding arbitration phase at the beginning, and then sets a deadline for how long the mediation phase can last. Therefore, parties are not motivated to delay and posture, as any time they waste means that the arbitrator's decision will be used rather than their own. As well, it reduces the risk of soured relations that can sometimes happen in med-arb if the initial mediation phase becomes contentious and fails (Zack, 2003).

The arb-med procedure has been used in particularly difficult union–management disputes in the automotive and steel industries (in South Africa) and police and firefighter disputes (in the US), and is suggested as a possible solution to airline contract disputes in the US, where avoiding soured relations that can result from lengthy mediation processes is critical (Zack, 2003). A recent empirical study supports these examples, finding that arb-med was effective in resolving some of the most difficult disputes and led to more settlements in the mediation phase than did med-arb (Conlon, Moon, & Ng, 2002). Thus, if a critical goal is to create conditions that lead disputants to resolve their own disputes, arb-med may be an interesting advance, and may even be well suited to handling particularly difficult disputes.

CRITERIA FOR EVALUATING THIRD PARTY PROCEDURES

To compare third party procedures in their application and appropriateness for any given dispute, we need an understanding of them across a meaningful set of criteria to appreciate similarities and differences. There are also other practical reasons for clearly defined criteria; agencies are accountable to clients or funding agencies and individual third parties may be given a performance evaluation based on particular criteria. In addition, we must recognize that particular procedures are not defined the same way and might be implemented differently across cultures, making direct comparisons of procedures challenging. This paper builds on existing literature (e.g., Lissak & Sheppard, 1983; Meyer, Gemmell, & Irving, 1997; Sheppard, 1983, 1984; Thomas, Jamieson, & Moore, 1978; Thomas, 1992) to evaluate criteria arranged into four categories or sets: process criteria, settlement criteria, issue criteria, and relationship criteria. Table 1 categorizes the procedures detailed in the previous section according to these criteria. We then consider several specific dimensions of each category of criteria and discuss how these dimensions may be influenced by cultural factors.[2] We conclude each section with propositions.

Process Criteria

Our first criteria deals with the dispute-resolution *process*: the typical methods used by the third party to direct how the disputants, third party, and parties related to the dispute interact. Although there are many potential dimensions related to this criteria, we focus on three dimensions, outlined below.

Does the Third Party Exercise Process Control?
Building on the classic organizing framework of procedures articulated by Thibaut and Walker (1975), process control refers to control over the development, presentation, and voicing of information that potentially can influence the outcome of the dispute. Does the third party intervene in how the disputants present evidence and discuss the issues (e.g., separating the parties, employing role reversal, playing devil's advocate), or does the third party relinquish such process control to the parties themselves (Thibaut & Walker, 1975, 1978; Sheppard, 1983; Lewicki & Sheppard, 1985)? Previous research has suggested that process control is important because it influences

Table 1. Categorizing Third Party Procedures by Process, Settlement, Issue, and Relationship Criteria.

	Mediation	Arbitration	Final Offer	Double FOA	Night Baseball	Fact-Finding	Med-Arb	Arb-Med
Process criteria								
Does the third party use process control	Yes, expected	Limited	Limited	Limited	Limited	Yes, expected	Yes then limited	Limited then Yes
Suggest settlements	Sometimes (dealmakers)	Unusual	Unusual	Unusual	Unusual	Yes	Yes then no	No then yes
Transaction costs	Moderate	Low	Low	Moderate	Moderate	High	Moderate	High
Settlement criteria								
Must third party determine settlement?	No	Yes	Yes	Yes	Yes	No	Sometimes	Sometimes
Is voluntary settlement reached?	Yes	No	No	No	No	Yes	Sometimes	Sometimes
Settlement timing	N/A	Late	Late	Late	Late	N/A	Late	Early
Probability of integrative settlement	High	Low	Lowest	Low	Low	Moderate	High (med only)	High (med only)

Discretion over settlement character	N/A	High	Limited – choose from two offers	Very limited – choose winning side	Limited – choose from two offers	N/A	Depends on the form of arbitration	Depends on the form of arbitration
Can third party reject voluntary settlement	No	No	No	No	No	No	No	Yes, if agreement is incomplete
Speed of settlement	Slow	Fast	Fast	Moderate	Moderate	Slow	Variable	Slow
Subjective success measures	Very high	High	Moderate	Moderate	Moderate	Low	Very high	Moderate
Issue-related criteria								
Issue clarification	Yes	No	No	No	No	Yes	Some	Yes
Chilling effect	Yes	No	Yes	Yes	Yes	No	Yes	Yes
Narcotic effect	No	No	Yes	Yes	Yes	No	Yes	Yes
Relationship criteria								
Relationship enhanced?	Yes	No	No	No	No	No	No	No
Commitment to implement settlement	Yes	No	No	Yes	No	No	Yes	Yes

perceptions of procedural justice: when parties are allowed voice, when the disputants are treated with dignity and respect, and when processes are considered "fair", there is greater compliance with decisions (Folger, 1977; Lind, Lissak, & Conlon, 1983).

While mediators have the choice to exert little to no control over the process (an inaction strategy, Carnevale, 1986), they more often are described as having high process control and no decision control (ability to impose a settlement upon the disputants (Thibaut & Walker, 1975). Arbitrators (in all types of arbitration), on the other hand, exercise more limited process intervention but have considerable control over the outcome (Sheppard, 1984). In fact, arbitrators are typically reticent to exert much control over the process, instead allowing the participants to present their cases as they see fit. Among the hybrid procedures (med-arb and arb-med), the level of process control changes over time depending on the stage of the procedure being implemented. Thus, hybrid procedures include stages with different levels of process intervention from the third party.

Existing US research suggests that with other factors being equal, parties generally prefer to control the process themselves, especially when they cannot control the outcome. For example, litigants usually prefer adversarial adjudication procedures (where the disputants' exercise greater process control) over inquisitorial adjudication procedures (where the third party exercises greater process control) as more just (Walker, LaTour, Lind, & Thibaut, 1974; LaTour, 1978). However, disputant preferences for high levels of process control may not generalize across all cultural contexts. While there is some evidence at an abstract level that the concern for process control is pan-cultural (Lind, Erickson, Friedland, & Dickenberger, 1978; Leung, Au, Fernandez-Dols, & Iwawaki, 1992; Leung, 1987), cultural values or expectancies around behavioral strategies might inhibit the observed preferences for process control in real dispute environments (Lind & Early, 1992; Bond, Leung, & Schwartz, 1992; Morris & Leung, 2000).

For example, in individualist and egalitarian cultures, there may be expectations around the rights of every individual to "have their say" and assert their own set of individual interests, with numerous US-based studies finding a preference for procedures that allow disputants voice (e.g., Lind & Tyler, 1988). In collectivist cultures, however, a focus on individual interests in the first place may be counter to the preferences of each individual who sees him or herself as a member of a collective (Leung & Tong, 2004). Such disputants might not feel it is appropriate or preferable to put their own individual interests forward if there is the chance of conflicting with the collective interest. Even when representing a group within the collective,

there still might be a hesitation to "having a say" because of potential conflicts with the broader set of community interests. In collectivist cultures, we suggest that there may be some preference for process control to rest with a respected third party who has the mandate to "do the right thing" with respect not only to the individuals concerned, but to the broader collective interests of the community or relevant stakeholders. Such a third party may not be close to the classic characterization of third party as a disinterested neutral. Interestingly, there is some evidence that in some collectivist cultures, there may be a preference for more power-based or directive dispute resolution procedures (i.e., that a high status or authoritative third party take control over the process or decision) for the purpose of avoiding direct discussion of sensitive issues and minimizing the social disruption of a drawn-out confrontational dispute process (Leung, 1997; Tinsley, 1997; Yang, 1993).

While we may see cultures with more egalitarian values encourage or allow a more open exchange of information and opinions to the third party within and across status lines (Tinsley, 2004), low status individuals in cultures with less egalitarian values may not feel comfortable with high levels of process control. In more hierarchical cultures, control over the process of dispute resolution may be viewed as the responsibility of those in a higher position, or those with more knowledge or information, therefore maintaining established hierarchies and power during the dispute resolution process (Leung & Stephan, 1998). In general, cultures high in power distance, where those of lower status accept unequal social conditions, are associated with greater tolerance of harsh treatment by authorities (James, 1993).

We might expect that desire for process control might also vary according to disputants' level of comfort with direct confrontation in their cultural context: to "speak up", or at least to "speak up" without negative consequences. For example, evidence for the relationship between having voice and judgments of procedural fairness have been found in the United States, West Germany, France, and Great Britain (Lind et al., 1978). As well, there are greater preferences for direct information sharing in low context culture disputes and negotiations, while those from high context cultures prefer indirect methods of influencing outcomes (Adair, Okumura, & Brett, 2001; Brett, 2001). Furthermore, those who fear negative consequences in their cultural contexts (whether societal, organizational, or familial) may have little desire to directly air their own opinions or present their own evidence. In such cultural environments that discourage open airing of dissenting opinions, disputants, even when feeling strongly about an issue, may not choose to openly share information about it.

Does the Third Party Offer Suggestions, such as Possible Settlements? Suggesting settlements is a specific type of "content control" where "the intervening party attempts to determine *what* is to be discussed…" (Sheppard, 1983, p. 200). To the extent that the suggestions are acceptable to each disputant, this criterion has some similarity with what Sheppard (1984, p. 169) describes as "level of intervener process neutrality" in that the suggestions may be perceived on a continuum from being biased against a disputant, to even handed, to biased in favor of the disputant (Arad & Carnevale, 1994; Conlon & Ross, 1993). Kolb (1985) observes that some mediators, whether in the mediation process or the mediation stages of the med-arb or arb-med procedures, are "Dealmakers" who tend to make such suggestions, whereas others, whom she calls "Orchestrators", do not. She reports that Dealmakers tend to be found in public sector labor relations where strikes are usually illegal, whereas Orchestrators tend to be found in the private sector.

Fact finders more consistently recommend settlements as part of their role. These recommendations often carry substantial weight with the parties and with others who may be in a position to provide outcomes (e.g., a state legislature). However, fact finders do not have any decision control, and only serve to inform parties of the potential outcome of some future procedure if they choose to embark on it. Arbitrators in all forms of arbitration, on the other hand, do not generally provide any recommendations or offer suggestions, as their role is to allow disputants to present evidence as they wish; the third party then uses this information to make a decision.

Preferences for third party style in terms of content control may differ across cultures. In collectivist cultures, there may be expectations that the third party has a mandate to consider the wider set of community or organizational interests, and therefore, would be expected to consider a larger problem than that presented by each individual disputant (Brett, 2001). Therefore, there may be a higher preference for the third party in a collectivist culture to take on a more directive or active role in finding solutions than in a more individualistic culture. In more egalitarian cultures, we may find that while third party suggestions for settlement are an acceptable part of the dispute resolution procedure if the settlement suggestions are perceived as fair by both parties (Conlon & Ross, 1993, 1997), disputants would be comfortable to take an active part in the creation of ideas for settlement, and may be more committed to the solution if they felt they took part in creating it (Pruitt, 1981). In hierarchical cultures, however, we may find that lower status disputants would expect the third party as the "expert" or "authority figure" to take control of the situation and

make suggestions for settlement or to actually dictate a resolution (Leung & Stephan, 1998). In fact, disputants in this situation might actually feel that the third party was "shirking" their responsibility if disputants were asked to come up with their own solutions. There is evidence that disputants in hierarchical cultures prefer the early involvement of a third party in dealing with conflicts rather than trying to resolve them on their own (e.g., Brett, 2001), where disputants may be more satisfied and committed to a solution if they themselves have had a major part in creating it (Pruitt, 1981).

Transaction Costs of the Procedure

Some procedures require more time and resources (e.g., money) for both disputants and the third party. Brett et al. (1996) report that participants believe that mediation is less expensive than adjudication or arbitration. While arbitration costs are typically low (certainly lower than adjudication), they may be somewhat higher for double FOA (where the third party must spend extra time in order to evaluate *four* proposals) and for night baseball arbitration (where the third party must take the time to write a non-binding decision and then take additional time to compare it with each side's offer and select a winner). Med-arb may be, on average, cheaper than arb-med because some (if not most) cases will settle in the mediation phase. However, with arb-med, the costs of an arbitration hearing must be borne even if the parties settle in mediation, because the arbitration hearing precedes mediation. Fact-finding can occur before any of the formalized procedures as a preliminary step to encourage parties to come up with a voluntary agreement. In this sense, if another procedure follows fact-finding, additional costs must be considered for the subsequent procedure. If, however, the fact-finding recommendation dissuades parties from engaging in a subsequent procedure and they find a voluntary settlement, the costs of the additional procedure are avoided.

If one takes the position that time is money (e.g., third parties often charge by the hour), third party procedures that lead to a speedy resolution of the dispute will be less costly, and preferred, to more costly procedures. But, the "time is money" view of the world is likely to be more of a Western value. In collectivist cultures, for example, third parties and disputants might feel that a significant investment in time is well worth the maintenance of harmony, and in some very delicate situations, third parties may have a preference to spend more time making sure that disputants are treated well, that the relationship between them is maintained or improved, or that the underlying drivers of the dispute are addressed and resolved.[3]

Even within the US, some disputes may benefit from a heightened sensitivity to relationship and the concomitant time demands. In instances where a transaction dispute is embedded within a valued, ongoing relationship, investment of time and resources in the short term can pay dividends over a longer term in the form of cooperative behavior and trust. Conversely, even in collectivist cultures, where the focus on relationships are heightened (compared with individualist cultures), some one-off transactions may benefit from a greater focus on time-cost savings at the expense of the relationship.

This discussion of dimensions related to process criteria and the cultural implications of these dimensions for third party procedures leads to the following testable propositions.

Proposition 1. Third parties in egalitarian and individualist cultures will impose less pressure on disputants and make fewer suggestions for settlement during mediation procedures, relative to third parties in hierarchical and collectivist cultures.

Proposition 2. Transaction costs (e.g., time, money) will be of greater importance to disputants from egalitarian and individualistic cultures, compared with disputants from hierarchical and collectivist cultures. However, within egalitarian and individualistic cultures, transaction cost importance will also be dependent on expectations of future interaction among disputants. Thus, we expect to see a higher degree of variance in the importance of transaction costs among egalitarian and individualistic cultures, as compared with hierarchical or collectivist cultures.

Proposition 3. Procedures that allow individuals to have voice and to take part in generating the solutions will be perceived more favorably in egalitarian and individualist cultures, as compared with hierarchical and collectivist cultures.

Settlement Criteria

Certainty of Settlement

In some dispute situations, an important criterion for procedural choice is whether or not a settlement is guaranteed. Fact-finding, for example, does not seek to generate a resolution or agreement but rather seeks an opinion on the likely outcome if there were to be a subsequent procedure. In fact, a major objective of the fact-finding process is to encourage parties to find

their own voluntary agreement in order to avoid a potentially unattractive imposed outcome. Mediators, on the other hand, have the objective to facilitate parties to generate agreements, but since they do not have decision control, outcomes are voluntary and therefore not always certain. Mediators also have the discretion to end their involvement in a dispute at any time, regardless of whether a solution was forthcoming or not, if they feel the parties are not bargaining in good faith. Terminating their involvement may be one of the mediator's key sources of power that can put considerable pressure on one or both parties in a dispute. Arbitrators, regardless of the form of arbitration, are contractually engaged to resolve a dispute and cannot decide they no longer want to be involved. Certainty of an outcome therefore, is highest for the different forms of binding and FOA arbitration procedures.

Certainly within cultures, preferences around certainty for settlement would vary across different situations and disputes. Acknowledging this variance within culture, there still may be cultural differences on preference for guaranteed outcomes as opposed to less certain outcomes reflecting cultural values around propensity for risk or uncertainty avoidance.

Is a voluntary agreement reached? Some procedures (e.g., arbitration) specify that the third party is required to fashion and impose a settlement, whereas others (e.g., mediation and fact-finding) encourage voluntary agreement and allow participants to fashion that solution in whatever way they wish (Conlon, 1988). For some disputants, this dimension is crucial to determining procedural choice (Pierce, Pruitt, & Czaja, 1993). Yet, even with arbitration or the hybrid procedures, it is possible for *voluntary* agreements to be reached before a third party generated solution is imposed. Just as judges sometimes mediate in their chambers, some arbitrators will, upon rare occasion, mediate. Arbitrators sometimes allow the parties to have "one last chance" to negotiate privately prior to hearing the third party's decision. Thus, one relevant dimension that must be considered when comparing various third party procedures is whether a dispute is settled voluntarily vs. whether the decision is imposed by a third party (Carnevale et al., 1989).

With all other factors being equal, in some cultures (perhaps those with individualist and egalitarian values) it is generally assumed that procedures where the parties voluntarily resolve conflicts are better (or are at least perceived more favorably by disputants) than those where a decision is imposed by the third party (Kressel & Pruitt, 1989; Brett & Goldberg, 1983). We might find in hierarchical and collectivist cultures, however, there is less desire for voluntary resolution, as disputants might be comfortable agreeing

to an imposed settlement because it is designed to meet the needs of the group – especially if a high status third party is responsible for making the decision. Furthermore, those "lower" in the hierarchy would actively avoid taking part in the creation of a settlement, with the assumption that those of higher position or status have the responsibility, knowledge, or skill to do so. In some cases, we might even imagine a great resistance to lower status individuals being forced to participate in solution generation. In one author's own consulting experiences in China, lower status workers were often highly resistant to resolving any problems they considered "manager's work" and did not want the responsibility for decisions (perhaps not to be blamed in the future if things went wrong). This makes the implementation of Western "empowerment" and "participation" initiatives difficult.

Probability of an Integrative Settlement

If a settlement is reached, whether by voluntary agreement or by third party decision, then the nature of that settlement must be considered. Simply securing a settlement for the sake of having a settlement may result in relatively poor outcomes for one or all of the disputants. Some procedures may lend themselves to high "quantity and quality of facts, ideas, or arguments elicited" (Sheppard, 1984, p. 169), which in turn leads to finding integrative ("win-win") agreements. Integrative agreements typically involve creative problem solving and/or combining several issues to fashion a "package deal". Mediation is often identified as a procedure that facilitates the production of integrative agreements that are "mutually beneficial", "lasting", and high in "overall success" (Carnevale et al., 1989; Carnevale & Henry, 1989; Carnevale & Pruitt, 1992). Similarly, med-arb and arb-med have been shown to promote integrative problem-solving in their respective mediation phases (Conlon et al., 2002; McGillicuddy et al., 1987). While fact-finding in itself does not facilitate agreements directly, it encourages subsequent discussions that can lead to voluntary integrative solutions via the "focal point" mechanism discussed earlier.

Integrative agreements often have objectively higher payoffs than compromises, where issues are frequently "split down the middle". Conventional arbitration is often criticized for producing such compromises. While binding arbitrators do have the power to impose integrative agreements on disputants, their decisions are usually limited by the positions, perspectives, and offers the disputants choose to present, and often result in the arbitrator simply choosing a middle ground (Feuille, 1975). In FOA, night baseball, and double FOA, disputants have the

incentive to offer something just slightly more reasonable than the other side so that their position may "win" in the eyes of the arbitrator. Such motivation also does not promote integrative "win-win" agreements.

Culture complicates the desire for integrative outcomes as well, because in traditional negotiation and dispute resolution research, integration is judged solely by the individual interests of those directly involved in the dispute, and the maximization of individual interests is considered an important and valid pursuit (Brett, 2001). It is difficult if not impossible to judge the level of integration with broader community or organizational interests, which in some cases may not directly involve the individual level interests in any individual dispute. In collectivist cultures, the primary concern may be a less definable set of collective interests that is not easily "integrated" by the sharing of disputant's individual level interests, and measurement may be further complicated by the potential difference between short term maximization of interests and longer term welfare of a greater collective (Tinsley, 1997, 2001). Furthermore, there may be a desire to maintain social harmony and therefore not actually engage in a detailed, potentially confrontational process to elicit individual interests and then continue to search for integration. In this case, social harmony is the greater level interest that is maximized rather than the individual level interests.

One would expect that integration of individual level interests would be desirable in low power distance or egalitarian cultures, where there is an underlying assumption that individual level interests are all equally important and legitimate as a basis for resolution (Tinsley, 2004). But, in cultures where there are established hierarchies and the distribution of resources is not expected to be equal, there may be no overt objective to maximize the welfare of the lower status individual in the conflict. This is because a lower status individual's interests may be considered less important, and therefore not to be taken into consideration equally with interests of a higher status individual.

Discretion over Settlement Character

A third party in binding arbitration in principle has the power to fashion any decision as s/he sees fit. A third party in FOA or night baseball has that power curtailed by the rules of the procedure, because the third party must select between the disputants' proposals (Coltri, 2004). From the third party's perspective, a procedure is considered superior to the extent that a third party has the discretion to tailor the decision to fit what s/he thinks will best serve the parties' needs. It is possible, however, in highly rule-oriented cultures, that deference to a particular rule or standard is seen as the most

legitimate basis on which to decide the solution to a dispute. For example, Germanic cultures tend to value explicit contracting and egalitarianism (Tinsley, 2001), and resolution by a particular rule may be preferred to the third party having individual discretion to decide according to individual interests. For in such cultures, individual interests are not necessarily paramount, it is the abstract, generalized principles or the maintenance of an important principle that takes precedence (Montaqu-Smith, 1998).

Third Party Rejection of Voluntary Settlements

Some contractual third party procedures do not allow for the rejection of voluntary settlements between the two disputants; indeed, for many procedures such as mediation or fact-finding, voluntary agreements are the goal. In some procedures, however, we may find that the third party has the prerogative to reject an unacceptable or incomplete voluntary agreement. For example, in arb-med or med-arb, the third party can reject an incomplete settlement and impose an arbitrated decision. We anticipate that disputants in individualist, egalitarian cultures may feel frustrated and offended when their voluntary agreements are overruled by a third party, even if the third party's solution is objectively better (i.e., has higher payoffs to both sides; is more integrative).

In collectivist cultures, however, we may find as we argued for process control above, that voluntary agreements are not as sought after as in individualist cultures. A collectivist disputant might not be frustrated or offended if the third party imposes a solution that is designed to attend to the interests of a broader collective, because collectivists are more likely to allow the subjugation of their individual interests to that of the group (Brett, 2001). In fact, such a decision might be welcomed, with disputants knowing that the solution has attended to more interests than just their own.

Similarly, disputants from more hierarchical cultures may expect that the third party will take responsibility to make a decision, regardless of what the disputants suggest in terms of outcomes (if they suggest anything at all). There would be the perception that a higher status third party "knows best" or has more knowledge than lower status others. In some cultures, in fact, we might expect that the third party's primary purpose would be to come up with solutions as the disputants may not feel comfortable to suggest any themselves.

Furthermore, we might expect that in rule bound cultures, it could be offensive to go outside the bounds of accepted and legitimate rules or standards to pursue individual level interests (Tinsley, 2004). If the third party determines that the disputants' suggested outcome does not reflect the

accepted principles, they may be willing to forsake their own personal short-term gain to make sure that the principle is upheld fairly and consistently within the collective.

Speed or Timing of the Determined Settlements

In some procedural contexts, the third party has the flexibility to allow a settlement to occur (or can dictate a settlement) at any time in the process; for others, the third party is constrained by rules or expectations as to when s/he must render a binding decision. While more lengthy procedures may have certain advantages (e.g., issues may be examined thoroughly, the parties make concessions, or negotiate their own settlement), generally when people are in conflict, existing research shows that they want efficiency – a speedy resolution to their dispute (Sheppard, 1984). In some contexts the third party has also been found to be under some pressure to reach a speedy settlement (Elangovan, 1995). While most ADR procedures are more efficient and faster than going to court, mediation and fact finding in general are comparatively slower than the different forms of arbitration.

Expectations and constraints around speed of settlement, however, are not always consistent within procedure, whether mediation, fact finding, or the different forms of arbitration. For example, there may be a med-arb procedure in one instance that does not limit the time spent during the mediation phase, and only moves into the arbitration phase if all attempts at voluntary agreement are exhausted. Alternatively, other implementations of the procedure may have specific expectations around how much time is allowed for the mediation phase and then disputants are forced into the arbitration phase whether or not they are ready. Perhaps one procedure that has more consistency is the arb-med procedure, where most of the second mediation phases have specific deadlines before the initial arbitrated decision is imposed.

The perception that "time is money" is particularly strong in the US, where efficiency of dispute processes (but allowing enough time for the parties to voice their individual level interests) is an important criteria for the selection of procedures. In collectivist cultures, a different factor may drive the desire for disputes to be settled quickly and quietly: the desire for there to be a minimum social disruption to harmony (Leung 1997; Tinsley, 1997). In individualist cultures where the satisfaction of individual interests is paramount, disputants will prefer to have third party decisions rendered late because that allows the parties the maximum opportunity to present evidence (and perhaps to engage in impression management tactics) to influence the outcome (Conlon & Fasolo, 1990). However, in collectivist

cultures, it is possible that rendering a decision quickly may help to prevent or avoid social disruption and maintain harmony (Tinsley, 1997; Leung, 1997). Furthermore, in cultures where saving face is a critical issue, short, quick processes and settlements may be preferable as not to expose either of the parties to a public exposure of possible wrongdoings or mistakes that could compromise personal reputations.

In other cultural contexts, however; other values may take precedence, making a longer, more thoughtful dispute process preferred in certain situations. Cultures where disputants are particularly concerned about the potential loss of face that can occur when disputes are handled carelessly may prefer a more thoughtful and slow procedure – for if great care is taken in the resolution of a dispute, the chance of offending someone by making a careless mistake and causing the loss of face is decreased.

Subjective Measures of Success

This dimension is maximized if the disputants (and/or their constituents) are satisfied with the procedure and its outcomes and see both the procedure and outcomes as fair and successful (Thomas et al., 1978; Meyer et al., 1997).[4] While one can conceptually distinguish procedural satisfaction from procedural fairness (Sheppard, 1984), these two dimensions are often highly correlated and have similar consequences: people do not want to use procedures that they do not like or do not see as fair (Lind et al., 1978; Sheppard, 1985).

The literature taking a functionalist view of justice suggests that there is a universal concern for justice (Leung & Tong, 2004; Leung & Stephan, 1998) and that justice rules are pan-cultural (Morris & Leung, 2000). The importance or salience of different rules and the way in which they are implemented, however, has been suggested to vary significantly across cultures (Morris & Leung, 2000). While procedural fairness and satisfaction may be important across cultures, we may find different types of procedures or procedural criteria are perceived as fair or satisfactory within a cultural group.

All other things being equal, a procedure is considered superior if the disputants' believe that the procedure is fair and satisfactory (Carnevale et al., 1989), that is, according to whatever criteria drive perceptions of fairness and satisfaction. For example, in highly hierarchical cultures, perceptions of what is "fair" to a lower status individual might be very different from what is considered "fair" from the perspective of a higher status individual. Lower status individuals in such cultures have been found to be highly tolerant of harsh treatment by authorities (James, 1993), and may not have expectations for equal treatment. This is not to say, however,

that disputants would prefer harsh treatment, but that they might not consider it ''unfair''.

The following propositions are suggested by our review of different dimensions of settlement criteria:

Proposition 4. Procedures that allow for outcome control and voluntary agreement by disputants will be seen as more favorable by disputants in egalitarian and individualist cultures, as compared with disputants in hierarchical and collectivist cultures.

Proposition 5. Procedures that give the third party latitude in considering collective interests, and broad, longer term impacts will be viewed as less favorable in egalitarian and individualist cultures, as compared with hierarchical and collectivist cultures.

Proposition 6. Third parties who reject or abrogate settlements achieved by disputants will be perceived more negatively by disputants in egalitarian and individualist cultures, as compared with disputants in hierarchical and collectivist cultures.

Proposition 7. Procedures which allow for greater certainty in terms of settlement (as opposed to impasse) will be seen as less favorable in egalitarian and individualist cultures, as compared with hierarchical and collectivist cultures.

Proposition 8. Procedures which allow for faster resolutions (settlements) will be seen as less favorable in egalitarian and individualist cultures, as compared with hierarchical and collectivist cultures.

Issue-Related Criteria

Clarification of the Issues

When there is no settlement, issue-related criteria may be relevant for assessing the success of a third party intervention. People in dispute often define issues (and positions on the issues) differently and fail to recognize such differences. Sometimes underlying issues heighten the conflict, yet these remain unspoken and unexplored (Sheppard, 1984). A third party can play a valuable role in clarifying the issues for the parties. Mediation and, to a lesser extent, fact finding offer a real possibility of clarifying the issues for the parties (and perhaps identifying underlying issues that might not be otherwise discussed). Similarly, both hybrid procedures (med-arb, arb-med)

afford an opportunity to clarify the issues and explore underlying issues in the mediation phase. By contrast, arbitration (in all of its forms) tends to take the issues and positions at face value just as the parties present them.

Again, this dimension might be viewed through different lenses across cultures. While some disputants might prefer a procedure where they individually have greater understanding, input and control in the process or outcomes, disputants from other cultures may not value this. For example, if individuals in a collective culture do not want to disrupt social harmony, they may not spend that much time discussing the underlying reasons for the dispute or wish to get into detail to clarify the underlying issues. It is possible that in some cases, they may feel more comfort with simply being dictated a solution that is judged to be good for the collective and not want to be confronted with unpleasant and potentially disruptive discussions. Alternately, in high power distance cultures where disputants feel the responsibility of the third party is to craft a solution, they may feel perfectly comfortable to trust that the third party is knowledgeable and will do the right thing. They may not place a high priority on detailed understanding of the dispute, but simply want a solution to be dictated (Tinsley, 1998).

The Chilling Effect

A third party may also help the disputants make concessions on unresolved issues. If the disputants were unable to resolve all of their issues in dispute on their own, and the third party was able to help them do so, then the third party has played a valuable role. The ''distance in positions is narrowed'' (Carnevale et al., 1989, p. 227) and the parties are objectively closer to an agreement than they were before. Subjectively, such concessions may ''build momentum'' for later discussion and agreement. Indeed, research suggests that this ''face-saving'' capacity is one of the strengths of mediation, whether as a stand alone procedure or as a phase in one of the hybrid procedures (Pruitt & Johnson, 1970).

But as we noted earlier, third party involvement can sometimes lead to the so-called *chilling effect* (see Stevens, 1966; Feuille, 1975; Kochan, 1980). The chilling effect results in parties failing to make concessions that they otherwise could make and can reduce the probability of voluntary settlement. For some procedures, such as FOA, night baseball arbitration, or double FOA, the uncertainty of the third party's decision causes additional concession-making behavior toward their actual limits, because each side wishes to present a position to the arbitrator that is slightly more reasonable than that of the other side (Hebdon, 1996; Feuille, 1975; Stokes, 1999). Alternately, in the mediation phase of med-arb, the

uncertainty of what sort of decision might follow in the arbitration phase may lead to greater concession making (Conlon et al., 2002).

Third party procedures that facilitate maximum concession making (reducing the chilling effect) on unresolved issues may be preferable in many cultures, especially those where individual positions are paramount and directly spoken and asserted by disputants. But this criterion is culturally bound, as it assumes the superiority of discovering and integrating individual level interests, and assumes that disputants will present their positions individually and competitively. As we have suggested before, there may not always be an objective to find the "best" or "most integrative" solution from an individual disputant perspective, as wider stakeholders interests might take priority. The chilling effect might not be relevant for certain disputes in collectivist cultures, as there may be a hesitation to put individual positions forward, especially if there is the possibility of causing confrontation or the loss of face if a disputant does not reach his or her spoken, public desired outcome. Additionally, there might be limited relevance in hierarchical cultures, for if the parties expect that the third party will ask the questions and make the decisions, perhaps parties do not always come in with a "position" per se nor might they actively choose to make concessions.

The Narcotic Effect

One of the best known concerns about arbitration is the "narcotic effect", where disputants may become overly reliant on an arbitrator and not attempt to resolve disputes on their own (cf., Lewicki et al., 1999). In research on this topic, FOA sometimes shows less of a narcotic effect than binding arbitration (see Olson, 1988 for a discussion) and double FOA comparatively less than either of the above (Dickinson, 2004). Generally, we see nothing in mediation or fact finding that reduces the likelihood of a narcotic effect – the parties are likely to become dependent on the use of these third parties unless the third parties take special steps to train the disputants to resolve their own conflicts.

In some cultures, especially those with individualistic and egalitarian values, we expect a preference for procedures that encourage parties to resolve disputes themselves. But, in other cultures, we would expect the third party to be an integral part of any dispute resolution process. For example, in hierarchical cultures, it may not be considered appropriate for disputants to take responsibility to solve their own disputes, and there may be strong norms preventing them from doing so. For especially in cultures where hierarchy is very strong, pushing decisions and control down the chain is not

always desirable. It is considered the manager's job to take control and make the decision so that the disputants don't have to worry about this.

As well, in collectivist cultures, we might suggest that individuals are not encouraged to solve their own problems, as there may not be a desire for a focus on individual interests. It may be preferable for a respected, knowledgeable third party to ensure the "right" interests were taken into account in the situation (i.e., the broader collective). In fact, in some collectivist and hierarchical cultures (i.e., East Asian cultures), we often find that a preferred dispute resolution option is to seek out a higher status third party to assist in conflicts that may arise between subordinates (Brett, 2001; Tse, Francis, & Walls, 1994). Thus, the narcotic effect is likely to be even stronger in such cultural contexts.

Proposition 9. Disputes occurring in egalitarian and individualistic cultures will be more susceptible to a chilling effect, resulting in a greater proportion of disputes being appropriate for the use of FOA (and related procedures), as compared with disputes in hierarchical and collectivist cultures.

Proposition 10. Recurring negotiations that occur in egalitarian and individualistic cultures are less likely to exhibit the narcotic effect than are recurring negotiations that occur in hierarchical or collectivist cultures. Moreover, the presence of a narcotic effect will be perceived as less favorable among egalitarian and individualistic cultures than among hierarchical and collectivist cultures.

Relationship Criteria

Relationship Enhancement

Some procedures offer the potential for maintaining – or even enhancing – the relationship between the disputants (Bush & Folger, 1994; Elangovan, 1995; Thomas et al., 1978). As articulated by authors such as Bush and Folger (1994), mediation can focus on transforming relationships in addition to settling the immediate issues in dispute. Carnevale et al. (1989) report that "improving the relationship between the disputants" is an important criterion for evaluating the success of mediation. As described elsewhere within the context of mediation (Ross & Conlon, 2000), mediators may be evaluated based on how well they: (1) reestablish trust between the disputants, (2) deescalate the level of hostility between the parties, (3) help both disputants address power imbalances and other power-related issues within their relationship, and (4) help the parties have a more cooperative

motivational orientation. Kressel and Pruitt (1989), however, note that for many disputes mediation is unable to accomplish these goals because the intervention is too short and the relationship problems are too entrenched.

Relationship enhancement is not necessarily a primary goal of other reviewed procedures. Fact finders and arbitrators (of all "stripes") generally view improving relations among the disputants as beyond the scope of their authority. In the hybrid procedures of med-arb and arb-med, however, relationship enhancement (e.g., restoring broken trust; deescalating emotional conflict) is possible in the mediation phases, although ultimately ensuring a decision rather than improving the relationship is their primary mandate. Med-arb, for example, allows the possibility for parties to increase levels of understanding and cooperation, sometimes resulting in voluntary agreements before the implementation of the arbitration phase. Arb-med in a sense helps to preserve relationships by imposing structure and deadlines around the final mediation phase and discouraging uncooperative delaying and posturing behaviors.

Both individualist and collectivist cultures might be predicted to benefit from enhancing relationships, but for different reasons and perhaps to different degrees. For individualists, it encourages cooperation and potential integration of individual interests for a better solution and reduction of future conflict. For collectivists, it is important to maintain harmony and reduce potential animosity between individuals and the collective. In hierarchical cultures, however, we might find that this criteria is not as relevant, as low status individuals may be comfortable simply taking the advice of a third party to behave in a certain way toward the other party. In this case, they would follow the instruction, regardless of whether or not the procedure enhanced the relationship.

Commitment to Implement the Settlement

For many disputes, the parties must work together to implement the settlement, whether voluntary or imposed (Elangovan, 1995; Carnevale et al., 1989). When the disputants are committed to implementing the settlement, they are more likely to do so fully and enduringly; when one party is not so committed, s/he may simply fail to carry out the settlement and the other party may have to return to a third party forum to attempt to force compliance.

Procedural design may impact the commitment to implement a settlement. For example, McEwen and Maiman (1989) report that most disputants using mediation with small claims disputes are likely to implement the agreement whereas slightly less than half of those going to court implemented the judge's decision. Presumably, this is because people

are more committed to implement voluntary than imposed settlements. These effects may also extend to hybrid procedures if an agreement is negotiated in the mediation phase.

We also see participation in the generation of an agreement impacting commitment to follow through with arbitration decisions. For example, Starke and Notz (1981) report that FOA "winners" (those whose proposed offer was accepted by the third party) are significantly more committed to implementing the imposed settlement than either FOA "losers" (those whose proposed offer was not accepted), or those who had a third party generated decision imposed on them in binding arbitration. One of the alleged advantages of double FOA over other forms of arbitration is that because the losing side can select between the winner's two offers, the loser is more committed to fully implementing the arbitrated outcome. However, little empirical research has confirmed this advantage for the double FOA procedure.

Generally, in egalitarian and individualistic cultures when the parties have voice and play a role in the determination of the outcome, they tend to feel that the agreement is more fair and are more committed to the outcome (Carnevale et al., 1989). In some cultures, however, it may be that commitment is driven not by voice, but by punishments for not complying, or lack of acceptance or other negative consequences from the collective. Furthermore, we may find that commitment may stem from other factors not currently explored in Western research. For example, we might find in hierarchical cultures, the commitment of low-status disputants to implement an outcome would be stronger under direction from a higher status third party than under their own voluntary agreement. Whatever the drivers, we suggest that in general, disputant commitment to the implementation of a settlement is desirable.

Proposition 11. Procedures that maximize relationship enhancement (maintain harmony, avoid social disruption, and save face) will be seen as more favorable than procedures that do not. This preference will be exacerbated in hierarchical and collectivist cultures, relative to egalitarian and individualist cultures.

Proposition 12. Disputant compliance with third party-imposed outcomes will be weaker in egalitarian and individualist cultures, as compared with hierarchical and collectivist cultures. In addition, the motivation to comply with imposed outcomes will be driven by legal concerns in egalitarian and individualistic cultures, whereas it will be driven by deference to authority and concern for face in hierarchical and collectivist cultures.

SUMMARY AND CONCLUSION

In our discussion, we have discussed a number of third party ADR procedures and have applied four categories of criteria drawn from the literature that are useful for comparing third party procedures: process-related, settlement-related, issue-related, and relationship-related criteria (e.g., Lissak & Sheppard, 1983; Sheppard, 1983, 1984). We have offered ideas about how these criteria might be perceived differentially across cultures, emphasizing that Western research findings about procedural preferences do not necessarily generalize to other cultural contexts.

Many different dispute resolution procedures exist within each culture and are used for different situations (Brett, 2001; Tinsley, 1998, 2001), procedures that "fit" a particular culture's set of values, norms, systems, and beliefs are likely to be preferable to those that do not. While we realize that there are many unique combinations of cultural dimensions that drive potential differences in procedural choice, we have sought to identify only two major groups of cultures (egalitarian/individualistic cultures with direct communication and hierarchical/collectivist cultures with indirect communication) and explore how procedural choices might differ and make suggestions for future research. We have limited our discussion for a number of reasons. Firstly, these two major groups because we consider these to provide the greatest contrast for ADR procedures among cultural dimensions that are currently understood from a theoretical perspective as well as from an empirical base. Secondly, from a global population perspective, these two cultural groups encompass, generally speaking, a large proportion of the world's citizens. Lastly, in the spirit of disclosure, these are the two cultural groups with which we are most familiar. By no means should this discussion be considered to be exhaustive of the world's great variety of cultures. Likewise, this discussion should not be viewed as a comprehensive treatment of third party procedures, evaluation criteria, and the moderating effect of culture. In the interest of parsimony, we have economized where we thought appropriate while retaining sufficiently rich detail to provide the reader with an appreciation of the complexity inherent to the domain we have delimited.

In this article we have reviewed and summarized a suite of ADR procedures. We have examined various criteria for evaluating those procedures. One important contribution we have made is to discuss the moderating role of culture in the application and enactment of ADR procedures as well as the criteria for evaluating the effectiveness of their use. We caution the reader to view culture in both a broad and narrow sense. In a broad sense, national or ethnic culture can render manifestations of

individual and societal values, beliefs, norms, and behavior which differ significantly across large collectives of individuals who share a common origin or background. In the narrow sense, within a collective of individuals with a common national or ethnic background, there is wide scope for local variation – values, beliefs, norms, and behavior may significantly differ across regions, language or dialect groups, firms, communities, families, and individuals. Even within the same local group, these factors can change – a collective or individual can experience variation over time and context in the salience of particular dimensions of cultural values. For example, in times of prosperity and harmony, some dimensions of the culture may be more prominent than others for a community, whereas in times hardship and discord other dimensions are rendered more meaningful.

The meta-themes from this article should be evident to the reader by now: research which is culturally bounded is inherently ethnocentric, and potentially disregards important local factors leading to false assumptions; naïve transferal of ADR procedures across cultures can result in misapplication, and misappraisal of effectiveness of a given third party procedure; criteria for characterizing or evaluating third party procedures should be carefully and skillfully utilized with a cogent understanding of the implication of cultural values.

In short, the assumption that there exists a universal formula for selecting and evaluating third party ADR procedures can at best lead to wasted efforts in a futile search, and at worst can lead to misguided attempts to address conflict among disputants resulting in deleterious outcomes. This is not to say that we should be paralyzed in our attempts to disseminate third party procedures. Rather we encourage practitioners and researchers alike to test the assumptions underlying their conceptual and theoretical models of ADR procedures as they foray into cultures with which they are unfamiliar. In this way we will learn (often through trial and error), some universals, some non-universals, and some general heuristics for incorporating moderating effects. Let us keep in mind that, at least at this stage in our understanding of third party procedures, there still exists no "one best choice".

NOTES

1. While there is within culture diversity of conflict resolution strategies (Brett, 2001; Tinsley, 1998, 2001), certain strategies may be more preferred and used more often.

2. We do not assume here that these are the only criteria important across cultures. We expect future research may discover new criteria, and that relevance and importance of criteria will vary across cultures.

3. There is an obvious competing prediction here for collectivists. It is possible that preferences for face saving and animosity reduction might result in a desire to have quick resolutions to disputes as opposed to taking time to carefully tend to disputants for the same ultimate purpose. We await an empirical test of these competing predictions.
4. It is important to note that subjective and objective measures of success are not identical; sometimes parties prefer compromises to integrative tradeoffs even though the resulting outcome quality is objectively lower (Conlon & Ross, 1997).

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