

DOCTORAL THESIS “FROM MEDIATION TO SCHOOL MEDIATION”

Regarding *mediation* –as a way of solving conflicts– there exist certain prejudices about its effectiveness. They are largely due to the lack of accurate and sufficient knowledge. In this edition of the UM-Thesaurus appears an abstract of the findings of a thesis for the Doctorate Degree of the University of Morón, which is devoted to contributing, partly, to solve this lack.

Mediation is a process whereby a neutral third party (the mediator) helps negotiating parties to solve their conflicts, by facilitating communication and creating favorable conditions for decision making and dispute resolution.

It is a cooperative process in which the parties themselves “self-determine” their agreements and the mediator collaborates by generating creative and legitimate options so that the parties may find, on their own and jointly, a solution derived from mutual interests of the participants.

This is one of the existing negotiation forms, probably the most widespread and, certainly, the most successful nowadays. At this point, it is worth remembering those models, such as the Harvard Mediation program, that define mediation as a “negotiation process assisted by a third party...”

In this new conception, mediation is a fairly recent tool which does not belong exclusively to a particular scientific discipline, but permanently receives contributions from the most varied areas of knowledge, such as law, psychology, sociology, social psychology, systems theory, etc.

Contrary to common assumptions, mediation is not something new; it results from a long process. Here follow some landmarks in the history of mediation.

The custom of primitive human groups was to respond to aggression with aggression, taking the law into their own hands. As a step forward into the evolution of conflict resolution, the solution of disputes was delegated to one or more members of the group (the sorcerer, the chief of the tribe, the Elderly Council).

Later, as a fundamental milestone in the development of Law, State organizations monopolized the use of force, and more importantly, the coercive power of the potential and legitimate use of that force, acting as a deterrent of illegal behavior.

The *lex talionis* (Latin for “law of retaliation”) –*an eye for an eye, a tooth for a tooth*– was a great advance to quantify the allowed retribution for damages inflicted.

Mediation and negotiation are two closely related concepts. In ancient China, they are rooted in Confucius’ words (5th Century BC). He stated that disagreements were solved by means of moral persuasion and reaching an agreement, and not by means of coercion, and that the natural harmony of human relationships had not to be disrupted. Mediation in China took place before the People’s Courts of Arbitration as stated in Chinese Legal System.

In Japan, conciliation and mediation developed before the II World War, and compared to the United States of America, the lower number of lawyers is considered a consequence of the application of both strategies.

Gibbs argues that the idea of forming a neighborhood mediation committee composed of lay judges (*moot courts*) was a perfect tool to solve interpersonal disputes.

In the United States of America, at the beginning of the 20th Century, Chinese immigration brought Confucius’ teachings and it was created the *Chinese Benevolent Association*

so as to settle disputes within the Chinese Community in a peaceful way.

The *National Mediation Board* and the *Federal Mediation and Conciliation Service* were created in the United States in 1934 and 1947 respectively.

In some African countries, the neighbors are used to holding meetings or assemblies in order to collaborate with others in conflict.

In England, mediation has been carried out since 1980. Only in London there are about fifty private-sector *ombudsmen*, acting as mediators.

In France mediation was implemented in 1995 at request of the parents to help them in family matters, such as visitation of minor children.

In Spain, the oldest law court in Europe called "Tribunal de las Aguas de la Vega" has met under the Porch of the Apostles of the Cathedral of Valencia every Thursday at midday since remote times. The objective has been to settle verbally the disputes arising between farmers over the right to use water from the channels irrigating the 17,000 hectares of what is known as the "Orchard of Valencia". Moreover, in Spain, mediation has proved to be useful for the correction of juvenile offenders.

In Norway, mediation is compulsory for divorcing parents that have children from their marriage who are under 16 years old.

In Mexico, conciliation is considered necessary in most legislation related to family, workplace, and business conflicts, for example.

The different religions, regardless of frontiers, have long taught us that priests, ministers or rabbis have performed the role of conciliators in the fulfillment of their duties whenever a problem has arisen. Besides, it is known that mediation is consistent with the biblical values of forgiveness, reconciliation and community.

The main objective of this Doctoral Thesis was to develop the basic contents of mediation, its possible scope and, especially, its adaptation to and application in the educational field. The specific objectives were:

- To investigate about conflicts, new alternative problem-solving methods, and mainly mediation;
- To analyze the process of mediation and communication as its core;
- To examine some of the different possible spheres of application of mediation, including –within the legal context- the pre-judicial stage in the Argentine Republic.
- To study the scope and implementation of mediation in education, both in our country and abroad;
- To assess the different experiences of school mediation carried out in the province of Buenos Aires.

Based on own essays and those written by school mediators with whom the doctoral candidate has been doing research since 1991, as well as on observations and field experiences, interviews, surveys and bibliographic search, there have been developed some of the key concepts to know this strategy related to conflict, its resolution methods and mediation itself: its process, mediator's role and some of its application fields, mainly at school.

Precisely, the question to be answered is the following: *How can mediation be applied at school?*

Despite the efforts made for over a decade, school mediation is not really known, neither are its scope and multiple advantages as a valuable strategy of pacification and as an educational instrument.

The thesis intends to verify the following hypothesis: *"Mediation adapted for the school environment is a strategy and an instrument for the educational resolution of conflicts."*

The research focuses on the realm of education based mainly on two local field experiences–directed by the author since 1994–, showing in each case the convenience and effectiveness of applying mediation in this specific field.

The first experience was carried out in a new and very small secondary school –having about 50 students- located in La Reja (Buenos Aires, Argentina) from 1994 to 2000. The second one

started in 1998 and is still in progress in a seventy-year-old traditional school, with a great capacity (over 1,000 students), located in Bella Vista (Buenos Aires-Argentina). Both schools are situated at about 40 kilometers from Argentina's Capital City. The outcome of the application of "educational mediation" to solve conflicts between the members of the educational institution has been similar, despite the enormous difference between both schools: there was a sharp decrease in conflict levels – using conflict as an educational tool–, communication and school harmony were greatly improved, formation was based on values related to peace, respect, tolerance, etc., and the teachers could eventually channel their efforts into a better specific task, giving up the control of discipline, which had been one of their functions until the implementation of mediation programs.

Consequently, if school mediation were spread as it deserves, it would surely help solve the more and more frequent and serious conflicts arising daily in the school environment. Suffice it to observe any mass media to prove this hypothesis.

To sum up, here follows the framework chosen to elaborate this thesis: Starting from the

general theory of mediation (mainly conflict study, without which mediation would be meaningless), going slowly into particular scenarios–by alternating theoretical aspects with practical situations– to reach the specific and experiential scenario: *school or educational mediation*.

According to what has been expressed so far, it is expected that the title of the work will be eloquent enough: *"From mediation to educational mediation."*

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