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Culture and its Importance in Mediation

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I. INTRODUCTION

It is said that a fish cannot know what water is because it is all-pervasive. Water is all the fish knows and the fish cannot distinguish water from the fabric of its existence. So it is with culture. Culture is so deeply ingrained within us by the processes of socialization that we often do not realize we are affected by it. We simply swim through it like a fish through water. It is how we perceive and interact with the world. Of course, we are different from fish. We have the ability to "go meta" and to reflect upon our behaviors, thoughts, beliefs, values, and identities.[1]

This article seeks to take the reader on this "meta-journey." It will first explore definitions and frameworks about culture before looking at how culture is important in mediation. Specific attention will be placed on the context of Singapore, and we will look at Singapore's journey to dealing with the intersection between culture and mediation. This article will then look at formulating a working model to traverse the intersections between status and belonging on one hand, and modes of communication and face concerns on the other.

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1. This is, of course, an opinion based on conventional scientific views and anecdotal evidence. The writer cannot say with absolute certainty that a fish is unable to "go meta." That would be an interesting experiment to explore.

II. CULTURE: THE BLIND MEN AND THE ELEPHANT

When talking about culture and trying to define it, this writer is reminded of the story of the Blind Men and the Elephant. For readers unfamiliar with this story, one telling of the story goes like this:

> Once upon a time, there were six blind men in a village. One day the villagers told them, "Hey, there is an elephant in the village today."
> They had no idea what an elephant is. They decided, "Even though we would not be able to see it, let us go and feel it anyway." All of them went where the elephant was. Every one of them touched the elephant.
> "Hey, the elephant is a pillar," said the first man who touched his leg.
> "Oh, no! It is like a rope," said the second man who touched the tail.
> "Oh, no! It is like a thick branch of a tree," said the third man who touched the trunk of the elephant.
> "It is like a big hand fan[,]" said the fourth man who touched the ear of the elephant.
> "It is like a huge wall," said the fifth man who touched the belly of the elephant.
> "It is like a solid pipe," [s]aid the sixth man who touched the tusk of the elephant.
> They began to argue about the elephant and every one of them insisted that he was right.[2]

This teaching tale is often used to illustrate notions of relativity, multiple perspectives, harmonious living, or even wave-particle duality. For the purposes of this paper, it also illustrates that what culture is depends on what we focus on.

One could seek to define culture via academic definitions. There is, of course, neither dearth of nor agreement about academic definitions. A sampling follows:

> "[P]atterned ways of thinking, feeling, and reacting, acquired and transmitted mainly by symbols . . . the essential core of culture consists of traditional . . . ideas and especially their attached values."[3]
> "[T]he collective programming of the mind that distinguishes the members of one group or category of people from another."[4]

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2. *Elephant and the Blind Men*, JAINWORLD.COM, http://www.jainworld.com/literature/story25.htm (last visited Jan. 28, 2016).

3. Clyde Kluckhohn, *The Study of Culture*, *in* THE POLICY SCIENCES: RECENT DEVELOPMENTS IN SCOPE AND METHOD 86 n.5 (DANIEL LERNER ET AL., eds., 1951).

4. GEERT HOFSTEDE, CULTURE'S CONSEQUENCES: COMPARING VALUES, BEHAVIORS, INSTITUTIONS, AND ORGANIZATIONS ACROSS NATIONS 9 (2d ed. 2001). *See generally* THE HOFSTEDE CENTRE, http://www.geert-hofstede.com (last visited Jan. 26, 2016).

> "[T]he unique character of a social group – the values and norms shared by its members [that] set it apart from other groups."[5]

The problem with academic definitions is this: those definitions that seek to be encompassing may over-generalize and seem simplistic, while those seeking comprehensiveness must cope with so many variations and exceptions that their usefulness is undermined. What is clear from the above definitions is that any perspective on culture is always in reference to a particular community or group. It simply depends on the boundaries that we draw to identify that community or group.

Sometimes, we equate the culture of a particular community or group with its rules, etiquette, and customs. It is trite, of course, that culture is more than rules, etiquette, and customs.[6] These rules, etiquette, and customs are usually the outward manifestation of the cultural iceberg that lies beneath.

It is also trite that culture is a generalization and cannot be attributed to all other members of that community or group. It may be that a particular member of that community or group is a complete exception to the general rule or that he or she may share some characteristics, but not others.

To be fair to those attempting a comprehensive academic definition (in the writer's opinion, this is akin to quantum physicists attempting to construct a "grand theory of everything"[7]), the task of delineating culture, communities, or groups is made more complicated by a shrinking world and the segmentation of cultures.

In the past, one could delineate a cultural community or group along national or ethnic lines. These would be the days when cultural anthropologists like Margaret Mead could observe a group or community like the Samoans, and identify their cultural traits.[8] Of course there would be exceptions, but in those days, one could be fairly sure it was an exception and not the norm. This was possible because there was very little cross-grouping "contamination" or influence[9]: the Samoans had very little

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5. EMILY JONES, NEGOTIATING AGAINST THE ODDS: A GUIDE FOR TRADE NEGOTIATORS FROM DEVELOPING COUNTRIES 103 (Commonwealth Secretariat 2013).

6. Kevin Avruch & Peter W. Black, *The Culture Question and Conflict Resolution*, 16 PEACE & CHANGE 22 (Jan. 1991).

7. STEVEN WEINBERG, DREAMS OF A FINAL THEORY: THE SCIENTIST'S SEARCH FOR THE ULTIMATE LAWS OF NATURE 3-5 (2011).

8. For information relating to Margaret Mead and her work, see generally *Margaret Mead: Human Nature and the Power of Culture*, LIBR. CONG., http://www.loc.gov/exhibits/mead/oneworld-comment.html (last visited Jan. 20, 2016).

9. ROBERT C. HUNT, BEYOND RELATIVISM: COMPARABILITY IN CULTURAL ANTHROPOLOGY 22-23 (AltaMira Press 2007) ("The natural history of scientific concepts shows us that the vast

exposure to other cultural influences, whether through travel or other means. There was, therefore, the illusion of sameness, which in that time was relatively reliable.[10]

With the advent and development of modern travel, communication, and of course, the Internet, this is no longer true. The lines between cultural communities and groupings are blurring. It is now increasingly possible for a Chinese person to be born in Singapore, grow up in New York, be educated in the United Kingdom, and end up living and working in Hong Kong. It would be a mistake then, to assume that one was dealing with a Singaporean Chinese person. This individual may not manifest any characteristics of what it might mean to be Singaporean Chinese. Further, exposure to movies, music, and other forms of media could also mean that any individual that we look at may manifest different sub-cultures depending on the context he or she is put in. In the context of business, the person may manifest characteristics of typical "western" business values. However, in a martial-arts context, we may see the manifestation of a sub-culture that is very different from the behaviors and values that are typical of that individual. Put simply, the illusion of sameness is gone.

The writer finds that thinking about culture in terms of frameworks is far more satisfying and useful. A framework essentially takes certain cognitive or behavioral characteristics or traits, and tracks them over cultures. When using frameworks, it is important to make some preliminary points.

First, it is trite that there are many different frameworks available to measure culture. It is not a matter of which framework is right (or wrong) or which one is better. The appropriate question is which framework is more useful in the context that we are choosing to use them in. In other words, no single framework is superior to another.

Second, frameworks may overlap. For example, how cultures respond to hierarchy and authority in society is captured in the frameworks of Hofstede,[11] Lytle,[12] and Salacuse[13] even though they may have different names for this characteristic or trait.

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majority of them originated in some natural culture. As they develop and are applied in new context, it becomes clear that there is contamination from one or more natural cultures.").

10. *Id.* at 40 ("If the arena of action is a single culture, then cultural contamination may not be problematic. A problem arises when there is an attempt to acquire or compare measures in two or more different cultures. This difficulty occurs automatically in trade between two cultures.").

11. HOFSTEDE, *supra* note 4.

12. Anne L. Lytle et al., *The Strategic Use of Interests, Rights, and Powers to Resolve Disputes*, 15 NEGOT. J. 31 (1999).

13. Jeswald Salacuse, *Negotiating: The Top Ten Ways that Culture Can Affect Your Negotiation*, IVEY BUS. J. (Sept./Oct. 2004), http://iveybusinessjournal.com/topics/the-organization/negotiating-the-top-ten-ways-that-culture-can-affect-your-negotiation#.UyfWR466_dk.

Third, when using frameworks, it is important to remember that characteristics and traits are not digital—i.e. one or the other—but are better measured on a continuum. This allows measurements to be more nuanced.

Finally, just as it is important to select a framework that is most appropriate for one's purpose, it is also not necessary to accept a framework in its entirety. Since the cultural traits within each framework are, by and large, represented as separate traits, it is permissible then to select only certain traits from various frameworks to measure and discuss.

As an example, the writer has chosen to refer to Geert Hofstede's "dimensions of culture."[14] By way of background, Hofstede initially identified four cultural dimensions that could be used to describe important differences between cultures.[15] These first four cultural dimensions were: (1) power distance; (2) individualism/collectivism; (3) masculinity/femininity; and (4) uncertainty avoidance.

(1) Power distance. This dimension measures how society handles inherent inequalities, which may result from prestige, wealth, and power.[16] Cultures with high power distance tend to be comfortable with hierarchical structures and clear authority figures.[17] Cultures with low power distance tend to be comfortable with flat organizational structures and shared authority.[18]

(2) Individualism/collectivism. This dimension measures the relationship and extent of integration between the individual and the group that prevails in a given society.[19] Cultures, which rate high on the individualism scale tend to play down relationships and focus more on the individual, as well as individual rights.[20] Cultures which rate low on the individualism scale tend to be collectivist and focus more on close ties between individuals.[21]

(3) Masculinity/femininity. This dimension measures the degree to which the traditional masculine or feminine traits are reinforced in any given

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Salacuse places each factor on a continuum and locates where a particular culture is on that continuum. *See id.*

14. HOFSTEDE, *supra* note 4, at 29.

15. *Id.* (explaining that this was as a result of studying IBM employees from over fifty countries and cultures).

16. *Id.* at 79.

17. MICHAEL CARRELL & CHRISTINA HEAVRIN, NEGOTIATING ESSENTIALS: THEORY, SKILLS AND PRACTICES 224 (2008).

18. *Id.*

19. HOFSTEDE, *supra* note 4, at 209.

20. CARRELL & HEAVRIN, *supra* note 17, at 225.

21. *Id.*

society.[22] Cultures characterized as masculine reinforce control and power with a high degree of gender differentiation.[23] Cultures characterized as feminine reinforce nurturing and co-operation with a low degree of gender differentiation.[24]

(4) Uncertainty avoidance. This dimension measures a society's tolerance for uncertainty and ambiguity.[25] Cultures high on uncertainty avoidance tend to be rule-oriented, with regulations and controls to minimize the amount of uncertainty.[26] Cultures low on uncertainty avoidance tend to have fewer rules, and can more readily cope with change and taking risks.[27]

After surveys conducted with Chinese employees and managers, a fifth dimension was added: (5) long-term orientation.[28]

(5) Long-term orientation. This dimension measures the degree to which a society is forward-looking with long-term objectives in mind.[29] Cultures high on this scale value long-term commitments, cultivate a respect for tradition, and look towards future rewards.[30] Cultures low on this scale look towards immediate results and are more amenable to change.[31]

In an earlier work, the writer has looked at the possible impact these dimensions can have on mediation.[32] For the purposes of this chapter, the writer will only focus on two dimensions, Power Distance and Individualism/Collectivism and will consider how the interaction between these dimensions affects how we choose to communicate and manifest face concerns. Before doing so, we will first turn to consider whether and how culture is important to mediation.

III. CULTURE: MUCH ADO ABOUT NOTHING?

It would be very odd and politically incorrect for one to suggest that, in relation to mediation, culture was unimportant or insignificant. However,

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22. HOFSTEDE, *supra* note 4, at 279.

23. CARRELL & HEAVRIN, *supra* note 17, at 227.

24. *Id.* Of course, this presupposes that one buys into these stereotypes of gender.

25. *Id.* at 224; HOFSTEDE, *supra* note 4, at 145.

26. CARRELL & HEAVRIN, *supra* note 17, at 224.

27. *Id.*; HOFSTEDE, *supra* note 4, at 224.

28. HOFSTEDE, *supra* note 4, at 224-25. Since the time of initial writing, a sixth dimension has been added to the Hofstede model: indulgence versus restraint. *See* GEERT HOFSTEDE ET AL., CULTURES AND ORGANIZATIONS: SOFTWARE OF THE MIND 277-99 (3d ed. 2010). This dimension measures the extent to which a society allows or suppresses gratification of needs related to enjoying life and having fun. *Id.*

29. CARRELL & HEAVRIN, *supra* note 17, at 227.

30. *Id.* at 224.

31. *Id.* at 227.

32. *See generally* JOEL LEE ET AL., AN ASIAN PERSPECTIVE ON MEDIATION (Joel Lee & Teh Hwee Hwee eds., 2009) [hereinafter ASIAN PERSPECTIVE].

looking at this question in the cold light of day, it is a fair question. Does culture really have such a significant impact on human interactions, specifically mediation?

There has always been a tension between two schools of thought: the "Universalists" and the "Culturalists."[33] The "Universalists" believe that all conflicts are fundamentally universal in nature.[34] Humans manifest universal patterns of behavior, and a general and universal model of conflict resolution applies by recognizing universal human needs and addressing them.[35] Culture plays a minimal, if not non-existent, role in the resolution of disputes.[36]

The "Culturalists," on the other hand, believe that we are more different than we are similar.[37] While group characteristics and traits do exist, culture is complex, dynamic, and multi-dimensional. It is personal to the individual and any model of conflict resolution can only be a generalization, which is at best, a guide.

Of course, it is important to note that the "Universalists" and the "Culturalists" form two extreme ends of a continuum and where one stands within that continuum determines how one approaches conflict resolution theory and practice.

This was precisely where Singapore found itself in 2003.[38] The commonly used model of conflict resolution in Singapore (and many other jurisdictions) at the time was the facilitative interests-based model.[39] The question posed was whether this model of conflict resolution was appropriate in the Asian context. If it was, what modifications, if any, needed to be made to take into account relevant cultural differences? If it was not appropriate, then what model should replace it?

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33. FONS TROMPENAARS & CHARLES HAMPDEN-TURNER, RIDING THE WAVES OF CULTURE: UNDERSTANDING CULTURAL DIVERSITY IN BUSINESS 31-48 (EBSCO Pub. 2013) (1997), http://ocan.yasar.edu.tr/wp-content/uploads/2013/09/Riding-the-waves_Part-1.pdf. For purposes of this article, the term "culturalist" is used synonymously with Trompenaars' use of the term "particularist." *Id.*

34. *Id.* at 31.

35. *Id.* at 48.

36. *Id.* at 45-46.

37. *Id.* at 48.

38. Joel Lee & Teh Hwee Hwee, *The Quest for an "Asian" Perspective on Mediation*, *in* AN ASIAN PERSPECTIVE ON MEDIATION 3, 17-20 (Joel Lee & Teh Hwee Hwee eds., 2009) [hereinafter Lee & Hwee, *Quest*].

39. *Id.*

A. A Contextual Segue

Before looking at how Singapore dealt with this question, it is useful to make a contextual segue. Singapore is a small island state, with an area of approximately seven hundred square kilometers and a population of five million people.[40] Its population is made up of many ethnicities, including: Malays, Chinese, and Indians among others.[41] Modern-day Singapore was founded by Sir Stamford Raffles in 1819, colonized by the British in 1824, and subsequently occupied by Japan during the Second World War.[42] After the Japanese surrender, Singapore reverted to British rule and remained a British colony until its independence in 1965.[43]

Singapore has since become a developed country with all the trimmings of modernity and a robust economy. The country is governed by a democratically elected unicameral parliament and the legal system is based on the English common law system.[44]

Historically, there are indications that disputes were resolved through indigenous forms of mediation practiced among the ethnic groups.[45] The mediators were often religious and community leaders who had standing and credibility in their respective circles.[46] Under British influence, these traditional methods of dispute resolution eventually gave way to litigation in the courts as a primary way to resolve disputes, which brought with it the attendant tangible and intangible costs.[47]

The modern history and development of mediation in Singapore has been explored elsewhere, both inside and outside this volume.[48] The writer will not seek to repeat any of that here; save to say that since 1994, mediation has taken root in the form of the Primary Dispute Resolution Centre in the Subordinate Courts, Community Mediation Centres, and the Singapore Mediation Centre.[49] In each of these contexts, disputes between

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40. Joel Lee, *The Evolution of ADR in Singapore*, *in* MEDIATION IN ASIA-PACIFIC: A PRACTICAL GUIDE TO MEDIATION AND ITS IMPACT ON LEGAL SYSTEMS 397, 400 (Wang Guiguo & Yang Fan eds., 2013) [hereinafter Lee, *Evolution*].

41. SINGAPORE DEP'T OF STATS., *Population & Land Area, Latest Data*, SINGAPORE GOV'T, http://www.singstat.gov.sg/statistics/latest-data (last visited Jan. 21, 2016).

42. Lee, *Evolution*, *supra* note 40, at 400.

43. *Id.*

44. *Id.*

45. *Id.*

46. Lee & Hwee, *Quest*, *supra* note 38, at 10-11, 15-18.

47. Lee, *Evolution*, *supra* note 40, at 400.

48. *See generally* ASIAN PERSPECTIVE, *supra* note 32; Lee, *Evolution*, *supra* note 41, at 397; Joel Lee, *Singapore*, *in* GLOBAL PERSPECTIVES ON ADR 383, 383-420 (Carlos Esplugues & Silvia Barona eds., 2014) [hereinafter Lee, GLOBAL PERSPECTIVES].

49. Lee, *Evolution*, *supra* note 40, at 402-06.

parties of different races, ethnicities, and, increasingly, nationalities are mediated regularly.[50]

In particular, the writer would like to highlight the work of the Community Mediation Centres, which were the fruit of the efforts put in by the Committee on Alternative Dispute Resolution.[51] This committee was set up by the Ministry of Law to explore ways of resolving community disputes in order to preserve religious, racial, and community harmony.[52] This is an understandable priority in a small, racially-diverse country with a densely packed population.[53] The main idea was to replicate the traditional and indigenous mechanisms for resolving community disputes, and to foster community spirit.[54] Culture clearly plays an important role in these types of mediation.

This segue was important for two purposes. First, it provided those unfamiliar to Singapore with some contextual background. Second, it illustrated that, in the melting pot of races that is Singapore, it would be absurd to say that culture was not important. If it is sometimes perceived that culture is not often discussed in Singapore, this is due to the fact that it is so much a part of Singapore life that talking about it would be odd; as if it was something unusual.

B. Meanwhile, Back at the Ranch . . .

From 1994 to 2003, mediation training and practice overseas, in particular "Western sources" such as those in the United States, Australia, and the United Kingdom, had a heavy influence on modern mediation practice (including training and accreditation).[55] As mentioned, this is the facilitative interests-based model and, while it worked well enough most of the time, there was no denying that it was not always a comfortable fit.

Considering that one view asserts that mediation has its roots in the Asian culture,[56] this irony was not lost on the former Chief Justice Dr. Yong

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50. *Id.*

51. *See* Teh Hwee Hwee, *Mediation Practices in ASEAN: The Singapore Experience*, ASEAN L. ASS'N 8 (Feb. 2012), http://www.aseanlawassociation.org/11GAdocs/workshop5-sg.pdf [hereinafter Hwee, *Mediation Practices*].

52. *Id.*; Lee, *Evolution*, *supra* note 40, at 403.

53. Hwee, *Mediation Practices*, *supra* note 51, at 19-21.

54. *Id.* at 8 ("The Committee observed that there was a need for a framework that encompassed fast, inexpensive and non-confrontational mechanisms for conflict resolution outside the court system.").

55. Lee & Hwee, *Quest*, *supra* note 38, at 7-9.

56. Hwee, *Mediation Practices*, *supra* note 51, at 1.

Pung How, who remarked that Singapore had to relearn mediation from the West.[57] It is therefore not surprising that the Singapore Mediation Centre was tasked with looking at whether the facilitative interests-based model was appropriate for the Asian context.[58]

A working group was convened to study this question and was faced with the dichotomous choice of "West versus East."[59] The working group rejected this distinction and proceeded from the assumption that the interests-based model of conflict resolution provided a functional paradigm that was universal to the human condition.[60] What sometimes caused an uncomfortable fit with cultures outside the West were the cultural assumptions inherent within the model that had their origin in the West.[61] These assumptions were: (1) the primacy of the individual and the individual's expectation of autonomy; (2) the priority of the interests of the individual; (3) the premium placed on direct and open communication for constructive conflict management; and (4) the importance of maintaining a good working relationship for constructive conflict resolution.[62] The operational behaviors that flowed naturally and unconsciously from these assumptions are illustrated in Figure 1 below:

Western-oriented Cultural Assumptions of the Interests-based Model	**Resulting Features/Strategies of the Interests-based Model**
Primacy of the individual and the individual's expectations of autonomy	Western-oriented assumption puts disputing parties first and in the center. Mediator is an external neutral party who facilitates the process and has low substantive authority. Parties know best and are therefore most well placed to decide on the form of mediation process and shape of mediated outcome. Interactions are kept informal to encourage parties to

57. Former Chief Justice Yong Pung How, Republic of Sing., Speech at the Launch of DisputeManager.com (Jul. 31, 2002); Lee & Hwee, *Quest*, *supra* note 38, at 12. *See also* Hwee, *Mediation Practices*, *supra* note 51, at 3 ("[M]ediation as is now practiced is different from traditional forms of mediation because of the influence from the mediation movement in the West.").

58. Hwee, *Mediation Practices*, *supra* note 51, at 19-21.

59. In writing this paper, the author is well aware of the dangers of using sweeping terms like the "East," "West," or even "Culture." It is outside the scope of the paper to explore the problems of this definitional minefield. Suffice it to say, for a more thorough exploration of this issue, see ASIAN PERSPECTIVE, *supra* note 32.

60. Joel Lee & Teh Hwee Hwee, *Appropriateness of the Interest-based Model for the Asian Context*, *in* AN ASIAN PERSPECTIVE ON MEDIATION 40, 40-42 (Joel Lee & Teh Hwee Hwee eds., 2009) [hereinafter Lee & Hwee, *Appropriateness*].

61. *Id.* at 40.

62. *Id.* at 34-39.

	negotiate and take decisions.
Priority of interests of the individual	Western-oriented assumption gears the mediation process towards helping parties maximize and satisfy individual interests. Interests include those of self and immediate family members.
Direct and open communication is constructive for conflict management	Open debate and confrontation is acceptable. Explicit expression of feelings, views, and concerns is encouraged to "air" grievances. Joint sessions perceived to be beneficial as flow of information may create new levels of understanding and create options for settlement. Mediator facilitates process by asking questions to surface underlying interests and hidden emotions and turn them into issues for joint discussion.
Unconditionally constructive approach to maintaining good relationship for optimal outcome	Cultivation and maintenance of good relations to facilitate securing a good outcome. In view of objectives, the same approach to relationship building is generally taken for one and all.

Figure 1[63]

These assumptions were by and large invisible when the model was used in a context that had compatible cultural assumptions.[64] There is no clear distinction between the functional and operational paradigms of the facilitative interests-based model.[65] This is of course not surprising and illustrates the point this article began with: these cultural assumptions are the water we swim within and, until the water goes missing or is corrupted to the extent that it causes discomfort, we generally do not realize that it is there. The problem is that, by not making a distinction between the functional and operational paradigms, what is sometimes conveyed in mediation training and practice—e.g., encouraging direct communication—is an operational matter, which may not fit the cultural context one is operating within.

By identifying these "Western" cultural assumptions and replacing them with cultural assumptions appropriate to the context of Singapore—and

63. *Id.* at 39-40.
64. *Id.* at 40-41.
65. *Id.* at 41-42.

other cultures that share its heritage[66]—it was possible to preserve the usefulness of the interests-based model of conflict resolution—its functional paradigm—and harmonize it with the culture of Singapore in application—its operational paradigm. These "Asian" assumptions (in juxtaposition to the ones earlier identified) were: (1) the primacy of social hierarchy and the individual's expectations to fulfill roles in any hierarchical relationship; (2) priority is given in observing proper conduct; (3) communication and conduct is geared towards preserving harmony, relationships, and face; and (4) one approaches context-dependent relationship maintenance as a way of life.[67]

Before looking at the impact these assumptions have on the operational aspects of implementing the interest-based model, it is important at this point to highlight two observations. First, there is no suggestion that these assumptions represent the values system of all Asians, and no attempt to prescribe any "Asian Model" of mediation.[68] That would be an absurd proposition. It simply offers *one* Asian perspective—that of Singapore—and provides a methodology by which academics and practitioners of mediation in other contexts may choose to contextualize the interests-based model for their own cultures.

Secondly, it is important to highlight here that by inserting these "Asian" assumptions into the conflict resolution model, the functional paradigm of using "interests" to resolve the dispute remains untouched.[69] What changes are the operational aspects of implementing the interests-based model. The operational behaviors that flow naturally and unconsciously from these assumptions are illustrated in Figure 2 below:

Suggested Asian-oriented Cultural Assumptions	**Resulting Features/Strategies of the Interests-based Model**
Primacy of social hierarchy and the individual's expectations to fulfill roles in hierarchical relationships.	Asian-oriented assumption requires the mediator to be at the heart of the mediation. Mediator has high social status and is expected to lead and guide. Parties expect guidance from the mediator, and are expected to value and respect his opinions. Interactions with an authority figure in the form of a mediator may be expected to be formal.
Priority in observing proper conduct.	Interests include those of self, immediate family members,

66. Joel Lee & Teh Hwee Hwee, *Asian Culture: A Definitional Challenge*, *in* AN ASIAN PERSPECTIVE ON MEDIATION 43, 43-70 (Joel Lee & Teh Hwee Hwee eds., 2009) [hereinafter Lee & Hwee, *Definitional Challenge*].

67. *Id.* at 61-67.

68. *Id.* at 52-53.

69. *Id.* at 54-61.

	and wider groups, and group interests may have priority, especially in a dispute with another in-group member.
Communication and conduct gearing towards preserving harmony, relationships and face.	Disputants may be more reserved and reticent, and prefer to communicate through non-verbal cues or in more subtle ways. Unearthing issues that should be left unspoken may lead to embarrassment and disengagement from the process.
Context-dependent relationship maintenance a way of life.	Cultivation and maintenance of good relations with in-group members is a matter of priority and an end unto itself. Any interest in cultivating or maintaining relationships with out-group members is similar to the original Western interests-based model. Nature of relationship (in-group/out-group) dictates appropriate approach to issues of relationship.

Figure 2[70]

By juxtaposing the operational behaviors from both values system, it is clear that certain tensions can arise. It can be illustrated as Figure 3 below:

Resulting Features/Strategies of the Interests-based Model –Western Assumptions	**Resulting Features/Strategies of the Interests-based Model – Asian Assumptions**	**Tensions Created in the Asian Context due to Incompatible Cultural Characteristics**
Western-oriented assumption puts disputing parties first and in the center. Mediator is an external neutral party who facilitates the process and has low substantive authority. Parties know best and therefore most well placed to decide on form of mediation process and shape of mediated outcome. Interactions are kept informal to encourage parties to negotiate and take decisions.	Asian-oriented assumption requires mediator to be at the heart of the mediation. Mediator has high social status and is expected to lead and guide. Parties expect guidance from mediator, and are expected to value and respect his opinions. Interactions with an authority figure in the form of mediator may be expected to be formal.	A party-centric process may leave mediator and parties feeling out of place. A mediator who does not assume position of authority may be deemed ineffective. A mediator who holds back on giving guidance may be viewed to have abdicated his responsibilities. Individuals not accustomed to being the sole locus of decision-making. They may be frustrated if prompted to take decisions without any assistance in the form of

70. *Id.* at 66-70.

		inputs from an authoritative source. Interactions with the mediator on egalitarian terms may be a breach of social etiquette and cause discomfort.
Western-oriented assumption gears mediation processes towards helping parties maximize and satisfy individual interests. Interests include those of self and immediate family members and these take priority above all else.	Interests include those of self, immediate family members, and wider groups and group interests may have priority, especially in a dispute with another in-group member.	Satisfying and maximizing individual interests may not be considered "proper conduct."
Open debate and confrontation acceptable. Explicit expression of feelings, views and concerns encouraged to "air" grievances. Joint sessions perceived to be beneficial as flow of information may create new levels of understanding and create options for settlement. Mediator facilitates process by asking questions to surface underlying interests and hidden emotions and turn them into issues for joint discussion.	Disputants may be more reserved and reticent, and prefer to communicate through non-verbal cues or in more subtle ways. Unearthing issues that should be left unspoken may lead to embarrassment and disengagement from the process.	Pursuit of individual rights and search for collaborative solution to problems do not justify open confrontation. Open confrontation disrupts harmony. Joint sessions for open discussion may be perceived as face threatening. There may be a preference for private sessions.
Cultivation and maintenance of good relations to secure a good outcome or facilitate future dealings. In view of objective, same approach to relationship building generally taken for one and all.	Cultivation and maintenance of good relations with in-group members a matter of priority and an end unto itself. Any interest in cultivating or maintaining relationships with out-group members is similar to the original Western interests-based model. Nature of relationship (in-group/out-group) dictates appropriate approach to issues of relationship.	Requiring a one-size fits all approach to relationships is a blunt instrument with no nuance. Requiring parties to build a relationship where none is valued can cause discomfort Not recognizing that the relationship is the substance can give rise to a conflict of expectations between the mediator and the parties.

Figure 3[71]

71. Lee & Hwee, *Definitional Challenge*, *supra* note 66, at 66-70.

As an aside, it is interesting to note that what has typically been referred to as the "facilitative interests-based model" is a descriptive amalgam of the functional paradigm (interests-based) and one aspect of the operational paradigm (facilitative).[72] Therefore, it stands to reason that, where the circumstances call for it, it is possible to manifest the interests-based model in a less facilitative, if not non-facilitative, manner. In fact, one could even practice directive/authoritative (not authoritarian) interests-based mediation. It should be made clear that this means that mediators may take on more of a leadership role but without depriving parties of their power to decide how to resolve their dispute.

At this point, some may wonder how this is different from the proposition that, when resolving conflicts in "Asia," one should for example, use indirect speech. The writer submits that this is too blunt an instrument: this presupposes a dichotomous choice of direct vs. indirect speech based on whether we have characterized the context as "East" or "West." As long as one has characterized the context to be "East," this view prescribes the use of only indirect speech. However, this cannot be right: in the "East," direct speech is often used.

Expressed metaphorically, imagine a large corkboard that is divided into various segments. Some of these segments are red, others green. The idea is to throw and land a dart at only the green segments. However, the task is made more challenging because the corkboard is covered with paper and the person throwing the dart has no idea where the segments are. If the entire board represents every context in Asia, the segments indicate the contexts that are appropriate to use indirect or direct language, and the paper covering the board is our ubiquitous reference to the "East," then the metaphor is complete. Any dart thrown would essentially be a wild guess and whether the dart lands on a red or green segment is left up to chance. The dart will sometimes land appropriately and other times not. This is therefore akin to using only indirect language in every context in the "East."

The methodology presented above provides us with a sharper tool by which to cut away the paper so that the segments on the corkboard can be seen, identified, and analyzed. One would still need some skill to land a dart on the correct segments but less is left to chance. By identifying and understanding the assumptions underlying any cultural context in which we are seeking to apply the interests-based model, one has a framework to accurately determine when to use indirect or direct language.

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72. Lee & Hwee, *Appropriateness*, *supra* note 60, at 40-42.

IV. STATUS, BELONGING, COMMUNICATION AND FACE

As mentioned earlier, it would be inaccurate to make a general assertion that, in an "Asian" context, one must use indirect language and that face concerns are prevalent. There are many instances in Asia where parties communicate directly and do not seem concerned about helping the other party preserve "face." While one could dismiss these instances as anomalies, the writer submits that there is coherence and consistency in these behaviours, and a framework underlies and guides them. This section seeks to formulate this framework so as to assist readers in traversing this challenging area.

As a preliminary point, it is useful to define some of the terms that the framework will revolve around. The first is the notion of *status*. This is expressed by Hofstede as Power Distance and is measured by the Power Distance Index (PDI).[73] This is a measurement of how society handles inherent inequalities, which may result from prestige, wealth, and power.[74] Put simply, some cultures are more hierarchical than others. Hierarchical societies (i.e. societies with a high PDI) have a more defined sense of roles and obligations and there are clear decision makers (usually at the top of the hierarchy).[75] Status, seniority, age, and even gender, therefore, matter. Societies that are more "flat" (i.e. societies with a low PDI) tend to be comfortable with shared authority, more diffused roles, and have a preference for consensus.

It is important to note that the PDI is, as with many other things, contextual. Within a society that that has a low PDI (e.g. the USA), there are certain contexts within that society that may exhibit a higher PDI. The military and the legal profession are two examples of groups that generally exhibit a higher PDI.[76] Conversely, within a society that has a high PDI, some contexts within that society may manifest a lower PDI.[77]

The second is the notion of *belonging*. This is expressed by Hofstede as Collectivism/Individualism and is measured by the Individualism Index (IDV).[78] This is a measurement of the relationship and extent of integration between the individual and the group that prevails in a given society.[79] Put simply, cultures that have a high IDV tend to play down relationships and focus more on the individual and individual rights.[80] Conversely, cultures

73. HOFSTEDE, *supra* note 4, at 79.
74. *Id.*
75. *Id.*
76. *Id.*
77. *Id.*
78. HOFSTEDE, *supra* note 4, at 79.
79. *Id.* at 209.
80. *Id.*

with a low IDV tend to be collectivist and focus more on close ties between individuals.[81] As with the PDI, there may be contexts within a high IDV culture where they may manifest a lower IDV and vice versa.[82] Individuals within the same collective or grouping can be referred to as being "in-group."[83] Those not within the same collective or grouping can be referred to as being "out-group."[84] Of course, these are static snapshots of the relational belonging between two individuals. It can be that the relational belonging is in transition (i.e. two individuals are moving from an out-group relationship to an in-group relationship or vice versa) either by design or circumstances.

The next notion to consider is *communication*. For the purposes of this paper, this amorphous concept can be split into direct and indirect communication.[85] Direct and indirect communications are often associated with low-context and high-context communication respectively.[86] Put simply, a direct or low-context communicator derives meaning primarily from the words that the speaker uses. Similarly, they will seek to transmit meaning primarily with words. Very little meaning, if any, is derived or transmitted via the context, hence the reference to low-context communication. A direct communicator who does not feel able to commit to the deal that is on the table may simply say, "This is not a good deal for me. I cannot agree."

On the other hand, an indirect or high-context communicator derives and transmits meaning not just from words but also through contextual cues and clues.[87] Taking the same message from the previous paragraph, an indirect communicator may say, "Let me take this proposal back to consider it," but give off non-verbal cues indicating that he is just being polite.

At this point, it is useful to make three points about the nature of direct and indirect communication. First, it is important to be clear that both forms

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81. *Id.*

82. *Id.*

83. HOFSTEDE, *supra* note 4, at 209.

84. *Id.*

85. Joel Lee, *Thoughts on Direct and Indirect Communication*, KLUWER MEDIATION BLOG (May 14, 2012), http://kluwermediationblog.com/2012/05/14/thoughts-on-direct-and-indirect-communication [hereinafter Lee, *Thoughts*].

86. Jeffrey Sanchez-Burks et al., *Conversing Across Cultures: East-West Communication Styles in Work and Nonwork Contexts*, 85 J. PERSONALITY & SOC. PSYCHOL. 363, 364 (2003) ("Indirectness has been shown to vary between cultures . . . . [T]here is more indirectness in high-context cultures where people rely on a broad array of social cues to communicated than in low-context cultures where people rely on few social cues to communicate.").

87. *Id.*

of communication seek to convey the same message. Those that engage in direct communication will simply say what they mean.[88] Those who engage in indirect communication will find some other way to convey this message that requires the listener to read between the lines.[89] This could even be expressed as a metaphor.

Secondly, because we have a preference for our own style of communication, this often leads to each type of communicator attributing negative intentions to the other type of communicator. Direct communicators may perceive indirect communicators to be "shifty," "evasive," and "unwilling to communicate."[90] On the other hand, direct communicators are perceived as "insensitive," "abrasive," and "brash."[91]

Thirdly, direct and indirect communication is not a digital either-or distinction.[92] Instead, it is an analogue distinction that traverses a continuum. Put another way, it is not useful or easy to say whether any piece of communication is "direct," or "indirect." One can more usefully say that one piece of communication is more direct or indirect than another piece of communication.

Fourthly, accepting the preceding point will affect how we think about our communication styles. While there are "tests" or survey instruments that one can take to determine whether one is a direct or indirect communicator,[93] it is probably more useful to think of these as indicators of one's communication style preferences. Instead of being a single point on the direct-indirect communication continuum, our communication style preference is more of a range within this continuum. Put another way, our communication style preference is a continuum within a continuum; for some, their range could be greater or narrower than someone else's.

Fifthly, different people will perceive the same phrase differently depending on their communication style preferences.[94] A person who is closer to the indirect end of the direct-indirect continuum would likely consider phrases that are considered indirect by those on the other end of the continuum to be direct. Therefore, even when a person who was closer to the direct end of the continuum restated a phrase more indirectly, it may not be heard by one on the indirect end of the continuum as being indirect.

Finally, since we are able to operate inside a range within the direct-indirect continuum, most people exercise some discretion and choice about

88. Lee, *Thoughts*, *supra* note 85.
89. *Id.*
90. *Id.*
91. *Id.*
92. *Id.*
93. Lee, *Thoughts*, *supra* note 85.
94. *Id.*

where within their range they will communicate.[95] What guides this choice can be the values they have about communication (it is important to be open and direct) or the model of mediation being used (in the interests-model of mediation, as practiced in many western jurisdictions, direct communication is prescribed) or the context and conditions that the mediation is being conducted in (where there is a concern about preserving the harmony of the collective and saving face of individuals, indirect communication may be prescribed).[96]

The final notion to look at is the concept of *face*. This is a difficult concept to define. It is sometimes expressed in some western contexts as ego or pride and can include the concern for dignity, honor, and status.[97] Some provide a four quadrant framework encompassing face saving, asserting, restoration, and giving.[98] For our purposes, it is not necessary to delve into the intricate complexities of face.[99] It is sufficient to make two observations.

First, a person can either save one's own face or give the other person face. While it is possible to say that one "saves the other person's face,"[100] for the purpose of this piece, we will take this to mean the same thing as giving the other person face. Further, while it is possible to say, although admittedly an uncommon formulation, that one "asserts one's own face," for the purposes of this piece, we will take this to mean the same thing as saving one's own face.

Secondly, what does it mean exactly, in behavioral terms, to save or give face? The starting point is the assumption that where there are no face considerations, two parties will communicate with each other in a direct manner and can reasonably expect and assert for what they are entitled to in terms of, *inter alia*, respect, behavior, or rights.[101] We will take this to be the norm.

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95. *Id.*

96. *Id.*

97. John Ng, *The Four Faces of Face Implications for Mediation*, *in* AN ASIAN PERSPECTIVE ON MEDIATION 158-69 (Joel Lee & Teh Hwee Hwee eds., 2009).

98. Stella Ting-Toomey, *Intercultural Conflict Styles: A Face Negotiation Theory*, *in* THEORIES IN INTERCULTURAL COMMUNICATION 213-20 (Young Yun Kim & William Gudykunst eds., 1988) [hereinafter Ting-Toomey, *Intercultural*]; Stella Ting-Toomey & Mark Cole, *Intergroup Diplomatic Communication: A Face-Negotiation Perspective*, *in* COMMUNICATING FOR PEACE: DIPLOMACY AND NEGOTIATION 77-85 (Felipe Korzenny & Stella Ting-Toomey eds., 1990).

99. For a discussion on face, see Ng, *supra* note 97.

100. Sarah Rosenberg, *Face*, BEYOND INTRACTABILITY (Feb. 2004), http://www.beyondintractability.org/essay/face.

101. *Id.*

When face considerations come into play based on the first observation above, two scenarios arise. In the first scenario, Party A may feel a need to give Party B face. Behaviorally, this means that Party A may communicate indirectly, manifest patterns of deference, and assert for less than what she or he is entitled to. In the extreme, Party A may even completely refrain from asserting for his or her entitlement. In the other scenario, Party A may feel the need to save face. Behaviorally, this means that Party A may communicate directly, manifesting patterns of dominance and authority and asserting exactly what she or he is entitled to. In the extreme, Party A may even assert for more than his or her entitlement, perhaps to the point of seeming unreasonable. Essentially, in this context, deviating from the norm can be seen as a manifestation of giving or saving face. In the context of mediation, the need to give or save face may also manifest as a reluctance to talk about certain things in joint session. Put another way, a private session can be a very useful tool to manage face considerations.

Now that we have considered the four notions of status, belonging, communication and face, this article will turn to how they interact with one another. In the proposed framework, status (PDI) and belonging (IDV) form the two variables that determine which communication and face strategies to engage in. For example, if we were to isolate the status variable and examine its effect on communication and face, a number of possible variations exist. Figure 3 below seeks to capture—admittedly imperfectly—the various permutations that might occur:

		X	PDI High		PDI Low	
Y			High Status	Low Status	High Status	Low Status
PDI High	In-Group	High Status	β Indirect Communication, Face Play	Indirect Communication, Face Play	Indirect Communication, Face Play	Indirect Communication, Face Play
		Low Status	Direct Communication, Norm	Indirect Communication, Face Play	Direct Communication, Norm	Direct Communication, Norm
	Out-Group	High Status	α Direct Communication, Norm	Indirect Communication, Face Play	Direct Communication, Norm	Direct Communication, Norm
		Low Status	δ Direct Communication, Norm	χ Direct Communication, Norm	Direct Communication, Norm	Direct Communication, Norm
PDI Low	In-Group	High Status	Indirect Communication, Face Play	Indirect Communication, Face Play	Direct Communication, Norm	Indirect Communication, Face Play
		Low Status	Direct Communication, Norm	Direct Communication, Norm	Direct Communication, Norm	Direct Communication, Norm
	Out-Group	High Status	Direct Communication, Norm	Direct Communication, Norm	Direct Communication, Norm	Direct Communication, Norm

		Low Status	Direct Communication, Norm	Direct Communication, Norm	Direct Communication, Norm	Direct Communic ation, Norm

Figure 4

It is important to make a number of observations at this point. This table captures a communication from someone delineated in bold (the x-axis) to a person delineated in italics (the y-axis). The x-axis captures two variables: the PDI and the level at which one is at their respective hierarchies. The latter is expressed as "high status" or "low status" and only makes sense when matched with the status of their counterpart on the y-axis. The y-axis captures these two variables as well. In addition, it captures whether "Y" relative to "X" is considered to be in-group or out-group.

Secondly, the various intersection points capture the mode of communication that can be expected from X to Y, taking into account the corresponding variables. The intersection points also capture whether "Face Play" is engaged in. While this is arguably descriptive, it can also be prescriptive. The reader can use this table to guide his or her actions when faced with similar circumstances. For example, in the box indicated by **"δ"**, where X (High PDI, High Status) is communicating to Y (High PDI, Low Status, Out-Group), it is fairly safe to assume that X will communicate with Y in direct language and not be very concerned about giving the other person face.

Thirdly, some boxes have been shaded. This is to capture the nuance that the behaviours described in that box are to be expected as a starting point but that the opposite set of behaviours may be engaged in, depending on the judgment call of the speaker. For example, in the box indicated by "α", X (High PDI, High Status) is communicating to Y (High PDI, High Status, Out-Group). The assumption is, *ceteris paribus*, that X will engage in direct communication and not be too concerned with face play. However, if X prioritises the fact that both of them are from high PDI contexts and are both of high status, X may choose to depart from the default mode indicated.

Finally, this table does not take into account situations in which parties may be in transition from in-group to out-group and vice versa. For example, in the box indicated by "β", X (High PDI, High Status) is communicating to Y (High PDI, High Status, In-Group). As indicated in that box, one would ordinarily expect X to engage in indirect communication and engage in face play. However, if the relationship between X and Y was transitioning to that of an out-group, then X might engage in the opposite set of behaviours of direct communication and little concern for giving the other party face. Similarly, in the box indicated by

"χ", where X (High PDI, Low Status) is communicating to Y (High PDI, Low Status, Out-Group), X may nonetheless engage in indirect communication and face play rather than direct communication and have little concern for face play if the parties are in transition.

This writer does not propose to elaborate on all the possible variations depicted in the table. Some variations have been explored elsewhere.[102] How might this be helpful to mediators? First, it can help the mediator determine what mode of communication to use with the parties. If both parties prefer communicating in a particular mode, it would behoove the mediator to match that mode. A mismatch between parties who prefer indirect communication and a mediator preferring direct communication would lead to the mediator being perceived as being insensitive, pushy, and unable to understand the nuanced complexity of the problem and relationship between the parties. In turn, the mediator would perceive the parties as being unwilling to communicate and evasive. Conversely, where the parties prefer direct communication and the mediator prefers indirect communication, the parties may perceive the mediator as being wishy-washy, ineffective, and not really getting to the point. In turn, the mediator may perceive the parties as being impatient and pushy.

Secondly, if parties prefer different modes of communication, the mediator must be careful not to let his or her preferred mode of communication give the impression that he or she is partial and siding with the party with whom his or her communication preference matches. In addition, the mediator plays an important role in bridging the communication gap. The mediator can do this by playing the role of a translator. This will usually be in relation to a piece of indirect communication as the party who is a direct communicator is not likely to "get it." Another way of bridging the gap is for the mediator to address the labels (which may be unspoken) that one party has attributed to the other party by reframing the behaviors in question. The mediator may have to reframe more direct instances of communication (which have a clear meaning but may come across as abrasive) so that the message is more palatable and not lost. Yet another way is for the mediator to play the role of a coach and assist one party (preferably in a private session) to communicate in a manner that better fits for the other party.

Thirdly, where face play is important to both parties, the mediator can use this information to help parties construct agreements that both save and give face. These may involve symbolic gestures that may not otherwise surface if one were to focus purely on substantive interests. Further, being aware of status and belonging issues can help the mediator decide when to

102. Joel Lee, *In Praise of Private Sessions*, KLUWER MEDIATION BLOG (Apr. 14, 2012), http://kluwermediationblog.com/2012/04/14/in-praise-of-private-sessions.

shift into private sessions so as to get parties to communicate more openly. Where face play is important to one party only, as with the preceding point, the mediator can bridge the gap by playing the role of a translator, coach, or reframer.

Finally, an understanding of the issues relating to belonging can assist the mediator in reframing an out-group situation as one of being in-group. Alternatively, it may assist the mediator to find some way to assist parties who are out-group to transition to being in-group. This can assist in the creation of options that parties can agree upon and comply with in sustainable ways.

V. CONCLUSION

Speaking as a recovering Universalist, it is easy for this writer to answer this question: "Is culture important?" Of course it is. The challenge is to not fall into the trap of thinking that the generalizations we draw represent reality. Generalizations are useful in that they give us shortcuts through which we can more easily navigate our world. However, the sin is to forget that they are generalizations and that the map is not the territory. It is therefore important for us to have a framework from which we can create our own generalizations when we meet with a situation that does not fit with the generalizations that we presently have.

This piece has offered a limited framework to think about the interaction between status, belonging, communication, and face. While it is hoped that it will have contributed somewhat to mediation thinking and scholarship, more importantly, it is hoped that it offers mediators a practical way to traverse the sometimes difficult territory of communication and face.

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