

Book review

A Theory of Mediators' Ethics: Foundations, rationale, and application

Shapira, Omer 2016

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Introduction

A Theory of Mediators' Ethics is Omer Shapira's attempt at rectifying, in his view, a lack of clear and updated ethical guidance for mediators and theoreticians. Shapira, therefore, assumes the ambitious task of providing various codes of conduct and a guide for how to identify, and understand the content and scope of mediation norms. The author divides the book into three parts with a total of 16 chapters and two appendix sections. The first part, entitled 'A theory of professional ethics', expounds on the ethical principles undergirding professionalism which apply to the practice

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of mediation. The second, 'A theory of mediators' ethics', delves into the content and meaning of the norms of mediators' ethics. The third and final part, 'Dealing with ethical problems', demonstrates the ways in which the theory of mediators' ethics applies to ethical scenarios mediators confront in their practice.

Defining mediators' ethics

According to the author's own explanation, the book is not a textbook on mediation laws, but 'a monograph constructing a general theory of mediators'. While the book mainly applies to mediators in the 'United States, United Kingdom, Canada, Australia, and other Anglo-American countries that share the definition of mediators' role suggested in the book' (p. xxiii), additional beneficiaries include 'all those who have a stake in the practice and study of mediation: mediation teachers and students; actual and potential mediation participants; mediation organizations; program directors and staff; policymakers; ethical advisory bodies and the ADR [Alternative Dispute Resolution] community' (p. xxvii). Central to the author's argument is the tenet that all those who engage in the practice of mediation – professionals (paid, organised, highly skilled, experienced mediators) and non-professionals (volunteer, unorganised, amateur, sporadic mediators) alike – ought to be bound by the same ethical code of conduct. Hence, mediators' ethics is defined as 'ethics that apply to all those who perform the role of mediators' (p. 8). The recognition here is that mediation practice is at present highly unregulated and broadly varied, thus necessitating well defined and categorised moral and ethical codes of conduct.

Philosophical framework

Relying on philosophers Lon Fuller and Bernard Gert, Shapira adopts a critical morality framework to engage the ethical demands in mediation practice. He departs from *descriptive virtue ethics* and takes a stance on *ethics as particular morality*. Further emphasising this point, the author states that 'moral norms are not absolute and may be deviated from on the basis of objective reasons of rationality and impartiality' (p. 22).

Ethical mediation practice then is understood to exercise duty towards employers, principals, parties, the profession, and the public (p. 337). The author employs these fundamental concepts and organises them into a Proposed Model Code of Conduct for Mediators (pp. 397–411). The Proposed Code, ‘aims at supplementing, *not replacing*, legislation, case-law, court rules or other professional rules of obligatory force applicable to mediators’ (p. 397) and serves as a point of reference for reforming existing codes, e.g. the 2005 Model Standards of Conduct for Mediators (p. xxvii).

Mediation beyond borders

The premise behind Shapira’s argument is that the practice of mediation is quickly outgrowing existing codes of norms, and the Proposed Code, he adds, is to serve as a point of reference for reforming existing codes (p. xxvii). Let us consider for example the practice of international peace mediation. Mere codes of conduct are proving insufficient, and authors Brenda Daly, Noelle Higgins, and Sarah Bolger explore this point in their 2010 paper, ‘International Peace Mediators and Codes of Conduct: An Analysis’. These authors argue: ‘In order for the Proposed Code to be effective, however, it might need to consider moving beyond ‘codes of conduct to include training of mediators and perhaps involve some level of uniformity between mediation organisations, which some practitioners believe are necessary to ensure a positive mediation process’ (Daly, Higgins and Bolger 2010:10).

Cultural context

Shapira emphasises that mediators’ ethics, ‘cannot rely on abstract principles alone, but must be contextualized, grounded in the particularities of mediation cases’ (p. 345). Mediation practice, in Shapira’s view, often requires the mediators’ critical analysis and moral engagement in varied case by case circumstances. While the author vehemently opposes ethical relativism, there is little mention of cultural competency. Such inattention weakens Shapira’s argument for particularity. While Shapira adopts a set of liberal values that are assimilated into his Proposed Model Code of Conduct

for Mediators (pp. 397–411), none requires mediators' engagement with ethics outside of their own context. Contextualisation requires cultural understanding. As previously mentioned, in the case of international mediation, various actors and diverse ethical challenges may be involved. While many institutions including those in Africa are adopting the Code of Professional Conduct as prescribed by the International Mediation Institute (IMI), these codes remain subject to necessary amendments in order to make them applicable to African circumstances (Mediate Africa Dispute Resolution Services 2013).

In her review of the book, Barbara Wilson takes issue with Shapira on the notion that there be consensus among theoreticians in Western developed societies on fundamental social values (Wilson 2018:51). While a fair critique, these countries, at minimum share a common context. For the African reader, at first glance, the book does little to add to the effectiveness of current practice in ethical mediation. In this aspect, the book is limited in scope and applicability. Where Shapira is successful, is in the relevance of the fundamental question he raises about the necessity for ethical guidance. If ethical challenges for mediators are global, is there indeed a need for 'professional' and ethical guidance even for those mediators in Africa? While ethical challenges might differ per context, the necessity for clear codes of conduct remains. In this regard, Shapira's work is useful.

Conclusion

The strength of Shapira's extensive and comprehensive text, is the innovative combination of various forms of resources including literature on morality and professional ethics, major codes of conduct for mediators in Anglo-American countries, the writings of mediation experts, the author's own experience of sitting in on a mediator ethics committee and drafting ethics opinions in response to mediator queries. The result is a substantive contribution to the profession of mediation. While the relevance of the Proposed Model Code of Conduct for Mediators is limited with regard to context and culture, it is a helpful foundation for further development on mediators' ethics. Shapira successfully reaches the intended goal of

providing tools for guiding mediators. These tools, at the very least, can begin to guide mediators no matter their location and context and indeed ‘fill up lacunas’ of ethical guidance in mediation practice. For the African audience, it can at best, serve as a basis for some comparative analysis of ethical mediation practices.

References

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