

MEDIATION AS A CATEGORY OF HUMANISTIC-ORIENTED PEDAGOGY

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Abstract

This paper analyzes the category of mediation from the point of view of humanistic-oriented pedagogy. Mediation is discussed first in its presumably most popular context, that is, in the context of legal procedures, where Polish law is taken as an illustrative material. Against this background, the main functions and principles of legal concept of mediation are presented. Further investigations are devoted to the characterization of humanistic-oriented pedagogy, with emphasis on the main categories of this type of pedagogical inquiry. The very notion of category is also focused on. Finally, the research question concerning the understanding of mediation as a category of humanistic-oriented pedagogy is discussed. It is argued that certain important values underlying the legal concept of mediation are present in the research in pedagogy, but in the latter context, the category of mediation adopts a much broader meaning, for its elements are present in every stage of human development.

Keywords: Pedagogy, mediation, law, categorization, interdisciplinary research.

Introduction

The purpose of this article is to analyze the relationship between mediation theories and humanistic-oriented pedagogy in Poland, with the use of the categorical approach. The main line of inquiry rests on the thesis according to which mediation, traditionally understood as a legal procedure, is in fact one of the categories existing and developing in the area of modern pedagogy, both in theory and in educational practice. The analysis opens with a brief description of mediation as an alternative dispute resolution strategy, highlighting its basic functions and the scope of its use within the Polish legal system. This leads to reflection on the presence in Polish pedagogical thought of elements overlapping with those present in the theory of mediation. The analysis closes with an attempt to construe mediation as a category of contemporary humanistic-oriented pedagogy, with emphasis on its semantic richness and broad scope of application, as more than a procedural device.

Mediation in the sphere of the Polish Legal system

Mediation constitutes one of the primary methods for an amicable and conciliatory approach to conflicts⁴⁰ which evolved in the movement called Alternative Dispute Resolution (ADR). The genesis of a strategy of reaching resolution between disputing parties through an intermediary⁴¹ can be found in the second half of the twentieth century in the American legal

⁴⁰ Kalisz and Zienkiewicz 2014, p. 26.

⁴¹ See: MEDIATION, E. Polański (ed.), 2008, p. 446.

system⁴², which emphasized the need to support the judicial system with additional, non-institutional methods of resolving conflicts arising from parties' opposing legal interests. In time, as difficulties associated with the growing number of cases and lengthy litigation increased⁴³, Alternative Dispute Resolution was gradually incorporated into the institutional system, creating, at least as a goal⁴⁴, in a comprehensive model for supporting parties involved in judicial proceedings.

The functioning of Alternative Dispute Resolution within the Polish judicial system is a relatively novel phenomenon. Despite a growing interest in mediation as a method for achieving agreement between disputing parties, the issue engenders certain interpretive doubts. One problem is that the term "mediation" eludes clear definition⁴⁵. Doctrinal interpretations emphasize different aspects of this concept, and in the sphere of normative acts an unambiguous definition of the objective scope of the concept does not exist. According to a position widely accepted in the literature on the subject, mediation can be seen as an example of a non-dominant entry of a third party into a dispute, a party who improves communication between the opponents and seeks to eliminate the primary cause for the dispute^{46,47}. Importantly, resolving the dispute is not one of the competencies of the mediator. The mediator at most presents to the participants in the proceedings possible proposals for reaching an agreement⁴⁸. Another problem concerns the possibility of treating mediation as a judicial or extra-judicial mode of resolving disputes⁴⁹. The overarching normative act of the Polish legal system, the Polish Constitution, does not mention mediation as a way of supporting the work of the justice system⁵⁰. At the same time, legislatively-enacted laws (statutes), starting in 2005⁵¹ began gradually to introduce the concept of mediation as a means of resolving disputes between parties to litigation. The issue of implementing Alternative Dispute Resolution within the Polish justice system is to a large extent regulated by the legislation of the European Union, in particular by directive⁵² and recommendations⁵³ promoting active use of mediation in matters relating to various branches of the law. Although the phenomenon of mediation as a procedure supporting legal proceedings remains in the Polish justice system a theoretical and practical novelty, the number of cases in which

⁴² Białecki 2012, p. 21.

⁴³ *Ibidem*, p. 22.

⁴⁴ The degree of implementation of the idea of Alternative Dispute Resolution within the scope of the judicial system presents itself differently in different countries. The causes for this state of affairs are due to political, institutional and economic factors.

⁴⁵ Difficulties in the precise definition of the concept of mediation are at least partly caused by the large variety of types and strategies of mediation, as well as divergence in the purposes and functions that mediation pursues. See Gmurzyńska, R. Morek, *Mediation. Theory and Practice*, Wolters Kluwer, Warsaw 2009, p. 15. See Cebula 2011, p. 3, available online at: <http://ms.gov.pl/pl/dzialalnosc/mediacje/publikacje-akty-prawne-statystyki/>.

⁴⁶ Kalisz and Zienkiewicz, *op. cit.*, p. 32.

⁴⁷ Białecki, *op. cit.*, p. 34 et seq.

⁴⁸ Kalisz and Zienkiewicz, *loc. cit.* Decisive powers allow one to distinguish mediation from other recognized methods of alternative dispute resolution, particularly arbitration, conciliation and negotiation. See *Ibidem*, p. 32 et seq..

⁴⁹ See Zienkiewicz 2007, p. 208 et seq.

⁵⁰ See M. Bielecki, *op. cit.*, p. 25. The underlining should emphasize the lack of a clear resolution of the identified issues. A literal reading of the Constitution leads to the separation of mediation from the court system. At the same time, the analysis of acts of law tends to recognize the eligibility of alternative dispute resolution to be supported in an institutional nature, combined with the judicial system. See *Loc. cit.*

⁵¹ The Amendment to the Civil Procedure Code of 28 July 2005, *Journal of Laws* 2005, No. 172, position 1438.

⁵² Chiefly in directive UE2008/52/EC on certain aspects of mediation in civil and commercial matters (Directive 2008/52/CEdu Parlement européen et du Conseil du 21 mai 2008 sur certains aspects de la médiation en matière civile et commerciale). See Bobrowicz, *ms.gov.pl*.

⁵³ Green Paper on alternative dispute resolution in civil matters and trade.

a mediator's intervention is used steadily increases⁵⁴. In the Polish justice system, mediation is used in several key areas of law. The presence of Alternative Dispute Resolution in civil and criminal proceeding⁵⁵, and in economic disputes, family law, labor law and administrative law⁵⁶ should be emphasized.

The principal function of mediation – understood as a social and legal institution - is to support the conflicted parties at the personal, interpersonal and social levels⁵⁷, and directing them towards reaching a voluntarily adopted resolution of the existing conflict. It should be emphasized that an agreement reached through the mediation process must be accepted by all parties. In this respect mediation differs from the resolution of disputes through adjudication, where the decision governing the situation of the parties comes from above, as sovereign edict of the authorized body⁵⁸. In seeing mediation as a strategy of Alternative Dispute Resolution, a teleological function comes to the fore. A mediator's work must serve numerous purposes⁵⁹, of which the most important is reaching a mutually beneficial agreement for the parties involved⁶⁰. Interestingly, Ministry of Justice statistics on the number of cases where mediation supports the judicial system use as a reference point the number of agreements made or proceedings dismissed or discontinued after the mediated agreement was approved by the court - which further emphasizes the utilitarian dimension of mediation⁶¹.

Focus on resolving conflict as an overarching objective of mediation based on the interests of the parties⁶² undoubtedly increases the efficiency of proceedings involving the justice system. Compared to contractual negotiations, mediations related to judicial proceedings are more formalized and, presumably, focus more on the successful resolution of the conflict than on imparting to parties the ability to effectively communicate and react in conflict situations. In the Polish legal system, mediation should be recognized as a process consisting of successive stages, where the end goal is an agreement satisfactory for all interested parties⁶³. Despite the differences between various theoretical approaches, a certain more or less formalized structure emerges in the mediation process, which organizes the process of coming to a compromise. The existence of a procedural dimension of mediation is additionally supported by national and European codes of ethics regulating the conduct of mediators in accordance with recognized ethical standards⁶⁴.

⁵⁴ Statistics compiled by the Ministry of Justice confirmed an increase not only in the number of cases referred to mediation, but also in the percentage increase in settlements concluded. See. Statistics mediation in 2010. - Rates of the results of mediation, available at: <http://ms.gov.pl/pl/dzialalnosc/mediacje/publikacje-akty-prawne-statystyki/>. Interestingly, the trend expressed in the decrease in the number of proceedings terminated as a result of mediation is observed in matters relating to criminal law, both in the preparatory stage and in conduct itself.

⁵⁵ Included are cases involving juvenile perpetrators of criminal acts.

⁵⁶ On the functioning of mediation in relation to particular branches of law, Kalisz and Zienkiewicz, op. cit, p. 63 et seq.

⁵⁷ Zienkiewicz, op. cit., p. 115.

⁵⁸ For more about the adjudication mode see Jakubiak-Mirończyk, 2008, p. 64 et seq.

⁵⁹ In addition to personal objectives, interpersonal and social mediation is focused on achieving the effects of communication, psychological and negotiation-informational.

⁶⁰ Gmurzyńska and Morek, op. cit., p. 18.

⁶¹ A numerically verifiable number of proceedings terminated due to parties' agreements is a much more accessible measure of evaluating the effectiveness of mediation than are factors of psychological or communicational nature. But undoubtedly, successful resolution of legal disputes is a key measure of the effectiveness of mediation.

⁶² In addition to the indicated types of mediation as a strategy for alternative dispute resolution one can distinguish different models, focused on helping participants in the conflict, shaping the ability to assess the situation, redefinition of the conflict, or improving relations between the parties. For more about mediation see Ibid, p. 109 et seq.

⁶³ On the subject of the reference models of the phases of mediation proceedings see Zienkiewicz, op. cit, p. 123 et seq.

⁶⁴ The text of the Code of Ethics for mediators in the Polish and European Code of Conduct for Mediators are available at: <http://ms.gov.pl/pl/dzialalnosc/mediacje/publikacje-akty-prawne-statystyki/>.

In Poland mediation is being increasingly implemented as both a contract negotiating and judicial strategy for resolving disputes arising in connection with parties' conflicting interests. The law's role in framing the boundaries of thinking about mediation⁶⁵ and in addressing the question of institutional recognition of the results of a mediated proceeding undoubtedly promotes real inclusion of ADR into the practice of the Polish justice system. At the same time, despite a growing interest in using the ADR model, its practical implementation currently occurs almost exclusively in the realm of broadly understood law, with little impact on extra-legal spheres of individuals' functioning. Meanwhile, according to the main thesis of this article, because of its potential impact in the personal, interpersonal and social spheres, mediation should be analyzed from a broad perspective embracing other than purely legal aspects of human functioning.

The characteristics of humanistic-oriented pedagogy

Because of its object of study, which is a human being⁶⁶, contemporary Polish pedagogy is deeply differentiated internally, due to the complexity of that object of study and to its inter-disciplinary approach. Therefore, this discipline is classified in the humanities and also as a social science, because it studies and solves problems empirical-analytic, humanistic⁶⁷ and praxeological⁶⁸ in nature. Its broad research interests directly impact the methodology used, which is based on both a quantitative and a qualitative research model. Moreover, from pedagogy's strong engagement with anthropology flows research exceeding purely pedagogical perspectives, intersecting with philosophy, psychology, sociology, biological and medical sciences, economics and law, all of which construe the broad context of pedagogical activity⁶⁹. The basic feature of current Polish pedagogy is its multi-paradigmatic character⁷⁰. This characteristic clearly sets apart current pedagogy from its prior evolutionary stages in Poland. In the process of its development, three fundamental stages best reflect the transformation - from a model of scientific orthodoxy, through heterodoxy, to heterogeneity.

Regardless of the scientific pluralism engendered in Western Europe in the fifties by postmodernism, Polish pedagogy of that period was dominated by the modernist model, revised and precisely tailored to the needs of socialist doctrine. The ideological offensive which then engulfed the applied sciences in Poland, including pedagogy, tended to put the science of raising, upbringing and education at the service of the project of reliably forming an ideologically-prescribed civic identity⁷¹. It should be emphasized that during the early stages of the modernist model of pedagogy, alternative paradigms were, in principle, excluded from public educational activity in Poland. The slow twilight of the socialist narrative finally started the process of dismantling of the monolithic modernist-oriented pedagogy. Approaches critical of that dominant model of scientific inquiry, although not claiming to be universally valid, gradually gained recognition, until the scientific value of inter-paradigmatic discourse on the key issues of education and upbringing was widely understood⁷². With the collapse of the socialist system, heterodoxy was replaced by a heterogeneous orientation, to the fullest

⁶⁵ Mostly because of EU directives and recommendations issued to the governmental bodies of members countries.

⁶⁶ And upbringing, education and formation throughout life. See Palka 2006, p. 22.

⁶⁷ Should emphasize the difference between the humanistic nature of education as a field of study, and humanistic orientation as component in and of itself under consideration. The first of the issues relates to broader academic pedagogy specifications in other disciplines. In the latter case mentioned narrower in meaning, but still a vast paradigm of thinking about man as a subject of reflection and pedagogical interactions.

⁶⁸ Ibidem, p. 26.

⁶⁹ Kwieciński and Śliwerski 2009, p. 32.

⁷⁰ Śliwerski 2011, Contemporary Pedagogic Thought. Meanings, Classifications, Research, Kraków 2011, p. 31.

⁷¹ Ibidem, p. 117.

⁷² Z. Kwieciński 1993, p. 13-14.

extent realizing the postmodern idea of pluralism in the sciences, including education. At the beginning of the nineties, Polish pedagogy abandoned its ideologically-embroiled objectives and methods, in order to recognize, and reflect upon, the eclecticism of its disciplinary identity and the principle of openness in scientific endeavor. As the importance of the alternative models of scientific inquiry grew, the plane of pedagogical discovery became a site of meta-theoretical struggles for dominance, geared towards imposing certain specific assumptions and positions as binding. It should be emphasized that this situation, with varying intensities, continues to this day, forming a constitutive element of the condition of contemporary Polish pedagogy.

A humanistic orientation affords just one of many possible modes of reading the aims, objectives and strategies of pedagogical action. At the same time, given that the philosophical tradition of humanism firmly undergirds reflection on the pedagogical concept of man, the humanistic lens plays a particularly important role. It should be emphasized that, in contrast to the numerous pedagogical trends of relatively well-articulated assumptions⁷³, the paradigm of humanistic-oriented pedagogy is heterogeneous not only in structural, but also in temporal terms. Ideas based on the interpretation of the concept of *humanitas* permeate all theoretical orientations of modern pedagogy, to a lesser or greater degree. For this reason, it seems reasonable to talk about pedagogy in humanistic terms rather than as a homogenous system⁷⁴

“Category” is a heterogeneous term, thus causing interpretational ambiguity. According to the classic Polish understanding and usage, this construct is defined an explicans (literally: explanation) specific to a given period of intellectual thought⁷⁵, and serving two basic functions. First, “category” shapes the theoretical plane by isolating the basic problems of the given field of knowledge⁷⁶. In such a system, “category” holds a central importance. At the same time, while organizing research, “category” gains the status of a research subject in its own right. The second function, resulting from the poly-semantic nature of “category,” is to declare it as a reference point in the theoretical investigations of researchers. Thus, “category” not only organizes the space of research, but itself becomes a research challenge. Furthermore, due to its semantically open structure, “category” inspires creative search for answers to the questions faced by scholars in a given intellectual formation. Using “category” as an orienting reference point depicting a certain variant in pedagogical thinking allows for a much freer analysis than can happen from the rigid and static standpoints of the particular schools of thought.

Among the categories associated with a humanistic oriented pedagogy, special attention is due four, which are directly connected with the concept of mediation: subjectivity, relationality, dialogue, and accountability or responsibility. It should be emphasized that these categories, in part because of their open semantic nature, and in part due to their overlapping subject matter, complement each other, forming a set of mutually complementary propositions which defines the boundary framework for thinking about humanistic-oriented pedagogy.

Subjectivity can be considered the over-arching category, the foundation of ordered thinking about the duties and tasks of education, in both the theoretical and practical spheres.

⁷³ The field of modern Polish pedagogy lacks not only uniformly but also consistently applied solutions epistemological concepts governing the handling, system, flow, direction, or paradigm. Despite the application of certain of these proposals in the field of philosophy of science and methodology of science, in meta-theoretical thought about the structure of science there is still a lack of proper order.

⁷⁴The heterogeneity of the concept of modern pedagogy implies a multiplicity of proposals with a methodological approach to problems. For this reason, the categorical approach should be treated as one of many alternative ways to read the aims and objectives of the humanistic orientation, and not as the exclusively legitimate optics.

⁷⁵ Skarga p. 108.

⁷⁶ Loc. cit.

Abandoning determinism to recognize in subjectivity an external source of causal human action⁷⁷ shapes the specific target and direction of formational, educational and care-giving activity. This category is used in two ways in pedagogy⁷⁸. First, it refers to the question about the status of individuals engaged in the practice of pedagogy as formation, particularly educational. Second, it designates a specific set of objectives oriented towards preparing individuals for autonomous, creative lives⁷⁹. Regardless of the accepted philosophical, psychological, and sociological concepts⁸⁰, which emphasize different aspects of any issue under consideration, undoubtedly the recognition of the irreducible, irreproducible and unique value of each individual forms a foundation for relational pedagogical practice based on freedom and responsibility. As a result, in contemporary pedagogical thought, subjectivity operates as a sine qua non for the possibility of supporting individual potential⁸¹.

The concepts of subjectivity and relationality are inextricably linked. The category of relationality is defined as the ability to engage in successful supra-individual interactions, and it allows seeing pedagogical action as potentially lasting and effective. In the realm of humanistic-oriented pedagogy, relationality takes on additional significance associated with the axiological dimension of interpersonal experience. These issues, in turn, are closely related to the category of dialogue. The relational model of human structure, based on the phenomenon of one human's constitutive interaction with another⁸², poses for pedagogy a number of theoretical and practical questions about the relationship between individuality and relationality, the limits of freedom and obligation, and such practices of education which reflect the dialogical conception of humanity⁸³. Binding together the aforementioned categories is responsibility which, in the simplest terms, can be referred to as the awareness of standards and of the effects of pedagogical practice and the validity of the axiological, ontological and moral obligations undertaken in the name of supra-individual purposes⁸⁴.

Mediation as a category of humanistic-oriented pedagogy

Undoubtedly, as a structured process supporting the resolution of conflicts, mediation is naturally useful in the sphere of law. At the same time, it is not confined to that field, and mediation's present use in the law does not exhaust its potential. Despite the relatively young history of alternative dispute resolution, at ADR's foundations are principles of a much longer, and not only legal, lineage. What is more, the ideas undergirding support for conflict resolution through consensual agreement are consistent with the concept of humanistic pedagogy. Hence the following hypothesis: humanistic pedagogy and mediation (with its underlying assumptions) are so related that current pedagogical theories contain elements typical for the problematic of Alternative Dispute Resolution, and specifically mediation.

An analysis of the purposes for which mediation is practiced supports this hypothesis about the pedagogical dimension of mediation. Apart from the utilitarian sphere, resulting from the direct practice of supporting the parties to a conflict and from the indirect goal of optimizing the judicial system, the teleological dimension of Alternative Dispute Resolution includes several additional aspects. Particularly interesting is the postulate that, in pursuing

⁷⁷ Górniewicz 2001, p. 24.

⁷⁸ Horowski 2010, p. 234.

⁷⁹ Loc. cit.

⁸⁰ For more on the topic of the concept of subjectivity see Ibidem, page 25 et seq..

⁸¹ In contemporary pedagogy, unanimity is noticeable in the treatment of subjectivity as a condition for the effectiveness of pedagogical interaction, which is a phenomenon with a relatively short pedigree. In the history of educational thought, especially in the scenario presented by the supporters of a socialist formation and the associated radical behaviorism, you can encounter the concepts of reducing subjectivity to a set of properties to ensure effective process of acquiring knowledge, skills and competence..

⁸² See Gara 2008, p. 180 et seq.

⁸³ Gara 2009, p. 135 et seq.

⁸⁴ Górniewicz, op. cit., p. 15.

a mutually acceptable solution, the parties function as drivers towards a value-creating solution, thus qualitatively improving their relationship⁸⁵. Importantly, the resulting improved relationship between the parties in mediation is separate from the primary aim of finalizing an agreement. As such, it may regulate the functioning of the parties after mediation is completed, on levels only indirectly linked to the substance of the agreement⁸⁶.

Among the goals of mediation, attention-worthy is the prophylactic goal, oriented on preventing future conflicts⁸⁷. At the core of a so-understood preventive function is the belief that the parties - aware of the essence of the conflict, the course of the conflict and the conditions for successful conflict resolution - will be better positioned to identify the most effective course of action against the conflict and to implement it together, if circumstances require cooperation. Just as value is created in improving the relationship of the parties, so also the preventive function goes beyond the immediate subject in dispute, to equip individuals with universally useful competencies.

The third purpose served by mediation is to develop general competency in optimizing human interaction. According to the proponents of the transformative dimension of mediation, this dimension aims to strengthen the participants' attitude of responsibility, proactiveness in running their affairs, and competency in dialogue, epitomized in the ability to communicate effectively⁸⁸. It is not difficult to see that such a function promotes the expansion of the structures of civil societies, which in the long term may reduce the number of conflicts and disputes ending up in court⁸⁹.

The personal, interpersonal and social dimensions of mediation, which emerge from the analysis of the objectives of mediation, are consistent with the fundamental postulates of humanistic-oriented pedagogy. Current concepts of education, upbringing and care highlight the value of correlated, multi-faceted interactions, aimed at the object of pedagogical practice and that object's interactions with his/her immediate and distant environment, as well as the importance of effective pedagogical support for the labor of forming socially desirable attitudes. Contemporary Polish pedagogy shares, as a rule, mediation's claim that conflict are neutral facts present in the social space and common in natural human interactions. For this reason, the objectives of mediation and educational practice can be considered to, for the most part, coincide. Teaching with a humanistic orientation aims at having a three-step impact: non-directively supporting the development of human personhood, supporting the acquisition of competencies and skills conducive to a valuable life, and the creation of supra-individual values which would optimize the functioning of large groups. What is more, noteworthy is the temporal range of ADR's effects and its pedagogical influences. In both cases, despite focusing on supporting individuals in the labor of successfully resolving their conflict, both pedagogy and mediation implement far-reaching goals, inherent in reducing the risk of difficult situations in the future.

However, in reflecting on alternative dispute resolution, particularly in the context of private legal relations, the educational component is not emphasized. Approaching mediation *sensu largo*, broadly, with attention to the intermediate purposes for which it is used, leads one to notice its strongly pedagogical character. Underlying both mediation and humanistic pedagogy is the belief in the possibility of personal transformation towards future successful resolution of problematic situations. In the case of mediation, belief in the efficacy of action is applied to adults rather than minors.⁹⁰ Pedagogy, in turn, demanding support at every stage

⁸⁵ Gmurzyńska and Morek, *op. cit.*, p. 18.

⁸⁶ There is no doubt that this intention is not always possible to achieve. The final result depends not only on the subject of the conflict, but also on the attitude of the parties and their efforts to improve bilateral relations.

⁸⁷ *Loc. cit.*

⁸⁸ *Loc. cit.*

⁸⁹ *Loc. cit.*

⁹⁰ Especially on litigational and contractual grounds.

and age of human development⁹¹, markedly expands the supposition of the natural tendency of individuals to organize their living sphere, noting ADR's usefulness even in disputes between school-age children.

The perspectives of mediation and pedagogy also share an orientation on dialogue. Whether the approach is philosophical, psychological or praxeological, the drive to reaching agreement through open, assertive communication increases the effectiveness of the process, both in terms of the immediate goals, as well as those long-term ones, delayed in time, and manifested in a dialogizing attitude towards other people. As in the case of supporting the sense of efficacy, humanistic pedagogy underscores the importance of shaping, at all ages, communicational attitudes and skills consistent with the principle that dialogue - apart from regulating an individual's incidental condition, e.g. via conflict resolution - constructively shapes durable personality dispositions.

Alongside subjectivity, efficacy and dialogism as preconditions of alternative dispute resolution (which also determine the effectiveness of pedagogy in practice), mediation and humanistic pedagogy both engage in reflection on responsibility. It should be stressed that this concept applies not only to the incidental situation involving, respectively, the search for a mutually-acceptable resolution of a dispute or reflection over the sphere of action, morality, and human personhood⁹². Apart from serving as a competence supporting the process of effective decision-making, responsibility enhances focus on long-term goals, temporally distant from the subject's incidental condition. Undoubtedly, the ability to take responsibility for oneself as well as, in some measure, for one's partner in the mediated or pedagogical relationship, improves the chances of a constructive approach to difficult situations in the future.

Conclusion

This study suggests several conclusions of a general nature. Mediation, understood strictly as a process of alternative conflict resolution in civil and criminal litigation and business disputes, is a relatively new field. At the same time, the foundational concepts of forming constructive interactions between disputing parties, with the goal of coining mutually satisfying resolutions, turn out not only to have more longevity but also a broader interdisciplinary reach. The universal nature of such concepts as subjectivity, relationality, responsibility and dialogism makes these concepts useful not only in the area of compromise-oriented dispute resolution, but also - indeed above all - throughout the lifetime course of human development. For this reason a re-orientation is in order: a broader analysis of the subject, whereby mediation will be seen as an element rooted in the humanistic concept of man, rather than just a procedure supporting the justice system.

In the field of humanistic pedagogy mediation gains new meanings, which are absent in its legal and justice system applications.⁹³ More than a method of compromise-reaching by feuding parties, in applied pedagogy it becomes an effective method of solving conflicts stemming from human functioning in society. In pedagogy mediation finds multiple applications unconstrained by the nature of the dispute, the parties' ages or maturity levels, or the environmental contexts of the underlying conflicts. Developing competency to act constructively in challenging situations is always particularly desired, especially since conflict is unavoidable at every stage of human development.

⁹¹ Whether of child-rearing, formational, or care-taking function.

⁹² Górniewicz, op. cit., p. 15.

⁹³ J. Górniewicz, op. cit., p. 15.

⁹⁴ Law-grounded analyses of mediation recognize the potential benefits of more broadly viewing mediation, as a mode of reaching objectives not just in narrowly-conceived conflict resolution, but in the interpersonal, social, and personal spheres as well. At the same time, due to institutional and procedural factors, that approach remains, as of today, largely aspirational.

Apart from the strict interpretation of mediation, as just constructive dispute resolution, in the field of humanistic pedagogy mediation can be conceptualized as an attitude. In this sense mediation becomes a generalized, internalized conduct strategy, implemented with the goal of living a satisfying life on the personal, inter-personal, and social levels. Pedagogy's primary goal is to form an attitude, by practicing self-awareness, positive self-assessment, a drive for self-determination, and the correct recognition of problems, cooperation, or the positions of others. This goal can be more easily reached if the concept of mediation is implemented in applied pedagogy.

The overlapping goals of mediation and pedagogy support the title thesis here: that mediation can be conceptualized as a form of humanistic-focused pedagogy. Mediation's complexity as a discipline and its semantically-open structure makes possible approaches based on various temporal, scope, and goal criteria. Depending on the adopted starting point, mediation can be treated as a handy strategy for conflict solving, or as a set of competencies improving human functioning in the social sphere, or as a universal attitude of openness and attentiveness in the act of living. Mediation thus adds to the key pedagogical concepts, while at the same time opening a field for their practical, immediate manifestation. So understood, mediation can be seen as a category melding subjectivity, relationality, responsibility and dialogism, focused on attaining personal, inter-personal, and societal goals, both immediate and long-term, and with evident conditioning impact on human personhood.

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