

MUSLIM DISPUTE RESOLUTION IN AMERICA

A Challenge of Religious Pluralism

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World Religion 201: World Religions as a Resource

For Christian Theology and Church Ministry

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Wesley Seminary

December 12, 2005

A young Muslim couple meets with a local “Imam” to help them arrange for a divorce consistent with Islamic law. The Imam decides they should not divorce, because the couple is not fundamentally incompatible, rather they have poor marital communication. The young couple accepts his decision. Subsequently, the Imam obtains their commitment to work with him for six months to improve their communication. After two months the couple is doing well.

Two Muslims in a dispute over a business deal ask an Imam to decide what each of them is entitled to with respect to the matter. Once the parties acquiesce to be bound by his decision, the Imam listens to their evidence and determines an equitable amount that each party should receive. Before they sign the final agreement, he reminds them that his decision is only as good as the evidence they have provided him, and that if either of them has influenced him with false testimony, God (Allah) will know and they will be held accountable on the day of judgment. After signing the agreement one party begins to weep; he says that he has provided inaccurate information in a document, and he is not entitled to a portion of the sum awarded by the Imam. The other party is moved by his honesty; she tells him that he may keep the amount originally awarded.

These cases do not have the characteristics of your typical American mediation or arbitration; however, they are cases that Imam A¹ has handled as a dispute resolver for Muslim community members in the United States. In fact, many American Muslims carry on the long Muslim tradition of resolving disputes with a trusted, learned Islamic expert, outside a formal judicial system. As an expert on Islamic law and often the head of a mosque community in the United States, an Imam is sought for this type of help.² And as the American Muslim population continues to grow, we can expect the need for dispute resolution among this community to

¹ For this paper, I interviewed an Imam in the Washington, D.C. area in person on December 7, 2005. During the interview I took extensive notes and I tape-recorded the meeting with his consent. All references to his thoughts in this paper are obtained from that interview. He is referred to as “Imam A” to protect his privacy. The original notes and tape are on file with the author.

² An extensive study of American Muslims from the 1980s showed that the role of the Imam is different in the United States than it is in the Muslim world, where his primary duty is to lead prayers. In the United States the Imam, among other things, counsels and arbitrates family disputes, and oversees a mosque where all the necessary of functions of society – economic, political, social, religious and recreational -- take place. Without their extended families overseas, immigrant Muslims turn to their local Imam for help. American Muslims want their Imam to have knowledge of the Islamic faith, Islamic law, counseling skills and ability to discern the proper means of resolving contentious issues. American Muslims also want someone who understands American society and will assist them with following their faith in a non-Muslim society. Yvonne Yazbeck Haddad and Adair T. Lummis, *Islamic Values in the United States*, (New York: Oxford University Press, 1987), 58-66.

increase as well.³

As a professional mediator, I have noticed that parties' values, usually religious and/or culturally based, effect how they think in mediation, how they react to the negotiation that takes place, and the settlement they are willing to reach. The few times that I have observed Muslim parties in a mediation, I felt a lack of familiarity with aspects of the context of their communications. When our class was asked to select a religion to visit, I felt it was in keeping with my Christian roots to dive into the sea of my ignorance in hopes of transformation. So I joined the Muslim group, and on our visit to a local mosque, learned about the extensive, but to me unknown, practice of dispute resolution within Muslim communities.

This paper examines American Muslim's use of dispute resolution within their communities through an interview with a local Imam about his practice. It analyzes his work against the backdrop of the American dispute resolution field, and the cultural and religious contexts of Muslim dispute resolution practices. Finally, the paper discusses the possibilities and challenges of integrating the Muslim disputants into the mainstream alternative dispute resolution system in the United States (which I will sometimes refer to herein as "secular"). I suggest there would be in this exploration opportunity for deeper religious and cultural pluralism in action, and one more step towards local and possibly greater world peace.

Roots of American ADR

While negotiation and mediation are surely as old as human civilization, the current United States alternative dispute resolution (ADR) movement is distinct in its breadth and

³ The United States Census Bureau statistics indicate that as of 2001, there were over 1.1 million Muslims in the United States – more than double the amount in 1990. U.S. Census Bureau, *Self-Described Religious Identification of Adult Population: 1990 and 2001, from 2004 Statistical Abstract of the United States*, 55 <<http://www.census.gov/prod/2004pubs/04statab/pop.pdf>> (December 11, 2005); see also Jane I. Smith, *Patterns of Muslim Integration*, U.S. Department of State, <<http://usinfo.state.gov/products/pubs/muslimlife/immigrat.htm>> (December 10, 2005) (According to the Hartford Institute for Religious Research, about 25% of Muslims in the United States about are of Arabic origin; exact statistics are very difficult to obtain; estimates of the Muslim population in the United States range from 2 million to 7 million).

pervasive infiltration of the entire American legal system. ADR includes any type of dispute resolution process other than traditional court proceedings. The most popular process offered by courts and mediation centers today is mediation (facilitated negotiations in which the mediator helps the parties come to a decision). Also used in many labor disputes and in some business disputes is arbitration (in which the parties present evidence and argument and agree to be bound by a decision the arbitrator renders at the conclusion of a hearing). Many other combination processes exist.

In the United States, mediation and arbitration are quite distinct from each other. In mediation the parties maintain control over the outcome; in arbitration they are bound by the arbitrator's decision. Mediation is informal, and parties may speak with the mediator confidentially. Arbitration is an evidentiary hearing conducted in the model of our adversary court system; the arbitrator must have no appearance of bias and must not talk with any party without the other having the opportunity to be present. The arbitrator rarely "changes hats" into the role of mediator because it is thought that the parties could be disadvantaged if an arbitrator knows the kind of confidential information parties tell a mediator when trying to settle their case.⁴

Most mediators trace the rapid rise of the current American ADR movement to the 1960s and 1970s when both multiple community mediation centers and state court-annexed pilot programs were founded.⁵ By the late 1990s, nearly every State court and two-thirds of the Federal courts had mediation or other ADR programs.⁶ Similarly, more and more private parties

⁴ Stephen B. Goldberg, Ed., Frank E. A. Sander, Nancy H. Rogers, Sarah Rudolph Cole, *Dispute Resolution: Negotiation, Mediation, and other Processes* (4th Ed. Aspen: Aspen Publishers, 2005) 7-9. ADR includes any type of dispute resolution process other than traditional court proceedings such as mediation (facilitated negotiations in which the mediator helps the parties come to a decision), arbitration (in which the parties present evidence and argument and agree to be bound by a decision the arbitrator renders at the conclusion of a hearing) and conciliation (a less formal often multi-step facilitation of settlement).

⁵ Goldberg, *Dispute Resolution: Negotiation, Mediation, and other Processes*, 7-9.

⁶ Jay Folberg, Dwight Golann, Lisa A. Kloppenberg, and Thomas Stipanowich, *Resolving Disputes:*

are hiring mediators or arbitrators prior to commencing litigation.⁷

The modern ADR field grew from communities' increasing awareness of human rights and dignity, a desire to practice democratic participation and empower themselves to solve local problems affecting their lives; and the desires of the American judicial and legal communities to offer more efficient and satisfactory alternatives to the secular court system.⁸ An example of an early community mediation program was a federal service established by the Civil Rights Act of 1964 to prevent violence and facilitate constructive community dialogue.⁹ Following the watershed 1976 Pound Conference in which lawyers, judges, law professors and court administrators met to consider problems with the U.S. court system, Neighborhood Justice Centers for community dispute resolution were initiated, as well as new court-annexed "multi-door courthouses" where litigants could obtain alternative dispute resolution at the courthouse.¹⁰

The value of ADR and its rapid rise since these events are usually attributed to its benefits: substantially less cost to the court and the parties; quicker resolutions; opportunity to preserve personal or business relationships; confidentiality; opportunity to vent feelings; flexibility; more control over the outcome; and opportunity to create solutions that are more tailored to the parties' needs than in court.¹¹ Although many religious cultures have long-standing mediation traditions, the current growth and institutionalization of ADR programs in the

Theory, Practice, and Law (New York: Aspen Publishers, 2005), 388. One reason so many federal courts have ADR programs is that the Alternative Dispute Resolution Act of 1998, 28 U.S.C. §§ 651-658 required every federal district court to establish its own ADR program and allowed courts to require participation. See also Thomas J. Stipanowich, "ADR and The Vanishing Trial," *Dispute Resolution Magazine*, 7 (Summer 2004).

⁷ See, Thomas J. Stipanowich, "ADR and The Vanishing Trial," *Dispute Resolution Magazine*, 8-9 (Summer 2004) (while there are few hard statistics, studies from 1997 and 2002 show that most major companies use ADR; usage is increasing as of 2002 and annual process cost savings were \$500,000 or more).

⁸ Christopher W. Moore: *The Mediation Process: Practical Strategies for Resolving Conflict* (3d ed. San Francisco: John Wiley & Sons, Inc., 2003), 22-23.

⁹ Kimberlee K. Kovach, *Mediation in a Nutshell* (Minnesota: West Group, 2003), 19-20.

¹⁰ Once a lawsuit was filed, one could go through various courthouse "doors" in addition to the litigation path to resolve a legal matter. Kovach, *Mediation in a Nutshell*, 21-22.

¹¹ Kovach, *Mediation in a Nutshell*, 34-40.

United States was not initiated by religious groups nor motivated by overt religious values.¹²

There are some religiously based¹³ private mediation providers today, but none are as widely used as comparable secular mediation services.

The American mediation model has a process of distinct consecutive stages that mediators follow with variations depending on the needs of each case: introductory remarks by the mediator, parties' consecutive statements of the problem in dispute, information gathering, problem and issue identification, generating options, problem solving and bargaining, narrowing options and coming to agreement.¹⁴ Mediators vary their styles from very facilitative, i.e., functioning only as a facilitators for the parties' communication and negotiation, to a more directive and "evaluative" style, i.e., giving assessments of the effectiveness of parties' positions and opining as to what might happen if the case went to trial. To best assist parties in resolving their dispute -- which is the assumed goal of most American mediations¹⁵-- mediators attempt to create new possibilities for solutions through exploring deeper business or even personal concerns and interests that underlie each party's stated position in the dispute. The mediator encourages brainstorming of possible creative solutions and helps the parties develop an eye for complementary resources that they can trade as part of a solution. The goal is to enable each party to obtain, to the furthest extent possible, trades and agreements that maximize "value" for

¹² See the extensive history of mediation in Moore, *The Mediation Process: Practical Strategies for Resolving Conflict*, 20-33. Of course most Americans are religious, so one may assume a certain amount of religious influence within a cultural context, even in secular institutions. For example, a 2003 Gallup poll found that 61% of Americans felt that religion was very important to them, and 24% said it was fairly important. Frank Newport, "A Look at Americans and Religion Today," <http://speakingoffaith.publicradio.org/programs/2004/09/02_godsofbusiness/galluppoll.shtml> (December 10, 2005).

¹³ For example, the Christian Conciliation Service provides mediation using Christian principles. See R. Seth Shippee, "Blessed are the Peacemakers: Faith-Based Approaches to Disputes Resolution," 9 *ILSA J. Int'l & Comp. L.* 237, 240-246 (2002).

¹⁴ See, e.g., Kovach, *Mediation in a Nutshell*, 41.

¹⁵ There is a minority mediation style that emphasizes the parties' increased empowerment and interpersonal recognition and transformation over a formal settlement of the dispute. See Robert A. Baruch Bush, Joseph P. Folger, *The Promise of Mediation: Responding to Conflict Through Empowerment and Recognition* (San Francisco: Jossey-Bass 1994).

themselves; that is, value that satisfies their genuine interests. The mediator can also help the parties engage in more traditional “competitive” bargaining; use his or her neutral status and ability to hold confidential sessions, to keep the bargaining going; and help close any difficult gaps between the parties.¹⁶ Accordingly, the mediator’s reputation for trustworthiness, communication proficiency, neutrality and integrity as well as having sufficient training and experience are usually considered the American mediator’s stock in trade.¹⁷

American arbitration proceedings are more formal, time consuming and expensive than mediation. Parties, often through lawyers, submit evidence (including witness testimony), make oral and written arguments, and agree to be bound by the arbitrator’s decision. While as in mediation there is little formal training or licensing, there are general character and professional traits that clients look for in their arbitrator.¹⁸

Much of American ADR is either court-annexed or is conducted with the parties’ legal recourse to settlement as a backdrop. Thus, our legal system is another important root of America’s ADR system. We adopted England’s system of feudal law and equity which itself was a product of a Christian Anglican culture. In our adversary system of justice, the parties are required to present proof, legal argument and bear the burden of establishing a case for what they claim they should receive. The judge is to act as an essentially passive arbiter. This approach presumes that the truth is more likely to emerge from parties who are motivated to investigate and present their case, and that the “moral force and acceptability of a decision will be greatest where it is made by one who does not have, and does not appear to have, the kind of psychological commitment to the result that is implied in initiating and conducting the

¹⁶ See Folberg, *Resolving Disputes: Theory, Practice, and Law*, 249-254.

¹⁷ See generally, Kovach, *Mediation in a Nutshell*, 151-271.

¹⁸ See generally, Folberg, *Resolving Disputes: Theory, Practice, and Law*, 454-461, 470-473 (parties seek arbitrators with specialized experience in the subject matter of the dispute and who can effectively manage the hearing process).

presentation of the case.”¹⁹ The system presumes fairness in advocacy abilities between the parties and reasonable truthfulness, both of which may not in fact occur.²⁰ The responsibility of the individual to advocate for his or her case is ingrained into our history and along with other aspects of our cultural influences our style of conflict resolution.

According to Professor Mohammed Abu-Mimer of American University, who analyzed both Western and Islamic styles of conflict resolution, the western style contains underlying assumptions that: conflict can be positive and lead to growth and creativity; facing conflict is necessary; conflicts can be managed through rational steps; the individual’s needs, interests, positions and desires should be satisfied; it is often efficient to negotiate with the alternative of a likely court outcome in mind; collaborative and cooperative frameworks are essential to conflict resolution; the parties and the mediator are task oriented and an agreement should usually be written and signed.²¹

Cultural theorists offer ways to measure differences among cultures that are relevant to negotiation and mediation. Americans, for example, are considered “individualistic” (focusing on individualistic thinking and action), as opposed to Arab and Muslim cultures which are “collectivist” (oriented toward the cultural norms of the primary groups they belong to). Americans are also “low context” (preferring a direct, specific, confrontive manner of speaking) rather than “high-context” (preferring indirect messages) communicators.²² This means that

¹⁹ Fleming James, Jr. and Geoffrey C. Hazard, Jr., *Civil Procedure* (2d. Ed. Boston: Little, Brown and Company, 1977), 4-18.

²⁰ James, *Civil Procedure*, 4-18.

²¹ Mohammed Abu-Nimer, “Conflict Resolution in an Islamic Context: Some Conceptual Questions,” in Abdul Aziz Said, Nathan C. Funk, Ayse S. Kadayifci, *Peace and Conflict Resolution in Islam* (New York: University Press of America, 2001), 130-132; George E. Irani and Nathan C. Funk, “Rituals of Reconciliation: Arab-Islamic Perspectives,” in Abdul Aziz Said, Nathan C. Funk, Ayse S. Kadayifci, *Peace and Conflict Resolution in Islam* (New York: University Press of America, 2001), 171 (In North American conflict is perceived as inhering between individuals as free agents pursuing their own interests in life); see also Mayer, *Beyond Neutrality*, 34-38.

²² Joshua F. Berry, “The Trouble We have with the Iraqis is Us: A Proposal for Alternative Dispute Resolution in the New Iraq,” 20 Ohio St. J. Disp. Resol. 487, 507-8 (2005); Jeanne M. Brett, *Negotiating Globally: How to Negotiate Deals, Resolve Disputes, and make Decisions Across Cultural Boundaries* (San Francisco: John

Americans will focus on each party's choices, rights, goals and satisfactions, and they will tend to seek a mediator who is neutral and possesses the expertise to guide them in dealing with the other individuals involved.²³

Given the above cultural influences, it is not surprising that Americans feel important attributes of a mediator are professional knowledge, neutrality and impartiality, lack of influence from either side by a prior influential relationship or knowledge of the facts, ability to focus on each individual's needs, interests, desires and rights and maintaining an emphasis on achieving a fair deal for both sides.²⁴ In my experience, Americans take great care to insure the mediator (and of course an arbitrator) is unbiased concerning the subject matter of the dispute and is not disposed towards favoring one side or the other.

Muslim Dispute Resolution: Cultural Roots

Muslims come to the United States with a rich religious and cultural heritage that profoundly affects their everyday life. While less than 15% of Muslims worldwide are Arabic,²⁵ it appears that Arabic roots tend to dominate Islamic culture worldwide.²⁶ Imam A explained that Arabic Muslims come from a tribal system, which leads to present day dispute resolution tendencies. As the elder of the tribe resolved intra-tribal disputes in the past, today's American Muslims will seek the oldest, most senior and experienced person to resolve their disputes with other Muslims.

Imam Handi's observations are corroborated by research on Arab-Islamic relations

Wiley & Sons, Inc., 2001), 15-16, 20-21.

²³ Berry, "The Trouble We have with the Iraqis is Us: A Proposal for Alternative Dispute Resolution in the New Iraq," 509.

²⁴ Abu-Nimer, "Conflict Resolution in an Islamic Context: Some Conceptual Questions," 132.

²⁵ Islam, "Information and Statistics about the Muslim Population of the World," <<http://islam.about.com/library/weekly/aa120298.htm>> (December 10, 2005) (citing Britannica Yearbook, 1997); see also Jane I. Smith, "Patterns of Muslim Integration," U.S. Department of State <<http://usinfo.state.gov/products/pubs/muslimlife/immigrat.htm>> (December 10, 2005).

²⁶ Irshad Manji, *The Trouble with Islam Today* (New York: St. Martin's Press, 2003), 134-157. Ms. Manji, a self-styled "Muslim refusenik," writes an interesting chapter about the multi-faceted Arabic dominance within Islam, despite being a minority of its membership today.

conducted by international relations specialist George E. Irani and Nathan C. Funk. Their work established that despite modernization, Arab-Islamic cultures still differ profoundly from Western societies. Nomadic peoples and traditions left a deep imprint on Middle East culture, society and politics. Middle Easterners are loyal to family units and kin-based collectives, which in the past performed most social, economic and political community functions in the absence of centralized state governments. The basic unit of identification for the individual is their family rather than the state or even their ethnic group.²⁷ The Arab-Islamic culture is also patriarchal; the father's authority is an integral and powerful part of both decision-making and maintenance of the genealogical cohesiveness of the family and social life. The father/leader of the family acts as a referee for family disputes and represents the family within the village.²⁸

Conflict resolution traditions of Middle Easterners include unique hospitality and conflict resolution rituals to which they are deeply attached. One process is *sulh*, which means "settlement" and another is *muslaha*, which means "reconciliation." These are both commonly called *sulh*. These rituals, common in Arabic cultures, are performed by the "guilty" party for the benefit of the offended person/group. The ritual is usually private if between individuals but public between groups. The rituals are meant to restore parties to ordered peace, fairness and security that were lost by the offense.²⁹ The ritual follows traditional stages: First, the offender, to avoid retributive action, seeks the help of local leaders, who investigate the case. The leader delegation intervenes and arbitrates the dispute. The aggrieved individual/family agrees to forgo retaliation and begins a period of mourning. The delegation arranges for payment of just and symbolic compensation. After mourning, the parties gather to shake hands in a ritual which may

²⁷ Irani and Funk, "Rituals of Reconciliation: Arab-Islamic Perspectives," 177.

²⁸ George E. Irani, "Islamic Mediation Techniques for Middle East Conflicts," <<http://www.mediate.com/articles/mideast.cfm>>, (November 30, 2005)(at note 18).

²⁹ George E. Irani and Nathan C. Funk, "Rituals of Reconciliation: Arab-Islamic Perspectives," 182.

be public. The victim part(ies) show forgiveness by offering bitter coffee to the offender(s), and the offender's family (or the individual) serves a meal to the family of the (or individual) victim.³⁰ Irani and Funk suggest that such Middle Eastern rituals, as they exemplify key Arab-Islamic values, can provide insight to conflict resolution practitioners.³¹ In fact, today the "Palestinian Conflict Resolution Center" in Bethlehem, West Bank, acts as an equivalent to our community dispute resolution centers, using traditional Islamic *sulh* rituals.³²

Also, Islam's legal tradition contained routine settlement vehicles. Ottoman Empire Islamic law judges (*kadis*) were active in facilitating *sulh* between parties.³³ In Saudi Arabia today, where the legal system largely adheres to a traditional Islamic model, most civil cases end in reconciliation, following the legal maxim "*sulh* is best" from a Q'ranic verse: "[I]t shall not be wrong for the two to set things peacefully to rights between them: for *sulh* is best." 4:128.³⁴

In cross-culture theory terms, Arabic culture is "collectivist," meaning individuals place the needs of the collective above the individual. Self-identity is interdependent with the community or other level of group of which they are a part. The Arabic culture is "high-context," meaning individuals have a tendency toward indirect communication, and usually have extensive information networks among family, friends and colleagues.³⁵

Collectivist cultures rely on third parties who are respected members of the

³⁰ Irani and Funk, "Rituals of Reconciliation: Arab-Islamic Perspectives," 182-185, 187.

³¹ Irani and Funk, "Rituals of Reconciliation: Arab-Islamic Perspectives," 171.

³²The website indicates it "helps to resolve disputes within the Palestinian community by complementing the traditional Arab form of mediation, called *Sulha*, with Western models of conflict resolution." <http://www.planet.edu/~alaslak/> (December 12, 2005).

³³ Walid Iqbal, "Courts, Lawyering, and ADR: Glimpses into the Islamic Tradition," 28 Fordham Urb. L.J. 1035, 1037-38 (2001).

³⁴ Walid Iqbal, "Courts, Lawyering, and ADR: Glimpses into the Islamic Tradition," 1039-40

³⁵ Moore, *The Mediation Process: Practical Strategies for Resolving Conflict*, 40.

parties' social network to help them resolve their disputes in a way that preserves their "face," honor and minimizes conflict.³⁶ Mediation can be critical in Middle Eastern societies when honor is at stake and concessions will result in a loss of face or respect. An intermediary is often used to separate the parties and work out an arrangement that preserves honor. In such cultures, parties may view suspiciously a mediator who does not take charge in speech and manner. For example, Irani found that among Lebanese Muslims, remaining silent while another is talking is interpreted as acquiescence or stupidity. It makes sense then, that in Arabic cultures, the mediator is perceived not as a mere facilitator, but as someone with answers, solutions and accompanying power. If the mediator fails to provide answers, s/he will not be respected nor considered legitimate.³⁷

Muslim Dispute Resolution: Islamic Religious Principles

Outside of the cultural history of compromise and settlement, an exploration of Muslim's use of ADR must of course consider the extent to which Islamic religious doctrines support compromise and settlement. Muslim ADR is on its face a *religiously* bound system. What do the Q'ran or other Islamic laws say about settling disputes? According to Imam A, community interest or pressure for American Muslims to resolve their disputes outside of court is not because of religion, but to preserve pride and avoid exposing one's "dirt" outside the community or in the press. Also, many do not have \$20-30,000 to participate in a lawsuit. However, when I presented him with a series of Q'ran passages that other authors had identified as supporting ADR, Imam A expounded on some Q'ranic principles he found relevant to his work.

³⁶Berry, "The Trouble We have with the Iraqis is Us: A Proposal for Alternative Dispute Resolution in the New Iraq," 510-511; Brett, *Negotiating Globally: How to Negotiate Deals, Resolve Disputes, and make Decisions Across Cultural Boundaries*, 103.

³⁷ Irani and Funk, *Rituals of Reconciliation: Arab-Islamic Perspectives*, 182-185; Gopin, Marc. *Holy War, Holy Peace : How Religion Can Bring Peace to the Middle East*.(Cary, NC: Oxford University Press, Incorporated, 2002), 136.

Imam A began with the proposition that Islam requires that when there is a dispute between two parties, one must bring it to a solution; the parties must make peace between them. He works hard to help resolve disputes, since he feels it is his duty as a Muslim. He also feels very strongly about the concept of *sulhah* (which appears to be the same as *sulh* above) or reconciliation. This idea is consistent with Q’ran verse 5:8.³⁸ To him, *sulhah* means that groups or individuals should reconcile on the basis of justice, equity and fairness.

Imam A also often considers the concept of forgiveness, in conjunction with the Q’ranic phrase: “resist temptation with goodness.” This means that the animosity of the person and in that person’s heart will be changed and melted with your goodness. The Q’ran also asks people to forgive in a passage that says, “God is more aware than you are.” This means that if you go to war, even if you get what you want, in a violent way, God can and will give you better justice than you can give yourself. So reconcile, try to forgive, try to overlook and compromise.

Imam A also directed me to the writings of Rabbi Marc Gopin, an international peace expert in Islamic-Jewish relations and the Director of George Mason University’s Center on Religion, Diplomacy and Conflict Resolution, on forgiveness. Dr. Gopin writes that in the Q’ran there are three kinds of “forgiveness:” forgetting a wrong done, ignoring or turning away from an offensive person or act, and Allah’s divine forgiveness.³⁹ Dr. Gopin states that Q’ranic provisions related to forgiveness include sections 7:199, which urges the Muslim to “Take to forgiveness” even as he resists evil, and 42:37, which provides that those who “shun the great sins and indecencies, and whenever they are angry they forgive” have the highest reward.⁴⁰ The

³⁸ “O you who believe! Be upright for Allah, bearers of witness with justice, and let not hatred of a people incite you not to act equitably; act equitably, that is nearer to piety, and be careful of (your duty to) Allah; surely Allah is Aware of what you do.” *The Holy Qur’an*, translated by M.H. Shakir (Tahrrike: Tarsile Qur’an, Inc., 1983), <<http://www.hti.umich.edu/k/koran/>> (December 7, 2005).

³⁹ Gopin, *Holy War, Holy Peace: How Religion Can Bring Peace to the Middle East*, 46.

⁴⁰ Gopin, *Holy War, Holy Peace: How Religion Can Bring Peace to the Middle East*, 15.

Q'ran suggests that people deal with their differences by "consultation" with each other, and that forgiveness combined with reconciliation brings a reward from Allah.⁴¹ The Q'ran also seems to suggest that Muslims should be willing to forgive unbelievers of their faith: "Say to those who believe (that) they forgive those who do not fear the days of Allah that He may reward a people for what they earn."⁴² He notes more sources for support of forgiveness and conflict resolution in the *hadith* literature.⁴³

Finally, Imam A discussed the principle of sacrifice. When Abraham was asked to sacrifice his son, he was willing to do so for the glory of God. So humans should be willing to let go of money, pride and argument over things for the glory of God. Disputing over these things will only incite hatred. He also, as mentioned in the first vignette above, feels it is very important to remind parties that they will be subject to perfect justice on the Final Judgment Day.

While I found articles by practitioners, lawyers and academics who asserted support for the proposition that Islam as a religion promotes settlement of disputes, I found valuable Dr. Gopin's thoughts cautioning against an unrealistic one-sided view of any religion. Dr. Gopin discusses that, since in Islam (as well as in Judaism and Christianity) there are sources that promote peace as well as those that promote violence, religious peace-builders should take care not to ignore troubling portions of their tradition's literature.⁴⁴

Turning to Islamic sources that various writers think encourage dispute resolution, the following is a sample of what I located. A practicing Muslim mediator and solicitor

⁴¹ Gopin, *Holy War, Holy Peace: How Religion Can Bring Peace to the Middle East*, 15 (citing Q'ran 42:40).

⁴² Q'ran 45:14; Gopin, *Holy War, Holy Peace: How Religion Can Bring Peace to the Middle East*, 16.

⁴³ Gopin, *Holy War, Holy Peace: How Religion Can Bring Peace to the Middle East*, 16.

⁴⁴ Mark Gopin, "Forgiveness as an Element of Conduct Resolution in Religious Cultures: Walking the Tightrope of Reconciliation and Justice, 14-15" <www.gmu.edu/depts/crdc/docs/forgivenessincultures.html> (December 9, 2005).

from London writes that “Islam is a logical and benevolent religion that provides a framework in which relations between human beings are facilitated and conducted - faith guides every aspect of life.” He asserts that the Q’ran contains many examples of the principles of resolving disputes through negotiated settlement to preserve human relations; the ethical principle is forgiveness.⁴⁵ Mohamed M. Keshavjee, LLM, another Muslim London attorney active in the ADR field, writes that ADR is an old concept in Islam. He asserts that the Q’ran, including verse 4:35, contains several passages about resolving disputes amicably and encourages forgiveness. He recounts that the Prophet settled a quarrel between the four leaders of the Auraysh concerning who would set the Black Stone during reconstruction of the Ka’ba by having them each hold a corner of a cloth in which the stone was carried.⁴⁶

Similarly, law student R. Seth Shippee’s research on faith-based approaches to dispute resolution found Q’ran verses that encourage peaceful resolution, reconciliation and dialogue: 5:16, “Allah guides him who will follow His pleasure into the ways of safety;” 23:61 “These hasten to good things and they are foremost in (attaining) them;” 5:8 “O you who believe! Be upright for Allah, bearers of witness with justice, and let not hatred of a people incite you not to act equitably; act equitably, that is nearer to piety, and be careful of (your duty to) Allah; surely Allah is Aware of what you do;” 25:63, “[W]alk on the earth in humbleness, and when the ignorant address them, they say: Peace.”⁴⁷

Indeed, the Q’ran requires Muslims to cooperate to maintain “what is good,” but avoid what is wrong. They must also not dilute their religious teachings to blend in with

⁴⁵ Karim Mohamed, “ADR in Muslim Thought,” <http://www.consensusmediation.co.uk/adrimuslimthought.html>, (December 9, 2005).

⁴⁶ Mohamed M. Meshavjee, LLM, “Alternative Dispute Resolution: Its Resonance in Muslim Thought and Future Directions” (The Institute of Ismaili Studies 2002), 5-6.

⁴⁷ Shippee, “Blessed are the Peacemakers: Faith-Based Approaches to Disputes Resolution,” 245-246.

the society around them.⁴⁸ Finally, the afterlife is an integral part of Muslim life. The Q'ran correlates life in this world with the unified whole of life including death and the afterlife.⁴⁹ As Irani notes, since the Q'ran is a code of conduct for the worldly as well as the spiritual life, religion plays a very important role in a Muslim's interactions both privately and publicly.⁵⁰

Imam A's Dispute Resolution Process

Now that the cultural and religious roots of Muslim ADR have been explored, we turn to a description of Imam A's dispute resolution practice. According to Imam A, Islamic law is very detailed and covers economic, political, social and civil matters. The dispute may concern marital, business or other interpersonal, community or business issues. According to Imam A, Muslims want to resolve their disputes in a way that is consistent with their religious obligations and related community expectations.

As noted above, the parties seek Imam A's help because he is someone they know, he is an Islamic law expert (he is an Islamic judge (*qadi*)) and very importantly he is someone whom they know to be just and fair. The parties apparently give him a substantial control of the process. He may know a lot or almost nothing about the facts of the dispute in advance. Imam A decides in each case whether he should facilitate an agreed solution, make a decision for the parties, or some combination of the two. Sometimes he puts different options on the table and asks the parties decide. He is expected to be able to tell the parties their obligations under Islamic law, and make sound decisions. Often if he plans to make a decision on the matter for the parties, he requires them to agree in advance to abide by his decision. He does this because it takes him significant time on the matter (from 5 to 30 or more hours a case), and he does not

⁴⁸Muhammad Abdel Haleem, *Understanding the Qur'an* (L.B.Tauris Publishers 2001) 80 citing Q'ran verses 16:125 and 5:2.

⁴⁹ Abdel Haleem, *Understanding the Qur'an*, 82.

⁵⁰ Irani, "Islamic Techniques for Middle East Conflicts," 10.

want to spend this time if the process will not resolve the dispute. He says that he has no set process, but will meet with the parties together and/or separately as is useful, and will often have a series of meetings over a period of time. He may bring in an expert such as a Certified Public Accountant to look at documents if he thinks it is necessary for him to make a good assessment or decision. The parties may or may not have legal representation in the sessions. He does not charge fees for his services.

Imam A says that his decisions are not enforceable unless the case is in court and it is adopted as the parties' agreed upon judgment, as in a divorce case. We discussed that under national and state arbitration laws, the parties' agreements to be bound by his decision might be enforceable as arbitration decisions. Nevertheless, in his mind and the parties' minds, they are voluntarily committing to be bound by his judgment.

Imam A discussed one case that seemed to demonstrate the collective, family-oriented Muslim culture. A wife of a couple getting divorced decided to seek a ruling in the secular court system rather than from an Islamic judge, because she felt she would receive a more favorable award under American law. The wife's family was very upset with her. Her brothers were very angry and her sister even moved overseas because she felt the wife was violating the law of Islam for the sake of money, and did not want to talk to the wife again! This case shows the involvement of family members and underscores the pressure to resolve disputes within the community to save face and also to preserve the morals and values of the collective whole. In fact, Imam A feels that for Muslims, complying with Islamic law and its moral principles is more important than complying with American secular law.

Imam A does not have a different process for working with inter-religious disputants. He is occasionally asked to work with parties of mixed religious backgrounds--usually family disputes. Although he was trained in dispute resolution in Jordan, he did not seek secular dispute

resolution training in the U.S., because he did not want to pursue a career in this field. Despite his generosity in helping many people resolve their disputes, he is employed full-time and is not pursuing a career in dispute resolution.

Imam A notes that Muslims might also use the method set forth in Q’ran 4:35 for resolution of marital disputes: The husband and wife (or parties if not a marital dispute) each choose someone in the community that they like. The Q’ran refers to using a “judge” from each family, but “judge” in that verse really means a representative for each person. Then both representatives listen to both sides, talk between them, and make a decision. If they can’t decide themselves, they appoint an outsider that would listen to both parties and the representatives and then decide.⁵¹

Comparison of Muslim v. American DR Processes

From the forgoing discussion, there are some themes flowing through the character of the American and the Islamic dispute resolution histories and cultures. Most of them are captured in the Table 1, summarizing the findings of Irani and Funk as to differences between “Western” and Arab-Islamic approaches to conflict resolution.⁵²

Table 1: Comparison of Western and Arab-Islamic Conflict Resolution Styles

Western	Arab-Islamic
Individual choices primary Facilitate settlement of individual’s choices	Communally oriented Individual part of web of relations that must be preserved Preservation of harmony requires individual sacrifices
Mediators should be certified professionals	Dispute resolver should be unbiased insider with ongoing connections to the

⁵¹ “And if you fear a breach between the two, then appoint judge from his people and a judge from her people; if they both desire agreement, Allah will effect harmony between them, surely Allah is Knowing, Aware.” *The Holy Qur’an*, translated by M.H. Shakir (Tahrirke: Tarsile Qur’an, Inc., 1983), 4:35.

⁵² Irani and Funk, “Rituals of Reconciliation: Arab-Islamic Perspectives,” 182-185. Note that the authors are referring to a facilitative process where the neutrals facilitate dialogue and resolution of group conflict usually over multiple sessions; arbitration is not included in this analysis.

Mediators should be neutral and unaffiliated outsider	disputants, and with a strong sense of the common good Standing in the community important (re: age, experience, status, knowledge)
Mediation occurs in the shadow of one's legal alternatives to settlement Yet individual parties decide ultimately whether to settle	Communal leaders and village elders facilitate process of acknowledgment, apology, compensation, forgiveness and reconciliation
Relies on secular idiom, personal experience of the neutral, professional mediation guidelines	Depends on references to religious ideals, sacred texts, stories, moral exemplars, local history and custom
Goal of process is pragmatic, utilitarian Preoccupied with "win-win" process; attain a fair deal where disputants' rights are not compromised	Goals include concern for preserving and cultivating the established "wisdom" of the community
Process attempts to "empower" parties to solve their own problems without needing to use the adversarial legal system	Tries to empower families and community to participate in controversies of common concern
Uses direct, step-by-step problem solving, separate people from the problem, satisfy interests and needs, conclude with formal written agreement	Prioritizes relational issues such as harmony, solidarity, restoring dignity and prestige of individuals and groups Process completes with ritual including handshakes and meal

There are some additional distinctions that would come into play with American mediations. First, confidentiality is very important. Parties generally expect a commitment that all discussions will be kept confidential among the parties.⁵³ Confidentiality is less formal in mediations within the American Muslim community, according to Iman A. The formal confidentiality agreements in most American mediations and arbitrations may be received skeptically in a collectivist community.

Another key difference is the function of the neutral. The neutral in the Muslim method can float between mediating and directing or arbitrating an outcome without concern from the

⁵³ Kovach, *Mediation in a Nutshell*, 193-197.

parties. The parties bring their case to the “patriarch substitute” as it were, and entrust to his discretion the choice the best process to resolve their matter. American rules regarding conflicts of interest and disclosure for mediators and especially arbitrators are part of a system that has little applicability for the Muslim community.⁵⁴ .

Finally, the orientation of the dispute resolution session, as the table above indicates, is different between the two cultures. Over and above the “individual versus the collective benefit” orientation, Muslims go to their Imam so they may stay straight on their path to Allah in the afterlife. They want moral guidance as well as wisdom and counsel. While those in American secular mediation might hunger for this kind of guidance at times, they are accustomed to separating their legal from their religious matters. Even devout Christians or Jews who try to apply religious principles to their every day lives would do so privately, without discussions with the mediator or arbitrator. And no one would expect the mediator -- unless they sign up for Christian mediation service -- to quote scripture in the session. There is a presumption in American dispute resolution that the mediators never know as much about the true needs and concerns of the parties as they do themselves, so the parties must be the ultimate arbiters of their resolution. But this would not be the case when the overall priority of the process is community cohesiveness and individual reconciliation, and when the neutral is an expert in the moral principles one wishes to live by.

⁵⁴ A party can sue to have an agreement set aside in an arbitration if they felt the process was not fair due to something the arbitrator said or did, or if any of the arbitrator’s family members or law partners had a work or social relationship with any of the parties that is not disclosed and waived by the parties. Folberg, *Resolving Disputes: Theory, Practice, and Law*, 474-480. Even in mediation, any prior relationship with either party or persons close to either party should be disclosed to both sides, so the parties can choose if they are still comfortable that the mediator will be “neutral” despite the prior connection. For example, see the “Virginia Standards of Ethics and Professional Responsibility for Certified Mediators” Section H <<http://www.courts.state.va.us/soe/soe.htm>> (December 12, 2005) (requiring mediators to inform parties of “any current, past, or possible future representation or relationship with any party or attorney involved in the mediation” as well as “any relevant financial interest.” The party then decides whether the mediator may still serve).

ADR and Religious Pluralism in the United States

While accurate estimates are difficult to obtain, the American Muslim population in the United States is probably between 2 million and 7 million today.⁵⁵ The challenge of increasing religious pluralism in the United States is probably a greater cause for conflict than most American residents realize. Day to day miscommunications deriving from religious and religious-cultural differences are a common experience for both the long time resident and the immigrant. Traditionally, as a “melting pot,” the United States did not feel it necessary or perhaps even right to provide special religious or cultural accommodations to immigrants; it was better for all if they assimilate into the American culture. Religious pluralism was not a problem, since we have freedom of religion.

Muslims have a different religious paradigm. Their *religious* (Islamic) law, as Imam A says, covers the kinds of social, economic and political interactions that American *civil* and some criminal laws cover. Although the secular law is binding, at the end of the day the greater concern is for their soul and eternal life, and thus, compliance with Muslim law. Also, Muslim law requires behaviors that may not fit the goals of Western mediation, such a self-empowerment. A Muslim may want to follow Islamic law governing child custody and support, for example, which a secular mediator may feel disadvantages one party. Yet Muslims may see it as empowering in their life view.

Muslims don't turn to secular mediation or arbitration services because we cannot offer them what they want. They want someone with whom they feel accepted and respected, and who can influence both parties morally and legally for the good of their community, their “face” and their faith. Muslims may not want to turn to a non-Muslim who is likely to be either

⁵⁵ Smith, “Patterns of Muslim Integration.” (According to the Hartford Institute for Religious Research, about 25% of Muslims in the United States about are of Arabic origin; exact statistics are very difficult to obtain; estimates of the Muslim population in the United States range from 2 million to 7 million).

ignorant about their faith and values, or worse, prejudiced against the same, for help in resolving disputes. Additionally, according to Imam A, while some Imams do charge fees and are full time dispute resolvers, most do it without charge. For secular mediation, it is the opposite—most mediators (outside of court-annexed programs) charge fees, although many community mediation centers charge on a sliding scale.

Should we just let Muslims have their own dispute resolution system and leave well enough alone? If they are not complaining, should the secular mediation community care? I think it matters. Carved out sections of communities split American society. Whether we like it or not, today's immigrants are not merging into our culture in the same way earlier generations did. It seems that in mediation as in other walks of life, instead of seizing an opportunity to create a better whole, to explore working together for the benefit of all, to integrate, to express our Christian faith (that asks us to love our neighbor and spread the reign of God),⁵⁶ we remain comfortably ignorant of those who for good reason cannot self-assimilate into our system. We mediators often consider ourselves the carrier of a higher order process than those involved in court trials. We can bring understanding, improved relationships and peace. We have assumed that once a person truly understood our process, they would be a believer. But we are not paying attention to what our would-be clients really want.

The pluralism challenge, then, is to explore further the possibility of re-examining secular mediation as a tool and option for Muslims in the United States. As in the early days of Christian mission work, mediators used to spread the word about ADR by holding trainings in our model and accepting assignments to help in other countries. We expected them to experience the same delight we did in our process, despite totally different cultural values, needs and priorities. Some of the mediators who did this began

See Joseph Allegretti, "A Christian Perspective on Alternative Dispute Resolution," 28 Fordham Urb. L.J. 997, 998 (2001).

to talk about how the other cultures had their own dispute resolution traditions that had deep culturally-specific wisdom. Thus, conflict resolution practitioners developed methods to interactively adapt and create an appropriate conflict resolution process when working cross-culturally.⁵⁷

What those practitioners did was similar in some aspects to an approach for cross-cultural religious mission proposed by Bevans and Schroeder in their study on church mission theology, *Constants in Context*.⁵⁸ Following both of these leads, we secular mediators⁵⁹ should have a dialogue with Muslims to discuss whether secular mediation would be an option they are interested in using, and how we mediators can learn and adapt our model together with the religious community for this cause.⁶⁰ We should educate ourselves about the Muslim culture through reading, talking with members of the community and immersing ourselves in Muslim cultural events. To the extent they have not done so, Muslims can do the same with non-Muslim religious or secular culture. We would both “witness” and be witnessed to as I have been --having met Imam A, I can already see the appeal of having a wise religious elder available to help me resolve a dispute with someone with whom I have a conflict.

As we each talk about our models of dispute resolution, we will discern the essential foundation of each approach, and build a system that is cross-cultural. For those of us inclined,

⁵⁷ See, e.g., Moore, *Mediation Process*, 248-251; Christopher Moore and Peter Woodrow, “Mapping Cultures-Strategies For Effective Intercultural Negotiations,” <<http://www.mediate.com/articles/cdr1.cfm>> (December 10, 2005).

⁵⁸ Stephen B. Bevans and Roger P. Schroeder, *Constants in Context: A Theology of Mission for Today* (New York: Orbis Books, 2004).

⁵⁹ I am not addressing how to integrate the arbitration field specifically, because there is not space in this paper to include a full analysis of a plan for this endeavor. However, it would most likely be less complicated than the mediation field, because the process is more similar across cultures.

⁶⁰ The components of the model proposed by Bevans and Schroeder are: Witness and proclamation, liturgy prayer and contemplation, justice, peace and the integrity of creation, inter-religious dialogue, inculturation and reconciliation. Bevans and Schroeder, *Constants in Context: A Theology of Mission for Today Constants in Context*, 348-395.

we can humbly ask for God's guidance as to the best for everyone involved. We can look for ways to act with the Muslim community consistently with justice and peace. Having a genuine inter-religious dialogue and immersing ourselves in their culture while speaking what we believe about conflict and healing—e.g., our value of individual rights and human dignity, our experience in talking about and working through conflict--is an honest start. Finally, we may want to consider reconciliation of our own. We secular mediators have been ignoring those who don't easily fit in with our culture of dispute resolution. We can acknowledge this and begin to move out of this stance. An approach with humility, curiousness, willingness to listen and respect should open minds and hearts.

As part of this exploration, secular mediators may perhaps observe a Muslim dispute resolution process. I plan to offer to co-mediate (or observe) a case with Imam A, and ask him to do the same with me. A secular mediator could co-mediate with a Muslim elder or Imam in a case between a Muslim and a non-Muslim. The secular mediator could potentially help the non-Muslim cooperate with the Muslim's religious obligations and attempt to incorporate them into any resolution. Another option is for a secular mediator to obtain an opinion on an issue from an Imam as necessary; one or more issues could be arbitrated by an Imam and the other issues mediated. We can then report these experiences to our communities.

Mediation is meant to be inclusionary and open to all, regardless of faith. Yet curiously, by not talking about religion, we have excluded some. Learning about mediating with a different culture will be one little step to more peace in our community, and so in our country and the world.