TRADITIONAL APPROACHES IN ALTERNATIVE DISPUTE RESOLUTION: A BRIEF OVERVIEW

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Abstract. The Western culture is not the only one using alternative dispute resolution mechanisms. Other cultures have developed a large array of conflict resolution tools, as a mean of maintaining harmonious relationships. The study will present an evolution of the ADR methods in the Western culture and will identify some traditional and indigenous conflict resolution systems, in order to allow a comparison between the two.

Keywords: traditional conflict resolution, indigenous alternative dispute resolution, mediation.

Introduction

When humans organize into communities and build social structures, conflict is inevitable. Regardless of the culture or civilization conflict occurs in all forms for which every society has developed its own system of conflict resolution. In Western countries, these systems have evolved, following patterns set by classical Greek and Roman writers and influences from Christianity, into elaborate sets of legislation and the great variety of institutions involved in interpreting, enforcing and applying the law (Walker & Daniels, 1995). Other societies, spread all over the world, have also developed a functional mixture of conflict resolution mechanisms. Most of them are specifically designed to satisfy the needs of some small communities, but in most cases they coexist or even replace the legal system imposed by the Western civilization.
In the broader field of conflict resolution different scholars have discovered a large array of legal systems, even within a given society, all meant for resolution of conflicts. The literature classifies these methods of conflict resolution into a number of categories: avoiding conflicts, accepting another party’s claim, coercion, bilateral negotiation, mediation, arbitration and adjudication (Taieb, 2008). Such methods can broadly be divided into formal and informal legal systems. Formal legal system, represented by adjudication, is the characteristic feature of modern states. In adjudication the authority relies on the rules and regulations that govern similar cases and the nature of evidence and arguments and then pass on a judgment (Levinson & Ember, 1996, p. 244). Typically this is a win-lose situation.

State is not the only source of mandatory norms because there are also other means of exerting social control, prevalent across the world in different shapes. The informal institutions for conflict resolution provide the more permanent and lasting solutions than the formal ones, mainly because their solution is more consensual and, therefore are more likely to be accepted by both parties (Taieb, 2008).

This study will focus on the informal institutions for conflict resolution, namely the ADR methods. First, there will be defined the main theoretical items that will be used across the study, followed by a brief presentation of the evolution of the ADR mechanisms in the Western civilization. Later, will be introduced some traditional conflict resolution systems, encountered in more “exotic” cultures. The final discussion will be centered on a comparison between the traditional informal mechanisms of conflict resolution and the ADR methods, widely accepted by the Western society.

**Theoretical Framework**

*Alternative Dispute Resolution*

Negotiation, mediation, arbitration and a range of other less-known methods are grouped under the acronym ADR – alternative dispute resolution – (Chereji & Pop, 2014) which is described as „a range of procedures that serve as alternatives to litigation through the courts for the resolution of disputes, usually involving the intercession and assistance of a neutral and impartial third party” (Brown & Marriot, 2012, p. 12).

The simplest form of ADR is *negotiation*. Fundamentally, negotiation can be defined ‘as to people simply talking about the problem and attempt to reach a solution boat can accept’ (Barrett & Barrett, 2004, p. 1).

*Mediation*, at its core, is a negotiation “that includes a third party who is knowledgeable in effective negotiation procedures, and can help people in conflict coordinate their activities and to be more effective in their bargaining” (Moore, 1996, p. 14). Mediation emphasizes the participant’s responsibility for making decisions that affect their lives.
Mediators encourage integrative and facilitated problem-solving negotiation that seeks a mutually agreed decision among disputants (Walker & Daniels, 1995).

Like judicial decision-making, arbitration is a form of adjudication (Goldberg, Green, & Sander, 1985). Basically, arbitration is a ‘settlement process in which disputants present their issues to a neutral third party who listens to arguments, reviews evidence, and renders a decision’ (Cooley, 1986, p. 246). There are many types of arbitration, including binding, non-binding, interest, inal offer, and grievance arbitration. Generally, the arbitration process assumes that the disputants give all decision-making authority to the arbitrator and agree to abide by the decision the arbitrator makes (Walker & Daniels, 1995).

There is also another ADR approach, largely used when the disputes are more complex and involve a significant number of parties, like public policy or natural resource disputes. In these cases, the conflict management depends less on mediation-assisted negotiation and more on a procedure that promotes collaboration and problem-solving dialogue facilitation is the appropriate tool (Susskind & Cruikshank, 1987). Facilitation represents third-party interventions in which the disputants are the decision-makers, but differ somewhat from mediation in its emphasis on process and outcome. A facilitator manages the process of dialogue, assisting the parties to have a constructive discussion while a mediator helps parties construct a joined acceptable settlement to their dispute (Walker & Daniels, 1995).

Traditional and indigenous conflict resolution

Roger Mac Ginty is using the terms traditional and indigenous peacemaking when describing dispute-resolution and conflict-management techniques that are based on long-established practice and local custom (2008, p. 145). We will follow his conceptualization but we consider that conflict resolution instead of peacemaking is more appropriate for our approach, as it combines both notions of dispute resolution and conflict management:

“Common features of traditional and indigenous peace-making are, and were, consensus decision-making, a restoration of the human/resource balance, and compensation or gift exchange designed to ensure reciprocal and ongoing harmonious relations between groups. Many traditional societies developed and maintained sophisticated mechanisms for non-violent dispute resolution and constructed complex conceptions of peace. These versions of peace were far removed from versions of peace introduced by colonial powers or sponsored by elements of the international community in the contemporary era” (Mac Ginty, 2008, p. 149).

Traditional and indigenous, despite their common characteristics, are not necessarily substitutable. Traditional assumes that a norm or an activity has a long heritage, while indigenous suggests that a practice or a norm is inspired and spread only in a particular
geographical area. Indigenous norms or activities do not need to be also traditional (Mac Ginty, 2008).

While the debate of who are “indigenous” is not without controversy, the definition recommended by the International Labor Organization (ILO) in the indigenous and Tribal Peoples Convention No. 169 has wide support by Indigenous Peoples, governments, and other actors. The Convention defines tribal and indigenous peoples as:

“(a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or

(b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions” (Whiteman, 2009, p. 102).

The Perception of Justice

The common ground for all the different cultures, when speaking about conflict is the call for ‘justice’. Justice can be perceived from the point of view of the fairness of the distribution of outcomes (distributive justice), of the fairness of procedures for decision making (procedural justice), and also of the fairness of the interpersonal and informational aspects of encounters between actors (interactional justice). All affect the degree to which parties accept or resist decisions and whether they engage in cooperation, withdrawal or conflict (Greenberg & Colquitt, 2005).

The perception of justice is influenced also by the cultural environment. Indigenous approaches to justice, as opposed to Western culture, develop holistically from deep-seated beliefs of the interconnectivity of all life forms. Indigenous peoples commonly derive their collective and individual identity from the natural environment and are rooted in these local ecologies (McCaslin, 2005). While all indigenous cultures are unique, many share this general approach to relationships across social, ecological, and spiritual dimensions (LaDuke, 1999). Injustice is addressed through healing and a rebalancing of relationships (McCaslin, 2005). The goal of justice may not be, from an indigenous perspective, the punishment of the person but rather correcting action and restoring harmony across the community.

There is also the traditional law which defines the appropriate mechanisms for conflict management in a particular culture. According to McCaslin:

“Law is embedded in our ways of thinking, living, and being. For Indigenous Peoples, law is far more than rules to be obeyed. Law is found within our language, customs, and
practices. It is found within the carefully balanced relations of our clan systems and our extended families. It is also found in ceremonies and rituals. Law is a whole way of life. Through countless means, our traditions teach us how to be respectful of others and mindful of how our actions affect them. In other words, to exist as Indigenous Peoples is to live our law, which holds us in balance ... The closer we stay to our traditional ways, the more we internalize our law and its values, so that they exist among us as a natural, everyday expectation of what it means to 'be a good relative' – not only with each other but with all beings” (2005, p. 88).

**Evolution of ADR in Western culture**

In the Western culture, the history of ADR can be traced back to the ancient Greeks. The mythology offers one famous story of arbitration. The goddesses Aphrodite, Juno, and Athena could not agree on who was the most beautiful and they asked Paris, the royal shepherd, to decide. Thus, Virgil’s The Aeneid, one of the classics of Western literature, can be read as a long reflection on the consequences produced by an arbitration gone wrong (Barrett & Barrett, 2004).

For the ancient Greeks ADR was not only a matter of mythology. As Athenian law courts became crowded, the city-state introduced sometime around 400 B.C. the position of public arbitrator. The service as arbitrator was mandatory for all Athenian men during their sixtieth year. Their job was to hear all kind of civil cases in which the parties were reluctant to present the dispute to the slower and more formal court system (Harrell, 1936). While the decision to take the dispute before an arbitrator was voluntary, the choice of being an arbitrator was not. The arbitration process set up by the Greeks was remarkably official. The arbitrator was chosen by lottery for a given case and his first duty was to attempt to resolve the matter amicably. If this first attempt failed, he would ask for submission of evidence in writing and could call witnesses. The parties often engaged in elaborate schemes to challenge the arbitrator’s decision or postpone rulings. An appeal could be brought before the College of Arbitrators, which would refer the matter to the traditional courts.

ADR existed also during the Middle Ages when the king was called to make justice. Even if essentially ADR is a nonviolent process, in these early stages this was a matter of degree. Duels or trial by combat were viewed as a mean to obtain God’s judgment, especially by the noblemen. In this case God is not seen as a judge but as the most impartial arbitrator of all. For the common people, other forms of trial were also available, including placing the burning iron into the hands of the disputants, plunging a child from each side in cold water or the process of extracting a tiny ring from boiling cauldron (Barrett & Barrett, 2004).

Later in the Middle Ages arbitration became widely use in commercial matters. Although no official law was involved, in many European cities, it was known as the law merchant,
because this ADR process was developed and enforced by merchants. The legitimacy of the arbitration was given by understanding that in commercial relations mutual benefits, fairness, and reciprocity where profitable for all sides. These first steps in arbitration established some rules that are still in use today: the disputants could choose their own arbitrator, arbitration results were recorded in a state court, and the court was involved in enforcing the arbitrated outcome (Barrett & Barrett, 2004).

The other forms of ADR, namely negotiation and mediation, where developed as an alternative to war by the evolving class of diplomats. Initially, the diplomats were merely special messengers, but by the 15th century the medieval Venice established a network of permanent embassies abroad and the other Italian states followed, including papal nunciatures. As papacy assumed more and more a political role and with no army of its own the popes used frequently diplomats to negotiate agreements, mediate or arbitrate disputes between European leaders, gather information and seek political allies.

It is worth mentioning the influences that other cultures means of settling disputes had over the Western civilization. During the discovery era, the early colonists had the opportunity to observe and interact with “exotic” governance and dispute resolution processes. As an example, the word caucus is a Native American derivative, underlying the Indians long tradition of talking matters through (Barrett & Barrett, 2004).

The new diplomatic ideal provided its first great success by the Peace of Westphalia, which ended the Thirty Years War. As Jerome Barrett and Joseph Barrett note “making the peace in 1648 would require patience, a willingness to compromise, and a conciliatory attitude” (2004, p. 25). Later on, during the modern ages permanent negotiations maintained the balance of power between the European states. When diplomacy failed, war was inevitable. But even so, the peace set after the First World War was a result of discussions and mutual agreements and established a favorable environment for developing the Woodrow Wilson’s dream, the League of Nations.

ADR mechanisms became accessible or for the large public alongside with the development of the human rights. When treating workers as slaves was no more an option, the employers had to rely on softer means to persuade the employees. From this labor relation, starting with the 1920’s, ADR became largely available for settling individual and social conflicts in the Western world.

**Traditional ADR**

*Religious roots*

All the main religions played a significant role in developing early ADR practices including negotiation, mediation, arbitration, and ecclesiastical courts. The main purpose was to establish peaceful relations within their followers and to maintain harmonious communities.
Christianity has a long tradition in using ADR as a mean of avoiding violence for resolving disputes. There are numerous biblical references, including that of King Solomon who used arbitration in order to settle a dispute between two women over a newborn child. In terms of practice of practicing ADR, the village priest often served as arbitrator or mediator on an array of issues involving his parishioners. The cases handled by the priest went far beyond the spiritual life and regarded more materialistic everyday disputing situations (Barrett & Barrett, 2004). Both Catholic and Orthodox churches where deeply involved in “making justice”, as a substitute or more often as an annex of state courts.

The Jewish religion also encourages ADR, the idea of compromise in dispute resolution being highly valued. Based on the Torah and Talmud, Jewish tradition strongly urges the disputants to solve their differences informally in bitzua (mediation) or p’sharah (arbitration), before appearing in front of a rabbinical judge (Goldstein, 1981). The Hebrew managed to maintain their own informal justice system, resembling arbitration, long after the Romans occupied the Holy Land. This made possible for the Jews to avoid Christian courts of law and to prevent to testify under an oath identifying Jesus Christ (Barrett & Barrett, 2004).

ADR has a long history in the Arab world. From the earliest days of Islam the prophet encouraged the practice of tahkim, a variety of arbitration (Moussalli, 1997). During the first period of Islam there were no formal courts and the Prophet assumed the role of judge, arbitrator, and mediator and acted based on divine inspiration and specific revelations send down from the Lawgiver (Azad, 1994). Once to revelations and practices of the Prophet and his companions developed into formal institutions and Islam spread into the Arab world, the local law was amended to include arbitration (Moussalli, 1997).

The role of group or community is more important in Islamic culture, regarding dispute resolution, then the role of the individual. The struggle inside the Islamic tribes and villages to avoid conflict between its members developed a large array of dispute resolution processes. Most of them have been identified in dedicated studies by Rashid (2004) and Abdul Hak et al. (2011): nasihah (counseling), sulh (good faith negotiation, mediation/conciliation, compromise of action), mushawarah (consensus building though deliberation), tahkim (arbitration), Med-Arb (hybridized mediation and arbitration), muhtasib (Ombudsman), mazalim (special tribunals for redress), fatwa al-mufti (expert determination or non-binding evaluative assessment), and qada (court adjudication) (Oseni, 2012). Many types of conflicts, including even criminal act, were solved using one of these ADR technics in order to achieve restorative justice and diminish revenge that one family or group might use against another. Thus, the Islamic tradition of dispute resolution used of all three original forms of ADR (Chereji & Wratto King, 2013).
Influences of culture over ADR – Chinese mediation

ADR as an institutionalized practice is always culturally formulated. Chinese mediation is a good example of how culture can influence the ADR mechanisms. Mediation in China is not functionally or semantically equivalent with the concept of mediation in the Western culture. Chinese mediation’s primary goal is to prevent conflict and not to respond to it only when it breaks out. Thus, W. Jia argues that: “Chinese mediation is a continuous process of being vigilant against any potential threats to harmony, even after the harmony has been built” (2002, p. 289).

Culturally speaking, mediation in China includes the trinity of lianmian (face – mixture of the symbolic and material resources that constitute social statuses and moral identities of the members), renqing (giving favor – humanizing feelings), and guanxi (interrelation – interdependence among members is the precondition for human communication), and the concepts of compromise, tolerance, pardon, and gentlemanhood (Jia, 2002). The Chinese culture is the culture of three where there is always the teacher (Pang, 1997). In the case of mediation, the mediator is the teacher. Thus, the Chinese culture emphasize the role of the group, considering the culture of two (face to face negotiation) incomplete and the culture of one, the individual, as less desirable. Instead, the Western culture focuses on individualism, based on the permanent competition between individuals. Basically, the Chinese culture leaves no room for individualism (Sun, 1991).

The predilection for mediation and the avoidance of negotiation or litigation is deeply in embedded in the Chinese culture and originates in the teachings of Confucius (Fingarette, 1972). Shenkar & Ronen (1987) have identified three reasons that explain the preference for mediation in the Chinese culture, over litigation or face-to-face negotiation. First, the social hierarchy rules the interpersonal relations and negotiation as equals is not a likely option in the Chinese society. Second, negotiation implies defending one’s interests and the ability to express apology when needed. This kind of behavior can be regarded in China as face losing and selfish. Third, the Chinese tends to get very emotional in conflict situations preventing them from conducting reasonable negotiation.

As a process, Chinese mediation treats the conflict as being evil, and undesirable, unlike the Western approach that considers the conflict as a natural phenomenon that can be potentially productive. Thus, a Chinese mediator will act in such a manner that will not only avoid conflict between parties but also resolve it and help rebuild a harmonious relationship. Instead, a Western mediator would focus more on managing conflicts rather than permanently resolve them. To continue the comparison, the Chinese mediator is at the same time counselor, pacifier, educator, problem solver, unier, arbitrator, negotiator, litigant, consultant, and therapist. A Western mediator is supposed to ensure constructive and peaceful communication through which the parties are expected to ind their own solution and not to teach disputants to solve their conflict (Jia, 2002).
As a synthesis, Chinese mediation encompasses the three Western concepts of mediation, arbitration, and litigation. As Ren points out, “In China, mediation has a place not only in the process of arbitration but also in the process of litigation” (1987, p. 396).

**Indigenous ADR**

The following section of this study will present some ADR methods used in what it could be considered “exotic” indigenous cultures. Even if these dispute resolution techniques are used only in limited geographic areas, they show in a much larger perspective the potential of the ADR.

**The pacifying force of fire**

The term Bedouin generally describes all Arabic-speaking nomadic tribes from the Middle East. At its origins, Bedouin described those who herded camels but now the name refers to the inhabitants of the Negev region who form a distinct linguistic, political, and national group. Even if there are some Christian Bedou in the vast majority is Muslim (Marks, 1974). The social structure is patriarchal and gender roles are strongly embraced. Pride and family honor are the center of the Bedouin life and the collective is valued over the individual (Hall, 1976).

The Bedouins are using a unique ritual to solve various types of dispute, the *Bisha* ( ordeal by fire). Fire has a large spectrum of symbols among indigenous populations and in the case of the Bedouins it is a revealer of truth (Abu-Khusa, 1993). The ritual involves the licking of red-hot metal as an undisputable means of validating an accusation or erasing a stain of shame upon an individual, family, or tribe (Kazaz, 1989). The Bedouin usually apply the *Bisha* ritual to civil or criminal disputes or in situations where there is a suspicion of offence (Abu-Khusa, 1993).

Performing *Bisha* includes several steps. First, the Mobasha (the man who administers the Bisha) listens to both parties and tries to convince them not to request the ritual. Then, if he concludes that the reconciliation is not possible, he pronounces that *Bisha* will be performed and that both parties must accept its results (Apshtin, 1973). Al Krenawi and Graham (1999, p. 167) describe as follow, the ritual: “Necessary conditions for the *Bisha* are fire, a group of people as witnesses, and a ladle about four inches in diameter with a long iron handle. The ladle end of the tool is inserted into a hot, well-stocked fire. Before taking the tool from the fire, the Mobasha gives the accused some water. The accused rinses his or her mouth and spits the water onto the ground. He or she then pokes his or her tongue out for general inspection to show there is nothing on it, and that it is in its natural state. The Mobasha takes the metal tool from the fire and shows the witnesses that it is red hot. He orders the accused to put his or her tongue out, and the accused must lick the metal tool. The tongue is then examined by the Mobasha. If he ind it harmed, he declares the accused guilty; but if the metal tool has left the tongue unharmed, the accused is declared not guilty.”
From the societal level, the ritual reflects the need for a justice system within the Bedouin community, as long as the formal legal process is not considered appropriate for the community’s internal affairs. *Bisha* may be considered the last step in a dispute resolution cycle. The ritual involves a third party and does assume that previous softer methods have been used and failed (Al-Krenawi & Graham, 1999). From an individual perspective, the ritual can be considered as a sort of psychotherapy. Participation can modify a person’s social status and the relationship with the other tribe members. Also provide the opportunity for ventilation and communication of feelings, acting as catharsis (Rando, 1985).

**The role of elders in conflict resolution**

The Yoruba are one of the biggest African ethnic groups and they live mainly in Nigeria. They have a rich culture which developed an efficient way of dealing with conflicts. The Yoruba consider that presenting a dispute in court is a mark of shame as it proves that the disputants are no good people who favor reconciliation (Barrett & Barrett, 2004).

The focus on the Yoruba conflict resolution process is on the *agba*, commonly known as an elder person from the Yoruba community. Actually, the term outbound defines more than a senior person. As Lawrence Bamikole (2013, p. 146) observes: “As an attribute, *agba* suggests the quality of being reflective in the sense that data presented are not just accepted hook and sinker but put into the court of reason, looking at the pros and cons and asking questions about the motive of the person who presents the data and the possible consequences which the data might have for the person or other persons or the society at large.” Other qualities are also needed for a person as referred as *agba*: courage, kindness, tolerance, selflessness. Consequently, *agba* is a model for the community and a leader in the Yoruba society. An interesting aspect is that the ancestors can also be regarded as *agba* and evolved into the conflict resolution process, as they are considered to be wiser, having experienced the knowledge of both the living’s world and the thereafter (Bamikole, 2013).

The conflict resolution procedure involves the head of the family and the head of the village. Each party to the conflict is usually invited to state his/her own side of the story without interruption from the other party. It is believed that the persons will speak truthfully, but when in doubt they could be asked to swear on certain deities. The parties concerned can present themselves before the elders because of “their confidence in the elders for their steadfastness, shrewdness, integrity, and the length, breadth, and depth of their wisdom” (Bamikole, 2013, p. 147). The actual process of dispute resolution starts from the introduction of the parties and the elders’ sitting in council. Each of the elders would begin to review the case, in turn, starting from the “junior elders” until the most “senior elder”. During the review of the case each elder makes use of proverbs, wise-sayings, and other artistic expressions that are contextually relevant to the case.
By the time the head of the village, who is the most senior elder, finishes his submission, each party to the conflict would have known what will be the resolution. In most cases, the objective of the elders is not to blame responsibility, but to strike a balance in the case so that the parties are reconciled. The elders have an arsenal of techniques for reaching a settlement: proverbs, persuasion, precedent, subtle blackmail, and even magic. The only real power behind the elders’ decisions is cultural: they can threaten social excommunication or use emotional blackmail (Barrett & Barrett, 2004). In the unlikely event that one or both parties is/are not satisfied with the decision of the agba, the elders will reconstitute the council; but this time the ancestors would preside and their decision is always regarded as final by both parties to a conflict (Achebe, 2002).

Talking through conflict

The Semai Senoi, a group of Malaysian Aborigines, are one of the least violent societies known to anthropology. Nowadays there are around 15,000 Semai leaving in the forested mountains of the Malay Peninsula. They are scattered in small groups of no more than 100 persons, all linguistically related. Each band has a headman who has no real authority over the group but his own powers of persuasion. The society supports gender equality; some of the headmen are actually women. The Semai have a particular view about the world considering it a hostile and dangerous place. They make a clear distinction between band members and the rest of the world, between kin and not kin (Robarchek, 1997).

They are a peaceful society but sometimes conflicts occur. It can be about divorce, infidelity, land claims or other matters of vital interest for the community. If this is the case, a bechara is put in place and the individuals’ conflict becomes the concern of the entire band. A bechara is a formal assembly with the role of solving the dispute. It takes place at the headman’s house and involves the main parties and also their kindreds. Everyone has the occasion to present a case, to ask questions, to express a personal point of view or to offer an opinion or an observation. Robarchek (1997, p. 55) describe better the process: “This discussion may go on for several hours or, more likely, continuously for several days and nights. The headman’s household provides food, and participants catch a few hours’ sleep on the floor from time to time, and then arise to rejoin the discussion. All the events leading up to the conflict are examined and reexamined from every conceivable perspective in a kind of marathon encounter group. Every possible explanation is offered, every imaginable motive introduced, every conceivable mitigating circumstance examined. Unresolved offenses and slights going back many years may be dredged up and reexamined”. When no one has anything to say anymore the headman presents his judgment which is, in fact, the consensus that emerged during the discussion.

There is no mean to impose the community’s decision since there isn’t any institution of control and follow up. The parties have to voluntarily accept the decision with all
its repercussions. If a participant to the *bechara* refuses to comply with the group consensus risks alienation from his kindred and also from the band. This means that he will have to face on his own the hostile world outside his psychological security area (Robarchek, 1997). 

The entire process of bitch around facilitates an emotional catharsis. The feelings generated by the conflict situation are repeated the over and over and they are symbolically re-experienced until all of their emotional meaning is gone (Robarchek, 1979).

**Drinking as a mechanism of dispute resolution**

The Kingdom of Tonga is a Polynesian society that stresses the ideal of social harmony and the importance of strict measures of social control (Goldman, 1970). Today Tonga is a Christian nation, under the influence of the European, especially British, culture, education, legal system and commerce. A key aspect of the Tongan social interactions is the respectful behavior in regard with a person of a higher social status (Olson, 1997).

Tongan society has found a particular mechanism for social control and violence prevention: drinking kava. Kava is an indigenous alcoholic drink made of pounded roots of the pepper shrub *Piper methysticum* and water. While drinking other alcoholic beverages, as commercial or home-made beer is a source of violence and maintains a conflictual climate and it is viewed highly negative by the community, kava is a social lubricant.

Drinking kava is a social event. According to Olson (1997, p. 81): “Most evenings in the Tongan village include at least one kava party. The kava drinking party, or *faikava*, is predominantly a male activity in that it consists of males sitting cross-legged on the floor and being served the brownish liquid from a large wooden bowl supported by short legs made of the same material. Ideally, there is a female server, the tou’a, who sits on the floor next to the bowl and ills coconut half-shells with the liquid; each shell is then passed to the individual recipient. Each member of the circle in turn receives his own coconut shell of liquid, which he then consumes at once in a single lifting of the shell to the lips”.

*Faikava*, the kava party, allows unrelated persons of various statuses within the social hierarchy to socialize. “*Kava symbolizes the ethos of hierarchy, status, latent competition, rivalry, and exclusion*” (Rogers, 1975, p. 415) and *faikava* parties are a “fairly controlled forum for individuals to safely compete actively against their cohorts and rivals for the good of the community” (Olson, 1997, p. 83). Being a male dominated activity, *faikava* can be also a setting for courtship competition (Lebot, Merlin, & Lindstrom, 1992).

The essential ingredient of *faikavais* humor. Stories, jokes or amusing insults are the main weapons of the men competing. Also talking is an important element when considering *faikava* conflict management process. Voicing of opinions allows the involvement of elders, peer groups, family members. Basically, “the kava party is an informal arena
for individuals – through joking, teasing, and scolding – to express conflict in a manner that allows for some dissipation or resolution” (Olson, 1997, p. 86).

Discussion
The examples presented in this study show that the Western civilization does not have the monopoly on dispute resolution instruments. An attempt to compare the ADR mechanisms used in the Western civilization with those encountered in more traditional societies should take into consideration at least two elements: process and objective. The Western ADR is clearly more formalized, embedded in structural rules and included in a way or another into the official legal system. There is a clear delimitation between the ADR components. From the point of view of the people involved in this process, there is a clear specialization of roles (e.g. negotiator, mediator, and arbitrator) with little flexibility in altering the attributes.

Traditional ADR holds no clear distinction neither regarding the elements of the process and neither regarding the roles of the facilitator. The boundaries are elusive and the rules are dynamic. For example, in the case of the Semai Senoi is unclear if bechara is mediation, facilitation or arbitration. Often there is also no difference between informal and formal process because traditional ADR does not always function within the framework of a structured legal system.

The main purpose of the Western ADR is to settle a dispute between two entities as close to full resolution as possible. The focus is on individual, regardless if it is a person or group. On the other hand, the traditional ADR seeks to maintain the social harmony. The process involves often the whole community and the focus is on the greater good.

By traditional and indigenous ADR we do not imply a better ADR, just a different approach of dispute resolution methods. The differences between the two systems are clearly a result of their historical and social evolution. Western ADR has to address to a much larger public and therefore does have the force to contain the conflicts of holistic communities. As opposed traditional ADR is particular to a certain limited geographical area and so, it can afford the luxury to aim for the community social well-being.

References


