Chapter 3
Navigating Moral Reasoning in Mediation

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ABSTRACT
This chapter examines the importance of understanding of moral reasoning processes in individuals involved in mediation. It discusses Lawrence Kohlberg’s model of moral reasoning and applies it to a case study of a workplace dispute. The chapter also discusses the care ethic versus justice ethic debate put forth by feminist psychologists challenging mainstream theories of moral reasoning. The chapter concludes by examining the impact of moral reasoning processes on mediation and how it might lead to re-imagining the skill set needed mediates conflict effectively (i.e., skills that involve emotional intelligence).

INTRODUCTION
Mediators and their clients can benefit from understanding the how moral reasoning processes affect decision-making in mediation. Such understanding can provide a schema by which to navigate the kinds of reasoning processes their clients follow during mediation. This is not to suggest that mediators introduce their own moral- reasoning orientation to direct their clients during mediation (Bennett & Hermann, 1999; Moore, 1986). Rather, it is an invitation to mediators to explore moral-reasoning orientations they may observe during mediation (Kohlberg, 1964). Arguably, such analysis is particularly useful when conflicting orientations work to escalate the dispute and, in some instances, prevent any possibility of effective conflict resolution altogether.

Empirical evidence supports the notion that individuals adopt consistent patterns in moral reasoning throughout their lives (Kohlberg, 1964). Disputants’ moral reasoning orientations tend to motivate their behavior and steer their respective legal positions during mediation. Therefore, by becoming aware of the parties’ respective moral-reasoning orientations the mediator has an opportunity to discover what is important to them in, what would otherwise be, a turbulent sea of conflicting facts.

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In situations involving heightened conflict, individuals tend to rely on their dominant moral reasoning orientation to make sense of the world (Kohlberg, 1964). The chosen orientation becomes a framework or reference point through which to navigate conflict. By identifying the disputant(s) dominant moral reasoning orientation, a mediator can assist the parties to communicate more clearly with each other in a non-judgmental manner.

In addition, the mediator can use this awareness to disarm a disputant’s attempts to manipulate the co-disputant, the mediator, and/or any aspect of the mediation process. In mediations taking place within organizations or communities, mediators can assist the larger collective to reduce clashes and stand-offs emerging from differences in moral reasoning orientations held by the various competing stakeholders. This can often improve the organizational culture for the betterment of all.

**MORAL REASONING AND MORAL DEVELOPMENT**

Theories of moral development often accompany theories of moral reasoning. Theorists draw links between moral reasoning strategies and antecedent development through childhood into adulthood. The most notable theorist among them is Lawrence Kohlberg.

**Kohlberg’s Theory of Moral Reasoning Orientations**

Lawrence Kohlberg, renowned developmental psychologist, inspired by Piaget’s work on cognitive and moral development during childhood, (Piaget, 1932; Piaget 1952; Piaget 1977) was the first to propose a comprehensive theory of moral reasoning orientation. He believed that human beings develop dominant moral reasoning orientations to which they tend to adhere during conflict. To test this hypothesis, Kohlberg presented subjects, both children and adults, with a series of dilemmas in story form, (Boyd, D.R., Bee H.L, & Johnson, P.A. 2011) each of which addressed a specific moral issue, such as the value of human life, i.e., the famous case, in which a man’s wife is dying:

[A] woman was near death from a special kind of cancer. There was one drug that the doctors thought might save her. It was a form of radium that the druggist in the same town had recently discovered. The drug was expensive to make, but the druggist was charging ten times what the drug cost him to make. He paid $200 for the radium and charged $2000 for a small dose of the drug. The sick woman’s husband, Heinz, went to everyone he knew to borrow the money, but he could only get together about $1000. He told the druggist that his wife was dying, and asked him to sell it cheaper or let him pay later. But the druggist said, “No, I discovered the drug and I’m going to make money from it.” So Heinz got desperate and broke into the man’s store to steal the drug for his wife (Kohlberg, L. & Elfenbeing D. 1975).

Kohlberg then asked subjects a series of questions, e.g., Should Heinz have stolen the drug? Should Heinz steal the drug if the police told him he should not? Should Heinz steal the drug if the person dying was a stranger, etc? Through the responses to these questions, Kohlberg noticed that subjects appeared to adopt, on a consistent basis, dominant moral reasoning strategies or orientations. Kohlberg concluded that with increasing maturation, the child may or may not pass through three levels of moral development, each containing two sub-stages. See Table 1.