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MEANING AND SOURCES OF POWER IN MEDIATION

Power is a vague concept with various meanings. It is a contextual concept used in many fields with different meanings. We talk about political power, military power, economic power, physical power, legal power, psychological power, and social power. Mediators have power. They use their power during mediation to help the parties to communicate with each other, to change their positions, and to come to an agreement.

It is a function of mediator to facilitate the parties to reach agreement themselves. The mediator can attempt to use the processes of mediation to assist the parties reach a level of equality that allows them to arrive at an agreement. As the parties will have some direct contact with each other, the mediator must be responsible for detecting any factors that threaten the fairness and equality of any agreement [1].

Among many others researches of mediation we should admit John R. P. French, Jr., Bertram Raven, Omer S. Shapira, Scott H. Hughes, James A. Christopherson and Ukrainian researchers G. Eremenko, V. Zemlyanska, Yu. Prytyka, etc.

In the article the author aimed to define meaning and sources of power in mediation.

The field of social psychology seems to be of special relevance for the study of power relations in mediation. In essence, mediation is a forum for multi-party communication whereby each participant tries to influence another participant. Each party tries to make the other party accept its position. Each party tries to convince the mediator that its position is right. The mediator tries to influence the parties to behave in a way which would advance their common interests. In other words, at the heart of the mediators' role is communication and interaction with the parties, and much can be learned in this regard from social power and influence theories.

John R. P. French and Bertram H. Raven, two of the most important researchers in this field, defined "power" as the potential ability to influence another person, and "influence" as the use of force on another person in order to bring about a change in the person's behavior, opinions, goals, needs, or values [2, p. 150, 152].

Another definition is "the ability to control resources or access to resources that another wants or needs" [3]. Power is the ability to influence events or

outcomes, and to have an effect on the perceptions and actions of others [4].

Nobody lives in a state of complete powerlessness. Power always exists in relations. It doesn't exist of itself or in vacuum. It comes from having a resource to use.

John R. P. French and Bertram H. Raven defined five bases of power: coercion, reward, legitimacy, referent, and expertise, and later a sixth base of power, information, was added to the list.

This list of sources of power is not exhaustive many writers have suggested different classifications for the bases of social power. We can define such sources of power as:

- formal authority (judge, housing officer);
- expert/information power (expert witness, technician);
- associational power ("he looks just like my father");
- resource power (bank, oil company);
- procedural power (court clerk, bureaucrat);
- sanction power (traffic warden, teacher);
- nuisance power (vandal, salesman);
- habitual power ("things are always done this way");
- moral power (priest, philosopher);
- personal power (charismatic leader, mediator)

[4].

Omar Shapira describes following bases of power:

1) **coercive power**. Coercive power is the ability to cause what the other party would consider a negative outcome. This ability derives from control over resources such as money, physical strength, and high social status.

2) **reward power**. Reward power is the ability to bring about what the other party would consider a positive outcome. This ability, as in the case of coercive power, derives from control over resources. A personal relationship with the influenced person might enhance this base of power, making it personal reward power.

3) **expert power**. Expert power is based on a perception of the power holder as having superior knowledge and experience. One tends to follow what experts advise because one assumes that the expert knows better what should be done.

4) **referent power**. One has referent power where another (the influenced person) identifies with the

power holder or finds common points of likeness with the power holder. Positive referent power motivates one to follow what one is told by someone whom one identifies with or finds charismatic.

5) **legitimate power.** Legitimate power exists where a person believes that the power holder has a right to ask something of the person, and that the person has an obligation to do as the power holder has asked:

a) **position power** (or formal legitimacy) derives from a position or a role which makes it legitimate to ask someone for something or to order someone to perform a task.⁷⁰ This legitimacy may be expressly defined in a legal setting but can also be implied from other social norms;

b) **the power of reciprocity** (or legitimacy of reciprocity) is based on the social norm of “give and take”: where one has done something for the benefit of another, the latter should feel obliged to repay the former and do something in return;

c) **the power of equity** (or legitimacy of equity) is based on a norm of fairness which creates a right to compensation;

d) **the power of weakness** is based on a norm which creates an obligation and responsibility to assist those who cannot help themselves or who are dependent on others;

6) **informational power.** Information is power, but not every piece of information generates power, since it must be of relevance to the influenced person.

7) **environmental manipulation power.** The ability of one person to manipulate the environment of another is power, since such a change of surroundings would make the other person respond to the new situation.

8) **third parties' power.** In some cases one can rely on the power of others, with whom one can associate oneself, and by doing so extend one's own powers. Where this is the case, one can then attempt to influence another person by “invoking the power” of these third parties [5, p. 535].

The issue of power at the mediation table concerns Self-Determination and mediator's Neutrality. In fact, there is not anything to get excited about encountering an imbalance of power at the mediation table, unless it affects a party's ability to self-determine. A cornerstone of the mediation process is the protection of self-determination. If a party cannot self-determine their own future, then little difference exists between mediation and a judge or hearing officer deciding their fate for them. Empowering someone to determine for themselves the outcome of their conflict is part of the design of the mediation process and the skill set of talented mediators. Any challenge to a party's power to self-determine should be a concern of the talented mediator, requiring some serious attention and

skill application. If a mediator does not recognize and address this challenge then the mediator could unwittingly become an accomplice or collaborator in undermining a party's power [6, p. 79].

Mediators are known to be a neutral third party and mediation is defined as involving the intervention of a third party neutral. Last years this neutrality was widely criticized and as a result it no longer appears as a defining feature or even an ethical requirement in the National Mediation Accreditation Standards (NMAS). The first construction mediator's neutrality was that this third party exercised no power in mediation.

Many scholars critiqued this and mediators argued the idea that mediators have no power.

Questions remain however about the sources of mediator power and the proper limits of its exercise. Traditionally mediators attributed power to the process of mediation itself, and constructed the parties' voluntary consent to engaging in the process as giving them authority (legitimized power) to control that process. This approach was consistent with constructing mediators as neutral as to the content of mediation but in control of the process. The distinction between process and content in mediation no longer appears in the NMAS. This change is consistent with the development of “newer” models of mediation, namely, narrative and transformative models, extending the traditional problem-solving (facilitative and evaluative) models. Postmodern constructions of power are more consistent with these later models. At the same time facilitative and evaluative models are the most commonly practiced, with practitioners' sometimes incorporating ‘aspects’ of narrative and transformative approaches [7].

Scott H. Hughes illustrates five areas of power in divorce mediation: economic, intellectual, physical, emotional, and procedural. Economic power represents the ability to control the income and the assets of the divorcing couple. Intellectual power has two distinct aspects: control over information, both legal and factual, and the expertise to understand and manipulate the information. Physical power represents the ability to control the real and personal property of the marriage, the ability to provide for the housing and care of the children, it also entails control over the other spouse exercised through physical abuse. On a personal level, emotional power represents the ability to recognize injury to oneself, to disengage from the relationship, and to meet emotional needs elsewhere. On a relationship level, emotional power means the ability to control the other through threats or intimidation. Finally, procedural power represents the ability to control the course and the duration of the dispute and any dispute resolving mechanism [8, p. 553].

As a rule the types of power are not split but interwoven. Therefore one act may execute or concede

power in several categories. The differences between them are indistinct. Power is relative, situational, and can shift.

It is important that mediators' work is transparent and that the parties know before they enter mediation how it is conducted and how mediators operate. Mediation is based on a principle of informed consent, and consent would be harmed if parties were not aware of mediators' power. Even though mediators lack the formal power to impose an outcome on the parties, they are still powerful professionals who use a variety of powers in the exercise of their professional role, and have considerable influence on the parties, the process, and its outcome.

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Summary

Vodopian T. V. Meaning and Sources of Power in Mediation. – Article.

The article is devoted to the clarification of the concept of force in mediation, the evolution of this concept is explored. The sources of force in mediation are considered. The types of mediation force are given. The importance of the mediator's power (power) and sides in mediation is highlighted.

Key words: mediator, power in mediation, mediation, types of power in mediation.

Анотація

Водоп'ян Т. В. Поняття та джерела сили у медіації. – Стаття.

Стаття присвячена з'ясуванню поняття сили у медіації, досліджено еволюцію цього поняття. Розглянуто джерела сили в медіації. Наведено види сили у медіації. Висвітлено важливість сили (влади) медіатора та сторін у медіації.

Ключові слова: медіатор, сила в медіації, медіація, види сили в медіації.

Аннотация

Водоп'ян Т. В. Понятие и источники силы в медиации. – Статья.

Статья посвящена выяснению понятия силы в медиации, исследована эволюция этого понятия. Рассмотрены источники силы в медиации. Приведены виды силы в медиации. Освещена важность силы (власти) медиатора и сторон в медиации.

Ключевые слова: медиатор, сила в медиации, медиация, виды силы в медиации.