Chapter 1 : Mediation as a Second Language |

Languages and cultures are interlinked and interdependent and their teaching and learning should be too. Learning another language is part of a complex process of learning and understanding other people's ways of life, ways of thinking and socio-economic experience.

Some third parties simply maintain a list of approved individuals, while others train mediators. Lists may be "open" any person willing and suitably qualified can join or a "closed" panel invitation only. Alternatively, private panels co-exist and compete for appointments e. For example, a mediator could be liable for misleading the parties or for even inadvertently breaching confidentiality. Despite such risks, follow-on court action is quite uncommon. Only one case reached that stage in Australia as of Damage awards are generally compensatory in nature. Liability in Contract arises if a mediator breaches written or verbal contract with one or more parties. The two forms of breach are failure to perform and anticipatory breach. Limitations on liability include the requirement to show actual causation. Liability in Tort arises if a mediator influences a party in any way compromising the integrity of the decision , defames a party, breaches confidentiality, or most commonly, is negligent. Liability for Breach of Fiduciary Obligations can occur if parties misconceive their relationship with a mediator as something other than neutrality. Since such liability relies on a misconception, court action is unlikely to succeed. The case involved two sisters who settled an estate via mediation. Only one sister attended the mediation in person: An agreement was executed. At the time it was orally expressed that before the final settlement, taxation advice should be sought as such a large transfer of property would trigger capital gains taxes. One year later, when Tapoohi realized that taxes were owed, she sued her sister, lawyers and the mediator based on the fact that the agreement was subject to further taxation advice. The original agreement was verbal, without any formal agreement. Tapoohi, a lawyer herself, alleged that the mediator breached his contractual duty, given the lack of any formal agreement; and further alleged tortious breaches of his duty of care. Although the court dismissed the summary judgment request, the case established that mediators owe a duty of care to parties and that parties can hold them liable for breaching that duty of care. Habersberger J held it "not beyond argument" that the mediator could be in breach of contractual and tortious duties. Such claims were required to be assessed at a trial court hearing. United States[edit] Within the United States, the laws governing mediation vary by state. Some states have clear expectations for certification, ethical standards and confidentiality. However, such laws only cover activity within the court system. Community and commercial mediators practising outside the court system may not have such legal protections. State laws regarding lawyers may differ widely from those that cover mediators. Professional mediators often consider the option of liability insurance. Evaluative mediation[edit] Evaluative mediation is focused on providing the parties with an evaluation of their case and directing them toward settlement. During an evaluative mediation process, when the parties agree that the mediator should do so, the mediator will express a view on what might be a fair or reasonable settlement. Facilitative and transformative mediators do not evaluate arguments or direct the parties to a particular settlement. In Germany, due to national regulation "evaluative mediation" is seen as an oxymoron and not allowed by the German mediation Act. Therefore, in Germany mediation is purly facilitative. Instead, the Facilitative mediator facilitates the conversation. These mediators act as guardian of the process, not the content or the outcome. During a facilitative mediation session the parties in dispute control both what will be discussed and how their issues will be resolved. Unlike the transformative mediator, the facilitative mediator is focused on helping the parties find a resolution to their dispute and to that end, the facilitative mediator provides a structure and agenda for the discussion. Transformative mediation Transformative mediation looks at conflict as a crisis in communication. Success is not measured by settlement but by the parties shifts toward a personal strength, b interpersonal responsiveness, c constructive interaction, d new understandings of themselves and their situation, e critically examining the possibilities, f feeling better about each other, and g making their own decisions. Those decisions can include settlement agreements or not. Transformative mediation practice is focused on supporting empowerment and recognition shifts, by allowing and encouraging deliberation, decision-making, and perspective-taking.

Narrative mediation[edit] The narrative approach to mediation shares with narrative therapy an emphasis on constructing stories as a basic human activity in understanding our lives and conflict. In objectifying the conflict narrative, participants become less attached to the problem and more creative in seeking solutions. The process begins as a standard mediation, but if mediation fails, the mediator becomes an arbiter. This process is more appropriate in civil matters where rules of evidence or jurisdiction are not in dispute. The parties awareness that the mediator might later act in the role of judge could distort the process. Using a different individual as the arbiter addresses this concern. Online dispute resolution Online mediation employs online technology to provide disputants access to mediators and each other despite geographic distance, disability or other barriers to direct meeting. Online approaches also facilitate mediation when the value of the dispute does not justify the cost of face-to-face contact. Biased mediation[edit] Neutral mediators enter into a conflict with the main intention in ending a conflict. This goal tends to hasten a mediator to reach a conclusion. Biased mediators enter into a conflict with specific biases in favor of one party or another. Biased mediators look to protect their parties interest thus leading to a better, more lasting resolution. It differs from adversarial resolution processes by virtue of its simplicity, informality, flexibility, and economy. Mediation provides the opportunity for parties to agree terms and resolve issues by themselves, without the need for legal representation or court hearings. Success is unlikely unless: All or no parties have legal representation. Mediation includes no right to legal counsel. All parties are of legal age although see peer mediation and are legally competent to make decisions. Conciliation[edit] Conciliation sometimes serves as an umbrella-term that covers mediation and facilitative and advisory dispute-resolution processes. For example, both processes involve a neutral third-party who has no enforcing powers. One significant difference between conciliation and mediation lies in the fact that conciliators possess expert knowledge of the domain in which they conciliate. The conciliator can make suggestions for settlement terms and can give advice on the subject-matter. Conciliators may also use their role to actively encourage the parties to come to a resolution. In certain types of dispute the conciliator has a duty to provide legal information. This helps ensure that agreements comply with relevant statutory frameworks. Therefore, conciliation may include an advisory aspect. Mediation is purely facilitative: Instead, a mediator seeks to help parties to develop a shared understanding of the conflict and to work toward building a practical and lasting resolution. They both offer relatively flexible processes. Any settlement reached generally must have the agreement of all parties. This contrasts with litigation , which normally settles the dispute in favour of the party with the strongest legal argument. In-between the two operates collaborative law , which uses a facilitative process where each party has counsel. Counselling[edit] A counsellor generally uses therapeutic techniques. Some—such as a particular line of questioning—may be useful in mediation. But the role of the counsellor differs from the role of the mediator. The list below is not exhaustive but it gives an indication of important distinctions: A mediator aims for clear agreement between the participants as to how they will deal with specific issues. A counsellor is more concerned with the parties gaining a better self-understanding of their individual behaviour. A counsellor is fundamentally concerned about how people feel about a range of relevant experiences. A counsellor may find it necessary to explore the past in detail to expose the origins and patterns of beliefs and behaviour. A mediator controls the process but does not overtly try to influence the participants or the actual outcome. A counsellor often takes an intentional role in the process, seeking to influence the parties to move in a particular direction or consider specific issues. A mediator relies on all parties being present to negotiate, usually face-to-face. A counsellor does not necessarily see all parties at the same time. A mediator is required to be neutral. A counsellor may play a more supportive role, where appropriate. Mediation requires both parties to be willing to negotiate. Counselling may work with one party even if the other is not ready or willing to participate. Mediation is a structured process that typically completes in one or a few sessions. Early neutral evaluation[edit].

Chapter 2 : Mediating Languages and Cultures : Dieter Buttjes :

The history of "language teaching" is shot through with methods and approaches to language learning - but this book demonstrates that a more differentiated and richer understanding of learning a.

Introduction[edit] Vygotsky investigated child development and how this was guided by the role of culture and interpersonal communication. This key premise of Vygotskian psychology is often referred to as "cultural mediation". The specific knowledge gained by a child through these interactions also represented the shared knowledge of a culture. This process is known as internalization. Example[edit] The easiest way to understand mediation is to start with an example and follow with the Vygotskian principles behind it. As the candles on her birthday cake are lit and it is placed on the table, the child gains a feeling of deeply felt joy. While these would be sufficient reason to arouse an emotional response in an ape, there are mental processes in a four-year-old that extend well beyond this. She patiently waits as her family and friends sing " Happy Birthday to You ". It is a sign that today is a special day for her in which she is the center of attention and that her friends and family are praising her. The true significance of the birthday cake then, is not in its physical properties at all, but rather in the significance bestowed upon it by the culture the daughter is growing into. This is not restricted to such artifacts as a birthday cake. A classroom, a game of soccer, a fire engine are all first and foremost cultural artifacts from which children derive meaning. Like animals, we have lower mental functions tied closely to biological processes. In our birthday cake example, a toddler may well have reached out to take a handful of cream from the cake as soon as she saw it and the four-year-old may have been tempted to do the same. In humans, however, lower mental functions facilitate a new line of development qualitatively unique to humans. Vygotsky referred to this as the higher mental functions. The lower mental functions cannot be equated to those of an ape as they are interwoven with the line of higher mental functions and are essential to them. The history of the development of the higher mental functions is impossible without a study of their prehistory, their biological roots, and their organic disposition. In our example above, the birthday cake is much more than a source of nourishment, it is a sign with much deeper and broader meaning. To the extent that these signs can be used to influence or change our physical or social environment they are tools. Even the birthday cake can be considered as a tool in that the parents use it to establish that their daughter is now older and has a new status in society. The cake is a sophisticated example. Tools and signs can be much simpler, such as an infant pointing to an object she desires. It is from these simple inter-subjective beginnings that the world of meaning in the child mediated by tools and signs, including language, develops. This applies equally to voluntary attention, to logical memory, and to the formation of concepts. All the higher functions originate as actual relations between human individuals.

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Ethnographic Writings and Inter-lingual Translations Niveditha. Ethnographic writing as a product of extensive field-work done by an ethnographer to describe cultures, peoples, their customs, beliefs and behaviours is often viewed upon as the outcome of a scientific and systematic research. Translations between languages irrespective of their classifications as poetry, travel writing, social theory, or text books of medicine are tested against scales of fidelity, originality and by theories of equivalence. Each language being a product of a specific culture, when used as a tool to illustrate details of another culture would in fact create novel representations and images, which in turn end up in creating new identities. Culture, Ethnography, Overdetermination, Post-colonial, Translation. Ethnographies and translations looked upon as pieces of or acts of representation are bound by similar ethical parameters in their judgment. Ethnography and translation though perceived as entirely different kinds of activities and fostered by different disciplines, lacking homogeneity at a superficial glance, always work together when examined for the relations of power that constitute these disciplines. Not only do they create identities, they play a crucial role in the re-telling of history, thereby leading to the origination of multiple discourses. The irrefutable connectedness of the birth of these endeavours within their respective disciplines with the project of colonialism also binds them and the link thence continues in terms of the similarities in the theoretical and methodological trajectories through which both of the above- said activities of representation have passed through. Positivism and the Universal Subject Ethnographic writings which are products of intensive field work and inter-lingual translations involving contiguous or distant languages are bound together by the underlying signified of culture which is commonly present in both. Both these genres of writing are tested often against standards of fidelity and originality, though it happens in slightly varied forms in each case. We often come across criticisms of translated texts which try to judge the degrees of faithfulness of the text to its original, whereas ethnographic accounts are supposed to be crystal clear representations of the cultures, peoples and beliefs they tend to describe. The fact is that ethnographies as well as translations have to confront the same question, which is centred on the issue of representation. Cultural relativists like the American linguist-anthropologist Franz Boas had similar notions of culture. The tendency to look upon ethnographies as translations of culture first appeared in the writings of Godfrey Lienhardt. The Turns of Translation Studies. John Benjamins, p. Basil Blackwell, p. Target Orientedness and Functionalism: From Fidelity to Acceptability The realization that inter-lingual translations not only involve the problem of recreating concepts in a different language, but also carry the burden of trans-culturation of the text resulted in the shaping of target- oriented approaches to translations. Gideon Toury sticks on to the opinion that translators operate first and foremost in the interest of the culture into which they are translating and not in the interest of the source text and culture alone, thereby presenting a target- oriented functional approach to translation. Here, the text becomes a part of the world continuum, embedded in a given situation. Post Colonialism, Post-structuralism and the Third Space: The Construction of Social Meanings. Postcolonial theories of translation tend to view social meanings as constructed entities and language as an ingredient of power relations, sustained by forms of inequality. Descriptive Translation Studies and Beyond. This third space is relevant for a translator as well as an ethnographer as it is the venue which witnesses the intermediate stage of methodological invariance and the meeting of field notes with contexts and behaviours of target culture. Post-structuralism and deconstruction shattered the notion of a structure built around an unchanging centre or origin which swept away all notions of purity and originality. The term translation is no longer used to indicate an inter-lingual practice, but to name an entire problematic9. Ethnographers started questioning both the innocence of representation and long standing asymmetries of translation. Ethnography in most cases invent rather than represent cultures owing to this element of overdetermination, whereas translation produces newer texts endowed with the quality of internal coherence rather than reproducing the original. Translations form an inter-textual web: Travel Writing

and Transculturation. University of California Press, Moreover the power differences that bind languages which regulate every act of representation began to be the focus of any judgment to which a translated literary text or a finished ethnographic writing became subjected to. History, Power and Representation: Most anthropologists do not try to find what the natives believe, but will try to establish that what they believe is wrong, says Talal Asad The inequalities in the power of languages involved also influence the discursive properties of translation. Instead, the British colonizers and the agents of neocolonialism attempts to create stereotypes, ignoring the differences in intentions of languages. The strategic transformation of fiction into history by engraving the East as exotic, superstitious and with an elegant past in addition to the dismissal of history to the Orient, depicting it as decadent and effeminate was the cornerstone in building the hegemonic visuals of British progress. This symbolic domination and the resultant social order are produced by a recognition and misrecognition; the recognition that the dominant language is 12 Talal Asad. The Poetics and Politics of Ethnography. University of California Press, pp. This turns out to be a matter of foremost relevance in the analysis of representations, in this age of neo-colonialism. To unravel the long- standing dichotomies which sustain such a power gradient in turn would help to set new standards to judge representations. Works cited Bassnett, Susan and Lefevere, Andre. Translation, History and Culture. Clifford, James and Marcus, George E. The Institutions of Primitive Society. History, Post-Structuralism and the Colonial Context. The Translation Studies Reader.

Chapter 4 : Meditation and Culture: The Interplay of Practice and Context: Halvor Eifring: Bloomsbury Aca

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