

Community conferencing as transformative problem solving: dealing with the past, the present *and* the future

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The ADR community has recently debated which is better: ‘problem-solving’ mediation or ‘transformative’ mediation. This seems a curious topic, as other contributors to this newsletter have suggested. If we were to debate whether New York is superior to United Airlines, the category error would be clearer. New York is a destination. United is a way of flying there.

But there are other airlines, other modes of transport. How we choose to travel depends, in part, on where we start. Likewise, we may choose to solve problems by transforming relationships, but only if that’s an appropriate way of getting from where we are to where we want to be. Either way, a destination and a way of getting there belong in different categories.

Doubly curious: neither side of this false dichotomy actually identifies where we are. What exactly is the problem that ADR offers to treat? Is it a dispute? Is it conflict? Are they synonymous? These questions should be answered before proceeding. For it is good to have medicine, better to know how it works, but best to know what conditions it can treat. Then we need to diagnose these conditions, which requires adequate tools. To assist the diagnosis, it helps to:

- distinguish disputes from conflicts, and
- distinguish the general *category* of mediation from a particular mediation *process*.

Some disputes involve little conflict. Others are symptomatic of deep conflict. Although disputes and conflict often occur together, they are different phenomena. Conflict is defined primarily by a *general* state of negative *feelings*. Disputes are primarily about *specific* contested *facts*. And disputes over facts can be dealt with through a dispute resolution process, whether it be non-adversarial mediation or adversarial litigation

Adversarial litigation can safeguard the liberty of a person who is wrongly accused. An adjudicator considers arguments from both sides, imposes a judgement, and declares the dispute resolved. But adversarial litigation has many costs. It is expensive and time-consuming, and it has a damaging side-effect: emphasizing differences between two sides *maximizes the conflict* between disputants. The movement for Alternative Dispute Resolution (ADR) emerged largely in response to these problems.

But here we must make a second distinction, because the best known form of ADR has come to have two meanings. ‘Mediation’ refers to the general *category* of *non-adversarial processes*, but also to one specific non-adversarial *process* within that category. It is as if ‘Dalmatian’ had come to refer to all dogs, not just the spotted ones. For the sake of clarity through the rest of this discussion, mediation will refer to the *process* rather than the category, and Dalmatian will refer to the breed.

In the standard version of interest-based mediation, a third party helps disputants to:

- separate the people from the problem;
- focus on interests, not positions;
- invent options for mutual gain; and

- insist on the use of objective criteria (Fisher & Ury *Getting to Yes* 1991).

If disputants can *agree to disagree*, a mediator can follow these rules and thus help *minimize the conflict* while the disputants search for common ground. But people will sometimes *not even agree to disagree*. They will simply disagree. If so, their primary problem may not be a dispute. It may be conflict. And, by definition, people in conflict tend to:

- identify the other people as the problem;
- cling tenaciously to their own positions;
- see no possibility of mutual gain, feeling they can only win if the others lose;
- insist on their own subjective criteria.

Accordingly, once people are in significant conflict, interest-based mediation is not necessarily the right medicine. People in conflict cannot negotiate constructively unless they somehow can acknowledge and *transform conflict* into cooperation. So some alternative both to litigation *and* interest-based mediation may be required.

But what brings people into conflict in the first place? The causes and consequences of conflict fall into three general categories:

- conflict may result from some *undisputed harm*, and/or
- there may be *many* poorly resolved *disputes*, most of which are merely symptoms of the conflict, or
- there may be *no specific dispute* between individuals, but conflict between groups to which they belong.

In sum, by distinguishing disputes and conflicts, we thereby also distinguish three general approaches to conflict:

- *maximizing conflict* as a side effect of adversarial dispute resolution systems;
- *minimizing conflict* as a deliberate strategy in cases where disputants can agree to disagree about a *specific dispute*;
- *transforming conflict* in cases where there is conflict associated either with *no* dispute or *many* symptomatic disputes.

This is a useful diagnostic tool for distinguishing the situations with which facilitators have to deal. It can help identify where the parties are, thus making it easier to identify where they might wish to go, and how they might get there. But it renders our existing categories obsolete. If there are not two but three categories of resolution process, the dual categories of 'adversarial' and 'non-adversarial' processes are no longer adequate. Nor is the word 'alternative.' Nor the word 'appropriate', since each of the three approaches to conflict is appropriate for certain types of case.

Instead, in cases where the primary problem is general conflict rather than a specific dispute, the appropriate processes are perhaps best categorized as 'conflict transformation'. And there is now an exemplary conflict transformation process. It has come to be known generically as 'community conferencing.' Early versions emerged in New Zealand and Australia in the late 1980s and early 1990s, but the process is now being adopted in parts of Canada, the USA and Western Europe, often in 'restorative justice' programs.

Conferencing is not altogether new, striking a chord with people who have worked with 'circle-based processes' in many places. In its modern form, however, community conferencing was first used for cases involving young people: care and protection matters and juvenile justice incidents. The precipitating problems here were either *many disputes*, symptomatic of conflict in a family system, or acts of *undisputed harm*, often against strangers. In these applications, compared with other interventions, conferencing seemed consistently to: (i) lower rates of reoffending, (ii) increase rates of participant satisfaction, and (iii) increase the quantity and/or quality of relationships in the affected communities. In short, intervening with conferencing seemed to augment rather than diminish social

capital.

On the strength of these early results, conferencing was piloted in Australian schools. It soon came to be used for cases of conflict involving not just students but also staff and/or parents. Programs were further evaluated, and the process grounded more thoroughly in interdisciplinary theory. A group of us working with conferencing in Australia, both in the justice system and schools, began to consider applying conferencing more widely in workplaces.

Working as Transformative Justice Australia, we distinguished cases of undisputed harm from multiple disputes, and/or conflict between groups. From 1995, we began facilitating workplace conferences in Sydney and Wollongong, a neighbouring industrial city. (We also began running training workshops in North America for community conference facilitators. Lessons from workplace conferencing continue to inform our work in this area, and vice versa.)

The workplace variant of conferencing has yet to be delivered within a broader legal or administrative framework, but that may be no bad thing. We have had the flexibility to experiment with language, format and varied applications, and so further improve the process and outcomes of conferencing. Certainly, workplace conferencing is delivering some dramatically successful results. And it has been dramatised.

Leading Australian playwright, David Williamson has already penned two plays about conferencing. His 1999 play *Face to Face* met with critical acclaim in the major Australian cities and on a national tour. A film version is planned for release in 2001. David's second conferencing play, *A Conversation*, premieres in 2001. *Face to Face* dramatises the transformation of conflict among staff of a mid-size industrial organisation, whereas *A Conversation* dramatises a meeting between families affected by a brutal and tragic crime. Together, these plays indicate the range of applications for this powerful process.

So what exactly is the process being dramatised here? A conference facilitator:

- identifies sources of conflict in a system of relationships;
- brings the people in that system together in a circle;
- asks questions of participants in a specific sequence;
- begins with open questions about incidents and/or issues that contributed to the conflict;
- then asks open questions that foster greater understanding of the present effects of the conflict;
- referees the process as participants experience the transformation of conflict into cooperation;
- assists with the negotiation of an agreement to repair past harms and minimize future harm.

The facilitator is a referee, and must assiduously avoid becoming a player in the emotional transformation which powers a conference. Typically, this transformation proceeds through four stages. In the first stage, participants may seem contemptuous, angry or fearful. These emotions are directed at other *individuals* because of their *past* actions. As participants speak, however, there is a tangible transition to a second stage. Participants express disgust, distress and surprise in response to revelations about those past *actions*, and the associated *emotions* and *motivations*.

When everyone has spoken, and so helped to paint the collective picture of what happened, the community enters a third stage, experiencing a sense of deflation, a collective sense of vulnerability. The facilitator then asks what needs to be done to make things right. This is the fourth and final stage of the formal conference, and it is marked by a growing sense of interest as *plans* for the *future* are developed. Then a sense of *relief* emerges, as agreement is reached and the conference draws to a close.

To referee fairly through these stages, the facilitator must hold participants to the agreed rules and principles. We have consistently been guided by the principles of deliberative democracy: participation, deliberation, equity and non-tyranny. The facilitator satisfies the principle of *participation* by identifying the full list of people affected by the conflict and inviting them to attend. The principles of

deliberation and *equity* are satisfied if participants speak in an appropriate sequence, prompted by open questions, and are allowed adequate time to speak and be heard.

Finally, a facilitator may need to use subtle techniques to prevent one or more participants from exercising excessive power over other participants. In this way, the facilitator upholds the principle of *non-tyranny*. The skill is to uphold that principle in a non-tyrannical manner. A facilitator who directly insists on certain behaviours in the course of the conference will be perceived as a player, not a referee, and will rapidly become embroiled in the conflict. Thus, some techniques used in counselling or interest-based mediation are inappropriate in conferencing.

The rationale for these principles, and the interdisciplinary theory explaining the emotional stages of a conference, have been articulated in our recently published *Transforming Conflict*. The book provides a history, theory, and practical guide to conferencing. We hope it will encourage further dialogue about the nature of disputes and conflicts. For it seems ironic that a lack of clarity about the core of our work should foster conflict in the ADR community. Lack of clarity about disputes and conflict has allowed the word 'mediation' to be used both for the general category of non-adversarial processes and for the particular process best suited to dealing with disputes. The end result is a debate about which *process* within the *category* mediation is better.

It is as if a group of carpenters were to splinter into a guild of hammerers and a society for the promotion of the saw. But a hammer is not better than a saw. They are both useful for carpentry. Likewise, interest-based mediation and community conferencing are both useful tools. But we might all benefit from wider use of a process that can transform conflict into cooperation.

Transforming Conflict in workplaces and other communities by David B. Moore & John M. McDonald (Sydney: TJA 2000) may be ordered through the TJA website at www.tja.com.au

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