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Community conferencing for young people in conflict

Dr David Moore

In the classroom of a Sydney secondary school, an exam is in progress. Two Year 10 students are arguing over a copy of a book. The book is thrown across the aisle. The teacher calls for quiet. One student mutters to the other, 'We'll sort this out at lunch time!'

Sure enough, at lunch time, two groups of young men are milling around on the sports field. They are divided according to ethnic background — and our classroom antagonists are among them, one in each group. The one who was going to 'sort this out' assesses the situation, and decides this might not be the best time to fight. As he and his friends walk away, a tennis ball hits him on the back of the head. There's a great deal of laughter — partly because it was such a good shot, partly because it made him look silly. Still, he's sensible enough to keep walking. But when a second tennis ball hits him from behind, the fight is on.

The teacher on duty sees the melee only when the pack rolls around the corner of the main school building. The teacher is knocked against the wall and hits his head hard. In the thick of the pack, headlocks are applied, punches are thrown, eyes are bruised, a wrist is broken and some fists injured too. By the time some other staff arrive, and the worst of the fighting has run its course, there are injuries to the teacher on duty and to five or six students. Some of them receive hospital treatment.

Now, as always, the principal has to decide how to respond. And like most office bearers in most systems of governance, his guiding questions are: 'Who did it, and what do we do to them?' In this particular case, eight boys are deemed to be the chief troublemakers. Five are suspended, and the matter is referred to the local police. They now have to ask

much the same questions: 'Who appears to have done what? Do we lay charges, so that a magistrate can decide what we do to them?'

To thicken the plot, other government agencies become involved. A disproportionate number of boys from one ethnic group are suspended. This is automatically taken as evidence of racism, and a formal complaint is lodged to the Anti-Discrimination Board (ADB).

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Had this incident occurred a year or so earlier, the police might indeed have laid assault charges. But two significant recent institutional changes in this part of town have changed the situation. First, the local police, like their counterparts around the state, are now operating under the *Youth Justice Act 1997* (NSW) which allows for the use of 'youth justice conferences'.

A youth justice conference would most likely have been convened had the police decided to deal with this case. Police could have referred the case directly to the local Juvenile Justice Administrator,

who would have arranged for a youth justice conference to be convened. Alternatively, they could have sent the case to the local court, but the magistrate would probably likewise have referred the case to the local Juvenile Justice Administrator.

In fact, however, the police refer the case to neither Juvenile Justice nor the court. A second institutional change means that they can simply hand the case back to the school. Schools in this district of Sydney have begun to pilot the use of 'school community forums'. As it happens, this pilot program began in schools around the same time that the *Youth Justice Act* became operational.

School community forums are used to deal with incidents of violent and/or disruptive behaviour that would previously, without exception, have met with a long suspension or exclusion. Both the sergeant and the principal know that the youth justice conference and the school community forum are essentially the same process; they bear different names simply because they are run under the aegis of different departments.

Community conferences

The generic term for the process is a 'community conference'. A community conference brings together a group of people in conflict. It provides those people with a structured sequence through which they can acknowledge the causes and consequences of their conflict. The focus of a conference shifts from the past, to the present, to the future. As the focus shifts, so the motivation of participants shifts from conflict to co-operation. Then they can begin to negotiate an optimal agreement.

For the process to unfold according to this ideal, and to generate an optimal agreement, 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 ➤



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- and/or issues that contributed to the conflict;
- asks open questions that foster greater understanding of the present effects of the conflict; and
- assists with the negotiation of an agreement to repair past harms and minimise future harm, ensuring that all suggestions are adequately deliberated and all undertakings recorded.

The facilitator must referee, and must avoid becoming a player in the emotional transformation which powers a conference. Typically, this transformation proceeds through four stages. During 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 the past *actions* of other participants, and about their 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 initiates the fourth and final stage of the formal conference. 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. In our experience, the surest guidance here is provided 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 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*. Skill is required to uphold this 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.

Community conferencing is suitable for cases where neither court nor interest based mediation is ideal. Certainly, the adversarial system of courts can safeguard the liberty of a person who is wrongly accused. An adjudicator will consider arguments from both sides, impose a judgement, and declare the dispute resolved. But adversarial litigation has many costs. It is expensive, it is time consuming, and, by emphasising differences between two sides, it *maximises* the conflict between disputants.

Community conferences in the spectrum of dispute resolution processes

The movement for ADR emerged in response to these problems. The best known form of ADR is mediation, a word that has come to have two meanings. 'Mediation' refers to the general *category* of *non-adversarial processes*, but it also refers to one specific *process* within that category. 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).

When disputants *agree to disagree*, a mediator can use these rules to *minimise the conflict* while the disputants search for common ground. But people will

sometimes *not even agree to disagree*. They will, instead, simply disagree. If so, their primary problem may be more general conflict than specific dispute. 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; and
- insist on their own subjective criteria.

For people in significant conflict, then, interest based mediation tends not to be the right medicine. They cannot negotiate constructively — with or without third party assistance — unless they can first acknowledge and *transform their conflict* into co-operation.

For people in significant conflict, some alternative both to litigation *and* interest based mediation is required. Community conferencing, which deals primarily with general conflict rather than specific disputes, offers that alternative. It has proven to be suitable when:

- conflict has resulted from some *undisputed harm*;
- there are *many disputes*, most of which are merely symptoms of deeper conflict; or
- there is *no specific dispute* between individuals, but conflict between groups to which they belong.

Our opening case study exemplifies how all these elements can be present in complex cases. The students involved in the melee all admit their involvement, agree they should not have been fighting, and regret the physical injuries that have been caused. In that sense, theirs is a case of undisputed harm.

But there was also history of poorly resolved disputes between the two students whose classroom tussle over a book was a prelude to the fight. Several other students likewise bore grudges against others over earlier incidents. In that sense, earlier disputes were both causes and consequences of deeper conflict.

Finally, the general sense of conflict between two ethnic groups made a fight more likely, and amplified that fight once it began. This later justified the threatened involvement of a government ➤



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➤ agency in the case. For all these reasons, this was a case that called not so much for dispute resolution as for conflict transformation.

A community conference in action

Since the school could facilitate a community conference, the police officer suggested that they arrange to deal with the matter in-house. In this particular case, given the possibility of police charges and the involvement of the ADB, the school chose to ask for independent help from outside the Department, and Transformative Justice Australia (TJA) agreed to facilitate the conference.

The community conference began with the students painting a picture of the lead up to the incident and the incident itself. This was the first time anyone had heard perspectives from all of those involved. The extent of the conflict caused by the event became clearer as family members and friends were invited to talk about how they were affected. Some of the adults then began shouting at each other after one of them suggested he thought the other ethnic group in the room were 'genetically' predisposed to fighting in packs.

The facilitator might have suggested that this sort of slur was inappropriate, but a great deal of learning would have been lost by such an intervention. Instead, the adults were not prevented from shouting their way through to a calm moment where they were able to stop and see how they had escalated a dispute into (verbal) conflict, much as the boys had done with their fists. Some of the adults had also articulated their prejudices. Now these were articulated, they could be addressed. And they were.

These exchanges powerfully moved the participants away from conflict and towards co-operation, yet many participants were clearly still upset by the failure of the students to apologise adequately for the fight. They appeared not to have been moved by anything said by their colleagues or their parents. What did move them were the words of the principal,

who spoke about how he was nearing the end of his career, felt he had markedly improved the reputation of the school, but now felt that, with this incident, all his work might prove to have been in vain. He had tears in his eyes as he spoke. The students were visibly moved, apologising and asking how they might try to make things right.

The conference negotiated a detailed agreement to do just that. It included ways not only to respond appropriately to damage that had been done, but ways also to foster a greater co-operation

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and less conflict among the Year Nine and Ten students. Typically, the report some months later was that the conference agreement was achieving that outcome. The conference had turned conflict into an opportunity for positive cultural change.

Scope for community conferencing

Since the mid-1990s, community conferencing programs have been established in Australasia, North America and Europe. Community conferencing is now being used in schools, care and protection matters, the justice system, small communities and workplaces.

Different program applications of conferencing seek different specific outcomes. Conferencing in schools has significantly reduced the rate of suspension and exclusion. Community conferencing is used in many schools that already have peer mediation programs. This is very sensible. The two processes are philosophically compatible, but they apply to different cases. Peer mediation helps students develop their capacity for negotiation, clarity of expression, dialogue and authoritative refereeing, but conferencing is required if students find themselves in deeper conflict. Conferencing is also required when conflict extends beyond students to staff, parents and/or other members of the school community.

Conferencing in the justice system has diverted cases from court, reduced re-offending more than comparable interventions, produced unprecedented rates of participant satisfaction and increased social capital in the affected communities. Workplace conferencing has dealt effectively with immediate problems and has also tended to improve the style and systems of communication among colleagues. The same is true of conferencing in small, geographically defined communities and in care and protection matters, if the process is appropriately facilitated.

What all these evaluation outcomes from Australasia and North America have in common is the finding that conferencing turns conflict into an opportunity for learning and systemic change.

TJA Directors David B Moore and John M McDonald have summarised their work with community conferencing in a new book, *Transforming Conflict in Workplaces and Other Communities*. The book introduces the theory and practice of conferencing, with a particular focus on workplace applications. It was in workplaces that the need for a new explanatory paradigm became most obvious. ●

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