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Dorothy Spiller

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New frontiers for ADR applications

ADR in the university: the limits of a problem solving paradigm

Dorothy Spiller

General Editor

Laurence Boulle
Professor of Law,
Bond University, Queensland

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The milieu of the contemporary western university has many features that make it susceptible to conflict. Consequently, finding appropriate models of conflict resolution for universities is becoming imperative. Currently, there is a considerable amount of mediation practice in western universities and increasing recognition of its usefulness. However, there has been less debate about and analysis of the model and philosophy of mediation that may best serve the university environment.

This article suggests that there are limits to the benefits of a mediation process that is based on the *problem solving* tradition for this environment. Instead, the *communication* model of mediation which focuses on discourse and considers relational and systemic questions may be better suited to the tertiary sector.

Sources of conflict in the tertiary environment

Conflict has always been a part of the university environment and some of the traditional features of western universities still remain as sources of potential conflict.[1] The intellectual climate of the university encourages debate, a range of perspectives and discipline specific differences in approach and ideology and thus, inevitably, disagreement. In addition, the longstanding tradition of collegial ownership means that many academics believe in their right to have input into all aspects of the university life and governance.[2]

Questions about ownership and control have been exacerbated by a number of factors affecting the contemporary western university. Many academics still cling fervently to the traditions of individual autonomy, but the contemporary reality is that there is strong pressure on academics to be accountable to a wide range of stakeholders. Governments, students, administrators, employers and the broader society are all claiming ownership of the university and trying to influence the direction of university education.

The contesting agendas create enormous potential for conflict. In addition, universities have been affected by the ethos of management. Fee-paying students often see themselves as consumers and universities engage in expensive marketing campaigns and are subject to audits and monitoring. The conflicting perspectives make the university ripe for conflict and engender a climate of uncertainty about academic identity.

This uncertainty about academic identity permeates the daily working life of academics. The debates about the relative importance of teaching, administration and research have been intensified by a number of factors.[3] These include the increase in student numbers at most western universities and the increasing diversity of the student body. At the same time, there are heightened expectations about the quality of university teaching and ongoing pressure for research

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production. All these demands and uncertainties may foster competition between academics who want to protect their positions and may be suspicious of their colleagues and their workloads.[4] In a climate in which people are under pressure and core questions about identity are at stake, conflict is an inevitable consequence.

Not only are collegial relationships threatened in the current university environment, but also the inherently problematic relationship between staff and students is complicated by major changes in the composition of the student body. Students now come from a range of backgrounds in terms of culture, age, socio-economic demographics and prior academic experience. Students from different backgrounds will have their own distinctive expectations of university education and their understanding may conflict with the expectations of academic teachers, other students a nd the institution.

The climate of change and uncertainty in the contemporary university is heightened by the technological revolution in teaching and learning.[5] The incorporation of technology into higher education has destabilised the traditional boundaries of the classroom, and prompts questions about the role of academic teachers in the future. It is likely that this learning revolution will result in fundamental changes to the identity and character of university communities. It is also possible to speculate that the increasing recourse to online teaching may impinge on patterns of communication and be another potential source of conflict.

The campuses of contemporary western universities are thus charged with multiple, contesting voices. Western universities are made up of many different groups and subcultures that are often in conflict with one other. A report by the Carnegie Foundation[6] suggests that the 'heteroglossia'[7] of academia is accompanied by a fragmentation of campus life. Factors contributing to this fragmentation include devolution on campuses, the demands of work and family, student diversity, increasing separation between academic staff, administrators and managers, and incoherent curricula.

In this context, there is a need to address the impact of change and to explore new discourses that can redefine academic community in such a way as to accommodate diversity. Furthermore, the corresponding uncertainties about academia mean that academics need to explore frames of reference that can enable different expressions of academic identity and purposes to co-exist in constructive ways. There is a need for discourses that can accommodate multiple truths.

Limits of the problem solving approach for the university environment

In the current university climate, the problem solving model of mediation is not necessarily the optimum approach to conflict resolution. With its focus on issues and settlement, the problem solving approach may not be able to address the deeply rooted questions that are the sources of much conflict in the contemporary western university. In the problem solving model, conflict is believed to occur because of the incompatibility or perceived incompatibility of the needs and interests of the parties. The mediator aims to facilitate dialogue and collaborative problem solving by the parties. The aim is an outcome that will satisfy the needs and interests of both parties.

This view of conflict and conflict resolution is built on the conception of society as a collection of autonomous individuals. It has been argued that the problem solving model of mediation is governed by self-interest, albeit 'enlightened self-interest'.[8] The focus on the needs of individuals means that there is not a significant emphasis on broader systemic factors that are frequently embedded in the fabric of conflict. While the problem solving model does attempt to deal with the underlying interests of the parties, critics contend that a settlement preoccupation may mean that the relational factors in a conflict are dealt with in a cursory fashion.[9]

The problem solving approach to mediation, with its philosophical foundation of individualism, cannot address the underlying problems in the contemporary university. The goal of satisfaction of individual needs, while

possibly offering short term resolutions, may ultimately reinforce the fragmented character of university life.

Many of the features of university life, as outlined above, involve a clash of competing world views and value systems. In the long term, conflict resolution based on satisfying individual needs may encourage individuals and interest groups to try to protect and nurture their own interests without reference to the needs of the community. Competing factions may become more entrenched in their positions and isolated from each other rather than connected. It has been argued that there are deep rooted systemic questions that need to be addressed in the universities and new ways of thinking and talking about academic endeavour that must be explored. In this environment, the communication model of conflict resolution that focuses on discourse is particularly apt.

Communication perspective of mediation

The communication view of mediation is underpinned by a particular understanding of the nature of conflict. From a communication perspective, conflict is a dynamic process that is shaped and reshaped by people's interaction with others, as well as by broader systems and social frameworks. In their interactions, people continually encounter others who construct their experiences differently and who draw on different personal, cultural or ideological organising frameworks.

Communication scholars suggest that differences themselves do not constitute the problem, but the difficulty resides in the way we communicate about difference, that is, 'conflicts are constructed by those who engage in them'.[10] Narratives of conflict and their interplay shape the unfolding of conflict. The communication understanding is that people reconstruct events through a range of interpretative lenses that include personal and cultural history, emotional factors and the need to be seen well by others and themselves.[11] Individual constructions of events are also embedded in socially constructed notions such as gender and cultural values and, often unrecognised contextual factors. Concerns about personal identity, and about moral and social values that influence the way in which people frame conflict, mean that these constructions can be charged with a high level of emotional energy.[12]

What is the role of a mediator in relation to these conflict stories? From a problem solving and settlement perspective, the goal of a mediator is to help the parties disengage the issues from the fabric of the story so that the parties can focus on collaborative problem solving. However, a communication perspective recognises that the stories that parties tell illuminate truths that need to be identified and reframed in more constructive narratives.

For the mediator and the parties to the conflict, it is less a question of the truth that lies behind the stories and more about redefining the truth that is embedded in the stories. The role of the mediator in this perspective is to pay close attention to the narrative and linguistic features of the parties' stories and to help the parties engage with these features. This process includes the mediator and the parties exploring the narrative structures of their stories, probing metaphors and subtext, and considering alternative narrative structures. A mediator should be sensitive to the clues that reveal the frames used by conflicting parties, and encourage them to explore these frames and experiment with alternative frames. Littlejohn and Domenici emphasise the importance of the mediator listening attentively to the stories told by conflict protagonists and being alert to connections between the stories and to the way in which people punctuate or organise their stories.[13]

From a communication perspective, it is also important for a mediator to work with the parties to evaluate the socially constructed framework of beliefs that frame their conflict stories. Pearce and Littlejohn call these frameworks 'the moral orders' in which disputants frame their worlds, and argue that they involve deeply felt beliefs about the way in which the world is constituted.[14] A mediator needs to be sensitive to the verbal clues that suggest a particular ideological orientation and belief system and help the parties to cultivate an awareness of the frameworks within which they work. From this perspective, 'a successful mediation then is one in which mediators empower disputants by developing an awareness of the disputants' forms of life as well as an awareness of what needs to be done to help the disputants effect the necessary elaboration or transformation'.[15]

A mediator also needs to be reflective about his or her own 'moral order'. Failure to do so may be fundamentally detrimental to the empowerment of the disputants, as the mediator may assume that the parties share his or her belief system, or the mediator might unthinkingly be more sympathetic towards the party that sees the world in a similar light to himself or herself.[16]

In a mediation, careful exploration by the mediator together with the parties may help to bring the 'moral orders' that frame the parties' understanding to the surface. In many cases, disputing parties may be surprised to uncover points of commonality in the way in which they see the world. This can make it easier to locate the personal truths that underlie the parties' conflict stories, to gain mutual recognition and to move on from the impasse of the conflict.

In personal and public disputes, however, it may emerge that the parties work from belief systems that are in fundamental and intractable opposition to each other. Pearce and Littlejohn call these clashes 'moral conflicts' and say that they occur 'when people deeply enmeshed in incommensurate social worlds come to clash'.[17] It is almost impossible for a mediator to change such polarised positions and to bring about a reconciliation. A mediator needs to help the parties to find a way of talking across their different moral orders.

Littlejohn talks about this process as finding a 'discourse of redefinition'.[18] The 'discourse of redefinition' can help parties with diametrically opposed world views to see each other in a different light and to find ways of talking across intractable differences. Littlejohn notes some key approaches in building a 'discourse of redefinition'. These include 'creating new frames to transcend old differences', creating 'new

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patterns of communication to transform relationships', and creating opportunities 'to explore the powers and limits of multiple world views'.[19] Examples of reframing include working with the parties to find new terminology for stating their beliefs in order to break the polarising effects of overused and destructive labels. Other possibilities are helping the parties to explore positive as opposed to negative forms of expression or reframing discussion in future oriented ways.[20] Reframing can also be helped by a collaborative exploration of and agreement on ground rules that help to set up a climate of civility and mutual respect.

In contrast to the emphasis on individual interests in the problem solving tradition, the communication perspective stresses a relational understanding of conflict. Every communication endeavour of one party to a conflict will shape and reshape the pattern of the conflict. Correspondingly, in a conflict intervention, any move by either party or by the mediator will influence the pattern of the conflict dynamic. A relational understanding of conflict and therefore mediation also means that the quest to enhance the relationship of the parties is the primary focus of the mediation. The hope is that resolution will flow from improved relationships, but the communication perspective prioritises relationship and acknowledges that resolution is not inevitable.

In addition to a relationship focus, a communication perspective works from the premise that conflicts occur within a network of inter-related contexts. These networks include the broader patterns of relationships in which the parties are embedded as well as the cultural context.

The mediator engages with the parties to explore the influence of these contexts and also recognises that contextual influences may change for the parties and the mediator as the mediation progresses.[21] The mediator keeps asking questions that encourage everyone to reflect on the influence of broader systems and to probe how these might be altered for more positive outcomes.

From a communication perspective, the interaction between the mediator and the parties constitutes another system that is related in a dynamic way to all the other contexts that shape the disputants and their connection. The mediator becomes connected with the parties in a dynamic and fluid way, simply by virtue of the personal qualities that he or she brings to bear on the mediation. This inextricable connection between the mediator and the parties has led Cloke and Goldsmith to propose the word 'omnipartial' as a more precise description of the mediator's role than the more usual term of impartial.[22]

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Benefits of a communication approach in the higher education setting

A communication understanding of conflict and mediation has many features that make it appropriate for the university context. If one considers the potential sources of conflict in universities, there is a common underlying theme: the efforts to make sense of academic identity in the light of all the changes within universities and in the relationship between society and the university. Progress in academic life

requires the ability to search for and articulate discourses that can help people to live with the current uncertainties about academic identity.

The benefits of a discourse focused communication approach to mediation in tertiary institutions will now be considered in relation to some of the specific sources of conflict in academia.

First, a communication approach to mediation accords with the intellectual climate of the university. A long cherished ideal of the university is to encourage students to develop the capacity to appreciate multiple perspectives. Settlement focused mediation, with its emphasis on separating out the issues, contradicts the notion of complex multiple realities that are constructed by language and context. By contrast, the communication approach to mediation encourages parties to explore their 'grammars', narratives and paradigms and seek for some common frames of reference or at least learn to acknowledge differences and communicate respectfully across them. In addition, the communication approach is ideally suited to the academic enterprise that is quintessentially concerned with making sense of experience through discourses of different kinds.

Second, there is a prevailing mood of uncertainty about academic identity. As noted above, there are many elements contributing to this climate of uncertainty. Many changes have happened over time without academics explicitly reconceptualising what it means to be an academic. Inevitably, different academics are operating within different conceptual frameworks of academic endeavour. For the most part people do not articulate these frameworks, but they often contribute to conflict. When conflicts arise in the university, a mediator could work with parties to help them uncover the belief systems about academia that frame their discourses, and collaborate with them to find more compatible frames of reference. Such an approach should sit comfortably with people whose training is dedicated to the rigorous scrutiny of language. When conflicting parties can see the different stories about academic life that underpin their thinking, they may be able to talk about ways of co-existing more comfortably and in this sense resolve their conflicts. Furthermore, it may be possible to start co-constructing a more comprehensive academic identity that can embrace difference.

Third, many conflicts in the contemporary university are underpinned by the tension between an historic tradition of individual academic autonomy (often associated with the phrase 'academic freedom') and the increasing demand for collective responsibility that includes responsibility to colleagues, students and the institution. The settlement model of mediation that focuses on the satisfaction of individual interests does not address the need to find a balance between the individual and the collective. On the contrary, by dealing with conflicts as disagreements between individuals over goals, the approach may even reinforce the individualist traditions of the culture at the expense of building connection with others. Like the transformative model of mediation, the communication perspective recognises the need to attain the subtle balance between a strong sense of self and recognition of and connection with others.

There are other specific characteristics of the contemporary university that lend themselves to the use of a communication model of conflict resolution. Most significant is the diversity of the student body that requires a model of conflict resolution that is premised on the recognition that people construct their realities differently according to social, cultural and ideological backgrounds.

A case study of conflict: applying the communication approach to mediation

A case study from a NZ university suggests how a communication model of mediation could be applied in practice.

This case concerns a dispute between two factions on the Waikato Student Union (WSU) and their respective supporters at Waikato University. The case was widely publicised on campus and in the local press. The main protagonists in the conflict are, on one side, the WSU education officer and the Maori students' officer, and, on the other, the former president of the WSU (who has recently resigned) and the editor of the student newspaper *Nexus*. Supporters have gathered around each of these groups. According to the newspaper account of the conflict, opponents accuse the education officer and the Maori students' officer of violence, intimidation and lack of accountability in their use of student funds. The opposing group argues that the former president was unable to run the WSU and is taking the editor of the student newspaper to court for a defamation action. The group supporting the education officer are all Maori, while the other group is made up of students of a range of ethnic backgrounds including Maori. Issues about race have entered the dispute.

In a problem solving approach to mediation, a mediator may try to work with the parties to separate out the key issues and encourage the protagonists to focus on the problems and not the people. It may be possible to isolate the issues of defamation, accountability for public money and even complaints of intimidatory behaviour. Possible resolutions could include the establishment of certain codes about material in student publications and the use of student money and even perhaps an election to bring about a complete change of personnel.

However, when one looks at the language in which the dispute has become couched, one can see the near impossibility of isolating issues from relationships, context, cultural concerns and deep-seated feelings about identity. Thus, for example, there are claims that the WSU student officer and the Maori Education Officer are making the WSU an 'unsafe workplace', there are complaints of 'nepotism', and the *Nexus* article talks about the '*hapu* [sub-tribe] of the WSU student officer getting their hands on WSU money' and refers to him as a 'drug user'. For his part, the WSU student officer claims that the *Nexus* article is defamatory and according to the report his 'associates say the pair have *mana* [integrity/prestige] as leaders' and 'are creating milestones in Maori student representation'.[23]

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The language suggests how the stories told by these disputing parties are embedded in very different 'moral orders'. Polarisation is linked to perceptions of cultural identity and views about how the opposing group holds and uses power. The words and the stories woven around these words need to be addressed. Isolating specific issues cannot resolve what has essentially become a war of words and the belief systems that they enshrine. While it is possible that a resolution may not be possible with such intense polarisation, an exploration of the 'frame of reference'[24] used by each party may at least liberate all parties from the entrapment of the language into which each group has become locked.

The first step in exploring this language and its shackles would be for a mediator to take the dispute out of the public domain. Mediations would need to be conducted in a private confidential setting and both the press and supporters need to be kept out of this setting. The newspaper article shows how publicity can reinforce the language that ossifies positions. The article begins with a description of the physical appearance of the WSU officer which resonates with suggestions of latent aggression — the writer observes that 'the WSU Education officer wears a black t-shirt that accentuates his powerful physique, his shaven head is hidden under a trademark beanie, a loop earring in his left ear'.[25] Inflammatory accusatory labels used by the disputants such as 'nepotism', 'harassment', 'racism', and 'violence' are also reiterated a number of times in the report.

In setting up an environment for a confidential mediation, it may even be helpful for the mediator to work initially with representatives from each side who are not the main public spokespeople, as those people may find it difficult to separate themselves from their publicly stated personae.

The emphasis of the communication approach to mediation on the interaction of the parties and the mediator means that there is no set script for how the mediation must develop. However, it is possible to suggest some strategies that may be helpful in encouraging the protagonists to explore the verbal matrix that is shaping their dispute and in working towards more constructive discourses that may enable better relationships.

In the first instance it may be useful to explain the nature of the mediation to the disputants and indicate that it may not result in a specific settlement. The disputants need to agree to the approach. In this particular case, strategies adapted from family therapy by Chasin et al may be helpful.[26] The first step is for the mediator to invite each party to share his or her feelings about entering the mediation before it even begins and to record these for the perusal of the other party. This strategy immediately focuses the disputants on the complex humanity of the other party and may encourage some recognition of the personal impulses and fears that are embedded in the stories that have become destructive.

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In a similar vein, the strategy of inviting each disputant to share the histories that have brought them to the current point encourages the disputants to begin unpacking the narratives behind the immediate intransigent war of words. In the tradition of transformative mediation, the idea of inviting participants to share any grey area or voices of uncertainty that they have about their stances could be very helpful in the case under discussion.[27]

This strategy, if effective, can open up suggestions of vulnerability which is important in mutual recognition.

The mediator would need to work with the parties to find agreement on some ground rules about process. These could include the usual ones such as not interrupting while the other party is speaking, and also include agreement on language focused ground rules. For example, the parties might be asked to reframe any statement that is phrased as an attack or invited to find alternatives to words which have been used repeatedly in the dispute and in which the conflict has become stuck (such as 'intimidation', 'harassment', 'nepotism' and 'racism'). These rules about language not only promote a better environment for dialogue, but can also be a first step towards parties creating alternative frames of reference.

The mediator could invite the participants to tell their stories of the conflict and through ongoing questions invite parties to explore the values, concerns and fears that lie behind these stories. In the process, it may be possible to uncover points of commonality, such as fears about identity and concerns about having one's individual or cultural voice heard on campus. Disputants can also be invited to explore organisational and structural factors that may be shaping the way in which the parties articulate their understanding of their place in the student community and in the university as a whole. It is hoped that such an approach may, at the very least, enable the disputants to move out of a narrow paradigm of their conflict and to become aware of the role of individual and cultural histories as well as systemic contexts that determine their discourses and their accompanying perceptions of the conflict.

A further step would be to begin to construct a frame of reference that recognises points of commonality and differences, well as addressing organisational frameworks so as to deal with fears and concerns about voice, identity and power.

Conclusion

As the discussion of the above case illustrates, the communication model of mediation aims in the first instance to bring about a change in the way that people see things by inviting an exploration of the language and the narratives in which they frame their positions. The hope is that the exploration of language and the history, contexts and values embedded in the stories of the protagonists will enable participants to work towards finding more compatible frames of reference.

The argument here has been that, in the uncertain environment of the contemporary university, the communication approach to mediation could offer benefits not only in particular conflicts, but to the university as a whole. The communication approach could help people within the university context towards naming the multiple discourses at work in contemporary higher education and finding points of coherence.

Without such interventions, the modern university is in danger of being fragmented by the demands of competing voices. A discourse centred model of conflict resolution is a first step towards finding a language that can accommodate diversity and change and also shape a vision of a new kind of community. ●

Dorothy Spiller is a Senior Lecturer in Tertiary Teaching and Learning at the University of Waikato, New Zealand.

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