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New developments in ADR

Chaos, creativity and mediation: a complex systems view

Shelley Rosen

An interesting concept in dispute resolution is CIRCA: Creativity and Innovation for Resolution/s of Conflictual Agencies.

CIRCA 2nd millennium refers to the patterns in our lives being fundamental to the knowledge in our lives.

The main story lines of this article are as follows.

- Difference and latent conflicts exist, at variant levels, in all groups of people.
- Conflict has a chaotic potential and latent conflict holds potential to transcend chaos.
- 'One to whole' relationships create a lens for viewing conflictual and change agencies. This is a complex, dynamic systems view.
- Dispute resolution always occurs after the dispute; however, what about mediating latent conflict as a creative opportunity, early in relational development?

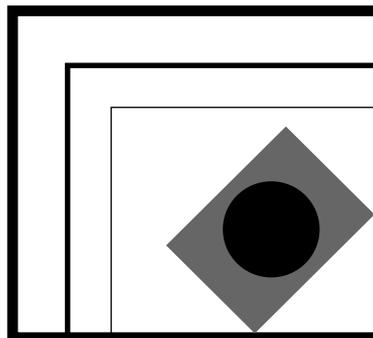
Abstract framing and reframing — an example

Personal frame

Growing up was painful. I remember the vocal yet unstated menace of popular convention: from my parents; from religious figures; from my strictest teachers. 'Why must you think that way?' 'Stop asking so many questions.'

'Draw on paper, stop drawing on walls!' I eventually learned that most families use their best walls for hanging pictures in frames.

CIRCA reframe



The picture shows a simple, geometric icon that maps the concept progression within a dispute resolution context. The external frame (——) draws a scope boundary; this is an holistic systems worldview of difference and disputation. The action area reduces to the next frame (——) which represents mediation processes. The contraction in the next frame (——) represents conflict dynamics. The solid interior delivers the main interest: a rotated reframe around latent conflict that hosts a different shape! The real form of this shape evolves from the myriad patterns of human interactivity.

Creativity is hybrid vigour

Alternative dispute resolution is not pedigreed from our legal system. Like the first kelpie pups bred from some kind of collaboration between indigenous dingoes and colonial collies, dispute resolution has evolved from a hybrid of systemic, community and individual choices. The ADR 'movement' and kelpies really have much in common: the kelpie continued to be bred. The characteristic selection processes became more formal and eventually breed recognition followed. In keeping with the metaphor, ADR has also emerged as a popular, valid alternative to established, older 'breeds' such as judicial determinants.

Scope boundary: systems of complexity and chaos

The emergence of innovative responses to systemic problems of difference, disagreement, dispute and conflict are both resonant and dissonant with natural human patterns. Literature and history sustain a perceived wisdom: that people resist change. Yet most people are tolerant of some change —some more so than others. Broadly speaking, the majority of people are fairly intolerant of change and 'it is not so much change that people resist, as having it imposed on them'.¹ ADR practice works well



with people's natural resistance to imposition. It is a common social pattern. Collective story building in families and groups illustrates the pattern. Events are ordered and reordered to minimise flux and maintain stability. Conflict is generally represented as an element of change and instability, one that undermines social order.² Conflict can easily become chaotic. 'Yet the paradox of chaos and order is not new. As ancient myths and new science teach, every system that seeks to stay alive must hold within it the potential for chaos.'³

In chaotic systems the appearance of order is lost. Unstable mathematical systems seem to wander chaotically in computer models, always displaying new and different behaviour. But over time, a deeper order — a shape — is revealed: the chaotic strange attractor, a three winged bird (pictured left).⁴ The strange attractor shape is inherent in the system; always there, but not perceived until



its chaotic movements are plotted in multiple dimensions over time. What if there is an emergent pattern or shape forming our chaotic, strange attraction to internal, individual and external, collective human conflict. Maybe any such inherent form is only discernible through the expansion of consciousness over time.

The relationship of the one to the whole is critical in chaos theory and the sciences of complexity. Carl Jung also explored the holistic nature of one to whole relationships through states of consciousness.⁵ Conflict, a recurrent dynamic pattern of individual and societal behaviour, can be viewed through the lens of holistic systems thinking. The potential for conflict is the potential for chaos — 'a creature slumbering deep inside the perfectly ordered system'.⁶ Paradoxically, physical and organisational systems moving towards chaotic regimes are seen to become more creative and improve their performance as they become less predictable and stable. This phenomenon is known as creativity at

the edge of chaos.⁷ The nature of conflict has an implicit potential for chaos, as well as the creative transcendence of chaos.

Mediation and conflict dynamics

When kelpies achieved pedigreed status the breeding rules became static. Over successive generations the problems of recessive features, such as pigmentation and skin cancer, became more obvious. Stability and predictability can produce stultifying spin-offs. ADR may not be pedigreed from the legal system but it has gained 'new breed' status. Such status has contracted the creative and change agency role of mediated communications in disputes. Broader issues that feed the underlying conflict might feature extensively, or minimally, in facilitating outcomes. Outcomes focused on reliability and efficiency are generated through systems of processes. Outcomes focused on enhancing the quality of agreement and understanding between people are generated through systems of meaning.⁸ This aspect of ADR practice is largely dependent on the role of the mediator.

The role of the mediator, or neutral, echoes one to whole tenets. Controversy about this role continues to dominate the professional literature. Riskin's grid classifies mediator orientation using two principle questions.

1. Does the mediator tend to define problems narrowly or broadly?
2. Does the mediator think they should evaluate, or facilitate without evaluating, the parties' negotiation?⁹

Kovach and Love offer a 'great divide' model that places emphasis on the profound differences between adjudicative-evaluative dispute processing and facilitative dispute processing.¹⁰ Carnevale's strategic choice model considers four basic mediator strategies: compensation, pressure, integration and inaction.¹¹ Noll jumps into the fray with a theory of mediation that recognised a continuum of conflict resolution outcome possibilities from imposed decision to full reconciliation. The theory evolves from a conflict dynamics perspective rather than a process perspective.¹²

The debates over process and outcome seem to have ignored the fact that conflicts are as diverse as human society. Thus, this theory anchors the process and the outcome debate to the nature of the conflict. When this occurs, the differences between evaluative and facilitative processes can be reconciled and justified.¹³

Conflict dynamics examines conflict goals and escalation stages. Noll's theory holds that the nature of the conflict dictates the mediation process to be used and the likely outcome. Where conflict centres on identity or relationship goals, or has escalated to regressive, immature emotional patterns, transformative and narrative mediation processes are appropriate. Both processes rely on emotive self-interest by disputants, as opposed to rational self-interest (evident in processes such as distributive bargaining negotiations).

Narrative mediation assumes conflict is merely one reality — a conflict saturated story — constructed by disputants. It can be deconstructed and re-authored.¹⁴ Transformative mediation seeks a reordering of internal and external perceptions through empowerment and acknowledgment.¹⁵ Transformative and narrative mediation techniques use perceptual experiences to change the quality of understanding and agreement.

Main interest of CIRCA

Latent conflict manifests as tension. Tension exists, to varying degrees, wherever there is difference. Diversity and difference are creative, edge of chaos processes. Transcending chaos leads to a paradigm shift where a new form, such as the chaotic strange attractor, can emanate from a deeply

inherent pattern existing in the ordered regime. The emergence of new from old is always an experience involving degrees of tension.

Cognition and perception play major roles in interpreting difference. Perhaps a paradigm shift happens on issues of difference, when cognitive and perceptual tensions emerge and are productively reworked? Neuro-linguistic programming (NLP) exercises demonstrate these objectives.¹⁶

What if the latent potential of subliminal conflict was mediated, narrated or transformed at the beginning of our 'stories'? Creativity and innovation come from something predictable, yet unexpected — *change!* ●

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