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Reflections on practice and education in ADR

Negotiation and mediation in 3D: completing the models for practice and education

Jill Howieson and Nadja Alexander

Introduction

Reflecting on two major conferences held in September 2009 at the LEADR conference, Kongress, and the 36th Australian Legal Convention around the same time, it appears that ADR in Australia might be going 'back to the future'. Discussion of the 1970s concept of the 'multi-door courthouse' as a model for Australian courts in the 21st century and an acknowledgment of the enduring essence of the 1980s¹ interest-based negotiation model at both conferences, created a curious sense of déjà vu — and raised the question: where do we go from here?

In response to this challenge, we suggest that we too will need to go 'back to the future' — and that we can begin this process by reviewing, and then building on, the interest-based models for negotiation and mediation, and the traditional models of education.

Completing the models

A simplistic revision of ADR concepts is no longer sufficient. In order to propel ADR into the next decade we need first to reflect, revisit and then reassess our existing practices. At the Legal Convention, in the course of reflecting on the interest-based negotiation model, the authors discovered what one might call 'the evolutionary link'. To date our ADR training models have focused on process steps and the skills the practitioner requires to move through the process. These two-dimensional models have served the early stages of the ADR movement well.

However, as mediation becomes a profession, and as civil law reform seeks better ways to integrate the principles of interest-based ADR into litigation, the two-dimensional models of the past seem incomplete and insufficient. A philosophy that underpins our attitude

to conflict, and that forms the basis of a new professional grouping, requires greater depth. Therefore the 'evolutionary link' is the piece that extends and completes the usual representation of ADR processes.

The next phase of ADR practice requires holistic, reflexive and balanced models: models that integrate the proven cornerstones of communication, facilitation and procedural justice with the reflexive ideals of the self and the needs and functioning of the parties — and these models, we argue, will need to be three-dimensional in scale.

We have drawn an example of these models. As represented in Figure 1, the third dimension of the models comprises those factors that we now know to be important in creating *balanced* conflict resolution and negotiation processes:

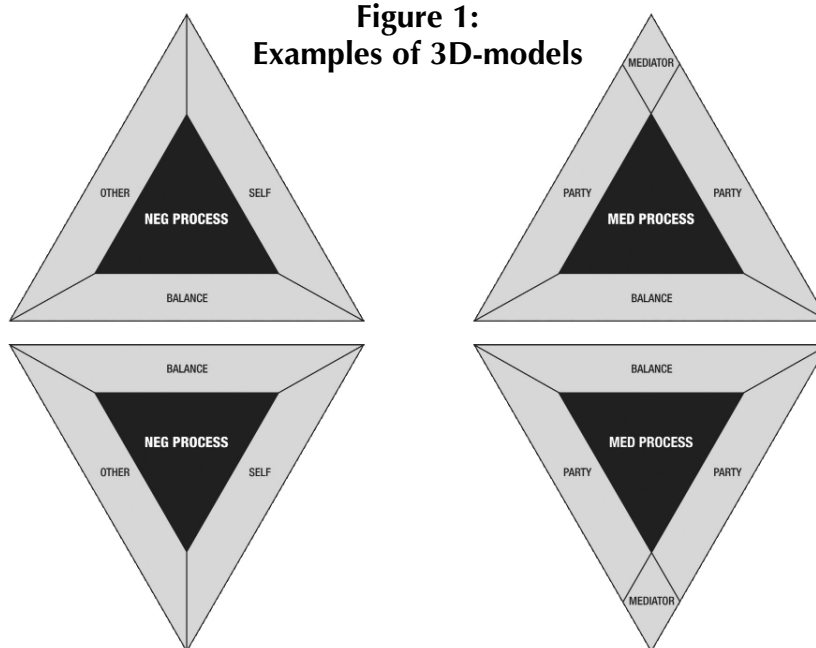
- an understanding of self and the other party in negotiation, or of the parties in mediation, including the ability to

reflect mindfully on conflict dynamics and an awareness of the psychological-emotional and cognitive-neurological functioning of people in conflict and conflict resolution;

- as a mediator or professional adviser, an understanding of self in terms of what one brings to the table as a person and how that affects the dynamic of the process — bringing a sense of mindfulness to the table;
- building into the process space for reflective participation by those involved in the system, including parties, advisers and dispute resolution practitioners; and
- creating a balance in terms of recognising and responding to the inter-personal and intra-personal components in the room.

By adding the third dimension to the interest-based models, we begin to achieve a greater depth and resonance to our learning and understanding of negotiation and mediation.

Figure 1:
Examples of 3D-models





Completing the education

To complement the 3D-models of negotiation and mediation, we also need multi-dimensional models of education. Research tells us that it is also no longer sufficient to continue with textbooks, lectures, role-plays and case studies that fail to integrate and balance the needs of the different types of learners, and their emotional and multiple intelligences.

Below we present a snapshot of ideas for taking us 'back to the future' of negotiation and mediation education and placing more emphasis on the third dimension of the interest-based model.²

Reflection

Both teachers and their students maintain reflective journals and make a space for sharing reflections in the teaching/learning group. For teachers and trainers keeping a journal can help reveal the layers of complexity involved in teaching; for students and participants, it can help with transferring the learnings beyond the seminar room.

Resonance

Create activities that have resonance for the participants. Take advantage of the benefits of simulations, games and activities that give participants the opportunity to take others' perspectives into account.

Variety and engagement

Design activities that engage the participants. Incorporating a variety of teaching techniques can help to engage participants and simultaneously create 'active, collaborative, social and learner-centered environments'.³

Balance

Balance a spirit of play with an air of seriousness about the activities. Where necessary, emphasise the particular learning objectives related to the activity in advance of its unfolding. It may work better when participants know the objectives. Balance this with activities that work better when the objectives unfold and the participants actively discover the key learning points.

Improvisation

Incorporate improvisation into the learning. Incorporate techniques from improvisational theatre as teaching tools.

Trust, acceptance, listening, spontaneity, risk-taking and storytelling are some of the features of improvisational theatre, and adapting these concepts to the classroom can contribute to deeper learning (Berk and Trieber, 2007). Encourage improvisation in role-playing rather than literal adherence to a script, so that participants draw on their own experience and behave as they would themselves, given the context. This will enhance the realism of the experience.

Further, in relation to role-playing in particular:

Realism

Design role-plays that are as close to real life as possible, drawing on composites of actual scenarios or real issues so that the simulations have an air of authenticity. Consider using real situations that are close, but not identical, to contexts and situations experienced by participants in the wider world.

Safety

Ensure safety for all participants so that they have maximum ability to engage in the activities and design role-plays with an awareness of any potential emotional triggers contained in the contexts of the exercises.

Warm-up and preparation

Warm-up and prepare participants for role-play and simulation activities. The warm-up not only helps to create a sense of safety for all participants but also encourages reluctant participants to take on, and engage with, the role of their characters. Participants who are warmed-up and prepared for role-plays have a greater understanding of the thoughts and feelings of their characters, which in turn leads to deeper learnings about the self and the process.

Debrief

Debrief specifically and completely to promote deeper learning. Resist the tendency to relegate debriefing to an afterthought or a rushed invitation for general comments.

Feedback

Provide students with meaningful, specific and constructive feedback. Feedback can come from professionals, practitioners, coaches, or other

participants in the learning environment. If possible use video or audio recordings, or coaching *in situ* for simulations (Van Hassalt, Romano and Vecchi 2008). Create space for structured and unstructured reflection on feedback.

Follow-up

Follow up with exploration of applications, and design follow-up learning activities to assist with integrating those concepts, skills and capacities that are difficult to implement.

Conclusion

These are the authors' immediate reflections from the recent conferences. Our future work will develop and extend these concepts and representations toward a more complete understanding of the 3-D interest-based models of negotiation and mediation. Further, we will continue to explore the educational models that would best serve the evolution of a holistic, reflexive and balanced culture of ADR. ●

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Endnotes

1. Although the interest-based model of negotiation in English-speaking literature dates back to Mary Parker Follet's work in the early part of that century, it was popularised in the 1980s by the Harvard Program on Negotiation.

2. Taken from N Alexander and M LeBaron, 'Death of a Role Play', in Honeyman, Coben, and De Palo (eds) *Rethinking Negotiation Teaching: Innovations for Context and Culture* (St Paul, MN: DRI Press 2009) and Howieson's 2009 study of 642 participants in negotiation and mediation role-play activities—paper currently in preparation for the Teaching and Learning Forum 2010.

3. Berk and Trieber, <www.humorfusion.com/Improv%20Clean%20final%2012-18-07.pdf>.