

Key Points

- Alternative dispute resolution enables social justice and workable solutions by recognizing mutual interdependence.
- The paradigm shift from the ethic of justice to the ethic of care enables taking responsibility for action.
- Moving from destructive reactions to constructive potential exploration results in a “joint struggle” to reach consensus.
- Humanizing the problem leads to the shift from “I versus you” to “I and us”.
- A meta model addressing the tasks, relationships, environment, engagement, and values is possible only by systems change.

Conflict Resolution: The Way Forward

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1. Introduction

Conflict resolution is an integral part of social justice and social transformation. Objectively perceiving the situation as a shared problem enables a paradigm shift. Any system that enables resolution has to ensure space to address fundamental needs, identify opportunities, reframe and develop creative options, reconceptualize the situation, shift perspectives about roles, norms, issues, structure, and so on. Effective conflict resolution happens when there is focus on identification and prevention and collaboration practice and/or a cooperative process is in place.

Empowerment and capacity building enable an individual to commit, conform, and make a considered choice. To evolve and to be effective, systems that enable value and justice ought to undergo a paradigm shift by addressing attitudes, morals, beliefs, and values. Capacity building and space to exercise volition ensures taking ownership and making an informed choice considering the needs of the self and of the other. In short, humanizing the situation invites reciprocation. The shift is now from the ethic of justice to the ethic of care.

2. Access to Justice

Justice is broadly based on ethics and morality. Justice is often believed to be a dispensation of giving an individual what they broadly “deserve.” As justice and/or claims are based on what is fair, it becomes frustrating for an individual to see that norms and established rules may lead to a different perspective from what they believe they are entitled to. An individual finds the process and substantive requirements exhausting and the mechanical rule-centered approach anchored in strict procedure, inattentive to the cost and time factor. The lack of validation



of emotional quotient or value in relationships, least potential for “personal empowerment,” and the inability to feel heard and to participate and take ownership lead to a feeling of “failure of justice”.

Various studies to address effective justice have identified common barriers to justice as: delay—systemic, economic, process, and personal capacity; limitations in available remedy and access; limited participation and addressing the need for reforms; values and issues recognition; and inability to address issues.

Public conflicts and ineffective means for dealing with them have led to wasted resources, social instability, reduced investment, chronic underdevelopment, and loss of life. In the established judicial system, disputants do not have the opportunity to evaluate or opt for a certain course of action. The justice system is based on accessibility, transparency, efficiency, and institutionalization. The reality is that it has failed to discern the efficacious handling of conflicts by failing to address the main concerns such as perception, identification, and approach to conflict; process of resolution chosen; model of service preferred; degree of intervention; and space for informed decision making.

Effective access to justice ought to be inclusive of “resilience—reinforcing and enhancing the capacity of people to resolve disputes themselves.” Access to justice qualifies the dynamics and potential of people’s social, civic, and economic relations. Access to justice is not just about forums or institutions, but processes and methodology to improve the quality and means of justice.

3. Expectations in Resolution

Susan Daicoff (2015) refers to Tom R. Tyler (1996) who said that the world may be suffering from the effects of law’s overly adversarial, other-blaming, position-taking, and hostile approach to conflict resolution. People often believe that if something went wrong, someone else must be responsible, and so they sue. They then encounter the enormous pain and staggering costs of undergoing litigation, often due to moral righteousness, and they can feel empty, even after a “win” because litigation is not designed to satisfy the psychological needs of the participants to be heard and to obtain a sense that “justice” was done (Tyler 1996).

Tyler stated that the expectations of a litigant are voice and/or participation, being treated with dignity, and

trust in the judicial authority. Hence, what is sought in the name of justice is understanding and satisfaction.

Social order is influenced by “what is right” versus “what is wrong”. Moral judgments rely on “language driven interpretations and attributions define social behavior.” Jonathan Haidt’s reference to quick intuition versus deliberate reflection is based on the need to understand specific psychological mechanisms involved in moral reasoning (Haidt 2001).

4. The Pound Conference

The multi-door courthouse concept introduced at the National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice (known as the Pound Conference) in 1976, by Frank Sanders (1976), brought focus on different resolution processes that could supplement the existing justice dispensation more effectively by enhancing the quality of participation and choice in problem solving. In short, social justice was focused on and the technique that Roscoe Pound propounded as “Social Engineering” (Sander 1976), conceived an efficient structure of society that addressed maximum satisfaction with minimum waste and friction.

Roscoe Pound (1976) saw law as a process of social adjusting—a system of practical compromises of conflicting and overlapping interests (Pound 1976). For Pound, the social interests that secure reasonable expectations are security (morals, health, safety), social institutions (economic, political, religious, etc.), morals (sentiments), conservation of social interests (environment), development of powers (socioeconomic), and individual life (ability to secure ordinary standards of living). Pound opined that engineering meant continuous experimentation to get a more finished product and, as any social activity, demanded interaction by individuals’ balance of competing interests, which can be aided only by engineering. The phrase “social engineering” was coined as the need.

Mary Parker Follett (Follett 1924), who actively engaged with Pound and others for law reform in the early 20th century, opined that labor disputes had to be resolved through “integration.” Follett (1924) suggested that if the “creative dynamic” of conflicts were handled integratively, disputants would see the conflict as a “joint struggle” and be able to communicate beyond the “destructive dynamic” that had caused the dissonance. They would then be able to view the perspective of the

other as “complementary” and assess the potential of unifying (Follett 1924).

Follett opines that “we want to know how [people] can interact and co-act better to secure their ends [and] to understand and broaden their ends.” Hence Follett’s idea of creative compromise recommended the parties’ recognition of their differences and their mutual interdependence, and their willingness to enter the synergistic dynamic that this interdependence and difference could create.

Sander’s presentation at the Pound Conference made alternative dispute resolution (ADR) relevant and kick-started the global movement. His work enabled the popularization of the idea that disputes should be channeled into the most appropriate dispute resolution mechanism; promoted the advantages of alternatives to litigation, such as mediation and arbitration; and enabled the “multi-door courthouse” concept for facilitating access to ADR services and traditional court processes (Sander 1976).

While different resolution processes with respect to community and public issues, personal and contractual relationships, and the needs of disputants have been in practice in the past, the following processes are now accepted. First, public dispute resolution (regulatory negotiation and enforcement, multi-agency, private and/or public task forces, community boards, and other forms of consensus-building agencies that seek to reform and reconstruct formal decision-making processes). Second, analytical conflict resolution (distributive justice, protracted conflicts, conceptualization of need, structuring systems change). Third, online dispute resolution (resolution in the digital space, directive and/or facilitative.).

5. Conflict

John Burton classifies dispute as a short-term disagreement where disputants look for resolution and conflict as a long-term, deeply-rooted nonnegotiable space (Burton 1990).

Lewis A. Coser (1967) defines conflict as a “clash of values and interests, the tension between what is and what some groups feel ought to be.” Coser opines that each social system contains an element of strain and of potential conflict. The sources and incidence of conflicting behavior in each particular system vary according to the type of structure, the patterns of

social mobility, of ascribing and achieving status, and of allocating scarce power and wealth, as well as the degree to which a specific form of distribution of power, resources, and status is accepted by the component actors within the different sub-systems (Coser 1967).

While every individual act is about an individual’s beliefs, ideas, and expectations, the ability to cognize and evaluate determines the action. While conflicts are seen as disruptive, they have the potential for producing creative solutions and the evolution of better ecosystems. Various views have been expressed about the potential in a conflict, and one view is that conflict is a “natural” force of evolution that should be processed in a manner that serves individual and social progress. The shift from the rule-centered ethic of justice to the relationship-centered ethic of care facilitates enablement and empowerment.

A study by Stanford University (Ross and Stillinger 1991) identified three categories of barriers to resolving conflicts: (i) tactical and strategic barriers stem from a party’s efforts to maximize short and/or long-term gains; (ii) psychological barriers stem from differences in social identity, needs, fear, frames, interpretation, values, and perceptions about others; and (iii) organizational, institutional, and structural barriers that can disrupt the exchange of information and stall reaching decisions that are in the interests of the parties in dispute.

6. Needs in Dispute Resolution

The need for access to justice has led to a shift from concerns about justice to concerns about harmony and efficiency, and from concerns about the ethic of right and wrong to the ethic of treatment. The constant search for harmony and concern is rooted in socialization. Understanding the individual’s role in the initiation, participation, and management leads to resolution and/or reconciliation. In a conflict space, everyone has a role in the initiation, participation, management, resolution, or reconciliation. Unravelling and understanding the reason for conflict, institutionalization, will not only enable a reduction in dependence on judicial systems but will also help to preserve relationships, secure harmony, and strengthen local civil actions.

The word “resolution” means the quality of being resolute, a firm decision, an expression of opinion or intentions agreed on by a legislative body, the action of solving a problem or dispute, the process of reducing or separating something into components, and so on. Perceptions about the relationship, breakdown of communication, and

empowerment to change boundaries often appear at the surface as causes. Addressing personification, destructive actions and accusations lead to communication which is “of” the person and not “to” the person. Firmness of purpose and determination and intention to change the existing condition to move toward a positive space is the intention behind any resolution. It presupposes commitment, volition, and taking responsibility, recognizing the joint purpose and achievable goals.

The basic need in resolution is to identify the actual conflict and timing for intervention, the possibility of future conflict and plan of action, and effective communication to handle the actual or potential conflict.

Addressing the role and relationship of the parties involved, enhancing cognitive ability, and enabling ethical communication ensures satisfying resolution. Constructs and beliefs are anchored in perspectives and hence the primary step in resolution is mapping the conflict through questions such as:

- Who are involved, and what is the future of the relationship?
- Who is influential and how is the power structure to be balanced?
- What is the responsibility and/or contribution of each party for the conflict and how do they position their goals?
- Who and what is the role of the individual and third person in sustenance and resolution of the conflict?

Enabling long-term workability and reassessment of what is effective processing based on understanding the need to probe styles, approaches, volition, dimensions, interests and goals, and nudging willingness to engage, ensures effective problem solving.

While conflict is basically seen as relating to resources, objectives, and identity, the dimensions and needs of conflict engagement are seen as values, interest, constructive dialogue, and structural and instrumental frames. Kurt Lewin formulated the 3-stage model of change as he opined that people get used to “comfort zones” and are “resistant”. Lewin’s Field Theory points out the need to recognize the need to move from “unfreezing” to the “danger zone” to be motivated to change without assurance of outcome. Lewin’s focus was on the need to understand psychological reasons for behavior, systemic causation for behavior, and exploring the potential of the dynamics. Hence, Lewin felt that it is necessary to plan and communicate clearly.

- Motivate and nudge people to act
- Allow space for internalization and determination

Communication being the key to understanding and exploring, dialogue in good faith is the basis of any resolution.

Kristiina Jokinen states that “dialogue is understood as a joint activity between rational and cooperative agents” (Jokinen 1966). The ability to listen reflectively creates space for empowerment. The first step in humanizing the problem situation is understanding and moving away from the “I versus you” situation to “I and us”. For the alternative justice practitioner, humanizing becomes a mechanism to break down the walls of insider versus outsider, us versus them, and creates a bridge to recognizing similarities and building rapport between parties in conflict.

The efficacy in dispute resolution processes is guaranteed by constructive dialogue that addresses tensions in interpersonal relationships, goals (short and long term), and perspectives and values (tangible and intangible).

To enable disputants to recognize their needs and to have a dialogue, it is essential to be aware of the model of neuro-occupation. The model identifies issues that impact the individual, such as (i) intention (a state of readiness that enables selection and defining goals to fulfill needs and/or desires), (ii) meaning (actions that are defined by experiences of goal directed choices), and (iii) perception (attitude and beliefs shape and affect awareness).

The model of human occupation stresses (i) volition (values, interests, and personal causation), (ii) habituation (habits and roles), and (iii) performance (mental and physical attributes and experiences). This model sees the individual as a system. The task and environment are seen as influencing occupational behavior. Through engagement, the human system is seen as constantly changing, unfolding, and reorganizing.

The presence of a “neutral third-party” to balance power and steer a constructive dialogue enables disputants to find a satisfactory solution ensuring finality. The neutral third-party will ensure capacity building, choice, competence, and confidentiality, and shift from the ethic of justice to the ethic of care by recognizing needs and potential.

7. Dispute Resolution Systems

The availability of a choice of forums not only gives flexibility but gives the disputant a space and a chance to ethically determine suitability and comfort with the decision. The common dispute resolution processes are seen as:

- Binding arbitration—referral to a single or more neutral third-party to give a binding decision.
- Nonbinding arbitration—reference to a neutral third-party to get a factual perspective that enables resolution.
- Negotiation—parties directly deal with each other to get the best outcome by making offers, demands, and discussion, and so it can be interest and/or rights-based. It is positioned in polarity, i.e., common versus opposing interests.
- Mediation—neutral third-party facilitates negotiation to reach a mutually satisfactory solution. It addresses underlying needs, relationships, distribution of resources. Parties have control over outcomes and it is voluntary.
- Conciliation—neutral third-party facilitates discussion and evaluation. It plays a positive directive role in testing alternatives.
- Cooperative problem solving—suitable for labor disputes, discussions by parties without the intervention of third parties on identified causes.
- Consensus building—agreement reached by those who have a stake in the outcome. The neutral facilitator identifies parties, time frames, issues, and procedure, and identifies the plan of action and calls for discussion, mostly planning, and environmental issues.
- Early neutral evaluation—expert opinion, gives objective perspective to parties to be analytical to understand strength and weaknesses.
- Dispute panels—advisory, give inputs on technical issues and fills in information gaps.
- Med-arb—combination of mediation and arbitration for use in specific areas.
- Ombudsmen process—reviews and persuades; most common in workplace disputes.

The shift to arbitration from litigation has not been able to ensure effective resolution or lower costs. Conciliation and mediation have addressed concerns of parties but now raise concerns about space for volition and informed choice. Sociocultural issues have also created barriers in approaches to resolution processes.

The identification of the need for change charters the course for handling resistance, efficacious system development, and ecosystems. The primary step in resolution is ensuring participation. Getting individuals to commit to a participation agreement is inclusive of the need for information sharing, respectful communication, confidentiality, participation, interest-based negotiations, and the joint retention of experts. Perceiving the needs of the future and capacity measurements has to be conscious of the 7S model—shared values, styles, skills, systems, structure, staff, and strategy. David Hoffman points out that the need is to enable parties to i) narrate their individual stories, ii) help to recognize and explore underlying interests, iii) enable generating options, and finally iv) facilitate negotiation to serve the best interests of the parties. Resolution now provides for different processes as in Figure 1.

Figure 1: Resolution Process



Source: Authors.

8. The Way Forward

Susan Daicoff (2015) proposes that all the disciplines comprising the comprehensive law movement share at least two features in common: a desire to maximize the emotional, psychological, and relational well-being of the individuals and communities involved in each

legal matter; and a focus on more than strict legal rights, responsibilities, duties, obligations, and entitlements (Daicoff 2015). These two features unify the vectors, such as problem solving, collaborative law, therapeutic jurisprudence, transformative mediation, and so on, and distinguish them from more traditional approaches to law and lawyering. Daicoff identifies two main features as unifying the vectors:

- Recognition and value of potential in law as an agent of positive inter-personal and individual change, which ensures harmony.
- Integration and value of extra-legal concerns that address factors beyond strict legal rights and duties.

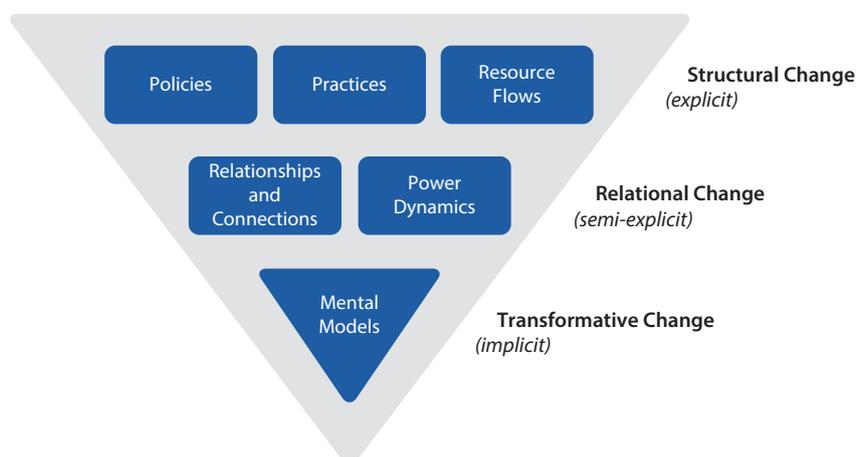
The emerging disciplines, according to Daicoff, have to “merge, integrate, coalesce, or link, based on similarities in their overall purposes and goals.” Harmonizing, building relationships, and taking responsibility determines satisfaction. The satisfaction quotient is based on equal opportunity, the restoration of dignity, fair distribution of resources, and access to information. The basic elements of social justice are generally seen as power and privilege, identity and intersectionality, systems of socialization, cultural competence, and allyship and advocacy. Hence, the system put in place to handle conflicts has not only to be aligned with social justice but must also be conscious of potential, possibilities, and prudence. Comprehensive law not only adds another tool for the efficient handling of conflicts but it also enables multi-process availability to structure and sustain an efficacious system.

A concerted effort to energize systems is rooted in the understanding of the dynamics and ability to bring in multilevel perspectives. Three categories of approaches to change are identified as (i) simplification (use of change management techniques), (ii) incremental (partly by change management techniques and partly by re-architecting), and (iii) re-architecting (putting it through the architecture cycle) based on sociocultural values and transformation in approaches to the other. Systemic change in the approach to handling conflict and managing interpersonal dynamics calls for appropriate processes depending on the context and the satisfaction quotient. “Minimum government and maximum governance” ought to be the tool to achieve efficiency and efficacy. Addressing and enabling parties to address their vulnerability, to move beyond their conditioning, and to recognize potential in opportunities and value relationships enables them to discard their insecurities.

Change management theory speaks about the framework for the approach to transitioning people, processes, and resources to achieve better outcomes. Change management induces a cohesive architectural vision to enable effective systems. Hence, systems to effect change in approach to resolution have to provide for addressing the source of conflict, reason and behavior, reward and/or loss, cost and time, an appropriate solution, and space for choosing an efficacious solution.

Figure 2 shows that systems change is possible only by addressing structure and seeking transformation. Taking

Figure 2: Six Conditions of Systems Change



Source: Kania, Kramer, and Senge (2018).

ownership and the ability to see the situation as a shared responsibility enable addressing power dynamics and transformation by volition to commit to consensual decision making.

A meta model that is inclusive of sociocultural angles, value systems and practice, expert opinion, and assessment necessitates institutions to provide a neutral space for the exchange of information and discussion, systems to evaluate and assess the manner of resolution, systems to aid and empower the effective use of the resolution process, neutral third parties in organizations who facilitate discussions and dialogues, opportunities to exercise self-determination and considered choice, and commitment and enforceability of agreements.

The responsibility of every institution is to guarantee a space for exploring the different processes, provide trained personnel who can help participants to identify

the appropriate process to enable cooperation, capacity building, value addition, and empowerment. The institution must set norms to develop a resolution culture by putting a system in place and establishing a process of who, when, and how to handle issues. The efficacy of the process will depend on competent dispute resolution professionals, space for autonomy, confidentiality, documentation, and monitoring by providing feedback and assessment.

The conflict resolution process and structure must enable the transformation of social relationships by shifting focus from allegations to affirmations and a relatable agenda. The needs in an efficacious process are for an effective study and structure to address assessment and reconfiguration of the approach to resolution, while periodic analysis of the worth of the process will ensure the competent handling of disputes and their dissolution.

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