

## **Conflict and Conversational Practice.**

During the last couple of decades, different approaches have been developed and applied by many professionals who practice in the arena of conflict and dispute resolution. Many of us have heard about evaluative, facilitative, transformative, and narrative approaches to mediation.

All of these approaches offer several valuable features and all have something in common. They embrace conversational practice. It should not be a secret that the mediation process is nothing but a bunch of conversations with multiple participants or parties involved in a conflict or dispute. These conversations take place between mediators and parties. They take place between mediators and the representatives of parties, such as attorneys, Union negotiators, or Human Resources managers. Finally, conversations also take place between parties themselves.

Perhaps it might be a good idea to pay attention to the structure of these conversations and see if organizing them in some fashion and understanding their structure would help practitioners to advance the field of Alternative Dispute Resolution. That of course is a truly ambitious undertaking. Similar undertaking can take some inspiration from the field of interactional socio-linguistic, conversation analysis, and discourse analysis, which are associated with such names as Erving Goffman, Emanuel Schlegoff, Harvey Sacks, Steven Levinson, and many others.

In this article my goal is quite modest. I want to show how certain types of acknowledgment can help to mitigate the intensity of conflicts. I want to show that these acknowledgements

are used most effectively when they are a part of the conversational practice.

Let me begin with a few notes.

The first one is an obvious one. Instead of completely eradicating conflicts from our private and public lives, we need to accept that they are a part of our human condition and human experience. Instead of fearing and avoiding conflicts we need to learn how to address them and deal with them. Among many authors, Stuart Hampshire illuminates this fact in his book **Justice is Conflict**, writing following words; ‘*Conflict is perpetual: why then should we be deceived?*’ (Note 1) Acknowledging our predisposition for conflicts and desire to resolve them, Peter Adler makes the following claim about the mediation process (Note 2):

*At the end of the day, and from a wide angle view plane, I believe mediation is a “meme,” a word coined by Richard Dawkins that is a cultural proxy for a gene, the basic mechanism of inheritance discovered by Gregor Mendel in the 1850s. Genes are packages of biological information. Memes are packets of cultural information....The mediation meme probably goes back to our deepest history as human beings, perhaps to the end of the Pleistocene 40,000 years ago. It spans 6,000 historical and current language groups and runs parallel to our deepest destructive impulses.*

Second, once we recognize the presence of conflicts in our lives, we need to determine at what point conflicts become a destructive force when it comes to our individual well-being, to our relations, and to our co-existence with others.

Third, mediation is a practice. It does not matter how much we analyze, hypothesize, and theorize about conflict resolution, at the end we immerse ourselves into the flow of mediation process and become active participants. Therefore it is important to make a distinction between reflective and pragmatic attitude.

Those among us who practice conflict and dispute resolution typically apply both pragmatic and reflective attitudes. We are problem solvers who often reflect on our experiences in retrospect. Social theorists and the theorists of justice predominately apply reflective attitude, and at the same time they emphasize the importance of practice. So conflict resolution can be understood as the theory about practice. In his seminal work, *The Theory of Communicative Action*, (Note 3) Jurgen Habermas used the terms ‘reconstructive sciences’ and ‘formal pragmatics’, relating these terms to activities (processes, practices) similar to conflict resolution. From the practitioner’s standpoint, pragmatic attitude serves as a trigger for problem-solving activities. It does not necessarily guarantee solutions, yet it encourages seeking them.

Once we accept that conflicts are parts of our human condition we need to evaluate our options. We can maintain the adversarial posture and compete and fight and compete and fight, ad nauseum. Or, we decide that there are occasions when we need to get together and try to solve our problems in a cooperative fashion.

In another article I suggested that due to the fragmentation of values some conflicts or disputes might go unresolved, at least temporarily, and some differences are irreconcilable.

Especially these types of conflicts should remind us that as long as we stay in conversation we have a chance to prevent hostilities. To put it bluntly, as long as "we are talking we are not killing each other."

Carrie Menkel-Meadow believes that this should be a sufficient moral justification to engage in negotiations or any form of Alternative Dispute Resolution, thus preventing violent behavior. In her article '**Ethics of Compromise**,' (Note 4) she attaches the moral aspect to pragmatic and problem solving activities such as negotiations and alternative dispute resolution. As I understand it, to her mind any form of collaborative problem solving should be tried as an alternative to the confrontational and adversarial posture that leads to hostilities and violence. She aligns the moral requirements with the pragmatic attitude and expresses the preference for negotiations, seeking some form of productive resolution.

At the same time Menkel-Meadow believes, that occasionally the adversarial posture needs to be maintained and utilized in the court system. To be clear, some cases must go to trial. Another concept, which adds some credence to the adversarial posture and necessitates violence, is the concept of 'just war'. (Note 5)

Compromise is often used as a dirty word. And while some authors argue that reaching compromise between opposing parties does not necessarily mean compromising one's integrity, (Note 6) others argue that compromise can lead to very unhealthy outcomes. (Note 7)

Martin Benjamin, the author of the book **Splitting the Difference**, is fully aware of the fragmentation of value. He illustrates this condition on the impossibility of reconciling pro-life and pro-choice positions. Yet, he acknowledges that taking these positions is necessary to

maintain personal integrity for those who hold two sets of opposing beliefs. And while he wants parties to engage in conversational practice, he understands its limits. He is very much concerned with the maintenance of personal integrity as he is concerned with violent outbreaks of conflict. He allows for concessions and yet he warns conflict resolution practitioners not to replace deeply and dearly held values and beliefs with interests on every occasion. At the same time, he spends considerable effort showing how compromise can be a valuable outcome in many conflictual situations and disputes. Practitioners of mediation are familiar with many of the challenges described above. Often they ponder their own role and they also ponder the requirements of the mediation process itself.

After the preliminary notes, I would like to offer some ideas considering mediation as a conversational practice.

I want to begin with the relation between conversations, which are unique to the mediation process and the Art of Rhetoric. The art of rhetoric is as old as humanity. Speaking to different audiences, trying to persuade people, making the argument, all these activities started with our ability to speak and to listen. The ancient Greeks were the first civilization that took serious interest in rhetoric and developed it into an art form. Aristotle was the first thinker who systematically dealt with speech making, showing the intimate link between our daily lives and practical matters on one hand and rhetoric on the other hand. (Note 8)

Rhetoric mostly has been understood as a relationship between a speaker who delivers speech and his/her audience, the recipients. Therein, the speaker speaks and the audience listens. The speaker, by assuming an active role, is trying to have an impact on the audience

emotionally or by virtue of the argument. The audience assumes a passive role as recipients of the message. The speaker is attempting to move the audience by persuading people to accept the message or to act in a certain way.

The mediation process as a conversational practice contains many similarities to rhetoric. Both emotional factors and argumentation belong to the repertoire of mediation and rhetoric. What mediators are often trying to achieve is similar to what orators try to accomplish, that is, to persuade the parties to reach an agreement by accepting arguments and by taking certain actions. One major difference between the mediation process as a conversational practice and rhetoric is that everyone engaged in mediation is the "Speaker and the Listener" at the same time. There is no clear delineation between passive role and active role. By virtue of participation, everyone has an opportunity to be actively engaged. Everyone can and should be an audience and a speech-maker. Listening carries the same weight as does speaking. Equating speaking and listening and sharing it among participants in mediation, affirms the self-determination of the parties and creates the partnership between the mediator(s) and partakers.

The mediation process is generally understood as a collaborative process, where the mediator - as the third-party participant - facilitates agreement. Persuasion, on the other hand, is often understood as a strategic approach, where the speaker attempts others to accept his/her argument or attempts others to accept some course of action. Therefore, persuasion might be viewed as a competitive maneuver rather than a collaborative one. It follows that the mediation process as a conversational practice at once contains the features of debate and

dialogue. The process is collaborative when it comes to outcomes, decision-making, and problem solving. It is competitive when any form of persuasion takes place during the conversation between mediator and parties. Depending on the approach that mediators apply when it comes to proposed solutions, the mediation process can be assessed as evaluative or facilitative. From indirect proposals to strong suggestions, while parties' concerns, needs, motives, and interests are addressed, mediators and participants are engaged in a dance-like activity. Emotional appeals, lines of reasoning, proposing and evaluating options, problem-solving, negotiations, and decision-making, are all parts of conversational practice that go into the process of mediation.

Yet, mediation is unique as a conglomeration of conversations at least in one respect. It begins with animosity and adversarial postures taken by disputants and/or combatants. But by the end, it seeks to bring about amicable outcomes like settlements, reconciliation, and mutual recognition.

Whenever people compare themselves with others and make others feel inferior, intentionally or unintentionally, they invite anger, resentment, and the lack of esteem from those who are on the receiving side. The attitude of superiority often leads to adversarial posture.

Statements and judgments indicating any supremacy breed feelings of indignation. Any manifestations of superiority combined with arrogance or humiliation make people feel disrespected and violated in some way or another. Therefore, dignity and respect are high on the agenda for mediators, when people feel violated by some form of wrongdoing, real or perceived.

Indignation often means that people are not treated as human beings, that some basic sense of humanity in them is disregarded and violated. It often is expressed by words, *'I am treated like an animal'*, or *'I am just a number'*. *'I have been completely disregarded. Nobody pays attention to me and nobody listens to me'* are typical statements of indignation. People who want to be treated as equals feel as if they are devaluated by others, unless they acknowledge their own shortcomings and accept the judgments of others as a constructive critique rather than the means of humiliation.

Willingness to initiate conversation and engage in communication, even if the third party is used, is the first step of acknowledging others. It is an opening to the path of mutual recognition and dignity. Instead of stating *'I don't want to talk to that idiot ever'*, saying, *'I am willing to hear what he/she has to say'* gives us opportunity to validate or invalidate our judgments about others by allowing others to explain themselves. By engaging in conversation where everyone has a chance to speak and is willing to listen, we mutually acknowledge our autonomy, the freedom of will, and the right to self-determination. Giving people voice and willingness to listen becomes a prerequisite for mutually dignified conduct.

Often the sense of indignation is accompanied by the request for respect and recognition. We want to be respected for who we are and we want to be recognized for our achievements and contributions. We want to be recognized as partners in conversation and as the members of distinctive cultures, nations, and ethnic groups.

There are some difficulties with respect. Most people believe that it must be earned rather

than asked for. At the same time, if people believe that they possess qualities and skills which they should be recognized for, they feel a need to ask for respect from others. Of course, different people respect others for different reasons based on divergent values. Some people respect power, others respect courage and honesty. Some respect kindness and benevolence, others respect effort and perseverance. Therefore, respect is not always afforded to those who ask for it and those who believe they are entitled to it because they earned it.

When it comes to mediation as a conversational practice, there is one term, which carries a lot of weight. That term is "acknowledgment." There are a couple of types of acknowledgment I want to focus on. The first type relates to what are we willing to acknowledge about others, their positive traits, qualities, skills, talents, achievements, and contributions. On occasion, we need to acknowledge the other persons' fears and hardships. At the same time we should be cognizant of some challenges and difficulties when we present disapproving evaluations to others, referencing negative traits, qualities, and skills. Such evaluations do not appear like acknowledgements. Rather, they look like we are judging other people or we are criticizing them.

Next to positive acknowledgments offered to other people, we need to also acknowledge our own shortcomings, deficiencies, weaknesses, and negative character traits. Not an easy task. This is the second type of acknowledgment. Once we acknowledge positive elements in others and we are willing to acknowledge the negative in ourselves, and at the same time we expect others to acknowledge what is good in us and what is deficient in them, we have a great opportunity to overcome many adversarial and hostile situations. We can prevent a lot

of violent behavior, and we can resolve plenty of conflicts and disputes.

This is not more evident than when we engage in conversational practice. Indignation can be forced on people without speaking to them. Often, just refusing to give people "voice" results in indignation. Respect or disrespect can be communicated without talking to each other. Similarly recognition or lack of it can be delivered indirectly without conversing. An expression of respect and recognition or the lack of both, can be offered unilaterally without demanding any response. We can show concern for others even if we do not know very much about them due to the fact that they live their lives in places we have never visited. We can show respect to all people(s) by affording them the universal right to free speech. We can recognize their uniqueness and their distinctive cultural, ethnic, and national heritage by letting them exercise this right even if we disagree with their practices.

Two types of acknowledgments seem to be quite important if we wish to overcome hostilities and attempt to resolve our differences. Addressing these acknowledgments to each other while using conversational practice, we can defuse negative judgments about others when we all admit that none of us are perfect, that we are willing to better ourselves and in the process improve our relationships.

Previously, I mentioned that understanding the structure of conversational practice in relation to conflict and dispute resolution and to organize these conversations into some form of practical guide would be a demanding project, which would require a prolonged effort and endless refinement.

Such a Guide would certainly enhance the practice of mediation.

Here, I would like to propose some formulations of acknowledgments that I find useful:

1. *I can only imagine what you had to go through.*
2. *I realize that was not an easy thing for you to do.*
3. *Now I see that you not only tried hard, but what you accomplished helped all of us.*
4. *That was a perfect example how to solve this problem. Thank you.*
5. *You are much better at target shooting than I am.*
6. *It amazes me how easy it is for you to make decisions.*
7. *First I believed that you tried to screw me, now that I listened to you I am convinced that your intentions were pure, despite the outcome.*
8. *I believed that it was all yours fault. In retrospect, not only I was wrong, but I am aware that I contributed to this mess.*
9. *Not always I acted in a good faith.*
10. *I realize what a jerk I was.*
11. *I guess I need to improve a lot when it comes to my people skills.*
12. *I was not aware how my behavior impacted my coworkers.*
13. *Now that I spent some time thinking about it, I am learning that calling you crazy meant that I simply did not understand what you were trying to do.*
14. *Thanks to you I am becoming a better person.*

Some critics might suggest that these phrases pertain only to personal conflicts and therefore

they are too simplistic. That for example, these formulations of acknowledgments do not take under the consideration the complexity of international negotiations or public disputes, where instead of personal dislikes, people act as the representatives of various interest groups and where a formal protocol provides a framework for impersonal differences. This of course is a valid concern. It is the concern many times expressed by the distinction between micro and macro negotiations and between personal and group conflicts. Being personally involved in a dispute and being personally impacted by the outcome of negotiations (for example, losing the house due to foreclosure) is quite different from representing a financial institution and attempting the best deal for that institution. We all play our professional roles and we all live our personal lives. Yet the acknowledgments mentioned above can work successfully in personal or impersonal settings. Think about public apology, when the head of state apologizes for the atrocities committed by his predecessor. Think about high-level negotiations between two heads of state. The more rapport they develop and the more they personalize their relationship the easier it is for them to utilize similar phrases, suggested above and to reach agreements. If they develop a personal dislike for each other the negotiations can be doomed. Here is the statement leading to negotiation breakdown or impasse. *'You offending me and my people, I don't want to talk to you anymore.'*

Let us turn to another kind of acknowledgment. This type relates to those conflicts we believe are beyond resolution. Perhaps temporarily, right conditions and proper circumstances are not in place to resolve these conflicts. Perhaps the lack of knowledge, the lack of mutual understanding, the lack of courage, or the lack of safety and security disallows parties to take a risk and to move forward. Perhaps conflicts are too complex, or too many

parties are involved. Perhaps the consequences of agreement are too unpredictable and difficult to control.

Unintended consequences, bad luck, and unpredictable accidents beyond our control can also contribute to conflicts when a scarcity of resources create an adversarial situation. Inheriting a good fortune or being endowed with a unique talent, good looks, or intellectual abilities, might be perceived as unfair and can contribute to conflicts. Or based on the incommensurability of values we know upfront that it is quite difficult to resolve our differences.

The third type of the acknowledgment is that we simply realize we cannot resolve conflicts, at least for now, and therefore we have to allow for some form of confrontational posture and adversarial approach to conflict resolution. Yet, we also need to set the limits to what kind of means and approaches we allow so that we do not step into the territory where violent behavior, harm, and consequential bloodshed get the upper hand. We need to stay in conversation to prevent violence otherwise conflict will feed itself through memory, ongoing victimization, and mutual vilification.

Even if the conversational practice does not lead to resolution and negotiations do not yield desirable or at least acceptable results based on compromise, we still need to make the effort. We need to refine our arguments, we need to seek better compromise-based solutions, we need to learn how to be more patient, more acknowledging of others' positive qualities and be more self-reflective about our deficiencies so that we can stay hopeful about our more and

more codependent future.

**Notes:**

1. Stuart Hampshire, *JUSTICE IS CONFLICT*, (Princeton University Press,1999)
2. Peter Adler, *THE END OF MEDIATION: An Unhurried Ramble On Why The Field Will Fail And Mediators Will Thrive Over The Next Two Decades!*  
<http://www.mediate.com/articles/adlerTheEnd.cfm>, 2009)
3. Jurgen Habermas, *THE THEORY OF COMMUNICATIVE ACTION: Volume One*  
*p. 276-277*, (Beacon Press,1984)
4. Carrie Menkel-Meadow, *THE ETHICS OF COMPROMISE*, in *THE NEGOTIATOR'S*  
*FIELDBOOK*, *p. 155-164* (Andrea Kupfer Schneider & Christopher Honeyman eds.,  
Chicago: American Bar Association, 2006)
5. Michael Waltzer, *JUST AND UNJUST WARS*, (Basic Books, 1987)
6. Martin Benjamin, *SPLITTING THE DIFFERENCE: Compromise and Integrity in Ethics*  
*and Politics*, ( The University Press of Kansas,1990)
7. Avishai Margalit, *ON COMPROMISE AND ROTTEN COMPROMISES*,( Princeton  
University Press (2010)
8. Craig R. Smith, *RHETORIC AND HUMAN CONSCIOUSNESS: A History*  
( Waveland Press, Inc., 2003)

