

Beyond Neutrality: Confronting the Crisis in Conflict Resolution

Nadja Alexander

Beyond Neutrality: Confronting the Crisis in Conflict Resolution

By Bernard S Mayer,
Jossey Bass Publications,
San Francisco, 2004, 312 pages.

Contemporary mediation in Australia and North America has come a long way since the pioneering days of the 1970s and 80s. Court-related mediation is the norm in virtually all Australian courts and in many in the US. There are more than 2500 laws in the US that regulate mediation. Mediation case law has quickly developed on issues such as confidentiality, liability of mediators and legal representatives, the enforceability of mediation clauses and mediation agreements. Standards and accreditation for mediators are hotly

development of mediation, Bernie Mayer wants us to rethink it all.

In his second book, *Beyond Neutrality*, Mayer identifies what he sees as a crisis in the conflict resolution field and challenges the reader to look beyond the assumptions embedded in the very North American model of conflict resolution that we know and to redefine the nature of what we as conflict resolvers do.

Part One of the book focuses on identifying and explaining the crisis of the conflict resolution field. The author begins by exposing the reader to the reality of conflict resolution practice. The continuing resistance to conflict resolution he categorises as follows:

- Political or policy-based criticisms, for example that mediation is based in white middle class cultural norms that may clash with the values of those from different cultures and that most mediation occurs as a result of mandatory programs;
- Efficacy and efficiency critiques, for example empirical evidence is at best mixed in terms of its support of the value claims of mediation; and
- Experiential, personal-based critiques, for example the feminist perspective, which argues that women are disadvantaged through ADR processes.

He expands his argument by exposing the misuse of mediation in practice and there are no surprises here – fishing expeditions, repeat players avoiding precedents, and the like.

The most interesting chapter in Part One is Chapter 4, entitled '10 Beliefs that Get in our Way'. Mayer argues that we, conflict resolution professionals, are most limited by our own thinking. Here the reader is forced

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debated issues as mediation shows all the signs of developing as a profession in its own right. Indeed, Austria proudly claims to be the first country in the world to recognise mediation as a profession through an Act of Parliament.

However before we sit back and congratulate ourselves at the next mediation conference for working so hard to contribute to the progress and

think values such as neutrality, collaboration, interest-based bargaining, win-win and process intervention. The paradox is, of course, that while we may use the rhetoric of collaboration and mutually positive outcomes in our marketing, our story-telling and our writing, the reality of practice is in many cases quite different. As mediation is a confidential process, much of what we hear about practice is self-reporting by mediators and legal representatives. Anecdotal evidence suggests that these are not always congruent – in other words, different reports about the same mediation may vary greatly. Some commentators argue that most practitioners, if asked, would not be able to identify the values that inform their practice. Many practitioners, so the argument goes, maintain that as neutral third parties, they operate in a value-free space. Like others before him, Mayer links mediation to specific western cultural norms, which are typically invisible to those within the culture. So if mediators are white Anglo-American middle class people, they will likely be oblivious to the cultural assumptions they make each time they conduct a mediation: assumptions such as that conflict should be resolved; that it is more important to demonstrate respect to each other than anger; and that good relationships are more useful than continuing as adversaries.

Mayer is right when he suggests we move away from these 10 beliefs as the foundations of the conflict resolution field. My discomfort with the chapter, however, relates to the fact that I doubt the stability and depth of these foundations for conflict resolution practitioners. In other words, I do not believe that Mayer's 10 beliefs are representative of mediators in practice. Would not a more useful problem-based question be: what values do we bring to the table and how can we most usefully apply these to engage in conflict?

Part Two of the book is devoted to exploring new ways of intervening in

conflict. Mayer labels it 'conflict engagement'. In developing the concept of conflict engagement, Mayer draws on the work of Bill Ury who argues for an expanded role of third parties and communities in conflict situations. Conflict engagement is about recognising all the roles that exist in

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the conflict resolution field — including those of advocate, coach, facilitator, mediator, arbitrator, dispute system designer, trainer, researcher and case manager — and bringing them under one umbrella. Mayer suggests that the way forward is to redefine ourselves as conflict specialists beyond the traditional third party roles of mediator, facilitator and arbitrator.

Beyond Neutrality is written in Mayer's typically relaxed and engaging style. While, as the author himself acknowledges, not all the ideas are new, they have been framed in a fresh and exciting way using the methodology of mediation. The book challenges us to rethink our values, roles and purpose in the conflict resolution field and is a valuable and timely contribution to the literature. ●

Nadja Alexander is Professor of Dispute Resolution in the Australian Centre for Peace and Conflict Studies, University of Queensland, and can be contacted at n.alexander@uq.edu.au.