Participatory Approaches to Dealing with Community Conflicts and Disputes. Part 1 – Suggesting a Consistent Taxonomy
by Katalin Pallai

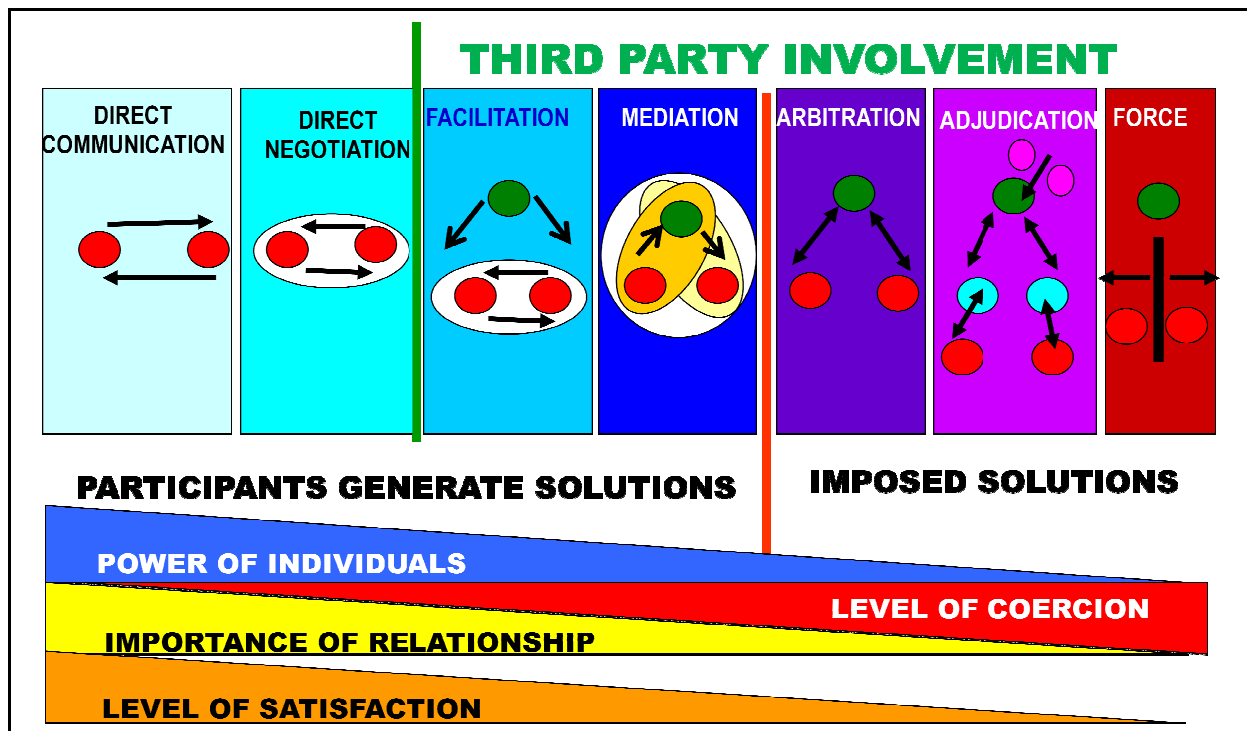## Dispute resolution

Parties to disputes or ones in a situation of conflict are able to choose from among many different ways to solve their dispute. They can have discussions, and come to some form of agreement, ask a third party to assist them in their negotiations or to make a decision instead of them, or they can use force to defend their claimed position or interest.

When we move on the continuum from one end point - "free choice of solutions through direct communication among the parties" – towards the other - "imposed solutions" - the power of leverage of parties regarding the outcome decreases; often, their level of satisfaction with the process and its result also shows a reduction. In most cases, when disputing parties are not able to generate a solution to a problem by themselves - that is, to agree on something - but resort to arbitration, to adjudication or perhaps to force, such processes seriously damage their relations. The process often lasts a long time, engenders frustration, and in the end at least one party is likely to remain dissatisfied with the imposed solution.

Figure 1: Dispute resolution strategies

Alternative Dispute Resolution (ADR) refers to processes and techniques applied in an effort to resolve conflicts/disputes outside that of a judicial process.[1] The other common characteristic of ADR methods is that they are peaceful processes available for use by disagreeing parties so that such parties can come to a mutually accepted agreement. The term's usage varies in different countries and organizations: in this collective term different sets of methods[2] belong from negotiation to arbitration. Among these processes, some may be implemented with the help of a third party, and some without such assistance.

In this paper I have as my focus mediation and restorative justice processes – the two ADR methods that are most widely used in resolving community disputes. The attraction of both methods is in their principled underpinning; they both imply a deep belief in the right and capacity of individuals to make informed and responsible decisions about their own lives when adequate conditions have been created. They both create possibilities for freedom: freedom to speak, to drop masks, to be present as humans, reveal and struggle for aspirations, acknowledge mistakes and responsibility, and act in accordance with core values.[3] In both processes a neutral (or non-partisan) third person (facilitator or mediator) will support the stakeholders in their joint learning and problem solving - and in their quest for a mutually agreeable solution to a problem.

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[1] The word 'alternative' in ADR refers to an alternative to formal litigation at court.
[2] What processes ADR covers may be different as regards source: some countries/different organizations may use a range of taxonomies, e.g. UNODC taxonomy includes arbitration, mediation and conciliation in ADR methods, USAID includes negotiation, while Wikipedia has within it collaborative law.
[3] This sentence is based on a beautiful paragraph written by Kay Pranis on Peacemaking Circles. It is not quoted but has been adapted to the purpose. (Parnis, 2005: 11)

While ADR methods have many commonalities in their basic principles and ideologies, there is also a wide variety of ADR approaches - i.e. directions and, indeed, whole schools - that have developed many legitimate and valid approaches as regards supporting parties when in conflict. The abundance of options is positive - though its problematic corollary is a degree of chaos as far as the innocent observer is concerned. The fact that different approaches may use the same terms to describe partly overlapping methods or very different processes and rituals could well create confusion for anybody not entirely familiar with the field. This paper thus aims to put some order into this cacophony, too, by comparing principles underlying key methods of working and key differences within processes, and by identifying possible meanings for key words. It also makes a suggestion for a simple taxonomy of the most oft-used methods and also reflects on some of the challenges facing professionals. At the same time, this short paper is unable to offer any detailed explanations or act as a substitute for the reading of more substantive texts on methodologies that might fall within the sphere of interest of the reader.

The fact that application of Alternative Dispute Resolution (ADR) methods in local communities and governance is a relatively new phenomenon - both in general and particularly in Hungary and in Central Europe - gives impetus to this attempt. Here, when ADR is new it is possible to introduce a *coherent* terminology, thereby avoiding situations prevailing in countries where ADR practices have roots in different sources and a parallel growth has occurred, resulting in an overlapping use of terms. At the same time, there is also a risk here coming from a chaotic use of terminology; for we do have trained mediators, persons emanating from different disciplines and schools, though they may be familiar solely with one area of the ADR field, so their instinctive use of terms will be likely to differ. If we agreed upon a coherent terminology, it would make all professionals' and users' lives simpler.

The other component for the actual relevance of the topic is on the users' side. We have some decision-makers who have heard of methods and a few who have experienced its functioning, too. Probably, both groups could benefit from having a review of methods and from clarification of the meanings of terms.

Finally, a closing comment of relevance: ADR in community disputes necessarily involves stakeholder participation. They are deliberative multi-stakeholder processes. As such, they may well be opportunities for both decision-makers and local communities to experience what participation in fact means and how beneficial it can be. My deepest hope is that successful multi-stakeholder ADR processes will be able to support the emergence of more participatory local governance in our region.

Simple cases and types of process[4]

When we refer to community conflicts and disputes, many different things come to mind. There are conflicts among the rational interests of individuals or groups of stakeholders - for example, a conflict between a restaurant owner's satisfaction with her/his happy clients and neighbors' frustration with

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[4] 'Simple' here means cases that have two characteristics: (1) they relatively clearly fit into the generic situation for rational interest conflict or norm-breaching, and (2) they are episodic in the sense that the context does not reproduce them on a regular basis, or they can at a minimum be isolated and dealt with in a short time, as separate cases.

the noise; or a dispute between developers and the old users of an area when looking at a new development project; or conflicts among stakeholder positions in well-known NIMBY[5] cases. These are all rational conflicts among positions and interests. We call them symmetrical, as parties are assumed to be on a level moral playing field, thus can be considered equal parties in the negotiations.[6] In such cases, parties seeking a solution can decide to directly discuss the options, call in a mediator, or go to court within the framework of a civil law case. If their choice is mediation, the mediator attempts to assist parties to explore needs and interests and achieve a mutually agreeable solution to the disputed issue or problem. The mediator will try to lead the quarreling parties towards collaborative problem solving and help them to create value ("expand the pie") by adopting an interest or needs-based frame of reference. (Fisher-Ury-Patton, 1991) The principle underlying such an approach is that unearthing a greater number of the actual needs of the parties will create more possible solutions because not all requirements will be mutually exclusive; as not all individuals value the same things in the same way, exploitation of differential or complementary needs can produce a wider variety of solutions which more closely meet the parties' needs. (Menkel Medow, 1984) It is the duty of the mediator to establish a "safe place" for negotiations. This means maintaining mutual respect among the parties whilst leading the process in constructive communication that allows effective problem solving till an agreed solution is achieved.

Different types of wrongdoings and crime that breach community norms and/or laws can be equally treated as community conflicts. Examples that come to mind are either the case of a teenager who breaks into a house to rob it and comes up against the home owner[7], or a conflict between the community and a group harming community assets[8]. The major difference in this second pair of conflicts from the first is that the parties are not on a symmetrical moral playing field, for, here, one party causes harm by breaching laws and/or norms, while the other party is a victim of an offense. If such a case is handled by the judicial system, it is judged according to penal law and the offender faces punishment; yet when a case goes through a restorative justice procedure, the focus shifts from retribution to the needs of the stakeholder. With restorative logic, reconciliation is more important and beneficial for the persons involved and the community than to have a member who is punished. The victim(s)[9] needs healing, empowerment and restitution, and the offender needs reintegration into the community; and a necessary condition for this is that the offender takes responsibility for his/her wrongdoing. This gives an opportunity for healing and restitution for the victim and reintegration of the offender. (Zehr 2005) The role of the facilitator in the restorative process is to create a safe place where victim(s) and offender(s) can engage in a dialogue that personalizes the event, and creates mutual empathy and understanding, realization of the impact of

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[5] NIMBY is the acronym for "Not In My Backyard" types of urban problem. These are conflicts when most stakeholders accept the need for intervention or implementation of a project (e.g. a road or incinerator), but nobody wants such a thing to be built close to his/her property (i.e. in his/her own backyard).

[6] Here, symmetry refers only to their equal moral status. It may happen that their negotiating power or skills are very different, though this is a process management challenge and does not determine the *type* of process.

[7] The Clint Eastwood movie, Grand Torino, beautifully depicts such a case and the follow-up restoration process; or the short movie The Woolf Within provides a record of restorative justice treatment within such a case. http://www.youtube.com/watch?v=A1s6wKeGLQk

[8] The documentary Burning Bridges covers a restorative process initiated after such community asset damage. http://www.youtube.com/watch?v=QaeeRwOJQng

[9] According to restorative logic, the obvious victim may be a person, a group or the whole community. In all cases, as secondary victim the communities may also be affected as their norms are breached and their sense of community damaged.

the offense and taking responsibility by the offender: the conditions for reconciliation and healing. (Fellegi 2009)

The restorative process can take various forms and dramaturgies. One often applied form is the restorative circle, which may also be seen as a form that best captures the essence of the process. It foreshadows the purpose and positive outcome of the process: the respect offered to all parties in the process, and the intention of regaining balance and reintegrating the wrongdoer. "The physical form of the Circle symbolizes shared leadership, equality, connection, and inclusion. It also promotes focus, accountability, and participation from all." (Parnis: 2005: 11)

Figure 2 below summarizes the key characteristics of the two processes and shows the use of terms I suggest. Here, for the processes that would fall under civic law in the judicial process, the term "mediation" is thus used; and the third party who assists in the process is called the "mediator". For the processes that fall under penal law in the judicial process, the term "restorative justice dialogue" is used, and the third party who provides assistance is called the "facilitator".

Figure 2: Taxonomy of simple cases and methods
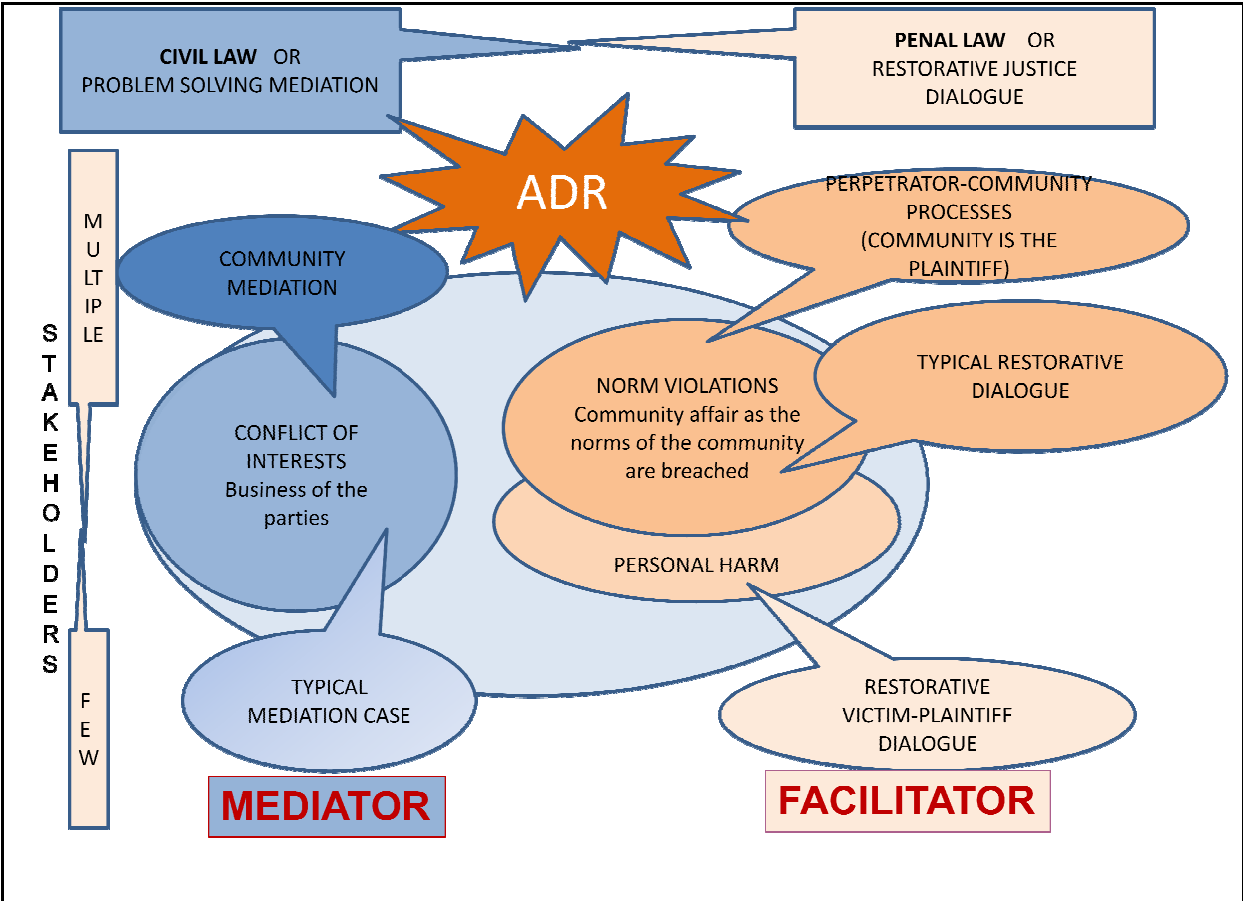
Such clarification is needed because the terms in the chart and other key words used in dispute resolution processes often cover very different things and have overlapping meanings in their use in

the literature and by practitioners.[10] In many countries (e.g. Germany), Victim-Offender Mediation is the most used term for the restorative processes. In the wider restorative literature, the term "mediation" is equally used for restorative processes. A leading restorative justice practitioner suggested a couple of years ago replacing the "mediation" term by the term "conferencing" or "dialogue" to create a distinction. (Zehr 2005: 9) This is a legitimate idea, as conferencing is a method most widely used in restorative processes and dialogue is the most essential part of the process. However, many conference methods are also widely used in multi-stakeholder planning and interest-based conflict resolution processes. In these processes, as with restorative justice processes, the 'conference' means only a format for multi-stakeholder meetings, i.e. a tool for organizing the negotiation process. Nevertheless, the term "conference method" is often used to replace the term 'multi-stakeholder mediation' or planning. In view of all these factors - and going a step further than Zehr - I would suggest utilizing restorative dialogue as a generic term for the restorative processes as dialogue captures not only the form but the *essence* of the process; at the same time, it allows one to create a clear distinction from interest-based mediation procedures.

This proposal introduces a more logical and consistent usage of words than the existing one. It identifies the two processes according to their essence and not the tools applied. The starting point for this distinction is a comparison of the key modes of communication in the two processes. While mediation is a negotiation between parties to find a mutually agreeable solution, the restorative process is a deep, complex, and often moving dialogue between the parties via which they are able to look at experiences, feelings and identities. Different methods are used to promote such processes. "To promote a dialogue, we must facilitate conversation, … to promote successful negotiation, we must mediate proposals for action." (Forester: 2009:7) The mode of communication is the essential distinguishing characteristic between the two processes. Consequently, it is logical to term the symmetrical interest dispute 'mediation' and the restorative communication a 'dialogue'. Accordingly, negotiation is led by a mediator and dialogue by the facilitator. With this logic, all interest-based negotiation processes should be called 'mediation', independently of the number of stakeholders involved; and restorative justice processes should be called 'dialogue'. The same logic might be applied in making a distinction between mediator and facilitator.

This distinction is simple and clear in simple cases that clearly fall into one or the other process - as with the cases mentioned above. However, there are cases that fall in between, involving both interest and norm conflicts and/or the breaching of some community norms, or laws. We will see later, in the second part of these twin chapters[11], during a discussion of complex cases, that there are also many local conflicts that do not fall into either of the two simple categories but which have various components rooted in interest-, value- and identity-differences. The resolution process pertaining to such conflicts often needs to be long (and complicated), and third party professionals need to merge different approaches. The distinction made above still helps, though, as when

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[10] Even the sources listed in the reference list display this variety in the use of terms, e.g. Connor et al (1999) use the terms conferencing/facilitation, while the CIDA 2004 publication calls the same process 'mediation' and the third party the 'mediator' while referring to the same process.

[11] I am calling this chapter and the other chapter written by the same author twin chapters as they are both written about community conflicts and disputes. Although they look into different kinds of conflicts - and can be read separately - the second chapter can also be seen as a more complex discussion built on the terminology developed in this paper.

planning such processes, understanding, distinguishing between modes and then consciously applying the different modes of communication is of crucial importance. (Forester 2009: 77-91)

The generic process and the role of the third party

By generic process I mean the main components of both processes. The first duty of a mediator or facilitator who is involved in the conflict is to assess it. Assessment often starts with interviews to gather information about the case, determining whether intervention is needed and feasible, and what type of process should be initiated. The main questions in this phase are: what the nature of the conflict is, whether the parties need support and are willing to participate and are capable of constructively participating, and whether the risk of causing more trouble or harm can be minimized. If the professional conducting the assessment and convening is the one who will lead the process, she/he can also make use of these first steps to build a relationship with stakeholders and create trust in that she/he is able to create a safe environment for the resolution process.[12]

The next step is to prepare the parties for their involvement by explaining the process and its rules, and to convene a meeting of parties. When the parties are groups, it has to be determined whether everybody will take part or some form of representation should be organized in relation to specific groups.

The next phase is the actual process: the mediation or restorative dialogue. During such a meeting, the role of the mediator/facilitator is to create a safe environment (safe place) where the parties respect each other, listen to the others' messages, claims, feelings and ideas and a process of learning and understanding can be built up among the stakeholders. The other duty of the mediator/facilitator is to assist the parties in their navigating towards exploring, learning and agreement, thus in attaining a successful working process. She/he has to keep an eye on creative possibilities and practical propositions raised during the dialogue which satisfy the other party's interest(s) and on mutually beneficial options and possible agreements. (Stulberg-Love, 2008)

This is what the role of the mediator and facilitator have in common. Beyond this, they have slightly different roles, owing to the partly different purposes adhering to the procedures. The purpose of mediation is to negotiate an interest-based solution. Mediators focus not only on interests but on exploring parties' differences in priorities as well, as such differences may be able to maximize the joint benefits ("expanding the pie") and lead to win-win outcomes. The purpose of the restorative process is reconciliation. For this, facilitators need to focus on how the process can personalize harm and understanding, and note when signals of responsibility taking, support, reconciliation and healing appear. (Fellegi 2009: 94-95)

At the end, when the parties arrive at an agreement the mediator/facilitator can help formulate such an agreement and assist in the organization of the monitoring of implementation.

As we can see, there is a similar sequence in the two processes (assessment -> convening -> learning of parties -> negotiation of parties -> agreement of parties -> monitoring of implementation of the agreement). The intensity of the work of the ADR professional can be different in the different

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[12] Notwithstanding this possible benefit, some authoritative experts argue for a separation of the conveying role. e.g. Susskind and Cruikshank (1987) argue for separation.

phases. Often, restorative professionals work more intensively in the preparatory phases and attempt to intervene less in the dialogue among the parties. In mediation, different schools exist: some mediators do not meet the parties before the mediation meeting in simple cases, while others do meet the parties and use the assessment and convening phases for relation building.[13]

Different approaches and role perceptions of mediators/facilitators

Although the generic process is one held in common, there are many different approaches that assign different roles to the mediator/facilitator. The most typical taxonomy is to distinguish evaluative, facilitative and transformative approaches. Professionals belonging to the evaluative school have a role perception that includes providing direction and signaling the appropriate grounds for settlement. They typically read all relevant documents before meetings and work only in cases where they have professional expertise. Facilitative professionals consider the principal mission of their job to enhance and clarify communication. They find it inappropriate to express opinions or make predictions; and they do not necessarily read all documents before meetings and do not restrict themselves to cases where they have professional expertise. (Riskin, 1994)

The transformative schools go beyond the facilitative approach in distancing third parties from problem solving. They see conflict as a form of interactional degeneration and claim that the purpose of the resolution process is to change the quality of conflict interaction - and, via this, to reverse the negative conflict cycle. Their main goal is transformation of the relationship among parties that happens through support being given to recognition, perspective taking and empowerment. Some adhering to the transformative direction completely reject problem solving as a goal. (Bush-Folger, 1994) The role of the mediator/facilitator in this approach is to concentrate on the opportunities that arise during the process for empowerment and inter-party recognition as they may strengthen the parties' capacity for self-determination and responsiveness. (Bush-Folger, 1996) Some anthropologists and sociologists even argue for a therapeutic style of operations - a process focusing on the full expression of feelings and attitudes, and also on self-enforcement. (Silbery, 1986)

The three approaches mentioned above create a clear continuum according to the level of involvement of the mediator/facilitator in the conflict content. At one end stands the evaluative approach, with its possible involvement in decisions; the facilitative is in the centre, maintaining a distance from direct involvement in decision-making; and at the other end are the transformative approaches that not only stipulate a withdrawal from involvement but also shift the focus from content to relationship. This concept of transformative dispute resolution consistently fits in with the taxonomy that is widely used by trainings and introductory books related to ADR.

Yet there is another concept of the transformative approach that is applied both by mediators and facilitators and which does not fit in with the earlier continuum. This second transformative concept is defined not by the intensity of third party involvement in problem solving but by having a wider focus. Mediators and facilitators using this approach work not only with the actual presentation of the conflict and its solution but also include the wider context in the analysis. Their aim is to enhance

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[13] An interesting debate was running on this topic on Linkedin during the summer of 2011. Many good positions can be read on the Linkedin site: http://www.linkedin.com/groups/How-do-you-structure-your-935617.S.61844951?view=&srchtype=discussedNews&gid=935617&item=61844951&type=member&trk=eml-anet_dig-b_pd-ttl-cn&ut=0ylSv1EMbJQQY1

parties understanding of the *whole* situation, as they claim that the wider picture can help the parties shape creative and mutually rewarding longer-term and also more substantial solutions, ones that have a chance of creating stability. (Friedman-Himmelstein 2005) I will explore this path in more detail in the second part of these twin papers. (Pallai: Participatory Approaches to Dealing with Community Conflicts and Disputes. Part 2. – Participatory Processes for Complex Cases.

Closing words

The taxonomy above is artificial and abstract. The purpose of its introduction was to take a look at the basic considerations, differentiate simple polar cases, and examine main options and approaches; in addition, such differentiation has been used to define key terms clearly, while avoiding multiple uses of basic terms. I saw it as important to do this as the terms we use have an effect on the concepts that structure our understanding. Clarity and consistency in one will be able to help the other.

Though feeling satisfied with this newly-gained clarity, we should not forget that life is much messier than this simple taxonomy. Conflicts and professionals cannot be so neatly encased in boxes. Cases mix components, and professionals apply a mix of methods. Good professionals have principles that dictate an inclination towards one approach, though they may also understand all the other options and select the one most suitable for a presented situation. Conceptual clarity helps one make the adequate choices.

To see more of the most difficult challenges for local decision-makers and ADR professionals, after this review of the key concepts I suggest that one reads the second part of these twin chapters, the one discussing complex challenges and intervention options. (Pallai: Participatory Approaches to Dealing with Community Conflicts and Disputes. Part 2. – Participatory Processes for Complex Cases.

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Documentary films

The Woolf Within http://www.youtube.com/watch?v=A1s6wKeGLQk

Burning bridges http://www.youtube.com/watch?v=QaeeRwOJQng