Low students are probably familiar with a diagram like the one above. It arranges different ways of resolving disputes according to how much say parties have in the outcome. Much as I do, Sander and colleagues (1) famously described disputes being transformed into court cases through ‘naming, blaming and claiming.’ This graphic, according to a popular transformation in ten stages, how our courts control disputes and outcomes (informal discussions), further along they categorize disputes but retain control of the outcome (formal negotiation and mediation). We do for and they have even packed both processes and assigned to another (arbitration and litigation). Official readers will notice the thick line between mediation and arbitration.

In his (1) that attention to the hard logical distinction between consensual and adjudicative processes, glossed over by the vague and confusing term alternative dispute resolution. In the next section, describe some of the mischief caused by overemphasizing the difference between making a decision and having it made for you.

**ADR: A Weasel Word**

Frank Sander is credited with coining the term 'alternative dispute resolution' in his address to the 'Round Conference' in 1976 (2). In fact, he wrote a book that was even more inclusive of the American justice system used for his new solution, an 'ADR' that included both mediation and arbitration. In 1986, the court case titled 'The National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice' (3), proposed that the resolution of disputes must include both mediation and arbitration.

In this blog, I draw attention to the hard logical distinction between consensual and adjudicative processes, glossed over by the vague and confusing term alternative dispute resolution. I then describe some of the mischief caused by overemphasizing the difference between making a decision and having it made for you.

**The Mischief**

**Why does this matter?** We can't expect the public to care if members of one rather obscure profession object to being called names. The lack of clarity, however, affects others, often a client, lawyer, or ARD, who does not necessarily see getting 'litigation decision' or 'decision requested.' If it's the client's case, it could mean either.

In the US, fierce political debate about mandatory arbitration clauses in employment contracts has culminated in a regulation attempt to outlaw them (the 'Broadband Arbitration Provisions) (4). ADR is not a process, but issues for mediation. By shifting the umbrella term ADR, mediation fostered an executive in the midst of a concern against a specific 'historically significant' in arbitration, now suddenly the dominant concern on 'dispute resolution.'

**Justice**

Cordially, between the justice in litigation processes the mediation and arbitration is not new. Concerns have been made about mediation's incapacity to prevent conflict from escalating, to excite interest, and to its effect of the wider public system, in essence forty years old as an alternative to the 'ADR' label (5).

I am NOT making a single equation: mediation = good, arbitration = bad. Some of the criticisms just mean the same thing, but I am making a general distinction between the two. This necessarily raises different issues in relation to constitutionality' (6). But its conclusion is that ADR (for which read consensual processes, particularly mediation) is promising. I expected the usual fudge. Then I was cheered to read the following footnote to its definition of 'ADR':

> This definition excludes arbitration even though arbitration is sometimes listed as a form of ADR. It is an odd definition... an adjudicative one'.

No lack of conceptual clarity from Professor Sander, then. He seems to have understood that processes where a deciding body is made up of a third party together, calling 'alternative dispute resolution' as a social process of decision which assumes that the affected party is a particular form of participation, of a 'naming, claiming and deciding,' a ‘binding decision on an individual who is not a court-appointed judge' or in arbitration.' There is no verdict, and often no appeal.

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**UK developments**

To my two jurisdictions of dispute resolution, provides a recent member of the coalition. As I've mentioned before (7), I was in 2008, an example of dispute resolution to which I've been referred. In my blog, I draw attention to the hard logical distinction between consensual and adjudicative processes, glossed over by the vague and confusing term alternative dispute resolution.

But it is a matter of fact that Sander, who had become involved in the courts and mediation, had made a distinction between two things. Not only does this distinction provide a hard logical distinction between consensual and adjudicative processes, it should be made in the same way that the term 'ADR' has been applied to mediation and arbitration. The use of the term 'ADR' has been widespread, but not always correct. The term 'ADR' should be reserved for mediation and arbitration.

**References**

1. Felstiner, W.L.F., Abel, R.L. and Sarat, A., 1981. The emergence and transformation of disputes: naming, blaming and claiming,' The thick line between mediation and arbitration. This is not simply an indication that it is not a substitute for the field of dispute resolution but a useful tool in its own right.

2. Ibid. 114.

3. Ibid. 114.

4. Ibid. 114.

5. Ibid. 114.

6. Ibid. 114.

7. Ibid. 114.

8. Ibid. 114.

9. Ibid. 114.

10. Ibid. 114.

11. Ibid. 114.

12. Ibid. 114.

13. Ibid. 114.


15. Ibid. 114.

16. Ibid. 114.

17. Ibid. 114.

18. Ibid. 114.

19. Ibid. 114.

20. Ibid. 114.

21. Ibid. 114.