
Kluwer Mediation Blog

Here Be Dragons! A Systemic Look at Mediation

Sabine Walsh (Sabine Walsh Mediation) · Friday, September 11th, 2015

Catching up on a few episodes of Game of Thrones recently, I was enjoying the string-pulling, manipulation and orchestration being engaged in by almost everyone in the fictional world of Westeros. None of the rulers really make their own decisions, all are influenced and steered by others who all have their own agendas. Some do this so subtly those they are manipulating don't even know it. Others just use big fire breathing dragons.

With the exception possibly of the dragons, these shenanigans, as we say in Ireland, are by no means confined to King's Landing or Winterfell. Every day in mediation we tell our clients (and ourselves) that only they can make the decisions and that they are there to determine their own outcomes, but who are we kidding? Every participant in mediation is part of a system of others, many of whom will have an influence on them and their engagement and decision making in mediation.

Here's an example from my practice – a mediation took place between numerous beneficiaries to a late relation's estate who could not agree on how to divide a farm to which, under the laws of intestacy, all 14 of them had an interest. While only four of them participated in the mediation, two of the parties' decision making was heavily influenced by the fact that they were representing the other ten, and had to account to them for any decisions. Then there was the parties' lawyer who conscientiously removed any willingness on the part of the parties to "risk" a compromise and meet the other side somewhere in the middle. The part of the system that I was unprepared for in that case was not the other beneficiaries, I knew about them, but the lawyer and his influence, in turn, on the parties that were there and that parties that were not. We have all experienced trying to get over, around and through gatekeepers such as lawyers and advisers, but there can also be less visible, more powerful influences at play too.

If we view conflict as a system, it becomes easier to identify and address these influences. Gallo, for example, describes a conflict as "a special kind of system whose complexity stems from many different and sometimes unrelated elements." A conflict between two people, therefore, does not take place in a vacuum but within the social, emotional, cultural and value environment of the parties. All these factors influence the conflict in complex and unpredictable ways. The goals and motivations of many of the people in the conflict system may be completely different, or even at odds with those of the main parties to the conflict.

If we look closely at our mediation practices we can see these dynamics at play every day. In a conflict between a separating couple the visible members of the broader conflict system include the

children, grandparents, siblings of the couple. Less obvious but equally influential can be employers, neighbours, therapists, friends and, in a society like Ireland, the community. I recall a wife struggling to create and maintain an amicable separation with her husband who had been unfaithful. She struggled not because of her own feelings but because of the enormous pressure her family and friends were putting on her to “make him pay for what he did”. One sibling, in particular, threatened to end the relationship with her if she did not try to cut her ex-husband out of her life completely. The motivations of this sibling, clearly, had a lot less to do with the conflict between husband and wife than things that had happened or were happening in her own life.

Taking a systemic view on family conflict is particularly useful. In fact, anyone practising in this area could do worse than read Wayne Regina’s insightful and informative book on applying Family Systems Theory to Mediation. I have mooted multi-disciplinary approaches to family mediation in past blogs, I think, and the need to recognise that a relationship breakdown, and a mediation to address its consequences, needs to be viewed as reaching beyond the two parties to the relationship from the beginning. A colleague reported recently on a case where a set of grandparents, out of fear of losing contact with their grandchildren and frustration and not being given a say, reported the parents to social services, triggering a dramatic series of events. One can only wonder if things might have turned out differently if the grandparents had been treated as part of the conflict system from the beginning.

So does this mean that we need to have four, eight, twenty people at the mediation table? Of course not. Not only is that not practical but it is not desirable either. What is worth doing is looking at a conflict through a systemic lens when it first comes to us. There are many different ways of viewing and analysing conflict, through conflict styles theory, Moore’s Wheel of Conflict, Maslow’s hierarchy of needs and other theoretical concepts. Systems thinking is another one of these. If we apply systems thinking to a conflict and our intervention in it, there are a number of key factors we can look at.

The first is these is boundaries. If we can identify the boundaries of a conflict, we can shape how we will tackle it. These boundaries can be defined by people, that is the actors in a conflict; time – how far back in a conflict we are willing to look or physical as in where the conflict is being played out. As mediators we will need to decide how the boundaries will need to be defined for the mediation process. Who can have a say? To what extent are we happy to work with the antecedents of a dispute? To what extent do the locations of various parties influence the process and outcomes (as in the case of a child abduction mediation for example)? We need to be sure to define a boundary that is workable for everyone concerned, but flexible enough to be adjusted if other aspects of the conflict system need to be addressed.

Another relevant concept in systemic thinking is the idea of causal and feedback loops. All mediators are familiar with patterns of interaction that repeat over and over again in mediation. One party makes a small move forward, the other is dismissive of it rather than engaging with it, and the resulting feedback loops results in regression in the negotiations. These loops can occur in many parts of the system. A party might engage with a suggestion by the other party positively, but then discuss it with their lawyer who, for their own reasons, dismisses it, returning the dialogue to the status quo.

Finally, a recognition that a system contains multiple, interconnected components and micro-systems is essential for anyone working with conflict. Just when we think we have figured out what is going on in a conflict, another layer reveals itself and we have to re-evaluate our analysis.

An example is a mediation based around a landlord and tenant dispute, repairs and arrears of rent. The boundaries seemed clear, the actors in the system seemed clear, as did the issue....until another agent appeared in the form of an engineer's report on the property. This added aspect completely changed the dispute, united the warring parties against a third party and broadened both the temporal and legal boundaries of the conflict. A new series of issues, disputes, and parties joined the system (or indeed created a new one).



I am acutely conscious of the fact that I risk fundamentally over-simplifying a complex and detailed theory for the purposes of applying it to day-to-day mediation practice. Nothing if not the New York Times diagram of a dynamic systems model of the Afghanistan Conflict above shows clearly the complexity of systems thinking. That said, it can provide a very useful lens through which to view the mess of conflict, particularly for people such as myself who have a teutonic tendency towards orderly, linear thinking and analysis. It provides a framework for managing chaos, and recognising mediation for the unpredictable and complex intervention that it is. It also reminds us to stop and ask ourselves who we need to be considering, what questions we need to be asking, and who might be impacted by, or indeed driving the decisions our clients are making. At the very least, it should remind us to watch out for dragons...

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