

Kluwer Mediation Blog

Context – going back to the drawing board.

Rosemary Howell (University of New South Wales) · Wednesday, November 22nd, 2023



It is no secret that the time I spent studying and working with the Harvard Program on Negotiation (PON) was the start of a love affair that has endured. The material from Fisher and Ury's 'Getting to Yes', which evolved into the Seven Elements, is constantly useful as a strategic thinking tool.

Addressing my group of Teaching Fellows in the Program, on our first day, Professor Roger Fisher told us 'if these tools work – they work everywhere'. The idea of a universal tool was extremely appealing and I continued to explore all the programs I could find at PON and beyond.

Sometime later my partner Alan Limbury conducted the negotiation of a lifetime and persuaded Fisher to come to Australia with his team and present his foundational program at venues around the country. We were lucky to have more opportunities to work with him.

Fisher also delivered the plenary address at the 1988 Australian Bicentenary Legal Convention. He gave me permission to reproduce his paper to use in my teaching work. It is an elegant, accessible introduction to the tools and students have consistently told me that they find it valuable.

I have used it regularly – until now.

Perhaps if I tell you that the paper is titled ‘**Negotiating with the Russians or with your Spouse – is there a difference?**’ you will understand what I mean. As I was preparing the training materials for a negotiation I was delivering to my University colleagues last week it suddenly struck me that there had been a significant change in context which might make this paper inappropriate.

I hesitated.

I re-read the paper.

The material is terrific and the strategic concepts are as relevant as ever. But the title suddenly has a different impact. It does not take us to a place of rational, strategic thinking. It transports us to a geopolitical conflict in which the countries of the world are being pressured to take sides and send military supplies. I really wanted to give participants in the program some pre-reading. I took a breath and changed the title to ‘Negotiating Differences’. The paper was well received and I gave a sigh of relief but....

Context is not a new idea

I include it in numerous programs I present and I have a ‘questioning assumptions’ practice I use in my mediations. However this experience was clearly prompting a revisit and a rethink.

My first port of call was to revisit the important thoughts on context from 20 years ago presented by the marvellous [Carrie Menkel-Meadow](#). She is sceptical about whether we dispute resolution professionals have theoretical and practical tools that work across all domains. As an interesting aside she acknowledged that she was influenced by the context in which she was writing – a different war; this time in Iraq.

After reading the thoughtful way in which she wrestles with the challenge, it occurs to me that she is leading us to the idea that the work on which we draw for theoretical conflict analysis and dispute resolution practice can provide helpful tools for thinking and action – but her proviso requires us to ensure we are consciously applying them in a situation-specific way.

Commenting contemporaneously on her paper, [Kevin Avruch](#) talks about his notion of context and pretext – where meaning well is the pretext for exporting and imposing theory and process from one context to another (he uses the example of US style dispute resolution being exported to the rest of the world) without proper understanding that they might not have universal application.

Culture as context

Menkel-Meadow and Avruch make much of culture and its impact on context. [Gender research](#) deepens the cultural understanding by explaining that ‘culture provides the context in which gender roles, identity and stereotypes unfold’.

But much of the work on cultural differences takes a focus on the cross-cultural elements that relate to different countries. [Hofstede’s work](#) gave us the Five Dimensions of Culture, exploring national cultures via five different dimensions.

Returning to Menkel-Meadow’s situation-specific advice, this work is clearly helpful. But

contextual differences are far broader than culture.

Enter behavioural economics

Since Daniel Kahneman won the Nobel Prize in Economic Sciences in 2002, his work in integrating insights from psychology into economics has shone further light on context, highlighting the psychology of judgement and decision making. Complementing Chris Argyris' [work](#) on the ladder of influence, Kahneman shone a light on the heuristics we use to make sense of information quickly. He continued to develop these ideas in his [text](#) which draws heavily on context. We use heuristics to create shortcuts to decisions by drawing on context – when did we encounter a similar position? Driving fast down the highway, I see the brake lights of the truck in front of me flash. Reflexively (making the assumption that the driver is braking) I plant my foot on the brakes. I used the context of the brake lights to prompt my action.

Absence of apparent context thwarts us. I give my students a challenge to make sense of the following letters:

HRHRJH

They are stumped. In the absence of any context whatsoever, their brains work overtime. They look for patterns. They seize on HRH as a pattern they recognise – in my culture it means Her (or His) Royal Highness. But they remain stumped. It is only when I add an increasing number of contextual cues that they can identify the numberplate of my car – **HRH.RJH**. (My children call me HRH and my initials are RJH.)

Where does this take us?

For me the piece that is missing in much of the research is the fact that context is not fixed. There are constant changes in the environment that reflect an array of constantly changing influences – social, economic, political and religious to name a few.

Context is always in play for conflict resolution professionals. If we are to follow Menkel-Meadow's advice about situation-specific behaviour, then it has never been more important for us to continue to develop tools to support us in asking and answering significant context-related questions such as:

- What assumptions am I making about the context of this dispute?
- What is an appropriate way to question these assumptions?
- What external validation might I seek to validate my assessment of context?

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