

ALTERNATIVE DISPUTE RESOLUTION/
CONFLICT INTERVENTION
AND SOCIAL JUSTICE

by Mark Chesler

October 1994
CRSO Working Paper #403
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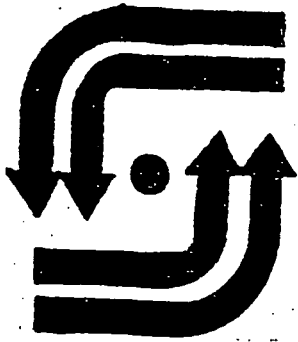
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September 1989

**The Program on Conflict Management Alternatives
at The University of Michigan**

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Program on Conflict Management Alternatives
The University of Michigan, Ann Arbor, MI
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Alternative Dispute Resolution and Social Justice*

Over the past several years we have seen tremendous growth in scholarly and practical efforts to advance the traditions of Alternative Dispute Resolution and Conflict Intervention. What are the actual and potential relationships between these developing traditions and another tradition, that of the struggle for social justice? In this chapter I attempt to promote dialogue on this question.

As a way of signalling my orientation to this task, I want to indicate that the tradition of scholarship and social action I am rooted in focuses on social change and social justice. It generally is not a revolutionary or radical tradition, but a progressive and reformist tradition. It assumes the existence of socially organized patterns of injustice and domination; moreover, it emphasizes the necessity of major structural and cultural changes in institutions and communities, and the

*This chapter is a revised version of a talk given at the 1989 National Conference on Peace and Conflict Resolution, Montreal, Canada, March 4, 1989. I am grateful to James Crowfoot, Edith Lewis, Richard Salem, my PCMA colleagues, and several NCPDR discussants for their comments and reactions to preliminary versions of this work. I also want to express my intellectual debt to David Luban (1989), whose brilliant review of some of these issues I discovered after the Conference presentation and used in this elaboration.

development of multicultural personal and institutional behavior, as conditions for lasting peace and justice in America.

My background and experience is not in the tradition of Alternative Dispute Resolution or Conflict Intervention, per se, except as those strategies help promote institutional change and social justice. Thus, I am more committed to justice-making or social change-making than to dispute settlement or conflict resolution. My work is not neutralist or impartial; it more often takes the form of identification or consultation and alignment with or assistance to a disadvantaged or oppressed party (first party intervention) than third party intervention and mediation.

What is social justice?

"Justice is not just one virtue among the lot. It is the cornerstone of human togetherness. To try to define it is to address the most profound questions ever to challenge the human mind. In the definition of social justice is contained one's definition of person and of society. Also at issue is the relationship of the individual to society" (Maguire, 1980, p. 57).

What is meant by social justice? I do not have a detailed answer to that question: I am not sufficiently well-versed as a moral philosopher to have synthesized and reconciled the many competing arguments and positions that exist in the literature...and in our human experience. Moreover, I think it is more important to create and act upon context-specific

definitions of social justice than to debate vaguely general and abstract notions. Abstract definitions become battle cries, and occasions for both the worst and best kinds of liberatory struggles, moral crusades, terrorism, joyous celebrations, violent repression and legitimized victimization.

Despite these cautions, we do need to consider some minimal conditions or starting places for a common understanding of social justice, and thus for a common inquiry into the issues of conflict and dispute resolution. The literature of social, political and moral philosophy provides a host of alternative conceptions and definitions. One important starting place is the distinction between procedural justice and distributive justice. Procedural justice refers to the fairness of procedures or mechanisms utilized to allocate societal resources, adjudicate disputes, or permit/promote various life opportunities and choices throughout the population. Examples of such mechanisms include the legal system (e.g., equality before the law, right to counsel, etc.), the educational system, immigration and citizenship criteria and pathways, guidelines for economic and political participation, discourse rules, etc. Distributive justice refers to the fairness of the allocations of resources and opportunities themselves, in a sense the "outcomes" of whatever procedures are used. Examples of such resource distribution patterns include differential levels of mortality and morbidity, income/wealth, education, health care, criminal victimization, punishment, access to clean air/water, etc., throughout the population.

Much current debate in our society centers on the relative preference for one or another of these principled forms of justice. For instance, many argue that procedural justice is key, and that fair procedures means that justice exists even if outcomes are skewed. Others argue that skewed outcomes are in and of themselves evidence of injustice at work, and that apparently "fair" or even similar procedures that result in "unfair" outcomes are not fair. This is roughly similar to the question of whether "equal treatment" and "same treatment" are equivalent terms when dealing with people who are different, who have different talents and styles, and who have different access to societal resources. Is treating people differently, in accordance with their group's unique characteristics, or their individuality, more or less just than treating everyone the same, regardless of their uniqueness? We shall return to this question later, when we examine various principles or criteria for justice, and different ways of approaching or attaining it.

Although these two forms of justice are conceptually distinct, they may be quite interdependent in practice. For instance, Walzer (1986) argues that for distributive justice to work effectively, certain societal conditions must prevail: (1) a substantial public sector of shared economic, political and cultural infrastructures - thus enabling citizens to participate in valued social activities; (2) communal provision for those who cannot participate effectively - the ill, unemployed, uneducated, oppressed, etc.; (3) equality of opportunity to participate in economic, political and cultural activities, and; (4) a strong

democracy in both public and private spheres of activity, with a wide distribution of political power - thus enabling citizens broad access to decision-making channels. These conditions are basically components of procedural justice, and Walzer is arguing that just procedures are a necessary, although not sufficient, condition for assuring just outcomes.

Underlying these distinctions, and overlaying all discussions of justice, are varying definitions or ideologies about what are "just outcomes". Figure 1 summarizes several key principles or criteria for the just distribution of resources in the society or in any sub-societal social system. For instance, many theorists and philosophers argue that liberty is the prime component of justice, that the ability of people freely to make decisions about their activities and options is the central element in their ability to control their fate and pursue satisfaction on their own terms. As Bovard argued in a recent "My Turn" piece in NEWSWEEK (1991, p. 13), "In exchanges between individuals - and in contract law - the test of fairness is the voluntary consent of each party to the bargain: the free will which constitutes fair exchange." Others argue that equity is the prime component of justice, and that differences in individual talent, effort or investment (of money, time, skill, etc.) should be rewarded by differences in outcomes or rewards. Thus, people who work hard, who have valued talents and use them well, who contribute more to the communal enterprise, should get greater rewards than those people who work less hard, have less talent, or have talents that are valued less - and that such inequality

is just. Still others argue a third position, that equality is primary, and that a relatively equal distribution of societal resources recognizes the inherent value of every individual person, regardless of their particular talent, effort and contribution. Moreover, it is suggested, such a distribution criterion helps to overcome the cultural and structural inequalities that give unfair advantages (equity value) and liberties (opportunities to act on free will) to some and disadvantages to others. A fourth major principle is need, the basis of the Marxist dictum, "to each according to his (her) need." Such a criterion recognizes that equality itself fails to respond to the fact that people (and classes of people) are not equal with regard to their needs, and thus that certain inequalities may be legitimate if they are tied tightly to differential need (e.g., the young need more education than do the elderly, the ill need more access to health care than do the healthy). A fifth major position stresses a sense of community solidarity as the prime component of justice, and that communicating with, caring about, and solving problems with others is essential. Such a criterion goes beyond material questions of distribution and raises new questions about the measures or goals of private and public life and effort.

Each of these principles has its advocates and detractors, although few commentators are purists with regard to a single principle, and few are apt to argue for complete liberty or equality or need irrespective of counter-claims. As several critics argue, the priority or (relatively) exclusive emphasis on

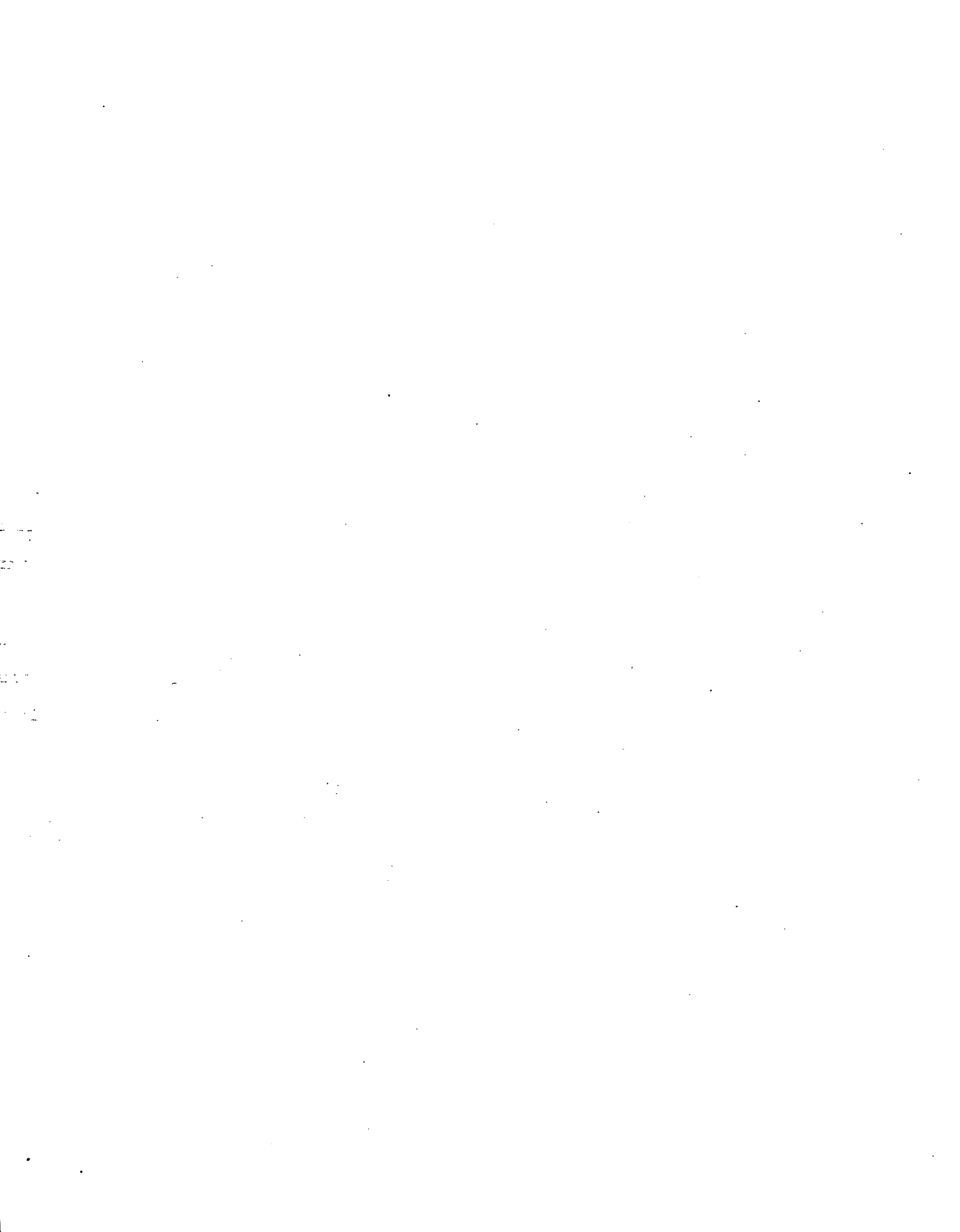


FIGURE 1: DIFFERENT DEFINITIONS, MECHANISMS, CONDITIONS OF DISTRIBUTIVE JUSTICE

Priority justice principle	Mechanisms	Key resources	Major barriers	Advocates & architects
LIBERTY	Freely made contracts and opportunities	Talent Freedom from constraint Self-interest maximization Individualism Freedom of speech, association	Constraint on opportunities	Nozick Friedmann Rawls
EQUITY	Market place that rewards talent/effort/investment	Talent Motivation and self Freedom of opportunity	Constraints on rewards	Homans Rawls
EQUALITY	Public action to ensure equal distribution of resources Impartial administration of rules, laws, opportunities	Inherent value of each person Relationships Equality before the law	Pre-existing inequality Concentrations of wealth Arbitrary administration	Rawls Shklar
NEED	Public action to asses/meet different needs	Compassion, charity for all	Different subjective needs Self-interest	Marx Walzer
SOLIDARITY/COMMUNITY	Local discourse and cooperative problem-solving Multiculturalism	Comraderly feeling and desire for bonding Shared understandings and actions Desire for union	Alienation and tribalism Inequality and cultural hegemony Mechanical solidarity or conformity	Habermas Walzer Gilligan

liberty and equity often ignores the ways in which concentrations of wealth and power limit or eliminate the liberty and choices of certain classes of people (notably the poor, people of color, women, the young, etc.) (Phillips, 1986; Sturm, 1981). In so doing, it also limits their access to the resources that can generate equity. The major critique of equality-based principles is that they fail to deal with "legitimate" differences in individual talent or merit or effort, and the functional utility of stratification systems for social efficiency and advance (Phillips, 1986; Sturm, 1981). Thus, a major challenge to equity and to equality theorists is to distinguish between relevant differences (those that perhaps should be rewarded unequally) and irrelevant, arbitrary or imposed differences (those that should not be bases for differential rewards). The major critique of need-based theories is that it is very difficult to assess need accurately (as opposed to preference), and that rewarding need irrespective of effort, like promoting equality, fails to engender motivation for effort. Another critique of both equality and need-based principles is that their implementation generally requires a cumbersome public/state apparatus to control "free exchange" and to manage redistribution, and that such a centralized, bureaucratic apparatus seriously constrains local community democracy and individual liberty. Moreover, the very fact of compulsory redistribution seems to some to seriously violate personal freedom of choice. The major critique of the solidarity principle centers on the potential for consensualist conditions to create group conformity, groupthink and false

consensus, rather than searching dialogue and creative problem-solving. Moreover, it has proven difficult to specify how one can create an "ideal speech situation" or maintain the conditions under which free discourse and a sense of community can occur. The same concentrations of privilege which constrain universal liberty, which artificially manufacture equity, and which frustrate equality, render many of the same groups voiceless or exclude them from full participation in community discourse and decision-making. For instance, even with the United States' guarantees of freedom of individual speech and association, powerful political and economic forces control the shape of and participation in public policy debates, let alone their outcomes.

Some may argue that community and liberty are content-less statements of procedure, that they point to the ways in which claims for justice should be processed rather than to the bases for allocating social goods and resources. Thus, perhaps they should not be considered true criteria for distributive justice. As I suggested earlier, the distinctions between procedural and distributive justice are not always clear. These two components, like the other three, appear to be so crucial to contemporary debates that I have retained them in our discussions of distributive justice.

In the U. S. society, deviations from cherished norms of liberty must be defended carefully and rigorously. Our cultural preoccupation with the liberal rhetoric and ideology of individual rights and responsibilities supports the priorities on individual liberty and equity. Moreover, the economic structure

of advanced industrial society leads easily to a fragmented Gesellschaften emphasis on individual achievement. This same emphasis often overlooks the existence of collective advantage/disadvantage, let alone the possibility of collective rights. It also overlooks Gemeinschaften concerns about collective responsibility, mutual aid, caring and compassionate relationships (Gilligan, 1982; Kamenka, 1979; Walzer, 1986). In fact, concerns about equality often are relegated to matters of procedural justice rather than distributive justice; that is, whether all classes have equal legal rights and equal opportunity or access to mechanisms of advance rather than do all classes and individuals have equal resources or outcomes. Moreover, concerns about standards of community and solidarity, articulated in some societies and historic periods as fraternity (sic), generally are not seen as relevant to discussions of justice. As Pateman (1980) suggests, it is rare that concerns about love and compassion, or questions of solidarity and social relationships, enter discussions of justice.

But women and feminist scholars often do see these issues as primary, and there is evidence that gender may have an important impact on views of justice, especially these latter concerns. Cook & Hegtvedt (1983) summarize experimental research indicating that females prefer equality to equity as the criterion for allocating rewards to coalition members (with the reverse being true for men). Extending this research-based finding, Gilligan (1982) suggests that women considering fairness are more likely to concentrate on responsibilities than on rights, on

relationships than on abstract principles, and on care and compassion than on equality. In this regard, they are more likely to adopt views consistent with Walzer and Habermas' emphasis on community solidarity...and in fact to go beyond them. Douvan (1988) suggests that it is women's experience in care-taking and life-giving roles (Ruddick, 1980) that prepares them to contextualize issues and to focus on relationships before making judgements.* Indeed, consider the following words of Portia, directed at Shylock, in a Court of Justice (The Merchant of Venice, Act IV, Scene I).

Though justice be thy plea consider this-
 That in the course of justice none of us
 Should see salvation: we do pray for mercy;
 And that same prayer doth teach us all to render
 The deeds of mercy. I have spoke this much
 To mitigate the justice of thy plea.

One may argue whether this is a truly feminist view (of mercy or solidarity over vengeance or equity as two competing priorities of justice), a woman's plea on behalf of her lover, or a cynical attempt at the manipulation of an "outsider Jew" by a daughter of the elite. Regardless, it does help remind us that preference for any of these justice principles are contextualized by gender, race, class, historic era, societal form, and momentary crises or situations, etc.

*This does not appear to be a claim for feminist essentialism, at least not on biological criteria alone. Rather, Ruddick appears to argue for the relevance of social roles for the formation and maintenance of varied justice ideologies.

As the preferred definitions or primary principles of justice differ, so too do the means by which justice is to be attained. Adherents of justice as liberty often advocate for the freedom to make independent contractual arrangements, with few constraints on an open market place. Equity adherents, likewise, assume and advocate a free market for the generation and exchange of investments and resources. Adherents of equality as justice argue that free markets seldom exist, and that they already are constrained by the operations of concentrations of wealth and power. The skewed market place primarily (and they argue, unjustly) benefits those with accumulated wealth and power (equity), rendering meaningless concepts of equality of opportunity and unrealistic an enduring link between equality of opportunity and equality of outcomes. Thus, equality advocates propose other means, such as the operations of a public weal, to guarantee the fair (re)distribution of wealth and power. This only makes sense, of course, if the public weal itself is representative of and accountable to groups with varying access to key resources. The failure of the public weal, or the state, to be so constructed and operative is one factor leading to its current "crisis of legitimacy" (Habermas, 1975). Still others, especially those advocates of justice as community, emphasize the role of broadly based community discourse - dialogue, problem-solving and decision-making - as mechanisms for deciding upon the allocation of societal goods and resources. Their goal is the organization of "society linked to decision-making processes on the basis of discussion free from domination (Habermas, 1971, p.

55)." As Hollinger notes, Habermas' concept of dialogue "rests on the willingness and the ability of people in different traditions, or differing people within one tradition, to work toward mutual understanding and cooperation through continued dialogue. This gives rise to a communicative model of community (Hollinger, 1985, p. xiii)," and to a *Gemeinschaften* emphasis on community as a unit of problem concern and solution (Lang, 1979). Such processes avoid or overcome the problem of alienation and oppression by promoting moral inclusion, which "refers to relationships in which the parties are approximately equal, the potentiality for reciprocity exists, and both (or more) parties are entitled to fair processes and some share of community resources (Opotow, 1990, p. 2)." Moral inclusion of all people and groups, in this view, is an essential component of a just society.

The priority concern for community means that the individual rights of people like DeFunis and Weber and Bakke have to be balanced (and discussed in a dialogic context) against the individual rights of members of a previously oppressed or disadvantaged (minority) groups, or against the collective rights of groups long excluded from the "moral community" and its privileged access to medical schools and industrial employment. This is a classic case of the problem of (re)distribution of key resources (higher education, jobs) that involves issues of individual-collective rights and the meaning of equal opportunity, liberty, equity, equality and community. Rawls (1971) raises similar issues when he suggests that individuals'

"natural talents" are part of a social gene pool, and thus open to collective claims (an argument sure to entice sociobiologists).

Habermas argues further that rooting oneself in the community means that one "cannot isolate formal rights from the concrete context of social interests and historical ideas (1973, p. 119)" operative in the society or organizational system. Indeed, in the concrete context of the United States in the 1990s, talking about or attaining justice requires dealing with issues of race, class, gender, ethnicity, sexual orientation, etc. These macro-level realities of social structural injustice are the settings within which micro-level injustice and disputes occur. And few would argue that on any justice criterion - liberty, equity, equality, need, solidarity - there is now real justice by race and class and gender within our society.

Although some of these principles, and the mechanisms for approaching them, are contradictory or conflictual, none are absolute or unitary. Rawls (1971) clearly attempts to moderate his emphasis on liberty as a first principle with a significant concern for relative equality (or at least redistribution with the least advantaged in mind). And Deutsch argues that "Under some conditions distributing rewards according to individual needs will be more just, and under other conditions allocating in terms of individual productivity will be more so (1975, p. 40)." Deutsch suggests further that if the priority goal is to maximize productive capacity, equity is likely to be the preferred allocation principle (and hence the principal definer of

justice); if harmonious social relations is the goal, equality is likely to be the preferred principle; and if fostering peoples' welfare is sought, need is likely to be the preferred principle.

A review of these various definitions, principles and arguments suggests that social justice must include a goodly measure of personal liberty throughout all social sectors and classes, the probability that people are equitably rewarded for their contributions, at least relative equality of critical and life-sustaining resources among various peoples and parties, and the sense that deviations from equality are minimal, openly discussed and decided upon, and appropriate (legitimate). Social justice also must include relative equality of access to the power to discuss and allocate resources among various classes and peoples and parties and to the mechanisms for resolving disputes and making decisions. And social justice must include mutual appreciation and respect for the cultural differences in styles and beliefs and traditions that characterize various peoples and parties, as well as a meaningful sense of community identity and solidarity among various peoples and parties who are interdependent with one another*. Within such a range of criteria we may be able to see the possibilities for the advancement of the basic well being of all social groups, and for the reduction of official as well as incidental violence.

*These conditions obviously include elements both of procedural and distributive justice. More elaborate recent efforts to offer definitions of social justice can be found in Deutsch, 1975; Eckhoff, 1974; Habermas, 1975; Heller, 1989; Kamenka & Tay, 1979; Luban, 1989; Lucash, 1986; Phillips, 1986; Rawls, 1971; Walzer, 1983.

Finally, Heller argues that (1989, p. 273) "a just procedure is the condition of the good life - of all possible lives - but it is not sufficient for the good life. Justice is the skeleton...." Perhaps it is the minimum condition. In her view, righteousness, emotional depth and even love also are essential. This view closely mirrors the position of other feminist theorists noted above, but Heller does not include these considerations as part of a definition of justice: they are, evidently, simply other conditions of a good life - individually and collectively. Coulson (1988), too, argues that justice is not the only criterion for assessing the outcomes of dispute resolution or indeed the good life and the good society. His argument is somewhat different however; he argues that abundance and satisfaction may be more important to people, and therefore make them forget justice.

Certainly justice is not the only criterion for a good society, but certainly it is an important one. Given how the promises or even the realities of satisfaction and abundance often are used to mystify or "cool out" oppressed groups' demands for justice, satisfaction with agreements is not a satisfactory principle for social justice. It matters little whether these satisfactory agreements are made with or without third party interveners, in a court of law or in the shadow of the court; satisfaction may be an irrelevant, or worse, criterion. To the extent that weaker or dominated parties in a struggle or in a society may have internalized the oppression visited upon and taught to them, they may willingly make agreements not in their

best interests (Fanon, 1966; 1967). They may adopt a form of false consciousness or self-destruction that furthers their victimization.* They also may not have the tangible power to push for a just agreement, and (perhaps willingly, perhaps unwillingly) settle for what they acknowledge as an unjust but "satisfactory" (best they could do) settlement. Thus, "BATNA" (Fisher and Ury, 1983), often touted as the criterion against which to assess participation in ADR/CI, certainly is no indicator or guarantor of justice.

The relationship between ADR/CI and Social Justice.

"Justice, it is rightly said, presupposes conflict: there is no problem of justice, and no conception of it, where there are no conflicts (Kamenka, 1979, p. 17)"

Several elements in the prior discussion help identify the problematic relationship between ADR/CI and social justice. These problems often can be captured in the difference between short-

*The question of false consciousness, and the determination of anyone's best interest, is very complex and cannot be undertaken in depth here. Suffice to say, I do not advocate imposing "objective" determinations of a person/group's interest on that group's "subjective" sense of its own welfare. At the same time, I know that especially powerless people/groups often are persuaded by dominant elites and the ruling culture to misconstrue their own potentialities and welfare. Such cultural hegemony is a crucial element in keeping an otherwise conflictual society or organization relatively harmonious, and for preserving the advantages of power and privilege. Once again, then, the call for informed dialogue and a genuine community of discourse may be a vital path to resolution of this theoretical and practical dilemma.

term objectives of agreement-making or survival with minor changes and long-term goals of structural change or substantial resource redistribution. They also are evident in Luban's (1989) distinction between "within the system justice" and "revisionary justice." And they are evident in distinctions between advances in procedural justice and distributive justice. My primary concern is with the latter meanings of justice, for if "fairer procedures" and minor changes do not lead to "fairer outcomes" and structural reform we have not made much progress.

When parties are in protracted and heated conflict with one another it sometimes is helpful for external actors to assist in the examination, settlement or resolution of such conflicts. The question is whether and when such assistance (often called intervention) is truly helpful to the parties (and to which party), and whether such assistance can be provided in ways that increase the possibilities for social justice. Perhaps most explicitly, to what extent do such interventions help create or move toward the "community of discourse" explicated by Habermas and others? Conversely, when do such interventions replicate dominant parties' historic advantages (and thus challenging groups' disadvantages or oppression), or help settle disputes without regard for the achievement of social justice?

The central question for justice-minded proponents of ADR/CI (and one which I cannot answer but only raise here - a complete answer awaits better empirical investigation) is the degree to which ADR as a process approaches procedural justice and leads to greater distributive justice. Claims that ADR/CI can improve the

quality of resolutions of conflicts and improve the relationships among contesting parties, by creating situations wherein the voices of all the parties are heard, and have potent impact on social system decision-making and ongoing operations, are relevant to this question. It is dangerous to attempt to evaluate such claims or answer such questions in the abstract, since the local contexts and realities of specific situations ultimately determine the value of any intervention. But claims about the value of ADR/CI often are made in the abstract. Thus, like the prior exploration of social justice, we need to venture some general principles and praises/critiques of ADR/CI, while being careful about the limits of a generic perspective.

Most protracted conflicts (disputes) have their roots in perceived injustice (Gurr, 1970; Gamson, 1975; Gamson, 1968). Thus, surfacing and escalating conflict often is part of a group's conscious strategy designed to require other parties to pay attention to the issues, to get them to "come to the table" to begin discussion or bargaining, to pressure and threaten others in the effort to gain different allocations of resources, and to pursue their conceptions of social justice. As Himes argues (1980, p. 14-15), "Social conflict is purposeful behavior. The parties intend to gain scarce resources and to overcome obstructing resistance...This requires the use of social power, since the obstructing group will not voluntarily give up the values in contest." Under such circumstances, where conflict (and perhaps even violence) is part of the mechanism for the struggle over group interests, Rubinstein asks (1988, p. 18), "What is the

role of conflict resolution?" And he responds (p. 18), "If the effect of localized group violence in the context of the American political system is to fulfill the basic needs of previously excluded, impoverished and powerless groups, there may be no further necessity (or legitimacy) for conflict resolution." And if this is the case with violent conflict, how much more cautious should we be about the reduction, management or elimination of non-violent but noisy and distressing conflict?

The structure of economic and political power in this society, when coupled with official state support for sustained inequality, does systematic injustice and often violence to people who lack the resources to meet their needs for life and happiness - let alone liberty. Both the private and public sectors maintain and often advance injustice on several of the principled criteria discussed earlier. In the face of such official injustice, violence and exploitation, conflict - and conflict in its escalated forms (unpeace, disorder, unruliness, even terrorism) - may be the only viable tools disempowered and unfairly treated groups have at their disposal in their struggle to bring attention to their situation or to gain adequate resources and life opportunities (see, for example, Coser, 1956; Gamson 1968, and a long line of social and political theorists). People trying to defend themselves against such exploitation or inequality often look like the primary escalators of conflict, when in fact they principally may be reactors to the violence and conflict generated by people with superior power.

Rational dialogue and debate, pleas and petitions, and attempts at collaborative problem-solving (guided or unguided) are all too easily ignored by those whose privileged background and status insulate them from having to understand others' life experiences, and whose status and power protect them from having to listen to or collaborate with disadvantaged or oppressed groups' claims for justice. These powerful groups, by virtue of their privileged access to the society's information tools and cultural forms (e.g., media, scientific establishments, publication channels, etc.), generally are able to use tactics of dialogue and debate, and negotiation and mediation, to their partisan advantage. They also use their culturally and economically superior access to society's processes of information creation (sciences) and dissemination (media) to outlisten, outargue, outflank, outcompromise, outcollaborate, delegitimize or just overpower protesting groups.

There undoubtedly is considerable value to facilitating the informal and potentially consensual resolution of conflicts and disputes that are painful to people. Certainly reduction of the costs (personal, political and material) of protracted litigation is a worthwhile course. Even when issues of social justice are at stake, and when disputes occur among parties of unequal resources, third party intervention may be appropriate and useful. This may be clearest in some marital or divorce situations, intra-neighborhood conflicts, intra-agency or multi-unit disputes within an agency or organization, etc. However, even some of these situations may be implicitly and indirectly

may be part of a larger social struggle. Under such circumstances, if underlying issues of structural conflict, oppression and long-term institutional change are not dealt with, we run the danger of applying band-aids to festering sores.

In like vein, Bercovitch (1984) makes a distinction between conflict management, conflict settlement and conflict resolution. He states (p. 11): "A conflict is settled when destructive behavior has been reduced and hostile attitudes have been lessened...A conflict is said to be resolved when the basic structure of the situation giving rise to destructive behavior and hostile attitudes has been reevaluated or re-perceived by the parties...Conflict management can be directed toward conflict settlement, or it can be directed toward achieving the more complex, enduring outcome of conflict resolution." These distinctions are useful, although they are by no means accepted as general language in the field. In these terms, resolution is more likely to involve concerns about long term social change and social justice, as they have been reflected heretofore in this chapter, while settlement is more likely to focus on the immediate issues in overt dispute. The utility of these distinctions are marred, unfortunately, by Bercovitch's focus on "destructive behavior" and "hostile attitudes." Not all conflicts involve such behaviors and attitudes; as Himes and others indicate, they may have great social and personal rationality and utility. Bercovitch's characterizations lead too easily to labelling conflict as "bad", and drawing attention away from underlying interests and issues.

If aggrieved parties gain from the opportunity to engage in prompt, low-cost, consensual settlements not involving the courts they may feel satisfied, even justly served. But this may reflect procedural justice gained, perhaps at the expense of distributive justice. It also may be a temporary gain. It is especially likely to occur among low-power and oppressed groups who have been taught to internalize their oppression and to expect for little gain or redress. Recent critical analyses of women's experience in divorce mediation cases, for instance, raise precisely the concern about women "settling for less" because of self-blame or guilt. Students who do not "know" the system may back off from fullsome arguments to remedy school inequity because they feel they are too young or ignorant to debate or problem-solve on an equal level with adult experts and professionals. Grassroots community groups also may settle for less because they do not anticipate that they can fully articulate their needs, or that their needs will ever be reasonably responded to, within the system. All these groups may be satisfied with agreements made, without the criteria for justice being attained or raised seriously.

But in the market place of ADR/CI offerings, as Luban points out, "commercial suppliers of ADR sources depend on satisfied consumers for their livelihood (1989, p. 404; see also Coulson, 1988, discussed above)," and thus may accept or promote "satisfied agreements" as the criterion for successful

intervention.* Under these conditions, mediators and interveners also are beneficiaries and empowered parties in the intervention process; thus, their satisfaction may be quite high as well. While this priority on agreement-making is an understandable response to disagreements that are painful or that disrupt the social process, and a boon to mediators' own concerns for economic and career advantage, it is a very limited orientation to social justice.

The role of third party conflict intervention is most problematic when there are substantial power differentials among parties, involving traditionally oppressed groups, where (distributive) social justice concerns are at stake. Here is where the fundamental structural conflicts in our society float (or explode) to the surface. It is in these situations where long-term settlements are most difficult to create, most likely not to be implemented, and most often to maintain or even increase injustice. Here many third party ADR and CI efforts end up reducing, avoiding and neutralizing social protest, and retaining dominant power and privilege in the hands of elites and powerful stakeholders or bureaucratic managers. These intervention efforts do not appear generally to alter institutional structures or to redistribute power and resources. Even when apparent "victory" or "fair resolution" occurs, the use of a third party process may weaken the struggle for justice by reducing both the momentum and power of the

*Note that this comes quite close to the "freely made contracts" priority in the case for justice as liberty.

organizing/challenging effort and the pain/threat that elites experience (Cunningham et al., 1990; Splain, 1984; Wilcox, 1971).

In a broader framework, Hofrichter (1982, and other contributors to the Abel, 1982a volume) argues that these mediations, dispute-settlements and other attempts at informal justice tend to depoliticize and trivalize real social conflict by rationalizing and controlling struggle, by failing to consider and include fundamental social injustices which are at the root of many individual and localized disputes, and by removing or diverting the expression of grievances from the political arena. Certainly one does not have to adopt the entire perspective on class conflict and struggle reflected in the work of the critical legal scholars to be concerned about the relationship between ADR/CI approaches and the maintenance or alteration of structural oppression.

The reduction of social protest and the failure to alter institutional structures is seldom the manifest or stated value system of ADR/CI practitioners. However, it is the logical (and indeed the empirical) outcome of much current practice. It is most likely to be the outcome when both mediators and parties to a dispute fail to surface and examine the implications of these practices. It is not simply in the process of agreement-making that such concerns must be addressed, but also in the process of implementation. For instance, in the absence of continued conflict (local group mobilization, public advocacy, pressure for bureaucratic change, and sustained monitoring), many Supreme Court and lower court decisions regarding school desegregation,

and other matters related to institutional reform, were ignored, sabotaged and just not implemented by (ir)responsible local officials (Dolbeare & Hammond, 1971; Kluger, 1975; Nakamura & Smallwood, 1980; Rodgers & Bullock, 1972). Why should we expect non-Court backed settlements to fare any better? One argument is that a consensual and problem-solving process, rather than an adversarial process, might increase the likelihood that agreements made will be kept. Leaving aside for the moment the question of whether equally just agreements would be made in informal settings, it seems clear that the same implementation guarantors (continued local mobilization, public advocacy, pressure for bureaucratic change, and sustained monitoring) are as relevant here as they are in the court scenarios. To fail to plan for such activities ignores many of the historic lessons of social struggle and social change, and betrays an overtrusting attitude toward the problem-solving process, as well as toward powerful groups' behavior.

The claim that professional interveners only seek to serve parties' (apparent) interests, as these interests are presented and articulated by the parties, is often presented as the reason why broader perspectives on societal structure and conflicts often are not pursued vigorously. Thus, it is argued that if a group representing poor people focuses its concern on inadequate garbage collection, and does not link this dispute to broader issues of taxation, employment opportunities, police protection, insurance redlining, neighborhood deterioration, etc., interveners should not draw these issues to their attention. This

reasoning is seen as a way of ensuring that the parties, and not the intervener, "own the conflict." Certainly such sensitivity to ownership issues centers the action on the subjective interests of the parties rather than on some set of objective interests determined by academic or external analysts or agitators. But leaving it here, without any effort to clarify or discuss the relationships among these issues and sets of interests, is not justifiable in these terms. There are many ways to protect local ownership and subjectivity while encouraging the exploration of alternatives. Moreover, this "hands off" approach typically is eschewed in practice as well as in theory, as most competent interveners argue that they do and should help parties' clarify their "real" interests. For example, in their generally sage advice to both lay disputants and professional interveners, Fisher and Ury (1983) devote two chapters to the necessity of distinguishing between surface or apparent positions or demands and underlying interests or needs: "Don't bargain over positions" and "Focus on interests, not positions."

Unfortunately, these underlying interests seldom are linked to social justice concerns and structural change in social institutions or community operations. Certainly, social justice-oriented interveners or mediators should not arrogantly impose a larger agenda (based on their conception of objective group interests) on clients', petitioners' or allies' subjective definitions of their own interests. But they can surface the options and related issues clearly and enthusiastically, letting parties make their choices. Those parties who simply wish their

particular grievances heard and attended to, and who do not want to engage in discussion or struggle over the social justice implications of a tenant dispute, a small claims court case, a lack of community services, a divorce settlement, a toxic waste dump, prison conditions, racial antagonism in a community, wage and salary negotiations, fishing or land use rights, etc., certainly will not have been duped or mis-served by such an analysis or invitation.

Earlier I reported Coulson's (1987) support for the stance that social justice is not and should not necessarily be a concern of interveners. He argues that (p. 24) "private mediators are not officers of the state, obliged to enforce the laws or impose natural justice upon their environment. Their role is to facilitate bargaining in a generally unregulated, free society." Thus, he concludes, mediators are not necessarily responsible for the results of such bargaining, let alone the justice quality of these results. One can question not only the principle involved here, but as well Coulson's assumptions about an "unregulated, free society", the ways that officers of the state "impose natural justice", etc. Nevertheless, his stance is a powerful and guiding orientation for many third party interveners, especially mediators.

Despite the weight of current practice, some third party interveners do try and deal openly with these issues. Some do define and use social justice criteria, for both outcomes and procedures, as part of their work. Some do address the need to go beyond accommodation and agreement, beyond mutual persuasion and

incremental change, and do attempt to lay the groundwork for major structural changes in organizations and communities.

Some third party interveners do raise and acknowledge the important roles of race and class and gender differences and oppression in their work and in parties' conceptions of the interests and options at stake in a dispute (see, for example, Chesler, 1991; Goldstein, 1986, Merry, 1987; Weingarten and Douvan, 1985). Kochman (1981) argues that because people of color, people with strong ethnic ties, and white-anglos have markedly different cultural backgrounds they bring to a dispute different values, styles of expression, conceptions of conflict and therefore different preferences for settlement tactics and processes. For instance, compromise, victory, bargaining, fighting and even reasonable discourse have different meanings in these different cultures. As Auerbach notes, disputing is part of human behavior and "How people dispute is, after all, a function of how (and whether) they relate (1983, p. 7)." Different cultures certainly teach and support different ways of relating. In this context the relative absence of people of color in the ADR/CI community itself, and the lack of racial issues explicitly on the agenda of related publications, is very problematic. However inadequately, women, gender conflicts, and gender influences on intervention roles are much better represented and considered in this craft/profession.

And finally, some third party interveners do strive to balance the power relationship among contesting parties, and have written explicitly about the tactics that might prepare for and

redress imbalance (Cormick, 1977; Davis and Salem, 1984; Laue and Cormick, 1978; Susskind, 1981). As Mayer notes (1987, p. 79): "Power inequities cause problems because they lead to rigidity on the part of both the stronger and the weaker parties, because they lead to a breakdown in the collaborative process, or because they cause unprincipled (in our terms, unjust) agreements to be reached." Mayer goes further, to identify some of the varied sources of power that may be relevant to a dispute: formal authority, expertise, associational or referent power, resource control, procedural power, sanction power, nuisance power, habitual power, moral power, and personal power. Not all these forms of power are or need to be equal simultaneously, of course, but the effort to pluralize our common-sense notions of power and influence may highlight potential power balances that are not obvious.

Unfortunately, even the best rhetoric of power balancing often cannot be translated into practice. Even when it is, such power balancing efforts are most often temporary and laboratory-like in nature. They are extremely hard to sustain after or outside mediation sessions, and almost impossible for mediators to build into the ongoing life of organizations and communities. Where there is sustained power balancing it generally is because the weaker party has managed to generate such power prior to the bargaining/mediating session, and not primarily because of the mediator's actions at the table.

The failure to strive explicitly for social justice, the failure to focus clearly on creating structural change in

oppressive social institutions, the failure to equalize the balance of power among disputing parties, and the failure to articulate a vision of multicultural processes and structures constitute burdens of proof for the ADR/CI profession. Not solely this profession, because these issues are relevant for all who seek to intervene in, improve or change social institutions. After all, these failures are the failures of our entire society, and not just of change agents and dispute resolvers. But if ADR/CI work seeks to improve our common life it must overcome these problems above all. Is this too much to ask? Perhaps. But not if the value framework and rhetoric underlying much ADR/CI practice and its practitioners includes a concern for social justice.

ADR/CI and the courts.

Part of what is at stake in discussions of conflict and disputes, and their settlement or resolution, is our view of the proper and actual operation of the rule of law in social life. If ADR/CI is an alternative to the courts, what is it an alternative to?

Certainly the commitment to guarantee equality before the law, and to provide liberty and justice for all, are central aspects of our constitutional legal system. In practical terms, some philosophers and social scientists argue that the law and legal procedures create and maintain public order and fairly settle disputes. Others suggest that the law and legal institutions primarily protect the weak and resource-less against

the potentially rapacious action of powerful elites. And still others argue that legal institutions primarily are instruments of state and elite control of the populace, especially of the actually or potentially unruly populace. One's view of the relative accuracy or mix of these different perspectives on the operation of legal systems affects one's sense of formal justice and of trust in the law as an arbiter of justice. It necessarily also affects one's view of systems of informal justice and their possibilities.

The third view, championed by the tradition of critical legal studies, suggests that the legal (and other) mechanisms of the state represent primarily the interests of wealthy and powerful classes, and that the unruly populace typically represents the weak and disadvantaged classes; thus the law generally acts to further codify and justify or legitimate economic, political and cultural dominance and oppression. Naturally, this system of legality and legally enforced order or peace and nominal change impacts most negatively on the interests and persons of people with the least power and access to societal resources - people of color, women, poor people, members of ethnic minorities, people with different sexual orientations, people with different cultural traditions, etc. As Auerbach argues, "Expectations of equal justice were nurtured, but they could not be fulfilled in a society where economic and political resources were unequally distributed (1983, p. 115)." Therefore, "American legal institutions confront a...task: to legitimate their rule to all despite their special service to the privileged

few (p. 143)." Under pressure (of public protest, of elites' desire to stabilize or compromise disorder, of the search for moral order and common values) minor adjustments often are made to re-equilibrate the system and dismantle the most egregious forms of inequality and injustice.

If protection of the interests of elite groups in the society is one major path of the law, can "bargaining in the shadow of the law" be far behind? Do most ADR/CI efforts follow this same path? Several scholars argue that ADR/CI is attractive precisely because such informal procedures promise to yield "better justice" (Abel, 1982; Galanter, 1985). Agreements freely made, quickly and inexpensively, with intervener facilitation but without the adversarial trappings of lawyers, judges and formal rules, tends to put decisions back in the community, neighborhood or among the parties themselves. This is certainly more participatory and democratic, and as Spitzer (1982; p. 187) argues, social justice requires just such "mechanisms for establishing or revising the strength, autonomy and self-sufficiency of local social units (i.e., communities, neighborhoods, farms, etc.) above the experiences of bureaucratically encrusted, impersonal, professionalized and otherwise 'removed' monoliths of control."

However, with regard to precisely these issues some critics warn that the reverse may occur, especially when fundamental rights or class-based claims are in dispute (Edwards, 1986; Nader, 1984), or when the power for change relies expressly on challenging groups' ability to generate conflict and threat

(Wilcox, 1971). These and other commentators (see especially the selections in Abel, 1982a) express concern that elites' and managers' superior access to skills and resources in ADR/CI processes and forums, and the (perhaps unconscious) biases of many relatively affluent mediators, lead them to extend the state's (and therefore elites') control over poor people and people of color, while denying them full legal rights. As Abel argues (1982, p. 297), "Informalism grants additional offensive weapons to those already endowed with disproportionate legal resources while depriving the legally disadvantaged of the protection of formal defenses." The result is a double whammy, and a form of 2nd or 3rd class justice, since we doubt that the courts consistently provide oppressed groups with 1st class justice anyway.

All of who are critical of extra-legal or informal justice options for resolving disputes must remember that the formal justice system also promotes "unequal application of the laws to the lower classes (Lazarson, 1982, p. 159)." In an idealized construction, both the formal justice system of the courts and the informal justice system of ADR would seek to create the conditions for social justice - dialogue and problem solving and a community of discourse - by promising fair processes, processes that overcome the constraints of differential power and resources. But in reality do they deliver on this promise? And do they create new conditions of more just organizational and community life, or simply temporary opportunities for conversation, exchange and dispute settlement?

Given the serious question of whether the courts can/do provide procedural or distributive justice to traditionally oppressed groups, are ADR/CI operations likely to be any worse? ADR/CI procedures and outcomes could be assessed against court operations in an attempt to answer this question (Fiss, 1984; Luban, 1985). Although empirical evidence on this matter is hard to come by, ADR/CI efforts are not likely to be any worse than the courts in this regard. But are they much better?

ADR/CI and "neutrality".

One of the cornerstones of current ADR/CI practice, and of third party intervention generally, is the notion of intervener neutrality. In the context of specific social structures and social conflicts "neutrality" may have many meanings. It may refer primarily to the absence of formal and official or financial conflicts of interest, such that the intervener is not a member of any party to a dispute. Or it may mean that the intervener is not only not a member of any official party to the dispute, but also not a member (or beneficiary) of the broader class of people from which any party is drawn. It also may refer to a lack of personal valuation or investment in the parties, the issues or the outcome. Or it may refer to a commitment to a process that does not create new advantages or disadvantages for any of the parties in the process of engagement or settlement.

Few scholars or interveners suggest that they can or should approach complete neutrality or impartiality. We all carry the heritage and perspectives of our race and gender and class backgrounds, as well as our personal values and interests. But

most professional ADR/CI is wrapped in a cloak of neutrality, and this can be a dangerous garment. It may be hard to see outside this cloak once adorned. It may be hard to take it off once put on. In practice, Forester & Stitzel argue (1979, p. 260), the promise or pretense of neutrality "hides hundreds of strategic judgements that must be made - each of which can practically affect the benefits achieved by any party...And it actually obscures...the mediator's own active influence on the outcomes that may be achieved." Moreover, where social struggle and justice are concerned, personal valuation and investment may be unavoidable - and necessary. Indeed, in these contexts an intervention process that deliberately creates different sets of advantages/disadvantages than exist in the society or community often are required - if power balancing is to occur and justice sought.

Most important, neutral third party intervention is not likely to be neutral in the context of a social system (or a given dispute) replete with major power differentials and substantial differences in access to resources. Any neutral tactic, when set within a societal, community or settlement framework of power differentiation and oppression, inevitably takes on partisan meaning. When these meanings are ignored (deliberately or out of naivete, as a matter of principle or of strategy) resolutions necessarily slide in the direction of benefit to the most powerful forces. Then according to Forester & Spitler (1989, p. 255), "the mediator's neutrality has the somewhat perverse outcome of reproducing the very inequality that

the disputants bring to the negotiating table." Moreover, neutrality in the face of oppression typically amounts to moral anesthesia and political irresponsibility. Is that what interveners should bring to the table?

If it is obvious that there are serious problems with the concept of intervener "neutrality" in the midst of resource and power differentials and oppression, what about the case of culture and cultural differences? Do male and female mediators or interveners operate differently? Since some research indicates they do (and perhaps should, Weingarten & Douvan, 1985), what might neutral mediation mean in a setting where gender issues are a crucial part of the dispute? Do black and latino and asian and white-anglo interveners operate with the same styles and values? If not (and Kochman, 1981; Merry, 1987; suggest they do not), what are the implications of neutrality practiced by a mediator of one race in a setting where issues of race and/or ethnicity are part of the dispute? Or is the white and male and relatively affluent model of mediator and intervener behavior (such as canonized in SPIDR) the only option? Is this style neutral with regard to race and gender and culture?

Some scholars and practitioners argue that mediators or interveners in the ADR/CI tradition must at least present themselves as neutral in order to make themselves and the process they use appealing to powerholders. To openly deny the myth of neutrality, they suggest, is a strategic error (see discussions in Colosi, 1983; Luban, 1989; Susskind & Ozawa, 1983). If mediator bias is skewed in favor of traditionally oppressed

groups, it is anticipated that powerful groups would object, and thereby scuttle or avoid ADR/CI efforts. No doubt this occurs on occasion, and thus there may be some strategic advantage to the maintenance of a public appearance of neutrality. But note that this line of reasoning rests on at least two assumptions: (1) that some (many?) apparently neutral mediators feel that they are at heart sympathetic to oppressed groups' situations, enough so that this debate occurs when they gather or write; and (2) that gaining the trusting and willing participation of elite groups is more problematic (and important?) than the trusting and willing participation of traditionally oppressed groups, reflecting the greater power of elites in this system and therefore the probable structural bias of mediation procedures/settings.

It is important to consider the possibility that there also may be some strategic advantage to greater honesty, at whatever potential cost. It is not obvious that an intervener who announced non-neutrality with regard to outcomes, but concern for a fair (not necessarily neutral) process, automatically would be unattractive to all disputants. After all, many perpetrators of injustice and administrators of unjust systems do not see themselves in this way, and maintain the view that they do pursue just processes and outcomes. Salem suggests, for instance, that police chiefs, sheriffs and mayors he brought to the negotiating table did not perceive him and other CRS mediators as "neutral," but saw them as "fair and truthful" - and therefore useful (Salem, 1989). If this is so it is a window of opportunity worth exploring.

Further, in their discussion of conflict mediation in Central America, Wehr & Lederach (1991) suggest that some current "Theorists generally do not see mediator neutrality and impartiality as requisites for successful international mediation. In fact, in some cases mediator connectedness and bias prove to facilitate settlement (p. 87)." They discuss mediators who have operated as "insider-partials", "...whose reservoir of trust and mutually recognized stature among conflictants, and cross-cutting affiliations with both sides, are so substantial as to permit a mediating function (p. 92)."

If the primary issue in this debate is not neutrality, per se, but the public or strategic presentation of neutrality, we should be able to discuss this strategic choice openly - amongst ourselves and often with groups in conflict. To the contrary, however, neutrality often is discussed as an article of faith - a revered principle. Neutrality as a principle must be questioned - both on grounds of morality and of feasibility.

Are there some examples of these issues available?

It is important to decide the extent to which the concerns raised throughout this chapter are realistic and concrete, and whether they can be illustrated with specific examples.* As a start, in the December, 1988, issue of the DISPUTE RESOLUTION FORUM (How Community Justice Centers are Formed, 1988) there is a

*Other scholars have conducted much more searching logical and empirical investigations of these issues, and perhaps reading their works can extend the analysis begun here to many other arenas of disputing, conflict resolution and social change.

series of interviews with 6 directors of Community Justice Centers. Their comments stand, in some sense, as a statement of where that field is. Three issues of special interest are addressed in these interviews: the demographic characteristics of mediators and mediating constituencies, the criteria of success for these Centers, and the skills these directors look for in selecting/training mediators.

In discussing their operations, most Center directors acknowledged (and regretted) a demographic bias of primarily white and (upper) middle class and highly educated mediators. Certainly these members of the dominant culture can be trained or retrained to be sensitive to and aware of the realities of life affecting people of color and poor people. However, such (re)training is a very complex process, and it generally requires promoting an understanding of one's own racial and class realities and privileges, of the realities of others' lives, and of the institutional as well as individual natures of racism, sexism and class discrimination. While some directors did discuss their efforts to screen and train mediators, training in multicultural sensitivity, or in the dynamics of institutional oppression and change, seldom was noted explicitly. In addition, however hard we elect to work at training and retraining, the movement appears at the present time to be predominantly white and middle class.

These demographic biases in the practice of ADR/CI are neither accidental nor trivial; they are part of this craft's politics, construction and operation, and perhaps its appeal.

They tell us something about the culture, and therefore the tools and techniques practitioners may use, and raise questions about the implications of these tools for the cultures and politics of disadvantaged and oppressed (non-white, non-male, non-middle or upper class, etc.) peoples and communities. Would interveners selected from the populations of people of color and poor people practice their craft or operate their Centers differently?

When asked whether they felt their Centers had been successful, the directors' answers reflected four primary criteria for defining or assessing success: the volume of use or caseload; their credibility or attractiveness to the courts; their ability to attract a secure funding base; and the ability of mediators to make agreements. No reference was made to the creation of institutional change in the community or in conflict settings as a criterion for success. No reference was made to increasing the possibility of (any of the forms of) social justice as a criterion; the concept of "fairness" was noted by one Center director, but was not a primary criterion overall. As we have argued, making agreements is not a necessary component of social justice or structural change, and the other three criteria have much more to do with institutional maintenance and survival than with the quality of life or justice available to the people served - especially in the case of poor people or people of color.

When asked to identify the skills or characteristics of mediators that they looked for, Center directors emphasized language skills - both oral and written, compassion, and an

ability to listen. These are important skills, to be sure. However, only one director mentioned "cultural sensitivity" or an ability to work in multicultural settings; no mention was made of a sense of justice as an important orientation or skill; no mention was made of a commitment to social and institutional change. Whether this absence reflects the priorities of the Center directors, or of the interviewer who posed the questions to them, or of the editor who selected portions of the interviews for publication makes little difference for our purposes. The results help inform us about the nature of the broader ADR/CI movement.

Another set of examples of where we are and what we do comes from a series of panels, papers and conferences that discuss or illustrate programs of conflict intervention in the schools. This is another important and growing portion of the field, one that is receiving a lot of attention and funding, and is indeed quite "trendy." The values and directions inherent in these programs also stand, to a certain extent, for the entire field. A great deal of attention is being paid to training elementary and secondary school students in techniques of conflict intervention. Almost universally, they are being prepared (and limited) to intervene in disputes occurring among students. This is an important and useful set of objectives and activities. Children undoubtedly learn valuable and useful skills and attitudes, the school environment can become less hostile or tense, and perhaps the materials and activities also enlighten teachers and administrators.

However, some important issues and targets seemed to be systematically ignored. For instance, relatively little attention and discussion has focused on programs to train educators in these same skills of conflict intervention (see Scimecca, 1988, for a more elaborate commentary on this gap). Little attention and discussion has focused on altering the curriculum and pedagogy of the classroom and school. And little attention or discussion has focused on altering the organizational structures of schools themselves. Current school-based mediation and mediation-training efforts focus overmuch on "student problems" - such as truancy, fighting, failure - to the neglect of "system problems" - such as irrelevant instruction, white dominance and monoculturalism, authoritarian adult control, and lack of "payoff" (in terms of jobs and future schooling, especially for youth of color and lower class youth) of school attendance. These systemic, structural problems create the conditions for conflicts among students, or at least the fertile ground upon which these conflicts are escalated and played out. It is, after all, the social structure and (often covert) conflicts in our communities and school systems that create and pass on the pressures and problems that result in many of the conflicts experienced by and among students. Such structures eventually will overwhelm and overcome students' newly learned skills in conflict management/intervention, and quite possibly trivialize and brutalize them in the process.

Why is so much of the focus of these programs on teaching the victims of oppression how to minimize their conflicts, or how

to "behave" better, without paying at least equal attention to the adult-dominated structure and culture that creates these conflicts in the peer system? Is this another example of a strategic choice ("we have to start here because it is the only way to get access") or of a principled preference? Would designers or advocates of a different program be invited to leave the school - or not be invited in the first place? If this is just a strategic choice, are planners at least honest with each other about it? Are they sharing their strategy with their student as well as adult clients? Are they at least educating young people regarding the power structure of the school and how they may defend themselves against it while they work to reduce peer conflict?

In the late 1960s and early 1970s our staff at the Educational Change Team was involved in a series of interventions in interracial and interstatus or intergenerational conflicts in urban secondary schools. In various situations we focused on training students, educators and community members in conflict intervention and organizational change skills; sometimes these groups were trained separately and sometimes together. Some of these efforts focused on organizing the constituencies at greatest risk in the school system (students of color and students of low economic status), some utilized tactics of organizational development, some fed back data gathered in the schools into the system, and some focused on disseminating specific skills in conflict mediation (Chesler et al., 1972; Chesler & Lohman, 1971; Wittes et al., 1972). While many

interesting and successful interventions were made along these lines, our staff encountered several critical problems in institutionalizing conflict intervention teams or processes in these high schools over time: (1) the unwillingness of high school administrators to permit student participation in the design and conduct of programs; (2) the desire of principals to control the flow of information and data on which program designs would or could be built; (3) a slackened desire to put professional time and energy into programs when schools no longer faced heated crises; (4) teacher resistance to students' roles as conflict interveners around school organizational issues; (5) professionals' resistance to looking beyond overt symptoms of racial tension to underlying problems in the structure of the school (Chesler, Bryant & Crowfoot, 1975). This experience, as well as the accumulated literature on the short lifespan of innovations that are not built into the ongoing structure of the organization, does not lead to optimism about student-focused "add-ons" seriously altering the conflict-creating structure of the school organization itself. Failing such alteration, the system will remain the same, despite good efforts with individual groups of youngsters. Even worse, it may now employ representatives of these low power constituencies in the effort to control their peers, thus further mystifying the organization's true nature or structure.

As important as it is to "gain and maintain entry", to start somewhere, to deal with the pain that exists in our schools and communities, some of these particular beginnings may blind or

distract us from important work aimed at reducing oppression, approaching multiculturalism, and maximizing justice. An emphasis on making agreements and reducing overt behavioral conflict sooner or later leads to "false peace." Without simultaneous action on underlying structural conflicts it often leads to the preservation of injustice and the denial or delay of work to reduce oppression. Training the least powerful members of the organization, and focussing on making agreements, are useful but morally and politically inadequate as the primary agendas of this craft. Rather, making changes that move us toward socially just systems of schooling (and living and working) must be primary, and ADR/CI should be undertaken in ways that fulfill that agenda more consistently and coherently.

In raising these issues and posing these arguments I want to emphasize again that I am not operating from an anti-ADR or anti-CI stance. ADR/CI often plays a useful role in helping to reduce social conflict and to help low power groups be represented at the table of decision-making. ADR/CI can (and sometimes does) make meaningful contributions to some or all of the concerns and conditions for social justice. I want to encourage and ensure that it does so more often and more effectively. I cherish many of the inventive programs and interventions that are generated by this tradition and by some of its practitioners. Moreover, I often utilize and participate in them myself. Certainly I have indicated my belief that courts and non-mediated resolution processes are not necessarily any better. And certainly violence and brutality (official or unofficial), or the sheer exercise of

coercive power, generally are worse. But I think we can do better ADR/CI work if we keep a clear focus on the language and goals of social change, social justice and non-oppressive or multicultural organizations and communities. As the following discussion suggests, however, it may only be possible to do this with the help of organized social movement organizations and pressure groups, groups that place new opportunities and demands upon interveners and upon all parties in a dispute. It often is these pressures that require communal discourse where none existed previously, that give voice and representation to the voiceless and unrepresented, and that create the possibilities for "communities of discourse."

What are some first party options for interveners?

There is a wide variety of roles interveners can play in conflict situations. Some alternatives to the traditional ADR emphasis on mediation have been detailed by Laue and his colleagues (Laue, 1986; Cormick & Laue, 1978). They examine the possibilities of the intervener as activist (member of a party to the conflict who is an advocate of a specific position or outcome), advocate (an advocate for one of the parties), researcher (an advocate for the truth and factual matters), and enforcer (an advocate for peace and order). Fisher & Keashly (1988) add the role of the third party as consultant, also distinguishing between this role and traditional forms of mediation. They argue that the consultation process focuses more directly on facilitating creative problem-solving and altering

the relationships among the parties, as contrasted with mediative efforts to forge agreements or compromises on specific goals and positions. They identify four key functions associated with this "skilled and impartial intermediary" as consultant: (1) inducing and maintaining mutual positive motivation; (2) improving the openness and accuracy of communication; (3) diagnosing the conflict; and (4) regulating the interaction. Clearly a number of mediators would disagree with this role distinction, arguing that they, too, focus on altering the often hostile and adversarial relationships among the parties (see, for example, Bercovitch's distinction between resolution and settlement, and earlier discussions of activist styles and power balancing in mediation). Most of these discussions focus on procedural rather than distributive justice.

Some of these commentaries even begin to explore alternatives to the notion of a "third party" as the primary or sole form of legitimated intervention (especially Laue's notion of advocate and activist). Indeed, there are alternatives wherein interveners become "first party" consultants or aides, allied with or acting primarily on behalf of one of the parties or issues in conflict. Especially when issues of oppression and social justice are at stake, a first party advocacy mode may be most appropriate.

Some of the following options open to ADR/CI practitioners and interveners can only be practiced with a first party alliance; others can be incorporated within a third party stance. Some are clearly alternatives to traditional ADR/CI intervention

strategies, while others are quite complementary with these approaches. They all attempt to use or work with conflict, rather than to reduce or eliminate it. Moreover, they (almost) all assume that the intervener has as much to learn from the local parties to a conflict, and the process of struggle, as she has to offer to the parties. Such co-learning efforts, efforts to combine local knowledge and general knowledge, efforts to combine credentialed expertise and lived experience, promise greater democratization of the intervener's skill and knowledge base. The long-range question, of course, is whether the use of such options, in combination or competition with others, can increase our potential for achieving distributive justice.*

One option is to gather (probably local) data, review any relevant research, retrieve parties' own wisdom, and create with them critical analyses of issues and interests at stake in a social struggle, change effort or dispute. These analyses can help parties generate more coherent and effective change strategies, and can provide them with broader institutional or societal perspectives on the issues they already experience or understand. Examples might include description and specification of the meaning and existence of institutional racism as contrasted with individual racism, of subtle structural sexism as contrasted with overt sexual harassment, of the role of an

*The following listing owes much to discussions with Frank Blechman and William Potapchuk of the Conflict Clinic Inc., and with colleagues of the Program on Conflict Management Alternatives, especially James Crowfoot, Barbara Israel and Barry Checkoway.

oppressive school authority structure and culture in creating conflict among students in educational settings, of the monocultural assumptions underlying many cross-cultural disputes, and of the short-term and long-term advantages and disadvantages of various procedures for pursuing informal justice. Given their privileged access to (some would say control of) knowledge generating systems, elite groups can rather easily avail themselves of such information - in the form of scientific research, managerial training seminars or expert consultants. What is involved here is ensuring that all parties, especially low-power parties, have access to such information, and access in a language and style that is meaningful and useful to them. This requires challenging the free market's privileged allocation of knowledge resources, and the substitution of equality for liberty in access to them. The democratization of such information would do much to equalize resources in a dispute and throughout the entire society. Finally, since some mediators and activists suggest that they do not fully understand the theoretical base from which they operate, or why they use which tactics, especially when they claim to operate from an experiential and intuitive base, critical analysis can help them discover, conceptualize and articulate the assumptions underlying their own practice.

A second option involves the development of site-specific action-research or intelligence gathering activities that help oppressed people (or any people invested in institutional change) learn more about their local situations and options. One variant

of this approach is to conduct a community or organizational diagnosis, a tactical investigation such as those pioneered by Barry Greever at the Midwest Academy (Greever, nd) and John Gaventa at the Highlander Center (Gaventa, 1989). Such information might also identify additional parties who could be allies or coalitional partners in the dispute or the pressures or incentives for change that might impact successfully on key powerholders or decision-makers. The net result might be to help advocates or organizers discover the kinds of protest or change tactics they might employ. And still another variant could take the form of generating data and tactics relevant to gaining an advantageous posture in a negotiation or mediation session. All these efforts need to be guided by the experience and wisdom of the local oppressed population, lest these groups once again be excluded from processes of information generation and control as well as of social action.

A third option takes the form of direct or "shadow" consultation with leaders and members of social change-oriented organizations. Similar roles may be played with a preferred party (or parties) in a multi-party dispute. The objective here is to assist a given party to consider a range of change strategies or bargaining postures, and to assist them further in implementing such strategies in the conflict arena. One may do such work quite openly or in hidden form, with one actor or many.

A fourth option involves providing a party or organization with training in developing the skills required to work effectively for social change or to further their interests in a

conflict setting. Six sets of skills seem relevant to discuss in this regard: (1) skills in overcoming internalized oppression; (2) skills in planning change strategies; (3) skills in dealing with conflict itself; (4) skills in building and running organizations; (5) skills in working in multicultural settings; and (6) skills in designing/implementing long-term change in organizational structures. Efforts to help dominated groups overcome the internalized oppression they often experience typically involve the kind of "literacy training" discussed by Friere (1970; 1973). New information, new analytic perspectives, new ideologies and a sense of hope or confidence all are part of such a resocialization process. Parallel to work on overcoming internalized oppression among dominated groups, it is necessary to help their potential allies in dominant groups overcome their sense of privilege and their (perhaps unconsciously) oppressive behavior. Out of this mix we may see the development of new and more potent coalitions (Chesler, 1981). Friere's (and others') efforts to help oppressed groups achieve literacy and find/express their voice is a direct link to Habermas' notion of the creation of a community of discourse as a justice principle.

Skills in planning change strategies generally include learning how to analyze the change potential of situations, establish objectives and targets of change, understand one's own talents and abilities, understand one's own level of acceptable risk-taking behavior, develop feasible strategies, organize resources, monitor change, balance the opportunity/costs of incremental change and major restructuring, and escalate and

deescalate conflict. Skills in working in conflict settings are often quite similar, as they also involve learning how to escalate and deescalate the level of tension or conflict in a situation, listening, empathizing with others, dealing effectively with cultural differences, presenting one's interests and positions clearly, collaborating, creating coalitions, resisting bribes and blandishments, linking particular conflicts to underlying organizational or community problems, demystifying the apparent connections between conflict and injustice or between agreements and justice, etc.

Skills in building and running social change organizations involve learning how to recruit members and run meetings, how to exercise leadership and divide labor and responsibilities, how to operate a (relatively) democratic and efficient organization, how to reach out to others and create high internal morale, etc.

Training efforts to aid people to work effectively in multicultural settings require learning about one's own ethnic history and relationships to others, understanding systems of racial, gender and cultural dominance and oppression in this society, living with differences in ways that cherish rather than avoid or deny their meaning and power, etc.

And finally, skills in designing and implementing long-term change in institutional structures involve learning how to think in organizational as contrasted with individual terms, understanding the linkages between particular disputes and the structural oppression that creates and escalates them, understanding the levers for organizational and community change,

dealing with the interface between persons committed to change and well-established roles and relationships embedded in the organization or community, altering reward systems that denote the payoff for new organizational (and personal) behavior, assessing the potential for major restructuring versus incremental change, involving local oppressed groups (or a wide range of stakeholders) as well as elites in management of the change process, creating monitoring mechanisms, etc.

A fifth option focuses on work with elites or bureaucratic powerholders that may educate them, "soften them up" or otherwise prepare them to appreciate and accept some of the interests and positions posed by protesting or challenging groups. This is a very delicate path, of course, because it is fraught with some of the same dangers of cooptation and blindness that may accompany the "cloak of neutrality". Once one works closely with powerholders it may be difficult not to accept in part their worldview, and thus to (perhaps inadvertently) soften weaker parties' challenges rather than pave the way for their acceptance. However dangerous, this is an option. The dangers are somewhat ameliorated if practitioners electing this mode establish lines of trust and accountability with the parties to whom they are loyal, thus providing a buffer or protection (or at least a warning) against inappropriate and counter productive behavior.

Direct organizing assistance is of course another option. It is one important way to create the balance of power that can help an ADR/CI effort work in more just ways. It also is an

important way for an outside intervener to establish credibility and to "pay one's dues" to desired allies.

These tactics carry within them the potential for utilizing conflict to advance justice, necessarily through the creation of organizational and social change. They also carry within them the seeds of power balancing and multiculturalism. They are part of the set of intervention tactics that must accompany efforts at informal justice. As Handler (1986) has argued eloquently, neither the courts nor the informal justice system themselves will necessarily accomplish improvements in the position of oppressed groups. What is needed is "an informal system set in the context of social movement activity and the changed position of the bureaucracy (1986, p. 251)." Unless there is sustained effort to mobilize and express the concerns and powers of oppressed and disadvantaged constituencies, and as well to alter the styles and structures of bureaucracies and elite managers, just settlements will not be made and, when made, will not be implemented.

Although there is a good deal of anecdotal information, and some solid research, on several of these options, very few studies or reports have tied them to the use of ADR/CI programs. It would be useful to create a research base, probably a systematic series of extended interviews with key actors and case studies of actual incidents or campaigns, that examined the interfaces and transitions between first party intervention roles and third party roles, between conflict-escalatory or advocacy strategies of low power (and elite) groups and their approaches

to negotiation/mediation settings, and certainly between informal and formal systems of dispute settlement. Such work might clarify all these options as well as answer many outstanding questions.

It is extremely unlikely that several or all of these kinds of collaboration or assistance can be provided by a lone intervener or consultant or change agent or ally (Bercovitch, 1984). Thus, a skilled and effective intervener must, in effect, be a team or group of interveners, and they must have taken the time and energy to discover and create effective ways of working as a team. In some situations, in fact, the ability of a diverse team to work together may stand as a model for conflicting parties in their own efforts to establish collaboration or coalitional connections.

A call to come home?

Much of the work undertaken within the ADR/CI tradition has its roots in concerns for social justice, basic institutional change and multicultural values. In professionalizing this craft, however, anxieties about credentials, neutrality and legitimacy with elites often have obscured these commitments. Moreover, it has brought into the arena some people who lack this commitment, and who are interested primarily in agreement-making.

This chapter has been addressed primarily to those who wish to carry through a commitment to social justice in ADR/CI work. For then, the cloaks of neutrality and elite legitimacy are only some of many fashion options, and one must consider carefully the

appropriateness of various rainments in different situations. Despite the almost universal preference for mediator roles, there are disadvantages (and advantages) to third party work, just as there are unique advantages (and disadvantages) to work in a first party mode. The modes we utilize obviously are tied to the general goals we pursue, as well as the specific circumstances, resources and relationships in which we are engaged.

I hope ADR/CI practitioners and interveners can come home to primary values and commitments to work for social justice through social change, however directly or indirectly. I hope they/we can come home to a more deliberate and thoughtful focus on the ways in which ADR/CI can help create structural and institutional change, explicitly or implicitly. And I hope they/we can come home to a commitment to building less oppressive and more just and multicultural communities and organizations.

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