
Review Essay

The Unreliable Narrator?

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John Forester. *Dealing with Differences: Dramas of Mediating Public Disputes.* New York: Oxford University Press, 2009. 240 pages. \$21.95 (paperback), ISBN: 019538590X.

Telling Mediators' Stories

John Forester's recent book, *Dealing with Differences: Dramas of Mediating Public Disputes*, focuses on the work of several different mediators working on multiparty, public sector disputes. He explores the actions they have taken in particular cases, telling their stories about what they have done to intervene in protracted, painful public disputes in the United States and Canada.

Forester announces four goals for this book:

1. to explore deep value differences among multiple parties;
2. to explore power and inclusion as well as effective negotiation;
3. to distinguish between the activities of dialogue, debate, and negotiation; and
4. to explore the "moves" mediators make in these situations.

Although most of the stories come from "professional" mediators who primarily practice that craft, he also draws on the stories of planners who mediate as part of their broader planning function.

The cases Forester draws on range from land use to police-community relations to public health. The book is not particularly focused on case

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studies nor does it always seek to be prescriptive. Forester wisely does not try to overconstrain mediation and what mediators do — he recognizes that public sector mediation is not just one easily definable thing but rather includes activities that range from engagement and communication to tough, hard-boiled-assisted negotiation. He places his work (and the mediators whose stories he draws from) squarely in the “activist” camp of mediation, where addressing issues of power, imbalance, and the inclusion of marginalized parties must be part and parcel of the activity.

Forester’s focus is not as much on what mediators have *done* but how they have *reacted*. “These profiles tell us in the practitioner’s own words less what they have actually done than how they imagine and corroborate elements of their own practice” (p. 10). In developing these “profiles of practitioners,” he has taken oral histories from various mediators to capture the essence of the practice of public sector mediation. He has a knack for getting practitioners to tell stories and construct narratives that are more engaging, enlightening, and entertaining rather than simple dispassionate analyses of what their work would be. Consequently, the ideas, lessons, and insights he gleans tend to arise from the data rather than being imposed upon it. This method produces insights that seem richer, more profound, and more succinct than the often jargon-filled, dull writing too often typical of the field (count me guilty, please).

Forester’s passion for the field and its possibilities shines through these stories and offers hope to even the most hard-nosed, seen-it-all cynics of public disputes. He writes, “We shall see that we can do far more together than we often think. If we’re going to be critical about differences of interest, values, and power, let’s not begin by tying our hands and presuming that there’s little we can do — let’s instead examine, critically and practically, all the avenues we have to rebuild and transform the messy, politicized world we share” (p. 2). Forester tempers this enthusiasm for the field and the possibilities it offers for an improved political discourse by recognizing that one cannot enter naively into these processes, and simple good intentions do not suffice for the hard and risky work public sector mediators undertake. While acknowledging that resignation to conflict and the status quo can preclude all sorts of possibilities, he acknowledges that “political idealism that masquerades as practical judgment” flies in the face of any number of painful, protracted public and political conflicts that surround us” (p. 5).

Mediating Values and Identities

In a chapter on exploring value-based disputes, Forester tells the stories of mediators who themselves tell stories. He stresses that in such cases, problem solving cannot begin until the pain of the past, the context of the history in which the particular dispute rests, and the parties’ shared humanity surfaces out of and above stereotypes and biases at work in the conflict.

This occurs when people actually listen to one another, not for offers or options but for the stories that illuminate their histories, values, identities, and experiences.

In the book, the late Wallace Warfield shares his stories about being an African American mediating a dispute between a police department and a black community. Forester also describes Shirley Solomon's experience with tribal leaders in Skagit County, Washington. The stories of both Warfield and Solomon suggest that mediation is not a social engineering exercise in which interests are lined up, calculated, and processed to produce an agreement. Rather, it can be a process in which parties must first come to terms with each other as human beings. Only then can a mediator begin to hope to align the parties' interests, especially when race, religion, or culture are some of the elements that divide them.

As Solomon says of the Skagit Fellowship Circle, "That's a story that needs to be conveyed. It needs to come out — it's the history of the place — and it's the recognition and the appreciation of that, that reconciliation occurs" (p. 64). As Forester writes, ". . . if we don't tend to deeper 'underlying' issues of experience and worldview, we'll be continually blindsided" (p. 67). In this chapter, Forester and the stories he tells contradict the notion that one must "separate the people from the problem." In fact, the mediators' stories suggest that in value-based disputes, the process must first embrace the people *as* the problem, as the central focus of the activity, before addressing the particular problem or issue that brought them to mediation.

In his chapter on participatory processes and deep-value differences, Forester further explores the role of the mediator when more than interests are in conflict, raising an important challenge for both parties and mediators in a dispute. What, in fact, drives the dispute? Is it "deeper" issues and strongly held principles? Or, are the claims that "I don't believe what you believe," more of a smokescreen for opposing interests or competing claims to power?

Here, Forester develops a concise but useful table that compares a party expressing deep value differences with a party posturing to advance very specific interests. But, unfortunately, I wish Forester had taken this insight further and prescribed what we practitioners (and parties) should do to assess the difference. Should the mediator take the parties at their word and precede: that sincerely held value differences are at stake and to engage in storytelling, building understanding, and assisting all parties to recognize their mutual humanity will help? But what if one party places its heartfelt concerns on the line, while the other is only posturing? Would the mediator's efforts at building understanding be a prescription for failure and even more bitterness and divisiveness? Forester implies that approaching such issues, while necessary, puts the mediator at risk of being manipulated by tough bargainers whose real concerns are not values and identities but profits and power.

One of the most successful chapters describes the uses of humor and irony. Forester teases out the qualities that can be so important to setting tone, easing the parties' anxieties, and moving toward constructive conversation, which are often absent from academic writing on this subject. "Both irony and humor," he writes, "at once imaginative, creative, and serious too, can play important roles of simultaneously recognizing past suspicions and hurts, disrupting the conventional political expectations of parties and encouraging new actions and social relationships" (p. 155).

Nathan Edelson, a city planner, describes how acknowledging the absurdity of a situation can help parties identify common ground and reduce anger and frustration. Mediator Frank Blechman uses self-parody — "I'm the short, fat, white guy" — (p. 162) to both set anxious participants at ease and to acknowledge tacitly the complexities of race and history. Mediator Normajeau, who works with First Nations people and others in Canada, states, ". . . humor is not about being funny, but rather about creating a space for release and recognition, 'a safety valve' that can enable work on very hard issues to move ahead" (p. 164). While humor may help to put participants at ease, Forester points out that it is also a great leveler of power. Here he clearly comes down on the side of "activist" mediators who view their job as not merely to cut deals among existing power hierarchies but — in the midst of conflict — to use humor, framing, inclusion, and transparency to confront those hierarchies.

The Missing Narrative

Dealing with Differences is highly enjoyable, and Forester is to be admired for the passion and energy that he brings to his work and communicates in this book. Nonetheless, after reading it, some significant doubts linger. What I kept wondering about was this: What were the *parties* thinking and doing in these disputes? How did *they* perceive that their own actions and attitudes helped resolve differences? What factors did *they* consider keys to success? Did they even view the mediation as a success in the long run? How did they perceive the mediator's interventions? How much did they even notice the mediator in the first place? In short, I wanted the other sides of the story.

I worry that we public sector mediators and those who write about our work, are a bit like Dorothy, skipping down the yellow brick road. In our enthusiasm and commitment to dialogue, deliberation, and dispute resolution, we are not sufficiently attuned to the many other narrators in these complex stories and the complex dynamics that drive these cases toward or away from resolution.

From my vantage point, as a public sector mediator, we are too often the central character in books and articles about the field. The mediator is often portrayed as a hero, a white knight, or at least the best supporting actress or actor of the story. But in my experience, I have come to terms,

sometimes grudgingly, with the significant limits of my role. In many cases, the parties' actions, the timing, exogenous events, and the institutional structures within which the dispute (and its attempted resolution) take place seem far more important than most anything that I do. Although I may construct a narrative about brilliant moments when I did X or Y, or describe how my organization — through good assessment, process design, framing, and relationship building — helped address differences and achieve lasting agreements, I am not so sure I am a reliable narrator in my own story.

Social psychologists tell us that our recollections of events and our role in them are colored by our inherent cognitive biases (Banaji, Bazerman, and Chugh 2003). I am likely to play up my role and its importance, whether accurate or not. I am only one voice in a story that, like the movie *Rashomon*, has multiple viewpoints with only portions of the full story intersecting in some kind of congruity. But while mediation researchers have tried for some time to conduct thorough evaluations of cases through surveys of participants, these surveys cannot capture the richness, detail, and deeper understandings that Forester elicits from his interviewees' stories.

I think we need to research and understand better the cognitive biases and limitations that mediators bring to the cases in which they practice their craft. What elements does the research miss when we rely primarily on the stories, insights, and reflections of the mediators themselves? What parts of the story (its complexity? the practitioner's mistakes?) are left out of this one particular narrator's telling of his or her story? A narrative analysis, in which a researcher captures stories from a range of mediation participants and observers and then examines in particular how the same events or moments are viewed differently by all parties (including the mediator and any observer) as well as what is said or not said between them, would, I think, offer fascinating insights. From a practical standpoint, it would also be useful to learn and teach some techniques that can help mediators work to avoid or mitigate our biases and enable participants to spot them accurately when they are present.

I also wonder about the many stories not told. The literature is filled with success stories, but the detritus of our many failures (my own included) are left to rot when we should be mining them for what went wrong. We have much to learn from these failures, especially which factors — including, but not limited to, the mediators' interventions — affected outcomes. (I might suggest to Forester that his next book mine mediator's failures for further lessons and insights.) Forester's stories of success, of breaking impasses, knocking down barriers, and advancing agreements on tough issues do not convey what failed processes or dead ends mediators unintentionally helped lead parties down. As a seasoned mediator and colleague once remarked, "You can lead the parties to the table, but you

can't make 'em negotiate'." In part, what I found missing from the stories were the "yellow light" and "proceed with caution" signs that these experienced mediators have learned through failure and failed processes.

How do we as practitioners, as we are called into messy, complex, often murky disputes, help the parties make clear-headed, informed judgments about whether to engage our services and the processes we promote? And how do we practitioners do that in an optimistic but dispassionate way to reduce the likelihood of smacking into a brick wall later? How do we temper our own enthusiasm and professional and financial interest in wanting these processes to proceed? I think this balance of possibility and skepticism is a difficult one but one that must be addressed if we are to do good without doing harm. Precisely because the mediators in Forester's book are so experienced and skilled, it is easy to become overconfident — that through expertise, charm, personality, and long experience — we mediators can march into the most difficult settings and make a difference.

Larger Forces

Finally, while mediators clearly bring any number of skills to a particular problem or challenge, I think larger forces are at work that shape, constrain, and sometimes open the negotiation space in public sector disputes. I want to discuss a few that were not addressed as fully as I would have liked in the book: timing, exogenous factors, and institutional structures.

In my experience, more often than I would care to admit, my success in a mediation has often been tied to the timing of my entry. For example, I mediated a case that failed to settle, which involved an industrial use (road salt storage); an adjacent, relatively poor waterfront community; and state agencies. Among several reasons for this mediation's failure, one clearly was that the window of opportunity for using a problem-solving approach had passed. Prior to the mediation, in a settlement discussion, the industrial user and the state agencies reached a deal and developed a consent decree. The city and the most directly affected neighborhood were not allowed to participate, however. Not surprisingly, community members were not satisfied with the outcome and, via media and political pressure, called for mediation. We mediated diligently, but it was too late. The industrial user had already given all that its representatives believed they could in the previous consent decree negotiation. It had nothing (or not much) left to give; hence, no agreement.

In another case, I and a colleague of mine helped develop a plan to address a thirty-year-long dispute regarding the use of a cultural resource in a national park. When we became involved, the parties were already exhausted from years of fighting, the most cantankerous stakeholders had grown old and moved away, the legal battles had been fought (and mostly lost), and impending deadlines for various leases forced the parties' hands.

While I would like to think my team was brilliant — and I know that our intervention was helpful — timing clearly mattered much more. Understanding the role of timing can be critical: mediators and parties alike need to take a good, hard look at their situations when they consider mediation and make a reasonable if imperfect assessment about whether factors relating to timing are sufficient to move forward. Storytelling, empathy, good process design, and humor cannot alone overcome the evolutionary arc of the dispute.

In addition, any number of exogenous factors can drive the parties to a settlement (or away from it). I facilitated a case concerning a plan for a nine-acre site in a university town. The site had not been redeveloped because many local business people, local officials, and potentially interested developers had come to believe agreement could not be reached with the town's contentious, well-educated citizenry. With the support of the American Institute of Architects (AIA) and others, the town formed a committee, hired a facilitator (me), engaged in numerous meetings, charettes, and public meetings, and arrived at an excellent site plan supported across a range of constituencies. But, political differences at the town council, the 2008 financial crisis, and the retention by the site owner of a poorly chosen developer to implement the plan all combined to lead the plan toward the resting place of many other good plans: on the shelf.

In another case, we successfully mediated among a pulp and paper mill and local towns, state and federal agencies, and many others. But a key turning point occurred when the mill was bought out by a company much more receptive to community input, which also highly valued its community and corporate reputation.

In these two different cases, exogenous events far beyond the process of collaboration led to either successful or failed implementation. Many of the writings on mediation suggest that somehow, if only the mediator is smart enough, or if only the parties have enough foresight, such unanticipated surprises can be avoided (or embraced). But I believe that, given the research done on unpredictable surprises — high-impact, low-probability events described by Nassim Nicholas Taleb (2010) in his 2007 book entitled *Black Swan: The Impact of the Highly Improbable* — we cannot be so prescient. These exogenous events will often drive our processes in one direction or another far beyond our control.

Finally, institutional structures and arrangements can powerfully shape the parties' actions, perceptions, and the plausible bargaining range. These, as they sometimes should, forcefully constrain what both the parties and the mediators can do, even when they approach the mediation with great dedication, commitment, and skill.

The industrial use case adjacent to the waterfront that I described earlier posed significant structural as well as timing challenges. While just

one community bore the brunt of the traffic, dust, and noise associated with the storage of large amounts of road salt for most of the state, almost every other town and city in the region benefited from the “just-in-time” use of the salt. The other communities did not have to store it or buy it until it was time. While any number of options for resolving the issues seemed plausible in theory (increasing storage by all municipalities, moving the site to another industrial zone further from residences, etc.), the status quo costs and benefits, public contracting constraints, and legal constraints were all more compelling. Mediation might have hoped to further improve the relationship between the neighborhood and the facility or to marginally improve that facility’s operations. But ultimately, the mediation could not change the disparity between concentrated costs and diffuse benefits typical in many land-use cases.

In another case I mediated involving federal lands and off-road driving, any number of structural impediments stymied the possibility of settlement. First, federal administrative rules including the Federal Advisory Committee Act and the Negotiated Rulemaking Act dictated and circumscribed how the negotiation could be conducted. This caused delay, introduced a lack of flexibility in the process, and framed the enterprise as a rule-making plan, rather than a major land, recreation, habitat protection, and economic plan. Furthermore, the federal agency itself had any number of relevant executive orders and its own rules and regulations with which it had been out of compliance for as much as thirty years. The economics drove some stakeholders to fight to preserve what they had built over decades at all costs, while the law drove others to fight for their ideal solution because they were sure they could win in court.

Clearly, bureaucratic procedures, processes, and organizations constrict human responses in ways we should not underestimate. After all, policies and procedures are designed to take out the “human” and “personal” element from large, complex organizations whose staff and constituencies are ever changing, diverse, and often have inconsistent attitudes, biases, and beliefs. As Forester shows in this book, getting to the “humanness” or “heart” of the conflict can be the key to resolving value-based disputes. But decades of training, acculturation, and experience have trained seasoned managers in large bureaucracies to subsume, repress, and subjugate their emotions and feelings. In short, their institutional structures strongly discourage them from doing those things most useful for overcoming the history, emotion, and frustration that can stand in the way of resolution.

Overall, Forester’s book raises for me two further lines of inquiry, one directed at participants and one to academics and researchers. From participants, we would benefit from efforts to glean the stories and insights of the various parties, as well as of the mediators. What actions taken by themselves, others, and the mediator did they see as instrumental or essential, perhaps from these very same cases?

I am also curious to what degree they might perceive the actions of themselves or others (through humor, expression of interests, moments of empathy, or insight) as instrumental to moving dialogue forward and facilitating agreement — with or without the mediator. What stories will help us distinguish between the impact of the mediator's process design structure and his or her real-time interventions?

Furthermore, I believe practitioners would benefit from more highly developed theories and practices when it comes to how to better assess up front what is and is not possible in mediation. Existing negotiation theory and professional judgment seem inadequate to the tasks of deciding whether to recommend (or not) proceeding to a mediated process in these complex cases. Which analytical tools can help free mediators from our own biases, as well as the biases of parties, as we try to assess more accurately the probabilities of moving forward productively?

In conclusion, Forester has not broken altogether new ground in *Dealing with Differences*. However, the book does absolutely deepen our understanding of the public dispute mediator's craft and how these mediators view their roles, their tools, and their actions. By relying on narratives, Forester has written a book that is both eminently readable and more sensitive to the complexity of the practice than many other related works have been. He has not simply tried to convince readers of the value of mediation, nor has he tried to pigeonhole rich practices into overly constrained categories and subcategories. What the author has done, in the best of his own tradition of writing and thinking, is to advance his and our understanding of the complexity of public disputes and of those mediators' attempts to intervene effectively, with creativity, insight, and courage.

REFERENCES

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