11.255
Negotiation and Dispute Resolution in the Public Sector
Spring 2021
Class #20
Call to Prayer

- **Call to Prayer Case** (from the Harvard Pluralism Project)

- Formulate Ideas and Suggestions that Might be Helpful to the Community

- Come up with the best advice you can to the community right at the point before the referendum. *Is there any way you can suggest to help to resolve the dispute and possibly generate some level of reconciliation?*

- Discuss in Full Group (possible Lessons About Value-based Negotiations)
Value Differences

- Value and identity-based disputes are not the same as interest-based disputes.
- Value disputes are often irreconcilable (i.e., because trades are not possible).
- Often, value disputes take the form of disagreements about individual or group rights (or which rights trump others).
- Value disputes create high anxiety because “identity” is at stake.
Which of the below strategies would you find most challenging? Mark with a star

- Appeal to overarching values that the parties have in common.
- Identify joint activities or “confidence building measures” that can help to build trust.
- Aim for understanding or reconciliation rather than resolution.
Three approaches to resolving disputes

Focus on Interests...
- Lower transaction costs
- Generates higher level of mutual satisfaction
- Less recurrence
- Better working relationships

Source: Ury, Brett and Goldberg (1988: 9)
The GOAL: An Interests-Oriented DRS

Figure 2. Moving from a Distressed to an Effective Dispute Resolution System.

Source: Ury, Brett and Goldberg (1988: 19)
Dispute system diagnosis

• *What* are the current and recent issues in dispute? Who are the parties? How many disputes occur?

• *How* are disputes being handled? What types of dispute resolution procedures are being used and with what frequency? What are the overall costs and benefits of these procedures?

• *Why* are particular procedures being used and not others? What functions are being served by court, power contests, and other high-cost procedures? What obstacles hinder the use of interest-based negotiation?

Source: Ury, Brett and Goldberg (1988: 21)
Figure 3. Model of a Dispute Resolution System.

Source: Ury, Brett and Goldberg (1988: 22)
Six principles of dispute systems design

1. Put the focus on interests
2. Build in ‘loop-backs’ to negotiation
3. Provide low-cost rights and power backups
4. Build in consultation before, feedback after
5. Arrange procedures in low-to-high cost sequence
6. Provide the necessary motivation, skills and resources

Mark with a question mark those that remain unclear

Source: Ury, Brett and Goldberg (1988: 42)
Four stages of dispute systems design

1. Diagnosis
2. Design
3. Implementation
4. Exit, evaluation and diffusion

Source: Ury, Brett and Goldberg (1988)
Conflict in the organization...

Disputes... Competition... Sabotage... Inefficiency/lack of productivity... Low morale... Withholding knowledge

- Fight responses:
  - Arrogance
  - Engagement

- Flight responses
  - Denial
  - Avoidance
  - Accommodation

Flight or Fight responses, feel free to type some of the examples that Constantino gives right next to each type (Arrogance, engagement....)

Source: Costantino and Merchant (1995)
Conflict management as a system

- Practice and principles from *Organizational Development*, taking *organizational dynamics* into account. How organizations...
  - Function
  - Learn
  - Know whether or not they are performing well
  - Adjust to new information and the need for any change
  - Go about the business of changing

- A *democratic* approach to managing change and learning processes in organizations

- Designing *with* stakeholders and not *for* them

Source: Costantino and Merchant (1995: 20)
Conflict management as a system

• Characteristics of conflict management systems:
  • Boundaries
  • Purpose
  • Inputs
  • Transformation
  • Outputs
  • Feedback

Source: Costantino and Merchant (1995)
Figure 3.1. Dynamics of ADR Techniques.

*Imposed ADR*
- Binding arbitration

*Advisory ADR*
- Early neutral evaluation
- Private judging
- Summary jury trials
- Minitrials
- Nonbinding arbitration

*Preventive ADR*
- ADR clauses
- Partnering
- Consensus building
- Negotiated rule making
- Joint problem solving

*Negotiated ADR*
- Principled
- Positional
- Problem solving

*Fact-Finding ADR*
- Neutral expert fact finding
- Masters
- Magistrates

*Facilitated ADR*
- Mediation
- Conciliation
- Ombudsperson

Source: Costantino and Merchant (1995: 38)