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JUNE 6, 2019 | JOHN LANDE | LEAVE A COMMENT

At the upcoming Past-and-Future Conference at Pepperdine, much of the discussion will be about engaging the real world of dispute resolution. This post recommends that to help do this, we develop a common language of dispute resolution and increasingly use qualitative research methods.

We Should Set a Top Priority to Develop Clearer Common Language of DR

The Tower of Babel symposium described problems with our jargon in negotiation theory and the ABA Section of Dispute Resolution Task Force on Research on Mediator Techniques identified problems in comparing research results because of differences in concepts used in various studies.

The Task Force recommended that we "[s]upport and/or undertake the development of more uniform definitions and measurements of mediator actions and mediation outcomes, as well as the research needed to improve the reliability and validity of the measures and methodologies used so that future studies will produce more rigorous and meaningful findings."

I suggest that we focus on this as a top priority, though not limited to mediation. This initiative could provide numerous benefits not only for research, but also for practice, teaching, training, and collaboration within our field.

Right now, there is a huge disconnect in our field between theory, research, and practice.

Experiences judging student competitions provide a useful indicator of this chasm. With some regularity, practitioners tell students how "things work in the real world" – contrary to what they are taught in school. Practitioners not only have different perspectives from academics but they also use different language. And they rarely read publications written by academics. (Heck, most of us don't have time to read them either.)

Conversely, academics often don't have a good understanding of or empathy with practitioners' perspectives. We are overwhelmed with our academic responsibilities and it's hard to invest the time to understand the wide range of things going on in practice. We generally don't have the time or budget to attend practitioner-oriented events, and practitioner-oriented publications generally aren't considered as "scholarship."

The disconnect is reflected in long-standing dilemmas about what to emphasize in our teaching – academic theories, goals, and jargon and/or those used in practice.

Potential Benefits of Clearer Communication From Common Language

Imagine a world where we generally use the same language, particularly language consistent with meanings in plain English that disputants generally would understand. Although people would be free to use any language they want, this initiative would help improve our communication so that everyone involved in DR could better understand each other.

Developing more uniform definitions would not only help researchers conduct their own research but it could promote collaborations between researchers and practitioners to produce more useful theory and research. For example, a program at the ABA conference about what theory practitioners would find helpful produced a list of ideas that would have both practical and scholarly value. Having a common language would help us do this work.

Clearer communication could help in many other contexts. For example, focusing on language could be particularly valuable in dealing with disputants and other stakeholders. A program at this year's ABA conference demonstrated how the Harvard Negotiation & Mediation Clinical Program helped two court-connected DR programs assess how parties receive *intended and unintended* messages about DR. The program showed how messaging affects parties' experiences of access, quality, integrity, and effectiveness. By the same token, ODR system designers regularly grapple with the challenge of designing systems that work well for the variety of stakeholders who interface with their systems.

Clearer language could help students in clinical and externship courses navigate the different worlds of practitioners, clients, and faculty. These courses could become more useful laboratories of knowledge at the intersection of academia and practice.

We could develop a standard list of keywords for bibliographic research. This could help authors reach interested readers and help researchers find what they are looking for.

You might think of other ways that a common language could help.

Suggested Common DR Language Project

So I suggest that we follow the Task Force recommendation to develop more consistent concepts. This would engage the range of stakeholders who might review a range of academic and practice literature to seek consensus about preferred language. In 1999, Doug Yarn edited the Dictionary of Conflict Resolution, an academic reference of more than 500 pages with more than 1400 entries. To be practical, a new initiative would need to produce a much more concise document with only a fraction of the terms in Doug's dictionary. But it could be a very helpful resource in the effort.

The new ABA Dispute Resolution Research Advisory Committee might undertake this initiative, beginning with internal discussion and then testing their ideas in focus groups with academics, practitioners, and disputants and in public forums, and by inviting public comments.

Developing some common DR terminology could be a challenging task because much of our language has connotations reflecting strong feelings about what some believe to be the "right" or "wrong" DR approaches. Ideally, we could develop more descriptive and less ambiguous, emotionally–charged terminology. We still could have strong philosophical differences but hopefully we would be able to focus more directly on the issues using a shared vocabulary, less distracted by reactions to the language itself. Indeed, using clearer, commonly–accepted language presumably would improve these discussions.

Although it could be challenging to conduct this common–language initiative, it could be practically achievable in 1–2 years.

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