

“Pursuing Higher Ground in Public Arena Dispute Resolution: Establishing the Case for Transformative Facilitation”

Bryan H Gibson, Principal – Collaborate Australia

Growing disillusion with civil governance and a concern that social and environmental issues can no longer be entrusted uniquely to our elected leaders has generated a demand for public facilitation approaches involving elevated forms of community engagement.

The intrinsic limitations of traditional approaches to public arena facilitation stifle opportunities for engagement between community and the public sector, community healing and therefore the realisation of superior and mutually rewarding outcomes for government, community and the environment.

*In the mid-1990’s, a new model of mediation known as ‘transformative mediation’ was pioneered. This paper argues that the critical nature of socio-environmental pressures in the 21st Century demands **transformative facilitation be the core methodology for dealing with public arena conflict.***

In arguing the importance of implementing transformative practices in public arena facilitation, this paper draws attention to:

- ✓ *Traditional approaches to public arena conflict and the need for higher ground;*
- ✓ *How transformative facilitation moves beyond compromise and common ground;*
- ✓ *Why ‘transformative’ approaches are superior to ‘management’ approaches;*
- ✓ *The unique demands of transformative facilitation and implications for practitioners; and finally,*
- ✓ *Some challenges facing transformative practice and recommendations for the future.*

It also concludes that many ‘new approaches’ to public arena facilitation already meet the rigours of transformative practise and therefore not only uphold its legitimacy and value but confirm the redundancy of the term ‘transformative.’

SYNOPSIS: HISTORICAL NOTIONS OF COMMUNITY ENGAGEMENT

Traditionally, establishing a forum for public debate has provided some degree of satisfaction for the parties and whilst they have not been abandoned to outright war, some level of public discussion has been encouraged. However, is this approach adequate?

A Queensland Illustration

The recent example of Council amalgamations in Queensland (which has divided whole communities) demonstrates the *fundamental inadequacies of traditional approaches to community engagement* and presents an example of how matters could have been handled differently and how superior alternative outcomes could have been achieved by adopting a process of facilitated engagement with the relevant communities.¹

Earlier in 2007, only months prior to Peter Beattie’s resignation as Queensland Premier, legislation was effected to consolidate Queensland councils through amalgamation from 157 to just 73. The State Government argued amalgamation was needed to create superior efficiencies in Council service delivery and cater more effectively for demands created by rapid growth in Queensland. This legislation included a

¹ The rumours circulating at the time regarding the motives of the Premier were just that – rumours. Yet it must be asked if those same rumours and the potential for the denigration of the character of a publicly elected leader would have existed had proper public dialogue taken place within a regime of transparency and openness?

restriction on the right of the community to put this major issue to any public referendum.² The *degree of public consultation* attached to this process was limited. Despite almost daily marches protesting the changes, public outcry in the media and a federal election only months away, public information sessions were scant and formal. The usual Government email and mailing addresses were provided for public feedback! How was such paucity of community engagement possible?

Susskind et al argue that over time communities have given up believing they have any influence over government and no longer look for ways to influence public decision-making – making themselves an easy target for bureaucrats. They assert that “ironically, representative democracy may have dulled citizenship.”³ Within this context they maintain government agencies apply methodologies that miss the opportunity to “tap the public’s knowledge and creativity.”⁴ In such a way constructive vision is stifled, fostering an environment of aggravating disputes, and then separating the people with an interest in the dispute resulting in short-term compromises falling short of elevated potential outcomes. A sense of disenfranchisement can result between community and state over the public belief the state is out of touch with community expectations and standards, resulting in a sense of disempowerment, a deep sense of unease about the future and a mistrust of bureaucrats.

Even when some effort is made to elicit citizen’s views, preliminary decisions are often made *after* experts have been consulted but *before* being aired by the public. Therefore, the public is merely asked to form an *opinion* on a situation which has already been formulated.⁵ In the Queensland scenario by and large, it can be safely concluded that public consultation was not intended to be taken seriously.

On the other side of the coin, community disempowerment sometimes morphs itself into a new collective emotion - *outrage and active resistance* by narrow self-interest groups, resulting in senseless impasses continuing for years. Supporting this, Susskind stated in 1987: “*we are at an impasse*,”⁶ arguing that public officials are increasingly unable to take action. Investment projects potentially beneficial to the community can remain dormant for years.

Historically therefore, notions of community engagement have *fallen short of producing value-added solutions and mutual gains* - the outcomes a modern and hopefully more enlightened society needs and demands in response to growing awareness of the stresses on our fragile planet.

Public arena negotiations are generally marked by *inadequate consensus-building, excessive emphasis on distributive bargaining, lack of broad spectrum community engagement* and a *paucity of processes founded on mutual dialogue and understanding*. Even when more integrative⁷ processes *are* adopted, as Lewicki agrees, many negotiators simply do not always perceive solutions as having integrative potential, or they lack the ability to promulgate productive integrative discussion.⁸ So selfishness, history of the relationship, tendency towards ‘black-and-white’ thinking and the mixed-motive nature of typical bargaining situations come into play. It is these types of *deficiencies* that demand some type of higher ground in public arena facilitation.

² Two months prior to Beattie's shock resignation in September 2007 the word was quietly getting around that Beattie was going to resign and consult to a bevy of developers. Developers stand to fare well from the significant development activity expected to take place under council amalgamations.

³ Susskind, L.E., McKernan, S. & Thomas-Larmer, J, *The Consensus Building Handbook*, Sage Publications, Thousand Oaks, California, USA, 1999 at 560

⁴ Above at 560

⁵ Above at 558-560

⁶ Referring to the US situation - Susskind, L.E. & Cruikshank, J, *Breaking the Impasse – Consensual Approaches to Resolving Public Disputes*, Basic Books, Inc USA, 1987 at 3

⁷ 'Integrative' refers to collaborative process in which the parties define their common problems and pursue strategies to solve it.

⁸ Lewicki, Roy J; Litterer, Joseph A; Minton, John W; & Saunders, David Ma *Negotiation*, 2nd ed, Richard D Irwin, Inc USA, 1994 at 105-106.

Bureaucracy and Community: Notions of Democracy, Compassion and Justice Undermined by a Crisis in Governance

Bureaucratic agencies (sometimes anticipating the maze they are likely to have to negotiate and fearing they are forsaking their legal constituted power), often harden their position and proceed with their stated objectives regardless of *public sentiment* (as was likely the case in Queensland).⁹ There is an increasing willingness though¹⁰ to negotiate unless forced to assume the role of regulator. Increasingly a forum for discussion is provided *prior* to policy-making oftentimes incorporated into relevant legislation or public policy guidelines.¹¹

Carpenter and Kennedy point out free and open expression of disagreement is “*natural and necessary in a free society and that efforts to stifle dissent provide a signal that a democratic society is in trouble.*”¹² As Maser acknowledges, democracy is valuable because it is self-reflective and therefore weaves itself “within the intimacy of life”¹³ and is founded on the principle of finding the point of balance through compromise, so rifts between opponents *can be minimised and healed*. Maser maintains a democratic system exists under the umbrella of compassion and justice.

Yet, this mission to dispense compassion and justice, despite changes in approaches by bureaucracy towards community engagement, is still being hampered by what Dukes describes as a “*crisis of governance,*” referring to a *paralysis of action brought about by powerful single-interest groups, over-regulation by inefficient bureaucracies, apathy in the private sector and breakdown of the moral fabric of society.*¹⁴ Therefore, it is not so much a matter of governments acting vexatiously with blind disregard for the views of the electorate – rather, it is a question of *what processes and methodologies are available and can be usefully applied* in the negotiation of conflict issues that inevitably arise¹⁵ within such a problematic framework. This raises the question, what options are there?

⁹ Extracts from an article ‘Supercity for Coast’ by Mark Furler in the Sunshine Coast Daily Newspaper on 27 July 2007, conveys the prevailing public sentiment:

"Unbelievable" is how Mayor Bob Abbot described the recommendation from the Local Government Reform Commission to amalgamate Noosa Shire with Maroochy and Caloundra.

"How could they possibly make that recommendation to the Government when more than 30,000 submissions came in to them telling them that is not what local residents want?" asked Mr Abbot. ...

"Premier Beattie and his ministers pride themselves on listening to the community and a single loud message has come from Noosa people: **'Don't amalgamate us with Maroochy and Caloundra because we have different values. An amalgamation with them won't work!'**

"To his credit, Local Government Minister Andrew Fraser had promised that he would not implement any recommendations from the commission that were plainly absurd. We believe this is the case with the commission's recommendation about Noosa.

"I now call upon Minister Fraser to honour his commitment and to promise Noosa residents that he will not implement this absurd recommendation. ...

"I also call on all Noosa people to maintain the rage and not to give up the fight. Confrontation is not the Noosa way to do things, but until the State Government makes its final decision, our battle is not over."

¹⁰ Government is aware of the costs of not attempting to negotiate with the community. Financial costs can be considerable and law suits can be awarded in the environmental court for example. As well, elected ministers can lose their seats and a sitting government may lose the election if public disaffection mushrooms, particularly from a series of what is interpreted as unpopular public arena decisions.

¹¹ Carpenter, Susan L & Kennedy, WJD *Managing Public Disputes - A Practical Guide for Government, Business, and Citizens' Groups*, 2nd ed, Jossey-Bass, San Francisco, USA 2001 at 15

¹² Susan L Carpenter and WJD Kennedy, *Managing Public Disputes – A Practical Guide for Government, Business and Citizens' Groups*, 2nd ed, Jossey-Bass San Francisco USA, 2001 at 3

¹³ Maser, Chris, *Resolving Environmental Conflict – Towards Sustainable Community Development*, St Lucie Press, Florida USA, 1996 at 133

¹⁴ Dukes, Frank, 'Public Conflict Resolution: A Transformative Approach', (1993) January, 9:1 *Negotiation Journal* 46 at 45-57

¹⁵ Maser, Chris, *Resolving Environmental Conflict – Towards Sustainable Community Development*, St Lucie Press, Florida USA, 1996 at 131 describes the notion of democracy in this way:

"Democracy (in the United States) is built on the concept of inner truth, which in practice is a tenuous balance between spirituality and materialism. One such truth is the notion of human equality, in which all people are pledged to defend the rights of each person, and each person is pledged to defend the rights of all people. In practice, however, the whole endeavors to protect the rights of the individuals, while the individuals are pledged to obey the *will* of the majority, which may or may not be just to each person."

SEARCHING FOR HIGHER GROUND IN PUBLIC ARENA CONFLICT RESOLUTION

Compromise, Common Ground and Beyond

Traditionally the word 'compromise' has been used when negotiating conflict. Although better than war, as Gerzon states, compromise offers "no major shift, no new awareness, no deep change in the relationship"¹⁶ and parties have effectively merely split the difference. In recent years, search for compromise in negotiation evolved into searching for 'common ground' which although an improvement, still falls short.

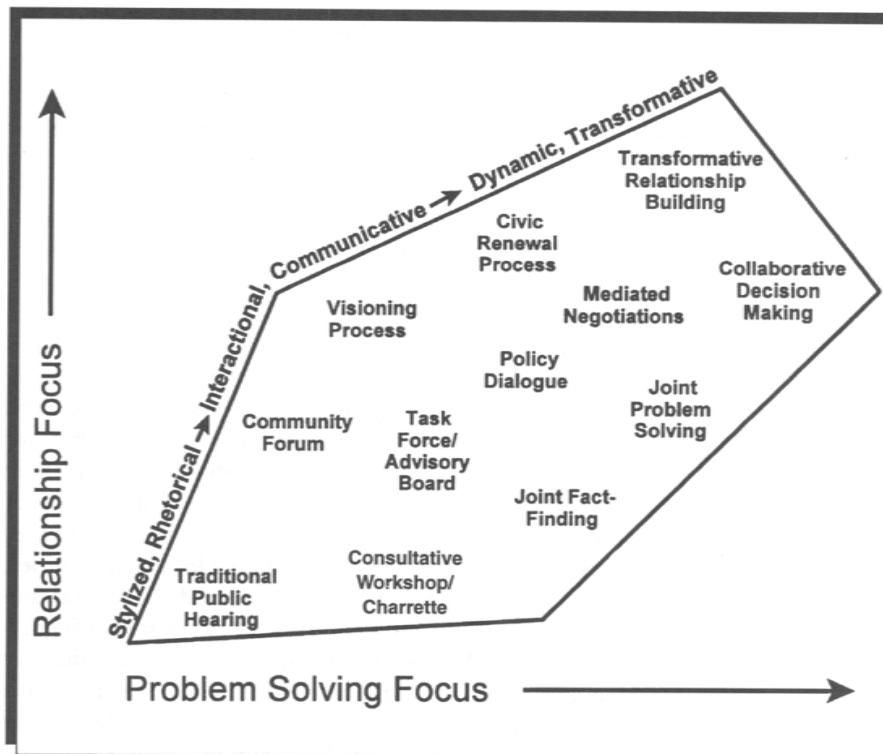


Figure 1 Range of Consensus Building Processes in Public Policy¹⁷

Gerzon advocates going beyond common ground towards 'higher ground' which he describes eloquently in this way:

"higher ground" challenges all participants in a conflict, inducing the neutral third party (facilitator) to open themselves to another level of awareness. It asks everyone to not simply take a step toward each other but to take a step upward toward higher, and therefore unknown and mysterious levels of engagement."¹⁸

In public facilitation, Dukes et al¹⁹ are adamant some type of higher ground is needed. They refer to "a greater degree of integrity and humanity" and the "power of shared expectations" – ways to deal with

¹⁶ Foreword by Gerzon, Mark in Dukes, E Pisolish, M & Stephens, J *Reaching for Higher Ground in Conflict Resolution – Tools for Powerful Groups and Communities*, 1st Ed, Jossey-Bass, San Francisco, USA, 2000 at xi

¹⁷ Susskind, L.E.; McKearnan, S. & Thomas-Larmer, J, eds *The Consensus Building Handbook*, Sage Publications, Thousand Oaks, California, USA, 1999 at 216

¹⁸ Foreword by Gerzon, Mark in Dukes, E Pisolish, M & Stephens, J *Reaching for Higher Ground in Conflict Resolution – Tools for Powerful Groups and Communities*, 1st Ed, Jossey-Bass, San Francisco, USA, 2000 at xii

¹⁹ Dukes, E Pisolish, M & Stephens, J *Reaching for Higher Ground in Conflict Resolution – Tools for Powerful Groups and Communities*, 1st Ed, Jossey-Bass, San Francisco, USA, 2000 at xv

conflict that produce *elevated and mutually beneficial outcomes* yet also *preserve intact the dignity* of all parties.²⁰ Over time the range of consensus-building models has expanded (Figure 1).

Thus 'higher ground' in facilitation may extend beyond merely determining where commonality in interests lie towards actively endeavouring to ascertain *how* the interests of the other party(ies) may be actually *enhanced*. The key ingredients in effecting this are *mutual respect and recognition* which, collectively combined, produce understanding. Parties must also be able to have the confidence to *trust each other* and work hard at building and maintaining that trust.²¹

As Dukes et al describe, "to rise higher, you must go deeper, accessing core values, attitudes and intentions to create productive ways of listening, thinking and speaking."²² It is by virtue of such an 'ethic of care' that the collective good will be achieved.²³ This tenet is enshrined in the philosophies of emerging peace studies and initiatives²⁴ around the globe.

Although the challenge is great, as echoed by Dr Lang's statement: "The earth is one but the world is not,"²⁵ the reality is substantial transformation of social conflict can be brought about through negotiation built on an ethic of empathy, care and understanding.²⁶

Laying the Groundwork for Transformative Facilitation: A Collaborative Ethos

Any moves towards 'higher ground' therefore must be built on a foundation of *collaboration*.²⁷ Collaboration must be the goal and the process. Barbara Gray usefully describes collaboration as the

²⁰ Dukes, E Pisolish, M & Stephens, J *Reaching for Higher Ground in Conflict Resolution – Tools for Powerful Groups and Communities*, 1st Ed, Jossey-Bass, San Francisco, USA, 2000 at 6

²¹ Lewicki, Roy J; Litterer, Joseph A; Minton, John W; & Saunders, David Ma *Negotiation*, 2nd ed, Richard D Irwin, Inc USA, 1994 at 108

²² Dukes, E Pisolish, M & Stephens, J *Reaching for Higher Ground in Conflict Resolution – Tools for Powerful Groups and Communities*, 1st Ed, Jossey-Bass, San Francisco, USA, 2000 at 7-8

²³ To apply the full ambit of this may require a level of sophistication that goes beyond simply well-meaning.

For example, developed countries often accuse developing countries of seeking short term returns at the expense of the longer term good. However, it is argued that if developed countries treat those countries *as if they will continue* to act irresponsibly, the developing countries will respond defensively which will take negotiations into a downwards spiral. In this example, had the facilitator of these international discussions reframed the concerns of the developed countries appropriately, perhaps by way of clarifying that they would like to assist in the long term aspirations of those countries by asking them to reveal at some length what those aspirations are and demonstrating a trust and confidence in their statements, this situation could be avoided or mitigated; the developing countries at the table would no longer be seen as paternalistic benefactors at best, but rather, as trusted strategic partners with a genuine concern in the future growth of their country.

Babbitt, Eileen, Ed 'Negotiation Theory and Practice: International Environmental Disputes' (1990) November, *Working Paper Series 90-19 – Program on Negotiation at Harvard Law School*. Reports on Session 284 of the Salzburg Seminar, held June 3-15, 1990 in Salzburg Austria at 5

²⁴ For example, in Yardley, Greg, 'Peace Studies' War Against America' (30/4/2003), viewed on 3 October 2007 <

For all the likely over-exuberance and hubris of the peace studies proponents, the greatest issue must be taken with Yardley's position which places **insufficient value on the potential for conflict transformation through peaceful and negotiated initiatives**.

²⁵ Babbitt, Eileen, Ed 'Negotiation Theory and Practice: International Environmental Disputes' (1990) November, *Working Paper Series 90-19 – Program on Negotiation at Harvard Law School*. Reports on Session 284 of the Salzburg Seminar, held June 3-15, 1990 in Salzburg Austria at 20

²⁶ Dukes, E Pisolish, M & Stephens, J *Reaching for Higher Ground in Conflict Resolution – Tools for Powerful Groups and Communities*, 1st Ed, Jossey-Bass, San Francisco, USA, 2000 at 7-8

²⁷ Refer to Figure 1 Range of Consensus Building Processes in Public Policy

constructive management of “difference”²⁸ and states collaborative initiatives can be understood as “emergent inter-organizational arrangements through which organisations collectively cope with the growing complexity of their environments.”²⁹

What then is collaborative negotiation? Lewicki describes it as “one in which both parties consider the relationship” to have equal importance to the outcome and “work together to maximise both.” In practical terms this involves putting “yourself in the other party’s shoes” and thinking about the other party’s problems “as well as your own.”³⁰ Lewicki reminds us negotiators normally assume conflicts are more competitive than they are and parties can be easily preoccupied with the “who-gets-what”³¹ part of the negotiation thus blinding themselves to the wide ranging ‘win-win’ possibilities. Thus it is a *commitment of time, energy and a high ethic of mutual care*.

Both parties must be willing collaborators. Especially without a facilitator present, if one party is competitive, the collaborative party will likely be forced to become competitive.

A high level of trust must also exist. What builds such trust? Lewicki summarises the elements:

- ✓ creating and meeting other parties' expectations;
- ✓ making your statements honest, accurate and verifiable;
- ✓ keeping promises and following through;
- ✓ developing a good reputation;
- ✓ establishing common ground and building on it.³²

Collaboration moves distinctly away from “dividing the spoils to searching for more.”³³ After all, as Lewicki points out, it is better to bake a bigger pie than to fight over a small one.³⁴ But something further is needed.

The Transformative Debate

Some twelve years ago, Bush and Folger pioneered the notion and practise of transformative mediation in their groundbreaking work “The Promise of Mediation: The Transformative Approach to Conflict.”³⁵ Although the debate continues regarding the practical usefulness of transformative approaches, its efficacy is gradually being recognised and embraced. In the public arena, Botes states “the idea of transforming conflict in order to mitigate or even end protracted social conflicts *has now become an integral part of the lexicon used in the peace and conflict studies field.*”³⁶ Astor & Chinkin describe transformative mediation positively as a method “explicitly committed to personal and social development ... embraces peaceful, moral decision-making ... supports tolerance, understanding of others and the embracing of diversity.”³⁷ It extends the

²⁸ Gray, Barbara, *Collaborating – Finding Common Ground for Multiparty Problems*, 1st Ed, Jossey-Bass, San Francisco, USA, 1989 at 1-25

²⁹ Above at 236

³⁰ Lewicki, Roy & Hiam, Alexander, *Mastering Business Negotiation – A Working Guide to Making Deals and Resolving Conflict*, Jossey-Bass, San Francisco, USA, 2006 at 128

³¹ Above at 129

³² Lewicki, Roy & Hiam, Alexander, *Mastering Business Negotiation – A Working Guide to Making Deals and Resolving Conflict*, Jossey-Bass, San Francisco, USA, 2006 at 135

³³ Above at 133

³⁴ Above at 133

³⁵ Bush, Robert & Folger, Joseph, *The Promise of Mediation: The Transformative Approach to Conflict*, Rev ed, Jossey-Bass, San Francisco, USA, 2004

³⁶ Botes, Johannes *Conflict Transformation: A Debate over Semantics*, (2001) Autumn/Winter, Vol 6, No. 2, The International Journal of Peace Studies, viewed on 5 October 2007 <http://www.gmu.edu/academic/ijps/vol8_2/botes.htm> at 1

³⁷ Astor, Hilary & Chinkin, Christine *Dispute Resolution in Australia*, 2nd ed, Lexis Nexis Butterworths, Australia, 2002 at 39

importance of, and focus on, the cultivation of party empowerment by the mediator/facilitator to resolve the dispute through understanding and mutual recognition.

Because transformative approaches are more concerned with empowerment of individuals through enhanced understanding and improved relationships, a common criticism is there is inadequate focus on problem-solving. However, as Bush and Folger assert, there will likely be a problem-solving outcome *anyway* as a result of the process of understanding and empowerment created. In the public arena context it is submitted this dynamic will be all the more evident.³⁸

It is by virtue of the creation of true understanding of the views and needs of all parties in conflict (something transformative approaches are particularly powerful in bringing about), which brings about decision-making in greater harmony with the needs of the planet.³⁹ The planet's vulnerabilities increasingly motivate us to pursue options consistent with taking responsibility for our individual actions and choices and to 'speak up' through empowerment.

Charlotte Bretherton backs this up:

"From this principle [the need to determine the most appropriate social and political arrangements for communities] there derives a need radically to reassess the position of humans as a species which has no greater intrinsic value than any other but is unique in its capacity to abuse and exploit others. Accordingly, there is a related need for a re-ordering of human behaviour, in all its facets, in order to reflect the true position of humans and enable them to live in harmony with non-human species and the ecosystems of which they form a part."⁴⁰

Maser, acknowledging our once abundant natural resources are fast disappearing, puts to us a moral question: "do those living today owe anything to the future?"⁴¹ By answering 'yes' Maser urges us to *acquire a revised sense of personal and social justice*. In the public arena context this will involve whole communities engaging with government and private interest groups to make decisions orientated towards the protection of present and future generations. *This requires transformation in the thinking of individuals and collective groups – a shift from short-term goals*, perhaps linked to economic growth, to what is sustainable and will allow nature's capital assets on this planet to rebuild.

Shedding light on current trends, Hamilton⁴² points out we are consuming at a greater rate than what the planet is able to produce on a sustainable basis and we are therefore, eating into the capital of the planet. Hamilton argues an obsession with economic growth lies at the heart of our current political, social and environmental ills. Politicians agree.⁴³

³⁸ Schwerin, Edward W. in '*Mediation, Citizen Empowerment and Transformational Politics*', Westport, Connecticut: Praeger Series in Transformational Politics & Political Science, 1995 argues that **the concept of empowerment is composed of eight elements: self-esteem, self-efficacy, knowledge and skills, political awareness, social participation, political participation, political rights and responsibilities, and access to resources**. Schwerin defines empowerment as "the process of gaining mastery over one's self and one's environment in order to fulfil human needs." He describes the dynamic interrelation between the components of empowerment, and offers a model of the empowerment process. Viewed 2 October 2007 <<http://www.colorado.edu/conflict/transform/schwerin.htm>> at 81

³⁹ By way of illustration, the approval of the new Gunns pulp milling project in Tasmania may be on the surface, serving the collective public good in terms of employment and dollars for the state but there are extreme environmental concerns inconsistent with what is seen by many as inconsistent with the best long-term interests of the Tasmanian population.

⁴⁰ Bretherton, Charlotte '*Ecocentric Identity and Transformatory Politics*' (2001) Autumn/Winter, Vol 6, No. 2, The International Journal of Peace Studies, viewed on 8 October 2007 <http://www.gmu.edu/academic/ijps/vol6_2/Bretherton.htm> at 4

⁴¹ Maser, Chris, *Resolving Environmental Conflict – Towards Sustainable Community Development*, St Lucie Press, Florida USA, 1996 at xiii

⁴² Hamilton, Clive, *Growth Fetish*, Allen & Unwin, Crows Nest, Australia, 2003 <www.growthfetish.com>

⁴³ Senator Natasha Stott Despoja observes "This book reveals the undelivered reality of economic growth and the hollow mantras of the Third Way. *Growth Fetish* provides a much needed road map to a new politics in a post- growth world" while the Rev Tim Costello referred to the book as "potentially transformative." '*About Growth Fetish*' (2003), viewed on 5 October 2007 <<http://www.growthfetish.com/book.htm>>

In all this, it is difficult to deny *something of a truly transformative nature is required right now* to alter the way communities interact with our political leaders and demand more socially and environmentally responsible strategies, not necessarily related to economic growth. *Transformative facilitation in the public arena will be a key element of this.*

Elix states the frequency of environmental disputes indicates the fragmentation of community and governance. She argues the public arena conflict resolution process should be “a vehicle for *transforming* communities, citizenry, and the institutions and practices of democratic governance.”⁴⁴ Anstey concurs, stating: “conflict promotes social transformation by modifying major structures, values and institutions.”⁴⁵ Bush and Folger acknowledge the potential for conflicting parties to be transformed into a “network of allies.”⁴⁶

To be consistent with these objectives, what characteristics would differentiate ‘transformative’ from traditional approaches?

The “Management” vs. Transformative Approach

The better forms of traditional styles can be described as ‘management approaches’ in the sense they set out to provide a structured method to air disparate views and produce some type of outcome. Dukes states the two are not necessarily mutually exclusive but warns against an overemphasis on the former.⁴⁷ He suggests some reasons why the management approach has limitations:

- Its very practical focus tends to exclude some important philosophical questions about the meaning of mediation;
- The management approach does not concern itself with justice but is reliant on efficient completion through negotiation to promote the overall good;
- It tends to treat conflict as a matter of allocation of issues, assuming interests and resources are both fixed;
- A narrow focus on a reallocation of resources ignores other issues;
- Conflicts which cannot be framed in terms of resource allocations tend to be ignored.⁴⁸

The majority of public participation exercises have not traditionally been intentionally designed for the purpose of true consensus-building. These relegate dialogue to backstage and become more information-sharing exchanges typified by the traditional public hearing.⁴⁹ The management approach is stylized and rhetorical, although over time it has become a more interactional/communicative or integrative process.

Yet, although this more integrative category by its very definition invites more diverse interaction, free public comment and two-way communication, *it does not necessarily seek to fundamentally alter the manner*

⁴⁴ Glavovic, B; Dukes, EF & Lynott, J ‘Training and Educating Environmental Mediators: Lessons from Experience in the United States’, *Mediation Quarterly*, Summer 1997 at 278 in Elix, Jane ‘The Meaning of Success in Public Policy Dispute Interventions’ (2003) 14 *Australasian Dispute Resolution Journal*, 115 at 113-123

⁴⁵ Mark Anstey, *Negotiating Conflict – Insights and Skills for Negotiators and Peacemakers*, Creda Press, Cape Town, 1991 at 11

⁴⁶ Bush, Robert & Folger, Joseph in *The Promise of Mediation: The Transformative Approach to Conflict*, Rev ed, Jossey-Bass, San Francisco, USA 2004 state at 14:

“although empowerment and recognition have been given only partial attention in the mediation field thus far, a consistent and wider emphasis on these dimensions would contribute to the transformation of conflict interaction from a negative and destructive social force into a positive and constructive force – helping individuals to interact with more confidence in themselves ... empathy for each other, ... helping to transform society as a whole from a truce between enemies into a network of allies.”

⁴⁷ Dukes, Frank, ‘Public Conflict Resolution: A Transformative Approach’, (1993) January, 9:1 *Negotiation Journal* 46 at 45-57

⁴⁸ Above at 46-47

⁴⁹ Refer to Figure 1 Range of Consensus Building Processes in Public Policy at Footnote 17

*in which power, rights or identity affect community relationships or problem-solving in the future.*⁵⁰ A major cause of this is the “incorrect assumption disputants have of linear utility functions.”⁵¹ In reality, simple trade-offs from traditionally-styled log-rolling negotiation sessions do not reflect the types of agreements made under transformative processes. Traditional approaches tend to encourage conventional negotiating styles with all of their ploys including misrepresentation of needs in an effort to obtain a strategic advantage. They also tend to allow scientific uncertainty or complexity to forestall collective action.⁵²

Dukes explains that traditional processes create these negative features:

- disintegration of community;
- alienation from the institutions and practices of governance; and
- inability to solve public problems and resolve public conflict.⁵³

Clearly higher ground exists.

To sustain an environment of *integrative* negotiation, Lewicki et al claim parties must:

- ✓ understand each others' true needs and objectives;
- ✓ have free flow of communication/ideas through search and discussion;
- ✓ share a motivation and commitment to work together to achieve common objectives;
- ✓ believe the others' needs are valid.⁵⁴

The dynamic transformative process addresses this and features two key attributes:

- problem-solving but an orientation towards rebuilding community relationships which may have become damaged;
- identify sources of past conflict in the hope of preventing such recurrences in the future.

Burgess observes “the ultimate goal of both transformative mediation and constructive confrontation is the constructive transformation of conflictual relationships.”⁵⁵ Transformational approaches thus focus on the *ethical imperative of support for grassroots political participation, social justice, human growth, ecological awareness, conflict resolution, and empowerment of individuals and communities.*

Could this have helped in the Queensland Council amalgamation issue? Would merely increasing the degree of public consultations have assisted? Probably, however the complexity of the issue demanded a *greater objective* than a simple ‘yes/no’ vote.⁵⁶

⁵⁰ Susskind, L.E.; McKernan, S. & Thomas-Larmer, J, eds *The Consensus Building Handbook*, Sage Publications, Thousand Oaks, California, USA, 1999 at 217-218

⁵¹ Northcraft, Gregory B; Brodt, Susan E & Neale, Margaret A, 'The Prospect of Negotiating with Non-Linear Utilities: Why Some Concessions are More Equal than Others' (1994) June, *Working Paper No 111 – Dispute Resolution Research Center, Kellogg Graduate School of Management, Northwestern University* at 6

⁵² Babbitt, Eileen, Ed 'Negotiation Theory and Practice: International Environmental Disputes' (1990) November, *Working Paper Series 90-19 – Program on Negotiation at Harvard Law School*. Reports on Session 284 of the Salzburg Seminar, held June 3-15, 1990 in Salzburg Austria at 13

⁵³ In Dukes, Frank, 'Public Conflict Resolution: A Transformative Approach', (1993) January, 9:1 *Negotiation Journal* at 45-57 he comments that ***transformative conflict resolution should be fuelled by a realistic assessment of the entrenched problems in our modern society*** which include “an atrophied public life, cultural dissolution, dehumanizing technologies, and alienation from the institutions of governance.” He also notes “in the United States, these problems are manifested in the growth of a permanent disenfranchised underclass amidst unprecedented prosperity; farm bankruptcies, cultures of violence, and environmental degradation. And solace is sought in the escapism of rampant materialism, gang membership, and drug and alcohol abuse.”

⁵⁴ Lewicki, Roy J; Litterer, Joseph A; Minton, John W; & Saunders, David Ma *Negotiation*, 2nd ed, Richard D Irwin, Inc USA, 1994 at 108

⁵⁵ Burgess, Heidi & Guy, 'Constructive Confrontation: A Transformative Approach to Intractable Conflicts' (1996) Summer 13:4 *Mediation Quarterly* 321 at 305-322

⁵⁶ Some council areas were actually in favour of amalgamation and councillors within individual councils were not necessarily united in their views of how their own council area should be dealt with. Thus, factions within factions were developing both at a council and community level. For example, businesses and families that stood to gain from increased employment/business from amalgamations were as vociferous in favour of amalgamation, as others not so directly affected in a dollar-sense were against it, creating intra-community divide. With so many stakeholder

It should not be construed from these observations that Council amalgamation was wrong; indeed there are many reasons why amalgamation had substantial merit. Rather, the issue demonstrates the *resentment caused by a lack of community consultation, the lost opportunity for mutual gain* over and above any gains which an imposed decision might have created and an *enduring sense of community satisfaction* and a manifest *healing*.

Dukes argues 'transformative practice' rather than 'management-facilitation' brings about dialogue at *all* levels, empowering people to "*articulate their needs freely and to explore their differences fairly*" and "*moderat(ing) powerlessness and alienation by insisting on inclusion and participation.*"⁵⁷

A key difference between these two approaches is the ***application of ground rules***. Applying traditional ground rules may seem like good sense. In reality *they may impede moving beyond common ground*. One weakness is ordinary ground rules may be invoked to draw attention to deviance from a rule, often creating polarization. Rules are also often applied inconsistently. Dukes argues common rules tend to be culture bound and because they draw attention away from inspirational planes of thinking, they serve to miss opportunities for jointly creating values and aspirations.⁵⁸ Thus, how can common ground rules be improved upon? The fundamental clue to the answer lies in the *benefits of pursuing principled approaches to dialogue rather than pursuing adherence to rules*. If parties agree on the need to adopt principled behaviour, then unconscious adherence to what would normally be considered to be 'the rules' is likely to follow.⁵⁹

Higher ground in public arena facilitation therefore seeks to embrace processes which alter the dynamics of stakeholder interactions to an extent where empowerment, understanding, healing, option-finding all within a context of joint community consciousness and environmental sensitivity, are created. How can such laudable outcomes be produced in practise and what is the standard for public arena facilitators?

PRACTICING TRANSFORMATIVE FACILITATION

If, as Maser et al assert, the aim of transformative facilitation is to "help parties become better human beings by stimulating moral growth and transforming human character, which results in parties finding genuine solutions to their real problems,"⁶⁰ then it can be argued with confidence it is difficult to envisage transformative facilitation practices being applied to anything but **all** public arena contexts. Some contexts will require a greater or lesser degree of transformative elements but underlying principles remain the same. This argument will be explored in greater depth.

The Empowering Facilitator

Clearly, certain qualities and skills are required by a 'transformative' facilitator. Brenner et al provide valuable insight by asking: "Do we approach each mediation [and by definition, facilitation] with the unique

interests within an overall context of a 200 year history of the development of the unique culture of regional Queensland communities, no agreed outcome could be so clear cut.

⁵⁷ Dukes, Frank, 'Public Conflict Resolution: A Transformative Approach', (1993) January, 9:1 *Negotiation Journal* 48 at 45-57

⁵⁸ Dukes, E Pischolish, M & Stephens, J *Reaching for Higher Ground in Conflict Resolution – Tools for Powerful Groups and Communities*, 1st Ed, Jossey-Bass, San Francisco, USA, 2000 at 41, 50, 55-56

The authors also note at 41 several problems with how ground rules are rationally introduced:

- i) They are offered in a directive manner;
- ii) They tend to be formal, limited and prohibitive and describe what you *cannot* do as opposed to what you *can* do;
- iii) Usually there is little opportunity to illustrate, understand or revise the rules.

⁵⁹ Above at 72

⁶⁰ Maser, Chris; Beaton, Russ & Smith, Kevin *Setting the Stage for Sustainability: A Citizen's Handbook* Lewis Publishers, Boca Raton, Florida, USA, 1998 at 28

inquiry it deserves?" Like Bush and Folger, they refer to the need for a highly elevated sense of emotional and mental awareness by the transformative mediator and a "situational awareness" - the latter referring to the wisdom and insight required to involve parties "emotionally and mentally in the process." They explain situational appreciation as:

"not something that can simply be transmitted as a disembodied set of skills" but "requires a rich background of experience ... a finely attuned and sensitive, self monitoring ... an ability to be critical of the way we, as mediators practice and live our own skills."⁶¹

Clearly, the task of the facilitator/mediator is an onerous one.⁶²

Kraybill⁶³ reminds us there is a critical need for the facilitator to relate to others in empowering ways or the parties will rarely provide more than superficial views. He explains empowering in this sense means to:

- strengthen sense of self;
- increase their confidence they are treated as an identity worthy of respect with needs to be addressed.

Kraybill explains we don't need to necessarily express agreement with them:

"we need only make it clear through our eyes, body posture, and tone of voice ... we are eager to *understand* the situation as they understand it, that we will not reject them for their views, and ... we recognise in them significant resources of their own for responding to the conflict at hand."⁶⁴

"The most important thing in communication is hearing what isn't said."
Peter F. Drucker

Active listening is a vital skill in communicating this understanding and attitude and enables effective use of paraphrasing, summarising and reframing.

Building Understanding and Creating a Collaborative Vision

With all this in mind, it is not surprising transformative practices provide an oasis from all that is lofty, ego-driven, adversarial, disempowering, humiliating and destructive by returning control of the dispute to the parties; engendering personal empowerment, mutual exchange and understanding. The transformative

⁶¹ Brenner, M; Segal, S & Serventy, N 'What is "Transformative" Mediation?' (2000) 11 *Australasian Dispute Resolution Journal* at 159 (in Dispute Resolution Research Paper Box)

They expand this by saying it is only by being sensitive to the ways in which our own (as mediators) cultural backgrounds, mindsets and belief systems, ego and emotional interests affect the way our skills are practiced, that practitioners can develop the "clarity of vision" necessary to be finely attuned to the conflicts parties in dispute are experiencing and conclude that this places an onerous task on the professional.

⁶² Redfern, M 'Mediation and the Legal Profession' (2002) Vol 13, Issue 1 *Australasian Dispute Resolution Journal* at 19

Although the facilitation process is usually more hands-on, Michael Redfern's comments about mediator skills have an underlying relevance:

"Mediation is a difficult task, in many respects it is a demanding task. It is not for the untrained, the inexperienced or the insensitive." He went on to say, quoting one of the lawyer litigators participating in a mediation forum, "the key to a good mediation is seemingly the rare ability to be doing nothing but everything, to be able to so construct and develop and influence the mediation conference that it is taken over and run by the parties themselves."

Such detachment, whilst at the same time playing a vital role in driving a process towards a resolution, demands a *unique set of skills not all of which can be learned from a text book.*

⁶³ Kraybill, Ron 'Facilitation Skills for Interpersonal Transformation', Berghof Research Center for Constructive Conflict Management, (August 2004) viewed on 11 October 2007 <http://www.berghof-handbook.net/uploads/download/kraybill_handbook.pdf>, 2-3 at 1-17

⁶⁴ Above at 2-3

facilitation process, as Maser appreciates, must be as gentle and dignified as possible to maintain the key ingredients of compassion and justice at each step. He concludes *all parties must emerge with their dignity intact* if anything is to be properly resolved.⁶⁵

But how does it work in practice? What is involved? What type of environment needs to be provided? How does the facilitator's role change?

As Putnam acknowledges, the literature often gives too much attention to the “give and take exchanges” between the parties and identification of settlement agreements shaped by persuasion and influence. She claims this does not concord with *communication patterns which typify or lead to conflict transformations*, although the concern for locating common ground is the same. This is the key area of emphasis for the facilitator.⁶⁶

Putnam states transformation⁶⁷ brings about fundamental changes in the patterns that define relations between the parties, changes consciousness and reduces intractability.⁶⁸ Again, *transformative approaches empower the parties and enhance the standing each party has in the eyes of the other*. This thinking comes about on a more abstract plane. When parties are afforded an environment within which to move away from communicating on concrete formal lines, to communicating on a more abstract basis, barriers breakdown and collaborative thought processes start to unwind.

Putnam asserts the facilitator fosters three dynamics that create the right atmosphere for shifting levels of abstraction and transforming negotiations:⁶⁹

- Developing a curious stance;
- Probing, exploring and learning;
- Engaging in appreciative enquiry.

Additionally, Dukes puts forward several elements assisting in attaining higher ground in transformative approaches:

- ✓ “Establish the need: seek understanding and agreement about the need for shared expectations.
- ✓ Educate and inspire: provide sufficient support and time for reflection and discussion about how ... rules should operate ... indications of commitment from group leadership to developing and honouring a covenant.
- ✓ Envisioning desired outcomes: what are ... outcomes that will define higher ground for your group. After envisioning them, develop ... specific ground rules that will allow you to reach these outcomes. The group needs to make explicit what its values are and how it wishes to enact those values as people engage one another.
- ✓ Promote full participation.
- ✓ Evaluate and revise: evaluate, modify and recommit as appropriate.”⁷⁰

⁶⁵ Maser, Chris, *Resolving Environmental Conflict – Towards Sustainable Community Development*, St Lucie Press, Delray Beach, Florida, USA, 1996 at 134

⁶⁶ Putnam, Linda L, 'Transformations and Critical Moments in Negotiations' (2004) April; 20, 2 *Negotiation Journal* at 276

⁶⁷ “Transformation” according to Putnam refers to:

“moments in the conflict process in which parties reach new understandings of their situation, ones that redefine the nature of the conflict, ... relationship among the parties, or the problems they face. ... The parties involved have a fundamentally different view of what is happening than ... when they entered the negotiation. Some folks describe these new understandings as the ‘ah-ha moments’ or the points when a light bulb goes on and illuminates a situation in an entirely different way.” Putnam, Linda L, 'Transformations and Critical Moments in Negotiations' (2004) April; 20, 2 *Negotiation Journal* at 276

⁶⁸ Above at 276-277

⁶⁹ Above at 287

⁷⁰ Dukes, E Pisolish, M & Stephens, J *Reaching for Higher Ground in Conflict Resolution – Tools for Powerful Groups and Communities*, 1st Ed, Jossey-Bass, San Francisco, USA, 2000 at 83-90

Another key element is the 'Collaborative Vision,' one of the most difficult things to create for the facilitator. Marshall describes how much frustration exists over the true meaning of "sustainable development" and how conventional economics wisdom holds us back in comprehending what needs to be done to "successfully pursue the collaborative vision."⁷¹ Visioning is described as a process in which people build consensus based on their preferred long-term future.⁷² A transformative facilitator/mediator can play a key role in helping parties identify what their vision is and knit the commonality together whilst developing a working plan to put it into practice.⁷³

However, stakeholders do not have to walk away with something they 'wanted' in order to feel satisfied or vindicated. For example, in the Queensland Council amalgamation, some who were in staunch opposition, may in fact *following a properly facilitated process*, have still been faced with an amalgamation outcome for their particular area. Yet, had transformative facilitation processes been properly conducted in such a divisive and explosive issue, what otherwise may have been the generation of anger and resentment from 'losing' may well have been transformed into acceptance due to a new level of understanding, created as a result of the *process*.

Often what begins as a view in one direction may in fact turn in the other direction as understanding develops. Or the acceptance paradigm may simply be an acknowledgement that what has been decided must be accepted as the consensus of opinion in the community was clear, even if it was not in parity with their own. At the very least, satisfaction may come simply from being 'heard' and participating in a fair process. All these dynamics will help unite a community rather than driving it apart.⁷⁴

Susskind states processes must be structured to overcome deep rooted barriers that grow out of power, rights or identity and notes:

"These processes almost always require systematic analysis of the dispute and barriers to effective resolution ... The issues are complex ... they require time and multiple meetings to create an environment in which dynamic exchange is possible. At their best, such processes transform ... relationships and problem-solving abilities of ... participants ... they are better able to resolve future differences in a productive manner."⁷⁵

Reflexive Dialogue and Introspection

How is dynamic exchange assisted? Rothman explains that reflexive dialogue is the key and defines it as "a form of guided and interactive introspection by which disputants are encouraged to speak about themselves in the presence of their adversaries ... about their needs and interests viewed interactively through the prism of the conflict situation."⁷⁶ Reflexive dialogue de-emphasizes the goal of settlement or problem-solving and

⁷¹ Marshall, Graham R, *Economics for Collaborative Environmental Management – Renegotiating the Commons*, Earthscan, London, 2005 at 9

⁷² Susskind, L.E.; McKernan, S. & Thomas-Larmer, J, eds *The Consensus Building Handbook*, Sage Publications, Thousand Oaks, California, USA, 1999 at 558

⁷³ (i) A well known US example is Chattanooga, Tennessee. As result of an active community visioning process the town went from severe economic and social breakdown in the early 1980's to one of the State's major industrial centers by 1995 whilst also becoming a popular tourist destination. The results of this visioning process were so spectacular that the Chattanooga experience was considered in the US to be a "miracle." - Susskind, L.E.; McKernan, S. & Thomas-Larmer, J, eds *The Consensus Building Handbook*, Sage Publications, Thousand Oaks, California, USA, 1999 at 557-558

(ii) In another US example (known as the Quincy Library Group) transformation occurred when loggers and environmentalists realised they could save the economic base of their historical community by forming a new collective identity. Putnam, Linda L, 'Transformations and Critical Moments in Negotiations' (2004) April; 20, 2 *Negotiation Journal* at 277

⁷⁴ Dukes, E Pisolish, M & Stephens, J *Reaching for Higher Ground in Conflict Resolution – Tools for Powerful Groups and Communities*, 1st Ed, Jossey-Bass, San Francisco, USA, 2000 at 36

⁷⁵ Susskind, L.E.; McKernan, S. & Thomas-Larmer, J, eds *The Consensus Building Handbook*, Sage Publications, Thousand Oaks, California, USA, 1999 at 217-218

⁷⁶ Rothman, Jay 'Reflexive Dialogue as Transformation,' (1996) Summer 13:4 *Mediation Quarterly* at 347

helps disputants engage proactively “in a creative conflict management process at the midpoint between these extremes [of avoidance or escalation].”⁷⁷

Reflexive dialogue assists with identity conflicts too. Such conflicts are not based primarily on objective facts or historical events but rather in the disputants' feelings, interpretations, and in the meanings they ascribe to various events. In what Rothman describes as “reflexive introspection,” parties are invited to think deeply about what the conflict means to them and how any priorities which have become negatively shaped can be re-shaped positively. Through facilitated reflexive dialogue, the facilitator must clarify the “inner meaning” of the conflict for the disputants. He then skilfully seeks to bridge the disputants' separate subjective realities with a shared reality which can then provide a basis for cooperation.⁷⁸

Such investment in promoting introspective and reflexive dialogue is rewarding when the facilitator witnesses a *focal shift from blame to recognition of mutual responsibility* – a move away from an adversarial, demonising mind-set to one of mutually wanting to shape how the course of the conflict will play out. Rothman describes the development of a type of analytical empathy, “in which the other is viewed as 'like self' with respect to motivations, needs and values” out of which arises an internal acknowledgement they themselves are imperfect, which encourages them to be less intolerant of what they previously fixated with – the other parties' faults and imperfections.⁷⁹

A key element of transformative practices often involves going back into the past – or as Moore⁸⁰ describes it, adopting “past-future-present or past-present–future sequences.” Such a focus on past relationships and an interest in the *effect* of the past on the future requires a *high level of expertise*.

It is strongly believed that ALL facilitators working within the public arena must possess personal qualities and a skill-set which collectively empowers, dignifies, enhances relationships and brings about engagement– in other words, playing a key role in *creating transformation both of the conflict itself and of the parties involved*.

THE TRANSFORMATIVE CHALLENGE

By extension, this paper argues that *all facilitation should be transformative* but what challenges exist to its uniformity of practise?

Sources of Resistance

On an institutional plane, Gray⁸¹ acknowledges as Western societies become increasingly aware that government is not able to respond sufficiently adaptively to issues of social concern, the increasing community demand for collaboration to augment more traditional administrative or judicial processes can result in either government instrumentalities acknowledging and meeting this need, or seeing it as a threat and resisting facilitated initiatives.⁸² Such behaviour may include:

- ✘ Blocks set up via funding for protracted facilitated exercises;
- ✘ Threats;
- ✘ Withholding of technical information;

⁷⁷ Rothman, Jay 'Reflexive Dialogue as Transformation,' (1996) Summer 13:4 *Mediation Quarterly* at 345

⁷⁸ Above at 345

⁷⁹ Above at 352

⁸⁰ Moore, Christopher W *The Mediation Process – Practical Strategies for Resolving Conflict*, 3rd ed rev, Jossey-Bass, San Francisco, USA, 2003 at 397

⁸¹ Gray, Barbara, *Collaborating – Finding Common Ground for Multiparty Problems*, 1st Ed, Jossey-Bass, San Francisco, USA, 1989 at 236-237

⁸² Eckersley R, 'Politics and Policy' in Dovers S and Wild River S (eds), *Managing Australia's Environment*, Federation Press Sydney 2003 at 494

- ✗ Unrealistic timelines posed;
- ✗ Participants resisting the process of option-generation and brainstorming;
- ✗ 'Neglecting' to send representatives with decision-making ability; and
- ✗ Where active resistance is manifest, government stakeholders may be less receptive to agree to transformative processes.

As Elix explains, adversarialism dominates the political environment in Australia to the significant detriment of the country. She suggests collaborative benefits even when implemented, are not fully recognised or endorsed.⁸³ It will likely only be through community awareness of, and demand for proper facilitated processes, created through public awareness campaigns that this destructive ethos will be broken down over time.

At a **community-stakeholder level**, *deep ideological and value differences* can also present barriers. In such cases, the facilitator may need to work separately with community stakeholders *before* bringing the parties to the table. In some cases this could take many months. Again, assuming funding is available, it is emphasised the long-term rewards are likely to be worth the cost and delay.⁸⁴

Technical complexities can pose barriers too. Environmental disputes can become bogged down over disparate opinions in respect of expert reports or contradicting expert reports. A transformative approach is much more likely to *re-evaluate the situation in the light of value-premises*; agreeing at the outset on value premises against which the participants wish to have technical assessment judged.⁸⁵ Transformative facilitators need to *use techniques to generate understanding of critical technical data* by "resource poor" groups to protect their interests.⁸⁶

Cultural Issues and Neutrality

A transformative facilitator must pay attention to race, culture and gender dynamics.⁸⁷ For example, Dukes explains in some cultures 'I'-statements violate cultural norms of giving weight to the community's views rather than the individual. A host of other cultural sensitivities exist⁸⁸ but *preparation* can go a long way towards pre-empting potential problems or handling issues correctly when they arise.

⁸³ Elix, Jane 'New Approaches to Adversarialism in Business and Politics – Three Facilitative Tools in use in Australia' (2006) 17 *Australasian Dispute Resolution Journal* at 105, 112

⁸⁴ Some value differences can be irreconcilable e.g. the use of sacred aboriginal land. Even in these situations it does not mean that outcomes for mutual gain cannot occur. It is more likely though that it be via transformative approaches, often over some period of time, that conciliation can develop.

⁸⁵ Gray, Barbara, *Collaborating – Finding Common Ground for Multiparty Problems*, 1st Ed, Jossey-Bass, San Francisco, USA, 1989 at 253

⁸⁶ Ozawa, Connie P 'Transformative Mediation Technique: Improving Public Participation in Environmental Decision Making' (1991) September, *Working Paper Series 91-7 – Program on Negotiation at Harvard Law School* at 2

⁸⁷ Dukes, E Pisolish, M & Stephens, J *Reaching for Higher Ground in Conflict Resolution – Tools for Powerful Groups and Communities*, 1st Ed, Jossey-Bass, San Francisco, USA, 2000 at 55-56

⁸⁸ Kraybill, Ron '*Facilitation Skills for Interpersonal Transformation*', Berghof Research Center for Constructive Conflict Management, (August 2004) viewed on 11 October 2007 <http://www.berghof-handbook.net/uploads/download/kraybill_handbook.pdf>, 10 at 1-17 reported:

"At a South African conference of church delegates in 1992, a white professor of theology publicly apologised for his role in the white system of apartheid. I thought the apology was sincere and expected that the many black participants in the conference would welcome it. Instead they were angry. "They've taken everything from us," said a community leader in discussions later. "Now they think that all they need to do is say they're sorry, and we'll say, 'you're forgiven' and then they can go their merry way, released of all obligations." Another said, "I don't want nice apologies so white people can feel good. What I want is for whites to join us in the struggle to dismantle apartheid and create justice." The black delegates recognised that the healing of this conflict required more than transformative gestures between individuals; and they were certainly not about to participate in what they saw as an effort to limit attention to these micro-exchanges."

Another challenge is overcoming expectations of facilitator neutrality in the public context. 'Impartiality,' a more useful term, enables the facilitator to take a 'shirt sleeves rolled up' approach, be an *active* advocate for the process and even represent stakeholders who cannot be at the table.⁸⁹ In this, the facilitator should show at all times he is using *active impartiality* to genuinely assist all parties. In active processes there is often a high probability of accusations by one or more stakeholders that impartiality has not been respected. The facilitator needs to constantly work hard at demonstrating impartiality *even when it appears* on the surface there is consensus. Susskind observes from his mediation experience, parties least prepared and skilled, benefitted in unequal proportions. In the facilitation context he admits to intervening "*in ways that made it hard for those in power to ignore the legitimate concerns of less powerful stakeholders.*" An interesting dynamic he observes when corporate and government interests agree to work towards a consensus, they automatically give up the power to act unilaterally anyway and have by default made a commitment to seek consensus through group activity.⁹⁰

"Leaders are problem solvers by talent and temperament, and by choice."
Harlan Cleveland

Facilitator Expertise and Training

This paper advocates for transformative facilitation styles and processes in the public arena to ***become core mainstream processes***. By definition therefore, it is considered facilitation in the public arena context should be simply described as 'Facilitation' and be conducted by facilitators *trained to a transformative level*. Facilitation training and experience should be gained *up to* a transformative level as opposed to transformational facilitation being merely an *elective* – something to be carried on by facilitators known for being "transformative facilitators."⁹¹

⁸⁹ Dukes, Frank, 'Public Conflict Resolution: A Transformative Approach', (1993) January, 9:1 *Negotiation Journal* 50-51 at 45-57 Dukes states as follows:

"A conception of neutrality which can reinforce an undesirable status quo would be replaced by a conception of third party responsibility and independence in a transformative practice. This role, which recognizes and embraces the values implicit in the conflict resolution process, may also be thought of as co-partiality or co-advocacy. This third party role explicitly advocates for a process (Laue, 1990) seeking certain qualities of outcome, including fairness, inclusiveness, and endurance. This more active conception of the third party role also admits the interests of stakeholders not at the table, including the general public, groups or individuals without the power to force inclusion into public conflict resolution forums, and future generations (Susskind and Cruikshank, 1987). In effect, practitioners would not adopt a cloak of neutrality to avoid accepting responsibility for the implications of their practice."

⁹⁰ Susskind, L 'Confessions of a Public Dispute Mediator' (2000) April, *Negotiation Journal* 129-132 at 130

⁹¹ Micheline Dewdney asserts in: 'Transformative Mediation: Implications for Practitioners' (2001) 12 *Australasian Dispute Resolution Journal* 20 at 23-25 that:

Transformative mediation may be simply applying a fresh title to time honored techniques. She says "there are many similarities in mediation methodology between TM and Australian mediation practice since the 1980's" and the modern emphasis in mainstream mediation is on looking for openings where one party can consider the other's situation from that other party's perspective (role reversal). In other words, what may have once been seen as somewhat more ethereal practise may well have now been enshrined into mainstream mediation to the extent where historical notions of "transformative" mediation or facilitation may now be (and should be) merely a part of good and acceptable facilitative practise.

Naturally, there will be degrees of transformative elements required across facilitation contexts, but it is emphasised whilst not all contexts will require a heavy transformative emphasis, *the vast majority of contexts will require at least some transformative elements.*

Keltner expresses concern that many people try to be facilitators who are “*quite unprepared for the complexity of the functions*” and many facilitators try to *adopt a particular style which lacks the flexibility to adapt to the wide-ranging contexts of facilitation environments.*⁹² Elix considers facilitation is “more art than science” and that practise strategies tend to be “tacit, reflexive and improvisational.”⁹³ Jenkins and Jenkins assert *facilitation effectiveness is determined less by skills, techniques or processes and more from a type of ‘self-mastery’* (referring to the way facilitators relate to and understand others, ourselves and the world.)⁹⁴ Ghais discusses qualities such as authenticity, confidence, presence, trustworthiness, caring, respect, personal values, knowing oneself and having a sense of calm.⁹⁵ Going even further down this more esoteric road,

“When the only tool you own is a hammer, every problem begins to resemble a nail.”
Abraham Maslow

such as inward relationship with self and *internal relationships with life itself.*⁹⁶ **In practise, a fusion of formal training, constant up-skilling, personal qualities and experience provide the required collective facilitator attributes.**⁹⁷

Therefore, the *qualities of sensitivity, awareness, intuitiveness, empathy, quick-thinking and emotional intelligence* are all vital ingredients that cannot be taught from a text book. Facilitators who apply *reflective practise principles* will no doubt relate well to these demands.⁹⁸

⁹² Keltner, John S 'Facilitation: Catalyst for Group Problem Solving,' (2006) Number 7, *Group Facilitation: A Research and Applications Journal* 40 at 31-42

⁹³ Elix, Jane 'The Meaning of Success in Public Policy Dispute Interventions' (2003) 14 *Australasian Dispute Resolution Journal* 113 at 113-123

⁹⁴ Jenkins, Jon C & Maureen R, *The 9 Disciplines of a Facilitator: Leading Groups by Transforming Yourself*, Jossey-Bass, San Francisco, USA, 2006 at 3

⁹⁵ Ghais, Suzanne, *Extreme Facilitation: Guiding Groups Through Controversy and Complexity*, 1st ed, Jossey-Bass, San Francisco, USA, 2005 at 13-27

⁹⁶ Jenkins, Jon C & Maureen R, *The 9 Disciplines of a Facilitator: Leading Groups by Transforming Yourself* Jossey-Bass, San Francisco, USA, 2006 at 3

⁹⁷ In the US, a heavy weighting seems to be being given to formal qualifications for the purpose of accreditation. In so doing, development of a “diverse mediation pool” might be hampered with a system rewarding those with the funds to pay for advanced training and degrees.

In the Australian context, it appears clear that a (non-compulsory) national accreditation program will be introduced within the next 12 months. There is currently raging controversy over what criteria the RMAB's within the proposed system will be required to use to accredit mediators.

Formal qualifications directly relating to ADR or otherwise, are not proposed by the government.

⁹⁸ Schön, Donald A, *The Reflective Practitioner – How Professionals Think in Action*, 3rd ed, Arena, Ashgate Publishing Ltd, England 1995

The challenge will be to ensure available facilitators possess not merely the necessary formal training but also have the requisite non-technical qualities required of mediators at the highest level. As Astor and Chinkin⁹⁹ astutely state, mediators now universally recognise the *complexity of their task* and the *need for retraining, continuing education and skills development*. Porter-Love¹⁰⁰ stated in 1992 after she proposed a 25 hour mediation-training program for lawyers and others interested in mediation practice, her academic dean at the time responded in shock: “but what would you talk about for twenty five hours?” Happily since that time it is contended the ADR fraternity is recognising and embracing the complexities and seriousness of their task.

It is considered in the public arena in Australia, facilitation should be a specialised profession – distinct from general mediation. As such, *specialist training resources* are required and it appears this is not being presently catered for. Unfortunately courses are notoriously expensive and would-be mediators/facilitators are loathe to commit the funds, especially within an environment in which many mediators strangely are not generating sufficient work.

Government to take the Lead

Such professional competence needs to be paid for. Government funding of training programs or the subsidising of private training organisations would greatly assist.

Fortunately the costs of mediation/facilitation are more likely to be absorbed in the public arena than private context. Costs would, in most cases, be a small proportion of the total economic costs of proposed initiatives and a pittance compared to the expense of foregone, delayed or patently bad infrastructure initiatives. ***Government must be made to place an appropriate value on public sector facilitation and factor it into its costings for public projects.***

There is currently a favourable climate for public debate processes. Facilitation services need to vindicate the trust placed in them. One notable challenge that historically raises its head is some environmental groups create *disincentives* to collaborate and fail to co-operate fully in public debates. Gray¹⁰¹ explains environmental groups for example, often view public collaboration as short-circuiting their vociferous public educational and advocacy campaigns by reducing exposure of the issue in the public eye and creating compromise. Environmental stakeholders with these views are much less likely to want to engage. It is argued much of this stems from reaction to historical approaches of stifling public debate and rail-roading government-driven agendas through. ***Effort applied to educating these special interest groups will be beneficial.***

Importantly, the public needs to perceive the real power disparities (which exist between bureaucracy and the community) are not being deployed to actively work against it. What this means is stakeholders with the most power (usually but not always government) must have no desire to use that power to advance their wishes. To sacrifice ego and financial interest is a big mental shift for government bureaucrats and independent consultants hired by government. It may likely only be through constant reminders at the polls of people power that public collaboration will continue to be advanced by government.

Another issue is the criticism which often comes from facilitated group negotiation - some stakeholders are deliberately or otherwise left out of the consultation loop under the misguided belief the public interest or collective good can be sacrificed on the altar of an early agreement. Again, this drives the need for appropriate funding to cover the cost of exhaustive pre-facilitation assessment and planning.

⁹⁹ Astor, Hillary & Chinkin, Christine, *Dispute Resolution in Australia*, 2nd ed, LexisNexis Butterworths, Australia, 2002 at 208

¹⁰⁰ Porter-Love, Lela 'Twenty Five Years Later with Promises to Keep: Legal Education in Dispute Resolution and Training of Mediators' (2002) 17 *Ohio State Journal of Dispute Resolution* at 602

¹⁰¹ Gray, Barbara, *Collaborating – Finding Common Ground for Multiparty Problems*, 1st Ed, Jossey-Bass, San Francisco, USA, 1989 at 247-248

Transformation of communities requires collective and individual pro-action but this will come about if awareness is promoted by Government and if debate forums match promises.¹⁰² Funding inadequacies can mitigate the value of consulting with parties in the early stages. Yet transformative facilitators should not try to construct a process and then try to flog it to the parties.¹⁰³ Kraybill suggests a Process Committee can be useful to clearly define purpose and expectations and clarify important events.

Active efforts are needed within government to educate elected officials in the superiority of facilitated processes over adversarial ones. Some public officials fear participating in negotiations can be an abdication of legal responsibility but Susskind¹⁰⁴ assures us in reality modern legislative frameworks render such thinking misplaced. Some public officials also think consensus-building means yielding up power. Again, Susskind exposes the myth behind this reminding us officials are a party to any facilitation agreement and not required to forego their veto power. Indeed to the contrary he believes consensual approaches *increase* their power because of the goodwill generated and the greater standing earned with the community.¹⁰⁵

Studies Required

Studies into the long-term benefits of facilitated community processes are needed. Recording and promoting such successes (an Australian equivalent of the Chattanooga, Tennessee example would be useful!) would go a long way towards creating a demand for and increasing participation in, such processes and help remove any suspicion about the motives behind it.¹⁰⁶ As Gwartney et al suggest, there is much to be done in testing social exchange theory and how social interaction between individuals and groups can be improved.¹⁰⁷ McKillop agrees with the need for long-term evaluative research in Australia and notes most evaluations are conducted and retained in-house by the managing agency. Significantly, she explains entities including the Land and Environment courts recommend increased use of ADR but don't evaluate its present use in any meaningful way.¹⁰⁸ Again, government funding is required here.

Dealing with Technical Complexity

¹⁰² As a declaration of the City Club of Eugene in the US stated:

"As a community-at-large we need to become our own support system around the issues that confound us: managing growth, supporting our children, crafting positive relations between citizens and public officials, building a healthy community for all our citizens. We do this best when we talk with each other with honesty ... respect and work with each other with optimism and dedication. I believe the City Club has an important responsibility to create a context where this can happen. ... I invite each of you to take part in the effort.

City Club of Eugene, 11/98, at 1 in Gwartney, Patricia A; Fessenden, Lynne & Landt, Gayle Research Report 'Measuring the Long-Term Impact of a Community Conflict Resolution Process: A Case Study Using Content Analysis of Public Documents' (2002) January, *Negotiation Journal* 70 at 51-72

¹⁰³ Kraybill, Ron 'Facilitation Skills for Interpersonal Transformation', Berghof Research Center for Constructive Conflict Management, (August 2004) viewed on 11 October 2007 <http://www.berghof-handbook.net/uploads/download/kraybill_handbook.pdf> 14 at 1-17 - Kraybill provides some examples of getting group involvement in the early stages:

'We are wondering about creating a forum in which people can talk. Would you be interested?' 'What should it look like? Who should be there?' 'When and where should we meet?' 'Who should convene it?' 'Should it be on the record or off the record?'

¹⁰⁴ Susskind, L.E. & Cruikshank, J, *Breaking the Impasse – Consensual Approaches to Resolving Public Disputes*, Basic Books, Inc USA, 1987 at 241, Susskind states: "in almost every situation we have observed, ... consensual approaches fit quite well within the constraints imposed by the laws governing the actions of elected and appointed officials."

¹⁰⁵ Susskind, L.E. & Cruikshank, J, *Breaking the Impasse – Consensual Approaches to Resolving Public Disputes*, Basic Books, Inc USA, 1987 at 242

¹⁰⁶ Putnam, Linda L, 'Transformations and Critical Moments in Negotiations' (2004) April; 20, 2 *Negotiation Journal* at 291-292

¹⁰⁷ Gwartney, Patricia A; Fessenden, Lynne & Landt, Gayle Research Report 'Measuring the Long-Term Impact of a Community Conflict Resolution Process: A Case Study Using Content Analysis of Public Documents' (2002) January, *Negotiation Journal* 71 at 51-72

¹⁰⁸ McKillop, Jeanie; Neumann, Ron; Sipe, Neil & Giddings, Jeff 'Evaluating Environmental Dispute Resolution' (2003) 14 *Australian Dispute Resolution Journal* at 144

Large disparities in knowledge and technical understanding tend to exist across stakeholders in the public arena context.¹⁰⁹ Systems must be devised to distil complex data to their essence and present it in such a way that informed decisions can be made even when major power balances *exist*. Too often, the argument of technical complexity is advanced by those in positions of power. It is considered this argument does not stand up. The key to distilling what appears to be complex data, lies in *questioning and preparation* - an area the facilitator can excel in.¹¹⁰

Technical complexities are generally not required to form an opinion regarding commonsense social impacts. By the facilitator determining answers to such questions before facilitated sessions commence and present this information, any power balance extreme is substantially mitigated. However, complexity of modern day projects does not exist merely in the sense of technical complexity but also in terms of effects on already delicate eco and socio-systems. Again, this can be dealt with through proper assessment and preparation, mapping stakeholders and likely interests and compiling information and data in such a way it can be assimilated and understood by all stakeholder groups. Susskind and Kraybill urge in-depth examination, research and reflection on substantive issues and the parties before even coming to the table.¹¹¹

Whilst there are challenges, the rewards of transformative practise are surely worth the sacrifice. A growing number of practitioners and respected academics¹¹² are contributing to the field and adding their voice to it, maintaining in every area of life, transformative approaches have the potential with the appropriate amount of energy and commitment, to assist in transforming the quality of social interaction and ultimately social institutions. It is worthy of mention that a study of the literature reveals that the term “transformative” is not necessarily always used to describe modern facilitation practices which embody transformative principles. This supports and attests to the legitimacy and worth of “transformative” practise by rendering the term a redundancy.

Transformative facilitation does not oblige parties to change their views or positions where extreme value differences exist but it does affect the way the parties look at each other – not as individuals to be demonised but as people who can and should still be respected.¹¹³ Therefore, the potential benefits to society are enormous as such thinking represents a dramatic departure from traditional modes of thinking.

¹⁰⁹ Carpenter, Susan L & Kennedy, WJD *Managing Public Disputes - A Practical Guide for Government, Business, and Citizens' Groups*, 2nd ed, Jossey-Bass, San Francisco, USA 2001 at 6

¹¹⁰ In the radiation example, is it right that a scientist holding up a 300 page technical report silences dialogue by saying that it is too complex to understand? Surely, by asking questions such as “How does the level of radioactivity compare to international norms?”; “Are there international findings of increased health problems near reactor sites?”; “In what types of scenarios could melt-down occur?”; “How quickly could leaks be contained?”, comprehension will be gained.

¹¹¹ (i) Susskind, L ‘Confessions of a Public Dispute Mediator’ (2000) April, *Negotiation Journal* 129-132 at 130 admits:

“Hoping that my process skills would get me by, I have taken on assignments when I knew absolutely nothing at all about the substantive issues facing the parties.”

(ii) Kraybill, Ron ‘*Facilitation Skills for Interpersonal Transformation*’, Berghof Research Center for Constructive Conflict Management, (August 2004) viewed on 11 October 2007 <http://www.berghof-handbook.net/uploads/download/kraybill_handbook.pdf>, 13 at 1-17 reveals the kind of in-depth examination and questioning required:

“A commitment to the transformative value of empowerment suggests that the first step in decision-making is to determine who will be affected so as to involve them appropriately. Questions to guide this assessment include:

- Who will view themselves as deeply affected by this negotiation, project, or decision? (Usually this group should be at the heart of the decision-making process).
- Who is in a position to block implementation if they are unhappy with decisions? (These parties should always be consulted and often need to take an active part in the decision-making process.)
- Whose advice or assistance will be valuable? (This question calls for broad consultation.)
- Whose approval will be required to enable this project to proceed?
- What are the interests, concerns, or motivations of each of the above groups?”

¹¹² Winslade, John & Monk, Gerald *Narrative Mediation – A New Approach to Conflict Resolution*, John Wiley and Sons Inc, USA, 2001

¹¹³ Burgess, Heidi & Guy, ‘Intractability and the Frontier of the Field’ (2006) Vol 24 no 2 Winter *Conflict Resolution Quarterly* 183 at 177-185

CONCLUSION

All processes to resolve conflict should be built on strong foundations of understanding, empowerment and sharing. This paper argues the complex nature of community conflict and diversity of interests, both at a human and environmental level, makes all the more critical facilitation practices in the public arena which uphold the integrity of these dynamics. 'Higher ground' in public arena dispute resolution goes well beyond the traditional community hall meeting governed by a rigid set of 'Robert's Rules' and ending in some type of compromise or none at all. Rather, it provides a safe environment for all parties within which all values and interests can be identified and shared, culminating in the baking of a 'bigger pie' of mutually rewarding outcomes in which the wider community interests and environment are key beneficiaries. Elevated facilitation processes are the only way to achieve all this within complex public domain contexts.

There can be no downside to this elevated form of facilitation process. It may even mean one day that so-called 'intractable conflict' is anathema within society. It is inevitable, regardless of the context; personalities of the parties; or difficulties of the issues, that deeper recognition and relationship-building *will* take place. Although new layers of meaning may not endure forever, at least the *transformative process* provides opportunity for parties to turn aside from the option of using destructive behaviour to at the very least, cultivating some type of understanding and acknowledgment which will benefit them in the moment and hopefully also in the future. Over time, communities will function better, be healthier and happier and our policy-makers and executive arms of government more highly regarded as a result of *transformative facilitation processes*.

The complexities facing modern communities amid increasing pressure on scarce resources, growing environmental strains and a growing realisation the moral health of our communities needs to be resuscitated, demand transformative facilitation through collaboration *not* management-type approaches be applied to community issues and conflict. These collaborative processes will *tap into the collective public knowledge and creativity*. Appropriately skilled practicing facilitators and academics have the opportunity to take advantage of the presently favourable climate for the advancement of conflict resolution processes.

Ongoing commitment by the ADR industry and increasing specialisation by those wanting to be public facilitators is needed. *Government and its various arms need to embrace transformative processes through internal education and training and by funding training in the private sector. Increased funding for facilitated engagement will need to be made available and more realistic timeframes for community engagement will need to be incorporated into strategic planning. Legislative instrumentalities may need modifying* to require and enable the operation of the appropriate processes to take place.

It is hoped government and communities will respond sensibly to the pressures the planet is under. Rather than mindlessly making as a priority, a grab for a stake in the few resources that remain - believing it will be these things that provide economic security and personal stability - they will recognise instead that it is the health of the living breathing communities of which they are a part that ultimately provides a real source of enjoyment in life.

Bryan Gibson is a collaborative practice and dispute resolution practitioner and principal of Collaborate Australia Pty Limited, a nationwide company specialising in advancing shared visions and dispute resolution through collaborative practices. He is an accredited Mediator with the Institute of Arbitrators & Mediators Australia and holds a masters degree in Dispute Resolution and a Bachelor of Commerce. He is a Fellow Member of the Australian Institute of Management and has 28 years experience in the accounting, franchising, property, small business and retail sectors. He assists organisations, government and individuals to work more effectively in bringing their goals to fruition by providing expertise to facilitate meaningful communication and build commitment to achieve mutually beneficial outcomes. Collaborate Australia provides dispute resolution services including mediation, negotiation and facilitation - from resolving short-term one-off issues, complex multi-party disputes and community engagement to acting as a long-term partner when collaborating on large projects and community or government outcomes.