

Deconstructing “Alternative Dispute Resolution”

For many years the shorthand term “Alternative Dispute Resolution” (ADR) has been used to describe the field and the mechanisms used to engage with conflict. However, there has been increasing critique of this term in favor of other terms such as “Conflict Engagement.”

1) Conflicts vs. Disputes

Dispute: a disagreement over a discrete issue

Conflict: a prolonged state of disharmony

Disputes

An instance of a conflict

Relatively easy to settle

Realistic Goal: Resolution

Disputes are conflict escalators

Conflicts

A collection of disputes

Very difficult to settle

Realistic Goal: Management or De-escalation

Conflicts are dispute generators

Example: The feud between the Hatfields and the McCoys. The feud was allegedly started by a *dispute* over ownership of a hog, but the ensuing feud in which many members of both families were killed was an enduring *conflict*.

Often organizational Dispute Resolution processes may “resolve” the dispute but aggravate the underlying conflict. While the terms “dispute” and “conflict” are often used interchangeably in practice, the term “conflict” more accurately describes the depth of the issue, whereas “dispute” merely captures the presenting surface issue.

2) Engagement vs. Resolution

The term “resolution” implies that conflicts or disputes may be settled once and for all. However, this is not always the case. Some conflicts are enduring or intractable. The more expansive term “engagement” suggests that there are ways of addressing conflict that may improve the quality and nature of the conflict without resolving or eliminating it.

Example: Committed relationships. Couples in committed relationships may not always agree. They may continue to have the same disagreements surface repeatedly. Their ability to maintain a healthy relationship does not require them to resolve or end these disagreements, but to be able to continue to engage them in a healthy way over the course of time.

Another term often associated with conflict is “management.” “Conflict management” is broader than “conflict resolution” and communicates the responsibility of authorities to exercise oversight over conflict. However, the term suggests that conflict can be managed, and that management is the most appropriate response to conflict, which may not always be the case.

Even use of the term “engagement” can be challenged because avoidance of conflict (or deliberate non-engagement) can be a successful strategy for responding to conflict.

3) Integrated vs. Alternative

The term “alternative” arises from the use of ADR practices, such as mediation or arbitration, as an alternative to litigation and other traditional legal mechanisms. The term is most frequently applied to the more informal mechanisms that differ the most from the formalized adjudicative legal approach. Thus, mediation is considered more “alternative” than arbitration, because, arbitrators adjudicate (as do judges), whereas mediators do not adjudicate but rather facilitate agreement between parties. Some have questioned traditional legal mechanisms should be considered the norm and have advocated that ADR should stand for “appropriate dispute resolution.”

However, there has been growing recognition that conflict engagement mechanisms are interconnected and interdependent. Mediations are negotiated “in the shadow of the law” and thus are influenced by the law. The term “Integrated Conflict Management System” is sometimes used to describe the interwoven structure of mechanisms within an organization for engaging and managing conflict. Although the term “integrated” is rarely explicitly articulated, the term “alternative” has declined in use with the growing recognition that there is a single large web of interconnected conflict engagement mechanisms.