Columns

The Wrong Mental Image of Settlement

Christopher Honeyman

Negotiation participants usually think of "settlement" as the official end of a conflict; the author points out that this mental image is inaccurate in many situations, where a settlement is followed by additional eruptions of conflict. He uses the recent Good Friday peace accord in Northern Ireland as an example of the continuing nature of many conflicts; theorizes as to why we have this incorrect mental image in general; and suggests ways we can present a more accurate representation of a conflict's life cycle.

What if there is a pervasive error in the mental map of negotiations that most people — the public, negotiators, even mediators — are using?

I have come to believe that most of us are carrying around a mental image of what "settlement" looks like — and that it's a distorted image. If the wrong mental image is as prevalent as I think, this unnecessarily compounds negotiators' problems, and helps to create an impression of failure where often there has been success by any reasonable measure. Widespread misperception of what "settlement" entails may also be penalizing modes of neutral practice that are highly constructive for the parties, while fostering forms which are not as likely to be productive over the long term.

The error I postulate has to do with the way people tend to perceive the expected course of conflicts. In effect, most people think

Christopher Honeyman has worked as a mediator and arbitrator since 1978. He is president of CONVENOR Dispute Resolution Consulting (www.convenor.com) and director of Theory to Practice, a national project funded by the William and Flora Hewlett Foundation to improve communication between conflict resolution theorists, researchers and practitioners. His email address is honeyman@convenor.com

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Figure One
The Cymbals Clash and Conflict Ends

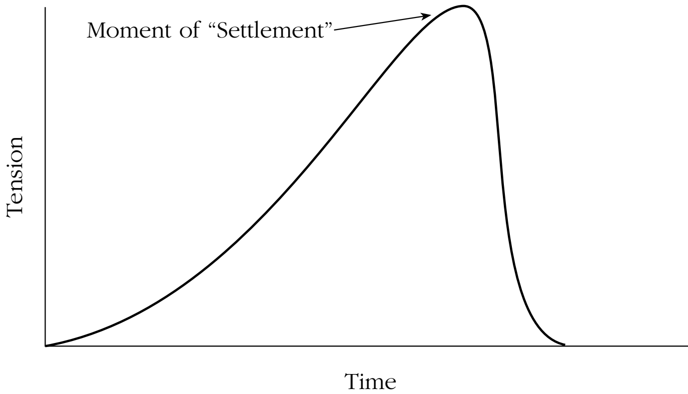
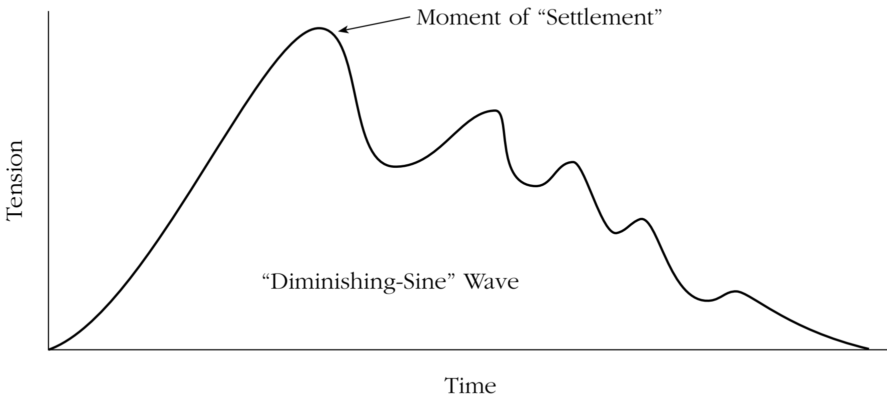


Figure Two
The Cymbals Clash. . .But Then, Something Else Happens



of a conflict in terms of a crescendo, rising to a peak of noise and fury till, with a clash of cymbals, a *Settlement* is achieved — after which the orchestra's efforts ebb away and everybody goes home. In the form of a graph (represented as Figure One), that model might look something like a gradually rising curve that comes to sudden, climactic end.

To my way of thinking, the typical pattern of settlement actually looks quite different. It's more like the ripple effect one gets by tossing a stone into a pond, as illustrated by Figure Two.

I am basing most of this on upwards of 25 years as a practitioner and student of conflict resolution, but would welcome hearing the views of historians of conflict, to see if the idea has "legs." Anecdotally, others I've checked with have agreed with my impressions, and amplified them from their own experience. For example, the colleague with whom I first discussed this idea, a diplomat for 35 years, confirmed that he has seen this pattern play itself out in Northern Ireland, and supplied details which are reported later in this column.[1]

I now think there are a number of grounds for believing that the graph shown in Figure Two actually represents "a" if not "the" predominant pattern of how a conflict evolves into a settlement.[2] The pattern seems to occur in a wide variety of disputes — not just where there are traditionally recognized continuing relationships such as in international and labor disputes, but in divorces, bankruptcy cases, and (perhaps) even in a larger variety of personal injury cases than is commonly thought.

One reason is that Newton's Third Law, that "every action begets an equal and opposite reaction," is often experienced all too personally by negotiators. Once the negotiators have had to commit themselves to what is almost inevitably a less-than-ideal result, they have placed themselves in an exposed position. The opportunity is presented for the disaffected to regroup — or, in disputes between individuals, for the more conflict-prone aspects of an individual's personality to reassert themselves.

At the high end of negotiation complexity and drama, the Northern Ireland negotiations are a conspicuous case in point. First, former U.S. Senator George Mitchell clearly acted in the national interest of the U.S. government, since the history of U.S. immigration results in the U.S. having a long-standing interest in the region. That interest is relatively neutral as between the parties; stated simply, it is in helping bring peace to Northern Ireland. Mitchell was what diplomats call a mediator *avec baguette*, because he was able to interject the political, economic and moral suasion of the United States.[3] In that sense, Mitchell could be viewed partly as a negotiator for the U.S.

This background was not irrelevant to his success, because the U.S. interest was ongoing. In the Northern Ireland dispute, it is more obvious than in most cases that the situation demanded someone who could get the various parties (several of which had been excluded for years) to the table; listen to them — really listen, and get them listening to one another; and help them forge a consensus amongst themselves. With ten eligible participants[4] in the peace process, Mitchell's emphasis was on getting the maximum number of parties involved productively.

Though Mitchell was generally accepted as a mediator, more than as a negotiator for a distant but inter-

ested party, his success was due to his tenacity as much as to his undoubted skills; arguably, the fact that the U.S. interest was unlikely to change strengthened the visibility of his commitment over an extended period. Certainly he was a superb listener (no mean task in the highly charged Northern Ireland setting), and he was a clear and impartial communicator. But equally important, when the going got tough, he was there — literally as well as figuratively — to deal with the parties. Mitchell therefore succeeded largely because his institutional and his professional interests coincided, favoring not looking for a "clashing of cymbals," but rather, grappling patiently with the "ripples." It took two years of constant assistance by Mitchell for the parties to reach the historic signing of the Good Friday Accords.

Even then, of course, that "intermediate bottom line" was not achieved without a dose of good old-fashioned tough negotiating tactics: The creative tension created around the Good Friday deadline was Mitchell's idea, and proved to be essential. Without it, the political risks to each negotiator from the concessions that would be necessary threatened to keep all sides hemming and hawing while momentum dissipated. As a mediator, Mitchell was thus no milquetoast.

But by making it clear over a long period up to that point that he *would be there* to deal with the inevitable ripples, riptides and reverberations, Mitchell's eventual threat to withdraw (if the parties failed to show equal commitment) had the desired effect. The end result was the signing of a landmark agreement between parties that have been at odds for hundreds of years.

It is, of course, still too early to say that Senator Mitchell mediated "the end" of the conflict in Northern Ireland. But it's reasonable to argue that by making it clear over and over again that he was there to deal with the ripples, Mitchell established a pattern of political interaction that will eventually lead to peace in that beleaguered part of the world.

On a less publicized level and in a different way, innumerable labor negotiations demonstrate the same point, because here the "second peak" of conflict has long been anticipated, and a mechanism is routinely provided in the form of the ratification vote. The period immediately preceding ratification is often characterized by high drama, as it becomes the best opportunity a radical or disaffected minority element within the union is likely to get to portray the tentative settlement as a sellout, and to seek to win adherents. In the public sector, where political bodies operate on both sides, the same pattern is seen in management circles.

In effect, professionals in labor and management, over decades, have recognized the near inevitabil-

ity of this pattern, and have built in procedures to deal with it. Even the subsequent peaks of conflict (number three and beyond) are typically anticipated and provided for, in parties' knowing adoption of mechanisms for handling disputes over the interpretation of their ratified agreement — including its often-deliberate ambiguities (Honeyman 1987).

For good or ill, most negotiation settings are not so ritualized. For example, a U.S. international negotiation (up till its second peak of conflict, the ratification of a treaty by the U.S. Senate) could be seen for these purposes in similar terms to a labor negotiation. But from then on, it becomes much more difficult to plan how subsequent related conflict will be handled; in some ways, the mechanisms end up being reinvented for each occasion. Far less planning for the second or third peaks of conflict is embedded in our expectations for many other kinds of conflicts, where even brief consideration should lead such recurrence to be seen as "standard" — divorces being just one example where people tend to describe further peaks of conflict, after a successful mediation, as an aberration, where they may really be the norm.

But Why Do We Allow This?

In the face of such long-standing experience, at least in the oldest parts of what is now a dispute resolution *industry*, why has the wrong mental image prevailed for so long?

The answer is probably a combination of many factors, but I believe the overriding one is that attention is a commodity, and that in our society, it's in short supply. In other cultures, this may not be the case. But at least in the United States, the search for brevity is everywhere; these days, for example, it's the lucky politician who is allowed even a daily sound bite, as any third-party candidate can confirm. In this respect, at least, negotiators and mediators share the politician's problem.

Compounding the situation is an understandable enthusiasm on the part of the public and parties to see a conflict "over and done with," and the understandable temptation presented to mediators not to muddy the waters, but instead to put the best face on an agreement which is, in fact, still a tenuous proposition.[5]

I believe the price paid by our field for allowing the wrong mental image of settlement to persist is a steep one. The prevailing image creates unrealistic expectations that the announcement of a tentative settlement means that "it's all over bar the shouting," and fails to prepare constituencies to deal intelligently with the probable cycle of subsidiary disputes.

By avoiding discussion of the likely course of a conflict after the first peak, the prevailing image also honors negotiation and mediation strategies which serve to push the first graph "down" and to the left, without regard to whether such

strategies ultimately increase the number, duration and severity of *subsequent* peaks of conflict. Again, I would welcome research on this point, as I have only anecdotal evidence (though lots of that, much of it painful to recall) to support my impression that some mediator strategies which achieve a "low and early" first peak of tension do so at the expense of the parties' long-term interests. I would be particularly interested to learn whether confirmation of the pattern, and wider appreciation of its significance, might have an impact on the marketplace success of what Riskin (1996: 22-28) has described as "evaluative/narrow" mediation, which may have spread beyond the best uses of that approach.

In the Northern Ireland peace process, by contrast, sustained attention has been very high and a significant number of journalists, as well as Mitchell and other active players, have repeatedly cautioned against excessive optimism. By these means a general public expectation of a series of phases, each with its own peak of tension, has been achieved, to a degree. Without that tempered sense of realism, a generally positive frame might not have been sustained, and the inevitable down-cycles might well have created something much closer to despair than that exceptionally difficult negotiation has actually produced even at its darkest moments.

Helping the public at large to predict the likely pattern has helped many to see each crisis of implementation as *part of a continuing process*, rather than as the complete unraveling of that process. I think this could be achieved for negotiation on a more general level.

What We Might Do Instead

If the probable subsidiary/recurrent peaks of conflict were more generally recognized as a pattern in more kinds of disputes, parties might be better prepared for them and in better humor when they occurred, and long-term, sustainable resolution might thus be facilitated. There is some basis for optimism that better recognition of the pattern might be achievable.

First, in the ordinary but revealing language of negotiators, the conception of parties "stretching" to reach settlement already carries with it an etymological prediction of a kind of snap-back to a second peak of conflict. The widespread recognition that there has had to be a "stretch" to achieve any kind of settlement at all amounts to a glimmer of recognition of the more probable pattern, and could be built on.

There are at least three strategies which could readily be adopted by adherents of conflict resolution, as ways of improving the public perception of settlement processes — at least, over time. One is to seek to incorporate careful accounts of past major negotiations in teaching and

training materials. Historians are one academic specialty largely missing from dispute resolution scholarship; but that could be remedied.[6]

Another approach to augmenting the public understanding of what to expect involves improving our dialogue with reporters. This past year's establishment of the first program formally to postulate a relationship between conflict resolution and journalism, the Joint Center on Journalism and Conflict Resolution shared by the University of Missouri's law school and journalism school, represents a conspicuous step in that direction.

Finally and more directly, mediators should probably advise parties in straightforward language of the likelihood that a combination of buyer's remorse, organizational politics and the mental distortion discussed here should be anticipated, in order to help them think through the viability of a proposed settlement.[7] Currently, the reality checks that mediators routinely provide are often directed primarily toward those elements of unreality in a party's position or proposals which are seen as likely to delay or frustrate the *first* round of settlement; but in the long run, the parties are better served by honest forewarning that it ain't over till it's over.

NOTES

1. Robert P. Myers, Jr. is now a community mediator in Washington, D.C. but, during the course of a distinguished 35-year career with the U.S. Department of State, served for four years as Consul General in Belfast, Northern Ireland — i.e., as the senior U.S. diplomat on the ground there. (Subsequently he became the State Department's first Dispute Resolution Specialist.) I am indebted to him for fleshing out the Northern Ireland example. I would also like to thank Linda Stamato and Leonard L. Riskin for their helpful comments on an earlier draft of this column.

2. Riskin has pointed out to me that another way of describing this is to draw a distinction between settlement, and resolution of the dispute. I agree that in its narrowest sense, a dispute can be called "settled" if the parties have no further interaction. Yet we call our field alternative (or appropriate) dispute resolution, while at the same time the phrase "it's settled" means, to most people, that it's supposed to be over in every sense, not just the immediate financial one. Clearly, the language we use every day is not alerting people to the distinction.

3. It has been said that all international mediators are biased, but that they are still useful (see Smith 1985; and compare with Touval 1985). In this instance, Mitchell neatly illustrates Touval's distinction between an interested-party mediator (i.e., one whose own interests or whose country's interests are affected by the conflict and who can be presumed not to be acting against those interests) and a biased mediator (i.e., one who has a closer relationship to one party than to another.)

4. At one time or another all ten were involved; the most at any one time was eight.

5. The combination of these factors helps explain why Howard Raiffa's ingenious proposal of "post-settlement settlements" (published in 1985 as the very first column in these pages) did not lead to a significant new form of professional practice: The idea had elegance, but did not follow the political logic to which negotiators are subject. Inviting the conception that a professional neutral might be able to come up with a mutually "better" agreement once the immediate tensions were resolved, in light of the "diminishing sine wave" image of conflict continuation and resolution which I suggest, would serve to undermine negotiators' authority and play into the hands of those who are least likely to accept any settlement at all. By contrast, stoutly averring that the settlement achieved is the best and only opportunity for peace puts the disaffected to their proof; and in practice, most of the time, it proves impossible for them to achieve their aims. There have been many treaties initialed by U.S. presidents which subsequently endured calumny in the Senate — but relatively few in which the opponents' policies were actually carried out. Similarly, failed ratification votes in labor-management bargaining are common enough, but it is relatively rare for these to lead to radically changed contract terms.

6. An example of the kind of writing we need more of, although not by a professional historian, is a mediator's eyewitness account of a complex race relations dispute at Columbia University, recently published in these pages by Carol Liebman (see Liebman 2000). Another, by Melinda Smith, appeared in the recent *Consensus Building Handbook* (see Smith 1999). An unsophisticated overreaction to confidentiality concerns has kept too many professionals from writing thorough case histories of this kind, and we need many more like these.

7. With respect to public disputes, Linda Stamato and Larry Spears have been working on identifying causes of what they are terming "escalation" — which may be a term of art, in their use, as it refers there specifically to post-agreement breakdowns. In their current draft (unpublished, received from Stamato with thanks) they identify four main causes of conflict escalation:

(a) uncertainty with respect to certain details until initial phases of an agreement can be completed;

(b) absence of a specified mechanism (such as the grievance-and-arbitration provisions common in labor agreements) to deal with unanticipated problems as the agreement is being implemented;

(c) absence of a formalized, or even informal means of regular communication to assuage the impact of periodic downturns in implementation; and

(d) disappointment when progress in implementation is slower than hoped, or when, following the excitement of the negotiation and sometimes the euphoria of "settlement," participants' attention shifts elsewhere.

All these considerations, to my mind, support the proposition that mediators should be more active in getting parties to plan beyond the moment that the ink is dry. But in fairness, I should note a countervailing admonition from Riskin: "Sometimes a stopgap settlement can end the shooting."

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