

# CONFLICT MANAGEMENT IN HIGHER EDUCATION REPORT

Volume 2, Number 1, Oct 2001

## **Student Protests, Negotiation, and Constructive Confrontation**

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August 28, 2000

Going back at least as far as the turbulent 60's and 70's, universities have served as a focal point for confrontations over many of the key moral questions confronting society--racial inequity, gender discrimination, fair treatment of people with different sexual orientations, environmental protection, and workers' rights.

When constructively handled, the policy changes that have emerged from these conflicts have helped transform universities into institutions which are among society's most progressive (in the best sense of the word). Unfortunately, there have also been cases in which such conflicts have been quite destructive. Miscommunication and misunderstandings portray inaccurate (usually negative) images of the positions and actions of others. Especially destructive are confrontations which have escalated to the point of property damage, physical injury, or even death. Destructive escalation processes can also lead to intense interpersonal animosities which replace any thoughtful examination of the difficult moral issues being addressed. Under such circumstances, opportunities for mutually beneficial compromise and institutional learning are usually lost.

For the past 10 years, the University of Colorado Conflict Research Consortium has been developing more constructive ways of handling the intractable conflicts that so often surround debates over questions of social justice and morality. Based upon this work, this essay suggests a series of strategies that can be used by university administrators and students seeking more constructive ways of handling student protests. (These ideas are also applicable to similar conflicts involving university faculty, staff, and the larger community.) More specifically, this essay offers guidelines for determining when negotiation is and is not appropriate. It also suggests some things to consider before negotiations begin and gives a few guidelines about how such negotiations might best proceed. (These topics actually take a book to cover in detail, so what we have here are just some key points and references, at the end, for more information.) In cases where negotiation is inappropriate, we also offer suggestions for

limiting the destructiveness which all too often accompanies the resulting confrontation.

Advice is offered from an impartial perspective which seeks to equally serve the interest of university administrators and protest groups. While some of the suggestions are more applicable to students and others apply more to administrators, by presenting both in the same paper we hope that we can encourage all the people involved in such disputes to confront them in a more constructive way, and to understand how each side can encourage the other to be more constructive in their response to the issue in dispute.

## **Conflict and Dispute**

One key toward what we call more "constructive confrontation" is an understanding of the distinction between long-term underlying conflicts and shorter term dispute episodes. Universities have been and will continue to be a focal point for a broad range of social groups seeking redress for past injustices. One of the university's most important pedagogical functions is to provide a forum in which its students and the larger community can examine these issues. This suggests that constructive social justice confrontations should be encouraged, rather than suppressed. It also suggests that hopes of resolving the underlying conflict in ways which eliminate future confrontations are unrealistic.

Within the context of these long-term underlying conflicts, there are numerous dispute episodes, such as controversies over the promotion or retention of minority faculty members; the disposal of university investments in companies engaged in unacceptable environmental or social practices; the addition of new, social justice-related curricula; animal research policies; and controversies over the university's association with businesses that utilize "sweatshop" labor and/or support for organizations which oppose "sweatshop" labor policies.

In some cases these disputes can be resolved using alternative dispute resolution processes (most often negotiation or mediation). In other cases, the parties will not negotiate and the disputes are resolved by more traditional legal, political, or administrative decisions. In any case, the cumulative effect of all of these dispute resolution processes is a continual setting and resetting of the moral policies under which the university operates. In short, university administrators and protest groups need to take a long view of social justice confrontations and seek to establish institutions and traditions which foster more constructive confrontations over the long term.

Students also need to realize that these issues are not simple, nor are they easily solved. Most of these conflicts involve deep-rooted moral questions that people feel very strongly about. Policies are not going to be changed overnight, nor perhaps, in a semester or a year. These are issues that will be considered, changed, reconsidered, and

changed again. Everyone involved needs to know that progress, likely, will be slow. But individual disputes and their resolution are stepping stones to the long run goal of significant social change. So pursuit of these issues, even on a small scale, can eventually have significant social policy implications that go far beyond the local campus and community.

## **Determining When a Dispute Is "Ripe" for Negotiation**

As used here, the term "negotiation" refers to the parties' voluntary efforts to find a mutually-acceptable compromise which settles the immediate dispute. It seldom resolves the underlying long-term conflict, but it sets a policy that at least resolves the immediate problem and may set the direction for future decision making as well. Negotiation can be pursued by parties themselves, or it can be facilitated by a mediator who helps the parties overcome the barriers to agreement.

Regardless of whether or not a conflict is negotiated or mediated, before beginning it is useful for all sides to assess the conflict's readiness or "ripeness" for negotiation. In personalized and highly escalated conflicts, people may become so angry and distrustful that they will not negotiate in good faith, or they may refuse to negotiate at all. Students may make the assumption that the university administration "will not listen to them," or "doesn't care," and therefore negotiations are a waste of time.

Similarly, administrators may assume that the students have made their demands (which the administrators may or may not view as reasonable) and further assume that the students are not willing to consider alternative approaches. Sometimes this is true: the protesting group may believe so strongly in a moral issue that they are unwilling to compromise their basic beliefs. As a result, they may prefer a principled defeat to what they see as a "hollow compromise." In this case, they will likely refuse to negotiate or will reject any proposed agreement, preferring to continue the confrontation and paint the administration as the "bad guys." While the administration can try to exhibit an open mind and a willingness to discuss the issues, they should not feel they have to bend to unreasonable demands to avoid confrontation. They should just maintain a willingness to talk, if and when the students are ready.

In other cases, the students' or the administration's refusal to negotiate may stem from a rational assessment of costs and benefits. If either party believes that they have an alternative to a negotiated agreement which is more desirable than what they expect to gain from negotiation, they are likely to take their alternative and reject any negotiated settlement. (Conflict scholars frequently refer to this alternative as a "BATNA," which stands for "best alternative to the negotiated agreement.") For example, a faculty member who believes

that he or she can win an employment discrimination case in court is unlikely to agree to a less desirable negotiated outcome. Similarly, students who feel that they can sue the university and get what they want, or that they can stage further, more disruptive demonstrations and get their demands met without fear of serious consequences, are likely to try to do so. If they suspect that the administration still won't budge, and is likely to expel them from school, they may be more interested in negotiation. Likewise, university officials with strong backing from regents and political leaders may also be less likely to bend to student demands, knowing that they will get backed up in their decision to hold firm.

Thus, as a general guideline, if the parties on all sides do not indicate (by word and deed) a willingness to sit down and really listen to the interests and concerns of the other side, and to work together in a positive way to reach a joint solution to the problem, then negotiations most likely will not work at that time.

That does not mean that negotiation won't work later—it just means the time is not ripe now. Generally, a conflict is not ripe for negotiation until both sides know how much power they have relative to the other side, and thus, what their BATNAs are. Once they understand what they are likely to be able to get through power-based alternatives, then they will know whether negotiation will make sense or not.

Thus both administrators and students should carefully consider their alternatives to negotiation—their BATNAs—before they decide whether or not to negotiate. If either side thinks the other is making an unrealistic assessment of their BATNAs—if the administration, for example, thinks that the students expect to get more through protests than they can possibly get, sometimes an administrator can talk with one of the leaders and explain how the administration's hands are tied, for example, and how further demonstrations will not yield the results the students want. Through clarifying their own options to the students, the administration may thus encourage the students to reassess their own BATNAs and then, perhaps, open negotiations when they would not negotiate before.

It is also important to distinguish between a willingness to participate in negotiations and a willingness to actually accept the negotiated settlement. People are often willing to give negotiation a try on the chance that it may ultimately offer them a good deal. Still, they are unlikely to accept the final compromise unless the negotiated agreement is better than their BATNA. (We actually prefer the term "EATNA"—the "expected" alternative to the negotiated agreement. A party may expect something far better than what they will actually get, but those expectations are what matters, not their actual BATNA.) While parties will know their EATNA, they will not know if they can beat it through negotiations until they try. So it is often worth attempting negotiation, if parties will do so in good faith, and see if it is possible to match or beat each side's EATNA. If it is, the dispute will probably be resolved more quickly and with less cost than if the

parties continued their confrontation.

## Negotiation Planning and Preparation

**I**n complex or highly escalated conflicts, a lot of preparation must be done, both by the parties, and by the mediator (if there is one) in order to maximize the likelihood of success. Before substantive negotiations begin, the parties must decide who will be involved, what issues will be addressed, and how the negotiation process will be structured and run. Since such decisions must be agreed to by all sides, this is often referred to as "pre-negotiation"—it is a preliminary negotiation about how the actual, substantive negotiations on the issue in dispute will take place.

**Who should be involved:** It is generally agreed that all the parties to a conflict need to be represented in the negotiations. That does not mean, of course, that everyone involved needs to be seated at the table. But people who are generally seen as "leaders" or direct representatives of the interest groups need to be present. While ideally it is desirable to have the actual "decision makers" at the table, this is often not practical, especially for protest groups, which tend to be very amorphous and fluid in leadership and membership. No one person can speak for or bind the whole group—the best they can do is give a sense of the group's interests and concerns and then take any proposed agreements back to the group for its consideration.

Generally it is helpful to have the same people involved in both the pre-negotiation and the negotiation phase. This allows the negotiators to build up a positive history of working together which facilitates coming to agreement, later, on hard issues. If the interest group can commit to having a person with decision making authority at the table, then it is desirable to have a university administrator with decision making authority present as well. Most often, however, each side will send "representatives." In this case it is extremely important that those representatives have the ear of the decision makers, and report back to them and from them often. (This is discussed more below.)

Another common issue concerns the involvement of extremists. Some experts advocate the exclusion of extremists because they tend to resist compromise and may even block dialogue. Others feel that extremists should be involved in an effort to show them that there is a better way to get what they want. Some extremists just want to be listened to, and if they are allowed to speak and be heard, then they may be willing to sit down and let the negotiations proceed. At other times, the group will reign in the extreme members themselves, realizing that those extremists are blocking progress for everyone. Thus, just because some people involved in a conflict are taking extreme views does not mean that all of the participants are equally extreme. It is often possible to start a dialogue with the more moderate members of a protest group, who will then "bring in" the

more extreme factions later on if the results they are getting are good. The same is true if one administrator is seen to be especially rigid. Students can go to someone else who is more supportive of their cause and work through the administration from that point. The goal, in either case, is to figure out where the leverage is, and try to work from there.

**What issues will be addressed:** When planning the scope of the negotiations, it is important to not try to do too much. The best that can be realistically expected is an incremental step toward social justice. Efforts to find a comprehensive resolution which would eliminate all such conflicts in the future are unlikely to succeed. If one starts with small goals, it is often easier to work out from there. If one goes for everything at once, the likelihood of complete failure, and the inability to agree on anything is more likely. Sometimes it is possible to start with a broad "agreement in principle" and use the negotiation as a mechanism for working out the details. In either case, issues which fall outside of the scope of the negotiation can be handled using the constructive confrontation processes discussed below.

**Determining When a Mediator's Help is Needed:** One of the key decisions the parties must make is whether to negotiate directly, or whether to enlist the assistance of a neutral third party (usually a mediator or a facilitator). While negotiations can be run successfully by the parties themselves, when conflicts involve multiple parties or are very escalated, it is usually beneficial to retain the services of a skilled mediator. On the other hand, good mediators are generally expensive, so they shouldn't be used when they are not really needed. Nevertheless, when the issue is important and the parties are really "stuck," mediators can help the parties improve their communication, limit misunderstandings, build trust, control escalation, discover underlying commonalities of interest, foster the development of creative win-win solutions, and develop workable implementation and monitoring strategies. Unlike arbitrators, mediators do not rule on which side is right and which is wrong, nor can they impose any solution. Sometimes they will be willing to listen to the discussion and suggest possible solutions, but the decision of whether or not to accept any proposed solution lies with the parties themselves. Therefore, parties are not losing power by enlisting the help of a mediator. While all of the tasks that a mediator does can be done by the negotiators alone, most people are not skilled in these processes, and the tension between them makes success less likely. Thus, using a skilled mediator to guide the discussions is often highly beneficial.

**Selecting a Mediator:** It is important to select a mediator who has the trust of all of the parties, and who is insulated from conflicts of interest. A University ombudsman, who reports directly to the president or the chancellor, who is also one of the parties, is unlikely to be a good choice. An ombudsman from another school might have credibility, but it might be better to go outside academia entirely to find a mediator who is not seen to be connected to one side or the other. Alternatively, there may be a faculty member who is trained in mediation and who is seen to be adequately impartial. The key is that

both sides must trust the mediator. It is also important to give the mediator the time and resources needed to do an adequate job.

**Setting Ground rules:** Another aspect of pre-negotiation is the setting of Ground rules which determine how the negotiations will proceed and what is expected of the parties. While a good mediator can propose these ground rules, it is generally recommended that these rules be negotiated and agreed to by the parties, rather than imposed by the mediator alone. When the parties develop the Ground rules themselves, they are more likely to follow them. They are also more likely to pressure their colleagues to follow them if someone violates one of the rules. This is usually more effective in maintaining order than the mediator having to play "enforcer." In addition, the process of negotiating Ground rules gives the parties a taste of negotiation success-- it gets the parties in the habit of working together, cooperating, and agreeing on things that are often much easier to agree upon than the actual issues in dispute. So it sets the stage for successful negotiation later on. (This is why it helps to have the same people participating in both phases of the process.) Typical Ground rules involve such items as parties addressing each other in a respectful manner (no harassing, threatening, or name-calling) and giving each side the opportunity to talk and be listened to without interruption. Usually negotiations are held in private and the discussions are considered confidential, especially with respect to the media. (However, parties are usually encouraged to keep their constituencies apprised of the progress of the discussions as will be discussed below). Another common rule is that representatives for each of the parties must commit to participating in the discussions on a continuing basis. Otherwise, the negotiation's sense of continuity will be lost, and the same issues will have to be addressed again and again. "Alternate" representatives, who stay up-to-date on the process, can be used to handle unavoidable vacancies and absences.

**Other issues to be decided include logistics:** when, where, how often, and how long to meet, whether observers are allowed, and if so, who those people can be.

**Timing of Negotiation Planning:** These procedural decisions can be worked out before the parties ever sit down together at a table, through the "shuttle diplomacy" of a mediator, or they can be worked out at initial negotiation or mediation sessions. Often such issues must be decided before all the parties will even formally agree to participate. While changes can occur over time as negotiators get to know and trust each other more and more, avoiding surprises is important, as surprises can easily be taken as "double-crosses," and used as an excuse for one or more of the parties to back out of the process or to become more hardline in their approach.

## **The Negotiation or Mediation Process**

**I****nterest-Based Bargaining:** Most mediation and negotiation processes follow the principles of interests-based bargaining as

outlined in the best-selling book, *Getting to Yes* (by Fisher, Ury, and Patton). The four principles they suggest are 1) separating the people from the problem (meaning focusing on the issues, not interpersonal animosities), 2) focusing on interests not positions (thus, focusing on the reasons each side takes a stance, not just on what that stance is) 3) searching for options for mutual gain, and 4) looking for objective criteria for judging "fairness." They suggest that by following these four principles, anything can be negotiated. This, we feel, is too optimistic, especially for very deep-rooted moral conflicts such as those that tend to become manifested in campus protests. Nevertheless, following these guidelines cannot hurt negotiations, and it often helps.

**One aspect of these principles is very important:** that is the second item relating to interests. If students present demands, these are, essentially, what Fisher, Ury, and Patton call "positions." They are rigid statements about what the students want. Demands and positions cannot be negotiated nearly as effectively as can interests. While many negotiators do engage in "positional bargaining," wherein they stick with their initial position as long as possible, and then start compromising, the results are often inferior to those which could have been obtained through a negotiation on interests. Generally, when people negotiate positions, they start with positions which are far apart (even opposite), then each side compromises a little bit, and then a little bit more, until each side gives in about half way and they meet in the middle. This can be done with demands—the students can back down half way, the administration can give in half way, and the dispute can be resolved. But Fisher, Ury, and Patton suggest (and we agree) that it is usually much more effective and successful if both sides explain the reasons underlying their positions—those reasons are their interests. Often, the parties will determine that they share at least some of their interests, so they can develop ways to meet those interests without having to give in on half of their positions or demands. Interest-based bargaining, as opposed to positional, or demand-based negotiations provides a way for both sides to get more—even all—of what they want, rather than having to give in or lose face, as so often happens when positional bargaining strategies are used.

**Constituency Involvement:** Also critical to success are effective processes for involving broader constituency groups in the negotiation. While negotiators may "represent" their constituents, they generally do not have the authority to bind constituents to an agreement. This means that negotiators must make periodic and frequent reports to their constituents about the discussions. This is especially important when negotiators see that the process is producing a kind of "conversion" experience in which the negotiators' views of the dispute and their ideas for resolving it change substantially. The people who have not been directly involved in the negotiation—the constituents who are not at the table—must be fully informed of the process and substance of the discussion and "brought along" with the process. Otherwise negotiators will find that they no longer have the support of their constituents, and any agreement that they reach will be likely to

fail.

**Binding Parties to an Agreement:** One of the especially difficult issues in social justice conflicts is binding parties to an agreement. Even if the parties at the table agree to the settlement, the negotiator's constituencies must be convinced to ratify and uphold the agreement. The looser the structure and membership of the advocacy group, the more difficult this process is. In very diverse groups, the possibility of splinter groups forming and opposing whatever agreement has been reached is quite real. While this problem can never be prevented entirely, making an effort to get all concerned parties represented at the table and apprised of the negotiations as they go along is generally the best way to deal with this threat. It is also helpful to make the agreement public at the end of the negotiations, so public pressure can be brought to bear if one side violates the agreement.

## **Constructive Confrontation**

**I**n cases which are non-negotiable or for non-negotiable sub-issues, continued confrontation should be expected. In this situation, it makes sense to put negotiation efforts in standby mode (where they can be quickly restarted should the situation change). The parties then need to concentrate on making the confrontation as constructive as possible. All too often, however, the parties conclude that, since negotiation won't work, business-as-usual strategies of all-out, destructive confrontation are the only option. The constructive confrontation strategies which we have been developing provide a much more desirable alternative. Constructive confrontation applies insights of the conflict resolution field to situations where agreement-based resolution is not feasible. These strategies can also be pursued while negotiations are going on-- it often makes sense to utilize both approaches simultaneously.

## **Principles of Constructive Confrontation**

**E**mphasize Persuasion, Not Force: The first step towards more constructive confrontation is a commitment by the parties to use persuasion and moral argument as the primary component of their strategy. All too often parties conclude that the other side will never seriously consider arguments which challenge their position. Therefore, they abandon persuasive arguments in favor of force-based strategies designed to compel opponents to make concessions. (Students will try to use demonstrations or threats of disruption or violence to force the administration to comply with their demands, while the administration will try to use administrative or police force to compel the students to stop their power tactics without getting anything in exchange, or to accept less than they otherwise wanted in exchange for an end to the protest action.)

In all of these cases, the conflict's focus becomes administrative, legal, political, or even violence based power strategies, rather than moral argument. However, the administration usually has more power, so such strategies, when used by students, usually fail. While the administration is generally more successful when it relies on power, the over-use of such strategies can leave the administration and the institution in a weak position publically if it is seen as being unreasonable or on shaky moral grounds. Thus, if the administration stonewalls students whose demands are seen as reasonable by the regents, the community, or the university's funders (the state legislature, for example, for public universities), then such power ploys can harm the administration as well. In addition, the legitimacy of the overall process is eroded, since no one is really making the case that what they are advocating is the "right thing to do," but rather they are relying on the dictum that "might makes right."

A generally superior approach for all parties, we believe, is a commitment to research, analysis, debate, and dialogue. The University needs to provide many opportunities to help its community grapple with the difficult moral issues of the time. This is especially important for higher education communities which traditionally value reasoned argument so highly. It should also be clear that this commitment to persuasion also involves the willingness to be open to persuasion. Rather than rejecting student concerns or belittling the importance of an issue, transforming a protest into an educational opportunity for students, faculty, staff, and administrators alike can have far-reaching positive effects. This might be done by structuring study groups to examine the problem or even by proposing new classes to look at the issue. Even if a solution does not result from this process, considerable learning is likely to take place and the parties may develop more respect for the other side and a better understanding of why this is a more difficult issue than it originally appeared to be.

**Use of Constructive Mobilization:** Also important for student protest groups is a clear distinction between destructive escalation and constructive mobilization of interest on an issue. Advocacy groups must be able to mobilize supporters and stimulate public interest in and support for their cause. Unfortunately, this is often done using destructive escalation which unfairly characterizes the positions and actions of opponents as dangerous, unjustified, and requiring immediate opposition. Disinformation and inflammatory sound-bites are common. In political terms, this is commonly referred to as "negative campaigning".

Far more beneficial is a commitment by all the parties to abandon destructive escalation tactics in favor of "positive campaigning" and constructive mobilization. (Although university administrators seldom use such overtly negative tactics, they sometimes make disparaging remarks in private which may be "leaked" or overheard and made public. In addition, just by making the pronouncement that they will agree to address the issue in a positive way, without resorting to

negative or misleading advertising, they put pressure on the student group to do the same.)

For the protest group, such tactics can still include demonstrations and other actions designed to force the university administration to address the tough issues and confront injustice. Still, this needs to be done in ways which are truthful and leave open opportunities for debate and a mutual reappraisal of positions. Also required is a commitment to oppose personal attacks, avoid the destruction of private or public property, and repudiate all acts of violence. (This helps advocates as well as their targets, as violence usually diminishes a group's credibility significantly.)

It is also highly desirable for University administrators, police, and protest groups to work out protest plans ahead of time, to prevent inflammatory and potentially dangerous surprises.

**Allow the Opponent to Save Face:** One of the common errors made by student protest groups is to put the University administration in a position where they cannot agree with the students' position even if they want to. When the students' interests are stated in terms of non-negotiable "demands," it is very difficult for the administration to meet those demands without looking like it is completely caving in to unruly students. Even worse, students may threaten violence if they don't get their way. This makes it even more difficult for the administration to comply, or even to open negotiations, for fear of being charged with caving in to threats. If students want to be taken seriously, they need to state their case in a way that can be taken seriously. They must make it possible for the administration to work with them without losing credibility or public support. As Ury says in his sequel to *Getting to Yes* called *Getting Past No*, both sides should try to "make it easy for their opponents to say 'yes', " while making it equally hard for them to say 'no.'"

**Negotiation "Loop-Backs":** Another useful concept taken from conflict theory is that of "negotiation loopbacks." This idea is based on the notion that there many different ways to resolve disputes: negotiation, adjudication, or power contests of various sorts (for example political power contests, military contests, or nonviolent force.) Negotiation is the least costly in terms of money, time, and broken relationships. For this reason, it should always been tried first. If it fails, or if parties won't enter into negotiations because of the reasons listed above, they should generally consider the least expensive alternative. If this fails, they can go to more expensive options—typically force-based options are the most expensive in terms of relationship especially, but also often time, money, and property.

The term negotiation loopbacks refers to the importance of returning (or "looping back to") negotiation as soon as possible after the alternatives have been pursued long enough to clarify each side's BATNAs or EATNAs. As soon as it is clear who is going to prevail in a legal or political contest, or most importantly a contest of force, it is usually beneficial to both sides to stop the costly dispute resolution

process and return to negotiation to work out the details. This, most often, will result in the same outcome, but at much lower cost to all concerned.

What this means in terms of constructive confrontation is that even if negotiation is not possible at one time, disputants should work to build their power and clarify their alternatives until they have a good idea of where they stand and what they are likely to get through a continued rights based or power struggle. Then, instead of continuing these costly power contests, they should revert to negotiation and try to work out an agreement that satisfies both sides interests and needs now that they know what their EATNAs are.

## **An Ongoing Process**

**A** final important lesson to keep in mind is that justice conflicts seldom, if ever, are completely resolved. Disputes can be settled, new policies can be set, and sometimes, justice is, indeed, achieved. But sooner or later another group will come along, challenging the decision that was made earlier. Or a different issue will develop. The key for both protest groups and university administrators is to recognize what is negotiable and what is not, and to use constructive confrontation strategies both within the context of negotiation (along with principled negotiation) and outside of the negotiation process to assure that the confrontation is constructive and educational, rather than destructive and divisive for the university community.

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