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Commentary on Moira Gutteridge Kloster: “Reasoning in Dispute Resolution Practices: The Hidden Dimensions”

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In her paper, Moira Kloster challenges the practicality of two models of mediation with respect to disputes that cannot be resolved even when the parties involved have tried their best to reason accurately and fairly, and despite mediation efforts (p. 4). She argues that there must be more than a modeling of a critical discussion to resolve a disagreement where trust between parties is compromised because 1) disputants’ principles are significantly different; or 2) where trust between parties is deteriorated because of some other problem with the relationship of the disputants.

Essentially, the two models of mediation presented by Kloster aim to *either* promote an ideal model of critical discussion, *or* focus on helping participants change for the better to the extent that compassion for others is fostered. She speculates that each model is limited in methodology, and poses that reason-based mediation models might not ever help to resolve stalemates. I understand such stalemates to be disagreements where trust violations inhibit reasoning skills, even when the respective parties are willing to use those skills.

In my interpretation of disputes characterized by serious trust violations, I will not enter into a debate about the usefulness of either the reasoning based or relationship-building model because I think reasoning skills are central to both. What I think should be explored is the character of the reasoning behind relationships seriously troubled, particular the reasoning that justifies deep mistrust of one disputant. With two types of cases I will show that the character of the reasoning behind serious mistrust is unconventional in that where normally we would think reasons for the mistrust are irrational or mistaken, we make exceptions and consider them both justified and acceptable.

It is important to point out that the kind of inference that leads to the compromise of trust in the examples I will explore has not the “logic” of categorical reasoning (as with Kloster’s reference to, for example, the mistake in reasoning where the identification of eyeglasses as fitting into the category of cooking utensils might bewilder us Western reasoners). To my mind, such statements as to why categorical logic fails us do not accurately exemplify the kind of reasoning - or unreasonableness - that would bring disputants to mediation.¹ Thus, I propose types of cases that may illustrate why reason

¹ I also think that Fogelin’s abortion example is not a practical one for trying to understand why reason-based models might fail, because people do not go for council or mediation to resolve disputes about abortion.

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might not be working in disputes unresolved by mediation. My position is that because reasons for mistrusting cannot be classified as “logical” under current reasoning models, disputants run into stalemates in trying to resolve conflicts where 1) emotions run exceptionally high; and 2) where extended lengths of time are necessary to build trust. I conclude that unconventional reasons for mistrusting require unconventional solutions specifically that money (not mediation) may be the key to reestablishing trust in relationships seriously troubled.

The first example of conflict where trust is seriously deteriorated is when a marriage partner has been unfaithful. The reason that justifies the debilitating mistrust of a marriage partner who cheats can be, and often is, just *one* known instance of unfaithfulness. I think most would argue that this one instance is all the reason needed to maintain a very high level of mistrust for a long period of time. Also, one instance of infidelity is often the reason the person hurt by the affair seeks a divorce.

In other everyday reasoning contexts, one instance of behaviour would not inform what we considered justified true belief of a person’s character. Certainly, one instance of behaviour would not be the basis for such serious actions as divorce. What makes the reasoning here unconventional, then, is that people can still be considered reasonable when their evidence is anecdotal, perhaps because the infidelity is considered such an egregious offense and a particularly gross violation of the marital contract.

Going out on a hypothetical limb here, I’m going to say that some of the relationship repair before counseling often involves a financial gift or gesture from the unfaithful partner to the disparaged one. Yet, mediation in these cases often remains unsuccessful, and I’m going to hazard a guess that what normally results is a financial settlement that is over-compensatory to the aggrieved party. I speculate here in saying that in order to get through a divorce and onward with taking care of children, the faithful partner stands a good chance of getting most everything they want in a divorce settlement, including custody (if only because an adulterer is often, fairly or unfairly, successfully deemed “unfit”). The only fitness left after an affair, then, appears to be financial fitness. I’ll come back to this point about money. First, let us look at the second case with an eye to the similarities in the kind of reasoning behind the trust problem between disputants.

I now discuss land claim conflicts, particularly the Ipperwash and Caledonia disputes. These conflicts are force five conflicts, where litigation is ongoing and the offer of financial settlement by the “cheater” is a key factor in reestablishing some sort of trust (the proverbial cheater in land settlement cases being the government). As with the unfaithful marriage case above, land claim dispute cases are characterized by mistrust that is seemingly insurmountable. Behind these and other such land claim disputes we also find unconventional reasons for mistrusting.

The reason for the mistrust of government in land claim disputes, simply put, is the history of the relationship between indigenous peoples and past governments. Our governments’ history with native people was tormented by abuse, and this is the reason used to justify the mistrust of current and future governments. This reason is exceptional in that we would not normally make such generalizations from past generations to present and future ones, especially considering the socially transformative changes in human rights policies and law. The causal connection and generalization that is involved in believing the argument that past governments behaved this way, and so too will current

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governments, is thus one typically considered to be unreasonable (at least under current models of Western reasoning). Yet under the circumstance of understanding the tormented history between government and native peoples, we accept both this reasoning as well as the lack of trust that follows from it.

More specifically, with respect to the Ipperwash controversy, what would be considered a fallacy of composition or anecdotal to those who reason under Western models is how the murder of Dudley George is reason for mistrusting present and future government in offers to settle land claims. Although the OPP officer who killed Dudley George was tried and convicted of murder, his death still continues to be unequivocally perceived to represent an instance of the historical treatment of native peoples – a singular instance unlikely questioned by most as anecdotal, or interpreted as some sort of category mistake. His death, therefore, is still considered a valid *reason* for not trusting anything the government does, despite any perceived or real threat of his possessing weapons. Most of us would not question his death with respect to it being a proper representation of the historical treatment of aboriginals. I think it is safe to say that because the reasons in this case are so unconventional, that reason-based mediation models would again fail us in repairing the serious trust problem this case exemplifies.

What is most interesting to me about the above cases is that money might be a “reason” for establishing some trust, even when the offers of money are seen as unfair or unjustified. In the Caledonia dispute, for example, some trust was established with money. Mohawk Chief Allen MacNaughton said that the \$125 million dollar settlement offer was a “...starting point to talk about things and...it’s obviously a recognition that they [the Canadian government] owe us something.”² Although it may seem highly unconventional to see money as a “reason” to begin trusting, it is being taken as a reason. In both cases, the financial offer can be interpreted as a gesture of trust, perhaps even a plea for forgiveness (in admitting wrongdoing, we trust the other in their attempt to forgive). It is also important for us to see money as an acknowledgment on the part of the government or unfaithful partner of the problem they caused, the first and biggest step in healing a relationship.³ Money is to be considered, therefore, a reason to begin trusting. I have offered these cases to provoke thought on why we accept such unconventional or illogical “reasons” as good evidence for mistrusting, and how in some unusual cases of reasoning how we might establish trust. Perhaps it simply remains that the logical mistakes in the above cases, like many fallacies, are incorrect but so psychological or emotionally persuasive that we accept them. Although I remain unsure as to why we accept normally unjustified conclusions as rational, I am sure it has something to do with the level of *justified* emotions in the examples provided. In any case, by exploring the unfaithful marriage and land claim disputes I hope to have offered a new beginning to examine stalemate disputes without throwing out reason.

[link to paper](#)

² For this quote and many news items and views about the Caledonia controversy, see <http://caledoniawakeupcall.wordpress.com/tag/conservative-cowards/page/2/> (last accessed 06/30/07) And <http://www.indianz.com/News/2007/003194.asp> (last accessed 07/01/07).

³ I must credit Trudy Govier for this insightful comment.