

## C O M M E N T

# The Prospect of Impact Transactions Through the Eyes of a “Backbone” Organization Practitioner

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First, I want to thank Patience A. Crowder for this very interesting and thought-provoking exploration of a new and innovative concept. I believe, based on her initial exploration, that the concept of impact transaction merits further work, so I am pleased to know that she intends to continue her development of the idea in future papers. I look forward to following her work as it progresses.

I have spent my entire professional career designing and implementing collaborative problem-solving approaches in the sustainability realm, broadly defined. My work and that of many, many others has laid the groundwork for the conceptualization of the collective impact construct, put forth by John Kania and Mark Kramer,<sup>1</sup> upon which Crowder builds the case for impact transactions. At my organization, Meridian Institute, we have helped diverse parties construct and implement efforts based on collaborative and collective impact. These efforts have been focused on areas like building community resilience in the face of natural disasters; developing new legal and regulatory frameworks on issues such as Superfund cleanups and Toxic Substances Control Act (TSCA) reform; and addressing international issues such as food security, tropical deforestation, and the elimination of aflatoxin food contamination in sub-Saharan Africa.

### I. The Underlying Premises of the Impact Transaction Approach

I agree with several of the underlying premises of Professor Crowder's development of the impact transaction approach. First, collaborative, as opposed to adversarial, proceedings are inherently well suited to address the complex societal challenges and conflicts that she is exploring. This results from several factors: collaborative processes bring multiple interested parties to the table;

these processes explore and strive to understand underlying interests, rather than focusing on stated positions, which is at the heart of most adversarial proceedings; and they empower the group of involved parties, rather than an adjudicatory person or body, to make decisions. I think this last point is particularly important to consider in the context of the potential benefits of the impact transaction approach.

I also agree very much that a backbone organization or agency plays a critically important role in convening, managing, and facilitating collective impact efforts. That is the role that my colleagues and I play on a daily basis—so I admit to perhaps having some inherent bias—but I do believe that this role is key to assisting a diverse group of stakeholders in meeting their collective objectives. I will not spend time here detailing the many administrative roles that a backbone organization plays, including scheduling, meeting planning, logistics support, and management of financial resources. I do want to comment on two additional dimensions of the backbone and facilitation role that I think are very important and merit further exploration by Crowder in her subsequent work. One is the reality that having an engaged third party fundamentally changes the problem-solving dynamic. A party can direct communications to and through the third party, who can assist in assuring that the other parties clearly understand the content of the communications. In a complex, multiparty effort, this function plays an extremely important role in deescalating interpersonal dynamics and historical animosities between parties.

Another key dimension of the backbone role is that the third party is positioned to help all involved to develop a common conceptualization of the problems that they want to address. Often, people do not see the nature of the problems in similar ways; and hence, the challenges associated with developing strategies to address them are multiplied. An example of action that the facilitator/backbone team could take is assisting in researching the fact base to help map key elements of the issues. This can then lay the foundation for all

1. John Kania & Mark Kramer, *Collective Impact*, STAN. SOC. INNOVATION REV. 36 (2011), [https://ssir.org/articles/entry/collective\\_impact](https://ssir.org/articles/entry/collective_impact).

parties to work to develop a logical, sequential way of addressing the issues at hand, which in my experience has played a very important role in constructively framing the problem-solving process.

I also agree with Crowder's proposition that, in some cases, a weakness of collaborative and collective impact processes is their inability to sustain impact due to their lack of accountability through a more formal implementation structure. The ad hoc nature of these processes is both a blessing and a curse: a blessing because the processes can be designed to fit the characteristics of the conflict or issue at hand—rather than to fit the prescribed rules of a more formal process; a curse because that same ad hoc nature can make it challenging to sustain engagement and impact over time.

I applaud one of Crowder's underlying hopes—that impact transactions can help to amplify the scope and scale of impact beyond that associated with a particular, case-specific application. It is, however, not yet clear to me how this would necessarily result from the application of the impact transaction approach, but I know that is a question that she plans to explore further.

## II. Additional Important Considerations for the Impact Transaction Approach

Crowder summarizes some important considerations that need to take place as the impact transaction approach is further explored. Some of the points I now raise might echo her sentiments, but I am framing them through my practitioner lens and have added a few others for consideration.

There is an inherent power in people joining together around a common cause and forging a joint problem-solving effort, particularly when they hold diverse perspectives and interests. It is very important that they chose to embark on this type of process of their own free will. While I fully support the notion of using terms sheets and memoranda of understanding to help define the ground rules and expectations for a process that is being designed, some very important dimensions include how that is done, who is involved, and how decisions are made regarding the content. It is very important to understand the importance of the “storming”<sup>2</sup> phase of these processes, which in my experience plays a critical role in building trust among parties—trust that will be vital to maintain if there is to be any hope of success and sustained impact. The ways these early steps are carried

out are critical in the trust-building process. I often say to groups that “you don't make any interest on your trust account if you do not make a deposit.” Therefore, in considering the development of a more formal, potentially legalistic overlay for the process design, it would be very important to maintain the power and positive dynamics that arise when people take part in the mutual risk-taking associated with collective action. I certainly see benefits to what the impact transaction concept has to offer, but a deeper exploration of the appropriate timing and nature of its development and implementation needs to be a very important aspect of future work.

It will also be important to further explore the implications of how units of government are involved in the development and implementation of impact transactions. As Crowder points out, government must be at the table to effectively address many of the social issues for which these processes would be applied, but that government presence has to entail a seat at the table, not owning the table. I think it will be important to think through the implications of a more formal legal process for the involvement and engagement of units of government. Considering some of our current political realities, a formalized impact transaction process coupled with government involvement might affect the perceived or actual power balance among parties, the prospect of undue interference, and the effect of political turnover on the collective impact effort.

There also are issues regarding what “binding” means in the context of these types of impact transaction agreements. What types of sanctions for failure to carry through on commitments are being contemplated? How could they be crafted in a manner that is equitable to all parties? If, for example, sanctions are monetary in nature or require legal action—and have associated costs—what would be the implications for certain parties?

I would also note that if lawyers are to play a more significant role, given the relational contract approach, their legal perspective and mindset might affect this work. Crowder points out that “[d]rafting relational contracts is not for the weak of heart. Good lawyers whose practice includes relational contracts will have to become ‘anthropologists, sociologists, economists, political theorists, and philosophers.’”<sup>3</sup> In other words, these lawyers would not act like normal lawyers. It will be very important for appropriate training and experiential opportunities for lawyers to be offered and utilized if lawyers are going to be able to assist parties in the ways that Crowder contemplates.

## III. Conclusion

In summary, I am very pleased to see Crowder's interest in exploring innovative ways to increase the impact of collective impact approaches by raising up the concept

2. Bruce W. Tuckman, *Developmental Sequence in Small Groups*, 63 PSYCHOL. BULL. 384, 396 (1965):

The second point in the sequence [of group development] is characterized by conflict and polarization around interpersonal issues, with concomitant emotional responding in the task sphere. These behaviors serve as resistance to group influence and task requirements and may be labeled as storming. Resistance is overcome in the third stage in which ingroup feeling and cohesiveness develop, new standards evolve, and new roles are adopted. In the task realm, intimate, personal opinions are expressed. Thus, we have the stage of norming.

3. Patience A. Crowder, *Impact Transaction: Lawyering for the Public Good Through Collective Impact Agreements*, 49 IND. L. REV. 621, 671 (2016) (discussing the relational contract approach).

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of impact transactions. The problems we face as a society require this type of innovative thinking, focused on problem solving that empowers people to engage with and understand issues and each other in deep and meaningful ways that can lead to sustained impact. I am excited by

the prospect of exploring how to bring the best of collaborative and collective impact approaches together with the appropriate application of increased rigor and accountability—but urge us all to realize that will not be an easy marriage to consummate.