

Kluwer Mediation Blog

Mediation's Values: Still Searching

Charlie Irvine (University of Strathclyde) · Saturday, August 10th, 2019

(I first wrote about mediation's values 12 years ago at the tail end of a Masters in Conflict Resolution and Mediation Studies.(1) Two years of study had convinced me that it is our values, rather than the techniques we learn, that tell us what to do and say when when mediating. The intervening years haven't changed my conviction. Mediation involves one person daring to insert themselves into other people's disputes. You can learn what to say and even when to say it. But conflict throws up profound questions that don't lend themselves to easy answers: What's my purpose? Do I believe in freedom of choice or fairness of outcome? What's more important, law or morality? Should I take a lead or let other people run their own lives? For these we tend to fall back on our values. I'm re-printing the introduction to my masters dissertation from 2007 in the hope of re-kindling the discussion about mediation's values. The sources seem rather dated (as do I!) but the questions are as pressing as ever.)

Values

"One's principles or standards; one's judgement of what is valuable or important in life." (Oxford Compact English Dictionary, 1996)

"The principles, standards, or qualities which guide human actions" (Wikipedia)

"The contrast between questions of fact and questions of value may be said to generate the traditional problems of moral philosophy." (Monro, D, *Empiricism and Ethics*. Cambridge: Cambridge University Press 1967, p.11)

Introduction

I begin with an apologia. Since "each of us, of necessity, must encounter the world from some perspective or other" (Burr, V, *An Introduction to Social Constructionism* London: Routledge 1995, p.160) I should acknowledge mine: this dissertation is the work of a 48-year-old, white, married, Scottish father-of-two. I cannot claim objectivity for my view. It is therefore helpful to set this exploration as a story: the story of one person's encounter with

other people's conflict, and the journey on which that has propelled me.

When I first received mediation training I had no experience of the social sciences, therapeutic or family work. Instead I brought a law degree, ten years in the music industry and a brief but intense involvement with evangelical religion. This background could reveal a quest for objective truth: law and religion both stake strong claims to being sources of values, while the music industry is an archetype of individualist capitalism, its highest values being money, fame and self-actualisation.

My first family mediation post was as an "intake worker", meeting individual parents to assess whether mediation was appropriate. The initial impact of hearing two sides of conflict stories was shock and wonder: how could two people see the same events so differently? However, as time passed I became accustomed to these competing truth claims. I began to say, to anyone who would listen, that the concept of truth was no longer "useful" for me. I am not claiming any originality for this position, which is roughly that of postmodernist thought (Willig, C, *Introducing Qualitative Research in Psychology: Adventures in Theory and Method* Buckingham: Open University Press, 2001). Its significance lies in the fact that exposure to other people's conflict led me there.

This intuitive response may account for the impact of my first encounters with alternative theories of mediation, from 2001 onwards. (The question of how an experienced UK family mediator could be unaware of alternative, or even his own, theoretical models could be the subject of further research, but I'm not the first to note the anti-theoretical bias of mediation training.)

Starting with *The Promise of Mediation* (Bush & Folger, 1994; 2005) and then *Narrative Mediation* (Winslade & Monk, 2001) I discovered that others had grappled with the slippery nature of objectivity and the difficulty of applying the rationalist principles of interest-based negotiation (Fisher & Ury, 1981) to the messy reality of conflict. Far from being unnerving, this divergence of views was comforting. My colleagues and I had often smiled at tidy tales of success in North American texts, saying, "Glasgow folk don't behave like that."

I sought more training, in both commercial and ASN (Additional Support Needs) mediation. While the model and techniques were ostensibly similar to family mediation, different contexts led to different values. For example, I had spent ten years perfecting a respectful, client-centred approach: commercial mediation trainers characterised this as "laid-back" and lacking in drive.

Finally I enrolled on the MSc course for which this dissertation is written. The exposure to different perspectives continued. Yet for me the same nagging question continued: what are our values? Conflict seems to touch people at the deepest levels: it brings into play their "judgement of what is valuable or important in life" (see above). Yet the values of the mediator seem to be invisible. My trainers used words like "respect" and "empowerment", implying some values base. However, the stress placed on neutrality and impartiality suggested that we stand outside the melée of conflict, objectively applying our techniques, immune to any clash between the parties' values and our own.

A Practice Dilemma

An anecdote from my own practice illustrates the importance of these questions. A divorcing couple came to mediation, wishing to divide their assets. In Scots Law, everything built up during a marriage (including pensions) is treated as matrimonial property, to be shared equally on divorce unless certain exceptions apply. However, this man was nearing retirement and regarded his (substantial) pension as his alone, although more than half had been accumulated during the marriage. He also laid claim to an earlier redundancy payment worth some tens of thousands of pounds.

The woman said this was acceptable to her. When I hinted that the law might suggest a different result the man accused me of taking sides. Furthermore, the woman would not consult a solicitor, saying she understood what I was saying but nonetheless wanted this ostensibly unfair outcome.

I was in a quandary. If my guiding principles were empowerment and respect, then the way forward was simple: these were mature adults, each with sufficient autonomy to pursue their own interests. Even if he made off with everything, was that my business? I could claim to be impartial, even neutral, in that I was not attempting to apply any of my own or my agency's values.

And yet I felt deeply uncomfortable. An alternative vision of my role would have me represent the values of the justice system, ensuring that the result was just or fair. I could represent other societal values as well. This mother would care for their child at least half of the time in a greatly disadvantaged position vis-à-vis his father. Should she not receive an equal proportion of the assets? The man too could appeal to reasonableness: he had not chosen to break up the marriage, he had worked for forty years to build up this pension, and she was twenty years younger than him. Surely a fair result would take this into account?(2)

Carrie Menkel-Meadow puts the dilemma well: "Are third parties, like mediators, ever morally responsible for the outcomes they preside over?" (Introduction to Menkel-Meadow and Wheeler (Eds.) *What's Fair? Ethics for Negotiators*. San Francisco: Jossey-Bass, p. xvi). My anecdote illustrates the consequences of such values questions for mediators, where clear choices about practice depend on the relative stress given to empowerment or fairness. And the stakes are even higher for clients: not just money but homes, family makeup and their future sense of wellbeing. Della Noce, Bush and Folger state:

"One notable and recurrent criticism is that mediators who are not informed and reflective about the goals and values underlying their practices unwittingly employ mediation as a subtle mechanism of social control" (2002, p.41, note 9).

To summarise, my experience as a mediator so far has led me to conclude that values questions are equally if not more significant than matters of technique. I therefore propose to examine the values behind mediation.

(Here's the [full dissertation](#))

1) At Birkbeck, University of London

2) In the event I drafted a settlement which grossly favoured the man, salving my conscience by adding after several of the figures “Family Mediation West recommends that further advice is sought on this issue.”

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This entry was posted on Saturday, August 10th, 2019 at 3:31 pm and is filed under Developing the Field, Ethics, Future of mediation, Growth of the Field (Challenges, New Sectors, etc.), Language, Mediation and Society, mediation as a career, mediation process, Philosophy, Reflective Practice, Scotland, Uncategorized, Understanding mediation

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