

# Kluwer Mediation Blog

## Breadth or depth? Why mediation should be proud to be a 'rendezvous discipline'

Charlie Irvine (University of Strathclyde) · Thursday, September 8th, 2011

Most mediators are pragmatists. This may not be our reputation, but in reality we wrestle daily with practical matters such as who will do what, when they will do it and how much it will cost. I once taught mediation to a group of therapists. Their 'soft' skills (this doesn't mean easy) were fantastic, actively listening, demonstrating empathy and respect, and making people feel at ease. But when I asked them what was new and different about mediation, the chorus of replies said (to paraphrase Bill Clinton) 'it's the outcome, stupid.'

And so it is. However, pragmatism alone cannot be enough. While lawyers too are a practical bunch, we typically spend some six or seven years building a body of knowledge, a theoretical framework that prepares us for real world practice. Mediation deserves nothing less. The problem is that most of us come to it late, in mid-career, when we can no longer spare six years or even six months. So how do we go about building that body of knowledge from which real expertise derives?

When I first encountered a theoretical approach to mediation (shockingly some eight years after I originally trained) I found it inspiring. It re-vitalised my practice, helping me to re-examine my 'moves' and widening my palette. At the same time it was unnerving. I began to glimpse the hinterland of multi-disciplinarity that underpins our work. It's like the old story about the world being held up by a giant tortoise. 'And what does he stand on?' goes the tale. 'A turtle.' 'And what does the turtle stand on?' 'Then it's turtles all the way down.'

And so it is with mediation. Beneath the 'how to' courses and manuals stand serious disciplines: law (justice and conflict are intimately connected); psychology (try reaching a settlement without thinking); psychotherapy (see Bowling and Hoffman's excellent 'Bringing Peace into the Room' (San Francisco: Jossey-Bass, 2001) for some useful insights); economics (which gave us Game Theory, a root of Negotiation Theory and mediation); philosophy (from which we get our ideas about what is right and what is logical, not to mention what is true); and conflict studies (the study of 'macro' conflict like war dwarfs the attention paid to 'micro' conflict between businesses and individuals). Then beneath these lie some of the disciplines that have usefully scrutinised our work: anthropology, sociology, social psychology (think of the great Morton Deutsch, one of the field's pioneers), communications and critical legal studies. Recently neuroscience has emerged as another useful explanatory lens for studying human conflict.

All of this can seem overwhelming. Kenneth Cloke once listed forty disciplines on which conflict

resolution rests (Cloke, K, 'Let a Thousand Flowers Bloom: A Holistic, Pluralistic and Eclectic Approach to Mediation' *ACResolution*, Winter 2007, pp.26-30.) Where do we start? It reminds me of a phenomenon well described by a friend: 'the more I read, the more chasms of ignorance open around me.' In spite of this I want to make an optimistic case for embracing our multidisciplinary (surely one of the longest words in English) and being proud that our roots spread wide rather than deep. I propose three reasons and then make some practical suggestions for enjoying dipping into other disciplines.

First, we are not alone. Criminology has famously been described as a 'rendezvous discipline' 'on the busy crossroads of sociology, psychology, law, and philosophy' (Jock Young, 'In Praise of Dangerous Thoughts: a Review Essay' available from <http://www.malcolmread.co.uk/JockYoung/inpraise.htm>). For criminologists this is a source of both pride and discomfort. By attempting to bring a multidisciplinary perspective they run the risk of belonging to no-one's gang. And yet without that sort of brave attempt to straddle different schools of thought, how much insight might be lost? The field of healthcare is now pervaded by multidisciplinary teams and approaches. Even lawyers are beginning to be alert to the potential of a multidisciplinary approach, for example in Collaborative Family Law.

Second, professional and academic life has become remarkably specialised. Mechanics can't fix modern engines: they rely on computers programmed by the manufacturer. Specialist lawyers can spend an entire career without straying beyond the boundaries of their area. Academics too go deeper and deeper into their silos, so that it becomes impossible for an outsider to enter. A neophyte or amateur lacks the jargon, the reference points, the history to gain credence or respect.

And yet mediation requires knowledge from across silos. We cannot stop a session when clients move from a calm discussion of the law to thumping the table or folding their arms in stubborn silence. We can't call in a counsellor or a neuroscientist to deal with emotion, or an economist to assist us in evaluating decisions made under uncertainty, or for that matter a philosopher to provide a definitive ruling on the question of truth. It just comes our way. Mediators, like it or not, are dealing with these questions daily. I am not claiming that this is unique to mediators, but my ethical sense tells me that the stakes are high for our clients and so we owe it to them to be as informed and ready as we can be. While it is useful to dig down into our own silo, knowing the law, specialising in an area of business, we also need to peek into others.

Thirdly, learning from a range of disciplines makes us better at our own. John Lande and Jean Sternlight argue forcefully that training in ADR can fill the gaps left by legal education and prepare students for 'real world lawyering' (Lande, J & Sternlight, J, 'The Potential Contribution of ADR to an Integrated Curriculum: Preparing Law Students for Real World Lawyering' (2010) 25 *Ohio State Journal on Dispute Resolution* 247-298). In particular they contrast the study of appeal cases, where facts have been established, events are in the past and the sole task is to apply the law, with the reality of legal business, where facts are uncertain and unpredictable, clients need to plan for the future and law is only one element in effective business choices. It is precisely the insights from other disciplines underpinning ADR that complement legal knowledge.

So, how might we supplement our understanding of other disciplines? As I have said, depth is difficult. We cannot all undertake graduate-level study in psychology or economics. It takes a lifetime to climb to the bottom of one of those silos. We can of course read books, but it is difficult to know where to begin. One useful starting point is to buy an edited collection. With chapters on a wide range of subjects this is an ideal way to open the door on new learning and then take the paths

that are most useful. In English, two are particularly helpful: Deutsch et al's 'The Handbook of Conflict Resolution' (2nd Edition) (San Francisco: Jossey-Bass, 2006); and Moffitt and Bordone's 'The Handbook of Dispute Resolution' (San Francisco: Jossey-Bass, 2005).

Reading is time consuming, however, and many of us are already swamped with the sheer volume from our own area. There are now other ways to learn. Over the last couple of years, I have stumbled across a vast resource of accessible knowledge on the internet. Using my trusty iPod, I can make use of down-time (driving the car, walking the dog) and learn at the same time. The wonderful 'iTunes-U' is growing every day, with more and more universities adding podcasts by the most brilliant academics and teachers on the planet.

The number of these is already too great to list, but I want to share one particular direction. I think I just struck lucky: my first outing was into Social Psychology, and I liked the look of UC Berkeley. A young professor called Rob Willer guides his students through this fascinating subject over 26 lectures. It is bristling with insights for mediators: cognitive dissonance, attribution error, biases, how groups work and much more. I then moved on to Social Cognition (John Kihlstrom), Cognitive Neuroscience (Rich Ivry), Psychology 1 (Kihlstrom again) and Developmental Psychology (Alison Gopnik). It seemed time for a change. Knowing the connection between Economics and Game Theory I found the introductory course (Bradford DeLong), a magisterial sweep through a discipline which underpins crucial real-world policies. I am now on the Philosophy of Mind (John R Searle), a detailed examination of the issues presented by consciousness.

I mention all of these by name because the quality of the teaching, the language, the clarity of explanation and the sheer joy in their subject tumble out of the headphones. They make learning fun, and provide one way to broaden our knowledge. Of course the fun is all the greater because I don't need to take the exams or hand in the assignments! However, if I choose, I can pursue a particularly interesting angle by getting hold of the book: Robert Cialdini's 'Influence: The Psychology of Persuasion' (New York: Harper Collins, 1984) is a good example.

So, I am dropping these thoughts in the pond. Who knows where the ripples will go. This level of detail may not be for everyone: my point is that knowledge is more accessible than ever, good news for an area of activity that requires us to be constantly on our toes, learning, reflecting and responding. All of this adds to mediation's breadth, and arguably its depth too. To finish with one final metaphor, mediation requires improvisation. And for musicians to improvise, they need to learn to play first. They practise and practise, memorising the rules and scales, following the chords and feeling the beat. The best have talent: but they also work the hardest. Those of us who are invited into other people's conflict should aspire to nothing less.

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