Kluwer Mediation Blog

Empathy

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Try this thought experiment: imagine a mediator without empathy. How and what would they do? Would there be drawbacks? Benefits?

The response to these questions probably depends on our own experience of empathy. This simple yet often misunderstood term masks a complex and fascinating set of ideas about human connection. Because we believe empathy is at the core of mediation, we consider it a construct worth closer scrutiny. Below is a summary of our recent work. (For a full account see Charlie Irvine and Laurel Farrington, Mediation and Emotions: Perception and Regulation in Heather Conway and John Stannard, Eds., *The Emotional Dynamics of Law and Legal Discourse*. London: Bloomsbury, 2017.)

Empathy

The English word is relatively recent (early 20th Century) and comes from a German idea of understanding art from the dual perspective of artist and observer. A modern and widely-accepted definition is *"the ability to identify what someone is thinking or feeling **and** to respond to their thoughts and feelings with an appropriate emotion"* [our emphasis] (Simon Baron-Cohen, *Zero Degrees of Empathy: A New Theory of Human Cruelty.* London: Allen Lane, 2011, p. 12). Note the two parts to this definition. Empathy requires both the cognitive (thinking) and also the emotional (or affective) element :a balance and synergy of head and heart.

Cognitive empathy requires thought and reflection to access another's mental state. It calls for self-awareness and the capacity for *perspective taking*: understanding what the world might look like from another's viewpoint. (Terms in italics are explained in Irvine and Farrington 2017.) On the other hand, emotional empathy is a reactive, automatic response to another's emotions: feeling what they are feeling. It can trigger *empathic concern*, the gold-star feature of emotional empathy: this motivates us to assist in another's distress.

What would it look like if only cognitive or emotional empathy were experienced? Psychopaths often have cognitive empathy yet lack the emotional counterpart. They may be highly skilled at perspective taking; but are likely to use information about others' thoughts and feelings to meet their own needs. Without empathic concern, they lack the motivation to help. Conversely, people with high levels of emotional empathy who may be missing the 'brake' of cognitive empathy can become flooded with emotion, skidding into the terrain of e*motion contagion* and personal distress. Their upset at another's suffering can deflect attention towards themselves and away from the person needing an empathic response.

Empathy can be viewed as 'fixed' or dispositional, dependent on genes, brain structure and early experience. It is also situational, fluctuating according to life stage, occupation or perceived similarity to another. It is likely to dwindle if we are unwell or having a bad day.

Fortunately empathy is also a skill. Mediators are trained to think empathically about clients; to view them, not as victims or culprits, but as people in difficulty who, with some assistance and encouragement, can rediscover their problem-solving resources. We can't – and shouldn't – prevent other people's anger/distress affecting us. On the contrary, empathy unlocks our genuine concern to help clients achieve the best outcomes.

Many of our standard communication techniques are helpful. Open-ended questions, accurate summaries, acknowledgement, attentive listening and appreciative enquiry all contribute to our respectful understanding of others' worldview. They let clients know that we not only 'get' them [the perspective taking part of cognitive empathy] but are genuinely interested in their wellbeing [the empathic concern element of emotional empathy].

Attachment

Farrington's model of empathy in mediation goes further. Many will be familiar with Bowlby's "Attachment Theory" (EJM Bowlby, *Attachment and Loss: Attachment*, vol 1. London, Hogarth Press, 1969.) He noticed how deeply young children were affected by the presence of their caregiver. With this person nearby children would explore and experiment, periodically glancing round for reassurance. If they withdrew the child became distressed, all thoughts of play abandoned during the frantic search for their attachment figure. On her return they would gradually calm down and continue exploring.

In fact, Bowlby concluded that any type of distressing situation triggered the automatic survival-driven response to seek out the trusted person who the child viewed as a 'secure base'. Attachment theory posits that *"an attentive, empathic caregiver creates a physically and emotionally secure environment, helping to regulate a child's emotions and, crucially, reduce stress"* (Irvine and Farrington 2017, p. 227). It also documents the lifelong impact of unavailable or unpredictable attachment figures and, crucially, the manner in which attachment behaviours continue into adult life, reactivated at times of distress and vulnerability.

Mediation in Practice

Conflict is stressful and triggers negative emotions. Mediation can add another layer of anxiety. Clients are usually fearful about confronting each other – afraid of the other's anger and of humiliation, and worried whether they will be able to control their own emotions. An empathic mediator may in effect function as an attachment figure, a 'secure base' enabling parties to both enter and remain in the room. The mediator's empathy helps clients reduce their level of emotional arousal. They become calmer and start engaging creatively in problem-solving: much as, when younger, they would resume exploration in the reassuring presence of their caregiver. People can now display curiosity rather than fear, engaging in the work needed to reach an understanding of each other's perspective and hopefully to sustainable agreements.

Opportunities for empathy are built into the mediation process. It's common to ask one person to listen while the other speaks uninterrupted. Even this simple act of listening can have a de-escalating effect: it resembles empathy, whatever the person is actually thinking, allowing the speaker to develop their narrative uninterrupted. The move is then reciprocated. If things go well the parties start to respond directly to one another, contributing to each other's shifts of perspective and understanding. *"Mediation offers disputants opportunities to appreciate both events and emotions behind each other's perspective: in other words, to experience empathy"* (Ibid, p. 236).

Does the mediator need to be empathic?

A great deal of current practice is built on and encourages empathy. Simply by applying mainstream techniques, a mediator will resemble an empathic person. However, empathy is in the eye of the beholder. Ultimately the parties judge whether the mediator seems understanding and genuinely interested in their dispute. In a 2005 study mediation trainees tended to rate themselves more highly than their instructors across all skills, the gap being widest for *"displaying empathy"* (Etty Lieberman, Yael Foux-Levy and Peretz Segal (2005) 'Beyond Basic Training: A Model for Developing Mediator Competence.' 23 *Conflict Resolution Quarterly* 237, 248.)

Mediators must communicate empathy: the parties need to know that that the mediator has a respectful understanding of their thoughts and feelings and solicitude for their safety and wellbeing. Attachment theory underpins our understanding of how and why this is such a key task for the mediator.

Empathy is woven into human life. If we are lucky, our early experience of being cared for and, dare we say it, being loved, enables us to give and receive empathy throughout the lifespan. Mediation is a process that touches on much of what it means to be human: inevitably, it calls for and calls forth empathy.

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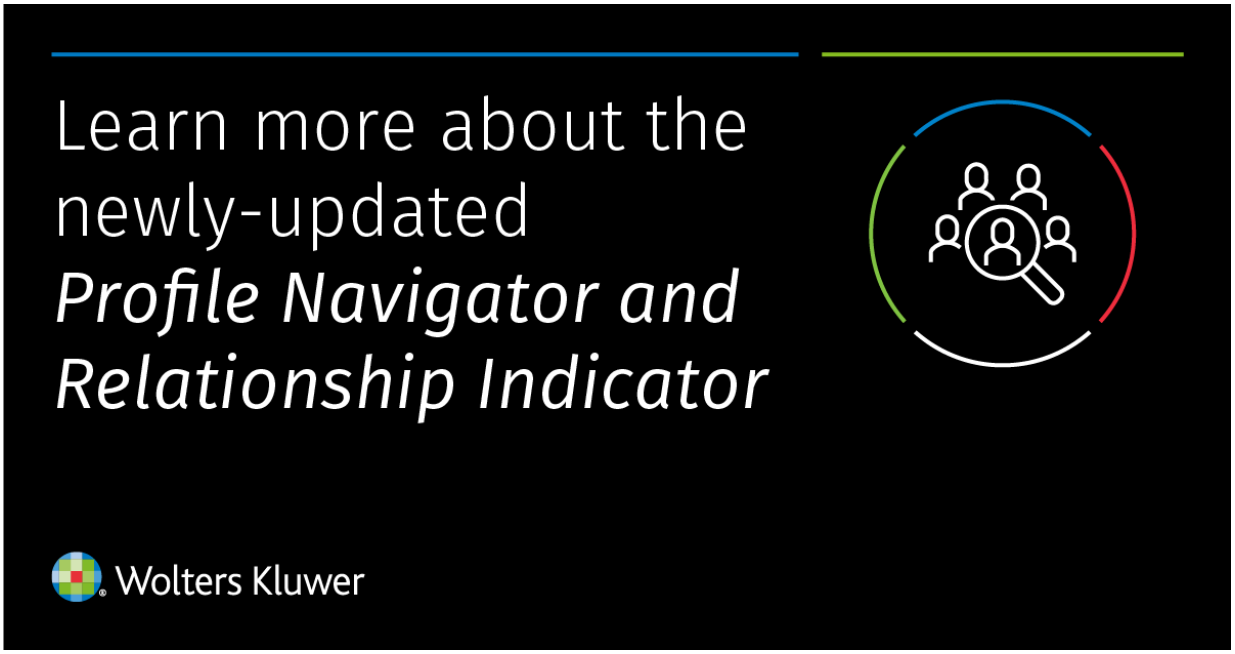

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