
Kluwer Mediation Blog

How Can We Sell The Mediation Product If We Haven't Worked Out What It Is

Greg Rooney (Greg Rooney Mediator) · Tuesday, February 19th, 2019

I wish to add to [Michael Leathes' recent post](#) on his suggestion that more field-based research be done into the mediation product and [Rick Weiler's follow-up](#).

There are really two distinct questions here. One relates to whether, with enough real-world research, we can put mediation in a nice box with a ribbon around it and show it to everyone as a discrete valuable product. The second question is why people and organisations do not embrace mediation.

If we don't get the first question right, then we can't have a hope of dealing with the second question.

The first question

My problem with the first question is that it is based on very 19th-century Newtonian concepts that are linear, predictable and deterministic.

Newton's belief was that the world is ordered and that if enough research is done and a full understanding of a situation is achieved then the future can then be predicted.

He was influenced by his religious beliefs that God must have a universal plan and the reason we haven't found it is that we haven't looked hard enough. Einstein was also caught by this mental construct in his search for the universal equation.

Einstein and much of 19th-century Newtonian physicists were blindsided by the rise of quantum physics in the early 20th century which has led to the digital age we now live in. Newton was fine for the Industrial Revolution but we could not have got to where we are now in the 21st-century with Newtonian physics and thinking.

Newtonian physics has been superseded by modern physics; particularly, the laws of thermodynamics and the emerging awareness of quantum physics. These offer far better explanations of what is happening in our world and more importantly why it has changed so much.

The laws of thermodynamics hold the best scientific explanation of the disruptive world we live in. Thermodynamics is a branch of physics that is the study of systems. The first law of thermodynamics is that nothing is created or destroyed; it simply changes form. The second law of

thermodynamics asserts that this change is always in the direction of decay and that all natural processes lead to an overall increase in disorder. It is why human beings, and nature in general, cannot reverse the ageing process.

As this change occurs nothing is lost or destroyed. It is simply reconstituted in another form which then becomes the new paradigm, before it too starts to decay. Disruption is therefore a normal part of reality rather than the ordered Newtonian view of the world.

The emerging understanding of quantum physics also impacts on our understanding of the complex world we now inhabit. It is a branch of physics which is highly uncertain and interconnected and where change occurs depending on the position of the observer. It breaks down the Newtonian link between cause and effect.

The latest challenge to this Newtonian view of the world can be seen in the replication movement in which many of the significant social science experiments of the past are being repeated with vastly different results from the original conclusions. This is because nothing is repeatable in a complex environment. It has thrown into doubt the validity of much of the so-called evidence-based research and observational case studies carried out in the social science field. This has become a significant problem for academia.

Anything that involves human beings or markets is inherently complex. In a complex environment outcomes cannot be predicted. This is because each aspect of a complex environment is interconnected and so all parts constantly co-constrain each other. They co-evolve by constantly modifying behaviours in random, never in the same way twice. This constant change means it is impossible to forecast or predict what will happen.

As a result our understanding of why things happen the way they did can only be done in retrospect. Because no two contexts are the same in a complex environment the concept of joining the dots in advance is an illusion. Best practice is, by definition, past practice and hindsight does not lead to foresight after a shift in context.

In my view our search for answers must start with modern science particularly some of the natural sciences, anthropology and the work coming out of the IT industry particularly complexity theory in how to deal with situations that are not repeatable. It requires a totally different form of thinking which I believe practising mediators acquire particularly those who are comfortable working in the moment to moment dynamics of the joint session.

The second question

Why is there a resistance to mediation within the commercial world. There is an old saying that generals generally fight the last war. In my view much of commerce and many in the legal profession that support it are still stuck in the competitive adversarial 20th century world.

The modern collaborative interconnected economy has challenged the identity and, in some cases, the very existence of the established organisations and professions.

The biggest upheaval has been the rise in the commercial value of trust over that of competitive and adversarial behaviours. The sharing economy relies on the willingness of users to be trustworthy and to trust each other. The platforms themselves also must be trustworthy. The sharing economy is built on the human element which is inherently complex. It is therefore

essential that any conflict be dealt with in a way that preserves those trusting relationships while allowing new learnings which are an essential springboard for innovation and evolutionary breakthroughs.

This interconnected economy is built on the creative tension between risk-taking and innovation. Balancing this tension and establishing a culture of trust is essential for maintaining the increasingly short time at the top in the 21st century economy.

Some of the work coming out of complexity theory is founded on a practice-based management system that seeks to modulate this complexity rather than trying to constrain it. It is an insightful way of thinking that has direct application to conflict resolution and mediation.

It is an experiential mode of management which requires leaders to step back and allow patterns to emerge. It is through this emergence that opportunities arise for innovation and creativity. It is a process that opens the door for luck and serendipity. The focus is on managing the present and seeking out its evolutionary potential.

It requires leaders to have a deeper understanding of the broader context in which they operate and the ability to not shy away from complexity and paradox. Because it is an evolutionary process it gives managers the time and space to assimilate complex concepts. The approach is to probe first then sense and respond. It is managing for emergence rather than outcome.

Embracing risk and possible failure is an essential element of experiential understanding. It challenges groupthink by encouraging minority views, mavericks and dissent. In other words diversity.

It is the opposite approach to the command and control model which seeks fail safe predictable outcomes. This is based on the cult of the alpha leader and is often driven by the desire to make the complex simple and ordered. This tends to focus on facts rather than allowing patterns to emerge. This leads to a structured rules approach which constrains the freedom of movement and diversity within organisations. It leads to organisational groupthink.

The over emphasis on efficiency and outcomes drives out variation. This is because diversity includes things that are not currently efficient. Allowing a place for mistakes, inefficiency, conflict and disruption to occur allows new learning which can be the springboard for innovation. They create a tension in the system which allows for evolutionary breakthroughs. If managers do not allow this type of internal disruption to occur then their competitors will disrupt externally.

This new world order accurately describes the lot of the practising mediator. Mediators around the world will go off to work tomorrow morning and engage with parties at a very human level in much the same way as they have been doing since the late 1980s. They will work with the uncertainties of the conflict they are mediating and hopefully come up with 'good enough' resolutions. They will continue to deal with complexity and ambiguity daily and use their soft skills to massage impasses and blockages. These 'soft' skills are now highly valued in this complex commercial world.

So maybe the problem is not mediation and mediators but the commercial world struggling to fit in.

Well done Michael for starting this conversation.

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The graphic features a black background with white text and a circular icon. The icon depicts a group of five stylized human figures, with a magnifying glass positioned over the central figure. The background is accented with horizontal lines in blue and green.

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