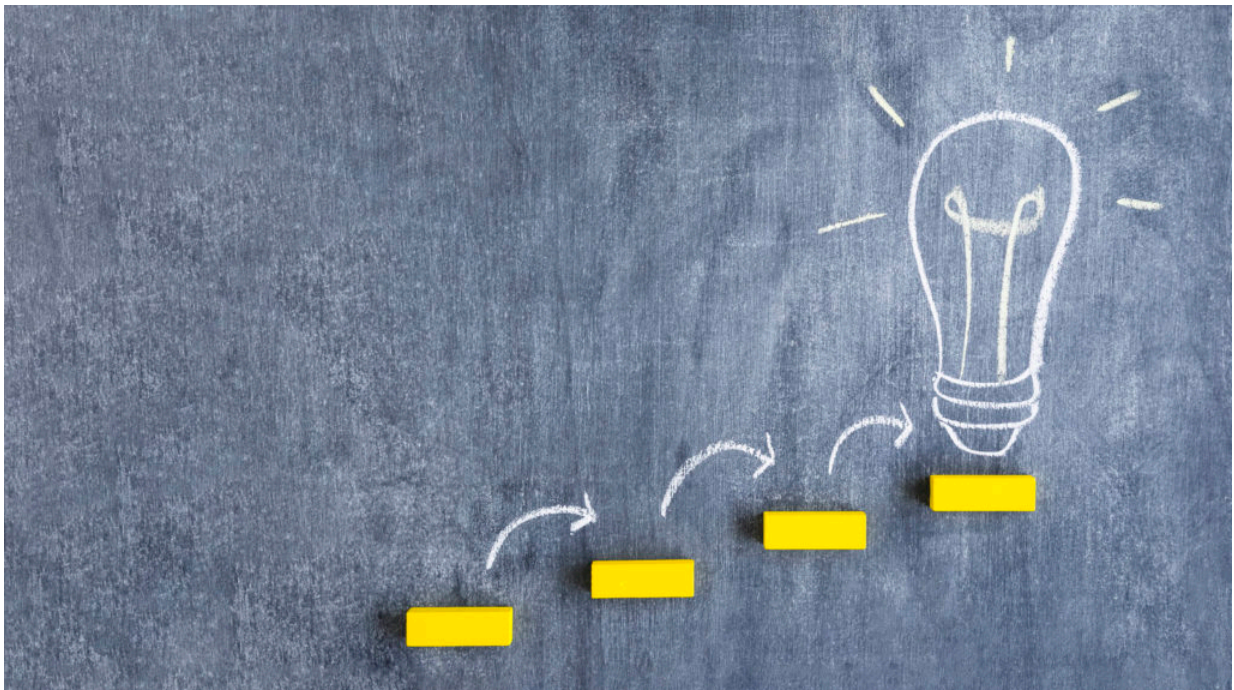


Kluwer Mediation Blog

Optimism in Mediation: Part II – Opportunity in Every Difficulty

Martin Svatoš (FORARB/Charles University) · Monday, May 20th, 2019



“The pessimist sees difficulty in every opportunity. The optimist sees the opportunity in every difficulty.” – Winston Churchill

Improving Habit of Thinking

The popular quote attributed to the former British prime minister is easily adaptable to mediation. The optimistic mediator considers the mediated settlement probable and helps the parties by spreading the friendly and promising atmosphere. The troubles and obstacles on the way to an agreement are considered as opportunities: They are here to reveal parties' hidden interests. When committing a mistake, optimistic mediator considers this as something that will neither influence the future procedure nor diminish the chances of reaching an agreement. The pessimistic one has a much more complicated task. Apart from dealing with parties, he or she has to tackle his own fears and concerns. In his mind, even tiny setbacks are converted to disasters.

In the first part of this article, I addressed the general comments in relation to optimism and its

indispensability in every mediation room. In this post, my goal is to present you with some hints and tricks that might help to improve mediators' interpretation of actions that they cannot influence.

How to do this? First of all, it is useful to understand that optimism and pessimism are just two sides of one same coin of perception. We are speaking merely about learned, though by genetic predisposition heavily influenced explanatory styles, a habit of thinking of actions over which (we believe) we cannot take control. And as such, it can be improved.

Same Situation, Different Approaches



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In his seminal book *Learned Optimism – How to Change Your Mind*, Martin E. P. Seligman lists three main characteristics of optimistic/pessimistic interpretation.

The first perception is called *permanence*. It is the interpretation of the fact whether the action at hand will be having a longlasting influence on your life. An optimistic mediator will see a problem as limited in time and significance. The pessimist will interpret it as a permanent problem that will hardly soon disappear.

The second characteristic is called *pervasiveness* and it answers the question of how much would individual problem influence all other fields of your activity. In the eyes of an optimist, an error would be considered only a minor, isolated slip without any overstepping impacts. In the eyes of a pessimist, the same fault would spread over to other fields and influence them.

Finally the last category is *personalisation*. An optimist does not consider himself being responsible for failures (“*It happened to me*”) but takes credit for success (“*They reached a settlement because of me*”). Pessimists take much humbler approach when reaching achievements (“*Great, they found an agreement.*”), however, they will take credit for all failures.

Let's apply those interpretation characteristics to a hypothetical situation that may occur in every mediation room – a confusion of names of one of the party. A minor failure all mediators are trying to avoid not always successfully. An optimistic person would perceive such a mistake in the following way:

“It occurred during my opening speech and it will certainly not influence the next phase. It happened to me as coincidence, it is not my fault, rather an inadvertence. Frankly, this name is that complicated and this is a cross-culture mediation, surely they will understand. Besides, as I am talking to them now, they have already

forgotten for they are focused on their own problem.”

A pessimist would see the same situation differently:

“Oh no, I just messed up all the mediation. The name is of such importance... It was highlighted by my mentor: Never confuse the names. This failure will definitely influence all the proceedings to come. Oh no, the way they are watching me...[and later] The mediation failed because of my poor performance – I am sure they will share this with other lawyers in this country and they will never appoint me again.”

Improving Yourself



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As promised, there are some hints on how to tackle pessimism. First of all, focus on improving your own perception of your mediation skills. Before you start your next case, please write down 30 things you are excited about in your past mediation career. It might be a single sentence, a training exercise passed, a mediated settlement reached,... After finishing this, write down 30 goals you would like to achieve in your mediation career next year. Though not complicated, this exercise might prove to be difficult, so take your time. After having finished, try to analyse how did you feel before and after finishing this task. The improvement should be solid. Try to repeat this at regular intervals and not only in relation to mediation. Do not forget to mention in comments about your feelings.

The second step is to maintain optimism in the face of reality. Not yours, but the parties'. Mediators are well equipped to do this as one of the most commonly used tools is related to optimism/pessimism scale: Reframing (also known as paraphrasing). Almost every mediation practitioner has heard the example of a glass filled with water to the halfway point: An optimist is said to see the glass as half full, while a pessimist sees the glass as half empty. Reframing has multiple purposes. It helps the parties to listen to each other, it serve as an instrument of language cultivation. Last but not least, it also improves the negotiation atmosphere within the mediation room and helps the parties to select certain choices.

Filter the pessimism – Power of Reframing

This was also asserted by Benedetto De Martino and his colleagues in their survey. Its participants

were told they may get up to £ 50 in the exercise. After that, the respondent had to choose between two options: First one was the sure way – the subject would receive £ 20. The other one was a gamble: The subject had a 50% chance of winning all £ 50 and 50% chance of losing all. The first, sure option was, however, presented in the context of two different frames: Either as a gain option (“*Keep £ 20 of the £ 50*”) or as a loose option (“*Lose £ 30 of the £ 50*”). The gamble option was identical in both frames. As expected, the results were significantly affected by the framing: Subjects were risk-averse in the Gain frame and tended to choose the sure option over the gamble (42.9% gambling). On the contrary, they were risk-seeking in the Loss frame (61.6% gambling). By pure filtering certain words out of the conversation, you are able to boost the atmosphere up.

Smile Can Turn No into Yes



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There is even a simpler tool than that – a mere smile. A basic facial expression mirroring our emotions and state of mind. It is, however, much more powerful than we usually consider it. According to many surveys, a smile seems to have a favourable influence upon others and makes one likeable and more approachable.

How is it possible? The common perception is that positive emotion is what makes us smile. Nobody denies these basic rules. However, it is surprising that it works also the other way round: Merely smiling can provide a positive experience. This was aptly pointed out by Thich Nhat Hanh:

“Sometimes your joy is the source of your smile, but sometimes your smile can be the source of your joy.”

Smiling makes you seem courteous, likeable, and competent – aren’t those characteristics something parties are looking forward? Especially the last one may raise some doubts when mentioned in relation to smiling. However, it might be easily explained by the fact that looking sad or anxious causes others to wonder if you know what you are doing. In contrary, a smile is an attribute to self-confidence and control of the situation.

Last but not least, smiling proved to be contagious. So there is some good chance you will infect the parties with good mood. You have probably seen the videos of the chain reaction of smiling. As much as some of them might be fake, check your mood when watching them. You are surely smiling. It is you, the mediator who can light up a mediation room.

Beware of Fake Smile

There are definitely some traps. First of them is the risk of a fake smile. Untrue emotions will not cause the desired responses. Quite in the contrary. They will be read as deception or arrogance and you would lose your mediation credit.

Insincere emotions may even degrade the chances of success. The fair example is so-called the Pan Am smile in which the smiling person only artificially raises the corners of the mouth to show politeness. It is named after the Pan American World Airways, whose flight attendants were known to greeting every passenger with the same superficial grimace. Where is the difference? The real and genuine “Duchenne smile,” named for the French neurologist Guillaume Duchenne involves not only the muscles surrounding mouth but also the eyes. This is extremely difficult to fake. In order to reach for this smile you have to make it real for yourself and the others will follow. Find your inspiration in some happy memories or appreciate something in the room.

It has to be underlined, that a positive approach and modest smile should not be confused with open laughter which would definitely ruin your mediation. Furthermore, smile have also cultural connotations. While its positive message is literally omnipresent, in some of the cultures stands also for confusion and ambiguity. Save these marginal situations, a simple smile will definitely improve the atmosphere and increase your chances of success.

So smile while waiting for the third and last part of this paper that is coming soon.

To be continued.

Sources:

– Martin E. P. Seligman, *Learned Optimism How to Change Your Mind*, Vintage; Reprint edition, 2006.

– Benedetto De Martino et al, *Frames, Biases, and Rational Decision-Making in the Human Brain* in *Science* 313, September 2006, pp. 684-87.

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