

---

# Kluwer Mediation Blog

## Twelve Problems Mediators Share With Scientists

Nigel Dunlop · Wednesday, October 20th, 2021

Professor A.C. Grayling, an Oxford don, has recently published *The Frontiers of Knowledge*.<sup>[1]</sup> According to Professor Grayling, the more humankind knows, the more we realise the limits of our knowledge.

Grayling identifies twelve problems confronting scientific enquiry which he says stand in the way of increased knowledge.

These problems can equally apply, in their own way, to our mediation practice.

### 1. The pinhole problem

Grayling says that the starting point in all our enquiries is the very limited and highly circumscribed data available to us. We view the universe as if through a pinhole.

In like fashion, we mediators commence each case knowing little. What we manage to see may be entirely misleading. The problem may persist throughout the mediation process. We may continue to view the dispute in front of us through a pinhole from start to finish.

We need to prepare as thoroughly as we can. Even so, we need to undertake our work with caution, in the realisation that what we are observing in front of our eyes is distorted by limited data. We should not replace data with assumptions. This is a sound reason to have the parties, not us, drive the outcomes.

### 2. The metaphor problem

Grayling says that we need to identify the metaphors and analogies we are applying to situations, and question whether they are misleading us.

We apply numerous metaphors and analogies in our work as mediators. Some we keep to ourselves, others we share with the parties.

Such metaphors and analogies can be very helpful. Equally, they can mislead us and give us a rigid, simplistic, or false understanding of what is occurring, and what is required.

This is a reason why we mediators need to look inwards as well as outwards. We need to check whether the mental formulations we are applying to the case at hand are problematic.

### 3. The map problem

Grayling describes the problem of knowing whether theories accurately reflect the realities they address by using the analogy of maps. Even if technically accurate, there may be a mismatch between maps and the realities they claim to represent.

How many of us have found that the portrayal of an intersection on a street map does not entirely help us when we arrive at the intersection and find it more complicated and confusing than the map would suggest?

We mediators need to be to be mindful that there may be a disconcerting gap between the map of ideas, and reality. We must respond to what we actually experience in mediation, rather than to what we expected to experience.

Part of the elation and despair we experience as mediators results from discovering that people do not take the roads our mental maps suggest they will.

### 4. The criteria problem

Grayling points out that when evaluating theories scientists apply criteria such as simplicity and elegance, which may not necessarily be grounded in reality. A complicated and inelegant theory may prove to be the successful one.

In a similar way, mediators and others apply simplistic criteria when measuring the success of mediation.

The rate of settlement is the most popular criterion used to evaluate mediation success. It is, however, a crude measure of success and may fail to take account of such criteria as fairness, justice, and the public interest. Settlement statistics overlook the many benefits of mediation even in the absence of settlement.

The more developed the criteria used to measure the success of mediation, the more we will understand its possible benefits.

### 5. The truth problem

Empirical scientific enquiry works with probabilities rather than absolute “truth”. There is always doubt as to what a given scientific enquiry has achieved.

In mediation, the equivalent of scientific truth is resolution of the dispute, not settlement. So can we ever be sure what settlement achieves?

We all know that some settlements are downright shaky. Even those that seem completely watertight, such as a simple agreement to immediately withdraw court proceedings, are not completely bereft of any uncertainty. There always remains the possibility that the agreement will not be followed through as a result of a change of mind or linger resentment. And even if, in the example, the court proceedings are withdrawn, subsequent actions may serve to undermine the benefits of settlement. We almost never find out the long term repercussions and consequences of our settlements.

We mediators perhaps need to avoid equating settlement with absolute success.

#### 6. **The Ptolemy[2] problem**

By this Grayling means that a flawed model, like Ptolemy's geocentric model of the universe may nonetheless "work" in a number of ways, with the result that it is initially accepted as correct.

In an equivalent way, there is a danger that we mediators will routinely apply approaches to our work that were effective for a certain type of dispute or circumstance, only to have them proven ineffective when we encounter new situations.

Even if we achieve good outcomes in many cases with one approach, that does not prove that the approach will work with all cases.

#### 7. **The hammer problem**

"If your only tool is a hammer, everything looks like a nail." As Grayling puts it, we tend to see only what our methods and equipment are capable of revealing to us.

The hammer problem reminds us as mediators of the danger of falling into routine approaches to our work out of laziness or habit. We should take a good long look into our toolboxes from time to time. Most probably we will discover that there are many tools we have forgotten were there, or have forgotten how to use properly.

#### 8. **The lamplight problem**

Grayling's analogy is the understandable tendency to search for missing items in the dark only where the light is directed by the lamp. The missing items might lie elsewhere in the darkness.

The problem is we cannot see what we cannot see or know what we do not know. What we can do as mediators, however, is to realise the limits of the information available during the course of mediation, and proceed accordingly, forming hypothesis not conclusions or assumptions.

As the late former United States Secretary of Defense, Donald Rumsfeld famously said:

*Reports that say that something hasn't happened are always interesting to me, because as we know, there are known knowns; there are things we know we know. We also know there are known unknowns; that is to say we know there are some things we do not know. But there are also unknown unknowns—the ones we don't know we don't know.*

Agreed. We mediators all too often have the feeling that unknown unknowns are at play in the mediations we are undertaking.

#### 9. **The meddler problem**

This is otherwise known as the observer effect. It asserts that the behaviour of the thing being observed can alter in consequence of being observed, and hence mislead the observer.

How true that is with mediation. We do not observe parties behaving as they normally do. We observe them behaving in the knowledge that the mediator, and others in the room, are watching them. What we observe may be entirely inauthentic.

Fortunately, there are solutions to this problem. We can rely on those in the room who know the protagonists well to call them out on the lack of genuineness. And judicious questions by the mediator can expose any inconsistency between past conduct and present appearances.

#### 10. **The reading-in problem**

Grayling says this problem arises when “interpretations of data are often made according to assumptions local in time and experience to the investigators.”

We mediators likewise bring assumptions to our work, not always recognised by us or others. We read-in our past mediation and other experiences into the current dispute.

These assumptions originate from our personal and societal history, gender, sexual orientation, education, culture, religion, and ethics.

The challenge is to stay present in the moment to the parties and issues in front of us without imposing our beliefs and mores on others. We must do that while at the same time being true to ourselves.

#### 11. **The Parmenides[3] problem**

This problem refers to the danger of reductionism, that is to say, attempting to reduce everything to a single ultimate causal or explanatory principle.

In the world of mediation, this can be taken to be the danger of simplistic analysis, in which a single or a few explanations are given to explain complex situations which in fact have multiple causations.

It is understandable that we try and reduce the complex to the simple, because this enables us to put simple strategies in place, and avoid being bogged down in detail. The rationale being: the fewer the moving parts the more likely we are to achieve settlement.

When making sense of what is happening in a mediation, however, there will likely be many answers at many levels, in many spheres.

#### 12. **The closure problem**

There is unlikely to be any mediator who does not recognise this problem! As Professor Grayling puts it, it is the desire to “reach a conclusion...to tidy up and sign off.”

As we all know, being too focussed on reaching a settlement can badly backfire. Mediations have a life of their own, and have their own natural life span and pace. Patience is required.

Parties too, need to be reminded of the paradox that the more the haste, the less the pace.

[1] VIKING/Penguin Books 2021.

[2] A mathematician, astronomer, geographer and astrologer born in Alexandria, Egypt in 100 CE. His flawed geocentric model nonetheless successfully predicted eclipses.

[3] A Greek philosopher born 515 BCE, who held that the multiplicity of existing things, their changing forms and motion, are but an appearance of a single eternal reality (“Being”), thus giving rise to the Parmenidean principle that “all is one.”

---


*To make sure you do not miss out on regular updates from the Kluwer Mediation Blog, please [subscribe here](#).*


### **Profile Navigator and Relationship Indicator**

Includes 7,300+ profiles of arbitrators, expert witnesses, counsels & 13,500+ relationships to uncover potential conflicts of interest.

Learn how **Kluwer Arbitration** can support you.

Learn more about the newly-updated *Profile Navigator and Relationship Indicator*



 Wolters Kluwer

The graphic features a black background with white text and a circular icon. The icon depicts a group of stylized human figures, with one figure in the center being magnified by a magnifying glass. The background is accented with horizontal lines in blue and green.

This entry was posted on Wednesday, October 20th, 2021 at 6:00 pm and is filed under [International Mediation, Mediation Practice](#)

You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can leave a response, or [trackback](#) from your own site.

