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Hope revisited — a theory for mediators

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New Perspectives for Mediators

Hope revisited — a theory for mediators

Barbara Wilson

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ADR Diary

The publication of a recent paper (Epstein and Epstein, 2006) has led me to review my own mediation practice, not only with regard to identifying barriers but also in an attempt to pinpoint ‘what works’ in mediation. A return to the theory of hope has appeared particularly relevant as one of many factors that may assist people to reduce or end conflicts (Wilson 2002, pp 555–8).

If it were possible to identify the many significant and variable contributory elements that promote settlement — and capture them in some sort of genie’s lamp — the world might be an easier place. However, the complexities and diversity of human conflicts mean that our best attempts to do so are constantly tempered by a multitude of factors, some of which may be beyond our control, and also beyond that of the parties. Nevertheless, there are conflict theories as well as personal qualities and beliefs that mediators can espouse, regardless of circumstances, and bring to the table. As helpfully proposed by Marshall (2004), the engagement of a body of relevant theories to underpin conflict analysis can assist practitioners in aiding disputants.

Hope has now been identified by Bowling and Hoffman (2003, p 128) as one of the qualities of *being* a mediator, rather than *doing* certain prescribed steps dictated by a particular school or theory (emphases original). A similar theme is also taken up by Shearhouse (2003, p 203), although she instead employs the term ‘optimism’, stating:

Perhaps the most important tool a mediator can bring to the process from the toolbox of personal emotional intelligence competencies is optimism ... Optimism has a direct impact on results.

Shearhouse is commenting on Goleman’s (1999) work in which he discusses research from the fields of business and social support where an optimistic outlook accounts for financial and marketing success, as well as reduced burn-out for the carers of those with mental health disabilities (p 128). He describes hope as a ‘near cousin’ of optimism and suggests of caseworkers:

In jobs like these, where stress is high and frustrations common, a rosy outlook may get better results. Hopefulness is critical when anyone undertakes a tough task: positive expectations may be especially beneficial in the toughest jobs, where high optimism may be a pragmatic job strategy.

When writing in 2002 I was impressed by the experience of hope’s function in mediation, derived from psychotherapist Frank’s work on interpersonal relations (Frank 1961, p 136), in which he cites an earlier treatise on the same topic (Stotland 1969). Hope has been identified as assisting adolescents exposed to violence (Hinton-Nelson, Roberts and Snyder 1966, pp 346–53) and the recovery of cancer patients. Coaching, arguably a form of hope theory, maximises athletic ability; the role of hope in encouraging positive performance strategies is probably universal. Further, the functions of hope and optimism are now commonly found within mainstream mediation discourses; for example, much of *Beyond Winning* is underpinned by the concept that adopting an optimistic mindset is beneficial to successful negotiations and instrumental in the achievement of positive goals. (Mnookin, Peppet and Tulumello 2000).



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Of course there is always the possibility that mediators will adopt an unrealistically optimistic stance that might operate to the detriment of the parties. It is possible to overstate the benefits of the mediation process, as with any other professional intervention in people's lives. Commentators have cautioned that 'the potential for manipulation, for carrying out the mediator's goals rather than seeking those of the participants, is always present' (Lang and Taylor 2000, p 216). Nevertheless, hope as an issue cannot be avoided because in practice the parties themselves are often acutely aware of its role in negotiations. Clients may seek predictions from practitioners regarding their own professional hopes for successful outcomes, thus presenting challenges regarding whether or not mediators themselves actually believe in the efficacy of the process.

Such questions pose ethical dilemmas. If mediators were not optimistic they would presumably not practise in the first place. However, not all mediations reach settlements, no matter how skilled the mediator. The factors and influences that impact on negotiations have been the subject of research and debate over many years (Maraschal 2005, pp 509-17) and there is as yet no universally agreed taxonomy of skills and knowledge guaranteed to optimise outcomes satisfactory to all the parties (Wall, Stark and Standifer 2001, pp 379-91). Given the powerful status and influence of litigation in our culture, it is unsurprising that clients entering mediation may question — sometimes openly — whether it is worth even starting. A recent divorce mediation between Margaret and Mike serves to illustrate this point.

After one particularly heated exchange Mike turned to me and asked 'I suppose you have seen worse cases than ours?' The truth was that I had experienced worse conflicts, but to have told them so then would not have helped. Each person's pain is unique and a strategy of comparing their situation with previous clients' problems at a time of such high conflict would have left them feeling unheard and devalued. However, there are occasions when providing examples of how former (de-identified) clients resolved matters can be helpful to the parties, although practitioners should be acutely aware that the choice and content of such stories may influence the current outcome if not very carefully framed and presented. Knowing when to relate such examples is a matter of judgment, experience and skill, always governed by the utility to the clients. I replied cautiously, conscious of needing time to think through this dilemma; 'Well, all couples have their difficulties and you are both finding it hard to deal with this right now'. Margaret's immediate response was to ask outright if I thought she and Mike would reach a settlement.

From an ethical point of view I was faced with a problem. To say 'no' would almost certainly have caused them to lose faith in the process and also called into question the efforts both had made so far to find a solution. Further, it was not what I actually believed at that moment. Both had been through acrimonious divorces before and, despite their differences, had already asserted several times that they were equally determined to avoid contested court proceedings. From a theoretical point of view they had concordant goals in terms of risk aversion (Wilson 2001, pp 467-9). Applying hope theory in these circumstances seemed a reasonable approach.

However, to have replied with an unqualified 'yes' might have seemed over-confident, even untruthful. I paused. Perhaps even the pause was enough to signal a lack of confidence on my part. I gave the best answer I could think of: 'I believe it's possible to find a way through this but we shall have to work hard. I hope we can continue to keep looking at options together until we find one that you can both live with'. They seemed content with this answer

The negotiations were proceeding fairly slowly, with Mike and Margaret both demonstrating considerable tension and hostility. The dispute involved the distribution of relatively low-value matrimonial assets and each sought sufficient money to achieve financial separation — a common feature of all-issues family mediation. Both were struggling with the challenge of how they could reach a settlement that met their goals of sustainable futures but had to be carved from their limited joint resources.

Erratum

Please note that due to editorial oversights there are several mistakes in the attribution to the article 'Making it fresh: teaching ideas for negotiation skills' published in *The ADR Bulletin* vol 9 no 4 pp66-70. Naomi Cukier's name is misspelt where it appears. Naomi works for Lander Rogers and may be contacted at ncukier@landers.com.au.

We apologise for these typographical errors and any inconvenience they may have caused.



and the mediation progressed to an acceptable conclusion, although it was not the easiest of negotiated settlements.

I reflected afterwards on whether or not I had been honest with Margaret and Mike. I believe I was. As a mediator I try to practise ethically and transparently — nevertheless I was aware that my replies to each of them were fundamentally optimistic and also that my role had been highly influential at that point. This raises the issue of the powerful position of the mediator, notwithstanding the ‘neutral’ position sometimes still posited by mediator codes of practice and training manuals. Third-party neutrality has been extensively explored and debated, notably by Mayer (2004, p 30), who suggests neutrality is a statement of intention, not of behaviour. He writes: ‘Every action we take, or chose not to take, reflects this, and the disputants we work with are sensitive to this’. Wall, Stark and Sandifer (2001, p 380) argue that the tandem goals of being neutral and appearing neutral do not affect which techniques a mediator selects and applies but, rather, motivates mediators to be equal in their interventions, applying the same techniques to both sides in the dispute.

I now understand mediation to involve the ‘co-forming of joint realities’ (Jones and Hughes 2003, pp 485–94). Applying this concept to the mediator’s role (and specifically employing hope theory), whatever I said to Mike and Margaret at that stage was likely to influence them. By displaying optimism I was engaging in what Lang and Taylor (2000, p 215–6) describe as a ‘critical moment in action’. Their exchanges created a defining point at which I openly committed myself to hope, despite the difficulties, knowing that making such a statement might subsequently leave me open to criticism if things failed to turn out as they wished. My responses were therefore potentially highly risky from a professional perspective, while simultaneously offering the clients the possibility of making progress. However, by adopting Snyder’s hope theory as discussed below, Margaret and Mike were able to co-construct a realistic settlement, although they made some necessary adjustments to

what was mutually achievable in their circumstances.

Mediators are not alone in experiencing such dilemmas — Cousins explores extensively the professional hope/negativity construct dilemma in medicine, drawing on examples from clinical cases (Cousins 1989, pp 97–8). He points out that a conflict of interest may arise for physicians caught between the possible negative consequences for patients of ‘telling them the worst in order to protect themselves (that is, the physicians) against the possibility of a lawsuit’ while, conversely, being conscious that the manner in which a serious diagnosis is communicated to a patient can sometimes have a negative effect on the course of their disease. He observes that people tend to move

the mediator’s toolbox, to be used indiscriminately and in all circumstances. Intentionally applying hope theory to Mike and Margaret’s mediation assisted them to reach a mutually acceptable outcome but before choosing to apply this (or any) theory I had first to reflect on the potential risks and benefits to them as clients. This reflective decision-making process fits with strategic choice theory (Carnevale 1986, pp 41–56) as briefly expounded by Noll (2001). By promoting hope theory I do not suggest it is always appropriate or helpful; however, the purpose of reviewing my earlier paper was to discover whether I still find the theory useful in my own work. A review of recent years leads me to suggest that hope may be one of the most important paradigms mediators can

Theories alone, even ones involving hope, cannot offer a universal remedy for people in a dispute. Hope strategies are not simply another ‘tool’ in the mediator’s toolbox, to be used indiscriminately and in all circumstances.

along the path of their expectations and advocates positively maximising all their resources, including emotional, spiritual and physical. Cousins also asserts that both giving and having hope are axiomatic to this process. To recap on Snyder and colleague’s hope model, this involves:

- (a) identifying goals sufficient to motivate people,
- (b) generating pathway thoughts (an appraisal of capabilities for finding one or more effective routes to the desired goal), and
- (c) optimising agency thoughts, ‘the perceived capacity to begin and sustain movement along the envisioned potential routes to a desired goal’ (Snyder, Ilardi, Michael and Cheavens 2000, pp 128–53).

Theories alone, even ones involving hope, cannot offer a universal remedy for people in a dispute. Hope strategies are not simply another ‘tool’ in

adopt, with experience demonstrating that its practical application has been extremely valuable in practice.

Returning to Wall, Stark and Standifer (2001, p 383), their paper offers a brief overview and analysis of the considerable volume of published material on mediation theories as the discipline stood over five years ago. They attempt to formulate a framework for organising some of the literature as well as proposing certain hypotheses beyond the scope of this article. The authors note with evident disappointment that the mediation corpus largely focuses on the aggregate overall mediation process rather than the outcomes of specific techniques, and they conclude with the hope that some key questions might be answered during this decade. They ask:

Does it matter what mediators do as long as they are highly active and attempt to smooth the parties’ relationship? A related question is the following: What techniques



should mediators use? And how can mediation be improved if we are uncertain as to which techniques work and which ones are ineffective? (p 386).

The challenging questions they raise will continue to attract the attention of researchers and practitioners alike; however, integrating and applying hope theory in mediation offers some contribution towards providing at least one answer. ●

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