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Mediation practice

'Don't just do something. Stand there!' — stillness in mediation practice

Kevin Hearn

Readers may recall a situation in real life or in a movie where things were getting out of control and someone in the middle of the chaos shouted to a bystander: 'Don't just stand there. Do something!' Likewise, most mediators can probably recall feeling the pressure to 'do something' when parties seemed hopelessly deadlocked or interested mainly in personally attacking each other.

The capacity of mediators to intervene creatively in such circumstances is an indicator of the quality of their practice. Professional development programs are designed, in part, to equip mediators with the knowledge and skills to actively channel events in such circumstances towards a collaborative resolving of the dispute.

However it may be useful to consider reversing the statement quoted above to read: 'Don't just do something; stand there.'[1] This may provide the opportunity to reflect on 'something' called stillness and to consider its relevance to mediation practice.

Language overload in contemporary times

Stillness does not equate to silence.

It is not uncommon for assessments of mediation practice to include a comment such as 'good use of silence'. In some circumstances, silence on the part of the mediator may be an effective strategy: maybe as a reminder to the disputants that the responsibility to resolve the dispute is primarily theirs; possibly to signal that it's ok just to sit quietly for a moment. Silence is something that comes and goes during a mediation session. Stillness has a continuance. It is a manifestation of 'something' that may also be called mindfulness,[2] awareness[3] or presence.[4]

Just as there is not one correct word for the 'something' being represented by such terms, so also there is not one voice more authoritative than another that informs their discussion. Why terms such as these seem to be resonating with significant numbers of people in contemporary times remains a matter of speculation.

Factors which may be fuelling this attraction could be stated as follows:

(1) as the globalising cultures in which we all now live become information-soaked and communication-laden,[5] our capacity to generate and respond to multiple what-if worlds may become seriously overloaded;[6]

(2) terms such as those mentioned above may seem to offer relief from the fatigue resulting from this overload. However, as more time is spent trying to absorb the meaning of such terms in the increasing number of media products devoted to them, the 'something' or the 'not-yet-known' behind such terms may thereby be rendered even more elusive.

A key assumption of this article is that the overload referred to above is limiting the capacity of parties at mediation to resolve issues in dispute. Stillness, on the part of the mediator, may be seen as a means of relieving some of the pressure of this overload and, in that sense, a means of empowering the parties.

Mediator power, professional development and stillness

The National Mediation Practice Standards require nationally accredited mediators to be able to demonstrate knowledge of 'the nature of conflict, including the dynamics of power.'[7] Presumably this includes knowledge of mediator power which may be interpreted as the capacity of the mediator to influence disputants to move towards a mutually acceptable outcome without the mediator 'crossing the line' by giving advice on a substantive issue, all the while demonstrating respect for the perspectives of both sides. Professional development programs are usually aimed at developing this capacity and may include a consideration of the sources of mediator power.

Mayer suggests there are 10 sources of power that may be exercised by disputants or mediators during a mediation session. The one in which stillness may be located is referred to by Mayer as 'personal power':

> … the power that derives from a variety of personal attributes that magnify other sources of power, including self-assurance, the ability to articulate one's thoughts and to understand one's situation, one's determination, endurance and so forth.[8]

While it may seem appropriate to locate stillness in this category, how useful is it to include this topic in a training session entitled, for example, 'The Personal Power of the Mediator'? Maybe the author of such a session would be in what Potts calls a 'self-contradictory position', asserting on the one hand that stillness is somewhat mysterious and unfathomable yet claiming to be able to transmit it through easily followed techniques.[9] Fisher says that the corporate sector has embraced 'mindfulness meditation programs'.[10] However de Mello, who prefers the term awareness, has definite views on the possibility of teaching this to someone: 'don't try to teach a pig to sing; it wastes your time and it irritates the pig'.[11] Rohr chooses to call the 'something' behind these terms presence and says it cannot be packaged for mass consumption without trivialising it.[12]

There's knowledge … and there's knowledge

While stillness may be conceptualised, it is a knowing of stillness beyond the concept that this article seeks to highlight. As de Mello points out a concept is highly useful but it is primarily a signpost pointing towards 'something'.[13] And if a person sets out in that direction and eventually 'gets there' (or 'gets it'), the experience is not one of some kind of universal stillness which can be manipulated through

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language to create certain power relations between people; it is a unique experience, seemingly of benefit only to that person.

So knowledge of stillness is, in one sense, something unique to each person who 'gets there'. But perhaps because we humans experience ourselves primarily as a social species, and specifically as 'the symbolic species',[14] we are fated to acquire much of our knowledge (including our knowledge of stillness) through shared symbol systems; through language; especially those complex constellations of ideas which seem to take on a life of their own and are usually called meta narratives or grand narratives.[15]

Grand narratives seem to be necessary for members of the symbolic social species to feel safe in a collective identity; to enable a stable regime of meanings; to enable individuals to imagine the good life. Together, in a given era, they are said to help maintain a cultural public sphere.[16]

They may also assist in maintaining control over otherwise diverse groups as happened, for example, when Christianity became institutionalised across most of medieval Europe. For hundreds of years, it was religious logic that largely determined the historic climate in which all ideas moved.[17] Then a series of 'religious' wars plunged Europe into a state of crisis for a century — until there emerged the secular-scientific or modern grand narrative. However, devastating wars continued as a variety of grand narratives continued to emerge, compete and transform.

Currently one of the most persuasive is the market grand narrative. So now it is market logic that largely determines the historic climate in which ideas move around this globalising world. Given such logic, stillness is possibly a product. And if a stillness fad converts to a trend and then a mega-trend, the financial rewards could be significant for those writing books, producing DVDs and running stillness workshops and stillness centres.

It needs to be emphasised that stillness is a word; a concept; it is language. And language is the currency of grand narratives. If we opt only for meaning created in that 'cage'[18] (which is how Wittgenstein describes language) we opt for knowledge with the potential for manipulating certain power relations between people. Another option is to stop engaging with language, insofar as that is possible; stop trying to think our way to a knowledge of stillness beyond the concept.

The futility of trying to think our way there is suggested in the following image: a hiker is sitting beside a signpost endlessly tying and untying her shoelaces; she never sets out because she never quite gets the knot right.[19] Reading widely, thinking about and discussing stillness (tying a decent knot) may enable clarification of the concept.

However, all that a concept of stillness can do is point the way. Sooner or later, the hiker may realise that words are simply symbols. After that, it's partly a matter of 'going on the journey' — of getting on with life — and somewhere, somehow experiencing the 'something', probably in the most ordinary everyday setting. This is primarily a DIY process. Evidence-based research has its place, but not here, because what is experienced slips through any 'net of language and symbolism'.[20]

To change the metaphor from a hiker to a violinist in an orchestra: it's as if the violinist is rehearsing with the rest of the orchestra and it's a piece they all know well. The violinist is doing something she has done many times before. But then the violinist hears what could be the sound that the composer originally heard; momentarily she experiences 'something'; she knows that piece in a way that is safe from a language of explanation.

After a student of stillness has a number of equivalent experiences, she may then choose:

(1) to try to put the experiences 'in the cage' by setting them down in language to try to construct some kind of universal stillness which promises to benefit those who have never 'gone on the journey'; or
(2) to accept that the experiences are unique and seemingly of benefit only to that individual.

The latter choice has the potential for empowering others (by the individual's *being* still), something relevant to the practice of mediation.

The latter choice implies that the boundary between *being* and *doing* may be characterised by a certain porosity. The mediator does not *do* anything, in the sense of doing some kind of stillness technique. It is a case of the mediator *being* still and allowing stillness to do its thing. Of course, to what extent parties in dispute are receptive to this is another matter.

While not having the role of determining disputes, mediators are usually assumed to have significant power during a mediation session. ... Mediator power may be exercised directly through various strategies, including silence, and indirectly through something called stillness — which may also be called mindfulness, awareness, presence or possibly some other term.

Conclusion

While not having the role of determining disputes, mediators are usually assumed to have significant power during a mediation session. The exercise of this power is seen as necessary to facilitate discussion of the substantive issues by the disputants in a procedurally fair way as they seek to reach a mutually acceptable outcome. Mediator power may be exercised directly through various strategies, including silence, and

indirectly through something called stillness — which may also be called mindfulness, awareness, presence or possibly some other term.

A consideration of stillness is useful to mediators in contemporary times because we all now live in increasingly globalising cultures which are becoming information-soaked and communication-laden. This means that our ability to generate and respond to multiple what-if worlds — especially important for parties trying to resolve a dispute in a mediation session — runs the risk of becoming overloaded. Stillness on the part of the mediator may enable an easing of the pressure of this overload and thereby be a means of empowering the parties.

Stillness involves experiences which no concept can adequately contain although a number of concepts from a variety of grand narratives may be useful in pointing the way. Knowledge of stillness is gained primarily through a DIY process. It involves a seemingly fortuitous distancing from the cultural public sphere.

Finally, because we humans usually experience ourselves as a social species, we over-identify with power relations *between* people and so have a limited appreciation of engaging with power *within* ourselves as individuals. And because we experience ourselves as the symbolic species, we over-identify with the power of language and other shared symbol systems. Again, we have a limited appreciation of engaging with power that escapes any net of language and symbolism. To avoid these other contexts of power is to settle for a limited appreciation of mediator power and a limited understanding of quality as regards the practice of mediation. It is to miss the opportunity to explore one of those undiscovered worlds of dispute resolution;[21] in this case, a world of discreet power flows between apparently discrete sites of power. ●

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Book announcement

International and Comparative Mediation: Legal Perspectives

Nadja Alexander

(Kluwer Law International Dec 2009, ISBN: 9789041132246, www.kluwerlaw.com)

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International and Comparative Mediation has a practical with recommendations for practitioners, students, mediators, policy- and law-makers. One chapter features an interview with the former secretary of UNCITRAL on the Model Law. The appendices contain highly useful comparative tables of mediation legislation and rules, in addition to sample clauses. ●