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Mediation in the Age of Complexity

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Mediators work in perpetual novelty

Nothing is repeatable when we mediate, except by accident. No two parties or two mediations are ever the same. What works in one mediation will not necessary work in another. We therefore cannot predict what will happen when we mediate.

Mediation is part of what is known as a complex adaptive system.

Mediation comes at the culmination of a series of complex human interactions between the parties leading up to the dispute. This interaction is described as a human system which scientists catalogue as a complex adaptive system. Complex adaptive systems apply to everything in nature including humans. Examples include - climate; cities; firms; markets; governments; industries; ecosystems; social networks; power grids; animal swarms; traffic flows; social insect (e.g. ant) colonies; the brain and the immune system; and the cell and the developing embryo.

Complexity is the science of inherent uncertainty. This accurately describes the interconnected digital economic and political world that we inhabit in the 21st century.

The three guiding principles that apply to complex situations.

The first principle is that 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 do can only be achieved 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 (Snowden, Rooney 2017).

All we can do as mediators is simply interact with the complexity. The aim is to focus on small things in the present and see what works and what does not work. Mediators can then promote things that work and dampen things that do not. Looking for small incremental changes and detecting weak signals can help us point the way forward. It is allowing the space for the unarticulated needs of the parties to emerge out of the interaction (Snowden, Rooney 2017).

If we do try to predict what will happen, such as forming a hypothesis, it can have the effect of filtering out what we see. The risk is that we will miss novelty and unexpected options that emerge along the pathway.

The second principle is that in a complex environment there is no one way or right way of doing things. There is no universal solution. In fact, choosing a single hypothesis limits the evolutionary potential inherent in the myriad alternative approaches. A multi-hypothesis approach leads to emergent practices and breakthrough innovations.

The third principle is that in a complex system you cannot go back or forward in time. We co-evolve so once patterns have formed we have to work from that point. Therefore, we have to understand and manage from the present and nudge forward step-by-step.

It is important for mediators to recognise the value of starting from where you are and moving forward from that point. It is about describing what exists here and now rather than trying to forecast a future state. It is important not to jump ahead to solutions. As a mediator you are looking for what is adjacent possible to where you are now that moves you in the direction of the best possible solution (Snowden). What that solution will end up being should remain oblique until such time as it evolves into its final form.

It is about progressing one step at a time because as you take each step all the dynamics around that step reorganise themselves. You then start again fresh from that point.

This is the opposite approach to designing a desired end state and then working backwards to close the gap. Trying to evaluate the future over sharpens our focus rendering us susceptible to missing the novel and unexpected.

Using Brexit as an example, the UK cannot reverse engineer back to 1973 and start again, nor can it arbitrarily select a desired future state and try to close the gap. It can only nudge forward from the present. The same will apply to Donald Trump's "Make America great again".

Working within a complex adaptive system

There is a four-step process in dealing with complex situations.

The first step is to create a boundary within the system that irritates emergent behaviour to life. Mediators can then observe that behaviour and amplify things that work and dampen things that do not (Snowden, Rooney 2017).

The classic mediation boundary is allowing the parties to meet in a joint session at some stage during the mediation. A face-to-face meeting stimulates an interaction.

The joint session then becomes the vehicle for sharing of stories. We communicate through stories and metaphors which are an excellent way of describing complex ideas.

For the mediator working in the joint session the focus becomes on linkages between people rather than the people themselves. It is far easier to work on changing the linkages

than trying to force change on the parties. It is a far more ethical approach than trying to make people change.

It is only by engaging and acting in this interaction that meaning emerges and enables us to understand what is possible. It is all about working in real time and capturing the lessons as they evolve. It is about mediating for the emergence of the new.

The second step is to probe, then sense what is happening and respond to it. The aim is to stimulate the human networks in real time (Snowden, Rooney 2017).

It requires the use of non-hypothesis questions by the mediator in trying to find out what is possible. This allows patterns of stories to develop in narrative form. It is important for the mediator to concentrate on small things in the present moment to help the parties move forward in a way that allows novelty to emerge. Slowing things down allows the parties to pay more attention.

The mediator needs to allow a narrative to evolve in the joint session which can be self-interpreted by the parties in real time. The patterns of stories can reveal the evolutionary pathway ahead. The process is about changing the interpretation of the competing narratives rather than trying to change the people.

The third step involves creating early “safe to fail” trials or experiments that run independently in parallel (Snowden, Rooney 2017).

From the mediator’s perspective this is about delaying the rush to find solutions and allowing multiple options to emerge through the exploration stage of the mediation process. If you jump too quickly to the goals or the possible outcomes you can easily miss out on discovering novelty that emerges along the way. The mediator provides a safe space for micro scenarios to develop which are then held in suspension while continuing with the exploration stage.

The aim is to avoid premature convergence or group thinking by keeping multiple possibilities open. This stimulates lateral thinking and multiple perspectives. It also recognises the value of “obliquity” which is the practice of achieving objectives indirectly (Kay).

The fourth step involves creating real time feedback systems so the parties can manage the conflict in the present (Snowden, Rooney 2017). This is much harder to achieve if mediators start passing messages between the parties. It is important that the parties stay physically in contact with each other as each step in the process emerges. Therefore, any movement or progress that comes out of the private or caucus sessions should preferably be brought back and presented to all parties in the joint session. This is about keeping the parties holding multiple perspectives in real time. This helps counter the cognitive distortion that occurs with interpretations and reinterpretations by mediators particularly when they try and inject their own advice or guidance on to the parties.

Mediation and the principle of emergence

Mediation is built on the complex interaction between the parties. That interaction leads to something new being created which becomes greater than the sum of the parts. Scientists call this process 'emergence'.

The American physicist Murray Gell-Mann made the following point *"You don't need something more to get something more. That's what emergence means."* (Gell-Mann)

Everything in the dispute is there in the person of each party – all we have to do is allow it to emerge. We just have to get ourselves, as mediators, out of its way. Of course, we have our own values including the desire to get a fair settlement for the parties. But we don't need to add these personal values to get something more for the parties. It is their journey not ours.

The alternative approach is to keep the parties apart during the mediation. It can be seen in the practice of mediators, particularly with legal backgrounds, using their expertise to hypothesise a solution and then work to close the gap using the caucus or shuttle mediation model to corral the parties towards a compromise.

I suggest that the desire to get a settlement is the biggest influence on mediator behaviour. I suspect most mediators don't see this as a 'value' but a natural consequence of their contractual engagement. The solution focused advisory approach to mediation is evidenced by their preference to be called 'dispute resolvers' rather than the more oblique (John Kay - Obliquity Theory) term of 'mediators'. It can be seen in the caucus or shuttle mediation

approach where the parties are deliberately kept apart to allow their legal advisors freedom to negotiate on their clients behalf.

This speaks to the archetype of the hero mediator who solves people's problem as opposed to the mediator who provides a safe space for the parties to solve it themselves.

The importance of developing mediation heuristics

Heuristics are a valuable way of understanding complexity. Heuristics are also known as "Rules of thumb". They refer to an easily understood way of doing things in complex situations based on practical experience rather than on a particular theory.

Their value can be seen in the following examples. Napoleon revolutionised warfare by the heuristic of 'when the battlefield breaks down march the sounds of the cannons'. The US Marines version for a similar breakdown – 'capture the high ground, keep moving, keep in touch' (Snowden). Genghis Khan united the Mongol tribes through four heuristics - 'fight to the end, don't kill women and children, always pay your debts and be loyal to your friends'.

The challenge for our young mediation profession is to develop a set of mediation heuristics that will help us navigate the complexities and the perpetual novelty inherent in our field.

The basic facilitative mediation training model in the mediation training course that I undertook at Bond University in Australia in 1991 had unstated heuristics which were- 'stay in the exploration stages as long as you can - have a wide agenda and move between the agenda items - when everything breaks down go back to the model'.

After 30 years of mediation practice my principal heuristic is – 'don't panic, it will be okay, worse things happen at sea, I'm paid in advance and people generally want to settle, they have not walked out.'

The importance of managing complexity in the modern economy

The commercial, political and social world of the 21st century is interconnected at so many levels that any activity has significant levels of complexity. This creates high levels of uncertainty and ambiguity in any significant enterprise. Its greatest impact is at the human level.

The modern economy is built on the creative tension between risk-taking and innovation. This puts pressure on relationships which adds an extra level of unpredictability to any complex project. Therefore, cultivating human skills, also known as 'soft skills', is crucial in navigating this tension in relationships.

We now live in a time where a world of connectivity and fluidity has replaced the 20th century Newtonian concepts that are linear, predictable and deterministic. This is a world driven by the rise of the World Wide Web in 1990, powered by the Google search engine in 1996 and the power of social networking starting with Facebook in 2004.

The world dramatically changed again in 2007 when Napster introduced the first sharing platform heralding the beginning of the collaborative sharing economy. Then came Airbnb and Uber, both in 2008. We now have transparent and open data networks that are available free of charge to anyone with an Internet connection.

The latest iteration in this change is the development of the 'Internet of Things' which is a network of physical devices, including vehicles, home appliances and other items embedded with electronics, software, sensors, actuators and connectivity, which enables these things to connect with each other and exchange data. As an example Uber's computers share traffic data with Google Maps computers.

The complexity caused by this connectivity has upended the Newtonian concept that the world is ordered and measurable and that having knowledge of the past will allow a computation of the future. Many organisations and professions, including the legal profession, still rely on a fixed Newtonian view of the world and wonder why they are being disrupted to their detriment.

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.

We therefore require a new way of thinking and operating that can work with this complexity.

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 try to remain totally present in the moment to observe the dynamics of the interaction between the parties. They will probe first and then sense and respond to the reaction and they will try to suspend any attachment to their memories, desires and the need to understand what is happening (Bion, Rooney and Ross) and will try to not be deterred by blockages and impasses. They will allow their intuition to guide them through the session rather than letting the mechanical side of their brain be the *master*.

(McGilchrist)

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 in high demand in the commercial world.

These are the same soft skills that leaders and managers in the commercial world need to use to manage the flow of networks between people in the way that allows for a safe space for minority views, diverging opinions, conflict and internal disruption to emerge. They require a higher state of alertness and the ability to provide a real-time response to emerging patterns and behaviours. This is the best pathway for creating strategic surprises and opportunities.

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Greg is a Director of the Mediator Standards Board that regulates the Australian National Mediation Accreditation Scheme.

He has lectured in mediation, dispute system design and project Alliancing in a number of Australian universities, including the University of Queensland and Southern Cross University. Greg has conducted dispute resolution training for a number of public and private Australian institutions. He has published papers on a number of mediation based topics in a number of national and international journals copies of which can be downloaded from his web site. Greg together with Margaret Ross and Barbara Wilson has run since 2012 an annual mediation Retreat in Tuscany Italy see

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