
Matters of Interest

MEDIATION QUEST: THEORIES GROUNDED IN EXPERIENCES OF LIFE

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I have been asked to discuss the content of my books, *Mediation Quest: Making Sense of Loss*.¹ To do so, I thought it best to first tell the story of how the books unfolded and became almost an autobiography based on theories grounded in my experiences of life.

To begin, after 40 years of working as a counselling psychologist – nearly 20 of which was with the Victims Compensation Tribunal – and 25 years at the New South Wales Bar as a dispute resolver, I began to see more commonalities between the fields of Psychology and Law than there are obvious differences between them. For example, I noticed that there is no need for anyone to go either to a psychologist or to a lawyer if there is no sense of loss from which there is a need to recover. That loss may be a loss of self-esteem, for which one would see a psychologist, or a loss arising from unfulfilled contractual obligation, for which one would see a lawyer seeking compensation and/or damages.

It also occurred to me that in any dispute, the sense of loss that affects parties arises from assumptions made and/or expectations held. In other words, it seemed that everyone attempts to minimise their sense of loss by seeking assistance either in psychology or in law. This led to the idea that there is in fact a continuum of dispute resolution with Psychology at one end where the parties could deal with their perceived losses on a one-to-one basis, and Law on the other where rules, regulations etc are set to minimise losses for the whole of community. Mediation then sits somewhere in the middle – more like a marriage between Psychology and Law – where the personal assumptions and/or expectations of the parties can be reconstructed to create a more enduring basis for relating either together or apart.

The insight that disputes occur when expectations are not met became Chapter 1 of my thesis, *Understanding the Loss* which sets the broad parameters of the study. When expanding the idea of understanding the loss, I realised that not only is there a continuum of dispute resolution but that the continuum functions as an agent for social change as new relationships are constructed as part of the Mediated Agreements, which in turn form new social orders.

The process of social construction via mediated agreements accords with what social scientists have termed *social constructionism in action*. In other words, I realised that the process of social constructionism where the parties co-create or co-construct a new foundation for social interaction, and the process of implementing mediated agreements, seem to be the same process. In other words, implementing mediated agreements co-constructs a new foundation for social interaction which organically changes the relational world in which the participants live. And if the process of democracy is accepted as the opportunity for everyone to have a say about an outcome in their life, instead of being considered only in political electoral terms, then implementing a mediated agreement or social constructionism in action can also be likened to the process of democracy as a social change agent, because in formulating a mediated agreement, everyone has a say. In this way, Chapter 1 places individual responsibility into the broader spectrum of societal responsibility to better understand the loss as it sets the parameters for learning in a relational world to create agreements which become agents for social change.

For example, the idea of how individual and social responsibility interact accords with the work of Kenneth Gergen who concludes in his work *Relational Being*² that there is no such thing as the individual outside relationship. Gergen explains that even the most isolated loner is in relationship with his environment and forms a single unit of ever-changing interactions. He continues that the idea of the individual being separate from the environment arises from *perceptions* about the environment as distinct

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¹ Katherine Johnson, *Mediation Quest: Making Sense of Loss* (Honeysett Press, 2018).

² Kenneth Gergen, *Relational Being* (OUP, 2009).



from perceptions about and the person. Gergen says that this dual notion of perceptions is misleading, and that it gives the impression of separateness, whereas we are in fact one constantly changing set of interactive organic perceptions.³ This thought turns the whole notion of responsibility on its head as it clearly places the responsibility of actions not just on the individual, as happens for example in criminal law with the *mens rea* philosophy, but also places responsibility on the interactions of the various types of environment/societies which coexist to make up the individual.

Although the law recognises mitigating circumstances in criminal law, for example, and attempts to take them into consideration when sentencing, the public often identifies “justice” as “an eye for an eye” despite intellectually knowing that no amount of sentence is likely to bring back the dead or is likely to diminish the severity of the loss. In answering how such dissonance between thinking and feeling around loss can be reconciled, the notion of readiness, willingness and the ability of the parties to deconstruct their assumptions and/or expectations around the loss becomes paramount and becomes the subject of Chapter 2, *Making Sense of Loss* and Chapter 3 – *Deconstructing the Loss*.

Chapter 2 – *Making Sense of the Loss* explores the psychological characteristics of readiness, willingness and the ability in the individual to make sense of any loss. It focuses mostly on the concept of readiness to move forward by sharing the pain of the loss with at least one other person. In other words, to make sense of the loss we need to acknowledge the level of grief being endured and the impact that grief has on the readiness of the individual to move forward. Readiness, therefore, is about enabling the grief that is felt to be acknowledged and shared so that it can be released and transformed into movement forward.

Ability is about developing skills, especially conflict resolution skills, with which to move forward. Lastly, willingness is about being willing to select another more enduring *meaning* to a particular loss. In other words, Chapter 2 is about reconstructing the original assumptions that led to the loss to form a more accommodating level of expectation or a new story around the impact of the loss in a way that can be better endured.

Chapter 3 introduces Berne’s theory of Transactional Analysis⁴ where communication between parties occurs via the *Parent*, *Child*, *Adult* of each, and concludes that the best communication occurs when the *Adult* or empathy/compassion channel of one party can empathise with the *Adult* of the other – that is when both parties can feel what it is like to walk a mile in the other’s shoes. Berne claims that agreements reached via the *Adult* empathy channels of both parties lead to a real understanding and a stronger capacity for forgiveness between the parties. It is through the *Adult* where the learning occurs about how best to relate at any given point in time and through which we experience humour – which some would argue is the best way of learning.

He continues that communication between the *Child*, or the feeling/creative channel of one party, with the *Child* of the other will tend not to last as the two continue to make up new rules for the game in which they continue to play.⁵ Berne continues that communication between the *Child* of one party and the *Parent* or the moral/thinking channel of the other is likely to be negative as the *Parent* tries to tell the *Child* how they should behave and what should happen.⁶ And of course, the conventional positional stance occurs when the *Parent* of one party can only reach the *Parent* of the other, and a Mexican standoff occurs where neither party is prepared to move.

I noticed through Berne’s Analysis that the field of Psychology on the dispute resolution continuum attempts to handle the *Child* within us, whereas the Law attempts to handle the *Parent*. I further noticed that it is through the process of Mediation that we attempt to reach the *Adult*. To this scenario, I have added a concept of *Observer Self* which I claim occurs once the learning through the *Adult* empathy channel can be implemented in the form of an agreement and becomes the foundation of a new way of relating between the parties. In other words, it is through *Observer Self* that the most effective reality

³ Gergen, n 2, 22.

⁴ TA Berne, *Games People Play* (Groves Press, 1964) 30.

⁵ Berne, n 4, 30.

⁶ Berne, n 4, 30.

testing of any learning occurs to create long-lasting mediation agreements which become agents for social change in the community.

Chapter 3 also looks at the theory of grounded research through Charmez⁷ and systematically deconstructs the traditional mediation process according to the 12 tenants of the grounded research theory approach. Added to this is the Normative Information Session, which is the key difference between my Re-Constructionist approach to mediation and all other forms. Chapter 3 further introduces and implements the concepts of *Meaning Re-construction* and *Mindfulness* to analyse the traditional mediation approach and presents it as an organic process that attempts to meet the needs of the parties as they unfold within the broader social framework. In other words, during the exploration phase of the Re-Constructionist mediation process the parties become mindful researchers of each other's worldviews around the context that they say caused the dispute between them.

Having outlined the parameters of the study in Chapter 1; introduced the concepts of readiness, willingness, and ability to deconstruct the assumptions (and/or expectations) around the loss in Chapter 2; and having examined the communication channels via Berne's *Transactional Analysis* and the concept of *Observer Self* in Chapter 3, I then look at the process of reconstructing the original meaning given to the loss from a micro and macro perspective, and that becomes the topic of Chapter 4 – *Re-Constructing the Loss*.

Chapter 4 explains the concept I have termed *relational learning* from a micro perspective and then places it into a macro societal perspective. That is, the micro analysis of the mediation process in Chapter 3 from a grounded research perspective applies the concepts of *mindfulness* and *meaning reconstruction* to the individual's interpretation of loss. In Chapter 4 the individual's reconstruction of meaning around the loss is placed into a macro perspective by focusing on how the ever-changing interactions between the individual and his/her society become a learning process. In other words, relational learning results not only in an agreement around how the parties are to relate, thus settling the personal dispute, but also reconstructs a new social order. Therefore, when implementing mediated agreements the new social order that is constructed can be explained in terms of democracy in action in a relational world, which is then considered from a historical perspective.

I begin with the work of John Dewey,⁸ an American Educationalist who lived at the turn of the 20th century and believed that society could be democratised best through the education system where parents, teachers, students, and the business community of any town could co-operate to set up systems for the benefit of all. Dewey believed that education could be used to meet the needs and interests of the disparate members of the community, which in turn could contribute to an effective economic and social system.

Dewey further believed that the needs and interests of each group constitute their world view. He was such an effective educationalist that he inspired the work of George Kelly, a psychologist who took the macro perspective of Dewey's work and applied it to the micro functioning within the individual.⁹ Although Kelly talked about the individual, he always noted the interactions from society that make up the individual as did Dewey. This accords with Gergen's work.¹⁰ The result of Kelly's work was the development of his *Personal Construct Theory* which has become a key process in psychology today. I have used Kelly's *Personal Construct Theory* in the Re-Constructionist Model of mediation as the basis of dealing with the respective world views of the parties for the last 25 years, but have found that it can be used during the micro analysis of any mediation process, especially during the pre-mediation (tele) conference phase.

Chapter 5 – *Enduring the Loss* – takes the personal agreements of the parties from the mediation process and implements them as a foundation to build not just new social orders as in Chapter 4, but also systems or institutions with which to nurture and further promote *concepts of social justice* as examples of

⁷ Kathy Charmez, *Constructing Grounded Theory: A Practical Guide through Quantitative Analysis* (Sage Publications, 2006).

⁸ John Dewey, *Experience and Education* (Macmillan, 1938).

⁹ George Kelly, quoted by Mark Eliot Paris and Franz R Epting, *Dewey between the Lines: George Kelly and the Pragmatist Tradition* (01 December 2014) 181–189.

¹⁰ Gergen, n 2.

democracy in action. The Chapter looks at examples of institutionalisation as a developmental process that signals the maturity of a society and could be the building blocks of the electoral process which we term *democracy*.

In summary, through my research in dispute resolution and from the knowledge grounded in my experiences of life, I have noticed significant commonalities between Psychology and Law – one being that both Psychology and Law are the opposite ends of a continuum in Dispute Resolution. I have also noticed that Dispute Resolution is itself an agent for social change and have realised that Dispute Resolution is not just a settlement process but an active means of better enduring losses on an individual level at the psychology end, and an agent for social change on the communal legal end.

I further noticed that mediation was one dispute resolution process that was something like a marriage between Psychology and Law, where the individual's needs were able to be considered within their broader social and legal context. In other words, I realised that the process of mediation offered parties the best opportunity to have a say not only about how they will relate, but in doing so, to also contribute to creating a new social order. As such, the outcome of a mediated agreement could be likened to the process of democracy in action – if by “democracy” we understand not just the electoral, political process but the process where every party's opinion is considered as part of an agreement, even if it is discarded within that process.

The insight that mediated agreements become social change agents highlights the significant role Mediation can play in further creating access to justice institutions in today's ever-changing, globally linked, relational world. By empowering individuals, the Re-Constructionist process of mediation as outlined in Chapters 1–5 above can offer parties more options with which to better endure their loss, and thereby create peace. This differs from the conventional positional bargaining or determinative approaches, which are still used as legal tools where the emphasis is on creating further loss through sanctions, trade wars or military action – all of which are still dispute resolution processes but with far-reaching negative consequences.

I hope I have said enough to inspire a sharing of these ideas from my books, which I feel passionately should be considered to create a more peaceful world. I am, however, mindful that the Theory Book is a PhD thesis and written as such, and the Handbook is a guide for practitioners. Nonetheless, despite the necessary academic writing style, which may be hard reading, I have been told by several colleagues that reading the books was worth the effort. I hope you also find it worth the effort.