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To Be or Not to Be Human

That is the Question for Mediators

Margaret Ross and Greg Rooney

Part A. What does it mean to be *human*? What does it mean to *be*?

This paper is dedicated to Jacqueline Morineau, French mediator and archaeologist, who died on 15 July 2023 aged 89 years.

Jacqueline developed humanistic mediation in France in the early 1980's and taught in many countries in Europe and South America. Only in the last few years has her work become known to English speakers. She wrote several books¹ about this method and is widely known in Europe and Brazil.

The authors attended humanistic mediation workshops conducted in France for the first time in English by Jacqueline in 2018, 2019 and 2023. They were introduced to her by French psychologist Miriam Eelbode.

Verticality – the central pillar of humanistic mediation

Verticality is a position or direction perpendicular to the horizontal plane.

Central to humanistic mediation and to being human is the ability to stand (or sit) with our feet on the earth and head in the sky. This stance is called verticality.

To be present and aware of this connection, through the body, between earth and sky is a key human characteristic. Our feet on the soil (humus) is our bodily connection to the world. Our head in the air reaches and connects to the world of the spirit.

Our contact with the earth “humus” gives us our humility. We aspire to reach the sky, the cosmos. As the Ancient Greeks taught, we consist of body, spirit and soul.

As we stand or walk in nature, in silence, we tap into an inner space within us. We can call this spirit, our relationship with something more than ego and our rational mind.

Through awareness of our verticality we experience the opening of a “door” to our “inner home” - the inner silence and space that exist within us. As Jacqueline Morineau and Zen Buddhists say it is “the door without a door, the gateless gate.”

Sensing the verticality of our body is what it means to be human.

¹ *L'esprit de la médiation*, Morineau J, Editions Erès, Collection Trajets, 1998; *Le médiateur de l'âme, Le combat d'une vie pour trouver la paix intérieure*, Morineau J, Editions Nouvelle Cité, Collection Spiritualité, 2005; *La médiation humaniste, un autre regard sur l'avenir*, Morineau J, Editions Erès, 2016; *La médiation humaniste, Une renaissance de la mort à la vie, un chemin de paix*, Entretiens, Morineau J & Deluze A, L'Harmattan, 2023

The Anglo-Saxon 'conflict resolution' model

In the Anglo-Saxon Western world, the 'conflict resolution' model of mediation is dominated by a rational, solution-oriented perspective. As Jacqueline Morineau has argued in her work, this model, which is also prominent in France, is very influenced by Descartes' philosophical statement: "I think, therefore I am". It is an intellectual attempt to understand the world and our existence in it. It distinguishes mind from body.

This Western mediation model has a mechanical view of the physical world, with an emphasis on logical outcomes, or resolution of a problem by techniques, structures and measurable or predictable processes. It gives the illusion of control over a problem or dispute and argues that the mediator can be intellectually, and thus physically, neutral.

Shakespeare's metaphysical question – 'to be or not to be'

As Jacqueline Morineau posited, the intellectual approach of Descartes is very far away from Shakespeare's metaphysical question in Hamlet's soliloquy "To be or not to be, that is the question."

*To be, or not to be: that is the question:
Whether 'tis nobler in the mind to suffer
The slings and arrows of outrageous fortune,
Or to take arms against a sea of troubles,
And by opposing end them? To die: to sleep;
No more; and by a sleep to say we end
The heart-ache and the thousand natural shocks
That flesh is heir to, 'tis a consummation
Devoutly to be wish'd. To die, to sleep;
To sleep: perchance to dream: ay, there's the rub;
For in that sleep of death what dreams may come
When we have shuffled off this mortal coil,
Must give us pause:²*

It is this struggle with life and death, being and not-being, that makes us human.

Our capacity to survive suffering and darkness (the shadows of the night, of our dreams), to wake every day and greet the light, to face the chaos and challenges that surround us, is integral to our humanity.

As mediators we face this suffering and chaos frequently. It affects us and the parties. We are not neutral blotting paper (Gestalt therapy likens neutrality to apathy, blotting paper absorbing with no response or reaction). It is not possible. We cannot be non-human. We are not robots. Not AI nor ChatGPT.

We can easily forget or ignore the impact our presence (either physically or virtually) has on those with whom we work and connect and the impact their presence has on us.

² Hamlet, W. Shakespeare, Act 3 Scene 1

The mediator is 'Mediation'

In this paper we suggest that it is the mediator who makes the difference by their human presence in a mediation. In fact, mediation is the embodiment of the mediator. The mediator is mediation.

To take on this mediation role we need to live it in our lives. We need to be aware of our responses and to work on ourselves, our own inner suffering, pain, the ghosts we carry. We need to clear our inner space. Like a Zen Buddhist monk, we need to sweep clean our thoughts with a broom, with meditation, silence.

We need support to do this, to face our own ghosts, from other mediators through supervision, from friends, relations and colleagues as well as reflecting on our own practice. The work is lifelong. It is never finished.

Being silent in the moment is the human connection to the participants

Clearing away our thoughts and expectations, allows us, as mediators, to sense in our body, our verticality, what the participants are feeling and experiencing. It requires us to be totally present in the moment with them.

As Jacqueline Morineau taught, we can be a mirror (un miroir) for them and can express the feelings and words they cannot fully express. We become a mirror for their trauma, their humanity and their hidden scream.

The mirror connects through the simple presence of the mediator

The mirror does not project – it reflects.

The mirror allows a feeling to emerge unbidden in the mediator and to be reflected back to the participant.

As psychotherapist Thomas Ogden³ suggests working with a client is not about projecting your personality. Rather it is becoming less definitively oneself. Being less of oneself allows the parties in the door, becoming one with them in the meeting.

Being a humanistic mediator is not about **projecting** empathy, trust, advice, help, understanding, the toolbox of skills, questioning methods or 'solving' people's disputes.

It's okay for mediators to just be human. The foundation of humanistic mediation is learning to be at peace with yourself and thus with others.

³ Ogden, T. H. (2015) *Intuiting the Truth of What's Happening : On Bion's "Notes on Memory and Desire". The Psychoanalytic Quarterly* 2015 Volume LXXXIV, Number 2

Can we really not be human?

Is it possible to leave ourselves, our human feelings, body, soul and spirit out of the mediation encounter? Parties will soon see behind any mask we try to present to them.

Our humanity is our best and most powerful quality that we possess. Why hide it behind the masks of neutrality, professional expert, lawyer, retired judge or social scientist?

By removing those masks and presenting ourselves as we are, we become able to reflect back to participants their deeper, perhaps unexpressed, feelings.

It is the human to human contact that is at the heart of the mirror. The inner self and presence are at the heart of the movement forward.

It is beyond techniques and toolboxes of skills.

How to introduce the human connection into the mediation process

The intake session of a mediation is where a foundational relationship is built between the mediator and the parties. It is important to start this meeting at the human level. This first human to human interaction sets the groundwork for the remainder of the mediation.

The key to establishing this human connection is simple politeness, respectful and considerate behaviour that is built into all cultures. Good morning, good afternoon, welcome and thank you are important social norms in a Western culture. For the French it is culturally appropriate to greet someone with a “bonjour” and to depart with “au revoir” or “bonne journée”. To do otherwise is insulting to the French. All cultures have their own unique form of introductory greeting.

In the cultural context in which we work a simple good morning and thank you for coming to the intake session is the first step. This is followed by the mediator asking how that particular party is feeling about the forthcoming encounter. The question we might ask is: *“What are your thoughts about meeting John next Tuesday at the mediation?”* It’s a very simple and polite open question with no set answer.

The response from each party will reveal the human side of their current lived experience, particularly with respect to the conflict at hand. In this way the mediator introduces the human element.

This human connection can be returned to at various strategic points within the mediation by checking how the parties are feeling.

Politeness must be context specific to the state of the parties and especially within the cultural context of the particular mediation setting. A person with an indigenous cultural background will require a culturally specific form of welcome. Each culture has its own unique way of greeting which must be understood and respected by the mediator.

Part B Humanity and its connection to the flow of life

Humans live each moment within the flow of time

"No man steps in the same river twice. For it's not the same river and he's not the same man".
Heraclitus (500BC)

To be human is to be alive, to be present within each moment within the flow of time.

"Both the past and the future are transformed through the present moment, and there is no present moment without a conscious human being" (Reshad Field 1979)⁴

Viewing conflict as a natural part of the flow of life is supported by the sciences, particularly the laws of thermodynamics which apply to everything in nature including humans. The second law states that entropy, the process of disorder, always increases. Things, including relationships, break down, we get older and we wear out. The first law says that nothing is created or destroyed. Combined together, the two laws of thermodynamics represent the circle of life of continual endings and fresh beginnings.

Another scientific concept that applies to everything in nature and humans is Constructal Law (Adrian Bejan). It describes the phenomenon of flow in all of physics that governs our human existence. It basically says when the flow stops you die. This applies to a blocked vein causing a heart attack or stroke, a blocked river that stagnates or a blocked family group, organisation, government, country or empire on the path to decomposition.

Looked at from this perspective the question for mediators becomes, where does each party currently stand in the flow of their lives and how does this intersect with the other party. Why is this flow blocked? *What is going on here?*⁵

The art of the mediator is to move away from seeing conflict as a static event to seeing it as continuous fluid movement in the parties' lives.

To be human is to exist within the flow of life

Returning to Jacqueline Morineau's concept of verticality, we see that the Austrian social reformer and philosopher, Rudolf Steiner, like Jacqueline Morineau, represented man and humanity as a figure standing upright linking the ground to the sky. His statue titled "The Representative of Man", is on display today at the second Goetheanum in Dornach, Switzerland.

⁴ Field, R. *The Invisible Way: A Time to Love- A Time to Die*. Element Classics Editions 1979

⁵ John Kay and Mervyn King - *Radical Uncertainty*, The Bridge Street Press 2020

The difference with Steiner is that his image of man is moving forward. This movement forward represents the flow of life to which all mankind is subject.

Mediation is a choice between the road to life and the road to death

For Jacqueline Morineau, each mediation, in its own way, is a microcosm of that death/rebirth flow cycle. Mediators work in the flow of life particularly focused on the tipping point between death and life.

The mediation process can give the participants the choice between death (looking back forever to the past and re-experiencing pain and suffering over and over) and life (a new perspective on the problem and the pain and an ability to see the future and move forward).

There is no one solution waiting to be discovered but multiple options waiting to emerge. The mediator becomes the container in which multiple perspectives are held in suspension until the right option emerges unbidden and finds the parties.

What makes us human is that we are all on the path between birth and death. We are faced with continual choices between life and death. That is our link with each other member of the human race.

Within each of us is an inner scream. To release it is to enable us to be at peace and live life. There is a hidden scream within every dispute, even within commercial mediations.

The Western conflict resolution approach tends to focus on achieving a deal to end a dispute without allowing the space and time for the parties to release their hidden pain and attachment to the past.

Every ending is just a new beginning we just don't know it at the time - The concept of flow

Humanistic mediation, in its broadest sense, embraces both endings and, more importantly, fresh beginnings. Mediation acts as a path or bridge between the two.

The following quotes highlight the transition between the endings and fresh beginnings:

"The situation is hopeless; we must take the next step." **The cellist, Pablo Casals**

"If we want things to stay as they are, things will have to change." 'The Leopard' a novel by Giuseppe Tomasi di Lampedusa

"Around and around we go, encountering the same things, again and again, but within this movement things happen that change us, annihilate us, shift our relationship to the world. It is this circular reciprocal motion that grows more essential and affirming and necessary with each turn." **Musician and poet Nick Cave in conversation with Seán O'Hagan⁶**

⁶ Faith, Hope And Carnage, Cave N and O'Hagan S, The Text Publishing Company, 2022

'A new scientific truth does not triumph by convincing its opponents and making them see the light, but rather because its opponents eventually die and a new generation grows up that is familiar with it' **Max Planck, the German theoretical physicist**

"The moment when you step out into the open is also a moment of risk-taking. Letting go of the old is part of a new beginning. There is no beginning without an end, no day without night, no life without death. Our whole life consists of the difference, the space between beginning and ending.

It is what lies in between that we call life and experience. I believe it time and time again; we need to be prepared to keep bringing things to an end in order to feel the magic of new beginnings and to make the most of opportunities.

That was what I learned as a student, and it is what I know in politics. Who knows what life will bring after my time as a politician? That, too, is completely open. Only one thing is clear. It will again be something different and something new".

From Angela Merkel's speech at the Harvard commencement ceremony 2019

The mediator inhabits this time and space between an ending and a fresh beginning.

Liminality - mediators work in the liminal space between endings and beginnings

Anthropologists call the transition period between the old and the new 'liminality'. The best example is teenagers who are no longer children but not yet adults.

Liminality is the period of change and opportunities.

Mediators work in this liminal space.

Dispute Resolvers or Mediators

"It's hard to survive in the jungle when you've been trained in the zoo".

Sonia Blignaut⁷

The traditional Western mediation model, particularly when described as 'Dispute or Conflict Resolution', tends to view the mediation encounter as a static event to be resolved by using mediator interventions drawn from a 'toolbox' of skills. These are mechanical skills and techniques that are used to promote the expertise of 'dispute resolvers'.

The dispute resolver, as the name implies, does the resolving for the parties. Get a deal with no messy emotions and send them on their way. For Mediators, conflict is a warning that something needs to change, which involves an emotional component. While both might end up with the same result the 'dispute resolvers' focus is on the ending whereas the 'mediators' focus is on the fresh beginning.

These techniques are a form of linear thinking that suggest the right question or the right intervention by the dispute resolver will naturally produce a logically consistent result. It is a Newtonian cause-and-effect approach.

⁷ [It's hard to survive in the jungle if you were trained in a zoo | by Sonja Blignaut | Medium](#)

However, anything involving humans, particularly in the mediation setting, falls within the complex domain where nothing is repeated and every interaction sparks a counter interaction. It is like the jungle. It is more Quantum mechanics than Newtonian.

Mediators, within the broad definition of mediation, provide a safe space to allow something to emerge out of the interaction. It is through this process of emergence that opportunities arise for innovation and creativity. Often something beyond the parties' original positions emerges.

Mediation is an interactive and emergent space beyond the direct cause and effect Cartesian thinking model of 'Dispute Resolution'.

The dehumanised mediation model

The 'Dispute Resolution' model is further complicated by the fact that the legal profession, which favours this term, has a centuries-old history of dehumanising the litigation process. Lawyers stand in the shoes of the parties to resolve the dispute on their behalf.

The legal profession has attempted to colonise the mediation field favouring keeping the parties apart, with the lawyers again standing in their clients' shoes while the dispute resolver engages in the shuttle negotiation with the lawyers. It parallels their approach to litigation.

In addition, placing the dispute in the hands of lawyers immediately suspends the flow while they take instructions and prepare positions.

The Western model of 'conflict/dispute resolution' is a structured approach focusing on outcomes, settlements, the end of discomfort as quickly and as cost-effectively as possible.

The broader concept of the 'Mediator' places an emphasis on relationships and the emerging story of both parties as the path to the unfolding solution.

The use of Time in mediation

Humanistic mediation has a different approach to the concept of time.

The Ancient Greeks viewed time on two levels.

Kronos – was the God of *chronological* time who devoured his children each day to prevent the prophecy of them destroying him. It is our 24-hour, 60 minute and 60 second clock time that rules us.

Kairos – was the God of eternal time, the right opportunity, the right moment, in the here and now.

Eternal time or Kairos is experienced when looking at a sunset. Time seems to stop and you feel yourself in another time and space.⁸

⁸ *La médiation humaniste Entretiens, Morineau J & Deluze A, p.55*

The mediator allows the parties a different space and time so that the Kairos moment, the right opportunity, can emerge. It is beyond chronological time.

As our colleague UK mediator Barbara Wilson has often said “Time is the mediator’s friend”.

Beyond techniques and toolboxes

Our Western founding mediator mothers and fathers in the 1980s and early 1990s had to fend off attacks from the legal profession and the social sciences that we were amateurs interfering in their professions.

They responded with the concepts of mediator neutrality, just outcomes and balance of power. It was, in effect, mimicking the judicial stance that judges are dispute resolvers who are neutral, balance power between parties and, most of all, provide just outcomes. This stance of itself is questionable.

*“Just as judges do not make law,
they do not resolve disputes,
rather, they adjudicate upon them”.*

- Justice P. W. Young (retired) of the New South Wales Court of Appeal⁹

Much of the current mediation theory, including the so-called toolbox of skills, is devoid of context. Context changes everything and what is appropriate one minute might not be appropriate a few minutes later. Theory without context is arguably just intellectual speculation.

It is time to move to a mediation theory that reflects the fluid nature of human interactions that form the basis of the mediation experience for the parties and for the mediator.

Incorporating the principles of flow into the mediation context

The first step requires a change of thinking – moving from seeing mediators as dealmakers to seeing mediation as a pivotal step in the continuous flow of the parties’ lives. Looking forward not backwards.

Moving from the intellectualised Cartesian approach, which divides mind and body, to the metaphysical Shakespearean approach of, to be or not to be.

It is an approach where there is no answer/solution ready to be found by the mediator but one where an answer emerges out of the fluid interaction between all parties and the mediator. The scientific principle of emergence developed by Murray Gell Mann from the Santa Fe Institute describes this concept.¹⁰

⁹ Young, P.W. (2002) ADR: A Generic, Holistic Concept, 76 ALJ 213 at 213

¹⁰ Consciousness, Reduction and Emergence - Some remarks Murray Gell Mann <https://doi.org/10.1111/j.1749-6632.2001.tb05705.x>

This allows the mediator to remain present in the moment by letting go of any attachment to their memories, desires and the need to understand what is going on. (Wilfred Bion)¹¹.

This creates a protected space for the parties to engage with each other at a human level as the path to a fresh beginning.

Mediator heuristics

The toolbox of skills approach is often taught as a key part of the theory of mediation.

Skills such as reframing, using the right question, hypothesising and reality testing are taught to new mediators with the expectation that they will equip them with a set of tools to lead the parties to an agreement.

It would be more helpful to replace these techniques with a set of more fluid mediator heuristics (also known as rules of thumb).

‘A heuristic is a mental shortcut commonly used to simplify problems and avoid cognitive overload. Heuristics are part of how the human brain evolved and is wired, allowing individuals to quickly reach reasonable conclusions or solutions to complex problems.’

Heuristics, James Chen¹²

Napoleon used heuristics to organise his forces in a complex battle. He decreed that when the battlefield broke down - march to the sound of the cannons. For the US Marines the heuristic for a battlefield break down is to capture the high ground, keep moving and stay in contact.

Genghis Khan’s heuristics that governed all his forces and conquered lands were - always keep your promises and pay your debts, don’t kill women and children and never betray the Khan. They were simple rules that everyone could follow in any context.

Heuristics can be applied to all situations in a complex environment.

Some mediator heuristic examples are:

- stay totally in the moment
- defer persuasion
- defer solutions
- when in doubt use silence
- time is the mediator’s friend. (Barbara Wilson)
- keep going even when all things feel lost and hopeless
- don’t give up on the parties. Always believe they can get there. They will notice
- when blocked look for an adjacent possible step (Stuart Kauffman -The Santa Fe Institute)¹³

¹¹ Bion, W. R.(1967) “Notes on Memory and Desire” (1967). In R. Langs (ed.) Classics in Psycho-Analytic Technique. New York: Jason Aronson, 1981

<http://braungardt.trialectics.com/sciences/psychoanalysis/bion/bion-memory-desire/>

¹² [Heuristics Definition \(investopedia.com\)](http://www.investopedia.com/terms/h/heuristic-definition.asp)

¹³[The ‘Adjacent Possible’ of Big Data: What Evolution Teaches About Insights Generation | WIRED](http://www.wired.com/wired/article/adjacent-possible-big-data)

- be like a tight rope walker, just focus on the next step (Angela Merkel)
- mediate with soft eyes (The Bhagavad-Gita – The Authentic Swing, Steven Pressfield)¹⁴
- look for connecting interests (Fisher and Ury - Getting to Yes)
- remain human
- love the parties (John Haynes)
- probe, sense and respond (Dave Snowden -Cynefin)¹⁵
- map the present and move forward in the general direction of where you would like to go rather than pick an outcome and work to close the gap
- Keep all possible outcomes oblique (John Kay, Obliquity theory- The science of muddling through)¹⁶

These rules of thumb are not rules per se. They just help centre the mediator within the twists and turns of each unfolding moment. They allow the mediator to experience fully the experience of the mediation encounter. It is in this state that the intuitive thought for the mediator arises unbidden.

This means there is no one way or right way to mediate. There is no universal solution. It requires a fluid approach. Mediation is an emergent practice.

Please note that these are *mediator* heuristics not mediation heuristics.

Mediator heuristics can be used to assess advanced mediator training role-play assessments and to critique competitors in mediation competitions.

Summary

To be or not to be human indicates that we have a choice in each moment, as to whether we bring ourselves, our human dimension, into the mediation.

There are no techniques, theories, lectures which are going to allow a meeting with the other in his or her depths.

Inner silence and peace with yourself as a mediator is not achieved by learning techniques and repeating them. It is a life's work.

It is ultimately about being in a state of mediating without mediating.

Margaret Ross and Greg Rooney

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¹⁴ Stephen Pressfield, The Authentic Swing, Black Irish Entertainment LLC 2013

¹⁵ A Leader's Framework for Decision Making David J. Snowden and Mary E. Boone, Harvard Business Review November 2007

¹⁶ John Kay, Obliquity. Why our goals are best achieved indirectly, Penguin 2010

specialises in Family Law, Mediation and Dispute Management in a wide area of disputes. Margaret has conducted dispute resolution and mediation courses for several Universities and has co-designed and facilitated dispute resolution courses for government and non-government organisations in Australia.

Greg Rooney has been a practising mediator in Australia since 1991. He sold his legal practice in 1996 to practice fulltime as a mediator. Greg has mediated more than 1,500 disputes in a diverse range of conflicts including multi-party disputes involving government institutions, commercial and industrial disputes, agricultural disputes, franchise disputes, matrimonial disputes and disputes involving conflict in the workplace.

For the last eleven years he has mediated over 200 face-to-face mediations between religious leaders and individual victims of sexual abuse as well as abuse within the Australian Defence Force.

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 and Margaret have run an annual mediation retreat in Tuscany since 2012