

The Limits of Mediation, by Kenneth Cloke

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“Every man takes the limits of his own field of vision for the limits of the world.” Arthur Schopenhauer

“To be aware of limitations is already to be beyond them.” Georg Wilhelm Friedrich Hegel

“The only way of discovering the limits of the possible is to venture a little way past them into the impossible.” Arthur C. Clarke

It is difficult to understand anything fully until we recognize its limits -- the places where it falls apart, or miraculously comes together -- where it begins and ends, or transforms into something entirely different. Together, these limits define the frontiers, or terra incognita, where critical discoveries can be made and entirely new and profound understandings can take shape. As I wrote several years ago in *Mediating Dangerously*,

It is difficult to describe what happens when things fall apart, or how they turn, transform themselves and come together in new ways. Words cannot accurately account for what happens at the edges, the frontiers and boundaries, the dark places where everything we know crumbles and disintegrates, or the bright places at the center where what we didn't know coalesces and becomes something new.

Mediation encompasses both. Conflicts mark the frontiers, the places where we weaken and divide. Yet these same frontiers embody the forces that strengthen us, bring us together, transform us, and dissipate our differences. Conflicts probe our innermost natures, and the outermost limits of our being. They provoke cruelty and compassion, competition and collaboration, revenge and reconciliation. Mediation is the dangerous magic that moves us from one to the other.

Perhaps the greatest limit in any endeavor is created by what we think we know, which leads us to fail to notice anything different or contradictory, anything that might require a fresh approach or paradigm or understanding. What is worse, we do not know that we do not know. As Psychiatrist R. D. Laing described it,

The range of what we think and do is limited by what we fail to notice. And because we fail to notice that we fail to notice, there is little we can do to change until we notice how failing to notice shapes our thoughts and deeds.

It is therefore important for us to develop an understanding of the limits – not just of mediation as a process, but of the ways we perceive and think about conflicts that defeat our imagination and prevent discovery. Mediation is still in its infancy, and because we are still beginners in this work, we don't actually know what the limits of the process are. However, we can start by identifying some likely, or potential limits, which I prefer to think of as dualities that appear disconnected, yet are invisibly linked, and can be

approached and considered from different perspectives that illuminate, enhance, and complement each other.

Two of the fundamental limits in every human endeavor are biases and noise. Daniel Kahneman, who won the Nobel Prize in economics, wrote brilliantly about biases in *Thinking Fast and Slow*. Subsequently, in *Noise: A Flaw in Human Judgment*, Kahneman, with Olivier Sibony and Cass R. Sunstein, wrote that to appreciate and correct errors in judgment, it is necessary to understand both bias and noise. Bias, of which there are many varieties, creates errors in judgment, but so does noise, which is rarely discussed or acknowledged.

The authors define noise as “unwanted variability” that we bring to decision-making, including random errors of judgment that can lead to compromised fairness, decision risks, and uncertainty. The difficulty is that conflict is both a fertile source of bias and naturally noisy. They write, with particular relevance for mediators,

Some noise may be inevitable in practice, a necessary side effect of a system ... that gives each case individualized consideration, that does not treat people like cogs in a machine, and that grants decision makers a sense of agency.... Diversity of opinions is essential for generating ideas and options. Contrarian thinking is essential to innovation.

In mediation, it is possible to reduce the impact of both bias and noise by paradoxically increasing the amount of variability, adding alternative ideas and diverse interpretations, and expanding the range of available choices. This suggests a shift from rules to standards, which the authors distinguish as follows:

Rules are meant to eliminate discretion by those who apply them; standards are meant to grant such discretion. Whenever rules are in place, noise ought to be severely reduced.... [However], whenever a public or private institution tries to control noise through firm rules, it must always be alert to the possibility that the rules will simply drive discretion underground.

Mediation, in my view, makes it possible to transform the parties’ focus from imposing or obeying rules to clarifying, negotiating and committing to values. We may then regard the limits of mediation as requiring a similar shift from identifying simple, fixed, clear, logical, one dimensional situations in which we cannot succeed to posing a set of complex, fluid, imprecise, poetic, multi-dimensional paradoxes where some limits exist, but in a form can be bypassed or worked through, as regularly happens, for example, in quantum tunneling.

As an inspiration for the limits described below, Gandhi created an interesting list of “seven social sins.” These included: wealth without work, pleasure without conscience, knowledge without character, commerce without morality, science without humanity, religion without sacrifice, and politics without principle.

If we imagine a similar list for mediation, each limit may then be described as an interconnected set of concerns, without finally deciding whether any particular issue is mediate-able or not. Instead, each limit ought to allow us to reframe the problem, look at our experiences with fresh eyes, be willing to try something completely new, make repeated efforts that may appear unlikely to succeed, and learn afresh what is mediate-

able and what is not in each circumstance, based on subtle, complex, continually shifting conditions.

Here, then, is my top ten list of the likely limits of mediation, with a brief explanation of each that identifies the difficulty without eliminating the possibility that innovative efforts may succeed in resolving it.

1. **Power without purpose.**

Power is an obstacle in mediation because it is nearly always unequally distributed and arranged as a "zero-sum game," or "win/lose" process. If resort to power has a purpose, it may be possible to achieve that purpose by satisfying the parties' interests and thereby reduce their perceived need to resort to power. Yet where power is used without any goal or purpose at all, as when it is exercised simply for the pleasure of defeating others, satisfying interests will be less likely to prevent people from using it.

2. **Insanity without comprehension.**

Everyone in conflict is a little bit crazy, or seems so to their opponent, so describing the other person as insane doesn't mean we are off the hook in trying to mediate, because there is a small piece of insanity that is triggered by every emotional confrontation that can be assuaged by expanding their comprehension – of self, of others, and of the problem. Yet where insanity precludes all comprehension, or obstructs the ability to understand what is taking place at all, we may not be able to mediate, and consensus will become elusive.

3. **Dishonesty without motive.**

Dishonesty that has an underlying motive or goal can be addressed by seeking to satisfy it, in which case the person will feel less strong a need to be dishonest. An example might be someone who lies about what time it is, or about the weather for no discernable reason. People in conflict lie to each other often, particularly where dishonesty is motivated by survival, or their desire to retain a job, or keep a marriage, or be promoted, or be loved or looked on favorably by others. Yet where there is dishonesty without any motive at all, it is far more difficult to prevent people from using it.

4. **Addiction without awareness.**

People can become addicted to many things, including conflict, yet if we are able to increase awareness of their addiction, we may be able to design a process like Alcoholics Anonymous' 12-step program, or some other method that can assist the person or organization in breaking their addiction. Yet if they are addicted and resist becoming aware of how addicted they are, or how addiction works, or how it impacts others, their unawareness and resistance can limit our ability to resolve the conflict.

5. **Greed without gain.**

If someone is seeking gain from greed, a mediator may be able to find a way of getting them what they need or want without needing to become greedy. In this case, their greed is actually conditional, contingent, and instrumental rather than absolute, fixed, and fundamental. Yet if they are greedy without any desire for gain, their insatiability can create obstacles to empathy, learning, and collaboration that limit the effectiveness of mediation.

6. **Suffering without empathy.**

In the beginning, people who suffer turn inward, often obstructing their ability to feel empathy or compassion for the suffering of others. Suffering can lead to an

increase in our capacity to recognize pain in others and experience empathy and compassion for them., which can diminish the length and depth of suffering by transforming it into increased sensitivity. Yet to suffer without any ability to experience empathy or compassion for the suffering of others often blocks listening, understanding, and acknowledgement, and creates limits in mediation.

7. Revenge without self-interest.

Revenge, in my view, is the willingness to hurt ourselves in order to hurt others. The introduction of any form of self-interest, self-esteem, or self-care can therefore begin to undermine the desire for revenge. But to be so deeply and passionately committed to revenge and the pain of others that we are willing to harm ourselves can make it much more difficult, if not impossible, to mediate successfully.

8. Trauma without meaning.

When trauma feels meaningless, it is difficult for those who experience it to perceive its deeper lessons and possibilities, leaving them unable to cope with, escape, learn from, or transcend it. If suffering can be seen to have a larger meaning or higher purpose, perhaps in our commitment to making sure that no one else experiences the same injury again, it may be possible to mediate restorative solutions. Yet to suffer trauma without any meaning at all can keep people feeling trapped in suffering and reduce the effectiveness of mediation.

9. Bias without perception.

Everyone has biases of many different kinds, ranging from simple cognitive biases to more serious stereotypes, prejudices, and discriminatory attitudes that assert superiority based on race, gender, sexual orientation, caste, class, religion, nationality, age, disability, and similar criteria. The worst biases occur in those who do not perceive that they are biased, or are unaware or deny they even exist. Perception of bias reduces its strength by inviting us to see others as more complex, unique, and human than our bias can comprehend. Yet being biased without perception creates obstacles to mutual understanding that can reduce the ability to mediate authentic agreements.

10. Emotion without insight.

People in conflict experience a broad range of emotions from mild to intense, including anger and fear, sadness and grief, shame and guilt, and many others. When we are in the grips of these intense emotions, we can lose insight into their deeper, underlying sources; perspective on what they mean to the people who receive them; and ability to assess what we could do to assuage, transform, and transcend them. Insight, perspective, and assessment can help us turn our emotions toward problem solving. Yet experiencing intense emotions without any insight, perspective, or assessment at all can make it difficult to assist people in completing and passing through them.

11. Domination without dialogue.

The desire to dominate, manipulate, and control others without allowing dialogue or dissent, in ways that exclude, silence, or annihilate the interests and perspectives of others, effectively reduces two parties to one and eliminates all the insights and synergies that can emerge when their diversities are brought together. Yet domination, manipulation, and control without any willingness to engage in dialogue with those who are being dominated, manipulated, or controlled undermines the core values and principles of mediation and creates power imbalances that make it difficult to solve problems and find common ground.

12. **Politics without principle.**

This limit, first suggested by Gandhi, acknowledges that politics, like mediation, may require people to compromise and reach agreement with their opponents. Principles guide politics and direct the problem solving process, even for opponents. Yet when we compromise what we believe in and negotiate away our principles, we strip politics of its redeeming potential, lose opportunities to make our lives better, and reduce our righteous, high-sounding rhetoric to opportunistic searches for short-term advantage.

There are many other possible limits in mediation, including those produced by extreme rigidity and dogmatism, excessive vulnerability and emotional fragility, strong needs to control and manipulate others, extreme narcissism and paranoia, a desire to shame and humiliate others, hostile styles of advocacy and negotiation, the incompatibility of languages, avoidant and adversarial cultures of conflict, dogmatism and orthodoxy, etc. Yet for each of these limits, as for all the others, there are many possible approaches, methods, and techniques that might help us discover unimagined ways of strategizing, sidestepping, deconstructing, dismantling, and circumventing each limit, and expanding our understanding and skills in subtle aspects of dispute resolution.

What is most important for us to understand is that we need not surrender to any of these perceived limits, but can continue searching for their sources, both inside ourselves and in the dysfunctional systems, conflict cultures, and environments we have created and accepted, sometimes without question. It is important, in doing so, that we consecrate our failures to the benefit of those who will come after; that we transform our limits into invitations into learning, insight, and improvement; and that we never cease trying to unearth or invent more advanced understandings, improved techniques, and more satisfying relationships.

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