

Meditation skills for the mediation process

Complementary practices and epistemological considerations

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This paper presents how meditation practices can be used throughout the mediation process. Skills for both mediators and disputants are presented. Additionally, different epistemological frameworks for mediation and meditation are provided and discussed. A postmodern critique of neoliberal ideals of individuals as objective and stable units independent of social context is presented. An approach of mediation and relational meditation is offered that acknowledges and incorporates cultural, historical, racial, gendered and other discourses as critical aspects to consider as the mediator facilitates alternative narratives and new relational positions for the participants. Regardless of one's epistemological frameworks, this paper presents skills for all participants in the mediation process to practice deep listening, respectful communication, mindfulness and flexibility for achieving new resolutions.

Keywords: mediation; relational meditation; epistemology; mediation process; skill development; critique of neoliberalism

Introduction

Mediation as a method and practice has been used for decades to redress conflicts in families, organisations, and states. Much of the focus on mediation has been on the role of the mediator, which has been typically characterised as one of neutrality. However, mediation is more than just an approach to resolving conflicts. It is also a practical and interactive aesthetic *relation* and *method*, drawing on a series of technical means, performances, and embodied practices and cultural imaginaries. Mediation offers a diverse set of knowledges and performances related to embodiment, affect, and collective consciousness in the therapy room, the boardroom and the negotiation table. Nonetheless, much of the literature has missed that mediators themselves are social beings produced in a particular space and time with their own held beliefs, values and narratives about the concerns being addressed in mediation. Even when the mediator assumes the role of a ‘neutral party’, she or he comes to the table as an *embodied being*, not an empty signifier. This paper argues that mediators, as social, embodied beings, must grapple with the affect and effect of their own presence in the mediation room. One way of doing this is the incorporation of meditation¹ practices such as mindfulness to become aware of and handle reactive emotions, strongly held beliefs and narratives, and the stress of conflict for both clients and mediator.

Critiques of mindfulness have asserted that mindfulness is a technology of self-management that ignores political ideological influences, while supporting an implicit neoliberalist ideal (Reveley 2016). This paper argues otherwise. Drawing on both social constructivism and discursive critical epistemology, it is argued that meditation practices offer a strong and beneficial complement to the practice of mediation. It is also posited that meditation can be untangled from its Westernised liberal framework (Kirmayer 2015) in such a way that it can be understood, read, and practiced as an effective and appropriate approach that addresses the inequities among different systems and power differences within the mediation room, as well as attends to different conflict resolution practices of the participants.

In presenting meditation as a complement to mediation, it is important to acknowledge the different epistemological and ideological frameworks that underlie different styles of mediation. Mediation approaches include facilitative, evaluative, transformative (Bush and Folger 1994),

restorative justice mediated dialogue (Umbeit and Coates 2006) and narrative mediation (to name a few). While Western views of mediation and conflict resolution developed from an epistemological framework of post-positivism, narrative mediation (Winslade and Monk 2000, 2006) views conflicts not as conflicts between individual values and interests, but as discursive positioning practices that define each person in their social interaction. This is a shift from an objective view of conflict, which presumes individuals are fundamentally stable units to be addressed. Narrative mediation attends to cultural, historical, racial, gendered and other discourses as critical aspects to consider as the mediator facilitates alternative narratives and new relational positions for the participants. With narrative mediation there is also a strong attention to power as being relational (Foucault 1969), dominating and marginalising discourses and hierarchies (Laclau and Mouffe 1985), as well as consideration of disjunctures, negotiations, ruptures and criticism against the dominant discourse of neoliberal notions about the self, relations, and modalities of being.

In presenting meditation as a complement to mediation it is therefore important to note that different models of mediation will view and use meditation differently based on epistemological differences. This manuscript, while predominantly attending to a postmodern view of meditation as practices of relational engagement, can also be read from a modernist perspective, which tends to focus on mediator and disputant characteristics and views meditation as an intervention. While this paper is not promoting the modernist perspective, it is acknowledged that this perspective is often employed, and does have benefits for disputants. The aim of this paper is to encourage practitioners and scholars to reflect on their epistemological frameworks and carefully consider how meditation can contribute to the practice of mediation.

Theories of mindfulness and meditation

In the literature, some writers use meditation and mindfulness interchangeably. Others see mindfulness as an outcome of meditation (Batchelor 2011), some view mindfulness as a type of meditation (Chiesa and Malinkowski 2011) and Ellen Langer presents mindfulness not as a meditation but a way of thinking (Riskin 2014). In this paper, mindfulness is presented as one type of meditation. Meditation can include many practices and

traditions including: concentration, open awareness, mindfulness, compassion, centring, loving kindness, analytical, gratitude, beholding, movement, dialogue, social engagement, and more. Mindfulness is defined broadly as practices of concentration and awareness.

Meditation can be considered from different epistemological frameworks, leading to different purposes and implications of the practices. There are a number of evidenced-based treatment protocols based on mindfulness: mindfulness-based stress reduction (Kabat-Zinn 1991), mindfulness-based cognitive therapy (Segal, Williams and Teasdale 2002), dialectical behaviour therapy (Linehan 1993) and acceptance and commitment therapy (Hayes, Strosahl and Wilson 1999) have all been used effectively in clinical and training settings. Ruth Baer's 2006 edited book, *Mindfulness Based Treatment Approaches: A Clinician's Guide to Evidence Base and Applications*, highlighted these and other mindfulness approaches.

Mindfulness and meditation has become an important topic of interest by scholars of different professions and disciplines. The National Institutes of Health, the National Science Foundation and the Mindfulness Initiative have all posted research demonstrating the benefit of mindfulness for a variety of issues (e.g. NIH undated; NSF 2013; Mindfulness Initiative 2015). The search engine Google Scholar found over 726,000 scholarly publications about meditation and 230,000 about mindfulness. While there is abundant literature showing the value of mindfulness on psychological issues, such as depression, anxiety and stress (Kabat-Zinn and Hanh 2009; Rogers and Jacobowitz 2012), there is also literature indicating the benefits for improving relationships, recovery from cancer and surgery and other health issues, and improving concentration and learning. Neural scientists are also carefully researching meditation practices and noting the physiological and neurological effects. Hölzel, Carmody, Vangel, Congleton, Yerramsetti, Gard and Lazar's (2011) research using neuroimaging demonstrated how mindfulness practice can lead to increases in brain grey matter density. Clinical professor of psychiatry at UCLA Dan Siegel has published extensively on mindfulness, and his 2012 book highlights the neuroplasticity of the brain and how meditation can create new neural pathways.

While the literature shows a variety of definitions, a common characterisation of mindfulness is a *moment-by-moment non-judgmental awareness of one's thoughts, emotions, physical sensations, and surrounding*

environment. While mindfulness is typically presented as a meditation practice, the social psychologist Ellen Langer (1989) does not see meditation as necessary for achieving mindfulness and defines it as ‘the simple act of actively noticing things.’ Langer notes that without a sense of mindfulness, one can be trapped in rigid patterns without an awareness of context, perspective, or responsiveness to situational changes. Riskin further distinguishes Langer’s mindfulness as way of thinking that is not mindless, and is relevant for ‘legal reasoning’ and ‘in working skillfully with concepts of conflict resolution’ (Riskin 2014:481). Riskin also proposes Eastern-derived mindfulness as another approach for addressing ‘emotional, social, cognitive and self-centered’ aspects of mediation (Riskin 2014:482). Different scholars talk about meditation in a variety of ways. Meditation can be viewed as a spiritual approach and some writers provide a framework for the practiced based on particular religious orientations. Jon Kabat-Zinn (1991) bases his approach on Buddhist philosophy and psychology (see also Ronkin 2014), while others have taken a more secular approach to defining mindfulness as a set of skills (Baer 2006; Brown, Ryan and Creswell 2007).

Meditation as a complement to the practice of mediation

The literature on meditation and mediation is abundant (e.g. Fisher 2003; Freshman 2006; Nobel 2005; Riskin 2002, 2004, 2009, 2010, 2012; Rock 2004; Elwork 1997; Coffey and Kessler 2008). In 2010 the Berkeley School of Law at the University of California hosted the first national conference examining meditation and legal education and practices, which was attended by over 180 attorneys, judges and mediators.² Rogers and Jacobowitz (2012) wrote about integrating mindfulness into Law School Curriculum, and Gershman (2015) notes that currently there are over two-dozen law schools that incorporate mindfulness in their curriculum. Further, Rock (2004) posited that mindfulness could help with mediator neutrality and mediator awareness.

Meditation shows great promise for supporting many dimensions of mediation. In this paper a Westernised perspective of meditation is offered for mediation, as well as a postmodern framework for mediation centring on social justice and relational positioning. For mediators, the

skill of concentration is of utmost importance. It could allow mediators to better attend to the verbal and non-verbal communication of the disputants; skills for addressing stress and reactive emotions in order to be more responsive in the mediation session; and the skill of flexibility of ideas to be less focused on specific solutions and open to generative solutions developed by all the parties. For disputants, meditation can provide skills for addressing reactive emotions and techniques to improve their ability to listen and be open to different possible outcomes. In addition, meditation practices can be used to facilitate the mediation process and even incorporated into the agreement.

While many benefits of meditation and meditation have been rigorously researched (see Khoury, Lecomte, Fortin, Masse, Therien, Bouchard, Chapleau, Paquin and Hofman's 2013 meta-analysis of 209 published studies), there are also concerns that mindfulness has been over marketed and commodified as 'McMindfulness' and overstated as a 'panacea' (Kabat-Zinn 2015). There have also been critiques of mindfulness as supporting a neoliberal ideology leading to 'subjects who see themselves as responsible for their own social welfare' (Forbes 2015). A premise of this paper is that meditation based practices can contribute to the practice, research and teaching of mediation and meditation can be a relational practice of social engagement. The next section presents a model of the mediation process by Herrman, Hollett and Gale (2006) that can be used as a framework from which to present different meditation practices for mediators and the mediation process. It is relevant to note that this paper in itself does not present sufficient details of meditation practices to start one's own meditation practice, but does present the rationale and possibilities of meditation practices for mediators.

When and how to use mindfulness in mediation

In Margaret Herrman's book *Handbook of Mediation: Bridging Theory, Research, and Practice*, Herrman, Hollett and Gale (2006) presented a testable model for researching mediation. It is a comprehensive model that considers characteristics of disputants, mediators, the presenting problems, the social and cultural context, the mediation process, and short-term and long-term outcomes, though it did not include any attention to meditation. This model presents a number of factors which can be affected by meditation practice:

- the negotiator's mindset (Herrman et al. 2006:23);
- disputants' beliefs and attitudes (Herrman et al. 2006:28);
- factors that prime readiness (Herrman et al. 2006:34);
- procedural factors (Herrman et al. 2006:42);
- short-term outcomes (Herrman et al. 2006:44); and
- long-term outcomes (Herrman et al. 2006:53).

How to include meditation practices with these different factors will be discussed below. There are important epistemological distinctions to consider as well in how one conceptualises the rationale and implementation of meditation at this different junctures of the mediation process.

The negotiator's mindset

How a mediator enters the mediation session can have an impact on the process (Bowling 2003; Parker, Nelson, Epel and Siegel 2015). Stress, personal events, health, relationships and other events can distract the mediator from being present with the parties. Additionally, as the mediator her/himself is situated and shaped by particular social/cultural/historical/geographic factors, meditation can be used to examine the mediator's taken-for-granted beliefs, values and narratives about the people and concerns being addressed. Assumptions about the conflict or the parties can influence how the mediator begins the process. There are useful self-assessments available in public domain and online that are useful for self-reflection by mediators on assessing their level of being present, and level of compassion for self-care. This includes the Mindful Attention Awareness Scale (MAAS) developed by Kirk Warren Brown (undated) and the Self-Compassion Scale developed by Kristin Neff (undated). It can be useful to use the mindfulness practice of a body scan (Kabat-Zinn and Hanh 2009). This practice can range between five to twenty minutes and asks the person, without judgment, to progressively place their awareness on different parts of their body, sensations, emotions and thoughts.

The mediator can also take an implicit bias assessment to help consider taken-for-granted assumptions and values (Project Implicit undated). Adding an analytical meditation practice to a body scan can help the mediator examine the arising of assumptions and values prior to starting a mediation session. This and other meditation practices can assist the mediator to attend to cultural, ethnic, economic and relational power

dynamics, and the potential arising of dominating and marginalising discourses and hierarchies, thereby increasing one's responsiveness to alternative resolution narratives that may be presented by the parties.

Using one's breath is also useful to reduce stress and distraction. There are a variety of breathing meditations one can employ. A simple breathing practice is to place one hand on the belly, and with the inhalation, to extend the belly out, and with the exhalation, to have the belly push out all of the air. The hand on the belly serves as a reminder to focus on the breathing while also helping move the belly in and out. With these and other meditation practices, the following guidelines are important:

- 1 maintain your focus;
- 2 when you lose your focus, return to what you are attending to; and
- 3 be non-judgmental when you lose your focus.

An important point of meditation practice is that success is not based on how long you maintain your focus, but rather, on your ability to notice when you lose your focus, respond without judgment, and return to your practice. Still another mindful breathing practice is to count each inhalation/exhalation cycle. While maintaining a focus on your breath, each cycle would be a new number (e.g. 1, 2, 3 ...). When you lose your focus, you start counting over again. The key aspect of this practice is not how high of a number you count to, but to gently and without judgment return to your breath and count whenever you lose your focus.

Benefits of the above practices include the following: They help one relax, reduce stress and calm the body and mind; they develop skills of self-awareness and self-care; they improve the ability to notice when one loses focus as well as quickly regain focus; and they improve the ability to be less reactive, argumentative or rigid in viewpoints. These practices allow mediators to be more present both to their own thinking and reactions, as well as improving their capacity to carefully listen and observe alternative positions and paradigmatic viewpoints.

Disputants' beliefs and attitudes

In starting the mediation process, it is important to know your parties. While there is a lot of demographic and personal information that is crucial prior to starting, it can also be useful to know if your parties already have a meditation practice. Depending on the experience of each party, a mediator can decide how to best present a meditation practice.

I have used terms such as relaxation, contemplation, centring, grounding, de-stressing, opening, connecting, remembering, and loosening up as terms for meditation practices. One can use a variation of the body scan noted above with your parties by inviting each person to ‘take a moment, notice how your body feels, take a deep breath, centre yourself, and gather your thoughts and ideas before we begin’. In other words, without using words like *mindfulness* or *meditation*, you can invite each party to be more present and calm. Reminding parties at times to breathe is very helpful in reducing stress and reactivity. Of course, in inviting the other parties to take these actions, it is necessary for you also to be aware of your own state of being and breathing and calming yourself. Research on mirror neurons (e.g. Winerman 2005) indicates how people are influenced by the expression of others to have empathy for another’s emotional state. Therefore, it is important for you to model being calm and relaxed in the session. If the disputants already acknowledge they have their own meditation, centring or contemplative practices, it can be useful to ask them what kind of practices they have, how this helps them, and to encourage them to use these skills during the mediation. A key point to add here is that from a relational and engaged meditation practice, the mediator attending to his/her own embodied state is not done as an intervention to elicit a response from the disputants, but as an approach to find more balance and harmony for themselves.

Factors that prime readiness

As noted above, helping the disputants get more comfortable and relaxed in their own bodies is an effective way to prime all parties to begin in a manner that increases one’s responsiveness to their own situation and positioning. These practices can include calming the mind, emotions, and even inviting the intention of having a good outcome for everyone involved. Practices of visualisation, gratitude and appreciation can be useful as well. Visualising a still body of water, or imagining water going down a drain can be effective in prompting a more relaxed state of being. At times, it may be appropriate to note that meditation (or whatever term one uses) *does not mean* that as the disputants relax they must *compromise their positions or views*. It can be helpful to offer a statement such as: ‘Being relaxed and calm can be helpful to be more articulate and clear in presenting your ideas and feelings as well as better understand the views and emotions of the other people.’

Procedural factors

Through the mediator maintaining her/his own experience of non-judgment, non-reactivity, and being present in the moment serves to model for the parties to be non-reactive. Meditation can be useful to help the mediator monitor and be vigilant to the arising of judgment, reactive emotions, normative assumptions, and relational positions of the parties. In other words, meditation provides skills for assessing one's position of neutrality and the constant fluctuation of perceived positions of self and others. Additionally, if the mediator uses caucuses to work with each of the parties separately, it can be useful to use mediation practices with the parties. Several mindfulness practices useful for this include:

- breathing practices to calm the body and relax;
- grounding practices to release tension and strong emotions;
- centring practices to maintain focus in the current discussion; and
- acceptance (or forgiveness) practices to help with historical wounds.

As noted earlier, there are many types of breathing meditation practices. A simple one to use with the parties is to have them focus on their breathing for five slow breaths. There are many grounding practices, and an example of a combined grounding and centring practice to use with parties is to ask them to imagine they have roots extending from their feet into the ground below. And then to imagine their stress and emotions are moving through their body and being released into the Earth. In addition, the person can imagine his/her roots bringing up from the ground a sense of strength and comfort. Visualising oneself relaxing is very powerful to elicit that state and invites the parties to be open to their own alternative conceptualisations. In using an acceptance or forgiving practice, it is important to access if the party involved is open to acceptance of the other parties.

Short-term outcomes

This refers to aspects such as satisfaction with the process, reduced anxiety or fear about the outcome, achieving an agreement, resolving issues, and changing relationships. Similar to the mindfulness practices noted in the procedural process, mindfulness practices such as a body scan, breathing to relax, and grounding practices to let go of emotional reactions can be used to invite the parties to calmly reflect on prospective agreements and consequences of these decisions. Through teaching these

skills to the disputants throughout the mediation process, the mediator can remind the disputants to use these skills as they finalise an agreement, considering resolving issues, and perhaps the consequences of changing their relationship with the other party. All of these short-term outcomes can be evocative of strong emotions and reactivity and it can be useful to help the parties manage these strong reactions as they also consider long-term sustainability for their process.

Long-term outcomes

This refers to relationship change and compliance with the agreement. Consistent with the previous section, helping the parts learn and develop skills of meditation can be useful for them following completion of the mediation. Presenting possible challenges that may arise in the future and noting the skills that the parties have learned to manage their own reactive emotions is important. The skill of concentration is helpful to remind the parties of the reasons they discussed earlier in mediation that enabled them to reach an agreement and the benefits of that agreement. Gale (2008) offers several practices that can be presented to the parties to be used later. Based on the work of Thich Nhat Hanh, Gale describes a meditation for compassionate listening in which family members recite affirmations to one another as well a practice for reconciliation and renewal (Gale 2008:257–8).

Closing summary

Meditation practices offer a rich complement to the field of mediation. Depending on one's epistemological stance regarding mediation, meditation can be used for different purposes and benefits. For example, a Westernised post-positivist adaption of mediation (Kirmayer 2015) that privileges the individual as the entrepreneur and solver of their own problems and views meditation as an intervention is one way to use meditation in mediation. However, as this paper has demonstrated, there is also an approach of social engagement and justice (Hanh 1998; Senauke 2013; CMind undated) that can also incorporate meditation in the mediation process. This engaged and relational approach to meditation presents an epistemological framework of identity and action that decentres an ego-driven-self-identity, does not pathologise emotions, is not commodifying a person's worth, labour or happiness, and is not an intervention

for fixing or curing people. Meditation practices can help parties shift their attention from individual needs, positions and short-term outcomes to a perspective of what is beneficial for the community (e.g. children, employees, neighbours, etc.) and beneficial for the long term. Engaged meditation is *not* a technique, but an approach for relational engagement in the world. Relational meditation is about connection, within one's selves, and with the world. It is holistic in that it views the entire world as ecologically connected and that each action, regardless of intention, has consequences: and in these consequences how each person is accountable for intended and unintended consequences. The practice invites a compassion and respect for the world rather than an 'othering' of self, people or things as separate (marketable) entities. Meditation as a relational practice is a counter measure to what Foucault refers to as people as docile bodies who both objectify themselves and get objectified by others in relational power dynamics. Relational meditation offers a practice to attend to the arising of objectification of self and/or other, and to develop pathways of connection, respect, compassion and grace.

In developing skills of relational meditation for conducting mediation, relational mediation provides an approach for all the participants to practice deep listening, respectful communication, and the flexibility for adopting new discursive positions that are less encumbered with ego-self attachment. Finally, this paper has demonstrated how meditation can be incorporated at different junctures of the mediation process.

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Notes

- 1 It should be noted that the word ‘meditation’ is not a neutral term and has various meanings from different cultural, religious, historical and spiritual traditions as well as different epistemological frameworks.
- 2 See www.mindfullawyerconference.org/default.htm.

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