

Viktor Frankl and the Art of Mediation

Maria Luisa Mansur

Maria Luisa Mansur is a Brazilian attorney and mediator. She earned her Bachelor of Laws (LL.B) from the Pontifical Catholic University of Sao Paulo in 2018 and is expecting to receive her Master of Laws (LL.M) in Dispute Resolution from Pepperdine University's Straus Institute in 2021. She is currently a trainee at the ICC International Centre for ADR in Paris.

Abstract: The presence of suffering in mediations is undeniable and using it to the advantage of the process is a skill that competent mediators must manage. This article answers how mediators can help parties search for a purpose to justify their pain, presenting the views of a holocaust survivor and his belief that men are ready to suffer when they are able to develop a sense of coherence.

Keywords: Alternative Dispute Resolution. Mediation. Positive Psychology. Salutogenesis.

Summary: Inspired in the books "Man's Search for Meaning" by Viktor Frankl, and "Health, Stress and Coping" by Aaron Antonovsky, this article approaches the concepts of *Salutogenesis* and Logotherapy from the mediator's standpoint. The primary section will investigate the common ground in their theories, which is the pursuit of meaning in suffering. This will first be examined as a tool to overcome hardships in human life, and, subsequently, as a way to manage hurting parties in mediations, providing them with the structure to engage in a process that goes beyond settlement. Then, Frankl's call for responsibility over people's response to life events and empowerment in the face of suffering will be explored in alignment with the basic principle of mediation: party self-determination. This article defends that legitimate settlement arises when parties take ownership of their role in the process and act in accordance with their values and desires, which lead to greater procedural satisfaction and higher compliance with the terms of the agreement. The last section is dedicated to an interview conceded by Hon. Judge Daniel Weinstein (Ret.), whose journey does justice to the beautiful Art of Mediation. He believes that magic can happen in mediations and generously shared his strategies to create the necessary environment to do so. Finally, he shared techniques to deal with human irrationalities and influence tactics he witnessed in his practice.

1 Introduction – **2** The Art of Navigating Suffering through Positive Psychology – **3** The Art of Empowerment through Party Self-Determination – **4** Interviewing Judge Daniel Weinstein – **5** Final Considerations – References

1 Introduction

Cognitive and affective components inform the individual's personality structure, which, along with positive psychology's findings, help explain what makes people thrive despite the hardships they face. This is the object of Aaron Antonovsky's research on *Salutogenesis*, further explored below.

In parallel, Viktor Frankl's psychological approach, known as Logotherapy, presents the primary motivational force in a human being and shows how it can

shape one's destiny. He invites people to take responsibility for their existence, leaving the role of victims and being the protagonists of their journey.

Both authors' contributions give mediators tools to explore the philosophical principle of personal autonomy with the parties. The theories presented here can help mediators bring awareness about their clients' choices, which does not require control over life's circumstances. Ultimately, it can assist parties to suffer with dignity, finding a sense of resolution, and dealing better with future adversities.

2 The Art of Navigating Suffering through Positive Psychology

Introduced and developed by Aron Antonovsky, the concept of *Salutogenesis* represents a different approach toward understanding the effects of hardships in human's life. The word comes from the Latin *salus*, health, and the Greek *genesis*, origin. Instead of focusing on the sickness and pathologies developed as a result of unfavorable circumstances, Antonovsky's researches sought to understand what made people succeed and lead happy lives despite the challenges they went through.

He found that high-risk populations survivors had a strong *sense of coherence*, that allowed them to make sense and add meaning to their suffering, which many times translated into happy and fulfilling lives. His definition of the sense of coherence is the following:

As defined, the sense of coherence explicitly and unequivocally is a generalized, long-lasting way of seeing the world and one's life in it. It is perceptual, with both cognitive and affective components. Its referent is not this or that area of life, this or that problem or situation, this or that time, or, in our terms, this or that stressor. It is, I suggest, a crucial element in the basic personality structure of an individual and in the ambiance of a subculture, culture, or historical period.¹

Further, he presents the main components that inform this sense of coherence, beautifully summarized by Tal Ben-Shahar, a Positive Psychology Professor at Harvard. Ben-Shahar explains that having a sense of comprehensibility, manageability, and meaningfulness informs the sense of coherence, introduced by Antonovsky as the source of mental health.²

The sense of comprehensibility is present when, regardless of one's suffering, the individual can make sense of the world around him and understand what is

¹ Aaron Antonovsky, *Health, Stress, and Coping*. San Francisco: Jossey-Bass Publishers, 1st Edition, 1980, p. 124.

² Tal Ben-Shahar (2011). 幸福課7-逆境還是機遇-Positive Psychology-. Retrieved from <https://www.youtube.com/watch?v=U3ZioP5MF1I>.

going on. On its turn, the sense of manageability depends on internal and external resources that the person identifies as tools to deal with the present situation. Therefore, instead of feeling helpless, the person has confidence in his or her capability to handle the challenge. Lastly, the sense of meaningfulness allows the sufferer to find a *why*, a purpose that justifies his pain. The later deserves further comment, as it shows to be the inner strength that allows people to bear suffering with dignity.

After analyzing robust studies, Antonovsky identified that mental sanity is sustained when individuals can translate their hurt into something significant: “It seems reasonable to view these findings as corroborating the hypothesis that when people, for whatever reason, are somehow able to translate a difficult, complex bombardment of stimuli into a whole that is meaningful, high health levels are likely to be maintained.”³

Just like Aaron Antonovsky, who was passionate about the source of health even in unfavorable circumstances, the Austrian psychiatrist and Holocaust survivor Viktor Frankl also believed in the Positive Psychology approach to understanding suffering.⁴

Using his experiences in concentration camps, Frankl wrote “Man’s Search for Meaning”, encouraging human beings to be responsible for their existence and to find spiritual freedom by choosing one’s attitude towards any set of circumstances. In his book, he also introduces the psychological approach known as *Logotherapy*, much related to Antonovsky’s theory on the sense of coherence:

Logotherapy [...] focuses on the meaning of human existence as well as on man’s search for meaning. According to Logotherapy, this striving to find a meaning in one’s life is the primary motivational force in a man. [...]

It is one of the basics tenets of Logotherapy that man’s main concern is not to gain pleasure or to avoid pain but rather to see meaning in his life. That is why man is even ready to suffer, on the condition, to be sure, that his suffering has a meaning.⁵

To Frankl, life is a quest for meaning, which can be found in work, love, and courage. He states that people have the opportunity to give sense to their distress by how they respond to it. Going one step further, Frankl affirms that the

³ Antonovsky supra note 2 at 170.

⁴ “Frankl’s concern is less with the question of why most died than it is with the question of why anyone at all survived”. Viktor E Frankl et al., *Man’s Search for Meaning*. Boston, Beacon Press, 2006. Forward, p. X.

⁵ Viktor E Frankl et al., *Man’s Search for Meaning*. Boston: Beacon Press, 2006, p. 98-99;113.

attitude towards this opportunity determines whether or not someone is worthy of his suffering.⁶

Not only do human beings have the chance to give meaning to and be worthy of their pain, but the holocaust survivor also acknowledges the opportunity that lies in connecting with the suffering of another: “I have to confess here that only too rarely had I the inner strength to make contact with my companions in suffering and that I must have missed many opportunities for doing so.”⁷

As peacemakers, mediators have abundant opportunities to face and embrace the suffering of other people. The art of dealing with it constructively is one aspect that can set apart great mediators from the extraordinary ones. Luckily, Viktor Frankl, along with Antonovsky’s research, showed one crucial way to do so, namely, finding meaning in pain. But how can mediators help parties in this search?

Many times, the art of mediation consists of building the bridge of inner healing and reconciliation for parties to cross. That would be an easy task if the human species were as rational as believed to be. Especially when dealing with interests, emotions, and expectations, human behavior can be inconsistent, surprisingly challenging, and illogical.

In his book *Assignment in Eternity*, Robert A. Heinlein writes that “man is not a rational animal, he is a rationalizing animal”. Therefore, it is within the art of mediation to provide rationales that parties can be happy, or at least live with, and see as justifications to the suffering they have gone through.

It can take an in-depth search behind the parties’ positions until the mediator finds what interests they need to see fulfilled. With this understanding, extraordinary mediators will be able to frame possible rationales as to meet those interests, in such a way that the party’s shoulders drop. Maybe the framing has to fulfill their need for acknowledgment, sense of resolution, space to self-expression, belonging, or approval. Perhaps it has to do with the client’s perception of integrity, fairness, or morality.

The fact is that once the interest is identified and the rationales compatibly framed, the mediator must have enough understanding of the players to deliver them in a way that does not threaten their sense of self.

One common reason that makes people fearful for their identity and reluctant to accept new insight is their unconscious need to be consistent:

[P]eople will hide inside the walls of consistency to protect themselves from the troublesome consequence of thought. [...] Researchers have

⁶ Id at X and 67.

⁷ Id at 84.

discovered that people themselves use this same evidence – their own behavior – to decide what they are like; is a primary source of information about one’s own beliefs, values, and attitudes.⁸

A possible approach to neutralize that force is by offering parties chances to save face, or simply providing a non-judgmental environment. Without explicit permission to change one’s posture and encouragement from the mediator to make that decision, in the name of consistency parties are more likely to continue performing as swines, even if their most authentic selves find inspiration in saints: “[W]e watched and witnessed some of our comrades behave like swine while others behaved like saints. Man has both potentialities within himself; which one is actualized depends on decisions but not on conditions.”⁹

Viktor Frankl inspires that turnover in attitude by shining a light in human’s freedom to change at any instant.¹⁰ Making this explicit to the parties will allow them to shift from competitors to collaborators, and from victims to heroes of their stories, as will be better explored in the next session.

Moving on, as the neutral succeeds to provide reasons parties can genuinely say yes to, the mediation will go beyond settlement by actualizing the meaning behind the raw situation the parties brought to the room: “As we see, a human being is not one in pursuit of happiness but rather in search of a reason to become happy, last but not least, through actualizing the potential meaning inherent and dormant in any given situation.”¹¹

Moreover, it is important to keep in mind that it is not up to the mediator to decide if an agreement is reasonable or if the parties’ interests seem logical. People’s behavior will always make sense from their perspective. Extraordinary mediators ask themselves what sense is there, find the underlying purposes behind it, and provide rationales that meet them.

After all, mediating would be meaningless, and perhaps useless, if the neutral could rely on the rational behavior of the players. In truth, mediation is more sophisticated than facilitating negotiations between rational people.

As this session comes to an end, it is worth quoting another passage from Man’s Search for Meaning, which describes what may be one of the most vital tools in the art of mediation: reframing. As will also be explored in Judge Weinstein’s interview, detoxifying parties’ views of the other and their situation allows them to

⁸ Cialdini, Robert B. *Influence: Science and Practice*. Boston: Pearson/Allyn and Bacon, 5th Ed, 2009, p. 54 and 67.

⁹ Frankl *supra* note 6 at 134.

¹⁰ *Id* at 131.

¹¹ *Id* at 138.

paint suffering as genuine inner achievement:¹² “Most important however, is the third avenue to meaning in life: even the helpless victim of a hopeless situation, facing a fate he cannot change, may rise above himself, may grow beyond himself, and by so doing change himself. He may turn a personal tragedy into a triumph.”¹³

3 The Art of Empowerment through Party Self-Determination

One valuable concept that underlies much of Frankl’s work is the responsibility people have towards life and the circumstances it presents. The acknowledgment that people can choose how to act, even during the hardest of times, is a call for many to give up on the position of victims they carry throughout their journeys.

In the mediation context, the first step is making parties realize that “[i]t is not freedom from conditions, but it *is* freedom to take a stand towards the condition”.¹⁴ Very often, people come up with stories that are amazingly similar to the fairytales they grow up watching: each side presents their view as if they were victims, the other side the villain, and trusting the mediator to be the hero. Frankl encourages all to be their own heroes by taking a stand towards any circumstance instead of passively allowing it to define one’s life.

Right there lies another opportunity to differentiate great mediators from the extraordinary ones: the first’s ego finds satisfaction by closing a mediation as the hero that solved the parties’ conflict. The second understands the art of freeing parties from the illusion that others have the best solution for their problem and finds opportunities for empowerment during the mediation session.

Furthermore, empowerment is the first step towards one of the strongest mediation’s principles, namely Party Self-Determination, explained as follows:

As adapted to private mediation theory, the right of self-determination allows parties to participate in decision-making and voluntarily determine the outcome of their disputes. This understanding of self-determination is rooted in the philosophical principle of personal autonomy and is expressed through the legal doctrine of informed consent. [...]. In short, “party” self-determination in mediation gives ownership of the conflict to the disputants.¹⁵

Empowerment and Party Self-Determination will also create independence from the mediator and inner structure for parties to deal better with future conflicts.

¹² *Id* at 67.

¹³ *Id* at 146.

¹⁴ *Id* at 130.

¹⁵ Jacqueline Nolan-Haley. Self-Determination in International Mediation: Some Preliminary Reflections. *Cardozo J. Of Conflict Resolution*. Vol. 7:277, 2007, p. 277.

Besides, this process will build the foundation for greater satisfaction with the settlement, and consequently, higher chances of compliance.

Indeed, it is known that individuals may like someone else's ideas, but they are passionate about their own. People also follow through agreements with more consistency if they actively engaged in its creation, since it represents his or her beliefs and values:

According to the SDT formulation, a person is autonomous when his or her behavior is experienced as willingly enacted and when he or she fully endorses the actions in which he or she is engaged and/or the values expressed by them. People are therefore most autonomous when they act in accord with their authentic interests or integrated values and desires (Deci & Ryan, 1985, 2000; Ryan, 1995). deCharms (1968) described a person who acts autonomously as an origin of behavior, because, when autonomous, a person feels initiative and stands behind what he or she does.¹⁶

The importance of supporting empowerment through the self-determination of the parties becomes crystal clear as the neutral understands that it is in the nature of human beings to express their autonomy: "Man is not fully conditioned and determined but rather determines himself whether he gives in to conditions or stands up to them. In other words, man is ultimately self-determining."¹⁷

Therefore, it is the mediators' responsibility to make their clients aware of their choices, the first one being whether to be a victim of the situation or the writer and hero of their story. With this mindset, it will become easier to select the most appropriate and satisfying course of action towards the conflict, and one that will be consistent with the role the party decides to play in his or her own life.

If the mediator performs with enough compassion and humanity, this process will allow the parties to identify their inner power and potential, and, as Frankl advises, "by making him aware of what he can be and of what he should become, he makes these potentialities come true".¹⁸

To summarize what was explored in this paper, one final quote from Antonovsky is pertinent, as it unifies the sense of coherence parties look for in mediation and life, the fact that it does not require control over circumstances, but rather the empowerment to actively shape their destiny through the process: "A sense of coherence, as I trust has become clear, does not at all imply that one is

¹⁶ Valery Chirkov et al., Differentiating Autonomy from Individualism and Independence: A Self-Determination Theory Perspective on Internalization of Cultural Orientations and Well-Being, 84 *Journal of Personality and Social Psychology* (2003), p. 98.

¹⁷ Frankl *supra* note 6 at 131.

¹⁸ *Id* at 112.

in control. It does involve one as a participant in the process shaping one's destiny as well as one's daily experience."¹⁹

4 Interviewing Judge Daniel Weinstein

Hon. Daniel Weinstein (Ret.), is the co-founder of the Judicial Arbitration and Mediation Services, JAMS, the founder of the Weinstein JAMS International Fellowship Program and of the Seven Tepees Youth Program, a nonprofit organization that provides services to under-resourced youth in San Francisco.

The following interview addresses questions of humans' irrationalities and weapons of influence he witnessed in his decades of practice. Unfortunately, much of the conversation, such as humorous imitations and organic examples, are missed with the transcription, but the content is still amazingly rich and inspirational to create new journeys to the art of mediation.

1. When you received the Straus Institute's Peacemaking Award, you said that great mediators pull the poison out of the parties, bringing them from the "arena" to the "field", where magic can happen. Can you share some of your strategies to create this environment?

It's not so secretive. Except in rare circumstances, people come in with a very righteous and distortive view of the other side, and a lot of anger, and hurt. They bring all of those things in a mediation room, and one of the things you as a mediator have to be careful of is the cumulative effect of absorbing all that stress from people.

One of the techniques in the arena is to accomplish two things at the same time: allow people on each side to be heard *enough*. Time-limited. The telling of the story in some form, preferably by the principle themselves, not the lawyers, but that's not always possible. And then the trick is mirroring back what they say in an acceptable way, that demonstrates you heard them, accepted some of what they said to you, and then give it back in a different form, that is beginning to turn it into something less toxic and less offensive to the other side. And you don't try to do that all in one swift act. To me, the art form of a great mediator is to be able to hear it, turn it, and detoxify it enough. And then stop there: "That's enough for me for now; why don't we rest with that for a moment". [...] And then, in the field, you begin to see, depending on the parties being trustworthy, some sense of grace and creativity. The air has been changed.

¹⁹ Antonovsky *supra* note 2 at 128.

2. What approach have you found useful when dealing with irrationalities of the human behavior that seem to bring impasse in mediations?

Number one is frankness. Being straight about your reaction, even when it means a risk that you might lose the person. At some point saying, “listen, I heard you, and I heard you patiently. Do you want some honest feedback? Or do you want me just to say that’s your story, your way of looking at it, it’s never going to change, and that’s the way it is?”.

Two, I use humor a lot as my weapon. And not everybody can get away with that; not everybody can do it. Sometimes I imitate the people: “you come over here, sit in my chair! Let me just show you what you sound like! Let me do the best Joe Barns I can do. And I mean no offense by this, but just let me do my Joe Barns, ok?!” And then you just do it. “Now what you think of Joe Barns if you heard that?!, Come on, tell me the truth! You’re Judge Weinstein, what would you say? ‘Right on Joe, yeah baby?!’”.

So, answering to your question, when dealing with irrationality in people, have the patience to stick with it, try to use some humor, and there are times when you really have to be tough. I mean, there is a point in patience and listening, and then there are people who will only respond to being tough: “You know, you’re really beginning to piss me off. This is enough already, I’ve heard you say, ‘my bottom line, my bottom line’, where did your bottom line come from?!”.

There are people who only respond to being bullied a little bit or tough talk. And to be able to turn that on and off, and to know when to use it, and to have the license to use it... I can tell you sometimes when I’ve done it and it’s failed. A lot of what we do, after a while, it’s taking a risk. The great mediators aren’t the safest, and they aren’t without failures.

And there’s timing, we all make mistakes in timing! It’s a game of timing, it’s all about when to move, when to stop the discussion, when to put our mediator’s proposal. When to say to the parties: “Hey, you know what? You don’t have me all night. You got me until 6:30. 6:30 is my kid’s game. Guess what, your case is really important, but I’m not missing my kid’s game. You’ve had me since 8:30 this morning, 6:30 I’ll be gone. Get real.”

But the science of dealing with crazies – and they are all over the world – just understand them. Understand better where they are coming from, give them a chance to turn rational on you, and then if all things fail, you just got to call their stuff.

3. Is there anything that surprised you in terms of seeing parties comply with the other's request? Have you identified any good tactics employed from one side that enhances compliance decisions in the other?

I've seen some great negotiation moves by one side to the other. The lawyers can play such a big role in breaking the ice: "how about when we come back, I'll bring my CFO, will you bring yours? He will be here ready to talk. Maybe just the four of us meet with the judge in the airport somewhere in between this, for dinner!", I've seen people offer all kinds of things.

I'd like to think about the answer to that question, but there is a huge role in the opening statement, that's why I insist almost always on an opening session, and I try to train the lawyers. It can be such a gift! It's a chance to talk to the other side. And that form for invitation it's part of a whole discussion that we should have. What are some great opening statements I've seen in mediation, what does it mean to give an opening in mediation, how to use the client, how it can set the whole tone, pathway, and blueprint for reconciliation.

So many of the best offers I get, many of the suggestions come from the other side. Sometimes they like to filter that through you as a neutral, but I've had some incredible things come from parties, principals, and others, that you miss. I mean, are your eyes watching everything? Your consciousness for the day? Did you have a good day? Are you all there? The days that I'm present, fully conscious, and fully there, I'm three times better than the days I'm distracted. I can still do it, but there is a huge difference in that little edge, and that is true in so many professions.

5 Final Considerations

Many are the qualities that turn great mediators into extraordinary ones. As Judge Weinstein illustrated, presence, frankness, and patience are some of them. Knowing how to guide parties through suffering and empower them in the process is another. This paper took a deeper look into the later with the hope to show the beauty that lies in suffering and how it can be used in mediations that go beyond settlement.

In truth, *The Art of Mediation* lies in finding potential in the parties, encouraging them to actualize them, and, hopefully, providing lasting healing in the process. Just like Roberto Benigni's character shows his son in *Life is Beautiful*, Viktor Frankl teaches the freeing power of deciding how to frame lives' experiences. Providing the space and time for parties to embrace this responsibility is a gift that artfully mediators should honor with joy.

References

ANTONOVSKY, A. Health, Stress, and Coping. San Francisco: Jossey-Bass Publishers, 1980.

FRANKL, V. et al., Man's Search for Meaning. Boston: Beacon Press, 2006.

HEINLEIN, R. Assignment in Eternity. New York: New American Library, 1974.

CIALDINI, R. Influence: Science and Practice. Boston: Pearson/Allyn and Bacon, 2009.

NOLAN-HALEY, J. Self-Determination in International Mediation: Some Preliminary Reflections. *Cardozo J. Of Conflict Resolution*. Vol. 7:277, 2007.

CHIRKOV, V. et al., Differentiating Autonomy from Individualism and Independence: A Self-Determination Theory Perspective on Internalization of Cultural Orientations and Well-Being, 84 *Journal of Personality and Social Psychology*, 2003.

Informação bibliográfica deste texto, conforme a NBR 6023:2018 da Associação Brasileira de Normas Técnicas (ABNT):

MANSUR, Maria Luisa. Viktor Frankl and the Art of Mediation. *Revista Brasileira de Alternative Dispute Resolution – RBADR*, Belo Horizonte, ano 02, n. 04, p. 133-143, jul./dez. 2020.
