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In search of family mediation ethics: picking through the undergrowth

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Introduction:

This discussion paper looks at some of the ethical challenges of mediation from a practitioner's perspective, especially family mediation in this jurisdiction (England and Wales). It argues that, although mediator ethics can seem straightforward, pathways through disputes can be convoluted or vague, with different values vying for light.

Family mediation is a type of Alternative Dispute Resolution (ADR), addressing the care of dependent children, apportioning of assets, distribution of finances, or all three. Family mediation does not attempt the therapeutic restoration of original relationships; it tries to create an informal and confidential forum for managing disputes, where at least some issues might otherwise have ended up in litigation. Yet, this simple assertion as to mediation's basic premises and purposes immediately raises questions about the mediator's values, intentions and practices. These are not uniformly addressed or agreed, even locally – certainly not globally; there is no consensus as to what constitutes good mediation practice (Midgley and Pinzón, 2013, p.608; Kovach, 2005, p.309).

Training courses typically emphasise the mediator's facilitative role in assisting the parties to reach a negotiated settlement. However, mediation constructs are represented by a continuum. Models range from highly directive, settlement-driven processes to therapeutic interventions aimed at achieving moral change. Theoretical and ideological arguments aside, some of this disparity reflects the highly commercialised nature of the family mediation training market, where numerous instructors claim the superiority of their own reputations and materials when competing for a share of the limited pool of potential trainees. Training is only tenuously linked to practice opportunities, with no guarantees of a paid role afterwards. Many trainees do not go on to have thriving mediation practices; some may never practise at all, although the skills acquired can be useful in other contexts.

The quality of practice differs too, as mediators self–regulate, with no unitary certification. The accepted accreditation standard here for family mediators – administered under the umbrella of the Family Mediation Council (FMC) – is recognised by the Ministry of Justice in terms of delivering legal aid provision for family mediation. Accreditation involves trainees attending an approved foundation course, followed by supervised case experience, regular consultancy, developmental training and submission of a portfolio for assessment purposes. Ongoing

casework, professional development activities, practice consultancy and eventual re-accreditation are required thereafter.

Some of the critical literature, including contributions from both academics and practitioners, accuses mediation of being a practice in search of a theory. There is certainly considerable merit in such criticism. Mediation's professionalistion project remains a work in progress, marked by struggles to establish a discrete identity distinguishable from ADR's many sources – disciplines as diverse as anthropology, psychology, law, linguistics, sociology, economics and others. Even though family mediation generally draws from traditional and current societal practices, its relatively recent endorsement here via legislation is not uncontroversial. It has detractors, proponents and an extensive canon too lengthy to cite or fully reference here. The literature includes debates about mediation's ethical basis and the mediator's role and values as a moral actor: these contentious areas are the main topics of this paper.

Some complexities of praxis:

Family mediation does not always involve high conflict. Indeed, a proportion of clients come to mediation specifically wanting to remain in control of settling their own affairs and avoid what they see as the alternative, namely the uncertainties, costs and hostilities of litigation. But it would be naïve to assume that an apparently easy case means it will be easy to mediate. Initial amicability may indicate the existence of a polite standoff, devised to keep a temporary peace. Civility should not be taken as evidence that the parties are getting on well, despite their differences, nor that they have already reached a mutual understanding that simply needs ratifying. The disputants' underlying dynamics and degree of conflict can appear deceptively straightforward. Nor is it necessarily obvious whose interests may best be served at any moment, or even which issues and options are at stake.

It is often been said that practitioners manage the process while relinquishing authority to decide outcomes, which the parties determine for themselves. Such supposed differences between process and outcome have been rightly challenged, since they provide an account of practice that cannot withstand scrutiny when it comes down to what actually happens in the mediation room. Mediators are inextricably involved with the shaping, and thus outcomes, of the process – otherwise there would be no need for their involvement in the first place. One example is the requirement that they give the parties information but not advice (FMC *Code of*

Practice, 2016; 5.3) (FMCoP, 2016). But how are clients to know the difference between mediators' 'information giving", "guiding"' and legal advice, as proposed by Shapira (2016, p.176)? However carefully delineated by the mediator, these differences are not automatically distinguishable by the parties, especially those new to mediation. This difficulty of distinction may make mediators highly influential – unwillingly or unwittingly so, and despite their firm intent to uphold party self-determination. Shapira's suggested solution is that disputants can rely on the degree of the mediator's substantive knowledge when giving guidance, an assumption that seems to sail perilously close to the giving and receiving of advice, albeit in a different guise.

Mediation is complex. Practitioners are tasked with adhering to a relevant code of conduct in circumstances which may be replete with conflict, tactical strategies, and multiple issues. Negotiations can be fast-moving, sometimes chaotic. Under these conditions, deference to concepts as seemingly prosaic as common sense is problematic. There are lexical differences between the words justice and fairness in the English language; these prohibit straightforward substitution of one for the other, despite many examples of indiscriminate conflation in the legal and ADR literature (Wilson and Wilson, 2007). All three concepts lack determinative definitions, and require degrees of subjective judgement. In conflict situations, common sense may not be 'common' at all – indeed, it can be decidedly uncommon when it comes to achieving unanimity. Formal justice is legislated according to jurisdiction, so may differ significantly by location as a result. As to fairness, what I consider fair may be the exact opposite of how you see things.

As Cobb (2006, p.186) notes, collaboration and the disciplinary power of language itself can mask a host of problems related to asymmetries between the parties. For example, asymmetry may stem from a lack of access to legal advice. Fewer people now qualify for legally–aided mediation following changes to the eligibility and scope rules enacted under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). Not only are they unrepresented, they may lack awareness of the basic norms and principles applicable in family law, whether they are taking part in mediation or choosing to represent themselves at court (Grimwood, 2016, p.10). There is also some evidence of wider public resistance to experts generally, including reluctance to pay for legal advice, even when affordable and desirable on a best interests basis.

Some feminist critics warn against women taking part in mediation at all, on the grounds of claimed innate gender power imbalances between heterosexual couples. However, there is

considerable evidence that women, too, are significant perpetrators of abusive behaviours. Hamel et al's (2012) meta-analysis found that intimate partner abuse (IPA) is endemic, and not confined to male assailants. This study's data mostly originate in north America, but the position in our own society is probably not that dissimilar. Further, Neumann (1992) and Gewurtz (2001) argue that power issues are not static. As Cobb and Rifkin (1991, p.62) contend, adopting a poststructuralist perspective of mediation means that power is no longer just a commodity to be possessed by an individual; power is also an attribute of discourse and manifest in the production and contestation of consensus. Power fluctuates as a consequence of the parties' changing circumstances, and shifts dynamically during negotiations. The less powerful participant – should there be one – may not be the party presenting as such.

Abusive or violent behaviours are matters of concern for all practitioners, especially where there are current or historical allegations. Mediation may well not be appropriate in these circumstances. Those alleging abuse can claim automatic exemption from the mediation process on certain defined grounds, or are screened out routinely during their initial intake meeting with the mediator (known as a Mediation Information and Assessment Meeting MIAMs) (FMC, no date, *What is a MIAM?*). Elimination is not gender-specific, nor are same-sex couples immune from such concerns. Screening at MIAMs must therefore takes account of the many dynamics that may be encountered in any intimate relationship.

Family mediation is typically organised to deal with substantive issues, but the parties may be concerned about less tangible matters as well, such as alleged psychological or emotional hurt. The most difficult issues for family mediators may be the very ones that are seldom justiciable at law, such as fault and blame. Other people can function as external stakeholders, keen to take sides and have a metaphorical 'dog in the fight', even if vicariously. As Wade (2003) points out, friends, relatives and co-workers can act as tribal influences, impacting the process, creating barriers, and affecting the participants' perceptions of their own authority to settle – yet without ever taking part themselves.

Compounding these factors is Mnookin and Kornhauser's (1979) much–cited 'shadow of the law', a term coined to represent the overarching reach of the legal remedies or sanctions potentially available to the parties and, thus, the role of law in the delivery of ADR. This constitutes adumbrations in mediation, especially if the parties intend to seek a financial or other order in due course. Typically, mediated proposals for settlement are eventually submitted to the court via an application by consent, requiring judicial scrutiny and approval

before an order may be granted. Identical considerations apply to proposals reached through solicitor negotiation, or other means.

Ethical norms, codes and the parties' values:

According to Press & Stulberg (2016, p.118), mediators must observe two fundamental norms, since mediation is both a justice and public process. These norms apply, even in the private and informal context of a typical mediated negotiation, whether conflicts are expressed as competing rights, interests, positions, goals, values, or narrative accounts of difference. However, the authors argue that a justice view of mediation as a process used primarily, or exclusively, to forge agreement is a bankrupt conception of mediation, since it ignores who participates, what concerns get discussed, what settlement options might be workable, and the manner in which dialogue between disputants is conducted. Further, understanding mediation as a public process does not mean that it must be conducted in open forum. Rather, practitioners must structure their conduct in a way that reflects, or is consistent with, fair treatment and dignity. It is the application and outworking of these two norms that generate the complex undergrowth of mediation ethics referred to in this paper's title.

Various ethical assumptions, sometimes described as principles, inform mediation in the developed world, although these may be stated or implied in terms that are largely unexamined, unexplained, or even problematic. Gibson (1989, p.41-42) opines that a great deal of the confusion in discussions about mediation ethics is caused by practitioners and theorists assuming that key ethical terms are evident and universally accepted, when this is not the case. Nor is dissonance over the meaning of key terms purely semantic, because differing usages of terms reflect pluralistic ethical values. Gibson also challenges Raiffa's (1982, p.344) conclusion that 'normative ethical frameworks are not designed to yield definitive decision procedures… we should not expect answers from these philosophical teachings and reflections'. According to Gibson, the reverse is true – normative ethics *does* deal with what we ought to do in particular situations (emphasis original).

Mediation's ethical norms appear to be typically neo-liberal, usually expressed in deontological, act-consequentialist, or teleological terms, and formulated in codes of conduct fixed by local professional governance. Reliance on the ultimate efficacy of determinative norms would be a great help for mediators – if only it were that easy. Mediators' fundamental tension, the very

basis of their work, is that they always have *two* clients, whose rationale for mediating in the first place is their potential, perceived or actual conflict. Mediation is a communitarian project, fostering information sharing and discourse aimed at reaching consensus (although this assertion of communitarianism does not automatically extend to community of property) (Wilson, 2015). Mediators are tasked with being on both sides of the fence at the same time. They owe the parties equal treatment (FMCCoP, 2016; 5.4.1), yet this principle is immediately countermanded by the injunction that practitioners must also power-balance as between the participants (FMCCoP, 2016; 5.4.2). A loyalty dichotomy therefore lies at the heart of mediation, confounding notions of straightforward ethical decision-making norms based on a one–size–fits–all moral code.

Where do these norms come from? As Irvine (2010, p.81) asks rhetorically, 'is mediation American?', proceeding to answer largely in the affirmative – although with certain caveats, particularly with regard to Scotland's own legal system. Irvine's study of five prominent ADR texts undoubtedly uncovers values attributable to the legal and political culture of the United States, where four of the books originated. Drawing on a number of sources, Cobb (2006, p.186) summaries her understanding of these values, arguably expressed somewhat aspirationally:

> 'Ethical perspectives on negotiation and conflict resolution arise from normative assumptions about the merit of participatory processes, the management of marginality, the reduction of violence, the need for coexistence, the importance of positive approaches and the need for self-reflection. The values espoused across these frameworks are often implicitly or explicitly tied to pragmatics on the assumption that self-reflection, the reduction of marginality and violence, the promotion of coexistence, etc., are often both the goals of negotiation and the means for producing effective outcomes. "Participation" becomes both the ethical end as well as the pragmatic goal.'

Nevertheless, as Irvine demonstrates, there are differing views about whether such assumptions are indeed considered normative, either within or across different jurisdictions (see also McCorkle, 2005). Other perspectives can be equally valid, even where marginalised by the dominant ADR discourses and only identifiable through critical interrogation and analysis based on familiarity with the wider literature.

Family mediation here anticipates the parties' commitment to joint decision-making within the framework of the law, coupled with an overriding focus on the needs of any minor or dependent children. The FMCCoP (2016; 5.8.3) enjoins mediators to uphold the principles of voluntary participation, fairness and safety. Mediators must adhere to a number of other principles when a marriage or relationship is brought to an end: minimum distress to the participants and any children, promoting as good a relationship as possible between them, avoiding any unnecessary cost. A separate code, also operative in this jurisdiction (National Family Mediation, no date) extends this focus on minors to include consideration of the children's *views as well as needs* (emphasis added), presumably anticipating child inclusive mediation as the default norm, which raises another contentious topic (Roberts, 2015). Powerful moral and welfare injunctions are thus enshrined within at least two local formulations.

Codes of conduct may include – but are not restricted to – assurances of mediator impartiality (treating the parties equally), neutrality (the mediator not having a preferred outcome), practitioner competence and the absence of conflicts of interest, along with guarantees of confidentiality, party voluntariness, and self-determination. Yet none of these 'norms' is absolute. For example, mediators may need to depart from impartiality in order to intervene if discussions become over–heated, or clients decline to fully disclose their financial circumstances for negotiation purposes. Practitioners are inextricably involved in shaping the negotiations, and therefore cannot be wholly neutral, regardless of their intentions. Every mediator should not necessarily accept every case referred to them, even where they are not otherwise prohibited from doing so (anonymous commercial mediator, cited Grossman, 2002, p.86). A disclosed conflict of interest does not necessarily rule out the appointment of a specific mediator in certain circumstances (FMCCoP, 2016; 5.1.4.). Mediators may be obliged to break confidentiality if there are over–riding safety, or even money–laundering, concerns (FMCCoP, 2016; 5.5.). True voluntariness and self–determination can be somewhat illusory. Accommodating each other's needs within the constraints of the total resources and options available, means both parties abandoning a 'winner takes all' position. Litigation commonly involves similar adjustments, since around ninety per cent of family law cases settle before trial.

What of the parties' own norms and values? Much of the literature tends to focus on the belief that disputants seek to realise individual interests and goals, whether expressed or underlying. Broadly speaking, dispute resolution is often described as the culmination of initial positional bargaining, transmuting to the search for common ground, trade–offs – perhaps concessions – and eventual acceptance of the best outcome available to both parties in their circumstances (or,

perhaps, the least worst result possible). However, for Midgley and Pinzón (2013, p. 607) identification of interests alone is insufficient: their Columbian study found that the most important thing for many mediation participants was to have their moral reasoning understood and appreciated. This concurs with Hoffman and Wolman's (2013, p. 766) citation of psychotherapist Elkin's (2011) assertion – 'what is our deepest need?…"innocence"', which the authors interpret as the desire to feel 'we are right, we are blameless, we are good'.

Midgley and Pinzón (2013, p. 607) continue:

> '…the morality of the mediator unavoidably influences his or her facilitative interventions. Therefore, personal reflection by the mediator on his or her own moral framework is essential, so that its influences can be made visible and the facilitator can thereby be held accountable for them in dialogue with his or her peers.'

This need for peer approval is articulated elsewhere in the canon, often in conjunction with protecting mediation's public image. Again, this is another objective not unanimously endorsed by the mediation community: Macfarlane (2002, p.86) offsets the risk to her own reputation against the need to be frank about the realities of practice. It is hard to escape the conclusion that mediation is a moral as well as practical project, encompassing deeply–held personal and professional values and beliefs, as well as the substantive matters to be resolved.

Mediators and virtue ethics:

According to Coulter and Wiens (2002, p.16), phronesis is not simply a form of knowledge, but an amalgam of knowledge, virtue and reason, enabling people to decide what they should do. If mediation is a beneficial process for at least some disputes, do mediators need to be good (or at least aspire to be good) in order to do good?

There is little specific reference to virtue ethics in ADR, although descriptions of, or allusions to, mediators' personal skills, characteristics, attributes and values are scattered across the canon (Wilson & Irvine, 2014). These may be conflated, propositional or speculative, aspirational rather than actually descriptive; the need for a sense of humour, the wisdom of Solomon, the patience of Job.... One commentator is knowingly provocative, framing mediators as subversive

and inherently at odds with the very same established order by which they are legitimised, namely the legislature (Benjamin, 1998). Yet regulated activities in any sphere have to be worked out when it comes to how people think and act – usually in circumstances where there is no opportunity to down tools and phone a friend. Does virtue ethics have a place in mediation?

Certain leading mediation ethicists are not at all keen on virtue ethics. Waldman (2011, p.9) pays relatively scant attention to mediators' personal characteristics or values, favouring ethical intuitionism instead and the weighing and balancing of the competing values at stake in the totality of the circumstances. She writes: 'the need for a context-driven balancing approach becomes even clearer when one looks at the regulatory landscape. In some professions, existing ethical guidelines are unified and consistent. This is not the situation in our field'. Gibson (1989, p.45) observes that mediation occurs between people, and thus varies with the dispositions and traits of the parties involved: in his view, virtue ethics concerns what sort of dispositions and habits we should inculcate in order to benefit mankind, rather than suggesting what ought to be done on any particular occasion. Gibson thus rejects virtue ethics as providing little guidance in new and different moral dilemmas, or where values conflict over individual cases.

Shapira (2016, p.15) is similarly sceptical, relying on Gert's (2004) treatment of moral values as moral virtues and the need to establish whether the speaker or writer intends an assertion of duty or aspiration. His proposed model of mediator ethics references '*fundamental social values* that are in consensus in Western developed societies and among theoreticians' (emphasis original, p.11). Shapira enlists both public expectations and those of the mediation field at large as providing tests as to right professional conduct. While offering a useful means of informing practitioners' decision–making and behaviours, his claimed consensus is problematic. It appears to assume the existence – or at least desirability – of a Kantian-type model of agreed norms that almost certainly does not actually exist, and is unlikely to do so in the foreseeable future.

Shapira (2016, 11–12) also criticises moral relativism as descriptive of the social conventions of societies, and a variety of conceptions of the good that cannot be morally criticised. Yet in Roberts' (1979, p.167) ethnographic account of dispute management in stateless and other less complex societies, the author warns that we have to be particularly careful not to let arguments about how 'trouble may be handled' be coloured by our own values and preconceptions. It would be easy to interpret Roberts' remarks merely as a commentary on the developmental state of certain emergent societies, made several decades ago. It is less easy to stand back from the hegemonic influence of much of the contemporary ADR canon. Further debate about

relativism in mediation is beyond the scope of this paper, except to observe that cultural norms – in the widest sense of that phrase – inevitably influence what takes place in mediation, wherever and however it is practised.

The goal of establishing a taxonomy of mediators' virtue ethics certainly warrants empirical investigation, but is unlikely to be a straightforward task. For example, impartiality may signify the mediator's virtuous commitment to scrupulous fairness, demonstrated by their ability to treat both parties equally. Yet seeking entry to the ADR field, which typically positions its practitioners as being above the fray, may also signify that a would–be mediator has their own unresolved conflict–avoidant tendencies (Benjamin, 2001). The practitioner's virtuous concern for justice may be expressed by their neutrally promoting respectful discussion of opposing views, but is theoretically deficient unless also accommodating a systemic understanding of how humans interact. Virtue ethics in the so–called helping professions may be conceptualised by a complicated, fuzzy, Venn–type diagram. At best, advancing the need for virtue ethics commits mediators to delivering the best practice they can, for the best reasons possible: at worst, there is the danger of unexamined motives and values.

Grossman (2002, p.45) speculates that there may be a distinction between the virtuous professional and the virtuous layperson. So, where should mediators look for professional guidance? In 2014 the Jubilee Centre published a Research Report (JCRR, 2014) setting out empirical support for virtue ethics as a promising contributor to character-driven legal education and morally–strengthened lawyers' conduct (p.4). This study of lawyers' self–reported virtue ethics is a promising starting point for mediators, although does not mention ADR. The findings show considerable agreement between experienced solicitors and barristers when identifying lawyers' top six personal values – fairness, honesty, humour, judgement, perseverance are listed in roughly the same order, with kindness and a love of learning in sixth place, depending on discipline. Aspirational virtues attributed to 'ideal' lawyers (p.15) are not that different. One notable exception is counsels' mention of idealised bravery, arguably also essential for those venturing into mediation practice.

It is challenging to untwine the strands of mediation's virtue ethics. Legal virtue ethics offer some useful markers, but are essentially attuned to lawyer's primary duties, namely to the court and the zealous pursuit of their own client's interests. Certain authorities (Honoroff and Opotow, 2007, p.168), believe that medicine's moral thinking is more apposite to mediation, although they do not mention virtue ethics as such. Legal virtue ethics are certainly not

unproblematic in their own right; neither can they tidily address mediation's fundamental loyalty dichotomy and the many other discrete issues faced by ADR practitioners. Given the apparent paucity of debate about mediations' virtue ethics, the suggestions made below are offered unranked, and very tentatively.

Beneficence, non-malfeasance, autonomy, justice and fairness:

ADR has won government endorsement in many jurisdictions. Judicial encouragement promotes mediation as beneficial to the parties, helpful for the disposal of cases in the public interest of avoiding cost and delay, and is therefore deemed 'good' in many circumstances. The global mediation community generally appears to endorse non-malfeasance (do no harm), despite interpretive problems when it comes to what might considered damaging (Macfarlane, 2002, p.83). Mediators' virtue ethics are likely to honour autonomy and self-determination, expressed by the mediator's encouragement of the parties' right to author their own outcomes.

But there are cogent arguments against private ordering and informal justice, with some critics viewing ADR as inherently harmful to justice concerns and the rule of law. Settlement for the sake of peace may not be a beneficial outcome, which begs the question of whose good is promoted in conflicts? Much has been written about preserving the democratic right to a fair trial, and the necessity of evolutionary precedents in common law jurisdictions. Yet it is questionable whether either party wins when litigation results in the tragedy of the commons, especially where families and children are concerned. Overshadowing judicial processes and precedents might not meet the parties' expectations of fairness in mediation: feminists such as Nussbaum (2001) question Rawls' (1971, restated 2001) 'justice as fairness' when applied to the family. Men and women alike express dissatisfaction with certain legal rulings, such as departures from equality or other determinations they deem unfair, even if for different reasons.

Trust:

People in conflict can be rightly suspicious of negotiators they do not already know and trust. The notion that impartiality and neutrality encourage participants' trust is not totally supported by communitarian–oriented contributions to the ADR literature [Wehr & Lederach, 1991).

Trustworthiness has to be experienced, not merely claimed. Trust takes time to establish, is easily breached, and may need to be earned by mediators through painstakingly overt demonstrations of fealty to *both* parties, and parity of respect for each (such as managed turn-taking and equal 'air time').

Perseverance, fortitude and generosity:

Perseverance and fortitude are probably needed by mediators and parties alike. Negotiations can be exhausting, even when going well; generosity can be sorely stretched in the pursuit of settlement. The performance demands of equitable conflict management make considerable demands on both mediators' and parties' self-control. Baumeister et al's (1998) strength model predicts that self-control is a finite resource, the exercise of which results in ego–depletion and weariness, which then require counteraction through rest or relaxation. There is a delicate pivot between giving up the search too soon and going on too long – put colloquially, it's better to quit while you're ahead.

Virtuous curiosity, excellence and 'not knowing':

Curiosity does not mean prurient nosiness; virtuous curiosity manifests as respectful enquiry, as wilfully free of as many assumptions and stereotypical value judgements as possible. A virtuous commitment to excellence means valuing professional development for its own sake, and the desire to exhibit related knowledge and skills at the highest level possible. Yet there may be another, less tangible ADR virtue, arguably not coterminal with patience, party autonomy or practitioner self-management – that of virtuous *not knowing*, the tolerance of uncertainty and the possible personal discomfort of sitting alongside the parties while they reach their own conclusions, in their own way, at their own pace, without your own obvious assistance. This does not mean abandoning participants to their fate, or overseeing unconscionable outcomes. Rather, it reflects the mediator's calibrated resistance to taking over, to seizing control for themselves through unwarranted interventions, to yielding to seemingly benign professional desires to be reputed a successful dispute resolver – even to eschewing the very human need to be needed.

What philosophical construct might inform ADR virtue ethics?

Mediation ethics will remain impoverished unless ADR advances beyond the inadequate architecture of conduct codes. Every dispute's unique features centralises the exercise of mediators' personal discretion; standardised statements about conduct cannot provide specific answers to every question (Macfarlane, 2002, p.64). In the end, mediation is about the discrete, multilateral relationships established between the parties and the mediator, in which process and content eventually become virtually indistinguishable.

Discussion of the vast panoply of philosophical constructs available is not possible here, except to think in terms of which might best accommodate mediation's dichotomy dilemma and the virtue ethics which might be expected of practitioners. Ricoeur's (1992) philosophical thought includes the concept of the caring conversation, 'practical wisdom inventing conduct that will best satisfy the exception required by solicitude…that is, the exception on behalf of others'. Writing as an environmental philosopher, a discipline similarly concerned with competing needs, rights and obligations, Utsler (2009, p.174) here endorses Ricoeur's philosophical intention in *Oneself as Another* as:

> 'a most profound way of considering…the dialectic of the self and the other–than–self constitutive of personal identity that is not merely in comparison with the other. This dialectic is such that "the selfhood of oneself implies otherness to such an intimate degree that one cannot be thought of without the other, that instead one passes into the other"'.

Conclusion:

Rather than rejecting virtue ethics, ADR ethicists might well contemplate the conclusion reached by Grossman (2002, p.98):

> 'Particularly in a global market, a profession's ethics have to function at a broad societal level which seems, on the face of it, to be difficult to reconcile with an ethical approach whose primary focus is the life and character of individual agents. However, virtue ethics leaves open the door to the idea of professionalism which is not independent of an idea of why professions emerge and what they are for'.

Pathways meander in mediation ethics, with the tangle of virtues and issues never more than a footstep away. Even the mediator's own values may not look static: the blessedness of the

aspiring peacemaker; the pragmatics of the deal broker. In more explosive disputes, sometimes this is as good as it gets. In the absence of a more useful thesis, Ricoeur's (1992) caring conversation and ethical intention — 'aiming at the "good life", with and for others, in just institutions' — might offer the best philosophical framework within which mediation's virtue ethics can be developed and enacted.

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