

Is It Possible to Mediate a Disagreement about Free Speech?

We've been asked this a lot over the years and I'm going to argue that it is the wrong question.

Which may sound pedantic, but please bear with me for a moment.

Mediation is a forum in which a trained, independent facilitator uses communication techniques to make a difficult conversation easier for the participants. What they choose to achieve at the end of that conversation is their decision.

The mediator has no interest in what the outcome is, nor any influence over its contents. Which is very different to the idea that "to mediate" is to use a process that decides the outcome.

So perhaps a better question is:



Could people use mediation to resolve their differences about the use of free speech?

Yes, they could, with one proviso about "control" which we'll come to later.

At the heart of this debate is what the protagonists are using "communication" for.

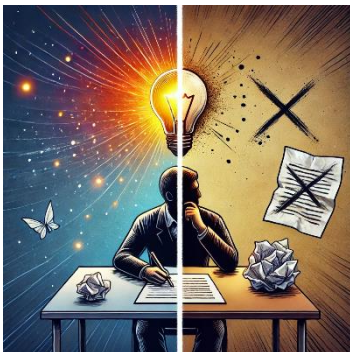
In biology communication can be defined as the potential for one organism to change the behaviour of another.

For example, female moths release a species-specific blend of pheromones which a male of the same species can detect from up to hundreds of meters away and so fly to the female. However, this chemical communication only creates the potential, not the certainty. If the male moth is the wrong species or too far away, the female's communication is ineffective.

What has to happen to push the potential towards certainty?

The often quoted ideal is that in a balanced dialogue between two opposing, strongly held views, we should be able to communicate with each other in a respectful and informative way, that builds mutual understanding while minimizing negative impact.

One way to demonstrate respect is to recognise two powerful motivations in the other person, their desire to exercise self-determination and self-interest.



We all want to make our own decisions about what we will or will not do in our lives and those decisions are largely based on whether we see doing it is in our best interests – or not.

In seeking to change someone's views, it is crucial to start by listening, to understand what's vital for the other person to have included in any solution that they see will be in their best interests.

Then it is possible to use negotiation techniques to promote the individual's self-determination in creating a mid-ground which gives both sides some element of what they want and which they can live with.

It might not be a perfect solution.

It might be they agree to disagree.

But hopefully the relationship they have built by listening and negotiating respectfully during the mediation will reduce the high levels of emotion their conflict had always demonstrated.

If they can agree to disagree in a calm, respectful manner, that could be a good solution for both sides.

Is It Possible to Mediate a Disagreement about Free Speech?

Except where the communication is about Control

What now seems to be happening is that one side of an argument refuses to listen to or negotiate with the other but attempts to control their views and behaviours by intimidation.

Which has fundamental problems.



When we attempt to change someone's mind, and they resist, it's tempting to try to exert control by shouting or physical restraint. However doing so creates rejection of our communication by ignoring our motivations for self-determination and self-interest and so erodes trust in us.

The truth of a "free society" is that we can't control other people to force them to believe what we want. Any more than they can force us to believe what they want. Such attempts are fundamentally unjust and futile.

Even if we think our ideas are righteous and flawless, employing control or manipulation weakens our cause, muddles our communication, and hurts chances we might have had at fair persuasion.

How could mediation help?

The mediation process is well tested and contains certain inviolable rules.

- ☀ The process involves both participants in its design, so both feel they have some say. We know from research that a decision we reach through a process we helped to design is more likely to be accepted, even if it is not the outcome we originally wanted.
- ☀ Each side can formulate and present their arguments safely, clearly and without interruption, sarcastic comments or eye rolling from their opponent.
- ☀ The mediator will not judge the rights or wrongs of their arguments, nor will they give advice – the conflict belongs to the individuals, so they must decide what's best for them.
- ☀ As the mediator is independent of the individuals, they have no interest in the outcome, which will be decided by the individuals, having expressed their differing views.



That outcome may be to agree to disagree, which is easier if the process has developed a deeper respect for and understanding of the other person, if not acceptance of their viewpoint. For most people this is a positive outcome, compared to the effects of their previous conflict.

To achieve this, the mediator may coach both parties in communication techniques, including active listening, open ended questions, attribution theory, confirmation bias and transactional analysis and each party may rehearse their arguments with the mediator to build clarity and conciseness.

For example, while one speaks, the other is encouraged to listen, actively, asking open-ended questions to generate more information and so create a deeper understanding of their opponent's views, what motives, beliefs, attitudes and experiences underpin them and what makes them so important.

Other ways the mediator might help include:

Is It Possible to Mediate a Disagreement about Free Speech?

- ✿ To develop an understanding of the other person's position, the mediator might ask each individual to write their key points on separate flip charts. Each is then asked to present the other party's key points. This may surface ideas they have not thought of, generate discussion about the meaning of some issues and generally increase everyone's understanding of what is important to both as well as to each individually.
- ✿ The mediator may establish their underlying values, together with the behaviours each sees as supporting those values and those which work against them. Invariably some values – such as respect, honesty and so on – will be common to both, although their behaviours may differ. Where the values are the same this can create common ground from which to explore their differences. Where they differ, this enables a discussion about the importance of that value to the individual, what underpins it and how it informs their position in the disagreement.

Could mediation enable a better relationship where the disagreement is profound?

Yes it can and does, where the relationship between the two protagonists is important or likely to continue, forming some basis of respect and understanding could be important to both.

If there is no need for a continuing relationship, the likelihood is the individuals will have little motivation to attempt to understand each other.

Where one side is determined to exert control over the other, for all the reasons above, no mediation is likely to succeed.

Is mediation's purpose to change minds or build respect?

Neither. It is there to create the forum in which both could happen if the protagonists see that as being in their best interests and they arrive at that decision themselves.

Mediation never seeks to change someone's mind because it has no power or authority over the individuals involved to be able to do that.

It does create a forum in which a dialogue can take place which can build respect for the individual (even if not for their views) and the knowledge that they are respected in return, even if their views are not reciprocated.

Is mediation worth trying?

Over twenty years as a mediator I am constantly amazed at the ability of individuals in conflict to use mediation to reach some level of respect and understanding when, were I to be a gambling man, I would have bet against that outcome.

As someone said many years ago, you'll never know unless you try.

Any Questions?

If you have any questions or suggestions please let me know.



07733882543

jeremy@catalystmediation.co.uk

www.catalystmediation.com