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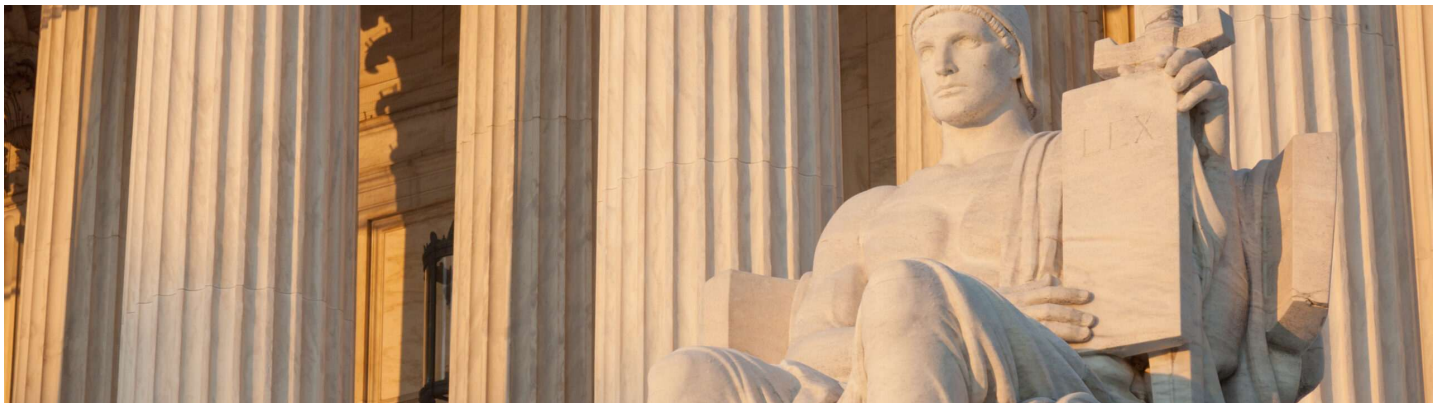
Identify Your Power as a Mediator Using Stoic Philosophy

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A skilled mediator is not a mere functionary who passively shuttles back and forth between the parties in the hopes of achieving a settlement. Ideally, the mediator wields great power in helping those involved to focus their energies on the common goal of resolution, despite the feelings of anger, fear, frustration, and resentment they may have toward one another. In a successful mediation, combatants are converted to cohorts who work together to resolve their shared problem.

Drawing on insights from the ancient Greek philosopher Epictetus, this article discusses the transformative power of Stoic Philosophy when applied to the mediation process.



Stoic Philosophy

Stoicism is a school of thought that originated in ancient Greece around the 3rd century BC. [1] It teaches that the central goal of philosophy is to guide the individual to act in the world with good character by adopting ethical values and by exercising sound reasoning. Ryan Holiday, a popular writer on the subject, explains that Stoicism is “a philosophy not of ephemeral ideas but of action,” and its four cardinal virtues are: courage, temperance, justice, and wisdom.

Among the many proponents of Stoic philosophy was a man born into slavery in ancient Rome around 2000 years ago. His name was Epictetus, and his teachings are expressed in a set of books called the *Discourses* and *Enchiridion* (the manual). [2] Epictetus offers valuable guidance for modern-day mediators by helping them recognize the elements of power inherent in the role of a neutral intermediary, enabling them to apply the cardinal virtues of courage, temperance, justice, and wisdom in the dispute resolution process.

The Power of Perception

Epictetus highlights that one of the greatest gifts possessed by humans is “the ability to make good use of impressions” (D I, 1,7). He explains that “the first and most important duty of the philosopher is to test impressions, choosing between them and only deploying those that have passed the test” (D I, 20, 7). Succinctly stated, “It is not events that disturb people, it is their judgments concerning them.” (E. 5)

Accurate perceptions can be distorted by fear and anxiety. A skilled mediator has the power to reduce fear and anxiety by helping the parties to discern actual facts from the parties’ judgments about those facts. For example, a feared outcome might not be so terrifying for a party if they consider ways of managing risk. Thus, a settlement involving a payment plan might be more palatable if it is accompanied by appropriate default provisions.

Sound judgments also cannot be made if the perception of those facts is distorted by bias and prejudice. The mediator’s ability to detect and reduce or remove the distorting presence of bias and prejudice is a powerful tool which, if delicately applied, can help the parties to more accurately perceive the nature of their dispute and the path to resolution.

The mediator’s power is also directed inward. Unlike the parties who may tend to assume they are correct, that their fears are fully justified, and that they have no bias or prejudice, the mediator constantly reflects upon their own fears, anxieties, biases, and prejudices to keep them in check. The mediator actively examines their own perceptions, beliefs, and behaviors with the express purpose of removing anything that affects their accuracy and neutrality. This is what sets the mediator apart from the parties, and this is why the parties trust the mediator as their guide to ultimate resolution.

Avoiding bias and prejudice is not just an ethical concern. It is the very core of the mediator’s value as an objective observer of the parties’ dispute. To make the best use of their power, the mediator should approach each dispute with a deliberate goal of eliminating as far as possible these distorting filters. Thus empowered, the mediator can help the parties to appreciate the value of settlement as compared to the litigation alternative.

The Power of Reason

Epictetus notes that “If a man objects to truths that are all too evident, it is no easy task finding arguments that will change his mind.” (D I, 5, 1)

At the commencement of the mediation, parties frequently believe their view of events is correct, and they are therefore justified in asserting and maintaining their opening position. As a result, they do not move toward one another.

Think of a mediator as a guide who helps the parties to find one another in the darkness through the light of reason, which is applied through carefully worded questions prompting the parties to examine the situation from a broader perspective. A skilled mediator recognizes that the only person who can change a person's mind is the person themselves, and so the goal of the mediator is to create a safe environment in which the mediator can help a disputant to reflect upon the soundness of their position and the reasoning that might lie behind their intransigence.

According to Epictetus, "reason and good judgment...we share with the gods." (D I, 3, 3) One need not be religious to accept the wisdom of this observation. Reason is the common ground upon which humans can best communicate, and we embrace our shared humanity when we turn to reason as the framework for resolving disputes rather than emotion. Emotions certainly play a part, but not if they lead to unreasonable results.

Epictetus explains that "Reason is unique among the faculties assigned to us in being able to evaluate itself." (D I, 1, 4) Thus, a powerful tool in the mediator's arsenal is to invite the parties to articulate the reasons for their positions and proposals. When spoken out loud, the parties can work with the mediator in evaluating those positions. If a broken link in the chain of logic can be detected, perhaps a previously unacceptable settlement outcome can now be achieved.

The point here is that once a party accepts the process of agreeing to evaluate the reasons for their positions, the process of dis-entrenchment can begin. A shared understanding of basic fundamental facts is a good way to begin this process. Thus, during the course of the mediation, the mediator encourages the parties not simply to soften their position, but, rather, to be more flexible in their reasoning.

Sometimes, it can become apparent that an appeal to fact and reason has fallen on deaf ears. There is something deeper and hidden (perhaps even to the disputants themselves) that is interfering with resolution. To this, Epictetus observes that "a person can suffer two kinds of petrification, that of the intellect, and that of the sense of honor, when somebody assumes a defiant stance." (D I, 5, 3) At this point, the mediator must use their powers of observation to identify and carefully address the underlying resistance to settlement. For example, it may be that the key to achieving a negotiated resolution at mediation is a nonmonetary incentive: e.g., an apology because a party needs emotional closure, a confidentiality / non-disparagement agreement because a party places value on its public image or personal privacy.

The Power of Listening

Epictetus explains, "When they assent to a thing it is because they feel it must be true, when they dissent, it is because they feel something isn't true, and when they suspend judgment, it is because they feel that the thing is unclear." (D I, 18,1)

Stoic listening is not merely waiting for your turn to speak; it requires intellectual humility and a desire to truly understand what a person is communicating. It is therefore the task of the mediator to actively listen and to show an understanding of the issues involved, as well as an understanding of how the parties perceive those issues. In this way, mediators can unearth the emotional drivers, fears, and goals behind the monetary

demands. Even a simple question like “how did we get here?” can open a floodgate, and the disputant feels they finally have the opportunity to tell their side of the story to an important person (the mediator) who will listen with open ears and an open heart.

Especially in an emotionally charged mediation, there may be an urge to interrupt and change the subject. By remaining silent and practicing attentive listening, the mediator models restraint. Through this, the tension can be de-escalated, the speaker can be made to feel validated, and a constructive environment can be created within which parties can negotiate rationally rather than reacting impulsively and emotionally.

By listening actively and equally to the parties, the mediator models a behavior of receptivity and respect. As the disputants observe the mediator’s ability to ‘listen,’ they will eventually begin to listen better themselves. Through active listening, the mediator communicates to the parties: “I am listening to you; perhaps you can listen to them.” When the mediator’s power of listening is taken up by the disputants, that is the point when hope of resolution can be manifested.

The Power of Composure

Epictetus advises, “Stand by a rock and insult it, and what have you accomplished? If someone responds to insult like a rock, what has the abuser gained with the invective?” (D I, 25, 29)

In other words, an insult has no power unless the receiver gives it power. In mediation, this Stoic principle empowers a mediator with a certain level of emotional invulnerability, which creates a space for parties to vent without triggering an argument.

During the course of a mediation, a disputant might direct their frustration and agitation at the mediator by communicating with angry words, emotional outbursts, and accusations. The mediator’s reaction to such an attack will likely be observed and can be a critical teaching moment. By remaining calm and objective, the mediator can help to de-escalate the way the parties communicate during the mediation. The disputants may learn from the mediator’s reaction (or non-reaction) that a person does not have to strike back at everything that seems insulting; that it may be best to let the insult pass where it is and then get back to the business at hand.

The ability to maintain composure in the face of an insult is a form of power. Epictetus provides an interesting view of this dynamic. He states, “If your body was turned over to just anyone, you would doubtless take exception. Why aren’t you ashamed that you have made your mind vulnerable to anyone who happens to criticize you, so that it automatically becomes confused and upset?” (E. 28) Stated another way, if someone can make you angry by criticizing you, then you have essentially allowed them to capture the most important part of your body, i.e., your mind.

By maintaining their composure in the face of a personal attack, the mediator can show that there are other ways of dealing with an insult than being insulted. Though an insult may be thrown, it need not be caught. When a party observes that the mediator can set aside their own feelings in order to focus their attention solely on the dispute, the party can then understand the dedication the mediator has invested in the process. The party may thereby feel empowered to do the same.

According to Epictetus, “... it is not enough to be hit or insulted to be harmed, you must believe that you are being harmed. If someone succeeds in provoking you, realize that your mind is complicit in the provocation. Which is why it is essential that we not respond impulsively to impressions; take a moment before reacting, and you will find it easier to maintain control.” (E. 20)

The mediator's ability to protect their equanimity is precisely the skill that sets them apart from the parties who have assumed attacking and defensive postures. The mediator is a neutral who has no need for self-defense. In a very real way, the power of composure is the very product that is being offered by the mediator.

The Power of Knowing What You Control

According to Epictetus, "...in life our first job is this, to divide and distinguish things into two categories: externals I cannot control, [and] the choices I make with regard to them I do control." (D, II, 5, 4) This statement is a central organizing principle of Stoic Philosophy, i.e., the ability to recognize that which is in one's control and that which is not. Epictetus explains that "Every circumstance comes with two handles, with one of which you can hold it, while with the other conditions are insupportable." (E 43)

By working with the parties to examine what is and what is not in their control, the mediator is able to help them to navigate the perilous journey between Scylla and Charybdis. While the allure of victory may lure disputants into a false sense of security over proceeding down the path to litigation, the question must be asked, "Yes, and at what cost?"

For their part, the parties have hired lawyers to advocate for them, and the directives given to those lawyers are to "win." Disputants do not always hear warnings from their lawyers about the process. The mediator can help the parties to embrace the possibility that things may not necessarily go as expected. Judges can make mistakes, and juries are unpredictable. While a party might not want to hear this from their own attorney, they may be willing to listen to the mediator who does not have a horse in the race. The mediator is able to explain that the mediation provides a real (and possibly only) opportunity for the disputant to control the outcome of their case.

Epictetus suggests, "Whenever I see a person suffering from nervousness, I think, well, what can he expect? If he had not set his sights on things outside man's control, his nervousness would end at once." (D II, 13, 1) So too, the mediator, by helping the disputants to focus on what they can control, will go far in helping them to resolve not only their dispute, but also, perhaps, a measure of personal anxiety they had been suffering.

The Power of Your Will

Epictetus presents an intriguing inquiry in examining the art of expression. He asks, "What opens or stops our ears, making us either receptive to a speech or unmoved by it? Not hearing; it is the will and the will alone." (D II, 23, 9-10). What a delightfully refreshing observation. Ears do not decide what they will hear, eyes do not decide what they will see, and mouths do not decide what they will say. All that is controlled by our willpower.

When parties are engaged in a dispute, both sides can have a feeling that they have lost control over the situation. Nothing they do seems to matter. They can be years into litigation with nothing to show for it. The challenge of the mediator is to help the parties recapture their locus of control, i.e., their sense of self-determination and the feeling that their decisions matter.

In the section above, factors that lie within a person's control versus those that do not were discussed. External events and other people's behaviors are examples of factors that largely lie outside a person's control. This section addresses internal factors that do lie within a person's control, such as perceptions, judgments, choices, and reactions. These internal factors are guided by the power of one's will.

A skilled mediator can help a party to recognize when external factors have hijacked a party's thought process. The phrase 'blinded by rage' comes to mind and elegantly explains how a person can lose their ability to perceive events for what they are because the fury that they feel compels them to seek retribution or punishment. In the context of a mediation, someone might be so upset with or insulted by the other party that they have not fully realized the value of a settlement offer that has just been presented. In such cases, it can be helpful to provide a respectful environment where self-reflection can occur and where the party can regain their ability to redirect their willpower from conflict to resolution. Achieving this end requires the mediator to exercise careful judgment, authority, discretion, and empathy.

Phrases like 'why are they making me do this' or 'I can't believe they are doing this to me' are signals that a party feels a loss of their ability to dictate their own fate. That is when it is important to help that person regain their focus on the facts that matter and to assume control over the choices they make and the reactions they experience. Thus empowered, a disputant will be in a far better position to formulate an acceptable settlement proposal rather than being 'forced to accept' what is being offered.

Conclusion – A Hero's Journey

In his book, *The Hero with a Thousand Faces*, Joseph Campbell describes the journey of the 'hero' which is shared by and echoes throughout the stories of virtually all human cultures and civilizations. As in countless stories, fables, fairy tales, and religious texts, the pattern describes the hero's separation from their normal world, an encounter with some previously unknown source of power, a harrowing journey followed by a return and reintegration with society, possibly with a life-centering or life-renewing form. Often, the story will include a form of supernatural aid, or the unsuspected assistance from a protective figure "who provides the adventurer with amulets against the dragon forces he is about to pass." [3]

In many ways, the mediation represents a journey into an unknown world for disputants. One in which they will encounter great difficulties that will encumber them and seek to interfere with their safe return. They may even have to face demons and ancient energies, perhaps even living inside themselves, that seek to prevent progress. The demons of fear, anger, frustration, greed, and self-righteousness will all leap out from the shadows or creep in through the crevices of the mind to disrupt and defeat our heroes. Both sides want something from the other, but they will never succeed unless they work together.

In the context of the dispute, the mediator guides the adventurers through emotional turbulence by using and conveying the amulet of Stoic Philosophy, which contains the ancient power of self-knowledge that can help to overcome the egoic beasts within that otherwise impede the passage to settlement and final resolution. In a very real sense, mediation is a transformative experience in which the great monomyth itself plays out. The stakes are great. But, if successful, it is a beautiful story where humans learn to live together in peace and harmony with the help of a powerful mediator serving as the enervating force through which this epic narrative comes alive. Journey well, my friends.

[1] Ryan Holiday and Stephen Hanselman, *Lives of the Stoics*. Profile Books (2020).

[2] In-text citations preceded by "D" are to Epictetus, *Discourses and Selected Writings*, Penguin Classics, (2008). In-text citations preceded by "E" are to Epictetus, *The Enchiridion*, within the same publication.

[3] Joseph Campbell, *The Hero with a Thousand Faces*, 57, New World Library (3rd Ed. 2008).



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