

When all else fails! Mediation!

Loss fuels the meaning we give to Life.

Making Sense of Loss – The Re-Constructionist Model of Mediation

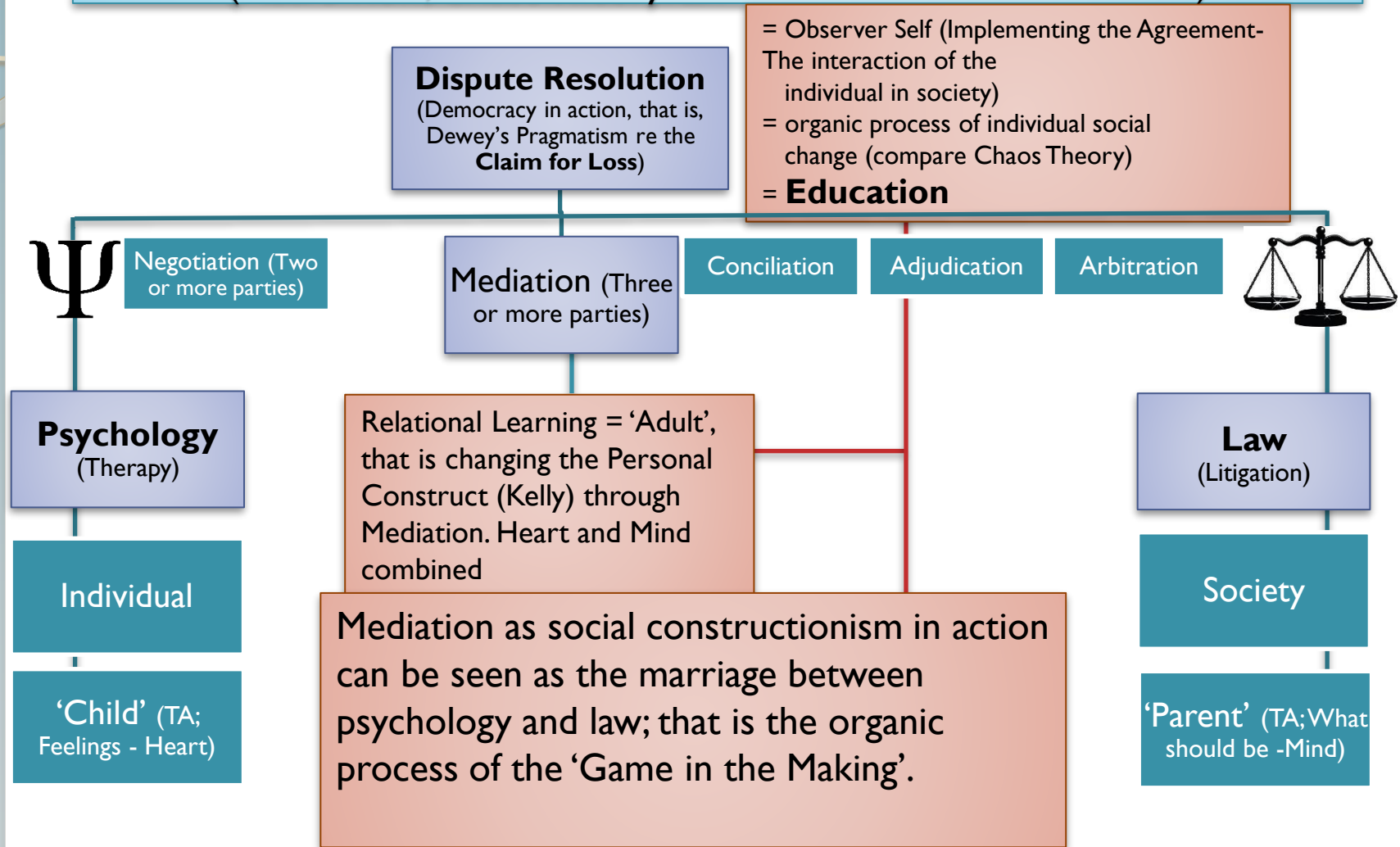
The Impact of Loss and Grief on Decision Making

Presented by Katherine Johnson, PhD
(Law)



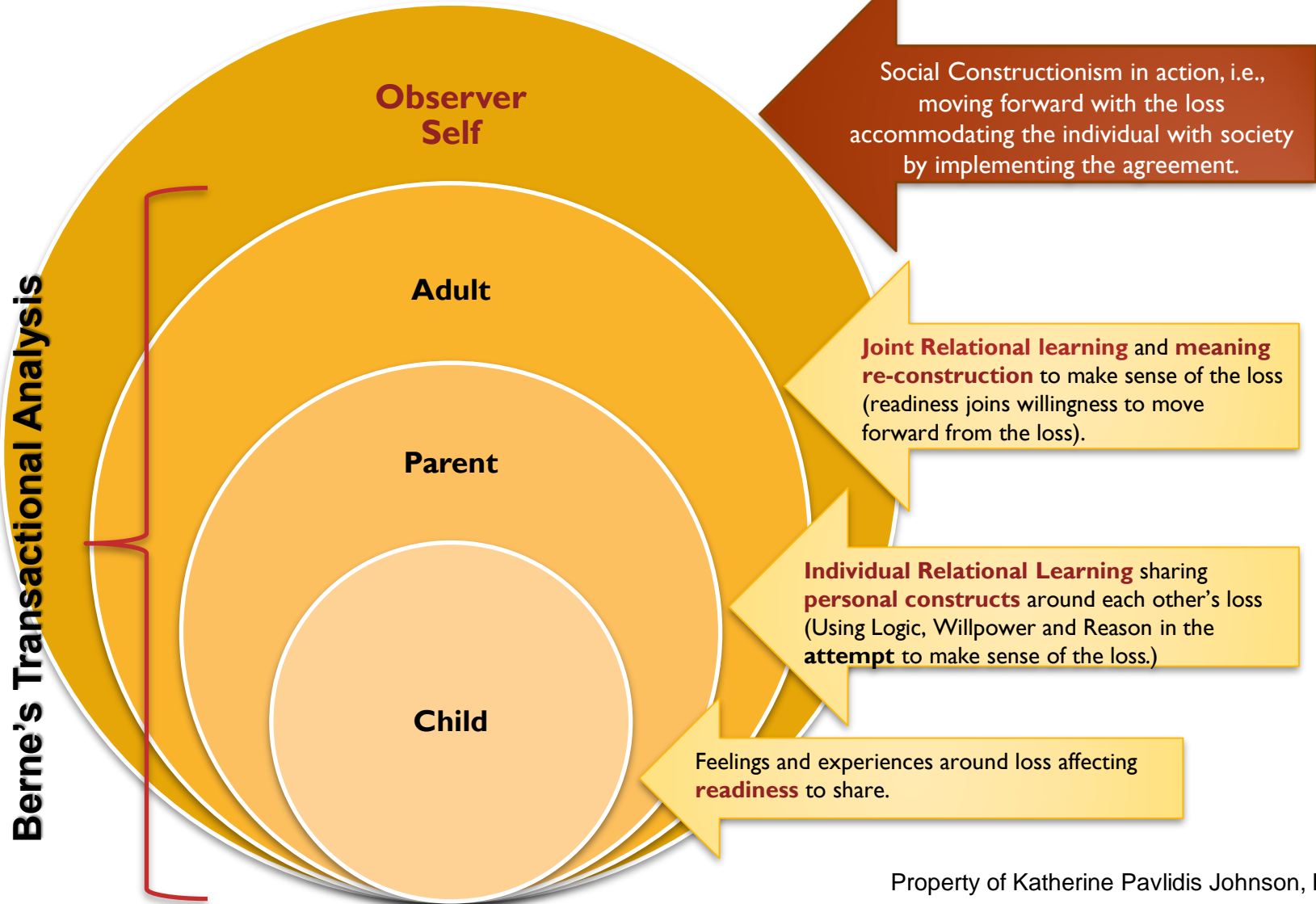
The Continuum of Dispute Resolution as an Agent for Social Change

(Macro View; Chaos Theory: $Z_{n+1} = Z_n^2 + C$ Mandelbrot set)



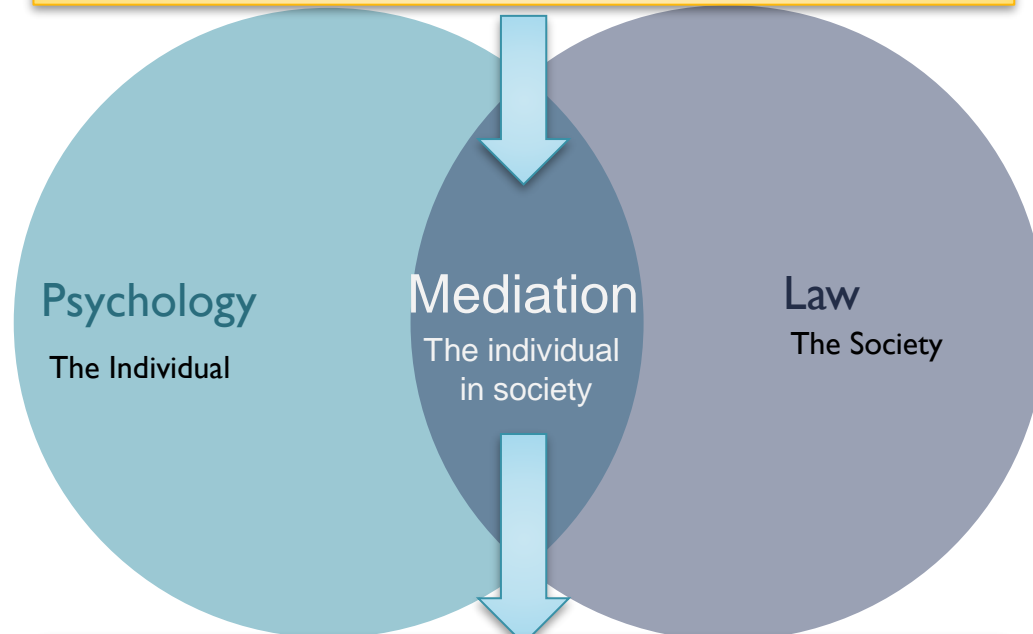
Transactional Analysis and Observer Self

Berne's Transactional Analysis



The Continuum of Dispute Resolution as an Agent for Social Change – An Analysis of Mediation as Social Constructionism (Micro View)

The marriage between Psychology and Law
To address Loss



Mediation as the “Game in the Making”

That is, parties sharing their experiences grounded in their loss in a legal context to identify and address a new set of rules around the issues, i.e, parties act as **grounded researchers** (Charmaz).



The Continuum of Dispute Resolution as an Agent for Social Change – An Analysis of Mediation as Social Constructionism (Micro View of Premediation to Macro View of Mediation)

(1) Identifying individual Loss

- Issue identification – each party explaining their own personal constructs around the Loss (Kelly)

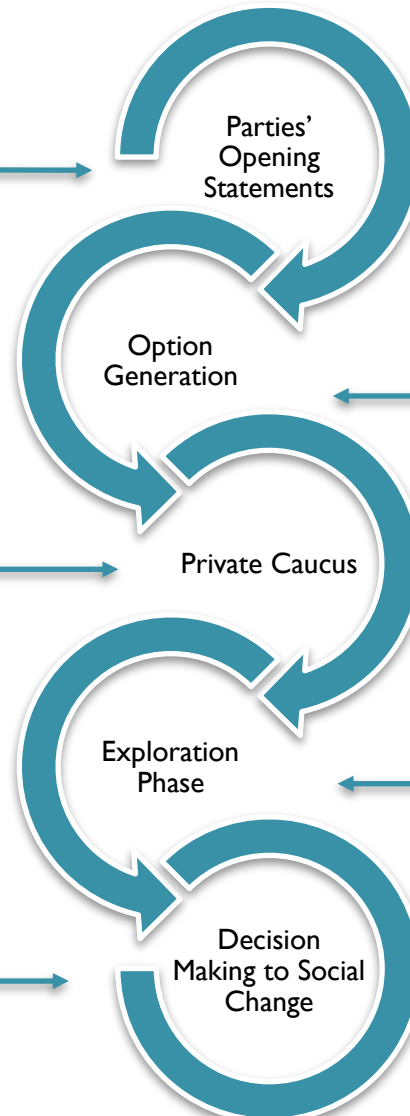
(3) Re-Constructing the Loss Individually

- Reality testing from possible to probable options to enable individual meaning re-construction around loss (Neimeyer and Sands)

(5) Loss: an Agent for Organic Social Change: Observer Self

- From probable options to decision making to live with the losses through agreement. That is:

- **Shared meaning re-construction + individual relational learning = the formation of new social relations = social change**



(2) Deconstructing the Loss

- **Assessing** the severity of the **grief** in relation to the capacity to understand the other's perspective (Child/Parent)
- **Engaging Relational Learning** – exploring the level of readiness and willingness to understand and/or address each other's worldviews/personal constructs around the losses.
- **Engaging Mindfulness** (Vago and Silberswieg) to consider options which can enable meaning re-construction through **Adult-Adult transactions** (Berne) around the losses

(4) Shared Re-Construction of the losses

- Reality test for probable options that enable shared meaning-re-construction around the losses

Congratulations!



Grief and Loss

- The grieving process occurs in all types of loss to a lesser or greater degree depending on the how much expectations have been shattered.
- Grief and loss can be loaded with complexities and fraught with difficulties as parties attempt to restructure their lives following loss.
- The relational aspect of grieving has been largely overlooked in the field of mediation, hence the use of the Normative Information Session (NIS) as part of the Re-Constructionist Model.
- The NIS offers parties a behavioural assignment to reinforce their own relational thinking and engage in responsible actions.



Grief and Loss (cont'd)

- The NIS enables parties to chronical their experience of loss as grounded researchers in order to better endure their loss for the long-term.
- Collectively acknowledging the effect of grief enables parties to form social networks and structures through which they can better endure their loss.
- The principles of readiness, willingness and ability form the foundation for a joint social constructionist process of mediation
- A social constructionist approach to loss in a relational world becomes a more effective means of dispute resolution



The Five Principles of Social Constructionist Mediation

1. Disputes arise when expectations are not met
2. The purpose of social constructionist mediation is to make sense of loss caused by the breakdown of expectations
3. To make sense of the loss, the parties determine how the original meaning attributed to the loss fits into their personal construct or worldview – that is, they deconstruct the loss (relational learning)
4. Assigning new meaning to the loss allows the parties to move forward – that is, to reconstruct the loss through the process of relational learning
5. The use of relational learning can raise the consciousness of parties to actively plan for any future relations between them through their own ‘game in the making’ (social inclusion)



The Process of Social Inclusion

- Through the process of social inclusion and reconstructing the meaning attributed to the loss, parties become agents for social change
- The way parties reconstruct their sense of social justice to better handle the loss impacts directly on the way they can move forward with life. This requires an interdisciplinary approach to making sense of loss.
- An interdisciplinary approach to mediation as social constructionism in action can transform the process of dispute resolution into an agent for social change



Understanding Loss in Relationships

- Every conflict takes place within a relationship not only between individuals, but also in context, culture and environment
- No relationship is conflict neutral
- Every relationship contributes often in veiled yet significant ways to the nature, intensity, duration, influence and meaning of conflict
- Analogy to the natural sciences through Chaos Theory (flickering flame)



Understanding Loss in Relationships (cont'd)

- The analogy from Chaos Theory provides a better understanding of the flow of perceptions that appear as uncertainties like the unpredictability of movement of a flickering flame
- Closer examination of the apparent chaos can be seen to be a constantly changing set of thought patterns ordered around the terms of the relational contract, much like a camera zooming into high definition on the movement of a flickering flame
- The constantly changing ordered thought patterns settle to form the values and beliefs of the parties which then form their expectations



Understanding Loss in Relationships (cont'd)

- The flexibility with which expectations are held determines the positions held by the parties around the terms of the relational contract
- Relational learning emerges as “glimpses of insight” around how the changing sets of thought patterns work in relation to the loss
- Gergen’s definition of social constructionism as the “game in the making” now applied to mediation as social constructionism in action



Making Meaning of Loss

- The parties' expectations and attendant assumptions usually constitute the opening statements
- Engaging as grounded theorists in a social constructionist process of mediation can change the expectations and attendant assumptions
- Theories of Neimeyer and Sands explain the construct of loss and the process of meaning reconstruction
- Theories of Charmaz around grounded theory represent the methodology for a social constructionist approach to mediation



Analysing the Loss – the Normative Information Session

- The NIS is the distinguishing feature of the reconstructionist model of mediation (that is the social constructionist approach to mediation)
- The NIS consists of 10 guidelines as a normative benchmark against which parties can measure their own level of grief to decide whether they are ready, willing and able to move forward from their loss
- The NIS allows the parties to creatively recombine existing ideas around loss and an open mind to allow new connections to emerge



Analysing the Loss – the Normative Information Session (cont'd)

- The NIS accommodates the stress arising from the legal obligations of the parties to assist in their decision making capacity
- The NIS uses personal constructs or worldviews of the parties as a fundamental part of relational learning
- Understanding each other's worldviews enables the parties to better understand the assumptions and expectations that form those worldviews
- The NIS enables parties in ongoing relationships to deconstruct the original meaning attributed to the loss to co-create a collective future
- Collective learning redistributes the power between the parties to cause a grass-roots social change



Deconstructing the Process of Relational Learning

- Deconstructing the process of relational learning offers a theoretical explanation for a social constructionist approach to mediation
- Dewey's pragmatism
- Kelly's personal construct theory
- Vago and Silbersweig's mindfulness
- Bernes' Transactional Analysis
- The above all merge to form relational learning



Deconstructing the Process of Relational Learning (cont'd)

- Relational learning merges with meaning reconstruction to form a social constructionist approach to mediation with which to better endure the loss into the future
- That is, it describes how parties can reconstruct their loss so that the loss can be better endured
- Assumptions and expectations affect the personal construct of the parties to the point of stagnation
- Personal constructs must be individually deconstructed to enable a collective acknowledgement of the losses
- Through the NIS, a collective acknowledgement can be reconstructed so that the loss can be better endured whether there is resolution or not



Deconstructing the Process of Relational Learning (cont'd)

- Engaging the complementary relations of Adult-Adult (TA) enables the best analysis of the parties' values
- The notion of "Observer Self" is introduced to acknowledge the social aspects of the "game in the making" (macro) as it unfolds with the intrapsychic developments (micro) validated from the Adult
- Difference between "Observer Self" to Adult-Adult transaction includes the concept of mindfulness on a holistic scale
- In observer self, the process of self-processing enables biases around one's own assumptions and expectations to be reduced to incorporate the assumptions and expectations of the other side
- The process of engaging in "Observer self" creates a more sustainable worldview and healthy mind is engaged to develop personal growth



Deconstructing the Process of Relational Learning (cont'd)

- The significance of relational learning is to:
 - Validate the feelings of loss from the past (the Child),
 - Acknowledge the expectations of how things should have been (the Parent)
 - In order to arrive (through the Adult) to an understanding of how things are
 - And how things will be organized in the future (through the Observer Self)
- The analogy from this micro-perspective of the individual (Child) can be extended to the macro-perspective of the social context in which the individual engages (Observer Self)



Deconstructing the Process of Relational Learning (cont'd)

- Similarly, the Law can be represented as the Parent (stating how things should be)
- Psychology can be represented as the Child feeling the loss
- Traditional mediation can be represented as the Adult (understanding how things are from the other's perspective as well as your own)
- And a social constructionist approach to mediation can be represented as the Observer Self (stating how the “settlement” will impact the social relations between the parties)



Deconstructing the Process of Relational Learning (cont'd)

- The innovations from meaning making redistribute power between the parties so that real or perceived losses (option generation) change into institutional collective acknowledgement
- The process of innovation to institutional acknowledgement is called bi-sociation and incorporates an organic grassroots change to the fabric in which the parties co-relate
- Bi-sociation describes how parties reconstruct meaning around loss so that the perceived loss, real or otherwise, can be collectively/institutionally better endured with an accompanying sense of justice



A More Effective Access to Justice Measure – Social Inclusion

- Social inclusion is about how the individual interacts with society
- It proposes that individual responsibility is not sufficient in a social constructionist approach to mediation
- Instead, social inclusion proposes that relational responsibility is also required where the individual's decision making affects the macro world of implementing agreements and anticipating possible ways to avoid future or ongoing conflict



A More Effective Access to Justice Measure – Social Inclusion (cont'd)

- A social constructionist approach to mediation assists the parties to better interact with each other socially, economically, politically and environmentally
- It offers an opportunity to work in a truly democratic way with an egalitarian outlook than includes the social dimensions of enquiry and tolerance for a diversity of viewpoints
- Individual responsibility becomes relational responsibility as the parties engage in the “game in the making” by placing their private solutions (agreements) within the broader legal and societal contexts



A More Effective Access to Justice Measure – Social Inclusion (cont'd)

- An interdisciplinary approach including psychology, education and law can co-create new meaning around loss
- A social constructivist approach to mediation changes the quality of conflict from negative and destructive to positive and constructive
- It encourages parties to explore and discuss the assumptions and expectations that brought them to the dispute and that can lead them away from the dispute in a more compassionate and collaborative manner



A More Effective Access to Justice Measure – Social Inclusion (cont'd)

- Law can benefit by further expanding its conception of the mediation process to include an interdisciplinary approach around the construct of loss and the emotion of grief
- Using a social constructionist approach, loss can be defined as the period of chaos following the shattering of expectations that was previously held
- Loss can thus be a catalyst in finding each parties' truth to their own version of social justice, which is individually meaningful on a psychological level and collectively implemented on the legal level. In this way Loss fuels the meaning we give to life.



A More Effective Access to Justice Measure – Social Inclusion (cont'd)

- The focus on a more effective access to justice measure is on how one responds to a dispute
- A social constructionist approach enables the parties to review their circumstances, measure their hopes against their knowledge of reality, and take stock of what they already have
- In other words, it allows the parties to acknowledge that while their lives are not perfect, they are manageable



A More Effective Access to Justice Measure – Social Inclusion (cont'd)

- Social constructionist approach, like brief therapy, is sufficient for some parties to realise that enough of their goals are already achieved to continue without further assistance
- This offers an effective model for dispute resolution in all manner of disputes involving ongoing relationships that takes seriously the task of resolving disputes on a deeper level than just reaching settlement alone.



A More Effective Access to Justice Measure – Social Inclusion (cont'd)

- A new definition is proposed, namely, a social constructionist approach to mediation is the process of social constructionism in action, where the parties and mediators, as joint relational learners, co-create a means of everyday social justice that anticipates conflict with which to better endure their losses into the future



A More Effective Access to Justice Measure – Social Inclusion (cont'd)

- The NIS is a quick method to assist parties to deal with their own everyday loss
- It enables parties to compare their own level of grief to the normative levels and assess whether they are ready, willing and able to resolve or consider possible solutions to particular issues
- The NIS offers guidelines for parties to move forward in a more constructive way as agents of social change



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Thank you!



Further Readings

- David R Vago, and David A Silbersweig, 'Self-Awareness, Self-Regulation, and Self-Transcendence (S-ART): A Framework for Understanding the Neurobiological Mechanisms of Mindfulness' (2012) 6 *Frontiers in Human Neuroscience* 1
- Eric Berne, *Games People Play* (Grove Press, 1964)
- Eric Berne, *Transactional Analysis in Psychotherapy: A Systematic Individual and Social Psychiatry* (Grove Press, 1961)
- George A Kelly, *The Psychology of Personal Constructs* (Routledge, 1955/1991)
- Jaber Gubrium and James Holstein (eds), *Handbook of Constructionist Research* (The Guilford Press, 2008)
- John Dewey, *Democracy and Education* (The Free Press, 1966)
- Kathy Charmaz, *Constructing Grounded Theory: A Practical Guide Through Qualitative Analysis* (Sage Publications, 2006)
- Kenneth J Gergen, *Relational Being: Beyond Self and Community* (Oxford University Press, 2009)
- Robert Neimeyer (ed), *Meaning Reconstruction and the Experience of Loss* (American Psychological Association, 2001)
- Robert Neimeyer, 'Grief, Loss, and the Quest for Meaning: Narrative Contributions to Bereavement Care' (2005) 24 *Bereavement Care* 27

