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# Humanistic Mediation: Opening Up The Way To A Peaceful Society

CRMH<sup>1</sup>

Translation Marie Odile Delcourt & Peter Wilson

## Introduction

Although mediation has been widely accepted both by institutions and the law for about fifteen years, it is nevertheless a practice that is neither known nor recognized by the majority of our fellow citizens, for whom it may be associated with, or even assimilated into, other modes of conflict resolution.

Mediation is effectively a dispute resolution process that works by re-establishing dialogue between the parties (referred to in this document as 'mediants'), a dialogue that is facilitated by the involvement of a third element - the mediator. The mediation process aims to resolve the dispute by changing each party's perception of the conflict via reciprocal exchange, thereby enabling the participants to gradually evolve the way in which they see the problem up to the point where they are in a position to develop their own solution. This last point is the key element that distinguishes mediation from more directive approaches such as conciliation, negotiation and arbitration.

In addition, and perhaps most important, many initiators of mediation who either come from the world of justice or are influenced by it, approach mediation according to two angles which will be discussed here. The first is as a way of resolving conflicts<sup>2</sup> or even litigation<sup>3</sup>, according to the definition given below; the second is as an alternative to the formal legal process, both modes borrowing much from the Anglo-Saxon models of *Alternative Dispute Resolution* (ADR).

Descriptions from the vast majority of papers on mediation<sup>4</sup> show that legal norms and positive law practices are either directly used or indirectly transposed according to the model of inclusive opposition<sup>5</sup>, a principle of dualism that allows the two opposing values of hierarchy and equality to coexist. These practices show how far our societies are accountable to the law (or state institutions), and are valuable in that they are a prerequisite for a law-based state, and therefore

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<sup>1</sup> CRMH (Centre For Research on Humanistic Mediation ) is a group established on the basis of work carried out at a symposium held in April 2011 at the Centre Sèvres in Paris, whose results were published by Emanuele IULA and Jacqueline MORINEAU, *Face au conflit : les ressources anthropologiques, sociologiques et théologiques de la médiation*, Paris, Médiasèvres 2012, col . Ethique, 163, 87 pages. For two years the following people participated in subsequent discussions, and are signatories to this synthesis: Marie Odile Delcourt, André Dupleix, Guy Escalettes, Alberto Giasanti, Etienne Le Roy, Leonardo Lenzi, Jacqueline Morineau, Christine Tavares, Filippo Vanoncini, and Bertrand de Villeneuve.

<sup>2</sup> In the context of this approach we adopt an anthropological distinction in differentiating various 'moments' in the gradual transformation of oppositions (generically called disputes): these are formulated as 'tension' then 'quarrel' and finally 'conflict', these are openly declared opposing positions on issues at stake, which can receive reactive or non-reactive responses (« Anthropologie de la justice » E. Le Roy, *Dictionnaire de la justice*, L. Cadet (ed.), Paris, PUF, 2004, p. 42-47).

<sup>3</sup> Litigation is a dispute in a pending state before a court, and so is not only formulated in legal terms but is also restrained by judicial machinery, and subject to its procedural constraints.

<sup>4</sup> *La médiation*, M. Guillaume-Hofnung Que sais-je. PUF. 2007, (1<sup>ère</sup> édition 1995). J.-P. Bonafé-Schmitt, *La justice informelle et la médiation, parcours de recherche*. Université Lyon II, mémoire de synthèse de HDR, juin, 2012.

<sup>5</sup> *Essais sur l'individualisme*, L. Dumont, Paris, Seuil, 1983.

for political democracy. However their mere presence in vocabulary and procedures is both problematic and paradoxical for the reason that, since the early 1980s, mediation approaches have been associated with the desire to make societies move away from an order imposed by a Welfare State towards arrangements agreed through negotiations and a negotiated order.

The experience relied on by our group illustrates how the mediation approach can focus less on dispute than on the transformation of human and social relationships. The exchanges established between the participants, made possible and facilitated by the mediator<sup>6</sup>, have the core objective of rebuilding a lasting relationship. It is on this basis that it justifies its qualifier 'humanistic'.<sup>7</sup>

It is not assumed that all disputes must be resolved: this is not always possible and sometimes it is not desirable. However they have to be dealt with at an appropriate level of social interaction lest the situation deteriorate almost mechanically into a state of 'dog eats dog'

In brief, mediation reveals a new project for society that the use of legal vocabulary alone invalidates or, at the very least, constrains. Through the denotation of humanistic mediation, we propose not only to present and justify the heuristic of technical management processes in relation to human exchange in conflict situations, but to approach the new type of society now emerging by means of this tool for education in peace. It is a question of mobilizing specific resources in order to reintroduce a sense of existential solidarity based on sharing more than exchange.

After giving the history of this humanistic mediation, its birth and establishment into the judicial sphere, we will present the main lines of its approach as a means of showing its potential. A later section discusses the delicate relationship of humanistic mediation to institutions such as justice and education.

### ***The origins of humanistic mediation***

In 1984, under the aegis of then Minister of Justice Robert Badinter, the French justice system sought to promote citizen participation as a means of re-establishing peace in those areas of complaint which were predominantly related to interpersonal conflicts. Mediation, largely unknown in Europe at the time<sup>8</sup>, was introduced into the criminal sphere at the Paris Prosecutor's Office as a reparative method, particularly in cases of violence. Jacqueline Morineau implemented this pioneering measure with the CMFM (Centre for Mediation and Mediation Training), a structure created for this purpose. This pioneering mediation process was then gradually expanded, and since then it has continued to be practised in criminal justice and applied in parallel in other frameworks: school, family and social, both at the national and international levels.

This specific and original approach of humanistic mediation has taken advantage of extensive experience gained over thousands of mediations as well as hundreds of mediation training sessions. CMFM has trained numerous mediators who carry out their practice in every sphere, both in France and abroad - particularly in Italy, but also Belgium, Luxembourg, Switzerland, as far as New Caledonia, West Africa and, recently, Brazil. An education program for peace through

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<sup>6</sup> Mediation is often run as a co-mediation process with several mediators, referred to in this article by the generic term 'the mediator'.

<sup>7</sup> This humanistic mediation term is also used in the United States by the school of Mark D. Umbreit, which independently developed a similar approach during the same period.

<sup>8</sup> Criminal mediation was institutionalized in France in 1993

mediation, sponsored by the Council of Europe, has been developed over many years in Europe and in particular after the wars in ex-Yugoslavia.

Humanistic mediation is thus the result of extensive field work. Centered not on the subject of dispute (which will be settled in most cases anyway) but on the transformation of the person and their relationship to the other, it forms a response that is appropriate to any type of interpersonal dispute and any phase of conflictual or simply tense relations. Lending itself to intervention upstream of the conflict, it shows itself to be a powerful preventative tool: it thereby constitutes a means for peace education and for living together in a way that respects the differences and uniqueness of each person. It relies on the values and deep aspirations of individuals. It acts by mobilizing the internal resources of the group made up of the mediants and the mediator(s) without reference to any external or superior authority.

A key objective of our CRMH group is to analyze how humanistic mediation can contribute to a process of social humanization, decisive for our future. Another objective is to transmit the pedagogy of humanistic mediation at the individual, collective and political levels by increasing the number of learning spaces, thereby creating a nexus of active, intelligent hubs based on shared interests. These issues represent aspects both of individual ontology as well as a social dimension

### ***An ontology capable of dealing with a modernity in crisis***

Mediation has its roots in the fertile environment of each human's earliest separation: after the separation of birth every human feels like a being apart, always in search of a unity that will subsume the diversity of their experiences and affiliations. The crisis of conflict, with its baggage of suffering, manifests as an ontological crisis: the individual, in a state of separation from the other, suffers in their very being.

#### *The existential crisis and the emergence of the individual*

Today man is immersed in a deep existential crisis which, like any crisis, is painful but can also be constructive. It is a situation involving waiting, desire - an 'advent'! The crisis manifests itself in various ways: loss of familiar signposts, disorder in individual choices, over-individualization, anxiety, confusion when faced with complexity, feelings of powerlessness, widespread mistrust, fear of the future and the present, dependency, depersonalization, anguish, and death viewed as a dramatic and absurd endpoint. This situation generates behavior problems such as consumerism, outbursts of socio-economic chaos, abandonment of religion... which leave people unable to face the great challenges of our time. But behind this apparent confusion lies something essential in nature, that needs to be revealed. Humanistic mediation allows us an opening to this hidden treasure.

The emergence of the individual which sociology places in the 1960s (prepared for over a long period of two to three centuries<sup>9</sup>) is a major phenomenon to be taken into account. Today everyone is called on to find their own way, construct it, decide on what values their life choices are to be founded, and be attentive to their deepest aspirations. Gradually the individual mobilizes all their capacities for differentiation. The human being has become responsible for their life on both personal and social levels. This task is exciting since it opens the door to a wide range of possibilities and personal creativity, but it is often a heavy task, at times even

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<sup>9</sup> Cf. for example *L'invention de soi. Une théorie de l'identité*, Jean Claude Kaufmann. Paris. Armand Colin, 2004.

exhausting (see « *La fatigue d'être soi*<sup>10</sup> »), one full of pitfalls, which can sometimes lead to errors or deadlocks.

### *Mediation as a space for an existential cry, and a tool for personal transformation*

Mediation is aimed at that ill-treated or hurt human being with whom everyone can identify. Injury and suffering may be the characteristics of what brings people to mediation<sup>11</sup>: indeed suffering, even though not sought, is the breeding ground for mediation. It imposes itself as a scream, an intense and insistent demand for recognition. While the official request is the resolution of the conflict<sup>12</sup>, the deeper purpose is to emerge from the suffering imposed by the situation. The conflict can, in itself, be positive and an expression of life. Making the effort to listen to that pain can provide access to the deep aspirations of the person, to the values they need to live.

Through the qualifier "humanistic", Jacqueline Morineau and CMFM sought to go beyond conflict resolution, considering that it is the human being who must be encountered – since the conflict is only a pretext that reveals a deeper need. Operating upstream of the conflict, addressing itself to the sources of the suffering experienced by the mediants, humanistic mediation arises as a self-transformation tool that meets the rediscovered requirements of what is means to live together - to "make society". The spirit of mediation<sup>13</sup> "*is based on the human need to fully realize one's own humanity, the desire for unity, for beauty, for what is good and just, for truth and for freedom*".<sup>14</sup>

### ***The social dimension, at the border of politics***

#### *Inventing new commons and a motor for society*

Faced with the existential crisis that characterizes a postmodernity marked by individualism, efficiency, deregulation and other factors mentioned above, the social dimension has to be re-thought and recreated. Sharing has been lost, and needs to be found in other ways. From the mirror side of the emergence of the individual, the trap of solitude - one of the most secret forms of suffering so present today – comes the necessity of inventing new shared "commons"<sup>15</sup>. A society of individuals has in effect a need to rediscover meaning, values and commons.

It is necessary to find the motor for a new type of societal project, a political project that reflects the recent evolution of mankind and its immense diversity. By proposing to modify the way in which we manage interpersonal relations, mediation participates in this invention by involving people's creativity in mending social links. In her book about mediation, Michèle Guillaume-Hofnung specifies the social function that exists beyond conflict situations: "*Mediation can*

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<sup>10</sup> *La fatigue d'être soi : dépression et société*. Alain Ehrenberg. Paris, Odile Jacob.2010

<sup>11</sup> Cf. *Le médiateur de l'âme. Le combat d'une vie pour trouver la paix intérieure*. Jacqueline Morineau, Nouvelle cité. 2008

<sup>12</sup> The term 'conflict' is used here and in the following text in the generic sense of a dispute that is a global holder of suffering or discomfort.

<sup>13</sup> Cf. *L'esprit de la médiation*. Jacqueline Morineau. Erès. 2010 (1<sup>st</sup> edition 1998)

<sup>14</sup> Charte du CmfM (Cenfre de médiation et de formation à la médiation)

<sup>15</sup> *Sous les pavés du monologisme juridique, prolégomènes anthropologiques*, Etienne Le Roy. *Repenser les biens communs*, directed by B. Parance and J. de Saint Victor, Paris CNRS Editions, 2014, p. 81-102.

*create hitherto nonexistent links, or smoothly restore weakened links: the first is creative, the second restorative. One builds social tissue, the other fills in the gaps".<sup>16</sup>*

### *Leaving monologism and hierarchy*

Another aspect of social life is impacted by mediation. The Western worldview was often monologue-type and devoted to the monopoly of the ONE<sup>17</sup>. However a humanism aiming to be universal would risk ethnocentrism by reproducing the forms of alienation which have been repeated many times... Cultural entities do resist *monos*. The world, historically conceived as having been designed first by God<sup>18</sup>, and subsequently in the name of the State, must now be considered in its whole complexity. Previous worlds to which we subscribed in the past are not meant to be obliterated by others in the name of evolution, but to be interlinked in a way that is mutually enriching, based on the principle of inclusive opposition. The challenge is to understand the limits of modernity (e.g. the defects of capitalism or efficiency set up as dogma, as well as individualism...), to go beyond them, and find a response commensurate with the expectations of our contemporaries.

In the past, hierarchical authority may have been excessive. Today we have handed over a large part of our responsibilities to the state and its institutions, a symbolic space where the human dimension is lost, forgotten. In particular our society rejects disorder and attempts to abolish conflict and its causes in order to return to a previous order - already out of date - which crystallizes human relationships onto the conflict and not onto the person. By radically leaving the hierarchical and vertical pattern of society, mediation seeks to let people evolve beyond themselves within a horizontal social process where the mediator brings a distancing and triangulating effect, but without any power of decision or domination.

### *Meeting around values*

Shareable commons are very important, vital both for people and for society. The monologic universal may leave some place, an occasionally modest if effective place, for research for those commons which do allow in-depth encounter and intercommunication, especially when cultures are very different<sup>19</sup>. The universality of certain values to which we are committed continues, as in the case of the need for justice, truth, freedom, dignity and respect... The aspirations that remain the most shared by the whole of humanity are the aspirations for peace, love, recognition of identity and recognition by the community. Thus unity, transcendence, excedance<sup>20</sup>, spirituality, search for meaning, the fundamental quest for happiness, and the ontological need of wisdom can manifest themselves in a selective and timely manner according to the personalities and circumstances involved. During the humanistic mediation process which will be described in detail below, a key step is the search for values to which both mediants can relate. Cementing unity, these values then become the sustainable foundation for the restored relationship.

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<sup>16</sup> *La médiation*. M. Guillaume-Hofnung. Op.cit. p.69

<sup>17</sup> *Le droit et le service public au miroir de l'anthropologie*, M. Alliot, Paris, Karthala, 2003

<sup>18</sup> Note however that Judaism and Christianity both introduced very early on the concepts of dialogy and even tria-logy, as explained in *La dialogica di Martin Buber...* Marcello Paradiso. Prospettiva Persona 60/07, 31

<sup>19</sup> « *The common, a concept that is neither logical (relevant because of reason) as is the case with the universal, nor economic (relevant because of production) as is the case with uniformity, is in its essence political: the common is that of which one is a part, or in which one takes part – a sharing or a participation* ». From *De l'universel, de l'uniforme, du commun et du dialogue entre les cultures*, François Jullien, Fayard, 2008 ; réédition Seuil, 2010.

<sup>20</sup> 'Excedance' evokes a human dimension which is an opening up, a leaving of the human condition that surpasses it, but without the element of divine dimension for which the word 'transcendence' would be reserved.

Humanistic mediation thus combines the profound dimension of one human being with that of the other, thereby introducing a process of mutual nurturing. It includes a component of restorative and reconstructive justice in the anthropological sense of 'just' i.e. good for oneself and for the community. A deep, truthful encounter together with mutual recognition releases a positive energy that makes a sustainable transformation possible.

### *Humanistic mediation as a way of creating a more peaceful society*

By meeting and nurturing the social dimension, humanistic mediation manifests itself as a tool of choice for a humanism of our time: firmly trans-modern, it must be sufficiently constructive and creative for the largest number of people to relate to it. Mediation is multidisciplinary: it is our humanity that is involved in its diversity and complexity. With a realistic optimism this humanism is characterized as a project for the individual that is more responsible, more inventive and able to reconstruct damaged social links and preserve harmony. Michèle Guillaume-Hofnung sees a new public freedom in it<sup>21</sup>. In this, humanistic mediation is the participant in a societal project, responding to the demand for peace on which our societies must be built<sup>22</sup>. It is interesting to note that French and European institutions have already adopted mediation at least in principle, and are making efforts to develop it at all levels, the same as in many other countries. It is hoped that they will be able to go beyond the mere resolution of disputes.

What is, then, humanistic mediation's schema? Conflict and war result in the vain search for an impossible peace, whereas the encounter that takes place within the truth to be found in every individual can open a genuine mutual recognition (which is always necessary). Then convergence can happen as a common aspiration, opening the possibility of surpassing individual withdrawal and providing the key to transformation and change. We move then from a potentially deadly situation to one that is open to life, a sudden change which is actually observable in mediation: tension reduces, and harmony becomes palpable. The pivot, or positive reversal, has occurred (see Catharsis below). Then the conflict finds its solution naturally. But above all, the most essential, the relationship is restored - a much safer guarantee of a harmonious future.

For Fabrice Vert, Counsellor at the Court of Appeal, "*the contemporary wave of mediation programs is indicative of a society seeking a new way to govern the metropolis and to forge cohesion through new reference models of action*".<sup>23</sup>

### **The mediation process**

Behind the turmoil of the mediants something essential is hidden, which it is the job of mediation to reach and reveal. The mediation process such as that practised by the CMFM involves several key steps, all of which are necessary. After an individual encounter with each mediant, three phases unfold in the order as related by the ancients in Greek tragedy: *theoria*,

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<sup>21</sup> *La médiation, nouvelle liberté publique*. Michèle Guillaume-Hofnung 2007

<sup>22</sup> Cf. *L'esprit de la médiation*. J. Morineau. op. cit. p169. "*If [mediation] becomes a project for society, it can be the social link that allows us to move from the old order, conceived as a relationship of submission between the citizen and higher authorities, towards a new order centered on people's actual and active participation in the management of their daily life.*"

<sup>23</sup> Gazette du Palais. 18 janvier 2014. p.12

*crisis* and *catharsis*.<sup>24,25</sup> They accompany the expression of suffering and the creation of the common good as they develop on the stage where the human tragedy is played out.

### ***Preliminary individual encounter***

Before any mediation meeting, it is essential to solicit the free agreement of the persons concerned. Indeed in all circumstances, mediation is a voluntary initiative; otherwise it would be doomed to failure. If some authority has proposed a mediation each person concerned must feel totally free to accept or refuse, as well as free to interrupt at any time. Often ignored or misunderstood, mediation requires a phase of presentation and explanation prior to consent. This is the reason for the mediator to meet each mediant separately. During this interview the emotional urgency linked to the conflict makes a period of supportive listening necessary, reassuring the future mediant and constituting in itself a first recognition by the mediator of the mediant's suffering and experiences, thereby paving the way for a trust relationship between the two. Here one finds three essential elements: information, trust and consent.

### ***Theoria: entering mediation with the presentation from each party***

When the mediants meet face to face, a time that is usually very tense, an initial warm welcome is intended to put the mediants at ease and relax the tension, arising from the conflict's emotional charge. This time is also used to remind them that the mediator is not there to judge or seek a solution to the conflict, but to help restore dialogue. The mediants are first invited to set out in turn their perception of the situation that is at the origin of the mediation process, without being interrupted: it is a time for expression and reciprocal listening, the first mandatory exchange between parties who have often lost all communication. Each one thus has the opportunity to hear the alternative version of the dispute or conflict.

Claiming to resolve the conflict by relying on facts adds to the confusion. Effectively they are used to argue, prove, develop, and build schemas that lock in certainties, while it is only in encounter that a truly constructive path may be found. The presentation of facts expresses a selective vision of events, each person being certain that they are right. The action of the mediator is therefore to move beyond the facts in order to meet each individual in their humanity.

At this stage the mediator does not intervene, except sometimes to shorten an excessively long presentation, or encourage a mediant who is almost silent. The important thing is that each person expresses their views on the situation and what they expect from mediation. Following the two presentations the mediator gives a brief summary addressing each mediant in turn: "Sir (Madam), you said...": the mediator can repeat some words considered particularly important, thereby echoing what each mediant has expressed. Coming from the mouth of the mediator these words then resonate highly, and must be shown simultaneously as not entailing any judgement. By means of this summary the mediants begin to feel heard and recognized by the mediator, and trust is engendered. The conditions are now set for dialogue to begin, even if is still likely to be chaotic.

Greek tragedy (like the African 'palaver') consists of such sequential presentations: *theoria*, followed by the reprise by the choir (or in Africa, a speaker) which provides what we call here the summary.

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<sup>24</sup> *L'esprit de la médiation*, op. cit. p.82

<sup>25</sup> These phases are also the basis of the African palaver. Cf. *Justice africaine et oralité juridique*. E. Le Roy, Bulletin de l'IFAN, série B, Tome XXXVI, N°3, 1974, p. 559-581.



## ***The crisis as confrontation of narratives and violent expression of emotions***

Humanistic mediation does not seek to soften the shock of confrontation for the conflicting parties. This differs from the approach common in other forms of mediation, in which a first step is to meet each party separately to induce them to moderate their language and not offend the other face on. Such preparatory work intended to "calm the situation" is also used in political mediations such as those that took place between Israel and Palestine, with the mediator shuttling from one to the other: sometimes confrontation is thereby pushed to its very limit. The mediators themselves are often afraid of the violence of confrontation. In humanistic mediation this violence is assumed since it brings together "the executioner and his victim" (although each one is often both executioner and victim). Thus, while remaining guarantor of the physical safety of the mediants, the mediator will allow the crisis to be experienced as "*a life force that dwells in each of us*<sup>26</sup>".

Rehabilitating the space where people have been able to shout out their anger, their hatred and their suffering is a challenge both for interpersonal relationships and for society. It is necessary to re-appropriate the scream, to grant oneself the right to shout, not for a purpose of destruction, but as a primitive and primordial energy which is part of us. The shout scares and destabilizes us, we do not know how to manage it. Too often this shout is muzzled, and prevented from being expressed, by psychological self-control. Without the scream however there is no anger, no rebellion and no freedom. Without this space, human beings cannot be recognized in all their animal and human dimensions. For the scream is a part of our humanity. It is both an expression of immeasurable suffering and a life energy that can be a source of creativity and hope.

### *Chaos*

Then a moment of chaos can take place. Like the scream, chaos scares and destabilizes us since it blurs our points of reference. We do not control anything any more. From the depths of our original nature the animal expresses itself, fighting. It is a matter of life and death. War creates disorder and destruction. Often, the first reaction is to want to get out as quickly as possible - while seeking a quick solution, or preventing it from being expressed (for example by reassuring or comforting a person, in spite of their urgent need to scream their hatred or sense of injustice). Welcoming chaos cannot be improvised. It must be learned, practiced and experienced.

Chaos is always present in humanistic mediation with various intensities. The time spent in mediation can be a path of transformation only if chaos has been given all the space it needs to be experienced and expressed. This is a fundamental point. A key to the process consists precisely in this explosion of emotions that would be unbearable for parties facing each other alone, something that could well degenerate into brutal violence, but which is made possible by the presence of the mediator. Then each mediant can witness the emotional experience of the other, which very often is a completely new revelation. The magnitude of the scream is a reflection of the intensity of the suffering. First inaudible, outrageous, unacceptable, this emotional experience slowly finds its path, and eventually is

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<sup>26</sup> *L'esprit de la médiation*. op.cit. p.30. Cf. also p. 69. «Offering a space where reciprocal violence can be uttered and transformed and wanting a reintegration of disorder necessarily become part of a societal revolution, because we must go against the current of a mindset and established usages and customs. [...] It is a disruption in the relationship of man with the society and with himself".

heard by the other mediant – without which mediation will not result. *"It is [the] relationship between the cognitive and the emotional that must be facilitated within the conflict. The story that each person has built is largely cognitive while the reality of suffering is emotional"*<sup>27</sup>. During mediation the emotional experience is very intense.

Through listening and empathy the mediator allows a trust climate to be established, without which access to what is essential would remain closed. Each mediant must feel heard, understood, and recognized by the mediator before it is possible on the part of the other mediant. The construction of such a climate requires from the mediator a fundamental attitude of availability, attention and silence - an attitude which, by its quality, density and duration, will eventually extend to the mediants. Two events will then initiate the process: opening to the other, and the sharing of values.

#### *Opening to the other as a motor for mediation*

Opening to the other on the part of the mediant assumes that they are able to overcome their fears. Our society is afraid of working on its fears. Fear is very present in mediation: fear of not being recognized, of not winning the case, of ending up a victim stripped bare, fear of the triumph of the other... Fears prevent us walking on the path of freedom.

During a crisis, connecting to ourselves and listening to our deep needs are necessary. On the contrary, people typically turn outwards to find a solution, unaware of the fact that it most often lies within us. The mediator must therefore create a space for silence, where another level of the person may be found. First there is the silence of the mediator themselves, who must silence the bustle of their own daily life and avoid strategizing a solution to the conflict, a logical and rational construction that does not belong to them. Then there is the silence of the mediants, which it is absolutely necessary to respect and support when it happens. In the quiet let the words reverberate, listen to them, let them have enough time to find their way and resonate deeply. These are the conditions of opening to the other, of an authentic exchange and of a real encounter that gives voice to the other.

This opening defines a space of intimacy, hope and transformation, a space that precedes a birth or a rebirth, it is an advent (waiting for what may happen), a receptacle for relationship.

In this relational space where each individual feels at one with themselves, and fully recognized for what they are, hearts open, compassion can arise, and a considerable creative energy is potentially able to be deployed: it will allow people to free themselves from the chaos in which they are immersed and which exhausts them, enable them to transform it and get back onto the road to peace. It is an opening into life and the dynamism of life, the source of a new knowledge and a new way of acting. It is a spiritual moment, a moment of grace where we can escape the weight of everyday life in order to reach out to the other. It is a matter of lived experience as opposed to an intellectual construction.

#### *Sharing values and aspirations*

When, in mediation, you succeed in passing from the level of emotions to that of values the individual manages to link to the other by means of universal aspirations: the need for justice, for truth, for dignity... which does not prevent the individual referencing their own

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<sup>27</sup> Cf. *L'esprit de la médiation* op.cit. p.92

culture. Important issues are at stake for cultures are very individualized in our modern world<sup>28</sup>, but they find common cause in the requirement for peace, the basis of any societal construction.

The truth, unanimously desired, is often a source of difficulty in mediation since events have been felt and memorized in different ways. At the level of facts, these discourses may appear to be irreconcilable. The mediator must therefore refrain from being convinced by one or the other, and listen to these two 'truths' as they reveal complexity and chaos. This is dialogy<sup>29</sup>: two opposite concepts which will manage to converge. This meeting of logics by means of the complementarity of differences is only possible thanks to diamutie<sup>29</sup> that takes into account the representations of both worlds. This approach is accompanied by a very comforting feeling of belonging to a common humanity. The emergence of commons can cause a mutual recognition to be triggered. Mediation is a passage from the individual to the community through the experience of sharing.

Suffering is often existential, and linked to the feeling that life has no meaning. The humanistic mediation process allows each person to think about themselves, to seek and discover a new way of life, to construct and reconstruct themselves, and to gradually see emerge a new vision of the future and a rediscovery of meaning. It is a process of self-knowledge, a pathway made possible by the eyes and ears of the mediator who recognizes "*what I am living, what I am looking for, someone who acknowledges me for what I am*".

Initially each mediant focuses on their 'Me-I', which is often very destructive. When the feeling of being recognized is assured, the opening towards the 'Me-Us' is possible, thereby determining the construction of a future where everyone will feel respected. This process is only possible because the mediator, while mobilizing the energies inherent in the situation, has adopted a comprehensively distancing position of the 'Me-He/She'.

### ***Catharsis, a pivotal moment***

In Aristotle catharsis is the purification of the passions. A successful mediation involves a personal re-engagement with regard to the situation<sup>30</sup>. Why and how can this positive reframing happen?

A key to mediation is found in the mediant's confidence to reveal themselves at a deep level, secure in the knowledge that they will not be judged but rather welcomed, heard and recognized. Recognition of who they are in their deepest self, emotions and aspirations towards peace and what is good...: that part of themselves that was hidden and obliterated is once again reached and brought to light. What is occurring is a real self-encounter. The attentive and benevolent eye of the mediator helps the mediant to restore their capacity for being. The mediant then understands that the story they have been telling themselves, a story held in a state of petrification for so long, no longer holds. Something is touched in the depths of their being that relates to a personal need and/or a deeply buried past pain which resurfaces. A new capacity for self-truth emerges.

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<sup>28</sup>Cf. *Les uns avec les autres. Quand l'individualisme crée du lien*. François de Singly. Paris, Armand Colin. 2003

<sup>29</sup>Dialogy: the logic of dialogue, the study of logical and philosophical issues related to logical pluralism. Dialogy is not dialectics. It is not intended to produce a third object of synthesis but to make both logics merge as complementary. Diamutie consists in making our foundation myths of being-in-the-world meet, and have them listen to each other, and then resonate.

<sup>30</sup>This positive reversal is observed in all successful mediations. The term *pivoting* to characterize it is used by Umbreit (see reference 7).

The other mediant is the witness of it, often surprised and disconcerted while at the same time experiencing a similar discovery on their own account. Then they can abandon the conflict, stop focusing on their reasons for tearing each other apart, and set out to rebuild the relationship.

At this point the encounter occurs, the real encounter of the persons behind the masks, in a profound communion. A spark suddenly flies out in an unexpected way, prelude to a re-creation. This very special moment in mediation often happens by surprise, and is always discernable by the accompanying release of tension: eyes seek each other out instead of avoidance, the tone of voice is calmer, smiles appear, tears are not uncommon. With the abandonment of defences both heart and soul open, a new breath releases a reciprocal energy that enables sharing, rebuilding the relationship and partnership.

The conflict has become incidental. It will be resolved by an agreement but is no longer the major issue. The provided solution is only an epiphenomenon, becoming accessible as soon as the change in the way of seeing things has been reached. Sometimes the conflict is purely and simply abandoned, now obsolete. The desire for revenge is forgotten. Claims are dropped or become symbolic.

Humanistic mediation is a tool of choice for renouncing revenge and moving towards forgiveness. It is a liberating act for the offender as well as for the victim. It is an opening for compassion and mercy. At the same time as it gives back to the 'other' their full human dignity, the victim is freed from an inner poison and can untie the last deadly bindings. Forgiveness is thus salvation for both<sup>31</sup>. Forgiveness is the highest part of mediation and is the last step in the pacification process, which final form often however cannot be experienced. It is in effect a pathway that requires time, a process of freedom that is not always possible, and which remains rare. Even though it is only sketched in the movement of understanding and mutual acceptance, this path is infinitely fruitful.

In short, the conflict is always linked to emotional chaos. The expression of emotions has allowed movement towards the recognition of an often reciprocal suffering. This recognition has led to a questioning: from where do this inner wound, this unbearable emptiness, this fear of loneliness originate? The mediants have been able to move beyond the dimension of the emotions and touch at the level of being, to seek the origin of alienation and anxiety in a society of which they are the mirror. Facing such turmoil a new language has succeeded in arising, that of aspirations towards truth, justice, freedom and dignity – differently expressed each time, coloured with what is specific to each person. A new level of conscience has appeared. Then the protagonists share words that no longer put them in opposition, but rather bring them closer. It is only when one can go beyond the emotional level to touch that of values, that the person is revealed in their highest dimension: a spiritual dimension from where light can burst out, and from which the peace and happiness so longed for may arise.

Accepting difference and recognizing the other<sup>32</sup> provide access to the complementarity where everyone finds their place. It is mutual acceptance that allows moving forward together and reciprocal enrichment. It is a matter of ontology, existential because leaving oneself allows a surpassing, a finding of paths towards self-accomplishment and living together in harmony. To work on mutual energy is an unusual mode of operation for society. Yet it has the ability to empower our citizenship, to create that communion of people from which 'citizens of peace' may be made. It is a personal humanization process that leads to mutual humanization. This is why mediation is participant in an ambitious project for society.

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<sup>31</sup> Cf. testimonies in : *Le pardon*. G. de Villeneuve. Audio-book Saint Léger Productions. 2013

<sup>32</sup> P.Ricoeur, *Parcours de la reconnaissance*, Paris. Stock, 2004

## ***Humanistic mediation: opening up the way to a peaceful society***

Here we explain first what characterizes the humanistic mediator, then the educational and civilizing process thus begun. .

### ***The mediator as embodied presence***

#### *Their role*

The mediator is supposed to be a third entity<sup>33</sup> who is independent (not subject to a hierarchical power), neutral (they do not place weight on the outcome of the mediation) and impartial (they do not come down on one side or the other). In fact the mediator is much more than a third entity for they constitute, with the mediants, an active triangle in which they play an important role.

This role is nevertheless a very humble one: the mediator is not in themselves the bearer of any particular ideal, or holder of a truth, or author of such and such an action: they are essentially an 'iconic presence'<sup>34</sup>, made of flesh, who can connect to another space or another dimension, repository of a forgotten wisdom. Physical presence is fundamental. The body is there as a witness of our capacity for violence or love. It is not only words which speak. Much communication passes through the body: looks, attitudes, expressions, hands, emotions, tears...

In a mirror effect, the mediator receives each person's real-life experience and then returns to them the unspoken behind the spoken – the hidden face of the self. The mediator's intervention is based on a very deep and very careful listening to what each mediant says about themselves. Capable of keeping a distance, the mediator must maintain inner silence, let go their own concerns, opinions or judgments, and be a simple channel between the expectations and demands of the mediants, in a spirit of peace. The mediator does not position themselves in a role promoting efficiency with respect to the resolution of the conflict, for the objective is above all the well-being of each mediant by means of a new understanding of each, one with the other.

The mediator is still a translator, for they put words to emotions, suffering, and the most fundamental aspirations. They help decode language and clarify its meaning, for expression can be clumsy and remain misunderstood by the other party [and/or the speaker].

The mediator is moreover the midwife to a new becoming, to a relationship to be rebuilt, to a personal renaissance. They strive to embody the best and most profound of the human, an ideal of peace and hope. The peace-producing effect comes from their channeling of energy. The mediator gives the mediant the possibility of reconnecting to their deep reality and own spirituality. They "feel" what emerges, what is likely to unravel the situation and bring out something new. Their action is therefore to prevent those words that carry key significance from being lost, but rather let them revive within a nurturing silence, resume and associate at the right moment - preventing setbacks, or getting mired in facts or sterile attitudes.

The mediator is thus the conduit that will allow mediants to find the road, the passage ways which facilitate sharing: the mediator is the transformer of deadly conflict into living relationship. They are one of those actors who redistribute energy between people, by assisting with the conversion of the energy released by the *crisis*.

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<sup>33</sup> The term *third* is not ideal for representing the mediator since legally it means that he is not a party.

<sup>34</sup> Instead of the idol that keeps its gaze on itself, the icon's presence opens up its presence to life itself

### *Mediator qualities, acquired through specific training*

In order to be this iconic presence, translator, conduit, midwife, they must already have made the journey themselves. The full training of the humanistic mediator involves a progressive relinquishing of their self, their will and their mental constructions, in order to leave space for intuition, empathy, compassion, and the circulation of energies.

During the *crisis* phase the mediator must not lose themselves in the chaos, nor get overwhelmed by the flood of violence, hatred and emotions that are expressed. As the guarantor of the physical integrity of the mediants, the mediator takes responsibility for welcoming the drama that is unfolding before them. The mediator must learn to consider harmony and chaos, life and death, as passages not dual but so intertwined that they are only one entity<sup>35</sup>. Compassion is a state of being, a humane way to approach others. We cannot empathize with suffering, distress or death unless we have experienced them ourselves, including all the related feelings of revolt and injustice. Training in humanistic mediation explores these feelings as a constitutive part of ourselves and allows the discovery or rediscovery of this part of ourselves that is often denied or repressed. For the mediator, the suffering of others echoes their own suffering and universal suffering - as it does in other life experiences (e.g. the support of people at the end of life). "*It is my own vulnerability that I meet through the vulnerability of others.*"<sup>36</sup>

Humanistic mediation is above all that of self with self, a never completed task which must be the priority of the mediator for their own sake. Finding peace within oneself, and hence with others. Reconnecting with oneself and with others.

The mediator is a messenger of hope... If they do not carry a positive vision of humanity within themselves, they will not be able to bring out these creative sources of peace. Their effectiveness is directly related to their own fulfillment. Humanistic mediation is the tool and instrument for peacemakers.

### *Their mode of action*

Before encountering the mediants, the mediator prepares for their reception by creating a silence within. During mediation the mediator is listening, intensely present, guiding the deep expression of the mediants, starting with the emotions they feel themselves as mediator, respecting silences. Often the expression of feelings by the mediant is not spontaneous: then the mediator will provide encouragement through an emotion that they themselves perceive: "*I feel you...*"<sup>37</sup>, thereby creating a reaction. If they have correctly judged the situation, the mediant will describe in more details what they feel and deepen their own inner searching; in the contrary case the mediant will rectify the situation by expressing another emotion. A long period of such an exploration of feelings is necessary, especially in the confrontation phase, the *crisis*.

"*I feel you...*" These three little words, which are in no way intrusive, just a mirror, allow the mediants to feel recognized, in confidence, to relinquish themselves, to drop their defences, often as they have never done before, and moreover in front of people who were unknown a few moments earlier. Here the art of the mediator is revealed, specific to each individual. "*To feel the other and especially the suffering they carry in their life is a key requirement in mediation. In their gut the mediator "feels" the situation in front of them. They are not called*

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<sup>35</sup> Cf. for example *La mort et ses au-delà*, directed by Maurice Godelier, Paris, CNRS Éditions, Bibliothèque de l'anthropologie, 2014.

<sup>36</sup> *Quand la fragilité change tout*. Jacques Ricot. Paris, Albin Michel 2013

<sup>37</sup> *L'esprit de la médiation* p.92

*either to understand or interpret it, but to feel it, in order to return it to the mediants in [their] own words. It is through this sixth sense that restitution is possible [...]"*<sup>38</sup>

Co-mediation, mediation with several mediators<sup>39</sup>, guarantees the quality of the process in the face of human situations that remain complex. Indeed the presence of others multiplies both sensibilities and experiences, and brings attention, concentration and empathy in relays, facilitating the emergence or opening up of different viewpoints for the protagonists on their situation.<sup>40</sup>

### ***Mediation as an educational and civilizing process***

Humanistic mediation assumes personal experience and transformation. It is a way of life, a way of healing for those who suffer. It consists of continuous learning that goes ever further into self-knowledge, philosophical questioning, a search for wisdom: who am I, where am I, where am I going? Thus it can restore to man the role that belongs to them: that of being the creator and actor in their own future. Its educational dimension is therefore a fundamental aspect, the objective being to reveal to each person their ability to transform themselves and their relationships. The first change to implement is the acceptance of uniqueness and difference: to each their emotions, their experience and their own road. Humanistic mediation proposes mobilizing vital forces in order to arouse a reciprocal energy that opens communion and brings people out of loneliness.

It consists of a new way of functioning on an everyday basis: through conflict, beyond conflict, even before conflict – have concern for the other. It is a process of humanization which characterizes a societal project for people to be more responsible, more creative, able to re-weave damaged social bonds, and rebuild a humanity that is more friendly and able to meet in profundity and truth. Humanistic mediation is profoundly civilizing.

Therefore it seems essential to bring this type of training into youth training centers as well as in management bodies that determine social relations at work.

If a certain amount of mediation learning is now spreading at universities, at schools, in families and more recently in professional circles, it is, however, most often focused on conflict resolution. This does not correspond to the deepest need of society which, at the collective level, meets that of the individual. *"No society can be either fully consensual or fully antagonistic, and thereby either fully pacified or wholly violent. Each is one and the other to varying degrees. [...]. The ability to understand (sensus) how to make society must be stated in a pluralistic manner [...]. Considered as a third way between consensus and dissensus, the hypothesis of multisensus must itself be stated in a pluralistic mode [...]. The multisensus way suggests giving rightful place to its participatory form"*<sup>41</sup>. Humanistic mediation is an access route to this multisensus which finds benefit from the complementarity of differences, thanks to which each stakeholder in society can feel heard, and a participant.

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<sup>38</sup> *Face au conflit ....* E. Iula. op. cit., p.4

<sup>39</sup> *L'intelligence collective dans la co-médiation.* Marthe Marandola et Geneviève Lefèbre. A égalité. 2013

<sup>40</sup> See also *National Survey of Victim-Offender Mediation Programs in the United States.* Mark S. Umbreit , US Department of Justice , OVC, 2000.

<sup>41</sup> « *The Agon and the Anthropology of Law. Une introduction à une relecture dynamique* » du conflit », E. Le Roy, Leiden, March 2013, communication from the workshop « *Conflict and antagonism in Nietzsche and beyond* ».

## The delicate relationship of humanistic mediation to institutions

Even if these thoughts / experiences substantially exceed the framework defined by the law, it is important to link up experience from the field and reflections on institutions. Mediation is outside the scope of institutions, but in fact the essentials have been practiced within the judiciary, key agent of the state. Mediation is not a by-product of justice. It is often reinterpreted by an institutional discourse that risks causing it to lose its soul and become dehumanized by turning it into a management process. Studying the role of mediation in relation to institutions, and avoiding dependence on state and institutions, are necessary tasks.

### ***Mediation and justice***

There can be no peace without a minimum of justice (here the word justice does not indicate the institution but the value). Every injustice calls for reparation, which is a necessity for the healing of wounds. The most striking example is perhaps the almost 70 year-old Israeli-Palestinian conflict, which cannot be resolved without recognition of prejudice, and its repair. For now each side remains tense based on the fear of the other, which finds increasingly dramatic expression. By contrast the Franco-German reconciliation is an alternate positive example of the ability to heal old wounds.

However the institution of justice has seized hold of mediation and, more or less successfully, has been looking to disseminate it after experiments carried out since the 1980s. Within the European Union a directive advocating extensive use of mediation was published in 2008, and then transposed into French law in 2011<sup>42</sup>. Here mediation is defined as "*a structured process in which two or more parties to a dispute voluntarily attempt to reach an agreement on a dispute resolution with the assistance of a mediator. This process may be initiated by the parties, suggested or ordered by a court or prescribed by the law of a Member State*". The recurring term *dispute* clearly places the action in the legal field. The stated intentions are saving time and money, by shortening procedures while maintaining good relations between the parties, mediation being recognized as effective and efficient on both aspects. In its application there is great confusion about its approaches, which often conflate mediation with conciliation, negotiation or arbitration. These different initiatives give rise to reflection on normative pluralism, and open up a perspective on new judicial responses.

The object of the Institution of Justice in our societies is the application de law and legal processes which by tradition has been far removed from what we have explained about humanistic mediation. If we simply try to move the position of the third-entity judge to the third-entity mediator, we only create a poor relation of the magistrate. Moreover, at the beginning of a mediation process, the mediants are asking for verticality, for a response from the mediator who is placed above them, which is not at all the mediator's role.

However in recent decades the system of justice has been making attempts to develop a reparative (or restorative) function. This path is a path of hope that Anglo-Saxon countries were the first to borrow, in particular the United States and Canada. But it is called upon to be developed everywhere. "*Restorative justice is a third way between the repressive model centered on the act and the rehabilitative model centered on the offender. Criminal justice was classically oriented to the past while mediation is forward-looking. [...] A growing attention has been given to the victim in the criminal trial. By allowing verbal externalizing mediation*

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<sup>42</sup>Directive 2008/52/CE of European Parliament and Council 21 may 2008 related to civil and commercial mediation transposed into French law by the *Ordonnance n° 2011-1540 du 16 novembre 2011*



*participates in the reconstruction of the subject, whether author or victim".<sup>43</sup> "The emergence of the victim, far beyond what was made possible by bringing civil actions, marks a radical change of criminal justice and criminal law. [...] The general interest is no longer the only one taken into account. In addition the need for the victim to understand and the need for the offender to raise awareness have a very practical opportunity to be realized".<sup>44</sup>*

In 2002 the Economic and Social Council of the United Nations (ECOSOC) adopted a resolution containing directives on restorative justice policies and practices for Member States<sup>45</sup> and the Council of Europe issued a recommendation to this effect in 2010. Recently France made this an important government objective with the convening in 2013 of a *Consensus conference on the prevention of recidivism*, with the aim of making an inventory on the issue, the conclusions of which inspired the judicial reform passed in August 2014<sup>46</sup>. Designed with the primary objective of preventing recidivism by resocialization of the offender<sup>47</sup>, restorative justice is defined as a *"process in which the victim and the offender [...] participate together actively in the resolution of problems arising from the offence, usually with the help of a facilitator"*.<sup>48</sup> During such meetings between the originators and victims of crime, concern for the victim finds its necessary place, reparation thereby being an issue for both. Among the recommended measures, criminal constraint<sup>49</sup> should aim to rehabilitate the offender and produce their desistance (out of delinquency): as one of the possible forms of achieving this, mediation can and should be developed at all levels. In France a first experiment with prisoner-victim encounters was tried at Poissy prison in 2010. With an older history in North America, such encounters gave rise to an assessment in the United States in 2000.<sup>50</sup>

The legal field is insufficient to cope with the often substantial emotional charge involved, which requires the judiciary to address the human element as well. Humanistic mediation is therefore set to find an ideal location there. Jacques Faget, a researcher at the Institut d'Etudes Politiques (Bordeaux) and author of a national assessment of criminal mediation in 1999, says that *"the expression of the emotional dynamics, restricted in the traditional court process, is the necessary condition for the effectiveness of a restorative process for both the originators and victims of crime"*.<sup>51</sup>

As early as 1984 the team led by Jacqueline Morineau took up this issue (see above § *The origins of humanistic mediation*) and developed humanistic mediation in the criminal domain on an experimental basis long before its institutionalization in 1993 - as an alternative route to formal

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<sup>43</sup> Colloque *Les médiations : la justice autrement*. 3 fév.2011. Créteil. Summary Hélène Gebhardt.

<sup>44</sup> Colloque *Les médiations : la justice autrement*. 3 fév.2011. Créteil. Actes p.8

<sup>45</sup> ECOSOC. Document E/2002/INF/2/Add.2

<sup>46</sup> Cf. Rapport Raimbourg N°1974 à l'Assemblée Nationale 2014 p.72-74

<sup>47</sup> *"If Justice responded by recognizing the offender's suffering, their need for repair to regain their dignity, it would give them the opportunity to change their attitude. They could live their sentence not as an unfair punishment, but as the necessary reparation for the offense that was committed"*, a repairing that therefore becomes a source of transformation, reconstruction and then *"reintegration, instead of self-destruction in a desire for revenge against society and thus a self-exclusion"*. *Le Médiateur de l'âme*. Ibid. p.182.

<sup>48</sup> Conférence de consensus sur la prévention de la récidive. Fiche 14. *La justice réparatrice*. 2013

<sup>49</sup> Criminal constraint submits the convict to a set of obligations and prohibitions, and to support that is maintained for a period of up to 5 years. Its creation expands the range of solutions available to the judge.

<sup>50</sup> *National Survey of Victim-Offender Mediation Programs in the United States*. M.S Umbreit and J.Greenwood. US Department of Justice, OVC, 2000.

<sup>51</sup> J. Faget *Champ pénal* Vol.1. Varia..2004 ; *La médiation pénale. Evaluation nationale*, Fonds national de la vie associative/CLCJ, GERICO, n°11.1999, synthetized in « La double vie de la médiation pénale », *Médiations et sociétés*, n°4, 2003

judgment, with much more interesting results. Indeed, complainants and offenders very often find themselves meeting again in the future and dealing with each other over years. The most frequently encountered cases are former spouses who are tearing each other apart over financial and child custody issues, with the children effectively hostages, as well as neighbours involved in neighbourhood disputes that make their life hell<sup>52</sup>. A judgment is ineffective for restoring dialogue and peace between them, while mediation can achieve it in a way that is both deep and durable, usually in a very short time (typically a half-day, sometimes two). Mediation restores to the mediant their ability to connect to the law of their conscience. They re-engage with their responsibility to find the right response for the situation, repair it if necessary, and propose a new form of relationship. Some express real relief in taking over control of their lives.

As restorative justice, humanistic mediation has also been used in the support of young offenders: a process called "remedial measures", spread over a few months, allows them to gradually realize the harm they created for their victims, find a means of reparation acceptable to them, and possibly access forgiveness. The educational process of mediation is then fully at work.

Restorative justice is a more humane and softer form of justice which considers the whole person, both of the victim and offender, and is based on an optimistic view of humanity: never despair of man, search in each individual the depth of our common humanity, and restore to them the ability to find the path to true peace. In the case of the offender it is a case of looking for that fragment of humanity which remains, and in the victim that portion which allows forgiveness. The authentic and profound encounter with the other allows access to this part of humanity and the process of humanization.

### ***Mediation and Education***

Justice is not the only institution concerned with mediation: it has made its entry into French national education in order to train young people so they know how to manage their relationships with others on the basis of respect and mutual enrichment. Humanistic mediation experiments have been conducted in junior high schools and high schools, sometimes with the whole educational staff: the change in atmosphere in these schools has been palpable. Institutions now train class delegates and promote mediations between students called "peer mediation", which in 2013 came under a national education charter. Such training is essential and urgent today when rampant loss of educational benchmarks rages, as well as individualism, incivility and disrespect pushed to the extreme. Mediation constitutes a first education for the responsible citizenship which our youth need, an education for peaceful social relationships.

If it therefore appears essential to bring the culture of mediation into those areas where youth education takes place, it is also necessary with stakeholders in the social field (educators, social workers...) and in the management bodies which determine social relationships at work. Through a recently established policy for the prevention of psychosocial risks, mediation is becoming a tool for management in public and private companies.

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<sup>52</sup> Domestic violence which represents approximately 40% of cases handled in mediation and for which "*judges [...] currently consider mediation as the best response*" according to J. Faget *ibid.* (2004) has been recently removed from the mediation field.

## In conclusion. Towards an evaluation of mediation

What are the effects of mediation? There is no clear answer at the moment... The answer depends on a formalization of the informal, which is a frustrating but valuable approach. Various authors agree that more than 70% of mediations result in an agreement. "*However the signing of an agreement is not the only criterion of mediation success. Some agreements are only formal without real involvement while other mediations transform relations between persons even though no agreement was possible. Qualitative research measuring the satisfaction of the participants after mediation still remains rare*".<sup>53</sup>

In France a few key elements concerning the practice of judicial mediation have been published recently<sup>54</sup>. Evaluation attempts have been made, for example in the case of mediation used within the family<sup>55</sup> or at school<sup>56</sup>, and a large census was recently undertaken in France by Jean-Pierre Bonafé-Schmitt<sup>57</sup> with the creation of the Observatory of Mediations. In the latter, the mediators are consulted to describe the framework of the relevant mediations, but the bulk of the evaluative data is provided by the mediants themselves through questionnaires - concerning on one hand the mediation process, and on the other the effects over three years. Indeed the mediants are the only ones able to say if healing has occurred and if behaviors have changed. Here quality prevails over quantity.

In general terms, the management of measurement tools is complex and delicate. It would be interesting to formulate success criteria, an assessment which remains to be carried out. Such an evaluation process should be a university study requiring a deeper methodological analysis that is related to sociology and anthropology. It is a question of assessing the impact of mediation, and appreciating the importance of how the interpersonal relationships of the mediation participants are transformed.<sup>58</sup>

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<sup>53</sup> « Médiations et violences conjugales ». Jacques Faget. *Champ pénal*. Vol.I (2004)

<sup>54</sup> *La pratique de la médiation par les Directions Juridiques*. Association des Médiateurs Européens. Janvier 2013

<sup>55</sup> "*We were able to identify three main dimensions that provide the mediants with this feeling of usefulness. Firstly, the fact of having been able to exchange views and have dialogue, sometimes even on topics that had been taboo. Then, the lowering of tensions and/or the desire to break the cycle of conflict is a repeating element. Finally, mediation allows mutual consideration of problems and needs [...] ignored before. Thus, it appears essentially to be the output of relational difficulties which contributes to the useful evaluation of the mediation experience*". Jean-Pierre Bonafé-Schmitt. *Empan* 2008.72. p.81-87

<sup>56</sup> In School mediation produces perceptible effects: « *enhancement of self-esteem, development of personal abilities, but also behavior improvement especially among the students with 'problems'* ». Jean-Pierre Bonafé-Schmitt. *Revue Spirale*, 01/2006, 037, p. 173-182. See also *La médiation en milieu scolaire*. L'école et la ville. 5. 2010

<sup>57</sup> Observatoire des Médiations <https://www.observatoiredesmediations.org/>. See also by the same author *Évaluation des effets des processus de médiation familiale sur les médiés* in *Médiation et lien social*. *Empan*.2008

<sup>58</sup> Such a research work started in 2012 for about a dozen cases of criminal mediation as part of a master report of Anthropology of Law at Paris 1 University.