

PART 1: INTRODUCTION

1.1 A personal identification of the ‘problem’ of neutrality

For several years I have been working as a volunteer, community mediator. As community mediators we are occasionally invited to go into the workplace to mediate. Both I and my local community mediation charity, separately and together, are seeking more, paid workplace mediation work. The current workplace mediation business in the U.K. seems to have grown from a community mediation base and this history, of which I am now a part, will inform this inquiry. Three of the larger U.K. independent, private mediation service and training companies were founded by people from a community mediation background¹. (The other significant player in the workplace mediation business is the government funded Advisory, Conciliation and Arbitration Service (ACAS).)

The first definition of mediation I was taught stated that:

Mediation is a process in which an impartial third party helps disputing parties to work out an agreement. The disputants, not the mediator, decide the terms of this agreement.²

This definition, at first glance, seems straight forward, implying a certain, necessary neutrality on the part of the mediator and a practical objective for the parties to self-determine an ‘agreement’. It is believed that parties need reassurances of neutrality and impartiality to accept the intervention of mediators. Our trainers actually explicitly stated that mediators are “neutral”.

It might be felt that the mere presence of the goal of ‘agreement’ could unbalance the impartiality of a helper but this was presented as a challenge for mediators to meet. ‘Neutrality’ and ‘self-determination’ are thus two sides of the same coin, and our trainers stated that the primary goal of mediation was to help the disputants secure their own (self-determined) agreement. It was also stated that if the parties also began to become more sympathetic to each other’s perspectives, through dialogue, then that would be an extra benefit. This thought is echoed in the words of Beer and Stief:

¹ Conflict Management Plus Ltd; PMR Ltd; and Total Conflict Management Ltd.

² Source: Mediation Dorset training material Autumn 2001, unpublished.

Mediation at its best goes beyond problem-solving or “managing” a conflict. ... [although] ... Not many mediations bring about such noticeable transformation (Beer and Stief, 1997:15).

This quote points to a profound divide within contemporary mediation practice, which I will consider below, between the concepts of either overtly “managing” or, very differently, *not* trying to manage a conflict. It seems that the latter approach is regarded by many mediators that I have met as a kind of heresy³.

When I started to practice as a mediator it very soon became apparent to me that the discourse of neutrality, supporting party self-determination, was problematic. Perhaps somewhat idealistically, I also felt concerned that ‘dialogue’ has been downgraded to a secondary objective or even a mere by-product of the aim for parties to reach a ‘settlement’. In this study I shall explore this ‘problem’ of mediator neutrality, entwined as it is with the objectives and philosophies that underpin mediation interventions. I shall also excavate the idealism of the concept of ‘dialogue’ that yet also remains in the bloodstream of the modern mediation movement.

However, to take a brief step back, I would like to describe how my initial interest in mediation arose to indicate the “normative framework” (Glynos, 2008:293) that I have brought to this inquiry. Prior to coming to the subject of mediation I was involved in a group studying what might be called ‘reflective management’⁴. In this environment, perhaps because large disparities of ‘power’ were mostly absent, I gleaned some practical insights into feelings of being in ‘dialogue’ with others. As Bohm explains, dialogic:

communication can lead to the creation of something new only if people are able to freely listen to each other, without prejudice, and without trying to influence each other (Bohm, 1999:2-3).

I was also struck by an idealistic critique of so called third world, participatory development, by Rahnema, in which he suggested that there should be:

³ When giving a talk to other mediators on the concepts of transformative mediation I met with a certain derision at the suggestion that parties should manage the process. “That’s our job and they will just start to fight each other”, said one colleague.

⁴ MSc in Management Development and Social Responsibility at Bristol University.

no motive or objective for the participant's caring, other than the inner necessity for one to relate to others as a sensitive human being

and that,

any transitive form of participation - that is interested participation - becomes destructive of the intrinsic act of relating (Rahnema, 1990:221-3).

I became curious about such ideals of dialogue and of a humble and even selfless engagement in which a desire to influence the other is suspended (i.e. there is an attempt to act more 'neutrally'). On learning about the concept of mediation, as a form of impartial, third party intervention, a chord resonated with my curiosity. Hence, I came to the practice of mediation holding somewhat idealistic expectations that have inspired a critical appraisal of current workplace mediation practice. Rahnema points to a, perhaps impossible, intransitivity of interaction that may be analogous to a type of mediation intervention. As Bohm implies, this is to do with listening to others without attempting to exercise one's own power, through knowledge or persuasion. I believe such 'listening' has potential to open a path towards dialogue along which we may be able to collectively reflect more deeply upon ourselves and our environment.

1.2 Focus and range of inquiry

On practising as a community and a workplace mediator I felt a need to further develop, personally, meaningful ways of making interventions. I asked myself, what am I doing when I speak and what effect do I intend to make upon the parties to a mediation session? On joining the ranks of workplace mediators I similarly wondered what they are doing when they intervene. Around me I heard claims of other mediators that their interventions were in some way 'neutral'. Since I had already come to view such claims as problematic, I set out to investigate the generalized practice of contemporary workplace mediation in the U.K. with particular attention to the spoken interventions that mediators make.

This inquiry sets out to understand the practice of workplace mediation by looking first at the context of its deployment, by considering how and why mediation has been brought into the workplace by Human Resource

Management (Section 2.2). I then examine in detail the problem of neutrality from within the diverse field of mediation practice (Section 2.3). These two opening sections, looking at both context of use and forms of use, afford a critical tracing of how the myth of neutrality is reproduced within workplace mediation. This critique opens the way for the development of a counterfactual approach to mediating that has so far been closed off from consideration. The development of this counterfactual approach is supported by consideration of a theory of conflict transformation, setting conflict within a wider social context (Section 2.4) and by a meditation on the meaning of 'dialogue' (Section 2.5). Part 2 concludes by summarising a revised problematic of workplace mediation in which mistaken presumptions of neutrality conceal issues of: mediator control and influence; assumptions about identity; and social and political power immanent in mediation encounters. Part 2 thus presents a theoretical assessment of what constitutes workplace mediation and how it tends to operate.

To examine my theoretical assessment in a practical way I invited three practising mediators to play out their roles in front of a video camera. I then discussed some of my critical interpretations of the role-play with these research participants, leading to further interpretations of their responses that largely defended the notion of mediator neutrality. Part 3 describes my political and ontological basis for critically interpreting the role-play data and the subsequent participant discussion about it. As is traditional, I provide a defence of my inquiry methodology (Part 4) prior to presentation and interpretation of the role-play data and the role-play discussion (Part 5) finally leading to my conclusions and an epilogue (Parts 6 and 7).

1.3 Outline of argument

This thesis is thus a story of a journey of personal discovery. I came to the practice of mediation with an idealistic intentionality but as I pursued this inquiry I have applied a critical, materialist ontology of political discourse theory (Laclau, 1990; Torfing, 1999; Howarth, 2000 and 2005; Glynos and Howarth, 2007) to thinking about the mediation project. At the end of this journey I have returned, to a degree, to a knowingly problematical and equivocal idealism, or at least a normativity, informing my continuing engagement in practice and theorising about mediation. With hindsight I can regard the main purpose of this inquiry as

being to develop a new approach to workplace mediation, a counterfactual practice, built upon a political critique of current practice. To develop this alternative approach to practice I have used this study to understand, from a political perspective, how and, to an extent, why mainstream workplace mediators operate as they do. Also, by seeking a political understanding of what I view as a problematical, mainstream practice, I am also drawn to a very limited psychological/psychoanalytic speculation about the persistence of seemingly illusory beliefs that underpin this mainstream practice.

In this study I develop a picture of workplace mediation as a form of obscured social control, hidden behind the beliefs and pretences of practitioners and their human resource manager commissioners. These beliefs centre upon a widely held notion that mainstream, workplace mediation proffers a neutral, third party intervention. I show that these beliefs hold sway in mediation literature and in discussion with practitioners but I also demonstrate their lack of validity. I consider the transformative mediation movement that mounts a challenge to this central facet of the purported neutrality of mainstream mediation. However, I develop a critique of transformative mediation and find that its' practise may not offer an escape from the controlling nature of mediation applied inside contemporary workplace organizations. From this critique of both mainstream and transformative mediation I fashion a more 'ethical' (Glynos, 2008), counterfactual style of workplace mediation practice that I have labelled 'explorative mediation'. Hence, as noted above, the product of this survey of the theoretical literature, complemented by practical data collection through participant 'role-play' and discussion, is an alternative, simple but necessarily fluid guide for a more 'ethical' workplace mediation practice. Thus, what I have called 'explorative mediation' should be viewed as a work in progress designed to help address many, if not all, elements of the ensuing critique I make of contemporary workplace mediation.

My concern is to retain the valuable kernel of mediation, being the aspiration to unintrusively support those in conflict. This aspiration arises from a belief in the potential for communication to mitigate imbalances of power through the development of 'dialogue'. Thus, I seek to show that mediation does not need to become just another tool for controlling employees. However, finally I consider how difficult it may be for this explorative style to elude a discursive entrapment

as another means of social control within our contemporary organizations.

1.4 Thesis structure and content

In Section 2.2 I chart the adoption by Human Resource Management (HRM) of mediation as a tool by which to handle interpersonal workplace conflict.

Mediation would seem to have been promoted in part as a means to offset the expense incurred by employment tribunals. The rise in the use of mediation has also coincided with both a rise in individualized conflict, relative to collective disputes and a trend of the increasing individualization of the employee.

Mediation may contribute to this isolation of the individual employee due to its private and confidential nature. Furthermore, mediation, carried out in private, becomes tantamount to an encouragement for employees to self-discipline their behaviour. I consider how HRM policy tends towards objectifying the employee and how the mediator may be induced to align with this practice, thus colonizing the mediation project. However, I suggest the possibility that the mediator may be able to escape the discursive power of organizational requirements for efficiency and compliance.

To provide a deeper understanding and explanation for the ready adoption and organizational colonization of mediation presented in Section 2.2, Section 2.3 first returns to look briefly at the recent historical origins of contemporary workplace mediation and then reviews a large literature about mediation. I show that as the mediation industry has grown, the aim of achieving 'settlement' has both undermined a spurious neutrality and overshadowed the aspiration to support 'dialogue'. I highlight how the instrumental use of mediation in the workplace compromises the ethical roots of contemporary mediation and suggest that it may be possible to recover them by a focus upon support for 'dialogue'.

This Section critiques of the promises of neutrality; impartiality; non-judgmentalism; and self-determination that mediators routinely make to the parties. I argue that the mistaken assumptions of party sovereignty and party control serve to disguise the retention of power and influence by mediators and oversimplify the dynamic of power played out within and through the mediation encounter. I lay out the range of mediation styles and theories to demonstrate a

spectrum of mediation ranging from the very intrusive and directive to a more gentle and circumspect style of intervention. In doing this I aim to lay bare the multiple varieties of influence present in the mediation encounter. From this range it can be seen that a divide has also arisen between approaches that address issues and substantive problems of a conflict and those that focus upon party inter-relationships. I identify workplace mediation as a form of facilitative, but settlement driven, problem-solving mediation. I conclude that assumptions of neutrality are seductive but nevertheless illusory. They serve to obscure the controlling and containing nature of problem-solving mediation. However, it still remains difficult to understand the persistence of the discourse of neutrality other than to note that to expose it, within the humanistic context of its current adoption, would place it beyond acceptance of both commissioner and party. Both want to believe in party individual autonomy and self-determination. Also, because the myth of neutrality does obscure the controlling nature of problem-solving workplace mediation, the commercial 'need to settle' is cloaked whilst being realised. Furthermore, a certain directiveness in mediation is defended for pragmatic reasons of getting a so called win/win solution.

These reasons of efficacy are rejected by the relational school of transformative mediation. However, I also critique the major challenge to problem-solving mediation represented by transformative mediation practice. I trace out a dualism that tends to the pole of individualism in the philosophy of Bush and Folger (1994; 2005). It is this philosophy that effectively depoliticises the transformative project, imagining a political vacuum within any mediation session. I contrast the 'transformative' technique and philosophy with a post-structuralist concept in which communication, rather than empowering a sense of identity, demands the self-destruction of one's subjectivity and identity.

Having established a deconstructive critique of these various styles of mediation I have been able to use 'relational mediation' theories to heuristically inspire the development of the counterfactual approach I have called 'explorative mediation'. This explorative approach is premised upon an ontology of radical contingency within which subjectivity and identity are viewed as contingent and potentially fluid (Glover, 1991; Howarth, 2000). I suggest that the windows of the mediation session could be opened to the fresh air of other discourses and to examination

of wider patterns of conflict causation.

To better understand the significance of this last point and to support the development of a counterfactual mediation style, Section 2.4 considers social psychological theorising about conflict. Drawing on the work of Lederach (2003) on conflict transformation and from Cloke (2001), affording a limited systemic view of conflict, it is again apparent that mediation must look beyond the confines individual responsibility for both problems and relationships. Matters of organizational hierarchy and structures of injustice emerge that point towards an apparent conundrum for the mediator to act both directly (to explore hegemony) and non-directly (to behave with humility). Overall it is sensed that a curiosity about conflict and an ensuing 'dialogue' could foster the creation of opportunities for learning about 'self', 'other' and organizational context, but this may likely be received with suspicion, fear and denial, at least on the part of the commissioning manager.

Continuing to build support for a counterfactual approach, Section 2.5 examines a variety of concepts of dialogue. I critique a concept of dialogue as a seductively 'fantastic' ideal, that hides unrealistic assumptions about equal power relations between individuals. However, a view of dialogue that rejects beliefs about equal power relations existing between autonomous individuals but instead suggests a potential for enacting a mediator selflessness, may also appear similarly fantastic. I conclude that a beacon of a knowingly impossible dialogue is a worthwhile and necessary aspiration as it may generate an ethical sensitivity to the contingent that can serve to admit the 'political' into the mediation encounter.

Part 2 arrives at an interim theoretical conclusion from this study of contemporary workplace mediation practice, its history, its adoption from the community sector and its consequent patterns of reproduction. I argue that a style of mediation whose objective is to solve problems, through the hidden use of mediator power, whilst pretending parties to be self-determining, will become absorbed by and aligned with organizational discourses of efficiency, productivity and employee atomisation. Other relational styles of mediation that similarly assume individual sovereignty and promote values of self-determination are also likely to obscure the discursive context of workplace conflict. The locus of these tendencies of mainstream mediation toward discursive capture reside in

both the way mediators present themselves (to the parties and commissioners) and in the spoken interventions they make in managing the mediation encounter.

Part 3 seeks to delineate a more rigorous theoretical framework with which to interpret the interventions, demonstrated by my research participants, to understand how the practice of workplace mediation is reproduced or contested. Thus, Part 3 builds upon Part 2. It steps back from some interim conclusions of Part 2 to consider a range possible organizational critiques that might be applied to workplace mediation practice and explains more thoroughly my choice, already emergent in Part 2, of drawing upon post-Marxist political discourse theory (Torfing, 1999; Howarth, 2000; Glynos and Howarth, 2007).

Section 3.2 views workplace mediation through the multifaceted discipline of critical management studies. From within this field, Marxist and Labour Process Theory perspectives would view the mediator as an ally of 'capital'. From a different and uncritical stance, mainstream management theory would concur that mediation is a useful additional means for managing the workforce. Given that mediators persist in an assumption of neutrality, I have sought to uncover ways in which an obscured directiveness serves the needs of the organization in a manner discernible via by these critical management perspectives. However, I have necessarily turned to poststructural understandings of subjectivity, identity and 'radical contingency' to acquire a more nuanced understanding of the enacted role of the workplace mediator. This is to prise open a space for the mediator to alternatively hold to an inquiring, uncertain and deconstructive impulse, that questions the forces that support and sediment our sense of identity and hide ideological preconceptions. The mediation intervention could then be reframed as less about managing conflict but instead about offering potential to ethically open up a dialogue about a conflict to create an opportunity for learning. This counterfactual mode of mediation both derives from a critique of the mainstream and reinforces that same critique.

Section 3.3 explores the ontological basis for this critique and provides a theoretical frame for interpreting the actions of mediators as they intervene in the mediation encounter. I draw upon concepts of subjective interpellation and 'radical contingency' (Torfing 1999; Howarth, 2000) that emphasize the political

nature of the mediation encounter. I ask if it is possible for mediators to help parties discern 'radical choices' that arise from an understanding of the illusion of subjecthood and of the recognition of our own and others' subject positions. From this same ontological basis, I argue it is appropriate to examine the discursive subject position of the workplace mediator as revealed in their spoken interventions and in their presenting, enunciative modalities. Additionally, it is possible to make some speculative and general observations about the practice of mediation from the basis of Lacanian concepts of 'lack' and 'jouissance' and these same concepts are used to underpin the development of the aforementioned counterfactual mode of mediation.

Very detailed questions of *why* mediators act in certain ways rest upon psychological and psychoanalytic forms of inquiry largely beyond the scope of this present study. However, I have invited my research subjects/ participants to discuss, consider and respond to some of my critical findings to aid a preliminary interpretation of the motivations of mediator practice. Deeper psychological or psychoanalytic questions of motivation are informed by differing theories of subjecthood and a dualism emerges in questioning whether origins of subjecthood are found within the 'social' or the 'individual' psyche. My review of Elliot's critique of the post-Marxist ontology of 'lack' helps to surface this question for further consideration in the concluding part of this study. I tentatively point to the need to consider an emotional, corporeal aspect of behaviour along with a more discursive understanding of mediator actions.

In the Methodology (Part 4), as part of my defence of the validity of the data gleaned in the role-play case study and follow up discussion, I qualify the ontological basis of my interpretive frame with a perspective on creative agency and subjectivity that assumes discursive construction but is also informed by a mix of critical realism and Levinasian phenomenology. A concept of ethics emerges demanding that we try to act knowingly in an attempt to discover "who we are in relation to others" (Knights, 2009:10) whereby we may be able to acquire a "thoughtful empathy" (Williams, 2010). This points to the validity of interrogating my data to assess 'who' the mediators are (what type of creative agents) by looking at what they are 'doing in saying' as they intervene. I am then able to contrast this 'doing in saying' with what they profess to do and to use both these practised and espoused 'theories' as a foil to develop a

counterfactual method, or at least a guide, for a more open style of explorative mediation.

In Part 5, the role-play data and follow up discussion reveal mediator behaviours that contradict espoused practice and values of mediation. Participants express a recognition of tensions between the promises made to the parties to a conflict and the commercial demands and expectations of the organization. They observe how these tensions force them to make ethical judgements on the hoof.

However, notwithstanding these insights articulated by the participants, I find that the naturalized discourse of organizational efficiency knits together with a mediation discourse of problem-solving. Conflict represents something to be 'closed down' rather than explored. These factors, overlaid by the mediators' comprehension of the 'subject' (both self and party) as an autonomous, self-determining agent, form a defence against a clear recognition that the mediators' power is deployed in the service of the organizational commissioner of workplace mediation. That the mediators appear to act as proxy managers, whose expertise is defined by their ability to *manage* conflict, on behalf of the organization, confirms the colonization of mediation as it is widely practised in the workplace. In the conclusion I review these findings and contrast them with both the scope and the limitations for the counterfactual mode of 'explorative mediation' to escape such a colonization. I suggest the need to restrict the ambition of the mediator to an offer of support, for the exploration by the parties of their understandings of their conflict. I find that for the mediator to attempt this is itself a task of high ambition.

1.5 A note about 'subjectivity'

This inquiry has been informed by a philosophical view of the individual subject in which 'subjectivity' is, to a significant degree, socially constructed and where 'identity' has a capacity for fluidity but also tends to become sedimented within social practices and regimes.

Grugulis and Knights (2000) have defined subjectivity as, "[a] persons ability to make decisions in the context of social constraints." O'Doherty and Willmott embellish this definition describing subjectivity as "the open, reflexive, embodied

quality of human agency” making:

possible the process of interpretation that secures temporary and precarious forms of closure in the understanding of self and the relationship between “world” and “self” (O’Doherty and Willmott, 2000:114).

They note that this closure may be disrupted by the self-critical reflection of the subject. Torfing, relying upon Lacan, extends these thoughts by explaining that:

[t]he traumatized subject might seek to establish itself as a particular subjectivity by means of identifying with forms of identity that are offered by various discourses (Torfing, 1999:306).

I will use the term subjectivity to refer to the ways that subjects apprehend or apperceive the world around them which in turn conditions their understanding of ‘self’ and their relationships to others. Our subjectivity necessarily enables us to live in the world. Spinning out of these poststructural descriptions of subjectivity as constructed and not autonomous, identity curiously becomes expressible as an egoistic enactment of subjectivity, being psychological and biological, about what “I” feel about “my-self” as “I” make sense of the world around “me”. It is hoped to develop some distance from this egoistic impression to a recognition of the ‘social’ playing through the thoughts and feelings of the individual. I would note that such a recognition, in extreme, represents an impossible search for a paradoxical ‘objectivity’ in ‘subjectivity’. However, in the context of this study, mediators appear to hold beliefs about their own subjectivity and identity and that of the parties, which inform their actions.

PART 2: EXPLORATION OF THE ‘PROBLEM’ OF NEUTRALITY

2.1 Introduction

A form of mediation arising from the community and legal sectors has been adopted as a processual means for addressing certain types of interpersonal conflicts in the workplace (Beer and Stief, 1997: Preface). Therefore, I have begun this inquiry by examining the growth of workplace mediation and the particular aspects of contemporary organizational life and its employment policies that have facilitated this absorption of mediation into the workplace. I will then critically review the subject of mediation practice focusing upon the theme of ‘neutrality’ to develop a counterfactual mediation method based upon understandings about conflict and ‘dialogue’ that are presently obscured by current workplace mediation practice.

2.2 Human Resource Management, mediation and the ‘individualisation’ of the workplace

In this Section I will show that the growth of mediation sits astride dichotomous, conflicted motivations from within the HR function. Namely, those of a humanistic valuing of the employee in contrast with the demands for productivity and efficiency. A parallel internal conflict exists within mediation that pretends ‘neutrality’ but practises ‘directiveness’, sometimes hidden, sometimes overt. Perhaps as a result of this symmetry of internal contradiction and within a context of the growth in the individualisation of the employee, mediation has afforded a new tool for management and control of the workforce. However, I will suggest that this need not be inevitable.

2.2.1 The growth of mediation in the workplace

Anecdotally there would seem to be a current rise in the use of mediation in the workplace to address conflict between peers and between managers and their line staff. This usage is premised upon the understanding of the mediator as an independent, neutral, third party. One major provider of mediation services

reported a tenfold increase in demand for their services in 2004 (Liddle, 2004:8). Within this increase it would seem that the public sector is turning to mediation to resolve conflict more than the private sector. A privately run training workshop held in July 2006 was attended by six HR managers from the public sector, two from the private sector and three others who were independent consultants. A one day workplace mediation conference I went to in October 2006 was attended by some one hundred and seventy people. Four fifths were salaried HR managers and four fifths of these from the public sector. Many, mostly public sector, organisations have set up internal mediation services in the past ten years. There has also been a rise in the number of small companies offering external mediation services to both the public and private sectors. However, this impression of a surge in interest in workplace mediation is balanced by a Chartered Institute of Personnel and Development (CIPD) Survey, *Managing conflict at work*. This survey found that:

Training in mediation is still carried out by only just over a quarter of employers, with significantly more HR staff than line managers being trained (CIPD, October 2004:4).

Thus, we can see that mediation training has come onto the workplace scene in recent years but it has still not touched many organisations. Where it has, it has often been delivered to HR people and is most probably always orchestrated on the initiative of the HR department⁵. The types of dispute “individual mediation services can help” with are listed in the ACAS London Newsletter, Issue 6, Autumn/Winter 2006, as:

Bullying and harassment; Communication issues; Personality clashes; Unresolved or ongoing grievances; and Facilitating a return to work following an absence.

One could add disciplinary and discrimination issues to this list. All these workplace conflict issues ultimately come back to the HR department for resolution.

Inside the Workplace: First Findings from the 2004 Workplace Employment

⁵ I have adopted the term HR or HRM since the terms HRM and Personnel are now taken as almost synonymous, although they may be distinguished by the former 'in theory at least, being an essentially more strategic task' (Legge, 2005:3).

Relations Survey, published by the DTI, found that workplace conflict:

has been subject to dynamic change during the period [1998-2004], most notably in the gradual decline in collective conflict, measured through industrial action, and in the concurrent rise in individualised conflict, measured most overtly in the number of employment tribunal claims (WERS 2004: 22-23).

Employment legislation enacted in October 2004 was designed to reduce the level of employment tribunal work by mandating for the introduction of set grievance and dismissal procedures in all organisations. That a reduction did not occur led the DTI to commission a study by Michael Gibbons called *Better Dispute Resolution: A review of employment dispute resolution in Great Britain*. Gibbons reported in March 2007. He expressed a 'vision of a greatly increased role for mediation' recommending that the Government should:

offer a free early dispute resolution service, including where appropriate mediation (Gibbons, 2007:5).

He further recommended that:

The Government should challenge all employer and employee organisations to commit to implementing and promoting early dispute resolution, e.g. through greater use of in-house mediation, early neutral evaluation, and provisions in contracts of employment (Gibbons, 2007:10).

Following on from "Gibbons", the Employment Act 2008, that came into force in Great Britain on 6th April 2009, has only mandated a voluntary Code of Practice for Disciplinary and Grievance Procedures. This CoP, written by ACAS, contains the following paragraph in the Foreword:

Employers and employees should seek to resolve disciplinary and grievance issues in the workplace. Where this is not possible employers and employees should consider using an independent third party to help resolve the problem. The third party need not come from outside the organisation but could be an internal mediator, so long as they are not involved in the disciplinary and grievance issue. In some cases an external mediator might be appropriate (ACAS, 2009).

The foreword of the 'voluntary' code also states that:

[Employment] Tribunals will also be able to adjust any awards made in relevant cases by up to 25% for unreasonable failure to comply with any provisions of the Code (ACAS, 2009).

Thus, in the past 2 decades or so mediation has emerged as a tool for HR managers to use in resolving conflict and there would seem to have been a mood in the last Government to encourage, with 'carrot and stick', its wider use.

2.2.2 The individualisation of the employee

WERS (2004), as quoted above, notes a move away from collective representation and the concurrent rise in the individualisation of conflict. This 'individualisation' is part of a larger trend in the overall employment relationship. Gratton and Ghoshal argue that:

in a competitive knowledge based-economy ... Each individual must now accept the responsibility for managing his or her personal human capital (Gratton and Ghoshal, 2003:4).

They laud this as a democratisation of the employment relationship, placing:

a premium on individuation ... the opportunity each individual has to reach his or her fullest possible development (Gratton and Ghoshal, 2003:4).

There is an inadvertent hint that this new world of work may be more elitist than egalitarian in the acknowledgement that it applies "[A]t least for managerial and professional careers" (Gratton and Ghoshal, 2003:2). Whether or not a commercialised notion of Jungian individuation is at all feasible for an elite, a process of 'individualising' the workforce follows from the logic of Gratton and Ghoshal.

Statutory guidance for dismissal and grievance procedures operated by HRM, afford a protection of both individual employee and employer rights that effectively promotes this individualising trend. Gibbons' recommendations pressed for the greater use of mediation within this overall pattern of

individualising employee relations. The recent legislation watered down these recommendations but still gave a spur to the increased take up of mediation, if only as a box ticking exercise ahead of the threat of a potentially adverse tribunal judgement.

Carroll (1996:21) cites a critique of workplace counselling, that is directly analogous to the mediation setting, in which problems are individualised by being decontextualised, made apolitical and the responsibility of the individual. Thus, a process of 'individualisation' operates to detach people from other significant relationships and wider causes of conflict. This tendency is exacerbated by mediations' private, confidential and hence isolating nature, which itself has been criticised as potentially oppressive for the weaker party. (Menkel-Meadow, 1991; Bush and Folger, 2005). Barratt similarly warns of a Foucaultian subjectification that may be channelled via HRM practises such that:

It is in the role of practices analogous to the confessional (Foucault 1980), mentoring, self development activities, employee counselling and most obviously the confessional appraisal (Townley, 1993, 1994) - activities in which the subject is required in the presence of an authority figure to reflect on his or her own conduct, feelings and aspirations with the aim of inducing corrective effects or self transformation - which have provided the most obvious analogies for the functioning of this modality of power (Barratt, 2003:1073).

This dynamic is recognisable to anyone involved in work organisations and has strong echoes with a type of mediation that may be sponsored by HRM. But on the contrary, I will argue for mediation's as yet unrealised potential to de-individualise and recontextualise conflict. However, for now it can be accepted that facilitative mediation has become a lasting feature of HR work and that this may contribute towards an existing trend in the individualisation of the employee, in particular when employee conflict occurs.

2.2.3 The HRM policy environment

Since it is HR managers who make use of mediation services it is necessary to consider the wider purpose of the HRM function to understand how and why it may see mediation as a useful tool in the fulfilment of its general remit. Legge (2005:39) explains that "the personnel function is centrally concerned with

achieving the control and consent of employees". Some see this as "an essentially and continuing bureaucratic" function (Watson 2007:1). Others may view HRM's role as:

to assist in the extraction of surplus value through obscuring the commodity status of labour (Legge, 2005:39).

Keenoy notes that:

HRM as an operational facticity has been routinely associated with attempts to effect a significant change in the organisational 'ideo-culture' (Keenoy, 1999:2).

'Ideo-culture' refers to management driven notions and concepts of 'appropriate behaviour' and 'the way we do things around here'. Keenoy further suggests that HRM entails the "management of meaning" against a socio-economic context increasingly concerned with the "effective" utilisation of human resources" (Keenoy, 1999:3). This more strategic assessment is at once discursive but also has a flavour of the utilitarian and bureaucratic, albeit with overtones of the false consciousness of a Marxist interpretation. Being thus multi-faceted accords with the metaphor of HRM as hologram that Keenoy develops. Although Keenoy does echo Legge and Watson, by offering a reduced definition of HRMism as:

no more than a collective noun for the multitude of concepts and methods devised to manage and control the employment relationship (Keenoy, 1999:17).

Within this array of methods, Legge notes the replacement of earlier conceptual models of HR strategy labelled 'soft' and 'hard' by new models of high commitment management(HCM) and high performance work systems. HCM she says:

focuses on job security, job design and employee development as the route to high productivity/profits (Legge 2005:19).

HCM also:

seeks to secure the consent and commitment of employees to organisational values and demands by treating them as valuable assets and with respect (Legge 2005:39).

Legge (2005:15) notes that HCM work practices tend to be more prevalent in larger workplaces and in the public sector. As noted above these same places are more likely to be deploying mediation in the management of workplace conflict. Workplace mediation services seem consistent with an HCM strategy that values staff in order to maximise productivity. Conflict manifest in incidents of bullying and harassment, communication failures, personality clashes, ongoing grievances and work absence, as identified by ACAS, clearly detract from productivity. Thus, mediation is one way of mitigating the 'bottom line' effects of conflict at work.

Legge (2005:39) suggests traces of Aristotelianism are discernable in the "unitary, inclusive and supportive culture" of HCM. This assertion would seem to be based upon a metaphor of the organisation as mini-state, given the Aristotelian belief in the state and citizenship as the root to the good life, wherein humans are viewed as political rather than social creatures (Miller et al, 1991). Aristotle attributed the underlying cause of political strife to inequality.

[R]evolutions generally occur when the poor rise against the rich. The statesman, ... is offered advice on how to produce equality or its appearance and on how to restrain or divert the passions of the unequal (Miller et al, 1991:22).

If the modern organisation is like a mini state, then HR managers act as 'statesmen' within it. To move from antiquity to contemporary life and extend the metaphor, we might view HR Directors as government secretaries of state and HR managers as junior ministers with a small element of their portfolio extending to the management of mediation services. Junior ministers must of course tow the party line to stay in office. Perhaps these 'statesmen' from HR simply need to restrain and divert the passions of the unequal and have co-opted the mediator to assist in this task. Drawing upon another philosopher Legge notes that:

HCM may appear Kantian in its respect for the person, [but] the likely instrumentality of that respect rules out a truly Kantian ethical position

(Legge, 2005:39).

Again Miller et al (1991) helps to decode Legge's philosophical allusions. Kant's categorical imperative argued that people must always have 'good will'⁶, so that persons are treated as ends in themselves, never merely as means to arbitrary ends. The HR manager may view the employee as a human deserving of respect and good will, but simultaneously may treat them as an objective factor of production in the service of profit that sustains all their employments' (or so the story goes). Mediators may bring an ethical code of compassion and humanism to their dealings with those in conflict and yet may become instrumental in delivering the wider objectives of the HR function. The mediators are themselves used by HR and in turn may inevitably treat the parties in dispute as mere means to arbitrary ends. Kallinikos underscores:

the distinctive mark of the modern workplace [as being] the fact that humans are involved in it qua roles not qua persons. (Kallinikos, 2003:597 cited in Watson, 2007:4).

And yet mediation is emphatically concerned with how people feel and how they respond to each other as persons. This of course embraces their own and others understanding of their role in the workplace. Thus, there is a tension between a facet of HRM in its alignment with the ethos of mediation, that has a reflective, human developmentalism at its heart, and practical aspects of the HR role in a capitalist economy, "driven by short-termism and management accountancy values rather than developmental humanism." (Keenoy, 1999:5). How this tension is negotiated will depend upon how the mediator engages, directly or otherwise, with the parties in the mediation, and also upon how the mediator engages with the HR manager referring the conflict to the mediation service. For example, are inequalities and deeper, structural causes of conflict up for discussion or are they taboo? This question is further complicated by the mediation code of confidentiality and consequent privacy; as noted above, a pivotal factor in the critique of mediation as oppressive.

Thus, when the mediator intervenes in workplace conflict, it may be argued that

⁶ Russell (1962) explains more fully that Kant held the principle that every man (woman) is to be regarded as an end in himself (herself) and more generally the categorical imperative may be represented as an admonition to 'Act as if the maxim of your action were to become through your will a general natural law.' (Russell, 1962:683)

they need to be self-aware of how they do so, given this ongoing, informal negotiation of power, for at least two reasons. First, I would argue in the Kantian sense, they need to be attuned to their influence as a means to HR strategic ends. Second, they need to have sight of the wider organisational inequalities that potentially foment an Aristotelian political strife or, in this case, workplace conflict.

At worst the mediator may become enmeshed in an organisational 'schizophrenia' (Bateson, 2000) potentially implicit in the adoption by organisations of in-house or routine external mediation and conflict management services. Bateson explains how an individual may be caught in a 'double bind' when, in a vitally important relationship, s/he is asked to respond to a directive containing "two orders of message and one of these denies the other" (Bateson, 1999:208). An honest answer to one message gives a 'wrong' answer to the other. Some form of pretended, dissembling response may be given. If this situation is repeated systematically it may literally drive the person crazy. For example, there is one message that says the organisation wishes to work with conflict and not suppress it; that people should surface their issues for dialogue in a safe environment; that people are the valued, most important asset of the organisation. Conflict transformation requires that the root causes of conflict in relationships, structures and cultures be addressed, otherwise interpersonal conflict will continue to erupt (see review of Lederach, 2003, below). But it is these wider relational and structural sources of conflict that the organisation may often be unable or unwilling to address without destabilising its own preferred power structures. Thus, the other message the organisation issues, 'says' to its employees, "whilst we want you to engage with conflict in a healthy, open way, there are on the contrary some lessons within conflict that must not be spoken about for fear of recriminations". Thus, madness may arise from mixed messages of "damned if you do, damned if you don't" as issued from an "inhuman" HR department (Schneider, 1999:280). Schneider argues that such "'irrationality' is not in the person but in the system" (Schneider, 1999:278). She suggests it is important for HR academics and managers to attain a:

better understanding of how systems (here organizations) create conditions that challenge healthy human functioning (Schneider,

Schneider ironically seems to be in denial of our own place as irrational members of the 'system'. Her solution would seem to be to simply create good 'systems' from within unchanged political parameters.

A central purpose of my study is to consider how the well meaning mediator may become party to the perpetuation of such 'schizophrenic' discourses and also whether there is any possible escape that does not result in a jettisoning of the mediation project and the consequent loss of its positive potential. As noted above, such an escape would seem to entail mediator awareness of all aspects of their role and power inside the culture of contemporary organizations and an attunement to the wider conflictual backdrop of any presenting party.

In this inquiry I will focus upon the relationship of the mediator to the parties, recognising that this is necessarily conditioned by the presence, behind the scenes, of the commissioning referrer from HRM. Thus, this study is a story of certain relationships of power within a context of organizational power. Because prevailing discourses of efficiency are largely seen as natural within the workplace, they become beyond question (Fairclough, 2001). In this way, the ideology of the market place may smother attempts at an ethical questioning of mediator role and power. If this is so the instrumental needs of the workplace and HRM might be expected to colonize mediation in its guise as a neutral intervention. Hence, the role of the mediator may be interpreted as less that of a laudable supporter of the self-resolution of conflict and more as an instrument of social control within the organization. The above review of the take up of mediation services by the HRM function would seem to suggest that this is the case, despite mediation's foundational claim to be a neutral intervention. So what emerges from this review of the application of mediation, as a tool of HRM, is a contradictory picture of a purportedly neutral intervention that is bent to the task of social control within the organization. There is a symmetry of internal contradiction between HRM and mediation. The former is divided over its attitude to the employee, viewing them as both 'staff' and 'people'. The latter espouses neutrality and the humanistic, independent capacity of the parties but practices non-neutrality, directiveness and persuasion (as I shall demonstrate below). I suggest it is this symmetry that has enabled a smooth adoption and colonization

of mediation by organizations. Where mediation has not been taken up, it is where a hard edged school of HR practice has rejected the concept of high commitment management and only seen this humanistic facet of the proffered mediation service. To support these assertions I will next examine in more detail the origins of the mediation movement and its claims to effect a neutral intervention.

2.3 Mediation and Neutrality

In the above chapter I charted the rise of the use of mediation as an HR tool. In this chapter I will briefly trace the ‘modern’ historical roots of mediation. During a period when mediation has been imported into the workplace it would seem some founding values of dialogue have been covered over. At the same time, those of ‘neutrality’ and ‘settlement’ have persisted, despite an inherent tension between the two. I will make a thorough review of contemporary mediation and its practical, stylistic sub-divisions to reveal the internal debate over neutrality. My aim is to afford insights into the nuances of different approaches to practice and their philosophical underpinnings. This will enable me to develop a critique of mediation in order to begin to derive a counterfactual practice.

2.3.1 Uncovering historical roots of mediation: From the Quakers to UK employment legislation

The belief of mediators in the neutrality of their interventions lies at the nub of the problematic of workplace mediation. I shall show how, from mediation’s more recent historical roots, neutrality continues to retain credence and act as a representative symbol. However, I shall suggest the need to discredit ‘neutrality’ and return instead to a similarly old, though more valuable, belief of mediation as a vehicle for ‘dialogue’. By this means it may be possible to undermine a predominantly instrumental practice of workplace mediation that currently prevails.

The early idealism I invested in mediation was not inconsistent with one important source of inspiration for contemporary U.S. and U.K. mediation. Beer and Stief explain that:

Our mediation model grew out of Quaker processes for finding the “sense of the meeting,” where the group as a whole tries to discern the right action to take (Beer and Stief, 1997:8).

Collins explains that “in the Quaker meeting ... there is no one meaning being striven for” and that “[d]ialogue depends on difference and difference depends on the other” (Collins, 2002:295). A Quaker information leaflet invites new

participants to bring a particular disposition to their meetings. It reads as follows:

The silence is broken for the moment but not interrupted. Listen to what is said in an open-minded, charitable spirit. Each contribution may help somebody, but our needs are different and can be met in different ways. If something is said that does not speak to your condition or need, try nevertheless to reach the spirit behind the words. The speaker wants to help the Meeting: take care not to reject the offering by negative criticism (Quaker leaflet, 2002).

From the inspiration of a Quaker, collective form of dialogue, the Friends Conflict Resolution Program began in 1976 and the *Mediator's Handbook*, written by Beer and Stief, was first published in 1982. This Handbook has become a standard reference for community mediators in the U.K. Beer and Stief place themselves at the roots of the mediation movement thus:

From a little-known concept developed by community activists on the one hand and by the courts on the other, mediation processes have spread throughout the United States to communities, corporations, criminal justice systems, and government agencies. Mediation has become a profession, with university degrees and professional societies (Beer and Stief, 1997: preface iii).

Some years after my own first encounter with mediation, I remain attached to a normative belief that mediation can be primarily a means for assisting conflicted parties to move in the direction of an ideal of dialogue. Yet definitions that link the 'profession' of mediation with dialogue now appear to be uncommon. Moore very differently defines mediation as:

the intervention in a negotiation or a conflict of an acceptable third party who has limited or no authoritative decision-making power, who assists the involved parties to voluntarily reach a mutually acceptable settlement of the issues in dispute (Moore, 2003:15).

Kressel also defines mediation even more broadly as:

a process in which disputants attempt to resolve their differences with the assistance of an acceptable third party (Kressel, 2006:726).

These definitions deliberately reflect the broad spectrum of activities that are grouped under the umbrella of a mediation industry. Speaking particularly of the U.S., Kressel reinforces the historical view of Beer and Stief stating that:

in the last two decades formal mediation has begun to play a role at all levels of society and in virtually every significant area of of social conflict (Kressel, 2006:726).

Whilst “[m]ediation has a long and varied history in almost all cultures of the world” (Moore, 2003:20), its more recent expansion is attributed by its proponents to:

superior outcomes ... based on a model of cooperative conflict, rather than the win-lose orientation of the adversarial legal system, and because it involves the parties directly and actively in searching for solutions to their differences rather than imposing a solution upon them (Kressel, 2006:727).

A key point here is that mediation, as distinct from an adversarial legal system, should not impose solutions. This description of co-operative, self-determination also seems to stand apart from any possible political dimension of conflict but when mediation is placed in an organizational context a more instrumental aspect emerges. For example, U.K. workplace mediators Crawley and Graham (2002:5) list several benefits of mediation in the workplace. The first two on their list are; “*Cutting the cost of conflict* - the stress, illness and staff loss caused by conflict often affect the bottom line” and “*Diverting conflicts away from costly adversarial procedures*”.

In the Government sponsored Gibbons Review (2007) referred to above, the author himself declared “My vision is for a greatly increased role for mediation” (Gibbons, 2007:5). Echoing the rationale of Crawley and Graham he argued that:

The consequences for success would be less disruption to workplaces and to individuals’ careers, and reduced burdens on the resources of all concerned - employers, employees and the state (Gibbons, 2007:5),

and further that:

the Review considers that parties should be incentivised to resolve disputes informally, with sanctions against those who do not make adequate efforts to do so (Gibbons, 2007:28).

These practical, cost based, 'transitive' motivations, expressed by Gibbons, would seem to be inconsistent with the community movement, inspired origins of mediation, with its emphasis upon self-determination and voluntariness. On the other hand the focus upon 'settlement' and resolution, contained in the broad definitions, encapsulated by Moore and Kressel, are in tune with similar aspirations to achieve 'win/win agreement' that are a foundation of the community mediation sector. Contemporary mediation terms such as 'neutrality', 'impartiality', 'voluntariness' and 'self-determination', have all been adopted in the current discourse of workplace mediation (see Section 2.3.2 below). However, whereas community mediation is charitable, workplace mediators earn a fee. As explained above, workplace mediation is usually commissioned by HR managers in larger organizations. These commissioning managers are also, of course, concerned to see the practical 'settlement' of conflict. Thus, the notion of settlement may acquire a much more 'instrumental' edge, perhaps born of a "technocratic consciousness" (Habermas, 1971). This may tend to both remove the concept of mediation from any high ideals of dialogue and certainly place stress upon the concept of mediator neutrality. Exchange values may be expected to undermine the ethical foundations upon which mediation purports to rest.

Whilst there are many conflict situations where an 'instrumental' approach may be deemed necessary, pragmatic and urgent (e.g. commercial and contractual disputes where it is cost effective to settle out of court or situations of active armed conflict), I will argue, contrary to prevailing wisdom, that for workplace mediation, this should not and need not in general be the case. From the above overview of the growth of a mediation industry both in the U.K. and the U.S. it is possible to discern the dilution of formative ideals of a search for dialogue and peace and the wide acceptance of a more pragmatic application of mediation processes. However, for purposes of applying mediation in the workplace, I propose to explore a contention that an aspiration of 'dialogue' may be able to support 'co-determination' rather than 'self-determination', whereas the aim of 'settlement' is most likely to disrupt and prevent the emergence of dialogue.

The next section will look more closely at mediation, its adherence to a belief in the twin discourses of mediator neutrality and party self-determination and the well established critique of such neutrality. It may thus be possible to further understand the enduring nature of this apparent tenet of mediation, that has supported its broad spread and growth across “all levels of society” including, and in particular, mediation’s seemingly contradictory ‘instrumental’ application in the workplace. Also, by examining the theory and values of contemporary mediation, I shall try to develop a counterfactual approach to mediating in the workplace. This counterfactual approach will facilitate interpretation of mediation practice, captured by the role-play, case study, described below and it will also act as a personal, heuristic device for the continuing development of alternative approaches to the practice of workplace mediation.

2.3.2 The Promise of Mediation: An idealised concept of ‘power’ devolved to individual parties

“The Promise of Mediation” is the title of an important text by two U.S. professors, Bush and Folger (1994, 2005). In this book Bush and Folger recover the idealism of the origins of the contemporary mediation movement and they do this, they would argue, from a sound practical footing. They assert that the potential for mediation may go beyond the usually claimed benefits of solving conflict and improving relationships, towards a hoped realisation of personal transformation ‘engendering moral growth’ (Bush and Folger, 1994:2). I shall consider this text and its second edition below but for now I want to borrow this phrase and consider a meaning more mundane than that intended by Bush and Folger.

The offer of mediation is accepted on the basis of several standard promises; those of mediator *neutrality*, *impartiality* and *non-judgmentalism* (Beer and Stief, 1997; Crawley and Graham, 2002; Moore, 2003). The concept of neutrality corresponds with the promise not to attempt to influence the choices about how to resolve a conflict, thus supporting self-determination by the parties. Impartiality refers to the need to treat each party equally. Non-judging requires that mediators withhold their own opinions about the parties’ views, motives and characters. Non-judging underpins impartiality. In this way, it is claimed,

mediators can offer to manage a process and an environment that will be safe for parties in conflict to meet and talk and find their own agenda and their own forms of resolution. Mediation is proffered as a *voluntary* engagement reliant upon the development of a trusting relationship between mediators and the disputants (Beer and Stief, 1997; Crawley and Graham, 2002; Moore, 2003). Kressel speaks of neutrality and impartiality towards the parties as being “the sine qua non of rapport building and effective mediation generally”. (Kressel 2006:740.) Mediators, it is argued, hold no power to decide or enforce any type of solution. This all amounts to an idealised concept of mediation in which power to determine the outcome of the process is said to be devolved to the parties. To offer less might deter people from agreeing to work with mediators to resolve their conflict. Thus, mediators and the parties may be seduced to jointly accept these premises. (It could perhaps be argued that there may be value in so leading people into the mediation process, if done knowingly by the mediators, where mediator influence is contained and attempts are made to render such influence transparent as a mediation unfolds.) Throughout the mediation ‘industry’ it seems these promises are made and accepted. For example, one workplace mediation company’s web site states their values thus:

We are committed to the principle of consent and self-determination in mediation. Mediation does not seek to impose a resolution and, by working in a safe and constructive environment, parties often find a resolution that courts or other legal/quasi legal approaches would be unable or unwilling to consider. (www.tcmsolutions.co.uk accessed 18/3/09).

In a similar vein the UK Centre for Effective Dispute Resolution describes mediation as:

a flexible process conducted confidentially in which a neutral person actively assists parties in working towards a negotiated agreement of a dispute or difference, with the parties in ultimate control of the decision to settle and the terms of resolution (www.cedrsolve.com accessed 18/3/09).

Another prominent UK workplace mediation company defines mediation more tentatively as:

a process by which an impartial third party assists people in a

dispute to *explore* and *understand* their differences and, if possible to settle them. The parties, not the mediator dictate the terms of any agreement (Crawley and Graham, 2002:3, italics added).

(‘Explore’ and ‘understand’ are key words that I believe are used loosely here. I shall use them with more significance in the course of this thesis.) Mediators are often heard exhorting one another to ‘trust the process’, but this may not be enough as Crawley and Graham explain that mediators need to:

demonstrate a neutral response to behaviours that don’t match their own values, and remain impartial when one side appears to have more in common with their needs than the other (Crawley and Graham, 2002:33).

This implies that mediators adhere to a particular type of reflective or reflexive practice that I will examine further below. Certainly, parties to mediation will in general not trust their mediators if they perceive them as biased. (Touval, 1975, documents exceptions to this assumption in the international sphere.) The values of impartiality, trust and self-determination are all rooted in the originating community model of mediation. Mediators build trust, inter alia, by demonstrating their respect for the disputants. Respect is highlighted as “the guiding principle” of mediation by Beer and Stief who premise such respect upon a set of beliefs as follows.

Mediation’s consensus process assumes that dignity and participation are more important than efficiency and expertise. It rests upon the expectation that:

- Every person has an element of goodwill and integrity
- Every person is capable of change
- People can and should make decisions about their own lives
- The parties speak for themselves, think for themselves, decide for themselves. The hard work is theirs. So is the outcome

(Beer and Stief, 1997:9).

Beer’s and Stief’s Handbook, as noted above, is something of a bible for facilitative, community mediators. Their ontology, along with their model of

practice, has been carried over into the workplace. By thus being imported into an organisational domain it is possible that “efficiency and expertise” have come to supplant “dignity and participation”. In a sense feared by Rahnema, quoted above, such participation by the mediator may have acquired a certain transitivity. That is, the containment of conflict may be assumed to be required as a justification for a fee paid. Professional workplace mediators may thus be under pressure not to fail to secure positive outcomes by their interventions.

I will examine how the above facilitative mediation discourse of autonomy, neutrality, impartiality, non-judgmentalism and respect play out, specifically in the context of the workplace. For now it is worth presenting a brief critique of the linked ideas of party ‘sovereignty’ on the one hand and party ‘control’ on the other.

Firstly, the above discourse of mediation tends to portray a world of parties as independent, individual actors, who hold power to make their own decisions and who seek, with the help of mediation, to manage their way out of conflicts of their own creation. (Beer and Stief, 1997; Bush and Folger, 1994, 2005; Crawley and Graham, 2002.) In this analysis ‘agency’ is privileged over ‘structure’ and the individual is conceptualised as a sovereign entity. What Glynos and Howarth have termed the “logics of atomisation” appear operational to:

downplay the social and structural aspect of success and failure in the self-understanding of persons and institutions, leaving them to view themselves as individually responsible for their successes and failures (Glynos and Howarth, 2007:172).

Ideas of systemic, structural inequality (Lederach, 2003), examined further below, or of a collectively constructed, relational conflict reality (McNamee and Gergen, 1999), do not seem to be regarded as significant. ‘Promises’ of mediation are proffered in a variety of situations (workplace, community, family, sub-judicial, commercial, educational, victim/offender) and yet this is often done without any obvious reference to the cultural, economic, social or political context of conflict (Beer and Stief, 1997; Bush and Folger, 1994, 2005; Crawley and Graham, 2002). Some styles of mediation emphasize the exploration of emotion but none seem to explicitly admit to the existence of wider, systemic dimensions of interpersonal conflict. Cloke (2001) does argue that mediators could help

parties explore wider causes of the conflicts they experience although it has been suggested, albeit with some irony, that to do this would prove disadvantageous and undermine an 'efficient' mediation process (Silbey and Merry, 1986:29).

Secondly, if the parties are deemed to be in 'control' it remains unacknowledged that the very language that mediators speak can be regarded as significant in the "production, maintenance, and change of social relations of power" (Fairclough 2001:1). Furthermore, Clegg notes the:

pervasive tendency to think of power as a thing without considering that it must also be a property of relations' (Clegg, 1998:190).

Just by changing the relationship of a conflict into a three party relation and communication, the mediator can be seen to bring new elements of power into play (Dingwall, 1988). As Mayer suggests:

We [mediators] bring with us a set of beliefs, values and interests to every conflict we enter no matter how firmly committed to neutrality. Every action we take, or choose not to take reflects this (Mayer, 2004:30).

Given this recognition of the power of a third party intervention, workplace mediation could be regarded as a potentially dangerous, unregulateable, privatisation of judicial processes, which themselves are claimed to be impartial and transparent (Dolder, 2004). Another illustration of mediator influence is found in feminist critiques of mediator neutrality which note the "failure of mediation to influence gendered privilege" (Winslade & Monk, 2001:36). More specifically it is argued that because patriarchal power persists equally inside as outside the mediation setting and because of mediation's opaque, private and confidential nature, divorce mediation is said to perpetuate existing gender inequalities (Bottomley, 1984).

The above expressions and discourses of the ideal mediation project, which seem to deny the effect of mediator influence, appear fragile when viewed from these more critical perspectives. I shall consider whether hidden within an idealised notion of mediation lies a possibility that disputants could yet be

helped to interpret their conflict, largely on their own terms, when the mediator/helper strives for what might be termed a 'fantasy of dialogue'. That is, it may be recognised that 'dialogue' is ultimately unattainable and yet it is still valid to work for its realisation. How this might be done, and the limits to its fullest achievement will be considered later.

Before I review the literature that further describes various styles of mediation, to reveal in more detail how mediators become entwined in the exercise of influence and power, I will first briefly sketch a simple outline of a generic mediation process and then comment on how this outline changes in basic ways when mediation is brought into the workplace. This sketch will help to indicate how practitioners might persist in assuming their influence is limited so that parties remain in "ultimate control". I will also quickly indicate how mediation is sometimes used in a highly directive manner. This is to afford insight into basic mediation practices for those unfamiliar with them. These sketches necessarily contain an implicit bias; they are my interpretation, but it is one that I believe will be largely validated by the following survey of mediation literature.

2.3.3 Simplified generic mediation processes

a) Outline of a typical facilitative, community mediation process

At the start of any mediation telephone calls are made to each party to set 'first visit' dates. Sometimes this entails listening to preliminary descriptions of the disputants' problems. Mediators also explain 'first visit' routines and purpose. First visits are then made to each party separately, typically lasting around 60 minutes. At these 'first visits' mediators listen to the parties accounts of their conflict. Mediators explain the mediation process, the mediator's role and guidelines to encourage courtesy and respect in any joint meetings. They seek to build the trust of the parties in the process and in themselves, the mediators. They ask if each party thinks mediation will be useful for them and invite voluntary participation in the next stage of a joint meeting. They also explain the confidentiality of the mediation process.

A joint meeting is set up, some days later, at a neutral location and this may be a 'one off' or one of a series. These meetings in principle follow a plan thus:

- Each party has 'uninterrupted time' to speak. Often, the disputant's speech is initially directed towards mediator
- The mediators may then ask 'how do you both feel?' before giving a short summary.
- The mediators then orchestrate an exploration of the situation by both parties.
- An agenda is formed of issues, interests and needs.
- Common ground is sought and some forms of solution mapped out.
- Scope for some agreement or consensus is developed.
- Some form of agreement is made, sometimes written down.
- The meeting is closed.

During the joint meeting the mediators will direct interactions by asking questions of each disputant, prompting them to open up issues or to drill down into specific events. The mediators seek to diffuse anger and blaming. They may call for 'time outs' to speak with each party separately. A number of interlocutory techniques are used, prominent among them being summarising, reflecting back/mirroring, affirming and understanding, reframing and prompting disputants to problem solve. Reframing is used to mitigate blaming and aggression, and to find the 'need' or 'interest' behind the 'position'. Thus, parties are encouraged to move in the direction of common ground, i.e. to turn a negative emotion into a positive search for resolution. In doing this the mediator does not seek to rewrite the individual's narrative or deny the history of the argument. It is done by making use of words that have been used by the parties where possible.

b) A typical workplace mediation process: Variations on the above outline

The basic structure is similar to the above model but with some significant differences. The entire mediation will often take place over one day. This allows space for a gradual process and yet, paradoxically the work is intensive. This is so, in part, because a solution is being sought in just a few hours, for what may be a very long running and highly emotionally charged conflict. The morning is spent seeing each party separately, sometimes twice (first for 1 hour and second for 15-20 mins). These initial, separate meetings prime the parties for

the afternoon joint session. The parties are directed to think about how they want to address the other party, what they want from the joint meeting and to reflect upon what sort of ongoing workplace communications and relationship they would like to develop in the future. There is a gentle implication that they should become responsible for engendering some sort of positive resolution of the problem. Their position as a contracted employee will tend to have a conditioning effect on their overall disposition.

In the early stages of a difficult joint meeting, 'time outs' are likely to be used more than in the community model, in part to impress upon parties that a negative conclusion may be undesirable for them. Mediators will help parties explore histories, narratives and emotion in joint meetings but there will be an underlying impetus towards the future and towards practical actions aimed at improving the parties relationship. During the joint meeting the mediator is again more likely, than in a community setting, to work actively to help prompt problem solving thinking by the parties and to structure an action plan with contingencies around the solutions that are generated by the parties. (Later I will analyse several extracts from the texts of two role-play workplace mediations in the case study.)

c) Directive mediation

There is a style of mediation in the literature that is referred to variously as 'bargaining' (Silbey and Merry, 1986), 'evaluative' (Noll, 2001) and 'settlement driven' (Boserup, 2004). An example of this would be where quasi-legal officers run a mediation, by mostly holding separate meetings with the parties, and very limited joint sessions. They 'to and fro' between parties with messages and in the separate meetings they give strong advice rooted in their assumed expertise. Parties are thus heavily directed toward agreeing a form of solution that, whilst tying in to their interests, will have been drafted independently by the mediator. This style of mediation is often referred to as 'managed negotiation' and is commonly applied in high value commercial disputes. The mediator's skill involves prevention of loss of face by the parties so that a win/win settlement can be agreed to pre-empt expensive win/lose legal proceedings.

The above sketches of simple mediation processes will afford a reference frame

as I consider the ways in which mediator influence and power may be brought to bear upon the mediation encounter, within many contemporary approaches to mediation practice. It serves to highlight differences between mediator interventions that are termed 'facilitative' from those considered 'evaluative', the latter being more overtly judgemental. This distinction will be teased out further in the next section.

2.3.4 Theories about mediation practice: Establishing the spectrum of influence

Kressel (2006:738), whilst explaining that mediation is a multifaceted and structured activity, presents a simplifying typology dividing behaviour interventions into three strategies, being "reflexive", "contextual" and "substantive". By 'reflexive intervention' he means that mediators orient themselves to the dispute by "establishing rapport and diagnosis" (Kressel, 2006:738). 'Contextual interventions' are about setting up a climate that is conducive for dialogue by, for example:

establishing norms for respectful listening and language, managing anger constructively, maintaining the privacy of negotiations (Kressel, 2006:740).

Finally Kressel asserts that:

Substantive interventions refer to tactics by which the mediator deals directly with the issues in dispute (Kressel, 2006:741).

As explained above, at first sight mediation proffers an attractive 'promise' by the mediator not to take on or take over the disputants' conflict nor its solution, and thereby to remain 'neutral', 'impartial', and 'non-judging'. Instead, the disputants trust the mediators and hence assign them authority to manage a structured encounter. But it is in this 'management' and 'structuring' and the deployment of "tactics" that the obscured or even hidden mediator's power resides.

Building on the above descriptions of mediator behaviour, the notion of a mediation meeting structure can be seen to embrace many aspects including: mediation meeting purpose, process and staging; mediator 'authority' and role,

importantly including strategic and tactical control of the conversation interactions; mediator disposition and body language; the location (being 'neutral')⁷; the encounter's voluntary nature (in so far as this is possible in the workplace); and guidelines/ground rules, (Seaman, 2006). Of key significance are the spoken, unspoken and possibly unrecognised values and aims a mediator brings to a session and how these play out through both the control of the process, (how many meetings, when, with parties together or separately) and the micro-management of each conversation interaction. (e.g. whether questions are posed at all; if they are, how; whether questions probe for issues and not feelings, or vice versa, or both.) Thus, it becomes apparent that there are many dimensions and planes upon which the mediator may hold powerful influence over the mediation session. Such influence is obscured through the use of technical skills, to both orchestrate communication and, to present an appearance of minimal intervention in the substance of, or any solution to, a dispute. Such hidden influence must surely be problematic. But as documented above, mediators lay claim to a common principle that the disputants should make their own decisions, separately or together, to achieve some consensus or arrive at some form of understanding.

The many opportunities for exercising mediator influence would seem to be further confused by the varieties and contexts of mediation as also indicated above. To attempt a rationalisation of this variety I will first review the work of Noll (2001) who has surveyed mediation writing to resolve it into a general theory of mediation. I will then draw on the work of Boserup (2004) who categorises differing styles of mediation. This will afford a clearer view of the problem of obscured, hidden or unknowing mediator influence and importantly, establish the concept of a spectrum of influence that pervades contemporary mediation practice.

Noll has surveyed, 'a vast literature' to find a:

theory ... to reconcile ... all the diverging views of practice and outcome into a unified view of mediation (Noll, 2001:78).

He argues that such a theory of mediation has hitherto been lacking because

⁷ In the workplace mediation setting this means a location away from the normal place of work.

the debates have not embraced an understanding of conflict dynamics. His theory contains four strands: conflict goals; level of conflict escalation; mediation style or process; and mediation outcome. He explains by reference to other analyses how the interwoven and varying 'goals' of a conflict will influence its dynamic, listing these goals as relating to "content" (I want something from you); "relationship" (people not getting along); "identity" (someone's sense of identity has been destabilised); and "process" (the way someone wants to seek a resolution). He then adopts a psychological, five stage model of conflict escalation, ranging from the not very serious to the out of control. For example, stage four finds one or both parties regressing to the cognitive function level of six year olds and at stage five to a "hallucinatory narcissistic sphere" (Noll, 2001:79/81).

He lays out three complementary models of mediation style and process. The first is Riskin's. This looks at two dimensions of mediator orientation. A/ "does the mediator tend to define problems narrowly or broadly" and B/ "does the mediator think he or she should evaluate .. or facilitate the parties negotiation." (Noll, 2001:81). Noll observes that Riskin's model, dating from 1994, has clarified mediation practice but "has been criticised as tending to legitimise evaluative mediation" (Noll, 2001:82). He then presents Kovach and Love's model that highlights a "Great Divide" separating "processes that require evaluation from processes that require facilitation" (Noll, 2001:82). This seems to inadvertently reinforce the criticism of Riskin's model, which would place evaluative processes beyond a definition of mediation.

The third model he delineates is that of Carnevale. According to Noll (2001), Carnevale argued that depending upon what value the mediator places on the disputants getting what they want, and also on whether the mediator thinks a mutual resolution is probable, then the mediator will adopt one of four strategies, termed: "compensation", "pressure", "integration", and "inaction". Noll explains Carnevale's logic thus. Mediators "compensate" if there is little common ground but the mediators want the parties to achieve their aspirations. They "pressure" if they don't care and there is little common ground. They "integrate" when they want parties to achieve their aspirations and there is common ground and lastly, they are "inactive" if they do not care if the parties achieve their aspirations and there is common ground. This would seem a

cynical view distant from mediation's origins in a compassionate desire to re-empower people trapped in conflict. It is based upon the idea that mediators can control the outcome or somewhat petulantly don't care if they can't. However, for mediators who do not bring a philosophy about human behaviour to their praxis, this analysis can seem plausible especially at a subconscious level. As a mediator I recognise the emotional responses that Carnevale describes but when a mediator is 'working well', guided by some, albeit, contingent philosophical premise, then a selflessness may occasionally be achieved, and Carnevale's strategies become redundant. I will elaborate this opinion below.

Lastly, Noll categorises three types of outcome. One is measured by tangible agreements. The second by whether "empowerment and recognition" has been achieved. This is a fleeting reference to the Bush and Folger (1994, 2005) transformative model. (Noll surprisingly does not embrace this model as an example of style and process.) The third is similar to the second in that the degree of reconciliation is measured. He then states his theory as:

The nature of the conflict dictates the mediation process to be used and the conflict's likely outcome (Noll, 2001:83).

Noll's own theory and his discussion about other mediation theories presents a picture of mediators who judge and weigh up conflict situations and then deploy strategies to influence outcomes they deem optimal. All these models implicitly acknowledge the wide extent of influence available to the mediator. Noll's theory is finally supported by formal theorems which effectively tabulate types of conflict, and levels of conflict, which he argues lend themselves naturally to different types of mediation, which if applied, result in one of the above three outcomes. This is fairly commonsensical but he does, like Riskin, uncritically legitimate evaluative mediation. His theorems name five types of mediation; a) facilitated-distributive bargaining, b) interest based negotiation, c) evaluative mediation, d) transformative mediation, e) narrative mediation. These blur and conflate the Riskin model, add in the transformative model and further add in the so far unmentioned narrative model. These latter two are discussed below.

In his concluding discussion all these styles are reduced down to either an 'evaluative' or a 'facilitative' approach. This would seem to be a sound

summation, categorising two distinct and polarised approaches. However, if mediation, by definition, is about minimising mediator influence, I would argue that, normatively, it can only be regarded as a form of facilitation. By this view Noll's theory could usefully pertain to the broader activity of general dispute resolution but not to mediation. Notwithstanding this criticism, the so called 'Great Divide' between the 'evaluative' and the 'facilitative' is an exaggerated metaphor since the area where facilitation slips over into evaluation is necessarily complex and grey.

The work of Boserup (2004) who categorises and dates six basic mediation styles will serve to penetrate this greyness a little further and reveal more facets of mediator influence that may arise from the diversity of mediation practice. These six styles are termed: "Generic" (1970); "Settlement driven" (1980); "Cognitive, systemic" (1980); "Transformative" (1990); "Humanistic" (1990); and "Narrative" (1990). The simplified descriptions of community and workplace mediation processes given above arise from the "generic" and "settlement" models. In the "Generic model", mediators invite parties to express their feelings and to explore their interests and needs (moving away from entrenched positions). This is done by a structured process that is common to many types of mediation practice. Boserup summarises this structure as: 1/ Storytelling, 2/ Defining issues, 3/ Generating options, 4/ Negotiation, 5/ Agreement. He explains that in this approach it is important to allow feelings and emotion to be explored through active listening and free storytelling. Also, joint sessions are not usually interrupted by 'time outs' for separate meetings with each party. Beer and Stief (1997:79) leading proponents of this style, exhort mediators to 'Keep yourself in their present, out of their future'. However, there is also an inherent aim to help parties surface their interests and underlying needs and to find some form of practical solution.

To move away from this "Generic model", to a style where a mediator feels obliged to always yield a productive, efficient outcome, measured in the form of an agreement made by the parties, will surely tend to compromise the "key objective of consensual joint decision making [by the parties alone]" (Roberts, 1992:385). This style of mediation, as noted above, has been variously labelled, "bargaining" (Silbey and Merry, 1986), "evaluative" (Riskin, cited in Noll, 2001), and is called "settlement driven" by Boserup. Here the importance of defining

issues and interests take more prominence than exploration of related feelings and emotions. Information is gathered more than stories told and 'time outs' are used as an integral part of a strategy for getting to an agreement. There is a very heavy emphasis on getting the conflict practically resolved and a written agreement made. Mediators necessarily adopt a more overtly directive approach.

The third style, called "Cognitive, systemic", he describes as a cyclical approach. Each problem surfaced is treated to a cognitive exploration, where information is privileged over emotion. Then the cycle is repeated with another problem. Each cycle seems similar to the basic stages of the generic model. This style was developed by Haynes (1981, 1994) in the context of family and divorce mediation. Thus, concerns are of a highly practical nature to do with finance and custody of children. In general, Haynes believed that:

The process of mediation is the management of other people's negotiations, and the mediator is the manager... The more coherent and organized the process, the easier it is for participants to arrive at solutions (Haynes, 1994:1).

The fourth style is called "Transformative" (Bush and Folger, 1994, 2005) where mediators seek to eschew "problem solving" in favour of encouraging "empowerment and recognition". I will explore this style in more depth below. It is innately facilitative as is well described by Pope:

[Transformative] Mediators are there to be responsive to participant's needs, to focus on their statements in conversation, to explore their meaning and to slow down at opportunities to encourage deliberation and decision making and invite consideration of the other's perspective (Pope, 2001:86).

The fifth, "Humanistic" style is applied to 'victim-offender' meetings. This is a specialist form of mediation for a specific situation. Interestingly, because it requires high levels of mediator modesty and respect, in the joint sessions it may also appear an innately facilitative style. Much advance work, that is not necessarily 'facilitative', is carried out in private preparatory meetings before parties will agree to sit down together. When they do, the mediator tries to be "as invisible as possible" (Boserup, 2001:6).

The last of the six styles identified by Boserup is the “Narrative” style. This style has been developed by Winslade and Monk (2001). Its process has three aspects of a) “engagement” involving listening, rapport building and story telling; b) “deconstruction” of the conflict story by externalising language (to separate the ‘problem’ from the party⁸), and locating alternative stories and lastly; “construction” of an alternative mutual story. It appears to commence in a relational mode but then move towards a more problem-solving style. Thus, it operates to free parties from their conflict-saturated story and to build a new conflict free story, led by the mediator and perhaps tantamount to a mediator guided solution.

Boserup identifies these six styles asserting that the adoption of any one will “change the whole concept of mediation as a practice” (Boserup, 2004:1) but he notes this in order to suggest that mediators should learn all styles to be able to select the one most appropriate for a given situation. This echoes Noll in suggesting any style is as good as another as long as it is appropriate for a conflict situation. For example, Boserup advocates a settlement driven style if the mediator senses that the parties are impatient for an agreement. Or, he suggests a cognitive style is best where one or both parties are not willing to reveal “emotional aspects of the conflict.” (Boserup, 2004:2).

Kressel (2006) effectively condenses Boserup’s and Noll’s surveys into two styles of mediation, being “either a *problem-solving* or *relational style*” (Kressel, 2006:742). He states that “The problem-solving style has long been the dominant mediation approach” (Kressel, 2006:743). Under “problem-solving”, like Noll, he differentiates subtypes of “facilitative” and “evaluative” styles but also adds a “strategic” style. Strategic mediation sets out to reveal “powerful latent causes of which the parties are unaware” (Kressel, 2006:743). He gives examples including from an organizational setting such as “impaired communication patterns” or “ineffectual leadership” (Kressel, 2006:744). I shall examine the importance of recognising the wider causation of conflict more generally below. Regarding facilitative mediation he notes that, “[m]ediator

⁸ “As mediators externalize a problem, they speak about it as if it were an external object or person exerting influence on the parties” (Winslade and Monk, 2001:6). Thus, a mediator might ask, “how did the ‘problem’ make you feel”, rather than “how did you feel about the ‘problem’”.

neutrality is emphasized” and that:

[i]t is also the most popular philosophy of the mediator’s role, albeit one that is frequently contradicted by empirical studies of mediator behaviour (Kressel, 2006:743).

The work of Kressel, Noll and Boserup confirms a wide range of practice in which power is exercised by mediators, to achieve agreements, across a spectrum of influence from the very intrusive to the more minimally intrusive. However, Boserup, unlike Kressel and Noll, fundamentally warns against “pushing and social control” (Boserup, 2004:8). He notes that those mediators who choose a least directive style try to surface information by listening closely and reflectively and asking the minimum number of open-ended questions. This is because, “questions reflect our own intentions” (Boserup, 2004:2). Boserup warns that it is very easy for mediators to become manipulative and that:

manipulation by mediators can only be avoided through mutual and open discussions and demonstrated facilitation between mediators in order to identify styles of manipulation, and the creation of values preventing their occurrence (Boserup, 2001:2).

In this study I shall seek to uncover and interpret manipulative tendencies that may be inherent in facilitative, workplace mediation. If such tendencies are found I shall explore why claims to the contrary should persist and try to assess if such tendencies could be subverted by an alternative stylistic approach, rooted in values which counter the potential for manipulation by mediators.

To summarise this overview of mediation literature thus far, it may be asserted that in the evolution of mediation styles there was a branching between “problem-solving” and “relational” styles in the 1990s. These “relational” styles of “transformative” and “narrative” mediation will be considered further below. They were a reaction to problems perceived with ‘facilitative’ mediation. Within ‘problem-solving’ approaches some are overtly directive and it is arguable that they should not be classified as mediation at all. Workplace mediation, that grew from the community model and seems to sit astride the “generic” and “settlement” types, has retained a discourse of ‘facilitative’ mediation in which mediators claim impartiality and neutrality with respect to outcomes, which are said to be self-determined by the parties. Facilitative mediation is structured

around mediator control of the meeting process even though the theoretical literature reviewed above demonstrates many facets of mediator influence arising from such control. I shall now turn to two empirical studies that re-enforce the view that mediators who facilitate 'problem-solving' necessarily exercise considerable influence upon the outcome of a mediation session.

2.3.5 Evidence of mediator influence: The problem of achieving settlement

Dingwall(1988) studied an English, charitable, independent divorce mediation service, observing mediation interactions from 45 interviews across 15 cases. He concluded that:

mediators can play a very active role in orchestrating these encounters in ways which seem inconsistent with the aspiration to party control (Dingwall, 1988:165).

He also noted that this conclusion may also be arrived at theoretically, quoting Simmel, writing at the beginning of the last century:

A gesture, a way of listening, the mood that radiates from a particular [third] person are enough to change the difference between two individuals. (Simmel cited by Dingwall, 1988:165).

This idea is reinforced if the mediation encounter is compared with therapy in which "transference and countertransference between therapist and patient is unavoidable" (Cohen et al, 1999:342). Linked to these observations Dingwall further noted that because the mediator creates the frame of the encounter:

The dispute is no longer a private matter but one which involves their [the parties'] standing in the eyes of an outsider, who is defining what will count as an acceptable, in-character behaviour. Given this, the element of enforcement seems ineradicable from mediation (Dingwall,1988:166).

Roberts (1992), also writing about divorce mediation in the UK, cites Gulliver to endorse the view that "mediation serves a negotiation process" and "the role of the mediator is understandable only within an understanding of that process" (Roberts, 1992:375.) Despite Dingwall's earlier findings she attempts to reconcile this service to "negotiation" with the principle of self-determination or

party control, asserting that:

‘the explicit adoption by the mediator of a “modest profile” is essential if the authority of the parties to create their own agreement is to be safeguarded (Roberts, 1992:383).

Thus, Roberts distils the conundrum of mediator support for and management of a negotiated agreement that is to be created by the parties themselves. Yet Irvine, (2009) a lawyer, academic and practising mediator, speaking from his own experience, supports the findings of Dingwall contrary to Roberts’ trust in a ‘modest profile’. Irvine explains that within family mediation it is well recognised that some mediators set out norms of behaviour to influence parties towards particular choices. He argues for an honesty with clients about what mediators do and a reflective practice (citing Schon, 1983) from which mediators may understand and make transparent their values that affect the moment by moment choices they make. Irvine seems prepared to give up the claim of party self-determination with an acknowledgement of mediator influence. Irvine (2009) describes Waldman’s (1997) typology of mediation practice that sets out three forms of practice according to their treatment of social norms. These are the norm-generating model (in which neutrality is assumed to be maintained); the norm-educating model; and the norm-advocating model. In the first it is believed that the parties generate their own norms within which solutions may be defined. In the second the mediator will indicate appropriate norms for the parties to work within. In the third the mediator ensures compliance with certain norms. Oberman (2009) comments on Irvine’s article that she is open about being a norm-educating practitioner. She states that:

[h]ow can mediators call themselves “neutral” (regarding the outcome) and at the same time have a bias for joint custody? (Oberman, 2009).

In family mediation, where disparities of party power may be significant and where outcomes may have a profound impact upon children, who are also often not included in mediation sessions, mediators would seem to be forced to confront their values and beliefs that influence their management of the mediation process. Non-neutrality can thus be more transparent and acceptable to parties and commissioners. It takes the form of a partiality in favour of the

children in front of both parents. In the workplace the overt acknowledgement of 'power' is often taboo. The stance of neutrality is also seen as a foundation for acceptance of the mediation intervention. Hence, the specific reasons why neutrality in the family domain has come to be questioned do not prevail in the context of workplace mediation. This comparison with family mediation may illuminate, to a degree, the persistence of the myth of neutrality amongst workplace mediators in that there are reasons to retain it and no pressing circumstances that point towards exposure.

Silbey and Merry (1986), writing over twenty years ago, also identified mediation's inherent tension explaining that mediators face "a dilemma: to settle a case without imposing a decision" (Silbey and Merry, 1986:7). They researched over 40 mediators in 175 mediations from 3 mediation programs in the U.S., over a period of 3 years. One program was court affiliated, a second was community based and the third dealt with conflicts between teenage children and parents. They also discerned a spectrum of influence in describing how, "mediation styles fall along a continuum between two types: bargaining and therapy" (Silbey and Merry, 1986:8). Thus, their study affords examples of a more facilitative style of practice, labelled 'therapeutic'. The therapeutic mediator's mandate is "to facilitate conversation, not to bargain" (Silbey and Merry, 1986:22). They describe therapeutic mediation as a "communication process which resembles therapy in its focus on exploring and enunciating feelings" (Silbey and Merry 1986:8).

In order to resolve the tension between the need to settle and the inability to impose a solution, mediators are seen "employing a variety of sources of power" (Silbey and Merry, 1986:12). They identify power operating within four strategies: 1/ How mediators present themselves and the process. 2/ How they control the process. 3/ How they control issues - broadening, selecting, eliminating, narrowing, concretizing or postponing. 4/ Assumed norms about conflict causation and how and why to settle. The different mixes of usage of the above four strategies determine where a mediation style is placed on a continuum between the poles of "bargaining" at one end and "therapy" at the opposite end; that is, from the more 'directive' to the more 'facilitative'. But in both cases, perhaps prefiguring transformative mediation, they see:

the aim of mediators is to convert [the parties] accounts into a language of relationships (Silbey and Merry, 1986:26),

and again in both cases it is argued that:

they share an orientation toward relationship and interdependence as the basis for settlement (Silbey and Merry, 1986:26).

In conclusion they suggest that because:

therapeutic mediators are forced by exigencies of some institutional umbrella to produce results competitive with some other yardstick of efficiency, ... therapists will become bargainers (Silbey and Merry 1986:30).

Dingwall's and Silbey's and Merry's critiques would seem irrefutable and yet they appear to be either unknown or unaccepted by practising mediators in both the community and workplace arenas. This is evident from the quoted definitions of practising mediation organizations given above and confirmed by discussions with workplace mediators documented below. These critiques of neutrality predate but mirror the analyses of Noll and Boserup. Unlike Noll, but in harmony with Boserup, they also find the manipulative behaviours of mediators problematic. Silbey's and Merry's most powerful critique is that facilitative, 'modest', mediators ('therapists' in their terminology) necessarily become directive i.e. 'bargainers', to achieve settlement in institutional settings. What emerges from a consideration of mainstream mediations' discourse of 'neutrality' and 'impartiality' is a picture of a practice rooted in an individualistic humanism that, due to a mostly benign desire to problem solve, tends to contradict its own values. Thus, it is the mediator who directs the outcome⁹. 'Neutrality' may be seen as an illusion behind which the actual engagement between parties and mediators becomes one of containment. That is to say that the parties, without noticing during the session, come to align themselves with the needs of the mediator to settle the dispute, probably within the terms of the dominant discursive formation.

Silbey's and Merry's analysis is based upon a premise of the "need to settle"

⁹ In some situations this may result in the enactment of a social 'good', in that violence may be curtailed or prevented or the interests of children protected in family disputes.

(Silbey and Merry, 1986:7). However, they do not countenance a form of mediation not driven by the need to settle. The proponents of the more recent, relational style of 'transformative' mediation have indeed eschewed 'problem-solving' and rejected an aim of settlement. It is to a consideration of transformative mediation, that I shall now turn.

2.3.6 Transformative mediation: Saviour of facilitative mediation?

Bush and Folger unequivocally state the consequence of a problem-solving approach is a failure to realise the "Promise of Mediation" amounting to a lost opportunity:

In our view, the potential that mediation offered to foster and support positive human interaction within conflict was being squandered. Instead mediation was being used to shore up institutional processes that operate to control, contain, and settle conflict (Bush and Folger, 2005:1).

This reference to institutional processes on page one of their book is interesting as Bush and Folger have supported the adoption of transformative mediation by the U.S. Postal Service. It is provided to support resolution of employment discrimination claims amongst the Service's 600,000 multi-ethnic employees. Bush and Folger also claim that "[o]ther employers, public and private, are adopting similar programs" (Bush and Folger, 2005:26). An example of a transformative mediation in the U.S. Postal Service is recounted by Bush and Folger but strangely this can be interpreted as representing the very shoring up of institutional processes they disdain. I shall cite this case below.

More generally Bush and Folger agree with many other critics that problem-solving inevitably inhibits the pivotal goal of mediation, being creation of an environment to enable party self-determination within which it may be possible to recover a positive human interaction. Furthermore:

Solving problems for parties is not transformative mediation, because it fails to support - and probably undermines - genuine party empowerment (Bush and Folger, 2005:71).

Party 'empowerment', self-determination and mediator neutrality are interwoven,

central concepts of Bush's and Folger's transformative mediation project. In their consideration of the specific 'problem' of mediator neutrality, they have reconceptualised 'neutrality' thus:

Neutrality means that the mediator's only interest is the interest in using his or her influence to make sure that the *parties maintain control* of decisions about outcome. ... By adopting the transformative approach, the mediation movement gains a solution to the problem of the inevitability of influence (Bush and Folger, 1994, 105-106).

Hence, they argue that by means of the transformative technique, to 'empower' the parties, the necessary influence of the mere presence of a third party can be completely channelled into the support of self-determining interactions. These are dramatic claims. To consider them I will sketch out their mediation technique and then review its premises, in order to both draw out a key contribution of the transformative approach and to raise a criticism of it. This is that the transformative process of mediation rests upon an apolitical individualism. By bringing this into question it is possible to also question the validity of the concept of self-determination, an otherwise unassailable foundation of mediation practice. This then opens the way for a poststructuralist reappraisal of mediation and its adoption for use in the workplace. But first I need to look more closely at the techniques and values embodied by transformative mediation.

Bush and Folger argue that problem-solving practice is born of a view of conflict as either a power struggle, or a defence of rights or needs (Bush and Folger, 2005:43-44). As "transformative" mediators, they largely discount these interpretations and instead view conflict primarily as an "interactional crisis". Hence, for the transformative mediator, mediation is not about containment or negotiation but about, "a way to foster a qualitative transformation of human interaction" (Bush and Folger, 2005:9). They explain how people experiencing an interactional crisis become alienated "from their sense of their own strength and their sense of connection to others" (Bush and Folger, 2005:46). Thus, disputants feel powerless and self absorbed and view their antagonists with hostility and anger, eventually demonising them. Bush's and Folger's theory is that such a negative spiral of conflict interaction can be reversed if the parties make shifts towards greater "self-empowerment" to restabilise a sense of their identity, which then releases an innate human ability for understanding and

reconnection or “recognition”. These behavioural responses of “empowerment” and “recognition” are the twin pillars of their philosophy and their technique. They define “empowerment” as:

the restoration to individuals of a sense of their own value and strength and their own capacity to make decisions (Bush and Folger, 2005:22),

and “recognition” as:

the evocation in individuals of acknowledgement, understanding, or empathy for the situation and views of the other (Bush and Folger (2005:22).

Hence, Bush and Folger advocate a technique of mediation intervention designed to support parties in these “shifts of empowerment and recognition”, thus effecting a “transformation” of the conflict interaction. This is what they mean by the term “transformative mediation”.

To this end, as much of the transformative mediation process as possible is placed in the control of the parties and the mediation begins with a discussion about how the parties want to use their time. In the course of the meeting the mediator will intervene to summarise, reflect back dialogue or check intentions, with the aim of ensuring clarity of communication. But most importantly interventions are designed to support the small shifts in empowerment and recognition that may be occurring. Nevertheless Bush and Folger explain:

Mediators ... are proactive ... They listen intently for cues that offer opportunities to work with empowerment and recognition, highlight those opportunities for parties, and constantly invite and encourage the parties to engage in a constructive dialogue, to consider new information and alternative points of view, to gain clarity, to deliberate or “think out loud”, and to make decisions for themselves. Mediators frequently check in to see where the parties would like to head next. They offer careful summaries of what parties have said, they ask whether anything that has been said by another party is “news” or - if they sense that one party is uncomfortable with the unfolding interaction - they may ask if that party wants to address whatever seems to be bothering them. All of these various behaviours are active moves that mediators make as they *follow* the parties along their path through empowerment and recognition (Bush and Folger,

2005:221/222, italics added).

The key word in this description of a “proactive” practice is “follow”. The parties pursue their own course through the meeting and the mediator follows them closely, with a “micro focus”, in the moment. Again this enables the parties to be much more in control of the process, the content and the outcome. Parties expressing high emotion are not reined in. Mayer (2004,103) explains that in conflict “the fundamental need that people have is to express strong feelings in strong ways.” An absolute trust is placed in the capacity of the parties to transform their own conflict rather than spiral down into anger and recrimination. However, this places a heavy burden of responsibility for the conflict upon the parties.

The power exercised by the mediator is not that of an expert facilitator, reframing statements otherwise imbued with blame, focusing on the future and shepherding parties through a conversation, away from discord, to common ground and towards material choices about ways of finding a necessary, workable settlement. Rather, the more circumscribed power of a transformative mediator, rests with the intervention timing and the choice of party dialogue she summarises or reflects back or the questions of clarification that are posed. For Bush and Folger:

[t]he promise that mediation offers for transforming conflict interaction is real, because skilled mediators can support the parties’ own work, create a space for that work to go on, and - most important - stay out of the parties way (Bush and Folger, 2005:83).

This style of mediation is comparable with the basic technique of the client-centred therapy and group learning methods of Carl Rogers (2001). As Winslade and Monk point out “by using paraphrasing to summarise and reflect the feelings, ... expressed by the client”, mediators are using skills “advocated by Carl Rogers” (Winslade and Monk, 2001:64), and enabling the mediator to demonstrate their understanding of the client to the client. The ‘transformative’ techniques I have learnt¹⁰ require that interventions are highly reflective of what the parties have recently contributed with a sole focus upon shifts in “empowerment” and “recognition”. The narrative span of the conflict story is not

¹⁰ Camden Mediation transformative mediation training course London 2007.

of immediate concern to the mediator and can be a distraction or a temptation to judging or making assessments and evaluations.

I believe the critical value of this technique is that the mediator can learn to listen more clearly to her own mental formulations of alternative (non-transformative) interventions that carry, however obscured, mediator assumptions, evaluations or subtle directions. These can then, to a degree, be controlled and self censored. The transformative approach is thus a much more reflexive and reflective practice (Rothman, 1996; Kingdon, 2005) than problem-solving mediation. The twin pillars of supporting moments of empowerment and recognition afford a recipe for controlling mediator tendencies towards being directive and evaluative. It is in this way that 'transformative' practice does seem to provide an antidote to any tendency towards the innate directiveness of a 'problem-solving' disposition. As Bush and Folger argue:

adopting the transformative approach to mediation would help solve the problems of problem solving: by offering a solution to the problem of mediator influence (Bush and Folger, 1994:107).

However, they add that these major advantages are surpassed by transformative mediation's greatest strength, that of "capturing the priceless opportunities for moral growth" (Bush and Folger, 2005:107). They regard moral transformation as the "ultimate purpose" (Bush and Folger, 2005:107) of transformative mediation.

Transformation, in the sense used here, necessarily connotes *individual moral development*, although this kind of change will very likely lead to changes in social institutions as well (Bush and Folger, 2005:24).

This claim is based upon a belief of:

mediation as working to engender moral growth in disputing parties, thus producing stronger and more compassionate human beings out of the crucible of human conflict (Bush and Folger, 1994:25).

Such ambitious claims seemed rooted within forms of ego psychological therapy similar to Rogerian techniques noted above. As Rogers explains:

Experience in therapy seems to bring about another change in the way our clients live in their family relationships. They learn something about how to initiate and maintain real two-way communication. To understand another person's thoughts and feelings thoroughly, with the meanings they have for him, and to be thoroughly understood by this person in return - this is one of the most rewarding of human experiences, and all too rare (Rogers, 2001:323).

The intent of transformative mediation seems congruent with the form of communication depicted by Rogers, and yet the technique of an exclusive micro-focus upon moments of "empowerment" and "recognition" seems to constitute a detachment of the mediator from a form of communicative, mutual understanding. As Gaynier argues, "[i]t is not enough to limit mediator behaviour for fear of mediator bias" (Gaynier, 2005:406). This detachment is consistent with Bush's and Folger's emphasis on the innate capacity of *individuals* to attain a form of moral growth.

As further demonstrated below, transformative mediation espouses a dualistic worldview of 'individualism' and 'connection' and yet it displays a strong leaning toward the former. It is a concern with the 'individual' that I feel repeatedly surfaces as the more prominent preoccupation in their work. This can be discerned in their expression of their beliefs about human identity. Unlike many other mediation practitioners they are concerned to admit to and discuss their underlying philosophy. As they say:

mediation practice in general is not "value free" but is based on ideological or value premises, no matter what model is being used (Bush and Folger, 2005:1).

Antes and Saul (colleagues of Bush and Folger) list transformative mediators' beliefs about:

Humans and their capabilities:

- A person's reality is unique to that person and based upon his/her life experiences.
- People have inherent needs for both advancement of self and connection with others.

- People are capable of making decisions for themselves.
- People are capable of looking beyond themselves.

(Antes and Saul, 1999:3.)

Given Bush's and Folger's assertion that transformative mediation is:

not a magical vision, nor naive; its belief in human strength and decency carries the deepest truth within it (Bush and Folger, 2005:83),

and that by means of "*a change in the quality of conflict interaction*" (Bush and Folger, 2005:18) transformative mediation can:

transform society as a whole from a truce between enemies into a network of allies (Bush and Folger, 2005:18),

it is difficult not to attribute an essentialist humanism and even utopianism to their worldview. This is not dissimilar to the philosophy underpinning the humanistic and individualistic stance of facilitative, problem solving mediators, delineated by Beer and Stief above (see page 30). However, in contrast, Bush and Folger proclaim a 'relational worldview' suggesting that the transformative dimension of mediation is:

connected to an emerging, new vision of self and society, one based on *relational connection* and understanding rather than on individual autonomy alone (Bush and Folger, 2005:23/24).

The use of the word "alone" appended to the phrase "individual autonomy" is of interest in understanding Bush's and Folger's concept of a relational worldview. They argue that:

as a matter of basic human consciousness, every person senses that he or she is a separate autonomous agent, authoring his or her own life, and at the same time senses that he or she is an inherently social being, connected to other people in an essential and not just instrumental fashion. Moreover, in this relational view, awareness of both individual agency and social connection is not just a peripheral characteristic - it is the very essence of human consciousness, the core of our identity as human beings. Each part of this duality - individuality and connectedness - is equally important to our fundamental sense of human identity (Bush and Folger, 2005:60).

I have quoted Bush and Folger at length as their concept of the “relational”, which underpins their method of mediation, maintains a strong belief in individual autonomy and an essential human consciousness and identity. Whilst they cite McNamee and Gergen (1999) as one of their philosophical sources, they hold back from a radical, social constructionist understanding of identity or indeed other “de-subjected” (Willmott, 1994) or “contingent” (Glynos and Howarth, 2007) understandings of subjectivity and identity. Bush and Folger do not seem to have any roots in Critical Theory although they do superficially cite Habermas as a secondary source (Bush and Folger, 2005:253). Their belief that transformative:

mediation could, with sufficient energy and commitment, help transform the quality of social interaction and, ultimately, social institutions (Bush and Folger, 2005:14),

does seem to hold out a dream of incremental change by means of creation of multiple ‘ideal speech situations’. There is no apparent recognition of the need for political struggle as a precursor to end point social conditions which might vaguely approximate an ideal speech situation. As Willmott points out, the humanism found in Habermas, that is found echoed throughout the mediation project, fails to “recognise how the pursuit of humanist ideals tends to foster and promote unacknowledged disciplinary effects” (Willmott, 1994:115). To explain this tendency Willmott highlights a “paradoxical freedom of modernity” (1994:104) in which:

the sense of self-determination opened up by modernity is simultaneously regarded as a precious defining characteristic of what it is to be human *and* experienced as a painful burden from which individuals are motivated to escape (Willmott, 1994:104).

Thus, such humanism may lead to a mirage of a ‘universal’ set of beliefs about how things *should* and *must* be, rather than beliefs about how things *might* be or about how they may forever remain undecidable (Glynos and Howarth, 2007). Herein, Bush and Folger proffer a defence against the anxious freedom of modernity, afforded by their concept of human decency, identity and uniqueness, resting upon an individualism that is stabilised through the ‘transformative’ technique of re-empowerment. Of course, Bush and Folger also emphasise “the inherent human potential for social and moral connection” (2005:38).

Nevertheless, within this dualism, there is a tendency to give more weight to the pole of individualism and the unity of an individual's identity. Such a determination of the 'self' by the 'self' would seem to foreclose a potential within mediation for the exploration of collective experience.

Bush and Folger tell a story of a conflict between a formerly active union representative in the Postal Service who applied to become a first line manager but was rejected due to his earlier activity. He submitted a complaint. After a mediation his supervisors agreed to take him on and the complaint was dropped (Bush and Folger, 2005:26-34). From one perspective the mediation served to confirm this former activist's personal process of depoliticization and he was subsequently absorbed into management. If problem-solving mediation tends to generate solutions that accord with the constraints of institutional settings, the tendency of transformative mediation, to re-enforce or "empower" a humanistic belief in an essential selfhood, may similarly contain the conflict interaction within a cultural, or social, status quo. Ironically, the opportunity for parties to explore the sources of their differences may be missed in the orchestrated journey to 'recognise' the other's humanity. Thus, stated in another way, in Bush's and Folger's quest for "moral growth" along a humanistic trajectory, the opportunity for self-learning that the dislocation of conflict affords may be lost. Bush and Folger are right to emphasise the need to heal the psychological and emotional fragmentation induced by conflict but not at the expense of smothering a possible emotionally intuitive and also reasoned reflection upon notions of 'self' and 'other' in a social context.

In facilitative problem-solving mediation, mediator neutrality is a construct needed to protect the notion that the parties themselves determine any outcome. This 'neutrality' is discredited and deemed impossible by many observers including Bush and Folger. However, Bush and Folger have developed an alternative definition of neutrality along with a technique that aims to ensure that idea of party self-determination remains enshrined within the mediation process. Their own particular interpretation of a relational worldview steps back from a more radical belief in the social construction of identity or a similarly radical concept of relational responsibility (McNamee and Gergen, 1999) and retains a heavy investment in the empowerment of an autonomous individual. The result is a reflective style of intervention, informed by an apolitical

humanism, that will hold little scope for any critical questioning of selfhood and the social or economic status quo surrounding any given conflict. This tends to suggest that the very notion of party self-determination at the heart of contemporary mediation, whether 'facilitative' or 'transformative' is itself extremely problematic. The alternative is to embrace a more thorough going relational worldview as defined by McNamee and Gergen:

Relational responsibility, then, lies within the shared attempt to sustain the conditions in which we can join in the construction of meaning and morality (McNamee and Gergen 1999: xi).

Thus, if the mediator regards herself and the parties less as autonomous individuals and more as persons whose identities are more dependent upon 'nurture' than 'nature', that is that their identities are, to a large degree, constructed as result of social and cultural interaction, then the premise of "self-determination" may be altered to one of co-determination. From this more poststructuralist perspective responsibility for the conflict then spreads beyond the persons immediately engaged in the mediation. In this situation the concept of mediator 'neutrality' may be replaced with an acceptance of 'influence'. It then becomes necessary to understand the types of influence that prevail in mediation encounters, in order to be able to both make such influence more transparent and amenable to acceptance or rejection by the parties.

This tilt in the direction of a poststructuralist analysis has been picked up by two academic/ practitioners of mediation to whom I shall now turn in this review of mediator influence and power.

2.3.7 A poststructuralist interpretation of mediation?

Cobb and Rifkin have argued that:

The adoption of poststructural perspective on [mediator] neutrality accents the discursive processes through which stories are constructed, contested and transformed (Cobb and Rifkin, 1991:62).

Furthermore, they have claimed their poststructuralist perspective to argue that:

research on mediation indicates that mediators manage the social construction of disputes and settlements; yet the existing rhetoric about neutrality does not promote reflective critical examination of discursive processes (Cobb and Rifkin, 1991:50).

Thus, they seem point towards the idea that a mediation session is a collective endeavour, where mediators are caught up in a discursive process. However, they infer a privileged position for the mediator as 'manager' as further indicated by their reconceptualisation of 'neutrality'. They analyse the problem of neutrality and its solution thus. Neutrality is deemed:

a practice in discourse, specifically, the management of person's positions in stories, the intervention in the associated interactional patterns between stories, and the construction of alternative stories. These processes require that mediators participate by shaping problems in ways that provide all speakers not only an opportunity to tell a story but a discursive opportunity to tell a story that does not contribute to their own delegitimization or marginalization (Cobb and Rifkin, 1991:62).

This unusual interpretation of both neutrality and discourse places the mediator/researcher as an observer/manager looking into the goldfish bowl that is mediation. (A trap that I as researcher/mediator do not escape either, although it is the purpose of this study to explore the boundaries of this 'trap'.) Cobb and Rifkin refer to the construction and generation of narratives, whereas Deetz, referring to communication more generally, goes further to consider our ways of being as we communicate. Deetz asserts:

In opposition to the commonsense view ... communication is not for self-expression but for self-destruction. The point of communication as a social act is to overcome one's fixed subjectivity, one's conceptions, one's strategies, to be opened up to the indeterminacy of people and the external environment (Deetz 1992a:341, cited by Willmott, 1994:116).

Herein lies a more thorough poststructural understanding of communication that could inform a mediator's appreciation of their own identity as well as that of the parties and from which a different style of mediation engagement could potentially develop. Hence, this understanding, of communication as self-destruction, would seem to provide a good maxim for an explorative form of

mediation that I will develop throughout this inquiry.

However, Cobb's and Rifkin's trajectory towards a narrative interpretation of mediation has been separately pursued more recently by Winslade and Monk (2001) who also claim a mediation practice that is rooted in a postmodern, social constructionist and poststructuralist worldview.

2.3.8 Narrative mediation

Transformative mediation views interventions, beyond support for shifts in empowerment and recognition, to be evaluative and directive and avoids a concern with the parties' stories. In contrast narrative mediation seeks to grapple directly with the stories. Winslade and Monk define narrative mediation as a task to tease out stories "in order to open up possibilities for alternative stories to gain an audience" (Winslade and Monk, 2001:53). As noted above, the "narrative mediation" approach, which has grown from narrative therapy (Monk and Winslade, 1996), embraces three main elements of firstly, "engagement" entailing listening, building rapport and story telling. This is followed by "deconstruction" of the conflict story, involving the externalisation of parties' language and the identification of alternative stories. Lastly the mediator works with the parties to "construct" a new, non-conflictual story.

Winslade and Monk note that, "[e]very story offers people positions to take up in relation to each other" (Winslade and Monk, 2001:72). The mediator's deconstructive thrust seeks to "make visible the relative positions that each version of the conflict story offers" (Winslade and Monk, 2001:74). Further:

[b]y asking questions, the mediator tries to make visible the workings of the dominant problem discourses (Winslade and Monk, 2001:78).

This statement suggests that a conflict is superficially a matter of language detached from underlying social antagonisms, although they go on to say that:

[o]vertly naming the discursive positions held by the parties makes it easier for the mediator to clarify exactly where the sticking points are (Winslade and Monk, 2001:82).

Recognising the mediation encounter as a discursive event, Winslade and Monk warn against the mediator placing themselves in an “expert knowing position” or from getting drawn emotionally into the participants story (Winslade and Monk, 2001:74-75). They argue that reflexive practice by the mediator can “render transparent the practices of power in the mediation relationship” (Winslade and Monk, 2001:122). Yet the mediator selects, or elicits through questioning, experiences left out of the conflict story, termed “unique outcomes” in order “to build on them a counter story of the conflict-saturated story” (Winslade and Monk, 2001:84). Thus:

the mediator asks questions that draw forth the parties’ knowledge about how to resolve the dispute” (Winslade and Monk, 2001:75).

The mediator also aims to “facilitate the development of personal agency” (Winslade and Monk, 2001:87) by the parties, and to “invite people into positions of partnership in the development of preferred resolutions” (Winslade and Monk, 2001:70). It is apparent from this type of questioning and intervention that the ‘narrative’ mediator is required to exercise considerable directiveness from a base of substantial expertise.

As noted above, “narrative mediation” commences ‘relationally’ in that it deals with parties accounts of the conflict rather than focus upon problems to be solved. Yet it would appear to move towards a form of ‘problem solving’ as the mediator works to free parties from their conflict stories and build a new story, being a ‘resolution’, ultimately led by the mediator. Hence, similarly to transformative mediation, the process has an end in view in the mind of the mediator. In the case of transformative mediation the ‘problem’ to be solved is the broken relationship and the inability to interact. With narrative mediation, the starting aim is to create a new account of the conflict that is not conflictual or to escape a “conflict-saturated relationship” (Winslade and Monk, 2001:82). Although Winslade and Monk do echo Bush and Folger in arguing that:

[s]ometimes the development of an attitude of cooperation and respect may be more important than any substantive agreement. (Winslade and Monk, 2001:82).

Despite this circumspection, Winslade and Monk contradictorily explain that the:

narrative orientation might be described as an effort to join the parties to a dispute in an alliance against the effects of the conflict (Winslade and Monk, 2001:71).

Narrative mediation seems to amount to a therapeutic intervention enacted with minimal acknowledgement of a political dimension to conflict. Although there is an implication that parties may be helped to name power relations, (Winslade and Monk, 2001:72), it is not made clear how this could happen.

Winslade's and Monk's ambiguous treatment of the matter of power may be understood from their loose adoption of a Foucaultian disposition. This emerges when they point to a dilemma for mediators who hold an individualist/essentialist stance. They note that such mediators are unable to support weaker/oppressed parties to prevent mediation becoming a site of abuse by those with power as they would lose their status as "neutral and impartial agents" (Winslade and Monk, 2001:50). This comment alone underscores a confusion in that a sense of neutrality is attributed to mainstream mediation even though Winslade and Monk are fully aware that it is a mirage. They themselves avoid this apparent dilemma by arguing that the mediator does not need to seek to support weaker parties due to a poststructuralist interpretation of power, commenting that:

Foucault has extensively critiqued the use of the commodity metaphor in the conception of power. ... Power does not so much adhere to structural positions in hierarchical arrangements as it operates in and through discourse (Winslade and Monk, 2001:50).

They thus suggest that:

All social life then comes to be a network of power relations, and these relations are always capable of being reviewed (Winslade and Monk, 2001:51).

Yet they accept that power can be oppressive, and that people engage in struggles and resistance as "relations are constantly being produced and reproduced, even in the middle of a mediation" (Winslade and Monk, 2001:51). They then argue that:

This process of expressing resistance develops a sense of agency in people who have felt silenced or marginalized (Winslade and Monk, 2001:51).

This reinforcement of a concept of agency is seemingly inconsistent with their claim to Foucaultian poststructuralist credentials. On the one hand Winslade and Monk seek to deny the problem of hierarchical and structural power and so effectively depoliticise mediation, yet on the other they retain a notion of 'agency'. They argue that their:

post-structuralist ... analysis moves away from a globalized notion of powerlessness and sensitizes persons to their ability to act, even in some modest way (Winslade and Monk, 2001:50-51).

Furthermore, their mediation technique represents an enactment of power in leading the construction of a new non-conflictual narrative. Agency is both denied and asserted. Hence, similarly to Bush and Folger, Winslade and Monk show a confusion between worldviews. This confusion betrays an apoliticism in their work which in part stems from a reliance upon Foucault and constitutes:

a refusal to clarify the normative criteria for distinguishing more or less acceptable forms of power (Willmott, 1994:115).

I am concerned to point out this confusion of worldviews although it is perhaps understandable, arising from the imponderable complexity that underlies what may be broadly, perhaps simplistically, termed an aspect of the nature/nurture continuum. I refer to the extent to which our identities and subjectivities are formed discursively and socially rather than intrinsically determined by our biology and our phylogenesis being very much a matter of opinion. I will argue for the considerable importance of social factors in Part 3 below. Indeed the great significance of Winslade's and Monk's model is the relevance they assign to 'discourse'. They identify that:

Discourse exploration in mediation is a useful tool for depersonalizing conflict. It helps us see how systems of meaning, or fields of knowledge and belief, shape not only people's perspectives, agendas, and desires but also the very nature of a conflict (Winslade and Monk, 2001:42).

Unlike Bush and Folger who contain the mediator's influence to the mere, gentle, prodding of shifts in party empowerment and recognition, Winslade and Monk seem to follow Cobb and Rifkin by ambitiously placing the mediator as orchestrator of 'discourse' and arbiter of 'meaning'. If they place the mediator outside of a discursive formation that coalesces in and around the moment of the mediation encounter, their understanding of discourse may represent something of a depoliticised vulgarisation. That this is so may be appreciated by considering other contrasting definitions of discourse. For example Torfing (1999:85) views discourse as a "differential ensemble of signifying sequences in which meaning is constantly renegotiated". In this vein from the same poststructuralist and post-Marxist perspective:

discourse or discourses .. refer to systems of meaningful practices that form the identities of subjects and objects (Howarth and Stavrakakis, 2000: Ch 1, p5),

and,

discourses constitute symbolic systems and social orders, and the task of the discourse analyst is to examine their historical and political construction and functioning (Howarth, 2000:5).

These short definitions have been extracted from long and thorough explications of the 'discursive' which yield a fuller understanding of the "socially constructed nature of any objectivity" (Laclau, 1990:4). But they afford an indication of the extreme complexity and subtlety of discourse that would tend to warn any mediator away from a conceit that they can manage discourse from the outside. Nevertheless, we are forewarned of our place within discourse, signalling scope for the possible joint exploration of discourse within a mediation setting.

This appreciation of discourse again brings into question a concept of self-determining agency that is based upon a view of the 'individual' as an autonomous agent. Should the mediator rely upon such a worldview, as found in the transformative mediation project, the parties may be left to thrash around inside a status quo, in the "grip of ideology" (Glynos and Howarth, 2007:116-7). This grip:

comprises a myriad of practices through which individuals are turned into subjects with an identity, and through which such identities are sustained and reproduced (Glynos and Howarth, 2007:117).

This reference to 'ideology' assumes a political interpretation of social forces which seems absent from the social constructionism of Winslade and Monk.

Whilst their work moves beyond that of Bush and Folger in its embrace of 'narrative' and 'discourse' and would seem to potentially open the mediation encounter to a consideration of the wider context of any conflict, like transformative mediation, it lacks a political dimension. It also relies upon an expertise, akin to a therapeutic, counselling intervention, to lead the individual parties towards a reframing or rewriting of their conflict stories. It does have an ambition of healing which is of great value where parties will commit to an extended sequence of meetings. Such a therapeutic intent is over and above the perhaps more limited but equally ambitious mediation purpose of supporting the emergence of dialogue, although this in itself can also be therapeutic.

However, the ground breaking work of the "transformative" and "narrative" projects have partially reactivated questions of mediator power and of the ontological premises of much mainstream mediation practice. Through examining the origins, objectives and values of the mediation movement, they have reconceptualised mediation practice in different ways by drawing upon aspects of social constructionist philosophy. In the domain of political discourse theory, "reactivation" consists of:

rediscovering, through the emergence of a new antagonism, the contingent nature of so called "objectivity" ... The moment of antagonism where the undecidable nature of the alternatives and their resolution through power relations becomes fully visible constitutes the field of the "political" (Laclau, 1990:34-5, cited in Glynos and Howarth, 2007:116-7).

This concept of reactivation is used to analyse society wide, political struggles and movements. Bush and Folger have been engaged in a struggle with defenders of older problem-solving mediation practices. Their methods represent a leap forward in understanding mediator influence and yet still place much importance in an essential individuality of the parties. (In questioning this

view of individuality the importance of the transformative techniques of re-empowerment should not be lost¹¹.) Winslade and Monk are more radical in recognising the discursive construction of identity but their method seems a little trapped by the search for a resolution in the form of a rewritten story. This is not to say that both approaches are very relevant and immensely valuable to the field of conflict resolution.

Bush and Folger and Winslade and Monk point beyond problems of neutrality towards questions of party self-determination. They stop short of recognising the mediation encounter, itself being antagonistic, as a political event in microcosm. To contradict Bush and Folger, an interactional crisis is also a power struggle. The concept of 'reactivation' defined above could be used to describe the potential of a mediation encounter.

With this in mind I now want to build upon the critique of mediation thus far by delineating in broad strokes a conceptual, alternative approach to mediation that adapts and modifies the narrative and transformative styles. This counterfactual alternative will form a reference frame for use in a critical analysis of the case study below. Thus, I will contrast how mediation is practised with how it could be practised. The ontological research position commensurate with this counterfactual mediation style will be further developed in Part 3 below.

2.3.9 Explorative Mediation: A tentative counterfactual sketch

The main aim of "explorative mediation" would be to support those in conflict to attempt to hold an explorative dialogue/conversation about the conflict in which parties may look at and listen to each other and themselves. The principal power of mediation lies in the initial staging of the mediation encounter. By this I mean that parties have actually come to the meeting and given authority to one or two strangers, in the guise of mediators, to set some parameters for the ensuing conversation. Additionally parties often curtail extremes of behaviour that might otherwise unfold. The material formality of the workplace reinforces this tendency. The situation may yet be volatile but there is a degree of voluntariness and some security of confidentiality. In an explorative encounter, as in

¹¹ These techniques can help parties separate their sense of identity from their emotional turmoil.

transformative mediation, the course of the discussion would be mostly led by the parties. Mediators would use the reflective techniques of transformative mediation (also used in the narrative model) to create a space for parties to slow the energy and pace of their conflictual interaction. In this way the parties may choose to bring the information and emotions they wish into the discussion. As a mediation encounter progresses, mediator interventions would seek to highlight differences and miscommunications and to thus reveal a sense of the influence of discursive power upon the parties and the mediators. At points of 'dislocation' hidden ideological premises may be revealed. As other contextual issues and influences driving the conflict are indicated by the parties, mediators would also intervene to highlight these for consideration and reflection. Such interventions would constitute relatively transparent instances of mediator power and influence, born of the mediators' culturally and politically inspired assessments of the parties stories. The hope is that a co-operative and collaborative dialogue could emerge between the parties with minimal support or encouragement by the mediators. The mediation would travel its course to wherever the parties take it. It would represent an opportunity for them to learn about themselves and each other and the wider context of the conflict. It is of course possible, even probable, that the parties may not choose to explore their conflict and the potential of mediation would be curtailed. The mediator can only respect the parties wishes in this eventuality.

In a spirit of dialogue and learning the mediators would attempt to remain impartial and non-judgemental. Such a humble stance will be limited to the extent that, as noted above, their interventions would be based upon politically, culturally and emotionally informed judgements about what is significant in the parties conversation. Ideally the mediator would strive for a sense of selflessness in their interactions with the parties. That is, their absorption in their work of understanding the parties would lead to an unawareness of self and yet they would still be able to apperceive the stories told. This selflessness is based upon a necessary humility (entailing non-directiveness) combined with a loving concern to engage with the parties and their stories (entailing some directiveness). In the transformative model the mediator is limited to a more detached observance of and, intervention around, micro moments of "empowerment" and "recognition". I believe this results in a detachment that hinders the potential for selflessness in the mediator's work. Paradoxically

selflessness may only arise from a position of active, concerned engagement. It is a concern for the other that overrides self-concern (with for example solving the conflict). Because of this intent to actively engage with the parties' stories, the mediators would not lay claim to any neutrality. The outcomes of the mediation would be co-constructed and therefore co-determined, although the extent to which the mediators would impose their own ideas would be limited to the subliminally conscious triggers of their interventions.

This approach is based upon a belief that 'identity' is a social construct formed within prevailing hegemonistic discourses and on a belief in a radical contingency of subjectivity, that will be developed in detail below. (Howarth, 2000; Howarth and Torfing, 2005; Glynos and Howarth, 2007.) Mediation could therefore amount to a form of encounter potentially open to the 'political', with the mediator acting as a promoter of exploration of the conflict. As such mediation may hold potential to facilitate the development by the parties of a new sense of identity, rather than serve to shore up old identities. Such a notion of possible change is held to varying degrees within all the types of mediation examined above, yet in their execution they mostly serve to contain conflict and close down, rather than open up, an encounter to uncertainty.

In the world of corporations and public sector institutions with their discourses of cost effectiveness and productivity, a mediation process which invites uncertainty and is deliberately open-ended may be regarded negatively. Also there is a probability that the understanding of mediation as a political encounter within a pattern or web of wider causation may be glossed over. In the next section I will evaluate the significance of the wider causal factors that necessarily impinge upon any mediation setting.

2.4 Conflict transformation and broadening responsibility for conflict

Deutsch (2006:13-15) notes that as the discipline of social psychology emerged in the early 20th century, a view of conflict as instinctual and as a naturally occurring symptom of competitive struggles, began to wane. That this view had previously waxed, he attributes to the influence of ‘three intellectual giants- Darwin, Marx, and Freud’ who respectively charted the struggles of species, of classes and of the psyche. This instinctual view of conflict, he states, was replaced by two others; ‘the psychological and the social-political-economic’. He comments that these two modes of understanding the origins of conflict are not mutually exclusive but that weight may be given to one or the other, subject to the educational background and preferences of the assessor. The psychological mode explains conflict:

in terms of the perceptions, beliefs, values, ideology, motivations, and other psychological states and characteristics that individual men and women have acquired as a result of their experiences and as these characteristics are activated by the particular situation and role in which people are situated (Deutsch, 2006:14).

In contrast he observes that the social-political-economic mode considers “objective conflicts between economic and political interests and the like” (Deutsch, 2006:14). The distinction he draws appears very weak when considering the latter mode’s relationship with aspects of beliefs, values, ideology and motivations. However, this division of primary causality is reflected in Kressel’s (2006:742) observation on mediation noted above that, “[m]ost stylistic accounts portray the mediator acting in either a *problem-solving* or a *relational* style.” ‘Problem-solving’ mediation could arise from a largely social-political-economic mode of understanding conflict and ‘relational’ mediation may seem to have its base mostly in the psychological view of conflict. That these internal and external perspectives of conflict causation obviously intertwine suggests that the pursuit of either a purely ‘problem-solving’ or a purely ‘relational’ mediator orientation would prove problematic. As explained above, there is a tendency within both transformative and narrative models to downplay or silence questions of ‘power’ contributing to a depoliticization of mediation encounters.

Deutsch argues that the view of conflict as something innate and instinctual is no longer supported and yet in the subsequent analytic frameworks of the 'psychological', the 'socio-political' or his own 'competitive-co-operative' axis for conflict resolution, there seems to be an underlying assumption that conflict is a part of the human condition, that it is somehow eternal, universal, in our species wide psychology or in our genes.

Lederach (2003) also sees conflict (at group, national and international levels) as a "normal and continuous dynamic within human relationships" (Lederach, 2003:15) but argues for an understanding of conflict transformation rather than mere transitory and isolated resolution. Thus, he implies there is potential for progress towards a lasting and absolute reduction in the levels and extent of conflict in societies. 'Transformation' connotes the achievement of change that surpasses resolution of specific problems. Lederach defines conflict transformation thus:

Conflict transformation is to envision and respond to the ebb and flow of social conflict as life-giving opportunities for creating constructive change processes that reduce violence, increase justice in direct interaction and social structures, and respond to real life problems in human relationships (Lederach 2003:22).

He emphasises that changes required to transform, rather than merely resolve, conflict need to occur at personal, relational, structural and cultural levels and that structural change processes must enable increases in justice. To address "justice issues" Lederach suggests that:

People must have access and voice in the decisions that affect their lives. ...the patterns that create injustice must be addressed and changed at both relational and structural levels ... Dialogue is essential to justice and peace on both an interpersonal and a structural level (Lederach,2003:21).

Conflict is still regarded as 'natural' but his analysis of the causes and responses to conflict is also explicitly political. Lederach stresses a dialogic, dynamic and systemic view much wider than the typical mediation focus upon individuals, their relationship and their conflict situation. This begs the question of whether mediation, operating on an interpersonal level, as an aspirationally

neutral intervention, can ever amount to more than a short term cure for the episodic flaring of conflict inside the workplace? Cloke observes that:

Personalization of systemic conflicts, or focusing exclusively on the psychodynamics of conflict, can be ways of avoiding its systemic implications (Cloke, 2001:195).

Similarly McAllister asks how can we get:

beyond mere interpersonal conflict to address the extent to which conflict is shaped by organisations (McAllister, 2002:5).

In the context of the organisation Cloke concludes that:

Instead of approaching conflicts as merely isolated, personal, and unique, mediators also need to invite parties to recognise the context of their conflicts and discover how to transform the systems that fuel their disputes (Cloke, 2001:197).

Hence, we might more positively ask, what type of workplace mediation service could be accepted and used in the workplace to harness the transformative potential that may be implied in Lederach's and Cloke's understanding of the causes of conflict?

Cloke (2001:217) almost glibly suggests instituting 360 degree feedback and:

altering the operational system that sustained the status quo.....[by] uncovering the sources of resistance and working carefully yet inexorably through them (Cloke, 2001:204-5).

Cloke's systemic view of conflict is political in its advocacy of system change yet seemingly limited to the immediate contextual system. Whereas Lederach looks beyond the immediate structures to wider cultural concerns. (This reflects his subject matter of national and international conflict situations.)

Like Lederach, Cloke views conflict as a natural part of the human condition, wherein systems are either autocratic and hierarchical and hence prone to conflict, or heterarchical and democratic, and therefore "less deeply conflicted" (Cloke, 2001:204). He argues that mediators can help by "normalizing honest

communication...[and integrating] conflict resolution principles” (Cloke,2001:217) within the organisation.

Unlike Lederach’s more radical analysis, Cloke’s appeal is thus for better management within the present economic system. This critique of bad management implies a need for incremental change that is internal to work organisations. A more radical critique of the wider supporting, economic system, the corollary of Lederach’s understanding of transformation, is absent.

An individualising, problem-solving mediation style may be unlikely to surface demands for organisational level change. The apolitical approach of transformative mediation, that reduces conflict to an interpersonal interaction, is also unlikely to result in an embrace of wider contextual causes of conflict. The mediation project is being progressively absorbed into workplace practice as a tool of HRM. The high commitment management style of HRM may be receptive to Cloke’s organisational analysis of conflict but, by definition, blind to Lederach’s more far reaching understanding of conflict transformation. It might be expected that notions of egalitarian justice are antithetical to the hierarchical structures of most workplaces.

To recap, workplace mediation is widely offered on the basis that it is a “neutral” intervention and that parties determine their own outcome. In this view it is believed that the mediator does not direct the parties towards a settlement. However, as we have explored above, this is an oversimplification of much mediation practice which can be directive, sometimes favours the stronger party and might blindly support the status quo (Bush & Folger, 2005; Dingwall, 1988; Silbey and Merry, 1986.) When mediation is directive, an unthinking promulgation of dominant discourses is likely to occur, as the mediators and their parties are necessarily rooted in cultural and historical value systems which impress upon the mediation setting. The alternative of a very non-directive form of mediation may also tend to leave the status quo and conflict causation unquestioned and yet seems to be necessary to create space for dialogue to emerge. Non-directiveness is born of the attempt by mediators to understand the parties in a non-judgemental fashion and thus to model a highly reflective, dialogic interlocution. Winslade and Monk (2001) promote a more directive engagement with discourse and Cloke suggests mediators invite some

consideration of systemic causes of conflict. In this latter approach mediators may use their judgement of the conflict as represented by the parties to prompt exploration of power, ideology and wider causation. Thus, there seem to be two contradictory motivations in play. In the first, mediators may seek to model a very non-directive, non-judgemental form of intervention, in the form of a dialogic exchange. In the second, they strive to discern and reflect or even highlight parties' expressions of discursive power and structural and cultural causes and patterns of conflict. It may be argued that this second aspect of mediation is of course also necessary to support the unfolding of a dialogic exchange. This apparent conundrum or paradox will be considered by a closer examination of what is meant by the term 'dialogue' in the next section.

More generally, there are two further drivers of conflict resolution to consider. One is to ameliorate conflict and stave off the possibility of violence and even physical violence. Primitive instinct may be involved in this visceral and material reaction. The other is to embrace conflict and dislocation (of views of the world, opinions and identities) and use it as an opportunity for learning and change, although this may reintroduce potential for heightened anxiety and defensiveness (Simpson et al, 2000). If such defensiveness is surmounted, personal fantasies that cover over the operation of hegemonic power may be revealed (Glynos, 2008). In many organisational settings such choices for learning are likely to be resisted. In an imagined, radical democratic, organisational context, conflict could instead become more a matter of intense curiosity to be almost welcomed.

This latter approach to mediation may not find favour with commissioning HR managers and likely be deemed too political, a thin end of a subversive wedge. However, the concept of dialogue may yet prove seductive as it is already a part of many understandings of mediation. I shall next seek to establish the idea of 'dialogue' as a kind of beacon for mediation practice, albeit with an awareness of its potential to also act as an "empty signifier" (Glynos and Howarth, 2007:130).

2.5 A beacon of dialogue?

As already noted, mainstream, facilitative mediation practice seems to place the possibility of emergent dialogue as a by product of the mediation encounter whose primary purpose is to solve 'problems'. Bush and Folger link their "transformative" practice to a form of dialogue that rests upon the human desire and "capacity for agency and empathy" (Bush and Folger, 2005:253). Cloke alternatively sees dialogue as different from mediation which, "focuses on finding solutions" (Cloke, 2001:176), and yet still an important part of mediation processes. Dialogue, he explains, focuses on "clarification, deescalation, and improved understanding" (Cloke, 2001:176). Less prosaically, he also regards dialogue as "thinking *together*, a kind of "participatory consciousness" (Cloke, 2001:175). This concept does present a challenge to the more instrumental approach of facilitative mediation on the one hand and the relational, yet very reflective and non-directive stance of transformative mediation on the other. Between these two, narrative mediation does seek to directly encourage dialogue as the meanings of conflict narratives are picked apart and defused (Winslade and Monk, 2001). The question of what levels of directiveness/non-directiveness in mediation interventions are likely to either smother or enhance scope for dialogue depends, to some degree, upon what our beliefs are about the meaning of the term 'dialogue'.

Socrates, according to Plato, was challenging in his interlocution with others and comfortable with a proactive disposition toward debate and dialogue. In the preface to his translation of 'The Great Dialogues of Plato', W.H.D. Rouse noted that:

Socrates himself described his object as that of a midwife, to bring other men's (sic) thoughts to birth, to stimulate them to think and to criticise themselves, not to instruct them (Warmington and Rouse, 1956: preface).

It is believed that Socrates ultimately alienated himself from many members of his community, albeit perhaps those deserving of criticism but least able to harness it. To help others criticise themselves implies a stance of at least subtle judgement, which may be more the role of the mediator as 'detective' or as

'counsellor', and perhaps not the role of the non-directive mediator. Thus, the role of a more non-directive mediator might be described as a humble "midwife" of dialogue. However, the concept of 'dialogue' is caught up in obscured assumptions about the agency of the interlocutors and about the influence of power relations upon them. I shall try to unravel some of these assumptions in the following investigation of meanings of dialogue.

What became my fascination with mediation started with an insight into how difficult it is, and yet possible in limited ways, to enter into 'dialogue' with others. Bohm (1999) described a "dialogue" as a stream of shared meaning. He sketched out a "vision of dialogue" in the following manner:

I'm looking at your assumptions and my assumptions. They're all suspended. I'm not deciding they are right or wrong. Or, if I think I prefer mine, well, that's OK. But I'm still looking at the meaning of what you say. And therefore we share a common meaning. Then, if somebody else comes up with another assumption, we all listen to that; we share that meaning (Bohm, 1994:205).

The result would be that:

when people are really in communication, in some sense a oneness arises between them as much as inside the person (Bohm, 1994:187).

In similar vein to Bohm, Renee Weber has observed that,

There are few final conclusions in dialogue because it is by definition, open-ended, flowing, and tentative. It explores rather than settles questions, and allows for - demands - a participatory mode, ... Dialogue reflects the insights of each partner at this moment in time, and does not negate the fact that another moment may call forward another response (Renee Weber, 1990:17).

These concepts of dialogue contain a combined sense of selflessness and participation. As such, these definitions capture the mediator's hopes for parties to emerge from conflict and dispute by means of hearing themselves and listening to others in a profound, dialogic way. This would be ideal! Because of its attractiveness, the idealism of 'dialogue' is found quite commonly. Although

conceptions of it at times overlook and at other times admit the disruptive influence of power.

Gergen et al (2004) survey several definitions of dialogue. They argue that:

most contemporary analyses of dialogue [are] derived from an ideal form of relationship (Gergen et al, 2004:41).

For example, they cite Putnam and Fairhurst who define dialogue as:

a mode of communication that builds mutuality through awareness of others

by use,

of genuine and authentic discourse, and reliance on the unfolding interaction (Putnam and Fairhurst, 2001:116 cited in Gergen et al, 2004:41).

This notion of authenticity in discourse suggests a belief in the sovereign agency of individuals. Gergen et al also quote Eisenberg and Goodall who see dialogue as:

providing parties with a chance to speak and be heard and to challenge the traditional positioning of authority (Eisenberg and Goodall, 1993:9 cite by Gergen et al, 2004:41).

Such a challenging stance would not accommodate a non-directive mediation style but it does introduce an aspect of power. Thirdly, of interest, they note the view of Hawes (1999:229) that dialogue is “praxis for mediating competing and contradictory discourses”. Hawes recognises ‘discourse’ as the stuff of power and struggle:

[I]nsofar as it is possible for dialogue to break apart and dissolve into violence, the practical and ethical questions for me have to do with when and how to participate in ways that articulate, at least temporarily and partially, the competing positions and interests of contestatory discourses such that those discourses continue to address each other (Hawes, 1999:230).

Again this view recognises how power may subvert dialogue and it also begs a question of how might non-directive mediation work with and reveal competing discourses?

Gergen et al (2004:41/42) observe that these definitions are normatively imbued with values and therefore prefer to offer “an elemental descriptive definition” of dialogue as “discursive co-ordination”. This phrase, born of their social constructionist philosophy, distinguishes itself from what might be termed an everyday conception of conversation in which individuals create thoughts and opinion and engage in debate. Thus, for Gergen et al, dialogue is a form of co-ordinated action, embedded in context, culture and history and dependent upon interactional influences of momentary “movements of the speakers bodies, tone of voice and physical proximity” (Gergen et al, 2004:43). Above all they see dialogue as publicly co-ordinated, and not as an emanation of language originating from within the minds of individuals to form intersubjective connections. However, they view this discursive co-ordination as value free, in that it has equal potential as a force for either the moral good or bad. Thus, they seem to accept a Foucaultian conception of power relations.

Despite this descriptive, constructionist spin on dialogue, it would seem that Gergen et al themselves return to a more normative, value based concept of dialogue they call “transformative dialogue [which] is essentially aimed at facilitating the collaborative construction of new realities” (Gergen et al, 2004:56). The term ‘collaborative’ used here seems to hold both a moral connotation as well as an instrumental one. Yet in the absence of a more overtly political conception of power, such an idea of “transformative dialogue” again moves in the direction of an ideal and finds echoes in the following view of Bohm.

One view of relationship would be to look at two people as two points connected by a dotted line showing their relationship as a secondary feature. Another view is a solid line with a point at each end - which is to say that the relationship is the main thing and the people are at the ends, at the extremes of it. And in the dialogue we might perhaps be that way (Bohm, 1994:187).

This form of communication requires the speakers to yield up a desire to assert

their own view as more correct than an 'other's' view. The speakers divest themselves of power used in persuasion and, instead, seek to see a view through another's eyes. Mediators may hold up this dialogic behaviour as a beacon and yet they cannot pretend the absence of power as a conditioning factor of any mediation setting, although they typically appear to do so. Thus, it is probable that a facilitative mediator may fail to encourage the surfacing of competing discourses and disparities of power, hence inadvertently assisting in the coercion or disciplining of the weaker party. Gergen et al qualify their social constructionist theoretical ideal when they draw upon Deetz (1992a) to caution against too much optimism as:

the relations of power in our ordinary institutions may preclude the kind of dialogue from which organizational change may ensue (Gergen et al, 2004:56).

However, it may still be worthwhile using the ideal of dialogue as a guide but retaining an understanding of the impossibility of its full realisation. From this understanding the mediator may find cause to dilute a purist pursuit of non-directiveness and countenance forms of directiveness that address the existence of power relations. Indeed the realisation of an ideal dialogic interaction, I would argue, is only approximated in contained and limited situations. Whereas, the blind, uncritical pursuit of 'dialogue' presupposes existent, idealised symmetrical power relations of a Habermasian ideal speech situation. Willmott states a:

basic problem with Habermasian Critical Theory [being] that it retains the counterfactual (humanist) ideal of the autonomous agent (Willmott, 1994:116).

If an imagined 'ideal speech situation' is also peopled by autonomous, free individuals, the aspiration of 'dialogue' can assume both the absence of power and the existence of sovereign agency. If neither of these assumptions are valid, but their invalidity is somehow hidden, the mediator's concept of 'dialogue' becomes fantastical. Thus, the mediator may think:

I know very well that communication is broken and perverted, but still ... (I believe and act as if the ideal speech situation is already realised) (Zizek, 2006:260).

Zizek calls this a “fetishist logic of the ideal” in which fantasy obscures an “ethics of the real” (Zizek, 2006:259-60). Because this fantasy remains unacknowledged in a workplace mediation practice, ‘dialogue’ may become employed as a ideological norm. If such a concept of ‘dialogue’ is held out to be the primary scheme of value, then workplace mediation may simply become a mechanism for the institutional reintegration of supposedly autonomous but recalcitrant spirits. Mediation may thus be reduced to a therapy of containment in which parties are exhorted to bury their differences and get along together.

A mediator’s vulnerability to such a containing practice is rooted in his/her subjectification, resulting, in part, from the extent to which their subjecthood is dependent upon sustaining an ideological fantasy of ‘dialogue’. Willmott(1994) describes how the assumed free agent of modernity anxiously searches for a sense of some anchoring identity, which opens up this agent to subjectification by prevailing discursive power. Subjection, Foucault writes:

categorises the individual, marks him by his (sic) own individuality, attaches him to his own identity, imposes a law of truth upon him which he must recognise and which others must recognise in him (Foucault, 1982:781, cited by Willmott, 1994:105).

Foucault’s project is to resist this subjectification and yet, as Willmott explains, Foucault traps us in a deconstructive process of perpetually undermining power relations yet always being subjected to them. Willmott acknowledges Foucault’s indication that escape from the subjection of power/knowledge relations might come by means of a new form of subjectivity that denies the individuality of humanism. But Foucault, it seems, does not pursue what this “new paradigm of human freedom” (Fraser 1989:50 cited by Willmott 1994:115) might look like. Willmott finds an answer in a post dualistic analysis of agency, that rather than simply denying human agency, regards it as:

a complex, contradictory and shifting process that is open to many possible modes of being (Willmott, 1994:117).

Willmott explains that:

‘communicative action’ is conditional upon the development of a selfless, post dualistic mode of being that is devoid of ‘strategic’ calculations about the costs or benefits to the autonomization of self (and others) (Willmott, 1994:116).

This echoes the “intransitivity’ of a disposition advocated by Rahnema noted above (see page 3). It also entails in part:

striving to listen carefully to the verbal and non-verbal questions that others are posing from their own depths (Burson, 2002:28).

The particular mode of being as “de-subjection” that Willmott promotes is “a re-eroticization of experience in which the subject/object, mind-body dualism is diminished” (Willmott, 1994:119). He quotes Levin (1985:61) to describe how, “We must learn to think *through* the body. We must learn to think *with* the body”. In this practice the “self-knowledge of no self” (Willmott, 1994:121), a paradoxically agentless agency may at times momentarily shrug off a Foucaultian, perpetual subjection to discourses of power/knowledge.

Recognition of ‘thought’ as a system, that plays through the body, rather than originates from within it, brings back to mind Bohm’s concept of dialogue (Bohm, 1994, 1999), in which people in relation, become that relation rather than two or more distinct points in conversation. According to Bohm, (1994:163-169) it is “[t]hought as a system” that fools us into believing in our own autonomous agency, to believe I am an identity. Such a belief can only serve to obstruct a selfless engagement in dialogue. The mediator who becomes selfless is best able to afford support for dialogue to emerge between conflicted parties. By definition dialogue must be voluntarily initiated by two or more corporeal individuals as a collective social activity in which rare and fleeting moments of agape may sometimes be experienced.

So far I have sought to critique an ideal of dialogue that is important for mediation but often based upon unspoken assumptions of humanism and symmetrical power relations. By means of this critique an idea of selfless engagement has re-emerged that is not very different from the starting point of the ideal I began with. What has been stressed, however, is the danger of an imagined dialogue that does not address issues of power and ontology.

Yet still multiple discourses of western culture regenerate our sovereign identities and our dualisms between subject/object, observer/observed, problem/solution and mediator/party and draw us back to the paradoxical security and anxiety of our egoistic selves. This condition is often a starting point for any mediation encounter since those in conflict have usually withdrawn inwards to a defence of their viewpoints and narratives invested in their senses of identity.

These different yet related notions of dialogue, the Socratic and that of Bohm and Renee Weber, and those recounted by Gergen et al, nevertheless encapsulate aspects of the intent and the behaviour of the idealised, non-directive mediator. Such mediators, by striving for dialogue, hope to help create a meeting space in which dialogue between parties may have a chance of occurring. By this definition of mediation, the mediator seeks to help conflicted parties to meet and talk with each other, hopefully dialogically, in order to enact their own chosen changes to their existing relationship and/or their feelings about it and themselves. Hence the mediator, that is the third party, may seek to enact for themselves a resolution of two contradictory impulses, in which she both strives, in dialogical exchange, for a self-knowledge of no-self and also actively reflects upon contrasting and competing discourses (recursive representations of power) and contextual causes of conflict, that are surfaced by the parties. Thereby, the mediator may engage in meaningful communication with the parties yet maintain a humble position in order not to interfere with the more significant inter-party communication. To be directive or not to be directive, this is the question. It would seem a paradox that the mediator does both. However, the mediator is never wholly non-directive and can seek to limit and make transparent interventions that are relatively more directive.

In any case, the striving for a perfect 'dialogue' would seem beyond reach. This thought conjures the idea of 'dialogue' being an "empty signifier" defined by Torfing (1999:301) as, "[a] signifier without a signified." He explains this as a word that is over coded and means everything and nothing, "as the signifieds slide under the signifier" (Torfing, 1999:301). The notion of an "empty signifier" is further described by Reyes as something that promotes:

a particular and ideologically loaded notion as a universal panacea to the fundamental lack that prevents society from achieving its full realization (Reyes, 2005:242).

Thus, the practice of 'dialogue' may in and of itself represent an impossible mode of being in which it is believed that its widespread realisation would significantly reduce much of the conflict experienced in the world. The ability for humans to selflessly and harmoniously coexist is the desired goal, but harmony is fundamentally 'lacking' and the practice of dialogic communication therefore promises to fulfil this desire and make good this 'lack'. As Glynos and Howarth explain:

It is because the master [or empty] signifier simultaneously promises a meaning, and yet withholds it, that subjects can be politically engaged (Glynos and Howarth, 2007:131).

And so our aim as mediators may yet be guided by the beacon of an impossible 'dialogue'. In identifying ourselves with such an aspiration we may also strive to offer "infinite responsibility to the other" (Critchley, 2004:116) but we can yet recognise dialogue's impossible nature, as an "enigma that promises meaning" (Glynos and Howarth, 2007:130). In this recognition of impossibility and uncertainty, the act of mediating might become an inherently political and ethical act. Pursuit of 'dialogue' may then become less fantastical as it mobilises parties and mediators in a collaborative search for understanding yet with a recognition that at root uncertainty will abound. To follow Critchley (2004), the parties and the mediators may, through discussion, render the interaction of hidden hegemonic power explicit, making that which appears 'natural', contestable.

2.6 Interim conclusion: Revising the ‘problem of neutrality’

In this first part of the literature review I have contrasted mainstream facilitative, problem-solving mediation with the more recent developments of ‘relational’ styles of mediation. The former are based upon ideas of neutrality and self-determination. There is a convincing literature showing this concept of neutrality to be illusory and yet neutrality is upheld by mainstream practice. It is as if neutrality and self-determination are shields behind which mediators are able to persist in their self-appointed role as expert managers and containers of conflict. It might be argued that this is a pragmatic approach and that alternative approaches, that value a dialogic co-determination and yield control of mediation meetings to the parties, are idealistic and even reckless. This more pragmatic approach seems to have proved attractive to workplace commissioners of mediation. There is a risk that workplace adoption of mediation may tend to accentuate its instrumental application and further obscure mediation’s ethical origins founded upon forms of collective dialogue. It might have been assumed that an instrumental usage in the workplace would bring the critique of neutrality to the fore but instead it remains unchallenged amongst practitioners, with the exception of the transformative school.

The problem of neutrality examined above, has revealed three underlying problems. Most obviously, sitting beneath the absence of neutrality lies, by definition, the matter of mediator control and influence. Less immediately obvious are issues of assumed sovereignty/identity (of mediators and parties) and of political and social power immanent in the mediation setting. The issue of control becomes one of understanding often obscured mediator influence to be able to, at least, mitigate it and render it transparent. Transformative mediation has reactivated questions of mediator influence, showing this influence, in the form of greater directiveness, to be innately entwined with problem-solving mediation. But whilst transformative mediation has deconstructed ‘problem-solving’ it has held fast to a concept of party, sovereign identity in which self-determination is central. It has also ignored issues of discursive power, instead emphasising a psychological ‘crisis of interaction’. The transformative project thus presents a form of moral, apolitical humanism and therefore tends to close off any potential for questioning the status quo from

which conflict has emerged.

Narrative mediation has joined the transformative project in a weak reactivation of the mediation project through its own critique of mediator neutrality. I argue it is 'weak' in that whilst narrative mediation has embraced a concept of discourse, it has done so without a thoroughly political interpretation of power. My own deconstructive criticisms of these relational styles of mediation have enabled the development of an ontological premise in which the subjectivities of parties and the mediators are viewed as socially constructed. From this stance it has been possible to sketch out a counterfactual style of mediation, commensurate with this ontology, that builds upon the relational models and yet extends them, in an attempt to ensure an explorative embracing of uncertainty in the pursuit of dialogue.

I considered the relatively recent uptake of mediation inside the workplace. It appears to have found acceptance as part of a more general trend by which employees are progressively individualised and interpellated into the ideological value system of the employer. Should the mediator adhere to a problem-solving practice it is probable that s/he may act as a container of conflict and thereby inadvertently become aligned more with the needs of the employer than the employee. Again, a presumption of neutrality can cloak such a tendency. The individualisation of employees, re-enforced by mediation's premise of the individual autonomy of the parties, points away from the need to consider a wider web of conflict causation, to be found in social and structural injustices. Consideration of these contextual injustices is also potentially denied by the private nature of mediation in which a dominant workplace discourse of cost effectiveness and logics of atomisation prevail (Glynos and Howarth, 2007:172). In this way significant organisational issues of hierarchy and authority may be excluded from discussion and deliberation inside a mediation encounter.

The concept of 'dialogue' seemed to be the only potentially radical feature of the original mediation project that could yet appeal to HR commissioners, and so possibly open up mediation interventions to consideration of underlying injustices. I have tried to show how the idea of 'dialogue' might offer a guiding light for mediation practice in a somewhat contradictory fashion. Namely, it seems necessary to pursue dialogue whilst at the same time recognising its

inherent impossibility. By this means I argued that mediation might be conceived as a process of participatory co-determination supported by a poststructuralist understanding of ourselves as subjects and in which mediators attempt a selfless but concerned engagement with the parties to a conflict.

The ontological premise that yields this possible interpretation of dialogue within the field of mediation practice requires a fuller explanation which I shall next attempt to develop. I will do this by sketching out contextualising philosophical debates amongst some competing approaches to social and political interpretations of the workplace. From an overview of these debates I hope to find a framework for a more detailed interpretation of mainstream workplace mediation practice from which a counterfactual alternative approach to practice, already emergent above, may continue to be fashioned. Hence the next section will look at some different critical interpretations of workplace employment to obtain further insight into the role of the mediator and to find an analytical frame to assess what the workplace mediator appears to be doing. From this inquiry, both theoretical and practical (using the case study below), I will further articulate a possible counterfactual approach to workplace mediation.

PART 3: SEARCHING FOR A FRAMEWORK OF EXPLANATION

3.1 Introduction

It would seem obvious to suggest that mediation has been adopted by organisations because it offers a cost effective remedy to interpersonal conflict and it does so with a veneer of ‘neutrality’ that demonstrates a valuing of staff qua people. If HRM has thus colonized mediation, it might also be expected that the overall practise of workplace mediation will tend to be supportive of any organizational status quo. If this is so, it will be necessary to interpret how this might occur. Thus, it would be ideal to study how workplace mediators do their job and what can be inferred about how they position themselves with respect to the parties. For example, it may be possible to discern whether they place responsibility for conflict with the parties individually or whether they perceive the parties as subjects within a discursive frame.

In order to do this I will define a philosophical standpoint from which to view the mediator as the ‘subject’ of this inquiry. I will next turn to critical management studies and the labour process theory debate in particular (Thompson and Smith 2001; O’Doherty and Willmott, 2001), to both glean theoretical insights pertinent to mediation and to develop an analytical framework for interpreting mediator interventions.

3.2 Workplace mediation through a critical lens

3.2.1 Acknowledging power

Workplace mediations can occur at all levels in an organization’s hierarchy and involve disputes between peers and between managers and those managed. An owner of a long established workplace mediation company publicly stated that, in his experience, over half of workplace mediations take place between a manager and a member of staff¹². Thus, anecdotally, mediator influence is most often positioned at this fulcrum of power between the manager and the managed.

¹² John Crawley of Conflict Management Plus speaking to a Dispute Resolution and Mediation Conference in London on 18th October 2006.

From the above review of 'neutrality' it can be discerned that mediators hold different attitudes towards their own sense of their power, as it is brought to bear upon this fulcrum or this play of power between parties. At a simple level we may broadly categorise at least four types of mediator subjectivity regarding their own awareness of their power.

	Mediator awareness of their power	Mediator belief about neutrality/non-directiveness	Implicit approach to conflict
1	unaware	neutral & non-directive	conflict should be resolved
2	aware	not neutral & actively directive	conflict should be resolved
3	professed unawareness	neutral and not neutral as direct a defined process, (directiveness is opaque or hidden)	conflict should be resolved
4	aware and knowingly unaware	not neutral (aim for minimal or transparent directiveness)	conflict an opportunity in which 'interaction' may be considered and conflict can be explored

Referencing the above tabulated types of mediator subjectivity:

1/ Some mediators may not recognise their own power and lay claim to a certain neutrality.

2/ Others may be aware of the scope to influence parties and deliberately deploy their power to secure agreements.

3/ Some mediators appear to be both knowingly directive, at least of the mediation process, and yet paradoxically in denial of their influence, or blind to it. They assert that the parties find their own solution within structures and processes imposed by their practice, which are necessary to prevent parties regressing to destructive confrontation. Thus, for example, they may lay down hard ground rules such as "no verbal abuse" and then apply this rule

judgementally to squash expression of emotion, so diverting parties from working through their conflict interaction themselves. One mediation organisation's representative described their mediators as "multi-partial", meaning that they simultaneously advocate the needs of both parties. This suggests a confusion about mediator role.

4/ A fourth type of critically reflective mediator may be sensitive to their influence and seek to maintain an awareness of the exercise of their power. By definition, the ideal of striving for critical self-awareness is an incomplete project. Unwitting directiveness is always likely to arise. By striving to be self-aware, mediators may at times reduce their influence to a minimum, or on other occasions, elect to more overtly use their power by directing the attention of the parties, hopefully in a transparent way. Beyond this notion of reflectiveness, such a communicative transparency may be realized by a selflessness that detaches one from any role as 'fixer' of conflict and yet immerses the de-subjected 'self' (see Willmott, 1994) in a non-judgmental concern for the parties.

It is the behaviours and beliefs of the third and fourth categories into which I wish to inquire. Since, as Clegg et al (2006:287) observe, Critical Management Studies (CMS) have an "explicit focus on power" in organizations, I felt some of the insights of CMS could be usefully applied to the study of the influence of workplace mediators.

CMS very broadly views the workplace as a site of conflict between owners and managers on the one side and employees on the other. (Managers may, of course, hold agendas that diverge from the interests of owners.). Fournier and Grey (2000:26) depict "CMS as a fragmented and slippery domain, fractured by multiple lines of division" although with a main divide between Marxist and poststructuralist camps. I will briefly explore the main contrasting evaluations of the workplace from the spectrum of CMS to consider how they might illuminate the matter of mediation in the workplace. Major philosophical divisions arise around interpretations of 'structure', 'agency' and 'the subject'. These CMS debates, plus a brief digression via mainstream management theory, provide a philosophical arena in which to begin a search for an analytical framework.

3.2.2 The Marxist position

First I will move to the Marxist side of the CMS arena where “structure” is privileged. Rowlinson and Hassard (2000) explain how Labour Process Theory (LPT) originated from Braverman’s *Labor and Monopoly Capital* (1974), and revitalised a Marxist analysis of the workplace. From a Marxist perspective labour is exploited under capitalism. Surplus value produced by labour is expropriated to accumulate capital. Competition demands that wage rates are progressively reduced. It is predicted that an inevitable struggle between labour and capital will ensue in which a revolutionary working class will emancipate itself by “removing the constraints of capitalist property rights” (Rowlinson and Hassard 2000:86). Conflict emergent in the workplace may be seen to result from this fundamental opposition between capital and labour. From such a Marxist perspective a mediator would tend to be positioned as simply a management tool, used to suppress conflict episodes that detract from production of a surplus. As such, it would not matter if a mediator adopted a directive style or a critically reflective style. We can assume that the unlikely appearance of a Marxist mediator, who sought to draw workers’ attention to their alienated and exploited state and the conflictual nature of the relations of production, would not find a welcome from the HR commissioner of mediation. Thus, from a hard Marxist interpretation of labour relations, a mediator would be cast on the side of the oppressor and not as emancipator, despite any humanist claims for mediations’ ability to raise awareness.

3.2.3 The orthodox Labour Process Theory position

If Rowlinson and Hassard mark the extreme left of the ‘critical management’ spectrum, moving slightly right takes us to an ‘orthodox LPT’ position held by writers such as Thompson and Smith (2000). They contest that Rowlinson’s and Hassard’s analysis is “too economic to treat control as subordinate to valorization since both exist in unified tension” (Thompson and Smith, 2000:47). It was Braverman’s focus upon the deskilling of labour that brought subsequent analysis to bear upon the control of labour power by management and the scope for resistance by labour. Thompson and Smith highlight the key notion of the ‘indeterminacy of labor’ as:

the distinctive characteristic of labor as a commodity, whereby there is an inherent gap between the potential labor power that capital purchases and the possible outcomes for capital in terms of profitable labor (Thompson and Smith, 2000:40).

Thus, under capitalism, labour has to be managed and controlled. The focus upon management control of the labour process may allow more scope for a benign consideration of the mediator's role. As already noted, the labour process is defined as a site of conflict. Thompson and Smith describe it as follows:

Given the dynamics of exploitation and control, the social relations between capital and labor in the workplace are of "structured antagonism". At the same time, capital, in order to constantly revolutionize the production process, must seek some level of creativity and co-operation from labor. The result is a continuum of possible, situationally driven, and overlapping worker responses ... from resistance to accommodation, compliance, and consent (Thompson and Smith, 2000:57).

They also note that because it is labour that creates surplus value, it is well situated to challenge capitalism, 'theoretically and politically'. Hence, from an orthodox LPT perspective we might imagine a mediator being viewed in two contradictory ways. Like before, a mediator who is wittingly or unwittingly directive and captured by the dominant discourses of management, could be viewed as pouring oil onto the wheels of surplus extraction, as those in conflict are helped to cease argument and concentrate their energies on work. It may be expected that this would be an LPT assessment of the mediation project. Perhaps less likely, the process of mediation could be viewed as operating in a more emancipatory fashion. If mediation led to a critical questioning of antagonisms and structural causes of conflict, the mediation process may, occasionally, become a temporary site of resistance within the "structured antagonism". Mediation may thus provoke a challenge to the status quo. Such a claim may meet with scepticism from 'orthodox LPT' on the one hand, and simple rejection as a valid concept by mainstream management theory on the other.

3.2.4 The mainstream management position

Mainstream management theory would most probably view mediation in terms

of its contribution to efficiency. Its adoption as a management tool would appear natural to those supporting a high commitment style of HRM. Concepts of emancipation would likely be deemed as either irrelevant or subversive. A workplace mediator, whether a paid 'external' or an internal payroll employee, is unlikely to preach a gospel of emancipation within earshot of senior, or any, HR management. The stark picture of mediating between a 'structural antagonism' tends to dissolve when viewed through the lens of humanist HRM, as already explored above. Here conflict is most typically assumed to be a result of bad management and, or, bad systems and procedures, and mediation, to borrow ACAS's mission statement, is but one tool to promote "Better Employment Relations".

To prise open a more subtle critique of the role of the mediator from a perspective of CMS I will now turn to the philosophical schism between 'orthodox LPT' and the 'poststructuralists'. As I replay their philosophical debate it may be possible to discern a critical framework for assessing the role of the workplace mediator.

3.2.5 Orthodoxy versus poststructuralism

Orthodox Labour Process theorists study the workplace because this is where the forces of labour and capital meet and conflict. Thompson et al assert that:

It is the job of management and the authority or control system within the firm to attempt to maximise the productivity or performance of labour. This is achieved through different types of control including the mobilisation of employee consent (Thompson et al, 2000:1155).

As already noted, mediation may be just one of the many means for such mobilisation of consent. They further assert that:

The labour process is important for employers, precisely because it is a contested arena, an indeterminate space, a sphere of negotiation and conflict between buyers and sellers. Within this arena, the actual potential of labour is compromised due to the absence of genuine co-operative relations between buyers and sellers of labour power. For such co-operation to develop, material shifts in ownership would be necessary, and sharing strategies over the surpluses produced through labour processes. For such policies

to develop, struggles at the workplace and within the state, and practical action ... are needed (Thompson et al, 2000:1155).

From this perspective the mediator may be viewed as being used to secure co-operative relations which, however, can never be genuine unless radical, structural changes are forced through. Mediators are unlikely to act in the vanguard of a revolutionary struggle. Although they may yet resist an inevitability of being co-opted in the manufacture of consent. From the above two quotes, although workers are seen to have scope to act, i.e. to have 'agency', it may be sensed that it is the oppressive conditioning structures of ownership and managerial power that are privileged by LPT orthodoxy. This emphasis upon structural constraints is criticised by O'Doherty and Willmott who argue that:

a major limitation of orthodox labor process theory [is] its rudimentary conception of the nature and significance of subjectivity and identity for analysing the dynamics of workplace relations. This deficiency, we argue, can be addressed by reconstructing labor process theory through a careful and sustained engagement with poststructuralist thinking (O'Doherty and Willmott 2000:112),

and further that:

those who remain wedded to basic assumptions of structure and objectivity lack the theoretical sensitivity necessary to appreciate how work organization is a fragile and precarious settlement of contending forces (O'Doherty and Willmott 2000:116).

Thus, it is relevant to ask how a mediator's subjectivity and identity is either fixed or disturbed by these forces. O'Doherty and Willmott even more scathingly, accuse contemporary labour process analysis of a 'bourgeois humanism' that:

continues to reify the industrial employee as a timeless essence and sovereign owner of attributes such as "agency", "attitude", "motivation", and "value" (O'Doherty and Willmott, 2000:116).

It is not that the subject is ignored by core LPT but that its fragile and socially constructed subjectivity and identity is not recognised. Here the mediator's role might be seen to emerge out of the internal contradictions of the HR function examined above. The need to value and support employees in conflict overlaps with a more utilitarian demand for harmonious (efficient) relations. If the latter

motivation is uppermost then the mediator's role may be reduced to one of control, becoming a subtle mechanism of discipline. The mediator might work to affirm the value of the employee qua person, but both neo-liberal value systems and the demands of the organisation are an ever present influence.

Thompson et al counter that:

by focusing on identity formation as a largely existential process and by treating the workplace merely as a 'local' site of disciplinary power, the distinctive characteristics of the employment relationship under capitalism, which treats labour as a commodity, are lost (Thompson et al, 2000:1155),

and that the poststructuralist focus upon:

social-psychological and existential issues tends to strip the "context" of any systemic tendencies and the "subject" of institutional, national and other social identity (Thompson and Smith, 2000:54/55).

But O'Doherty and Willmott are relentless in their critique. They argue that the very open and reflexive nature of 'subjectivity' allows an occasional understanding of 'self' and its relationship to the 'world'. Wrong is the:

humanist conception of human beings in which individuals are self-evidently viewed as *essentially* voluntary and free subjects, the centre and source of activity and meaning (O'Doherty and Willmott 2000:122).

And yet somewhat in contradiction with this denial of voluntarist agency and not without a hint of the structural, they still hold on to the possibility of locating management practice:

as a medium and outcome of processual, *dialectical* struggle between capital and labor (O'Doherty and Willmott, 2000:114),

and also that by attentiveness to the "fragility of order in social relations at work ... novel spaces of resistance" (O'Doherty and Willmott, 2000:129) may be highlighted.

Thus, despite their rejection of autonomous agency and any universal, overarching 'truth', discoverable by human reason, there seems to be scope for resistance and struggle. This apparent withdrawal from the brink of an otherwise wholly relativistic view is welcome, for in an extreme, poststructural soup of society, there can be no knowingly critical role for a mediator. S/he becomes just another player within a given ideological context, as interested or disinterested as any other player in power dynamics that ebb, flow and evolve as cultural awareness changes. But if 'ideology' is conceived in the sense meant by Laclau as a kind of spurious closure of discursive forms by a society unable to recognise an "infinite play of differences" (Laclau, 1983 cited by Clegg, 1998:179), an opportunity for contestation does emerge. As noted above, O'Doherty and Willmott (2000:129), still seek out "novel spaces of resistance". Thompson and Smith (2000:56) also sound a more conciliatory tone in their agreement that identity is discursively formed rather than "essential" or "authentic" and that there are tensions between self-definition and the power of unequal social relations. Since the subject of my study is the 'identity' of the mediator and the mediator's implicit beliefs about the 'subjectivity' of the parties, I am drawn to a poststructuralist ontology to be able to bring a meaningful analysis to bear upon the following case study of mediator practises.

The above Labour Process Theory debates over structure and agency and concepts of decentred subjectivity have been critiqued for their dualistic nature. Some have sought to reconcile 'dualisms' (Jaros, 2000) and others, such as Knights (2000), have critiqued both 'dualisms' and attempts at their reconciliation. I will now distil Knights' view of dualistic habits as it provides insights applicable to the mediation project, which in turn afford leverage for the development of a counterfactual approach to mediation.

3.2.6 A critique of dualism

Knights (2000) argues for a deconstruction of dualism rather than their reconciliation. He accepts the necessity to make distinctions to support language, communication and knowledge but argues that dualisms create polarised distinctions which become represented in a reified form, accepted as real and regarded as independent of the theorist. Furthermore, one polarity of any dualism will inevitably tend to diminish the other. Such dualisms taken up

across many sites and institutions then constitute an 'episteme of representation'. These representations are then treated unproblematically.

For example, we might say that 'mediation' sits opposite to 'conflict'. This dualism then poses a choice of fight (literally, or perhaps in front of an employment tribunal) or, go to mediation. Mediation may thus become unproblematically synonymous with harmony, compromise, wisdom etc. This may not be the case, especially if power and coercion are present, yet obscured, in the mediation process.

Knights explains that the strength of these dualistic representations of the world, e.g. structure/agency, coupled respectively with determinism/voluntarism, and attempts to reconcile them rather than deconstruct their difference, arise from the sense of control over the world that they yield their authors. He seems to take inspiration from Irigaray's feminist, psychoanalytic insight into Western culture, as described by Sarup:

She argues that the male projects his own ego onto the world, which then becomes a mirror which enables him to see his own reflection wherever he looks (Sarup, 1993:118).

'Masculine' mediators may regard themselves as roving experts in conflict resolution and objectify the parties they mean to serve. Knights' deconstruction of dualisms also takes much inspiration from Derrida's view of subjectivity as described by Eagleton as follows:

Nothing is ever fully present in signs. It is an illusion for me to believe that I can ever be fully present to you in what I say or write, because to use signs at all entails my meaning being always somehow dispersed, divided and never quite at one with itself. Not only my meaning, indeed, but I myself: since language is something that I am made out of, rather than a convenient tool that I use, the whole idea that I am a stable, unified entity must also be a fiction (Sarup, 1993:34 quoting Eagleton, 1983:130).

According to Derrida our consciousness of the world is created by written language. No object or referent exists independently of a word to signify the idea of the object, the thing signified. Further, signifier and signified are never a unity. Language is a system of signifiers endlessly referring to other signifiers in a

process of highlighting difference to elliptically trace out meanings. Hence, meaning can never be fully decided. In a humanistic and positivistic vein, we mediators and parties to conflict may cry, 'but we need to act'. However, for the mediator the lesson is to always be tentative, circumspect, and unknowing when in dialogue with parties to a conflict. And yet the mediator may want to highlight a conflict's causal webs and differences that may reflect and reveal ideological antagonisms.

That meaning is never fully decided would seem at a glance (and by definition) nihilistic. But Sarup believed that:

deconstruction is, for Derrida, ultimately a political practice, an attempt to dismantle the logic by which a particular system of thought and, behind that, a whole system of political structure and social institutions maintains its force (Sarup, 1993:54).

Thus, whilst a mediator may bring an ethic of humility and unknowingness, it would seem wrong or unethical to suppress a deconstructive impulse to invite investigation of the metaphors and discourses of the parties, by a close examination of their apparent disagreements. Knights, drawing on Foucault, suggests we may help to surface subjugated knowledge in order to resist "subjectivities" that "render us docile and manageable" (Knights, 2000:68). In this way the mediator may hope for the parties to make their way beyond the present conflict, often characterised by a fixed position, through unknowingness, towards a *temporary* point of decidability, that is either mutual or singular, or even to a revised but unresolved statement of a conflictual opposition. Hence, the ambition of the mediator may be less to overtly facilitate reconciliation and more to support the emergence of understandings of a plural nature. This insight, emerging from Knights' critique of dualism, points more clearly towards a philosophical framework for theorising mediation practice that I shall now expand upon, albeit at the risk of constructing a mirror in which to view my own reflection.

3.3 An ontological frame for explanation

3.3.1 *Ethical mediation: A brief note*

Much mediation seeks to support (lead?) the parties in making decisions about the *issues* of the conflict (problem solving mediation) or about the relational interaction of the parties (transformative mediation) or about the conflict story (narrative mediation). Knights drawing upon MacIntyre (2003) suggests that:

ethics is not choosing what to do as individuals, but also and essentially discovering who we are in relation to others (Knights, 2009:10).

Of the above three mediation styles, transformative mediation most clearly sets out such an ambition for mediators and the parties but bases it upon a concept of an essential, autonomous subject. There is thus an implied pressure upon the parties to see their own fixed subjectivity as both cause of the conflict and sole source of a potentially enacted resolution. This concentration upon the responsible agency of the parties tends to define the mediation encounter within the prevailing workplace hegemony. Whereas, an ethics conceived by Levinas, dismisses Enlightenment self-interest and individualism (Knights, 2009) and places upon us, as noted above, an “infinite responsibility to the other” (Critchley, 2004:116), with whom we engage in the mutual co-creation of identity. Thus, such an ethical and infinite responsibility, in a world of constructed identities, would seem to support a critical form of engagement that explores hegemonies and fantasy (Critchley, 2004; Glynos and Howarth, 2007). However, Knights also points out that this is a responsibility born of intimate relationships. In a social setting, when a third party enters, “judgement and justice are required and rationality takes the place of passion” (Knights, 2009:12).

As a third party, the explorative mediator is at pains to act with a sense of “infinite responsibility” and to seek to reserve or suspend judgement. Therefore, an explorative mediation encounter may be regarded as representing a hybrid situation in which the intimate and the social blend. Thus, mediators, if supporting an open, exploration of conflict, invite an ethical encounter with the Other which entails in varying degrees a:

risky uncovering of oneself, in sincerity, the breaking up of inwardness and the abandon of all shelter, exposure to traumas, vulnerability (Levinas, 2008b:48, also quoted by Knights, 2009:11).

As rare and terrifying as this appears, to do otherwise is to close down options and invite a retrenchment of individuals within safe identities according to available and already fixed meanings of social relations; that is within pre-existent hegemonies. It is from this ethical point of choice between a 'retrenchment' or an 'opening up' that a primary research question, set in the context of the workplace, emerges.

3.3.2 Research question

So far I have explored various aspects of an assumption that workplace mediation has been, in a sense, colonized. That is to say, a type of mediation, originating from a community setting, has been taken over by public and private work organisations as a means to cost effectively settle conflictual disturbances that erupt between employees. Employees are given an opportunity to resolve a dispute with the help of a 'neutral' third party. Workplace mediators profess this neutrality and the mediation offer is accepted, by commissioners and parties, because of this very promise of neutrality. I have shown this neutrality to be mythical. From this critique I have developed a proto-explanation (Glynos and Howarth, 2007) of mediation practice that employees may be directed to patch up their conflicts, in a manner that aligns with the needs of the organisation, beneath this cloak of neutrality, rather than hold a more open, dialogic exploration of the conflict.

This proto-explanation leads to the central, twofold research question to be asked of workplace mediation: In what ways, in practice, might mediators' influence become aligned with the needs of the organisation above those of the parties, and how might this situation be reversed, so that the needs of the parties (themselves entwined with those of the organization) are nevertheless uppermost. To gain insight into the first part of this question will yield possible strategies and counterfactual suppositions that address the second part. Mediators would seem to be confronted with a choice to either gloss over aspects of conflict or support a more open, dialogic exploration.

3.3.3 Tools for analysing research data

That there is an unawareness or at least a professed unawareness of the mediator's departure from neutrality and impartiality points to the need to examine the apparent subjectivities, identifications and identities of workplace mediators and the words that they use as they practice. As Knights says:

All we can do is disrupt or problematize existing representations by pointing to the precarious character of the subjectivity that makes them possible (Knights, 2001:79).

This insight, and other insights of poststructuralism explored above, provide a theoretical leverage to inquire into mediator subjectivity and language. They also contribute to the development of a counterfactual practice in contrast to that of the mainstream. A powerful theory of discourse and subjectivities that comprise the social and political world is found in Political Discourse Theory (Laclau, 1990; Torfing, 1999; Howarth, 2000; Howarth and Torfing, 2005, Glynos and Howarth, 2007). Political Discourse Theory, (PDT) based upon an ontological concept of social (society wide) antagonisms finds much resonance with conflict in an interpersonal domain and points towards an *impossibility* of the tidy resolution of conflict. PDT would further suggest that this statement of *impossibility* entails an "enthusiastic resignation" (Zizek, 2006:260). These counter-intuitive conclusions clearly require some further explanation.

3.3.4 Ontological basis for this inquiry

The practice of mediation is determined not so much by how the mediators theorize conflict but by their own philosophies and ideologies and significantly by how they understand the subjectivities¹³ of the parties. As Wight notes, "the practices of the actors ... are ... embedded within philosophical positions" (Wight, 2009:8). Therefore, an interpretation of practice and a critical, counterfactual alternative, demands an ontological assessment of how "subjectivity and social relations of power and domination intertwine" (Elliott, 1999:144). Torfing (1999), Howarth (2000) and Glynos and Howarth (2007), provide a poststructural

¹³ Joe Folger argued in a talk given at Camden Mediation Services, on July 8th 2009, that the way mediators intervene is governed by their ideological commitments and not their cultural or analytic theory of conflict e.g. biological; psycho-dynamic; social-psychological; structural etc. However, all these theories are themselves rooted in philosophies and ideologies.

assessment of society that rests upon the 'radical contingency' of the 'social' and of 'identity formation' within the 'social'. I will found my critique of mediator practices upon this ontological account of the 'social'.

Workplace mediation, regarded as an *apolitical* activity, purports to manage conflict resolution on the assumed basis of individual responsibility expressed through a language of stable signs and representations. Very differently, from a poststructural perspective, I will view the subjectivities and identities of mediators and parties, formed in the social medium of language and discursive practice, as being subject to a 'radical contingency'. (I will qualify this view below.) From this perspective it may be seen that mediation is a political, hegemonistic activity, the outcome of which is also inherently, 'radically contingent'. Furthermore, because of the underlying condition of language as a flux of traces of meaning and "the radical contingency of all objectivity" (Laclau, 1990:26), the mediator is bound to act, in conjunction with the parties, to either reinforce or contest a particular hegemony. I shall give a necessarily brief elaboration of these ontological assumptions of identity, hegemony and contingency, beginning with a quote from Derrida thus:

[I]f totalization no longer has any meaning, it is not because the infiniteness of a field cannot be covered by a finite glance or a finite discourse, but because the nature of the field - that is, language and a finite language - excludes totalization. This field is in effect that of *play*, that is to say, a field of infinite substitutions only because it is finite, that is to say, instead of being an inexhaustible field, as in the classical hypothesis, instead of being too large, there is something missing from it: a centre which arrests the grounds and play of substitutions (Derrida, 1978:289 cited by Torfing, 1999: 86).

Hence, there can be no 'centre' enabling a discursive apparatus to appear as a stable 'structure'. This suggests the dissolution of the concept of a structured totality due to the infinite play of possibilities within it. Structure cannot be apprehended from a fixed standpoint 'outside', just as the observer cannot stand back, independent from that which is observed. The observer is a part of the '(non)-structure' and speaks the language that is the '(non)-structure'. Torfing concludes that:

the absence of a fixed centre extends the process of signification

within the structure infinitely (Torfing, 1999: 86).

However, in our social existence we seem to be anchored to stable structures (practices, rules, norms, institutions) through the intersubjective use of language in which meaning and understanding appear more fixed than protean.

Torfing describes this illusion of fixity as:

an ambiguous and temporary order ... established by a multiplicity of mutually substituting centres (Torfing, 1999: 86),

and that:

[the] creation of a relative structural order is conditional upon the exclusion of a constitutive outside which threatens the relative order of the structure and prevents ultimate closure (Torfing, 1999: 86).

Hence, discourse, in creating a relative order, is thereby conceived as:

a differential ensemble of signifying sequences that, in the absence of a fixed centre, fails to invoke a complete closure (Torfing, 1999: 86).

The contingent presence of a 'constitutive outside' represents a permanent possibility of social antagonism. However, the illusion of closure and totality may be achieved by the hegemonistic ascendance of any given discourse or discursive formation. Hegemony being defined as, "a moral, intellectual and political leadership" achieved by the persuasive "expansion of a particular discourse of norms, values, views and perceptions ... of the world" (Torfing, 1999:302).

Discourses are thus unstable and permanently open to challenge. The ever present potential for social antagonism, arising from a 'constitutive outside', is activated by the dislocation of temporary structures and the identities of those within them. Where:

dislocation ... refers to the process by which the contingency of discursive structures comes to be seen (Howarth, 2000:109).

Hence there is a 'radical contingency' of the social which thus admits, indeed

makes inevitable, 'politics' and a 'political subjectivity' of agents. Therefore, as noted above, social acts, of which mediation is but one, are *political*, in the sense that they either support the continuance of any particular hegemony, or call it into question. The workplace mediation industry's assertion of 'neutrality' is therefore both a denial of the political and an hegemonistic act. The mainstream mediator's identity is shaped by this act and assumed to be 'complete' rather than contingent. Such an identification invites a deconstructive inquiry.

As Glynos and Howarth explain, "radical contingency refers to the inherent (as opposed to accidental) instability of an object's identity" (Glynos and Howarth, 2007:109). This instability is inherent because of the ontological assertion of an impossibility of a wholeness of identity of either an object or subject. Glynos and Howarth (2007:110) describe this as "the *constitutive* failure of any objectivity to attain its full identity".

From this brief consideration of the decentering of language as a structural meaning system, descriptions of the logic of 'discourse' and 'hegemony' have emerged along with the idea of 'contingency'. It is implicit that our identities are also constructed within the social interplay of language and are therefore in some ways incomplete, less than stable and contingent. To further consider this question of 'identity', of the 'formation of identity' and of the notion of the 'impossibility of a wholeness', I shall turn to the Lacanian concept of 'lack' that is pivotal to the post-Marxist canon. Torfing, drawing upon Žižek's engagement with Laclau and Mouffe explains that the subject seeks to make good its constitutive lack by a process of subjectivation "through the identification with different subject positions" (Torfing, 1999:57).

My critique of mainstream mediator behaviour is based upon a perhaps unsurprising apparent non-recognition of this concept of 'lack' and its consequent implications for practice. Below I will interpret mediator interventions and posit a counterfactual alternative from the perspective of discourse theory and its concept of the 'subject' that Laclau and his students have developed, in part from their reading of Lacan. It is therefore important to sketch, albeit briefly, an understanding of ontological 'lack' and to then consider a challenge to it raised by Elliott (1999).

3.3.5 The presence of 'lack'

Sarup explains that:

Lacan suggests that all our fantasies are symbolic representations of the desire for wholeness ... for a perfect union with the Other. .. desire is ontological, a struggle for wholeness rather than a sexual force. 'Desire is the metonymy of the desire to want to be' (Sarup, 1993 :16).

Benvenuto and Kennedy provide one indication of Lacan's concept of the Other as follows:

The Other who was there before the subjects birth , as 'absolute being', is the one who can recognise him and love him. But then this very mother, who makes such efforts to care for her infant, who seems to give as much as she can, is also a subject, itself based on a lack of being (Benvenuto and Kennedy :1986:174).

Sarup sums up Lacan's ontology thus:

we all have a need for wholeness, a longing for a state of unity, but the achievement of plenitude is a logical impossibility (Sarup, 1993:14).

The Lacanian subject, striving after the logical impossibility of 'the Other' and 'the Real', the former 'lacking', the latter beyond expression, is rendered forever incomplete. Paradoxically, wholeness and oblivion is found in death; a return to pre-existence. Against this 'truth' we lead our lives under an illusion that we shall live forever and this assumption provides the ground for an Enlightenment humanism. Hence the mediator may choose to view her/himself and the parties as 'whole', autonomous individuals with 'empowered' identities rightly deserving of 'recognition' that are temporarily disturbed by the aberration of conflict. However, if a Lacanian inspired ontology is accepted, the purpose and ethics of mediation are transformed and political implications unfold.

These implications are traceable through the way that identities, driven by a sense of 'lack', are formed and sustained. Howarth describes how Pecheux refined Althusser's Lacanian inspired idea of interpellation whereby:

an individual brings itself into existence by *identifying* with an external

object (Howarth 2000:95).

Through a plurality of identifications a 'subject position' is constructed by the social actor. However:

social antagonisms occur because social agents are *unable* to attain their identities (and therefore their interests), and because they construct an 'enemy' who is deemed responsible for this 'failure' (Howarth, 2000:105),

and

dislocatory experiences provide the conditions for the construction of antagonistic relations between agents (Howarth, 2000:132).

In sum:

the subject emerges as the empty place of a lack within a dislocated structure, and then seeks to constitute itself as a fully achieved identity within a recomposed social totality (Torfing, 1999:14).

Hence, the subject strives for a totality but by definition can never achieve it. There is thus an ontological undecidability and a 'radical contingency' (Glynos and Howarth, 2007) that conditions our being in the world. The mediator, holding such a view of subjectivity and identity, must be aware that their interventions constitute a political engagement with the parties and not simply an humanistic encounter aimed at the amelioration of conflict. Furthermore, if the mediator is sensitive to their own and the parties' 'formation of identity' they are more likely to hold back from intervening on the basis of unnecessary and misplaced evaluations of the conflict or of the characters of the parties. Mediator 'humility' in the face of an existential uncertainty might displace an overbearing mediator 'expertise'.

3.3.6 A critique of Lacanian post-Marxism

Lacan's account of the human condition and the models of the psyche that he extrapolated have been the subject to detailed refinement and/or criticism (Sarup, 1999). Elliott (1999) provides a rigorous critique in his book, *Social*

Theory and Psychoanalysis in Transition, that questions the theoretical grounds of much recent political discourse theory that draws upon Lacan's work. I will consider elements of his critique to refine the concept of 'subjectivity' I will use in teasing out conclusions that follow interpretation of the case study, role-play data. In particular, Elliott (1999) defends a concept of human autonomy resting on an interpretation of the psyche. As my counterfactual mediation style relies upon a critique of the notion of autonomy I feel it helpful to probe the argument put forward by Elliott.

In a return to the Freudian concept of the primary unconscious¹⁴, Elliott aims to establish a more "adequate theory of the connections between the psyche and the social field" (Elliott, 1999) in which:

the unconscious is a constitutive imaginary dimension of psychical life and subjectivity, a dimension in which the subject 'opens out' to the self, others, reason and society; [and] that on an individual and collective plane, human subjects are never passively 'shaped' by the symbolic forms of society, but actively receive such significations and creatively reconstitute them through representational activity (Elliott, 1999:10).

The human subject that Elliott considers is thus an "affirmative character of psychical productions and representational forms" (Elliott, 1999:132).

From this basis Elliott goes on to argue that Lacan wrongly places "lack" before desire and mistakenly regards the unconscious as formed, after entry into the symbolic order, in the structure of language. These errors, he argues, result in a:

superficially radical appeal .. [that] .. the ideals of our innermost needs and wishes are persistently unrealizable (Elliott, 1999:132).

On the contrary, I believe this appeal to be both radical and far from superficial although I would agree with Elliott's critique of the Lacanian picture of the formation of the unconscious. I find sympathy with Elliott's critique that some Lacanian inspired social theory would seem to not accept "the actual existence of a *pre-existing psychical reality*" (Elliott, 1999:172). The 'slate' may be relatively

¹⁴ "The primary unconscious refers to the constitutive mechanisms of the primary processes - condensation, displacement, considerations of representation, and the transfer of affect," (Elliott, 1999:252 footnote 4.)

blank but there is a slate. He also refutes a view that the complexity of this psychical reality could be “merely the product of discursive articulation” (Elliott, 1999:172). I also find it difficult to accept an extreme constructionist view that our emotional lives are socially created through language, from the outside in, as it were (Gergen, 2003).

Returning to the central question of “lack”, Elliott rejects a Lacanian logic of subjectivity arising from a concept in which “the imaginary is grounded in ontological ‘lack’” (Elliott, 1999:174). For Elliott this leads to the false conclusion that the imaginary is a derivation of ‘lack’ and hence the achievement of selfhood only represents a mere “mask”. Elliott on the contrary believes in the possibility of selfhood. He does however accept the concept of “lack” as formed by our earliest desires (of the breast, for example) as “simply one aspect of the nature of the object - although undeniably a fundamental one” (Elliott, 1999:132). He asserts that:

‘Lack’, and the distortions of intersubjectivity it promotes, can only exist through the imaginary, desire, invented subjectivities (Elliott, 1999:174).

Thus, Elliott’s alternative logic is that desire leads to ‘lack’ and the invention of subjectivities. So, for Elliott, whilst the psyche is damaged we may through reflection upon our “phantasies” proceed towards “achieving autonomy” (Elliott, 1999:139.) Here is a belief that it may be possible to return to a genuine selfhood and autonomy that pre-existed the infantile splitting of the psyche within the primary unconscious.

Elliott contrasts this understanding of the subject with that of the Lacanian theorist Žižek. According to Elliott, Žižek regards the Lacanian order of the Real as the:

dimension beyond symbolic representation which functions as a cause of desire and thus accounts for the subject’s *identifications* with ideological meanings (Elliott, 1999:168),

and that:

there must be an identification with interpellations, an investment of psychic energy, which drives the actions of human subjects in social reproduction (Elliott, 1999:168).

In Žižek there is a recognition of the complexity of psychic energy but it is linked with the impossible desire for that beyond the Lacanian orders of the imaginary and the symbolic or, expressed otherwise, for the impossible fulfilment of an ontological 'lack'.

These two positions are at once close together, in that they both agree upon 'lack' and its effect in the constitution of subjectivity, yet are far apart. One places "lack" after the formation of desire and is therefore able to hold out for a return to human autonomy and completeness, whilst the other, based upon a pre-existing "lack" points to a forever fractured subjecthood, a view which Elliott paints as "morbid and dark" (Elliott, 1999:176).

I am more convinced by the latter description of Žižek, although its darkness, as explained below, may be unfounded. I am reminded of my then five year old daughter who fell into deep heartfelt sobs one day on leaving our local beach. She had built a sandcastle and enjoyed an intense moment of imaginary play. She did not want this moment to end. Neither did she want to return to the same beach another day as she wanted to hold the castle in her imagination and did not want to witness the reality of its disappearance, washed away by the sea. In this situation we might agree with Elliott that 'loss' was experienced after desire and yet her sadness seemed deeper. I feel she was experiencing a more profound recognition that change is continuous and that all things will end. Thus, there was an underlying recognition of our mortality, her own and that of her family. In this sense, 'loss' precedes life, death is inevitable from the moment of conception and so 'loss' becomes representative of an ontological 'lack'.

In contrast to a Lacanian darkness, Elliott sanguinely suggests the unconscious is, "intrinsic to the search for self identity, human autonomy and political community" (Elliott, 1999:249). However, it is not obvious that the generative capacity of the psyche should infer a realisable potential for human autonomy and fullness of identity. I would assume that Glynos and Howarth (2007), as inheritors of post-Marxist theory, also view the investigation of subjectivity as replete with creative possibility, for both the individual and the collective

resistance to oppressive forces, but without reliance upon a return to a notion of the autonomous individual. Although I feel they would certainly agree with Elliott that “subjects are capable of critical self-reflection and acting creatively” (Elliott, 1999:180).

Elliott, whilst accepting that the imaginary is interwoven with ideology, has reduced the imaginary to a function of the individualised, centred psyche, peering out humanistically at the world. I find this unconvincing but the Lacanian model in which “subjectivity is entirely relational” (Sarup, 1993:24) seems too extreme, too unemotional. Perhaps the emotional, as the other side of a Lacanian affective coin that leads to fantasy, should not be overlooked. As one campaigner for a compassionate society says, “in being moved we can also get political” (Gilbert, 2009:439). However, I remain drawn to consider the documented mediator behaviours below through a lens of subjectivity crafted by political discourse theory (Glynos and Howarth, 2007; Howarth, 2000; Torfing, 1999) which would seem to offer a richer, more dynamic ground for interpretation of a more decentred, yet often sedimented subjectivity.

3.3.7 Constraints upon mediator behaviours: ‘Real’ or ‘discursive’?

Elliott interestingly claims that “subjective interests are commensurate with biological needs” (Elliott, 1999:177). In this statement Elliot connects the psyche to its corporeality and thence to the materiality of the world we inhabit, in a manner redolent of critical realism (Bhaskar, 2008). Elliott also suggests there is a non-discursive seat of human desire by explaining that our “premature” entry into the world demands an emotional relatedness from which:

a vital nexus arises between what we materially are and the ideological space in which repressed desires find symbolic representation. (Elliott, 1999:178).

Elliott refers to “transhistorical human needs” (Elliott, 1999:247) whilst accepting that the actualization of representations in a social context depends upon “the social, political and economic structures in which these imaginary forms are embedded” (Elliott, 1999:220). Thus, Elliott holds to an underlying transhistorical materiality that suggests an interaction of structure and agency in the forming of the ‘social’.

An avowedly critical realist interpreter of the social world, Wight (2009), believes, in agreement with poststructuralists, that “the *social* world is constructed by us” (Wight, 2009:25), although he prefers the terms “reconstruction and transformation” (Wight, 2009:26). Wight also notes that these terms imply an historical perspective from which circumstances arise to condition what is possible; what Bhaskar refers to as “antecedent social activity” (Bhaskar, 2008:16). This leads back to the earlier question of whether the mediator necessarily operates within structural constraints that approximate a ‘reality’.

The workplace mediator has the task of selling her/his services to commissioning HR managers. It is not impossible to promote a concept of open, explorative inquiry, as I have advocated, but to sell a solution to a problem is much easier. Laclau and Mouffe note the “myth of the transparent and homogeneous society” (Laclau and Mouffe, 1990:130). The HR manager’s ambition of a mediated resolution of conflict may presume a background of such a transparent and homogeneous society. A mediator who sought to highlight this myth in defence of an exploratory mediation practice may be unlikely to find acceptance with an employer of staff in dispute. There is thus a ‘reality’ of the contemporary workplace that the mediator must negotiate as the discourse of the “bottom-line” has been powerfully naturalised. It may be argued that this ‘reality’ is a temporary discursive ‘misrecognition’ and not material.

Laclau has advanced the term “misrecognition” in which ideology consists of the “non-recognition of the precarious character of any positivity” (Laclau, 1990:92). Facilitative workplace mediators may refute criticisms of their practice as constituting such a misrecognition. This reaction may be vaguely understood as a result of the hegemony of employment relations within a mixed market economy but there lies a possibility that it is also informed by interlocutory, emotional responses arising from a ‘material reality’ that is our ‘corporeality’. The waters of a discursive hegemony may be muddied by a sense that part of what mediators do is generated or informed by an obscure, immanent ‘material reality’ of a conflict. We could imagine such a ‘reality’ as generated from structures in which our evolved emotional and neurophysiological selves interact with a society “always *already made*” (Bhaskar, 1998:33). Such:

[s]ociety stands to individuals, then, as something that they never make, but that exists only in virtue of their own activity (Bhaskar, 1998:34).

The converse view would observe sedimented practices that appear as if they are structural constraints upon 'agency'. Mediators operating within these constraints may then become subject to motivations in the form of *vested interests*. These interests may include payment for work, professional self esteem and compassionate concern for the parties (a vested interest in part related to 'identification'). Such subjectivating interests of the mediator are likely to be internally and externally interwoven in complex ways. For example, the former two may be readily understandable from within a framework of 'mis-recognition' and 'fantasy' (Glynos and Howarth, 2007; Glynos. 2008) that I shall expand upon below. However, the latter, that of compassionate concern, may originate within an emotional materiality that plays out in the intersubjective engagement of the mediation meeting as the group strives for a collective 'objectivity' founded in a critical reality; that is, within what Bhaskar has termed a "*transformational model of social activity*" (Bhaskar, 1998:34). It is thus possible to imagine a linkage between the 'structural' and the 'emotional' via a notion of vested interest. To recognize this does not entail any reduction to a false individualism although it may be criticised as a turn towards essentialism and does imply an extra-discursive domain. Stavrakakis would reject both essentialism and the extra-discursive but has noted that:

in order to account ... for identification it is necessary to redirect our attention from the formal to the substantive/affective dimension, from discourse to enjoyment, from a drier to a stickier conception of the politics of subjectivity (Stavrakakis, 2005:75).

Glynos and Stavrakakis have suggested that the apparent absence of the concept of *jouissance* in Laclau's work results from an embrace of the Lacanian real "framed in formal, structural terms rather than substantive terms" (Glynos and Stavrakakis, 2004:209). They note that *jouissance* presumes the substance of the body to support it. Laclau has responded to the criticism that his theory of discourse is more structural than substantive by explaining that discourse "is a relational complex of which enjoyment is a constitutive element" (Laclau: 2004:303) and that discourse is a structural/relational complex of words and action that includes the "linguistic" and the "affective". This complex does not

admit a realm of the extra-discursive nor see the body as “a biological datum opaque to language” (Laclau, 2004:303). As Howarth and Stavrakakis note, the idea of the discursive:

views as logically self-contradictory all attempts to escape and conceptualise this world from an extra discursive perspective (Howarth and Stavrakakis, 2000: Ch1 p4).

Thus, by definition the extra-discursive is logically proscribed as if only what we can imagine and so conceptualise can impact the social. For me this debate remains ambiguous; events occur independently of us and objects pre-exist our engagement with them¹⁵. Contra Laclau, I do have a sense of a body opaque to language and yet it is appealing to recognize the discursive as synonymous with apperception. Nevertheless, Bhaskar makes the following distinction:

I accept of course that all extra-discursive realities are constituted within discursive practice, from the point of view of their intelligibility. But that is not to say that they are constituted in discursive practice from the point of view of their causal impact (Bhaskar, 2002:91).

My sympathy lies with Wight who comments he simply does “not ‘know’ when and how [extra-discursive] material circumstances might play a role in social practices and outcomes” (Wight, 2009:32). But, for the moment, in this present study, it is sufficient to consider the material gathered for analysis to be largely discursive where, after Laclau and Mouffe, the term discourse is used to “emphasize the fact that every social configuration is *meaningful*” (Laclau and Mouffe, 1999:100). From this conclusion it can be emphasised that the further elaboration below of a counterfactual proposal for mediation practice is itself a precarious and contingent act. However, I shall return to this ambiguity between critical realism and discourse in Section 4.2 below.

¹⁵ I am drawing upon Bhaskar's reasoning that views causal laws: “as the workings of generative structures, causal mechanisms and processes; that is, as being tendencies, tendencies which could be possessed without being exercised, which could be exercised without being realised, which could be realised without being manifest in a one to one way with any set of phenomena, and which also could be manifest without being detected by men(sic), that is by humanity” (Bhaskar, 2002:8).

3.3.8 An ontologically inspired explorative style of mediation: A second counterfactual sketch

I have begun to evolve a counterfactual approach to the conduct of workplace mediation above. In this approach mediators would seek to resist donning cloaks of expertise, that is, as technical experts in conflict resolution. Instead they would aim to merely help support an exploration of the conflict. (This would entail a different form of expertise but perhaps one that may be rendered more transparent to the parties.) The mediation setting alone, in which third party strangers are admitted into the personal worlds of the disputants, usually forms an emotional container for making a conversation a possibility. Those that have agreed to come to mediation very often self-censor to varying degrees in the presence of third parties. In this mediation style, two mediators, (the norm in community settings), are better than one as this enables pressures to problem-solve, placed upon the single, conflict resolution expert, to be resisted. Since it is impossible for the mediators' opinions and moral, cultural and social prejudices not to influence their interventions, they would need to ask themselves reflexively, in the moment, why they want to speak and to consider sharing their answer with the parties. Mediators would explain the ways in which they are not neutral and the ways in which they will try to contribute to the conversation so that any outcomes may have a possibility of being co-determined, emphasising the major role played by the parties. The subject positions that they would speak from, and contribute to, may then become less opaque. Mediators would also resist the desire to manage any aspect of the interaction¹⁶.

Mediators would eschew any thoughts of resolution and focus entirely upon understanding the parties and their conflict stories and helping parties to understand each other. In the early stages of a mediation meeting, mediators would concentrate on reflectively acknowledging both parties' feelings of hurt and confusion along the lines of transformative practice and also give additional

¹⁶ Extended bickering/fighting between parties that can lead to a collapse of the mediation encounter presents a challenge to the non-interventionist mediator. I believe that transformative mediators interrupt to acknowledge disempowerment to try to slow down recriminations and counter recriminations so that parties may take stock. They thus have opportunities to work on one (or fewer) issue(s) at a time. Folger, when asked about such matters, answered that he always asks himself "who is the intervention for". (Talk by Joe Folger at Camden Mediation Services, July 8th 2009.)

attention to the use of metaphor (Winslade and Monk, 2001). Reflecting back the use of metaphor has proven to be a powerful means for both helping others reflect and understand themselves and for minimising any interfering influence conveyed via the mediator's intervention.¹⁷ They would then aim to support an open, exploratory conversation by inviting the parties to examine their differences and the different expressions of what is significant to them. They would similarly invite a search of the wider context of their dispute for other, external sources of the clash between them. These invitations to explore would only be prompted by information already introduced by the parties to the mediation meeting.

At a place of dislocation where our social antagonisms are revealed, we (parties and mediators) have an opportunity to confront our own inauthenticity in our communication with others. Here, 'authenticity' is used in a relative sense and does not presuppose "a free, intellectual agent [whose] thinking processes are not coerced by historical or cultural circumstances" (Sarup, 1993:1). A relative authenticity may be imagined as arising from deeper understandings of motives discovered by reflective/reflexive attention to emotion, assumptions or projections, when in dialogue with trusted others. Glynos and Howarth describe the authentic, somewhat differently, as:

a generalized sensitivity or attentiveness to the always-already dislocated character of existing social relations, wherein creativity and surprise are accorded prominent roles (Glynos and Howarth, 2007:110).

This definition stems from a particular notion of the ethical and its correspondence to 'fantasy' that I will explore below.

Parties often come to mediation after trust between them has broken down. From the perspective of a psychological and psychoanalytic model, the level the complexity of conflictual interaction is immeasurable. Notwithstanding this, moments may be experienced in mediations when mutual authenticity emerges and parties make meanings of the situation together. A vital role for the mediator is to support the creation of an environment where trust and, hence, 'authenticity' may emerge. Therefore, the mediator must also strive to be aware of their own

¹⁷ This insight is derived from a counselling intervention developed by the late David Grove that has been called "clean language" (see Owen, 1989).

interventions, to question why and for whose benefit they are made. In this regard, the mediator needs to reflect upon their own 'masculine' impulses to contain, control and "sort things out" in keeping with their own, self-regarding understanding of the world. They should remember that to adopt the identity of 'explorative mediator' is also to align oneself with a role, a sense of agency, with a potential for becoming an heroic ego. If such temptations to indulge in fantasy are resisted the mediator may be able to assist parties in an 'ethical' exploration of 'radical choices'. It may thus be possible in rare instances for mediators and parties "to go through fantasy". A notion that is revealed by Žižek to whom I shall next turn.

3.3.9 Žižek on the possibility of puncturing fantasy

Žižek describes Laclau's and Mouffe's concept of social antagonism as a socio-symbolic field:

structured around a certain traumatic impossibility, around a certain fissure which cannot be symbolized (Žižek, 2006:249),

which he directly equates with the Lacanian concept of the Real. Hence, he explains that an external antagonism, that which prevents me from achieving my identity, masks a deeper and radical "self hindrance":

It is not the external enemy who is preventing me from achieving identity with myself, but every identity is already in itself blocked, marked by an impossibility, and the external enemy is simply a small piece, the rest of reality upon which we 'project' or 'externalize' this intrinsic, immanent impossibility (Žižek, 2006:252).

Thus, he argues that we take up antagonistic subject positions to avoid the traumatic experience of confronting our own void, that empty place of our own subjecthood. For Žižek, "the subject ... is the name of the void that cannot be filled out with subjectivation" (Žižek, 2006:254). He then names fantasy as "a kind of positive support filling out the subject's constitutive void" (Žižek, 2006:254).

If social antagonism masks an antagonistic negativity, innate to our psyches as social animals, and fantasies hide this 'reality' from ourselves, then to puncture

this fantasy:

articulates the contours of a political project based upon the ethics of the real, of the 'going through the fantasy (*la traversée du fantasme*)', an ethics of confrontation with an impossible, traumatic kernel not covered by any *ideal* (of the unbroken communication, of the invention of the self) (Žižek, 2006:259).

Žižek invites us to enthusiastically resign ourselves to the deadlock of the signifying field, since what he calls "the experience of a certain impossibility" (Žižek, 2006:260) implies a liberation that is at once also a political project.

I share Žižek's enthusiasm in resignation as my sense is that the subject, in their chosen subjectivations, may discern a 'radical choice' in how contingent situations may be interpreted. I would suggest that this 'radical choice' is a kind of creative counterpoint to radical contingency. That is, radical contingency proffers a domain of radical choices. The mediator's role might be to invite parties to "attempt to show/[see] the essential contingency of all universality" (Laclau, 1990:190). It may be that in the act of choosing there is an automatic collapse back into a subjectivity, but this thought of collapse is mitigated if the act of choosing is carried out in a collectivity, and subsequently expressed in practical action. Perhaps in this necessarily social (rather than individual) field, where radical choices about concrete practices may be considered, a poststructuralist inspired ontology of "lack", "negativity" and "undecidability" could bump up against and coexist with a certain corporeality or materiality of critical realism (Bhaskar, 2008). That is to say, what Bhaskar (1989:40) calls "*real* structures, mechanisms and systems of relations at work in nature (and society)" may be glimpsed by parties and mediators, who, from out of conflict, co-determine actions and events. I tend to believe that there is an extra-discursive "general structure of causality" (Bhaskar, 2002:95). It is clear that any such co-determination should be cautious and, on the part of the mediators, tentative in the extreme.

Such a collectivity, in the context of a mediation, suggests a practice in which mediators work in pairs and that they engage in meaning creation with parties, rather than simply and entirely, reflect the parties utterances of 'dis/empowerment' or 'non/recognition'. But also, somewhat paradoxically,

deeper within this notion of radical choice may be found a subjective contemplation of an occasional and temporary selflessness, as opposed to the immediate interpellation and adoption of new subjectivities (persuasions, opinions, positions, dogmas).

Zizek's, exhortation (after Lacan) of 'going through fantasy' is precisely captured by Glynos and Howarth in their delineation of an ethical/ideological dimension of social practices and regimes. For Glynos and Howarth, the 'ethical' is tied up with the "subject's particular *mode* of enjoyment" (Glynos and Howarth, 2007:119) which questions how our subjectivities and consequent beliefs and actions are informed and moulded by our emotional/affective enjoyments or displeasures as we engage in the 'social'. Thus, the ethical dimension of a practice "relates to its constitutive *openness* to the the radical contingency of things," whereas the ideological dimension of practice relates "to a complicity in *concealing* the lack or void at the heart of social relations" (Glynos and Howarth, 2007:197). In the latter there is no attempt to "go through fantasy". I shall use this model of the ethical again in the conclusion.

In much mediation there is an implicit assumption that antagonisms need to be soothed through an attention to practical issues. In this way facilitative mediation addresses itself to the closure of social antagonism. It might be argued that both transformative and narrative mediation go further in seeking to soothe the internal 'negativity' of the subject/antagonist that is made raw by the dislocatory experience of conflict. In doing this its advocates have generated projects aimed at a society wide healing of aggression through a self-disciplinary, reflective practice. The humanistic individualism that supports facilitative, transformative and narrative practices precludes an awareness of the 'radical contingency' of social and political norms and seeks to achieve a fantasy of closure. Hence, the mediator tends to promote a suturing of the bottomless chasm that separates the subject from her/himself and from the Real. Glynos and Howarth term this "a *closure* of subjective identification" (2007:198) in which ideology is reinforced and concealed.

To be able to gain an understanding *that* this occurs and of *how* it happens, it is necessary, as stated above, to consider aspects of mediator subjectivity revealed in the act of mediating. Thus, collection and analysis of 'data' has been

designed to afford consideration of the subjectivities of workplace mediators as evident in the subject positions they adopt or enact and in how these positions may be enmeshed within dominant discourses of the workplace. The ontological basis for this analysis has drawn upon theories of the psyche and in particular upon identity formation that is “triggered by an ordinary ‘lack of identity’” (Critchley and Marchart, 2004:6). However, the actual analysis, necessarily and practically, could not hope to extend into the realms of any kind of psychoanalysis of the participants. It can merely infer broad interpretations of the presenting characteristics of the mediator’s subject positions, displayed by their practice in the role-play data. This is not to deny the underlying “explanatory force” of a Lacanian account of “enjoyment” premised upon “jouissance ... as the absent cause of human desire” (Glynos and Stavrakakis, 2004:209) that I shall consider in a speculative, more generalized fashion in the data interpretation and the conclusion. I shall now elaborate the concept of ‘subject position’ underpinning the following analysis of the mediation role-play data.

3.3.10 Questioning mediator subject positions

In the analysis of discursive subjectivity, Howarth draws a distinction between:

the statement (enonce) and the act of saying or the enunciation (enonciation). This contrast allows us to focus either on what is said or written, in which the ‘subject of the enunciation’ is treated as a finished product through which language speaks, or on the acts of saying or writing, in which the subject is constituted or subverted by the act itself (Howarth, 2005:343).

I would note that this distinction, between ‘what is said’ and the ‘act of saying’ can be an extremely fine one, and the ease with which this distinction may be drawn will, to a degree, depend upon the research context. The ‘statement’ and the ‘act of saying’ may tend to become conflated unless ‘what is said’ subverts an assumed subject position of the sayer. By this I mean that if ‘what is said’ does not conform with the subject position of the sayer, we can turn to the ‘act of saying’ and what the subject is ‘doing in saying’ - namely subverting their own subject position. Where there is no act of subversion, where the ‘act of saying’ and ‘what is said’ are contiguous and the ‘act’ reinforces the constitution of the ‘subject of enunciation’, it becomes helpful to set out a contrasting,

counterfactual scenario, to bring a gaze of contingency to bear upon both 'enonce' and 'enonciation'. This will become clearer when considering a style of mediating in which the enunciative modality corresponds in intent with the 'acts of saying' and the 'doing in saying'. Howarth describes Foucault's naming of an enunciative modality of a discursive formation as:

those conditions and rules that must be satisfied in a given order of discourse for a statement to qualify as meaningful and thus to constitute a candidate for truth or falsity (Howarth, 2005:343).

For example, 'doing in saying' aligns with 'modality' in the case of a directive mediator making interventions that place the party in a subservient position and where the party acquiesces, subserviently, to these interventions. Furthermore, this notion of 'enunciative modality' begs the following questions about the conditions and rules constituting the subject as mediator: what is the authority of the mediator; why do parties submit to this authority; and what is the mediator's expertise?

However, in attempting to address these questions the 'subject position' of mediator remains ambiguous. At least three shades are discernible. Initially the mediator positions her/himself as someone *who helps others in a very detached manner to consider and maybe solve their conflicts themselves*. Mediators are skilled in supporting others in communicating. But this notion then blurs so that mediators may become people *who help others consider and solve conflict*, implying more of a joint effort where the balance of influence is obscure. Lastly, in the eyes of those employing mediators, the mediator's role may (but not always) slide into that of a person *who solves conflicts*. All these different positions are the basis upon which workplace mediators are commissioned by HR. It is assumed that the first shade of mediator 'subject position' is attractive to and accepted by the parties. Mediators then operate within a discourse of mediation (itself internally contradictory as explained above). However, their interventions/statements may then be received by the parties as meaningful, reasonable and even neutral.

We can assume the following situation. In a workplace, a conflict has been identified by HR. It is regarded as a problem i.e. disruptive to productivity, and unpleasant for those involved (this unpleasantness representing a vested

interest that bridges both the discursive and the emotional/corporeal). The HR manager has decided that the conflict may be amenable to resolution via mediation and has proposed this to the parties. The parties have agreed/ 'volunteered' to attend meetings with mediators. As we know mediation is promoted as a way of enabling the parties to resolve their conflict themselves on their own terms. The mediator will remain impartial and non-judgemental. Because of this the parties accord authority to the mediator to manage meetings in which the meeting format and processes of questioning and turn taking are under the mediator's control. The whole exercise is supported and paid for by HR.

Hence, a triangular set of overlapping objectives emerges. We can say that the referrer seeks organizational harmony and productivity, although this may be an oversimplification. The parties objectives may be subtly layered (involving complex attitudes to work and to other colleagues and will depend upon the nature of a particular conflict) but can include those of the referrer. The external mediator sets out to help the parties resolve conflict but also depends for a livelihood upon the referrer. The internal mediator is already an employee of the referring organization. Within this triangular relationship there is much scope for a confusion of objectives, both explicit and implicit, acknowledged and unrecognised.

Turning to the acts of saying or enunciating, Howarth (2005:344) identifies possibilities for the analysis of subjectivity in either the intentions of those uttering statements or "from a more fully fledged poststructuralist perspective, analysis can explore the character of subjectivity itself" (Howarth, 2005:345). Recognising that it is problematic to assume a researcher can deduce others' intentions, Howarth (2005:344) borrows from Skinner (2002) the thought that we can investigate what someone is "doing in saying" and that this requires the researcher "to reconstruct the background conventions and conditions against which the utterances can be interpreted" (Howarth, 2005:344). It has been my aim in the preceding literature review to set out the background and context of workplace mediation in the U.K. so that the analysis and interpretation below is rendered plausible and valid and also so that a counterfactual mediation style, commensurate with the critique I have established, may be justifiably articulated.

The case study below considers workplace mediators in action. But stepping back for a moment I shall very briefly describe the critical “logics” of social and political explanation developed by Glynos and Howarth (2007) in order look at mediation in a more abstract socio/political context. This will then allow me to additionally invoke the insights afforded by Glynos’s and Howarth’s ‘theory of explanation’ as I proceed to address the analysis of my case study at the micro-social level of ‘subject positions’. Glynos and Howarth set out three interrelated logics (rules or grammars that are by definition open-ended or not limiting) covering the ‘social’, the ‘political’ and the ‘fantasmatic’.

Social logics characterise particular patterns of social practice or regime. Problem solving, workplace mediation may be characterised by its individualistic view of the subject, by its espoused values of neutrality, impartiality, confidentiality, voluntariness and how the control of the mediation process is accepted by the parties. It is also set within a logic of hierarchical employment relationships entailing the commodification of labour inside a market economy. Again, I note that these characteristics are internally contradictory.

Political logics examine the dynamic institution and contestation of patterns of social practice. A political logic of mediation could include how HR managers have become commissioners of mediation as an additional tool for the efficient management and control of the workforce, from board members to much lower levels of the hierarchy. Another political logic of workplace mediation could involve the struggle by mediators to live up to the differing and sometimes inconsistent promises they make to commissioners on the one hand and the parties on the other. Transformative mediation may be seen to have arisen as an attempt to resolve some of these inconsistencies. The signifying frame of the purportedly ‘neutral problem-solving’ mediator has thus been questioned by transformative mediators who place an ethic of ‘self-determination’ at the centre of their practice.

As explicated by Glynos and Howarth (2007), if social logics describe patterns of practice (the ‘what’), and political logics examine *how* practices are either maintained or contested, then fantasmatic logics seek to furnish explanations of *why* social practices become sedimented and resistant to political contestation. Thus:

fantasmatic logics provide the means to understand *why* specific practices or regimes 'grip' subjects (Glynos and Howarth, 2007:145).

Mediators may hold to a 'fantastic' narrative that workplace conflict is best resolved by trusting to an ethic of responsible, self-determination by the antagonists and a commensurate belief that mediators are mere facilitators of a naturally emergent harmony, premised upon the humanism of the parties. These are powerful reasons why a mediator comes to identify him/herself with the practice of mediation. A key aspect of the immersion in such a fantasy is the sensation of enjoyment that may be so derived in 'being' such a mediator (Stavrakakis, 2005; Glynos, 2008). If parties emerge from a tense emotionally charged conflict with a relaxed smile, the mediator may take a great sense of pleasure in a job well done, irrespective of what has transpired in the meeting and whether the contingency of any normatively doubtful social practices have been covered over. A counterfactual approach to mediating that yields potential for the opening up of the contingency of social practices is also likely to induce enjoyment for the mediator. This idea is captured by Glynos's comment:

that there is a mode of enjoyment associated with closure and mode of enjoyment associated with openness (Glynos, 2008:291).

However, my concern in this thesis has been to focus upon the internal contradictions of mediation highlighted by the myth of neutrality and how these contradictions are likely to play out; that is to discern their overall impact, in the actual practice of workplace mediation. The case study and the follow up interview/discussion serve to establish the nature of the problematic of workplace mediation practice, thus enabling a contrasting, counterfactual practice to be developed.

In considering mediator subject positions it is important to recognise the mediation meeting as a special type of discussion group. This group typically consists of three or four individuals, being two parties in dispute plus one or two mediators. As a 'group' they may either adopt a critical or uncritical disposition to the situation they contemplate. They may either reflect upon a sense of the radical contingency of their subjectivity and the context of the conflict (however ambitious this may appear) or choose to cover it up. However, the mediation 'group' is formed around an inherent asymmetry. This is because the mediator

is privileged to be included in the group and is detached from the emotional dynamic of conflict experienced by the parties. It is this detachment that affords the mediator space to choose between possible subject positions i.e. s/he can find a sense of a political subjectivity and with humility, tentatively invite the parties to contemplate (if not contest) present norms and power relations, as these emerge from the parties' own expressions of difference and antagonism. The choices s/he makes may then impact upon the parties in the choices they make, in the context of their conflictual situation and on whether these choices come to be viewed as, paradoxically, radically undecidable and therefore necessarily/ultimately resolved by power relations (Glynos and Howarth, 2007). My study observes mediators moving between roles, from reflective listener to detached 'neutral' observer, to challenging interlocutor, and to directive intervener, dependent upon how they use (enonciation) or are used as (enonce) conduits of power.

Thus, I shall consider both the position of the 'enunciating subject', buoyed up by the discursive formation, and 'what is said' by this subject, either in the support or subversion of dominant discourses. This will enable me to ask if there is a contradiction between the purported subject-positions of the workplace mediators studied and the apparent subject-positions implied by the act of saying; by what is said and how it is said. This will yield a sense of the character of the subjectivity of the workplace mediators studied, as well as a sense of how their identification unfolds as they consider the conflict with the parties. It may be possible to see links between a problem-solving approach to mediation and what Glynos and Howarth (2007) term the sedimented practices and regimes (their contestable origins being lost to memory) that typify an HRM concept of the workplace. This can then be contrasted with the counterfactual alternative of an explorative mediation style that has been constructed via the theoretical critique so far deployed above. In this way I believe it may be possible to engender a constructive friction between theorising on the one hand and the analysis of practice on the other. To bring the above theorising to life I have used a method based upon a case study that I shall elaborate and justify in the next section on methodology.

3.4 Recap of Part 3

In this Part I have briefly examined a theoretical literature about the agency of labour in the workplace to arrive at a persuasive poststructuralist account of the precarious character of subjectivity. This has led me to a preliminary explanation that a combination of the inevitable and the unacknowledged influence of the mediator is likely to bend mediation activity to the service of the employer and possibly to the disadvantage of the employee. I have therefore reformulated my overarching research question as being to understand in what way workplace mediator influence may become aligned with organisational needs above those of employees. If this is understood it may be possible to generate an alternative practice further articulating the counterfactual approach already generated by the above critique and built upon this same poststructuralist understanding of 'subjectivity'.

I have sought to explain and defend the assumptions that support this view of 'subjectivity' that rests upon a Lacanian concept of ontological 'lack' and a sense of the radical contingency of the formation of objects and identities in the social domain. I have drawn upon a literature that shows how a recognition of this contingency may be conceived as both a political and an ethical endeavour. It is political because it reveals the arbitrary and oppressive nature of social practices within which identities are fixed. These identities and subjectivities are then regenerative of the same oppressive social practices. It is ethical in that it questions identities and subjectivities thus formed in, and sustained by, social practices and ideologies. An emotionally disturbing invitation to puncture fantasy may be developed, entailing an invitation to learn about our subjectivity that is disruptive of feelings of identity (Vince, 1996; Gabriel, 1999; Simpson et al, 2000). This ethical stance also found echoes and support from interpretations of Levinas's notion of 'infinite responsibility'; albeit from a different ontological premise. However, from this defence of a concept of 'lack', a frame for analysis has unfolded from which the following case study can enable an interpretation of the discursive 'subject positions' of the workplace mediators. I shall next explain and justify my overall study methodology and consider whether my findings may form the basis for any plausible generalizations.

PART 4: METHODOLOGY

4.1 Introduction

The mainstream style of facilitative, problem-solving mediation practice has been adopted as a tool by the 'humanistic' school of HR management, a school that is more 'theory Y' than 'theory X' (McGregor, 1960 cited in Knights and Willmott, 2007:273). This adoption has proved attractive in large part due to the neutral role that is asserted by mediation practitioners. Thus, HR management proffers staff an opportunity to self-manage their conflict without apparent organizational interference. However, the above review of the literature shows that this purported discourse of neutrality does not seem to hold up to scrutiny. All mediators, in different ways, act as managers of conversations between people in conflict. Their influence might be expected to vary according to the style of intervention practised, although, as noted above, there is only one broad mainstream style of mediation prevalent in the UK workplace, being what I have termed 'facilitative/ problem-solving'.

The beliefs of the parties, the mediators and the organizational commissioners 'naturally' converge around a shared perception that mediation can be used unproblematically to resolve interpersonal workplace disputes. This view of mediation, born of the assumption of neutrality, coincides with an apolitical conception of the workplace. Furthermore, if mediation does resolve conflict, it is deemed natural and unremarkable that the organization will benefit.

However, when considering all the players involved in workplace mediation a triangle of both divergent and overlapping objectives may be discerned. It is assumed that the parties seek to resolve their conflict and it is usual that their conflict is enmeshed with their workplace role and function. Within this the parties may have very different conceptions about the purpose and function of the organization or their part of it, based to an extent upon their own identification with their work. At a general level there is, of course, pressure upon them to work harmoniously with colleagues in order to sustain their employment and earnings. The organization tends to concern itself with the restoration of good working relationships for instrumental reasons of productivity. The mediator

espouses a concern to support the needs of the parties. This espoused concern may take primacy over organizational concerns or may be held to be equal with, but separate from, a duty to the organizational commissioner, from whom payment is received.

In the following case study of a mediation it is the manager's demands that finally prevail in accordance with a dominant organizational discourse of accountability. The shape and nature of this conflict was an accident of the improvised creation of the role-play story. The role-play parties hold very different perceptions of the organization's and their own purpose and function and invest these perceptions in their sense of their work identities. The mediators have responded to this situation in a particular way, documented below. A different interpretation of mediator behaviour than the one I have arrived at could possibly arise where parties may hold largely common views of the function of the organization or department but, for other reasons, still find themselves in conflict. In this latter case the aims of the mediator and the needs of the parties and the organizational commissioner may come into a closer alignment. However, notwithstanding the possible permutations of conflict situation and the complexity of psychological and psychoanalytic tensions and desires within workplace relationships, the workplace represents a site of hierarchical power within which labour is sold and livelihoods are maintained.

As I myself entered this field, I wondered if mediation, being other than neutral, would on many occasions become insidiously harnessed to the needs of the organization and therefore vulnerable to a form of colonization by HR? That is to say, would mediation, by serving the interests of the organization actually *displace* those of the parties, under the guise of a service that is provided primarily for the benefit of the parties? I therefore set out to investigate how mediators as agents are positioned or position themselves by their spoken interventions. I sought to examine in what way the subject positions of purportedly 'neutral' workplace mediators tend to influence or constrain the parties to the mediation. By tracing how such assumed forms of influence may manifest themselves, it may be possible to consider how an alternative practice might resist any tendencies vulnerable to colonization.

Therefore, the central aspect of mediator activity I have focused upon has been

the use of language, imbued with power, in the engagement with disputants. More simply put, what do workplace mediators do, what subject positions do they inhabit when they speak and what might they otherwise do? This focus on the mediator's spoken interventions, the practical constraints in addressing my research subject and my underlying philosophical assumptions have necessarily conditioned my overall approach to carrying out this study.

4.2 A qualification of my research ontology

My inquiry has been something of a voyage of discovery on several levels. I started with instinctive doubts about the professed neutrality of mediation on the one hand, but saw great value in its ethic of self or co-determination on the other. I also felt the paramount aim of supporting the potential emergence of dialogue to be worthwhile, however 'fantastic' this desire may prove to be. I set about exploring various literatures being those of critical management studies; HRM; discourse analysis; mediation, of course, and the legislative review of employment dispute resolution.

Within the field of workplace mediation in the UK there appears a reluctance to self-critically examine mediation practice. Perhaps unsurprisingly this tendency aligns with a similarly uncritical approach within mainstream regimes of management and organization. (A tautology, perhaps, as to criticise is to step back from the mainstream.) My personal, political disposition leads me to a critical view of organizations. Organizations are sites of hierarchy and authority and usually not very egalitarian. The political and the emotional is often silenced (Vince, 1996). We may regard ourselves, being economic agents, as in some ways imprisoned by organizations. This may apply in different ways at all levels of an organizational hierarchy. Thus, I tend to regard organizations as sites of varying degrees of oppression arising in part, but not solely, from the prevalent capitalist relations of production in our mixed market economy (Clegg et al, 2006). However, as argued above, this is not to over generalize or to adopt a more black and white Marxist interpretation of the agency of owners, managers and workers/employees. On the contrary, the preceding use of a broadly poststructuralist view of organizations affords an opportunity to gain insight into the subtle and contradictory motivations workplace mediators may experience as they practise and simultaneously aspire to an overt stance of neutrality and

impartiality. This is not to forget that:

[w]hile people produce organizations, all people are not equal in their ability to produce or reproduce organizations that fulfil their interests (Deetz, 1992b:24).

Turning to the 'subjects' who comprise our contemporary organizations, I, like Gray (2002) and many others, intellectually accept the concept of essential, and individual identity to be an illusion. Resting heavily upon the work of Glynos and Howarth (2007), Howarth (2005 and 2000) and Torfing (1999), themselves building upon poststructuralist and post-Marxist theories (of Laclau in particular), I have assumed that, to a significant degree, our identities and subjectivities are discursively formed into multiple 'subject positions' in which:

the subject is not simply *determined* by structure; nor, however, does it *constitute* the structure (Howarth, 2000:109).

Howarth (2000:109) describes a kind of ebb and flow in which social identities are stabilized but also ever vulnerable to destabilization in times of political crisis and *dislocation*. When a 'political subjectivity' is activated a 're-identification' may ensue. This process may seem arbitrary, is contingent, but need not be viewed deterministically; that is, a sense of the creativity of the agent may be retained. It is the contingent presence of an antagonism seemingly socially immanent and yet paradoxically formed of a constitutive outside that entails a necessary creativity of social actors.

Fairclough also argues for a form of creativity but one not rooted in radical contingency:

Social subjects are constrained to operate within the subject positions set up within discourse types, ... but it is only through being so constrained that they are made able to act as social agents. ... Social agents are active and *creative* (Fairclough, 2001:32).

This form of creativity is found in:

the activity of combining [discourse types] in ways that meet the ever-changing demands and contradictions of *real* social situations (Fairclough, 2001:32, italics added).

Hence, Fairclough's idea of creativity derives from a belief in a form of critical reality:

which claims that social relations and 'objects' (e.g. economic systems, states, practices of management or governance) have a materiality which is not conditional upon the fact or the nature of human knowledge about them, but that they are nevertheless socially constructed, ... and that discourse contributes to their construction (Fairclough, 2006:12).

This belief in an external, objective materiality limits Fairclough's concept of creativity as it appears to operate within a contained system, albeit with an implicit appeal to an idealised alternative. By contrast Laclau conjures a more far reaching sense of creativity. As Laclau explains:

With antagonism, denial does not originate from the 'inside' of identity itself but, in its most radical sense, *from outside*; it is thus a pure facticity which cannot be referred back to any underlying rationality (Laclau, 1990:17).

(Note that Laclau does make a reference back to an underlying irrationality, from *inside, being that of 'affect'* -as described in Section 3.3.7 above.) While a creative response, that mobilises a Laclauian political subjectivity, is somehow limited to the contestation of discursive domains (of meaningful social configurations), the sources of this challenge are not finite as they arise from a radical negativity of the subject, from the *outside* of identity. This ontology would appear to reject any form of fatalistic, determinism that more relativistic forms of poststructuralism are accused of.

I find Laclau's materialism more convincing than Fairclough's version of critical reality and yet I am drawn to an aspect of realism that rests within our individual physicality. In both Fairclough's critical realism and Laclau's materialism, creativity occurs as a form of interaction between nameless agents and events. Laclau's agents sometimes seem to be mere chess pieces more ossified than sedimented until cataclysmic events force an alteration of the 'rules of the game'. I am concerned to dwell a moment upon this agency. Glover asserts that our (i.e. we agents') "reactive attitudes ... are at the heart of our interwoven

emotional lives” (Glover, 1991:191). Glover (1991) finds the possibility for self-creation in our reactive responses to ourselves and others and traces the sources of our reactive attitudes to an “interaction between earlier social influences and [our] genetic make up” (Glover, 1991:191). I have argued above that our sense of identity is illusory but this does not preclude a human ability for self-creation. This ability for self-creation is reflected in Howarth’s (2000) descriptions of interpellative identification but Glover touches upon a possible ‘realistic’ element of such subjective identification. Hoggett also recognizes this inclination towards realism in his assertion of “the ultimate irreducibility of the individual to the social context” (Hoggett, 1992:138). Echoing Glover, Hoggett exhorts us to recognize that “the ‘naturalness’ of humanity resides in its corporeality” and that “[w]e are born into a period of extended helplessness, we live and then we die” (Hoggett, 1992:138). This reminds me of the cliché that we live socially but die alone. Whilst there is no ‘I’, and identity is found to be illusory, there is yet a phylogenetic corporeality of the ‘me’. Levinas (1966) describes “THE ME” as “the origin of the phenomenon of identity” but explains that this identity of Me is not “the permanence of an unalterable quality” (Levinas, 1966:34). Levinas (1966) finds the source of ethics, before ontology, at the fleeting place of this primordial ‘Me’. Levinas’s phenomenology of ethical responsibility (1966; 2008a; 2008b) contains an idealism that is less visible in other writers who also decentre identity. He argues that:

The responsibility which empties the self of its imperialism and egoism - even the egoism of salvation - does not transform the self into a moment in the universal order. It confirms it in its selfhood, in its function of supporting the universe (Levinas, 1966:41).

Gray (2002) argues differently that morality is a cultural construction overlaid upon an animal sensibility but even Gray, albeit dismissively, recognizes our “fugitive empathy with other living things that is the ultimate source of ethics” (Gray, 2002:112). For Glynos an ethics, disclaiming idealism, is materially found in the actions of agents who seek to escape capture from ideology, pursuing a “fidelity to contingency” (Glynos, 2008:291). This fidelity demands a recognition of ‘affect’ and ‘fantasy’ that structures our senses of enjoyment and pain.

An idea of ‘self’ emerges from these differing philosophical threads in which selfhood is a source of creativity in both action and in its very ‘self’-creation but it

is also a selfhood formed of a socially constructed identity in which subjectivities are held and contested within discourse. It is also an ethical 'self' that daily desires to discover 'better' ways of 'being', with ourselves and with others. Upon this philosophical understanding of identity, subjectivity and action, of both mediators and parties, I have drawn my critique of workplace, mediation practice and also sought to extrapolate a plausible, alternative mode of intervention. Thus, I have looked critically at what practitioners do, in order to fathom *how* a different mode of practice might enable creative agents/mediators to minimize their influence on the one hand, but still knowingly bring their own political, ethical and subjective sensitivity to bear on the other.

4.3 Research design

My research design has necessarily emerged from certain practical constraints which I will now describe. Given the impossibility of the workplace mediator as a purely neutral agent, I set out to assess the ways in which mediators depart from a neutral disposition. Ideally I required recordings of actual mediation sessions to inquire into such departures. To obtain data I first considered carrying out a wider ethnographic study of an organization that operated an in-house mediation service, but ultimately was unable to find a collaborating organization for this approach. Over a period of two years I contacted seventeen potential research participant organizations from the public and private sectors and finally held face to face meetings with representatives of eight of them. Appendix 1 gives a list of these organizations. Other 'networking' activities in the search for a research site included: placing an advert in a regional Chartered Institute of Personnel Newsletter; attending two mediation training courses; attending a workplace mediation conference; and meeting a director of a prominent mediation service provider following his delivery of a lecture about his work.

Some of my approaches seem to have been rejected because of a fear of being observed. However, one of the public sector organizations welcomed my research initiative and gave me access to their in-house mediators. I held co-operative interviews (Rapley, 2004) with two of the mediators, who had carried out recent mediations. These interviewees were initially surprised at my suggestions that mediators are not neutral and that it would be interesting to study the language they use to evaluate mediator directiveness. However, they

were willing to seek consent from future parties to mediations to have their meetings recorded for research. It may have been unlikely that consent would have been forthcoming given issues of identity, power and high emotion that surround mediation meetings. As it turned out, no such opportunities arose, to even seek consent, in the following twelve months.

During my trawl for research participants I concluded that it would have proved impractical to carry out an ethnographic study. On a basic level, the organization that opened its doors in a spirit of inquiry was not actually very active in its use of mediation services. Had there been more activity, it would still have been of an occasional and sporadic nature not suited to the presence of an external observer. I also started to feel a sense of ethnographer as 'spy' rather than research collaborator. Although, one other organization I met with was in the early phases of establishing an in-house service and the role of consultant/ethnographic observer could have been more feasible. However, this organization's 'gatekeeper' was too sensitive to the presence of an outsider. Her understanding of mediation as a confidential practice and her belief in the in-house mediators' radical neutrality was presented to me as politically sensitive, especially for an incipient service. As a result my research proposals were rejected. Had this particular research approach come to fruition it would have been very interesting to contextualise the practice of mediation inside one organizational culture. However my main concern has, a little differently, been to explore the directiveness of workplace mediation styles on a more general level.

It became apparent that I would not be able to access actual mediation material at this juncture. As I could not obtain data of actual mediations I began to consider an alternative approach that could possibly yield some advantage over 'live' audio data. This was to set up mediation role-plays which could be recorded by video and thus furnish visual, as well as aural access to facilitate both analysis and verification of validity. Role-play mediation is very commonly used in a training context. I felt that if role-plays were carefully set up they could afford a valid substitute for the 'real thing'.

I gained agreement from two major mediation service providers to support me in setting up a role-play exercise. The first organization, agreed to both host the role-play and to seek volunteers from amongst its ranks to participate. The

second put me in contact with one of their associate mediators known to practice in the transformative style. I recruited two 'actors' to play the parties to the dispute.

My overall design entailed recording two role-plays using the same dispute scenario. The first role-play involved a pair of mainstream, facilitative mediators working as a team. The second was a mediation conducted by the singleton mediator in the transformative style. Following the initial analysis of the role-play data I returned to the participants to discuss my main findings, in the form of a minimally structured, co-operative group interview/discussion (Rapley, 2004; Mason, 2003). Thus, my inquiry has followed the format of a comparative case study (Creswell, 1998) in which the spoken interventions from two different mediation styles have been recorded for analysis and interpretation. I have then taken my interpretations back to the research participants for discussion. I have finally carried out an analysis of what happened in this discussion.

In parallel with this research process I have practised as a mediator in both community and workplace settings. This practical activity has informed the development of the theoretical assessments presented in the literature review and in the analysis of the role-plays. My instinctual and emotional reactions as I work to implement the counterfactual style have influenced the writing of this thesis. Cycling between theory and practice and between analysis, interpretation and participant discussion, has allowed a movement to and fro between the contexts of discovery and justification (Glynos and Howarth, 2007). This retroductive circle has generated a reformulation of the problematic of workplace mediation. The initial problem of spoken interventions made under a pretence of neutrality and party self-determination has translated into a recognition of the problematical subject position that workplace mediators knowingly or unwittingly incarnate. That this embodiment of a powerful subject position is often unwitting has led to a consideration of the objectives of workplace mediation from the different perspectives of the principal actors: party; mediator; and commissioner. Distinguishing between these three has enabled a closer scrutiny of the perspective under study, that of the mediator. The mediator is enveloped in a discursive process but a redefinition of her/his objectives might allow scope for a partial return to an ethic, seemingly elusive, in which the parties' needs are more emphatically put first. In other words, the subject position of the workplace

mediator could be deliberately redefined so that the mediator may attempt an escape from becoming subsumed within an oppressive managerial discourse.

Hence, this research design, which brought a strong element of pre-study theorising, has allowed for proto-explanations to be kept under review so that deeper interpretations could emerge as the study has progressed.

4.4 Research epistemology

This comparative case study of discursive subject positions of mediators does not lend itself to any form of scientific, positivistic and quantitative research method. However, my approach is, to an extent, contiguous with patterns of much quantitative research. Stanley and Wise (1983) explain that traditional scientific research encompasses three stages: choosing a topic and formulating hypotheses; carrying out the research and obtaining results; interpreting the results. If I substitute the term 'develop a propositional statement' for 'formulating hypotheses', my own studies have to an extent proceeded in this vein. Thus, despite the interpretative use of ideas from discourse theory (Torring, 1999; Howarth, 2000 & 2005; Glynos and Howarth, 2007; Glynos, 2008) and from critical discourse analysis (Fairclough, 2001 & 2006), I find myself partly conditioned by a post-positivistic mindset¹⁸. This I would describe as an approach that bestrides both an acceptance that the social researcher as observer, to a degree, co-constructs data with participants in the act of collecting data, and yet seeks to generate meaning, if not truths, through application of traditional research stages critiqued by Stanley and Wise. Nevertheless, in laying out my study I have also sought to partially embrace the cyclical, retroductive research practice, advocated by Glynos and Howarth (2007), in which a problem is posited and investigated, explanations are sought and examined and persuasively deployed, leading to a probable revision of the problem and further rounds of investigation, explanation and persuasion. In this way the "context of discovery" and the "context of justification" are iteratively merged (Glynos and Howarth, 2005:33).

¹⁸ The term 'post-positivist' is used here to indicate that observers are not detached and objective. This term is used differently by Glynos and Howarth (2007) to encompass a particular rich and rigorous social science that they fully articulate.

Thus, I have traced how contemporary, mainstream workplace mediation has emerged from a 1970s, community movement with earlier roots in radical Quaker meeting practices. From these origins workplace mediation has retained a problematical discourse of 'neutrality' and self-determination. In the 1980s and 90s this discourse of mediator 'neutrality' was (and still is) subject to contestation by the rival school of Transformative Mediation practice. I therefore set out to "reactivate" (Glynos and Howarth, 2007) both this problem of 'neutrality' and the solution to it afforded by transformative mediation, noting that mediation was conceived as an intervention in search of a problem to be solved.

Accepting the premises of discourse theory (Torfing, 1999; Howarth, 2000), I was concerned to obtain an insight into the role and influence of workplace mediators. I also wondered whether any such influence would be mitigated with the application of transformative methods. As noted above, I set up a comparative case study of both types of mediator practice. I have attempted a partial "deconstruction" (Glynos and Howarth, 2007) of mainstream and transformative mediation practice by considering how their common, theoretical, supporting humanist assumptions impact upon their practical application. I have then sought to develop a counterfactual practice "commensurate" (Glynos and Howarth, 2007) with the ontological basis of my critique,

The findings from the case study, analysed below, led to a particular discursive interpretation of the behaviour of the mainstream mediators and some less straightforward interpretations about transformative practice. These interpretations did not wholly meet with ready acceptance in subsequent discussions with the case study participants. This has led to reconsideration of the problematic process that is workplace mediation and the further development and "articulation" (Glynos and Howarth, 2007) of an alternative approach to practice. This alternative mode seems to suggest that workplace mediators should not claim to support parties to resolve conflict/find their own solutions but instead limit themselves to supporting parties in exploring their conflict. From this subtle yet significant distinction, the need for more research, beyond the scope of this study, emerges. (I have briefly suggested some areas for further research in Appendix 3.) It might be assumed that the dominant workplace mediation discourse would be resistant to a dilution of mediation's public ambition. Some insight into the nuances of such resistance have been

gleaned from discussion with the research participants. Further, insight into this question could be gained from a more rigorous archaeological and genealogical examination of contemporary mediation's antecedents.

Accordingly, Howarth explains that one goal of:

discursive social inquiry is to discover the historically specific rules and conventions that structure the production of meaning in a particular social context. [and to] provide new interpretations of social practices by situating their meanings in broader historical and structural contexts (Howarth, 2000:11-12).

However, it is beyond the scope of this present study to excavate the social histories of a variety of conflict situations and to question why such conflicts needed to be resolved and who wanted them resolved, in order to assess alternative conflict resolution models that may have been covered over.

My own project, for practical reasons, is necessarily more modest than this, involving a simple tracing of the uncritical importation of the community mediation model into the workplace. From this vantage point, my concern is to understand the practice of contemporary workplace mediation, through the subject positions mediators inhabit, evident in the language they use, in the context of the workplace organization found in the U.K. capitalist, mixed market economy. This context is taken as somewhat fixed or stable in the short term, yet, of course, open to contestation, including in small ways, by the engagement represented by this very study. Thus, my inquiry aims to move beyond the interpretation of meaning towards 'contestation' by a consideration of some limited aspects of social justice that may be supported or undermined by the actions of workplace mediators. So I will seek to generate a theory, with a small "t", rendered plausible and understandable, for others to accept or refute, whilst acknowledging the limitations of drawing any more widely generalized lessons.

Easton (2000) suggests that, while many positivists deny the possibility of generalization from qualitative research:

if one accepts a realist view, one case is enough to generalise: not generalising to any population but to a real world that has been uncovered (Easton, 2000:214).

Easton may be advancing a view of a philosophy of science as a direct analogue for a study of the social that goes beyond Bhaskar's (1998) claims for a method of explanatory critique, whereas any 'real world' from this perspective is not so much uncovered as groped for. Easton goes on to observe that constructionists would reject the assertion of generalizability, regarding a case study as merely "an interesting way of producing text to analyse" (Easton, 2001:215). Whilst disagreeing he nevertheless accepts the value of interpreting both text and its production to uncover meaning. In this stance he is more in agreement with poststructuralists who reject critical reality but instead argue that research may be justified and, if exemplary, generalized by the:

[p]roduction of persuasive narratives that better explain problematized phenomena (Glynos and Howarth, 2007:191).

My ontological preferences are indicated above. These preferences may lead to blind spots in my interpretations of the data. However, in taking my findings back to my participants for discussion and evaluation, as a retroductive round of research, it may also be possible to detect biases in my analysis resulting from my own ontological preferences. Thus, to a limited degree, I have sought to "negotiate the analysis" (Parker, 2009:14) with the participants. This is, in part, an attempt to reinforce a reflexive self awareness of myself 'as a knowledge producer' (Macdonald et al, 2002:141). Parker views such attempts as at risk of a psychologization of reflexivity (Parker, 2009:13) in which aspects of the 'psychological' and 'psychoanalytic' might assume an importance above the 'social'. In keeping with Parker's warning I feel I have avoided this potential pitfall, as I have also attempted to map my own political, theoretical and institutional standpoint in relation to my material (Parker, 2009:13), in particular through the critical deployment of a counterfactual mediation method.

To be sensitive to one's own bias, both reflexively and in relation to others (by tabling a critique for discussion with subjects of that critique), is not easy, as is explained by Belsey as she comments that:

[t]o challenge familiar assumptions and familiar values in a discourse which, in order to be easily readable, is compelled to reproduce these assumptions and values, is an impossibility. New concepts, new theories, necessitate new unfamiliar and therefore initially difficult

discourses (Belsey, 1996:4-5).

New interpretations might seem to represent a discontinuity and, paradoxically, may appear obvious to some, yet still meet with doubt and even ridicule. The researcher may experience the pull and persuasiveness of the old familiar values. In resisting these old values, my study, whilst it may not presume to unearth a certainty of generalization about workplace mediation practice, can further a critique of and an engagement with mainstream practice and, at least, introduce the possibility of a new discourse about mediation. As a claim to knowledge this is to accept the continuity implied in Bhaskar's view that, "knowledge is a social product, produced by means of antecedent social products" (Bhaskar, 2008:16).

4.5 Critique of role-play data

The principal question to consider is whether the mediators would have behaved the same as in a real mediation. It has been established that:

role-playing is a commonly used tool ...for learning about ...behavior .. in organizations (Greenberg and Eskew, 1993:238).

Greenberg and Eskew (1993:224) also remind us of Zimbardo's famous study of a prison simulation, in which students played the roles of guards and prisoners, which indicates the value of role-play and its close approximation to a realism in that valid, 'natural' research data may be obtained. Milgram's experiments (cited by Wray Bliss, 2007:527) about the capacity of volunteers to submit to authority whatever the outcome, also raise interesting questions about role-play. The volunteers were playing a 'part' but the realism of this experiment's findings is shocking. Zimbardo's and Milgram's work blur the distinction between role-play and 'real play' and begs the question behind the work of Goffman (1972); are we not always engaged in a role-play?

I feel there are several reasons why it can be asserted that the role-play behaviour of the mediators and disputants in my study was realistic and therefore valid for analysis. Greenberg and Eskew (1993) identify three dimensions for assessing the validity of role-play data. The first is the subject's

level of involvement. The video I made and therefore the text presented below resonate with a high level of involvement. Greenberg and Eskew (1993) note that:

Highly active role-playing studies analyzing complex behaviors in realistic settings are essentially *simulations* (Greenberg and Eskew, 1993:227).

They equate simulations with higher levels of involvement by the participants which yield 'realistic' data. The emotional content of the role-plays was prominent throughout as would be the case in an actual mediation.

Greenberg and Eskew (1993) secondly examine the role being played. All the mediator role-players were experienced practising workplace mediators. The 'facilitative' mediators were self selected by virtue of their interest in my research. Their employing organization invited volunteers using the information in Appendix 2. The 'transformative' mediator is also an associate workplace mediator for another major service provider. She usually practices 'facilitative' workplace mediation and 'transformative' community mediation. All these mediators work as trainers of mediators. Thus, they played themselves in a familiar role (Greenberg and Eskew, 1993:229). The people I asked to play the disputants were also well qualified in their roles. One of them is actually a manager of an advice bureau, so her role was identical. She deals regularly with the funding agency referenced in the role-play. The other 'actor' is a trustee of a different advice bureau. In an earlier working life he had direct experience of the scenario we created where bureaucratic pressures detract from the 'real job'. The conflict story was created by the 'actors' to be deliberately close to their actual experience. Thus, they both played out familiar roles and were able to easily improvise in the mediation sessions.

The third dimension Greenberg and Eskew (1993) explain is:

the degree to which subjects are free to improvise their reactions to the role-playing by responding in a free and spontaneous manner (Greenberg and Eskew, 1993:231).

Within the parameters of the conflictual 'story' the disputants created, the role-

play followed the course of a mediation meeting. The conflict story was presciently topical and realistic. The role-play was carried out in December 2007 and the global 'credit crunch' of 2008 led to radio news reports that debt advisors in Citizens Advice Bureaux were meeting with unprecedented levels of demand for their services. The mediators then went about their work as in any other mediation session they encounter. The focus of my attention is upon the mediators spoken interventions and their interactions with the parties. They had complete freedom to play out their roles. As Greenberg and Eskew (1993) note:

by studying a broader, less restrictive set of behaviors, researchers may be assured that the behavior of interest is expressed as part of a more natural collection of responses. A benefit of this is that the behaviors of interest may be more valid representations of responses outside the research setting (Greenberg and Eskew, 1993:232).

They therefore recommend allowing subjects to respond "in a non-restrictive open manner" to "capture the richness of behaviors in real life settings" (Greenberg and Eskew, 1993: 236). They even go so far as to suggest that where there is a high level of familiarity with role it is possible to "make a strong case for the generalizability of ...findings" (Greenberg and Eskew, 1993: 235).

It is worth noting that the second role-play I carried out with a transformative mediator is a relatively rare practice in the UK and may be unique. It is only in the U.S. that I know of any routine transformative workplace mediation practice occurring. My email communication with those at the academic/practitioner heart of transformative practice, showed there to be no actual workplace mediation data available. Notwithstanding this, there are two obvious points of potential weaknesses in the role-play I have captured. The most significant is the ability of the disputants to act out their conflict realistically. This can never equal the behaviour of real disputing parties, if only because in 'real life' parties bring an intimate and often long-standing history of animosity to mediation meetings.

However, in mitigation, the political and philosophical differences expressed in this role-play were again 'real' and 'familiar' for the 'actors' and in addition one of them was effectively playing herself as manager. This weakness on the part of actors' abilities to play out and necessarily improvise a story of conflict is revealed by the timescale of the role-play. The role-play first visits conducted by

the facilitative mediators lasted for a total of approximately 40 minutes and the joint meeting lasted for 53 minutes. The role-play first visits conducted by the transformative mediator lasted for a couple of minutes only and the joint meeting ran for 1 hour 16 minutes. A typical 'real' mediation can last around, at least, 1.5 -2.5 hours. However, as simulations, it may be argued that the role-plays were quite extensive, thereby capturing very valid data of experienced, practising mediators' behaviours in a setting that was virtually 'real'. That is, the 'actors' created a sufficiently powerful semblance of realism to extract responses from real mediators that were highly consonant with their routine working practice.

The second potential weakness was in the staging of the comparative sessions. In discussion with the actors I decided to use the same conflict story for both the facilitative and the transformative mediations. This meant that by the afternoon session, the actors may have been tired of improvising the same story for the mediator. In fact, this did not seem a problem. In part, due to the style of the second mediator, the afternoon session ran on much longer than the morning session. It was practically necessary to make the recordings in one day and playing out the roles for both styles of mediator in one day did ensure consistency within the scope for improvisation around the dispute scenario. The alternative of creating a second conflict scenario could have been differently, but equally, taxing for the actors and would have undermined my options for drawing out analytic comparisons between the two styles of mediation.

As noted above, using role-play data did actually yield an advantage over data from actual mediation meetings. That is that I was able to use video and not just audio, to which I would have been most likely restricted if I could have gained access to such sessions. The visual image enables much greater accuracy of interpretation than just listening to audio or reading transcripts. It is much more alive, affording a 'realism' that would be lost with audio data. Given all of the above considerations, I believe it can be justifiably claimed that the use of role-play data does admit a reasonable and valid claim to knowledge. The video recordings have been included with this thesis in support of this claim.

Following an analysis and interpretation of the video material I met with the participating mediators to discuss my findings and seek their responses. When I did this I asked the participants to tell me whether they thought the role-play

was a realistic exercise. The second mediator (SM) responded saying that after quite a short time into the role-play she felt “this does feel real”. The first mediator (FM) then said “yeah I think that’s right you start off feeling this is a bit artificial but once you get going you sort of almost forget that the parties aren’t real and they get into role as well and they begin to feel themselves you know the emotions start to come out I think that’s when it starts to feel real”. The transformative mediator (TM) then said “ in any role-play whatever reactions or behaviours the parties show could happen in in real life”.

4.6 Selecting a sample and the plausibility of explanation

My study is centred upon just three practising mediators. As such I am clearly in the realm of qualitative research. As Berg notes, such research:

refers to the meanings, concepts, definitions, characteristics, metaphors, symbols, and descriptions of things (Berg, 2004:3).

Yet social researchers still seem to live in the shadow of knowledge that is empirical, quantitative, and testable. For this reason I feel it necessary to reflect briefly upon the adequacy of a small sample size. In the literature review I have made a strong case that mediators wield influence. One of my two central propositions is that this influence can be understood from the perspective of “discourse”. The other is that the transformative style of mediation affords an opportunity to attempt to reveal such discursive influence¹⁹. Thus, this research aims to critically test out these propositions. As noted above, I have set up two comparative role-play exercises with what might be termed typically representative mainstream workplace mediators and another who works both in the mainstream and is also practised in the transformative style. (This latter mediator is a rarity on this side of the Atlantic.) Furthermore, in a critical search for meaning I held a discussion about my analytical interpretations with my research participants. Via such a collaborative engagement, I hope that my own “reflexivity about how the research is conducted and what interpretations are made” (Macdonald et al, 2002:144) will be enabled. My quest is more for understanding to inform both my own and others’ practice development than to discover facts or generalizations. As Macdonald et al argue that:

¹⁹ The transformative style enables awareness of influencing assumptions and evaluations which provides a potential key to discursive meaning.

Those looking to generalize a set of behaviours ... will find little satisfaction in an interpretive perspective (Macdonald et al, 2002:139).

Nevertheless, Macdonald et al also assert that interpretive research can give valid insights into peoples' experiences and contribute towards developing a body of knowledge, based upon multiple truths that are socially constructed. This assertion is close to the view of Glynos and Howarth (2007:191) cited above that generalization may be accepted if problematized phenomena are persuasively explained.

Even without seeking to make generalizations I feel that valid insight relies to some extent upon the subjects of my study being representative of a class of mediation practice. The data as presented below is highly consistent with both my own experience as a community and workplace mediator and also with the body of criticism presented above in the literature review. In addition, my sample can be seen as representative of much mediation practice given that it was drawn at random from two major UK dispute resolution and mediation service provider organizations. In my search for research participants I was fortunate in coming into contact with three experienced senior mediators/trainers interested in both theory and practice who were open to the prospect of critical inquiry. Without their support I would not have been able to collect my data.

It is interesting to note that all three, self selected, participant mediators are women. Whether the role of mediator can entrap one in an oppressive practice or liberate one in a practice that should resonate with values of nurturing might be considered for further research. My own project is aimed at looking at power in mediation in a way that is not gender specific. This subject of the patriarchal hegemony of mediation has been taken up in the context of divorce mediation by Bottomley (1984). Bottomley's work pointed towards a necessary critique of the positioning and influence of the mediator that I am now undertaking within workplace mediation.

4.7 Approach to analysis of the role-play data

At the outset of this research my intuitive and experiential concern was that

workplace mediators seemed to believe their spoken interventions were in some way neutral and impartial but that in practice this would not and could not be the case. In approaching my data I therefore set out to discern any tendencies in the mediators' spoken interventions to influence the parties and hence to exercise hidden or overt power. Assuming that I would be able to detect such tendencies I sought to understand the nature of this influence and to discover whether it appeared to be conditioned by the organizational setting. Thus, I have concentrated upon what the mediators were 'doing' to the parties when they spoke and what could be interpreted about the mediator's comparative, enacted role, versus their espoused role, on the basis of the power displayed in their interventions. I further sought to use these interpretations to develop a counterfactual mediation style that could enable an ethical awareness of mediator power.

Given the limits of a case study and the political perspective I have adopted, I put aside other possible approaches, such as a fine grained template analysis of key words or rhetorical speech, that could usefully be applied by using aspects of a discursive psychological approach (Phillips and Jorgensen, 2006). However, my concern to highlight political dimensions of mediator interventions is nevertheless not inconsistent with the broad discipline of discursive psychology. As Billig notes "investigating what speakers are doing when they make utterances" (Billig, 2006:217) is an important concern of discursive/rhetorical psychology. He further notes that "each act of utterance, although in itself novel, carries an ideological history" (Billig, 2001:217) because speakers "use terms which are culturally, historically and ideologically available" (Billig, 2001:217).

In keeping with this insight, I have chosen the theoretical concept of the 'subject position' developed by both political discourse analysis (Glynos and Howarth, 2007; Howarth, 2005 and 2000; and Torfing, 1999) and by critical discourse analysis (Fairclough, 2006, 2005 and 2001) to render apparent the ideological and political nature of the practice of workplace mediation .

Discourse theory suggests the inevitable play of power in an interactive situation such as a workplace mediation and Fairclough (2001, 2006), in particular, highlights how ideology becomes obscured in everyday interactions. He

underscores how:

the exercise of power, in modern society, is increasingly achieved through ideology and more particularly through the ideological workings of language (Fairclough, 2001:2).

I have drawn from Fairclough's theory, at a level above linguistic, grammatical detail in order to interpret apparent behaviour depicted by spoken interventions. At this level, aspects of the naturalization of language may be detected that afford leverage directly to ideologies and power. It is these aspects of "naturalization" I shall use to help interpret mediator subject positions: namely "meaning systems"; "situation types"; "interactional routines and turn taking" (Fairclough, 2001).

Thus, I will approach the mediation meeting as a "situation type" that may reveal naturalized, ideological "meaning systems" of the mediator (Fairclough, 2001). I shall argue that the 'subject position' of paid workplace mediator is a quasi professional role, vested with considerable power that is obscured by the naturalization of language and shut off from scrutiny by its private and confidential character. The mediation meeting will always represent a 'situation type' (Fairclough, 2001) but the questions I want to address are what 'type' is it and what 'type' could it be? My purpose is to reveal and explore different aspects of mediator power that constrain the mediation setting so that alternative styles of mediation intervention may be considered and theorised. The second role-play is, in part, used as a comparison to tease out or perhaps simply point towards such alternatives.

To be able to develop a picture of the 'subject position' of the mediators in the role-plays I have examined the video recordings for moments of enacted power and influence and their presenting effects. Hence, in viewing the videos, the following types of question have underpinned the identification of such moments.

How have the mediators engaged with and addressed the parties? Is it with an overt sense of expertise or with humility? Is it with respect for them as people or are they viewed primarily as employees? How are their interventions likely to affect the parties? Are their interventions 'directive'? Does it seem that their

interventions tend to suppress conflict or open it up to exploration and are the circumstances of the conflict held to be contingent? Did their interventions afford any opportunities to consider aspects of identity and subjectivity played out in the conflict? Did their interventions yield any scope for the emergence of dialogue and 'learning'? Do their interventions seem imbued with a workplace/management discourse? Do they display a concern for matters organizational? Do their interventions accord with espoused principles of mediation?

Overall, my aim has been to critically and plausibly illustrate (Mason, 2002:176) what the mediators are 'doing in saying' (comparing the two types; facilitative and transformative) in contrast with both what they purport to do and what another 'counterfactual mediator' might alternatively have done. I have also invited the participant mediators to consider this counterfactual form of practice as an alternative to their own modes of intervention.

4.8 Research ethics

All interviewees and participants to this study have given written consent to the anonymised use of their 'data' in the preparation and publication of this thesis and any related articles. There were no other significant ethical considerations, in large part due to the case studies having been role-plays and not actual mediation meetings.

PART 5: INTERPRETATION OF ROLE-PLAY AND FOLLOW UP DISCUSSION

5.1 Role-play commentary, analysis and interpretation

(To protect participant anonymity DVD's of the role-plays have been submitted with the thesis for use by the examiners only, for return to the researcher after assessment.)

5.1.1 Introductory note on the mediation context

In approaching the role-play data, I believe it is important to recognise the innately constraining nature of all mediation settings. To state the obvious, placing one or two mediators in a room with two or more parties, who are in the midst of conflict, will set a conditionality of time, space and expected activity. A prominent purpose of a mediation meeting is to meet to talk. I have argued that the mediator's primary role is to provide support for the ambition to hold a conversation that leads toward some mutual understanding and hence, in a relative sense, away from conflict. However, as already, noted there are other motivations underlying the impetus to mediate. One of these is the wider urgency that is felt for an early resolution. The style of mediation adopted might be regarded as a function of the necessity to force a resolution. For example, in an international armed conflict an early cessation may reduce loss of life and injury. In a commercial mediation large sums of money may be saved pushing through a compromise. In the workplace, a successful solution may improve organizational performance, allow the commissioner to feel that mediation costs have been well spent and the mediator to feel justified in taking their fee.

I have made the above observations about the inherently constraining nature of mediation in order to contextualise the following analysis of workplace mediator behaviour as demonstrated in the role-plays.

5.1.2 Transcribing Key

FM = First "facilitative" mediator, in the first, morning role-play.

SM = Second "facilitative" mediator, in the first, 'morning' role-play.

TM = The “transformative” mediator, in the second, ‘afternoon’ role-play.

P = Paul, Party A, in both role-plays.

C = Chris, Party B, in both role-plays.

Each consecutive intervention by a speaker is numbered for analysis referencing.

Square parentheses aligned vertically

When these are approximately aligned vertically they indicate that utterances and expressions are made simultaneously or overlap. E.g.

(1) FM: I thought it was unlikely [that you

(2) P: [uhm

Period encased in parentheses

These denote a short pause thus (.) often for a breath or a longer pause thus (..)

Single square parentheses encasing words

These indicate that something was heard but the transcriber is not sure what it was.

Single curved parentheses encasing words

These indicate non-verbal activity, e.g. {laughter} or {turning to Paul} and descriptive summaries of passages of dialogue inserted to aid the flow of meaning through the selected text.

5.1.3 Extracts with commentary and analysis in chronological order from the morning, ‘facilitative’ role-play

In workplace mediation it is usual that first visits to each party are followed by the joint meeting, usually on the same day (Source: Workplace mediation training run in London by TCM Ltd in 2006.) First visits typically take an hour. These role-

play first visits ran for approximately eighteen minutes and twenty two minutes. On this occasion the first visits were held to enable the parties and the mediators to familiarise themselves so that they felt as comfortable as possible in the subsequent role-play joint meeting. This accords with a real mediation in which mediators aim to build rapport with the parties.

First visit of the facilitative mediators FM and SM with Paul.

Extract from 0 secs - 1 min 34 secs

- (1) FM: My name is 'forename plus surname' (FN & SN) this is my colleague
'FN & SN' and we are both mediators with 'organization name' ok
we've been doing the role for quite a while now and so hopefully we'll be
able to erm give yourself and Chris some support and help today [erm
- (2) P: [uhm
- (3) FM: our understanding is that erm this mediation well this mediation has
been referred to us by erm your board of trustees of your charity
the local advice centre [erm its about a dispute between yourself and
- (4) P: [uhm
- (5) FM: Chris (.) is that correct and are you happy to be to be [well happy is
- (6) P: [well I
[understand I understand why we are [here
- (7) FM: [not [ok ok (.) so (.) you're here
voluntarily [ok so you
- (8) P: [um hum
- (9) FM: want to try and resolve the situation
- (10) P: yeah ya (.) I can't I can't really see what the problem is but I'm happy
to kind of try [and do whatever needs doing
- (11) FM: [ok ok ok that's cool (.) di eh di
eh do you have any understanding what mediation is all about
- (12) P: not really no
- (13) FM: ok ok shall I just sort of explain a bit and then maybe you can chip

in with any questions [if there is anything I've left unanswered (.)

(14) P: [um hum

(15) FM: ok (.) well mediation erm I I suppose is a is a is almost like a
problem solving process (.) we're here to help build dialogue or to help
you build dialogue with Chris so that you can each better understand
[what the issues are and you've just said that you don't really

(16) P: [uhm

(17) FM: know what the problem is [so ahm

(18) P: [uhm

(19) FM: that's our role is to help you maybe understand what the problem is
at least from Chris's point of view and to help her understand what the
problem is from your point of view (.) erm the actual process is.....

Commentary and analysis

Within the above interlocution several subtle rules of this particular mediation are courteously, yet rapidly, established. In line (1) the introduction is quite formal, the mediators' organization is named and their own and their organization's expertise is asserted. The mediator then emphasises her own and her colleague's experience explicitly. A clear message is conveyed that the mediators are experts and "we'll be able to ... support and help ...", implying that they will help to find a form of resolution. Whether or not they always succeed, this is their trajectory. Their authority to do this is further underscored by noting that it was the board of trustees who have referred the dispute to mediation. Hence 'subject positions' are established for both the mediators and the party (Torfing, 1999; Fairclough, 2001; Howarth, 2005). The mediators view themselves as experts who have been appointed to do a job. Their expert position derives from their experience, their employing organization and their authorisation by the party's employer. The party is placed in the 'subject position' of receiver of the mediators' help. As such a relationship of power is established (Fairclough, 2001), forming an enunciative modality (Howarth, 2005). This is not the position of a humble mediator.

I will suggest below that this relationship corresponds to a manager - staff

relationship. It transpired in subsequent discussions, considered below, that the role-play mediator participants were unable to recognise this relationship. This being the case, it may be assumed that this opening critique might be refuted on grounds that the mediators are just fulfilling their role as 'neutral interveners' (a tautology), being 'naturally' constrained to operate within functional and discursive boundaries of both the mediation process and the workplace.

However, an alternative opening approach could have been to suggest that the purpose of the meeting is to find out if the party would like to make use of a mediation process and to discuss what that might be, i.e. to pose the question, is mediation, and of what type, of use to you, the party. Such an 'act of saying' (Howarth, 2005) may have possibly subverted the 'interactional routine' and its enveloping 'situation type' (Fairclough, 2001) played out within this workplace mediation. The party may have still felt constrained to comply in accepting an invitation to a mediation process but the mediator could nevertheless have been able to position herself as a follower of the emergent expressions and apparent needs of the party. Thus, the opening session could have aligned much more with practices described by Bush and Folger (2005).

In line (7) the mediator asks "so you're here voluntarily". She presents Paul with a rhetorical question based upon her own assumption that Paul is here voluntarily. Alternatively, she could have inquired about how he feels about being here, again as would a transformative practitioner (Bush & Folger, 2005). She then continues in this questioning mode in line (9) to assert that Paul wants to resolve the "situation". By leading this interaction she has asserted a condition of the meeting. This further reinforces the operation of a particular 'interactional routine' (Fairclough, 2001) in which one party holds a role of authority, if only as referee. Furthermore, within this 'routine' it can be seen that 'mediation' has been meaningfully equated with 'resolution' of a problem.

Thus, in a very few seconds the mediator has established her authority, that there is a dispute to be resolved, that Paul wants to resolve it and that she can help to do this. Paul has had very little opportunity to speak other than to say that on the one hand, he understands why he is here but, on the other, he doesn't really see what the problem is (line (10)).

As noted above, there is a courteous facade to these opening moments but they can also be interpreted as a coercion of Paul into acceptance of a 'subject position' (Fairclough, 2001; Howarth, 2000) as a more or less willing receiver of the mediators' help. The mediator has correspondingly adopted a 'position' as an authority in resolving the dispute.

In line (15) it transpires that Paul is to be part of a problem solving process in which he is going to be helped to understand the issues and the problem from Chris's viewpoint (line (19)). Conversely she will be helped to see his viewpoint. In some way the mediator is going to orchestrate a dialogue (line (15)). Paul has barely uttered a few words before the mediator continues to lay out a process and ground rules that govern it. If one concept of mediation is to place parties in control of their own conversation then this 'facilitative' approach has started in a directive manner. Such an underlying directiveness contradicts an espoused intent to be neutral helpers (Bush & Folger, 2005).

This aspiration to engender dialogue would tend to suggest the desirability of an exploration of the dislocatory effects of conflict from which a sense of a 'political subjectivity' could potentially emerge (Howarth, 2000:108-9). The following extracts will show that this does not happen. That the mediator is 'naturally' there to solve a problem is conveyed as if there could be no other alternative.

Extract from 2 mins 12 secs - 3 min 14 secs

(1) FM: the purpose of mediation is to help you and Chris erm come to a resolution of your problem yourselves (.) um and as I say we do that by sort of helping you to communicate better together um but we we're not here er to actually say well actually we think your wrong and Chris is right or Chris is wrong and your right and this is what we think the solution should be (.) am we're we're here to actually help you to sort of build your own solutions and agreements all right we we might play devils advocate sometimes] and we

(2) P: \neg um hum

(3) FM: might with your permission make some suggestions for how you could

- take things forward [but at the end of the day (.) its up to yourself
- (4) P: [umm
- (5) FM: and Chris to kind of move things forward and go back into the workplace and work together in a way that you both feel comfortable with [ok
- (6) P: [umm
- (7) FM: so we're totally impartial but for the purpose of testing out your understanding an and the same for Chris's we might kind of challenge you a bit and play our devils advocatey bit [erm (.) in in a bid to really
- (8) P: [umm
- (9) FM: sort of get to the nub of the a (.) [I I hope that will be o ok with you
- (10) P: [ok
- (11) FM: [right
- (12) P: [umm

Commentary and analysis

In line (1) the FM states “the purpose of mediation” is to help the disputants to “come to a resolution of your problem yourselves”. This is an expression of the mediator’s belief in her own neutrality. However, this statement assumes that there is a definable problem and that it will be resolved. The term “your” problem places the causation firmly with the individual parties. They are the seat of the problem. The mediators are there to help deal with this problem. Hence, the mediator has effectively set an agenda and a goal for the first party. The mediator has thereby reinforced the underlying ‘rules for engagement’ and extended them to preclude consideration of conflict causation (Lederach, 2003; Cloke, 2001) and wider responsibility for conflict that does not reside with the individual. As in the first extract, the disputant is being talked to, rather than engaged in setting the scene for the mediation meeting that follows. In this ‘act of saying’ (Howarth, 2005) the mediator is positioned as the authority overseeing the party as transgressor. It is as if she were saying, ‘you made the problem, you must fix it’ and that this is what your organization requires.

The mediator continues in line (1) to say her role is not to judge or decide how to resolve the conflict but to be impartial and to just help with communication. However, at the end of line (1) and in line (3) she undermines this stance by proposing a role as devil's advocate and suggestion maker. She has thus contradicted her own opening assertion about 'purpose' made seconds earlier and assumed a position which would necessitate a more overt exercise of judgement and opinion.

In line (5), there is a clear agenda and pressure to "move things forward", to "go back into the workplace" and to "work together". Again in line (7) a contradictory statement is made in which total impartiality, itself an impossibility, is conveyed along with the mediator's decision that she will "kind of challenge you a bit" and play devil's advocate in order to "get to the nub" (line (9)). The mediator has assigned herself the role of identifying and judging what the the nub of the problem is. She has seemingly migrated from, a role of helping others to consider and maybe solve their conflicts themselves, to that of a person who solves conflicts.

So far a 'situation type' (Fairclough, 2001) has been established in which a mediator is positioned with authority to direct an interactional routine as problem assessor with a pre-set, desired outcome of an harmonious return to work. The party is being subjected to a mediation process in which it is assumed that they accept responsibility for conflict and for its resolution, as if there are organizational mores suggesting conflict represents some sort of failure. The desired "back to work" outcome (line (5)) suggests a more material and economic basis. As noted above, It is almost as if the disputant has transgressed and the mediator is the authority assigned to rectify the situation for the benefit of the organization rather than the parties.

A sequence of extracts

After checking that Paul has no further questions about the mediation process the SM invites Paul to tell his story of the "problem". At 3 mins 48 secs she says "well Paul what I'd like you to do is would you be able to tell us what the situation is for you (.) what's been happening for you.."

Paul then tells his story. At 4 mins 15 secs Paul says that "... recently I've been getting a lot of kind of problems from from Chris about my record keeping and you know she's really been on my back to be honest err really you know being being really difficult with me about what what you know I have to say I regard as fairly minor and kind of trivial things...."

During Paul's explication the mediator acknowledges him by nodding and saying yeah, uhm and ok, but does not intervene until, at 5 mins 25 secs, she moves the story on by posing a question. She asks "and what have you done about it so far with Chris because [you've been here] for a short while what have you what has happened between yourself and Chris and between then and now"

Paul's response: Extract from 5 mins 32 secs - 6 mins 45 secs

- (1) P: yeah well we had a formal review meeting about a month five weeks into into my my employment and you know eh eh eh I'm sure she'll she'll say herself you know things wer were running really well I was getting good reports [and
- (2) SM: [umm
- (3) P: the work was getting [done and so on but you know she started to make
- (4) SM: [umm
- (5) P: these kind of noises about the the paperwork being (.) sorted [and and you
- (6) SM: [right
- (7) P: know I I I tried to keep on top of it for a bit [and I I I did my best an
- (8) SM: [umm
- (9) P: but really there's too much of it you know and that's the real problem with [it tha it its just nonsense you know [it it just gets in the way
- (10) SM: [umm [umm
- (11) SM: umm gets in the way of (.)
- (12) P: doing the job doing doing the business that we're there for

(13) SM: right which is what as far as you're concerned

(14) P: well you know we get people in the advice centre in in dire straights
you know with [real employment issues and real housing issues

(15) SM: [umm

Paul expands this point then at 6 mins 36 secs the SM says,

(16) SM: it seems to me as if what you're saying is that if this was a set of
scales [the people would be way down here and the paperwork [you know

(17) P: [umm [that's
[how it feels [absolutely yeah that's it exactly exactly how it feels

(18) SM: [sort [yeah

Paul continues to explain his dislike of form filling at the expense of serving
the clients and his resentment at suggestions from other advice centre
workers that he does paperwork at home in his own time.

At 7 mins 38 secs the SM asks,

(19) SM: ... ok ok so you said that you've been here for just quite a short time
what would you say your relationships has been like with Chris (.) since
you started

Paul explains that he thinks its been ok, that he has sympathy for Chris's
position but that he thinks she should manage the problem about the paperwork.

Commentary and analysis

Up until this point Paul is being led through an exploration of his situation, in
terms of issues and relationships, from his standpoint, by prompts and
questions from the mediator, such as in lines (11) , (13) and (19). She sums up
his concern about the balance of paperwork versus advice giving in line (16).

Paul is given space to relate his account of the situation, both the practical and relationship aspects. Nevertheless, by being gently questioned in this way he is being called to account. This style of interviewing can be seen to arise from a need to map out the issues and relationships of the conflict so that solutions may be subsequently generated, whether by the parties or by the mediators. The questions in lines (11), (13) and (19) are directive in order to serve the mediators need for assessing the 'problem'. This is, not surprisingly, a characteristic of a 'problem solving' discourse (Bush and Folger, 2005). Furthermore, the mediator's questions in lines (11), (13), and (19), display an unnamed authority to interrogate Paul so that he becomes 'positioned' as having to give account, as if he had broken some unspoken code of behaviour, as described above.

Thus, an interactional routine (Fairclough, 2001) continues to unfold in which power resides with the questioner. This style of interaction tends to reinforce and naturalise the subject position of the mediator as one of authorised expert in conflict resolution. The party seems to fall into line with this arrangement and to take direction from the mediator. It is difficult to challenge a questioner who poses as a 'helper' and this difficulty is magnified if there are subliminal social pressures upon the party to feel shame for being in conflict.

The 'transformative' alternative to the above interrogation would have been to follow Paul's unfolding story and reflect back moments of dis/empowerment or recognition that it contains (Bush and Folger, 2005).

For example, at line (11) a transformative mediator may have remained silent or possibly reflected back Paul's expressed feelings and asked if he would like to say any more about how paperwork "gets in the way" or whether he might want to talk about "noises" made by Chris or whether there was anything else that was important to talk about? In following the party's lead the mediator would not select a new subject as in line (19).

Extract from 8 mins 19 secs - 11 mins 44 secs

(1) SM: emm so what your telling eh {turning to the FM} er have you got anything you would like to ask [FM's name]

- (2) FM: well I was just interested to see what your day might look like (.)
- (3) P: uhmm
- (4) FM: you've kind of I've kind of got this impression of you said there's lots of people wanting your advice
- (5) P: yeah
- (6) FM: I've got this impression that you you maybe having (.) an interview with someone [however long it needs to last [you help them sort their
- (7) P: [um hum [umm
- (8) FM: problem out [and then there's someone else [waiting immediately
- (9) P: [umm [yeah typically yeah [very typically
- (10) FM: [yes so tell me
- (11) P: I mean it comes in fits and starts but yeah that's the typical pattern really
- (12) FM: right so are you are you erm sort of customer facing I mean is there that much demand that you you are customer facing all day long [from
- (13) P: [umm
- (14) FM: when you start to when you end or you could be
- (15) P: ya I I can be I mean there are other volunteers in the advice centre as well but you know I'm I'm the kind of specialist you know who who deals with the with the kind of more complex issues and so on [so I often to
- (16) FM: [right right
- (17) P: get referrals from them so they're asking me things
- (18) FM: so is is the suggestion that you should be dealing with a referral or dealing with a customer [and then filling up paperwork and and then
- (19) P: [umm
- (20) FM: dealing with the next customer [and filling out the paperwork so you
- (21) P: [yuh
- (22) FM: should be doing it as you go along
- (23) P: that seems to be the kind of view [yeah because [ya na bec uh
- (24) FM: [right [right

- (25) P: eh I I can can understand that point of view because when you get to the end of the day if you've been seeing people all day long you just need time to do the paperwork you just want to go home and that's often how I feel about it
- (26) FM: do you find you can remember who (.) each of the cases (.) when its time
- (27) P: I think I can [sufficiently you know [obviously one takes notes when
- (28) FM: [right [uhm
- (29) P: one's [we have we have a standardised referral form [you know I take
- (30) FM: [yes [uhm
- (31) P: notes and so [on erm (.) but yeah then there are these returns I don't I
- (32) FM: [uhm
- (33) P: I don't know if you understand [there's a system that we we we have
- (34) FM: [yeah
- (35) P: we have this contract with the Legal Services Commission we have these returns that need to go back to them [you know Chris will tell you
- (36) FM: [right
- (37) P: all the details I try I try and keep away from all that as much as I can but you know there are these kind of aggregated returns that need to go back
- (38) FM: and what's the purpose of those
- (39) P: they're about funding they're about providing evidence to get funding
- (40) FM: ok [so
- (41) P: [so this very much evidence driven funding
- (42) FM: so if they don't get filled in (.) the fin the funding stops
- (43) P: ahh well that's what they say
- (44) FM: right {laughter} ok [right that's one of the reasons that's been given
- (45) P: [{laughter}
- (46) FM: is [it for for why you have to fill out the stats [
- (47) P: [yeah [yeah
- (48) FM: ok just one more question [do you do you have kind of targets for

- (49) P: [uhm
- (50) FM: the amount of time that you are expected to spend with each client or targets for the number of clients you're expected to see in a day
- (51) P: no
- (52) FM: no ok
- (53) P: each case is as long as it takes
- (54) FM: yeah yeah ok
- (55) SM: so Paul what would be an ideal situation for you that would come from this mediation
- (56) P: uhmm
- (57) SM: what do want from it
- (58) P: um (.) just just for someone else to do the do the the unnecessary work [really
- (59) SM: [um
- (60) P: a a as I said I've suggested tha that there's an administrative assistant in the office an you know I can't see why she can't do some of this kind of work [this form filling and so on] you know it it just seems to to be more of a kind of administrative task I just can't see the point in employing a a specialist skilled debt worker and then and then spending you know paying you know hard earned money its difficult to get money for these things on on form filling
- (61) SM: ke so how would you describe your relationship with Chris right now
- (62) P: well it until this really I mean I until this came up you know I thought we were fine....

Paul and the mediators continue talk about the bad atmosphere that arises from this conflict.

Commentary and analysis

The problem solving focus is very marked in this extract (Bush and Folger, 2005). The FM begins by asking for a picture of Paul's day in line (2). She proceeds to quiz him, making many interventions, to build up this picture of his work activity, almost analysing his working practice. In line (22) she proffers a normative assessment of a detail of this work practice and again quizzes him on his response in line (26). Another example of this investigative probing appears in line (38). There is a high incidence of mediator intervention, and the questioning remains within a narrow management domain and terminology. An opportunity to explore any wider causes of the conflict, perhaps in the form of the function of the funding agency or of Paul's working history may have been missed (Cloke, 2001).

In contrast, the SM interrupts with a different line of questioning in line (55). This question, "what would be an ideal situation?" is a standard question from the repertoire of a facilitative, problem-solving mediator (Mediation Dorset Training 2007, unpublished). It subtly invites the party to adopt a focus on the future and on what needs to happen so that the current conflict can be left behind but not necessarily addressed. After Paul's reply it could have been possible to reflect back his answer and invite further exploration of his views (Bush and Folger, 2005). Instead the SM, a little abruptly, directs attention to a new subject, that of Paul's relationship with Chris.

In both the FM's and the SM's otherwise different lines of questioning (the practical and the personal respectively) the mediator is very much directing the exchange rather than seeking to follow where the party might wish to take a more open-ended discussion. Hence, the exchange becomes an interview with the party positioned as interviewee and the mediators as interrogators (Fairclough, 2001). Roles and positions already established for both mediators and the party are maintained and reinforced. In this way Paul is effectively positioned as a member of staff with respect to the mediators as 'managers'. The FM could be regarded as a line manager concerned with practical tasks and the SM as a personnel manager concerned with well being and relationships in the workplace. 'What is said' by the mediators is accepted by Paul. Their 'subject positions' as authority figures occupying an enunciative modality within the

workplace mediation setting is reinforced by Paul's acceptance of their adopted role (Howarth, 2005). But these mediators have also become proxy managers. They are no longer tentative, humble helpers, or radical explorers of conflict. Instead, they are solvers of conflict. Hence, there is an apparent dove tailing of a standard workplace 'discourse' around task achievement, implicitly premised upon harmonious relations, with a problem-solving mediation 'discourse'. The power of the mediators, is to an extent, hidden or, at least, unconsidered (by themselves and the parties) in what superficially appears a natural and reasonable form of engagement in the course of their work (Fairclough, 2001).

Extract from 13 mins 4 secs - 13 mins 40 secs

- (1) SM: so in an ideal situation what would be happening (..) as a result of this mediation
- (2) P: well as I say you know we would have some system whereby you know I can be relieved of the of the burden of the paperwork [that's what I want
- (3) SM: [ok
- (4) FM: (..) is that practical
- (5) P: I think it is you know I can't see any reason why you know if I fill out the the referral forms (..) at the same level at which I'm doing at the same level of detail in which I'm doing it now [then I don't see any
- (6) FM: [right
- (7) P: reason why those can't be passed to another person [an administrative
- (8) SM: [umm
- (9) P: assistant
- (10) FM: to put onto the returns

The FM then continues to ask several questions of fine, technical detail around the form filling before the SM brings back the question of "how would you like your relationship with Chris to be as a result of this mediation". At 15 mins 15 secs the SM summarises Paul's description of the issues and what he wants to

happen. This first visit ends after 17 min 52 secs.

Commentary and analysis

At the end of this first visit of the mediators to Paul, the overall impression is that Paul has been subjected to an interrogation, albeit a courteous one. The mediators seem to have adopted a stance as benign proxy managers who, in the search for understanding necessary to identify possible solutions, feel it within their remit to challenge Paul's beliefs about his work, as evident in line (4) above. The mediators' problem-solving disposition combined with the discursive environment of the workplace seems to have produced a 'subject positioning' that is a blend of interviewers/HR managers and interrogators/supervising managers. The whole discursive trajectory of this 'interview' has been towards an organizationally inspired resolution of practical and, to an extent, relational, work based problems.

First visit of the facilitative mediators FM and SM with Chris

Extract from 16 secs - 2 mins 2 secs

- (1) SM: have you managed to have a read of the leaflet that we sent out to you
[about mediation (.) ok (.) would it be useful for me to go over it again
(2) C: [yes I have yes yes
(3) SM: just to explain [what it is would that be ok
(4) C: [yes yes if you wouldn't mind thank you
(5) SM: well what mediation is its about us helping you to help yourselves
basically ok (.) there's an issue that's going on between you and yes (.)
we've been led to believe (.) and what its about its about helping you to
find your own solutions. 'FM' and I are not going to judge you in any way
so or to make decisions for you or to offer up solutions and say Chris
you have to do this and Paul you've got to do that [because if we
(6) C: [um hum
(7) SM: were to do that then it probably wouldn't work anyway its about you

finding your own solutions em it is confidential so the discussions that we have in here today are confidential between us as a we wouldn't pass any information on to Paul unless you gave us express permission eh to do that [(.) now we've had

(8) C: [right

(9) SM: the meeting already with [Paul we're going to have the meeting with you

(10) C: [um hum

(11) SM: (.) the next stage is if you're both still happy to do this will be to have a joint meeting and this is where we sit around the table and each party will have time to have uninterrupted time to have their say em about what their issues are (.) we'll set some ground rules obviously beforehand eh and that's simply to create a safe environment eh for you not that I'm suggesting its going to be unsafe {chuckle} but you know its where people can express their views because we know that a lot of the time people when they communicate they just stop communicating or communicate in a way that's not as useful as it could be [(.)

(12) C: [umm

(13) SM: so its about us all sitting around the table helping to find solutions and then if there are solutions then agreement is reached and we write an actual agreement is that ok

(14) C: yeah that's fine

Chris goes on to describe the "problem" as she is experiencing it, which centres upon her requirement for Paul to keep records of his time spent giving debt advice to clients of the Bureau. These records then enable funding support for this work to be drawn down from the Legal Services Commission (LSC).

Commentary and analysis

These few lines of speech cover the principles of a facilitative/problem-solving mediation meeting; that is, the objectives, the process and outcomes, as well as

the mediator's role. In line (5) the second mediator (SM) affirms a 'neutral' disposition saying we "are not going to judge you in any way so or to make decisions for you ..". Also in line (5) the SM says that "there's an issue that's going on between you", implying that there is a problem to be solved. She states that mediation is "about helping you to find your own solutions". This latter message is repeated again in line (7). Hence, four messages are quickly imparted, that there is a problem, you can/should solve it yourself, but we, the mediators, will help you, without judging or proposing a solution. This is all re-emphasised again in line (13), in the statement that, "its about us all sitting around the table helping to find solutions".

The internally, contradictory tension of mediation has emerged straight away, being the desire to help without intervening. Any intervention will disrupt the parties' scope to find their own path through the conflict. The more the mediator 'helps' the greater is the departure from the mediation ethic of being non-judging, since the mediator's decision about how to help must arise from their judgement of the issues presented. In 'transformative' mediation this tension is addressed by only 'helping' with the communication between parties, the aim being to support an escape from an interactional crisis. In 'narrative' mediation parties are also helped to reconstruct the conflict story. A more directive element thus creeps in. In this 'problem-solving' approach, in which the aim is by definition to find a solution, it becomes impossible to proffer help without influencing the outcome.

In line (11) there is a glimmer of the possibility that the parties can decide to opt for a joint meeting or not. Within the rest of this section there is presumption that the meeting will take place. (It is very common in workplace mediating that the whole process takes place on one day. The parties are asked to agree an agenda entailing first visits before lunch and the joint meeting after lunch. (Source: Total Conflict Management Ltd unpublished training course 2006.) Also in line (11) the processual parameters of this style of mediation are described, noting "uninterrupted time" and "ground rules", justified on the basis of making the process safe. Such procedures have long been criticised from a transformative perspective for their inevitable impact upon how the 'content' of the mediation unfolds (Rifkin et al, 1991; Folger, 2001). Finally, in lines (10) and (11) it is inferred that mediation is about helping people to communicate, to then

arrive at solutions and document agreements. A workplace discursive model of problem definition, solution finding, action planning, and monitoring, thus emerges as a conditioning force around the work of the mediator.

The form of broad influence most apparent in these opening remarks is found in the formation of a 'situation type' and an 'interactional routine' (Fairclough, 2001) that positions (Fairclough, 2001; Howarth, 2005) the 'helper' as 'director' of the process and 'manager' of the attempt to discover a workable solution. This is evident in the adoption by the mediator of the role/position of 'manager' of the process and then enacted in the way information about the process is imparted to the party. 'What is said' underscores the mediators 'subject position' and then the 'doing in saying' further fixes the constitution of this position (Howarth, 2005). The mediator demonstrates their very expertise by electing to tell the party all about the process at the outset. There is an organizational expectation upon the hired mediator to live up to a certain professionalism enacted through the adept management of a process. In this way, the discourse of a workplace, managerial competence insinuates itself into the mediation space. In this context the role of mediator as 'manager' of the process becomes naturalized (Fairclough, 2001), serving to obscure the enormous power of influence over solutions that is held by the mediator.

The overall impression is that the party is to be subjected to a process and that this is likely to close down options and ranges of outcomes that might otherwise be explored. That which might be contingent i.e. other outcomes arising from different interactions that may have considered other ethical and political dimensions (Glynos and Howarth, 2007), may be blocked or diverted . An alternative approach would be to invite the parties to manage the process of the meeting themselves. Mediators would adopt a humble position and could explain more transparently how and why they would intend to make interventions in order to support the conversation of the parties. This counterfactual style will be developed further below.

Extract from 5 mins 29 secs - 7 mins 37 secs

(1) C: ...but in this situation we just don't seem to be getting anywhere with it

- (2) FM: so the an an em he's well aware of the importance of the time recording
- (3) C: yes and he was he was told before eh he was told before he applied for the post at the interview at the time of the appointment (.) and subsequently so (.) I mean that everyone in the bureau is aware of how crucial the legal service money is to the bureau so I mean there's absolutely no question [
- (4) FM: [right
- (5) C: that he doesn't know
- (6) FM: right
- (7) SM: could I just ask a question Chris has was Paul promoted from within
- (8) C: yes
- (9) SM oh right [ok
- (10) C: [yes
- (11) FM: (..) an an an is he aware em of the implications of not filling out (.) not recording his time in terms of the the funding stream
- (12) C: [well] he understands that that's how the I mean that basically when when when we had the contract at the bureau everyone is part of everything that goes on so everybody needs to understand about it because sometimes the debt worker will be asking other members of staff to do things which they might think is bit strange but they but its because we have to fulfil certain criteria to get the money and and the time recording is one of them and yes you know he was and has been told
- (13) FM: and how immediate is the [are] the funding implications
- (14) C: (.) probably about three months so what's recorded one month (.) is usually processed (in umm) in probably three months before it would actually be obvious that it (.)
- (15) FM: so in practical terms if for example he'd spent seven hours one day doing erm debt work (.) and he'd only recorded he'd he'd not recorded all those erm clearly and so he'd only got say credit for four hours [are
- (16) C: [uhm
- (17) FM: you saying that in three months time there's there's

(18) C: we would see the result of it

(19) FM: there's a very direct link there [half practically half of that [day

(20) C: [yes [you
get four hours of money rather than seven hours

(21) FM: ok and he is aware of that

(22) C: yeah

(23) SM: how how do you know that he is aware of how crucial it is

(24) C: well (.) eh because we (.) having a legal services contract....

Commentary and analysis

In this exchange the mediators question Chris in detail about the need for time recording and about Paul's understanding of the implications for funding of not doing so. They seem to be adopting a position of line manager to Chris, or, at least, supportive management colleagues. Rather than let Chris speak for herself and simply listen and check for understanding, they seem to want to unravel the technical details of the issue to be able to mentally assess and judge it. Even at the 'first visit' they appear to be motivated by a need to own the problem and the prospect of finding a practical solution.

They have adopted an inquisitorial stance (very marked for example in line (23)). An interactional routine (Fairclough, 2001) is operating in which the mediators lead the questioning and direct the conversation. The party has thus become subordinate to the mediators' intentions to seek out a solution. The mediators here seem to retain all the power to manage the conversation and the process of the interaction. Were the mediators more concerned to support the party in exploring her own conflict a different situation type (Fairclough, 2001) could have been set up at this early stage. Transformative mediation (Bush and Folger, 2005) aims to support the party in arriving at their own clarification of the conflict by yielding power to the parties. In the more directive and evaluative, problem-solving approach the possibility for conflict to disturb a 'subject position' (Torring, 1999; Howarth, 2000) and open it up to possible change, would seem to be smothered. Thus, the potential 'political subjectivity' of the parties is also contained (Howarth, 2000, 2005).

A sequence of three extracts

Extract from 9 mins 47 secs - 10 mins 37 secs

Chris and the FM are discussing Paul's previous role at the Advice Centre.

- (1) C:um I mean that the alarm bells did ring I mean they did they did ring in terms of of (.) erm is he going to want to to work like this and we had that conversation
- (2) FM: [ok
- (3) C: [we had this specific conversation
- (4) FM: you did mention something about erm it the him improvising the information then that the that the paperwork and process type information although it was important for audit purposes it wasn't so crucial to the funding and that you said that you could sort of work around it a bit (.) I was just wondering and you know shoot me down if this [isn't correct at all is
- (5) C: [hum
- (6) FM: that he maybe sort of felt that well that he'd managed to work round the system in that role and you'd kind of (.) catered for that for his you know particular way of working do [do you
- (7) C: [hummm
- (8) FM: think he might have expected that to happen now (.) I mean
- (9) C: it its not impossible

Extract from 11 mins 23 secs -12 mins 1 sec

- (10) FM: what does his job description say
- (11) C: it covers the general roles of providing advice{gives full details}
- (12) FM: so it does cover all those admin things
- (13) C: oh yes

(14) FM: and the time recording and all that (.) is it couched in similar terminology to his previous job description

(15) C: no

(16) FM: so it does make it

Extract from 12 mins 19 secs - 12 mins 32 secs

(17) C:point one you would need to record every hour [] minute you spend with the client point two files must [be

(18) FM: [so again as far as you're concerned it has been clearly communicated to to him ok so why do you think he's not doing it I know you've sort of touched on this

Commentary and analysis

With a focus still upon the main 'problem', the FM asks a very detailed, leading and closed question about what Chris thought Paul's job expectations were concerning time keeping records in line (4). This way of assessing a work problem seems to be rooted in a 'situation type' (Fairclough, 2001; Howarth, 2005) of the office environment, as one manager speaks to another or as a senior manager speaks to a junior manager. The question in line (4), (6) and (8) is a search for reasons why Paul feels his behaviour to be reasonable despite Chris's pleas to the contrary. This probing is followed up further in line (14). The FM is thoroughly checking Chris's belief that she has communicated the job requirements to Paul. In line (18) she cuts Chris off to move on to probe Chris's beliefs about Paul's motivations. (This point is picked up in the next extract.)

The FM and Chris 'identify' (Fairclough, 2001; Stavrakakis, 2005) with each other as managers grappling with a 'problem' that is a result of Paul's behaviour, although Chris is positioned in a subordinate role as she is asked to justify her opinion. Wider causes of the conflict such as the demands of the funding agency or other working pressures on Chris have been effectively excluded from consideration.

The 'problem' is delineated as Paul's behaviour and defined in terms of work role and performance, evaluated against a job description. As such the 'discourse' in play is that of the workplace and the 'discourse' of problem-solving mediation becomes aligned with it. This occurs as the mediator and the party mutually conform to a relationship implicit in the interactional routine (Fairclough, 2001) of a manager and her staff. Again 'subject positions' are both acted and simultaneously constituted as the interaction unfolds (Howarth, 2005). What might appear 'natural' (Fairclough, 2001) in the workplace now occurs, as if also 'natural' within the mediation encounter.

Extract from 14 mins 52 secs - 15 mins 42 secs

- (1) FM: ... are you suggesting that the there there's almost a sort of stubbornness there that he he he feels very strongly that his time should be spent customer facing helping the client [it shouldn't be spent
- (2) C: [I that that would be my I mean that may [be very unfair
- (3) FM: [filling in these bloody forms they're a waste of
- (4) C: well he's actually said those words {laughter}
- (5) FM: time[ok {roars of laughter}
- (6) C: [we've actually had that conversation so yes that is that is it
- (7) FM: ok ok
- (8) SM: so its getting the balance between the customer facing and the paper work [to keep it there
- (9) C: [one is one is necessary for the [other that that's the difference but
- (10) SM: [yes
- (11) FM: [yes yes
- (12) C: I mean I really don't I I you know I don't think he's he's doing it deli I don't think he's setting out
- (13) FM: no ok well from that you know I think that that's a very helpful point to start off from you know that point of sort of feeling that its not

deliberate I mean so what is your working relationship with him like at the moment

Chris goes on to describe how she feels frustrated with the situation and is running out of ideas to resolve it to her satisfaction.

Commentary and analysis

The FM is working sympathetically with Chris to assess the problem for herself from Chris's perspective. She has positioned herself as owner of the problem, as if she were a manager in Chris's organization. In lines (4) and (5) the FM and Chris share empathetic laughter as they concur in their judgement of Paul's behaviour. Paul's behaviour is now the problem. In line (8) the SM says "its getting the balance between the customer facing and the paperwork". She thus suggests a practical or material solution to this interpersonal conflict. Then in line (13) the FM asks "I mean what is your working relationship like with him at the moment?" One reading of such a question is that the mediator wishes to invite the party to reflect upon her own feelings about the situation. However, the question is very direct, specific and closed. In doing this she demonstrates she is satisfied with her own exploration of the technicalities of the 'problem ' thus far and decides to dictate the next area of her inquiry into the 'problem'.

Once more the 'subject positions' of the mediators as intervening managers are strongly reinforced, in contrast with the declared intent of mediation not to judge, to remain impartial and to help the parties to find a solution themselves.

Summing up the first visit with Chris by the FM: Extract from 18 mins 51 secs - 21 mins 1 secs

(1) C:I don't manage by I'm in charge and you'll do as I say [but I have to

(2) SM: [uhm

(3) C: have done what I have to have done

(4) FM: umm ok

(5) SM: ya shall we summarise

- (6) FM: yes I mean (.) I I think in one sense its almost quite simple that you know Paul's just from your point of view is not doing the job that you feel he was employed to do that there's a lack of understanding or a (.) almost in a sense a sort of refusal to understand [(.)I think is the sort
- (7) C: [uhmm
- (8) FM: of the way you put it that you know that he needs to get this balance between his customer facing and giving advice and actually um filling out the the time recording sheets so that you can actually get the funding
- (9) FM: [and that for you that's taking up you know its beginning to take
- (10) C: [uhmm
- (11) FM: up quite a lot of your time and effort and and you're almost to the point of needing to go through disciplinary process because um its just been going on for quite along time now {cough} and you feel that he does understand erm what's required of him that the job he was doing before and the the way that the new job has been communicated to him and the job description was sufficiently (.) well set out that it distinguishes (.) from what he was doing before and he he does understand that i is different an and the importance of actually em of filling out the time sheets to get the funding erm and your concern that it is having a negative impact on the rest of the team [and its actually affecting
- (12) C: [yeah
- (13) FM: the atmosphere erm and erm you your relationship you've had a good you've clearly had a good working relationship with him for a number of years now and you've got a lot of respect for him and er you think he's a good er debt worker erm but that this situation is actually erm causing some friction between you an an its its its just not a very good environment to work in ok
- (14) C: yep right
- (15) FM: is there anything that you want to add to that (.)
- (16) C: no I think that its about it
- (17) FM: so basically from this you want him to do his job properly and you

wanner get back to how an easy [going relationship

(18) C: [everybody just getting on with what
their doing and what their [supposed to do

(19) FM: [yep ok (.) thank you

(20) SM: thank you Chris

(21) C: ok thanks (.)

(22) FM: ok so the next steps are erm erm we'd

Commentary and analysis

The distinguishing feature of this extract is how the FM speaks for Chris at some length. She demonstrates her mastery of the situation. The phrase from “your point of view” in line (6) is a little like paying lip service to a notion of impartiality. Alarming, the FM even introduces the possibility of the need for disciplinary process in line (11). The first visit with Chris has more of the tone of a business meeting than a mediation encounter and in line (17) a conclusion is reached in the recognised need for Paul to “do his job properly”. The notion of “from your point of view” becomes, in effect, from our point of view, i.e. the mediator’s and Chris’s. The whole session has been driven by questioning to understand the ‘problem’ and is consistent with how an HR manager might probe and assess a staff relationship that had broken down. The HR manager is concerned to recover harmonious relationships and get on with the job. The problem-solving mediator seems to have a similar ambition.

This highly directive, problem-solving interrogation of Chris results in re-enforcing her identity as Paul’s manager. Perhaps unsurprisingly, the order of the world within which the conflict has emerged is thus perpetuated by this practice, rather than opened up for exploration. Chris is ‘positioned’ as the manager and the FM and the SM are ‘positioned’ similarly as either supportive or superior managers with responsibility for finding a solution. Hence, the ‘discourses’ of the workplace (in which hierarchical power relations are the accepted norm) and the ‘discourse’ of problem-solving mediation are interwoven. This type of mediation would seem to be more about control and conflict management to promote a quick solution. The alternative could be to use

this dislocatory experience to explore, dialogically, party differences and wider webs and patterns of causal factors, from which the subjectivities of the parties may be mutually considered and a sense of the 'contingent' nature of the conflict apprehended (Glynos and Howarth, 2007). To attempt this would require a disposition of 'undecidability' by the mediators to allow a more open conversation that is driven along by the party (Bush and Folger. 2005).

Morning role-play: Joint meeting between Paul and Chris and two facilitative mediators, FM and SM

Opening welcome to the joint meeting: Extract from 6 secs - 3 min 9 secs

(1) SM: Welcome eh Paul and Chris urm we're now having um the meeting you both agreed (.) to meet together and thank you for doing that (.) erm I know that its quite a brave thing to do erm it takes a good few good steps to to agree to mediation so I do thank you for a for agreeing to come today because I do think it is em an intention of your commitment to resolve the situ eh the situation that you have erm what we're going to do today if you remember with FM and myself we're going to have erm a meeting now where we're all sitting around the table and you'll both have time uninterrupted time to have your say about what the situation (.) is that's happening between you (.) which means that there's no erm er as asking questions or interrupting the other person its just complete time because this as you know is an opportunity for the other person to hear (.) the other parties situation from their own mouth and probably in a way that they have never ever heard it before (.) so we'll both have time to do that and then what we'll do is we'll get into em listening to e (.) when we've sorted out the agenda we'll go into joint discussion ok and then hopefully we'll get to be looking for solutions and then reaching an agreement ok (.) the agreement if we do reach one will be ehm in writing (.) its not legally binding in any way its more or less a gentleman's agreement if I can use that terminology ehmm ground rules that you

would like to set before we start are there any ground rules at all that you would like to have to help the mediation flow (..)

(2) P: What kind of thing have you have you got in mind

(3) SM: er I was thinking about things like maybe not shouting maybe not getting aggressive [listening to each other (..) yeah

(4) P: [uhmm

(5) FM: Maybe trying to be as open as possible but without kind of focussing the blame on the other person (.) which you know trying to be as constructive and honest as possible

(6) P: Um I don't have any problem with [that

(7) FM: [if that's ok

(8) C: Um I think also I think it might be it perhaps might be helpful if we could have something about confidentiality because I think its very important that (.) what we talk about between us doesn't (.) [get out

(9) SM: [yes

(10) C: to other members of [staff

(11) SM: [yeah [yeah

(12) FM: [absolutely

(13) SM: [absolutely yes (.) and as (name of mediation organization) mediators we're not going to report up to your management to say what's happened in the mediation we will probably say yes it has been successful or no it hasn't and that is all that we will say (.) one or two of the previous mediations that I have done part of {cough} part of the agreement has been that you show the written agreement (.) to the HR person is that ok but that's obviously up to you to decide eh 'FM's name' and I might make a few notes that's simply just to jog our memory er we can we will will destroy them at the end of the day we won't give any notes at all ok

(14) FM: just

(15) SM: eh

(16) FM go on

(17) SM: I was just going to say any questions about the process that we talked through ...

Commentary and analysis

This opening statement follows routine mediation practice in its introductory coverage of the mediation process and implied mediator's role, groundrules and confidentiality (the last in this case raised by one of the parties). The 'enunciative modality' (Howarth, 2005) of the mediators, their authority to set up and manage the encounter is, in practice at least, accepted by the parties. Furthermore, if the mediators and parties are viewed as autonomous, fully responsible individuals, an initial reading of this introduction might find the mediators' approach to be courteous, reasonable and devoid of overt political persuasion. Sarup (1993:6) succinctly describes such a Cartesian psychology that "portray[s] the individual as a rational, conscious actor who could understand the basis for his or her action. ... rooted in a philosophy of individual autonomy and rational choice". However, a closer scrutiny that assumes the mediation meeting is a site for the co-construction of social realities and identities (McNamee and Gergen, 1999; Torfing, 1999; Fairclough, 2001; Phillips and Jorgensen, 2002) and in which "language constitutes us as a subject" (Sarup, 1993:6, interpreting Lacan) enables an alternative reading to be made. This particular 'modality' of mediation may then be contested.

The first mediator's opening introduction to the meeting in paragraph (1) begins with the assertion that "you both agreed to meet together". This may be seen as a simple fact but it is possible that their willingness to attend is more ambivalent. This statement would seem to fix the parties in the role of volunteers to a process. It could also imply the mediators are there at the parties' direct behest, often not the case. This assertion is quickly followed by an assumption, that we, the mediators, have "your commitment to resolve the ... situation ... the situation that you have". Later, this is referred to as the "situation ... that's happening between you". Thus, the parties are being directed to resolve the "situation" that is a problem of their own making i.e. for which they are jointly and individually responsible. The role or "subject position" (Torfing, 1999; Fairclough, 2001; Howarth, 2000, 2005) of the parties has been immediately delineated by

the task of resolving the situation for which they are responsible.

Next in paragraph (1) the meeting process “with SM and myself” is outlined, starting with uninterrupted time, followed by agenda setting and discussion, then “looking for solutions”, followed by agreement making and writing. It is noted that any agreement if reached is referred to as “not legally binding ... more or less a gentleman’s agreement”.

The mediator’s “subject positions” (Torfing, 1999; Fairclough, 2001; Howarth, 2000, 2005) as conductors of the meeting process, setters of an agenda and seekers of solutions is further affirmed by the expression “what we’re going to do today” (6/7th lines of paragraph (1)). This attention to an “agenda” and to “solutions” brings a discourse of mediation (Beer and Stief, 1997; Crawley and Graham, 2002) into alignment with a more general discourse of the workplace (Clegg et al, 1999; Clegg and Hardy, 1999). Moreover, the process is compared with an alternative legal process. This gives an unintended quasi legal connotation to the proceedings, ironically creating an opposite effect to mediation’s stated private, confidential, self-regulating character. This locates the mediator, albeit on the margins, within a hierarchy of authority that assesses or judges parties in conflict. The reference to gentlemanly practice carries a patriarchal notion of fair play and good behaviour, setting out the parameters against which the parties’ ability to resolve the issues is to be judged by the mediators as representatives of certain social norms.

Such required good behaviour is then echoed in the mediators’ recommendations about groundrules e.g. not shouting; listening; not blaming; being honest. This last behavioural norm suggests that the mediator will take the role of arbiter of honesty and truth with respect to the future utterances of the parties. These groundrules also “position” the parties as relatively passive agents, who have misbehaved, or are liable to misbehave, and who are now expected to listen to each other and work towards a solution under the mediators’ guidance.

Thus, this opening statement by the mediator has an element of entreating the parties to stop behaving like children and make an agreement to resolve their conflict. The mediator is firmly cast in the role of authority figure, as both expert

conflict manager and arbiter of social mores. Arguably, such entreaties are unnecessary because when parties volunteer to sit down in the presence of relative strangers, social and workplace conventions of behaviour usually condition them to moderate any anger or tendency towards extremes of emotional outburst.

The pronouns “we”, “you”, “we’re” and “your” (Fairclough, 2001) are used powerfully throughout this brief opening statement to effect a delineation of the mediators from the parties. An ‘us’ and ‘them’ ‘situation type’ (Fairclough, 2001) is constructed with very distinct roles for each side. The parties are given little choice but to accept this opening statement, that conditions the format of the ensuing encounter, being thus forced to continue to engage in the proscribed process. The format of this process and its language are akin to a very business oriented problem-solving process, typically concluded with written statements of agreement and ‘action plans’. This suggests the need to escape from this model of workplace mediation if the ethic of mediation is not to be colonised by the dominant workplace discourse of objectives, efficiency, productivity and persons qua roles (Kallinikos cited in Watson, 2007:4).

In lines (8) to (13) the confidentiality of the mediation process is underscored. One of the aims of the mediation policy of confidentiality is to effectively quarantine the mediation process. Thus, parties are meant to be able to come to it voluntarily, to feel it is safe to express themselves openly and without prejudice to any other, subsequent formal processes e.g. an employment tribunal or a disciplinary process. This idea of confidentiality seems to draw its validity, in part, from the reductive, individualistic concept of the parties and the mediators as agents. Behind the wall of confidentiality it is easier to imagine that the mediators are neutral, impartial, non-judging third parties able to support party self-determination. However, no forum can be socially hermetically sealed. Workplace mediations very often occur before or part way through disciplinary or employment tribunal proceedings (Gibbons, 2007). Hence, claims about confidentiality require careful qualification in discussion with the parties.

In line (13) the promise that the mediators will report back to the mediation referrer (usually an HR manager) to “say yes it has been successful or no it hasn’t and that is all that we will say”, apart from undermining the promise of

confidentiality, alludes to the make or break, problem-solving nature of this approach to mediation. In transformative mediation it is emphasised that there are an infinite number of outcomes that parties may choose to take away from a mediation encounter and that the mediators are there to support the parties in finding their own outcome (Bush and Folger, 2005).

Like many approaches to mediation this opening statement hints at an aim to promote an opportunity for conflicted parties to develop a dialogic exchange, i.e. for there to be a mutual shift in perspectives so that the views of the other person may be, at least, contemplated. To achieve this it is often argued that control of the process and structure of the joint meeting must be managed by the mediators, as this is critical in creating a safe, secure environment for people to speak and listen to each other without risking a regression into angry, open conflict (Beer and Stief, 1997; Crawley and Graham, 2002). Yet it is this very impulse to 'problem-solve' combined with control of process that has been criticised for removing the parties' power to choose their own modes of engagement, determine outcomes and decide upon future action (Folger 2001; Bush and Folger, 2005). Under a 'problem-solving' approach, the already constraining setting of the mediation meeting may become even more constrained. In a workplace setting, where disparities in power are usual and where it may be assumed that voluntary participation is not always wholehearted, the control of process deemed necessary for engineering successful 'problem-solving' is even more likely to limit scope for party self and co-determination.

The mediation encounter presents an opportunity to allow the disturbance of relatively stable, 'sedimented', 'subject positions' to release a more fluid 'political subjectivity' (Torfing, 1999; Howarth, 2000) in which the contingency of the conflict may be apprehended through dialogic exchange. If this facilitative approach constrains scope to work towards an open dialogue, an alternative more humble role for mediators, prepared to shrug off a mantle of authority, would be to trust the parties to manage their own process of engagement (Bush and Folger, 2005) and use the meeting as a chance for exploration of a conflict. Rather than make assumptions on behalf of the parties or assertions about their intentions, the mediator would wait until the parties proffer information and occasionally ask them very general, open questions and thereafter seek to

stimulate the exploration of difference. In contrast to this explorative approach, the above opening statement by the SM seems to place a discursive straightjacket around the ensuing encounter that anchors it firmly within an organizational hegemony.

Joint meeting “uninterrupted time”, selected extracts

At 3 mins 53 secs into the joint meeting the SM asked who would like to go first (with their uninterrupted time). Paul begins.

Extract 1: Paul said at 4 mins 20 secs - 4 mins 56 secs,

Paul: I really don't see what the problem is that I think I think that the situation is quite manageable really I don't I don't really see why we have to be (.) here erm you know I'm I'm willing to kind of try and work things out but I don't I don't really see its a major problem and I just think if if Chris could kind of agree to (.) you know remove some of the kind of administrative load on me I think we could walk away its just (.) I'm hired to do a job and I'm spending most of my time doing not doing a job.....

Paul spoke for less than 3 mins.

Extract 2: At 7 mins 4 secs the SM summed up and reflected back Paul's opening statement thus,

SM: So to sum up what your saying then Paul is that you don't see that there is a problem you want to be able to do the customer facing work where you deal with the problem you deal with the debt you deal with the banks and you actually deal with what you consider to be the most important which is the people factor the job your paid to do ok

ok and there's this weight there that's hanging around you which is all this paperwork that needs to be done that you think needs to be passed on to somebody else....

The SM then invited Chris to speak.

Extract 3: At 7 mins 49 secs - 8 mins 44 secs Chris said,

Chris: Well I just wish I could feel that it was quite so simple erm I think the thing that concerns me is that if Paul really believes that the job that he's paid to do is to only help the clients then I really don't understand where that's come from because the post was very clearly explained and its written down and there's a job description that there are other parts of it which involve statistical recording and time recording and things like that and that's the part that I have issue with I don't have any issue with Paul your debt work in terms of the clients or anything like that you're excellent at what you do but the problem is is that we've got to have the time recording and we've got to have the statistics and we've got to have the administration done

At this point Chris paused and the SM came in to ask at 8 mins 48 secs,

SM: Chris do you want to tell us a bit more about the administration and about how important that is

Chris went on to explain in great detail the technicalities of the paperwork, complaining that she has explained all this to Paul many times. Both mediators continued to prompt Chris on several occasions to further explore the problem from her perspective. Chris had spoken for 5 mins 28 secs.

Extract 4: At 13 mins 17 secs the SM made the following summary of Chris's

statement,

SM: What your telling us is that you do feel em quite uncomfortable at the moment in (.) trying to balance the issues that are happening within the workplace (.) your not sure how else to communicate to Paul how important the recording of the paperwork is you do actually acknowledge that it is tedious ittakes up a lot of time em however that it is very very important to the em the Bureau that this happens what you have done is that you have actually acknowledged that Paul is excellent at his job as em an Advisor (.) so has that summarised

Chris agreed and spoke some more stating her regret that she gave Paul the job. Once Chris had finished speaking SM then gave a summary of both parties opening commentaries as follows.

Summing up "uninterrupted time": Extract from 14 mins 55 secs- 15 mins 34 secs

- (1) SM: so the issues between you appear to be the recording of time within the file and the making up of the files and recording the time so that that can then be claimed back from the LSC and from Paul's perspective your saying you don't know how em or why you should have to do this work, this job job or this piece of the work can't be done by somebody else
- (2)P: yeah I understand the need its just its just the balance of the thing isn't it its just completely unbalanced you know spending more time doing paperwork than doing the job that I'm paid for and I just don't see why that should have to happen
- (3) SM: ok ok
- (4) P: its a bit rich saying that you know she that she now regrets giving me the job

Commentary and analysis

In line (1) above, the SM has defined and delineated time recording and consequent claiming of funds as an issue “between you”. The “issue” has been both attributed to both of the parties and also given a life of it’s own separate from both parties. In contrast, the SM then attributes a “perspective” on the problem to Paul in the phrase “from Paul’s perspective”. No perspective is attributed to Chris. The “issue” and a “perspective” on it, is now skewed towards Paul. Chris and the mediator have been amalgamated into a silent ‘we’ in opposition to Paul. This would subtly seem to imply that there is a problem and that Paul is the cause and that he could, if he wished, solve the problem for Chris by doing what she is asking him to do. At this very early stage of the joint meeting the mediator has set out the task for the parties as necessitated by the dictates of the ‘business’. Consideration of the relational, interactional crisis (Bush and Folger, 2005) or discussion of other or underlying differences (Winslade and Monk, 2001; Cloke, 2001), between the parties, has effectively been closed off from exploration. That is, their respective discourses have neither been given equal weight by the mediators nor held up for scrutiny and discussion in a move towards a dialogic exchange. Paul seems to sense this imbalance and immediately reacts to this summary defending his position with the mediator in line (2) and then furthering the argument with Chris in line (4).

Again it is useful to refer to Torfing’s definition of discourse as “a differential ensemble of signifying sequences in which meaning is constantly renegotiated” on the basis of the deconstruction of the ideas of both totalizing structures and atomised social elements (Torfing, 1999:85). We might see Chris’s position as a defence of a ‘structure’ imposed from outside the Advice Bureau by the funding agency and Paul’s criticism of it as an attempt to displace the funding agency as the defining ‘centre’ of the Bureau’s ‘structure’. Chris’s support for the existing ‘structure’ (imposed by the funding agency), is not delineated by the mediators, whereas, in a negative, exclusionary sense, Paul’s resistance to it is. Thus, the ‘structure’ that accepts funding agency rule, is normalised or naturalised in the discourse of the mediators, in that it’s existence and pervasive presence is unnamed and silent (Fairclough, 2001) . As Torfing notes, the “relative structural order is conditional upon the exclusion of a constitutive outside” (Torfing, 1999:86). This exclusion arises because the mediators

inadvertently do not give equal expression to these two positions in that they are themselves absorbed in the relative structural order that prevails. Their particular style of 'problem-solving' would seem to be an element of this same structural order. It is the inherently judgemental 'problem-solving' disposition that traps the mediators within a discourse of 'business'. 'Problems' can only be defined from within such a "totalizing structure" that regards the parties as "atomised social elements"; that is, as autonomous individual agents.

A first step in an attempt to momentarily neutralise this tendency requires the mediator to adopt a stance of 'follower' of the parties story, rather than 'leader' of a solution. This is to become less a 'solver', to be wary of 'helping' and to focus upon 'supporting' in a manner that is minimally invasive. From this standpoint, the mediators may be able to loosen the ties of cultural apperception and inevitable judgement and instead reflect back the different discourses of both parties. It may then be possible to yield a deconstructive consideration of each parties' identification with the problem. This could start by inviting both parties to reflect upon or clarify their different positions, issues, feelings and needs, which would, in part, be addressed by the transformative method of highlighting feelings of empowerment and disempowerment (Bush and Folger, 2005).

Joint meeting exchange stage: Extract from 17 mins 21 secs - 19 mins 15 secs

- (1) P: ... as I've said before I don't see any reason why I should be doing all that and I don't you know I I don't see any reason why an administrator can't do that kind of work it just seems pointless (.) me spending my time doing it
- (2) FM: what do other people do (..) in in the organization (.) other other advice would you {looking at Chris} have other advice workers other than debt workers
- (3) C: yes but none of them have to time fill
- (4) FM: right so its just [this
- (5) C: [they statistic record and they have to file record but not [not time record
- (6) FM: [ok

- (7) SM: so Paul y' you both know this job better than FM and I do how could you see this working with an administrative person doing that work (.) how could possibly could it work
- (8) P: well you know it just its just a matter of simple recording an and simply noting how much time (.) people spend on on work so I mean you know just a matter of simple time keepings simple record keeping isn't it
- (9) SM: so if I was the admin person and you were doing that task how would I know how to write down what work that you have done how would I know how to complete the form in the right way
- (10) P: well because I mean a obviously you know the the amount of time that I spend with each person could be noted quite easily (.)
- (11) SM: all right
- (12) FM: y you mean you could note that down
- (13) P: I could note it simply yeah just keep a record of how many how much time I spent with each person during the day just you know in in a rough format and then they could do all the kind of bits that follow on from there
- (14) SM: so i this is the part where it would be input[into the computer
- (15) P: [yeah the inputting and all that
- (16) FM: so when you say a rough format
- (17) P: I mean you know i i there's a story isn't there that it all has to be precise every single minute well it doesn't really have to be it just has to be roughly worked out it doesn't have to be so precise surely
- (18) SM: Chris what do you think
- (19) C: well the difficulty we have Paul if you don't make it (.) fairly precise ok...

Chris and Paul continue to argue about the need and practice of precise time recording of each case.

Commentary and analysis

After the opening “uninterrupted time” SM gave a rounding up summary. This is followed by a stage of the mediation encounter sometimes called the “exchange” (Beer and Stief, 1997) or the “exploring and working on the issues” stage (Crawley and Graham, 2002). It is notable that at 17 mins 21 secs into the whole joint meeting and at just 2 mins 21 secs after the “uninterrupted time”, both mediators, in the above extract, have largely moved directly to a sequence of problem-solving interrogation with Paul. The “subject positions” (Howarth, 2005) they adopted in the first visits remains unchanged as the joint meeting gets fully underway. From this “position” the mediator is authorised by self-presented expertise, confirmed by the act of commissioning, to manage conflict via control of the process of the mediation interaction.

After Paul attempts to defend his viewpoint in line (1), the FM, in line (2), decides to refer a question of detailed working practice to Chris to try to find a comparative model against which to measure Paul’s position. She is thus immediately entering into an instrumental, business debate about comparative workplace practice. She is also apparently deferring to Chris as Paul’s manager. Alternatively, she could have addressed this question to Paul or, very differently, at this juncture she could have sought to simply further explore the differences between Paul and Chris.

In lines (7) and (9) the SM takes up the probing of the ‘problem’ with Paul directly. It would seem that the SM and the FM are doing nothing other than managerial problem solving. It is as if they have already decided that Paul needs to do more of what Chris is asking and so they are both trying to get to grips with the detail of this with Paul through lines (7)-(16). Then, at line (18) the SM arbitrarily directs a question at Chris. She invites her to judge Paul’s assertions.

In this manner the FM and the SM start leading ‘problem-solving’ as soon as the ‘exchange’ commences. They thus overlook scope for exploration of the parties’ feelings about their personal disagreement or any deeper reasons, social circumstances or value systems that may have influenced the parties’ conflicting differences. It would seem that it is easier to deal with the ‘problem’ from a narrow perspective of instrumental reason or “technocratic consciousness”

(Habermas, 1971).

A sequence of four extracts in which 'difference' is mostly unexplored

First extract at 20 mins 33 secs - 20 mins 47 secs

- (1) FM: do you have eh eh have you had a situation in the past where the funding
has been refused because the
- (2) C: no I haven't
- (3) FM: so it hasn't actually happened yet (.) [Chris shakes her head] right
- (4) P: there we are (.) see (..) doesn't happen

Chris and Paul then argue again as Chris explains that she is always "running around putting it right".

Second extract at 21 mins - 21 mins 14 secs

- (5) P: you're worried about it you do it I mean I don't see the point eh he {a
chuckle} you know if you're so worried about it then what's the problem
with you doing it
- (6) FM: Chris can you say a bit about how this is impacting on your other work
with the time I think you said [earlier on
- (7) C: [yeah basically I have a ...

Chris goes on to explain her role as manager and supervisor, pointing out that it is not her job to put things right that have not been done and that Paul's job description is very clear and she should not have to make up for his lack of time recording in the manner prescribed in the job description. She suggests that Paul's refusal to time record will cause the LSC contract to be taken away and then Paul will no longer be able to help the clients he sees as most important. Paul interjects arguing that "they're not going to take the contract

away". Paul and Chris are talking over each other when the FM intervenes.

Third extract at 22 mins 28 secs - 23 mins 42 secs (DVD clock display 4/10 section 1/1 start at 1 min 12 secs.²⁰)

(8) FM: so there's a there's a there's a very there's quite a large difference of opinion here isn't there is you're you're for you the idea that the contract could be taken away here is very real (.)

(9) Chris: yes

(10) FM: your your very concerned that if the if the minutes recorded are not clear that they will take the contract away [whereas {turning to Paul}

(11) Chris: [and they have done with other bureaus yeah I know it happens so its not that I'm imagining it it happens I can

(12) P: where

(13) FM: ok so tell us a bit about that would you

(14) Chris: right well Dunstable had theirs taken they didn't have it take they had it cut by 50% because when they went into do the audit (.) the time recording didn't match the num the amount of hours that they had claimed so they just wiped the whole lot and they had to pay back five and half thousand pounds we don't have five and a half thousand pounds we we're we're we're a charity we're not you know I mean we're not a commercial organization that that has people paying us money to do things that we can offset it

(15) P: but there's something absurd about all this isn't there I mean that's just ridiculous

(16) FM: what what is tell us a bit more

(17) P: well its absurd you know that that an organization should be monitored so closely you know that one should have to account for every minute one spends its the work that matters who cares how long it takes who cares

²⁰ Timings on the DVD clock go out of sequence with the actual times at this point so they are shown additionally to ease any searching for a selected exchange.

how much time we write down

(18) FM: {turning to Chris} a would you agree with that

Chris then explains that she agrees with Paul that the time recording is tedious and she would prefer to get funding from somewhere else "where you could just focus totally on the clients" but, since the money cannot be obtained elsewhere, she sees it as a stark choice between complying with the LSC rules on time recording or not providing the debt advice service at all. The previous debt worker did comply with these rules "and it worked".

Fourth extract at 24 mins 31 secs - 27 mins 6 secs (DVD clock display 4/10

section 1/1 start at 3 min 12 secs.)

(19) FM: so your so your both agreed that i i is an incredibly tedious exercise

(20) C: oh without a doubt

(21) FM: {turning to Paul} correct me when I [stop when you stop to

(22) P: [uhm

(23) FM: agree with what I'm saying yeah that its an incredibly tedious exercise (.) there maybe is some understanding I I think possibly that if the information isn't provided judging by what's happened up at Dunstable that the that the funding could be stopped (..) ridiculous situation that you should have to provide so much information but the reality of the world is (.) that you do

(24) P: well

(25) C: its back to if you joined a club [where you've got to play by the rules

(26) P: [that's one way of seeing it isn't it

(27) FM: tell me how you see it Paul

(28) P: well eehh ok that may be the situation but its to provide its the provision of time recording isn't it you know I can't see why these things can't be just kind of worked out (.) on a on a kind of rough basis we all know how much time it takes to do this or that [or

- (29) FM: [ok so lets explore
that so how how wou how would that work (.) for you I mean the there
the requirement is I think to provide what looks like lets keep this
within these four walls what looks like quite accurate information to
the LSC
- (30) P: yep
- (31) FM: so in your ter in your way of looking at it how would you get to that
(.) providing how would you get to a point of meeting their needs (..)
- (32) P: well because we know you know although cases are individual we know
that cases fall into patterns we know that this kind of case takes about
this amount of time [you know we can we can kind of work those
- (33) FM: [right
- (34) P: things out its what I was saying about being less precise
- (35) FM: who can work them out
- (36) P: well you know between us we can work these things out can't we
[you know
- (37) FM:[so are you saying we almost have a menu that if you've got certain
cases you've got certain types of cases [that each one takes up a
- (38) P: [yeah
- (39) FM: certain amount of time
- (40) P: (.) yeah we could do that couldn't we I don't I don't see why not
- (41) FM: who could make that judgement then
- (42) P: well we could work it out between ourselves we know you know on the
basis of experience
- (43) FM: ok I meant I meant having come up with that menu of options
- (44) P: yeah
- (45) FM: having decided that case type A takes forty minutes case type B
takes two hours case type three takes ninety minutes whatever it is but
who then decides which case falls into which which [case
- (46) P: [well that would be
me wouldn't it

(47) FM: ok (..) ok

(48) P: on the basis of you know my conversation with the clients in in the
interview

(49) FM: {turning to Chris} is that at all realistic what Paul's (.)
proposing

(50) C: no and its not gonna happen

(51) SM: because

(52) C: we're not falsifying records its fraud

(53) Paul: its not

(54) C: its fraud you cannot

Chris goes on to question Paul's idea and explain why it is not very practical.
They both debate the practicalities for the next two minutes.

Commentary and analysis

In line (1) the FM continues with her practical assessment of the material detail of this conflict. Then, at line (6), she cuts across Paul, ignoring his outcry and poses a question directly to Chris. In a transformative mode she could have interpreted Paul's outburst as an expression of disempowerment and chosen either to remain silent, to allow either party to continue to speak, or to intervene to acknowledge Paul's strong feelings by reflecting back his suggestion (Bush and Folger, 2005). Her actual intervention has the effect of silencing Paul and preventing Chris from possibly responding to a direct challenge from Paul. Instead, she moves the discussion in a direction of her own choosing. This amounts to an invitation to Chris to refute Paul's proposal in a particular way, based upon information that the FM has gleaned earlier. Once more this tends to "position" the FM as a 'manager' of both the process and the conflict (Fairclough, 2001; Torfing, 1999, Howarth, 2000, 2005).

In lines (8) and (10) the FM intervenes to attempt a more even-handed recognition of a marked difference of opinion. In a sense she tries to draw the parties attention to their different discourses (Torfing, 1999) and to an external

source of this difference (Winslade and Monk, 2001; Cloke, 2001), being the LSC rules. However, Chris then talks over the FM. The FM then follows Chris's lead and yields the right to speak to Chris. A notional transformative mediator could have either remained silent at this juncture, to see what the parties decided to do, or possibly invited both parties to decide where the discussion should go next (Antes and Saul, 1999; Bush and Folger, 2001, 2005). The FM subsequently directs Paul to have his say in line (16), but then misses an opportunity to open up his view for exploration, immediately inviting Chris to judge Paul's view in line (18). Paul's contribution in line (17) may be read as both angry and defensive. Again, he is speaking from a position of some disempowerment. Inviting Chris to respond directly is likely to reinforce Paul's sense of disempowerment. The transformative approach would have been to either say nothing and continue to look at Paul (rather than turn silently to Chris) or to paraphrase Paul's comment to ensure he had been heard and understood by all present (Antes and Saul, 1999). In contrast to this non-directive approach, the FM appears to be orchestrating a debate between the parties in the hope that a 'truth' will emerge that she herself can relate to.

In lines (19), (21) and (23) the FM sums up the situation as she understands it thus far. She attempts to mutualise the 'problem' and massage her perception of Paul's hurt by reference to a "ridiculous situation" and yet refers to the "reality of the world" as she perceives it. The FM thus accepts and identifies with the hegemony (Torring, 1999; Fairclough, 2001; Howarth, 2000) of a discourse of monitoring and accountability. This sweeps aside Paul's views and he objects to this in line (26). The FM's response is issued as a curt challenge in line (27), "tell me how you see it Paul". In line (31) the FM further requests Paul to explain how he can meet "their [the LSC's] needs." This managerial terminology implies that the solution to the 'problem' must be to meet their needs. It is tacitly accepted that "their needs" are valid. Hence, the mediator has led the party to an acceptance of this very condition, one of the factors [the condition of LSC regulation] from which the conflict has arisen. The FM's interjections in lines (35), (41) and (45) focus upon her desire to unravel the technicalities of how Paul might work to meet the LSC's needs. Then in line (49) the FM invites Chris to comment on Paul's proposal. This is also an invitation for Chris, as Paul's superior, to judge him, questioning whether Paul is being "at all realistic". In this way the mediator is positioning herself as a management colleague of Chris

and the question, seemingly laden with silent judgement, is almost rhetorical (Fairclough, 2001).

All the above questioning is focused on the 'problem'. This implies a desire by the mediators to own the 'problem'. The 'question and answer' probing is authoritative, confrontational and directive. In the dynamic of this 'question and answer' style of intervention, the SM's one word expression "because", at line (51), becomes less a question and more a direction from the mediator positioned as a powerful 'manager'.

Almost opening up an issue: Extract at 28 mins 53 secs - 31 mins 39 secs
(DVD clock display 6/10 section 1/3 start at 4 min 11 secs.)

(1) C: ... well what's the difference in doing that when you've got this thing drawn up to just wri just writing down when you leave the office 10 o'clock to go to the client and when you come back up to the office writing 11.30 or 12.30 when you answer the telephone just write 10 o'clock you've got a clock on the [desk

(2) FM: [maybe maybe we should explore should explore what the difference is because I thought I thought I heard you {looking at Paul} say something earlier on or the impact on me certainly was around the fact that you kind of feel that this is quite controlling is is

(3) P: yeah absolutely

(4) FM: because you're having to state precisely [the time started and

(5) P: [uhm

(6) FM: the time ended [that you're finding it quite (.)

(7) P: [uhm yeah I just don't see what the problem is I just don't see why we can't get to the end of each week and say ok we spent this much time you know lets just kind of its not falsification is it its just kind of breaking things down on a kind a you know on a rough basis instead of having to be so precise an

- (8) FM: so what happens [what happens
- (9) P: [managed its all this management isn't it you know
you know I I left all I thought I'd left all that behind when I came to
work in a place like this you know I thought I'd left all that you know I
was in social services it was all over managed you know and now we're
getting the same thing its just over management all the time
- (10) FM: b but is that Chris's fault
- (11) P: (..) I don't know if its her fault but its certainly what she does (.)
- (12) SM: do you know (.) you mentioned about Dunstable earlier on and I'm just
wondering whether (.) if they've lost their em their funding sometime ago
would it be worth them coming to talk with you to explain to you what
happened and how that happened if they could do that without breaching
confidentiality (.) because we know that some people like small detail and
some organizations have to have small detail and there are some people
and it sounds Paul like you're very much one of them is you don't like
small detail
- (13) P: absolutely
- (14) SM: what you like is you're focus is on the people that's what's
most important to you [and for you its about bringing the
- (15) P: [absolutely
- (16) SM: balance in to accommodate what Chris needs what the bureau needs so
that you can keep these evenly balanced so that the LSC are getting this
that they need so that you can maintain [clients
- (17) P: [well that's what I'm saying
isn't it you know we work these things out on a rough basis rather than
being you know counting every minute that we're that we're spending
- (18) SM: but it might be so important (.) from what Chris is saying and from
what Dunstable's experience is is that it might be that it is that crucial
that the LSC may be laying down and if they are the provider [of the
- (19) P: [uhmm
- (20) SM: service they are the ones that have got the the purse strings

(21) P: yeah ok but I mean what Chris could do is to support

Commentary and analysis

In line (2) the FM attempts to open up an exploration of the different feelings about time recording between Paul and Chris by reflecting back Paul's sense of being controlled. Paul then starts to voice his resistance to what he perceives as an hegemonic discourse of accountability, or over-management, but this is not explored further in what could have been an attempt to stimulate a renegotiation of meaning (Torfin, 1999; Howarth, 2000). Instead, the FM seeks to defend Chris in line (10), thus apparently taking Chris's side. This elicits a counter defence from Paul who responds with a direct accusation in line (11). Perhaps the FM sought to build some common ground for Chris and Paul by constituting a common enemy in the form of the LSC. Thus, the mediator seems to be holding to several mutually irreconcilable 'subject positions': these are of impartial mediator; of manager/director of the mediation process; of proxy manager in search of a solution; of arbiter of a 'reality' that deems time recording a necessary need of the LSC; of enemy of the LSC; of defender of Chris as manager; and briefly, that of sympathiser with the over-managed Paul.

In line (12) the SM cuts across this confusion and Paul's answer (line (11)) to FM's question and closes down the issue of Paul's feelings about over-management. In lines (14) and (16) she attempts to invent a mutual purpose around the idea of "balance". She is thus creating a form of solution on behalf of the parties based upon her own reading of the situation they have described. However, this attempt at 'mutualising' the 'problem' becomes weighted or biased in favour of Chris because the LSC hold "the purse strings". Hence, the SM effectively supports the demands of Chris, the manager, and asks Paul to accept these also. The discourse of accountability is thus maintained and the dominant ideology naturalised (Fairclough, 2001).

Opening up an issue again: Extract from 36 mins 57 secs - 37 mins 33 secs
(DVD clock display 7/10 section 1/1 start at 1 min 42 secs.)

- (1) P: ..its not the LSC is it its just its just the micro-management that's going on there isn't it its just (.)
- (2) FM: do you think its not the LSC then do you think its its
[your organization
- (3) P: [I think that's just a kind that's just a kind of of bogey man isn't it you know just being used to kind of worry us you know its just the micro management that's going on just the the things the things spoiled in some way
- (4) FM: are you saying then that Chris is somehow or that that the that the advice centre is somehow using the LSC as an excuse to manage you
[to closely
- (5) P: [that's what I think that's how I feel about it (..) that's how I feel about it
- (6) C: so if that's what you feel then why do you feel I've just started doing that now....

Commentary and analysis

In lines (2) and (4) the FM reflects back Paul's sense of disempowerment and his dissatisfaction with what he perceives as "micro-management". In doing this she seeks clarification, gives him a chance to be heard and opens up this issue and the discourse it inhabits for exploration. In this way the discussion may be opened up to uncertainty so that potential for dialogue is created. If Paul feels this way, it would be a mistake if his feelings were not allowed to emerge, as the roots of the conflict would tend to remain buried and therefore liable to re-emerge later. For these moments one of the parties is more in control of the discussion with respect to the mediators', who are listening and following the discussion (Bush and Folger, 2005). The FM has thus temporarily divested herself of a particular 'subject position' as either mediation process manager or proxy manager for the organization (Torring, 199; Howarth, 2000).

There is a certain finger pointing edge to phrases such “do you think” (line (1)) and “are you saying” (line (4)). However, such an almost ‘transformative’ turn, that has enabled the power between the mediators and the parties to be more balanced, could have been extended to encourage an exploration of differences, causes and identities embroiled in the conflict. To do this, the mediator would seek to be ‘knowing’ about ‘not knowing’. However, this may lead to an apoliticism in an environment replete with politics. In countering this apolitical tendency, the mediator may seek to bring a judgement to bear upon the political and potential ethical dimensions of the conflict interaction between the parties (Glynos and Howarth, 2007). In practice, this means that the mediator may observe/assess points of difference between the parties. In selecting these points for overt consideration by the parties, the mediator acts politically (from within a normative, cultural milieu) and invites an ethical reflection by the parties upon their own subjectivities and associated social norms. Thus, the mediator both judges the situation whilst endeavouring to remain open and unknowing about the course the interaction might take. Hence, a counterfactual mediation style may admit the consideration of new ‘identifications’ entailing, albeit perhaps only on rare occasions, the temporary politicisation of the subjectivities of the parties (Howarth, 2000; Glynos and Howarth, 2007).

Closing down issues and a compromise agreement: Two more extracts

Extract from 40 mins 1 secs - 40 mins 37 secs (DVD clock display 8/10 section 1/3 start at 26 secs.)

- (1) P: well maybe she could do some of the filing stuff then if that's gonna (.)
satisfy you and I'll mm be [you know I'll be
- (2) C: [well I want it to satisfy you actually
- (3) P: more accurate with the with the time recording if that's if that's what
you're offering is that what you're offering
- (4) C: I said I'll look at it I'm not saying it can happen because Theresa isn't
sitting there doing her knitting all day is she
- (5) P: well

(6) FM: d d do you both sense that there's possibly some a bit of spare capacity there [for her to be able to help out

(7) C: [well there's possibly but if we can't get Theresa to do it then we might be able to get a volunteer to work with you but if we do that you're gonna have to make you're gonna have to make sure that that volunteer does what (.) is needed by the LSC because.....

Commentary and analysis

Paul makes a qualified offer to comply with Chris's demands in line (1) and (3) but is met with resistance from Chris, and so in line (6) the FM invites Chris to move her position. The FM can scent a compromise agreement and so directs Chris towards this. From within the dominant discourse of a managerial culture that focuses upon task achievement, the mediator manoeuvres the parties towards a solution. Mediation, if practised in this way, will tend to remain an instrument of management motivated primarily by reasons of cost effectiveness. The mediator will inadvertently and unconsciously support a status quo and an opportunity, however slim, inherent within mediation, for an 'ethical' engagement that seeks to uncover the radical contingency of social objects and relations will be missed (Glynos and Howarth, 2007).

Extract from 42 mins 24 secs - 46 mins 22 secs (DVD clock display 8/10 section 1/3 start at 2 min 50 secs.)

(1) C: ... we've ended up with one form that records every single piece of information other [organizations I know have got five forms [but we don't

(2) FM: [so your essential [your essen
your essential requirement is for Paul to be very very clear about exactly the amount of time he spends on each case (.) {turning to Paul}
are you y y your concerned about not wanting to be micro managed is there any sense in which you're concerned that Chris might then turn round and say to you why did you take too long why did you take so long

over that case [no ok so [

(3) P: [no [no I don't I don't think
there there's any of that

(4) FM: right

(5) P: I don't think that's the issue

(6) FM: right

(7) SM: so what so what is it then (.) what's the real issue

(8) P: its just spending time doing things that just you know a a a are not
valuable in terms of what the work is for

(9) FM: [ok

(10) SM: [and I think

(11) C: [its the principle and you're principles are going to cost the clients
the the the ability to be able to access advice [which I think is
really sad

(12) FM: [so is there
so is there maybe you know going back to what we were saying earlier on
about you know challenging the LSC is there maybe some if you like
compromise or or short term solution to be found here in terms of you
providing the information reluctantly (.) that is required but that
actually there's a commitment by all of you to work together to actually
challenge the LSC and challenge this kind of micro-management type
approach with a view to trying to get it changed in the future (.) but in
the meantime not play poker with your actually your actual [job do you
know what I mean

(13) P: [all right
yeah ok well if I thought there was a real commitment to doing that then
yeah I'd I'd I'd think about how yeah I'd I'd I'd do what I could sure

(14) FM: I mean I just get the impression that your kind of sort of
rebellious in your own sort of [way against the process and and [

(15) P: [yeah absolutely [um
absolutely

- (16) FM: Chris's concern is that that's all very well and she can she can see your point of view but she doesn't want to play poker with your job [
- (17) P: [uhm
- (18) FM: because if we you rebel too much and the information isn't provided the the experience at Dunstable suggests that [you know funding could
- (19) P: [uhmm
- (20) FM: be withdrawn and then you won't have a job (.) does that kind of sum up
- (21) SM: well I think perhaps the rebelling is which is which is quite a strong word is is because of your values your [values are with the people (.)
- (22) P: [absolutely
- (23) SM: not with the paperwork [to use]
- (24) P: [I'm not being bloody minded as she says
- (25) FM: you're standing up for what you believe in
- (26) P: ya
- (27) C: yeah but I but I then I then I think you're doing it I don't under you explain to me then how you equate this (.) I will not do it I'm not going to do it [or I haven't been]
- (28) FM: [I'm not sure we need to go there because I think that what you've just said that you you you are agreeable to the idea of trying to work together to actually provide the information in the short term whilst whilst agreeing er whilst commit whilst both committing to actually challenge the L the LSC in the longer term as to actually how they require information from you (..) and maybe looking [into the admin
- (29) P: [I'd be willing to look into that sure
- (30) FM: and you were talking earlier on as well about looking into some admin resourcing (.) to help Paul
- (31) C: mm yeah yeah that's fine (..) but in the meanwhile we've got to have it happening because I can't have it the trouble with this it isn't something that we can just say oh well lets see how we go for a couple

of months

(32) FM: yes ok [so

(33) C: [you know

(34) FM: [yep absolutely are you {looking at Paul} are you ok with that that if you're going to change and provide the information its got to start pretty soon do you want to erm sort of erm a do you want to agree now that you maybe have a meeting tomorrow or this afternoon something to actually work through how this is going to work in practice

(35) P: yeah I I suppose so (.) yeah I suppose so I just its just a sad state of affairs isn't it

(36) SM: sometimes these things happen you know that within [naming her organization] we have been asked to provide all kinds of information that we never provided in the past and believe me the number of people who are raving against it me included

Commentary and analysis

In line (2) the FM summarises the difference between the parties over detailed time recording/micro-management and then seeks to explore Paul's concerns, positing her own assumption about them. When this assumption is denied in lines (3) and (5), the SM interjects in line (7) with a direct question to Paul about what is "the real issue". Such a direct question carries unspoken overtones of a directive desire to sort things out and represents more the relationship of an adult to a recalcitrant child.

Chris's anger (line (11)) at Paul's "principles" is deliberately cut off by the FM who, contrary to the stated norm of mediation, proposes a compromise solution in line (12). Paul acquiesces to this compromise but only if there is "real commitment" to challenging the micro-management he objects to (line (13)).

The FM, in line (14), casts Paul as a rebel, indicating her judgement that Paul's behaviour is the 'problem'. Paul identifies with this naming of him as a rebel against the process. The FM goes on to enforce the message that if you rebel

too much your job is at stake. This leaves the FM with only one solution to pursue on behalf of the parties. Thus, the mediation has moved a long way from its starting premise of helping the parties to resolve their problem themselves. The mediators have investigated the problem and arrived at the solution which they are now shepherding the parties to agree upon. Both mediators in line (21) and (25) (and again in line (36)) massage Paul's ego. This triggers an outburst from Chris in line (27) which the FM suppresses with a restatement of the proposed, compromise agreement. Both Chris's residual anger with Paul's stance (lines (8) and (24)) and Paul's belief in his right to rebel (line (22)), plus his sadness over the compromise (line (35)), are not explored. To do so would tend to disrupt the chance of an agreement that the mediators have manufactured for the parties.

In sum, this section displays the mediators, having glimpsed scope for a compromise solution, leading the conversation, controlling contributions, suggesting the solution and preventing the parties from further expressing their thoughts and feelings to each other. Thus, the mediators occupy 'subject positions' of conflict managers rather than supporters to an exploration of conflict. The difference is subtle yet profound. The motivation to manage conflict would seem to be an instrumental one of simply getting people back to work.

This motivation is consistent with many expressed utilitarian reasons for the application of workplace mediation such as "improving working relationships", "reducing absenteeism" or "improving morale and productivity". (Source: Workplace Mediation South Ltd at www.wm-s.co.uk). Yet the practice of a 'problem-solving' approach, driven by a need to get people back to work, would appear to undermine the claims that workplace mediation affords non-judgmental support for party self or co-determination.

Mediation is a process enjoined by parties who are, to some degree, searching for the possibility of a peaceful resolution. In a world of work where the act of employment is depoliticised and naturalised (Fairclough, 2001), we may expect mediators to work within dominant discourses in their pursuit of resolution. Social norms from which the conflict emerged are likely to remain unquestioned. However, an aspiration to neutrality and impartiality necessarily becomes a political act. In deciding not to decide we make a decision that has an effect

upon our relationships with others. A stance of purported 'neutrality', in a situation of unequal power relations, effects tacit support for the powerful. Mediators claim to be outside of this dynamic of power. (Unpublished sources: Mediation Dorset training, 2001; Camden Mediation training, 2007.) This claim is contradicted by another mediator claim that they are sensitive to the impact of their interventions. This sensitivity is necessary to allow resolution to be decided by the antagonists themselves, either in compromise or in gaining a form of revelatory insight into the perspective of the 'other'.

It would seem that mediators thus have a choice of either managing the development of party compromise or of supporting the emergence of temporary acts of dialogue. These two appear mutually incompatible though both entail political action. The former depends upon an artful or skilled manipulation by a mediator that precludes any support for dialogue. Also, as seen in the above 'problem-solving' approach, furnishing a compromise can become a very directive, task focused exercise in which the mediator's perception of the needs of the organization come to supersede those of the parties (although one or both of the parties may identify with their interpretation of an organization's needs). By definition, a closure of the conflict aligns with the organizational need for a return to a co-operative and, therefore, an 'efficient' working relationship.

In the latter choice, pursuing dialogue demands a sensitivity to the impact of an intervention upon the parties, informed by an uncertainty and a tentativeness on the part of the mediator. Thus, a pursuit of dialogue indicates the need to support the parties in a possible uncovering of the radical contingency of social objects and relationships (Glynos and Howarth, 2007) that inform the conflict. Whilst this 'uncovering' has a potential to give rise to a challenge to the political conditions surrounding the conflict, workplace mediators do not work as political agents imposing their own a normative critique. However, such an approach to mediation resting upon an ontology of radical contingency (Glynos and Howarth, 2007), is inherently critical and yet seeks to retain a humility in which the parties' interactions are 'followed' rather than instigated. In the second case study mediation below I will contrast this counterfactual mediation behaviour with 'transformative' practice.

Below I will also consider some proto-explanations for these divergent modes of

mediator engagement, in terms of how either mode may be in the 'grip' of fanatasmatic logics and associated modes of enjoyment (Glynos, 2008).

Final extract from 49 mins 22 secs - 50 mins 23 secs (DVD clock display 8/10 section 2/3 start at 9 min 47 secs.)

(1) C: we can work it so we keep the money the clients get the service and you've still got your job (.) at the end of the day that's my (.) that's my total goal with it nothing else I mean I don't have any other agendas

(2) FM: ok

(3) SM: so tell me what it is that you've agreed what is it that you are going to do Paul what are you going to do

(4) P: I'm going to make a greater effort to to try and improve my time recording (..) and (.) work with Chris to find ways of trying to resolve the the overall administrative load on the post I suppose

(5) SM: ok and Chris what are you going to do

(6) C: well I think we we'll we'll probably need to go and sit down and talk about how we're going to move it forward in term of timescales because we need to get some timescales in we will need to be working t first of all the first thing we probably need to do is to start looking at the administrative tasks because maybe removing some of that from you will make you feel a bit less pressured as far as the time recording [ahm

(7) P: [uhm

(8) C: and then you know we need to just monitor it and and we would do this and I will feedback to the Legal Services Commission I mean

The role-play ended at 53 mins 5 secs.

Commentary and analysis

In lines (3) and (5) the mediator directs the parties to restate the solution as to how they will behave in future to prevent problems arising again. This has a feel

of the mediator as 'arbitrator' or even 'judge' and does not accord with the the descriptions of workplace mediation promulgated by the industry (Crawley and Graham, 20002; Gibbons, 2007; ACAS, 2005; ACAS/CIPD, 2009).

5.1.4 Summary interpretation of the facilitative mediation role-play

In the above examination of the work of the mediators, it is clearly possible to discern their overt direction of a resolution to the conflict. A picture of the exercise of power emerges. It is the power of the mediators' 'enunciative modality' that fixes the parties as subject to the mediators' authority. This authority is derived from a self-declared and institutionally backed, professional expertise of conflict management. This affords mediators a 'natural' right and obligation to control the mediation meeting process and interrogate the parties within it. By this means mediators acquire an obscured power to direct parties towards solutions devised by the mediators. They are thus able to transform themselves from 'supporters' of the parties to 'leaders' of solutions whilst retaining a rhetoric of mediation as a non-judgmental, self-determining process. 'Positioned' as proxy managers, the act of mediating becomes subsumed within a prevailing organizational discourse of a necessarily desirable, efficient outcome. The mediators, beneath a pretence of impartiality, appear to be intent on persuading Paul to accept the views and demands of his manager. 'Solving' the conflict for the parties aligns with getting people back to work. Espoused values of neutrality and impartiality shroud an instrumental directiveness. Acceptance by atomised parties (Glynos and Howarth, 2007:172) completes the naturalization of an ultimately hegemonic process. There is an implicit assumption of a transparent and homogeneous society, contrary to the assertions of Laclau and Mouffe (1990:130), as quoted above. From within this assumption the mediators deploy attributes of general mediation; listening, reflecting back, summarising, but these become distorted by naturalised beliefs about appropriate norms and practices in the workplace.

The mediation has seemed to focus mostly upon the material issues of the conflict rather than upon the personal interrelationship between Paul and Chris and the underlying discourses, beliefs and identities out of which this relationship is formed. Neither have causal webs and patterns surrounding the conflict received much consideration. In a sense, the 'conflict' has been

regarded as an aberration or a problem, in need of correction, arising between two autonomous agents. Conflict is viewed as arising from an antagonistic clash between individuals “with fully constituted identities and interests” (Howarth, 2005:105). Howarth continues to explain, as quoted above (page 103) that:

[b]y contrast, Laclau and Mouffe argue that social antagonisms occur because social agents are unable to attain their identities (and therefore their interests), and because they construct an ‘enemy’ who is deemed responsible for this failure (Howarth, 2000:105).

We can interpret the dislocatory experience, i.e. the conflict between Paul and Chris, as a blockage to the attainment of their respective identities. Chris’s role, as a firm but considerate manager, has been challenged by Paul’s apparent insubordination and refusal to comply with a procedure. Paul’s identity as a skilled debt worker, valued by his clients and colleagues, is being threatened by unreasonable and bureaucratic demands for form filling. The ‘blockage’ (form filling), is common to both of them; a demand by one versus a refusal by the other. In this opposition, they each become the other’s ‘enemy’.

Howarth describes the discourse analyst’s task as:

to describe ways in which the identities of agents are blocked, and to chart the different means by which these obstacles are constructed in antagonistic terms by social agents (Howarth, 2000:105).

Whilst the workplace mediator is not a discourse analyst and is working with ‘individuals’ rather than surveying social movements, s/he may derive an insight from this definition and regard the mediation meeting as an opportunity to support the parties in gaining an understanding of their own and each other’s identities and subjectivities. This would necessitate that the mediators place people qua people ahead of people qua human resources/ units of production. Yet the above focus upon the ‘material’ aspect of conflict seems to lead towards the objectification of the parties as mere human resources. Notwithstanding this analysis, mainstream mediation espouses an exclusive concern for people, but for people as individual, sovereign agents. This suggests the operation of a doubly layered fantasy. First, in this stance of humanism, in denial “of an awareness of the socially constructed character of identity” (Stavrakakis,

2005:70) and second, in the belief that problem-solving mediation can elevate this humanism above a discourse of workplace, task achievement that serves the 'needs' of the organization. In the above case study the reverse is apparent.

Drawing upon a view of identity and identification that rests upon the Lacanian concept of ontological lack and also upon Laclau's and Mouffe's concept of the radical contingency of identity and social formation, reviewed above, Howarth further explains that:

antagonisms reveal the boundaries or political frontiers of a social formation, as they show the points where identity can no longer be stabilized in a meaningful system of differences, but is contested by forces which stand at the limit of that order (Howarth, 2000:106).

Although this theoretical analysis refers to broad socio-political forces it has a resonance in the microcosm of the mediation encounter. The stabilization of identity in a "meaningful system of differences" encapsulates a central theme of mediation, very closely echoing the objectives of transformative mediation in particular. The aim of transformative mediation is to restore calm and harmony through the stabilisation of identity and mutual recognition. However, if the system of differences maintains an oppressive hegemony, mediation may be accused of acting regressively in harness to such a system. A progressive form of mediation would, at first glance, seem to require a counter-intuitive act of possibly exacerbating the conflict to disturb this system of meaningful differences. It would seem a madness to contemplate exacerbating conflict and therefore conflict must be suppressed. It is from this reasoning that the discourse of problem-solving mediation, that holds a "negative vision of human conflict" (Bush and Folger, 2005:239) becomes naturalized.

In contrast, Bush and Folger (2005:239) argue for an "essentially positive vision" of conflict. In a similar vein, but with a different trajectory, I would argue that it is possible to work through conflict, risking exacerbation, to a reconfigured system of differences that may be less oppressive than before. For Bush and Folger this 'working through' is found by their therapeutic method that induces moments of recognition of the 'others' individual humanity, irrespective of contextual social and political norms. Drawing upon the logics of explanation developed by Glynos and Howarth (2007), I would suggest that 'recognition' might go beyond Bush's

and Folger's idealism to a more material sensitivity to one's own and the other's subjectivity, brought into relief by awareness of the contingency of prevailing social and political norms. That this is not the case in either the 'facilitative' role-play above or the 'transformative' one below may be partly explained if we regard the mediators as being in the 'grip of fantasy'. Glynos and Howarth explain that:

[t]he role of fantasy in this context is not to set up an illusion that provides a subject with a false picture of the world, but to ensure that the radical contingency of social reality - and the political dimension of a practice more specifically - remains in the background (Glynos and Howarth, 2007:145).

In considering the approach of mediators FM and SM in the above role-play it is possible to conclude that there is an unawareness of leading the parties to a solution that has been framed in the minds of the mediators themselves. This may be because the solution is obvious to all within the discursive frame of the contemporary workplace. There are also implicit assumptions that both the conflict and the application of a mediation process have no political dimension. Above all, there is an presumption that the subjectivities of the parties innately grow from their essential, human identities. The conflict may have brought on a momentary emotional disruption of their sense of well-being but a solution, if it can be found, will restore 'normality'.

The mediators seem to have identified themselves with the role of peacemaker and, by deriving 'enjoyment' in this role, they become sedimented within a naturalised world of the work organization that is found in a market economy (Fairclough, 2001; Glynos 2008). Their own employment, as mediators, rests upon this sense of identity. This is how the 'subject position' of facilitative mediator becomes merged with the 'subject position' of proxy manager. A counterfactual stance would recognise that conflict is inherently political and that subjectivities are socially constructed and arbitrary. Therefore, it would seek to give space for the parties to express themselves without the interference of an interrogative disposition. In this way it may be possible to open up to view that which is contingent and thereby to afford an opportunity for exploration by the parties of their own 'modes of subjectivity' (Glynos, 2008).

A transformative mediator would try to avoid equating party reconciliation with a

success for the mediator. This is a matter for the parties and many different yet 'successful' outcomes are possible. In contrast, it is also possible that the mediators in this morning role-play tried even harder to achieve a successful outcome because they may have felt 'watched' or 'tested' by me, the observing researcher, and even by the parties as actors.

Approaching the act of mediating, "enjoyment" (Stavrakakis, 2005; Glynos, 2008) may be obtained from an expectation of an expert performance, and then subsequently, in the believed achievement of peacemaking; of re-stabilising the same "meaningful system of differences" that prevailed before the conflict flared. However, all of these motivating emotional/affective factors may be subsumed under the simple humane desire to help those in distress. Mediators may believe, on rare occasions, that collective making of meaning within the group has occurred, illusorily or otherwise. There is a risk that the mediator may feel they have become a hero in the wise, Socratic mould, without awareness that dialogue may have been suppressed and the status quo upheld.

This same fantasy could also apply to the hypothetical mediator practising in the counterfactual style. However, if parties are able to arrive at a new and critical understanding of the same system of differences, or even to glimpse an altered system of differences from which they can question social practices and their own subjectivities, the mediator may be permitted some enjoyment. Such enjoyment is derived from sharing with the parties in an ethical detachment from fantasy (Glynos, 2008:291).

Mediators who are aware of choices about how they mediate may adopt a transformative or an explorative style. Nevertheless, underlying motivations, such as fear of not generating a successful outcome or a humane desire to help those in distress, may yet lead to a relapse into a more facilitative, problem-solving approach. A fear of 'failure' to achieve reconciliation, may lead a mediator to compromise an 'ethical' practice (elaborated below) and opt to shepherd parties toward such reconciliation.

In the literature review I have shown how the transformative style has been developed from a partial problematization and deconstructive contestation of the problem-solving approach (Bush and Folger, 1994 & 2005). However, problem-

solving is still practised in the mainstream whilst transformative mediation has grown to hold a minor, yet significant, position in the world of U.S. mediation (Bush and Folger, 2005). Transformative mediation is used in the workplace in the U.S. but not to my knowledge in the U.K. The U.S. Postal Service set up an internal, transformative mediation service, precisely to address issues of discrimination in it's multi-ethnic workforce (Antes et al, 2001). Transformative mediation is characterised by it's non-directive approach and a self-deterministic humanism. It is this absolute faith in the sovereign capacity of the individual that would seem to render it effectively blind to the political dimensions of conflict. In the next role-play I will seek to evaluate how power is channelled through, or exercised by, a transformative workplace mediator in contrast with the facilitative mediators studied above.

5.1.5 Extracts with commentary and analysis in chronological order from the afternoon, 'transformative' role-play

In transformative mediations it is not assumed that first visits will lead to joint meetings. First visits can be very long, depending upon the needs of the party. Because of the nature of the transformative method and the accepted intent to hold the role-play joint meeting, the following first visits were very brief. Again, the first visits were held to enable the parties and the mediators to familiarise themselves so that they felt as comfortable as possible in the subsequent joint meeting.

As mentioned above, the mediator in this role-play works as both a paid facilitative, workplace mediator and trainer and separately as a volunteer, transformative, community mediator. Here she plays a transformative mediator in a workplace setting. Interestingly, to an extent demonstrating the 'realism' of the role-play, this proves to be quite a difficult task and facilitative, workplace practices emerge in the data below.

First visit of the transformative mediator with Chris

Extract from Chris's first visit from 0 secs - 1 min 54 secs

- (1) TM: Chris welcome (.) its good to meet you we've spoken on the phone
obviously (.) we've just got a little bit of time together now (.) so I
want to check in with you (.) see how you are and see if you've got any
questions (.) before we actually get together with Paul later on [today
- (2) C: [righ ok
- (3) TM: what (.) how are you feeling about about being here today
- (4) C: fine (.) yep erm I think this is sort of the end of the line as it were
because we've tried well no its not the end of the line its the step
before the end of the line because I've tried various different ways to
try to resolve this that haven't been successful so (.) this is another
opportunity to see if we can sort it all out
- (5) TM: so you've tried quite a few things already
- (6) C: yes when I say things I mean things that I have done or that I've tried
personally um hum
- (7) TM: so your you've tried to find coping mechanisms if you [like to deal with
- (8) C: [uhm
- (9) TM: the solutions but you've decided that mediation is going to be
something worth trying
- (10) C: yes definitely
- (11) TM: today
- (12) C: uh hum
- (13) TM: ok do you have any questions about the way mediation works about my
role about the process that you want to cover
- (14) C: what do you do what exactly do you do
- (15) TM: well my role is I suppose most importantly to say that I'm here to be
um impartial and and objective and I'm not here to try and judge em
criticise or give suggestions or recommendations as to what you an and

Paul should do (.) so my role is really to support you in understanding and making sense of the situation and how its affecting both you and Paul and to become clearer about what you want to do in order to move it forward (.) [umm

(16) C: [righ

(17) TM: the kind of things that I might be doing when we get together this afternoon would be reflecting back to you what I'm seeing and hearing um checking that you are comfortable with the way that the the thing is going and seeing if there are other ways that you want to use your time (.) does that make sense

(18) C: yeah ok

(19) TM: ok

(20) C: um that's fine

The meeting ended a few seconds later.

Commentary and analysis

In line (3) the mediator checks how Chris is feeling and in line (5) she reflects back Chris's contribution to allow Chris to steer the opening part of the meeting. In this way the TM can take her cue from Chris. Hence, the TM immediately demonstrates her intent to place control of the meeting process and content in the hands of the parties (Bush and Folger, 2001 & 2005). In lines (7) and (9) the TM reflects back what Chris has said and then moves on to invite questions about mediation. This reflecting back has the effect of inviting Chris to express herself without any leading assumptions being made by the mediator.

However, the use of the term "solutions" in line (9) is worth remarking upon. Although Chris has spoken of something to "resolve" in line (4) the word "solutions" appears almost like a Freudian slip, as if the word has forced itself into the dialogue. In a similar manner, at the end of line (15), the TM says 'in order to move it forward'. This implies that some form of resolution is an aim. This is not in keeping with the principles and practices of transformative

mediation, as to talk of 'moving forward' does prejudge what the parties might decide to do (Bush and Folger, 1994 & 2005). Moving forward from a negative, destructive interaction to a more positive interaction is an aim of transformative mediation, whereas moving forward to find a settlement or solution is not, although it may be a by-product of the former. In defining conflict as a crisis of human interaction, Bush and Folger (2005:46) argue that, "help in overcoming that crisis is a major part of what parties want from a mediator". "Overcoming" can be equated with a forward movement.

When asked about this terminology afterwards, the TM suggested a more transformative phrasing could have been "where would you like to go from here", which, she said, "sounds less like pressure to 'move forward'". A 'future focus' is typical of much workplace and commercial mediation. This aim seems to have seeped into the mediator's concept of her role here, and again below at several points. It appears that this mediator's 'facilitative' workplace work has infiltrated her 'transformative' disposition.

First visit of the transformative mediator with Paul

Extract from Paul's first visit from 15 secs - 1 min 14 secs

- (1) TM:... and I want to check with you if you have any questions about today or any concerns or anything at all that you want to raise before we actually when we're in a room together with Christine later on
- (2) P: uhm um I don't think so no a can you tell me a little bit more about what what we're going to do
- (3) TM: sure yep (.) well when we meet later on today the purpose of the meeting is for you and and Chris to find out how you want ta to explore the issues that have brought you to mediation
- (4) P: uh hum
- (5) TM and to find out how you want to take things forward
- (6) P: right
- (7) TM: um I'm not going to impose much structure on that unless you ask me to

(8) P: ok

(9) TM: um (.) the way I work is much more to follow your and Chris's lead as to how you want to use the time and and really work with you in a way that you know that's best I can support you

(10) P: right

(11) TM: uhmm (.) any other specific questions about my role or or or y'know how how do you have any concerns about what's going to happen

(12) P: err no I don't think so ...

The meeting ended after a few more seconds.

Commentary and analysis

The TM has stated an aim to work very openly without an imposed structure so that the parties may find out "how [they] want to explore the issues" (line (3)) and "to follow your and Chris's lead as to how you want to use the time" (line (9)). Although, again, there is an assumption of a desire to "take things forward" in line (5), which betrays a more task oriented and problem-solving 'discourse'.

Afternoon role-play: Joint meeting between Paul and Chris and the transformative mediator

Opening welcome to the joint meeting: Extract from 7 secs - 4 mins 38 secs

(1) TM: ...just before we start I want to say a few things about about mediation if you like the spirit of mediation erm to check that we're all here under the same understanding erm (.) the first thing to say is about confidentiality (.) that I'm not going to pass on anything that either of you say to me to anyone else do you have either of you any concerns about confidentiality you want to raise with one another in terms of how what is said is used or passed on to to any anyone afterwards (..)

(2) P: erm (.) well as you know e I mean we're here at the behest of the chair of

the trustee board and I just (.) want want to check with you what what the relationship you know what's going to happen about that (.) you know i is what's discussed here going to go back to the chair of the board or what

(3) TM: ok so you want to understand whether what we discuss what you discuss is going to be passed [on to to particularly to the chair [of the

(4) P: [umm [umm

(5) TM: board well I'm not going to pass anything on to them at all erm (.) and its really both for you both to decide if there's anything that you agree that you want to jointly pass on to them [whether its in a written

(6) P: [right

(7) TM: form or whether verbally erm but I certainly won't and you can make a request of one another not to pass not to pass anything on without agree agreeing it between you if you would if you would like to

(8) P: right (..)

(9) TM: Chris any any concerns [or any questions

(10) C: [yes I I I think my my I think my concern about confidentiality is that is that it doesn't get passed on to other members of staff because we've already got a bit of a (.) I don't think its appropriate for other people to be involved in [it so you know there

(11) TM: [yeah

(12) C: aren't any reasons as far as I am concerned why it should

(13) TM: um so for you its important that nothing is passed on you wouldn't like anyone to be aware [of what was said here (.) is that something that you

(14) C: [no

(15) TM: would share [Paul

(16) P: [um yes absolutely of course yeah

(17) TM: so how would you like to capture that agreement is it enough for you to have said it to one another or would you like to have that written in some form whereby you agree not to pass anything on and sign it (..)

(18) P: I don't think [so

- (19) C: [no I don't think [no
- (20) TM: [you're comfortable fine fine (..) because that's the first thing the second thing I would just like to um er raise which is crucial to the mediation also is that your presence here is voluntary that's really the way it works best that you are both here in the spirit of trying to find a way forward that works for both of you (.) so I want to check that your quite sh sure that this is the right place for you to be right now um and your ok to proceed (.) just double check
- (21) P: [well em I mean I'm I don't really see the need for it but um I'm I'm
- (22) C: [mm
- (23) P: happy to kind of talk sure
- (24) TM: ok so unsure about what the need for for [mediation is but you're
- (25) P: [umm
- (26) TM: happy to talk ok if we need to unpack that and understand a bit more about that you see the need [to be er you know let me know and we
- (27) P: [umm
- (28) TM: we'll do so [but for now that sounds like an ok yes I'm I'm here in
- (29) P: [ok
- (30) TM: [principle
- (31) P: [yeah [yeah
- (32) C: [Yes
- (33) TM: Chris
- (34) C: I'm fine with that
- (35) TM: fine ok (.) and then the third thing is about I guess its to do with my role which is that I'm a neutral here I'm not here on anyone's side or with a particular agenda as to what should be the outcome erm I'm really here to support you in having a produc productive conversation errm I want to help you in finding eh you know making sense of the situation and how its impacted on you both and becoming clearer about what you both want to do ta to move things forward (.) so the kind of things I might be

doing is you know reflecting back to you telling you what I'm seeing and I'm hearing erm and checking that you are both comfortable with the way the way the mediation is going erm eh if at any point you would like to make any suggestions erm or requests as to how we use the time how how to whether you want to break that kind of thing then please just let me know erm (..) and I think and I think that's it (..) well one one last thing I'd like to check actually is if you at this stage have any request or suggestions about (..) things that might make you both feel comfortable being here and talking to one another sometimes I find that people like to introduce ground rules about how you talk to one another the language you use all that kind of thing is there anything of of that nature that springs to mind and we can always introduce them later if you think of them later (..) but is there anything at this stage you want to raise

(36) C: no

(37) TM: nothing ok

(38) P: no I don't think so no

(39) TM: ok (..)

Commentary and analysis

The TM starts by setting up a conversation about confidentiality in lines (1) to (19). She places control of and decisions about confidentiality with both parties, for her part promising to treat all discussion as confidential. Promises of confidentiality help the mediator to gain the trust of the parties. As noted above, behind the shield of confidentiality the mediator is able to lay claim to an ethic of the impartial and 'neutral' assistant. However, by reference to the need for confidentiality alone, the mediator locates her/himself at the margins of a hierarchy of authority that assesses or judges parties in conflict.

The habit of workplace mediators to suggest documenting agreements, as in line (17), also hints at the potential prospect of these more formal, legal and statutory processes. This may indirectly confer status and authority upon the role of mediator and so again tend to subtly undermine the transformative

practitioner's belief in the parties' capacity for self-determination (Bush and Folger, 1996). The shadowy presence of more formal adjudication systems give an indication of the non-neutrality of mediators in that they are, in practice, unable to detach themselves from the cultural milieu of conflict in the workplace. This points to the necessity for mediators to recognise the myth of neutrality, implying the need for reflection upon an almost inevitable political agency inherent in the very act of mediating.

Hence, such mediation discourses of 'confidentiality' and 'agreement making' can be constraining but they may also afford structure within which a freedom for dialogue might develop. In this transformative example they are offered as choices for the parties which can be explored, rather than enforced by the mediator as a matter of dogma.

In line (20) the TM invites the parties to consider the importance for mediation of the parties voluntary attendance and to give them an opportunity to say if they feel they are there on a voluntary basis. The TM again associates voluntary attendance with a desire "to find a way forward", a phrase more akin to a 'problem-solving' discourse. As noted above, finding a way forward can be read differently. Bush and Folger argue that:

With or without the achievement of agreement, the help parties most want, in all types of conflict, involves helping them end the vicious circle of disempowerment, disconnection and demonization - alienation from both self and other. Because without ending or changing that cycle, the parties cannot *move beyond* the negative interaction that has entrapped them ... (Bush and Folger, 2005:52/53 - italics added.)

It would be antithetical to Bush and Folger to tell the parties that they must cease their negative interaction and move it forward, but that is their almost covert ambition. Bush, acting as a mediator, expresses it thus,

I'm not going to, uh, make decisions for you in any way here really, uh, whether decisions about how to have the conversation or what to talk about or where to wind up. I see my role as helping you to have the conversation, listening to you, helping you listen to yourselves in a way, as well as to each other ... (Bush and Folger, 2005:135)

The mediator follows the parties, intervening only to help bring more clarity to moments of “empowerment /disempowerment” or “recognition /non-recognition”. The whole purpose of transformative mediation is to support listening and the healing that comes from regaining “empowerment” to form a base for “recognition”. Thus, whilst it is for the parties themselves to decide to move beyond the crisis, the mediator holds an ambition for them to do so and makes therapeutic interventions to promote this possibility. Agreement may or may not follow. Success in transformative mediation is varied from small gains in clarity and individual decision making or small improvements in ‘interaction’, through to full mutual recognition and joint decisions that can sometimes flow from this recognition.

As noted above, Bush and Folger attribute a negative vision of conflict to the ‘problem-solving’ school. They themselves argue for a “positive vision” of conflict (Bush and Folger, 2005:239) because in moving beyond it, moral growth may be realised in which the “claims of self and other” (Bush and Folger, 2005:74) are brought into balance. However, this also implies a negative view of the state of imbalance present in a crisis of interaction. In sum, Bush and Folger seek not to resolve specific ‘problems’ but to resolve the general problem of an interactional crisis. They are thus also ‘problem-solvers’ but of a different kind.

From this standpoint it is not ‘issues’ that bring people into conflict but a deficiency in relational skills. This polarisation would seem too extreme, another mistaken dualism. From the perspectives of post Marxist and poststructuralist writers reviewed above (Laclau 1990; Torfing, 1999; Howarth; 2000; Howarth and Torfing, 2005; Glynos and Howarth, 2007) antagonism, conflict and power demand a consideration of the social, political and psychoanalytic dimensions of life. It is the political dimension that is most noticeably absent in the work of Bush and Folger (1994 & 2005) and I will seek to further draw this out in this case study. As I have argued above, the work of Bush and Folger is marked by an apoliticism. This may be one reason why the TM is unable to prevent herself slipping from the transformative style into a more mainstream, facilitative, problem-solving mode of mediation.

The beginning of the intervention in line (35) represents a contradictory mixing of ‘problem-solving’ and transformative mediation. It is as though the TM is unable

to throw off her usual workplace mediator 'subject position' with a focus upon the restoration of productive working relationships. She says she has no "particular agenda as to what should be the outcome", and yet these very words, "agenda and "outcome" are redolent of management control and echo a workplace 'discourse'. The TM then continues to say,

"I'm really here to support you in having a productive conversation errm I want to help you in finding eh you know making sense of the situation and how its impacted on you both and becoming clearer about what you both want to do"

These aims accord more closely with 'transformative' practice and the TM goes on to describe ways in which she will hand control of the meeting process to the parties with the intent of supporting them through their present 'interactional crisis' (Antes and Saul, 1999; Bush and Folger, 1996 & 2005; Folger, 2001). However, and this is critical, even this demonstration of transformative practice, when set in the context of employee relations²¹ within an organization, contains a presumption of reconciliation. Transformative mediation in principle, aims to surpass interactional crises. "[B]ecoming clearer about what you both want to do" could include electing to initiate a grievance or a disciplinary procedure, but this would constitute a failure of the workplace mediation process. Hence, in the workplace, the overall trajectory of a transformative mediation intervention will, I believe, tend to inevitably become aligned with the needs of the organization for reconciliation and a return to productive work activity. All workplace mediation interventions necessarily serve this agenda.

However, that parties, with support of mediators seek to address and possibly resolve interpersonal conflict does not need to entail a capture of the mediator as an hegemonic agent of the organization. A subtle shift of mediator ambition might limit it to supporting a search for understanding of the conflict and the 'self' and 'other' within it. This is an ambition short of an aim to heal an interactional crisis, although healing might be expected to result if such greater understanding is found. A search for understanding does leave open the political undecidability (Torring, 1999; Howarth, 2000) of the patterning of conflict

²¹ As I write in January 2010, a relatively new term for personnel management/HRM is becoming more common, that of Employee Relations. When relations of employees break down ER may intervene with mediation.

causation and any possible forms of resolution. In the absence of any political awareness of power, the more prescriptive 'transformative' ambition of "moral growth" achieved by an autonomous, self-determining party would seem to act to cover over a sensitivity to an innate undecidability. However, a mediator aim to support the exploration (and not necessarily resolution) of conflict is also premised upon a belief that a conflict, though it may be instructive, is an episode to be healed. This might seem to equate to the temporary suturing of a dislocation (Torfing, 1999:115 & 308). Nevertheless, a search for mutual understanding could combine a subjective, or intersubjective, emotional healing with maintenance of a political insight that holds to a continued sense of radical contingency and hence undecidability.

However, such philosophical potential is dashed in practice when the aims expressed in the above quote from line (35) are immediately followed by the words "ta to move things forward". Whether this aspiration is for resolution of specific issues or only about their 'interactional crisis' is ambiguous at this early stage. It would seem to be the former but if it is the latter, this is not an "outcome" a transformative mediator would tend to set out as an explicit goal, even though it may be implicit. This is because the transformative mediator seeks to 'follow' the parties conversation and not take a lead.

Throwing the meeting open to the parties: Extract from 4 mins 39 secs - 13 mins 24 secs

- (1) TM: ok fine so that's enough talking from me from now on I'll be doing much less talking and its really for you both to (.) you know to to use the time as you see fit ahmm (.) how would you both like to start would you both like to s s start by telling one another what what brought you here to to mediation (..)
- (2) P: um (..)
- (3) C: I think certainly that we both that we both know there's been a problem
- (4) TM: uh [hum
- (5) C: [erm (..) the trustee board suggested this as a (.) possible way forward

- (6) TM: uh hum (..) so a problem erm your both in agreement that this is the case and that the trustees or the the er trustees suggesting that mediation could be a way for you to find a find a way forward is that is [that how you [see
- (7) P: [umm [uhmm
- (8) TM: it Paul as [well
- (9) P: [umm yeah um I don't as I said before I don't really see there is a a major problem I think you know its its pretty minor thing which has been blown up really out of proportion erm but you know I I I'm willing to you know concede the fact that things aren't right in the office obviously its not its not a good atmosphere to work in
- (10) TM: ok
- (11) P: I would want to solve that if I could
- (12) TM: um so that's what you were referring to when you said that your not quite clear of the need for [this or that something somehow the things
- (13) P: [yeah
- (14) TM: been blown out of proportion [but you see now that there is an issue
- (15) P [uhmm
- (16) TM: in terms of how things are in the work place
- (17) P: yes its not its not its not a happy place at the moment obviously erm and you know obviously I'd like I'd like that sorted sorted out if it can be
- (18) TM: uh hum ok so your looking really for a way of making the environment in the office a more[happy place to be [ok does that sound to
- (19) P: [umm [hum
- (20) TM: you Chris like the kind of way a outcome I guess you'd like to see from today's meeting
- (21) C: yes I mean I I think that I have two outcomes one of them one of them would most definitely be the one that Paul was saying (.) and the other outcome is that we (.) we get some way of dealing with the situation of the fact that we've not had that Paul's job is not being done in exactly

the way that it needs to be done (.) because of the role that he carries out

(22) TM: uhm

(23) C: erm (.) but yes I mean you know the atmosphere in the office is unpleasant and its you know its its not its not nice and its never been like that before so (.) you know yes that is something that needs dealing with but I think the other thing runs along side it

(24) TM: um so from your point of view Chris really two two outcomes [that

(25) C: [uhm

(26) TM: you'd you'd like to see and one is which you share with Paul is to try and improve that the environ the environment in the [office which as you

(27) C: [uhm

(28) TM: say hasn't been like that before an so you would like to (.) make a change to that

(29) C: um

(30) TM: and the other is to see a change in the way that Paul's job is being done

(31) C: uh hum

(32) TM: which of those two would you {looking at both of them} like to to start talking about first

{long pause of seven seconds}

(33) C: I'm not sure that we can [have is] (.) from my point of view until we deal with the way the jobs being done I can't quite see how the other side of it can change because its (.) we've only had the problem of the atmosphere in the office since its about the the job not being done properly started so (.) um I I can't quite think how we could do what do one before the other

(34) TM: ok

(35) C: [.....]

- (36) TM: you you used the words I think Chris erm that for you Paul Paul's job isn't being done properly {turning to Paul} and then I mentioned I noticed that when you first started talking you didn't mention that as one of the outcomes you'd like things you'd like to see discussed (.) how does it strike you as you know as a topic that to talk about today and ta to address are you comfortable with that and expecting that
- (37) P: yes I mean that's that's that's been the bone of contention between us an I I don't think its a problem in in particular but Chris obviously does which is why we're you know why we have the the relationship the bad relationship which we currently have I think you know (.) what what seems to me to be a kind of minor kind of trivial administrative matter you know is being made a great deal of and being used as a kind of (.) you know a kind of stick really to kind of beat me with I think
- (38) TM: right[ok
- (39) P: [and there's a lot of kind of pressure on me now (.) erm (.) that I don't think needs to be there
- (40) TM: Um (.) its really putting a lot of pressure on you the situation which as you see it is as stemming from a minor eh administrative issue
- (41) P: yeah!
- (42) TM: and its being used you feel its being used against you almost like a stick
- (43) P: yeah I mean yeah its very simple isn't it you know I do I have this job as a full time debt counsellor I spend my time (.) dealing with with clients debt problems ok
- (44) TM: umm
- (45) P: and I don't fill in some pieces of paper that you know er all right all right I fill some bits of paper and apparently I don't fill in them all the right ones and I don't fill them in enough detail and you know and this is this is a problem but you know in my view these things are just trivial you know administrative matters anybody could do that I don't see why I should spend my time doing them really its just out of balance the whole

thing's come out of balance

(46) TM: ok

(47) P: the need for the the the work itself is you know has become kind of secondary to the filling in bits of paper it seems to me

(48) TM: so for you you have a clear idea as to what there should be some kind of balance between

(49) P: yeah

(50) TM: work that you are doing the content of the work you are doing and the paperwork that sort of supports that

(51) P: yeah

(52) TM: is that right ok

(53) P: absolutely

(54) TM: Chris how would you characterise that balance how would you expect it to be (.)

(55) C: erm I think that its not so much how how what I I personally expect it to be its the way that it has to be in terms of the (..) its bit its a bit complicated when you don't

At 10 mins 45 secs Chris explains technicalities of the case and time recording paperwork needed to draw down funding, complimenting Paul on his "excellent" debt counselling work but explaining that Paul has a problem with the processes and paperwork that are needed for the Advice Centre to "get paid". Then at 12 mins 6 secs the TM sums up thus, looking at Chris,

(56) TM: ok so if I eh I try and look at the way you see you see this balance between these two parts of work (.) for you the obviously the the paperwork er not the paperwork but the content of the work itself is is crucial and your saying there's no problem with that and Paul is excellent at that when it comes to the paperwork you see it as more important perhaps than Paul does because it is what enables you to get the money (.) to um to sor to you know keep the [organization

- (57) C: [yes
- (58) TM: organization going ok {turning to Paul} whereas for Paul you feel that that paperwork is interfering actually with the [importance of that of
- (59) P: [yeah absolutely
- (60) TM: [doing the core [work um ok so and I realise I'm doing a lot of
- (61) P: [absolutely [yeah
- (62) TM: talking now and your addressing what your saying to me
what I eh I imagine would be more useful and tell me you know if that
feels right for you is to actually to talk to one another and tell
one another you know how you see it and what you would like to do about
it erm because until this point we've I've heard a very articulately from
both of you as to how you see the situation but you've both said there is
some kind of a problem how would you er what else would you need to say
to one another about how you see the situation in order to be able to to
move forward (..)
- (63) C: well I feel like I've been saying the same thing for about the last three
and a half months

The argument restarts between Paul and Chris.

Commentary and analysis

In line (1) the TM passes responsibility for managing the meeting to the parties. However, she says “would you both like to s s start by telling one another what what brought you here”. In general, mediations occur because people view the fact that they are in conflict as a problem to sort out. In the workplace setting the employing organization becomes an absent third party in the room. The employer positively wants a resolution to be achieved and has invested in the mediation process to that end. The phrasing of this invitation points to the conflict as a ‘problem’. This is more directive than is usual in a transformative mediation and tends to ‘position’ the mediator as a referee, by directing the parties to tell one another what the problem is (whether this be in terms of their relationship, presuming a need for reconciliation, or of substantive issues

between them). Any mediator, by definition, cannot escape from an 'enunciative modality' (Howarth, 2005) but my concern is with the effective 'subject position' this mediator comes to occupy (Torfing, 1999; Fairclough, 2001; Howarth, 2005). At this juncture the parties seem uncertain about what this mediator will do. This is a contrast with the facilitative role-play whereby the parties were quickly 'positioned' as interviewees by the mediators.

In line (6) the TM reflects back Chris's response to her opening question and proceeds to check that Paul agrees in line (8). Again such a direct prompt to Paul is not wholly consistent with transformative practice. He is now being guided in his contribution by the mediator (Folger and Bush, 2001). Nevertheless, in lines (9),(11) and (17) Paul agrees that he does want some sort of resolution. Whether contiguous with the other party's concerns and/or with those of the employing organization, as already noted, parties usually agree with an aim to resolve conflict including some form of reconciliation. However, if the mediator adopts a similar ambition, as would seem 'natural', it is possible that this aim is likely surface as a subtle but active pressure to reconcile. As identified above, to mitigate this tendency, the counterfactual mediator may set out an aim to only support the parties in exploring and understanding their conflict in a manner that follows the speech of the parties and does not seek to interpretively, run ahead of them. To do this the mediator would need to remain open to all possible understandings and with humility, only hope that the parties develop their own understandings, mutual or otherwise, beyond an initial intransigence.

In lines (12), (14) and (16) the TM reflects Paul's uncertainty about the need for mediation and his concern about the office atmosphere. This empowers Paul's contribution in line (17) which again, in keeping with transformative practice, the TM reinforces in line (18). But then at the end of line (18) and in line (20), she gives an overt prompt to Chris. This prompt both directs Chris to address this particular issue and also places a focus upon an "outcome". By putting Chris on the spot with a direct question that guesses at Chris's view, the TM, whilst following the information revealed by the parties, is also leading them in the definition of a normative problem to be solved, being a bad office atmosphere. A transformative intervention might have read as, "so you both feel there has been a problem or an atmosphere, would either of you like to say any more about that

now or is there anything else either of you would like to raise?”. In this way the mediator would help to create space for an exploration of the unhappy office “atmosphere” or space for possibly recognising each other’s disempowerment whilst leaving decisions about the direction of the conversation equally with both parties.

The term “outcome” (lines 20 and 24), is very much a contemporary term from a management ‘discourse’ with strong connotations of solving problems or achieving results. It echoes the earlier notion of ‘moving things forward’, an outcome being something to be achieved in the future. By use of this one word the ‘discourse’ of this more transformative style of mediation has become woven together with a problem-solving approach and the meaning system of a managerial ‘discourse’ (Fairclough, 2001). After its use in line (20) it is immediately picked up by Chris in line (21). The TM then reflects it back in line (24) further embedding it in the discussion. This tends to naturalise the place of the mediator as a joint seeker after an “outcome” (Fairclough, 2001).

The TM demonstrates a reflective ‘transformative’ style in her summary in lines (24) to (32). She might have also added “or is there something else you want to discuss” to the end of line (32), so that all options are open for the parties. However, whilst the TM is following the lead of the parties, the conversation, at this early stage, has become focused upon either the “environment” in the office or the way Paul does his job. The TM seems to be practising partly in the ‘transformative style’, working reflectively with issues brought up by the parties, and partly in a more ‘facilitative’ mode, in that she has begun to shape an agenda with and for the parties. She seems to be constructing a ‘subject position’ of a purportedly enlightened ‘leader’ who seeks to empower staff but yet retains a positional authority (Knights and Willmott, 2007), from which she can apply a partly hidden pressure to reconcile.

In line (36) the TM uses a deferential, inquiring approach but in effect directs Paul to respond to the issue of “the job not being done properly” raised by Chris. The TM is thus suggesting that Paul respond to Chris’s agenda. In a more rigorous ‘transformative’ practice he would have been given space to decide to respond for himself, as would likely have been inevitable. In ‘transformative’ terms he has been disempowered by the mediator (Jorgensen et al, 2001).

In lines (40) and (42) the TM again demonstrates a more 'transformative' mode by reflecting back disempowerment felt and expressed by Paul. This affirms Paul and empowers him to further explain his feelings and beliefs about his work. The TM continues in this vein through lines (48), (50) and (52) until in line (54) she again puts Chris on the spot with a direct question. Since Chris is Paul's line manager, this has the possibly unintended effect of inviting Chris to judge Paul's views on the right balance between giving advice and completing the paperwork. Hence such a directive intervention would seem to 'position' the TM momentarily in the role (subject position) of a manager overseeing a dispute between two subordinates (Torfing, 1999; Fairclough, 2001; Howarth, 2005). The mediator is thus drawn into the management fold. An alternative, less directive intervention at this point would have been to summarise Paul's and Chris's different perspectives and to invite them to either explore these differences, or the problems that appear to arise from them, and to offer the option of introducing anything else they may have wanted to talk about. Such a counterfactual mediator tactic may go beyond the 'transformative', therapeutic technique, if born of an *intention* to invite the parties to open up the radical contingency of their conflict situation (Howarth, 2000).

In line (62) the TM again directs the parties; on this occasion to talk to each other about "how you see the situation in order to be able to move forward". Once more, the purpose of the meeting is expressed in terms of the managerial requirement that had earlier been attributed to "the Trustees" who instigated the mediation process. The solution to the interactional crisis would seem to be required for the benefit of the organization and hence the TM is caught up in the need to apply a subtle pressure upon the parties to move towards a reconciliation.

Extract from 15 mins 28 secs - 17 mins 40 secs

(1) C: ... if you don't do what it is that we're supposed to do in order to fulfil the contract then they will take the contract away and there will be no debt advice

(2) P: I don't believe it I [I

- (3) C: [well I'm sorry but it is
- (4) P: I just don't think they'll do that
- (5) C: well they did it in (.) Dunstable (.) they took it away
- (6) P: na [there must have been something else
- (7) C: [well they did they did take it away
- (8) P: there must have been something else going on there
- (9) C: no there wasn't they didn't they didn't have the time recording properly
and they hadn't they didn't have all the forms and things signed in the
files the exact things that you've got that you don't like doing and I
know you don't like doing them and I knew you didn't like doing them when
I gave you the job (.)
- (10) TM: so [the
- (11) C: [but you know but it eh it goes with the territory you have to do
what it is in order for them to give you the money and if you don't give i
they if you don't do what they want they don't give you the money
- (12) TM: um hum I can see very clearly that erm from (.) Chris's point of view
that you can see that there's that doing that paperwork isn't much fun
for Paul and
- (13) C: no its not
- (14) TM: and you [said you've been in that situation before and you'd love to
- (15) C: [I know its not
- (16) TM: spend all your time dealing directly with the with the clients but that
for you it is a reality that in order to make the money to keep you know
to to bring the work in and ultimately to be able to serve the clients you
have to do that paperwork and you're saying Paul well you know first of
all there's there's gotta be some kind of balance and why would you
employ a specialist such as yourself to do that work [if if you know half
- (17) P: [uhm
- (18) TM: the time has to be spent on doing (.) stuff that doesn't involve the
qualifications presumably that
- (19) P: uhm

- (20) TM: that that you bring erm (.) and so for you its there's got to be some system some other way you're almost looking for some other way of doing
- (21) P: uhm
- (22) TM: you know of of setting up this this scheme
- (23) P: uhm
- (24) TM: so I wonder and then of course you came to this issue of Dunstable where you're saying Chris that there was this is actually real erm concern because funding can get taken away erm whereas Paul you're sceptical about that and saying there must have been some other reason for that
- (25) P: yeah
- (26) TM: so I just whether you want to look more about that specific situation and understand what it was that made meant the funding went a went away or see if there's another way of running the system as you perhaps were suggesting Paul
- (27) P: uhmm (.) well I've suggested ...

Commentary and analysis

This extract demonstrates the TM summarising and reflecting back both parties' concerns in an even-handed way, affirming both parties, clarifying and making time for each to listen to the other. Then, in line (26), she offers them both a choice about what to consider next. This 'choice' is focused upon the central 'problem' and towards a rational search for a solution. Thus, the presumption of a need to reconcile emerges again. Also, the practicalities of their dispute and the discourse of 'workplace task' seem to hold a magnetic draw for the TM. However, she is allowing the parties to manage the meeting process by asking them what they want to do next and allowing the parties to interrupt her, as in line (10). She is 'positioned' more as a 'follower' of their meeting and a 'supporter' of their engagement in the argument. She speaks as a concerned observer. This more 'transformative' style contrasts markedly with the interactional routine (Fairclough, 2001) that held sway throughout the morning role-play and yet it still contains a subtle pressuring by the mediator to bring the parties to some form of

workable reconciliation.

Extract from 22 mins 56 secs - 25 mins 38 secs

- (1) C: you're not meant to be seeing nine clients a week you're only meant to be seeing six
- (2) TM: it sounds as if that there's something
- (3) C: you can't do it you know it there's not enough time
- (4) TM: I think it sounds as if Paul's what Paul was saying about this feeling of having having pressure on him to work outside his normal working hours you're saying that that actually gets to you quite a bit that comment because you're saying you do care [a lot about peoples
- (5) C: [I think its its very unfair
yes I think its very unfair
- (6) TM: yeah and you're saying that for you you know you're the first person to say at five thirty leave the office and you see its important that people have a good work life balance but for you its more not a question of the amount of time that Paul has i is spending its more to do with the level of organization and perhaps he's trying it sounds as if you think he's trying to erm look after too many clients or contact too many clients
- (7) C: {Chris nods her head}
- (8) TM: ok
- (9) P: I don't contact them they come to the door I'm I'm not going to be turning people away to to sit there and do paperwork its not me its not what I do its not what the job is
- (10) TM: uh hum it sounds that if really its almost like questioning you as who you are are and and who you want to be [in your job [as
- (11) P: [yeah [absolutely
- (12) TM: someone who has who is available and accessible to people who come in to be able to serve them is that is that have I understood [right
- (13) P: [absolutely

yeah that's what the job is its what you know its not a job its a erm a calling whatever you know its something more than a job isn't it you there's no money in it you wouldn't do it for the money so you know its a its what you do and er you know er I couldn't I couldn't honestly turn people away from the door who are in need and and and spend my time filling in bits of paper I couldn't do it its just its not moral its not right

(14) TM: so [for you

(15) P: [and that's the problem you know that's the problem with the office its you know there's something [shifting] there's this managerialism its a you know (.) [I don't know]

(16) TM: sounds to me like now we're beginning to get beneath some of the surface of what's brought you here today and you're talking more about almost what's the purpose of having a job you're saying its a calling its er its more (.) you know what it means about you as a person than just you know how you spend your days or make your money er and you're saying there's some shift in the office away from that [sort of

(17) P: [uhm

(18) TM: approach to work [to something

(19) P: [uhm

(20) TM: different (.) Chris how how do you see how do you respond to that I guess or how do you see er

(21) C: you know I I I don't I don't actually disagree

(22) TM: uh huh

(23) C: my job as manager in the last five years has changed from one thing to something that's almost completely unrecognisable I think the the way that the nurses in the hospital (.) the the what they you know they don't have matrons any more do they or the matron spends all her time filling paperwork in she doesn't deal with clients

Commentary and analysis

In lines (4) and (6) the TM is reflecting back Chris's reactions, clarifying and creating space for them both to listen. She is working with the feelings presented and not being drawn into investigating issues or problems. However, her unsupported assertion that Paul may be contacting too many clients draws a quick response from Paul in line (9). The TM then underscores Paul's strong feelings about his sense of work identity. This type of reflecting back in lines (4), (6), (10) and (12) is consistent with the model of amplifying empowerment (Jorgensen et al, 2001). In general, such 'reflecting back' may also be practised in mainstream facilitative work (Beer and Stief, 1997; Crawley and Graham, 2002).

In line (16), the TM underscores Paul's comments about changing approaches to work in the office. Here she touches upon two conflicting 'discourses' of work, being what Paul calls "managerialism" and his own working values about serving needy people. His contribution in line (15) alludes to a causality more far reaching than the conflict between himself and Chris. At this juncture a transformative mediator would most likely have made a summary of the discussion, checked if her/his understanding was correct and invited the parties to decide where to take the conversation next (Folger and Bush 2001; Bush and Folger, 2005). In this way transformative mediators try to avoid injecting their own evaluations of the conflict into the conversation.

Here, the TM doesn't enact such a transformative intervention but, instead, in lines (16, 18 and 20), directs Chris to respond to Paul's concern of a "shift in the office away from that sort of approach to work to something different". It is as if she is blending a transformative approach with a style of workplace mediation which operates to overtly fix the interactional crisis. Whereas transformative mediation has an aim of helping parties work out their crisis of interaction through a subtle therapy of support for moments of 'empowerment and recognition', the approach in this role-play more forcibly shepherds parties to confront and deal with their relationship breakdown. This is done by telling one party to respond to the comments of the other party. This points to an underlying assumption that they must overcome this hiatus so that they are able to return to a productive, working relationship. This is what the organization requires of

them. Thus, the problem to be solved is not something practical, such as the method of time recording, over which parties have come into disagreement, as in the morning, facilitative mediation session, but their workplace mode of relating. It is as if the ambition of transformative mediation to engender less conflictual interactions between parties may become a pressure to 'reconcile' when transformative mediation is imported into the workplace. Effectively, the TM is also 'problem-solving' but with an exclusive focus upon the 'problem' of the relationship failure. Hence, she becomes a tool of management, acting in the 'subject position' of a responsible, overseeing manager. In the 'gaze' of the mediator, the parties are no longer just parties but also 'staff'.

In an alternative, counterfactual approach a mediator could have stepped out of and beyond a transformative practice by making a 'political' choice (Glynos and Howarth, 2007) to reflect back the clash of 'discourses', their origins as highlighted by Paul in lines (13) and (15), and then *invited* the parties to consider this matter if they wished, i.e. she/he would not go so far as to *direct* the parties to address this issue.

Extract from 27 mins 24 secs -32 mins 41 secs

(1) C: ... but its as good as it can be at this moment in these circumstances

(2) P: umm its just not good enough is it I mean I think its just (.) you know and I think its down to you to to work the system better you know to make representations to the funders and to try and find ways round these and to tell the funders this isn't possible to do [ya] your funding us to do this work but we can't do all the work we want to do because we're having to jump through your hoops you know you ought to be more (.) you know you ought to be more more of an advocate you've lost touch with with the reality of seeing clients you've forgotten what its like you know to sit in rooms with people and see them in pain and want to get them sorted out you know you've just become the whole things just become too managerial

(3) C: well I mean that's that's not that's not true I I haven't forgotten

because I know what's going on all of the time and at the end of the day the reason I'm doing what I'm doing is because I can remember what its like sitting in that room with those people who are in pain otherwise I'm not I'm not doing this for any I'm not making a profit I'm not doing this so that we make a profit and I've got a company car and a holiday in the Bahamas this is this is it doesn't if if I m doing this for the same idealistic reasons as you are in as much as I'm trying I'm not don't mean I'm trying to help people that sounds very halo-ish but a this is about doing it because its the right thing to do because people should have access to advice and the only way at the moment (.) and I'm not saying this will be the same in six months or nine months or a year's time (.) the only way at the moment that I can get money for debt advice is to get it where I'm getting it and it comes with the strings and yes I can say to them and I will say to them and we as an organization we have said to them you know this is this is time consuming and could we do this and could we not do that and could we do something else but there were thousands of these contracts all over the country (.) and if they're all saying the same thing then they might change it but if I just go around bleating on about well my debt worker said this and my debt worker wants to be seeing more clients they don't want to be doing paperwork they don't want to be sending you statistics (.) of w who they've seen and how long they've spent with them (..) in the long term maybe they will do some thing about it I think probably they won't but I agree that's not a reason for not doing it so we can do that

(4) P: [uhmm

(5) C: [but it still doesn't alter the fact that there are thousands hundreds and thousands of these contracts all round the country and they are all running (.) having to conform in the same manner that I'm asking you to which doesn't make it right because you get a hundred people go and do something bad doesn't make it right because lots of people are doing it its what it is at the moment it its what we're stuck

with (.) its not [ideal (.) you know I

(6) TM: [ther there's obviously a lot of frustration for you Chris at having to it sounds like you've made that decision to accept that there are strings attached to getting funding this way [erm

(7) C: [um

(8) TM: and that that's a source of frustration for you that that you have deci [decided concluded that that's the best thing to do

(9) C: [well I didn't have any choice I didn't have any choice yeah I'm not choosing to do it [I

(10) TM: [umm

(11) C: mean its its I am choosing to do it I could just say I could have just said no we won't have a debt worker we don't like LSC we're not having them don't like their strings sorry all you people go away with all your pain and suffering and debt an we can't see you (.) well I can't do that because that's just that would be ridiculous so I have to say right well what can I do (.) this is the best we can do at the moment

(12) TM: uh hum so in order to keep that LSC contract alive and service all those serve all those clients this is what you think is the best thing to do

(13) C: umm

(14) TM: and you're saying earlier that for you there's as much a you know conscious erm (.) desire ta to help people in who are in you know situate situations of debt and you {turning to Paul} express it very differently because of course you're different people and as to whether its idealism or whether its you know a calling or you know use different terms for it but there's something in there it looks to me from the outside that there's you know there's a clear er sim similarity I guess between you and that you're here not because you want to earn lots of money but in order to fulfil a particular role (..)

(15) C: well that's why people work in organizations like ours isn't it (.)

(16) P: umm (.) certainly not for the money

{seven seconds silence}

(17) TM: so till this point it looks like we've (.) erm talked about the issue of you know (.) how much time how what this balance should be between erm paperwork and actually doing the er serve meeting and serving clients erm do you feel that you've got any clearer on this issue as to what one another thinks or what you want to do about it how do you want to move forward now do you want to (.) come to some kind of a agreement over that as to whether to try an make any change or not or talk about the other issue that erm (.) that you both raised earlier on which is the environment in the in the office (..)

(18) C: well I think one goes hand in hand with the other so I don't see

(19) P: I just don't see what you know I'm I'm I'm not being offered any agreement there can't be any agreement as far as I can see I'm just being told to do this and get on with it

(20) C: well it is your job

Commentary and analysis

In lines (6), (8), (10), (12), and (14) the TM reflects back her sense of Chris's frustration and the necessary decision to comply with the LSC's strings. She also emphasises a similarity between Chris and Paul, in a sense directly "urging recognition" (Jorgensen et al, 2001). This is that they both have a vocational "desire ta to help people" rather than "earn lots of money". Chris and Paul concur in lines (15) and (16). Once again a pressure to reconcile may be detected. However, the TM completely overlooks Paul's complaint about managerialism in line (2). Then, in line (17), the TM mistakes a moment of subdued agreement for a more significant shift in the parties' interaction and hints they may want to now "move forward' and "come to some kind of agreement". This amounts to a premature forcing of a reconciliation that is not felt by either party, as expressed by them both in lines (18) and (19). Also, in line (17), Paul's concerns and earlier plea (line (2)) for Chris "to be more of an

advocate” are reduced to a matter of “what this balance should be between erm paperwork and actually doing the er serve meeting and serving clients”. Here the transformative concern with the ‘problem’ of the relationship is conflated with the practical ‘problem’ of Paul’s time recording. This corresponds with the approach of the mediators in the morning, ‘facilitative’ role-play. The TM’s intervention in line (17) has reduced the whole mediation to one ‘problem’ requiring a solution, i.e. being to find a “balance” between paperwork and serving clients. The TM has thus adopted a ‘subject position’ as a problem-solving manager of conflict, in turn placing the parties in the role of ‘staff’ (Howarth, 2005).

This contrasts with a counterfactual possibility for a mediator to contain their own ‘subject position’ to that of an ‘explorer’ so that s/he sees the parties as ‘parties’ and not as ‘staff’ or ‘employees’ or ‘managers’. From this ‘position’ of ‘explorer’, it may be possible to retain an independence from the apparent, immediate needs of the organization for a “balance”. The mediator could thus have sought a kind of escape from a drift into a merged organizational and workplace mediation ‘discourse’. This would have entailed continuing to reflect back the impasse between Paul and Chris over their differing assessment of how to respond to the dictates of the funding body. Hence, the mediator would try to maintain a space for the parties to become aware, in themselves and each other, of a possible “misrecognition” of their situation in the conflict. As noted above, Laclau (1990:92) describes this “misrecognition” as “the non-recognition of the precarious character of any positivity”. The conflict would thereby have been temporarily ‘opened up’ rather than immediately ‘closed down’. In this way the mediator may be able to support the parties in a mutual exploration of differences that may vitalise their “political subjectivities” (Torfing, 1999), albeit transitorily. In such a space there is a chance for dialogue to flourish even though parties may well return to existing “discursive formations” (Torfing, 1999). A partial re-fixation of identity and meaning would follow but not at the urgent behest of the mediator. In this case the LSC strings may still remain uncut but some dialogue might have occurred. This may appear counter-intuitive to much contemporary, facilitative workplace practice in which a discourse of problem-solving is ‘naturalized’ (Fairclough, 2001).

In this example, to strike a balance between ‘necessary’ form filling, (“its your job”), and debt advice provision, is the ‘natural’ conclusion arrived at by a

transformative mediator. It may be expected, not surprisingly, that the hegemonic practices (Torring, 1999) of the workplace may condition what is sayable, making it difficult for the mediator to invite or amplify consideration of other discourses touched upon by the parties, however tangentially. This may be even more difficult if the mediator operates under a self-imposed, 'transformative' constraint of an intent to 'follow' the parties (precluding highlighting 'difference' and 'context') and if the parties' own discourse remains largely within the language of the workplace.

Extract from 38 mins 30 secs - 39 mins 37 secs

- (1) P: ... I understand the value of volunteers I have no problem with that (.) its just if I've got to supervise them I might as well do it myself hadn't I I mean just that just seems you know a non solution really (..)
- (2) TM: eh Paul it has struck me that erm you are asking for solutions or to explore other ways and Chris made a suggestion about possibly getting a volunteer to help you [and you looked you didn't look very encouraged
- (3) P: [uhmm
- (4) TM: or enthusiastic about that idea and i it almost strikes me as if there's something (.) there's something still blocking you from from from from moving almost forward to the to the stage of problem solving or whatever you might want to call it now I wonder if there's if you feel that Chris is listening to you and understanding what you're saying if there's anything else you want to say about how the situation is impacting you (.) before you move onto the stage of finding ways forward
- (5) P: no I think she knows exactly how I feel about it
- (6) TM: um hum
- (7) P: you know I think she knows exactly I I don't think I have any kind of block you know its all its all you know straightforward in my mind you know I just want to get on and do the job that I'm paid for and you know let someone else cope with the the paperwork

Commentary and analysis

In lines (2) and (4) the TM makes several assumptions on Paul's behalf. She asks if there is something "still blocking you from from from moving almost forward to the to the stage of problem solving or whatever you might want to call it". She wonders if he feels he is being listened to and understood. Lastly, she wonders if he wants to say anything else about the situation "before you move onto the stage of finding ways forward". The TM is thus bringing her own assessment of Paul's behaviour and openly suggesting to Paul that there are possible factors that may be preventing him from "moving almost forward", "problem solving" or "finding ways forward". Once again she has 'positioned' herself as an orchestrator of "moving forward" to find a "solution", even using the phrase 'problem solving'. Her self-appointed task seems to be to push for such an 'outcome', effectively acting out the 'subject position' of proxy manager (Torring, 1999; Howarth, 2005). From this disposition she projects a requirement upon Paul to adopt a role as compliant staff member. Within this implicit aim there is also a presumption of the need to reconcile contained in the language the TM deploys about being listened to and understood. The general aim of transformative mediation to support resolution of a crisis of interaction may be captured and altered by the hegemony of the workplace setting in that the mediator feels an obligation to pressure or urge the parties to reconcile. Operating with the accepted social norms of workplace behaviour there is only the possibility of reconciliation or no reconciliation.

Within a workplace discourse, the ambition to end the conflict and return to work will unsurprisingly appear as 'natural' and 'reasonable' (Fairclough, 2001). However, to accept it as such implies a role for the mediator as a powerful director of parties towards conflict resolution. We might infer that workplace mediation is all about engineering a return to work in which the mediator pretends to act as an unbiased referee, whilst making assumptions and judgements that are obscured or hidden within workplace and mediation discourses (Fairclough, 2001). For example, in this role-play, it is the mediator who "asks" if the parties are blocked, or "wonders" if they want to say if they feel misunderstood. Thus, the mediator takes the initiative, projecting her own assumptions towards the party, almost telling him how he 'should' respond. The message of "moving forward" becomes less a suggestion and more a demand

and a requirement. Behind this type of intervention is the force of the rules of the office hierarchy. It is the requirement of management and the trustees that a solution be found. Hence, workplace and mediation discourses mesh in the implication that if “you” can’t “move forward” “you” must be “blocked”, so tell me what is the block so that “I”, the mediator, can then remove it so “you” can comply with the ‘rules’ and end this conflict (Howarth, 2000; Fairclough, 2001).

Extract from 43 mins 38 secs - 44 mins 42 secs

- (1) TM: so for you for you Chris there's very clearly thought through reasoning and rationale for all the systems that are in place in the organization and and again you're saying that you don't necessarily want it to be that way but there those are the reasons [and that's why they're there
- (2) C: [yeah
- (3) TM: and you're and you're keen to have Paul understand that its not you personally wanting to impose this kind of rigour and discipline just for for fun to make people suffer but that its necessary in order for everyone's goal of keeping the organization alive to to to be achieved (.) but I heard you say also something Paul erm and I suddenly wondered whether the the it sounded to me as if the obli well the demand on you to do all this time keeping an an and paperwork makes you feel not trusted [is that right do you do you want
- (4) P: [uhm
- (5) TM: to say more about that because that struck me as as if it was said with a bit of hah with some real real you know feeling behind it and I wondered if you wanted to [say more about that
- (6) P: [yeah that's how its beginning to feel you know its beginning to feel like that (.) you know I I I feel like yeah I I just don't feel that I have the freedom I don't feel I have the autonomy

Commentary and analysis

In this extract the TM makes an even-handed intervention to open up discussion and exploration of each party's viewpoint. The TM seems to oscillate between more even-handed summaries, that reflect back the parties divergent concerns, and those that are more directive, that suggest the parties "move forward" or put them on the spot to respond to each other. Hence, in this second role-play, once again there seems to be merging of part 'transformative' practice with a more directive practice similar to that of the morning role-play, albeit with an emphasis upon the relational rather than the practical aspects of the dispute.

Extract from 50 mins 12 secs - 51 mins 25 secs

(1) C: ... and its going to seriously affect the clients the clients that you so much want to help because you won't be there to help any of them if that contract goes (.) so none of them so the six that you're only able to see if you do the paperwork properly or the nine that you do see without doing them none of them will have a debt worker because you won't be there (..) and I don't think you want that any more than I do do you

{eight seconds silence}

(2) TM: Chris you're explaining what you see as your options if you're to follow Paul's logic and you're saying that either you just you know (..) say that you're not going to work any more with the LSC straight away or you just stop handing them that paperwork whatever you know the files and the the records of time keeping and you think that in three or four months probably they will actually just take the contract away anyway as happened in Doncaster and you said Paul that you you just don't believe that and so it so it looks a bit like a sort of a an impasse there you're saying that's that's the way you {Chris} see it and you're saying {Paul} no I know I don't believe you (.)

{TM has hands out, palms up, as if to say "what are you going to do about this?"}

(3) P: uhmm

(4) C: do I normally lie

(5) P: I'm not eh s

(6) C: do I normally make things up

(7) P: I just think you're exaggerating ...

Commentary and analysis

In contrast to the facilitative morning session the TM continues to 'follow' the parties and not manage or direct their interactions. At this juncture the TM has decided to highlight the impasse. It is not unusual for a mediator to reflect back an impasse. It is merely to observe a momentary reality. In a 'transformative' mediation it would be more typical to offer open-ended options for working through an impasse. In this situation it appears that the TM is gently 'knocking heads together', if this can indeed be done gently. Again, we could view this intervention as that of a manager saying "you have got to sort this out" and thereby implying a judgemental disposition towards both parties equally. Obviously, this does not correspond with the aim of a 'transformative' mediator to engender 'empowerment' (Bush and Folger, 2005) and does represent another slippage towards a presumption of a requirement for a reconciliation. The alternative could have been to help them pursue an exploration of the impasse and its causes, at least until the parties decide to give this up.

Extract from 55 mins 50 secs - 59 mins 58 secs (DVD clock display 6/7 section 1/5 start at 11 secs²².)

(1) C: ... something could impact within the next three months if we don't if we don't deal with it

²² Timings on the DVD clock go out of sequence with the actual times at this point so they are shown additionally to ease any searching for a selected exchange.

- (2) TM: is it right to say that you both would like to change the situation of the amount of the burden of time that has to be spent on on time keeping but that you're saying Chris that its along term battle
- (3) C: yes [I mean] you're changing a a you're changing government organizations policy I mean (.) you know we're pretty good but we're not that good so you know that can't happen overnight
- (4) TM: ok so [you're saying
- (5) C: [we have to sort this out we have to sort this out within the confines of what we have now and then we'll try to change the world afterwards
- (6) TM: ok so focus on on the short term now make sure in the next two to three months you still have the LSC as a provider of funding and then work out how to through feedback and through other channels that you've mentioned (.) and Paul you're saying (.) well what are you saying are you saying fight it now
- (7) P: yeah absolutely
- (8) TM right (.) ok a difference of opinion of opinion what are what are you going to do about this (..)
- (9) P: I just don't really know an and I can't I can't see (.) you know I just wanna wanna get back now you know wanna get back to the work I jus can't be bothered to do this damn paperwork all the time (..)
- (10) C: so really you're taking what where we really are is you're taking a job that actually you don't that you don't like part of the job and the part of the job that you don't like and I and I understand why you don't like it part of the job that you don't like (.) you're actually are not going to do it

{Chris and Paul continue to argue for the next one and a half minutes until Chris says}

- (11) C: you're there to help the people in debt its all part of the package

(12) P: uhmm (..) well we're just going round in circles I mean (..)

(13) TM: lets see in terms of where we are right now if I sort of cast my mind back an the last whatever it is forty five minutes that we've been we've been here together you have (..) been telling one another an you know the communication is flowing freely an and easily as far as I can see that you know that you're able to tell one another I did I did check with you earlier Paul whether you felt that Christine was listening to you and I just want to check with you Chris do you feel that Paul is listening to you and trying to understand you (..)

(14) C: I think Paul is listening I think Paul understands but I think Paul doesn't want to do what Paul doesn't want to do and that's why we're going round and round in circles

Commentary and analysis

In line (2) the TM seeks to 'mutualise' the practical aspect of the conflict. Then, in line (6) she summarises Chris's and Paul's different positions but this leads on to a stark statement, "what are you going to do about this", in line (8). As already noted, such an intervention would not be viewed as empowering from the perspective of transformative mediation (Folger and Bush, 2001). This is another example of the TM seemingly inviting the parties to directly address their relationship breakdown, and to apply pressure on them to reconcile their differences. The TM is inadvertently using her power to place herself in the "position" of surrogate, supervising manager, dealing with recalcitrant staff. Her focus of responsibility has thus moved away from the parties and the conflict to the requirements of the workplace and the need for a solution.

The parties then rerun their argument until at line (13), once again, the TM directs one, but effectively both, of the parties to reflect upon whether some form of miscommunication might be preventing an implicit movement towards a necessary reconciliation. There is almost a projection onto the parties of this need. Yet again the question arises of whether the transformative agenda, to

amplify or invite re-empowerment and mutual recognition, (Jorgensen et al, 2001) will be compromised in the workplace. There is a suggestion from this case study that the hegemony of the workplace could lead a transformative mediator to go beyond their theoretical remit and apply a subtle, yet tangible, pressure upon the parties, urging them to find a form of reconciliation. As a result of such non-transformative 'urging' the TM again bluntly places Chris on the spot and invites her to judge Paul. This has the effect of enhancing Chris's role as Paul's supervisor and implies that Paul is the wrongdoer. The TM now seems to be directing the parties ever more towards the problems to be solved, being both those of their relationship and the material difference over their approaches to time keeping. The next extract also appears to support such an interpretation.

Extract from 61 mins 45 secs - 62 mins 55 secs (DVD clock display 6/7 section 2/5 start at 6 mins 5 secs.)

- (1) TM: an there are a couple of points at which I see that you're still sort of slightly I wouldn't say head to head but lets say not in agreement erm an an one is this is whether in fact if you whether there is scope perhaps to play around with the amount of time and precision that is put into time keeping you're saying Paul
- (2) P: uhmm
- (3) TM: maybe they really don't need that much maybe they just put it in the paperwork an an Chris you're quite clear that they wouldn't have said it if they if they didn't really mean it and that's what's happening all around the country so that's one you know point of difference between you erm an I guess there's also erm Paul you thinking well Chris is the manager its her responsibility to change something here
- (4) P: hum
- (5) TM: and Chris you're saying its you know its not your choice that its the way it is an there's nothing you can do to change it erm and I'm wondering what you know how how you want to move on from those points of disagreement do you want to agree to disagree or do you want to try

and understand better why the other person can't understand you or or
(..)

(6) C: well I don't think we don't understand each other do we

(7) P: no I think we understand each other [very well

(8) C: [yes I don't think there's any
problem with that {laughter}

Commentary and analysis

Paul and Chris are continuing to resist exploring each other's viewpoints. In lines (1), (3) and (5) the TM even-handedly restates their differences. At this point she could have invited the parties to look again at these differences and also asked if there was anything else that was of concern? As before, this could have kept the exploration of the conflict open, or silently left it to them to decide what to do about their impasse. Instead, in line (5), she again invites them to "move on". Her focus is now very much upon the parties, as if they are two sovereign individuals locked in battle over issues and not ideas that are tied to their own 'identifications' (Torfing, 1999; Glynos, 2008). But we can also see the parties as holding radically different views of the world, invested in their sense of identity, that prevents them from being able to see the other's perspective. Paul's identity as advice giver to the needy resists an unnecessary micro-management born of distrustful accounting practices. Chris seems to see herself as a firm but fair manager of an agency that helps needy people but works with, and relies upon, other funding agencies.

Also in line (5) is the TM's suggestion "do you want to try and understand better why the other person can't understand you". This is a most relevant, rhetorical question and perhaps a leitmotif of any mediation exercise. A mediation can provide an opportunity for the parties to explore each others 'realities', 'discourses', 'subjectivities' and 'identifications'. However, here it is too baldly and directly put to be understood at this moment by the parties. Stated so openly, it becomes another projection upon the parties to fabricate a reconciliation.

The TM seems to have lost confidence in the 'transformative' method and has again lapsed into directing the parties towards the need for them to resolve the

conflict. However, 'transformative' mediation, if practised more purely by eschewing problem-solving, only allows the mediator to follow the words and expressed feelings and emotions of the parties 'in the moment' in order to facilitate 're-empowerment' and mutual 'recognition', from which a 'problem' may or may not be solved. Antes and Saul (1999:3) lay out a basic 'transformative' belief in "[h]umans and their capabilities" being that "[p]eople are capable of making decisions for themselves". This implies that people can resolve their conflict *themselves* on their *own* terms, in their *own* way. It is taboo to make any evaluations of the parties' situation on their behalf. As Bush and Folger state:

The most important premises of the transformative theory are that parties have both the desire and the capacity for conflict transformation. Helping to support this desire and capacity is the "valued added" that the mediator brings to the table (Bush and Folger, 2005:62).

As such, transformative mediation seems to have its roots in an "[e]go psychology [that] asserts that 'self-improvement' is possible without calling society into question" (Sarup, 1993:7). A counterfactual, explorative style of mediation could extend beyond the reflective parameters of this transformative model by prompting parties to explore their differences and the sources of those differences, both personal and social, that have led to the crisis of interaction. The counterfactual, explorative mediator thus has a responsibility to the parties to evaluate the situation presented and reflect back this assessment by inviting the parties to consider apparent differences of meaning and patterns of wider causality. In this way, it may just be possible for the parties to critique socio-political norms (Glynos and Howarth, 2007; Glynos 2008).

However, in an important, pivotal sense, to move beyond the parameters of a transformative mediation discipline could potentially have two possible effects for a mediation; either to lapse into directiveness or to open up exploration of the discursive terrain of the conflict. Of course, the transformative critique of facilitative mediation asserts the former, suggesting that the mediator would risk taking over the parties' problem and become evaluative and directive. But by holding to the confines marked by transformative practice, as noted above, it is probable that both mediator and parties remain caught within the discursive formation of the workplace that conditions the language and relationships by

which they express their conflict. They are subject to the constraining effect of what Fairclough, (2001) terms “members resources”; that is, their learnt interpretive procedures based upon background knowledge.

This mediator also seems to be trapped by the discursive formation of the workplace and the assumed ego psychology of transformative mediation. She starts her intervention with a balanced summary but then lapses into a push to reconcile. This pressure to reconcile, which collapses into a problem-solving mode of mediation, appears to necessarily embroil the mediator in the dominant work discourse that demands unquestioning observance of rules and authority. But even without this departure from a more strict application of transformative techniques, the hegemonic power of the workplace might seem irresistible and yet, logically, it is not. Torfing usefully makes the point that:

if the relational and differential logic [of discourse] prevailed without any limitation or rupture, there would be no room for politics. All identities would be fixed as necessary moments of one and the same discourse, and conflict would only be played out between different intradiscursive variations (Torfing, 1999:91-92).

Curiously, this encapsulates the danger for transformative workplace mediation and workplace mediation more generally. However, Torfing goes on to explain that the necessarily:

partial fixation of meaning produces an irreducible *surplus of meaning* which escapes the differential logic of discourse (Torfing, 1999:92).

He calls this surplus *the discursive*, “being not extra- or non-discursive but ... discursively constructed within a terrain of unfixity.” (Torfing, 1999:92)

It is theoretically possible for parties supported by mediators to navigate and negotiate this space of *the discursive*. However, it is socially and politically extremely difficult and may rarely occur. If a mediator seeks to press parties to reconcile or problem-solve more generally, s/he seems to contain the parties within an undifferentiated sameness of workplace discourse. Perhaps a mediator can adopt a ‘subject position’ of humble, explorer of conflict, enacting a compassionate concern to understand, in order to potentially leave open a

discursive space for the parties. But such an explorative mediator cannot urge parties into this space. To do so would negate any humility and also result in a collapse back into another form of problem-solving in which different political prejudices of the explorative mediator may likely come into play. However, this is not to say that these prejudices may not be used to support the exploration of the conflict.

Extract from 64 mins 19 secs - 67 mins 20 secs (DVD display 6/7, section 2/5
start at 8 mins 41 secs.)

(1) C: ... the other issue which I hadn't even thought about eh eh until I'm just having this conversation is that you decide to do your guesstimating and you get it mixed up one day coz you end up putting something down and it suddenly becomes provable that it couldn't have been what it was something else I'll be the one who probably gets the sack (.) you'll get the sack as well probably but I shall get the sack for fraud because I'm the supervisor of the contract its not

(2) P: umm (.)

(3) C: the ramifications are absolutely (..) dire (..)

(4) P: yeah I can see that (..)

(5) C: I don't want you sitting with a clock on your desk that's not what it is and you know that's not what it is its just about making sure that every time that you make a a phone call or you do something with a client you write down some time for it and you you have to write it down more or less when you do it because after you've seen three clients in a day you can't remember what you've done with whom and when you did [it but

(6) P: [hummm

(7) C: no not you anybody [I can't I can't

(8) P: [um no no I can't you're right

(9) C: sometimes I see three clients when when I used to be doing it and by the time I get to the third one I couldn't remember which one of which one had the children and which one didn't and everything else [if you don't

- (10) P: [umm
- (11) C: write it up in between
- (12) P: um I understand that [certainly (..)
- (13) C: [umm
- (14) TM: it feels as if there's a a sort of a little window of light here maybe that's my ha ha optimism I'm not sure but it looks as if there's a bit of a kind of the moods slightly changed erm (.) what would be the most useful thing right now would it be to take a short break would it be to just check that we are at the point at which we can you know move forward into looking at how what might happen next by just checking that you've said everything you need to say to one another about how the situation has impacted you you know what's brought you ta to here today you know what what really is this is all about erm making any requests of one another as ta erm how to avoid getting here in again in the future (.) what needs what do you both need to say to one another at this point (.)
- (15) P: no em I can see you know I you know I've heard all this before obviously but you know kind of hearing it again (.) I mean eh there isn't very much room for me to move is there you know its going to be very difficult isn't it I mean I you know I feel like I'm being pushed into doing it which I don't like uh pretty obviously its hard to see what else can be done isn't it (..)
- (16) TM: so you feel a bit trapped a bit
- (17) P: I do really yeah [I do and I resent it I have to say its difficult (.) you
- (18) TM: [in a corner
- (19) P: know its a difficult place to be isn't it I mean its not its not very comfortable (.) but er you know having heard it all again (..) Chris hasn't got anywhere to go either has she I suppose she hasn't she hasn't got any room for manoeuvre either
- (20) C: well I don't want you to be uncomfortable if there's is anything I could do about it ...

Commentary and analysis

The TM continues with her, by now, mantra of 'moving forward' in line (14). In contrast, she adopts a thoroughly 'transformative' practice in lines (16) and (18), when she asks if Paul feels trapped. Given that Paul is extending an olive branch to Chris and a resolution is in sight, this intervention resists any temptation to quickly conclude the mediation, and exemplifies transformative practice of staying with the parties 'in the moment' to amplify 'disempowerment' (Jorgensen et al, 2001). Chris responds with 'recognition' in line (20). The TM thus demonstrates a highly non-directive intervention far removed from the facilitative practice of the morning session. For a moment she becomes less a 'manager of conflict' and more a 'humble midwife of dialogue'.

Extract from 68 mins 59 secs - 69 mins 42 secs (*DVD clock display 6/7 section 3/5 start at 13 mins 20 secs.*)

- (1) TM: [coz] that was something you started out by saying [in fact Chris] that Paul is excellent in the job that he's doing and that is not in any doubt erm (.) you're simply saying in order to create a place where he can continue ta ta to do that work there are certain sort of strings [that you mentioned
- (2) C: [uhmm
- (3) TM: earlier and I asked a minute ago em Paul the whether you know what you felt you wanted to say at this point before moving on how about you Chris at this point is there anything else you need to say er almost as if f you know you're at the point where you can draw a line under what has happened [in the
- (4) C: [no
- (5) TM: [past and move forward
- (6) C: [erm I think I think we've I mean I think we I don't think as I said earlier I don't think there's any question that neither of us understand or I'm not hearing what the other one is saying its about trying to work out about how we're going to make it work

Commentary and analysis

In this short extract the TM persists with a discourse of facilitative, workplace mediation, tidying up an emotional mess, brushing over history and covering up 'contingencies' (Howarth, 2000; Glynos and Howarth, 2007). She is entirely focused upon the individuals in front of her, now requesting that they can draw a line under what has happened in the past and move forward. However, this 'moving forward' is code for a return to the status quo (Fairclough, 2001).

Extract from 70 mins 35 secs - 71 mins 42 secs (DVD clock display 6/7 section 4/5 start at 14 mins 56 secs.)

(1) TM: so just to summarise what you've both just said in those last last few minutes Paul you're saying you felt somewhat trapped in the situation being forced to do something that you don't really want to be doing but then you said you probably see that Chris is also trapped there's not much she can do Chris you're saying that you you really would like to do everything you can do to make it more comfortable erm for Paul and you wouldn't be here today if you you know if you hadn't already if you had thought of something else that you could do erm an neither neither of you welcome the fact that you are here erm (.) you've also both talked about started to talk about ways that you might want ta you know how how things might work out in the future what what do you want to do about that do you want to actually explore in more detail how things are gonna work going forwards a an when would be a good time to do that do you want to do that today or do you want to find a time (.) tomorrow or another point to look at that (..)

(2) P: yeah I'd like to hear how you (.) you know how you you could support me I'd like I'd like to hear something about that

{Chris then goes on to explain in detail what she wants Paul to do concerning time keeping suggesting clerical methods he might use to do

it more easily and better. The TM summarises and prompts the parties to agree a time and place to sort out these details saying “so you both think it would be useful to set up a session outside this meeting to go through all these issues (.) do you want to fix a time for that or ...”.}

The meeting ends at 76 mins 14 secs.

Commentary and analysis

The TM continues with her theme of “moving forwards” and finally re-enforces her own ‘subject position’ as an authorised manager of their interaction ‘problem’ by suggesting they arrange a specific date to discuss how they are going to work together in future (Fairclough, 2001; Howarth, 2005).

5.1.6 Summary interpretation of the transformative mediation role-play and comparison with the facilitative mediation role-play

The overall style of this role-play demonstrates how transformative mediators follow the parties rather than ‘lead’ them or orchestrate their interrogation. In the morning role-play the parties were more passive participants, reacting to the direction of the mediators. Here, the humble disposition of the TM requires an active engagement from the parties, who are more able to hold their own conversation. After the role-play the TM, speaking as a professional workplace mediator, said she enjoyed doing “less less of the of the decision making myself and passing over more of the responsibility to the parties ... and that felt good”. The relation of power between mediator and parties was more evenly balanced than in the morning role-play.

However, in this case study, the TM dilutes a pure transformative method and blends it with a much more facilitative technique that presses the parties to focus upon the future and “move forward” towards a desirable outcome. This outcome may or may not be desirable for those in conflict but it is what is required for the benefit of the organization and the trustees. This slippage into a facilitative workplace mode of mediating has brought the TM into alignment with

a workplace discourse of agendas, outcomes, agreements and action plans.

Because of this intermingling of styles, the TM's 'enunciative modality' (Howarth, 2005) varies between that of a directive, supervising manager, a (mythical) enlightened leader/ follower and, at moments, a more fully 'transformative' supporter of parties in conflict. Hence, there are moments within this role-play that demonstrate how transformative mediation supports parties without leading them to problem solutions that have been conceived in the mind of the mediator. It does therefore, afford a practical demonstration of the critique of facilitative, problem-solving mediation.

We are left with a question of why the TM was not able to hold to a more pure transformative practice? In subsequent discussion with her she explained that when being paid to work she felt an obligation to her commissioner to be effective which was not felt when working voluntarily in a community mediation setting. This points to the overwhelming power of workplace discourse exerting an hegemonic influence over this particular mediator. For mediators in general, it also suggests an envelopment in a fantasy of identity as one who is skilled in manipulating the resolution of conflict, taking enjoyment and a thrill from this function (Glynos, 2008). The mediator may thus hold a self-image as a wise, emotionally intelligent individual (Goleman, 1996).

I have argued that a counterfactual, explorative mediation style, derived from an ontology of 'lack', would be able to extend the inherently reflective method of transformative mediation, to the knowing consideration of competing discourses and causal webs of conflict, presented, but perhaps not reflected upon, by the parties. The mediator could bring these discourses and webs of difference back to the attention of both parties. As explained, even such a marginally evaluative intervention radically departs from the guiding premises of transformative mediation. The latter method holds to a liberal humanism whereas the alternative I have mapped is concerned with the better understanding of each others' socially constructed subjectivities. An element of directiveness is entailed in the counterfactual alternative which transformative mediation resists. It can be argued that awareness of such an element of critical directiveness is born of a political consciousness, sensitive to radical contingency, on the part of the mediator. In the absence of such a consciousness it is perhaps not

surprising that, as noted above, the TM lapsed into a problem-solving mode of practice.

I can speculate about other causes of a departure from the transformative method. These may be to do with a human desire to help or alternatively a fear of failing to get to a solution. Carnevale, cited by Noll (2001) above, considers a limited psychology of mediator motivation but the attitudinal aspects of behaviour he touches upon are outside the scope of this inquiry. Nevertheless, the above data yields a powerful picture of how even a relatively humble and non-directive style of intervention may bring pressure upon the parties to find a path to reconciliation, despite introductory promises to the contrary. This tendency seems to mitigate against any escape from the dominant workplace discourse. Alternative discourses of 'managerialism' and 'accountability and trust', raised by one of the parties, do not find space to be explored.

Another transformative mediator could well have maintained a more strict application of the transformative method. A study of transformative workplace mediation in the US Postal Service²³ would be valuable to evaluate if there is a tendency, for transformative, workplace mediation, with its goal of improving the parties' interactions, to be captured by an organizational hegemony. Such a tendency was indicated in the example from Bush and Folger (2005) referred to in the literature review above. It was also detected in some of the more transformative interventions of the TM that nevertheless contained an implicit objective for the disputing parties to find a less conflicted mode of interaction, if not a reconciliation.

However, it can be assumed, by definition, that neither the transformative nor the

²³Nabatichi and Bingham (2001) surveyed US Postal Service mediator trainers called "ADR Specialists" who themselves observed mediators they had trained. This survey concluded that "the REDRESStm program, as implemented by these Specialists, generally follows transformative mediation theory" (Nabatichi and Bingham, 2001:426). Antes et al (2001) also studied REDRESS and held focus group sessions with ADR Specialists. This was a study of the effectiveness of transformative methods in improving workplace relations. This is an effective admission of the hegemonic agency of the REDRESS mediator. To my knowledge there is no research by direct observation of 'live' or role-play situations that examines mediator influence. Antes et al note that "confidentiality restrictions prohibited audio or video taping actual mediation sessions" and that "in-depth interviews with the disputants themselves were not possible because of confidentiality restrictions and difficulties in gaining access" (Antes et al, 2001:432).

counterfactual, explorative mediation methods can ever fully escape from the discursive formations (Torfing, 1999) of the workplace environment. I would tentatively suggest that the possibility of and potential for an occasional and partial escape from this tendency would more likely be realised by the counterfactual practice I have delineated. This is because this counterfactual style restricts itself to an ambition to support parties in exploring their conflict and no more. This alone may support the potential for the negotiation of the discursive, being that “irreducible *surplus of meaning*” (Torfing, 1999:300). I shall consider this important question further in my conclusions below.

5.2 A selective record and interpretation of the follow up discussion with the role-play participants

5.2.1 Introduction

The mediation role-plays took place in December 2007. The follow up meeting with participating mediators, to discuss some findings from the analysis of the role-play material, took place one year later in December 2008. The purpose of this Section is not to carry out any form of detailed textual analysis but simply to afford a consideration of the responses of the participants to some of my interpretations of the role-play. I was concerned to understand how their responses might illuminate the problematic of workplace mediation. My approach was to try to explain my critique and to invite them to consider their practice from this critical perspective. I treated this session as a form of hybrid interview/discussion held in an open, semi-structured and co-operative way (Rapley, 2004). Mason (2003) refers to group interviews that are minimally structured. However, I was concerned to stimulate a more rounded discussion by posing a few central questions and replaying a small amount of material from the role-play. I have presented a selection of extracts to give an overall sense of this loosely structured discussion. By doing this, again following Rapley, I have sought to “*analyse what actually happened*” (Rapley, 2004:16) as well as interpreting responses in the light of my overarching project.

5.2.2 Setting the scene

Discussion

I introduced the meeting by saying I wanted “to ask you to have a discussion” about the question “is workplace mediation about offering an opportunity to the parties to have a conversation or to fix a problem?” I stated that this was the central question I wanted to explore. One of the participants then said “that’s an either/ or is it? to which I replied “or is it both - so do what you will with it”. I said I would also show some clips of the role-play for us to consider and discuss.

Following a brief discussion about the ‘realism’ of the role-play as reported

above, I then asked the participants to say what they felt were the aims of workplace mediation and separately what were its guiding principles, so that I could record these on flip chart paper. The purpose of this exercise was to provide a frame of reference that we might return to in the ensuing discussion. This is what they said. All the contributions were consensual.

AIMS OF WORKPLACE MEDIATION

- Improving the working relationship
- Help people get on better together
- Putting an end to suffering caused by workplace disputes
- Allow people to be heard
- Release the energy taken up by conflict and make it available for other purposes
- Financial cost of conflict
- To keep valuable staff
- It sends out a message about the organisations attitude to handling workplace conflict - its ok to disagree
- Gives people a new way of working; a new set of skills
- Improves productivity

GUIDING PRINCIPLES OF WORKPLACE MEDIATION

- Allowing people to be heard; to have their say
- Confidentiality
- Respectful
- Remaining neutral
- Voluntary
- Treating every mediation as cross-cultural
- Parties own the outcome
- Parties are capable of deciding for themselves
- It is their responsibility
- Non-judgemental
- Sharing airtime - equality
- Empathy
- Basically about 2 people in the room and their relationship (there was

discussion around this point i.e. that there are wider issues)

- Listening, questioning, probing
- Not making decisions about solutions
- Exploring issues thoroughly so all feel acknowledged before moving on to options and solutions
- Being inquisitive - being aware that there are many layers beneath what is said

Interpretation

The main themes so far developed are writ large here, namely; the blurring of the mediator's responsibility to the parties and the organization; the individualisation of the parties; the strong presumption of neutrality and a slight contra-indication of directiveness (e.g. the comment on 'probing' and the comment in the penultimate guiding principle). From these statements alone it can be seen that mediation is perceived as an intervention that is both about supporting a conversation and also fixing a problem to serve the needs of the commissioning organization. This would seem to be the accepted norm.

5.2.3 Mediation as a sequence of interlocking objectives

Discussion

I then opened up a discussion about mediation as 'conversation' versus a 'problem fixing' process.

The TM said it was about both these things but that,

“from a pragmatic point of view from the organization's point of view its about fixing a problem and the first part of fixing that problem is trying to re-establish some kind of communication between the two people who are not communicating ... so having the conversation is part of that solution and then on top of that the bit that kind of maybe goes from having a conversation to the more extreme type of solution which might be that they you know er a complaint is is withdrawn or a process is stopped and the two start to be able to work together er all the things in between

which may or may not involve a written agreement ahm may or may not involve still going through a formal process ... but I'd say that having a conversation is almost a .."

The FM interjected with "a prerequisite"

The TM continued,

"yeah although not necessarily perhaps ... if its about fixing a problem and one person does decide that they do want to leave the organization that's what they want then they haven't had a conversation and yet the persons decided to leave and that could be seen as a solution ..."

The FM than said,

"yes I think that's right but I would also say that its actually about helping them have an an internal conversation with themselves ... the questions that the mediator's asking has helped them clarify some issues for themselves which leads them to that solution ..."

The TM commented,

"... and I really like that idea of the internal erm conversation because its often by voicing what you're thinking internally and hearing your mediator reflect it back to you that in a way its a conversation between maybe your conscious mind and your subconscious mind or something like that ahm and that leads really well into the whole of the transformative thing of empowerment and recognition where even before the two people are talking together you can start to feel a bit more empowered 'I've got choices here I can do this that and the other' or and have recognition 'maybe the reason they did that was because I said this before' or something ..."

The FM summed up this part of the discussion by explaining that,

"... the mediator facilitates the inner dialogue that's the kind of like almost

the first step and then out of that there might be a solution but that might not happen at that stage so you then go on to facilitate this dialogue with the other person and that then possibly leads ...”

and the TM concurred saying,

“... then you might have to go from the internal dialogue to the joint meeting and that then you’re having at the level of conversation but that then may in turn lead to the practical problem solving stage ... “

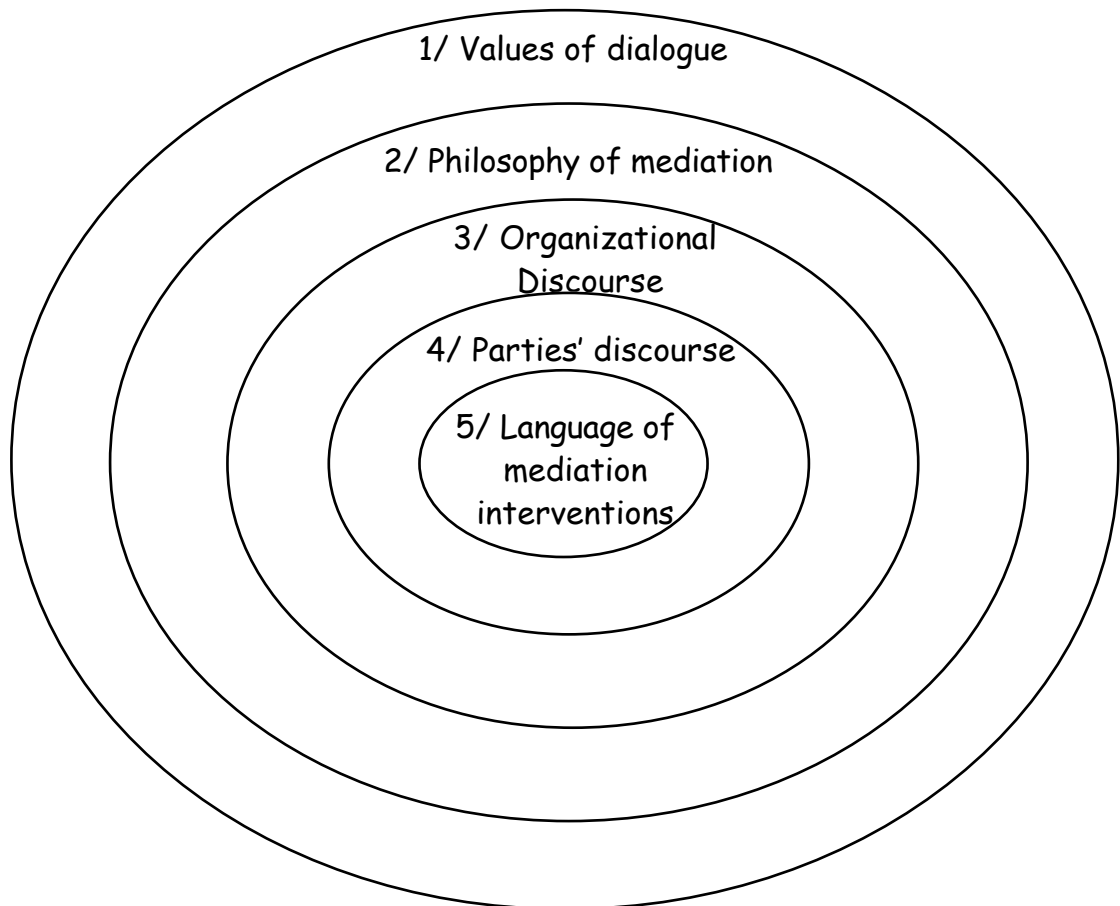
Interpretation

These comments illustrate how difficult it is for the mediator to escape the discourse of the organization. Above is a ‘naturalized’ description (Fairclough, 2001) of how workplace mediation inherently and intentionally functions to serve the needs of the organization. It is why organizations have taken up the tool of mediation. The mediators’ entrapment in the discursive frame of the organization is evident in how these mediators unquestioningly accept that mediation is about supporting a conversation so that a workplace problem may be resolved. I would further argue that the mediators’ entrapment is increased by their humanistic understanding of a unity of identity of the party, and the consequential assumption of sole responsibility, as implied in the above “aims and principles”. This entrapment is made complete by the mediators’ politically uncritical disposition towards their engagement with the mediation process. This applies equally to both styles of mediation researched above. If, on the contrary, the mediator were to adopt a political awareness of their role, the issue of separating out mediator roles, i.e. differentiating the ‘supporter of a conversation’ from a ‘seeker after a solution’, becomes significant and yet, of course, remains problematic. That is, a ‘solution’ may necessarily follow the ‘conversation’ and involvement in both cannot be easily separated.

Hence, assuming that the parties also remain uncritically enfolded within an organizational discourse and are themselves unable to acquire a “political subjectivity” (Howarth, 2000:108-9), it would seem that the mediator, even in an exclusive role as ‘conversation supporter’ will, in any case, always tend to act in the service of the organization. As these mediators say and demonstrate, the two

roles are inextricably linked and the mediator cannot but operate within the discursive field of the workplace. This is depicted in figure 1 below. This figure usefully illustrates the question I shall take up in the conclusion, being; what scope is there for the posited counterfactual mediator to intervene, in accord with their values and philosophy, to contest the discursive frame of the organization?

Figure 1. How language of a 'dialogic mediator' may be conditioned



5.2.4 Whether interventions ‘open up’ or ‘close down’ conflict, commercial pressures and what is mediation for?

Discussion

I next moved the discussion on to a broad question of whether a mediators’ interventions tend to either ‘open up’ or ‘close down’ consideration of a conflict. I noted that the transformative critique of problem-solving mediation is that the mediator “can take over the solution” of the problem and bring much more of themselves into consideration of the problem. It is therefore necessary for the mediator “to get out of the process”. I added to this an observation that the transformative method, which I briefly described, is a useful starting point to develop a sense of whether or not an intervention formulated in the mind of the mediator is likely to contain an evaluative aspect. I suggested that by using the transformative technique, relying heavily upon reflecting back words to the parties and applying a discipline of remaining ‘in the moment’, the mediator is able to reflectively resist making evaluative interventions whilst also slowing down the interactions of the parties and so allowing them space for reflection as well. I suggested this approach helps to keep consideration of the conflict by the parties ‘open’. We discussed aspects of transformative mediation and it was pointed out that there are common elements to both the transformative and problem-solving mediation styles, including the technique of reflecting back. I also explained what I have termed the counterfactual approach whereby building upon ‘transformative’ insights, the mediator can be sensitive to the parties’ stories, their differences of meaning and ‘discourse’ and to aspects of wider causal webs of influence affecting the conflict. I described an overall aim to reflect back such elements of their conflict and thus to ‘open up’ potential for moving towards ‘dialogue’ or, at least, a fantasy of ‘dialogue’.

The TM asked if I was saying that my,

“ ... definition the purpose of of workplace mediation is that the parties are encouraged to listen better to one another”

I replied yes but said that also it includes,

“ ... opening up and exploring a lot moving towards this you know call it a fantasy of dialogue if you like ... and and that is fundamentally about real listening and hearing ... the path to it for the mediator to be in the transformative role for a large part of the time but then to step over the boundaries ...”

into exploration of metaphor, discourse and wider causality.

Further discussion followed about the differences in techniques and process between facilitative, workplace mediation and transformative mediation. This discussion moved towards a focus upon the management or otherwise of the encounter process. The FM commented that,

“... workplace mediation is very much driven by business needs people who like process who want to see an output for the you know an outcome for the money they are paying and and it it forces you down this very commercial procedural route ...”

I asked,

“ ... how do you think that influences the mediator by that by all those constraints”

All three participants agreed this does make a difference. The TM said,

“ ... it makes me think twice about ahm offering the parties choices just because then one might start saying but it said in the paperwork that we were going to be doing this at this time ahm and it even though its laid down just a as a guide line ... it puts a barrier between being completely open ...”

The FM said,

“... I think that's true I I think the area for me that's of interest is is how you would behave if you didn't have that constraint ... you could carry that conversation on for quite a long time couldn't you in order to deepen the

understanding and improve the relationship but you know at which point does the cut off come you know is it is it created by the commercial necessity that the client's only prepared to pay for two days or is it created by your own professional you know practice that we'd like to delve deeper but I'm not I'm not a counsellor and its time to try and get them to focus in on sorting it out ...”

At this point I referred back to the aims and principles, documented on the flip charts at the start of the discussion, about: allowing people to be heard; remaining neutral; voluntary; parties own the outcome; capable of deciding for themselves; its their responsibility; non-judgmental; and commented that this is how mediation is sold. I then went on to describe how other workplace mediators I have met demonstrate processes that are controlling so that the parties are ‘managed’ and ‘directed’ to varying degrees and that at the most directive end of the spectrum is commercial mediation which is described by it's practitioners as ‘managed negotiation’, and that they don't pretend its mediation at all.

The FM commented that,

“ ... even at [our organization] we call mediation assisted negotiation ... even in transformative mediation you are ultimately helping the party negotiate their own way through their own conflict you are empowering them ideally to actually ah find the confidence and find the recognition the light if you like to be able to ahm hear what the other person is saying and to be heard themselves and then to be able to have a dialogue hopefully in the future unaided ..”

The SM interjected with,

“which means that they will resolve their problem”

and the FM then said,

“which is the negotiation”

Interpretation

This part of the discussion gave a sense that the participants view mediation through a universal, humanistic lens and that this philosophy and associated set of values conditions their beliefs about their interventions (one reading of Fig 1.) There was a view that the similarities between different styles of mediation were greater than their differences. I also sensed that the participants very much felt, that within a commercial context, they are constrained to provide mediation services that places demands upon them to practice 'professionally' in a 'business like' manner. Further, their experience of mediating confirmed their belief in a reasonable need for the management of the mediation 'process'. This was defended as being all part of the environment of the workplace with its 'process' orientation. It was suggested that there is a commercial necessity to manage or 'negotiate' the parties towards a solution and that 'process' control was needed to achieve this. The notion that use of such processes led to any overt influence upon the parties was not entertained and there seemed to be no recognition that this element of control entailed any significant compromises of their professed principles of mediation nor undermined their purported position of 'neutrality'. In sum, they presented an experience of awareness of commercial constraints in which ethical decisions are confronted, that there are tensions between mediation's principles and commercial pressures, but these were couched only in terms of time constraints. Awareness of such tensions did not seem to embrace the possibility that their interventions and utterances might influence the parties.

5.2.5 Challenging and defending 'problem-solving', time constraints, sticking plaster, success rates and widgets

Discussion

I then played three clips of the role-play, interspersed with discussion, to demonstrate interventions that either seemed to close down or, alternatively, open up exploration of the conflict. I introduced the first clip of the FM as an example of the party being somewhat interrogated by the mediators, thus focussing down on the conflict rather than opening it up. After the clip had run for about 2 minutes the FM asked me if I felt the interventions of the mediator were

“like an interrogation”. I said,

“ ..I would say this is very much focussing on the problem and and quizzing interrogation is uhm the wrong word but it but if you compare it to transformative where you’d be asking them to it would be much more on the part of the party to say things and you’d draw things ... you’d follow them this is a mediator going straight into the problem and and wrestling with the problem ... the initiative [of the mediator] comes from your experience of being in the workplace ... I feel he’s [the party] being interviewed by somebody who could be his HR manager ... there was quite lot of that interaction whereby it was question and answer quite a lot of airtime was given over to the mediator ...”

I then played another short clip of the SM and said,

“... on that one I’m sorry I’m going to be brutally critical here ... its kind of closed it down so here’s the problem between you [the parties] ... you’ve positioned the cause of the problem with Paul ...”

Following a brief exploration of what was going on in the clip the FM said,

“ ... this is a demonstration of problem-solving facilitative mediation I can’t see anything wrong with it”

I responded by saying,

“ ... I am not saying its wrong or right what I’m saying is the mediator becomes positioned as manager of the problem”

The FM rejoined,

“no she’s reflecting back she’s listened to to both parties opening statements and she’s made a summary ... you know she’s listened to what everyone has said and she’s tried to capture the issues as a means of forming the agenda for the rest of the meeting”

I said,

“so I’m criticising that from the transformative perspective”

The FM said.

“I don’t think there’s anything to criticise”

I said from a transformative perspective,

“the problem is that you have formed the agenda”

The FM said,

“oh absolutely”

The SM then said,

“and that is that is what happens”

I asked how this stacks up with letting the parties sort it out for themselves.

The FM explained that,

“ ... because its not the mediator that’s decided the agenda the parties have brought the issues the mediator has reflected that back to them and said are these the issues that you want to cover and then they say yea or nay or something else comes out and that’s how you structure the discussion ... ”

The FM commented it would be inappropriate for the mediator to select things that they thought were important. There was a brief discussion led by the TM of how transformative mediation looks first at the feelings of the parties rather than at the issues and that this is a different way of picking out material.

I commented that it is difficult to lift bits out of the role-play video to look at in

isolation but said that,

“the basic point I was driving at is that in in the problem-solving mode I I feel there's a tendency for the mediator to almost inevitably become like a manager in the organization ... they're actually using a lot of conversational skills uhm and their mediation training to to help people come together but but still there's a strong feeling comes across to me that its not fair to just show you a tiny clip but but ... if it is problem-solving and there is a problem ... then the tendency of the mediation becomes if you like as a proxy manager you know brought in from outside so they're impartial and independent but nevertheless sits down with the staff and actually drives towards cracking the problem ... so I would argue that is problematic if the mediator is supposedly some sort of neutral person”

The TM then reminded us of my initial question by saying,

“coz you introduced this by saying is it is the mediators intervention having the effect of opening up or closing down”

I agreed and added,

“conversation or problem-solving”

The TM commented that this could be sorted out by seeing what the effect on the parties is and what they said afterwards²⁴.

The FM then said,

“but that's interesting because if if your observations are that that mode of mediating is giving the parties the impression that the mediator isn't neutral then that's a really important thing to be saying isn't it and if that is the impact then we would have to ahm look at that quite critically and evalu

²⁴ I had privately asked the parties/actors how they had felt after the role-plays. They had told me that they had indeed felt treated like schoolchildren. It would have been inappropriate to comment on this in this discussion. However, in my experience parties are often not consciously aware of being directed by mediators. A new and different study could usefully research party feelings. See also footnote 25 on page 286.

and re-evaluate whether that is having that impact having said that if you are coming from a point of view of you are providing a critique of problem-solving mediation from the point of view of a transformative mediator then that provides a different reference point completely doesn't it because that really doesn't bother me so much because what I saw there I ah I think was only all that was happening was that the mediator was teasing out the issues that both parties had brought wasn't implying any judgement themselves on which was more important but was using a series of questions maybe fairly targeted accepted that's obvious to actually try and tease out what was going on here"

The SM then said,

"... I can see entirely where you're coming from but it was lets look at the problem lets see if we can get him [Paul] to start doing the work all to himself rather than the relationship"

The FM then commented,

that's not what its about is it that's what's struck me in this conversation that the transformation mediation transformative mediation is very much about the relationship isn't it and whilst I think that's very valid I think in the workplace situation its not very applicable I would say actually because as we always say you don't come to work you don't have to like the people you work with you have to get on and do the job and its ideal if you've got a good relationship with them but for some jobs which don't involve high levels of trus I mean I have ... but when you're processing widgets in a factory you don't need that depth of of of of of understanding"

I commented that there is a tension between what mediation purports to be about and its translation into the workplace where widgets are important as well as relationships. I said there seems to be a big gap between the high idealism of a concept of dialogue and running a mediation that has to get to a solution. I touched upon the subtlety and hidden nature of discourse and the apparent acceptance of facilitated outcomes by parties but suggested that mediation that supports conversation can result in lasting changes compared with problem-

solving that may yield short lived solutions of a conflict.

The FM went on to say,

“sometimes I feel in my mediations sometimes I what I regard as success ... I do try and aim to make people feel better about themselves and feel more empowered and I think that’s actually at the expense of sorting the problem out ... I’m a Myers Briggs practitioner and used that in a mediation and I still couldn’t get the parties together because they were at such loggerheads ... it was a three way mediation and one part of that worked and the other didn’t and I think they both went away knowing more about themselves because we did some Myers Briggs stuff with them but it didn’t sort the problem out and that’s what the employer’s interested in they paid three grand and the problem wasn’t sorted”

Later in the discussion we talked about opening up a mediation to new material at a stage when a possible agreement is in sight. I played a clip from near the end of the afternoon session as party agreement appeared to be emerging when the TM, working in the moment, reflected back to Paul how he expressed a feeling of being trapped. I commented that this was an example of the mediator keeping options open. The FM commented that,

“ I think that’s a really really good point because we do get er situations towards the end of the mediation times running on and you think they’ve made some agreements and somebody says something .. {speech inaudible} .. we do have to make a judgement almost an ethical judgement about whether you allow them to raise that issue or whether you say that actually you need to get this sorted today .. {speech inaudible} .. because the relationship still isn’t on a firm basis admittedly but you haven’t got any more time to to deal with anything for them ”

The TM then said,

“what a transformative mediator would have done would be to say ‘you just raised another point there Paul do you both to feel that now is a good time to talk about it or do you want to stop’”

The FM agreed saying,

“ ... I might do it that way say ‘is this something you might want to look at now’ maybe be a bit more directive than that as time’s moving on {laughter}”

The TM said,

“ but again you could go against what the employer might have wanted which is at the end of the day to go home with an agreement which you might not get because ... ”

The SM then said,

“and that is sometimes the pressure that you feel you’re under with problem-solving .. {speech inaudible} .. yeah shoe horned so that you can say yes we’ve got this agreement irrespective of whether it works or not”

The FM then said,

“its just sticking plaster some agreements I hate that”

The SM then commented that mediation is a limited intervention in a much larger set of circumstances, in a conflict that is months long, so it is not reasonable to expect

“ ... a couple of hours mediation to solve all of your problems ... life just isn’t like that ... ”.

She continued to say,

“I think that’s why the success rates look really good when they sign on the dotted line or not as the case maybe and then it starts to gradually fall away ...”

I then commented that success rates in community mediation are typically and crudely one third 'successful'. The FM said,

“that’s a very honest figure because that’s the lowest figure I’ve ever heard eighty five percent is the figure that [my organization uses] and I’ve heard other organizations use as well and I just don’t believe it {everyone laughs and concurs}”

We discussed some differences and similarities between community and workplace mediation and I said in the workplace context,

“there is that pressure to make it happen”

The FM interjected, “when you’re paid ... I’m sure ... how durable that happening is is up for debate”

Near the end of the discussion I summed up my overall interpretation of the role-play. I said my prejudice, as a “bit of an idealist” who may struggle to find work as a workplace mediator, was that workplace mediators should major on helping parties to have a conversation. I suggested that problem-solving mediation with tensions of being paid to get a result tends to place the mediator in a role of proxy manager. I further suggested that the mediator, using different techniques moves between practice that more accords with the values of mediation (on the flip chart) and practice more in line with the need to get a job done - it is widgets not people.

The FM said,

“ I don’t feel very comfortable with your description of the mediator in the problem-solving mode as a proxy manager ... I think if we had more time then I’d like to tease it out a bit more it somewhat alarms me that that could be perceived by the party as the mediator not being impartial but as I said earlier on if you’re coming at it from a transformative perspective and you’re critiquing it on that basis then I’m not quite so bothered but if it is that the mediator looks as though they are playing the part of the manager then that would bother me so I think I’d want to I don’t know in an

ideal world I want to try and explore that a bit more ...”

The FM continued to comment that HR managers who train with her in mediation often find they are not able to mediate in their own workplace because they are perceived as not being impartial, purely because of their formal job position and role.

The meeting drew to a close after about 2 hours and 20 minutes.

Interpretation

At the beginning of this section I recorded my suggestion that quizzing of the party to problem-solve had closed down the conflict and the interventions had positioned the mediator as a surrogate manager. This suggestion was refuted, in part, because it took inspiration from the transformative critique of problem-solving. The relational premise of transformative mediation oriented around the feelings of the clients, and by implication the dialogic aspiration of mediation, was rejected in favour of sorting out problems. The use of transformative methods was considered invalid. Grounded in an implicit belief in mediator neutrality, problem-solving, workplace mediation was strongly defended.

However, in contrast with these beliefs the participants expressed their experience of feeling constrained by time and the by need to get an agreement for the employer. There was a recognition that such quick fixes (“shoe horning” and “sticking plaster”) may be less than durable forms of resolution and furthermore that the industry conspires to present a higher incidence of ‘positive’ outcomes than is believable. Despite these self-criticisms, the idea that the mediator is a neutral and impartial agent was upheld. There is full awareness of the feeling that ‘a job has to be done’ but a belief that this need not entail any form of mediator influence upon the parties, who are assumed to voluntarily work with the imposed process to sort out their own conflict. The social norms and practices surrounding workplace mediation remain unchallenged because the contradictions between pressures to ‘resolve’ and assumptions of ‘neutrality’ are left unrecognised and unscrutinised. Logical reasons for the ‘success’ or ‘failure’ of a given mediation intervention are couched in terms of the abilities of the mediator on the one hand, or the mental

state of the parties, on the other. Glynos and Stavrakakis refer to discursive patterns of a:

psychologizing social logic ... in the self interpretations of actors ... [that] account for the success and failure of work related activities in terms of psychology or personality, rather than in terms of wider socio-economic features linked to (missed) collective decision-making opportunities (Glynos and Stavrakakis, 2008:264).

The FM's reference to her use of "Myers Briggs stuff" very much points to this type of logic. Despite her 'skills' the parties remained at "loggerheads".

Of course, as a researcher, I am also subject to a psychologizing social logic. At the start of this discussion I felt emotionally uncomfortable with my criticism of my research participants. I backed away from use of the word 'interrogate' and sought to suggest that criticism is not a case of 'right or wrong' but about understanding effects. Then, towards the end of the discussion, somewhat strangely I spoke of myself as "a bit of an idealist" (in contrast with my theorising above), who may not therefore find work as a workplace mediator. As a researcher I felt the weight of the discourse of mainstream mediation, that I sought to critique, bearing down upon me. Perhaps I felt I was being hailed (interpellated) by the opinions of my interlocutors. I was trying to soften and almost apologise for my criticism of their practice in the face of an implacable discourse of 'getting things done' to 'naturally' serve the needs of the organization. The social pressure of the prevailing organizational discourse led me to act out an identity, tapping into my proclivity for 'idealism', that I felt more acceptable to my research participants so that I could feel less uncomfortable in my engagement with them. Thus, I presented myself as an 'idealist' believing this 'position' would find acceptance from my interlocutors so that I would appear reasonable in believing we should strive after the values of mediation in a manner less compromised by commercial pressures. From this position I felt I could invite them to critique their own practice and then perhaps look at its underlying ideology. To paraphrase Belsey, quoted above (page 135), it is very hard to critique a discourse from within that same discourse.

The FM did express feeling uncomfortable with and bothered by the charge of acting as a proxy manager and that she would want to explore this a bit more.

This emotionally discomforting response is in itself interesting but would require further collaborative research to attempt any form of interpretation. Many months later I unsuccessfully attempted to strike up an e-mail conversation to further this exploration. However, in this exchange of e-mails one of the participants wrote,

“I think it depends on our assumptions as to what the role of the manager normally involves. If it means telling people how to solve their problems, then I wouldn't want to be seen as a proxy manager by my clients. But if it means supporting the parties in finding their own solutions, then I have no problem with that title!”

This exchange underscored my belief that I had been unable to draw out from my research participants any glimpse of recognition that, behind their presumption of a neutral form of ‘support’, their practice might entail direction of the parties towards solutions developed by mediators, from within a discourse of organizational effectiveness.

What these discussion extracts do show is the power of the prevailing discourse of the workplace, that continues to hold sway in the face of an awareness of commercial demands and constraints, that place stress upon the mediator's espoused values. The identities of the mediators seem formed of a contradictory hybrid of, on the one hand, mediation's traditional values (aims and principles) and, on the other, a practise necessitating their instrumental application. Perhaps this internal inconsistency explains a defensiveness apparent in the above discussion. To admit that workplace mediation is problematic could result in a disintegration of the adopted professional identity of the workplace mediator. Mediation is very much regarded as a quasi professional role in which a disposition of humility does not find a home. Mediation must always be located in a cultural and historical context but it seems that workplace mediation has so far been subjected to an all enveloping hegemony of organizational efficiency. Thus, a colonization of mediation has and is occurring in the contemporary UK workplace, rendering mediation an effective tool for the perpetuation of a status quo, rather than a means to dialogically explore dislocatory experiences of interpersonal conflict. Perhaps this colonizing force is so strong because it rests upon a practice that is layered, complex and internally contradictory. Whilst I believe I can assume a colonization has occurred, the above discussion reveals

that the mediators, as active agents, combine behaviours and traits that both support and also contest such a colonization.

Hence, it would seem that this effectively hegemonic usage of mediation should not be interpreted as a deliberate strategy. Problem-solving mediation used in the community setting was already categorised by Noll (2001), Bush and Folger (1994, 2005) and others as being directive and evaluative in varying degrees. It appears to have been imported into the workplace, ironically because of the combination of its appeal of neutrality and impartiality, but with these underlying tendencies of directiveness. Mediators in all sectors may be drawn into a role that effects a powerful yet contradictory combination of three traits: an assumption of neutrality/impartiality/ non-judgmentalism; overall professionalism in their practice of mediation techniques; and desire to achieve a successful outcome. I use the word powerful to denote the seductive attraction of the practice of mediation and the concomitant effects upon the subjectivities and identities of practitioners who are able to live with these seemingly contradictory objectives. It is reasonable to assume that on the 'experimental' entry of mediation into the workplace, the pressure to obtain 'good' success rates is increased and the mediator is a willing party in this 'experiment'. These factors underlie the subjectivity and identity of the workplace mediator. A deeper theoretical interpretation of this mediator subjectivity, that I will now conjecture, will help to further develop the counterfactual, exploratory practice.

Whilst the main thrust of the above analysis of the role-play mediation has been to look at enacted, 'visible' subject positions of the mediators, this particular concept of 'subject position' has been traced back to a root in the 'lacking' subject of Lacan. I have also made some more speculative interpretations of mediator practices that appear internally contradicted using notions of 'fantasy'. To further unravel the role of fantasy in obscuring such contradictions and covering over their political import, I shall employ the Lacanian concept of the 'objet petit a'. This leads to one last significant interpretation and clarification that might be applied to my own stance and that of many workplace mediators. To explain, Benvenuto and Kennedy note:

it is a property of language to slide around its own incapacity to signify an object, and this object exists then only as a *lacking object* (desire

follows this movement). This is what he [Lacan] called the 'objet a' (Benvenuto and Kennedy, 1986:176).

An objet petit a represents a fullness once enjoyed (a sense of jouissance) and now lacking, and therefore forever desired. Zizek refers to it as "the object of desire that eludes our grasp no matter what we do to attain it" (Zizek, 1992:4). Fantasy and the 'enjoyment' of fantasy compensates for this absent fullness and so becomes a motor for desire. Thus, enjoyment is now felt in fanatasmatic anticipation of recovery of this absent fullness. Glynos and Stavrakakis (2008) further explain this "logic peculiar to fantasy" which:

entails the staging of a relation between a subject (as lack) and the object [petit a] (as that which escapes socio-symbolic capture), thereby organizing the affective dimension of the subject, the way it desires and enjoys (Glynos and Stavrakakis, 2008:263).

To recap, we may superficially attribute to mediators a fantasy that the parties are solely responsible for their conflict and that there is no extant context within which this conflict has arisen. For example, the simple notions that 'pressure of work' and possibly the intricacies of the workplace 'identifications' of the parties, might have impacted upon the dispute, are assumed but then 'dismissed', as 'responsibility' is located within the individual party. A mainstream mediator thus regards both the party and him/herself as an individual who is 'responsible'.

Specifically the mediator operates within a working space within the wider workplace in which they come to feel responsible for a particular intervention and conclusion. This conclusion can be measured as either a 'failure' or a 'success'. In the above discussion, the FM commented that the employer "paid three grand and the problem wasn't sorted". Thus, the mediator, in general, may fantasize, with an expectation of enjoyment, that they are responsible for and able to bring about a reconciliation of parties (despite espoused and contradictory premises of mediation). If they succeed in 'totality' (an impossibility) they would achieve a "beatific" fantasy of fulfilment. Complete failure (their fault/ the parties' fault) would represent an "horrific" consequence (Glynos, 2008:283). 'Total' success, if virtually approached, may trigger a sense of bodily jouissance or a limit-experience (Benvenuto and Kennedy, 1986:179; Glynos and Stavrakakis, 2008:261). Yet jouissance obtained never matches that

expected and “unable to fully satisfy desire, fuels dissatisfaction” (Glynos and Stavrakakis, 2008:262)

In this affective and practical movement through the play of mediation, the mediator has made a conscious and unconscious decision to take control of the meeting and therefore to be responsible for the resulting outcome of the meeting (whilst holding to the belief that it is parties who make any decisions). To do otherwise is to deny themselves the enjoyments inherent in their ‘role’ and identity of mediator.

What is being pursued is an impossible ‘objet petit a’, in the form of a successful mediation. It is the mediator’s relationship to the ‘conflict’ that defines conflict as an ‘objet petit a’. A ‘successful’ closing down of conflict may be represented by the harmonious communication between the parties and a collaborative communion amongst all the members of the mediation meeting. This desire for a perfect form of communication and mutual understanding is what drives ‘identification’ as a mediator in the workplace, believing/fantasizing in the promise of the elimination of their own ‘lack’. The mediator’s enjoyment in this task is threatened by the parties, the latter cast as the volatile and unmanageable obstacle to this ‘elimination’ of lack. The parties must therefore be ‘controlled’.

It would seem that any style of mediation (including explorative) is going to be caught up in this logic of subjectivity. Hence, the “*mode* of the subject’s [mediators] engagement” (Glynos and Stavrakakis, 2008:265) with the norms of mainstream mediator practice may be wrapped/rapt in a form of enjoyment rendering them “insensitive to the contingency of social reality” (Glynos and Stavrakakis, 2008:265). This is termed, after Lacan, ‘phallic enjoyment’.

A first and necessary step, on the way to an (impossible) escape, is for the mediator to release him/herself from the need to control the parties and from the desire to bring about a peaceful reconciliation. In this move the shackles of organizational discourse may be loosened and a non-phallic enjoyment, that is more open to the contingency of social relations, may be felt. The mediator may thereby strive after a fantasy of ‘dialogue’, recognizing both the empty signification of this word and the false promise of a recovery of an absent

fullness.

Whilst problem-solving mediation focuses upon the substance of a dispute it also, like transformative mediation, seeks to engineer a complete, *working* reconciliation of the parties (a pragmatic arrangement) and so also re-institute the fantasy of a workably harmonious workplace. In sum, the 'myth' (Laclau, 1990) of such a workplace represents the covering over of social dislocations that inhabit it. The mediator's contribution to this overarching 'myth' is enacted by their pursuit of the idealised and imaginary *working reconciliation*. They desire it's achievement and take enjoyment from their expectation, entwined with their role, in bringing about the end of conflict. Like an 'objet petit a', this object cause of desire, the aimed for creation by skilled mediation of a working reconciliation, is both:

simultaneously the most *intimate* kernel of the subject and yet also external to this same subject (Glynos and Stavrakakis, 2008:263).

It thus seems that the enjoyment associated with the desire to fulfil oneself by orchestrating an harmonious return to work overrides or obscures contradictions arising from a founding ethos of mediation practice. This conceptualisation of the mediator's objective as a pursuit of an 'objet a' would seem to indicate an apprehension of "conflict" as a Lacanian 'cut'; that is, where "this relationship turns around an edge or a cut" (Benvenuto and Kennedy, 1986: 176). It is the conflict that must be absorbed or eradicated. Whilst the mediator, of course, faces the parties to listen to or interrogate them as they recount their conflict stories, it is as if the mediator almost looks past the parties towards the idea, on the periphery of their imagination, of 'the conflict'. The parties and the conflict become objectified. The alternative is to only seek to support the parties in their exploration for their own understanding of the conflict. This suggests a subtle adjustment to and clarification of the central idea of explorative mediation, being that mediation should explore not just the 'conflict' but also the parties *understandings* of their conflict. After all, during the mediation, the conflict is only represented by the parties' understandings of it. The mediator's attempts to help the parties explore their 'understandings' should not become solipsistic but neither should the wider conflict be objectified.

Whilst many workplace mediators may refute the above interpretation on the grounds that they are very aware of the limitations of mediation to bring about harmony, I personally experience a sense of the attraction of the telos of reconciliation at the 'edge' my 'vision'. (Maybe this points to a future, necessary possibility of expanding the sometimes claustrophobic space of the mediation meeting to a more far ranging temporal encounter with 'collective' threads of conflicts - who/what else is involved? - to broaden any exploration. However, due to an apparent cultural and individualised discomfort with conflict both parties and referrers seem resistant to this notion. Any act that may tend to challenge identity is usually restricted to 'therapy'.)

Bush and Folger as major critics of problem-solving mediation and it's weddedness to 'process control', found to be at the heart of the above conjectured mode of mediator subjectivity, have also taken up the challenge of applying transformative mediation in the workplace, but I will consider this development a little further in the next concluding section.

PART 6: CONCLUSION

6.1 Critiquing the facilitative and transformative mediators' approaches and philosophies

When viewing my critical interpretation of the workplace mediation role-plays, in the light of the subsequent participants' discussion, it seems clear that what is 'done in saying' does not align with espoused values. The mediators do exercise hidden power which they are reluctant to acknowledge. Instead, it appears that the 'subject positions' they inhabit, that of 'surrogate manager', place them within an organizational hegemony. I am using the concept of hegemonisation as "actions that attempt to fix the meaning of social relations" Critchley (2004:113). Given the extreme difficulty for escape from naturalized meaning systems, it is understandable that the overriding need for a resolution, in order to enable a return to work in the interests of economic efficiency, is taken for granted. However, the adoption of a disposition of authority and expertise by the 'mainstream', facilitative role-play mediators makes a hegemonic capture all the more inevitable. The mediator thus becomes proficient in a particular method for controlling the operation of an escape valve for certain types of conflictual pressures that build up in the workplace. In contrast, the 'counterfactual' approach, sketched above, demands a mediator disposition of humility in their 'uncertainty' and hence openness to the 'contingent'. (This humility is not without critical ambition and is also based upon a sense of the normative and the ethical, which I shall consider further below.) The 'mainstream' style of interventions are directive and tend to smother any fuller exploration of the conflict. The identities and subjectivities of the disputants are regarded as fixed, independent and autonomous. They are treated as employees more than persons. The result is that opportunities for emergence of moments of learning and dialogue tend to be lost.

Somewhat differently, the 'transformative' mediation role-play depicted an approach in which the mediator displayed much more humility and invited the parties to self-manage the process of the mediation encounter. The parties were thus treated as 'persons' but the mediator nevertheless also seemed to be captured within the hegemony of the organization. At times there was a slippage of the style of intervention away from a rigorous application of the practice of

transformative mediation, diluting the scope for this research to investigate and more thoroughly interpret any latent political tendencies present in transformative mediation. However, the moral impetus behind the transformative intervention, designed to therapeutically engender 'better' interactions, resulted in discernible pressure towards reconciliation and improved work relations. Added to this, the theoretical absence of a consciousness of 'political subjectivity' and the dualism of the 'individual' and the 'social', within transformative mediation (Bush and Folger, 2005; Folger and Bush, 2001; Jorgensen et al, 2001) leads me to surmise that transformative mediation is likely to reproduce the naturalism of an organizational hegemony. The claimed success of the transformative project at the U.S. Postal Service in improving workplace relations (Antes et al, 2001), as cited above, seems to confirm this conclusion. An organizational hegemony is likely to be reproduced if transformative mediators adopt a presumption of neutrality towards both the parties and, importantly, towards the organizational site of their activity.

In theory, transformative mediation sets up an ideal concept of the subject as both autonomous and capable of "moral growth". Drawing upon Glynos (2008), this fantasy enables an avoidance of anxious confrontation with the possibility that 'subjectivity' is conditioned within networks of contingent social interaction. Thus, it is easier for a transformative mediator to adopt a certain detachment from their 'individualised' subject, whereas a party conceived as a complex, fluid 'subjectivity', shaped in social interaction, would by definition demand a much fuller and riskier engagement of the mediator. In applying a conceptualisation of a depoliticised individualism to mediation in the workplace, the transformative project tangentially becomes subsumed within a managerialism in which 'hierarchy' holds a privilege over decision making (Deetz, 1992b:24). This is significant because:

[i]n modern corporations such an advantage is not so much conceptualised as a right or legitimate but is unproblematically reproduced in routine and discourse. As such this privilege is treated as natural and neutral. The presumed neutrality makes understanding the political nature of organizations more difficult. Order, efficiency and effectiveness as values aid the reproduction of advantages already vested in organizational form (Deetz, 1992b:24).

This strongly points to the need for the counterfactual mediator, in approaching

her parties with a 'fidelity to contingency', to also apply the same critical sensitivity towards the commissioning organization. If not, as in the role-play examples above, many of the practices of the mediator participants can only represent acts of discursive closure. They may thus act to perpetuate the reproduction of advantage and privilege within the microcosm of their 'private' mediation intervention and so become more a supporter of the status quo and less a humble midwife of dialogue.

6.2 Mediation: An heterogeneous yet tendentious practice

This assessment of some stark political differences in possible approaches to mediation is a somewhat heavy handed critical evaluation that Glynos (2008:293) warns against and leaves me feeling uncomfortable. Like my participants I, as a workplace mediator, am also caught up in subtle disciplinary webs of contemporary organizational power. For example, in my own mediation service literature I make appeal to commissioners for the organizational efficacy of mediation.

Despite the political delineations I have arrived at regarding the mediators' choice of disposition and philosophy, I would hold back from any overly simple interpretations of the tendencies apparent within both styles of workplace mediation critiqued above. As declared in my title, I set out to locate the mediator within workplace discourse, suggesting they may be found at one of two polarised positions. I hope that I have now managed to contribute to a deconstruction of the rhetorical dualism presented by the question of this title. I have found that the mediator does not occupy any particular position at any one time but, potentially multiple positions over the course of a mediation engagement. Whilst the subject positions that mediators inhabit are defined by what they do and what they try to do as they intervene, i.e. by the type of mediation they effectively practise, they all demonstrated a concern for the parties and support for the parties to listen and reflect. In abstract, the space that is the practice of mediation is not uniform or homogeneous but varied, complex and contested. No one mediator will behave the same as another despite which 'school' they pay allegiance to. Given the indeterminate nature of interactions between people, including those that are conflictual, the same mediator will enact practises differently from mediation to mediation. More radically and

theoretically, Torfing observes that “[u]ndecidability prevents the ultimate suturing of structure.” (Torfing, 1999:119.) Torfing continues to explain that:

[b]ecause of the failure of the structure to constitute itself as a homogeneous space of structural determination, subjectivity can only be formed through acts of identification. ‘These acts of identification are thinkable only as a result of the lack within the structure’ (Laclau, 1993:285). And if in this way the incompleteness of the structure provides the conditions for the emergence of contingent forms of subjectivity, we have a situation where the hegemonic agent is reducible neither to a structural dupe nor to a wilful subject with the character of a *deus ex machina*. In other words, the concept of hegemony does not replace illegitimate objectivism with an equally illegitimate subjectivism (Torfing, 1999:119).

This thought echoes Howarth (2005:109), cited above, stating that the subject neither determines nor constitutes structure. All of this does place a limit upon the possibility for generalizing findings but, overall effects are still discernible. It is apparent from the subtlety of the views expressed in the follow up discussions that the participants are neither structural dupes nor wilful subjects but, in the role-plays, they did demonstrate forms of powerful influence that were obscure to themselves and often probably to the parties²⁵.

6.3 The speculative use of fantasy in explaining directive tendencies

I am left with the question of why were my participant researchers apparently unwilling to embrace the possibility that workplace mediation tends towards directiveness to bring about ‘solutions’ or reconciliation. Whilst they did recognise the problematic organizational pressures upon them, they did not conclude that their interventions may primarily serve the interests of the organization. Hence, there were no explicitly political thoughts, emergent in our discussion, that workplace mediation, by default, supports the normalisation of organizational hegemonies. But we could say that that which is normalised is

²⁵ This latter point clearly begs the need for further research. That parties are often unaware of mediator influence is indicated by ACAS sponsored research into 14 ACAS mediations in 2004. (ACAS, 2005). This research, using in-depth interviewing, found that generally parties felt the ACAS mediators to be impartial and were happy with their work and admiring of their role. N.B. ACAS practice the form of mainstream, facilitative mediation that I have investigated.

normalised. The political and the contingent are obscured. This is a problem for the 'critical' researcher wishing to avoid becoming arrogant by arguing the researched subjects mis-recognize significant practices and therefore the researcher in some way knows better.

However, it is obvious to state that this researcher has adopted a different disposition, labelled 'critical', towards his broad subject matter that is clearly not shared by his participant mediators. Our underlying ontological presumptions are different. We view the parties and ourselves as subjects from different perspectives as explained above. It would seem that the participants view the organizational milieu, within which they have formed a self-identity, 'uncritically'. Notwithstanding this, it is noticeable that phrases to describe their work as at times "shoe horning" or applying "sticking plaster" or concerned with those who make widgets, do subliminally signal alarm and reflection in the participants. That they do might suggest that their acceptance of the prevailing organizational hegemonies rests upon the operation of an 'ideological fantasy'. The use of phrases such as "sticking plaster" indicates an ironic awareness of ideology but that this awareness is apparently not acted upon is explained in generality by Zizek as a mis-recognition of:

the illusion which is structuring their reality, their real social activity. They know very well how things really are, but still they are doing it as if they did not know. The illusion is therefore double: it consists in overlooking the illusion which is structuring our real, effective relation to reality. And this overlooked unconscious illusion may be called the ideological fantasy (Zizek, 1989: 32-3 cited in Torfing, 1999:116).

Thus, as a mainstream mediator I might say to the parties, 'I will support you in a process by which you have an opportunity to make your own decisions about what to do about your conflict'. I would say this whilst being aware of discursive conditions around this assumption - not the least that I shall control the mediation process. I will also know that I will then go on to influence decisions that may be made but I pretend to myself that I have will not do this. From a moment of conflict and dislocation, party decisions are then formulated within the lived patterns of the social norms of both mediator and parties. Given the mediator's thrust to 'close down' the conflict, it becomes likely that only the discourses of efficiency and hierarchy, discourses reinforced by the atomisation

of the individual, will come into play. This tendency has been documented above. If such an ideological fantasy is in play, as seems evident, it becomes necessary to unravel the nature of this fantasy a little more and to understand it's hold on the mediators. (Again, I should note that as a mediator I am also subject to similar illusions.) To do this entails a step into the realms of the speculative, albeit rooted in the above picture of mediation practice that I have drawn, the subsequent discussion with the participant mediators and my own experience of mediating.

I have already speculated about how the identity of the paid workplace mediator may become invested in the enjoyment (Glynos, 2008; Glynos and Stavrakakis, 2008; Stavrakakis, 2005) of their skill in managing peaceful outcomes (subsumed within their overall conception of their organizational environment and their function within it). This is evident in the introductory remarks of the FM and SM in the first role-play and must be a powerful draw to the adoption and defence of both facilitative and transformative modes of mediating - (and notional explorative mediation as well!). The suggestion that the participant mediators may be acting in the role of proxy managers was strongly resisted and even induced an expression of discomfort and alarm. This may point to an "attachment to fantasy" (Glynos, 2008:289) that strengthens any mis-recognition of the contradictions between the ideals of mediation and the norms of the workplace (although this suggestion echoes a 'Catch 22' like accusation of denial).

But perhaps it is a fear of failure that is the overriding psychological and visceral, emotional motivation that ties facilitative mediators to a love of process control. (It is difficult to say how this possibly more psychological experience is necessarily entwined with an ever present affect such as jouissance and the desire for an 'object a' as described above.) A reliance upon process control was indicated by the FM in the 'discussion' when she commented that "... workplace mediation is very much driven by business needs people who like process ..." and also in her comments about the need to structure agendas and discussion. Thus, if mediation 'success' is predicated upon a 'problem' solved, to let go of process control would increase the possibility of 'failure' in an activity that is already highly precarious. This very volatility may tempt the mediator to choose 'safe options' for the parties on an assumed path towards a 'solution'.

Transformative mediation has rejected both 'problem-solving' and mediator process control as incommensurate with the ideals of mediation but has replaced them with a form of therapeutic support to engender levels of reconciliation. Explorative mediation would also be based upon a similar idea of reasoned forms of supportive interventions, but in this case the aim is for parties to open potential for a fantasy of dialogue that may achieve an, albeit temporary, sense of healing. But it should be noted that, for facilitative, transformative and explorative mediation, ever present 'attachment to fantasy' and 'fear of failure' are always underpinned by a vested interest in the form of a desire to please the commissioner of workplace mediation upon whom a continuation of role and employment depend. However, the private nature of mediation does allow scope for radical forms of practice.

6.4 Using 'fantasy' to describe and deploy counterfactual, explorative mediation

These speculations about fantasy enable a useful further theoretical examination of the counterfactual model I have set out above and also lead to a pivotal, concluding point that differentiates the explorative method from the facilitative and transformative modes. I would argue that the latter two modes are inherently susceptible to hegemonic capture. This likelihood has been demonstrated above, and is also theoretically plausible because the investment in fantasy, in the form of the mediator's skills as an expert manager of conflict, brings a tendency to close down a conflict. In addition, the anxiety and fear of failure, if the mediator is not skilful enough, similarly leads to the closure of any normative consideration of the context of the conflict and associated social practices.

In contrast, in the counterfactual, explorative mode, the mediator attempts to recognise the investment of their identity in fantasies of enjoyment/fear and is therefore more able to resist a role of leading closure of the conflict. This stance, I would argue, may be achievable by holding to an ethic of conflict exploration. That is, as suggested above, the mediator expresses a function of supporting the parties in an exploration of their *understanding* of their conflict and no more. What the parties do with the upshot of their mutual explorations is left to them. The mediator does bring their own normative consciousness of the context of

the conflict to bear upon their interventions and endeavours to make this explicit to the parties.

Glynos' analytic distinction between a "normative critique" and an "ethical critique" (Glynos, 2008: 276) may afford some clarification of this counterfactual, explorative method and the criticism it implies of mainstream practice. He suggests that questions of normative critique deal with the content of norms studied whilst those of ethical critique address how the subject relates to those norms that govern practice. Glynos deploys a concept of fantasy to consider the "ethos with which a subject engages in a practice" (Glynos, 2008:276).

Using Glynos' distinctions I would view mainstream mediation as a project that does not engage in consideration of either it's immediate normative environment or of any norms that govern it's own or other practices. In this case there is a conflation of Glynos' distinction. Yet it is still possible to discern that the probable fantastic enjoyments and fears tied up with practice prevent any questioning or scepticism of the ideological premises of workplace norms. This being so, it becomes possible to objectify people as widget processors, and no matter that feelings of unease may be prompted, they can be glossed by a Zizekian double illusion. That is, we might say, 'let's pretend they are just processors of widgets (in part!) and let's not look at the norms that allow me to persist in this pretence'. But in the sketch of an incipient explorative mode of practice the mediator begins from a stance of openness toward the norms that are contested between the parties, as well as the norms that shape the conflictual moment and the norms by which the mediator engages with the parties. Interventions are designed to leave space for consideration of feelings about what ought to happen or has happened, as well as enabling a wider, perhaps contingent view of the practices that contextualise the conflict. The mediator also seeks permission to enact a role in a particular way.

There are, of course, limits upon the mediator in doing all of this which I will now elaborate using Glynos' model of transformation, indicated by his separation of the "normative" and "ethical" noted above. First, he describes a normative dimension of transformation in which dominant norms governing social practice may be politically contested and changed. This sets up a socio-political axis. He then suggests an ideological-ethical axis across which the subject's relation to

norms governing practice is transformed through the “intermediaries of fantasy and mode of enjoyment” (Glynos, 2008:289). Capture by fantasy places the subject in an unchanged relation to prevailing norms and thus in the grip of ideology. Conversely, a “detachment from (rather than abandonment of) fantasy” (Glynos, 2008:291) corresponds to an “*ethical* mode of being” (Glynos, 2008:291) in which the subject’s relation to norms is changed. Hence, he lays out three types of transformation: a normative one across the socio-political axis; an ethical one, entailing a change in relation to norms without any political contestation of existing practice; and a thorough going transformation, involving both a political contestation and an ethical shift away from ideology. Norms are challenged, plus our relation to those norms is reconceptualised by an awareness of radical contingency.

This model is helpful to depict the potential for a transformation of mediation practice that I have argued for in this thesis and to also illuminate the constraints on any such transformation. I would argue that a change from a facilitative mode of mediation to a transformative mode (Bush and Folger, 2005) represents a political challenge and a normative shift. However, such a shift, whilst altering some norms governing practice, does not affect changes in the mediator’s relation to a wider set of norms. A new practice is set up but the transformative mediator is still gripped by the same ideology as the facilitative mediator. Namely, a fantastic relation to the parties and the conflict in which the mediator views the conflict as soluble without any examination of existent norms of social practice. This fantasy holds within it an understanding of the party/subject as being independently responsible for solving the conflict via solution creation or via a recovery of an humanistic interaction with the ‘other’. The mediator attains their enjoyment from practising within this ideological domain.

By contrast, I believe that the counterfactual, explorative mediator would be able to engender a transformation of their own practice that is ethical (by Glynos’ definition) but not necessarily normative. By this I mean that the mediator would attempt to remain detached from a fantasy of the sovereignty of the individual (party or mediator) and would view the conflict in an historico-cultural context that is open to contingency and uncertainty. Their interventions would be informed by this disposition. They would try to dispel fears of failure and hold to a radical humility accepting of any outcome. But because the mediator’s interventions

would seek to follow and not lead the parties, any normative contestation of socio-political practice could only arise from work done by the parties, with support from the mediators. Thus, the explorative mode holds potential for a normative and an ethical transformation as a “work group” (Bion, 1961); that is, as a collectivity. It is also possible that a mediator’s conception of their normative sense of responsibility to the ‘other’ and to ‘justice’ may curtail their escape from the grip of ideology and draw them back to an over-investment in fantasy. This might involve a resumption of control of meeting process at the behest of one or both parties. Within the group it is highly probable that parties and mediators may enact basic assumption behaviours (Bion, 1961; Hirschhorn, 1990). For example, parties often look to the mediator for solutions and a mediator, if flattered, may be apt to respond. Or the mediator(s) and one party may form a covert coalition against the other party. (There was evidence of this in the morning role-play where the mediators sided with Chris to bring Paul into line.)

6.5 An infinite distance to the horizon of dialogue

I will briefly make a tentative re-conceptualisation of Glynos’ model in the language of Bateson (2000) to reveal the high ambition contained within the concept of explorative mediation (and, by implication in that of radical plural democracy (Laclau, 1990)). A normative transformation might correspond to “a change in the set of alternatives from which choice is made” (Bateson, 2000:293). A normative and ethical transformation combined seem to correlate to what Bateson defines as level III learning, being:

a corrective change in the system of *sets* of alternatives from which choice is made (Bateson, 2000:293).²⁶

Bateson explains that:

To the degree that a man(sic) achieves Learning III, and learns to perceive and act in terms of the context of contexts, his “self” will take on a sort of irrelevance. The concept of “self” will no longer function in the nodal argument in the punctuation of experience (Bateson,

²⁶ Curiously these words are also echoed by Laclau’s observation that reactivation cannot return to the original, historic system of alternatives as “in a new situation, the system of those alternatives will be different” (Laclau, 1990:34). Perhaps the passage of time and retrospect allow for radical learning or maybe just entrapment in the contemporary system.

In the very different languages of Laclau (1990) and Bateson (2000), 'discursive materialism' and the 'psychologistic' respectively, there is an interesting linguistic reflection, in the use of the word 'nodal'. In Laclau's terminology the articulation of social moments brings about the construction of nodal points that partially fix meaning. For Bateson, a selflessness is found in the separation of the 'self' from a nodal argument where experience is apperceived. The selflessness of level III learning would seem to represent a condition for approaching an idealised horizon of dialogue, something unattainable but worth striving after. It would seem that the mediator, being distant from an emotional investment in the parties' conflict, may be able to strive to act with a selfless openness to the conflict. By approaching the parties with intention and compassion and through an openness to the 'contingent', the mediator may thus be able to acquire moments of selflessness as described by Willmott (1994:119), referenced above, and so support the parties in occasional moments of meaning making. At these times a partial fixation (Laclau, 1990) of a reality might be brought about by the collective action of the mediation group acting as a "work group" (Bion, 1961). It is partial and temporary because as Bateson (2000) implies any permanent state equivalent to level III learning is only available to either the mad or the buddhist sage (female or male) and not to mediators and parties. This openness to the contingent equates with an awareness of the exercise of power of deciding (closing down) that which is "undecidable" so that "a constitutive decision ... articulates social meaning in one way rather than another" (Torfing, 1999:307). If, on the contrary, for reasons of entrapment within dominant discourses of economy and organization, the mediator holds, wittingly or otherwise, to an agenda that seeks to directly clean up the mess of conflict, the horizon of dialogue is lost from view.

All mediators practice in the uncomfortable presence of conflict and they inevitably, in different ways, seek to manage it. I feel that the workplace mediator needs to humbly step back further from this desire to 'manage' and embrace a counter-intuitive thought from a fictitious, children's character in Jansson's book, *Moominland Midwinter*, who says:

All things are so very uncertain, and that's exactly what makes me feel

so reassured (Jansson. 1971:25).

If things were not uncertain there would be no need to explore. My findings suggest that to do otherwise and prematurely manage uncertainty, however well intentioned, rapidly results in inadvertent support for a status quo, thus missing an opportunity for people to admit a sense of the contingent.

PART 7: EPILOGUE

7.1 An experiential account of mediation

When I began this inquiry into workplace mediation I had already started to develop an approach to mediating in which I was less concerned to manage an issues agenda and more interested in helping support space for listening. This entailed, in part, striving for awareness of my evaluations in order to edit my interventions. I then soon started to experiment with the practical ideas and methods of Bush and Folger. This study has enabled me to tease out ideas from the literature of critical management studies and discourse theory to further develop my work as a mediator and to continue to develop self-awareness of the emotional meaning of my spoken interventions. My overall aim is to try to support the emergence of dialogue and afford some escape from a contemporary organizational hegemony. Of course, the achievement of a partial dialogue will often result in an improvement in hitherto soured relationships. Hence a 'successful' explorative mediation, as any other style, will also ultimately serve the needs of the employer/referrer. However, I would argue that, rather than merely serve to reproduce a status quo, an explorative approach has potential to subvert, or even replace, old hegemonies in the minds of the parties and mediators. This is simply to claim that it could on occasion, or at mere moments, support a collectively open inquiry into interpersonal (or group) conflict. It is my hope that explorative mediation, forged from the above critique of mainstream practice, might contribute in small ways to such a development in workplace mediation. I expect to be challenged about the 'realism' of this hope, especially given its potentially subversive edge. To date my experience is mixed but broadly positive and I have recounted some recent practical experiences to illustrate this below. But first to set this question of 'realism' in context I shall briefly refer to Riskin (1996), mentioned in Section 2.3.4 above.

Riskin draws a quartered grid, split vertically and horizontally, to classify types of mediation practice. On the horizontal axis he places the problem definition continuum, being the "subject matter and the problems and issues" (Riskin, 1996:18) addressed by mediation. These range from "narrow" (specific, substantial issues of dispute) on the left side, to "broad" (relational and

community interests) on the right. On the vertical axis he depicts a continuum to describe “strategies and techniques that the mediator employs” (Riskin, 1996:23). At the top end the mediator evaluates issues and directs outcomes. At the bottom end the mediator aims to “facilitate the parties’ *negotiation*” (Riskin, 1996:24, italics added for emphasis).

The types of mediation I have critiqued above, typified by the morning role-play, range across all quadrants of Riskin’s grid but, perhaps, with a centre of gravity somewhere near the middle. Riskin places Bush’s and Folger’s transformative mediation within the lower, right grid quadrant (Riskin, 1996:33). It may be that explorative mediation would be outside of Riskin’s grid. This may suggest it is unrealistic to expect explorative mediation to be well received by other mediators or parties.

I have used the term facilitative in a narrower sense than Riskin by linking it to a problem-solving disposition. However, Riskin notes more generally that:

the facilitative mediator assumes that his principal mission is to clarify and to enhance communication between the parties in order to help them decide what to do (Riskin, 1996:24).

This seems a description vague enough to embrace both transformative and, indeed, what I have termed explorative mediation. However, it is Riskin’s use of the word “negotiation” that stands out. He is emphatic that, “[m]ediation is facilitated negotiation” (Riskin, 1996:13). Hence, mediation can be and is widely seen as a form of communication to aid negotiation. The word ‘negotiate’ has a root meaning of ‘carrying on business’, literally translatable as ‘not leisure’. Negotiation is defined in the New Shorter Oxford English Dictionary (1993) as an:

act of conferring with another ... to arrange some matter by mutual agreement, a discussion with a view to some compromise or settlement.

In my experience this describes the expectations of both referrers and parties to workplace mediations. I have effectively argued that if the mediator adopts the belief that they facilitate a negotiation, they are likely to become ensnared in

dominant discourses of the organizational environment. It might be imagined that a mediator, who differently presents their role as simply to support an exploratory conversation with a view to dialogue and where the parties largely manage any process, might not be so readily understood. However, as indicated above, this has not been my experience so far, although I have confronted some tensions in presenting such an approach to parties. I shall now recount four brief examples of my own experiences to illustrate some of these tensions. These examples also indicate a vital mediator attitude of hopefulness for the parties to engage in mediation that I shall explore in the final 'sketch' below. These short descriptions do not constitute a claim to have enacted an ideal of explorative mediation.

In two recent workplace mediations (one in the voluntary and one in the public sector) I explained the explorative approach to all parties. For example, I emphasized that our intent is to support them in having a meaningful conversation to explore their conflict and not to attempt to find or impose any solutions. I explained that, at times, we would intervene to slow down their interactions and reflect back issues of difference and context that may otherwise be lost in discussion. I also explained some differences between mediation approaches including issues of control of the process of the encounter. Whilst in these individual pre-meetings, the parties went along with my suggestions, at times I felt that it did not matter what I said. They seemed prepared to defer to our supposed expertise and were understandably preoccupied with thoughts about the conflict. Both these mediations involved very intractable and long standing interpersonal disputes. Within the mediations it seemed apparent that at least three out of the four parties achieved some new insights into their conflicts. Thus, there were small elements of 'success'. As an 'explorative' mediator I was active within their conversations so that whilst the parties led the direction of the exchanges they also felt the supportive engagement of the mediator. However, one of the parties in the voluntary sector mediation subsequently wrote that she had expected the mediation to support with resolutions. She also wrote that she had felt "pressure from the employer" to participate. This had not been evident in the initiating phone calls or in the pre-meeting. On this occasion we carried through an explorative approach and the mediation resulted in some limited success. The public sector mediation unfolded not dissimilarly and the parties gave positive feedback over the conduct

of the mediation.

Both of these mediations illustrated that conflict disrupts identity and that an 'open' explorative approach to mediation is potentially more disturbing than a 'closed' approach and may risk a worsening of conflict. Awareness of this should be considered in pre-meetings. I clearly favour 'opening' up conflict as I have argued that to do so is an inherently political and ethical act. Not everyone would agree.

In a recent community mediation one party told me at the pre-meeting that she would prefer the mediators to structure the meeting rather than allow it to flow where the parties took it. I then attempted to persuade her of the benefits of a more open approach and the disadvantages of a structured approach. In this, I sought to exercise power, falling into Rahnema's trap of interested participation, as quoted in the introduction above. I explained that with a structured approach it is most likely that mediators take over the conflict. I also said we would try to respond to her needs in a transparent fashion to preserve a balance for both parties. We discussed the voluntary nature of mediation. (Often in community mediations parties may feel pressured, for example by housing officers, to go to mediation. This did not seem the case here.) I told her she could call a halt to the joint meeting or call for a break in which she could talk privately to one of the mediators, at any time. I suggested that we open the meeting by inviting one of the parties to start as in a normal conversation and to take it from there. This mediation was intensely emotional for reasons that had not been exposed in the pre-meetings. However, it was very successful. In this mediation the inherently cautious nature of an explorative approach enabled the parties themselves to work past an impasse and reveal painful histories. This led to a new, much more positive turn in their relationship.

In another community mediation, involving a dispute over access to a child between a separated couple, the hour spent discussing and arguing seemed to achieve no improvement in mutual understanding and no practical new agreement. The mother had brought a second, sleeping child to the meeting, having previously told us it would be easy for her to arrange a baby-sitter. When the baby awoke after an hour she brought the meeting to an abrupt end. This seemed to indicate a resistance to, or fear of engagement in the mediation. A

more structured process might have made her more comfortable. Nine months later we received a feedback form from the mother saying that their situation had now improved. We shall never know if an approach which gave more space for this couple to argue in their own 'language' and so perhaps to listen a little, helped to generate this eventual outcome.

It is notable that these accounts of my own experience of mediating are imbued with the beatific/horrific fantasies of success/failure noted above. In partial mitigation I would also note that the presence of these fantasies are contiguous with 'real' life experiences of the parties.

Obviously, every mediation is in some ways different and from these experiential anecdotes the infinite variety of mediation situations and party needs may be inferred. It is of the nature of mediation that mediators should endeavour to respond to the needs of the parties. Where two parties express different needs the mediation can only start by addressing these differences. A conflict about the mediation process becomes the mediation. All I can do as a mediator is strive for transparency and offer parties the right to decide. This is why I find that the attempt to enact the role of an explorative mediator can have a close affinity with the disposition of the notional, radical democrat. As Laclau explains:

recognition of our limitation and contingency, of the precarious and pragmatic construction of the universality of our values - a pragmatism that leaves the perverse dialectics of 'necessary embodiment' behind - is the very condition for a democratic society (Laclau, 1990:83) .

In the face of sedimented practices, for some on the left, this appeal to radical democracy may lack a feeling of a concerted strategy for countering abusive concentrations (structures?) of power. It is perhaps a manifesto of hopefulness (for example that equivalence amongst a diversity of the oppressed might be forged into resistance) and no more. The 'wait and see' aspect of this hopefulness is, however unproblematic, for a single agent in the form of an explorative mediator. This is because the explorative mediator *should* only seek to follow the parties in their explorations and to do this with a selfless, non-judging and compassionate engagement. Yet the explorative mediator also seeks to selectively highlight expressions, metaphors and apparent contextual

meanings of the parties; that is, to necessarily embody a judging and critical sensitivity towards the discursive context of the conflict. This represents a paradoxically conditional humility precisely because the explorative mediator is after all an:

agent who must choose [and] is someone who already has certain beliefs and values (Laclau, 1990:83).

The mediator does not wish to impose her/his beliefs and values upon the parties, except for the belief that the parties could mutually understand their own values informing their conflict. Thus, maybe, sometimes both parties and mediators will come to a collective understanding of our discursive and contingent subjectivities.

7.2 A final brief sketch of an explorative mediator's disposition

To be caught up in conflict represents an emotional disturbance for an individual in their relationship to others and the world. It is a dislocatory experience with potential to reveal the contingency of both subjects, objects and patterns of relationships that make up the 'conflict'. The mediator faces a philosophical and a practical choice about their orientation towards the parties and their conflict. On the one hand, they may seek to patch up things for the good of the workplace; they may facilitate a negotiated settlement. This position is captured in the following quote from ACAS:

The overriding aim of workplace mediation is to restore and maintain the employment relationship wherever possible. This means the focus is on working together to go forward, not determining who was right or wrong in the past (Sephton: 2010:i).

Alternatively, from a moral and normative impetus, the mediator may seek to support the parties in an exploration to better understand the conflict and their part in it. This simple thought is captured by a mundane expression of a common mediator disposition: this is a hope that the parties who come to mediation are willing to try 'to give it a go'. This entails striving to communicate through listening to other and self. Many parties enter mediation but do not participate as fully as they might. They hold back information, thoughts, feelings

and emotions. If instead they risk attempting a certain 'authenticity' they may be able to go through fantasy to make a new, temporary and partial subjectivity/objectivity.

I would suggest that mediation is about allowing space for parties to really 'give it a go'. Žižek (1992) is helpful in revealing the subtlety of this making of 'space'. Drawing upon Lacanian phenomenology interpreting our being in the world, he describes "two opposed meanings of the term *existence* in Lacan" (Žižek, 1992:136). The first captures a:

sense of a "judgement of existence," by which we symbolically affirm the existence of an entity: existence here is synonymous with symbolization, integration into the symbolic order (Žižek, 1992:136).

Here existence is not 'real' but a symbolic representation through which we come to ascribe what things are, what they 'mean'. The judgement of existence is to assess the meaning of things. The second opposed sense of "ex-sistence" traces "the impossible-real kernel resisting symbolization" (Žižek, 2009:136). Žižek (2009:136) quotes Lacan to explain:

there is something so improbable about all existence that one is in effect perpetually questioning oneself about its reality (Lacan, 1988:229).

Žižek argues that "we are forced to choose between meaning and ex-sistence" and that we "gain access to the the realm of meaning by suspending, by putting ex-sistence in parenthesis" (Žižek, 1992:137). I would conjecture that for the mediator to 'really' make space for parties to 'give it a go' they have to resist this 'force to choose' and attempt to hold these opposing senses of existence/ex-sistence in mind. That is, they need to both hold to an ontological uncertainty, to be 'questioning', as well as make judgements about meaning, thus avoiding a polarisation of this duality favouring 'meaning' and the security of judgement. This entails an awareness of their coping mechanism of fantasy. Somewhere in the sliding between our imagination and the working meanings (symbolizations) we affirm to ourselves, lies the pain or 'enjoyments' of 'fantasies' that protect us from our 'lack' and also from the madness of too much questioning of the 'reality' of existence. The mediator tries to hold to his/her judgements formed of

the fantasy of the certainty of our evaluations (that fill out our constitutive void creating the illusion of self) and also to the profound uncertainty about these judgements, in recognition of this fantasy. This entails a humility of doubt. From this stance the mediator may regard the parties, with compassion, non-judgmentally and, also, approach the context of the parties' conflict with a critical perception that is tentative and uncertain. To do otherwise is to do violence to the right of the parties to confront an opportunity to explore their understandings of the conflict. It is impossible to find a right balance but it is necessary to make the attempt.

Stepping away from Zizek/Lacan into the realm of psychology, this juggling act is not so much a cerebral technique as a matter of feeling one's emotional reactions to the unfolding judgements we are doomed to make, moment by moment in the mediation meeting. In this juggling act a normative aspect of 'assertion' of meaning and an ethical dimension of holding to 'uncertainty' combine. A non-judging, compassionate concern to understand may give a release from negative judgements and support the struggle to give 'space' to the parties. This may then avoid the mediator affirming and asserting their own meanings to the distraction of the parties, who may themselves be reluctant 'to give it a go'. The mediator who affirms their own meanings risks an immersion in 'fantasy' which restricts their role to an already sedimented subject position. Alternatively, from a selfless compassion the mediator, if, ironically, supported by the parties, may in very rare instances cease juggling altogether and approach a possibly Levinasian morality that is extra-discursive, being before ontology. This is surely a worthwhile theory to indulge in and pursue in practice, if it holds scope to redeem the workplace mediation project.

This all demands humility in a struggle for 'authenticity' which, as already noted above, arises from deeper understandings of motives discovered by reflective/reflexive attention to emotion, assumptions or projections, when in dialogue with trusted others. This is a relative rather than essential conception of an individual's psychology. It recognizes the discursive creation of meaning but also admits to a complex and subtle influencing 'reality' engendered from our nature as evolved beings who "have emerged from the flow of life on this planet" (Gilbert, 2009:15). I would argue that if the mediator can try to 'think through the body' (see Levin cited on page 85) and approach the parties from this

philosophical standpoint, s/he can only invite parties into an exploratory engagement to discover their 'authenticity' whilst s/he is striving to model a similar disposition. In this, all engaged in the mediation encounter may find moments to lose their sense of self and 'puncture fantasy' in a 'fidelity to the contingent'. It is important to recognize the extreme ambition of this aspiration. If "through fantasy, we learn how to desire" (Žižek, 1992:6) and if "[d]esire is the metonymy of the desire to want to be" (Sarup, 1993:16), then by puncturing or traversing fantasy we may momentarily escape the desire to be, that is to be whole, and thereby come to know the self as "no-self" (Willmott, 1994:121).

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Appendix 1: A record of my search for research participants

Organizations approached during 2006-2007

Abbey Life

B&Q

Conflict Management Plus Ltd*

Croydon Borough Council*

Dorset County Council*

Dorset Police*

Greater London Authority*

HMRC

Hampshire County Council

John Lewis Partnership

Portman Building Society

Southampton County Council

Southampton University

Wilts and Dorset Bus Company

Wiltshire Police*

Anonymous mediation service provider and training organization 1*

Anonymous mediation service provider and training organization 2*

I held one or more face to face meetings with the organizations marked with an asterisk. In the course of this search for a collaborator no opportunities to carry out either ethnographic or 'fly on the wall' research came to fruition. It was after I concluded that the best way forward would be to set up a role-play case study that I obtained support from the two anonymous mediation organizations.

Appendix 2: Invitations to research participants

This note was circulated within one of the supporting mediation organizations. The ‘transformative’ mediator was recruited by telephone communication with the other mediation organization.

Workplace Mediation Research

Researcher: Roger Seaman, MPhil/PhD student at Bournemouth University Business School.

Research project: Role-play video.

Purpose: To compare contrasting styles of workplace mediation, specifically “facilitative” and “transformative” styles, by making a video of two role-play mediations.

Research objective: To be able to analyse the way words are used to assess the variety of effects mediation interventions may have, when using the different styles in a workplace setting. To then develop ideas about these alternative (or possibly complementary) styles for subsequent discussion with other mediators and users of mediation.

Practicalities: The researcher has enlisted the help of two “actors’ to play the clients and one mediator, who will use a “transformative approach/non-problem solving approach”. A dispute scenario is under development with the actors.

[Name of your mediation organization] have agreed to seek a volunteer to participate in the role-play as a “facilitative” mediator with a more problem-solving focus. The time commitment for each mediator is half a day.

[Name of your mediation organization] have agreed to host the role-play, providing a meeting room at [office address]. The researcher will organise and operate video and sound equipment.

Possible target dates for this one day event are currently the 29th October, 5th, 12th, or 19th November.

Consent to carry out the research and use the research materials will be discussed and formally agreed with all participants.

Please contact Roger Seaman if you would like to discuss this research further; tel: 01929 423720 or email: rogerseamanuk@yahoo.co.uk.

24th September 2007

Appendix 3: Possible lines of future research

There are many ways in which this research could be furthered but there are three I would like to highlight. Firstly, it would be valuable to study transformative mediation more closely to assess tendencies to, or potential for, closing off the mediation encounter from the contingent or otherwise. Secondly, any studies of mediator practice need to be complemented with further studies of party reactions. Lastly, in my own practical mediation work I hope find opportunities to invite others to experience the different modes of mediating and to evaluate an explorative style. Perhaps in this arena it may be possible to establish a group inquiry, at least in a role-play, training environment or perhaps as an action research project. This might enable more far reaching and in depth discussion with mediators about the dimension of the “ethical-ideological” (in Glynos’ model) and consequent scope for workplace mediation to become open to the contingent. From such studies it may be possible to obtain some situated views on my overall critique and a deeper understanding of any resistance to this critique.