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**Discursive Positioning
In Theory And Practice:
A Case For Narrative Mediation**

A thesis
submitted in partial fulfilment
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Abstract

This is a study of the usefulness of the concept of ‘discursive positioning’ in the practice of mediation and in the analysis of what happens in mediation. Mediation, as typically practised, has developed within the general philosophical framework of modernist thought, exemplified in mediation by the problem-solving method. Several foundational assumptions of the problem-solving method are identified: a) the idea of the mediator as a neutral facilitator; b) the idea of negotiating on the basis of underlying interests or needs rather than polarised positions; c) the idea of a win-win resolution in the form of an agreement. In this study, these foundational concepts are examined first in terms of the critiques that have been raised against them. They are further examined through the lens of postmodern and social constructionist thought and found inadequate in their accounting for the cultural conditions that give rise to people’s interests. A theory of discourse and discursive positioning is outlined which explains how people take up positions in relation to discourse in the process of making an utterance in conversation. Such utterances also implicitly or explicitly call others into position in relations within discourse. The concept of discursive positioning is used in this study as a theoretical tool, a practical tool and a research tool. For the research purpose, Critical Discourse Analysis is adapted to include attention to the negotiation of discursive positions in conversation. This study uses this method of discourse analysis to demonstrate therapeutic change by tracking shifts in discursive positioning. Two transcripts of role-played mediation conversations are examined. One of these is used to demonstrate how a narrative mediator can make use of discursive positioning as a conceptual tool for practice. The second role-play is analysed to show the shifts in discursive positioning negotiated in the course of the conversation. The analysis of conversation through using the concept of discursive positioning as a research tool makes cultural influences visible in discourse in the very moment of their utterance. An approach to mediation that takes discursive power relations into account is then articulated. While a single conversation cannot change a pervasive social discourse, people can, in conversation, re-position themselves within discourse. This kind of analysis avoids constructing people as

determined within discourse and supports a conceptualisation of personal agency achieved through discursive positioning. This study demonstrates the effect of using discursive positioning as a conceptual tool in practice through tracking the discursive shifts that take place in mediation. In the process, it establishes claims for narrative mediation as an ethical and effective practice that addresses power relations and cultural influences on relationships. The analysis of discursive positioning makes the effects of this practice visible and enables a theoretically robust account to be given of this practice.

Acknowledgments

While this study has my name on it, it has not been produced in a solitary context. As is fitting for what I am arguing in its pages, I wish to acknowledge the dialogical context in which it has taken shape. This means acknowledging the many other voices that have participated in the dialogues of its production. It is a pleasure to do so while standing on the platform of retrospection that completion affords.

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Table Of Contents

Abstract	ii
Acknowledgements	iv
Contents	vii
1. Introduction	1
2. Problems with mediation: A literature review	25
3. Discursive positioning	52
4. Research methodology	107
5. A review of analyses of discourse in mediation	139
6. An elaboration of narrative practice in mediation	156
7. Discourse analysis of a narrative mediation conversation	209
8. Discourse analysis of a narrative mediation (continued)	266
9. Discussion	293
References	308

CHAPTER ONE

Introduction

The intention of this study is to address the practice of mediation through the particular lens of postmodern and social constructionist thought. The best review of social constructionist thinking that I know is elaborated by Vivien Burr (1995) and her book can serve as an articulation of the lens that I am referring to. Kenneth Gergen's work (1994; 1999) contributes substantially to the ideas that Burr reviews and deserves mention as theoretically foundational to this study as well.

In contrast with this orientation, the theory and practice of mediation, as typically practised, has developed within the general philosophical framework of modernist thought. By this, I mean that the dominant ideas of Western culture that gave birth to the Enlightenment in the seventeenth century and established the scientific method as the primary mode by which truth claims could be established (Seidman, 1994) have found their way into the theories and practices that have formed the basis of mediation as a social practice. Just as it has in business, politics, education, law and engineering, the modernist scientific agenda has proved powerful and persuasive. As I shall show, the dominance of problem-solving thought in the mediation literature (after Fisher & Ury, 1981) attests to this. Conflicts are constructed within this framework as problems to be solved and the mediator becomes a problem-solver, that is, a professional trained in the skills of the scientific method - a scientist-practitioner. As has happened in other areas of social science, the modernist approach of establishing foundational concepts and then building upon those has been followed. In mediation, examples of foundational concepts have been mediator neutrality, disputing parties' underlying interests and agreements as resolutions of conflict.

However, the modernist framework for making sense of the world has not remained uncontested. In recent decades, there has been a groundswell of academic writing that investigates the limits of this way of thinking and proposes some new departures in what has been loosely called a "postmodern" direction (Lyotard, 1984). This is the starting point of this dissertation. My aim is not so much to discredit the

work done within a modernist, problem-solving tradition but to seek to explore the possibilities that lie in thinking otherwise, particularly in the articulation and elaboration of a narrative practice of mediation. This introductory chapter outlines the course that I shall travel across the terrain of mediation practice and describes how I came to set out across it.

Defining Mediation

In the field of conflict resolution, 'mediation' has come to refer to a particular set of practices that are used to help disputants resolve differences and move forward. Kruk (1997) defines it most simply as 'negotiation assistance' (p. 5); Haynes (1994) as 'the management of other people's negotiations' (p. 1); and Moore (1996) as 'an extension or elaboration of the negotiation process that involves the intervention of an acceptable third party who has limited or no authoritative decision-making power' (p.8). It always involves a non-partisan third party who facilitates the process of negotiation between disputing parties (Haynes, 1994; Kruk, 1997; Picard, 1998; Tillett, 1999; Ury, 1999). It is also common for mediation to be described as a conversation aimed at producing a 'resolution' (for example, Haynes, 1994). These practices have a long informal history in many cultural traditions (see Moore, 1996 for an account of these) but a relatively brief professional one. Parents and teachers often mediate quarrels between children, supervisors and managers mediate arguments among their employees, and friends among friends. More recently, it has become more common for disputants to employ mediators in a professional capacity in many countries and in many different contexts - for example, in conflict within families, businesses, schools, and organisations; in landlord-tenant relations; around environmental resource consent issues; in trade union negotiations with employers; in restorative justice; in the negotiation of international agreements; in intercultural disputes; and in community arguments (Kruk, 1997; Moore, 1996; Picard, 1998; Ury, 1999).

Mediation differs from other methods of third-party conflict resolution such as arbitration or adjudication in that mediators do not try to determine who is right, or which side's story is more factual. Rather, they seek to assist both parties to focus on the most important issues and to resolve their differences. Resolution is achieved by

facilitating communication between disputing parties and helping them to formulate and commit to agreements for the future that address the issues that the conflict is about (Ury, 1999). Advantages typically claimed for mediation are that it is less adversarial and protracted than litigation, more private than courtroom hearings, cheaper than legal negotiation and faster than processes that require waiting for a court date (Haynes, 1994).

It has been common in the mediation literature to talk of mediation as a process in which mediators control the process while disputants shape the outcome (Fisher & Ury, 1981; Kruk, 1997; Picard, 1998; Tillett, 1999). The authority for mediators to do this rests on the consent of the parties for mediators to facilitate the conversation, rather than to exercise any decision-making power (Picard, 1998). While, in some contexts, participation in mediation is mandated, the decisions that emerge from a mediation are usually voluntarily assented to by the parties (Kruk, 1997; Menkel-Meadow, 2001; Moore, 1996; Picard, 1998). The goal of mediation is more limited than, say, counselling, to the resolution of a particular conflict and the process is accordingly time-limited as well (Kruk, 1997).

The Purpose Of This Study

The broad purpose of this study is to elaborate the discursive analysis of positioning (in the sense advanced by Davies & Harré, 1990) both in the practice of mediation and in the analysis of what happens in mediation. I intend to show how a particular concept of positioning, in and through discourse, has explanatory power, and therefore value, for the practice of mediation. I want to utilise the idea of discursive positioning to make new forms of practice possible, especially when associated with other practices drawn from narrative therapy (White & Epston, 1990) and narrative mediation (Winslade & Monk, 2000).

I also intend to research some examples of this practice using discourse analytic methods (Burman & Parker 1993; Chouliaraki & Fairclough, 1999; Fairclough, 1992; Gee, 1999; Parker, 1992). In the process of the analysis of discourse, I want to utilise the same idea of discursive positioning for a research purpose. I believe it has explanatory potential for the analysis of the politics of conversation, and hence for understanding better what happens in mediation. I

therefore want to add it into the mix of what is becoming referred to as critical discourse analysis (Fairclough, 1992). The discursive analysis of positioning thus has a contribution to make to the development of discourse analysis as a research method.

In order to achieve the research purpose outlined above, the dissertation will involve theoretical exploration, the elaboration of a distinctive mediation practice and a developmental research orientation. All three components will be woven into its fabric. In part, it will involve the laying down of a theoretical framework that can be the basis for both questioning the dominant models of mediation and suggesting some elements of a narrative approach. In part, it will articulate and demonstrate how this narrative method builds upon this theoretical framework. Then, it will use the research methods that have been worked up in the field of discourse analysis to ask some questions about the effects of this practice. There is thus a trilateral purpose to this study: to theorise a practice, to demonstrate the practice and to begin to research the practice.

A narrative perspective has already been advanced previously as a way of making sense of what happens in mediation (Cobb, 1993; 1994). But the implications for practice of this perspective have remained relatively unclear. Along with Gerald Monk and Alison Cotter, I have in recent years published some attempts to clarify this practice and to articulate it in a systematic way that is consistent with a postmodern philosophical framework (Winslade & Cohen 1995; Winslade & Cotter, 1997; Winslade, Monk & Cotter, 1999; Winslade & Monk, 2000). But these efforts have been beginnings only and have not, as yet, been joined by others. Part of the rationale for this study is that the practice of mediation from a narrative perspective is still in the process of being articulated. There is a background literature in the family therapy domain that can be drawn upon but the specifics of translating this work into the context of mediation are still being worked out. This thesis should be seen as a contribution to that work.

Rationale

The rationale for pursuing the purpose outlined above involves describing a problem in mediation and articulating a line of reasoning that seeks to address this

problem. The rest of the dissertation will then hang flesh on the bones of the argument that I shall present now.

The professional practice of mediation has been dominated for the last twenty years by a problem-solving mode of practice that was outlined first by Fisher and Ury (1981). This practice has rested crucially on several key ideas: a) the idea of the mediator as a neutral facilitator interested only in process and not in the substance of disputes; b) the idea that the polarised positions that people take up in disputes are driven by underlying interests or needs; c) the idea that conflict resolution works best by addressing people's personal interests; d) the idea that the goal of mediation should be the negotiation of a win-win solution in the form of an agreement.

Twenty years has been time enough for problems to arise with this conception of the practice of mediation. In chapter two, I shall outline some of these problems more fully. My concentration here will not be on the empirical question of whether the practice of mediation from a problem-solving perspective can be shown to work, so much as on the conceptual question of the value of the work that it does. Therefore, I shall outline the problems that have arisen with regard to the assumptions on which this model of practice has been built.

Critiques of the problem-solving model have been made on the basis of the culturally-located assumptions built into it (for example Gergen, 1999). Feminist critiques have challenged the adequacy of this model of mediation for addressing gender privilege (Astor & Chinkin, 1992; Bower, 1992; Leitch, 1986-87; Neumann, 1992). Critics from indigenous cultural viewpoints have taken issue with the focus on a Western humanistic notion of the individual that does not fit with indigenous approaches to conflict resolution (Duryea & Grundison, 1993; Kruk, 1997; Nunnerly, 2002; Tomas & Quince, 1999). The possibility of mediator neutrality, especially with regard to the values and opinions of the mediator on the substantive issues in the conflict, has come under uncomfortable scrutiny (Beck & Sales, 2000; Cobb & Rifkin, 1991; Rifkin, Millen & Cobb 1991). It has even been argued that the very focus of problem-solving mediation on reaching agreement creates an instrumental focus that selects certain issues for greater attention than others (Folger & Bush, 1994; Putnam, 1994). These critiques have illuminated the assumptions built into the problem-solving model of mediation. Rather than a scientific process that is built on

culturally neutral knowledge, the problem-solving model of mediation now appears, in the light of these critiques, to embody a particular cultural viewpoint.

If mediation is not to be built upon a singular cultural viewpoint, these critiques need to be taken seriously. They raise a problem for the practice and the theory of mediation. It is a problem of the cultural colonising that ensues if we uncritically continue to practise in ways that impose these cultural assumptions on people in conflict. In short, it is a problem of what to do about the professional power that is involved in the uncritical embodiment of cultural assumptions in practice. How exactly can mediators address the issues of power that are raised by these critiques?

The search for answers to these questions can take us in different directions. It can invite us to a theoretical search for different assumptions on which to build a practice: for example, the transformative model of mediation (Bush & Folger, 1994) which will be discussed in chapter two. It can encourage the search for models of practice that are built on diverse cultural assumptions, including the promotion of more indigenous approaches: for example, the development of circle meetings in Native Canadian contexts (Stuart, 1997); family group conferences in New Zealand (Maxwell & Morris, 1993); and the ho'oponopono process in Hawaii (Hurdle, 2002). Or it can lead to more pragmatic new departures in practice that seek to avoid the pitfalls associated with the problem-solving model: for example, examination of the details of mediator communications with parties (Moore, 1994). All of these avenues have been, or are being, explored in the mediation literature.

The approach I shall elaborate here begins with the philosophical base of mediation practice. It is my contention that there is further foundational work to be done in re-examining the underlying assumptions of mediation, in order to open up further possibilities for practice development. I shall, therefore, examine the assumptions of the problem-solving approach in relation to the traditions of modernist thought as a response to the postmodern critiques of recent years. In the social sciences, and in psychology in particular, postmodern thinking has been articulated in a variety of ways.

The social constructionist perspective (summarized by Burr, 1995) is one of the most thoroughgoing articulations of postmodern ideas in psychology. A key principle of social constructionist thinking is that language does not simply neutrally

represent pure reality but that it is always imbued with culturally located meanings. Hence, every utterance to some degree constructs the world in accordance with the cultural world being referenced in the linguistic constructions used. Speaking is thus considered a social action with material consequences, and meaning is necessarily referenced back to social contexts rather than assumed to refer unproblematically to the true meaning of things. The politics of control of meanings in social contexts assumes greater explanatory value in social science as a result. Hence, social constructionists are interested in power relations as they are constructed in discourse. It follows too that understanding how narratives and discourses work to construct people's decisions, practices, and relationships has potential value for research and for professional practice. This is a brief summary of ideas that will be elaborated more fully in Chapter Three. I shall adopt constructionist ideas and use them to examine the assumptions built into problem-solving mediation. For this purpose, a particular understanding of the concept of discourse is crucial to an understanding of social phenomena, including the conflicts in which people become embroiled.

The concept of discourse I shall use requires a little explanation at this point, although it will also be examined in more detail in Chapter Three. In its general usage, discourse refers to the process of conversation, written and spoken, by which human beings trade in meanings. I am using discourse here in the tradition of Foucault (1969; 1972; 1978; 1980) who referred to discourse as a "social practice" dispersed through a cultural world in linguistic forms and exerting a dominating effect on what can be thought or spoken. It is a fluid concept that bears upon the structuring of social and institutional forms, of relations between individuals and groups and of individual subjective experience (see also Burman & Parker, 1993; Parker, 1992). Discourse is implicated in the construction of power relations through its authorisation and legitimation of social positions, thereby constituting positions of relative privilege and relative disadvantage. Foucault also drew links between the development of particular regimes of knowledge in discourse and the legitimation of social positions in relation to that knowledge. In this way, he pointed to the connections between knowledge and power.

A constructionist perspective requires attention to the constitutive effects of discourse on what can be said, who can say it and on the very formation of the subjective positions that disputing parties argue from. It disrupts the individual

psychological assumptions on which a problem-solving approach relies and re-imagines personhood as constituted in constant dialogue with discursive influences. If we think about the interests and needs that people express in the conflicts they bring along to mediators in terms of discourse theory, they do not appear so simply to belong to the individuals who are expressing them. Hence, I shall argue that discourse theory disrupts theoretically the reliance on interest-based negotiation in mediation.

It also disrupts the idea of a single knowledge base for mediation practice. It explains how the cultural assumptions that permeate discourse get built into problem-solving theory. In the process, it clears the way for thinking otherwise. And this is one of the primary goals of this dissertation: to explore the possibilities of an alternative approach to the practice of mediation that includes the concept of discourse as part of the philosophical foundation for practice. From this perspective, mediation would be focused much more explicitly on the politics of meaning-making. It would conceive of the stories people tell of a conflict, and of their underlying interests and needs as well, as formed within discourse rather than as based on a concept of needs (with its overtones of biological imperative). It would also need to theorise the political significance of the professional authority of the mediator and take account of the implications of the power of mediation knowledge in practice.

Discourse theory has been elaborated since Foucault in one particular way that I believe holds much promise for professional practice. Building on Foucault's concept of subjective positioning, Bronwyn Davies and Rom Harré (1990) suggested the value for psychology of thinking in terms of "discursive positioning". It is a concept that points to the ways in which people take up positions in relation to discourse in the very moment of making an utterance in a conversation. At the same time they offer the other person(s) they are addressing a position (or a choice of positions) from which to respond. As a theoretical tool, the concept of positioning strengthens the link between pervasive discourses that permeate the social world and the particulars of localised exchanges of meaning in ongoing relations between people. The advantage for psychology in general, and for mediation in particular, is that positioning theory (as it has been called, Harré & van Langenhøve, 1999) enables a study of the detail of how discourse operates in the production of relationships and of personal subjective responses. Positioning theory makes cultural influences

visible in discourse in the very moment of the establishment of their influence. It also makes visible the ways in which people resist and refuse dominant discourse in the detail of conversational exchange.

Since mediation is clearly about the negotiation of meaning in conversation, and therefore in discourse, I shall argue that positioning theory makes the concept of discourse available to the practice and the theory of mediation in ways that have much potential for the development of new forms of practice. This potential lies in the ways in which meanings that disputing parties build into their stories of a conflict can be opened up to make visible the discursive influences at work within them. When discursive influences become more visible, they cannot continue to do their work in secret and people can make more informed choices about the positions they will choose to take up in relation to discourse. In this dissertation, I shall argue for a version of mediation practice that places discourse and positioning in the forefront of the mediator's practice.

This practice, however, has not developed in a vacuum. A Foucauldian, discourse-informed practice has already been developed in the neighbouring professional field of family therapy. It has become known as "narrative therapy" and has established a substantial literature (for example, Epston & White, 1992; Freedman & Combs, 1996; Monk, Winslade, Crocket & Epston, 1997; White & Epston, 1990; White, 1995; Zimmerman & Dickerson, 1996). The version of mediation practice that I shall illustrate in this study draws considerably on the work done in narrative therapy. However, the concept of positioning has not been taken up extensively in this field either. Arguing for the usefulness of this concept is one of my prime goals in this study.

But I also want to go further than the theoretical articulation of this approach to practice. I want to demonstrate with some examples what this practice looks like in action. And I want to subject one of these examples to a research enquiry. This enquiry makes use of discourse analytic methods to illuminate how an approach to mediation based on a narrative perspective and on the discursive analysis of positioning works and has an effect. The choice of what kind of research enquiry was informed by several considerations: theoretical consistency, the nature of the subject matter being investigated and the stage of development of the ideas I was investigating. I shall take each of these points in turn and explain them further.

Discourse analysis methods take various forms, as I shall outline in chapter four. The approach which has become known as critical discourse analysis (CDA) (Fairclough, 1992) appealed most to my purposes because it emphasised and was built on the same philosophical assumptions as the practices I was interested in. Hence, there would be an advantage for research through the absence of a discord between paradigms (Kuhn, 1962), that is, between the worldviews assumed in the practice and in the research methods. As a result, fewer problems of the meaning of concepts might arise and the practices I was researching could be examined fairly in their own terms.

Furthermore, I judged that what was required for the establishment of the discursive analysis of positioning as relevant to mediation practice was detailed exploration of examples of positioning in practice. In order to sensitise mediators to the momentary detail of positioning in conversation, the close study of language-in-use is needed. Hence a detailed close analysis of case examples would be more useful than a broad sweep across the landscape of many mediations. Critical discourse analysis methods are eminently suitable to this purpose.

Then, I needed to consider the developmental stage of the work that I was researching. Narrative mediation is in its infancy. Two implications follow for this study. One is that the work I am doing here remains a part of the articulation of a narrative practice in mediation. There is no established practice that can be referred to and evaluated. My purpose here, therefore, is to advance the possibilities of such a narrative practice in ways that build on previous writings but which also add value to them. My aim in this study is to develop both the theory of narrative mediation and more detailed descriptions of the practice of narrative mediation. The second implication is that a practice in the early stages of its evolution does not warrant being researched in ways that might hinder its development. To subject it to summative or evaluative research would be premature. Any research conducted into this practice at this time should be exploratory in nature rather than confirmatory. This point has a bearing on research design. A full-scale outcome study would be imprudent. If it reached negative conclusions about a promising practice before the practice had been given enough opportunity to develop, questions could justifiably be asked about the ethics of the research design. Michael Quinn Patton (1990) makes this point about the

choice of research design. So this study is not an summative evaluation of the effectiveness of narrative mediation. Its emphasis is formative and developmental.

Nevertheless, the development of an embryonic practice may be assisted by the right kind of research. What was needed was a research approach that would be exploratory rather than summative in its focus. It would need to assist me primarily to describe possibilities rather than to confirm specific hypotheses. Research methods that examine process data in qualitative ways can be used to demonstrate what is happening in practice. They can also potentially show the detailed effects of such practice on a moment-by-moment basis. In other words, they can serve as the basis for claiming effectiveness, at least on a modest scale. It is in this domain that this study aims to do research. Again the descriptive and interpretive methods of critical discourse analysis are apt for this purpose. This is intended, therefore, to be an exploratory study that seeks to impact on the development of a practice. I want this impact to ensue from the asking of some research questions about the ethics and the utility of this practice at the level of detailed process.

But there was also a research methods problem that I needed to address. Discourse analysis methods to date have hardly been used for the purposes to which I wanted to put them. They have been used to develop accounts of how dominant discourses can be shown to be present in conversations (for examples, see Willig, 1999). They have been used to study conversation strategies, even in mediation (for example, Garcia, 1997; 2000; Greatbatch & Dingwall, 1998). They have been used to describe how people work up identities for themselves in conversation (for example, Edwards, 1998). But what I was looking for was a model of discourse analysis that could be used to demonstrate therapeutic change. I am using the term 'therapeutic change' to mean shifts in personal and relational positions, which includes the shifts that people make so that conflict resolution is possible. For a model of discourse analysis to illuminate such shifts, it would need to be possible to theorise therapeutic shifts in terms of discourse theory. Analysing the background discourses at work in the construction of identity would not be enough. There was a need to foreground the nuances of discursive exchange in conversation in a way that made the moments of transition (or transformation) in a mediation visible in relation to discourse theory. The major attempts to do this to date have been in the work of Jerry Gale and Steven Kogan (Gale, 1991; Gale & Newfield 1992; Kogan & Gale,

1997). They used a combination of conversation analysis methods (see ten Have, 1999 for a summary of these) and, in later work, Foucauldian analysis, in a way that comes close to what I was seeking to achieve. In the process, they showed through discourse analysis the effectiveness of work by two family therapists, Bill O'Hanlon and Michael White.

I want to add two foci to this work. One is an appreciation of the heteroglossic nature of all utterances drawn from a reading of Mikhail Bakhtin's (1981; 1984; 1986) theorising of the dialogical nature of communication. Bakhtin has some important things to say about how utterances are multiply voiced and have multiple addressees who exert an influence on what can be said. Bakhtin's theorising breaks up the singularity of the speaking voice of the individual in a way that does not compromise the ability of individuals to speak in meaningful ways.

I was also interested in the value of positioning theory for research methods. It seemed to me logical for the study of significant conversations (such as what happens in mediation) that pervasive social discourses could not in themselves change in one conversation but that discursive positions could be subject to shifts as people traded utterances. Therefore, I was interested in exploring the leverage to be gained from positioning theory in the analysis of what happens in conversational exchange. Through an analysis of the positions people take up, call each other into, refuse to take up or renegotiate on a moment-by-moment basis in an exchange of utterances, it is possible to study the construction of relations and subjectivities in a way that is attentive to the social structuring influences of discourse. At the same time, the analysis of positioning avoids constructing people as determined within discourse. They are constantly making decisions about how to position themselves in relation to discourse. Positioning theory brings into focus the relationship between personal agency and the structuring effects of discourse.

The Analysis of Discursive Positioning

What do I mean by 'the analysis of discursive positioning'? I have already introduced the concept above and will flesh it out more fully in Chapter Three, but the idea is so central to this dissertation that further explanation is required before proceeding. I am referring to the ways in which any utterance in a social interaction

(including those in mediation conversations) calls upon a discursive background in order to make sense. As it does so, often outside of the conscious intention of the person making the utterance, it is inserted into a social context made up of patterns of meaning, often in contest with other meanings. Whatever meanings come to dominate, to be authorised with institutional legitimacy, or to be accepted as just how things are, begin to serve a hegemonic function (Laclau & Mouffe, 2000) in relation to other possible meanings. They can even obscure the possibility that other meanings exist.

As people in conversation use words and deploy meanings against this discursive background, they inevitably take up positions in relation to the background politics of meaning-making. They craft subject positions that form the basis for acting in relation to others. This idea of positioning builds on Foucault's (1978; 1980) descriptions of how power becomes constituted in the everyday exchanges of life. Whatever discourse is dominant ensures that certain meanings will be privileged over others. It also establishes unequal conditions of possibility in social relations through the recognition and legitimation of some people's actions and not others. Some actions make sense within a particular discourse and some do not.

As people speak, they position themselves not just in immediate relation to the other person(s) in the conversation, but also in relation to utterances in other conversations (Bakhtin, 1984; 1986). What is more, any utterance offers other persons, directly or by implication, positions from which to respond. They are called into particular positions, not just in obvious terms like agreement or disagreement, but also in much more subtle ways as giving support to whole frameworks of meaning, perhaps through the choice of a single word rather than another word to describe something that the conversation is about. For example, "We are here to settle a custody dispute," calls up quite different discursive meanings than, "We are here to discuss the care of your children."

The analysis of such discursive positioning involves opening to view the discursive work being done by the words in positioning people in social relations. Such analysis is "deconstructive". The term deconstruction originates with Derrida (1976) but I am using it in the way that Michael White (1991) does in the sense of making evident the connections between words and the forms of life that they support. Deconstruction in mediation enables the taking up of other options and the

finding of new ways forward in conversations. My contention is that mediators (as Michael White, 1992, has argued for therapists) can do this kind of deconstructive work in the process of conversation and that it enhances the mediation process. Similarly, researchers can use positioning theory to achieve fine-grained analysis of mediation conversations by showing how discursive positioning shifts and changes in the course of moment-by-moment interactions.

Within the broad purpose of this study, I shall elaborate the benefits of the discursive analysis of positioning for the practice of narrative mediation. In support of this case, I have some specific contentions that I wish to argue. The discursive analysis of positioning does not just make new modes of practice possible. It makes possible practices that are valuable on the grounds of utility, ethics, theoretical robustness and political sophistication. What I am referring to as a ‘narrative’ approach to mediation here will include a specific focus on discursive positioning. This focus has utility value because it promotes more effective practice through deconstructing the discursive influences that underlie the ‘interests’ of disputants. It has ethical value, because it promotes a more respectful practice, particularly when mediators develop a reflexive consciousness about the effects of their professional positioning. It has theoretical robustness because it has stronger explanatory power for making sense of conflict stories. And it has political value because it directs attention to the politics of meaning-making in mediation conversations. Each of these contentions will be elaborated further in the chapters that follow. They will also be revisited in the final discussion in Chapter Nine.

The research question

From the above rationale for this study, I can sum up the purpose of this dissertation in terms of a central research question. The central question I am addressing is: how might the analysis of discursive positioning add value to both the practice of mediation and to the study of effects of mediation? Subsidiary questions that need to be addressed in order to answer this central question are:

- How does the discursive analysis of positioning assist the theorizing of conflict?

- How can mediators utilize positioning reflexively in the politics of mediation conversations?
- What sort of understandings of the exchanges that happen in mediation does the discursive analysis of positioning make possible?
- How does the discursive analysis of positioning make noticeable the shifts and changes that can lead to resolution of conflict?
- How can mediators make use of positioning in order to invite disputing parties into meanings that make conflict resolution possible?

The Personal Story Of This Study

I have been outlining the rationale for this dissertation in the form of a logical argument. It also has a personal rationale that better takes on the form of a narrative. In this section, I shall give an account of how I came to be engaged in this project.

If the narratives and discourses of people's lives are to be placed in a position of prominence in understanding how they make decisions and form practices then the practice of developing a thesis and the practice of research is no exception. In the interests of consistency, this study deserves to be placed in a narrative context (as Harré and van Langenhøve, 1991, have argued).

Researching The Practice Of Counselling

At the outset, this study was intended to focus on the practice of narrative therapy rather than mediation. The first idea was to study the detail of counselling conversations in order to demonstrate counselling effectiveness through discourse analytic methods. As a counsellor educator, I regularly set my students the task of transcribing pieces of their work in columns and analysing the conversational processes they were engaging in. My work required me to help students refine their conversational styles and focus them in ways that would be constructive for people who sought their help. The question that interested me was to do with how to use

research in order to do this work better. I was interested in the learning value that could accrue from studying the moment-by-moment effects of utterances in therapy.

The idea of studying the detail of counselling conversations is not new in counselling research. It has been around since Carl Rogers first began making tape recordings of counselling interviews (Rogers 1942). Rogers' concentration was upon a search for the relational conditions that could be distilled from a helping conversation to explain the core achievement of a successful conversation between a counsellor and a client. The communication of empathy, in particular, became enshrined in counselling literature as crucial to the opening of possibilities for change for the client as a result of Rogers' work (1951, 1957, 1961, 1980). For this reason, much attention has been directed in the counselling literature to the study of the relational conditions which produce empathy and to its effects. There have been a series of studies which have sought, in a modernist spirit, to establish empathy as a foundational concept in counselling that explains success in otherwise markedly different approaches to counselling (Anthony & Carkhuff, 1971; Auerbach & Johnson, 1977; Bergin & Garfield, 1986; Fiedler, 1950a, 1950b, 1951; Goldfried, Greenberg & Marmar, 1990; Sloane & Staples, 1984).

This foundationalist emphasis has been a feature of modernist social science as described by Gergen (1994). The search has been for a psychology of stable, predictable universal truths about the functioning of the human psyche that can be objectively studied. Rational, problem-solving approaches to personal and social problems were emphasised and the "correct" methods of application of these were sought in the counselling literature (for example, Egan 1994). As I was thinking about studying the detail of counselling practice I was also engaging with the literature of social constructionism (for example, Burr 1995; Gergen, 1985; 1991; 1994; Harré 1986; Shotter & Gergen, 1989), narrative theory (for example, Bruner, 1986) and poststructuralism (for example, Foucault, 1969; 1978; 1980). This literature was taking my thinking into quite different places, from which even the very concepts of things like empathy began to look very different.

The counsellor education team with which I was working had made a decision in the early 1990s to develop a concentration in our teaching and research on constructionist psychology and narrative methods in counselling. This work was still

emergent, however, and lacked substantial research support. I wanted to mount a piece of research for this dissertation that would contribute to this gap.

From a poststructuralist perspective, the production of subjective shifts in counselling needed to be articulated on quite different bases. It resulted more from the counsellor asking questions that were deconstructive of the client's problematic experience than from essentialist foundational concepts like empathy. The original aim of this study was to revise understandings of the detailed practice of counselling in the light of constructionist and narrative thinking.

To do justice to constructionist and narrative practices, a method of studying the effects of such practices was needed that was theoretically consistent with these practices. To study the effects of deconstructive questioning on discursive positioning, for example, requires research tools that are constructed with such tasks in mind. Therefore, I began reading discourse analysis literature with a view to finding tools that would be compatible. It was in the field of critical discourse analysis that I found researchers developing such research tools. However, critical discourse analysis is in the early stages of its own development and has not to date been used for exactly the kind of purpose I envisaged. It has most commonly been used for the study of social phenomena, rather than the study of change processes. Most discourse analyses aim to uncover the hidden work being done by discourse, rather than exploring the therapeutic potential for discursive repositioning that follows from thinking about subjective experience with a discursive perspective in mind. Hence, it became clear that this study would have to engage with the literature on discourse analysis and adapt it to my purposes rather than borrow a readymade 'method'.

What was promising about discourse analysis as a research method was its declared emphasis on the study of social practices (Fairclough, 1992). Making such practices the object of study could perhaps bridge the divide between the study of 'pure' psychological phenomena and the 'applied' fields of study (for example Willig, 1999) which might speak more to practitioners in fields such as counselling or mediation. Gee (1999, p. 8) goes as far as arguing that discourse analysis should always have a 'point to it' such as an evident focus of application.

There was nothing for it but to dive in and to begin to practice analysing some narrative therapy texts and to see what needed to be adapted along the way. I began

with some videos of Michael White and a transcript lent to me from David Epston's work and wrote some brief practice analyses of some of these conversations. From these exercises, which are not included here and are not for publication for ethical and copyright reasons, I began to see ways to describe the practice of narrative therapy in ways that these practitioners had not used in their own theorising of their practice. This experience encouraged further work in this domain. At this time I was planning to seek out some narrative therapists and ask them to find some clients who would agree to have some counselling sessions recorded for analytical purposes.

Several problems arose with this plan. First, some therapists who I hoped would agree to participate in this project refused when I broached the subject with them. Like them, I was also concerned about the ethical dangers of this kind of research. It was possible to design a process by which clients would find their lives and concerns rendered objects of research enquiry with little benefit to themselves. I was not keen to participate in that kind of objectifying practice. One way to avoid this would be to engage in a larger ethnographic study in which I would ensure that my engagement with clients would be to their benefit. But this would take my focus away from the close study of textual detail and the micro-analysis of therapeutic responses. I considered using only publicly available teaching videotapes as sources of conversations to turn into text for analysis, but there were copyright problems involved. These could no doubt be resolved with goodwill and permission but there was another concern that worked against this possibility. There is alive in the community of narrative therapists a suspicion of those in universities who might exploit for the benefit of their own careers the practitioners who have worked to develop and promote the narrative approach. This suspicion is built on the poststructuralist analysis of academic complicity in the construction of the knowledge/power alliance and on the analysis of power relations in professional life. It is exemplified in these words by Johnella Bird:

Those who write determine ownership of ideas and practices ... Outside of academic circles (which provide structure, funding and an explanation for self-preoccupation) a limited number of clinicians find the emotional, physical and financial space needed to write. Ethnic, gender and class

perspectives on clinical work remain unavailable as academics (both men and women) retain positions of authority as teachers and writers.

(Bird, 2000, p. xv)

The tone is a little bitter and the logic leaves little room for ‘navigating life’s contradictions’ as the subtitle of her book suggests. This kind of perspective was conveyed to me (by others, not by Bird) in several personal communications as well.

Since I had no desire to be implicated in such a construction of my own work, this study remained halted for some time as I worried about how to do it. Should I persist in trying to identify some narrative therapists with whom it might be possible to forge a collaborative arrangement that would not be perceived as exploitative? Or should I seek some other approach altogether? One option would be to write only about my own clinical practice, but that would bring some other ethical issues, such as conflict of interest, into play and potentially put more pressure on clients to please the researcher as well as the therapist. The quandary was of such significant concern that I considered abandoning the whole project.

Developing Interest In Mediation

The resolution of these concerns in a way that allowed this project to go ahead was made possible by a shift in attention away from the area of practice that I had begun with, that of counsellor education. I had developed a growing interest in the work of mediation in the years leading up to and during the work on this dissertation.

In my professional life, I had worked as a teacher and then a counsellor in secondary schools before I began teaching counselling. As a counsellor, I was drawn to conflict resolution work out of an impatience with hearing people complain about other people (students about teachers or parents, teachers about students or administrators, administrators about teachers or board members). It became a common practice of mine, when people told me of such complaints, to offer to facilitate a meeting with the person they were complaining about, in effect, a mediation. So I ended up mediating between families and school boards over suspensions, between principals and teachers over professional issues, between teachers and students about behaviour problems, and between students and other

students over playground brawls, teasing or spats between friends. As the schools that I was working with took on board the requirements of the reforms of the education system that became known in New Zealand as the “Tomorrow’s Schools” reforms (Ministry of Education, 1988), one of the provisions required them to put in place a policy and a set of procedures for dealing with sexual harassment in schools. This led me to become involved as a mediator in a series of situations in which some form of sexual harassment had taken place. A growing interest in peer mediation programmes in Auckland schools caught me up in a series of training programmes in mediation skills and I launched a peer mediation service in the school where I was a school counsellor.

At the same time, I was developing a small private practice in counselling with the family court. This gave me experience in conciliation counselling with couples who were in the process of separating. Although called counselling in the New Zealand family court system, this was largely mediation work.

I was an enthusiastic participant in the formation of Waikato Mediation Services in Hamilton in the mid 1990s. A group of a dozen people began meeting to form a community mediation service and training group. In the process, we engaged with the mediation literature and began to articulate a distinctive approach to mediation that moved away from the dominant problem-solving model. The interests that Gerald Monk and I had in narrative therapy became significant influences among this group on the development of a model of practice that was largely based on narrative ideas. Alison Cotter and Tim Clarke played significant roles also in the development of our thinking about the role of narrative ideas in mediation and on the securing of work opportunities in which to try these ideas out. We did mediation work in organizational and community disputes, in restorative justice contexts and in schools. We also planned and organized some community discussions of controversial issues along the lines of the Public Conversations Project (Becker, Chasin, Chasin, Herzig & Roth, 1995; Chasin, Herzig, Roth, Chasin, Becker, & Stains, 1996). The practice of narrative mediation began to flourish in this context and led to attempts to articulate this practice in writing. Alison Cotter and I wrote a chapter on mediation for the book that was edited by Gerald Monk, Kathie Crocket, David Epston and myself (1997). An article in the *Negotiation Journal* (Winslade, Monk & Cotter, 1999) and the publication of a book (Winslade & Monk, 2000)

followed. I was also involved with a group from the University of Waikato who undertook a pilot project for the New Zealand Ministry of Education to use a restorative conferencing process as an alternative to suspension in secondary schools (Winslade, Drewery & Hooper, 2000). As convenor of the New Zealand Association of Counsellors Ethics Committee, I was also involved in the development of mediation processes in response to complaints against counsellors (Winslade, 1996b).

By this time, it was clear that my professional energies were becoming more heavily committed to developing the practice of mediation than the practice of therapy. It made sense for this dissertation to follow that interest and become more aligned with the work that I was pursuing in other domains. Micro-analysis of the interactions in a mediation conversation was still close enough to the original purpose of studying interactions in counselling. The focus of the change process was simply more focused on relationship problems than on personal identity projects. Therefore, I made the decision to change tack in the direction of analysing mediation conversations rather than counselling ones. Given the difficulties I was facing in finding a way to generate text for the purposes of discourse analysis, this move could have made things even more difficult, since mediation involves people who frequently mistrust each other in situations of conflict. It is not easy to secure consent from such participants for their conversation to be taped and transcribed.

However, there exists within the mediation literature a tacit acknowledgement of this problem. Mediation training and research is frequently done with the aid of roleplayed conversations (for example, Association of Family Mediators, 1989; Gale, Mowery, Herrman, & Hollett, 2002; Menkel-Meadow, 1994; Pope & Bush, 2000). Waikato Mediation Services had produced such a tape of its own (Winslade, 1996a).

I made the decision, therefore, that, for the purposes of this research, I would make two tapes of roleplayed mediations. One would feature myself as mediator. I would use this tape as a source of text to illustrate my articulation of a narrative practice in mediation. The need for such an articulation was greater in the field of mediation than it was in therapy where a narrative practice has been established over a period of time. In mediation, the book published by Gerald Monk and myself (2000) and the articles with Alison Cotter, really break new ground. The other tape would feature my co-author on mediation, Gerald Monk, as the mediator. The

transcription of this conversation would furnish a piece of text that could be used for discourse analysis purposes.

These two tapes were made with the assistance of San Diego State University, where Gerald Monk is now employed. They have been shown a few times in teaching contexts since then and the responses and questions by mediators who have watched them have contributed to the development of my own analysis of the conversations. The details of the process of analysis that I have pursued will be outlined in chapter five.

This study has changed focus a little along the way but the main emphasis has remained intact, that is, the emphasis on the analysis of the detail of positioning effects in a conversation between a professional and clients. The development of a study of mediation, rather than therapy, now accords with a shift in my own areas of practice and writing during the course of setting up this research enterprise. At times, the work I have done in the mediation area has appeared to delay the task of getting this research exercise done. The delays have not been without benefit, however. As a result of them, the emphasis that has emerged has been tested in practice and articulated in several pieces of writing as well as in a variety of teaching contexts and conference presentations. As a result, what is reported in this exercise is much more mature than it would have been had I written it two or three years earlier.

Organisation Of The Study

After this introductory chapter, the three strands of this tri-lateral study each need to be given space to be developed before they are woven together. Here is an outline of the course that the rest of the dissertation will run in order to achieve this task.

In Chapter Two, problems with the assumptions that inform the current practice of mediation will be reviewed. The dominant approaches to mediation will be explained and some critiques of these approaches will be made. The need for some rethinking of mediation theory will be argued.

Chapter Three will address the theoretical issues raised in Chapter Two. In this chapter, I shall explain why I believe mediation theory needs to take account of

developing postmodern ideas in order to equip mediators better to respond to the everyday politics of conversation. The conceptual tools, drawn from discourse theory, that can serve this purpose will be distinguished and articulated. In particular, a theory of the utterance and a theory of discursive positioning will be detailed.

The discourse analysis method on which this research will rely will be outlined in Chapter Four. This outline will distinguish the critical discourse analysis (CDA) approach from other approaches to discourse analysis. Then, the addition of some further elements to this approach, suggested by some of the literature cited in Chapter Three, will be introduced. I shall be especially interested in how discourse analysis can be used to show shifts in discursive positioning taking place in the course of a mediation conversation. A list of questions to be asked of a text in order to make such shifts evident will be outlined.

Chapter Five will review the discourse analytic literature to date that has focused on mediation conversations and will position this study in relation to this literature. The main difference in this study from many other discourse analyses of mediation conversations is a focus on the effects of professional practice. I am not just interested in demonstrating the work that discourse is doing to shape conversations and identities. I want to use discourse analysis to show that changes in positioning are possible and to evaluate how a mediator working from a narrative perspective can facilitate such shifts.

However, before examining the effects of a narrative mediation approach, it is necessary to establish just what this is. Chapter Six will outline a narrative approach to mediation that addresses the problems raised in the review of the mediation literature in chapter two. The general principles of narrative mediation will be articulated and linked back to the theoretical positions outlined in Chapter Three. This approach will be illustrated through the inclusion of extracts from a transcribed mediation, accompanied by explanatory commentary.

In Chapter Seven, the text of a narrative mediation session will be presented and interwoven with a detailed discourse analysis, focusing especially on the analysis of discursive positioning. I shall introduce this text transcribed from an interview and include almost the whole conversation, together with accompanying commentary.

In Chapter Eight, the discourse analysis will continue by drawing together some of the threads picked out of the fabric of the conversation in Chapter Seven.

The background orders of discourse at work in the shaping of the participants' relational positioning in the mediation will be explored and the discursive themes drawn forth. I shall also here examine the uses made by the mediator of discursive positioning to open up new relational possibilities in the dispute.

Chapter Nine will conclude the study with a review on what it has covered and some comments on the implications for ongoing work.

CHAPTER TWO

Problems With Mediation: A Literature Review

The professional practice of mediation has been articulated only in the last twenty-five years. It has been described as focused on pragmatism and as lacking a body of theory (Irving & Benjamin, 2002). Carrie Menkel-Meadow (2001) says that it lacks a 'meta-theory' because it draws from a variety of disciplinary traditions. The problem-solving model proposed through the Harvard Negotiation Project by Roger Fisher and William Ury (1981) was at first considered definitive of the professional practice of negotiating the resolution of conflict and has been widely taken up by mediators. However, the dominance of this formulation of mediation practice has been challenged in the 1990s and beyond. The challenges have come from several avenues of social critique and from the articulation of some alternative approaches to mediation. This chapter will review the basic ideas behind the problem-solving model and also examine the various bases from which it has been critiqued. My argument is that these critiques make problematic a straightforward acceptance of the problem-solving model. The transformative model offers an alternative perspective with certain advantages, but it also has many of the same problems as the problem-solving perspective built into it. I shall attempt to show that mediators need to look beyond these approaches for the development of models of mediation that are able to take account of power relations and developing social theory.

Models of Mediation Practice

Problem- Solving Mediation

The current mediation literature is dominated by a problem-solving or interest-based approach to resolving disputes. The term 'interest-based' refers to a major feature of the problem-solving approach in which mediators seek to

identify the underlying interests that are hidden behind the polarized stances that people take up in conflict situations.

There have been various attempts to dislodge the dominance of a problem-solving orientation and other models have been proposed, such as transformative mediation (Bush & Folger, 1994) therapeutic family mediation (Irving & Benjamin, 1987) and a therapeutic-interventionist model (Kruk, 1997). The promoters of a 'transformative' perspective have mounted the most successful alternative model of practice so far. Nevertheless, the problem-solving orientation has continued to be the approach to practice that has been learned first and utilized most by those entering conflict resolution work (according to Rifkin, 1994). It has also been referred to as a 'transactional' orientation to mediation (Bush, 2001, p. 368), a description that emphasizes the goal of arriving at a settlement that resembles a business contract.

The foundations for this approach were laid by Fisher and Ury (1981) in their groundbreaking book, *Getting To Yes*, and have been built upon since by other authors who have elaborated a detailed practice based on these ideas (e.g. Haynes, 1994; Menkel-Meadow, 1994; Moore, 1996; Beer, 1997; Picard, 1998; etc). Before examining some of the critiques of this model, I shall outline its central ideas.

Basic Elements Of Problem-Solving, Interest-Based Mediation

The goal of a problem-solving mediation is defined as searching for a win-win solution that addresses the interests, or meets the needs, of each party (Fisher & Ury, 1981). To achieve this solution, a mediator should listen to each party's stories and then help them to uncover the underlying interests that are being expressed in the conflict. When the problem is defined in terms of interests rather than polarized positions, a negotiation can take place that aims to satisfy everyone's interests and resolve the conflict. To this end, the mediator engages the parties in a brainstorming process to generate a range of options. These are then evaluated for their usefulness to a negotiated agreement. The

mediator invites the parties to negotiate with each other to have both persons' sets of interests met so that no one loses and the conflict is resolved.

Fisher and Ury illustrate interest-based mediation by telling their now famous story of two individuals who are disputing over the heating in a library (Fisher & Ury, 1981, p. 40). One person is too hot and wants to open a window so as to have air circulating in the room. The other person is concerned that if the window is opened the draft will be unpleasant and possibly chill them. Fisher and Ury suggest an alternative to the traditional problem-solving method of compromising and giving up part of what they would like (perhaps leaving the window partially open). In their alternative, the emphasis is on identifying the underlying shared need of wanting a more favorable temperature in the room. The problem gets resolved with the help of a librarian who facilitates the identification of underlying interests and suggests opening a window in an adjacent room to allow cooler air to circulate without creating a draft. Thus the needs for fresh air and even temperature are met.

The problem-solving model is proposed as a process containing several cumulative steps. The first step in a problem-solving mediation is to 'define the problem'. This model offers some suggestions for how to do this that imply a theory about the nature of conflict. The problem should be defined in the context of a distinction between substance and relationship. 'Separate the relationship from the substance' urge Fisher and Ury (1981, p.21). The idea is that there are psychological realities and substantive issues and mediators are enjoined to maintain neutrality with regard to substantive outcomes. Instead, mediators should address mainly the psychological issues ('perception, emotion and communication') with 'psychological techniques'. For example, when there are strong emotions, 'find ways for each person involved to let off steam' or, where misunderstanding exists, 'work to improve communication', or where perceptions are inaccurate, 'look for ways to educate' (p. 21).

In relation to the substantive issues, mediators should distinguish further between 'stated positions' usually about desired outcomes, and 'underlying interests' which are described as 'needs, desires, concerns and fears' (Fisher & Ury, 1981, p.40). Although Fisher and Ury do not explicitly describe them as such, these would seem also to be psychological issues. They are founded on a

conception of what constitutes universal basic human needs like security, economic well-being, belonging, recognition, control over one's life (p. 48). Frustration of these underlying interests or needs is theorised as causative of conflict.

Interests motivate people; they are the silent movers behind the hubbub of positions. Your position is something you have decided upon. Your interests are what caused you to so decide.

(Fisher & Ury, 1981, p. 41)

Christopher Moore (1996) distinguishes these psychological interests from what he calls 'substantive interests' (for money or time) and 'procedural interests' (which are about how the process works). Conscious decision-making is involved in establishing a position and interests are constructed as originating in natural drives. The interest-based focus within the psychology of problem-solving is implicitly founded upon something like Maslow's (1956) hierarchy of needs as the basis on which a notion of interests is founded.

Fisher and Ury's use of the term 'position' needs to be distinguished from the constructionist usage I shall be developing in this dissertation. Fisher and Ury use 'position' to refer to a rationally chosen attitudinal stance on a polarizing issue. Moore (1996) describes these positions as preferences for 'particular settlement options' (p. 70). Positioning theory, as I shall draw from it later, uses the word 'position' with reference to discourse theory. I shall explain this usage more in the next chapter.

The separation of interests from positions is also advocated by Fisher and Ury from the pragmatic perspective that 'reconciling interests rather than compromising between positions' works better (Fisher & Ury, 1981, p. 42). As John Haynes (1994) says, people usually bargain about positions rather than interests, and 'bargaining about positions often results in a stalemate' (p. 5). Each side to a dispute is likely to have 'multiple interests' (p47) and can appreciate overlapping or shared interests more easily than compromise options: '... shared interests help produce agreements' (Fisher & Ury, 1981, p. 71). A clear

implication is that it is easier to work from the basis of the legitimacy of interests (Fisher & Ury, 1981, p. 51) than of positions.

After defining the problem in terms of interests, the problem-solving mediator seeks to establish a conversation aimed at negotiating the satisfaction of these interests rather than focussing on positions. This is achieved by first generating 'options for mutual gain' through brainstorming before undertaking any evaluation of these options or negotiating a resolution. Deciding about best options is suspended during the process of 'invention of options,' as is the 'search for the single answer' (Fisher & Ury, 1981, p. 58). Sometimes, when interests conflict, it is necessary to call on 'objective criteria' against which to assess the invented options before meaningful negotiation can begin. These are independent standards against which, say, the fairness of a price might be compared. For example, if the disagreement is about the value of a vehicle, then an 'objective criterion' might be a book that lists recent car sale prices.

The problem-solving approach has achieved a great deal in the mediation field. It has contributed much to the development of practice. However, it has also been subject to a variety of queries, especially about the assumptions that are built into its practice.

Questions About The Assumptions In Interest-Based Problem-Solving Mediation

Problem-solving approaches to mediation are predicated upon a series of assumptions about conflict and about human intentions and relations. These assumptions are open to challenge if we look at them from different vantage points. Indeed, they have in recent years been subjected to a series of challenges. I shall question these assumptions and review the challenges that have been raised in recent years.

Implicit in the heart of the problem-solving approach is the idea that conflict results from a competition between people to meet their goals in life (Moore, 1996). Conflict occurs when the attainment of the interests, or the satisfaction of the needs, of one party is found, or perceived, to be incompatible with the interests or needs of another. Conflict intensifies as the human interests

of needs are frustrated by the conflict itself. This position has been stated clearly in statements like this one.

Problem-solving is an orientation to negotiation which focuses on finding solutions to the parties' sets of underlying needs and objectives.

(Menkel-Meadow, 1994, p.794)

The opposition created by competing interests is theorized to harden into positions around which polarization occurs. These positions are opinions or viewpoints that consolidate around the rational interpretation and justification of self-interest. The parties then concentrate upon defending these positions while seeking to attack or undermine the positions of the other party. It follows that conflict resolution needs to be about facilitating the satisfaction of needs and the attainment of interests. Folger and Bush (1994) refer to this as the 'satisfaction story' of mediation.

This account of the resolution of conflict is founded upon the psychological assumption that individuals are driven primarily by internally generated needs. That these needs are assumed to be foundational is expressed in their description sometimes as 'real needs' (for example, Menkel-Meadow, 2001, p. xxi). In mediation these needs become expressed as their interests. Such needs are posited to have their origin in human nature rather than in, say, cultural or discursive patterns of thinking. Each party in the conflict is assumed to be pursuing a path of natural self-interest and to require their self-interested needs to be met in order to succeed in any negotiation. The 'needs' of the individual in this framework rely in turn upon a set of psychological assumptions that have been commonly accepted in many psychological theories. Both Freud's (1969) account of the individual's psychodynamic struggles and Maslow's (1956) hierarchy of needs assumed an inherent self-interested pleasure-seeking principle at a basic level of individual human motivation. Individual needs-based assumptions direct our focus away from cultural, collective or relational aspects of personhood. As a result, we are more likely to view people's claims of entitlement in mediation as natural, or biologically essential, once we have sorted

out what those 'basic' interests are and distinguished them from polarized posturing.

There is no suggestion in problem-solving theory that anything underlying interests needs to be considered. For example, the possibility that a person's interests might be culturally informed is not given prominent emphasis. Nor is the possibility that power relations might grant legitimacy to certain interests over others. Rather, the liberal democratic assumption of hypothetically equal opportunity for each party is incorporated into the model of mediation. The problem-solving mediation literature does, however, give some credence to the existence of power relations, chiefly by suggesting that mediation should involve a recognition of power disparities and a balancing of power where these exist (Haynes, 1988; 1994; Mnookin, 1984). The concept of power referenced in this literature is based on an equation of the accumulated individual power and potentially measurable amounts of information, legal rights, expertise, charisma or strength of personality, and financial resources. There is also a literature in mediation that stresses that mediation should not be attempted in situations where power differentials are at work. However, the proscribing of the interest-based method in such circumstances leaves intact the neglect of power relations and of socio-cultural influence in the construction of people's interests in situations where the method is used.

In a mediated dispute, the parties' positions, and especially their underlying interests, are also assumed to wholly belong to them as individuals. For example, there is little suggestion in the problem-solving model that individuals might be conscious at times of representing the interests of a social group. However, it is not uncommon for women in family mediations to make a stand consciously on behalf of women against a patriarchal assumption about marriage or about the family. I have also personally worked as a mediator in conflicts where Maori disputants are conscious of arguing for the interests of Maori in general rather than principally in their own interests. In the problem-solving formula, such political consciousness would have to be considered a 'position' and the mediator would be directed by the model to search for the underlying individual interests.

Gergen (1999, p. 150-2) has pointed out that the problem-solving model reflects a modernist worldview and presumes the primary importance of rationality and realism. Haynes (1994) indeed asserts that the problem-solving method is primarily a 'rational process' (p. 6). It assumes, says Gergen, that 'the problem', 'my interests', the 'optimal solution' are essential categories rather than 'moves in discourse'. It constitutes the parties to a dispute in the mould of 'autonomous individuals, each with private interests, perceptions and reasons', independent actors in the world who can be found 'ideally reasoning their way toward identifiable goals' in the midst of a singular existing reality. The problem Gergen is pointing out is that these terms are considered the stable baseline, constituted within a single reality, from which the mediation conversation is constructed. However, the definition of these terms and their connection to the stories of the parties is not unproblematic. People do not always act rationally. They do not always even act in their own interests. In the next chapter, I shall review in more detail how postmodern questions render the modernist assumptions problematic. Here, it is worth noting that the whole idea of defining a conflict as a distinct 'problem' of competing underlying 'interests', which can be isolated from the complexities of life around the parties, is itself a culturally informed act. It could not develop without the background assumptions of a market economy and the idea that rational scientific method can be applied to problems of living.

Fisher and Ury use these words to describe the ideal stance towards relationship in the context of a negotiation.

Base the relationship (between a mediator and the parties) on accurate perceptions, clear communication, appropriate emotions and a forward-looking purposive outlook.

(Fisher & Ury, 1981, p.21.)

Reason and be open to reason.

(Fisher & Ury, 1981, p.89)

The person called into position as the subject in such discourse is a recognisable expression of the enlightenment ideal. It is the model citizen of the modern democratic state, stabilised and normalised by modern psychology and education, believing in and relying on the progress of truth authorised by the technologies and procedures of the scientific method.

Even when the parties are collective entities like organizations or nations, the model plumps for an approach based on individual psychology. Fisher and Ury advise:

What is true for individuals remains equally true for groups and nations.

(Fisher & Ury, 1981, p. 49)

From this perspective, individuals are conceived of as the prime movers in the world, and communities are portrayed as made up of distinct, separate human beings who act independently and who are accountable for their choices. The identification of an individual's needs and the accommodation of her or his interests are viewed as the essential ingredients of a successful mediation. What is left out of this picture are cultural patterns of behaviour, institutional demands, structural inequalities, and the influence of discourse on what people can think. Presumably these formulations of social life remain epiphenomena of the actions of social actors in the world, rather than constitutive influences in the production of people as actors. It is not that the mediation literature is not cognizant of these dimensions of social analysis. My point here is simply that these social, cultural and political dimensions are not present in the problem-solving theory itself. Therefore the problem-solving approach does not place mediators in an easy position from which to handle power relations in the mediation process.

Sara Cobb (1997) makes this point by contrasting the discourse of needs in mediation theory with a discourse of rights, such as might be more dominant in legal contexts. In a discussion of the 'domestication of violence in mediation', she argues that the discourse of needs serves the purpose in mediation of hiding the operation of power through violence. For example, if a mediator was to attempt to enquire about the underlying interests of the perpetrator and the victim of domestic violence the possibility of expressing a community's moral objection

to the abuse of power involved is blunted. Her distinction does not attempt to problematise the rights discourse itself. Trina Grillo (1991), while making similar arguments about dangers for women in the mediation process also argues against the 'reification' of rights, that is the 'conceptualizing of rights as real, or thing-like' (p. 1566). She suggests that this conceptualization results in the 'acceptance of the existing social order as an inevitable fact of life' (p.1566). In this way, she argues that rights claims characterised in a formal way are 'hierarchical and therefore patriarchal' (p.1566). Nevertheless, Sara Cobb makes some useful comments by using the rights discourse as a standpoint from which to explicate the discursive work that is done in the needs discourse. She says:

... while rights construct the relation between the self and community, their reformulation into needs disintegrates that community, as actions that were obligated within a normative frame are reframed as actions that please or appease an individual. In needs discourse, the locus for the obligation of action moves from the community to the individual. A need connects a person's internal state to the actions of self or others ... That which obligates the action, rather than remaining external to the speaker, moves back into the person, dissolving any external standard for evaluating or guiding action. The final standard becomes the pragmatic service to the psychological/physiological processes internal to individuals.

(Cobb, 1997, p. 412)

The point is that the idea of needs serves to construct a basis for entitlement that refers inwards to basically physiological sources. It sidelines the moral dimension in the particular construction of meanings as 'interests'. The assertion of rights, by contrast, links entitlement claims to the world of social interaction. Trillo (1991) also acknowledges this point and suggests that the assertion of rights can have positive psychological effects for women.

What about the possibility that a person's stance in a conflict might be informed by racism for example? It might be easy to identify underlying self-interest at the base of a racist position. However, a mediation process that sought

to satisfy the drive behind a self-interested racist idea would clearly be abhorrent. No doubt, most problem-solving mediators would agree and would find ways to avoid such a situation developing. My concern is that the problem-solving model of interest-based mediation does not in itself offer them enough assistance at such moments.

Freud's (1969) use of the pressure chamber metaphor to account for the 'decathexis' of human emotions is also to be found in the problem-solving discourse. The idea that emotions, if not expressed, will build up internal pressure inside the person and need release in the form of letting off steam was a mechanistic metaphor built on an observation of the steam engine. Arising from the discourse of Freud's day, it has found its way into many corners of psychological discourse. In Fisher and Ury it takes the following form.

Often one effective way to deal with people's anger, frustration, and other negative emotions is to help them release those feelings. People obtain psychological release through the simple process of recounting their grievances.

(Fisher & Ury, 1981, p. 31)

What is not taken into account in this formulation is the moral dimension in the emotional experience. If, for example, the anger or frustration has been produced as a result of the experience of injustice then having one's emotions siphoned off through psychological release does not address the source of the anger. If a person is angry at being shut out of the chance to make a decision about something that affects their wellbeing, then being channeled into becoming more rational can be experienced as patronising. Another perspective on emotions like anger has been proposed by Brian Parkinson (1995). He suggests that the heart of the experience of anger is the desire to change something. Feeling angry is more than just a physiological experience. It is a protest about some state of affairs in the world. It therefore entails a moral judgment that something is not right and needs to change (Parkinson, 1995). The 'psychological release' approach to dealing with anger seems to grant precedence to the physiological dimension ahead of the social and moral dimension. What can ensue is that

protest about injustice and the use of power can be quieted and contextualised as the expression of emotional self-interest.

It will not be just mediators either who approach things with needs-based assumptions in mind. Disputants too are likely to carry such assumptions into mediation. Needs-based assumptions are part of common discourse in the modern world. These widely held taken-for-granted assumptions provide a lens through which people construct their needs and desires. They influence people's expectations and behaviour, affect the way they respond to other people, and inform what they find acceptable about their social arrangements. These expectations in turn construct people's understandings of what moves or responses are possible, what outcomes are desirable, and what role a mediator should play in this process. In other words, these expectations become the dominant norms to which people subscribe and around which they perform meaning in their day to day dealings in a variety of contexts.

A further major assumption in the problem-solving model is about conflict. It follows from the assumption of the drive to fulfil individual needs. Conflict is assumed to happen because individual needs are not being met. Disputes transpire when individuals, in the attempt to fulfil their needs, encounter others who believe that their own need-fulfilment goals are threatened. The frustration of unfulfilled needs leads to a deficit condition, which fuels the motivation for need-satisfaction. Thus the underlying motivational drive for conflict is considered to be a personal deficit (an unmet need). The deficit can be removed and the need satisfied when a solution is found to the conflict.

A biological metaphor of homeostasis lies in the background behind this idea. Unmet need equals disequilibrium. The biological organism is driven to return to a steady state (homeostasis). The solution is found. Homeostasis, or equilibrium, is restored. The background narrative is the medical one of disease interfering with a state of normal health, followed by the administration of the requisite treatment to cure it and restore health again. In other words, conflict is akin to a disease that needs treatment. What then is the task of mediation from this perspective? It is to find solutions that will meet the needs of each of the (individual) parties and restore homeostasis. Peace is conceived of as stable, orderly trading in the marketplace of individual interests.

The problem with this kind of model is again that it ignores power relations. The steady state of homeostasis when everyone's needs are met assumes a world of equality of opportunity for the 'meeting of needs'. There are, however, differences in the kinds of needs that people believe themselves entitled to have met. And there are social and cultural influences on the definition of a person's needs. Therefore the meeting of both parties' needs in a dispute may contain within it a built-in privileging of one party over another simply because that party's needs were constructed in terms of greater entitlement.

Another assumption built into the problem-solving model is that the mediator can be an objective, neutral third party. If the parties to a dispute have needs, then the mediator should remain neutral with regard to these needs. If the parties have interests, then the mediator is assumed to be disinterested. If the parties have substantive goals they want addressed, then the mediator should care only about the process and about creating the opportunity for both parties to reach their goals in a 'win-win' resolution. The ultimate model for the mediator is that of the scientist practitioner, the detached neutral observer applying the knowledge generated within Modernist scientific traditions, in which the concept of problem-solving is well entrenched. The emphasis in this tradition is on the generation of universal acultural truths and their application. Differences of culture, social class and gender contribute to the kind of bias and distortion that good models of practice seek to eliminate. When a stalemate is reached in the discussion of optimal solutions the mediator appeals to some objective scale that has been produced in the wider cultural world as a point of comparison for the parties. There is no questioning of the possible cultural bias of the scale that is used as the external reference point.

Disquiet about the concept of neutrality in the problem-solving approach has been expressed from a variety of quarters. The concept of neutrality as 'absence of bias on the part of the mediator', or 'impartiality' (Cobb and Rifkin, 1991; Beck & Sales, 2000), has been distinguished as one meaning of neutrality that has been subject to criticism. To achieve this, mediators are supposed to guard 'against psychological processes that may favor either disputant' (Cobb and Rifkin, 1991, p. 44) and to act as if they were 'observers without a perspective' (Grillo, 1991, p. 1587). However, the assumption of a neutral,

disinterested stance in relation to the needs that disputing parties present to a mediator has been strongly questioned in the mediation literature (Kruk, 1997, Grillo, 1991). Beck and Sales (2000) review the social psychological literature on impartiality and point out that the production of an impartial stance involves processing of disputants' stories through an interpretive filter which is made up of the attitudes and values of the mediator. These attitudes and values are in turn formed out of 'affective, behavioural and cognitive' information. Pre-existing attitudes and values are also, they suggest, the very bases from which mediators must respond in order to form quick perceptions, categorise information and make rapid decisions. Hence, they can hardly be left out of the process of mediation without rendering the mediator ineffective. At the very least, for example, divorce mediators are not likely to be neutral about the 'appropriate terms for divorce agreements' (Beck & Sales, 2000, p. 1001). If mediators hold values about such things as an individual's right to self-determination, or social justice, or what constitutes 'good' parenting, then these values are likely to be expressed in their responses to disputants' utterances that are not impartial. In the questioning of the neutrality assumption in mediation, the cultural values implicit within parties' interests and needs has been highlighted.

Moreover, Rifkin, Millen and Cobb (1991, p.151) commented that there has been less 'theorizing' about the neutrality of the mediator than there has been a developing 'folklore of neutrality'. The idea of the mediator as neutral facilitator of the process, who 'makes no assessments, judgments or value interventions...' but is '...wholly supportive of all actors, and adopts a no-fault and neutral position' (Burton, 1990, p. 204) is now hard to hold. It makes more sense to see that mediators are unlikely to be able to stand outside of time and space and their own culturally and historically located values. Just in the way they respond to people's stories, they are likely to select for emphasis some perspectives over others, or attune themselves to some people more than to others.

The idea that content and process can be separated and that the mediator is best thought of as a process facilitator who is impartial with regard to content has also been questioned. Linda Putnam (1994) has pointed out how particular conceptions of process (for example, thinking in terms of instrumental goals)

influence the selection of which subject matter will be discussed or emphasized. She suggests that instrumental goal-directed thinking leads to a privileging of 'substantive issues over relational and identity management aims.' Haynes (1994), articulating a problem-solving approach to mediation, argues that mediators should 'ideally' focus discussion on 'practical issues' (p.28). Thus problem-solving mediation might focus more on business transactions than on emotional or relational shifts such as the expression of mutual understanding, the reconstruction of trust or the offering of an apology.

Likewise, Folger and Bush (1994; also Bush & Folger, 1994) have shown a 'settlement orientation' to narrow the range of subject matter that a mediation conversation can address. They argue that a problem-solving orientation, even in the early stages of problem definition, leads to the selecting out of issues that will admit some kind of substantive agreement from the many possible problematic considerations. Their concern is that the mediation conversation can be unnecessarily and unproductively limited as a result. The 'satisfaction story', they argue (Bush & Folger, 1994), comes to dominate over other possible paths forward in the resolution of conflict. Kressel, Frontera, Florenza, Butler and Fish (1994) support this argument with research showing that the more mediators were settlement-oriented the less they actually were successful in facilitating settlement agreements and the less durable were the agreements that were reached. Bush and Folger are particularly concerned about making room for the 'transformation story', in which people do not so much 'resolve' a conflict as reach a place of mutual understanding in which the conflict dissipates.

A critique was also made with regard to the construct of neutrality on a narrative basis (Rifkin, Millen & Cobb, 1991). Following an interest in the narrative construction of conflict stories in the mediation process, these writers suggested that the order of parties telling their stories sets a frame for how the conflict will be defined and how mediation will proceed. If the first speaker selects out some features of the conflict for mention, the second speaker must work hard to avoid having the conflict defined for them on the same discursive ground. The issue pointed up here is that of the power that inheres in being the first speaker. However, as Folger points out, the issue is also bigger than that. He argues that Rifkin et al.'s research questions 'the entire premise that the

mediator's control of the process is independent of the 'content' of the conflict' (Folger, 2001, p. 392). It is an example, he says, of how control over process can effectively shape the substance of the conflict itself.

Feminist critics (Leitch, 1986-87; Neumann, 1992) have also taken mediators to task on the issue of neutrality. They have focused their analysis on the construction of power in gender relations and the 'failure' of mediation to influence gender power relations. Their accusation has been that frequently 'win-win' solutions simply reflect the pre-existing power relations between the parties and that these are often constructed in patterns of privilege based on patriarchal assumptions of how things should be. For example, mediators are just as likely as anyone else, suggests Trina Grillo (1991), to make assumptions that privilege men's work commitments and careers over women's. Thus patriarchal power relations, unless specifically addressed in the mediation itself, get reproduced in the outcomes that flow from a 'neutral' mediator's stance (Astor & Chinkin, 1992). A key argument along these lines rests on the comparison of the relative incomes and economic positions of men and women after divorce. Mediation, say the critics, does nothing to address economic inequality (Bower, 1992).

Another feminist argument that has been raised, particularly against mandated mediation in divorce cases, pertains to differences in men's and women's communication styles. If women are socialised to be more emotional and to emphasise the maintenance of relational connection over the expression of anger and the assertion of individual rights, then an approach to mediation that regards emotional expression as antithetical to rational problem-solving may legitimise values in mediation that do not serve women's purposes. Trina Grillo (1991) speaks of mediation conducted in this way as treating women who become emotional as 'unfeminine' and 'pathological'. Similarly women who express their interests strongly in mediation may be more likely than men to be characterised as 'greedy', 'selfish', or 'controlling' (Grillo, 1991, p. 1599). Thus, mediators can 'delegitimize women's anger' and the expression of women's interests (p. 1578) in ways that harm their interests in divorce settlements. Women's relational orientation has also been suggested as a handicap in conflict

situations if it leads them to be more willing to cooperate and compromise than their ex-spouse (Grillo, 1991).

Some of the feminist arguments along these lines have been based on a comparison of mediation with litigation in the context of divorce settlements. Critics of mediation have proposed that women do better when they focus on winning their legal rights in courts of law than when they settle amicably in mediation (Rifkin, 1984; Grillo, 1991). However this argument has been contested (for example by Benjamin & Irving, 1992; Edwards, 1997) on the grounds that it is too global and fails to take into account, firstly, some of the possibilities for women in mediation, and, secondly, some of the failings of adversarial legal systems to obviate patriarchal inequality. As Trina Grillo says,

Of course, subordinated people can go to court and lose. In fact they usually do.

(Trillo, 1991, p. 1610.)

Stronger feminist critiques have raised questions about mediators' failures to be sensitive to the effects of violence on what transpires in mediation itself (Lerman, 1984; Rifkin, 1989; Robertson, Lapsley & Busch, 1992). If a husband has been abusive, then mediator neutrality can give legitimacy to the abuser's perspective and fail to take adequate account of the effects of the abuse on the victim's ability to speak freely. Moreover, victims of abuse have sometimes been placed at risk of further abuse even by attending a mediation meeting.

However, it also needs to be noted that research evidence to support the claim that mediation is not necessarily supportive of women's interests has been at best equivocal. Beck and Sales (2000) review the literature about gender and mediation and note that, in one study of divorce mediation by Kelly and Duryee (1992), women tended to be more satisfied than men with both the experience and outcomes of mediation. They also reported greater confidence in their ability to stand up for themselves. Against this, another study reported that women who litigated were more satisfied with the outcome than were women who went through mediation, while men were more likely to be satisfied with mediation

(Emery, Matthews & Kitzmann, 1994). And a third study found similar satisfaction rates for men and women (Pearson & Thoennes, 1988). These data appear inconclusive, and Beck and Sales examine the detail of these studies to show that the results are influenced by various factors in the study design or the sampling process to the extent that nothing conclusive can be established about gender-based satisfaction with mediation processes. Satisfaction rates also focus only on outcomes and do not get at the process issues in the relations between people in the mediation itself. In this way they are a blunt instrument for assessing the neutrality issue in particular. Perhaps more telling is a study reported by Grillo (1991) in which men and women cited differing reasons for refusing mediation. The differences reflect gendered power relations. Women's reasons for not wanting to participate were more likely to relate to their mistrust of, or fear of, their ex-spouse, whereas men were more likely to refuse mediation because they were sceptical of mediation processes or convinced they could win in court.

Mediation practice in the problem-solving model has also been found wanting by various non-European ethnic communities. For example, the emphasis on individual psychological concepts such as needs and interests does not sit easily with cultural traditions that emphasize collective responsibility ahead of individual autonomy (Duryea & Grundison, 1993; Kruk, 1997; Nunnerly, 2002; Tomas & Quince, 1999). Nor does the field of mediation pay enough attention to the culture-bound values and assumptions that are built into dominant formulations of mediation practice. For example, the valuing of direct over indirect communication (Durie, 2000; Kruk, 1997; Menkel-Meadow, 2001; Nunnerly, 2002), the emphasis on rational and analytical thinking (MacDuff, 1999; Nunnerly, 2002), the formality of mediation process (Nunnerly, 2002) have all been argued to reflect a cultural bias. It might also be worth questioning the ethics of the neutral facilitation of win-win solutions to address situations where the interests of one of the parties are strongly informed by racism. Furthermore, culturally specific patterns of addressing conflict are not necessarily included in an approach that does not advertise its cultural origins (MacDuff, 1999; Nunnerly, 2002). Menkel-Meadow (2001) suggests that there

is in practice ‘no cultural uniformity’ (p. xvii) to the forms that mediation takes anyway.

The point here is that the idea of neutrality is highly problematic when cultural dimensions are taken into account simply because no aspect of mediation is free from cultural influence. Therefore, it is always likely that cross-cultural mediation will produce inequalities in the way in which understandings are produced.

As a result of these critiques, a more cautious approach to the subject of neutrality can be detected in recent writings (for example, Beck & Sales, 2000). Empirical data suggest that such caution is evident in mediators’ consciousness. It has been suggested that mediators experience the ‘ideal’ of neutrality as an ‘institutional constraint’ (Garcia, 2000, p. 323) holding them back from imposing more of their own viewpoints. I would prefer to speak about discursive restraint, but Garcia describes mediators as producing in their talk a ‘display’ of neutrality (Garcia, 1997, p. 229; 2000, p. 337) which is different from being neutral. This discursive display is then necessarily compromised by other elements of mediator practice, such as the issuing of ‘general or specific solicits’ (Garcia, 2000, p. 331) designed to ‘empower’ disputants to reach resolution of dispute. These ‘solicits’ are questions asking disputants to respond in the general direction of a settlement. In order to even ask such questions, mediators step away from the neutral position that they espouse.

Transformative Mediation

A further critique of the problem-solving model leads us directly into the consideration of the major alternative orientation that has developed during the 1990s, known as transformative mediation (Folger & Bush, 1994; Bush & Folger; 1994). These writers critique the problem-solving orientation on the grounds that it places a ‘heavy reliance on mediator initiative and direction, because both are useful in generating settlement’ (Bush, 2001, p. 369). Following from their critique of the way in which an instrumental settlement-orientation in problem-solving leads to the selection out of certain kinds of issues ahead of others (see above), they focus on the facilitative practices of the mediator that work towards this end. The problem-solving

orientation, they claim, leads to a much too directive style (Bush & Folger, 1994, p. 64). This description refers to mediators' use of 'techniques and strategies in order to control the relationship ... to produce outcomes' (Nabatchi & Bingham, 2001, p. 401).

Proponents of transformative mediation advocate giving people control over resolving their own conflicts. Their political analysis of the mediator-party relationship leads them to urge a more hands-off style of mediation in which the parties to a conflict are given more opportunity to communicate directly with each other, rather than through the mediator. They place faith in people's 'capacity to regain their footing' after feeling the effects of the 'conflict's natural destabilizing impacts on interaction' (Bush, 2001, p. 369). The footing to be regained is argued to have two main components: a 'restored sense of strength/confidence in the self (the empowerment shift) and openness/responsiveness to the other (the recognition shift)' (Bush, 2001, p. 369).

Empowerment is taken to mean giving parties a 'greater sense of self-respect, self-reliance, and self-confidence' (Bush & Folger, 1994, p. 20). Such empowerment is achieved by helping people: a) realize more clearly what their goals and interests are; b) realize that choices and options exist; c) learn better skills for conflict resolution; d) become more aware of resources already in their possession; e) make conscious decisions on their own behalf (Bush & Folger, 1994, pp. 84-87).

Promoting recognition is taken to mean helping people: a) reach a genuine appreciation of the other's human predicament; b) focus attention on what the other is experiencing and acknowledge it; c) reinterpret past events more sympathetically in the light of the other's views; d) see the other party in a more favourable light; e) stop thinking the worst about the other's motives and behaviours; f) communicate new understanding and offer apologies for 'having thought the worst'; g) make some concrete accommodation of the other in terms of the dispute (Bush & Folger, 1994, pp. 89-91).

As the individual parties regain their sense of empowerment and recognition, 'the interaction can therefore regenerate and assume a constructive, connecting, and humanizing character' (Bush & Folger, 1994, p. 369). This is the transformative effect referred to in the name of this orientation. The argument is that when people are in conflict they are more interested in transformation of the relationship and the

interaction than in settlement per se. A transformative mediator's goal is not therefore to pursue settlement itself but to 'help the participants reach clarity about their concerns and to recognize each other's position and interests' (Hallberlin, 2001, p. 375). Reaching agreement or settlement takes a back seat and becomes a secondary aim of the mediation process. Carrie Menkel-Meadow goes as far as describing the transformative approach as 'indifferent to whether or not agreement is reached' (Menkel-Meadow, 1995, p. 231).

In a major nationwide application of this approach in the United States, Postal Service settlement rates were specifically rejected as measures of the success of mediation in favour of what were called 'participation rates' and 'closure rates' (Hallberlin, 2001, p. 379). 'Closure rates' is a phrase designed to include settlements of complaints but also their withdrawal or dropping in the wake of a mediation.

The transformative model is illustrated by a story of a particular case drawn from this same project. Let me include this story as it is told by Joseph Folger.

A Hispanic employee and other members of their unit were at a meeting with their manager about upcoming changes in their unit. At one point in the meeting the frustrated manager slammed a stack of papers on to the table. The employee immediately got up and left the room. He was then disciplined by the manager for leaving the meeting. The employee went to the doctor complaining that the actions of the manager had hurt his ears and he filed an EEP complaint against the manager. This is how the case came to mediation.

The beginning of the mediation was intense. The manager was especially angry and could not understand how slamming papers on the table could cause injury or why the employee would leave the building. Following a caucus the employee explained a concept which his culture called a 'bad wind.' He said it is like a curse on you and your family and when you experience it, you need to get away from it as soon as possible. When the manager slammed papers on the desk he said all of this 'bad wind' hit me. After he left the meeting, he did not feel comfortable explaining his beliefs to the manager or his coworkers; so to save face, he

claimed that the manager's actions hurt his ears. This revelation in the mediation led to a tremendous discussion that went on for hours. The manager and the employee apologized and the complaint was withdrawn.

(Folger, 2001, pp. 395-6)

In his analysis of this story, Folger emphasises the absence of a settlement. Rather, the difference achieved in mediation is described with reference to notions such as increased understanding and greater mutual recognition.

Some comments on this story as an example of transformative mediation in action are in order before passing on. As a report on a mediation, the construction of this narrative is interesting. It appears to hinge on the fact that some information was hidden from the manager in the early stages of the conflict and when it is revealed, improved communication can take place and the conflict is resolved. What happens in the several hours of 'tremendous discussion' leading to the exchange of apologies and the withdrawal of the complaint is left out of the story. One can only speculate that this selection of certain narrative elements for emphasis and the omission of others is shaped by the transformative model so that the spotlight falls on the communication that leads to increased personal understanding and mutual recognition. There is no discussion of the work done in cultural discourse to produce relations around these issues. For example, there is no question about why the worker, rather than the manager, has to 'save face', or about what might have been at work in the context of ethnic relations to convey to the worker that his concerns would not be recognised as legitimate if he spoke about 'bad wind' from the start (unless such things were part of the 'tremendous discussion').

Transformative mediation also embraces a wider social vision than a simple transformation of the immediate relationship between the disputing parties. It is a vision of personal 'moral growth' (Bush & Folger, 1994, p. 24) expressed in transformed social environments through the 'bridging of human differences' (Nabatchi & Bingham, 2001, p. 401). In Bernstein's (1996) terms, Bush and Folger's vision is that mediation embrace explicitly a 'pedagogical' function (I shall refer more to Bernstein's version of pedagogy in Chapter Three). The transformative vision is expressed by Bush and Folger in this way:

It involves changing not just situations but people themselves, and thus the society as a whole ... The goal is a world in which people are not just better off but better: more human and more humane. Achieving this goal means transforming people from dependent beings concerned only with themselves (weak and selfish people) into secure and self-reliant beings willing to be concerned with and responsive to others (strong and caring people). The occurrence of this transformation brings out the intrinsic good, the highest level, within human beings. And with changed, better human beings, society as a whole becomes a changed, better place.

(Bush & Folger, 1994, p. 29)

In the United States Postal Service Project, a clear objective was to enhance the working conditions of the entire organisation, not just to clear some particular complaints (Hallberlin, 2001). However, it is clear that the vision of social change being articulated is not about structural or institutional conditions, except incidentally. Bush and Folger specify:

*...transformation does not mean institutional restructuring but rather a change or refinement in the **consciousness and character of individual human beings**. 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. (emphasis in original)*

(Bush & Folger, 1994, p. 24)

Assumptions In Transformative Mediation

It is interesting to note that transformative mediation begins its critique of problem-solving from something of a deconstructive perspective. It pays close attention to the ways in which the mediator's articulation of practice constitutes the parties in several ways, especially in how it pushes ('directs') them towards a

settlement. In a recent conference presentation, four advocates of transformative mediation used a detailed deconstruction of the language of mediator evaluation and accreditation policy documents to demonstrate how a focus on settlement rates meant that transformative mediators were being systematically excluded from a fair hearing on their own terms (Bush, Della Noce, Press & Sharp, 2001). In other words, the transformative perspective shows an inclination to take seriously the work that is done by particular ways of speaking to shape the mediation process.

There is also a greater analysis of the power relations between the mediator and the parties than can be found in the problem-solving orientation. Transformative mediators' desire to give the parties as much control as possible over the process. They demonstrate reflexive awareness of mediators' potential to influence parties' participation in and understanding of both procedural and substantive issues.

However, the transformative notion of empowerment that aims to give parties a 'greater sense of self-respect, self-reliance, and self-confidence' (Bush & Folger, 1994, p. 20) fits within the parameters of the 'rehabilitative/developmental' model of empowerment critiqued by Sara Cobb (1993). Cobb shows how the power referred to in such ideas about empowerment 'lurks unseen in the hearts and minds of disputants, as an attribute of individuals' (Cobb, 1993, p. 248). It reduces to a cognitive mental state, rather than to an understanding rooted in communicative practices or social relations. It refers to an individual state of being empowered rather than to a shift in the structure of a relation.

Transformative mediation claims an allegiance to a social constructionist perspective. However, it is interesting to note the ways in which this claim is constructed. Bush and Folger put it this way:

In the language of contemporary thought, this is a social constructionist view of human nature and society.

(Bush & Folger, 1994, p. 236)

The language of this sentence indicates a certain distance from any kind of easy identification with social constructionism. Seven years later, Folger is similarly cagey:

A 'social constructionist view' is one term that is often used to capture the way people construct meanings.

(Folger, 2001, p. 389)

He specifically does not claim to use this term himself. He makes this comment in the context of arguing a relationship of kinship between transformative mediation and the ideological shifts evident in the development of qualitative research methodologies, in conversation analysis, in the rhetorical turn in social science, and in the possibility of multiple meanings (rather than of singular underlying true meaning) in any piece of communication. But he does not refer to any social constructionist assumptions being built into the transformative mediation model itself.

The apparent reluctance to embrace social constructionism is telling with regard to identifying the dominant discourses at work in transformative mediation. It may contain a number of constructivist elements. Constructivism (Mahoney, 2000; Kelly, 1955) is a philosophical movement that shares with constructionism an interest in meaning making but places less emphasis on the structuring effects of discourse and power relations. Instead, it emphasises the construction of knowledge and meaning 'in the interpersonal context' (Raskin & Lewandowski, 2000, p. 16). While advocates of transformative mediation espouse an openness to constructionist ideas, it does not read as a social constructionist approach. Kruk (1997) refers to transformative mediation as humanistic in orientation and this description seems more apt. The conflict theory implicit in transformative mediation seems to be based on modernist communication theory. The underlying argument runs thus: absence of clear, direct communication can be expected to lead to communication problems which can be resolved when people are able to speak directly to each other with full emotional expressiveness.

The image of the self that engages in this communication is clearly also modernist psychology's construction of self as a rational, goal-oriented, moral agent, possessing resources, exercising conscious choices, and bolstered by processes of empowerment that promote self-respect, self-reliance and self-confidence. It is modified a little by the elaboration of an incipient relational dimension, but it is still the individual self of modernist psychology that is at work in these conceptualisations. As Carrie Menkel-Meadow comments:

... Bush and Folger proudly take on ... the individualization and internalization of problems and disputes. They have 'psychologized' or 'moralized' exactly what ... should remain political.

(Menkel-Meadow, 1995, p. 235.)

Their vision of social change is an inside-out approach. Change the person on the inside (make them more moral, concerned about others) and the social world outside them will be transformed. This sounds more idealist than constructionist. A social constructionist or discursive approach would start in a different place, perhaps an outside-in approach. The constructionist vision is that the self (or selves) is created through the positions taken up in discourse through the articulation of social practices and therefore personal moral development and concern for others might develop as a product of discourse in which such values were featured. It might conceive of social change primarily as achieved in discursive shifts, which are gradually internalised by people, or by institutions, leading to shifts in social practice. A social constructionist approach would also be interested in a more thorough-going deconstruction of how power relations in mediation are constructed in discourse. It would particularly be interested in how people's interests, positions, sense of empowerment and recognition of others are legitimated (or excluded) in knowledge systems and in dominant discourse. Such an interest is not developed in the literature of transformative mediation.

There are critiques that have been advanced about transformative mediation. Carrie Menkel-Meadow (1995) sympathises with the ethics of building the competence of disputing parties and promoting mutual

understanding but roundly criticises the transformative writers for the following reasons:

- a) Transformative mediation's individual focus makes it insensitive to social conditions and even ethnocentric.
- b) It does not specify clearly from what to what it is seeking to transform people.
- c) Despite its claims to being less directive and more process neutral, it is no less neutral with regard to content than is a problem-solving model.
- d) The emphasis on individual growth does not attend well to relationship development, let alone to the group or the community.
- e) The emphasis on personal transformation rather than settlement is too grandiose and ignores disputing parties' frequent wishes to reach settlements.

Novella Keith (1996), while appreciating the shift to a more relational perspective, also raises questions about whether transformative mediation processes adequately address social inequity and power differences.

So where does this sketch of the problem-solving and transformative approaches to mediation leave us? Clearly, neither of these approaches are the last word in mediation practice. Both leave intact the individual subject of modernist psychology and make assumptions about power relations that focus on personal power rather than on a socio-cultural analysis of power. They are both therefore open to criticism from feminist and indigenous cultural perspectives and share a somewhat leaky notion of neutrality. While both open some possibilities for bringing about shifts towards more inclusive social interactions in contexts where people negotiate differences between them, both are also limited by their own assumptive baggage. I believe that the field of mediation is ready for new approaches. In the search for new models and new practices of mediation, I propose that we begin with some recent developments in constructionist psychology and ask whether the elaboration of these ideas into the field of mediation can produce new approaches to conflict resolution. In the next chapter a selection of the most relevant of these ideas will be explained and articulated in relation to the practice of mediation.

CHAPTER THREE

Discursive Positioning

Before I return to the practice of mediation, I want to introduce some ideas that will be relevant to the kind of practice I want to articulate. These ideas will serve as the philosophical basis for the argument of this study and they also offer some specific advantages for the practice of mediation. They enable some useful conceptualizations of the nature of conflict itself and promise greater purchase in the negotiation of ways forward in conflict resolution. These advantages, moreover, have the potential to address some of the problems that have been thrown up by the problem-solving approach, as I have articulated them in the previous chapter. In addition, the same ideas will serve as the basis for the discourse analytic research method that I want to employ.

In this chapter, I shall outline the conceptual tools, drawn principally from social constructionist or discourse psychology, that will be used for the purpose outlined in chapter one, the elaboration of the discursive analysis of positioning in mediation. I shall locate these conceptual tools in the academic conversations where they have developed and select from among the available versions of these concepts those that are most relevant to this project. In order to make this selection, I shall review the problems that I see arising in relation to these concepts and argue that the choices I am making are likely to bear most fruit for the practice of mediation and for the kind of research that can illuminate this practice.

The concentration in this chapter will be on laying the foundation for my use of what I am calling the discursive analysis of positioning. In the following chapters, I shall build on this foundation both an articulation of a practice of mediation that deploys the idea of positioning as a conceptual tool and a research method that uses the same concepts to investigate the effectiveness of this practice in moment-by-moment detail.

So what are the building blocks that need to be laid as foundations for this work? The central concept that will be the focus of this study is 'discursive positioning'. Clearly, then, the idea of discourse needs to be further explained, as does the theory of positioning. But first, I briefly need to locate these concepts in

the general literature of postmodern social theory out of which they arise. Social constructionism is one name for the development of postmodern ideas in psychology and this study will draw on the literature that uses this description. A cornerstone of some versions of social constructionist psychology has been Michel Foucault's (1978; 1980) analysis of the articulation of power relations through discourse. Foucault's ideas help understand the structuring of utterances in mediation contexts and therefore this work needs to be reviewed. However, the analysis of the structuring effects of discourse can appear to erase the possibility of agency in conventional terms. If mediation is to be a relevant site for the expression of resistance to dominant discourses, then a theory of agency needs to be invoked. Therefore, it is necessary to articulate a description of 'personal agency' in terms that can be sustained with regard to discourse theory. I shall show how the theory of positioning is especially useful in this regard because it enables a focus on the individual without losing sight of pervasive social issues in the process. Mikhail Bakhtin's (1981; 1984; 1986) theory of the utterance and his notions of dialogue and heteroglossia are relevant supports for the theory of positioning at this point. The flexibility of this concept of positioning will serve as the basis for the claims I shall make in relation to the practice of mediation. I shall show how positioning helps facilitate the negotiation of ways forward in dispute situations, always in relation to the background discourses at work in the production of a conflict. To introduce each of these building blocks and to specify how I shall be using them is the task of the rest of this chapter.

Postmodernism

This study is located within the broad tradition of postmodern social theory. Postmodernism is a term applied to a loose collection of intellectual movements in a variety of social fields stretching well beyond the social sciences. Some suggest that its centre of gravity lies more in the arts and architecture than in social science (for example, Burr, 1995, p. 12) but it needs to be considered as part of the background against which we can understand the general principles of social constructionist psychology and the specific concept of positioning.

As the term suggests, postmodernism as an intellectual movement is a reaction to the dominance of modernism: a term referring to the approach to knowledge and truth that grew out of the Enlightenment in Europe in the mid-

eighteenth century (Seidman, 1994). Postmodernism casts doubt on the idea that the world can best be understood in terms of the grand narratives or meta-narratives (Lyotard, 1984) of modernist science (based on rationality and objective observation) with their promise of ongoing social progress. Seidman (1994) has summarised modernist culture as built on the following set of organizing assumptions or grand narratives:

Assumptions regarding the unity of humanity, the individual as the creative force of society and history, the superiority of the west, the idea of science as Truth, and the belief in social progress...

(Seidman, 1994, p. 1)

Built on the basis of these assumptions, Seidman details a series of institutional edifices that have entrenched the modernist cultural perspective:

An industrial-based economy; a politics organized around unions, political parties and interest groups; ... the market and state regulation ... role specialization and professionalism ...; knowledges divided into disciplines and organized around an ideology of scientific enlightenment and progress; the public celebration of a culture of self-redemption and emancipatory hope.

(Seidman, 1994, p. 1)

From a postmodern perspective, modernism is characterized as 'in crisis' but far from 'abruptly coming to an end' (Seidman, 1994, p. 1). Postmodernism asks uncomfortable questions of the adequacy of modernist assumptions about truth, knowledge, the relations between the individual and the social, and the possibility of progress, and argues that many historically and culturally specific assumptions have been masquerading as timeless universal truths.

The field of mediation is underpinned by its own grand narratives. The problem-solving orientation assumes the value of applying the scientific method to problems of living. It instructs us first to identify a problem, isolate it from its social context, gather facts about it through objective study, determine the underlying causes (that is, discover the interests or basic human needs), and negotiate a democratic solution to solve the problem. These are the process grand

narratives. There will also be grand narratives that underpin the nature of specific conflicts that mediators work with. For example, in family mediation, narratives about the 'normal' family will be at work. The analysis of positioning in mediation focuses on the relations between these grand narratives and the specific positions in which people find themselves. In other words, the deconstruction of discursive positioning foregrounds the work being done by these narratives rather than leaves them to do their work in the background. It also foregrounds the ways in which people construct themselves in relation to these narratives. The analysis of positioning will also pay attention to the ways in which standard mediation knowledge works to construct the mediator in the 'scientist-practitioner' mould and to construct consequent relations between the mediator and the parties.

Poststructuralism

The concepts of discourse and of positioning also draw from the academic tradition known as poststructuralism. The term poststructuralism derives from a set of academic debates that Lemert (1994) locates as taking place initially in France in the aftermath of the intellectual ferment in Paris in 1968 (see also Peters, 1996). Key figures in these debates were Derrida, Lyotard, Lacan, Foucault, Kristeva and Baudrillard (Peters, 1996). As the name suggests, poststructuralism was an outgrowth of the academic movement known as 'structuralism' in which social phenomena were studied by a process of identifying and analysing their structural elements rather than their surface features, for example, Lévi-Strauss's (1967) analysis of myth.

Structuralism represented a radical questioning of the humanist subject (Peters, 1996). It was built on a linguistic foundation in which meanings were detached from the intentions of the author and explained in terms of underlying patterns, or structures. Levi-Strauss (1967) argued that these structures were ahistorical and universal. Therefore, the specifics of history and culture mattered less to the development of meaning. Realities were to be explained with reference to the underlying structure of language. Whereas humanism might place the individual at the centre of the creation of meaning, structuralism pushed the human subject aside and placed the universal form or structure at the centre.

Structuralist analysis in linguistics was paralleled in Marxist analyses of social structure that privileged the economic determination of ideological

formations. In Marx's analysis (Tucker, 1978), within a given social system of organisation, the structural economic base of the means of production (including the social relations of production) determined the social class relations and the superstructural world of ideology, rhetoric, art, religion, fashion and politics. In order to understand the ideological and political world it was necessary to refer back to the economic or material base for the major organising forces (Tucker, 1978). Political, religious and philosophical ideas were thus relegated to the position of social effects and stripped of the possibility of originary force. As Vivien Burr (1995) points out, ideology per se was always to be suspected, in Marxist analysis, as 'false consciousness' and human beings were considered almost as irrational and unwitting puppets of social and material forces beyond their control.

However, if all ideas and ideologies are simply epiphenomena of the underlying structural economic base, it becomes problematic to trust any analysis of the social world because it must be assumed that the analysis itself is a product of the underlying structure. This is a problem for economic determinism when it comes to agreeing on a strategy for action to bring about social change, since any political strategy could be criticised on the same basis.

Another problem with such a deterministic view (Chouliaraki & Fairclough, 1999, p. 2, refer to an 'emphasis on structural constraint' in social theory) is that it leaves little room for the exercise of moral agency. Political analysis is possible but it is difficult to say how it can lead to effective action. Political struggle might be pursued but, in the end, will not be decisive. Only structural shifts in the relations of production, such as through revolution, can achieve real social change. Mediation, or therapy, for example, can scarcely be conceived of as sites of worthwhile activity for social change. At best, they might help people bear their suffering. At worst, they might actively alienate people from their essential class or gender interests and adjust them to tolerate rather than challenge oppression.

Marxist theory developed a less deterministic emphasis when Gramsci (1971) proposed a theory of hegemony that included a cultural perspective as well as a purely economic one in his analysis of social change. In his view, ideology was not simply identified with a systematic 'false consciousness' produced only as an effect in the social superstructure. Rather he saw ideology as present in a more organic way as part of the struggle between bourgeois and working class

collective wills made materially evident in social institutions and apparatuses. If a hegemonic formation was understood as produced out of such a struggle, then it was less determinate in advance of the historical specifics of that struggle (Laclau & Mouffe, 2001). He had at least argued that agentic struggle against structuring social forces was worth the effort and that it could make a difference to the course of history and the materiality of people's lives. However, as Laclau and Mouffe (2001) point out, the essential interests of social classes still constituted an underlying structural driving force in the formulation of the struggle for hegemony in Gramsci's analysis.

The poststructuralist critique goes further in challenging the reliance on essential structures, although it also retains some continuity with structuralist thought (Peters, 1996) through its further challenges to the humanist subject. Poststructuralists like Foucault (1969; 1972) suggested that it was not possible to adequately account for social phenomena with reference to their essential structures because those structures were themselves constructed out of the social world that was mapped onto them through discourse. Lemert (1994, p. 265) describes the poststructuralist project as focussed on the practice of 'decentering' the idea of an essential structure, whether we are referring to linguistic structures, psychological structures or social structures.

Poststructuralist social theorising has sought to disestablish what used to pass for essential certainties in social science. For example, in Marxist social theory, the essential interests of the working class and the inevitable progress from a capitalist economic system to a more socialist one are argued against as either contestable or no longer able to be sustained (Laclau & Mouffe, 2001). Radical feminist critiques of the essential opposition of men and women were transformed by a new emphasis on the discursive production of gender that was not essential at all (Laclau & Mouffe, 2001).

Michel Foucault (1969; 1978) challenged the foundations of knowledge in social science by arguing that knowledge was not only inseparable from the flow of discourse but that it was also deeply implicated in the production of power in social relations. Particular historical and cultural contexts, argued Foucault, are productive of, and at the same time products of, the knowledges and assumptions about the world out of which we operate and our assumptions about the world are cultural artefacts more than they are positive facts. To notice this does not make these assumptions wrong, but it may limit the functionality of these assumptions

to the cultural world to which they belong. We might also do better to think of them as inevitably tied to a particular social context, rather than as universal truths.

Hence, there was no position from which it might be possible to formulate knowledge of the social world that was objective and free from a culturally-imbued perspective. Foucault's argument asks us to enquire into the knowledge that has been generated in the field of mediation and ask questions about the power relations that might be fostered by the application of this knowledge. These questions might include, 'Who is advantaged by this knowledge?' or 'What relational positions are made legitimate within this knowledge?' or 'Whose interests are excluded by the dominant discourses at work in the production of this knowledge?'

Poststructuralist thinking then makes the process of knowledge construction a subject of study. Knowledge and discourse are understood as integral to the social construction of relations between people. Personal identity, social categories, relationships and families need to be understood with reference to the work done by discourse more than with reference to underlying essential structures.

Since discourse is produced in the exchanges that take place between people in various sites of interaction or conversation, it follows that specific sites of interaction can be studied in order to understand how discursive meanings are negotiated within them. Thus Fairclough (1992) is able to speak of counselling (and the same might be said of mediation) as an 'ambiguous practice', not essentially either oppressive or emancipatory, but potentially either, according to how and in which contexts it is practised.

Poststructuralist writers further challenge the subjectivist account of the human subject that has been a feature of liberal humanist thought since the Enlightenment. Foucault, in particular, sought to decentre the position of 'man', and especially the individual, as the 'creative force of society and history' (Seidman, 1994). Foucault (1969) argued that the concept of the human being of the social sciences was not so much discovered by scientific method as it was created by and within such a method. Derrida (1976) contributed to the decentering project with his efforts to 'deconstruct' text in ways that diffused the position of the author. Instead of meaning being inherent in either the text or in

the intentions of the author, Derrida proposed an idea of meaning as produced in the shifting field of interpretation between the reader and the text.

Applied to the practice of mediation, these ideas suggest a revision of the simple assumption that conflicts can be understood with reference to the underlying 'interests' of the disputing parties. These interests, or needs, are assumed to proceed either from what is essential in the individual or from an essential position within a social structure. If we decentre the subject of the problem-solving discourse and imagine how discourse might offer people subject positions, then the notion that a conflict might originate in parties' underlying (structural) interests slips a little. It becomes of more interest to think about the discursive influences on what someone is saying than to assume that what they are saying corresponds to an internally driven need. If the meaning of a person's utterance is shaped to at least some extent by social forces constituted in discourse, then the search for the underlying interests in the problem-solving method may not be enough. Instead, from a poststructuralist perspective, the interests that may be driving a dispute may be sought in the interplay of discourse that takes place between the individual and the social world around them. Such interplay of discourse would have to include the conversation that takes place in the mediation itself. Hence, an implication of poststructuralism is that we take more seriously what actually happens in the mediation conversation and consider the possibility that the conflict, and the respective parties' interests, may actually still be in production through the process of dialogue in mediation, rather than already structured by underlying essences. If this is so, then it also follows that it may be transformed in that moment in some way as well.

The Concept Of Discourse

The poststructuralist concept of discourse is the basis for the approach to the discursive analysis of positioning that I want to make use of in this study. However, this usage is far from consensual and it is necessary to lay out carefully the basis for my own use of it in this context in more detail than I did in Chapter One. 'Discourse' is not a hard and fast category in itself. Many different usages of the term overlap. Therefore MacLeod (2002) suggests that it is preferable to speak about 'conceptualisations' of discourse rather than 'definitions'. I am using it in the Foucauldian sense to signify a description of a social practice. In order to

distinguish this usage let me briefly review some different ways in which the term discourse has been used.

Fairclough (1992) notes that in some contexts 'discourse' is taken to refer to extended samples of spoken dialogue rather than written texts, while, in other instances, it is used to refer to different types of language used in different social contexts (for example, the discourse of classrooms, courtrooms or medical consultation rooms). There are also conceptualisations of discourse that make distinctions between the use of the term discourse and the use of other linguistic elements of analysis, for example distinctions between 'discourse' and 'text' or 'genre'. One such simple conceptualisation describes discourse as:

A stretch of language consisting of several sentences, which are perceived as being related in some way.

(Nunan, 1993, p. 5)

This conceptualisation does not go far enough into the analysis of social practice for my purposes but it does capture the aspect of coherence across units of linguistic analysis and directs attention to the relatedness of words in their meaning content. It at least points to the possibility of appreciating the constructedness of meaning systems. The idea of meaning systems leads us to an understanding of discourse (and a focus in its analysis) that includes more than the immediate linguistic context. For it is in discourse that people take perspectives on a number of potentially contestable aspects of life. Hence discourse can be understood as the domain in which what is 'normal', what is 'acceptable', what is 'right', what is 'real' and what is 'possible' are constructed (Gee, 1999, p. 2). Gee offers another conceptualisation of discourse:

In the end a Discourse is a 'dance' that exists in the abstract as a coordinated pattern of words, deeds, values, symbols, tools, objects, times, and places, and in the here and now as a performance that is recognized as just such a coordination.

(Gee, 1999, p. 19)

This conceptualisation emphasizes the performance aspect of discourse. It points to the moment of interaction and to the way the social exchange that takes place in

this moment embodies more than what is immediate, or more than what is present in the intentions and consciousness of the performers. The inclusion of these dimensions of discourse is useful in the analysis of actual conversations and connects with conceptualisations that emphasize the use of discourse as a social practice. As we perform acts of social significance around particular understandings of what is right or normal or real and so on, we embody these understandings in practice. This is why conceptualisations of the concept of discourse take us into the domain of the social and particularly into descriptions of widespread social practices.

Foucault was a leading contributor to the development of an analysis of the social world with reference to the concept of discourse. His definition of discourse picks up on the notion of social practice and has been widely quoted. He calls discourses:

...practices that systematically form the objects of which they speak.

(Foucault, 1969, p. 49)

This conceptualisation brings together several features of discourse. One is the use of the word 'practices' which suggests what Burr (1995) refers to as the performative function of language through which people act upon the world. Discourses are not simply representations of such acts. Words make a difference to reality, they do not just report it. MacLeod (2002) argues in this regard that Foucault wished to restore to discourse its character as an 'event'. The word 'practices' also suggests a wide enough view of language to include more than a narrow lexical focus. Discourses as practices include, for example, nonverbal communications, visual symbols, clothing or architectural constructions, as well as words in their written or spoken form.

The word 'systematically' in Foucault's conceptualisation suggests something wider than the individual as the social context in which discourse lives. It makes no sense to say that a person has her own personal discourse. 'Systematically' also suggests a structuring and organising principle. Discourses are repetitive and patterned. The objects Foucault refers to are the nominal categories of our world. They include physical objects, activities, identities, forms of embodiment, relationships and social groupings (Gee, 1999; Willig, 1999). Ian Parker (1992, p. 5) has suggested that a discourse is a 'system of

statements which constructs an object', in part echoing Foucault's definition. Knowledge is theorised in this way as a system of statements that are produced out of discourse. The final words of Foucault's definition are 'the objects of which they speak.' Here the speaking folds back into the practices mentioned at the start of the definition. The effect is to suggest the reflexive logic of the workings of discourse. Gee (1999) describes this as the 'reciprocity' of language and 'reality'. Through discourse we simultaneously reflect the way the world is and we construe it or construct it that way. Practices produce objects, which we speak about, which speaking then becomes a practice. But if we allow for the possibility that each speaking is unique in its context, even though patterned and apparently repetitive, and can make subtle shifts in response to its unique context, then the notion of discourse does not have to be deterministic in character.

What is also implied here is that there is nothing that can be said to exist outside the world of discourse. This view, of Foucault and others (for example Derrida, 1976), is a strong stand on the centrality of discourse. Not everyone would go along with it. Chouliaraki and Fairclough (1999), for example, argue the more palatable view that discourse mediates other 'moments' of reality.

However, Foucault also pointed out that his own uses of the term discourse were varied. He comments:

Instead of gradually reducing the rather fluctuating meaning of the word 'discourse', I believe I have in fact added to its meanings; treating it sometimes as the general domain of all statements, sometimes as an individualizeable group of statements, and sometimes as a regulated practice that accounts for a number of statements.

(Foucault, 1969, p. 80)

We can read here an effort to avoid reducing a concept to any stabilized essential meaning. Discourse itself is being treated as if its meaning retains a degree of indeterminacy. We can also hear an emphasis on discourse as a systematic concept. It accounts for the socially consistent nonrandom aspects of the relations between utterances. In this sense, it works to help us make sense of our experience of the world and to reduce a sense of everything being free-floating and indeterminate.

However, there are other ways of approaching the concept of discourse. Laclau and Mouffe begin from the concept of articulation and refer to a discourse as the product of the articulation of social interests.

... we will call articulation any practice establishing a relation among elements such that their identity is modified as a result of the articulatory practice. The structured totality resulting from the articulatory practice, we will call discourse.

(Laclau & Mouffe, 2001, p.105)

In a process of the articulation of a social practice, a system of differences, and therefore relations, are fixed, or are dislocated and refixed in some new arrangement. This arrangement can be called discourse. Laclau and Mouffe stress that discourse is not of a purely linguistic character. It also must 'pierce the entire material density of the multifarious institutions, rituals and practices through which a discursive formation is structured' (p109).

This conceptualisation is similar to one that, elaborating from Foucault, describes discourse simply as '... any regulated system of statements' (Henriques, Hollway, Urwin, Venn & Walkerdine, 1984, p. 105). The emphasis here is on widespread social formations and the means by which they are reproduced. Attention is drawn away from the smaller scale, more local and immediate, sometimes ephemeral aspects of discourse.

The choice of definitional emphasis needs to relate to the research purpose of a particular discourse analysis exercise. I want to use the concept of discourse in order to elaborate the detail of a conversational practice and the local effects of discourse in the process of sometimes subtle change. The lens chosen therefore needs to focus more locally and be sensitive to the subtler aspects of discourse than if I was focussed on the analysis of larger systematic social phenomena. The latter still have to be considered in their local manifestations but my operational definition of discourse needs to gesture more to what Laclau and Mouffe call 'points of rupture' than to 'systematic regulation' against the emergence of such ruptures.

Fairclough's (1992) conceptualisation therefore has appeal because it focuses our attention on the articulation of social practices rather than on systematic regulation.

... discourse is a mode of action, one form in which people may act upon the world and especially upon each other, as well as a mode of representation.

(Fairclough, 1992, p. 63)

From this perspective, different discourse contexts and different constructions of knowledge produce different ways of acting on the world. Burr (1995, p. 5) cites the example of the difference between constructing drunkenness as morally blameworthy or as an illness, leading to different social responses: imprisonment or treatment. Thus how we talk to each other matters, because when we talk we construct the world, constitute our social life and fashion our future (Gergen, 1999).

It follows that we should think of mediation conversations as sites for social action, where social relations are in the process of construction. We should also be alert to the relations between established knowledge in the mediation field and the social processes that have produced them. The approach to the discursive analysis of positioning that follows should therefore adopt a critical stance towards taken-for-granted knowledge in the field of mediation.

Fairclough's emphasis is also on how discourse can be made open to detailed textual analysis. He has expressed a reservation about Foucault's understanding of the operation of discourse. Fairclough (1992) argues for a more limited view of the role of discourse among other social forces which contribute to the constitution of reality and develops this further with Chouliaraki (1999) when they refer to discourse as the 'semiotic elements of social practices' in distinction from other 'moments' of social practice (Chouliaraki & Fairclough, 2001, p. 38). These other 'moments' might include material practices, institutions or sovereign power. They are all internalised in social relations through the mediating aspect of discourse.

This distinction opens up a knotty problem in discourse theory: is it necessary, or indeed possible, to make a distinction between discursive and nondiscursive practices? Chouliaraki and Fairclough want to be careful not to reduce the whole of social life to discourse. They argue that people can interact nondiscursively and cite the example that people can interact for instance by tidying a house together (Chouliaraki & Fairclough, 2001, p. 38). Parker would

agree with the Chouliaraki and Fairclough position, preferring to emphasise the independent reality of objects outside of discourse, which are nevertheless ‘given *another* reality by discourse’ (Parker, 1992, p. 9). For Laclau and Mouffe (2000) however, this position is not good enough. They take the view that, ‘... every object is constituted as an object of discourse’ (p. 107) and would see the practice of tidying the house as articulated within discourse and inseparable from it.

The resolution of this theoretical debate is not the focus of this study. Nor is this ontological argument crucial to the epistemological basis for my study. There does at least seem to be agreement that in practice we cannot study social phenomena except through discourse. This idea in itself makes the analysis of how discourse constitutes social relations a legitimate object of study. Mediation must by its very conversational nature entail the articulation of conflict through discourse and the question of whether there is anything else that lies outside of discourse is not crucial to the pursuit of a discursive perspective on mediation.

Fairclough (1992) takes Foucault to task for making the concept of social practice central to his definition of discourse (see above) but then being more confusing in his specification of what a social practice is. Foucault’s definition, according to Fairclough, references it back to the effects of social structures. Fairclough’s purpose is to emphasise the idea of a social practice as quite simply ‘real instances of people doing or saying or writing things’ (p. 57). This criticism may not be fair to Foucault’s rather different project but Fairclough’s emphasis nevertheless directs attention to the importance of the close analysis of particular instances of social practice in context.

Fairclough, in combination with Chouliaraki, has later developed the conceptualisation of social practice in a fuller way. They argue that social practices are:

...habitualised ways, tied to particular times and places, in which people apply resources (material or symbolic) to act together in the world.

(Chouliaraki & Fairclough, 1999, p. 21)

Discourses are instantiated in practices and realised in texts (MacLeod, 2002). The advantage of focussing on practices is that they are a point of connection between abstract structures and the mechanisms by which they are maintained and

reproduced, between society and people, between the general rule and the specific application.

The word practice also refers to more than just the semiotic aspects of discourse as well. There is a sense of activity in this usage as well as a sense of this activity being rehearsed frequently and repeated often. Thus practices may be actions or they may be words conceived of as acts upon the world (rather than just reports or representations of acts).

Chouliaraki and Fairclough (1999, p. 22) suggest three characteristics of social practices. First, they are forms of production of social life. This 'constitutive' claim contrasts with the structuralist determinism of classical Marxism in which the production of social life is always referenced back to the underlying economic base, not to the stuff of conversation. Secondly, social practices are always located in a network of relationships to other practices. In this way, a sense of social coherence is possible. Thirdly, social practices have a reflexive dimension. They generate representations of what they do as part of what they do. Social practices vary greatly in their degree of complexity and nature. Simple practices are often tied in with more complex practices.

An advantage of the concept of discourse that emphasises social practices is that it allows for the conceptualising of local interactions (such as the exchanges in a mediation conversation) as sites of struggle where competing and contradictory representations come into contact. The working out of these competing representations always has the potential to change dominant discursive formations (Chouliaraki & Fairclough, 1999, p.105). Therefore we can theorise mediation practice as potentially contradicting and challenging (even changing) the dominant hegemonic influences in a given social context, rather than just being shaped and determined by them.

At a more comprehensive level of social abstraction, the range of discursive practices within a given society or institution have been described by various writers as 'orders of discourse' (Foucault, 1971; Fairclough, 1992; Chouliaraki & Fairclough, 1999; Laclau & Mouffe, 2001). Orders of discourse represent the more enduring (for example across centuries of a particular civilisation) and more pervasive (assumptions so widely taken-for-granted as to be scarcely noticed as products of discourse) aspects of social practice. An order of discourse consists of a large number of discourse elements configured in a way that informs the ongoing production of many social practices. It serves a

stabilizing, social 'ordering' function. Particular instances of social practice then must take place within the context of background orders of discourse and in some way respond to them. The concept of 'orders of discourse' is useful to the analysis of conversation because it enables the analysis to make links between discourse as the actual words being said and discourse as the background systems of meaning against which what is said becomes meaningful.

Discourse Psychology

The concept of discourse has been applied across a range of academic disciplines. For my purpose here, however, it is necessary to concentrate primarily on the discipline of psychology as the discipline upon which the practices of mediation draw most strongly. We can use the concept of discourse to illuminate social practices at the level of institutions and political movements. But here I am most interested in its value for making sense of the production of subjective experience and personal relationships. This focus has been primary for the field of discourse psychology that has developed in the last fifteen years. Discourse psychology has a particular role to play in the development of discourse theory through the study of the power of discourse to shape how people think, behave, talk, respond to each other and experience life (Burman & Parker, 1993).

There is by no means complete consensus about the assumptions that form the basis of discourse psychology, but for working purposes, I shall outline the assumptions on which I shall build. The first assumption of discourse psychology is that we cannot study the mind outside language, or outside of discourse (Burman & Parker, 1993). What happens in our minds is composed of language elements which embody 'shared patterns of meaning'. Since these categories of meaning often exist long before any individual's use of them in language, we can think of ourselves more often as 'carriers' of discursive meanings than as 'originators' of such meanings (Gee, 1999, p. 18). Hence, if we use the concept of mind in discourse psychology, we are using it in a sense that emphasises its social or discursive dimensions rather than thinking of it solely as an individual private domain (Gee, 1999, p. 52; Gergen, 1999, p. 133).

In a social constructionist approach to mediation then, we should look primarily to the role of discourse in the production of conflict rather than looking primarily to the internal dynamics of 'mind' to explain the source of a conflict.

Rather than uncritically seeking out underlying psychological interests, it might be important for mediators to ask how these interests are formed out of discourse rather than assuming some pure internal driving force that is free from discursive influence.

Psychology, from this perspective, becomes a study of how social and cultural conditions give rise to discursive meanings, which in turn come to constitute subjective experience. As Miller Mair (2000) suggests, a psychology that is conceived as a discipline of discourse is 'almost a mirror image of the kind of psychology that holds centre stage at present' because it 'takes as crucial what most empiricist, fact-finding, experiment-reporting psychology suppresses almost entirely' (p. 341). A discourse psychology entails studying how the description of social and personal realities actually can have the power to bring them into material being (Willig, 1999, p. 2). In this sense, it can be said that we 'speak ourselves into existence' (Davies, 1991, p. 42). Or, 'In the act of speaking I become a different being' (Mair, 2000, p. 340). Or, discourse does not just describe the world, it acts in the world (Pujol, 1999). When psychology is approached in this way, the conventional categories on which it has been based (for example, personality, behaviour, cognitions, attitudes, emotions) may need to be reconceived from a discursive perspective. One reason for this is that these categories themselves are seen to be products of discourse rather than essential categories of the universal human psyche (Burr, 1995; Willig, 1999, p. 2; Banister, Burman, Parker, Taylor & Tindall, 1994, p. 92). Therefore they can be read as texts and made available to a deconstructive scrutiny.

We can therefore study the 'texts' (spoken and written) of discourse, including transcripts of conversation, and claim (with Burman & Parker, 1993) that we are studying the stuff of psychological experience. On this basis, this dissertation makes its claim to be a study of the psychology of mediation. It will build this case on the basis that the texts of a mediation conversation are manifestations of the discourses at work in the production of a conflict and can stand for these discourses for research purposes.

Because meanings are produced and reproduced in social discourse and in particular contexts, they are always to some extent unstable, are constantly shifting and changing, and multiple meanings are always possible. This point is made by a series of writers about a constructionist perspective in psychology (Banister et al., 1994, p. 93; Burman & Parker, 1993, p. 3; Gee, 1999, p. 40).

Therefore, an individual's psychological make-up does not appear as stable from a discursive perspective as it might from a more essentialist perspective. Personal identity or subjectivity or 'situated identity' (Gee, 1999, p. 39) does not emerge from within but is negotiated through discourse in conversation and interaction (Burman & Parker, 1993, p. 7; Burr 1995, p. 50; Widdicombe, 1993). From a constructionist perspective, then, the 'self' is not understood as a unitary, stable location that is theoretically prior to discursive interaction. Thus it has been suggested that one's 'self' may be different in different interactions (Gergen, 1994; 1999) and that human beings may be described as having multiple selves rather than a singular self. If this is the case, or even if identity is able to be storied in multiple ways while still retaining some continuity from one conversation to the next, then a constructionist perspective destabilises any claim for a permanent psychological structure. It is also obvious enough in elaboration of this idea that 'identity' as a stable psychological category begins to break up. It looks less like a constant essential core located in the mind of the individual and carried around from one context to another. Instead, it moves into a shifting field of production, permeated by discourse. This 'identity' is not only responsive to the encompassing storms of pervasive orders of discourse, but is also sensitive to the subtle zephyrs of particular conversations. Small wonder that we sometimes experience ourselves and each other as inconsistent!

There have been a series of attempts to reconfigure the concept of identity in a postmodern way. Foucault sought to clear the ground by undermining the humanistic concept of identity that has formed the basis of modern psychology. Bruner (1986) argues for a provisional identity on the basis of narrative coherence rather than on naturalistic grounds. McNamee and Gergen (1999) have attempted to construct a relational description of identity. Social constructionist theorists (Gergen 1994; 1999; Shotter and Gergen 1989) have put forward the idea of multiple identities. Gergen (1991) argues that 'multiphrenia' is a normal feature of modern existence. Others have argued for subjectivity as originating in multiple points of origin (Henriques et al., 1984) leading to a developmental psychology based on cultural influences rather than on unfolding inner essences (Bird & Drewery, 2000; Olssen, 1991).

All these attempts to decentre the stable subject of psychology and the straightforward notion of personal identity render even more problematic the effort to discover the underlying interests of parties in mediation. If a person's

centre shifts according to the discursive context they are in, then underlying interests might be more ephemeral than at first appears and might be produced in their particular form by the mediation context itself.

Distinguishing Discourse From Related Concepts

In order to use the concept of discourse in the rest of this dissertation, I shall pause for a moment to distinguish it from some other concepts. One of these is the concept of genre. The concept of genre was emphasised by Bakhtin (1981; 1986) sometimes in ways that are now better reserved for the concept of discourse. But genre is still a useful notion. It refers to a conventional pattern of interaction that takes place within the territory governed by particular orders of discourse. As Fairclough (1992) says, a genre is a particular type of language used in the performance of a particular practice. It has a quality of stability to it, it is socially sanctioned within orders of discourse, it implies a particular text type (for example, a job interview, a television documentary, a poem) and it is often associated with a particular style. Genres shape interactions to fit within time frames and institutional demands. They are ordering devices that constitute 'particular degrees of insulation between subjects' (Chouliaraki & Fairclough, 1999, p. 118).

Traditionally, the term genre has been reserved for literary discourse but Bakhtin (1986; also Fairclough, 1992; Shotter, 1993) has argued specifically for the importance of the concept in speech as well. The counselling or mediation interview, for example, is established now as a conversational genre which constitutes lay and professional practices in certain patterned ways and positions client and professional in patterned relations. One will ask the questions and the other will answer them. One person's life will be the subject of conversation and the other's will not. Shotter relates genres to sets of related and patterned (albeit continually changing), 'speech positions' that 'permit us as speakers certain forms of addressivity, that is, to aim our speech at the positions of others' (Shotter, 1993b, p. 383). This idea is better pursued below under the heading of 'positioning' but the point here is that genres set up ritualised patterns for discursive interaction. The notion of genres therefore accounts for some of the determinacy and predictability of dominant discourse but does not account for the variability that Shotter alludes to.

The term 'conjuncture,' advanced by Chouliaraki and Fairclough (1999), is also useful for making distinctions between certain types of discursive contexts. It lies between the idea of social structure and a particular event. It describes a particular repeated type of social practice and is distinguishable from a genre. A conjuncture is a type of social practice that is repeated across a range of events or instances at different times and places at which similar discourses come together. For example an election or a court hearing might constitute a specific type of project that has many variations in relation to a range of institutional contexts but we can look for and expect to find some common discourses at work in each instance. At such a conjuncture, a particular range of practices are assembled that bear a stronger relation to other elections or court hearings than they do to the nature of the institutional context in which they are being deployed. An election of a board chairperson for a public company may therefore have discursive similarities with the election of a trade union shop steward because they have connections as conjunctures rather than because the social contexts are similar. Gee (1999, p. 82) uses the word 'situation' to describe roughly the same concept. Conjuncture refers to the particular type of social practice, whereas genre refers to the style and context of language used in such a context. A conversation with a mediator has conjunctural elements about it that are likely to call forth particular forms of social practice that will resemble other instances of such conversations within quite different contexts. For example, a divorce mediation will contain practices that resemble a commercial dispute resolution process or an international treaty negotiation, even though the contexts for these conversations vary considerably.

Power Relations

The concept of discourse offers the opportunity for reformulations of the workings of power in social relations. Rather than a simple equation of power with economic structural position, the concept of discourse enables us to appreciate some greater complexities in relations of privilege or domination. The work of Foucault (1978; 1980) has been most influential in spelling out the discursive construction of power relations in the modern world. He noted that social control and social privilege are frequently predicated on different technologies than they used to be in medieval times. Rather than relying solely

on the 'sovereign' power produced by inducing fear of top-down physical force, in the modern world we have created a series of technologies for the construction of power relations more from the bottom up, without the use of force (Foucault, 1978). Such technologies produce relational positions of greater or lesser privilege through regulating the flow of discourse in particular ways.

In particular, Foucault noted how our knowledge systems - that is, constructions of phenomena produced in discourse that have 'received the stamp of truth' (Burr, 1995, p. 64) - operate to create descriptions of normality in personal and social life and then seek to measure and categorise deviations from the norm. Because there are recognisable consequences for being positioned on the margins of what is normal within a given discursive context, such as exclusion from opportunities that are available to others, it is necessary for people to work to produce themselves within the range of the norm. In order to be 'normal', it is continually necessary to be conscious of how one appears from the outside to the 'gaze' of those who have the authority to interpret social norms. We are encouraged in the modern world to constantly scrutinise our own behaviour, to ask ourselves questions about our own normality, to measure ourselves against officially sanctioned yardsticks, to consult 'experts' to help us scrutinise ourselves, and to confess our deviations from the norm (Burr, 1995; Foucault, 1980). Foucault termed this form of power 'disciplinary power' because it involved the twin operations of external surveillance and internal compliance with norms to create conformist or docile behaviour.

Modern technologies of power have spawned multiple systems of surveillance to the extent that we are required to be constantly vigilant in the policing of ourselves with regard to social norms. Surveillance and evaluation are backed up with technologies of note-taking and recordkeeping. We fill in forms and constitute files about ourselves which are kept and used to stabilise our relational positions vis-a-vis the world. In this way, disciplinary power shapes the production of subjectivity.

Examples of surveillance abound. The census is an example of the kind of form-filling exercise in which people are required to produce themselves to fit a particular range of identity categories. In the process the categories themselves are reproduced and a range of identity possibilities is defined and a normal range of distribution within categories is published. Another simple example exists in the use of speed cameras to produce driving behaviour within an acceptable range

of normality. They operate by inducing among drivers the awareness that they may be being watched and evaluated at any moment in relation to a defined norm (a speed limit). This awareness leads to drivers monitoring their own speed and controlling themselves most of the time, without the necessity for promoting a fear of being tortured, or of being put to death, as an example to others who might be found speeding.

The key feature of such modern technologies of power is that the mechanism of social control is placed inside people's subjectivity rather than outside. Docility, or conforming behaviour, is produced willingly and voluntarily, rather than reluctantly and forcibly. In this sense, these technologies produce hegemonic relations of privilege, if we understand hegemony to be the process by which power relations are based on consent rather than on coercion (Chouliaraki & Fairclough, 1999). Such hegemony is achieved according to Chouliaraki and Fairclough (p. 24) by the 'naturalisation of practices and their social relations' in discourse. They become treated as 'common sense relations' (Burr, 1995, p.63) apparently with little political import. In this way they are stabilised and obscured from view, and their articulation is made to seem relatively permanent.

Some other features of this modern form of 'disciplinary power' deserve noting too. First, power is not imposed from above in a hierarchical way. Power is distributed in everyday social practices and in every domain of life (Fairclough, 1992). We are all participants in its ongoing production and reproduction. Neither is there a conspiratorial central cadre who 'hold' power of this kind but rather a 'great anonymous murmur of discourses' (Foucault, 1989, p. 27). Indeed, Foucault argued against the use of a metaphor of power as a material commodity that can in any way be 'held'.

Power is not something that is acquired, seized, or shared, something that one holds onto or allows to slip away; power is exercised from innumerable points, in the interplay of nonegalitarian and mobile relations ... Power comes from below; that is there is no binary and all encompassing opposition between rulers and ruled at the root of power relations and serving as a general matrix.

(Foucault, 1978, p. 94)

His suggestion is that power is constructed as a property of a relation rather than held by individuals, or for that matter, by institutions. It developed from below in the procedures and microtechniques (such as the examination, the interview, the file) of modern social institutions such as the prison, the hospital or clinic, the school, the army, the factory (Fairclough, 1992).

The next point is that such power is often best thought of as productive or constitutive rather than as repressive (Burr, 1995; Fairclough, 1992; Foucault, 1979). Foucault suggested that if we focus only on repression we direct our attention only to the peripheral aspects of power relations and miss the larger picture.

In general terms, I would say that the interdiction, the refusal, the prohibition, far from being essential forms of power, are only its limits: the frustrated or extreme forms of power. The relations of power are, above all, productive.

(Foucault, 1989, p. 147)

Dominant discourses function productively to make us up in relational contexts that are always imbued with power, that is, with privilege and with differential opportunity to act. In discourse we produce knowledge, produce patterns of social relation, and produce identities, attitudes, intentions, bodily manifestations, sexualities, concepts, thoughts, or emotions. We form identifications and identities out of the dominant discourses of our world. We construct our sense of entitlement in life (and thereby positions of greater or lesser privilege) in such a way that we scarcely need to be coerced into compliance with social norms. Out of the positions constructed in such power relations, we are granted access to social and economic resources such that we can have an effect in the world.

In mediation, therefore, we can expect to find the operation of discourse in the production of power relations between the participants. Disputants will draw upon dominant discourse to legitimate their claims of entitlement. For example, in family mediation contexts parents will debate the 'needs of the child' in terms that are built on the basis of knowledge that is produced in discourse. We can also expect that this knowledge will legitimate privileged positions to some mediation participants and de-legitimate others according to what is dominant in discourses of gender, social class and sexual orientation. In the background of the

family disputes that are brought to mediation will also lie the systems of surveillance set up by statutory authorities and implemented by the courts, by social worker interventions and by psychologists who evaluate family relationships. The norms of family life, established in psychological knowledge and social work practice, will be kept in place by such surveillance and parents will be required to produce themselves to fit the norms in response.

Therefore we can scarcely expect that when disputing parties in mediation speak of their interests they are speaking only out of internal individual needs. Rather they will be participating in the negotiation of relationship in terms that can only be drawn from the world of discourse in which power is always already implicit. What is needed then is an approach to mediation that takes account of power relations and the work done in discourse to produce them.

Narrative Theory

Another vessel of thought that has anchored in the same bay as discourse theory but has sailed through slightly different waters to get there can be called narrative theory. The narrative idea is that life can be understood better through the study of stories than through the unearthing of factors and causes along traditional scientific lines. It is necessary to explore the narrative perspective a little because it has given rise to the approach to family therapy that I want to draw from in considerable measure to articulate a practice of mediation. It is therefore another building block on which the argument of this dissertation is based.

It is a commonplace to observe that human beings live in and through stories (Neimeyer, 2002; Randall, 1995; White & Epston, 1990). We tell each other accounts of our day, our childhood or our plans for the future. We convey cultural and moral messages to our children about how to do life through stories. We read stories in newspapers and novels and watch stories unfold in plays, movies and television shows and make sense of our own lives in relation to these. We construct mythologies to explain the universe in narrative forms. We describe our dreams as stories. We tell stories in our courtrooms, therapy rooms and barrooms and trust the narrative form implicitly as an adequate account of events. In mediation contexts, people place great store on the opportunity to tell their story and most approaches to mediation (including Bush & Folger, 1994; Fisher &

Ury, 1981) acknowledge the importance of parties being given the chance to tell their story.

Narrative theory grants greater importance to this aspect of human life than has usually been credited in modernist scientific understandings of social science. If we consider the possibility that stories are not just told about things and serve to represent them somewhat neutrally, but that they work to construct our understandings and representations of life, then we need to pay much more attention to them. If stories shape and organise our experience, then they are taking over some of the work otherwise assumed by underlying essences and structures. In conflict situations, it follows that we might expect the ongoing viability of a conflict to be grounded in a clash of stories as much as in causal factors such as unmet needs.

Writers about a narrative perspective in psychology have proposed that stories have a structuring effect in people's lives (Bruner, 1986; Gergen and Kaye, 1992; Sarbin, 1986; White, 1989; White and Epston, 1990). In this view, narratives serve a constructive function in social life, not just a representational function. As we make decisions and take actions on the basis of a narrative plot trajectory and our place within it, the story takes on a creative function. It makes a difference to reality. It does not just reflect it. In mediation then, as disputing parties tell their stories, they are not simply reporting on a pre-existent truth. Even in the telling of a story they can be said to be constructing various truths, such as their own sense of entitlement, illegitimacy of the other party's story, or positions from which to relate to the other party and to the mediator.

A narrative perspective in psychology also proposes that stories assist people in establishing coherence in life (Bruner, 1986; Neimeyer, 2000; Randall, 1995). Through stories, we organise our sense of ourselves and of others to reduce the complexity and confusion of existence. We give meaning to things that change through story because stories move through time. Thus narrative theory suggests that stories serve a meaning-making function (Neimeyer, 1995).

For an understanding of the psychology of personhood, narrative theory provides an explanation of the experience of personal continuity through time (Neimeyer, 1995; Randall, 1995). The self is a particular site for the building of narrative coherence. As noted above, postmodern theories of the self have concentrated on fracturing the image of the singular, stable, essential, individualistic self in favour of a more pluralistic, permeable self (Burr, 1995;

Cushman, 1990; Gergen, 1991; Neimeyer, 2000). However, we still seek a sense of continuity and coherence and describe our selves as developing more or less consistently through time. Narratives provide us with such a sense of continuous development. Therefore, people become attached to particular narratives, because they have constructed a sense of identity around them. Hence, conflict stories in mediation contexts can often be closely tied to people's cherished identity projects. Despite the fact that mediators sometimes seek to carefully distinguish mediation from therapy, the interweaving of conflict stories and personal identity projects ensures that mediation often has a therapeutic edge to it.

Narratives are also, however, cultural products and serve cultural purposes (Cushman, 1995; Rosaldo, 1993). It is in the nature of stories that they are told by someone(s) to some other(s). Thus they have their life in the relations of social exchange. They are shared experiences. In the process, they help groups of people define themselves as groups, as a people who share allegiance to a set of stories. Jerome Bruner (1986, p. 15) suggests that, '... human mental activity depends for its full expression upon being linked to a cultural toolkit,' and that cultural narratives operate as such a toolkit.

Coherence, however, whether we think of it in a personal sense or in terms of cultural belonging, is a constraining aspect of narrative. This aspect concerns how possibilities are constrained to fit within an organising storyline. The narrative perspective also allows for the possibility of breaking from such constraints through the disruption of storylines. Bruner describes the narrative mode of thinking as providing a 'loose-fitting' constraint which is therefore serviceable for dealing with the 'vicissitudes of human intention' (Bruner, 1986, p.17). Human beings work out their intentions in the face of actual or threatened breaches or crises and the outcome is always to some degree indeterminate.

Narrative theory also offers explanatory power for psychologists that Bruner (1986) suggests can rival what he calls 'paradigmatic' scientific method. He argues for narrative thinking as a 'mode of thought' that is distinct from the logico-scientific mode of thought. The narrative mode invites us to build psychological understandings more on the foundations of literary theory than on scientific reductionism. In this vein, we can study narrative forms as 'prosthetic devices' (Bruner, 1986, p. 15) with which we construct our consciousness. Moreover, he argues for the concept of intention in the narrative mode of thinking as rivalling the scientific concept of causation in the paradigmatic mode. The

point will be important when I start to describe an approach to mediation that calls upon a narrative perspective. It can mean that mediators need not be as concerned with establishing the underlying causes of a conflict as much as establishing the intentions of the parties and working towards a way forward that is inclusive of those intentions.

The narrative metaphor further offers the possibility of noticing how particular characterisations can construct relations in particular directions within a story. In the conflict stories that come to mediation, parties often have allegiance to competing stories and characterise themselves and each other within familiar storylines as heroes and villains, supporters or combatants, truth-tellers or liars. Within these storylines, people articulate their intentions with regard to plot development. The analysis of narrative trajectories and characterizations provides substantial material for the analysis of what happens in a conversation aimed at conflict resolution. While not exactly the same, it is close enough to the concept of discursive positioning for the terms 'discourse' and 'story' to be used almost interchangeably in some circumstances.

The narrative metaphor has been deployed in the therapeutic field to describe an approach to family therapy that has grown originally out of family systems theory but which has in the last ten years incorporated many postmodern and poststructuralist notions. Narrative therapy owes much to the original work of Michael White and David Epston (Epston & White, 1992; White, 1989; 1995; White & Epston, 1990). It has developed a following and a literature that has explained White's and Epston's original work in a variety of ways (Freedman & Combs, 1996; Monk, Winslade, Crocket & Epston, 1997, Morgan, 2000; Zimmerman & Dickerson, 1996).

Conversations in narrative therapy aim to 'deconstruct' (White, 1991) the constitutive effects of dominant stories, dominant discourses, or 'dominant cultural practices' (White, 1989) and to 'open space' (Freedman & Combs, 1996) in the narrative construction of people's lives for a 're-authoring' (White, 1995) to take place. The aim is to develop an 'alternative story' (White & Epston, 1990) that can compete with the 'problem-saturated' story (White, 1989). Narrative therapists ask questions aimed at encouraging the 'performance of meaning' (White, 1989) around 'unique outcomes' (White & Epston, 1990) or unstoried elements of experience in order to develop this alternative story. These therapeutic practices have much relevance to the work of facilitating conflict

resolution through mediation. I shall elaborate these ideas further in Chapter Six when I show an example of narrative mediation in action.

The Utterance

Having outlined a general theory of discourse I now want to direct my focus more specifically onto the concepts that will support the analysis of positioning within discourse. The discursive analysis of positioning requires some elaboration of what is meant by positioning. This concept is built upon discourse theory in general but takes it up for particular purposes that are especially useful to the analysis of conversation.

I want to begin discussing the analysis of positioning by referring to the idea of the utterance and to claim with Mikhail Bakhtin (1986) that the utterance is the most useful analysable element of discourse through which we can notice the work of discursive positioning taking place. Some of the definitions of discourse cited above refer to the 'statement' as a primary element of discourse and characterise discourses as collections of 'statements'. Bakhtin has argued the alternative view of the 'utterance' as a basic unit of discourse. Interestingly, Foucault (1972) used the term 'énoncé' in French, which is closer to the concept of utterance in English than it is to 'statement'.

'Statement' in English carries connotations of a type of sentence that is distinct from a question or an instruction, whereas 'énoncé', as does 'announcement' in English, suggests words spoken for a social purpose. The content is important as well as the grammatical form. Bakhtin argues that the concept of the utterance works across spoken and written genres of language use and functions as the 'real unit of speech communication' in preference to the word or the sentence (statement). Fairclough (1992) makes no distinction between the 'utterance' and the 'statement' but Bakhtin's definition works better across both written and spoken conversations because it directs attention to the social process of communication rather than to the grammatical analysis of sentences. The sentence as a unit is defined in terms of written language and does not map easily onto the analysis of spoken conversation. Utterances, on the other hand, have 'clearcut boundaries' says Bakhtin, marked by the 'change of speaking subjects' that takes place when one speaker 'ends his (sic) utterance in order to yield the floor to the other' (Bakhtin, 1986, p. 71). This distinction makes possible the

application of the idea of the utterance to the practice of mediation as I want to elaborate it. It focuses our attention on the positioning work done within a speaking turn.

Bakhtin extends this notion from spoken conversation to include written and even literary utterances. In writing, a letter might be a single utterance and, in literature, a poem or a novel might constitute a single utterance. This idea enables Bakhtin to elaborate a theory of literary criticism that begins with the analysis of a particular literary work as a response in a 'conversation' taking place within single or multiple cultural contexts as well as within literary traditions. Thus, no novel exists in isolation, as a work to be appreciated for its own essence. Novels are also responses to other utterances in a wider cultural conversation. This idea constitutes the reader as a respondent and therefore as a participant in the communication event that an utterance signals. Academic articles or books are also understood first as utterances in particular genres of conversation, always within some dialogue, always as an aspect of the production of discourse. Each utterance is therefore not free-floating, but to some extent reliant on the particular cultural, literary or academic dialogues out of which it has been produced. There might be a single author but this author is speaking within the possibilities of response to what has been said before in a dialogue and in relation to the listener or reader. Bakhtin put it this way:

...the single utterance, with all its individuality and creativity, can in no way be regarded as a completely free combination of forms of language...

(Bakhtin, 1986, p. 81)

Any utterance is a link in the chain of speech communion.

(Bakhtin, 1986, p. 84)

Bakhtin's theory of utterances within speech genres incorporates aspects of his theory of utterances within literary genres. In relation to a focus on mediation conversations, it is the domain of spoken genres that deserves most attention. Bakhtin stresses the ways in which utterances cannot be free from the cultural worlds of dialogue in which they take place.

Utterances are not indifferent to one another, and are not self-sufficient; they are aware of and mutually reflect one another ... Every utterance must be regarded primarily as a response to preceding utterances of the given sphere... Each utterance refutes, affirms, supplements, and relies on the others, presupposes them to be known, and somehow takes them into account.

(Bakhtin 1986, p. 91)

Bakhtin's use of the concept of 'utterance' has been taken up by John Shotter, who acknowledges Bakhtin's influence (along with Vygotsky's and Wittgenstein's) on his own efforts to articulate a 'rhetorical-responsive' (Shotter, 1993) version of social constructionism. Specifically, he takes up the idea of the utterance as at the centre of the communication processes by which we construct our worlds and our selves. We are never the first speaker on any particular subject. Every utterance is first a 'rejoinder' (Shotter, 1993b, p. 383) to some previous utterance(s). Thus an utterance must be understood as situated in discourse and to some extent constituted by its discursive context. It uses words borrowed from other utterances and any use of words carries with it an echo of other voices, down a 'corridor of voices' (Bakhtin 1986, p. 121). The term Bakhtin used most commonly to define this phenomenon was 'heteroglossia'. It refers to the sense that any utterance contains many other usages from other conversations within it. There are always many other voices speaking. The heteroglossic nature of a text is also sometimes referred to as its 'double-voiced' quality (Bakhtin, 1986; Gee, 1999). While not analysing power relations in the same way as Foucault, Bakhtin acknowledges the existence of 'authoritative utterances' that 'set the tone' for conversation within a genre (Bakhtin, 1986, p. 88). Bakhtin argues:

The utterance is filled with dialogic overtones, and they must be taken into account in order to understand fully the style of the utterance. After all our thought itself – philosophical, scientific, and artistic – is born and shaped in the process of interaction and struggle with others' thought, and this cannot but be reflected in the forms that verbally express our thought as well.

Even the words that we use, he suggests, carry with them traces of many other utterances (also Shotter, 1993b). They are not of our own invention but have at some time belonged to others and have been used in other contexts. There must always be a degree to which our words are not our own. In this sense, our mental life is not 'wholly under our own control, nor filled with our own materials' (Shotter, 1993b, p. 382). But this degree will vary too. Our use of discourse can vary in the degree of distance from, or closeness to, our own 'expressive intentions' in a particular dialogue. Meanings are therefore inherently dialogical and nuanced with constantly shifting boundaries, because they are suspended in the discursive soup of conversation across multiple contexts.

Each word contains voices that are sometimes infinitely distant, unnamed, almost impersonal (voices of lexical shadings, of styles, and so forth), almost undetectable, and voices resounding nearby and simultaneously.

(Bakhtin, 1986, p. 124).

Foucault was also interested in the historical traces that words carried with them in discourse. His studies were often dedicated to the task of locating the historical conjunctures that gave birth to these traces.

Personally I am rather haunted by the existence of discourse, by the fact that particular words have been spoken; these events have functioned in relation to their original situation, they have left traces behind them; they subsist and exercise, in this subsistence even within history, a certain number of manifest or secret functions.

(Foucault, 1989, p. 25)

The discursive analysis of positioning will therefore need to take account of the traces of other conversations that are carried forward within an utterance. This point is important with regard to the debates about what should be the empirical focus of discourse analysis that will be addressed in the next chapter. It supports interpretations that go beyond the immediate text in order to understand the

meanings present. In mediation conversations, as disputants tell their story to a mediator, they can be expected to use language that carries traces of many previous conversations, some of them with other parties to the dispute and some with their other friends and allies.

But Bakhtin was not only concerned with the historical traces of other conversations. He also understood the utterance as determined within a relationship with future utterances as well. Each utterance is made with an eye to possible responses and the listener (or the listener's expected response) exerts a powerful influence on what can be said. He put it like this:

Every word is directed towards an answer and cannot escape the profound influence of the answering word that it anticipates.

(Bakhtin, 1981, p. 280)

To some extent primacy belongs to the response, as the activating principle: it creates the ground for understanding, it prepares the ground for an active and engaged understanding. Understanding comes to fruition only in the response.

(Bakhtin, 1981, p. 282)

This idea amounts to a challenge to the singularity of the author's voice (also challenged by Foucault, 1977). It privileges a more dialogical or relational view of communication processes and focuses attention on the reflexive aspects of speaking. The term Bakhtin coined for this aspect of any utterance was 'addressivity'. It refers to the aspect of any utterance that anticipates a response from the 'addressee' and seeks to shape that response in some way. The addressee's influence might be felt in the words chosen, in the style of communication, in the rhetorical strategies employed, and in the very content of the message. The speaker makes judgments in the moment of speaking about the addressee's 'apperceptive background' and 'degree of responsiveness' (Bakhtin, 1981, p. 346; also Shotter, 1993c). This addressee can be:

...an immediate participant-interlocutor in an everyday dialogue, a differentiated collective of specialists in some particular area of cultural communication, a more or less differentiated public, ethnic

group, contemporaries, like-minded people, opponents and enemies, a subordinate, a superior, someone who is lower, higher, familiar, foreign, and so forth. And it can be an indefinite, unconcretized other.

(Bakhtin, 1986, p. 95)

This quality of addressivity in a word or a statement cannot be studied in isolation or in abstract. It can only be found in the context of conversation. Hence, Bakhtin reiterates his theory of the primacy of the utterance as a unit of language. This point suggests the importance of studying discourse in context. It is also important for the practice of mediation because it alerts us to the possibility that any utterance by a participant is already being shaped both by the other party (or parties) to a conflict and by the mediator, even before it is spoken. In this sense, the relational dimension is never absent from a conversation. The listener is already influencing the speaker before the speaker has made an utterance. And the speaker, while speaking, is both taking up a position in anticipatory response to the listener and calling forth responses from the listener.

In his concern with the social influence of the listener, Bakhtin is suggesting an embryonic notion of power in discourse. It is not as developed as Foucault's later ideas but it is present in such statements as this:

The addressee's social position, rank, and importance are reflected in a special way in utterances of everyday and business speech communication.

(Bakhtin, 1986, p. 96).

Moreover, the social position of the speaker is implicated in the very meaning of words, in Bakhtin's view. He argued that it is impossible to separate the meanings of words used from the speaker's social position (profession, social class, gender, etc) within a concrete situation. Thus:

Who speaks and under what conditions he (sic) speaks: this is what determines the word's actual meaning.

(Bakhtin, 1981, p. 401).

The meanings of words and of utterances are determined by the contextual features of discourse use. Meanings are linked to social relations and each usage plays into such relations. Thus, Bakhtin arrives at a view of communication that emphasises discourse rather than essence.

Everything that is said is located outside the 'soul' of the speaker and does not belong only to him.

(Bakhtin, 1986, p. 121)

However, while Bakhtin stresses the extent to which any utterance is not free-floating but is located within and to some extent determinate within discourse, he also is careful to allow for the discursive agency of the speaker in discourse. He does not constitute the speaker as completely originary (as a biblical Adam naming virgin objects for the first time) but as a respondent in dialogue who has the responsibility (or response-ability) to speak. He puts it this way:

As a living, socio-ideological concrete thing, as heteroglot opinion, language, for the individual consciousness, lies on the borderline between oneself and the other. The word in language is half someone else's. It becomes 'one's own' only when the speaker populates it with his own intention, his own accent, when he appropriates the word, adapting it to his own semantic and expressive intention.

(Bakhtin, 1981, p. 293)

This expressive aspect of the speaker's relationship with an utterance is crucial to Bakhtin's understanding of the possibility for acting in the world. For him, agency is entailed in the 'speaker's subjective emotional evaluation of the referentially semantic content of his (sic) utterance' (1986, p. 84). Because we are located in the middle of a context of dialogue when we speak, we are positioned in a place that is never neutral. We are always speaking in relation to other speaking subjects and taking up positions of agreement or disagreement, building on their utterances or undoing them, evaluating or elucidating their words, referring to their previous utterances, making assertions in relation to their

assertions, approaching or moving away from them (see below for the relevance of this idea to positioning theory). In the process of doing this, says Bakhtin:

Every utterance makes a claim to justice, sincerity, beauty and truthfulness.

(Bakhtin, 1986, p.123)

This claim is its expressive, discursive aspect. In this sense, the speaker is an active agent in the production of discourse and his or her responsiveness is not completely determined by the discourses into which he or she is speaking.

Bakhtin was adamant on this point:

An utterance is never just a reflection or an expression of something already existing outside it that is given and final. It always creates something that never existed before, something absolutely new and unrepeatable...

(Bakhtin, 1986, pp. 119-120).

In this stand, Bakhtin ensures that voice can be expressed and personal agency (to be explained further below) can be realised. It is never simply a reproduction of existing discourse but is always, to some degree, a response to other utterances within a discourse. Therefore, it is possible to consider people as agentic in their exercise of moral responsiveness.

However, Bakhtin also argues that this expressive intention can only develop in a dialogical context, that is, in dialogue with others. Commenting on Dostoevsky's novelistic art, he says:

The idea lives not in one person's isolated individual consciousness – if it remains there only, it degenerates and dies. The idea begins to live, that is, to take shape, to develop, to find and renew its verbal expression, to give birth to new ideas, only when it enters into genuine dialogic relationship with other ideas, with the ideas of others.

(Bakhtin, 1984, pp. 87-88.)

Truth is not born, nor is it to be found, inside the head of an individual person, it is born between people collectively searching for truth.

(Bakhtin, 1984, p. 110.)

This dialogic perspective contrasts with what Bakhtin refers to as a ‘monologic’ one. Monologic thinking tends towards ‘singleness of meaning’, the ‘finalising’ of ideas and to ‘dogmatism’. Bakhtin clearly prefers the ongoing generative possibilities of ‘the joyful relativity of evolving existence’ (Bakhtin, 1984, p.164).

Bakhtin’s dialogical principle is valuable for theorising the practice of mediation. It suggests a process whereby two or more parties are invited into a genuine dialogue in which neither loses sight of their ‘expressive intention’ and both contribute to the development of ideas about how to move forward in a dispute situation. From Bakhtin’s perspective, the outcome of dialogue is likely to be better than either party could think of alone. A mediator’s role can be described as Socrates described his own function at the birth of an idea through Socratic dialogue – as a ‘midwife’ who ‘assists at the birth’ (quoted by Bakhtin 1984, p. 110). The challenge, however, lies in the fact that, in the midst of conflict, disputants are often very keen to impose a monological account of the conflict that does not admit the other party’s version. They are often keen to finalize the conversation around their own claims and to dismiss the legitimacy of the other person’s. Here the mediator needs to keep a dialogical vision in mind and facilitate the birth of a dialogical outcome.

Positioning

I shall now take the idea of the utterance, with its dialogical overtones, and add to it some ideas advanced within what has been called in the 1990s ‘positioning theory.’ I am using the term ‘positioning theory’ and thus crediting these ideas with the status of a fully-fledged theory on the basis of Davies, Harré and van Langenhøve’s (1999) use of this title.

The word ‘position’ has been used in a number of ways in social theory (Harré & van Langenhøve, 1999, p.1). In the conflict resolution literature, there has developed a specific usage of the term that describes a beginning stance in the

process of negotiation as discussed in chapter two. However, it is the usage that has developed in relation to discourse theory in psychology that I want to distinguish here. I believe that it has more potential than has yet been explored to help us make sense of the process of mediation at the level of micro-analysis. Particularly, it helps us to get a take on the way in which power is constituted in relational exchanges, including the ways in which power relations can be very fluid and unstable and in constant process of renegotiation through the course of a conversation.

As Drewery (2002) argues, positioning theory is focussed on ‘the constitutive functions of talk.’ It derives from Foucault’s notion of a subject position (1978, 1980) and was developed by Davies and Harré (1990) into a concept that is useful for studying the production of selves in discursive contexts. Davies and Harré describe a subject position as involving ‘both a conceptual repertoire and a location for persons within the structure of rights for those who use that repertoire’ (1990, p. 43). When a person makes an utterance, the speaker both establishes a moral claim within a discourse and also calls the addressee into some kind of subject position within the structure that is invoked by the offer. In this way a relation is established, even if only momentarily, and a perspective on the world is invoked. Two different positions in this relation may offer the respective conversation partners differential entitlements to speak. For example, a speaker may take up a position of deference and call the other person into a position of superior knowledge and expertise such that his or her utterances will have greater material effect. Positioning is a spatial metaphor that emphasises the relationship between words and the forms of life that they physically point to and propel us into. The concept of positioning makes visible the idea that we are never speaking in a vacuum but always from some place, some time, some social context and in response to other utterances that have gone before.

Drewery (2002) offers an example of positioning that is relevant to conversations in family mediation. A mediator might say to a separating couple:

Have you thought about who will look after the children after the separation?

This utterance calls the couple into position in a competing or oppositional relation, one in which claims of entitlement will be placed in contest with each

other such that the eventual outcome is likely to be some form of exclusion. By contrast, the question could be asked in a way that calls the couple into a quite different position in this way:

Have you thought about how you will care for the children after the separation?

The positions called into being in this question are more inclusive and invite a shared interest and cooperative involvement in the care of the children. What these examples demonstrate is that the discursive constructions chosen make a difference. The choices that are involved in deciding on the phrasing, and the choices that follow for the couple who are called into position in response, are given within dominant discourse. However, they are not fixed by this discourse to the extent that other choices cannot be made, particularly when people are given opportunities to be reflexive and to decide on which positions to take up or refuse.

The concept of positioning also can help describe processes of resistance to the operation of power. Davies and Harré (1999) refer to second order positioning, as distinguished from first order positioning, to refer to the ways in which people choose to refuse a position offered by someone else's utterance and instead respond from a different position. An example lies in the following exchange in a television interview between a white woman reporter and the African American boxer, Mike Tyson, who carries a reputation of uncontrolled violence both in and out of the boxing ring.

Interviewer: Can you tell me where all the rage within you comes from?

Tyson: (smiles) You know, you're so white asking me a question like that.

The interviewer's question positions Tyson within a particular psychological discourse that accounts for acts of violence with reference to the postulate of an individualised psychic container of rage that will spill over when it reaches overflow level. It is a psychological discourse drawn from mainstream, psychodynamic, Western knowledge. Tyson refuses this position, however, and instead positions himself and the interviewer in a conversation about race, perhaps a discursive context in which his violence might be contextualised more

favourably against a background of racism. Tyson's response would amount to second-order positioning.

However, I am choosing not to use the distinction between first and second order positioning in this dissertation for the following reasons. First, Bakhtin's notions of addressivity and heteroglossia suggest the typicality of multiple positionings within an utterance such that it becomes hard to distinguish which one is first or second. Secondly, as Bakhtin again points out, there are a variety of responses that are possible in response to being positioned (including deliberate acceptance, outright refusal, partial refusal, ironicisation, subtle renegotiation of meaning, etc) and this ranking system seems to narrow them down too much. Thirdly, any utterance in response to another one also constitutes the first utterance for the next response in a chain of utterances. Thus any utterance may be at the same time both an example of second order positioning in relation to a previous utterance and of first order positioning in relation to the subsequent one. It becomes too confusing to track which is which. I therefore prefer to simply describe the kind of response to an instance of positioning in terms of the possible choices of stance that can be taken up.

The notion of positioning connects with Ken Gergen's notion of 'supplementation'. Gergen argues that it is not possible to 'mean' something, or to make meaning, on one's own. Meaning only accrues in a relational exchange, in a conversation, in the process by which a listener 'supplements' (Gergen 1994, p. 264) my utterance. Gergen's notion of supplementation is reaching for the same idea that Davies and Harré describe as 'positioning.' I prefer the word positioning on two grounds. 'Supplement' carries with it a suggestion of completion or finalisation (Bakhtin's word, 1986) that positioning does not. While it suggests the participation of interlocutors in each other's utterances, it also implies that one person's utterance completes another's. I prefer the emphasis on an ongoing dialogue as Bakhtin (1981; 1984; 1986) describes it in which each utterance offers the other a position in an ongoing chain of utterances. Generativity, in Bakhtin's view, arises from the neverending exchange of positions as people respond to each other in dialogue, despite efforts to finalise conversation through various monological speaking practices. 'Positioning' also suggests more of the use of words as socio-political actions, in which someone is doing something to another. It therefore accords a clearer view of the politics of meaning-making.

Each utterance also acts in some small, or not so small, way to produce the social world into which we are acting. Our utterances serve to position us in relation to others and also to call others into position in relation to us. Thus Shotter (1993a, p. 70) articulates a view of communication (building on Vygotsky and Wittgenstein) in which human beings use language as tools or prosthetic devices. Speaking gets to be thought of as not just reporting on what is being thought but as an action in the social world. As we speak, we act upon ourselves and others and upon our social context. Through our utterances, we make (as in 'produce') sense (Shotter, 1993a, p. 72). In this sense:

Indeed we can go so far here as to say that this prosthetic-(tool) function of speech works on one's surroundings formatively, to specify them further. Retrospectively, however, what we (and others) have already said remains 'on hand,' so to speak, as like a 'text', constituting a given aspect of the situation between oneself and one's interlocutors, into which they (as well as oneself) must direct their speech. Indeed, it is in the tensions between the retrospective and the prospective, the given and the created, between 'finding' and the 'making', in the expression of an utterance, that the 'movement of mind' is at work.

(Shotter, 1993a, p. 72).

This usage recalls Althusser's (1971) notion of 'interpellation' by which a person's subjectivity was 'hailed' by the dominant ways of speaking in a given social context and then incorporated into a set of institutional relations defined by social class interests. The constructionist version of positioning has, however, fewer deterministic overtones.

The concept of positioning can be explained further by contrasting it with the 'more static' concept of role (Davies & Harré, 1990, p. 43; 1999, p. 32; Harré & van Langenhøve, 1991, p. 393; 1999, p.14). Making use of discourse theory, the positioning theorists describe a more fluid, dynamic, sometimes shifting, sense of how people move themselves and each other around in conversation. The metaphor of 'role' by contrast offers a blunter instrument for describing processes of movement or change. For example, a 'doctor' can be considered a social role. Foucault (1972), however, sought to describe the social role of doctor as a series

of dispersed fragments of a variety of relational positions (such as questioner, observing eye, laboratory technician, interpreter of signs and so on).

Davies and Harré recognise the poststructuralist idea of 'discursive practices' constituting social positioning through the 'inscription of subjectivity' (1990, p. 43; 1999, p. 32). Positioning theory seeks to articulate, through the analysis of very particular discourse usages, just how the social world becomes mapped onto the subjective experience of individuals in the context of conversation. It is, therefore, about the development of a sense of self. It also accounts for practices of exclusion from speaking rights in which a person may be offered a position that does not entail full participation as a legitimate social agent. Positioning is about social constraint as well as about social legitimation. The analysis of sexist language has provided many examples of exclusionary positioning. Thus, any utterance becomes understood in terms of its contextually specific social, or illocutionary, force.

The notion of discursive positioning accomplishing the 'inscription of subjectivity', the production of a subject position in text, also includes the establishment of a foundation from which to act as a subject, not just to be subjected. It implies the possibility of agency from a place in history and culture, that is a place that is already structured within limits, but also a place that is a beginning point for acting into the cultural world (Laws & Davies, 2001).

In this context, a discourse is referred to as an 'institutionalised use of language and language-like sign systems' (Davies & Harré, 1990, p. 45; 1999, p. 34). Such institutionalisation can occur at various levels, such as the political, the disciplinary, the cultural and the small group levels. Hence, discursive positioning can be traced in relation to membership of local discourse communities (such as families) or in relation to widespread pervasive social categories, like gender or class. This fluidity distinguishes positions from roles, which are more closely tied to social structures.

Moreover, any single saying can accomplish the task of an utterance in multiple conversations (Davies & Harré, 1990, p. 45; 1999, p. 34). Take for example a newspaper article, which in itself constitutes a response to a reporter's interviews with perhaps several sources. As an utterance, it gets read in many contexts by multiple readers, who respond to it with utterances of their own in many more conversations (even those conversations that are held in private in a reader's head). In the context of mediation, one party may be having an ongoing

conversation with her or his lawyer about the subject matter of the dispute. Then, in the mediation conversation itself, this person may make an utterance that is both a response to the mediator's question and at the same time a response to his or her lawyer's advice.

Nor do we need to entertain any expectation of discursive consistency. Discourses often compete with each other to offer people subject positions which incorporate 'conceptual repertoires' (Davies & Harré, 1990, p. 46; 1999, p. 35) and structure or legitimise the right to act, or not to be able to act, in a local moral order. Positions also grant a vantage point from which to view the world. This vantage point is built out of metaphors, storylines and concepts which achieve relevance through their connection to a particular discursive context. We become the positions that we take up and we speak from these positions.

Discourses are never of our own individual making, and, therefore, it makes sense to speak of our subjectivity as constituted largely from the outside in. Nevertheless, positioning theory allows for personal choice as well. Choice arises on the basis that there are always multiple discourses at work in our positioning (Davies & Harré, 1990, p. 46; 1999, p. 35.) As we move from conversation to conversation, we are offered a 'panorama' (Davies & Harré, 1990, p. 47) of different positions that in effect create multiple subjective experiences from which we can draw in understanding our potential choices in life. The ability we have to make such choices accords with Bakhtin's expressive intention in our utterances. The concept helps us analyse how it is that people 'do being a certain kind of person' (Davies & Harré, 1990, p. 62; 1999, p. 52).

In the analysis of interactions in a mediation, the roles of 'disputant' and 'mediator' are not sharp enough instruments on their own to enable meaning-making with regard to the conversational moves in a conflict resolution process. There is more variability in utterances than can be accounted for by these roles. Nor, in a divorce mediation, is it enough to speak in a simple way about the roles of husband and wife if we want to appreciate exactly how gendered subjectivity is being constructed or contradicted, taken-for-granted or challenged, accepted or reconfigured, in the moment of interaction. The same can be said for other roles that might become embroiled in conflict, such as landlord and tenant, parent and child, brother and sister, customer and small business owner, teacher and principal, manager and employee, or even colleague and friend. Positioning theory offers us a more finely honed tool for analysing the moves in conversation

out of which, in a discursive understanding, we make ourselves up as persons, always in relation to others.

Positioning theory also allows us to understand the more subtle nuances of contradiction and discontinuity (Davies & Harré, 1990; 1999). The possibility of contradiction of discursive positioning is necessary for any kind of critical social analysis or for the possibility of change. If we could not at times refuse the positions we are offered, then we would be determined by the discursive worlds in which we live. We would have no room to make choices, to take stands, or to protest injustice. In other words, we need the possibility of contradiction in order to exercise agency.

Moreover, positioning theory opens the way to make sense of our inconsistencies, and even hypocrisies. We are positioned within many conversations, even at the same moment of time, and may not always find it easy to perceive how we are positioned. On some occasions, we may be able to formulate a contradictory response to the way that we are being positioned by another, while on others we may not be able to do this. This advantage of positioning theory is important for an analysis of mediation processes, because mediation, by its very nature, is about weaving a path through contests and contradictions. Frequently, conflict might arise from the ways in which people are at least uneasy, and often downright unhappy, with the effects of how they are being positioned by the other party (or parties). Mediation conversations hold out the promise of opportunity to reposition oneself in a relation or to make more room for another's position-taking.

Positioning theory allows us to theorise how people move each other around in conversation. As a concept then, it is useful in the analysis of exactly how power operates at the local and particular level. It accounts for how people take up, say, gendered subjectivities, even to their own cost. It allows for distinctions between 'forced' and 'deliberate' positioning of either ourselves or of others (Harré & van Langenhøve, 1991, p. 399; 1999, p. 24), and between 'tacit and intentional' positioning (Harré & van Langenhøve, 1991, p. 398; 1999, p. 23). This view entails an understanding of power in Foucault's terms as a 'constitutive force' (Davies & Harré, 1990, p. 46 ; 1999, p. 35) that is realised primarily in the exchange of utterances called conversation.

Again, there are advantages for an appreciation of what can happen in mediation. Positioning theory provides a bridge between the local moral order of

a relation and the wider social discourse in which it is but one example among many. It does this through taking account of how an utterance can be responsive not just to the immediately preceding utterance but also to utterances in many other conversations in the discourse on a certain theme. These utterances may be responsive to other conversations from the same genre, from other conjunctures in the speaker's experience, or from background defining utterances in a particular order of discourse. When there are dominating discourses at work that provide insistent positions from which to make sense of the immediate utterance of the other, then they can exert a strong pull on what is said in the direction of the dominating discourse, and can discourage options for refusal or contradiction. Thus, we might make sense of how dominant discourses about gendered family arrangements might operate in divorce mediation.

Linehan and McCarthy (2000) analyse an instance of discursive positioning that illuminates the possibilities for contradiction in the face of the normative power of discourse. The particular conversational exchange that they use as example takes place in an interaction between a teacher and student in a primary school. The class is given five exercises to do and the student, Lorraine, completes only one. The following exchange takes place beside the teacher's desk.

T: That's a disgrace Lorraine Smith

(Lorraine makes a face.)

T: be very careful

(Lorraine moves back to her seat and the class moves on to geography.)

T: the girls who have their plans and scales book take it out please

(Later on ... T is passing out photocopies to students who do not have their book, without any comment, then ..)

T: Lorraine do you have a book

Lorraine: No.

T: Pardon.

Lorraine: No.

T: (says something in an undertone to Lorraine which includes 'your mother')

The student refuses to cooperate with a teacher's positioning of her as behaving inappropriately within a classroom. She resists being positioned within a

discourse of school that legitimates the authority of the teacher simply through answering, 'No,' when asked if she has her book. The moment is characterised by the researchers as one where the outcome is not predictably structured within the dominant moral order of schooling, but is being negotiated through this exchange and the others that follow. Positioning theory illustrates how this happens on a moment by moment basis.

Linehan and McCarthy show that there are multiple identity possibilities within this interaction, even within a constraining moral order. Moreover, the particular positions that are taken up by the individuals in the interaction remain indeterminate for each as long as it not clear which positions (out of the many available) the other will take up (Linehan & McCarthy, 2000, p. 449). They also draw from Hodges (1998) in saying that the participant's own meaning of the momentary gaps between normative practice and difference counts for something. Background discourses do not fix people in positions ahead of any moment of interaction.

On the one hand, this analysis emphasises the normative power of discourse to constitute a 'moment by moment oughtness' (Linehan & McCarthy, 2000, p. 442) in the relations between participants in a conversation. On the other hand, this analysis emphasises 'the idea of persons having the possibility of distinctness' (Linehan & McCarthy, 2000, p. 449) through the choices they make to take up or refuse discursive positions. An over-emphasis on discourse 'stability' is thereby avoided and more possibilities for points of conflict and change can emerge. Analysis of a particular interaction therefore takes on greater vividness and the picture painted is one in which positioning theory:

...offers a dynamic, agentive model of identity construction where a person creates a possible identity for themselves in a particular context through their active positioning in relation to, or perhaps in opposition to, elements in their discursive cultural context.

(Linehan & McCarthy, 2000, p. 449)

Of particular interest to Linehan and McCarthy are the 'momentary gaps that emerge between normative practice and difference' (Linehan & McCarthy, 2000, p. 443). Laclau and Mouffe (2001) might call these gaps 'points of rupture' in the dominance of discourse. Bakhtin might refer more generally to the

unfinalizability of dialogue and Chouliaraki and Fairclough (1999, p. 127) speak of the 'openness of discourse'.

These ideas are particularly important for the approach to mediation that I want to articulate below because they point to the possibility of shifts and changes. The discourse analysis of mediation also needs to pay attention to the momentary gaps in a conflict that arise as people jostle for discursive positions in conversation. Studying what happens in these moments offers the possibility of evaluating the effectiveness of work done in mediation.

Agency

Linehan and McCarthy's account of momentary gaps in the midst of the discursive constitution of relationships raises the general question of the need to theorise agency. A theory of agency has already been referred to implicitly in Bakhtin's 'expressive aspect' of an utterance, in Bruner's narrative 'intentions' and in the positioning theorists' description of the possibilities for refusing subject positions in discourse. I want now to make this theorising more explicit.

Any explanation of the workings of power relations in discourse raises the question of the extent to which power can be resisted or refused. Such a question is significant in relation to the possibility that relations between people might remain to some degree indeterminate in the face of the constraining and structuring effects of discourse in our lives. If we mount a description of the operation of power within discourse do we become simply puppets of the function of discourse? Have we arrived at a new Calvinism which has our thoughts and actions predestined by the new god of discourse?

To answer the question requires a theory of agency. It is necessary to balance an understanding of the constitutive effects of discourse with an appreciation of what remains indeterminate and within our agentic grasp. The term 'agency', as I am using it, refers to the possibility for persons of making decisions about their own lives. It involves the ability to be a moral actor in the construction of the material conditions of one's own life, rather than to be produced wholly by social structuring forces, whether these are described as discourse or social structure or institutional demands. It is about a person's productive capacity to negotiate a position within a social context from which to act.

Positioning theory invites a consideration of the subject positions offered to people within a given discursive relation. Noticing and considering the assumptions built into such 'position calls' (Drewery, 2002; Drewery & Winslade, 1997; Winslade & Monk, 2000) opens up the possibility of deliberately re-positioning oneself within a discourse. For example, conventional discursive positioning may offer an individual a position of diminished opportunity to speak in relation to another's more privileged position. Refusing the position of diminished opportunity may involve asserting one's speaking voice anyway and upsetting the relational balance laid down in a discursive formation.

Agency, however, cannot be taken for granted. From a constructionist perspective, it is always an achievement in a particular social context. The ability to speak on one's own behalf will always be partial since we can only speak in the discourses available to us and this must mean that some of the meaning we can make always lies beyond our individual control. Sampson (1993) describes situations in which a person's voice is constructed, authorised or legitimised only within terms given by another and hence there is little meaningful possibility for agency. Foucault (1978) also argued that discourse works to set up constraints on what can be said, by whom and on what occasions. In the context of power relations, the coercive control of language may be exercised so that individuals find themselves called into non-agentive positions, or at least into positions in which their agency is severely limited.

Taking account of these discursive constraints distinguishes this account of agency from a humanistic perspective that is built around the central significance of the self. Foucault destabilized the dominant humanistic assumption of agency in which individuals are assumed to be free and equal citizens of democratic states, able to express their subjective will in the marketplace of social relations. His erasure of this kind of subject cleared the ground for the development of revised notions of subjectivity that are responsive to discourse theory. It is important in building on this work to construct notions of subjectivity carefully in order to avoid re-inscribing a humanistic agentic subject. However, without a notion of agency it is hard to account for social change, as Bernstein points out. In fact, Bernstein criticises existing theories of cultural reproduction for not specifying the criteria by which agentic acts can be shown to produce change (Bernstein, 1996, p. 30). He implies that such theories lack plausibility without a theory of agency.

Bronwyn Davies (1991) distinguishes her theory of agency from a humanistic version that locates agency in a unified, rational identity possessed by individuals as a product of normative socialization. From her perspective, agency is inscribed as the experience of subjectivity that can be taken up in contradiction to being positioned within dominant discourse. It is not unified or continuous but fragmentary and 'spoken into existence at any one moment.' It is linked to the constitution of a person as having desires and meanings and a voice that is made legitimate and is heard, even as it goes beyond the given meanings. Agency is not to be confused with autonomy and does not spring from the essence of the person.

Agency is never freedom from discursive constitution of the self but the capacity to recognise that constitution and to resist, subvert and change the discourses themselves.

(Davies, 1991, p. 51)

From this perspective, the individual social agent is necessarily decentred from the central position it occupies in liberal humanist thought. It does not issue forth in response to a self-actualizing tendency (Rogers, 1961) but finds itself in conversation or dialogue, always in response to another. It is both passive and active, as the source of the energy for meaning-making and articulation and as the site onto which discourse is mapped. Chantale Mouffe stresses the plurality of the contingent position of social agents in this way:

We can ... conceive of the social agent as constituted by an ensemble of 'subject positions' that can never be totally fixed in a closed system of differences, constructed by a diversity of discourses, among which there is no necessary relation, but a constant movement of over-determination and displacement. The 'identity' of such a multiple and contradictory subject is therefore always contingent and precarious, temporarily fixed at the intersection of those subject positions and dependent on specific forms of identification. It is therefore impossible to speak of the social agent as if we were dealing with a unified, homogeneous entity. We have rather to approach it as a plurality, dependent on the various subject positions through which it is constituted within various discursive formations.

Mouffe is stressing a sense of personal identity that accrues through participation in multiple discursive contexts. It remains fragmentary, contradictory and plural and resists what Bakhtin would call finalization. It is only ever temporarily fixed. Like Bronwyn Davies, Mouffe theorises the person in an ongoing relation with discourse, always reaching for a sense of identity which Davies has suggested is achieved through recognising the effects of discursive positioning and deliberately contradicting it.

The very complexity of life also produces innumerable moments that are not rehearsed within discourse. While there are many recognisable patterns within social interaction, there are always unique instances constantly arising in which we are required to 'make it up as we go along' (Speedy, 2001). Dominant discourse can be extended to exert control over such instances, but this control can never be completely successful, because, as fast as the influence of dominant discourse is spread, so do fresh gaps in its influence arise. Agency can, in some circumstances, involve noticing what is unique about a particular conjuncture, rather than what is patterned and generalisable, and responding to the uniqueness.

Agency can also involve borrowing from other discourses. The possibilities of borrowing from other discourses are enhanced by the very intertextual nature of discourse (Bakhtin, 1984; Kristeva, 1986). Intertextuality refers to the property of texts to contain borrowed traces of other texts. These borrowings may sometimes be overtly marked as originating elsewhere or they may simply be incorporated unwittingly as part of the text. Thus relations are established between texts, which may be relations of agreement, elaboration, contradiction, etc. They are always, in a sense, historical relations since any new text builds on other texts that are prior to it. In the process of the intertextual influencing of one text by others, styles of language 'intermingle to create and transform meaning' (Gee, 1999, p. 41).

The concept of intertextuality has been enjoined to account for processes of overdetermination (Althusser, 1971) whereby large-scale orders of discourse are woven together in almost inescapable, systematic webs of power. But intertextuality also opens new possibilities for contradiction, if ideas for resistance can be borrowed from some other known discursive context. An example exists in the way the disability movement borrowed from the feminist critique of sexist

language and developed a parallel analysis of disability discourse (Corker & French, 1999.) Viewing something from within constructions borrowed from another discourse, has the ability to ‘render something strange’ (White, 1991, p. 121) and to break up the comfortable dominance of what was otherwise taken-for-granted.

Foucault made the point that the articulation of power through discourse produces its own resistance. He argued that the very processes of domination and the need for their constant reproduction admit their weakness and instability. Power relations in their productive function produce categories of personhood that can be expressed in the form of resistance.

As soon as there is a power relation, there is the possibility of resistance. We are never trapped by power: we can always modify its grip in determinate conditions and according to a precise strategy.

(Foucault, 1989, p. 153)

No discursive formation achieves total authority. Dominance is ‘always being threatened, always needing to be restored’ (Laclau & Mouffe, 2001, p. 106). And the existence of resistance creates options for the refusal of dominant discourse. Agency is possible in the choices that must be made in this regard.

Bernstein (1996, p. 44) sees ‘potential discursive gaps’ as arising between the context-bound material base of practice and the more indirect world of meaning in which it may be described. In this gap lies the potential for the generation of alternative meanings, for the realisation of alternative relations ‘between the material and the immaterial’. It is, says Bernstein, the ‘site for the unthinkable, the site of the impossible’ which is the meeting point of ‘order and disorder, of coherence and incoherence’, of the ‘yet to be thought’ (Bernstein, 1996, p. 44). This site is a point of origin for the agentic act. It will be necessary here to demonstrate that mediation can be such a site, if mediation is not to be considered merely for its role in the reproduction of discursive power relations.

The concept of voice is often used in relation to agency. To have a voice, to speak on one’s own behalf, can be equated with notions of active participation in the creation of discourse. However, having an agentic voice is not as simple as just opening one’s mouth to speak. Bakhtin (1981) shows how utterances can be

double-voiced (see also Fairclough, 1992; Gee 1999) and so contain voicings that the speaker did not authorise. He also stresses how the uses of words in any utterance will contain echoes of many other contexts of usage, such that the voice of the subject in any context is muted. For these reasons, it is not enough to distinguish having a voice from silence or even from being silenced. It is necessary for the articulation of a theory of agency to develop a concept of speaking in 'one's own language' (Fairclough, 1992).

Bernstein suggests a starting point. He speaks of the processes of control over the legitimacy of speaking and suggests the need to understand something of such processes as part of the development of a voice. He puts it like this:

To know whose voice is speaking is the beginning of having one's own voice.

(Bernstein, 1996, p. 12)

Articulating a voice thus means beginning with recognition of what is going on in a discursive field and being able to 'make distinctions between contextual events so as to manage a response' (Chouliaraki & Fairclough, 1999, p. 117). This idea of voice is does not automatically correspond with speaking. Rather it is achieved, and achieved in a relational or discursive context. It is not so much a constant state of being, but a repeated production in a variety of contexts. Sometimes we achieve the possibility of agency in the face of dominating discourse but we do not necessarily always do so. Nor do we necessarily carry a sense of voice forward from one context to another.

Finally, there is a role for reflexivity in the constitution of agency. Human beings have the ability to reflect on and to notice the process of production of their own practices. We can produce representations of what we do as a part of what we do (Chouliaraki & Fairclough, 1999). Such reflexivity is an important foundation for the exercise of agency. Without the ability to reflect, we would be more easily subjected by the constraining effects of social forces. Reflexive awareness, or the '... ability to stand out of the flow of lived experience, sometimes only momentarily, and to review the events of our lives from other vantage points,' (White, 2001, p. 23) gives us the opportunity to act in unpredictable ways. It enables us to alter, even subtly, the course of life that colonizing discourses would determine for us. Even if we do not use these words

to describe what we are doing, we can analyse just how we are being positioned in our own or in others' utterances and shift the basis of our responses.

For mediation, the concept of agency is important with regard to the politics of meaning-making. If mediators can support both parties in a dispute to be agents in the design of their ongoing relationship, then the chances of one person dominating are minimised and the chances of real dialogue are enhanced. As I have theorised the concept of agency, mediators should be alert to the opportunities disputing parties take up in resistance to readymade positions in dominant discourse. They should capitalise on such opportunities by inviting people to give voice to their positions in the story of a conflict and also to be reflexive about their own positioning. In the process, they should seek to deliberately create a dialogical space in which multiple voices can be heard without any of them coming to dominate. I shall go on to outline some conversational methods that have these goals in mind. But first, there is one more concept that is relevant to the creation of a context for mediation.

Recontextualising

'Recontextualising' is the final concept that I want to include in this chapter. Its importance to this study lies in its relevance to the context of professional conversations such as mediation. The concept of re-contextualising a discursive formation in ways that bring about changes to social practices and even to power relations is developed in the work of Bernstein (1996). He defines recontextualisation as a 'principle for appropriating other discourses and bringing them into a special relation with each other for the purposes of their selective transmission and acquisition' (Bernstein, 1996, p. 183). His interest lies mainly in ways that educational pedagogy can develop into a special kind of discourse that has the potential to transform relations constructed within other discursive fields (for example, discourse of social class). Pedagogic discourse moves other discourses about. As they are relocated, social practices can be dislocated from their social basis and reimagined. Hence recontextualising can be useful in the production of social change.

For Bernstein's purposes, the definition of pedagogy is a wide one that is not confined to schooling. He takes 'pedagogic practices' to include 'relationships between doctor and patient, relationships between psychiatrists and

the so-called mentally ill, the relationships between architects and planners' and so on. In other words, 'pedagogic practice' describes lay-professional relations as a 'fundamental social context' through which 'cultural-reproduction-production takes place.' It is clear then that, in these terms, mediation would be a pedagogical practice.

The concept of recontextualisation has potential in mediation for explaining the structuring aspects of discourse in a way that leaves them more fluid than rigid. It also accounts for another way that agency can be exercised in the face of the constitutive power of discourse. Bernstein specifies the recontextualising principle as one which 'selectively appropriates, relocates, refocuses and relates other discourses to constitute its own order' (Bernstein, 1996, p. 47). He insists that in the process of recontextualising dominant social discourses (for example of social class, gender or race) through the discourse of pedagogy, the discourses existing outside the school (for example) are not simply reproduced intact but are always transformed in some way.

Bernstein's proposal enhances the significance of what happens in mediation. It suggests that dominant discourses at work in the production of a relationship between disputing parties need not be simply reproduced in the mediation conversation but may be recontextualised by it. For example, when disputing parties tell a story in mediation of an angry and even abusive exchange that has taken place between them, they often do not do so in a way that resembles the original exchange. In the presence of the mediator they are far more polite and respectful towards each other. They therefore position themselves differently in relation to each other and in relation to the events of the previous angry exchange. Meanings begin to shift in the process. A relationship is recontextualised by being folded back on itself and events are revisited in a different context. Discursive positioning shifts a little in the process. If mediators take this possibility seriously, they can conceptualise their work as pedagogical without having to be didactic. Their task is to create the kind of relational context in which parties can feel comfortable enough to re-position themselves in the mediation conversation so that a different story of relationship can go forward.

* * *

Let me review the ground covered in this chapter. What I have sought to achieve is a representation of the major conceptual and interpretive tools that will inform this study. I intend to use these concepts as prosthetic devices (in

Shotter's terms, see above) in the elaboration of the practice of narrative mediation and also in the analysis of some pieces of conversation drawn from this field of practice. The concepts used here have been selected out of those available as those that seem to give the most promise for describing the articulation of a practice.

I have sought also to locate my argument in a conversational tradition, in a particular discourse about discourse. This discourse provides both foundation stones and scaffolding for the edifice that I want to build.

Amongst the ideas I have explored, there is some sense of tension between the structuring, shaping, constituting or determining effects of discourse on the one hand and the possibilities for resistance or agency that grow out of the indeterminacy, complexity and variability within discourse. I am not suggesting that this tension is a dialectic that can be, even in theory, reduced to a synthesis. Rather, it is a way of accounting for both the sense of coherence and stability in the production of our personal-cultural-social world and for the sense of instability that makes it possible to imagine social change.

Michael White's formulation of this idea appeals for its simplicity. He describes the tension between the constitutive power of discourse and the unruliness of life as the possibility of 'indeterminacy within determinacy' (White, 2001, p. 28). Under this heading, he asserts his belief that there is never a 'one-to-one correspondence' between 'cultural knowledges and practices on the one hand and life as it is lived on the other'. Such an idea would render people as too passive and be disrespectful of their creative efforts. Discourse would then be thought of in mechanistic ways as 'inputs' which produce predictable 'outputs'. White prefers an account of people's relationship with culture and discourse that casts them in the active, agentive roles of 'performing acts of meaning', 'pulling the materials of culture together', 'engaging with cultural modes of life and thought' and 'expressing their knowledges of life' (p. 28). The verbs here are active.

These descriptions render possible the kind of professional practice that can enhance possibilities for seeking out the 'chaotic zone of indeterminacy or uncertainty' (Shotter, 1997, p. 345), for dwelling in it temporarily, and utilizing indeterminacy to advantage. It is the place where dialogue happens, where things remain unfinalized and where social change originates. Here, culture is something being produced rather than a constraining straight jacket of

conventions (Rosaldo, 1993). Here too, history is often discontinuous (Mills, 1997, p. 26) rather than driven along a fixed trajectory in which discourses appear arbitrary rather than overwhelmingly powerful. It will be necessary to turn to the world of practice to do justice to the conceptual tools outlined in this chapter and to show how we can wrest the prize of social change from the grasp of discourse.

These then are the bases from which I shall argue for a practice of mediation that takes full account of the structuring effects of discourse but which also makes use of the possibilities for promoting agency among the participants in a mediation. It will be a practice that recontextualizes relations between disputants in a mediation conversation, deconstructs the workings of discourse behind people's backs, invites them to reposition themselves in relation to dominant discourse, and calls them into position as agents who are able to speak on their own behalf. Before describing and illustrating this practice in more detail, there are methodological considerations that I need to take into account.

CHAPTER FOUR

Research Methodology

In this study I have so far developed an account of discourse and positioning theory that can serve as the basis for both a mediation practice and a research approach to analyse conversation data. I now need to turn to the task of articulating a mediation method informed by these ideas and then asking some questions of this practice through researching it. This chapter will contain an account of the methods used in the remainder of this study to pursue this objective.

Research Design

As outlined above in the introductory chapter, the emphasis in the design of this research task was to study narrative mediation in a way that could be justified in terms of its current stage of development. To subject it a full-scale outcome study is premature given that it is still a fledgling approach to conflict resolution. Therefore the method of study needed to match the developmental process and if possible enhance the development of the approach, including its theoretical elaboration, rather than subject it to evaluative scrutiny.

The emphasis in terms of research design is therefore on the close study of some examples of the approach in action. The aim is to use the tools of research to develop a richer account of this approach than has existed so far and to elucidate this account through the use of positioning theory. As claimed in the introduction, I shall be attempting to show how the analysis of discursive positioning contributes to the development of a practice and to the research of that practice.

A broad scale study across hundreds of examples of such practice is not possible since there do not exist a cadre of practitioners committed to embodying this approach in their practice. For this reason alone, a broad survey approach would not be possible. Nor would it benefit the process development of a newly articulated practice as much as the close study of this process. The generation of data that can

benefit the development of practice was the clear goal of this research exercise. It is not 'pure' research aimed at developing psychological concepts per se. Nor, on the other hand, is it principally an ecological study of the relation between a practice and the community it is designed to benefit. Nor is it an evaluation study aimed at demonstrating, for the benefit of funders and providers, the efficacy of a practice.

Given this avowedly developmental research purpose, I would contend that there is no conflict of interest between my position as an advocate for narrative mediation and my position as a researcher asking questions about its effects. I have written elsewhere about narrative mediation (Winslade & Cotter, 1997; Winslade & Monk, 2000; Winslade, Monk & Cotter, 1999) and cannot be considered an independent observer of it. Even when I am commenting on a piece of conversation drawn from an example of narrative mediation performed by someone else, it is impossible for me to establish a position of impartiality. But if the research exercise is itself avowedly partial to the development of a practice, if it is indeed openly seeking to maximise the advantages of this practice and is using some research methods to this end, then my position as researcher is not so questionable.

There are two role-played mediations that form the corpus around which the rest of this study is organised. In the first of these, I shall include selected segments of text from the course of a single interview to illustrate principles of narrative mediation in action. This example of mediation is one in which I was the mediator. I shall then use positioning theory to explain this example of practice and show how an understanding of discursive positioning can enable a practitioner to work narratively with people in dispute. The aim will be to show how discursive positioning is implicated in the production of the ethics and the politics of practice with a particular emphasis on how the mediator can make use of positioning theory. In the second interview, Gerald Monk was the mediator. With this example, I shall take up the position of researcher, analysing the discursive positioning in more detail. I shall mount a discourse analysis of the text of this conversation. The aim here is to demonstrate the explanatory power of positioning theory with regard to the shifts and changes that people can make in conversation.

The methodology for these two exercises varies slightly. For the first exercise, I am using text to describe and make sense of a practice. For the second exercise, from the position of researcher, I want to ask many more questions of this

practice. In order to ask these questions, I need to invoke a research tradition and articulate the specific rigours of study that I shall deploy in order to claim the status of research for this exercise. The rest of this chapter will outline the methods used for these two different exercises. I shall begin with the methodology for the explication of practice and then in much greater detail describe the discourse analytic method that will be used for researching this practice.

In the book I wrote with Gerald Monk (Winslade & Monk, 2000) on a narrative perspective in mediation, we did introduce the concept of discursive positioning but in this exercise I intend to take it further and expand the utility of this idea. The method for doing so involved making recordings of two mediation conversations in a narrative mode and turning them into text by transcribing the conversation. In Chapters Six and Seven, I shall present selected segments of these conversations along with commentary that seeks to make explicit the discursive positioning that takes place.

Single Case Study Analysis

The research aspect to this study is based on the detailed analysis of a single case study. There exists a tradition of such research in the therapy field dating back to Freud's analysis of Breuer's treatment of Anna O (Russell, 1987). It is justified as a basis for discourse analytic work by ten Have (1999) on the basis of the 'emic' perspective in social research and as a 'specimen perspective'.

In the 1950s, Carl Rogers pioneered the use of the tape recorder as a research tool in his early studies of therapists' use of language. Since the 1980s, a research tradition has grown up in the counselling field of 'psychotherapy process research' which uses various tools to study intensively the significant events in a counselling session (Toukmanian & Rennie, 1992). Gale (1991) introduced the study of discourse into this field when he used a conversation analysis method to analyse a single family therapy session for a doctoral dissertation. This is the research tradition in which I am seeking to stand. The data for a mediation session are comparable to those for a therapy session. And Critical Discourse Analysis is a closely related variant of the approach to conversation analysis that Gale employed.

Balance Of Process And Outcomes

Another question that needs to be addressed with regard to research design concerns the balance of research focus on process or outcomes. While this is a study concerned with examining a practice in terms of its moment-by-moment effects and is therefore in this sense an effectiveness study, it is also an attempt to stand clearly outside the tradition of what has been called 'black box' outcome research (Patton, 1994). By this, I mean the kind of research that asks a question about the effectiveness of a complex practice through a study of the endpoints reached at the termination of the process. Such research approaches lead to the establishment of summative judgments of the practice but shed little light on the elements of the process that have produced these outcomes. Such approaches to the evaluation of the effectiveness of mediations have been criticised in the mediation literature (Garcia, 2000; Dingwall 1986) for their failure to capture what actually happens in mediation.

Once again, the developmental focus of this study makes a process focus more relevant at this stage of the evolution of narrative mediation. I wanted formative judgments to take precedence over summative ones. The approach I am using aims to both demonstrate and make sense of the detailed elements of practice and to illuminate the micro-level effects of specific conversational moves, rather than to be concerned with the overall outcome picture. In all likelihood, there will be a relationship between the accumulation of micro-level effects and the massing of overall effect, but this may not be a simple relationship. Certain practice elements may be seen to have greater effect than others and the differential effects that the research illuminates may not always equate with what the practitioner expected or intended. Therefore, what I needed to do was to produce data for analysis that could represent the practice of narrative mediation.

Producing Text For Analysis

Since I am talking about a complex conversational practice it is clear that such a process can best be represented by pieces of text. The major methodological

questions concerned how to produce such text. Mediation conversations are more difficult from which to get recordings for transcription than are counselling conversations, because of the need to secure informed consent from people who are in conflict and therefore not in positions where they are easily trusting of each other. As a result, there is a tradition within mediation research of using role-played scenarios for the recording of mediation conversations for teaching and analytical purposes (for example, Association of Family Mediators, 1989; Gale, Mowery, Herrman, & Hollett, 2002; Menkel-Meadow, 1994; Pope & Bush, 2000). I chose to work within this mode of data collection and to set up two role-played mediation scenarios that were recorded and transcribed.

There are limitations to the value of a role-play in representing what happens in a 'live' mediation. Participants role-playing disputing parties do not have a history of living with a conflict and can therefore find themselves either overplaying or underplaying the difficulty of the conflict. Role-players can introduce details that contradict what other participants have said as a result of the need to invent things along the way rather than drawing on actual memory. Role-players who do not have personal experience of, say, a divorce may not represent accurately the legal steps (for example) that people need to go through in such a context. And the method always leaves the process open to criticism that it would not be like this in 'real life'.

However, Don Mixon (1974) defends the use of role-plays as a legitimate and flexible research tool which is 'particularly well-adapted to the systematic exploration of social episodes' (p. 84). He argues that there are many occasions where more information can be generated by the use of role-plays than is possible from 'real' life. A defence of the use of role-played mediation can also be made on the basis of discourse theory. When people find themselves in particular conjunctures, such as custody battles, they can be expected to construct their personal positions and their position calls of each other from the available discourses that are extant in their cultural worlds. Such discourses are known to us, both as participants in the language games that constitute custody disputes and as role-players who are temporarily entering into such language games without having to live them out in an ongoing way. I believe this accounts for the phenomenon that has been noticeable on several occasions where I have shown in teaching contexts the videotapes of the role-played mediations used in this dissertation. People regularly comment that the roleplaying

was so 'real' that it was hard to believe that it was a role-play. I would argue that it appears this way because the discourse that the role-players call on is 'real'. It has a real life in the cultural and linguistic worlds that the role-players are familiar with and therefore they can draw on this knowledge as they play the role. They do not even have to have shared in the exact experience of the people they are role-playing to know how to speak themselves into the discursive positions of the role-play. Perhaps it can be said that in 'real' life we are always role-playing anyway, in the sense that we are constructing our responses out of discourse rather than inventing them for the first time.

On these grounds then, I argue that the role-playing of a mediation offers a reasonable representation of what might be expected to happen in a 'real life' mediation conversation. There are some things, though, that analysing a role-played conversation does not make available for study. One of these is the relationship between what happens in the mediation conversation and the performance of meaning in ongoing life after the conversation around the words exchanged in the role-play. Study of this contextual influence is not possible and therefore it is necessary to acknowledge this as a limit to this study. However, given that my main purpose in this exercise was the elaboration of a practice and a micro-study of the moment-by-moment positionings and re-positionings that take place in response to this practice, I decided that the wider contextual perspective was not crucial to my current purpose.

The other side of the coin is that role-play does offer some unique possibilities for research purposes that are not so easily available in 'real' conversations. After the completion of the role-play, as the participants are debriefing, and later on further reflection, the role-players can be asked to comment on their experience of the process. Since they are no longer committed to the content of the conversation they are perhaps freer to comment on the process issues, particularly on how the mediator's responses positioned them. This unique perspective for comment provides an added source of data and can be seen as an advantage of the use of role-play over the recording of 'real' mediations.

Rigour In Qualitative Data Analysis

Since this study employs a modified version of a qualitative research methodology, namely critical discourse analysis (I shall outline this approach below), it is useful to articulate an account of the methodological rigour of the procedures used. These procedures will be discussed in relation to the established criteria for rigour that exist in literature about such methods.

One such attempt to establish some criteria for rigour in a qualitative study was laid down by Banister, Burman, Parker, Taylor and Tindall (1994). Their concern was to suggest how researchers can work 'interpretatively within the methodological horrors' of a reflexive science like psychology and 'transform them into methodological virtues' (p.10). They suggest three broad areas in relation to which a research exercise of merit should give account of itself: a) indexicality, b) inconcludability and c) reflexivity. I propose to use these three terms as a starting point for, on the one hand, explaining and justifying my research methods, and on the other hand being transparent about things that may be the basis of methodological criticism of this piece of research.

Indexicality

Indexicality refers to the 'problem' (as it is conceived in conventional positivist accounts of research methodology) of ecological validity. The meaning of all actions and all discourse needs to be indexed to, or held accountable to, the particular contextual features of its occurrence. Since no two contexts can be considered identical, the question arises as to the validity of using any research findings to explain occurrences of the phenomenon studied in other contexts. In qualitative research, this 'problem' is addressed by removing the separation of the activities of theorizing and of empirical testing (Banister et al., 1994, p. 10). Each piece of qualitative research work needs to be theorized and each piece of theorizing must in turn be related to the empirical context out of which it arises.

What this means in practice is that for a particular piece of qualitative research, the extent to which the research can be said to relate to 'real life' refers to

the extent to which the meanings that the researcher imposes are made explicit and are made subject to interpretation from others involved in the study. Rigour here is based on ecological specificity rather than on generalisable replicability. Questions that might be asked include:

- Has the study been done with the informants rather than against them?
- Have the interests and influence of the researcher been made explicit and accountable to the participants?
- Have the participants been accorded the right to speak in the research approach?

Let me address these questions in relation to this research exercise. For the piece of transcript to be analysed in this study, the 'problem' being studied could be expressed as, 'What does narrative mediation look like in practice and what effects does it have at the micro-level of the ongoing production of discursive positions?' The contexts to which it might be indexed are therefore the contexts in which the role-players took part in the role-play, including the mediator. Let me outline the process by which such issues were attended to.

I met with the role-play participants for twenty minutes before the videotape recording began when Gerald Monk was the mediator. For the exercise in which I was the mediator, Gerald met with the role-play participants in the same way. In these meetings, we asked the participants a series of questions to help them take on the roles they were playing (see Chapter Seven for these questions). After the recording of the role-played mediation was complete, I spoke with the role-players again and recorded their comments on the experience of the conversation. In this conversation, I was interested in their comments on the work done by Gerald as mediator. I was endeavouring to avoid using them as research subjects in an objectifying way and giving them an opportunity to participate in some first-level theorizing about the exercise. Their comments are included alongside the transcript in Chapter Seven.

Once I had transcribed the role-play, I asked Gerald as the mediator to read through the transcript and give me any comments he would like to make about his intentions in the interview. In other words, he was asked to participate in the process of theorizing on his own work before I undertook the task of making sense of the conversation. After I had written a draft of my analysis of the role-played conversation, I again sent this to all the participants for them to comment on. My

interest was again to treat them as participants in the exercise with a valuable perspective to offer, rather than to separate them off as research subjects who were not needed for comment. I was also seeking to make my own conclusions accountable to those of the participants.

These are the bases on which the study lays claim to relevance as an example of mediation work. It is not on the basis of a representative sample of mediation participants but on the basis that the participants who took part had ample opportunity to comment on how the experience was relevant to them. Gerald Monk, for example, commented that he was happy with the transcript as a representation of his work.

Inconcludability

Positivist research methods seek to build generalised conclusions on the validity of the data gathered, based on the success of the efforts to control outside factors from influencing the research results. Qualitative researchers claim, however, that there is always a gap between the meanings that appear in the data and the meanings that get concluded in research reports and that claims to have 'discovered' psychological facts are at heart rhetorical claims (Banister et al., 1994, p. 12). It is in this gap that qualitative research methods seek to operate, trading back and forth in meanings between researchers and participants, rather than keeping the two separate. Qualitative research data is thought to be more fluid and unstable as a foundation for reaching conclusions that can be carried into other contexts than are the generalised conclusions made from the quantitative analysis of data from a large sample of participants. But there is a trade-off here between the more meaningful commentary possible through qualitative research and more generalisable conclusions made possible through quantitative methods (Patton, 1994). Quantitative research methods also have limitations with regard to generalisability because, in order to develop universal enough concepts for generalisable purposes, context sensitivity is often sacrificed. Qualitative researchers (including discourse analysts) can lay claim to some advantages for their approaches with regard to explanatory power from small samples or from single case studies (Banister et al., 1994, p.12). But they are also advised to clearly state the reasons for making a particular selection of research informants (Banister et al., 1994, p.13). And they should accept the provisional nature of research findings, even within a context, let alone across multiple contexts.

Again, let me use the concept of inconcludability as a basis for describing my own choice of research method. Since my aim was to produce a detailed account of, and a demonstration of, mediation practice, rather than, say, an account of participants' experience of the ongoing effects of such practice, generalisable conclusions on the experience of the parties to the dispute was not at issue. If anything might be hoped to be generalisable, it would be the mediator's practice. However, a range of mediators using comparable practices does not exist. Nor has the kind of practice being demonstrated here stabilised into a sufficiently consistent practice that it could be reproduced in range of contexts. Hence, the emphasis clearly needed to be on the detailed analysis of a narrow range of practice with a view to articulating and interpreting it more fully than has been achieved so far. Therefore, in the choice between close and detailed analysis that is less generalisable, and less detailed analysis of data that is more generalisable because it originates from a wide cross-section of contexts, I chose the former. My hope would be that this account of the practice of narrative mediation would achieve a stronger position from which to claim generalisability through the eventual accumulation of a series of such practice examples. In the meantime, no strong claims can be made even that the principles of this practice demonstrated here in relation to an issue of child custody can be generalised to contexts such as mediation in, say, employment disputes, or restorative justice contexts, or business settlements, or international conflicts.

Reflexivity

Reflexivity is a concept used in research to address the issue of objectivity. The desire to be objective can be thought of as the desire for the research results to reflect more than just the preconceptions of the researcher. It is traditionally thought of in positivist research as opposite to subjectivity. Researchers have sought to remove subjectivity from their results through a variety of procedures designed to separate the subject of the researcher from the object of the study. These procedures are variously criticised by qualitative researchers as failing or as dishonest (Banister et al., 1994, p.13). Qualitative research, on the other hand, frequently does not make the same claim to objectivity. Its credibility stands on a different formulation of the relationship between the subjective and the objective. Subjectivity is seen as a resource and a research exercise must examine and make explicit the position of the

researcher in relation to the research. Such positions can then be examined by other research participants, whose opinions can be treated as valued resources rather than screened out. Credibility is established through the transparency of the researcher's position and through the inclusion of multiple perspectives rather than through the construction of a singular objective position. From this perspective, a research exercise need never be regarded as neutral in its effects. Studying something will always change it and qualitative researchers seek to celebrate this fact rather than conceive of it as a methodological limitation.

Once again, let me apply this principle to the research exercise that I have undertaken. Some degree of objectivity was aimed at in this study in the following ways. I did seek to make a conversation into an object of study through the use of recording and transcription techniques. The conversation was recorded on videotape and was also audiotaped at the same time. The recordings were then used to make a written transcription that became the object of study. Thus, while subjective judgments necessarily came into play in the process of transcription, the data to be analysed was not simply a subjective account constructed from memory of what happened in the conversation. It could be referred to by all participants in the process and by subsequent readers of my analysis. The analysis was undertaken by asking some questions of the text and generating some interpretations based on the theoretical concepts already outlined. Where multiple interpretations seem possible these are included. Meanings made by the participants in response to the transcripts and to my commentary are included where these are available.

However, a transcription does not illuminate a practice without interpretation and meaning-making. Interpretative analysis was necessary before the data could be of value. As indicated above, I sought to be reflexive about the analysis by including the participants in the process of generating interpretations. Since discourse is a shared commodity generated in social contexts, its interpretation is also best shared in such contexts. My own discursive emphasis would not always be the same as others. Therefore, I also gave the analysis I had written to a series of other selected commentators and asked for their subjective comments in relation to my interpretations. Their comments are included in Chapter Seven as other possible interpretations of the work being done by discourse in this conversation.

Data Collection And Text Generation Procedures

In this section I shall move from the general research design issues to a description of the procedures used for collecting data and generating text for analysis.

Scenario One

The scenario used in the first role-play was selected from some scenarios suggested by students in a mediation class as representative of the kinds of disputes that were typical in their work or in their experience. An instance of family mediation around the care of a child was chosen because this is a major domain in which mediation is practised in New Zealand and elsewhere. The particular case chosen also had an extra dimension to it. It involved a gay man who had made an arrangement for a woman to carry a child for him. After carrying the child, the woman had decided that she did not want to give the child up to the man and his partner. This scenario seemed to offer the opportunity to make explicit some of the discursive effects in people's lives of normalised notions of family. How people position themselves and each other in relation to such discursive influences would, I hoped, show the work being done by such influences in many other contexts as well. The scenario that was given to the role-players is reproduced in Chapter Five.

Scenario Two

The scenario to be used in the second role-play was also generated by adapting a scenario that was suggested by students in a mediation class as representative of the kinds of issues they had come across in practice. The scenario used was chosen because it represented the kind of child custody issue that features commonly in divorce mediation, still one of the most frequent areas of practice for professional mediators. The scenario also had some added dimensions. It was about a conflict between a grandmother and a father after the death of a mother. The role-play participants had a say in choosing this scenario over an alternative possibility and they mentioned in doing so that it was one in which they felt they could call on enough personal experience to be able to play the role. For example, Jackie, who

played the grandmother, referred to her own experience of being a grandmother as a resource for playing this role.

Participants

I was the mediator in the first role-play. The disputing parties were role-played by two students in the school counseling programme at San Diego State University named Andrew and Melissa. They volunteered to participate in this exercise in response to a request in their class from Gerald Monk. Both identify culturally as Latino/Latina and are in the late twenties. They did know each other before the role-play.

Gerald Monk was recruited to be the mediator in the second role-play. As my co-author in a book about narrative mediation he could be expected to provide an example of the practice of this work that was recognisable as a narrative mediation approach.

Gerald recruited two colleagues from San Diego State University who volunteered to be the role-players in the mediation scenario. Neither is involved in teaching mediation, but one does teach family therapy and the other teaches multicultural issues for students in the school counselling programme. They were given the role-play scenario the day before the recording of the mediation. Both participants are university teachers and therefore well educated and articulate. Jackie is African-American and Craig is Anglo-American, and this racial difference emerged as a factor in their adaptation of the scenario. Gerald did have a collegial relationship with each of the role-players prior to the role-play although they each did not know each other beforehand, except by sight.

The Recording

The role-played mediations were recorded on videotape by two cameras provided by the audio-visual department of San Diego State University and later edited onto one tape by them. It was also audiotaped at the same time. The recording was made on the 19th of July, 2001, at San Diego State University in California. The entire session lasted fifty-five minutes. I was present in the room during the recording of the role-play, as were two production crew members who were working

the cameras. The presence of three other people in the room no doubt affected the conversation and rendered it less similar to what might happen in a 'real' mediation. The role-played nature of the interaction and the recording process itself also made the conversation differ in some ways from a more naturally occurring interaction as 'would take place without research observation' (ten Have, 1999, p. 49). For the sake of video quality, the participants were required to sit in closer proximity than they would in other contexts so that the camera operators could get them all in shot at the same time. They were also required to sit facing out towards an imaginary audience rather than facing each other more naturally. No doubt these factors had a shaping influence on the conversation, although it is hard to measure exactly how. At one point in the course of the recording the production crew called a brief halt to the conversation for one minute while a videotape change was made.

Nevertheless, the conversation recorded largely resembled the kind of conversation that might conceivably occur in a naturally occurring mediation. It was representative of a genre of conversation between a professional mediator and two lay persons. It differs from an interview made for research purposes.

The Transcription

The transcription was made by me as the researcher rather than treated as a mechanical activity that could be completed with secretarial help. This decision was made on the basis of advice from various writers on discourse analysis who stress the value of close listening to the dialogue by researchers in order to hear and understand what was said (Gale, 1991; ten Have, 1999; Potter & Wetherell, 1987). The process of listening to a tape and rendering a version of that in writing is a process that involves discursive construction and interpretation (Fairclough, 1992; Gee, 1999) and is the first step in the process of discourse analysis.

Repeated listenings to the audiotape were necessary in order to develop the written construction of the conversation and on each hearing extra dimensions to the conversation were added. The first hearing was done with the videotape and the entire conversation was listened to without pausing. The next three listenings concentrated mainly on the transcription of words. Small segments of tape were played several times and the words used were written down. The next run-through

concentrated on picking up words that were missed at first. Then the following two listenings focused on the pauses (voiced and unvoiced) between the words, the stresses and tone shifts, the laughs, the sighs and the intakes of breath.

After a series of listenings to the audiotape, the videotape was also studied. The extra visual cues produced a number of different interpretations of expressions used and allowed for the inclusion of more paralinguistic communication features that were useful for micro-analysis. These features could not be exhaustively represented without interfering with the readability of the transcript but I sought to include what I interpreted as major head nods, body gestures, shifts of gaze and shifts in body position. Of particular importance was at whom each participant was looking while speaking. In all, over forty hours of time were spent listening to and transcribing the tapes. An ordinary cassette tape recorder and video recorder were used for these purposes.

Transcription Conventions

Since transcription from an oral recording to a written text always involves some degree of translation and the 'idealization of speech in terms of the standard language' (ten Have, 1999, p. 81), it is necessary to explain the conventions adopted in this translation. My concerns were, on the one hand, to preserve the spoken quality of the language, and, on the other hand, to render it easily readable. Ten Have advises that, 'one should adapt one's transcription style to one's purpose and audience' (ten Have, 1999, p. 82). A key decision I made was to keep in mind professional mediators as the primary audience who might want to read the transcript, rather than to focus on the production of a transcript that would provide the richest value to linguists interested in the study of conversational phenomena. Working from this premise, I decided to develop my own adaptation of the transcription conventions advocated in the literature on discourse analysis (Fairclough, 1992, Sacks, Schegloff & Jefferson, 1974). I made the following decisions:

1. On the basis of Bakhtin's theory of the utterance (see Chapter Three) I decided to use the beginning and the end of an utterance rather than the sentence as it occurs in written modes as the organizing units of language. Capital letters and full stops are therefore used to denote the beginnings and ends of utterances (some would

call these turn construction units, ten Have, 1999, p. 90). Within an utterance, pauses such as might be represented by the end of a sentence are designated with two dots (..).

2. Words spoken by the participants were represented largely in standard spellings rather than making an attempt to represent them phonetically. Accents and dialects were not considered crucial features of what needed to be studied in this exercise. The reasoning here was that making a greater attempt to show how something was said rather than simply what was said would impede too much the flow of reading for the target audience. Neither did I want to risk portraying participants in the role-play as stupid or sloppy (ten Have, 1999).
3. Pauses were represented with dots (...) and the length of such pauses was estimated rather than measured. Precise measurement of pause length (e.g. [0.5secs]) was not considered crucial enough to the meanings over a lengthy conversation to warrant the effort of measurement. It would also provide a further unnecessary impediment to the reading flow. Instead, length of pauses was indicated roughly by the number of dots, with more dots for longer pauses (.....) and fewer dots for shorter ones (..).
4. Voiced pauses (um, ah, er) were treated as pauses and rendered with dots (...) rather than transcribed as words. This was also a decision made with an eye to privileging readability over linguistic accuracy.
5. Paralinguistic features were written in brackets in italics (*laughs, Alan nods, looks at Theresa*). Relevant visual phenomena from the videotape were treated in the same way.
6. Inaudible sounds or words were represented by brackets and the word *inaudible* written in italics in the brackets.
7. The common convention of marking overlapping by using square brackets was not employed. I decided that this convention was not commonly enough in use to be easily picked up by mediators reading this transcript and did not want to require mediators to learn the convention as a pre-requisite for easy readability. As it happened, the conversation had a measured reflective pace to it and overlapping did not feature highly. Where it does happen and seemed important I have used the more cumbersome, but easier to read, method of referring to it in full in brackets and italics.

8. Where the meaning of a word or expression depended in its spoken rendition on emphasis conveyed through increased volume, capital letters are used to indicate this. Simple stresses on particular words were rendered by underlining.
9. Intonation was a linguistic feature that I decided to leave aside for the purposes of my analysis.
10. The transcription was formatted according to the vertical rather than partiture system (ten Have, 1999, p. 89), again for reasons of easy readability.

Discourse Analysis

After the production of a piece of text for study, an approach to its analysis and interpretation needs to be articulated. First, I shall discuss the general nature and purposes of critical discourse analysis before outlining the specific methods of analysis to be used in this study. I shall also locate the approach that I am using here in relation to the existing literature on discourse analysis.

The first general point that can be made is that discourse analysis has developed not just as a way of thinking about the social world but as a specific research approach. It has been developed into a tool of inquiry which takes advantage of the concept of discourse and uses it as a 'thinking device' (Gee, 1999, p. 53). It can be used to study systematically different ways of talking or writing 'so that we can understand them better' (Parker, 1992, p. 5). In order to do so, it is necessary to take pieces of discourse and turn them into objects of study. Discourse analysis, according to discourse theory, is not a neutral process. Rather, it constructs objects (discourses) in the process of representing them. In Bernstein's terms (see Chapter Three) discourse analysis recontextualizes pieces of discourse.

Discourse analysis has been the subject of discussion by various writers. It is first of all a process of studying language-in-use rather than language itself (Gee, 1997). This means that the emphasis in discourse analysis needs to be on the relationship between social contexts and linguistic elements in their communicative functions rather than on either the abstracted structure of language or the abstracted structure of the social. Thus the very use of discourse analysis amounts to the taking of a position on the nature of this relationship between discourse and the social. This

position rejects the possibility of constructing either the social or discourse as discrete objects of study in themselves.

On this basis, a range of emphases can be found within the field of discourse analysis. There is little consensus to be drawn from. Rather, there is a literature of exploration and development and sometimes of debate and disagreement. Some of these differences relate to the diverse disciplinary backgrounds in which discourse analysts are located (sociology, linguistics, cultural studies, social psychology, literary criticism). More linguistically-oriented discourse analysts are inclined to emphasise regularities and patterns in language use in relation to linguistic context, genre, topic, and participant relationships (for example, Nunan, 1993), often following the principles of Garfinkel's (1967) ethnomethodology as developed into 'Conversation Analysis' (CA) (by Sacks, 1995; Schegloff and Sacks, 1973). Discourse analysts with more of a bent towards social theory and the facilitation of social change have clustered under the banner of 'Critical Discourse Analysis' (CDA) especially as championed by Burman and Parker (1993), Billig (1998), Chouliaraki and Fairclough (1999), Fairclough (1992) and Parker (1992). These approaches start from the assumptions represented by Bernstein in this way:

The text is the form of the social relationship made visible, palpable, material.

(Bernstein, 1990, p. 17)

It is the text that becomes the object of study for discourse analysis. However, the interest for critical discourse analysts is not in the linguistic elements of the text in themselves, so much as in the social relations being constituted and the agents endowed and authorised in and through the text. Fairclough bases his argument for textually-oriented discourse analysis on Foucault's approach to discourse but he also expresses disappointment in Foucault for largely ignoring the detailed 'discursive and linguistic analysis of real texts' (Fairclough, 1992, p. 56) resulting in a neglect of the specificities of practice, particularly practices of resistance to the operations of power.

The merits and problems of Critical Discourse Analysis have been debated in recent literature (Chouliaraki & Fairclough, 1999; Billig & Schegloff, 1999; Schegloff, 1997; 1998; Wetherell, 1998) and some points of issue have been thrown up that deserve attention in the articulation of method.

Schegloff (1997), arguing for the ethnomethodological tradition of conversation analysis, has made a series of critiques of work done by critical discourse analysts. In the process he sparked off an energetic debate about approaches to discourse analysis. I take seriously his desire to privilege the straightforward intentions of participants in a conversation. As discourse users, they are attempting to achieve something and they know best what they are trying to achieve. I have already mentioned how a similar point is made by Linehan and McCarthy (2000). It is possible for critical discourse analysts to treat people as chaff blown about in the winds of discourse with little emphasis on their intentions or agency. Heeding Schegloff's concern is necessary if we are not to slip back into classical Marxist assumptions of 'false consciousness' when describing participants' intentions, while we as discourse analysts claim the high ground of being able to see the underlying truth. So the approach to discourse analysis I want to use here needs to include a focus on the intentions of participants with regard to the discourse they are immersed in.

However, it is a different thing to suggest, as Schegloff seems to, that discourse analysis should adopt the rigorous disciplinary position of only analysing the social elements of discourse that are actually made relevant by the participants in the text being analysed. For example, he might argue that the construction of gender identity in discourse should not be analysed unless the conversation participants in some way make reference to their own consciousness of gender discourse at work. Schegloff is concerned with what he sees as the tendency of critical discourse analysts to approach texts with a set of ideological predilections in mind which then get mapped onto the conversation without making them available to influence from the data.

This limitation does not take adequate account of the complexity of discursive influences, some of which participants in a conversation will be consciously responding to and some of which will fall outside of their consciousness as taken-for-granted understandings of how the world is. I see no reason why careful analysis might not render understandable to participants aspects of what they have to say that were not present in their consciousness at the time. If we take seriously Bakhtin's notion that every word used contains traces of other uses and Foucault's accounts of the dominance of certain discourses in the background systems of meaning, without

which participants' utterances would not make sense, then an analysis of conversation that leaves out the relationship between a discursive usage and the wider social context will be severely limited.

These arguments have also been made in various responses to Schegloff's comments. Wetherell (1998) insists on the importance of the 'imbrication of discourse, power and subjectification' (p. 388). She cites Laclau and Mouffe's descriptions of 'nodal points', 'discursive clumps' and 'ensembles' which achieve relative stability for long periods of time and which provide the 'argumentative fabric' (p. 393) from which conversational participants fashion signification and construct social realities. These discourse features are often so implicit that they scarcely feature in the immediate intentions of participants in a conversation. Discourse analysis does need to take account of how conversational participants' utterances make sense and this means that it needs to explore the complexities of the relationship between specific utterances and background orders of discourse.

Billig (1999) points out that this task is not only necessary but also unavoidable. He goes further than Wetherell in taking Schegloff to task and points to some of the common concepts used in conversational analysis (turn-taking, repair, etc) that he claims can also be seen as preconceptions imposed on participants' intentions. Reflexive attention to the researcher's preconceptions is always necessary. Billig goes too far though and in the end appears to justify some of Schegloff's concerns. His choice of one example to attack Schegloff with is worth noting in passing. He suggests that even the selection of names to use in a transcript is a political choice. By way of illustration, he describes a hypothetical analysis of a conversation about rape or abuse and suggests that it would be preferable to identify the participants in the transcript as 'rapist' and 'victim' in preference to using their names. However, such a move would make Schegloff's criticisms appear justified. To be sure it conveys an enthusiasm for a political analysis. But it also totalises and objectifies people's identities and appears to use them as pawns in the analyst's agenda. The example is objected to strongly by Schegloff and the whole debate is somewhat sidetracked by a spurious (not to say nonexistent) example.

Chouliaraki and Fairclough (1999) help us get the debate back on track in their response to these issues. They argue that it is inevitable that discourse analysts will be 'operating in theoretical practices whose concerns are different from the

practical concerns of people as participants' (p. 7). Therefore, of course it will happen that the analyst's preoccupations will be brought to bear upon the discursive text. That is to be expected and is no fault. Chouliaraki and Fairclough therefore argue that a technical or formal analysis that excludes the theoretical preoccupations of the researcher is not possible anyway (Wetherell, 1998, makes a similar point). But Chouliaraki and Fairclough still emphasise Schegloff's prime concern, which is that a discourse analysis needs to remain answerable to the text.

Another argument against Schegloff's stance is advanced by Wendy Drewery (2002). She points out that the conversation analysis approach Schegloff is recommending leads to a focus on the detail of the text to the extent that it is cut off from the overall context of the conversation, let alone from the context of the relationship outside the recorded text. She advocates studying the relationship between texts and the contexts of the lives of persons who participate in them rather than focussing solely on what is in the text. As Vivien Burr argues, this approach makes it easier to 'harness such analytic work for the purposes of personal and social change' (Burr, 1998, p. 21).

My own preference in all this is for the wider, more interpretive focus of the Critical Discourse Analysis perspective over the more formal and technical linguistic analysis of Conversation Analysis. This preference relates to two concerns. The first is that the influence of discursive relations, and more specifically power relations, in the content of conversation appears more salient to me than the Conversation Analysts make evident. Like Wetherell (1998), I am also not convinced that it is possible to do a technical linguistic analysis first and a social analysis later.

My second concern relates to the intended audience of this study. This study aims to use discourse analysis to speak first to those interested in the practice of mediation rather than to those interested in the practice of either linguistic analysis or social psychology. To the extent that such readers might be served by an introduction to the technical aspects of discourse analysis I am prepared to use these, but not to the extent of having them wade through material of little applied relevance to practice. On the other hand, professional mediators can be assumed to have an interest in the deconstruction of background discourses at work in conversation for its potential practical value rather than for an academic interest in the study of discourse. This concern about practice leads me to be interested in more than how people work up

identity claims in texts. Narrative mediators are concerned with how people can make identity shifts in their lives in the context of conflict situations.

Moreover, the approach to mediation that I am about to outline, itself consciously and directly draws on the same poststructuralist social analysis that Critical Discourse Analysis draws from. The congruence of epistemological perspectives between the research methods and the mediation approach can only be advantageous for the purposes of this study.

This is not to say that there is not still much to be gained from Conversation Analysis. Critical Discourse Analysts have included in their work many of the practices developed by Conversation Analysts (see Fairclough, 1992; Parker, 1992). Schegloff's call for attention to the detail of the text is important, as is his concern for the intentions of the participants in a conversation. The kind of analysis I am aiming at should provide insights into the text that go beyond mere description, but this should not be the kind of insight that sets out to prove the naivete or shallowness of participants. It should be the kind of insight that participants can, potentially at least, find helpful in understanding their own discursive positions. It should promote their chances of taking up agentic positions in future conversations.

Such a study requires a combination of both micro-analysis and macro-analysis, a concentration on the detail of textual emphasis and on the broad scale orders of discourse (Fairclough, 1992). I now shall address the specifics of doing discourse analysis from a Critical Discourse Analysis perspective.

Since there are a range of approaches to discourse analysis, it is not surprising that there have been a series of calls to resist the development of a formulaic method that could be established as a convention for repeated use (Billig, Condor, Edwards, Gane, Middleton & Ridley, 1988; Parker 1992; Potter & Wetherell, 1987). Such a formula would tie discourse analysis down but it would also make it contextually less responsive. Discourse analysis, particularly critical discourse analysis, stands upon the principle of analysing text in relation to the context of its creation and in reflexive relation to the contextual purposes of the research. There is a desire to keep the method fluid enough to be moulded by contextual demands, and a resistance to hardening it into a singular approach. That would lead to a greater degree of abstraction and objectification.

At the same time, there have been calls for development of greater consensus over what can be understood as discourse analysis (van Dijk, 1997a; 1997b). Van Dijk argues that the consensus should establish how discourse analysis amounts to more than 'simply citing or paraphrasing selected fragments of text' and also more than 'mere commentary on text and talk' (van Dijk, 1997a, p. 6). As editor of the journal *Discourse and Society*, which is dedicated to publishing discourse analysis examples and leading the way in the development of the research approach, he called for:

... details of structures and strategies in terms of conceptual devices that produce novel and interesting insights in talk, in its interactional accomplishments, or in its contextual or societal conditions and functions.

(van Dijk, 1997, p. 6)

He implies that such methods are not as yet available and will only become available through the 'doing of more discourse analysis and in the process developing new ideas, concepts and theories about our own practices.' Van Dijk (1997b) also laments the state of discourse analytic research for its lack of applied value, despite its disavowal of schism between 'pure' and 'applied' scholarship as 'bad for both' (p. 451). He remarks on the articles he receives for publication as editor of *Discourse and Society* that they mostly 'remain severed from practical applications' (p. 452).

The last point leads into the relevance of discourse analysis as a research method to this particular study. My focus here is on the study of an 'applied' practice. It is also a study about the facilitation of change. Hence my interest lies less in the linguistic study of conversation than in the social usefulness of particular forms of conversation. Or to put it another way, I am not so interested in studying how identity accounts work within the text, so much as in the relevance of these accounts to possible changes in people's lives. Moreover, I deem the critical discourse analysis interest in power relations to be an important focus of discourse analysis and hence I choose to locate this study in this tradition more than in that of conversation analysis.

Fairclough (1992) has laid out an agenda for discourse analysis that can serve as a guide for the practice of discourse analysis as I am using it. He specifies four

conditions for distinguishing a critical discourse analysis approach. The first is that it would need to maintain a multidimensional focus and relate detailed properties of texts to social practices and to social change. Secondly, it would need to be a multi-functional analysis that attends to the functions of discourse in the production of knowledge, social relations and social identities. Thirdly, it would need a historical focus, relating particulars of texts to longer-term constitution through time of orders of discourse. Fourthly, it would need to be a critical method that made more transparent the hidden processes of social structuring. Such an analysis makes possible some material benefits for those who are disadvantaged through such processes remaining hidden.

These are valuable principles that I accept as the basis for discourse analysis but they also fall short of one crucial dimension that is important in relation to the purpose of this study. The social change processes that Fairclough is envisaging here always lie outside the process of discourse analysis. Change is assumed to follow (potentially at least) from a good piece of discourse analysis that sheds such light on a particular context that stakeholders in it might rise up in protest and bring about change. The emphasis is not on mapping processes of discursive change themselves. An extra dimension is needed in the analytic process for this purpose. It is the analysis of discursive positioning that I believe advances the kind of analysis that Fairclough proposes in a direction that is more sensitive to the subtle shifts and changes of conversation. In conversations that are explicitly aimed at the production of changes in people's relationship with the discursive conditions of living (such as in counselling or mediation), we can profit from the analysis of the subtleties of positioning and re-positioning that take place. In such positional moves, we can see people producing and reproducing their worlds. This emphasis makes people less the puppets of Fairclough's hidden processes of social structuring while preserving the sense in which people are making and remaking their worlds in relation to the discourses that are at work in these worlds.

Chouliaraki and Fairclough (1999) have elaborated Fairclough's earlier ideas further by directing the focus of critical discourse analysis principally at a series of suggested target problems. They highlight a concern about power and struggle over power as a major theme through all discourse analysis and suggest that this needs to be studied in the following domains: a) processes of colonisation and appropriation

of social practices; b) current social trends towards globalisation of social practices and their disembedding from local cultural worlds; c) the relationship between ideological constructions of the world (for example through racist or sexist discourse) and the effects of reflexive awareness of the working of such ideologies; and d) the production of identity in relation to categories of social grouping and in relation to both universalizing and fragmenting tendencies. A study of mediation practice might potentially be relevant to all of these domains of research but it is the fourth area of identity construction in relation to categories of social grouping that is most pertinent to the discursive analysis of positioning in mediation.

The research task then for the discursive analysis of positioning is to illuminate just how people in conversation are building their worlds (Gee, 1992, p. 93) by deploying the meanings available to them. Such research asks of a piece of text what kinds of person are being called into position in a particular discourse (Parker, 1992, p. 10). Gee would have us ask about what kinds of 'situated identity and relationship building' (Gee, 1992, p. 93) are taking place. But if we are to focus on the possibilities for social change, we also need to ask how these identities are being 'stabilized or transformed' (Gee, 1992, p. 94) in the course of conversation. Or how the right to speak is being constituted or restrained (Parker, 1992, p. 10) and therefore what can be said? Following Linehan and McCarthy (2000), I believe it is also important to ask what remains indeterminate within the shaping effects of discourse. Such a focus has potential for the study of social change processes. Now it is time to articulate an analytical method that will meet these demands.

Handling The Corpus

Having examined some general parameters, we now need to get down to the detail of how to go about this kind of analysis. There are some models to draw from. Fairclough's (1992) model has been widely cited as a point of reference and is more recently developed in conjunction with Chouliaraki (1999). Parker (1992) offers a systematic procedure and Gee (1999) has listed a series of angles from which to address textual material.

One issue is to do with how to handle the corpus of a lengthy transcript of conversation. A common approach is to code and select sample sections of the conversation according to topic or other features (Fairclough, 1992). Another is to focus on 'moments of crisis' (Fairclough, 1992). Such selection processes can identify textual elements that represent the overall whole or can pinpoint change points but this may be at the cost of a sense of the whole. In order to demonstrate an approach to mediation practice, I was concerned to convey a sense of the overall development of a conversation, as well as to show shifts and changes in discursive positioning as they occurred. I therefore decided to follow the model used by Gale (1991) in his analysis of a family therapy session of including nearly the whole of the corpus in a series of chunks. For the sake of brevity I omitted only a few blind alley sections of conversation that did not contribute to the overall development of the conversation. Detailed textual analysis was inserted in between the chunks of conversation and was then followed by an analysis of the whole that drew themes together and cited examples from different places in the text.

The Process Of Discourse Analysis

Fairclough (1992) advocates starting with the macro-level analysis of social practices, moving to a micro-level textual analysis and then back to the macro-level analysis of the context in which the discourse takes part. His approach starts with an interest in the social practices within which the text has been produced. In his 1999 version with Chouliaraki, he adds the identification of a problem as the first stage of the analysis of the social context in which the text has been produced. His method continues with a search for intertextual features of the discourse production, includes a Conversation Analysis emphasis on interactional control, scrutinises a series of semiotic textual elements (ethos, grammar, transitivity, theme, modality, word meaning and metaphor) and then pulls back to the larger world of discourse, orders of discourse and the ideological production of social relations. Fairclough notes that this model involves moving from interpretation to description and back to interpretation again. I would prefer to talk about repeated cycles of such movements, not just one. The analytical reasoning is neither purely inductive (moving from text

to interpretation) nor deductive (moving from interpretation to examples in the text) but rather a continual back and forth interplay between interpretation and text as ideas are examined in the light of textual data and data are questioned for the concepts that they might support. Neither interpretation nor description can take precedence as the chicken or the egg.

Parker (in Banister et al., 1994) emphasises a more inductive approach in his version of discourse analysis. He starts with locating nouns; free associating around these (a piece of psychoanalytical discourse that has to be queried from a discourse theory perspective since no associating can be free of discursive influences); identifying the objects formed within the text and the subjectivities being constituted; reconstructing the differential rights to speak of these subjects and mapping the social worlds which exist within the text.

This method describes a worthwhile discipline to follow when working in a detailed way with a small amount of text but it is hard to imagine identifying all the nouns in forty pages of conversation transcript and free associating around these before forming a sense of the subject relations involved.

Gee (1999) outlines a series of 'building tasks' to be done in the process of constructing a discourse analysis. These include using the cues in the text to construct versions of the work being done in discourse to: assemble semiotic meanings; build worlds; perform activities; formulate identities; distribute 'social goods'; and make coherent connections between past and present. He suggests that these building tasks are always all being done at once and that they are not sequentially ordered. Like Fairclough, for each he lists some questions that can be asked of a text.

None of these approaches includes an emphasis on some of the features of discourse theory that I would like to see included, particularly those that derive from Bakhtin's theory of the utterance, from Bernstein's notion of recontextualizing, from Cobb's attention to narrative coherence, and from positioning theory. The idea of constructing a series of questions to pose in relation to a text does however appeal. Therefore I set out to construct such a set of questions, drawing in part from each of these approaches and adding some that were drawn from positioning theory and from Bakhtin's theory of the utterance. Before outlining this list of questions let me address the additional issues that guided this list.

Discourse analysis that focuses attention on the creation of differential speaking rights (for example Parker, 1992) and the corollary exclusions that result in the silencing or bypassing of such rights seem to me in the light of Bakhtin's ideas to emphasise only one aspect of the production of subjectivity in discursive communication. Bakhtin points much more vigorously to the role of the addressee in any utterance. He suggests that we should pay much more attention not just to who is speaking but to who is exerting claims to be addressed. The shaping influence of the addressee is often neglected in discourse analysis. This influence may be much wider than the immediate listeners too. A speaker may have one eye on other more persuasive audiences than the one immediately present and an utterance may take its place in more than one conversation. Similarly, the speaker is always offering the addressee a position from which to respond, which brings me to the second point.

Bernstein's theory of pedagogy as a context in which discourses get recontextualised (see Chapter Three) is also important to my analysis of what happens in mediation. It helps take account of the ways in which simply talking to a mediator and hearing a mediator carefully listen to what one has to say makes a difference to the discursive resonance of what is said. When the mediator uses some deconstructive tools, for example the method of developing externalising conversations (explained in Chapter Six), meanings even more rapidly become recontextualised. One of the important uses of this idea is that it helps us account for shifts and changes that happen in mediation. What I am looking for are the analytical tools that help develop just such an account.

Positioning theory and the concept of position calls deserve attention in the analysis of discourse. Describing the subjectivities produced within a text and even the power relations between different subject positions, often appears largely static in many discourse analyses. The analysis often gives the appearance of locking participants into such positions. For the analysis of conversations that are intended to create opportunities for shifts in subjectivity and shifts in relational positioning (for example counselling or mediation conversations), such analytical emphases will not do. A more relational emphasis, rather than one that focuses on individual subjective achievements is needed for this purpose. We need an approach to discourse analysis that is more sensitive to the subtle shifts in discursive relations that can happen in significant conversations.

Analysing the position calls being offered in any utterance, and either taken up or not, is one way that discourse analysis can be made more sensitive to social change, even on a micro-level. A good example of the kind of analysis that makes use of positioning theory has been recently provided by Linehan and McCarthy (2000). In this account of interactions between a teacher and a student they use the concept of positioning to illuminate not only the 'sense of oughtness' (p. 442) constituted through discourse but also the 'momentary gaps in determinacy' (p. 445) in which 'normative practice meets difference' (p. 440). They argue that:

'... we need an analytical tool that can be used flexibly to describe the shifting multiple relations in a community of practice, something that captures the sense of momentary gaps in interactions. We argue that 'positioning' is a useful way to characterise the shifting responsibilities and interactive involvements of members in a community.'

(Linehan & McCarthy, 2000, p. 441)

This suggestion that positioning can be used as an analytical tool 'to describe the movement of participants through interactions' (p. 443) amounts to a refinement of Davies and Harré's (1990) use of positioning in a much more static way. It is useful to my purpose here because it is sensitive to the shifts in positioning that people make in the midst of a mediation conversation. It is respectful of the agentic choices that mediation participants make in relation to the positions being offered to them on a moment-by-moment basis and it helps us account for change as the outcome of such choices. Moreover, facilitating shifts in positioning rather than facilitating wholesale discursive change makes for a realistic goal for a therapist or mediator in the context of even a single conversation.

Analytical Questions To Pose In Relation To A Text

What I have arrived at therefore is the not uncommon approach of formulating a list of questions that can be asked of a text. Such questions should guide the analysis through directing attention to what deserves to be noticed. The list that I

developed and used in this research exercise is based on the Critical Discourse Analysis sources that I cited above (Fairclough, 1992; Fairclough and Chouliaraki, 1999; Banister et al, 1992, Parker and Burman, 1993; Gee, 1999). However it is also influenced by the four further conceptual sources that I have referenced above: Bakhtin's theory of the utterance; Cobb's theory of narrative coherence, Bernstein's theory of recontextualisation and positioning theory, particularly as elaborated by Linehan and McCarthy. Here are the questions that I devised.

General Contextual Features

1. In what genre is this conversation conducted? Does it draw upon other genres?
2. What kinds of social practice are being performed in this conversation?
3. What conjunctures serve as the context for this conversation?
4. What other conversations/background discursive influences/institutional normative expectations are being referenced in this text?
5. What storylines are presupposed in this exchange? In what other narratives are the stories being told here nested?
6. What traces of other usages in other contexts are present in this exchange of utterances?

Positioning

7. What position calls are being offered by the mediator and by the disputing parties in this exchange of utterances? How are they taken up or refused?
8. What positions do participants seek to establish for themselves in this exchange?
9. What options are made available/excluded from availability in the position calls issued?
10. What other position calls (including contradictory ones) might participants be responding to in addition to the apparent ones? What other addressees might the participants have in mind as they position themselves and each other?
11. What sense of 'oughtness' might be operating on participants in this conversation?
12. To what extent does the taking up of positions involve the assumption of or the compromise of possibilities for agency?

13. What storylines (for personal identity/relationship/community/or institutional life) are being created or restrained by the positions claimed, taken up or refused?
What other possible storylines are not taken up?
14. How is narrative coherence being organised around the discursive positions that are established?
15. What alternative narratives, and the positions possible within these, are being closed off by the positions established within the storylines that are privileged in each person's account?
16. What kind of power relations are being promoted within the position calls being offered and taken up?
17. What dilemmas of agency arise in relation to the possibility of multiple positionings?
18. What 'momentary gaps in determinacy' are evident in this exchange of utterances?
19. What shifts in position are enabled in the course of this conversation?

Recontextualising

- 18 How are utterances being recontextualised in the course of this conversation?
- 19 Is irony or humour being used to recontextualise discursive meanings?
- 20 If shifts in position can be detected, how are they contextualised so as to be sustained or are they reincorporated back into a dominant storyline or discourse?

Orders Of Discourse

21. What systems of meaning, interpretive communities, discursive assumptions are necessary as presuppositions in order for these utterances to have meaning?
22. What hegemonic relations might be reproduced or challenged in this conversation?
23. How do the practices engaged in or referenced in this conversation stand in relation to conventional or normative practices?
24. What systems of knowledge are drawn upon, have their authority upheld or are undermined in this conversation?

Finally, it would be misleading to suggest that this list of questions was first constructed and then applied. In fact, this list is the product of a process of generation that has included: practice attempts at analysing the discourse of narrative therapy sessions; theoretical work on the conceptual tools outlined in Chapter Three; and the process of diving into the discourse analysis of a mediation, working out what seemed important and noticing what seemed to be happening in the conversation. Theoretical readings several times led to a need to revisit the terms of the analysis to pay attention to new elements in it. A version of this list was developed before writing the analysis in Chapters Seven and Eight and then revised again as this chapter was written. This revision led to a need to revisit the discourse analysis once again. All this I would argue is as it should be. The constant working back and forth between concepts and practices is what distinguishes robust discourse analytic work from mere description (as van Dijk called it, see above). My hope is that these questions represent an approach to discourse analysis that can assist in the illumination of what happens in the complex conversations that are intended to facilitate a way forward in conflict situations. I want them particularly to be sensitive, not just to the workings of dominant discourses, but also to the subtle re-positionings that take place within discourse in the course of a mediation, particularly as this is conceived of in narrative terms.

CHAPTER FIVE

A Review Of Analyses Of Discourse In Mediation

Any piece of research can be understood in Bakhtin's (1981; 1984; 1986) terms (see Chapter Three) as an utterance in a conversation. In order to be intelligible it must respond to other utterances in that conversation and contribute to the ongoing conversation. Previous chapters in this study have located this study in academic conversations about mediation theory and practice (Chapter Two), about discourse theory (Chapter Three) and about research methods (Chapter Four). There is, however, another domain of conversation in which this study seeks to be an utterance. In Chapter Four, the methods of discourse analysis that will be employed in the following chapters were outlined. But this is not the first occasion for the use of discourse analytic methods in the understanding of what happens in mediation or family therapy. It is therefore important to draw some points of connection with other academic utterances in this domain in order for my work to be appreciated in this academic context. That is the purpose of this chapter.

There are several domains of discourse analytic study in which I want to examine recent contributions. In the process, I shall clarify how this study will either build on, or differ from, other work done in these domains. The focus of this review will be restricted to analyses of the genres of conversation that are similar to the mediation conversations of main concern here. I have ruled out from this review discourse analyses that have focused on conversations that were primarily research interviews. However, it is necessary to review a little more widely than just the discourse analyses that have been done on mediation conversations because there have been so few of these. Beck and Sales (2000) point out that they could find only seven studies in total on the process of mediation. And not all of these used discourse analysis methods.

One relevant larger domain is the analysis of conversations between professionals and their clients. Such studies have been steadily growing in number in recent years (MacLeod, 2002). There have been a number of such discourse analysis studies that have focused on conversations between doctors and patients, nurses and

patients, teachers and students, social workers and clients, as well as the conversations that involve therapists and mediators. I shall briefly represent this literature. Then, there is a literature in which the work of family therapists with families or couples have been analysed using discourse analytic methods. In introducing this literature, I shall distinguish between work that has been done in the Conversation Analysis tradition and that that has been more aligned with Critical Discourse Analysis. Some of these studies will include the discourse analyses that have been attempted in relation to examples of narrative therapy. Of more direct relevance to this study is the literature in which mediation conversations themselves have been studied as a separate genre. In each of these domains, I shall describe the existing academic utterances in this field, the purposes to which discourse analytic methods have been put, and the achievements that have accumulated in this work with a view to distinguishing my own work from these.

Discourse Analyses Of Conversations Between Professionals And Their Clients

In a variety of domains, there exists a research interest in how professional knowledge can be conveyed in ways that can be of use to the general public. This interest is a recognition that discourse in spoken conversation always mediates between the academic knowledge that serves as the basis for professional service and the practices that are the embodiment of such service. Such knowledge is itself constructed in discourse too, but here I am interested in the negotiation of the influence of such knowledge in conversations between professionals and their clients rather than in conversations between professionals and academics. For example, in the field of medicine, doctors need to converse with patients in order for medical knowledge to be useful. In education, learning processes can be studied in the context of conversations between teachers and students.

Discourse analysis has been used recently in relation to various aspects of professional practice in disciplines such as nursing (Adams, 2001; Powers, 2002) and teaching (Obilade, 2002; Tuffin, Tuffin & Watson, 2001; Tunstall, 2001). However the focus has often not been upon the negotiation of meaning in the conversations between professionals and their clients. The usual focus is on the analysis of discourses at work in the structuring of power in professional relations.

There have been instances of discourse analysis of particular conjunctures such as job interviews. Gee (1996) provides a brief example of such an analysis, in which he focuses on the requirement to produce a performance of identity to fit an appropriate social class narrative for the job. This kind of analysis can help explain to both interviewers and interviewees what happens in a particular interview to produce an outcome.

Another domain of practice where discourse analyses have begun to appear is in the realm of doctor-patient conversations. Norman Fairclough used an example of a comparison of two doctors conversing with their patients to illustrate his approach to Critical Discourse Analysis in his (1992) description of the practice of discourse analysis. The focus of this analysis was on the exercise of professional power in conversation with patients and the ways in which this may be moderated in different styles of medical interviewing. Such power is mainly indexed to interaction control and topic control. It does have a focus on social change as well however, since the second conversation in the comparison is advanced as a representation of a shift, 'on the ground, in the way doctors and patients really interact' (Fairclough, 1992, p. 144). He describes a trend in contemporary medicine:

'...in the construction of the medical self away from overt authority and expertise, shifts in power away from the producers of goods and services towards the consumers or clients. '

(Fairclough, 1992, p. 148.)

While it is not a study of discursive positioning, it is in broad terms a shift in discursive positioning that Fairclough is analyzing and calling a trend. This trend of power shifting towards consumers and clients is of interest in relation to this study since the pursuit of this shift appears as an ethical goal in many of the writings about narrative therapy. Fairclough's purpose differs from mine, however, in that his is not primarily a study of the effects for the patient of the deliberate use of positioning in professional medical practice. Moreover, the social change being indexed happens elsewhere than in the conversation (somewhere in the background orders of discourse) and is merely made noticeable in the comparison between the two conversations. The conversation is analysed mainly in terms of the evidence it

provides of such a shift having taken place. I am seeking to use discourse analysis here to demonstrate the negotiation of positioning happening in the moment of conversation and to call that social change.

John Nessa and Kirsti Malterud (1998) use discourse analysis to examine the concept of patient autonomy in a doctor-patient interaction. Their concern is about the negotiation of power in a medical interview in the light of various philosophical assumptions about autonomy and authenticity. They suggest a dialogical understanding of 'authentic interaction', although the nature of this concept is not developed extensively.

Glyn Elwyn and Richard Gwyn (1999) provide a more refined example of discourse analysis of a conversation between a doctor and a patient that is directly designed to persuade doctors to listen carefully to the ways in which patients are constructing themselves in the context of a clinical interview. The value of such listening, they suggest, can be that doctors might be able to 'allow a more democratic arrangement of voices' in the interview. In other words, discourse analysis might lead to differences in the moment of discursive production. To this end, they offer some examples of ways in which a patient and a doctor position each other (although they do not use the language of positioning theory) around a request for a further prescription of anti-depressants. The patient presents elements of a story in which the request fits as part of an ongoing story of her life. She positions herself in relation to a particular 'sustaining fiction' (p.187) and, at the same time, negotiates some legitimacy for this position, so that she is not viewed as 'malingering' (p.188). Part of this position of legitimacy for her request is analysed by Elwyn and Gwyn in conversational elements that demonstrate 'maintaining her contractual commitment to recovery' (p.188). This study is an example of the use of discourse analysis to investigate the detailed construction of relations in a professional genre. It demonstrates sensitivity to the negotiation of power in professional relations, and does so in a way that leaves the outcome of that negotiation open. In other words, the relations of power are not presented as monolithic and conclusive and there is room for the exercise of agency in the conversation.

In relation to the practice of teaching, there have also been some discourse analyses of teacher-student interactions. For example, Fairclough (1992) gives a brief account of topic control in teacher-student conversations that shows how teacher

evaluation of student talk constructs and polices the subjection of students. The account developed does not also examine the ways in which students position themselves in relation to such operations of power and hence the power relations appear somewhat monolithic. I have already referred in Chapter Three to Linehan and McCarthy's (2000) analysis of a teacher-student interaction around a disciplinary incident in a classroom that illustrates more fully the complexity of relations in the classroom. This analysis has the potential to be more informative of professional practice because it indicates the openness of the choices that can be made in relation to discursive positioning.

In a similar account of conversations between a principal and students in a special educational setting for 'behaviourally disturbed' students, Cath Laws and Bronwyn Davies (2000) assemble a useful account of the construction of the 'good student' in educational discourse. Their account makes use of the notion of positioning in the course of the construction of 'subjection' to a dominant rational humanist discourse. But they also notice the possibilities for subjective positioning that are opened up in the very moment of being subjected.

In the process of this kind of analysis, Laws and Davies provide examples of professional practice that make possible shifts in positioning. In one such example, a young man who is out of control on the school roof, screaming and threatening to burn the school down, is spoken to by Cath Laws in a way that recognises him as someone making a protest about an injustice against a friend, rather than as a 'bad subject'. He is then able to reposition himself as an agent in this storyline (it fits with the storyline in which he is operating himself) and to come down from the roof and change the behaviour that could have been read as behaviourally disturbed. Cath Laws is able to speak to the young man in a way that recognises his narrative intentions (Cobb, 1994) and treats him as an agentic and purposeful rather than just as a problem. Analysis of positioning thereby illuminates the stands that young people make in relation to dominant discourse.

Laws and Davies make some comments that are relevant to the practice of mediation as well. They advocate the usefulness of a professional practice that does not assume that 'bad' behaviour emerges from an essential fault in the individual, but which assumes that people take up positions of subjection in particular conversational

exchanges in relation to dominant discourses. They argue that a poststructuralist reading differs from a structuralist one in its attention to agency.

A poststructuralist reading must take account of the psychic energy of the subjected being and what it is they are doing with the imposed structures or discourses.

(Laws & Davies, 2000, p. 219.)

This is advice that may well benefit mediators as they form readings of the stories told by participants in mediation. It has potential for making sense of the actions of people in conflict situations that is an advance on listening for the underlying individual rational interests because it takes account of the socially structuring effects of discourse but also takes seriously the agency of the person. It is a model for the discourse analysis of professional practice that puts positioning theory to work in effective ways.

Discourse Analyses Of Family Therapy

The field of family therapy is perhaps the closest to the field of mediation, especially given that divorce mediation is a substantial domain for professional mediation practice. Family therapists are frequently working with family conflicts in mediation roles. Hence, discourse analysis research in family therapy contexts needs to be taken into account because it bears upon what happens in mediation. As with other domains of professional practice, discourse analysis has been deployed in research interviews to analyse therapists' thinking or decision-making. For example, Guilfoyle (2002) interviews therapists about practices of power in therapy and uses discourse analysis to make sense of their responses. But this is not a study of these practices of power in action.

Edwards (1998) provides one such example of a discourse analysis of a counselling session with a couple. He analyses extracts from this conversation, using a conversation analysis approach, in relation to the construction of identity categories by the couple in the course of the interview. What he is interested in is the work the

two people are doing to work up identity categories for themselves and for each other. I would refer to this as a study of their positioning of each other in the course of the interview. The work being done by the counsellor is paid virtually no attention, however, in this analysis and the interactions between the counsellor and clients are not emphasised. Moreover, the focus on how identity categories are 'worked up' tends to solidify discursive positions in the process of their analysis rather than render them more fluid and subject to possibilities for change. This kind of analysis does not show how professional practice works or even how it might work. That is my main purpose, however, in this study.

The closest attempts to study what I am interested in here, that is the processes of change in mediation, can be found in the work done by Jerry Gale and Steven Kogan and their collaborators. Their work features the study of conversations through the application of textual analysis procedures (rather than through, say, ethnographic studies or interpersonal process recall). Some of these studies have even involved an analysis of narrative conversations in family therapy contexts. Let me now review what has been achieved in several studies published in recent years.

Gale and Newfield (1992) published a study of a solution-focused therapy session with a couple conducted by Bill O'Hanlon. This study has also been written up in full by Jerry Gale (1991). The aim of this study was to 'describe how an expert therapist uses language in the therapy session to achieve particular therapeutic outcomes' (Gale & Newfield, 1992, p. 153). The explicit agenda is, therefore, to shed light on the process of conversation and especially on the effects of the therapist's contributions. Do they bear out the claims that a therapist makes for what he or she does in therapy? Discourse analysis of a whole therapy session is conducted within the tradition of Conversation Analysis and a series of nine 'rhetorical procedures' used by the therapist are identified. The focus is on the relationship of these procedures to other features of the context of this conversation. Analysis of what is achieved through the management of turn-taking is stressed. They are able to demonstrate that a number of therapist responses articulated by the therapist in his writing about his work were in fact present in the conversation and also that there were some 'rhetorical procedures' identified by the researchers that went beyond what the therapist knew about his own work. They report his response that he has learned something about his work from the research exercise. Such

outcomes are encouraging for the textual analysis of discourse in counselling and mediation. It suggests that such research can serve both a validatory or confirmatory purpose and that it can also have additive value to an understanding of what happens in a conversation from the perspective of a participant.

In a 1997 article with Steven Kogan, Jerry Gale has shifted in his approach to textual analysis (Kogan & Gale, 1997). Again, an analysis of a marital therapy session is presented. This time, the therapist is Michael White and the narrative therapy session is conducted before a conference audience and is commercially available on videotape. To my knowledge, it amounts to the first published discourse analysis of a narrative therapy interview. In this piece of discourse analysis, some of the methods drawn from Conversation Analysis are still present (for example, the analysis of the management of turn-taking, adjacency pairs, reversals etc) but there are some other influences on their methodology that are acknowledged: 'discourse and narrative-based inquiry' (Kogan & Gale, 1997, p. 105) and elements of 'postmodern theorizing'. They cite Potter and Wetherell (1987) as methodological sources but make no mention of Fairclough or of Parker and Burman. However, the analysis is explicitly linked to a Foucauldian analysis of power relations. Therefore, it is reasonable to claim that the movement of this study is in the direction of Critical Discourse Analysis and away from a strictly Conversation Analysis approach. As a result, the analysis responds, not just to the work done in the text to produce self and relationship, but also to the background work being done by dominant discourses of gender in the relationship between the couple. The therapist's moves to challenge some of the discursive positionings produced out of such discourse are made explicit. It is a much more politically conscious analysis that emerges as a result. A concept of 'reciprocal editing' as a rhetorical move is described, for example. This term refers to a process of mutual negotiation of meaning between the therapist and the client that develops in the exchange of utterances. It refers to deliberate moves by the therapist to construct statements in tentative terms, to use tag questions to clarify meanings, and to invite the client to revise the therapist's meanings (p.114). Kogan and Gale analyse reciprocal editing in terms of the discursive work that it does and the political effects that it has, rather than leaving it in the domain of technical therapeutic skills, separate from the socio-political context. I would argue that they are describing a particular example of how a therapist is positioning himself and his

clients in a way that invites the clients forward into the production of meaning in this conversation.

Kogan and Gale are explicit also in locating their research in the context of a postmodern research tradition. They eschew the essentialist goal of trying to determine what the therapist was ‘really trying to do’ or what the participants’ experience of the session ‘really was’. Instead, they pursue a ‘decentering’ agenda for research as well as describing this agenda in therapeutic practice. Hence they claim to be producing an account (and it is explicitly an account, not the account) of how the discourse (including the talk that took place in the conversation) ‘operated to produce spaces for people’ (Beels, Kogan & Gale, 1997).

Kogan (1998) takes this agenda further in a subsequent article in which he analyses a solution-focused therapy interview with a couple. His analysis claims allegiance to a Conversation Analysis tradition, with a Foucauldian perspective thrown in to enable:

a view of the construction of reality as contested and political ... Which meanings form in an interaction is a political issue, as the construction of a meaning displaces some other meaning.

(Kogan, 1998, p. 231)

One of Kogan’s main emphases is on the ways in which a therapist ‘disciplines’ the clients’ narratives, grants a more central position in the conversation to the husband’s narrative, and thereby creates ‘an unequal distribution of agency’ (p. 247). He ends up asking an ethical question about what meanings the therapy he is researching legitimates and what it excludes. Kogan’s and Gale’s examples of discourse analysis are, therefore, very close to the emphasis on the politics of meaning-making that I am interested in here. While I am not committed to the Conversation Analysis emphasis on sequences of turn-taking, the questions that Kogan and Gale are asking based on a Foucauldian notion of the politics of meaning-making serve as a useful foundation for this study. Adding the theoretical concept of positioning theory into the mix does not seem to me to interfere with this analysis. Rather, it adds an extra conceptual tool to the discourse analyst’s repertoire.

Discourse Analysis Of Mediation Conversations

There are a series of studies that have taken excerpts from mediation conversations and analysed them in terms of discourse dynamics. In the main, these studies have focussed on mediation as an interesting genre within which to study aspects of conversation rather than with a view to informing the practice of mediation. Greatbatch and Dingwall recorded a series of mediations at ten different agencies in England. They have written several analyses of segments of these conversations (Greatbatch & Dingwall, 1989, 1997, 1998). The 1998 analysis is typical of these studies. They describe mediation as 'a process in which a neutral third party helps separating couples to reach their own agreements' (p.122), a definition which suggests a problem-solving model of mediation.

The segment of conversation that Greatbatch and Dingwall select out for intensive analysis is very small (11 lines in total) and does not allow for much development or change to take place. It also does not demonstrate much of the mediators' (there are two) work. Rather, the analysis focuses on the production of identity categories in minute detail. The first group of these identity categories are called 'discourse identities' and refer to transient interaction functions, such as: *speaker, report producer, accuser, addressee, overhearer, questioner, nonaligned party*. To call these identities seems to me to unduly stretch the concept of identity. Positioning theory offers a better alternative. It is more elegant to refer to these as discursive positions taken up in the course of interaction rather than fully-fledged 'identities'. Then, Greatbatch and Dingwall address institutional and other social identities, including those of mediator and disputant, spouses/ex-spouses, parents, and gendered identities. Their interest lies in describing how the participants work up these identities, including how they 'invoke and accept or contest the relevance of identities on a moment-by-moment basis' (Greatbatch & Dingwall, 1998, p. 131). Again, positioning theory offers some conceptual grounds for better describing these processes. These 'identities' appear to correspond better with 'roles' than with discursive positions. Moreover, positioning theory enables the asking of more searching questions about the politics of meaning-making as these 'identities' interact.

The process of mediation itself and its role in the production of identities are not attended to in this study. To do this requires more of an emphasis on how people shift identities around, rather than just how they work them up. It would also require an attention to the relationship between the identities the mediator calls disputants into and the identities they choose to take up. For this kind of purpose, I would suggest that discursive positions and position calls are more precise analytic tools than identities for this kind of discussion. This is what I shall show in Chapter Seven.

Another example of discourse analysis in mediation is the project written up in several articles by Angela Garcia (1991; 1997; 2000). In these studies, she uses an ethnomethodological Conversation Analysis approach to analyse the conversational exchanges that take place during the phase of mediation where proposals for resolution are being generated and placed on the table. Her interest is in the process of mediation, particularly in the process of bargaining and negotiation through which dispute resolution is accomplished. Garcia focuses on the discursive practices of both mediators and disputants. She analyses the conversational moves by which mediators solicit such propositions for solving a dispute, or (less commonly) themselves make proposals, sometimes in the form of a question. In the texts she analysed (transcripts from fifteen small claims mediation hearings), she found a number of examples of participant reluctance to make the first move in proposing solutions in response to mediator 'solicits'. This reluctance was expressed in silence, passing, or making non-position report talk (talking about anything other than expressing a position or making a proposal) (Garcia, 2000, p. 330). Mediators, on the other hand, were often restrained from making propositions themselves by a discourse of neutrality in mediation theory.

This is useful research that addresses the process of conversation and is concerned with the work that participants are doing as they use discourse to negotiate conflict resolution. The study shows some aspects of the processes by which the professional power of mediators is both discursively constructed and resisted. The limitations of it from a Critical Discourse Analytic perspective are the limits imposed by the disciplines of Conversation Analysis. It does not pay much attention to the imbrication of larger orders of discourse in the specific content of the exchanges.

In another study (Manusov, Cody, Donohue and Zappa, 1994), a particular discursive aspect of child custody mediation sessions was investigated. The authors

looked at the exchanges (called 'account sequences') between divorced or divorcing couples in which an accusation of wrong-doing was made by one party to the other, followed by the giving of an account of some kind (excuse, justification, mitigation, concession or refusal), followed in turn by an evaluation by the original accuser. Sometimes this process was interrupted by a mediator intervention. Although this study is not a piece of qualitative discourse analysis like CA or CDA (instances of these 'account sequences' are coded and quantified), it is interesting from a constructionist perspective as an example the structuring of responses in patterned discourse. The study shows how certain forms of accusation make certain forms of account more likely and how certain forms of account-giving make certain evaluations more likely. In other words, the pattern of communication developed in these mediation conversations proceeds on the basis of which position calls are issued and then taken up in a way that issues another position call in return.

Moreover, the data collected by Manusov et al. supported mediator intervention early in the process after the issuing of an aggravating rebuke. Mediations in which the mediators intervened in this way were more likely to lead to agreements on the substantive custody issues. This finding is interesting (although hardly definitive) in view of the preference in transformative mediation for a more *laissez-faire* approach in which mediators are more likely to stand back and let participants communicate freely with each other. This research suggests that, in exchanges between parties, the pattern of account sequences (of accusation/justification/evaluation) is likely to dominate the mediation conversation. In training seminars, some people trained in transformative mediation have commented that a narrative approach is more 'directive'. They question a mediator's efforts to interrupt a conflict story and ask questions that are aimed at producing a new story rather than allowing the parties to communicate freely. This piece of research, however, supports the mediator taking an active role to intervene in the conflict story rather than allow it free expression.

What is encouraging about the development of these kinds of studies is the attention being paid to the process of what actually happens in a mediation. Over time, such work promises more useful information for the development of practice than outcome studies that measure outcomes without taking account of the processes by which these results have been produced. Summative evaluation studies in which

detailed processes are not studied (called black box evaluations my Michael Quinn Paton, 1994) are addressed primarily at managerial concerns rather than professional ones. The development of professional practice of mediation requires more of these kinds of studies that explore how various discursive strategies work. This dissertation aims to contribute to this purpose.

The Narrative Analysis Of Mediation

The narrative perspective has been taken up in the research literature on mediation to a modest, but significant, extent. The focus has been mainly on the application of narrative theory to the analysis of what happens in mediation. In an important theoretical article, Sara Cobb (1994) wrote about ‘A narrative perspective on mediation’ (my emphasis) rather than about, say, a narrative perspective in mediation or for mediation. Her focus was upon the implications of narrative theory for ‘understanding and evaluating the storytelling process *within mediation practice*’ (Cobb, 1994, p. 49, emphasis in original). She advocates studying the storytelling that happens in mediation as an example of ‘a micro-level discourse practice’ (p. 49) and is interested in the ways in which the practice of storytelling ‘functions reflexively to construct the context in which stories are told’ (Cobb, 1994, pp. 51-2).

Cobb’s analysis of storytelling in mediation focuses on three elements of the function of narratives. The first is the function of narratives to establish ‘coherence’, described as causal linkages between components of a story in a unified account. The story that someone tells in a mediation is a meaningful construction that has internal consistency through its integration of plot components, characterisations and thematic elements. As well as internal coherence, a story may be said to establish coherence with other narratives (‘inter-narrative coherence’) in the meaning system of a person or of a family or community. Cobb describes stories told in mediation as ‘nested’ in a context of meaning in which other stories are told and lived. The conflict story consolidates, and is consolidated by, other narratives in a web of meaning. The concept of inter-narrative coherence then extends into the comparisons and contrasts between the stories of the parties to a conflict. From this perspective, says Cobb, ‘conflicts are the *product* of inter-narrative coherence’ (Cobb, 1994, p. 54, emphasis

in original). As a mediation proceeds, a conjoint narrative emerges that involves the reformulation of each party's story in the light of the other's story.

The second function of narratives, says Cobb, is to stabilise conflicts through bringing 'closure' to an account in the face of other possible stories. The discursive work that narratives do, Cobb argues, is to close off other possible interpretations of events. 'Unstable sites' in a story of events will need to be closed off in order to protect the story that each party tells. The more complete the narrative, the more easily narrative closure is established. Cultural resonance with dominant cultural narratives also aids the narrative function of closure. Stories that resemble dominant cultural stories have more stability and are more likely to be given credence as a result (Cobb, 1993; 1994). They are likely also to be harder to argue against in the midst of a conflict.

The third function of narratives that Cobb articulates relates, in effect, to the discursive analysis of positioning. She calls it the 'interdependence of conflict narratives'. This phrase refers to the way in which people in conflict 'with great regularity' (Cobb, 1994, p. 56) construct the other as responsible for, or to blame for, the negative aspects of the problem. They construct themselves as 'victims' of the other's 'villainy.' Cobb points out that 'victim' and 'villain' are interdependent pairs of discursive positions. The validity of each position rests on the presence of the other position in the narrative. Typically in mediation conversations, people position themselves in 'positive discourse positions' and the other in 'negative discourse positions' (p. 57). She links the idea of a negative discourse position with Fairclough's (1989) 'delegitimate social locations'. In conflict narratives, these are often assigned to others alongside contrasting narrative constructions that work to legitimate the self.

So how do these ideas about narrative production relate to the discursive analysis of positioning as I am seeking to elaborate it here? In the first place, Cobb is directing our attention to the work done in discourse, that is, in the content of what is being said, to shape relations between people. In this regard, she is critical of the validity of the common division of process and content in mediation (Fisher & Ury, 1981: mediators should focus on the process and leave the parties to be responsible for the content). Her argument is that narrative content has considerable influence on the process of mediation. She is also alert to the intertextual cultural links between

what is being said in a particular instance and the background orders of discourse. These links are what she calls 'cultural resonance'. Without referring to the developments of positioning theory as Davies and Harré have developed it, she is speaking about incipient notions of discursive positioning, especially in her comments about story constructions that position the other as villain and the self as victim. The ideas of narrative coherence and closure connect with the determining or constitutive aspects of discourse theory. Cobb asserts that:

'... the determinacy of narrative meaning is quite obvious in everyday life.'

(Cobb, 1994, p. 54)

The ideas of coherence and closure help elucidate the work of narrative in the production of power relations. Cobb demonstrates how they work against the production of agentic positions. Coherence and closure are produced unevenly in mediation conversations (Cobb, 1993) and the very unevenness can legitimize one participant's position in relation to another. However, she also notes possible sites for the disruption of narrative coherence and the interruption of closure and the possibility of taking advantage of these through asking destabilising questions.

The analysis is limited, however, by the focus on storytelling, which tends to take place early in the sequence of a mediation conversation. Positioning theory is capable of handling more than this. Applied to the utterance rather than to the story, it allows for a more nuanced description of positions in relation to specific utterances, rather than in relation to overarching narratives. It can therefore be extended and made more useful for the analysis of subtle increments of change.

Janet Rifkin, Jonathan Millen and Sara Cobb (1991) have studied another piece of discourse positioning that focuses on the relations between the mediator and the parties. They are interested in the prevalence of concepts of mediator neutrality in mediation discourse and point to two different meanings of neutrality that appear in this discourse: impartiality, defined as 'the ability to interact in the absence of feelings, values, or agendas in themselves' (Rifkin et al, 1991, p. 152); and equidistance, defined as 'the ability of the mediator to assist the disputants in expressing their 'side' of the case' (p. 152). They then go on to show how these two

competing meanings of the concept of neutrality can end up contradicting each other. Mediators can find themselves in a paradoxical situation where the desire to be impartial works against the establishment of equidistance or vice versa. In terms of positioning theory, we might say that the discursive positions for mediators in relation to these two discourse formations are at times incompatible. The result is that mediators sometimes have problems negotiating their relationships with disputants without creating expectations that they cannot fulfill.

This study is an interesting one for several reasons. First, it picks up a particular discursive element in the mediation literature (neutrality) and examines it, in effect, in a deconstructive light. The result is a weakening of the general assumption of mediator neutrality, a cornerstone of modernist mediation theory. Secondly, it is an example of the intertextual nature of positioning. Professional and academic discourse is shown to impact on the specific nuances of utterance in the midst of mediation conversations. Positions taken up in one discursive context have implications in many others. This instance is an apt example of Foucault's postulate of the links between knowledge and social practice. A specific piece of academic discourse is shown doing its work to shape relations in professional practice and having an effect on people's lives. Thirdly, Rifkin et al's argument shows how a mediator can be unconsciously embedded in competing discourse positions and yet unable to make sense of this, with unfortunate results for the mediation process. It points to the value of the analysis of discursive positioning by mediators for the purpose of working out ways forward in such situations, even though the authors do not articulate their arguments specifically in the language of positioning theory.

Cobb and Rifkin's (1991) study of storytelling in mediation also focussed on 'discourse positions' (Cobb, 1994). Their usage of this phrase refers to positioning in another specifically limited way. They focus on one main aspect of positioning: who speaks first in telling their story in a mediation. They showed how the first speaker in a mediation conversation established the terms of the conversation, laid the ground for the second speaker's telling of a story and strongly influenced what the second speaker could speak about. In an analysis of a cohort of community mediation cases, they found that, in 75% of cases, the first story told framed the agreement that eventuated (Cobb, 1993). In a strong statement of this insight, Sara Cobb says:

‘... the first narrative that is told colonizes subsequent narratives.’

(Cobb, 1994, p. 49)

It is a promising analysis with implications for practice because it calls on mediation practitioners to take the power relations of what happens in a mediation conversation into account.

Concluding remarks

There are some promising inroads that have been made into the understanding and the articulation of mediation practice through the use of discourse analysis methods. I have outlined some of these and my reading of them in relation to positioning theory. The field is still in its infancy, however, and the value of such research depends on further development of the methodology and on its application to professional practice. It has been more common for discourse analysis to be used to inform social analysis in general than it has been for it to detail the specifics of professional practice in ways that might be of use to practitioners. However, there does exist more recent research that suggests that practitioners of mediation can employ discourse analysis to make sense of what happens in their practice. Such research promises a practice that takes account of the negotiation of meaning, identity and power relations in the moment of conversational exchange, rather than in structures that are merely made manifest in conversation. Of all the concepts available in discourse theory, positioning theory points most clearly to these possibilities.

It is time to move on towards the articulation of a form of mediation practice that takes positioning theory more explicitly into account. In the next chapter, I shall outline a narrative approach to the theory and practice of mediation before proceeding to use an example of it for discourse analysis.

CHAPTER SIX

An Elaboration Of Narrative Practice In Mediation

In Chapter Two, I outlined a series of concerns about both problem-solving and transformative mediation and in Chapter Three introduced some theoretical ideas that have the potential to address these concerns. These ideas were drawn from discourse theory, constructionist notions of practice and a poststructuralist analysis of professional power. It is necessary now to begin to articulate a mediation practice that embodies these ideas. I am using the name 'narrative mediation' to encompass these alternative approaches to practice (Winslade & Monk, 2000), even though there are some risks in doing so. The approach I am elaborating is not summed up nor even necessarily accurately described with reference to narrative theory per se. More importantly, however, the term makes a link to the articulation of narrative therapy in the family therapy field (White & Epston, 1990, and others). Using this name acknowledges the debt owed to narrative therapy in the development of narrative mediation and also signals to those who are interested in these ideas in therapy that there may be an application of interest in the neighbouring field of conflict resolution.

In the course of talking about the narrative mediation approach in this chapter, I am going to illustrate a series of particular conversational practices with examples from a role-played mediation in which I am the mediator. I shall not include a transcript of the whole conversation in this study. I shall use only excerpts sufficient to enunciate and demonstrate the practice rather than to locate it in the full context of a conversation. But first it is necessary to explain the basic principles of an approach to mediation that draws on narrative and poststructuralist theory and makes use of the concept of discursive positioning. This will include some comments on the nature of conflict when viewed from a constructionist perspective and some guidelines for practice.

A Constructionist View Of Conflict

Conflict As A Product Of Difference

From discourse theory, we can derive a set of assumptions about the genesis of conflict in human relations. In the first place, if the truth that we can know is the product of the legitimation of discourses in particular social contexts then no one can have exclusive access to it. There is no singular knowable reality. What gets to count as truth will always come from a cultural perspective. Therefore, the general diversity of discourses and the complexity of social life are bound to produce diversity of perspectives on any issue. From time to time, different positions are going to clash. Conflict therefore can be seen as the inevitable articulation of difference.

An understanding of conflict as produced in the flow of discourse, which is mapped onto people's subjective positioning, amounts to more of an outside-in theory of conflict than an inside-out theory. There is no need to resort to an inside-out theory of unmet needs, expressed as interests, to explain how conflict arises.

Conflict can often also be understood from a constructionist perspective as a by-product of the operation of power in the modern world. We have seen in Chapter Three how Foucault and other poststructuralist writers have theorized power relations produced in discourse and expressed as privilege in various forms. We have seen, too, that power is always being resisted. Therefore it is to be expected that in conflict there will be a dimension of contest between processes of domination and resistance. We can, therefore, expect many of the disputes that come to mediation to be sites where such contests are being worked out. For example, in the ongoing contests between men and women over gender entitlements, divorce mediations are key conjunctures where dominant patterns of gender power relations are constantly being produced, reproduced or challenged.

Position Calls

Positioning theory also offers potential for understanding the particularities of how conflict gets produced and inflamed in interactions. If we look at the utterances people make as social practices that establish discursive positions for themselves and for others, then it is possible to analyse the discursive positions made available to the

other in any utterance. Often in conflict situations such position calls offer only very narrow options from which the other can respond. Instinctively, people refuse to accept such narrow positions and a conflict is thereby reproduced on a moment-by-moment basis. An example might be when one party to a conflict constructs themselves in a particular utterance as a victim of another's deliberate neglect or cruelty. The other is thereby positioned as something of a thoughtless villain deserving of approbation, but may refuse this as too narrow an interpretation of her/his intentions or actions. Another typical example of positioning in mediation occurs when one party utters something like:

Look, I am just trying to be reasonable here.

This can be read as an attempt to establish legitimacy for the speaker's sense of entitlement based on perhaps a background discursive privileging of rationality and logic over emotional expression. But, implicitly, it calls the other party in a dispute into a position as unreasonable, irrational or too emotional. Rather than be subjected by such a description, the other person will resist this position and the conflict becomes inflamed. The repeated offering of such position calls and their repeated refusal or acceptance is sufficient to produce a conflict, particularly when such position calls begin to coagulate into patterns.

The Narrative Metaphor

Narrative theory also helps understand the mechanics of the construction of conflict. It proposes that we commonly assemble elements of discourse into stories and use these as frameworks of meaning to make sense of life. As Michael White (1989) put it:

We enter into stories, we are entered into stories by others, and we live our lives through stories.

(p. 6)

From Jerome Bruner's (1986) perspective, our utterances and practices can be considered 'performances of meaning' (p. 25). We enact these performances more with the characteristics of a well-formed story in mind than with facts, realities and cause-and-effect logic. Through stories, we establish coherence (Cobb, 1994), order events through time, develop characterisations and construct denouement out of narrative trajectories. Thus, we develop stories of our relationships with others, stories about ourselves and stories about other people. In conflict situations, therefore, we might expect to find competing narratives being played out and people occupying the subject positions available in these stories. Since no story can account for all possible events, there will always be a process of selection of elements for inclusion in a particular narrative. Each selection would be made on the basis of narrative plausibility or coherence. Moreover, each arrangement of plot elements would legitimate (or de-legitimate) different subject positions. Each account would also set in motion a different plot trajectory for the future, because one of the features of narratives is that they develop sequentially and connect events over time.

Cobb (1994) warns us also to expect that stories that people tell in mediation will contain disparities in terms of their narrative coherence, perhaps on the basis of the degree of cultural resonance a story exhibits, or in relation to the degree of legitimation that exists for the teller's discursive positioning.

The point for mediation is that stories take on a life of their own. Thus, when a conflict story takes root, it generates a momentum (or coherence, Cobb, 1994) that cannot be claimed to reflect simply the facts or realities of a situation because stories mediate our knowledge of reality. It makes sense, therefore, to ask how a story is shaping a relationship as the protagonists in the story take up the positions that are available in this narrative and perform meaning around them.

However, there will always remain other possible elements that sit outside of any particular narrative and remain unstoried. These elements are a source of the possibilities for new narratives to be formed and the events of the conflict recast in a new coherence. This is the task of mediation. Thus we can account through narrative theory for the differences between stories that people tell about events and for the persistence of these differences as people hold onto the coherence that a story offers them even in the face of contradictory information. We can also conceive of a mediation practice that is not so much about separating the facts from the stories and

working with those, as it is about working with the parties to create an alternative story. Such a story needs to be plausible for both parties and to include the significant events of the conflict story in a way that makes sense to both of them.

A further characteristic of stories is that they are cultural creations (Bruner, 1986; Cobb, 1994). Indeed, a cultural world is constituted within a framework of stories. Therefore, the stories within which we live our lives always draw from the cultural stories of the world around us. Moreover, the cultural imperatives in a story can create a narrative in which the end of the story has been prefigured by an event in the beginning (Bateson, 1993).

Therefore, in a mediation there are likely to be a series of stories at work at different levels. There will be the conflicting stories of the dispute that each party brings. Any support persons who become involved, including lawyers, will also have their own versions of these stories too. There will be the unfolding story of the mediation itself. And there will be background stories that shape the meanings from which people draw the elements of other stories. These background stories may include larger stories of relationship, familial stories, cultural stories, or fictional accounts drawn from books and movies.

The task of mediation can be considered to be a teasing out of these stories in order to open up possibilities for alternative stories to gain an audience. Rather than searching for the one true story, the narrative mode of thinking welcomes the complexity of competing stories and numerous influential background stories. Sara Cobb speaks of the 'opening of (conflict) narratives to alternative interpretations' (Cobb, 1994, p. 60). Out of this complexity can emerge a range of possible futures from which parties to a mediation can choose. This is the 'subjunctive mood' (Bruner, 1986, p. 29) that narrative thinking promotes. It is useful for mediation because conflicts so often narrow the field of vision for protagonists (Cobb, 1994). The subjunctive spirit opens people's thinking to the possibility that things can be different. In this kind of climate, repositioning is possible and substantive changes to relationships can follow.

Entitlement

Despite what I have said above about the construction of conflict in discourse, it is still useful to re-think elements of the problem-solving theory in relation to a constructionist perspective. A key element is the idea of underlying interests. Clearly it has been useful for mediators to use this concept in the process of helping people move away from polarizing positions. The problem lies in its essentialist links. Interests that are tied to a universal human nature can make a claim for attention on the basis of some authority. The conceptualizing of ‘unmet needs’ creates a condition of oughtness about their fulfillment. If they are needs, then they deserve to be satisfied. Needs are viewed as fundamental characteristics of being human and arise naturally. This is what it means to call them essentialist.

One problem with this concept lies in the assumption that everyone’s needs are individual and equal. But often the interests that people bring to mediation are discussed in terms that clearly are not equivalent. For example, in the context of divorce mediation, it is more common for men to present claims for entitlement not to have their careers adversely affected by child care arrangements than it is for women to ‘need’ this. In employment disputes, the entitlements of waged workers are not expected to carry the same force of legitimacy as the claims of employers. In other words, people feel different degrees of entitlement to their needs. By social convention (that is, within discourse), they are granted different degrees of encouragement to claim them. Their needs may even be constructed in discourse quite differently with regard to, say, gender, culture or social class.

At a recent mediation in which I took part, there was a dispute between Maori members of a school community about the correct way to observe a ‘wairua tapu’ (pronouncement of sacredness). The dispute focused on whether the children of the school could be taken to swim in a pool on the land that had recently been designated ‘wairua tapu’. What was obvious to me was that the ‘needs’ different parties felt to have ‘wairua tapu’ observed in the way that they were claiming were not based on any kind of universal human nature but on a particular tribal history and a set of Maori discursive assumptions. Neither do I believe that this experience is restricted to members of ‘minority’ cultural groups. For all of us, what we assume to be our

needs and interests are never free of the authorising and legitimating worlds of discourse. When we sense that we are being treated unfairly, we make this judgment against a background of what we know to be the 'normal' patterns of treatment. These norms are in turn attached to a cultural and historical context.

I assume, therefore, that the discursive contexts in which we live lay down for us the systems of validation for our interests. In order to establish this assumption more clearly, I prefer to use the term 'entitlements' rather than the term 'interests'. It has more of a flavour of social construction than of biological imperative. What we believe we are entitled to is granted its title within a social world. Entitlements are achieved, acknowledged or assumed within relational contexts, in contrast with interests, which are internally referenced to the individual psyche. This point has been made before. Trina Grillo (1991) explained the perception of being injured by the actions of the other party in a conflict as 'arising from a sense of entitlement, which in turn is a function of the prevailing ideology' (p. 1567). With this change in emphasis, we can again revisit the notion of the interests or entitlements that people seek to assert in a conflict. But we can also take into account how these entitlements are at times likely to include exaggerations built on positions of privilege (also established in discourse). We can potentially take into account the power relations expressed in differential entitlements more easily than we can if we are tied to an idea of interests based on individual, biological needs.

What is more, the idea of entitlement can give us greater leverage in the context of a dispute and therefore open up more options for forward movement. There is something about the dominant idea of 'needs' that makes them appear non-negotiable and accords them 'taken-for-granted' status. The basis for needs is understood as pre-existent and its legitimacy scarcely open to examination. Entitlements, on the other hand, lend themselves more easily to close scrutiny, debate and challenge. A sense of entitlement can be linked with a desire or intention that has been constructed. From here, a process of deconstruction can render this construction visible and, therefore, more open to change.

Patterns of entitlement often form around specific groups or identities in a community. Discourse constructs such patterns in ways that privilege groups of persons in relation to other groups. Through discourse, such patterns of entitlement offer people identity positions, authenticate those positions, regulate their dispersal

and exclude others from their benefits. Thus, we come back to viewing conflict as a clash of entitlements that occurs between people in overt or covert ways on a day-to-day basis.

Emphasizing Restraints Rather Than Causality

Another aspect of theorizing conflict derives from the innovative work of Gregory Bateson (1972). Bateson advanced an approach to the understanding of complex phenomena that departs from the dominant assumptions of positive explanation found most commonly in the modernist scientific method. We have seen in Chapter Two how the problem-solving approach to mediation builds on and applies the model of the scientist-practitioner looking objectively at a problem, seeking to ascertain its underlying causes and then addressing an intervention at the level of the underlying cause to resolve the problem.

Bateson's insight was that it is possible to conceptualize the facilitation of desired changes without having to resort to a conventional notion of causality. He refers instead to a theory of restraint (Bateson, 1972, p. 399 ff.). The idea here is that it is not enough to understand the continued existence of a problem through considering its antecedent events as positive causes of what follows. It is also possible to ask how the continued existence of a problem can be explained in terms of the restraints on the manifestation of other possible narrative trajectories. Such restraints can be said to contribute as much to the continuation of a problem as the antecedent causes. From this principle, we can consider how to go about producing change through removing restraints rather than through isolating antecedent causes and intervening in these. This approach knits nicely with discourse theory, because it points to the ways in which dominant discourses function to maintain their influence through restraining the possibility of other ways of thinking.

In relation to the conflicts that people bring into mediation, we can consider these less as problems to be solved than as stories that restrain us from noticing the possibilities that lie in other stories about what has happened. Conflict stories can be understood as restraining stories of cooperation and understanding for example. Viewed in this way, conflict stories do not necessarily have to be analysed for their causal factors in order for changes to be produced. Rather, the stories of cooperation

and understanding or the like can be developed so that the conflict story begins to wither and its significance begins to fade. This different way of thinking can itself be experienced as fresh and invigorating, because it constructs the conflict story not so much as an obstacle to be overcome but as a dragging weight to be cut away in pursuit of some more satisfying story. The focus of conversation is on the development of the new story rather than on methodically dealing with the causes of the conflict story.

Goals Of Narrative Mediation

What then are the goals of a mediation process from a narrative perspective? In a problem-solving approach the goal is the formulation of an agreement that solves the problem. This is the fabled win/win solution that satisfies the interests of the disputing parties. Advocates of the transformative approach have questioned the instrumentalism involved in a reliance on reaching agreements as the primary goal of mediation. They urge the inclusion of more intangible goals such as improved understanding or communication, making people better human beings, and social transformation through improved relationships.

Approaching mediation through a narrative lens alters the perspective on what might count as a valued goal. Goals are formulated in terms of narrative trajectory, a relational psychology and discursive shifts, reflecting the philosophical basis of this approach. We are not so focussed on the construction of events within the particular narratives of problem-solution, or of disempowerment-empowerment, or of blocked communication-clear communication, although in particular circumstances these constructions may pertain. Even within the problem-solving tradition, where settlement is usually the goal of mediation, there exists a recognition that mediators might be involved in the story of a conflict past the development of an agreement. Howard Raiffa (1985) speaks of 'post-settlement embellishments' to the negotiated agreement. A narrative perspective promotes a goal that moves through time, that is a story, rather than a singular settlement. I would advance three goals for a narrative mediator to bear in mind: a) creating the relational conditions for the growth of an alternative story; b) building a story of relationship that is incompatible with the

continuing dominance of the conflict; and c) opening space for people to make shifts in discursive positioning. I shall expand on each of these in turn.

Creating The Relational Conditions For The Growth Of An Alternative Story

Most mediators would agree that it is not the mediator's job to decide on a desired outcome and then to persuade the parties to agree to it. It is a commonplace to assert that the parties are responsible for deciding on the desired outcome of a mediation. And yet we must accept that the mediator's discursive practices will influence outcomes through the very positions offered in every question asked or response offered. Therefore, it is necessary to focus attention on the kind of influence that a mediator can be intentional and transparent about having.

If we think in narrative terms, the goal of mediation has to be constructed in terms of the development of a narrative towards some kind of denouement. A written agreement may well be a pertinent aspect of such a narrative, or it may not. We can avoid the trap of becoming too attached to the goal of 'resolution' if we focus not on one component of the solution-bound narrative but on the narrative trajectory itself. If mediators concern themselves with developing the relational conditions that make possible the forward movement of a solution-bound narrative then they have done their job. In Wittgenstein's (1958) words, a mediation may be considered successful if people 'know how to go on'. Or in Bakhtin's (1984; 1986) terms, ongoing dialogue, rather than a fixed agreement that ends the conversation, should be the goal of mediation. Agreements may thus at times be considered dangerous interventions if they take no account of ongoing relational shifts and developments.

Sara Cobb (1994) has some things to say about the relational conditions necessary for a mediation outcome that is not simply reproductive of existing power relations. She would involve the mediator in regulating the process of story construction so as to address any disparities that may exist between the parties in the narrative coherence of their accounts of the conflict. The mediator must 'manage the construction of content' (p. 60) in the stories that people tell in mediation. This is an

argument against the more laissez-faire non-directiveness of the transformative approach to mediation.

Moreover, a narrative attention to the ways in which both personal identity and power relations are constructed in relational and discursive contexts invites us to construct the goals of mediation in relational and discursive terms. Thus, we are less concerned with the satisfying of individual interests as with the construction of a respectful and equitable relational context that can serve as the basis of an ongoing relationship.

There are times of course when a mediation takes place between parties who have no ongoing relationship. In such circumstances, a notional ongoing relationship can be invoked. We can ask parties to think about how the resolution of this particular dispute fits with their general preferences for their relations with, say, their customers. In this sense, any dispute is always part of a larger relational context. Ironically, what I find is that prior attention to the creation of a relational narrative often makes the process of negotiating particular agreements far more straightforward than it is in a problem-solving approach. But the narrative mediator perceives these agreements as part of the larger process of developing a cooperative, peaceful relational narrative, rather than as the pre-condition for such a narrative.

Building A Story Of Relationship Incompatible With The Continuing Dominance Of The Conflict

The second goal I would propose for narrative mediation is principally thematic in nature. If we begin from the assumption that the relationship between the parties will contain thematic elements that are being restrained in their expression by the continued dominance of the conflict, then the goal of mediation can be conceived as the removal of such restraints and the renewed expression of such thematic elements.

There may be many names for such themes. Often they are called things like: cooperation, understanding, listening, mutual respect, teamwork, agreement, positive focus, fairness, joint action, partnership, collaboration, justice, humour, courtesy, equity, kindness, generosity, harmony and so on. There is nothing essential about the

name for such a theme. What matters is that it represents something in both parties' minds that is being restrained in the relationship by the continued existence of the conflict. Another way of saying this is that, under such restraints, relational events that feature such themes are remaining unstoried in the production of a working story of relationship for each party.

The goal of the mediation becomes the rescuing from oblivion of such unstoried relational elements (either events that fit with these themes or direct expressions of these themes) and their incorporation into a new story of relationship. An agreement or resolution may well be incorporated into such a new story or the conflict story may simply become redundant in the face of the emergent new story, so that little actual resolution is necessary.

Opening Space For Shifts In Discursive Positioning

The practice of deconstructive conversation in narrative mediation (see below) leads to the formulation of a third goal. Transformative mediators construct a larger goal of personal and social transformation for the process of mediation. I support their vision of the work of mediation as having a bigger purpose than simply fixing problematic eruptions so that the social status quo can continue unchallenged. Like them, I envisage a role for mediation in the production of a better and more peaceful world. Therefore, I believe it is useful for mediators to develop a conceptualisation of this purpose that can be a useful guide in moment-by-moment practice. However, I would choose to formulate the kind of transformation I am seeking to embody in practice in different terms than those of 'recognition' and 'empowerment'.

The basis for a narrative conceptualisation of social change needs to be discursive in origin. We are building on a social theory in which we understand discourse to be active in the production of social relations, and we, therefore, need to formulate the goals of mediation in terms of building more equitable social relations. Positioning theory offers the most useful leverage for the articulation of such a practice. The goal of mediation from a narrative perspective can be described as achieving some degree of deconstruction of the discourses at work in the production of the dispute, and of the relational positions offered to the participants within such

discourses. Cobb (1994) refers to the need for destabilizing narrative closure in order to open the door for new interpretations.

It follows too that such deconstructive effort leads to the possibility of parties making discursive shifts within the discourses that have been dominant. That is, mediation conversations can open the space for the issues to be described in different terms, for positions offered within dominant discourse to be refused, and for parties to reposition themselves within dominating discourses that they are experiencing as problematic. They might move from a way of speaking that positions the other in a 'negative discourse position' (Cobb, 1994, p. 61) to a more positive positioning. It is important too that the shifts that take place are not just in any direction. It would not be acceptable, for example, for mediation to be employed to create discursive shifts in directions that promote greater social injustice. The goals of mediation therefore need to have an ethical dimension to which a mediator needs to be accountable. Narrative mediation is not just about the development of any story. It should stand for the advancement of equity, justice and democratic partnership and oppose practices of exclusion, systematic silencing and subjugation. It is not therefore about the construction of possibilities for agency for their own sake. The purposes towards which agentic action is aimed need also to be examined.

In straightforward terms, the goal of narrative mediation can be described as the production of discursive shifts. When such shifts take place, we can expect the ongoing relational narrative to take a different course from the path that was being followed under the influence of the conflict story. Consequently, we can expect people to act differently in relation to each other and the conflict story to become less compelling.

The Politics Of Mediation

In the light of the critiques of mediator neutrality mentioned in Chapter Two, it is no longer sustainable for mediators to pose as dispassionate process specialists who are neutral with regard to the content of disputes. They are forever making overt and covert judgments on how issues are to be addressed, which settlement prospects are preferred and how diverse interests are to be attended to. The moves that

mediators make influence the disputing parties' actions and reactions, ultimately shaping the course of a conversation. Advocates of problem-solving have often downplayed the effects of mediators' own biases, values and viewpoints and instead have emphasized the degree of impartiality that can be achieved.

Christopher Moore (1996) makes a distinction between neutrality and impartiality. He assigns the term neutrality to the absence of any prior relationship between the mediator and either of the disputing parties and to the mediator not receiving any benefit or payment from either party. He reserves the term impartiality for describing the process objective of refraining from favouring either party's interests, wishes or proposals over another's in the course of a conversation. Impartiality amounts to evenhanded conduct of the mediation. The test of impartiality is considered to lie, ultimately, with the judgment of the conflicted parties. At the end of the mediation, if they can testify to the evenhandedness and fairness of the mediator, only then can the mediator be deemed impartial.

While it is not desirable to undermine mediators' efforts towards ethical practice along these lines, there is a difference between making these efforts and assuming the achievement of a neutral discursive position as a result of making such efforts. There are a multitude of ways in which mediator biases, prejudices and preconceptions will necessarily enter into the subtleties of their selections of content to respond to and their choices of words. A discursive analysis, particularly one that is alert to the subtleties of position calls, can help make this evident. Rather than taking up a position of empty neutrality, the mediator can be seen to adopt a stance and take a position in every utterance and to issue position calls to the parties as she does so. To use discourse at all means to work with culturally bound tools and, therefore, from a cultural position.

Folger and Bush (1994) have shown some examples of the ways that mediators can exert influence on the trajectory of a mediation through influencing the frames of reference within which matters will be discussed. They argue:

When conflicts are mediated, social justice issues can be suppressed, power imbalances can be ignored and outcomes can be determined by covertly imposed third-party values.

One of their critiques of the problem-solving approach to mediation concerns the instrumental focus on producing an outcome in the form of an agreement. This focus in itself leads to the selection of content for emphasis to fit with what can be written into an agreement. It privileges the tangible aspects of a dispute such as differences in money and property ahead of more intangible emotional elements.

If we accept that mediator neutrality and impartiality are attractive ideas rather than straightforward expectations, we must grapple with the fact that mediator influence is an integral part of the mediation process. The ethical dimensions of practice change from a desire to work within the scientist-practitioner tradition of objective neutrality towards an ethical management of the particular nature of the mediator's influence. Does it work in the direction of the promotion of greater justice in social relations or does it work intentionally or unintentionally towards the reproduction of injustice? Does it open up more possibilities for action for people or does it close these down?

Some mediators suggest that their influence should be used to offset the advantages that a more powerful party may have in the mediation (for example, Haynes, 1988). Indeed, if the mediator fails to bolster the influence of the weaker party and to curb the dominating effects of the stronger party, some critics would suggest that mediation becomes an abusive activity. Take, for example, the differential levels of influence that an employer and an employee bring to a mediation, or a landlord and a tenant. These positions offer different degrees of entitlement in relation to one party's ability to make decisions that affect the other party. Consider too the disparity of power and influence between a party who is educated, rich and eloquent and one who is uneducated, poor and inarticulate. When these degrees of variance over relational influence are present, mediators could be called unethical if they did not find some way of attending to power discrepancies.

There are problems, however, with mediators managing the difference in status, authority, and relational position between parties by shoring up the weaker party and checking the behaviour of the party perceived to be dominant. This kind of

analysis of the workings of conflict and how conflict can be resolved is based on assumptions of power as a commodity that can be possessed in finite quantities that are distributed (unevenly) between people. In other words, a modernist, structural analysis of social hierarchies is being employed. Structural positioning at the top of the social hierarchy is assumed to mean that a person amasses a certain quantity of power that will translate into conversational influence in the mediation.

But this kind of analysis builds in a certain rigidity of expectation. Those in the position of structural advantage cannot be dislodged from their power in one conversation. And those in the position of disadvantage cannot remove the disadvantage through talking about it. From this perspective, protest that stops short of structural change is not valued. This kind of analysis itself always runs the risk of obscuring or trivialising the efforts people make to resist their own subjection. Such efforts have to be conceptualised as futile in terms of a structural analysis. As a result mediators are not encouraged to expect much opportunity for potency in their work.

From a poststructuralist perspective, power does not so much adhere automatically to structural positions in hierarchical arrangements as it operates in and through discourse. Discourses offer people positions of greater or lesser entitlement. Within particular discourses, some positions are rendered more legitimate or more visible and others are subjugated. Some voices get a full hearing and others are silenced. But, of course, discourses are products of the shifting, changing, unstable conversations that take place in communities and relationships. As discourses shift and change, so the discursive positions of legitimacy and marginalization ebb and flow. In other words, it matters what happens in a conversation. All is not predetermined by social structure. Structural positions of privilege only manifest power in the context of conversations in which such privilege is practised, or in which entitlements are laid claim to and not made subject to challenge. Thus, power is produced on a moment-by-moment basis, rather than determined by social structure in advance of a conversation. For power relations, this means that it matters what happens in the course of a mediation conversation. I would expect that, as a result of the expression of resistance, subtle shifts and changes in discursive positioning will take place in the moment of producing utterances in conversation.

From this perspective, I conceive of the role of the mediator as having certain responsibilities and certain possibilities. The responsibilities lie in the need for vigilance about the shape of the power relations being advanced in the conversation, including a reflexive awareness of how professional power can be practised by a mediator in colonising ways. The possibilities lie in the opportunities for constant renegotiation of power relations that can be realised in the course of a mediation. Position calls and claims of entitlement can be deconstructed, refused or resisted at any moment. Voices that have been subject to systematic silencing can be heard and made legitimate. Viewpoints that have previously been rendered invisible can be paraded and discussed. In these ways, power relations can be destabilised and agency realised. Even in the most apparently powerless of circumstances, people can find small ways to act that make a difference to their relational position.

However, if power is not a commodity, then it makes little sense to talk of people being equal or unequal in their possession of it. It also makes little sense to speak of empowerment in the sense of an action by the mediator to balance the 'amount' of power being held by the respective parties. Moving away from a globalised notion of power sensitises mediators to people's abilities to act in their own behalf, even in small ways that do not radically alter structural arrangements.

Reflexivity

The work of Michel Foucault, as discussed in Chapter Three, has problematised the politics of relations between professionals and their clients, particularly in the fields of medicine and psychology. He draws attention to the ways that knowledge in any domain of professional practice is produced within dominant discourse. This is no less true in mediation than in other domains. From a narrative perspective, the relationship between knowledge and power is important for the politics of relations between mediators and their clients. To take this relationship into account requires mediators to commit to a reflexive stance in their practice. Therefore, let me articulate a reflexive practice of mediation.

A reflexive practice seeks to handle power and privilege in ways that demonstrate the principle of accountability. Reflexive practice includes, but is more than, 'reflective' practice (Schon, 1983). Reflection suggests an individual process of thinking back over experience and learning from it. 'Reflexivity' refers to a more dialogical or conversational process, one that involves people being answerable to each other for their actions. This form of accountability involves taking account of and reflecting on the impacts one has on the other. It requires professionals to be accountable to their clients and contrasts with the more common form of accountability which is focused 'upwards' toward employers or funders rather than being concerned with the views of clients.

The concept of reflexivity has been developed in relation to research methods (Banister et al., 1994; Lather, 1991) where it has been used to distinguish research that objectifies and exploits its subjects from research that respects its subjects as co-participants in the research process. In such research, the researcher includes himself or herself as a participant whose research questions are not neutral or objective but situated and interpretive. The researcher's interpretations are always open to alternative readings as well, especially in the light of the co-participants' contributions to the research task.

Similarly, in fields of professional practice such as mediation, a reflexive approach opens to view the positions from which professionals and their clients relate to each other. This process of opening to view is not a strictly neutral activity. Reflexive moves make relational positions evident and begin to shift or transform these positions. Reflexive practices help to make what mediators and clients are often barely aware of more obvious, and therefore more available to conscious efforts to change.

Reflexive practice makes privilege and entitlement subjects for discussion and deconstruction. It alerts us to the ways in which professional and academic discourse grants authority to the words uttered by the mediator. It requires mediators to avoid the assumptions involved in 'practising down', just as researchers have 'researched down' (Hoffman, 1992). Practising down would be achieved by professional mediators laying their theoretical knowledge over their clients' experience. A reflexive approach by contrast involves deliberately making professional privilege

transparent and demonstrating willingness to be repositioned by the clients' preferences. This might involve some of the following relational moves:

- inviting parties to comment, theorize or editorialize on the mediation process and content
- being prepared to be surprised by and to learn from what the parties have to teach rather than seeking to assimilate parties' comments into the mediator's existing knowledge
- asking permission to make process moves rather than assuming this as a professional right
- speaking or writing reports about parties only in ways that one would be happy for the parties to overhear or read
- treating all documents or recordings that come from the mediation process as being co-authored with the parties rather than as belonging exclusively to the professional, including notes and files which should be open to client inspection.

The outcome of this kind of reflexive practice should be a more dialogical process than simply a personally reflective practice. It can only be achieved in the kind of conversation from which each participant emerges a little changed. In order to practise this way, mediators have to shrug off the cloak of objectivity and accord parties a position of shared authority in the conversation. They have to be prepared at times not to take themselves too seriously, even to be able to laugh at their own predilections. And they have to be willing to learn from those to whom they are seeking to offer a learning experience, to be served by those they are serving.

Respect

One way to describe the political stance described above is to use the word 'respect'. To adopt the reflexive stance advocated above amounts to a systematic effort to communicate a palpable respect. Few would take issue with 'respect' as an abstraction, but not everyone would embody respect in the performances of meaning that I am advocating here. In order to understand this stance let me articulate a conception of just what it is in another person that we might respect.

The concept of positioning (see Chapter Three) enables a discursive understanding of respect. If discourse authorises and legitimates the positions of

entitlement offered to people in conversations and at other times limits or excludes them from such positions, then mediators can make conscious use of discourse to offer disputants opportunities to take up positions of moral agency. When mediators do this, they can be said to offer people respect. Such respect invites people to take up subjective positions in the grammar of mediation relationships rather than inviting them into subjected positions. Such subjective positions are frequently the subject of contest and are not to be taken for granted. I conceive of them as achieved moments of practice rather than as states of being. Nor once achieved in a given context can such a subjective position be guaranteed to continue. It is not like a state of enlightenment that, once reached, is never lost again. Rather, discursive positioning is always being reproduced in everchanging contexts and there are always challenges and contests, not all of which can be taken on in a given moment.

Listening discursively, or listening to how discourse positions people and also to their preferences to take up or to refuse such positions calls, enhances the possibility of offering people respect. Treating people with respect entails calling them into speaking positions, especially in situations where the dispute arises out of systematic exclusion of a person's voice. For example, heartfelt concerns about the particular effects of racism or sexism can be effectively sidelined by being described merely as 'political correctness'. If a mediator solicits the giving voice to these concerns this is no insignificant act in the micropolitics of conversation.

Michael White (1989) has proposed an aphorism that embodies the principle of respect I am seeking to describe here.

It is not the person that is the problem. Rather, it is the problem that is the problem.

(White, 1989, p. 6)

This statement sounds so straightforward that it may seem obvious. However, it needs to be understood in the context of many habits of speech that describe people by summing up their essential being, or totalising them on the basis of a narrow range of experience. This happens whenever someone is described in a conflict situation as though they are a particular characteristic, for example, aggressive, weak, a liar, difficult to deal with, stubborn, bad-tempered, unreasonable, arrogant, or the like. In

professional psychological discourse, deficit labels of psychological diagnosis can be applied in the same totalising way. A person can be described as overreacting, acting out, emotionally disturbed, passive-aggressive, and so on. When such descriptions are used by someone with the authority of a professional training behind them, the totalising effect is magnified. Communicating respect entails avoiding falling into ways of speaking that employ objectifying descriptions like these, or in other ways totalise people.

It is very common in conflict situations for one party's description of the other to narrow considerably. Whereas the two parties may have previously experienced each other in a range of ways, under the influence of a dispute, the experiences that are selected for remembering become restricted to those that describe a person's participation in the dispute. The complexity of experience is reduced to a small range of words applied to the exclusion of other possibilities. People are totalised and places where they could be thought of as otherwise are obscured. Communicating respect entails continuing to maintain curiosity about the possibilities that lie outside of any simple summary of a person.

Relationships too can be described in totalising ways. A common description of conflicts is to call them 'personality clashes'. Such a description privileges the essential individual qualities that we call personality. The assumption of 'personality' is that individuals carry around with them some kind of stable personhood that is context-free. The assumption is also that these personalities will not change and so when two people clash, the conflict is to some degree inevitable and determined by the pre-existence of personality features. However, people are far more complex than any descriptions. Nor can relationships be reduced to simple summaries without distortion. There are always exceptions to any description. Communicating respect means holding the door open to such exceptions, rather than simply accepting an analysis of the conflict that is based on an essentialist description of either persons or relationships.

To communicate the kind of respect I am outlining here requires that mediators make a conscious effort not to see people as essentially anything, to refuse to sum people up. It implies a willingness to look for contradictions and to celebrate them as indicative of the range of possibilities that anyone has at their disposal. This stance encourages mediators to see people as more than their actions in the current

dispute. My belief is that people usually appreciate being spoken to from this enlarged viewpoint. It also involves being on the lookout for opportunities to celebrate, appreciate and build on every little step into positions of moral agency, to have a voice in matters that affect them and to act from subjective positions in discourse. Another way to say this is that a mediator needs to be on the lookout for possibilities that lie beyond the realistic and the known, always seeing the potential for people to step into neglected knowledges or understandings, and seeking to capitalise on such potentials.

Elements Of A Narrative Practice

In this section, I intend to describe some ways to articulate the principles argued above in the practice of conversation. To illustrate this articulation, I shall draw from a transcribed mediation conversation that can serve as an example. This conversation was a role-played mediation which was recorded and transcribed. I shall not present the whole of the conversation but rather select pieces of it that serve the purpose of illustrating the method I am proposing.

Deconstructive conversation

The first concept that I want to emphasise is that of deconstructive conversation. This concept refers to the mediator's focus in the early part of a mediation as the issues that have fueled the conflict are laid on the table. To work narratively, the mediator is not just listening to the parties telling their stories and joining with them through communication of empathy. In addition to doing this, the mediator listens for the discursive positioning being negotiated, the entitlement claims being made, the power relations at work, and the discourses being referenced in the construction of the stories. She or he seeks to enjoin the parties in a conversation that opens up these discursive influences to view, rather than allowing them to continue to do their work behind the scenes. Deconstruction is not an analytical operation carried out by the mediator on the parties. Rather, it is achieved as the mediator asks questions that invite the parties to step outside of the conflict

story and to think about how they have been caught in a web of discourse in the development of the dispute. It is best done in a spirit of wondering and curiosity, rather than critique.

The effect of this kind of conversation is first of all to 'render strange' (White, 1991) what has become familiar in the conflict saturated story. Taken-for-granted aspects of 'how things are' can be viewed from a new perspective and take on a different hue. I do not mean here an objective perspective. Objectivity would be too narrow a range of perspectives. I would argue that any shift in perspective creates a new discursive vantage point, which will still be embedded in discourse, but which always entails a loss of certainty in relation to the original story of the conflict. Deconstructive conversation loosens the authority of a dominant way of thinking and opens the door for different ways of thinking.

I shall now introduce the conversation that will serve to illustrate a deconstructive inquiry. The scenario for this conversation was given to the role-players only a few minutes before the recording. It runs as follows:

Dennis and Mario are in a permanent and loving relationship. They are committed to each other and each has a satisfying and rewarding job. The only thing they want is a family of their own. Dennis's former partner Marlene agrees to conceive a baby with Dennis and to hand the baby over to Dennis and Mario when it is born. Although Dennis and Marlene had split up some years ago they had maintained a supportive relationship and were good friends.

Baby Samuel is born and he is much loved by both his father and his mother. Marlene is so attached to Samuel after carrying him for nine months and giving birth to him that she is reluctant to give Samuel up. At first she stalls for time and then later admits that she has no intention of giving Samuel up to Dennis and Mario.

There were no contracts drawn up prior to the conception of Samuel. The whole arrangement was based on trust. Neither wants to destroy the friendship but they both want Samuel. Dennis suggested mediation to Marlene in the hope that they would be able to establish at least a shared parenting arrangement. Marlene agreed and Mario supported the process.

What follows is a segment of conversation based on this scenario. It comes about ten minutes into the conversation as Dennis and Marlene are talking about the discursive positions offered to each other in the versions of future they each want to advance. My concern as mediator here is to inquire about the taken-for-granted aspects of the envisaged stories, and about the discursive positions they can identify for themselves in these versions of future.

MARLENE: Do you want me to pop into his life maybe fifteen years from now and say hey yeah by the way this is your mom.

DENNIS: No not fifteen years from now..

MARLENE: (interrupting) .. but this whole time she's Auntie Marlene or something ... I don't understand ..

DENNIS: Well ... you helped me out .. and you brought this child into our lives ... you're .. you're gonna be part of it .. somehow .. we've just got to figure that out.

JOHN: Can I .. can I just check out .. because I mean you just spoke about a picture of what might happen .. you know like if .. I mean I'm not suggesting this is how it will go but I'm just saying if things were to go as you're imagining that Dennis would want them to go .. right .. it would be .. and you (Dennis) described a picture ... and you (Marlene) sort of responded to that picture .. which was along the lines of you'd be distant .. you'd sort of somewhere .. whether it's fifteen years or six years later you'd come in and be Auntie Marlene .. something like that .. so it sounded like a picture in which your role in Samuel's life would be what ...

MARLENE: A close family friend that's always there.

JOHN: A close family friend.

MARLENE: I'm still Marlene and his best friend but to Samuel I'm just a family friend that he maybe calls Auntie Marlene and I cannot see myself that way (JOHN: Right.) .. maybe in the beginning I didn't have a problem with that but now .. I'm not his aunt .. I'm his mother.

JOHN: So can I just check .. (to Dennis) was that .. is that anything like the picture that you've been having of how this would go .. I mean Marlene's role .. a picture of Marlene's role.

DENNIS: Partially.

In this conversation the discursive position for Marlene produced in the original agreement with Dennis is spelled out in a way that it has not been before. In response to questions about its sources, it is linked to the role of a 'close family friend' in the dominant discourse of family. Perhaps it contains echoes of the handling of family shame around 'illegitimate' births in which the dominant story of family is maintained through the ruse of turning the mother into a sibling or an aunt, while other family members (usually grandparents) raise the child as its parents. The deconstructive inquiry into what such a picture contains is done without requiring anyone to commit themselves to this picture. Along the way, the ground is prepared for departure from the positions inherent in this story. It is after all just a story and its authority is loosened simply by naming it.

In the next segment, a deconstructive question gets behind the meaning of the picture to its relation with background discourse. Dennis's answer is indirect. It appears to change the subject but in the end it comes around to filling in the details of Marlene's position more fully. This is followed by a recognition of the differences in positioning between the tug of dominant discourse of family and the prospect of a family with two male parents.

JOHN: Can I just ask .. cause I'm interested in this picture that .. you had that you know you both actually had which was of Marlene's role being like a distant family friend ... like where does a picture like that come from .. where do you get it from .. I mean is it out of your own lives or .. out of what you've heard other people talk about or .. like where do these pictures come from?

DENNIS: I just .. personally .. I just felt that when Samuel was at an age when he can understand (JOHN: Mhmm.) .. or even begin to comprehend what was going on ... obviously there would be .. differences there would be two men in his life taking him to school taking him to soccer (JOHN: Yeah.) .. doing those types of things ... with regards to the other .. families it would look different and I guess when he was able to recognise those differences ... I didn't envision some big old summit that we'd all sit down but something like that an informal .. type of .. meeting where he gets to meet ... not meet Marlene for the first time but where we really discuss .. you know where he came from .. and I thought we could do it in an informal way ... where it was comfortable for all the parties.

JOHN: See .. I mean like what I heard you describing .. tell me if any of this is wrong because I want to make sure that I'm hearing you correctly but you had various pictures of being a parent .. right ? (DENNIS: Yes.) .. and you described some of those like taking him to soccer and what were the other things you mentioned .. you know ..

DENNIS: School.

JOHN: Soccer, school those kind of things .. and ... and you had a picture of like what is ... a primary parent's role in those things .. right?

DENNIS: Mhmm.

JOHN: And .. but you also had a picture of .. the difference .. you know like .. this would be different from some other kids and .. because he would have two male parents .. right? (DENNIS: Mhmm.) .. so you.. you kind of had a .. is this right that you had a picture of kind of what is generally expected that parents do and also pictures of .. things that as two gay men you would do differently ... and that you would have to deal with those differences .. right ..

It is clear that Dennis cannot rely on dominant discourse for a legitimate model of parenthood. This conversation is deconstructive to the extent that it opens up a view of the limited positions available in dominant discourse and identifies the need for a different discursive position from which to be a parent. The same issue is pursued with Marlene in the following segment of conversation. Her answer takes her in different direction but it is still about the shaping of discursive positioning in relation to notions of family.

JOHN: I'm interested in where your picture came from too of the .. what Dennis was wanting was Marlene as the family friend .. like where does that come from?

MARLENE: I just .. I didn't .. I would see myself as a friend still (JOHN: Yes.) .. a really close friend but maybe not this child knowing that I was Mom (J: Yes .. because?) maybe because in my own head I wasn't ready to be a Mom at the time that he approached me (JOHN: Right.) .. so I didn't see myself as Mom.

JOHN: OK .. so you didn't have a picture of yourself in that place in that role ...

MARLENE: Being that full on (JOHN: Right, yeah.) .. at the time it was more of realistic role that I thought I could fulfil (JOHN: OK.) .. for this child ... but now ..

JOHN: Just the giving birth role .. the carrying of the child (MARLENE: Right.) .. that's as far as your envisaging of yourself in that role went .. at that time right? .. and over the last months that that envisaging has grown.

MARLENE: I am Mom (JOHN: Yeah.) .. and he needs his mommy (JOHN: Right.) .. and so something that I didn't feel that I could do before .. is so real right now .. it is so much of my reality .. my future.

JOHN: So as that ... you know like that .. it's sort of like over those months that picture and that envisaging of your own ... role in Samuel's life has grown .. it's kind of developed and grown as time's gone by ...

Here we see in Marlene positioning herself in relation to a discourse of motherhood that has grown more salient during her pregnancy. The salience of this discourse has grown more significant for her through her pregnancy and she has rejected the more marginal position in relation to this discourse that she earlier was happy to occupy. The implication is that further development can also take place and that identity as a parent is not fixed, an important consideration for a mediation about the care of a child.

Deconstructive conversation builds on a mediator stance of curiosity about meanings, rather than an acceptance of standard meanings. Careful inquiry into the meanings of expressions or story elements seeks to avoid taking any particular meaning for granted. It conveys the idea that meanings are not fixed but are shaped by context and are negotiable in conversation. Such inquiry can be deconstructive, because it loosens the grip of established meanings and unpacks the background assumptions against which things make sense. As these assumptions are cast into the spotlight of curiosity, they begin to look more like options or preferences, rather than unassailable truths.

The particular spirit in which such curiosity might be expressed requires a little further explanation. It needs to be distinguished from the kind of curiosity that can be experienced as interrogation or examination. Nor is it the same as data collecting. In these questioning processes, the person being questioned is subjected to the questioner's intent, supplying information to fit into a schema existing already in the mind of the questioner (for example a list of diagnostic criteria). In the spirit of the modernist scientist-practitioner, the questioner solicits details from the client that

become ‘facts’ once they are interpreted within the framework of the professional’s expert knowledge.

This spirit of asking questions to collect data is not the kind of curiosity I am advocating here. I advocate a stance of curiosity that is not so much confirmatory as exploratory, not so much aimed at confirming hypotheses as at generating them. In this spirit, the person being questioned need not be subjected but is invited into the subjective position of the knower. A mediator seeks to learn from the knowledge of the client, rather than subsume the latter’s knowledge within expert knowledge. Some family therapists have described this stance as adopting a ‘not knowing position’ (Anderson and Goolishian, 1992), or ‘deliberate ignorance’ (Hoffman, 1992). These descriptions describe this spirit in terms of its binary opposite. The flip side of ‘not knowing’ would be a spirit of respectful wonder or naïve inquiry that welcomes ambiguity and indeterminacy, because of the increased range of possibilities that they open up.

Let us look at some examples of what happens in practice when curious questions are used in this spirit.

JOHN: Dennis used the word catalyst before .. like he described the original understanding as being that you would be like a catalyst for them .. for Dennis and Mario to have a child ... how did that fit with your understanding of what the agreement was to start with .. how does that word fit ?

MARLENE: Now I just think it’s horrible but at the time but I guess at the beginning I was wrapped up in my own career and I didn’t even see a child in my future .. so I didn’t mind .. I wasn’t in a relationship and I saw how committed him and Mario were so I .. I didn’t think there would be any harm in allowing you know two great men to raise a child so I don’t want to describe myself as a catalyst but as ... the means to the end .. if I was able to provide them what they needed that they couldn’t provide for themselves then at that time I didn’t think it was a problem .. however .. it’s all changed .. I didn’t think it was going to change.

The question focuses on one word that has been used and asks Marlene to articulate how it positions her. She responds by telling a story of a shifting meaning. The word ‘catalyst’ would have ‘fitted’ for her at one time but its meaning has shifted in

relation to developments in her life and it now has a strongly negative meaning. By negating it, she eludes being subjected by it and enters a subjective position in the story. A curious question has thus opened up a deconstructive inquiry into the evolution of her positioning in relation to a particular piece of discourse. She articulates a more agentic position for herself than would be possible if she remained in the position circumscribed by the word 'catalyst'.

A parallel exchange then takes place with Dennis in response to Marlene's comments. Again, I ask a curious question that seeks to expand further the range of possible positions. The word 'catalyst' is now, in Bakhtin's terms, double-voiced. It carries forward both Dennis's original assertion and Marlene's negation.

DENNIS: I used the term catalyst and it may sound cold but .. I came to the realisation that .. this relationship was not working (JOHN: Yes.) .. I trusted her .. we spent a lot of time together .. I .. I moved on .. I'm very happy in my relationship now .. I .. she is right when she says that we did have a strong friendship ... yes and I still value that friendship that's why I went to her instead of a person I didn't know I went to a person I did know and did trust and did believe in .. and she would assist me .. she would be a vehicle .. to bring in a child to .. our lives .. which is .. utterly impossible .. you know ... we didn't want to adopt .. that was the other option we explored but we wanted something more personal.

JOHN: Can you help me understand how come you had such trust in .. this friendship .. this relationship that you were prepared to contemplate .. you know such a significant thing ..

DENNIS: (overlapping) Well ... I cared about her ... trusted her loved her ... it's just the .. the intimacy wasn't working and .. that was my personal recognition .. of .. what was going on in my life .. she's intelligent, she's career-oriented ... she was a good .. a good candidate I guess.

As a result of the use of deconstructive curiosity, this time the word 'catalyst' has developed a richer meaning in the context of a story of relationship. Dennis's story also breaks out of the narrow range of position calls that the word 'catalyst' at first suggested. He repositions himself in relation to his own earlier utterance and in response to Marlene's negation of her subjection by it. He offers her a different

position of greater subjectivity in a trusted friendship. However, the tug of the old discursive meaning reasserts itself, perhaps, in his final choice of an objectifying word like 'candidate'.

One further example of the use of curiosity will suffice. This time the curious question occurs as part of the development of a new dimension of appreciation that stands in stark contrast with the original conflict story.

DENNIS: I do understand that she's developed a bond .. an attachment .. that's wonderful.

JOHN: That means something to you?

DENNIS: Yes that means something to me.

JOHN: Tell us tell us what it means.

DENNIS: It means that she's developed an attachment, she .. encompassing love and uh ...

JOHN: Is that something you see as good for Samuel?

DENNIS: Yes I do .. that's wonderful .. I think that's great ... um .. (some conversation omitted) I want her to understand that I feel .. I feel that she has made an attachment and a bond with Samuel (JOHN: Yeah.) .. and .. I guess we're in a point .. we're at a point where .. something's gonna have to happen for us to move on .. because the original agreement no longer .. means anything.

JOHN: Yeah .. you .. you've reached a.. an acceptance of that.

DENNIS: Just within myself I don't .. I'm sure she's very aware of that as well.

JOHN: Yes .. well she's been saying that to you hasn't she (DENNIS: Yes.) .. that for her that happened some time ago.

DENNIS: Long time ago.

JOHN: Yeah .. so you've reached that point .. of accepting that the original agreement isn't going to work any more.

DENNIS: With reservation because I have .. in order to move forward .. in order to see my son .. I will have to compromise .. my .. my thoughts or my .. original idea or perception and so .. in order to see my son .. which I want to see my son I want to be with my son and in order for this to take place ...

Here, the statement that Dennis makes is explored by enquiring further into its meaning. As mediator, I am not offering an interpretation of his statement so much as issuing an invitation to him to step into the subjective position of interpreter of his own words. The interpretation he offers in response amounts to a significant relational shift in the context of the conflict. It is as if he cannot make meaning without shifting position in line with the meaning. In the process, the story of the original agreement is dismantled further as a new set of meanings begins to emerge.

Externalising Conversation

A particular rhetorical move in narrative conversation that assists the process of deconstruction is the development of an externalising conversation (White & Epston, 1992; Winslade & Monk, 2000). Externalising conversations reverse the common logic, in both popular and academic psychology, that focuses explanations for events inside the person. Externalising makes a grammatical and syntactical shift that emphasises the relational domain and the world of discourse as an origin for experience. As mediators externalise a conflict, they speak about it as if it were an external object, or a person, exerting an influence on the parties but not identified solely with either party. In the process, they introduce a way of speaking about the conflict that interrupts stories of blame and guilt, or accusation and defence, and opens the way for the disputing parties to begin to disidentify with the conflict itself. This way of talking promotes a clear separation between persons and problems and then invites persons into a re-evaluation of their positioning in a problematic story. For example, in the story being used as an illustration, I might have asked questions about how the dispute was the cause of difficulties between Dennis and Marlene, rather than about how Marlene and Dennis were the cause of the dispute. The dispute might then be spoken about as if it had designs on their lives, had desires to undermine their friendship, and had played tricks upon them both to convince them to speak its lines. In terms of positioning theory, the problem is constructed as issuing position calls upon which the parties are asked to decide where they stand. If they choose to resist the notional position call issued by the externalised problem, they are implicitly taking up positions in a different storyline.

When a mediator introduces an externalising conversation, parties often experience a sense of relief and a lightening of the heaviness of the problem. Blame and its counterparts, guilt and shame, are burdens that can best be thought of as hindrances to the task of finding a constructive way forward in conflict situations. The humanistic assumption that a way forward can be found by encouraging people to take responsibility for their part in producing the conflict fails, in my experience, to obviate this heaviness. By contrast, the lightening embodied in an externalising way of speaking can rapidly give the parties a different experience of the conflict they have been living with. The different way of speaking brings about a subtle shift in grammatical position in relation to a problem. From this position, things look different. And when things look different, the power and authority of habitual ways of thinking about a dispute are deconstructed.

Let me now illustrate this process with reference to some examples of externalising drawn from the mediation conversation with Dennis and Marlene. A simple example from early in the conversation lies in my summary of what the parties have been telling me.

JOHN: So is this right that at one point you both had .. or you both thought you had a similar understanding and that things have changed .. is that right .. that the understanding has disappeared between you at the moment.

The origins of the changes that have happened are not ascribed to either party but to 'things' and 'the understanding' that has disappeared is spoken of as if it took itself off into the distance, rather than that either party stopped being willing to understand the other. Another example comes from an exchange with Marlene in which her change of mind about keeping the baby is spoken about in this way.

JOHN: So that whole experience of going through carrying Samuel for those months kind of altered the whole situation for you?

The origins of the change are spoken of in an impersonal way as produced by the experience of carrying the baby, rather than as a deliberate (malicious?) intent on Marlene's part. The temptation for Dennis to enter into an accusing description of the

change as originating in Marlene's lack of consistency or integrity is thereby pre-empted. She is therefore not called into disputing this negative discursive position and can consider other options for the positions she wants to take up.

DENNIS: ... but we really haven't really talked to it .. talked about it much .. you know we're just kind of involved in Samuel's life and his wellbeing right now.

JOHN: Does that .. I mean not talking about it .. does that fit with the history of your friendship?

In this example, 'not-talking-about-it' becomes the externalised subject of the sentence and the question is framed to bring about a maximum contrast with the qualities of friendship for which they have previously expressed much value. It is also worth noting that the theory of restraint referred to above is deployed here. In the way this relation between competing stories is constructed, the friendship story is granted priority and the problem story is discussed in terms of its fit. Thus the problem story is constructed as restraining the more important story of the valued relationship. But the story of valued relationship becomes the one in relation to which the parties are asked to position themselves. This is the opposite of what usually happens in problem-solving rhetoric, where the problem to be solved is placed in centre stage and the story of change emerges slowly in response to the process of brainstorming options and negotiating an agreement.

A further example shows the development of an externalising conversation over a series of exchanges. In this instance 'resentment' is used for a brief period as the externalised problem. Externalising allows me as a mediator both to acknowledge the emotional experience and, at the same time, to speak in a way that assists with a process of disidentification with the story in which the feeling of resentment features.

DENNIS: ... I want the child with me ... that was what we discussed .. and I guess also I'm building resentment .. there is a sense of resentment because I just feel like I've been thrown .. and now she's telling me that you know we've .. she's turning it upside down like I feel like I've been thrown .. now she wants .. you know the baby's been with her for four months .. all the time .. she's also taken a little time off her work is allowing her to be home so she's with the child a lot now and I'm only

allowed to come and visit him and that is not what I assumed this was going to be that's not what we discussed and that's not what I want I don't wanta just go visit him..

JOHN: OK so resentment has entered into the picture .. right?

DENNIS: Yes.

JOHN: And tell me about the effect of that like what effect has resentment had for you for the relationship

DENNIS: It's just ... I want .. I want action (JOHN:Yeah.) I want the child .. I really don't want to hear what she has to say (MARLENE: exactly) .. I really don't want to talk to her now .. I want to take the child and start our lives and .. and move on.

JOHN: So it's like resentment has really got in the way of you wanting to hear what she's got to say.

DENNIS: Yes .. in essence.

JOHN: And you were saying Marlene that you've tried to speak to him ..

MARLENE: I've been telling him this for a while now but he doesn't want to hear it

JOHN: OK .. It's like .. because .. what you're saying is resentment has even stopped you hearing these things .. whatever she's got to say.

DENNIS: Yes .. now it is .. (JOHN: Right.) and I'm just ..

JOHN: (interrupting) and it's taken .. I mean has it also had an effect on your relationship? I mean the friendship that you described .. it sounds like a remarkable friendship .. a wonderful friendship .. over many many years and through some transitions and stuff like that .. is resentment somehow (DENNIS: Yes) undermining that?

DENNIS: Yes I think it is.

JOHN: (to Marlene) Would you .. how would you say it? .. would it be the same?

MARLENE: I don't even see a friendship right now.

JOHN: You don't even see one .. so resentment even blocks the .. even the vision of that and yet .. I mean .. I've heard you say that ... if .. in some way resentment was not to be there and maybe some other things that are in the way I don't know .. you would want to keep the friendship .. that you still value it.

This is also an example of asking some 'relative influence' questions (White, 1989; Winslade & Monk, 2000). Once resentment has been externalised, the

separation of the problem from the person is maintained by asking some questions about its influence on both parties. Thus, resentment is constructed as a character in the scenario, rather than as an essential aspect of Dennis. It has played a role but it is a position in a storyline and is not fixed to some inner truth about Dennis. If it is not essential, then it follows that a different response and a different basis for interaction can be constructed.

In this next example, the emotion of sadness, another internalised representation of the conflict story, becomes the externalised problematic element. It is nominalised and objectified and thereby removed from being essential.

JOHN: (to Marlene) What .. do you see .. how do you see the relationship developing between Dennis and Samuel .. what do you notice that's happening?

MARLENE: I don't know .. he looks sad whenever he's with Samuel because he can't have him .. (JOHN: I see.) so I really don't know .. I mean Samuel's a happy baby so .. I think .. I know Samuel is happy to have two people .. two additional people .. who love him but he looks sad .. so I haven't been really able to see that bond .. I mean he's happy holding the child but ..

JOHN: So sadness is almost interfering with the development of that relationship in the way that you would hope that it would develop .. is that right?

MARLENE: Mhmm .. (inaudible)

JOHN: If sadness wasn't there so much what would you be hoping to see developing in the relationship between Dennis and Samuel?

MARLENE: That he's there .. that he helps Samuel develop and grow.

This use of externalising comes late in the development of a counter story and the 'sadness' by this time refers back to a previous state of affairs when the problem story held more sway. It is clearly a restraint on what by this time is a fledgling story of alternative to the conflict story. In order for this story to fly, it needs to be free of such restraints. My concern therefore was not to encourage either party to dwell in the existence of this sadness, but rather to acknowledge it as a restraint and to focus the conversation more on a continued development of what it was restraining. The subjective positioning offered to Dennis and Marlene is the agentic one of actively

developing a relationship with Samuel in contrast to the subjected positioning of them that 'sadness' is offering.

Restorying Practices

Let us turn now to the practices associated with the construction of a counter-story to the conflict-saturated story. As argued above, the process of deconstruction contributes to the opening of space for such a story but there is a more deliberate effort needed to foster the development of a coherent and viable story that can be embodied in a performance of meaning. The next section addresses this task by specifying, describing and illustrating a series of methods for finding the openings to a counter-story and of developing something out of these openings.

Articulating Hope

It is common in a problem-solving approach for the first task of mediation to be about defining the problem that needs to be solved. In my own practice, I have found that this sometimes lends more weight to the problem than is necessary. It is established in the place of importance from the outset. My aim in mediation is to create the relational conditions in which an alternative story to the conflict story can flourish. Therefore, I often seek to open this story from the very start. I make the assumption that people have agreed to a mediation process with some hope of something better than the conflict story. Even when they harbour serious doubts about the intentions of the other, they still have hope that the mediation process will bring about some relief from the discomfort of conflict. This hope can be the opening to a story of cooperation and respect. Therefore I often solicit its expression at the start of a mediation conversation.

The basic question that can be asked is about what each party hopes will come from the mediation. Note that it is not about each party's individual wants or needs. I am not just asking what each party hopes they will get for themselves. The question invites forward a hope for the relationship in the context of the mediation. Let me

illustrate this approach with an extract from the beginning of the mediation conversation that we are using in this chapter.

JOHN: I guess .. I'd be interested in .. in starting by asking each of you what your hope would be for what would come from this meeting?

MARLENE: My hope is ... that my son Samuel ... have ... it's important to me that my son Samuel have a mother and stay with his mother ... a constant ... mother in his life .. and .. I'm not trying to take Samuel away from his father .. however..

JOHN: So your hope (writing) is that Samuel .. have a constant .. mother in his life.

MARLENE: Mhmm... By constant I mean ... primary role in his life.

JOHN: Primary role.. that's what constant would mean to you? (MARLENE: Mhmm.) Okay... anything else that would be your hope for this meeting?

MARLENE: I think Dennis is a wonderful person and will be a wonderful fa... and is.. and is going to make a wonderful father and I'm not trying to take that away from him .. however I do want Dennis to understand that Samuel is .. half mine.

JOHN: So you're wanting something for Dennis here as well .. (MARLENE: Yes) right?

MARLENE: Yes.

JOHN: You're wanting some understandings here about .. Dennis's role in Samuel's life?

MARLENE: Mhmm.

JOHN: Is that right? Have I (MARLENE:Yes.) caught that?

MARLENE: Clarity as to what his role will be in Samuel's life.

JOHN: OK .. so clarity would be an important hope that you would get from this conversation .. that clarity would increase? (MARLENE:Mhmm.) ... anything else? ... is that enough for the moment or .. ?

MARLENE: Yeah, my thoughts are real ... (grimaces).

JOHN: OK. ... (turns to Dennis) What about you Dennis? What .. what would you hope would come from this meeting?

DENNIS: Well .. in the beginning we had a .. a verbal agreement that she was going to be the catalyst to bringing Samuel into our lives .. me and Mario's lives .. and ... shortly after .. giving birth to Samuel .. the agreement .. there was no longer an agreement .. she wanted to keep the child .. and I had hoped that it would be my child

and me and Mario would be the primary caregivers of Samuel. (JOHN: OK.) so today ...

JOHN: What's your hope for today?

DENNIS: I hope to kind of find my role.

JOHN: Find my role.

DENNIS: Find a role that works for myself .. Mario .. Marlene

JOHN: And Mario is your partner?

DENNIS: Yeah .. he's my partner.

JOHN: Sorry.. continue .. I interrupted you just to clarify that there.

DENNIS: Oh yeah .. just .. like a role for myself, Mario and as well as Marlene .. that best ... that will provide the best for Samuel's life.

JOHN: OK .. So it's like a conversation you're hoping will be one that has this kind of discovery in it that you would find this.. this role and that you would work out what these roles are for each of you?

Since we are talking about hopes here, rather than about embodied realities, no commitment is being asked as yet of either party. However, each is invited from the start into a subjective position in the mediation conversation. Each also gets to hear the other express their best intentions from the start. In these best intentions is likely to be expressed the spirit of the relational goals for the mediation. The tone of the conversation is set and any problems that later get defined can be understood as restraints on the materialisation of these hopes. Materialising these hopes becomes the prime focus of the conversation, rather than resolving the problem. My aim as a mediator is to help them define their relationship more in relation to these hopes than in relation to the problem. The problem becomes more of an annoying obstacle to the development of these hopes, rather than something to be resolved before hope can be expressed. This framing move pre-figures the process of objectifying the problem in an externalising construction. It also amounts to a position call from the mediator. I am calling them into positions in a particular story of this conversation. It is not a neutral position, since it clearly privileges story elements and discursive positioning that accords with their hopeful intentions, rather than with their positions in a problem story.

Both Marlene and Dennis, however, do make reference to their positions in the conflict story. Marlene refers to her own desire for Samuel to stay with her and Dennis speaks of his desire for the original agreement to hold and for Marlene to hand Samuel over to him. However, my questions invite them to envision hope for the relationship as well as for themselves and they each respond to that too. Marlene has hopes that include clarification of Dennis's role and Dennis hopes for a discovery in conversation with Marlene of sustainable roles for himself, Marlene and Mario.

As I review this exchange, I can see a piece of Marlene's expressed hope that I did not pick up on at the time and could have done so. She says that she wants some understanding from Dennis about her feelings about Samuel. Increased understanding could have been emphasised more as a legitimate goal for the conversation. This piece of conversation has nevertheless done enough to establish a position from which the conflict story will eventually be viewed. In the process, the conflict story takes on a different perspective. Its authority is deconstructed a little. What is needed next is for the story of hope to be kept alive through linking it to other story elements.

Recovering Unstoried Experience

We can expect the story of a conflict to be constructed within a narrow range of discourse and with enough coherence about it to have fueled and sustained the relational conflagration. However, narrative theory suggests that no story has a mortgage on possible truths and no story will ever be large enough to include all possible story elements. Any account of events has to be selective and therefore has to leave some things out. It is likely that a conflict story will omit elements that are illustrative of themes of cooperation, mutual understanding or respect, in favour of the relational events that spotlight the conflict. It is likely too that it will position parties as combatants rather than as partners in a shared enterprise.

The advantage of this perspective for a narrative mediator is that the narrative logic can be reversed. If we are alert to the possibilities of story elements that contradict the conflict story or are left out of it, we can seek to make of these 'unique outcomes' (White & Epston 1990; Winslade & Monk, 2000), or exceptions, an entry point into a new story. Once we start to look for these exceptions to the dominance

of a conflict story, we can notice always an abundance of them within a relational context. They exist in even the most feeble attempts to fight back against the dominance of a conflict story. They exist as we have seen in the hopes that participants bring with them into a mediation. They exist in parties' side comments that are often quickly glossed over in favour of a return to the dominant story. They exist in relational moments that are not predictable from the perspective of the conflict story or not consistent with its trajectory. They exist in shared understandings, or small agreements about what has happened, or moments of cooperation, the potential significance of which lies neglected in the shadow of the things about which disagreements exist. They exist in sometimes unspoken desires to address the issues raised by the other in a fair way or in a willingness to offer compromises in return for peace. They exist in small acts of resistance to the dominance of a dominating discourse.

The mediator's task in relation to these unique outcomes is to highlight them and to invite parties to take up positions in relation to them. In the process, the mediator can help the parties weave them into a viable story through connecting them with each other. The purpose of this deliberate positioning is to develop a counter-story of dialogue, cooperation and agreement. This counter-story can be assembled through finding unique outcomes, marshalling a series of plot elements, naming it as a project, inviting parties to step into its characterisations, and enhancing its significance through identifying its themes. Inquiry into its history can enhance its validity, inquiry into its current existence can reveal its important components and an inquiry into its future trajectory can generate hope in its viability. In other words, the mediator's task is to help the parties to develop in this counter-story the narrative coherence that Cobb (1994) described. A narrative method seeks to achieve all this through the asking of questions that are generative of such a counter-story. Let us return to our illustrative mediation conversation for some examples of this work in practice.

The conversation has made reference to the transition Dennis and Marlene made from being married to being separated, to being good friends, and later to agreeing to have a baby. Under the influence of the conflict story that threatens their friendship, this history is being put to one side. In that sense, it is losing its place in the history of their relationship, which is being steadily taken over by the story of

disagreement. In every utterance, Dennis and Marlene are positioning themselves in a story of relationship that is increasingly relegating concepts like friendship to the background. My assumption is, however, that this story of friendship, if recovered, might provide some basis for working through this new challenge in a spirit of cooperation. It might open up possibilities for re-positioning. I therefore expressed curiosity about this history.

JOHN: Can I ask does it say something about your .. relationship as it has developed since you have been living separately and Dennis has been involved with Mario ...

I'm talking about that you were willing to make this agreement to start with

MARLENE: I guess it remained strong ...

JOHN: It remained strong.

MARLENE: We were able to keep that friendship that we had going into our marriage (JOHN: Right.) and ... even though the marriage didn't work out he .. found .. someone else in his life .. that friendship was still there.

JOHN: Is that friendship .. important to you? (MARLENE: Yeah.) Sounds like it is.

MARLENE: Yeah .. yes and I mean ... I want to keep that friendship .. I do want to keep that friendship however .. I do want to keep Samuel as well.

Marlene's last comment in this exchange is indicative of the existence of competing stories. They are hinged in this sentence on the word 'however'. The major part of this exchange, though, stories the relationship between Dennis and Marlene as remarkably strong. This description does not fit with the story that they are not able to talk to each other about a sensitive issue, because it speaks of occasions when they have done this in the past.

In the next example, the unique outcome happens in the immediacy of the present rather than in the history of their relationship. It arises when I hear Marlene accusing Dennis of not hearing or listening to her, something that he agrees that he has been reluctant to do. However, her story of him not listening to her is referenced to past occasions and was linked to the conflict story. I suspected it may well be different in the immediate moment and wanted to give Dennis a specific invitation to demonstrate that he could listen to what was important to her. Such a demonstration would not be predicted by the conflict story. Hence, if he took up the invitation we

might have a relational experience for both parties that could take its place in the counter story that was being assembled.

MARLENE: .. I don't want to be ignored any more .. and I want you to start hearing me .. and you're not hearing me .. you're not hearing the fact that I didn't know that these nine months were going to change my life so much .. and I didn't know that the past four months were going to change my life even more so .. and I don't think you want to hear that you don't want to hear the fact that there was an attachment made.

JOHN: Can I just interrupt you for a second because you're you're saying he doesn't want to hear that .. and he's sitting here listening to you say that and I'm wondering whether we can find out perhaps what he is hearing .. I mean because you're stating that he's not hearing and I'm wondering whether we can ask him .. is that OK?

MARLENE: Mm.

JOHN: (to Dennis) Do you want to respond to that because .. Marlene's saying that the last few months have made a difference and .. you know I'm wondering as you spoke about before that you wanted to be .. you valued this friendship .. whether, you know, in the .. in the spirit of that friendship how do you hear what she's saying?

DENNIS: I do understand that she's developed a bond .. an attachment .. that's wonderful.

JOHN: That means something to you?

DENNIS: Yes that means something to me.

JOHN: Tell us tell us what it means.

DENNIS: It means that she's developed an attachment, she .. encompassing love and uh ...

JOHN: Is that something you see as good for Samuel?

DENNIS: Yes I do .. that's wonderful .. I think that's great ... um ..

JOHN: Can you just pause there for a second .. (DENNIS: Yeah.) you might want to think about what else you want to say.

DENNIS: Yes I'm .. need to think about what ..

JOHN: (to Marlene) You were saying you don't think he's hearing that .. I mean you know he's saying something now .. what are you hearing him say right this minute?

MARLENE: I hear him saying at this minute that he understands that I have a bond I have developed a bond with the child.

JOHN: OK .. is that good for you to hear?

MARLENE: Part of me doesn't believe how .. part of me doesn't think he realises how deep that bond is.

JOHN: So .. you've got some reservations about whether .. (MARLENE: Mmm.) .. yeah .. those reservations taken into account is it still a good thing to hear?

MARLENE: Mhmm.

JOHN: Right .. what difference do you think it might make .. to hear that.

MARLENE: In my decisions?

JOHN: Well not in any decisions just in terms of your ..' cause I mean before you were .. you expressed some strong concerns which I thought were really important about .. that he wasn't hearing what's important to you .. hasn't been hearing .. right? .. do you hear him starting to hear?

MARLENE: Mhmm.

JOHN: You've still got reservations I know but you hear him starting to hear .. is that important for you that he does?

MARLENE: Mhmm.

JOHN: So I'm wondering what does that open up .. in terms of possibilities .. or .. conversation between you about these things .. if you can hear each other on these issues?

MARLENE: For me it's important that he .. continues to hear my thoughts and understand my thoughts .. and understands my feelings .. and not so much take into account the original agreement (JOHN: OK.) cause since then things have changed.

JOHN: OK and if he can do that .. what does that open up that you can offer back to him?

MARLENE: Begin to work on something that will be beneficial for both he and I and Samuel.

There are several aspects of this pivotal exchange in this conversation that I want to draw attention to. First, I was careful in asking Dennis to speak about how he was hearing Marlene to reference the 'spirit of friendship' that he had already spoken about as something that he valued. This was an effort to create the maximum

possible opportunity for his response to be positioned in relation to the counter-story, rather than in relation to the conflict story.

Secondly, the influence of the conflict story can still be heard as this unique outcome is being constructed. Dennis struggles to say things that indicate that he is hearing Marlene (and at the same time granting credence to her position). No doubt he is feeling the internal tug of the conflict story as he speaks. Marlene also struggles to hear his words and give them credence. She has reservations about whether she can trust his words. She is tempted to listen to the conflict story and dismiss his efforts as insignificant.

Thirdly, my own efforts at this delicate moment are purposefully directed. Some who have viewed this tape would even say I was being 'directive'. But my purpose is to take an active role here in the construction of a different set of discursive positions for both of them. By this time, I did believe that it was necessary, in order for them to be able to work together as parents, for Dennis to accept that things had changed for Marlene, not out of any manipulative intent, but as an outgrowth of the commitment she had made in the original agreement. I did also believe that it was necessary for them to reach an understanding that did not position Marlene as a wrongdoer, having to eat humble pie and in Dennis's debt. Such a relation, I assumed, would not produce power between them in ways that would be in theirs or Samuel's best interests. Nor did I believe that it would be in the best interests of the relationship preferences that they had stated if Dennis was to continue to be storied as not listening by Marlene. Therefore, I was deliberate in asking a series of small questions, some of them closed questions, each of which was designed to invite them a small step further into the construction of a story of listening, understanding and appreciation of each other and into wondering about the possible futures that such a story might have in store. I was active in the process of co-authoring this relational shift because without my involvement I believe it would be likely that the possibilities in this moment may well have been swamped by the conflict story. I would defend my active involvement by saying that I was careful throughout to check that each move was in accord with what the parties wanted and I believed that I was acting on behalf of the original statements of hope that they had made.

Fourthly, the exchange illustrates the mileage that can be gained in story development through the use of the concepts of ‘landscape of action’ and ‘landscape of meaning’ (Bruner, 1986; White 1992; Winslade & Monk, 2000). The landscape of action is the plane on which plot events take place. It is the plane of actions, behaviours and practices. The landscape of meaning is the plane of interpretation where human beings dwell on, think about, reach conclusions about and react against, plot events. I am not claiming an essential structural boundary for this distinction. Thoughts and interpretations can be plot events and actions are embodiments of meaning and both are shaped by the dominant discourses of the social worlds in which they live. It is simply a useful construct that allows for the shaping of questions that grow a story. Several times in a row in this exchange, I identified a moment of plot development (that is, an event on the landscape of action) for the counter-story and sought to increase the significance of this moment by asking questions about the meaning of it (that is, issued an invitation to interpretation on the landscape of meaning). I asked Dennis to make meaning of and take a position on his statement that he has understood Marlene’s development of an attachment with Samuel. Then I asked Marlene a series of questions about how she has heard Dennis’s response and about the significance of that for her. Building a relational story in mediation involves doing a lot of this kind of weaving back and forth between the landscapes of action and meaning and also between the two parties. Everything that one person says positions the other. It can also be a plot event that the other person can be invited to position herself or himself in relation to. Continuing to ask questions in this vein begins a conversation in a deliberate direction, that is, in the direction of the counter-plot.

Building Momentum For The New Story

As unique outcomes such as those in the examples given above are found or constructed in the moment, they need to be built into a story that has a compelling enough storyline, and is plausible enough, to have a chance of surviving after the mediation session has ended. Some commitment to it needs to be demonstrated by the participants in the mediation. The identification of unique outcomes can be said

to open space for the development of a new story but in order for a clearing to become a pathway out of a dispute the story needs to be well-enough formed to carry the weight of each of the parties' hopes for something different. It needs to develop the qualities of a good story. So what are these qualities?

A good story needs a storyline that is coherent and is more than a chance collocation of events. Events that are separated by time need to be not just strung together but stuck fast with the glue of human intentions and emotions and with thematic consistency. A narrative trajectory needs to be established and current developments need to be linked both to the antecedents that foreshadowed their evolution and to the possible futures that they predict. The protagonists in this story need to have a sense of character development in a direction that is pleasing and not diminishing for them. In mediation, this means that both parties need to have a sense of meeting a heroic challenge for which they are respected by the mediator. In the process, the relationship between the parties should involve the performance of meaning (Bruner, 1986) around some key themes that serve as adequate counterpoints to the themes of the conflict story. For example, in the conversational exchange above, the conflict story featured the theme of not listening or understanding. The counter-story therefore needed to build on moments of listening and understanding by way of contrast and to develop these concepts as thematic elements around which future practices could be organised.

Focussing on the qualities of a good story in the process of generating momentum for the counter-plot distinguishes narrative mediation from other approaches to mediation. Rather than an instrumental focus on solving problems and reaching settlements, narrative mediation proposes a focus on constructing a new storyline. This is achieved by progressively storying the relational context in ways that are incompatible with the continuation of the dispute and are favourable to the development of agreements, mutual understanding and cooperation. The emphasis is on creating the relational context out of which agreements might be formed rather than on reaching agreements which can serve as the basis of ongoing relationship. Often in this process, there is not just one final agreement but many small agreements along the way, sometimes but not always leading up to the signing of a formal agreement. Often, a dispute starts to dissolve rather than be resolved as the discursive conditions that have supported the conflict are weakened. If, however, a formal

agreement is signed, this signing is not thought of as the culmination of the story. It is, rather, a significant plot event that embodies a relational theme that will hopefully continue to be expressed in ongoing plot developments after the mediation has concluded. If a review meeting is held some time after the mediation, it can focus not just on how the signed agreement has been implemented but also on weaving into the developing story any new plot events that can be discovered.

It is time to look at this story-building work in practice. The first example follows a little after the exchange immediately above where Dennis made some moves to demonstrate his understanding of what Marlene has gone through. Here the current relationship developments are storied against the background of the friendship that the parties have maintained after their separation.

JOHN: ... I'm still .. affected by both of you and what you said about describing your friendship and this .. you know .. would you forgive me if I said it was a remarkable friendship an original one that you've had over a number of years through different things (MARLENE: Mhmm.) (DENNIS: Yeah.) ... and I'm imagining that in order to keep that through those things .. you've had to be creative about how you've created the terms of your friendship Is that right? I mean you haven't done things just how everybody else does them ... (MARLENE: Mhmm.) is that right? (MARLENE: Yeah.) .. is that something you're proud of?

MARLENE: I'm proud that we were still able to remain friends even after (JOHN: Yeah.) .. our separation.

JOHN: Yeah that's something of really great significance .. is that right?

(MARLENE: Mhmm.) .. is that something you're proud of too .. that you were able to do that?

DENNIS: Yeah ... I mean .. I don't know about proud .. I don't know about proud.

JOHN: Is that .. would you choose a different word?

DENNIS: It's like we made it (JOHN: Yeah.) .. accomplished something that doesn't usually happen .. with the circumstances it was trying .. it was a difficult time for both of us and ... we made it through.

JOHN: See.. I guess what I'm getting at by asking about that is .. I'm wondering whether you're at another point where you're having to do that again .. where you're having to somehow find your own way through and not .. you know the normal

patterns of how everybody does this or how .. conventional ways of doing this in society .. they're not going to work for you you're actually gonna have to work your own way through.

MARLENE: We're definitely not conventional.

JOHN: Right and ... and you're going to have to find a pattern of parenthood that isn't just conventional because of the situation you're in and the relationship you're in and because of Samuel's needs for his parents.

MARLENE: And I'm willing to do that with Dennis .. all I ever wanted was for Dennis to hear .. and to understand the way I was feeling and .. he was so stuck on the original agreement that (JOHN: OK) .. he wasn't willing to know and knowing now that he can hear it (JOHN: Yeah.) or .. with reservation I think were his words (JOHN: Yeah .. yeah.) .. but it may .. it is going to move forward as long as him and Mario and Mario's not here so we can't speak for him as well and he was part of this (JOHN: Yes.) .. but .. for them both to understand that I am a part of this child's life and I don't want not to be a part of this child's life as another role .. I want to be recognised for the role that I am .. his mother .. from the beginning.

JOHN: (to Dennis) How does that sound to you to hear that?

DENNIS: It sounds like ... it will allow us to move forward .. and that's what I'm thinking about now .. I .. put the .. original agreement ... somewhere .. and I'm thinking of Samuel's wellbeing (JOHN: Yes.) .. and I believe it is important ... yes I might know .. I might not be able to experience that bond I didn't carry the child for nine months but .. I .. I'm listening now .. before I wasn't listening.

This exchange builds on the deconstructive work done earlier in which the authority of the dominant discourses at work in the production of conventional patterns of parenting after divorce was loosened. In this discursive domain, despite the development of many alternative discourses, conventional legal discourse still promotes the story of one parent 'winning' custody off the other one (while children are positioned as chattels). In order to establish a parenting arrangement that departs from the conventional it is often necessary to articulate this departure and this is what I believe is taking place here. The precise details of the parenting arrangement that Dennis and Marlene will reach are not yet clear. However, the relational conditions necessary for negotiating such an arrangement in a respectful and mutually satisfying

way are being cemented in place. They are also being located in a narrative history in the relationship between these two, a history about which they both get to hear each other make statements of positive evaluation. At the end of this exchange, both parties are looking forward and making distinctions between how they were positioned in the conflict story and how they are positioning themselves now. When such repositioning statements are being made in a mediation, I am confident that the way is clear to invite the parties to join in a process of brainstorming and negotiation similar to what might be expected in a problem-solving mediation. This will go much more quickly and smoothly once a favourable relational context for it to do so has been established.

At this point, I asked a question that began a new exchange that focussed on the development of the story of Dennis's bond with Samuel. It seemed to me that a recognition by both parties of the importance of Marlene's attachment with her son was in place. What the parenting arrangement they were considering needed now was for the story of Dennis's relationship with his son to grow. My assumption was that this would benefit the story of cooperation between them.

JOHN: Can you experience a bond with Samuel when you see him now when you're with him? .. is that growing?

DENNIS: Yeah.

MARLENE: It looks it .. I do.

JOHN: Does he?

DENNIS: That's good.

JOHN: (to Marlene) What .. do you see .. how do you see the relationship developing between Dennis and Samuel .. what do you notice that's happening?

MARLENE: I don't know .. he looks sad whenever he's with Samuel because he can't have him .. (JOHN: I see.) so I really don't know .. I mean Samuel's a happy baby so .. I think .. I know Samuel is happy to have two people .. two additional people .. who love him but he looks sad .. so I haven't been really able to see that bond .. I mean he's happy holding the child but ..

JOHN: So sadness is almost interfering with the development of that relationship in the way that you would hope that it would develop .. is that right?

MARLENE: Mhmm .. (inaudible)

JOHN: *If sadness wasn't there so much what would you be hoping to see developing in the relationship between Dennis and Samuel?*

MARLENE: *That he's there .. that he helps Samuel develop and grow.*

JOHN: *That he's there . that he helps .. helps with what do you mean?*

MARLENE: *With his development .. and his upbringing.*

JOHN: *So you want him to have a big role .. right? .. not just a distant ..*

(MARLENE: No.) family friend role.

MARLENE: *No .. he is Dad .. that's all I want.*

JOHN: *(to Dennis.) Is that .. is what Marlene's saying .. sounding like .. something closer to the role that you'd like to play?*

DENNIS: *Yes .. I want to be there .. I want to be his father .. I want to do those things with him .. but I don't want to have to .. beg or .. get her approval .. you know it's my son and .. I want to be there.*

JOHN: *So you want to .. sorry .. let me get this clear .. you want . you don't want to beg .. you don't want to be asking Marlene's permission to be his father (DENNIS: Yeah .. exactly.) .. to be Samuel's father .. is that right? (DENNIS: Mhmm.) ... So what would that be like .. can you .. can you help flesh that out a little bit?*

DENNIS: *I would like to pick him up and take him and have him stay with me and do those types of things I don't want just to swing by and visit him for two hours and oh he has to eat and oh he has to do something so now you guys have to leave and ..*

JOHN: *You want to not be a visitor .. is that right?*

DENNIS: *Yeah .. not a visitor .. I want to be in his life.*

JOHN: *You want to be .. (DENNIS: daily life..) responsible for him in some ways.*

DENNIS: *Yes .. provide for him*

JOHN: *Provide for him.*

DENNIS: *Do all the things Dad's do .. or loving parents do I should say*

JOHN: *OK .. How's that description of the kind of role that .. Dennis would want to play as a father .. how's that sounding to you?*

MARLENE: *That sounds fine and I never .. erased the role of him being a father .. I never erased the role of him having a major part of Samuel's life and raising Samuel with Mario .. I just .. I guess I have been trying to define my role now.*

It is interesting that Marlene is prepared to take the lead in storying Dennis's relationship with Samuel. It conveys a message that she supports and welcomes his active involvement as a parent and also Mario's. With this support articulated, Dennis is able to build on this platform and begin to articulate small details of his envisaged role as a parent. He is enthusiastic in his rejection of the discursive position of 'visitor' but there is still much that needs to be 'fleshed out'. As he starts to flesh it out, he struggles to describe what he envisages. In the process, he is pulled by dominant discourse into speaking of his role as a 'provider' but then a few seconds later departs from gender-specific parenting discourse by choosing the word 'loving parent' to describe himself rather than 'Dad'. Each of these pieces of conversation builds the growing story of cooperation between them. This story is developing into something that is by now reasonably robust even though nothing has been settled yet. One further example of an exchange that builds the momentum of this story will suffice. This example features the offer of an apology that is aimed at repairing damage done by the conflict story.

MARLENE: I am .. I am sorry that I hurt you .. because I've seen the sadness in your eyes (JOHN: Yes.) .. and I don't want this to interfere in our friendship .. but I've been hurting also because you haven't seen my side .. and you haven't been able to recognise a mother and a child bonding because you were so stuck on well .. he's going to have me and Mario and that's it

DENNIS: Well along those lines it's not only difficult for me and I can't speak for Mario but it's going to be difficult for him as well .. I mean this was like something we were doing .. you know and .. yes to make it more accommodating we're going to have to modify some stuff .. it's not the conventional family or what have you ..

JOHN: When Marlene says that she feels sorry that she hurt you .. how does that affect you?

DENNIS: I think she is .. I think that .. (JOHN: You believe that?) after the eleven months she really is sorry because I think she really knows .. that she did something differently that wasn't supposed to happen and this is such an important .. it's a life it's not ..

JOHN: Does it help you that she says that?

DENNIS: Yes it does.

JOHN: Is it helpful in the kind of partnership that you need to have to share parenting Samuel?

DENNIS: Yes.

JOHN: And does it help you that Dennis has heard what was important for you that you felt like he wasn't hearing for so long?

MARLENE: Mhmm .. in a way .. I'm not trying to say .. the roles have reversed in the sense of I've changed my mind now .. whereas he changed his mind in the past on our relationship .. now I'm changing my mind as far as .. I didn't realise what I was doing what I was going through .. and it is very important that he now .. somewhat hears that .. or he now .. I don't know .. I still don't know as to what level he understands it .. really hears it .. but he has made .. he has acknowledged that he has heard it .. so that makes me feel .. back in the picture.

This apology from Marlene, which she volunteered unsolicited, is another unique outcome. Apologies do not fit with the development of a conflict story but with an emerging counter-story. The rest of this exchange amounts to an elaboration of the significance of the apology. My working assumption is that an apology is not the end of a story but the opening to a new chapter. In some discursive contexts, apologies are expected to be the last word in a conflict. In others, they are viewed suspiciously as empty words not to be trusted. I prefer to think of apologies as windows opening to a story development. The new development may not always advance itself however. Questions need to be asked to elaborate its significance. What matters is not the words of the apology so much as the performance of meaning that follows those words. This again is what the mediator has to focus on in building the momentum of the new story.

Concluding Remarks

There is more that can be said to articulate a narrative practice in mediation but this is not the place for an exhaustive survey of practices that can be included in this rubric. Along with Gerald Monk I have surveyed this field more fully elsewhere (Winslade & Monk, 2000). What I have included here is sufficient to represent that

practice within the context of a study that has a slightly different scope. My purpose in this chapter has been to articulate a practice in enough detail so that it can be recognised and replicated. This is a relatively new practice that, apart from our writings, has not been extensively written or practised in the field of mediation (although it has gathered to itself a robust history and literature in the field of family therapy). Therefore a reasonably thorough expounding of this practice has been necessary before the asking of what might be considered some research questions about this practice. I shall move next to ask these questions about the effectiveness of an example of narrative mediation.

CHAPTER SEVEN

Discourse Analysis of a Narrative Mediation Conversation

This chapter will engage with the transcribed text of a particular narrative mediation conversation and present an analysis of this conversation based on the questions outlined in Chapter Four in the critical discourse analysis tradition. The conversation to be used is a role-played mediation scenario. It does not represent a whole mediation process but rather a segment of a joint meeting between a mediator and the two parties to this family mediation. I shall present the scenario that the role-players were given to work with and outline briefly the instructions they were given and the process by which the role-play was set up. Then I shall present a slightly edited transcript of the mediation conversation interlaced with some commentary that begins the analytical account of what happens. I want readers to have the chance to get a feel for the whole conversation in this way as well as to see the process of analysis being developed. Then, in Chapter Eight, I shall return to develop some analytical categories drawn from the theoretical decisions made above and further advance the analysis of the text, focusing particularly on certain sections of it for detailed analysis.

The Scenario

Genna and Alan had been married for six years when their relationship fell apart after Genna discovered that Alan had been having an affair for more than two years. Genna and Alan have one child: Rebecca aged three at the time of separation. Genna took the initiative to end the relationship and went to live with her mother. Their divorce was finalised after two years. Alan's relationship with the other woman had ended soon after his separation from Genna and he had not had a permanent or meaningful relationship since.

A short time after she began living with her mother, Genna got a job in the area. Genna's mother, Theresa, looked after Rebecca while Genna was at work.

Genna's father had died a few years before. This situation continued for four years, during which time Theresa spent more time with Rebecca than Genna did as Genna enjoyed an active social life as well as a challenging career. The situation suited both women as Genna enjoyed the relative freedom her singleness and work life afforded her and Theresa had become extremely attached to Rebecca.

When Rebecca was just seven years old, Genna was killed in a car accident. It was a tragic and trying situation for both Rebecca and Theresa and they supported each other through the difficult times. On hearing of Genna's death, Rebecca's father Alan, who had had virtually no contact with his daughter since his separation from Genna, (Rebecca had only received birthday cards from Alan) decided that he should now have custody of Rebecca and stated his intentions to Theresa. Theresa was distraught to hear this and urged Alan to reconsider for everyone's sake. Alan was quite determined to file for custody of Rebecca but agreed with Theresa that they would seek mediation before lawyers became involved.

Instructions given to role-players

The role-players were given the scenario (as printed above) the day before the mediation recording. They did not know each other and had no communication about the process until shortly before the recording of this conversation. In order to warm them both up to the role they would play in the mediation, I sat with them for about fifteen minutes before the recording and asked a series of questions. These questions were designed to help them take on the roles and sort out necessary story elements so that there would no huge surprises for each other in the conversation. Questions included things like:

What job do you do?

How old are you?

What has the relationship been like between you two over the years?

Who initiated this mediation and why?

How often has Alan seen Rebecca during the last few years?

How did Genna die?

How long has it been since her death?

What sort of girl is Rebecca? What does she like to do?

Tell me the story of how the divorce happened?

It could have been possible to speak with them separately to develop their personal accounts of the scenario. However, the need to develop a coherent story as the basis for role play necessitated that they both hear each other's comments as a basic narrative skeleton to develop a conversation from. To do otherwise would have risked throwing the role play off if one role player introduced story elements that were hugely inconsistent with the other's narrative.

The mediator in this conversation was Gerald Monk. He was given the same written scenario that the role players were given at the same time that they were given it. During my conversation with the two role-players who would play the disputing parties, Gerald was in the room but was not part of the conversation until the recording began.

Before the mediation began, I also gave the role-players some advice about how I wanted them to play the role. This was based on experience of mediation role-plays. I asked them to play the roles in a way that they would play such a situation for themselves. I did not want them to think of the most difficult person they have met and play that person in order to frustrate the process. Nor did I want them to be too easy for the mediator and move so quickly to a story of cooperation that the mediator did not have much to do. I did want them to play the roles in a way that emphasized response to the mediator's moves, rather than solid resistance for its own sake. I also reminded them that we had one session and, if they wanted to achieve some progress, they needed to do it in this session, rather than play it out over six sessions. While this instruction may have created a limitation for this exercise in terms of the transferability of practices to other contexts, it is also consistent with the reality that mediators often work within regulatory contexts that impose time limits on mediation processes, sometimes of only one session.

Both role-players commented afterwards on how the preliminary discussion was helpful. Here are their comments:

Jackie: It's a good thing you gave me a little speech about being hard, too hard because I was coming in there .. I was coming in with from a .. (bangs fist against hand) (..) and the setup you did in asking those questions prior was really helpful ..

Craig: Yeah.

Jackie: really helpful .. because otherwise we would have had to like create in our heads as we went along and it would have been a surprise ...

John: You could easily trip each other up like that .. yeah ..

Jackie: yeah .. and then we'd have conflicting stories or whatever .. so that was really helpful all those .. those questions ..

Craig: I appreciated not only those questions but the manner in which you did that ..

General contextual features

Some comments about the general contextual features of this conversation are worth making at the start. The mediation context defines the genre of text as a mediation conversation. This genre creates a series of expectations for the participants about the positions that they will occupy in the conversation. Gerald, as the mediator, takes up the position of speaking first and asking the questions that drive the conversation. Theresa and Alan are in the responding position and must choose along the way to take up Gerald's position calls or refuse them. As they do so, they will also be conscious of the other party as a second addressee influencing their utterances. All three will have the range and type of their utterances shaped by the conventions of participation in a professional interview.

A mediator in Gerald's position will carry the professional authority of his profession and the institutional authority of the family court system into such a conversation. Although this authority may be diluted from that of a judge, for example, it is nevertheless present and will affect how his every utterance is incorporated into meaning by the parties. It is a conjunctural authority rather than an institutional or structural authority. There is a sense in which a mediation meeting is a 'preconstructed space' (Bourdieu, in a television interview cited by Chouliaraki and Fairclough, 2001, p. 99) or a conjuncture in which the composition of the participants and the positions they take up in relation to each other is constrained in advance of the particular individuals entering into those positions.

Mediation Conversation

- 1 GERALD: Thank you both for being here .. as you know you've read the brochure
2 and consulted with our mediation firm and I understand that the reason we're here is
3 to discuss the .. primary caregiving arrangements for Rebecca ... and Alan I
4 understand that you began the proceedings to ... to look at caregiving arrangements
5 ... and so we're here to do that ..what I would like to do ... to begin is to talk with
6 one of you .. to get .. a fuller understanding of the circumstances that have led to this
7 meeting and led to the point of wanting to discuss the .. the care of Rebecca and so
8 I'd like each of you to take turns so we ... we start with one of you and the other, if
9 you wouldn't mind, just being patient with me as.. as we talk and then we will change
10 and then I'll talk to the other person who would like to begin?
11 (*Alan gestures towards Theresa to begin, she does the same in return.*)
12 THERESA: This was his idea so I think that he should begin.
13 GERALD: OK...OK Alan? So can you give me a little background as to what has
14 led to you wishing to have the ... the meeting and your thinking about that.

The mediator opens this conversation and begins to set up some of the parameters of what will happen. His focus is on: process issues, such as who will speak and in what order; a fair and even turntaking norm for interaction; both parties having a say in the process; a request for patience while the other person is talking; and a norm of conversation control through addressing comments to the mediator rather than towards each other. But this is not just a process conversation. The content of the conversation is already being shaped by the choice of words used. Gerald recognises the overall legal context in which this conversation takes place as part of some "proceedings" (4), a word that carries traces of legal discursive practice. All three participants are no doubt aware of the significance of this legal discourse, through which the public power of the state can be exercised to shape the private world of the family. The public gaze on the adequacy of Alan and Theresa for child-rearing purposes can be expected to lie in the background of this whole mediation and both can be expected to be constructing their responses in full awareness of this gaze. They will be speaking as if under examination to some degree or other.

However, it is also apparent through the mediator's introduction that other conversations about the issue are now being recontextualised in the context of mediation. There is a sense of drama being established because the meanings that have been dominant in previous conversations and in the legal system are to some degree being made open to re-working in this conversation. Perhaps some consciousness of the indeterminate nature of what will come from this recontextualising contributes to the hesitancy that is evident in both parties about speaking first.

Gerald carefully chooses words to describe the subject matter of this conversation as about 'primary caregiving arrangements' (4) and 'the care of Rebecca' (7). In this choice of words, he establishes a position on the content of the mediation that is not neutral. He avoids directing the discursive traffic towards the traditional legal discourse through use of a word like 'custody' (with its potential for objectifying Rebecca as a legal chattel) and instead indicates a preference for the discourse of family relationship. Gerald comments in his reflections on the transcript:

I think it is critical to be attentive to the relational domain in mediating custody and access issues. I was acutely aware of how I wanted to attend to the two parties to 'encourage', 'invite' points of connection and collaboration between them. A discourse I am attracted to is caregivers getting on for the benefit of the children.

This is a clear position on the substantive issues that will shape the cues that he attends to and selects for emphasis as a mediator and the kind of outcomes he will favour. Moreover, it is a stance that places him in a position of perhaps mild antagonism to the hegemony of the legal rights discourse.

Theresa takes up a respondent position in the 'proceedings'. In the process, she gives away the power of the first speaker (Cobb & Rifkin, 1991). However, in a sense she retains her position through reserving her comment and grants Alan the rights of first speaker from a position of something like benevolence. He is not just speaking first therefore. He is speaking first on her say so. Therefore, her action here is complex and should not be too hastily seen as, say, deferring to male privilege, for example. It can be read more as foreshadowing her voicing of a counter-statement

later. She also establishes her position in relation to the whole issue through saying, 'This was his idea...' The statement begins to position her as not wanting the current caregiving arrangements upset and calls Alan into position as the one making trouble, disrupting Rebecca's life.

15 ALAN: Well I talked to my attorney and .. after I found out ... that Genna had passed
16 ... and I told him that I really wanted to see my daughter again and he suggested that
17 the best way to go through this with the court is to go through this mediation I guess ..
18 and so ... that's why I thought ... that's why .. we're doing this I guess.

19 GERALD: What are your hopes ... for this meeting? .. what .. what would you like
20 to come out of it?

21 ALAN: ... Well I'd like to see if there's a way that we could both agree that ... that I
22 could play an important role in .. in my daughter's life and .. I don't wanna exclude
23 her grandmother, I don't wanna exclude Theresa but I just wanna make sure I also
24 can play a part.

25 GERALD: OK. .. thank you .. Theresa .. I'd like to hear your perspective .. what's
26 happened up until this meeting with regard to the issues around Rebecca's care?

27 THERESA: Well I was really surprised to hear that ... Alan wanted to get custody of
28 Rebecca simply because he hasn't really been a major figure in her life for all these
29 years and .. this has been a really difficult time for my granddaughter and I'm
30 concerned that ... any more changes in her life are going to have really very powerful
31 and negative ... impact on her ... so I think that it's important that we both that
32 Rebecca and her life and what's comfortable and familiar for her and that's living
33 with me we've been together for years and we're very close and ... I don't want to
34 lose that.

In this segment, Alan begins by making a connection between this conversation and the wider discursive context in which it sits. It is part of a context of conversations with attorneys, precipitated by the circumstances following the death of Rebecca's mother, Genna. Traces (in Bakhtin's, 1981, sense) of Alan's conversation with his attorney might be expected to turn up in this conversation, as might traces of conversations that have taken place around Genna's death, perhaps at a funeral. Neither Alan nor Theresa comes into the conversation as individuals in a

totally originary position in relation to their own voices. They come subject to discursive influences from the significant contexts in which they live. A mediator might be wise to be alert to such influences and be ready to deconstruct them along the way. Theresa may well bring traces of conversations with her daughter, Genna, that have taken on particular salience since Genna's death. Here, it is worth noting that both Jackie and Craig, who play the roles of Theresa and Alan, are well-educated university faculty members. Their use of discourse can be expected to reflect their knowledge of the habitus (in Bourdieu's 1991 terms) necessary for agentive action in this context.

Gerald begins by asking them to speak about their hopes for the meeting (19). He shows an evenhanded approach to the parties by asking them each to answer this question, offering them both the same discursive position of having a voice in this conversation. However, he also appears to lose sight of this intention when he turns to Theresa after Alan has responded. At this point he asks her a different question. He also acts to shape the content of the mediation by directing their attention to positive intentions from the start. This contrasts with the discursive assumption that would be established by asking an opening question seeking the definition of a problem, such as might occur in a problem-solving model.

Alan and Theresa answer his questions in sharply contrasting ways but both indicate their awareness of the pull exercised by the discourse of exclusive legal ownership of children that lies in the background of their exchange. Alan seeks to counter this discourse and to establish a position from which to negotiate with Theresa that places his action in starting these proceedings in a generous and favourable light. He picks up on Gerald's invitation to speak about care of Rebecca, rather than custody, and speaks about 'wanting to play an important role in his daughter's life' (22). He invites Theresa into a relational place of agreement rather than contest and he specifically rejects the idea of exclusion of Theresa (22). Theresa announces directly her own opposition to the discourse of legal custody and the position of exclusion that could potentially be offered to her within this discourse. She positions Alan as a proponent of this discourse, ignoring his disavowal of it, and as a potentially disruptive force in Rebecca's life. The position she establishes for herself is one of greater entitlement through her knowledge of Rebecca and of her

lifestyle, through her closeness of relationship with Rebecca and through her demonstration of concern for Rebecca's wellbeing.

35 GERALD: OK ... thanks .. Alan would it be OK with you if ... I spent a little time
36 talking with Theresa about ... describing her relationship with Becca and ... the time
37 they've had together so I understand that more then I want to .. come back to you to
38 understand more the contact you've had and what your hopes are about how .. about
39 how that might look .. would that be OK with you to do that?

40 ALAN: Sure. (*Nods.*)

41 GERALD: OK .. well Theresa would you mind telling me your.. your sort of history
42 with Becca over .. over time and.. the nature of your relationship and how that's
43 changed.

44 THERESA: Well.. I'm.... since my daughter died I've .. my granddaughter and I
45 have gotten even closer but we've always been very close because my daughter was
46 just a very busy person .. she worked hard and she played hard and she had a really
47 active social life .. so that .. Becca and I spent a lot of time together .. I mean I take
48 her to dance lessons, gymnastics, we do after school activities, she's a very active
49 child and I've been with her through all of that, we're really close ... since my
50 daughter died ... we've become even closer .. we spend a lot of time together .. we
51 comfort each other .. we understand each other .. so it's been a really really close
52 relationship ... and it's helped her and me to get through this period .. and I just.. I .. I
53 don't want to lose that and I don't want her to lose that.

54 GERALD: Can you tell me some more ... information about the amount of time that
55 you spend with her now and ... h .. how that has changed and what the current
56 situation is .. in ... yeah really I'm wanting to get a sense of the day to day experience
57 that you have with .. with Becca and where you see her and ...

58 THERESA: OK .. well ... I work full-time .. so.. we get up in the morning and I make
59 her a big breakfast, she likes big breakfasts .. and I take her to school, I drop her off at
60 school and then I go to work and .. after school she's enrolled in an after school
61 programme, it has all kinds of activities and then I pick her up when I get off work at
62 five o'clock and I take her home and .. she does her homework at the dining room
63 table while I'm cooking dinner so .. we have dinner together, we go over her
64 homework and then usually we read together before she goes to bed ... so ... and

65 then on the weekends as I said she's very active so I take her to .. different classes
66 and lessons and ... she's really into gymnastics now so .. she's been taking
67 gymnastics for a couple of years now, we go to gymnastics class on Saturday
68 morning When Genna was alive, we'd all spend Sundays together .. so..
69 GERALD: Yeah.
70 THERESA: On family picnics...

This segment begins with Gerald reflexively negotiating the process move of giving his attention to one party and asking the other to listen for a while. Since a separate meeting with each of the parties was not possible, this process move can be understood in narrative mediation as a substitute for such a separate meeting. Gerald negotiates this move in the form of asking permission, thus positioning Alan and Theresa as permission givers, and therefore as having some authority in the direction the conversation will take. It is an authorising move. This might be understood in contrast to much professional discourse that would assume that such decisions are the prerogative of the mediator. It is one of the methods by which narrative mediators might seek to remain accountable to their clients and at the same time, in a small way, to disrupt the discursive assumptions through which power/knowledge (Foucault, 1980) operates to constitute professional privilege.

The conversation moves into a discussion of the 'history' of Theresa's relationship with Rebecca. This locates Theresa's entitlement claims (Winslade & Monk, 2000) for her role in Rebecca's life as constituted over time. The basis of this entitlement is established in Theresa's responses as founded on 'closeness' (45, 47, 49), amount of time 'spent together' (47, 68), and knowledge of and participation in a child's daily routine (58-68). A note about ethnicity is necessary here too. The written scenario did not specify the ethnic background of the participants. But the ethnic background of the role-players themselves introduced a cultural locatedness in terms of ethnicity into the conversation. Jackie, who played Theresa, is African-American and Craig, who played Alan, is Anglo-American. In the analysis, therefore, it is necessary to take account of the racial and ethnic influences on what is said.

Theresa's sense of entitlement, then, can also be understood within an African-American cultural tradition that values 'othermothering' (by grandparents, aunts, sisters, friends or neighbours) alongside 'bloodmothering'. Sharing the task of

mothering among women is argued to have discursive support in both West African cultures and in African-American cultural traditions (Hill Collins, 1991). However, Theresa's claims of entitlement, while legitimated within the cultural discourse of African-American people, may well be muted in their expression because of her knowledge that these claims do not carry much legitimate weight for her white former son-in-law, and are unlikely to be recognised within the law.

Gerald comments on his intentions here in his reflections on the transcript:

I wanted to help the parties talk of the history of their association with Rebecca to contextualise the reasons for the potential disagreement on outcomes. My experience of mediation is that when opposing parties learn about the other and their struggles and challenges with the issue at hand it is more likely that they will develop points of empathy and understanding than if they go straight to solving the mechanics of the problem. Understanding context enables the parties to find points of connection unlike a purely problem solving approach that may produce a one dimensional series of descriptions compared with the multitude of descriptions produced by historicised 'rich' descriptions of the interactions.

- 71 GERALD: Now Rebecca's Mum died.. I understand .. and .. so you've been the
72 primary caregiver.. and your daughter died in a car accident .. how long has that been
73 now?
- 74 THERESA: It's been a month.
- 75 GERALD: It's just been a month.
- 76 THERESA: Yes.
- 77 GERALD: And before then you were engaging in this ... having this relationship
78 you've just described .. of .. being there for her breakfast and .. has this just been
79 going along.. and breakfast and then .. school and after school and then homework ..
80 and gymnastics .. has that just been going for a month since ... Genna's death or is it
81 something that you've also been involved with before .. her Mum died.
- 82 THERESA: Yeah .. it's been like that for years.
- 83 GERALD: Right.
- 84 THERESA: That's the lifestyle she's used to.

Here the routines of daily life and relationship between Theresa and Rebecca are invited out of a somewhat timeless rendition and placed in juxtaposition with the major event of Genna's death. Theresa introduces the word 'lifestyle' in the final utterance of this exchange (83). It is a word that signals participation in the 'late modern' world (Chouliaraki & Fairclough, 1999) where lifestyles are considered matters of identification with a variety of subcultural options, rather than given by cultural tradition. Perhaps this usage is not uppermost in Theresa's mind in relation to a seven-year-old child but the word still carries such traces (Bakhtin, 1986) with it. Perhaps it sends exclusionary messages to Alan. More salient still is her claim of entitlement to care for Rebecca on the basis of familiarity with this 'lifestyle'.

It is worth noting here too the way in which Genna's death is talked about. There are discursive patterns evident here that constitute the practice of speaking about death and about the dead. When Alan signals that Genna's death was a month ago, Gerald underlines the significance for this conversation of the recency of the death by using the word 'just' (74). Gerald approaches his question about Genna's death speaking in a softer, serious tone and there are respectful pauses used before each mention of death. There will be meanings of death in general, and Genna's death in particular, that will be lying in the background of this conversation. While it may not be appropriate in this conversation for a mediator to explore all of these, the pauses and the tone can perhaps be read as indicative of and respectful towards some of these meanings. The likely construction of death of a family member within a discourse that features "loss" highly may well, for Theresa, open up potential for this conversation to be understood as one that could add to this sense of loss. She could easily be thinking, 'I've lost my daughter and I am now afraid that I will lose my granddaughter.' She could perhaps be positioned as needing to guard against this possibility within this discourse.

- 85 GERALD: And ... so how.. how involved have you been in relation to Genna ..
86 sorry, to Becca's .. with her education and her.. health and wellbeing.
87 THERESA: Well..
88 GERALD: What role have you played in that?

89 THERESA: Well ... her Mom and I kind of shared that, we'd both go to parents'
90 meetings and conferences at the school ... but Genna's life was very busy so when she
91 wasn't available then I would attend those things myself .. but there were times when
92 we both went ... and my daughter also enrolled her in the gymnastics classes ..
93 sometimes she took her but generally I took her .. to those kinds of things things so
94 I've been very much involved in all aspects of Becca's life.
95 GERALD: OK .. OK what.. what are you aware of in terms of Alan's ... contact
96 with Rebecca .. from your perspective .. how have you seen that from .. the way you
97 look at things?
98 THERESA: Well Alan hasn't had a lot of contact with her since he and my daughter
99 separated. He does remember her birthday every year and ... he's .. he's called the
100 house a couple of times and spoken to her .. not very often .. but as far as actual
101 physical contact, there hasn't really been a lot that ...

Now the daily picture of Rebecca's life with Theresa is widened with reference to other contexts of her life. The conversation focuses mainly on her schooling. Parental practices that could be said to be criterial for public judgments of adequate parenting (attending parent teacher conferences in educational discourse means being a 'good parent', as does enrolling a child in extra-curricular activities like gymnastics) are referenced and used to extend the basis for Theresa's entitlement claims. The basis for her entitlement claim is summarised as her 'involvement in all aspects of Rebecca's life' (94). The word 'involvement' will become a pivotal word in this conversation. Theresa's discursive strategy is built around her contrasting of her involvement with Alan's lack of involvement. The more she positions herself as involved the more she positions Alan as uninvolved. Here she begins to set that up. Gerald anticipates her move to some extent by asking her perspective on Alan's 'contact' (95) (his synonym for involvement) with Rebecca.

The phrase 'from your perspective' (96) establishes the possibility of difference in perspective. It implies the limited truth value of any single perspective and it sets up the opportunity for comparison of perspectives as the conversation continues. The question could be read as an attempt to open up the chance for

Theresa, after having made her own claims of entitlement very explicit, to cede a little legitimacy to Alan for his sense of entitlement for participation in Rebecca's life. But Theresa is not yet in a place where she can do that with comfort. She does not have enough information to counter the story of Alan's lack of involvement that makes more sense in her position. Therefore she contrasts Alan's lack of involvement (and therefore his lack of legitimate claims of entitlement) with her own intimate involvement. This lack of involvement is tempered with some references to some exceptions to it (birthday cards and phone calls) but after referring to these exceptions she returns to stressing the story of Alan's uninvolved involvement.

In how she speaks of Genna she uses a nominalisation, 'Genna's life was very busy,' (90) in a construction that downplays a sense of Genna's agency in how she lived her life. Perhaps this is a move to protect her dead daughter from any suggestion that there was anything wrong with her parenting. Possibly, the desire not to speak ill of the dead comes into play here. Also possible is a discursive strategy on Theresa's part to base the legitimacy of her own claim to care for Rebecca on Genna's assignment of that role. For this purpose, Genna's parental judgment needs not to be in doubt.

Gerald describes his posture in this stage of the mediation as one of 'a highly curious, inquisitive interviewer/researcher'. He is positioning Theresa and later Alan as key informants with stories to tell that are of intrinsic interest to him. So he asks many questions to enrich these stories, and Alan and Theresa are called to be tellers of stories or authors, each with their own interpretive slant.

102 GERALD: OK .. so now I'd like to catch up with Alan a little and understand his
103 perspective (*turns to Alan*) ... the nature of your relationship with .. your daughter ..
104 with .. do you address her as Becca? .. or ..

105 ALAN: Rebecca.

106 GERALD: Rebecca. Can you tell me a little about your ... involvement with
107 your daughter over .. since her birth ... just want to understand how that's developed.

108 ALAN: Yeah, we were very close... since the beginning ... we had a real good
109 physical bond and ... we would go out, I remember merry-go-rounds a lot when she

110 was really small .. and she used to like to cuddle with me a lot ..and I ... taught her
111 how to .. read ... and .. I used to read to her a lot .. and we had a lot of good times ..
112 unfortunately it was complicated by my .. relationship with my ex...

113 GERALD: With Genna?

114 ALAN: Yeah with Genna .. and ... Genna actually .. she was.. she had a different
115 lifestyle, she had a different way of wanting to .. to spend her time so she .. after a
116 busy day she would want to go out in the evening, y'know maybe two three four
117 times a week .. to a movie or to a play, she thought .. y'know .. it's boring just to stay
118 at home ... I was happy just to .. to have a family .. to stay home with our daughter,
119 but ... I tried ... y'know because of .. because of her I tried to .. to go out and so forth
120 .. more than I would have wanted to but actually with my daughter, the two of us had
121 a lot of good .. we used to do a lot of father-daughter sorts of things, rough and
122 tumble .. and I really felt .. a good strong connection.

123 GERALD: So.. very early on you had a strong presence .. this was .. this was when
124 you and Genna were together ... you taught her to read and you were involved in ..
125 playing with her and you .. would you care for .. Rebecca when Genna wanted to go
126 out in the evening in that .. in that stage?

127 ALAN: Actually that was.. I really enjoyed it when we did that ... sometimes it was
128 hard because Genna would .. get ticked off with me because.. y'know.. what's wrong
129 with going out .. why don't you wanna do that .. and but I .. I often .. I would say
130 to her look I'm fine with you just going out by yourself because I actually enjoyed
131 spending time just directly with Rebecca.

132 GERALD: So at that point when you were together you had a lot of involvement ..
133 with Rebecca .. and that changed, I understand, is that right, given ... what Theresa
134 has described .. happening.

135 ALAN: Well yeah it's a complicated thing because (*exhales*) Genna and I didn't
136 .. you know .. we didn't really get along and .. she wasn't really .. that available .. and
137 ... I guess like I said before .. she was always wanting to do things, do, do, do and ...
138 so .. she.. she really wasn't very nice to be around and she was angry with me a lot
139 and .. I wound up meeting somebody else and we kind of .. connected .. and then
140 everything sort of went downhill as far as my relationship with Rebecca from that

141 point on .. and that was .. my heart was broken because I .. it's like giving up your
142 left arm to keep your right and .. but every time I tried to ... to talk to Genna
143 reasonably about me seeing Rebecca she would just give me so much grief. .. oh so
144 you think you have time for her when you have your .. your lover .. (*mocking tone*)
145 you know and this and that .. she would just give me such grief that it just became
146 impossible.

147 GERALD: So what did that .. how did that affect your relationship with Rebecca,
148 what .. happened in terms of your contact with her .. after that had happened?

149 ALAN: Well we were living apart obviously at that point and ..

150 GERALD: Mhmm.

151 ALAN: Uh (*exhales strongly*) You know, I asked her to.. I wanted to see
152 Rebecca .. and I .. started to come by and Genna just made all kinds of threats
153 and she would yell and become hysterical and scream at me and ... it just became too
154 difficult ... my attorney advised that I didn't really have .. much legal recourse as
155 much as I thought .. I should fight for this but he said there's not .. you're not going
156 to be .. there's nothing much you're gonna gain with this...

In this piece of conversation between Gerald and Alan (although it should always be remembered that Theresa will be exerting considerable influence over what is said through her position as audience), the basis for Alan's claims of entitlement to expand his role in Rebecca's life are explored. Gerald uses the same word that Theresa used, 'involvement' (106) as he invites Alan to develop his own claim to care for Rebecca. Picking up from Gerald's cue and perhaps also from Theresa's claim, Alan makes his own pitch on the basis of emotional and physical closeness, referencing a different time period than Theresa did. He goes back to Rebecca's early years and his relationship with his daughter before the separation between Alan and Genna. The word 'bond' is used (109) which carries a variety of possible traces with it: a) a commitment and set of duties that remain unquestioned through long periods of time (cf Cordelia in *King Lear*); b) a legal set of rights and responsibilities (as in the expression, 'My word is my bond'); c) a natural biological tie; or d) an essential psychological link between family members as described in Bowlby's (1969/1980)

widely popularised attachment theory. His physical contact with his daughter is cited as an expression of this bond in 'cuddles' (110), in 'rough and tumble' (121) (an acceptable description for affectionate play that does not carry overtones of being too effeminate within the norms of male culture).

Gerald's acknowledgment of Alan's 'involvement' and his 'bond' with his daughter is marked by his choice of the expression, '... you had a strong presence' (123). It is an interesting choice. The word presence (which contrasts with absence) is a softer nominalisation than bond or involvement and needs the intensifier 'strong' to match Alan's statement. It is a word that might be expected more in a masculine than a feminine discourse about relationship.

Next Alan goes on to account for his subsequent lack of expression of the 'bond' that he has just argued for. He uses the rhetorical strategy of positioning his recently deceased ex-wife Genna as an obstacle to the ongoing development of his bond with his daughter. This is a risky strategy, though, in front of Theresa, who can be expected to be still tender in her grief for her dead daughter. Alan risks angering Theresa through 'speaking ill of the dead'. Note also in passing the use of the objectifying, depersonalising shorthand, 'my ex' (112) and Gerald's refusal of this in his immediate referral to her by name (113). But Alan is aware of the possibility of alienating Theresa and adopts a number of discursive tactics to deflect this danger. He refers to Genna a little euphemistically as having a 'different lifestyle' (114). This nominalisation matches Theresa's earlier one in its softening of a sense of Genna's agency. 'Having' a lifestyle is weaker than 'choosing' one, for example, and suggests that any ill effects on Rebecca from this lifestyle are scarcely Genna's responsibility. He goes on to say that Genna was not 'nice to be around' (138). He positions her as a something of a 'bad mother' who wants to go out all the time rather than adopt a norm of domesticity and personal sacrifice and himself as the 'good father' who, by contrast, is willing to do so and even 'enjoys' (127) spending time with his young daughter. However, he does this without appearing to express a direct judgment of her. Then, he slowly builds a picture of Genna as often unreasonably angry. At first she is described mildly as 'ticked off' with him (128). This intensifies into a slightly euphemistic, 'We didn't really get along,' (136), followed by a more

direct, 'She was angry with me a lot' (138). She is portrayed as using bitter sarcasm (144), and finally becomes, 'Genna just made all kinds of threats and she would yell and become hysterical and scream at me' (152). The ground for these eventual strong statements is carefully prepared with the more neutral descriptions. But, in the end, he does deploy the common gendered strategy of rendering a woman's concerns illegitimate through referring to them as 'hysterical' (153).

In the process, he drops into the conversation the information about his own affair with another woman. This is constructed as the most natural thing in the world in the context of he and Genna not getting along and her not being 'available' (136). In this context, he 'wound up meeting someone else,' (139) as in a natural sequence of events over which he has little control, and they 'kind of .. connected' (139), which also sounds positive, natural and innocent of any hurtful intent, or indeed deliberate planning. After that, 'everything .. went downhill' (140), he describes a little vaguely. There is nothing in this description that recognises his own actions as disqualifying his entitlements as a father, a discursive stance that Genna obviously took. He reverses the usual use of the discursive position of the cuckolded wife as brokenhearted by claiming for himself that his 'heart was broken' (141). His use of the expression 'she would give me such grief' (143) is interesting too. He is referring to Genna's anger with him and his own response to this. The image produced is of him as sad in response to anger. It perhaps amounts to claiming the morally superior position of being sad and longsuffering in the face of 'unreasonable' anger.

Then he speaks about his desire to see his daughter after his separation from Genna. He says, 'I started to come by,' (152) and mentions that Genna responded with 'threats' (152) and 'hysteria' (153). It might be noteworthy here that Alan is positioning himself as in the agentic position here of 'coming by' and Genna in the position of responding. There is no mention of an agreement for him to see his daughter. Did he just 'come by' unannounced and take Genna by surprise, giving her little dialogical space? Or was she unwilling to negotiate and therefore leaving him without dialogical options? It is not completely clear.

There follows a segment of conversation that I shall omit. It continues to develop Alan's claims of entitlement to contact with Rebecca through further details

of his attempts to continue to make contact with his daughter in the face of his ex-wife's opposition to this. Gerald tries to clarify the details of this contact, which turns out to be very minor. Let us pick up the conversation again when Gerald summarises this interaction, attempting as he does so to acknowledge (and lend some authorising weight to) Alan's story of his desire for relationship with his daughter.

157 GERALD: Yes .. yeah .. so what I understand is that you've made lots and lots of
158 efforts to want to see her, you've described driving past her ... her home on a number
159 of occasions ..

160 ALAN: .. phone calls

161 GERALD: Phone calls, you've sent birthday cards and Theresa has noted that that's
162 happened .. but what has ended up happening as a result of the distress that occurred
163 between you and Genna that you felt that it was too difficult to make contact with
164 Rebecca at that point and so .. rather than get involved in that confrontation .. you
165 took a step back .. but kept in your heart your relationship alive with her and kept
166 connection with the school and monit...observing and watching her a little bit from a
167 distance.. with her schooling.

168 ALAN: Right.

169 GERALD: And you described having her portrait on your dresser it's a statement
170 about your ongoing desire and of course you're the person who called this meeting ..
171 so.. I want you to know that I'm understanding about your interest in her and I .. I
172 was really wanting to get more clarity about what it specifically looked like in terms
173 of that contact, so it's been very very small.

Gerald here seems concerned to play down the conflict between Alan and Genna, perhaps because little can be gained from reviving it now that Genna is dead and perhaps also because he doesn't want to take the risk of alienating Theresa. He uses the nominalisation 'distress' (162) to bundle up the elements of the story of conflict Alan has told. It is a softer word than some that Alan has used and focuses on the emotional effects rather than on any assignment of responsibility. He also uses the key word 'involvement' in a different fashion (164). In relation to

'confrontation', lack of involvement is given a positive valence. The point is not developed far but it is a subtle unsettling of the sense of certainty in the conversation that involvement is always a good thing.

It is also worth noting in passing Gerald's switch in mid-utterance from the use of the word 'monitoring' to the word 'observing' (166). This is clearly an expression of discursive preference. No doubt the revision relates to the traces of unwanted meaning that the word 'monitoring' carries with it. In particular, the idea of monitoring brings to mind Foucault's notions of surveillance and the exercise of disciplinary power (Foucault, 1978). Gerald does not want to suggest, or to some degree legitimise, the exercise of male surveillance over a female's life, even though he is referring to a child in this instance. So he quickly withdraws that word before it is completely out of his mouth.

- 174 ALAN: Well listen it would really have been not in Rebecca's interest for me to
175 try and force issues because ...
- 176 GERALD: Mhmm.
- 177 ALAN: because of (*several words omitted*) she .. she ... she could really just fly
178 off the handle and ... (*brief exchange omitted*) Genna was really crazy and I .. I didn't
179 want my daughter to be subjected to all that .. I've heard.. I've read books .. you
180 know and I've seen talk shows where they talk about how you shouldn't argue in
181 front of your daughter and and Genna didn't mind but, y'know, if I was trying to
182 force the issue to see her it really would have .. it would have screwed up Rebecca ..
183 big time..

Here, some popular psychological discourse enters into the conversation. In a way that would not have been possible prior to the development and popularisation of psychodynamic psychological knowledge, Alan is responding, in both his actions and in his account of his actions, to many conversations he has heard about how a good parent should take responsibility for the psychological health of children. He wants to avoid creating a traumatic childhood experience for Rebecca and so shapes his own decisions in response to injunctions such as, 'You shouldn't argue in front of

children,' (180) or else you will 'screw them up' (182). He references television 'talk shows' (180) as a recent development in the technologies of disciplinary power (Foucault, 1978) that serve the purpose of constituting parental behaviour and family relations. Such shows subject some volunteers to a public gaze as a public spectacle to inform general public and often use psychological experts to pronounce on the norms of how people should behave. Such pronouncements are clearly in the background of Alan's comments here. He even uses the term 'subjected' (179) to describe the power effect on his daughter, were she to see her parents arguing.

Alan's use of the word 'listen' (174) is interesting too. It signals a concern that something has not been heard and it underlines his position call, to Gerald especially, to hear and validate his own position. It can be read therefore as a claim for mediator support.

184 GERALD: Right.. right now things have changed a lot ... when did you become
185 aware that Genna had .. had died?

186 ALAN: Just about .. a little over a month ago. (*looks down*)

187 GERALD: What .. was your experience of discovering that?

188 ALAN: Oh .. it was shock as much as we didn't get along I... you know .. she
189 was a good person in her own way and ... I was shocked to hear that (*quiet voice*)
190 and ... after a while, after that initially subsided I .. thought to myself wow this is ...
191 finally the .. unfair warden .. the unfair prison guard is no longer there to keep me
192 from my daughter, from a father-daughter relationship so I sort of .. you know..
193 honestly felt relieved nothing against Genna but ... um .. and again I don't have
194 anything against Theresa being a part of Rebecca's life .. I understand how important
195 grandmothers can be and .. I don't want to take anything away from that I just want
196 what's .. what .. what rightfully is a father's right to be part of his daughter's life.

This little exchange demonstrates the discursive positioning Alan wants to establish for himself in sharp relief against a background of some competing discursive demands. Again, we see the discursive influences on the ways in which death and the dead are spoken about. A somewhat ritualised reference to shock

(188) is followed by the paying of respects to Genna, now that she is dead, as a 'good person in her own way' (189). This is scarcely a compliment although it takes that form. It might be said to be 'damning with faint praise'. It also removes her gender, and therefore any reference to gender relations, through the choice of the word 'person' over an alternative like 'woman.'

Then, Alan moves quickly back to his own agenda of portraying Genna as a serious obstacle to his relationship with his daughter. This time she has become an 'unfair warden' or 'prison guard' (191) keeping him in the prison of separation from Rebecca. This is a strong metaphor and perhaps he gets concerned after using it that he will have alienated Theresa further, so he seeks to restrict any relational damage caused by re-stating his openness to Theresa's continued involvement in Rebecca's life. This move is backed up by a statement of folk psychological knowledge about the importance of grandmothers in children's lives (194-5). He also takes care to justify his sense of 'relief' after Genna's death by modifying his reference to it with the word 'honestly' (193). This usage can be read as an effort to insulate his disclosure of feeling from possible criticism. How can you criticise someone for expressing honest emotion? Moreover, he asserts 'nothing against Genna' (193) almost in contradiction to his suggestion that he actually does have something against her. It is an attempt again to soften the effect of the words he has uttered.

At this point, Alan's use of the nominalisation 'father-daughter-relationship' (192) is interesting. He revises his initial formulation in which he describes Genna's actions to 'keep me from my daughter' to 'from a father-daughter relationship'. He positions himself here as the reasonable parent, concerned to avoid conflict, while Genna, the 'unfair warden', is constructed grammatically as the active agent who is interfering and blocking. He constructs himself as the victim of her actions and implicitly calls for back-referenced sympathy, and now justice.

Next, Theresa is offered a position of inclusion, again to counter any possible alienated position she may have felt tempted to take up in response to the comments about Genna. Finally in this segment, Alan calls up an additional legal discourse to support his claim for entitlement by speaking about a 'father's right' (196) to be part of his daughter's life. A rights discourse in which entitlement claims are based on

social role bears little relation to the stronger focus, throughout this conversation so far, on a discourse of emotional closeness as the basis of entitlement. Nevertheless, in a conflict story it can become available as a resource to be deployed as it is here.

Gerald's intentions at this point are worthy of note as well. In his reflections on the transcript, Gerald says that his invitation to Alan to speak about Genna's death was aimed at building connection between Alan and Theresa:

I am seeing if I can build points of connection through inviting Alan to acknowledge Genna's death and his feeling about this. To not do this might have appeared a bit callous for Theresa. It could have 'backfired' if he said that he was very happy that she was dead but my hunch was that it would make sense to Alan to express some sadness or regret for her parting in front of Theresa.

Gerald's concern is therefore not just to take care with how he positions himself in relation to the two parties, and with the positions he calls them into, but also, to some extent, to manage the positioning by the parties of each other that his questions might be producing. In the end, it is debatable whether his strategy backfired or not. Alan did make brief comments acknowledging Genna's passing but then went on to utter thoughts that counteracted any positive effect for Theresa. Theresa's response appeared kept pretty well in check. She makes no nonverbal response and says nothing immediately. However, in the next section of conversation, she does give rein to her criticisms of Alan.

- 197 GERALD: OK ... Theresa, I'd like .. I'd like to come back to you and ... from your
198 perspective what's your relationship and connection been with Alan .. from the
199 beginning and how that's unfolded and changed and how it is today for you?
200 THERESA: I feel like Alan just tends to take the easy way out .. I think that .. I
201 don't know maybe he just doesn't want to have .. to engage in conflict he's saying he
202 didn't want to have conflict in front of Becca but I think that if he loved his daughter
203 then he would have fought to see her .. (*Alan shakes his head*) and I think that .. I
204 know that he knows that when he called the house .. whenever I answered the phone I

205 would let him talk to her .. and I think if he had asked me to make arrangements to
206 bring her to a park or something so he could have seen her I would have done that ..
207 my .. I'm just angry because he didn't do that, because he didn't try and see her...
208 and because he hasn't been a part of her life .. now all of a sudden he wants to take
209 her .. and I just don't think it's fair.

Although Alan and Theresa have been shaping their comments in relation to each other for some time, here, for the first time, Gerald invites direct comment from one party about the entitlement claims of the other. Theresa is invited to respond to what Alan has been saying. She does so by reacting strongly and directly to his words. She dismisses his reasons for not pursuing contact with Rebecca over Genna's objections as taking 'the easy way out' (200). She almost implies that he is a 'wimp', a gendered term for a man who lacks courage in a fight and is therefore worthy of some degree of contempt. Her logic for this criticism is interesting. She says that, 'If he loved his daughter he would have fought to see her' (202). What are the discursive origins of this logic? Perhaps, she is drawing from a Romantic discourse of the male hero walking over hot coals for his beloved (even if the beloved is a child.) Perhaps, she is thinking more in terms of a female image of the lioness fighting for her cubs, an image often called up approvingly to account for a woman's fierceness in defence of her children. It is one of the situations where women are not only allowed, but expected, to show aggression. To do so marks a person as a 'true' woman. Such discourse sets a standard by which a woman's behaviour might be assessed. But here she would be using it to assess a man's behaviour. Is this usual in conventional patriarchal discourse of gender? Men are usually expected to show courage and aggression in different arenas and to be willing to sacrifice their devotion to their children for some wider public cause. However, Alan has made his claim to be entitled to be part of Rebecca's life on the basis of emotional intimacy and on the basis of being more 'maternal' in his instincts than her mother was. Perhaps this crossover leads to his being judged on criteria normally reserved for women. Or perhaps the winds of a feminist argument along gender equity lines can be felt in this assessment of Alan as a parent ('the same criteria should be used for any parent,

whether male or female'). My point here, in speculating along these lines, is that Theresa's utterance carries traces of other usages and that these traces, even when they are not clearly specified, are relevant to the positioning she offers Alan in this conversation.

In the end, after expressing anger on this basis, she re-iterates her argument that Alan's entitlement claims are not legitimate, because he has not been part of her life. His desire to now be part of it is characterised as 'all of a sudden' (208), suggesting that he is not consistent and trustworthy. Finally she claims, despite his assurances to the contrary, that now he wants to 'take her' (208), raising again the discourse of legal ownership of children as chattels. Her 'I don't think it's fair' (209) amounts to an appeal to a notion of folk justice.

However, despite the strength and anger of these statements there is another voice in the midst of Theresa's utterance. It is a less polarising voice and one that opens up a possibility that her anger is not necessarily finalizing and that options other than an adversarial battle are still possible. She refers to her willingness to allow Alan to speak on the phone with Rebecca (204-5) and to arrange a meeting between them both in a park. If her anger at him for not being involved pushes her towards determinacy in how she sees him, this voice opens up a small gap of indeterminacy (Linehan & McCarthy, 2000). A narrative mediator needs to be on the alert for these kind of gaps in a conflict story and ready to examine their possible significance. Gerald begins to do this in the next exchange.

210 GERALD: Have .. can you think of a time where ... the connection with Alan was ..
211 under easier circumstances .. at an earlier point?

212 THERESA: Oh sure, he could .. when he and Genna were together ... I babysat for
213 them when they went out and I think things were fine .. and he was close to his
214 daughter when she was young .. but ... I think that I've got more distant from him
215 because he's distanced himself from his daughter... and that angers me.... (*she looks*
216 *directly at Alan*)

A point of difference in the relationship between Alan and Theresa is acknowledged here. Gerald is seeking the inclusion of some different discursive positions that may exist for the two parties in their relationship history. Such positions have the potential, if they are salient enough, to become the basis for a way forward in this conflict. However, the conflict story is still powerful enough and the alternative positions not strong enough, or perhaps not relevant enough, for a new story to get off the ground at this point. Theresa acknowledges the story of difference and then quickly reasserts the story of conflict.

217 *(9 lines of transcript omitted)*

218 GERALD: And your perspective on conflict was that you saw it was important for
219 Alan to fight and challenge and engage in the conflict with Genna .. to declare his
220 ongoing love for .. for Becca. *(Alan shakes his head)*

221 THERESA: Exactly.

222 GERALD: And .. so your idea of conflict is .. one of meeting it and working through
223 it to declare your passion.

224 THERESA: I think so .. because .. y'know because I think the message he gave to
225 his daughter was that she wasn't worth fighting for. *(Alan is shaking his head
226 throughout Theresa's utterance)*

227 GERALD: Uh huh... and yet for you .. Alan .. it's very clear that fighting and .. I
228 sense a very painful set of entanglements and conflict that you experienced with
229 Genna had felt far too distressing to put you and Rebecca in .. and that when you
230 weighed everything up .. you made a decision to step back .. is that accurate?

231 ALAN: Yeah I mean it's like .. it's like .. at the end it was like a war zone .. and
232 there's, there's no point when two people are just .. you know.. right in each other's
233 faces .. there's nothing you can do .. believe me I tried many times .. many times ..

234 GERALD: Right .. right ... so this is one .. one important piece in this conversation I
235 think is about your different views around conflict and what can be done .. with that ..
236 with with conflict in relationship with .. with Becca ..

Gerald is not happy on reflection with his use of the word 'accurate' in this exchange. It suggests an epistemological stance that he does not want to convey, one that is perhaps more suited to a courtroom pursuit of the 'facts'. He commented on reading the transcript:

I don't like my use of the word 'accurate'. It is a word that implies that my understandings will be exact.

Gerald's preference here is for a language that offers Alan and Theresa a different kind of position than that of witnesses in a courtroom. They are not there to provide an accurate account that the court will then interpret in order to establish a judgment. He wants them to be positioned in a more powerful place of making the judgments as well as providing the information on which they will be based.

It has become apparent to Gerald that the two parties are positioned differently within a discourse about conflict itself. In this exchange with both parties, he engages in a brief deconstructive inquiry into the meanings of conflict that each is operating from. In the background, one can imagine a field of military metaphors that they are drawing on, or perhaps the metaphors of streetfights. Alan even compares conflict with Genna to a 'war zone' (227). There are codes of behaviour that go with any context of conflict. What is the honourable way to behave in a conflict? Is it to make a stand on principle and fight with 'passion' (223), Theresa's word for it? Or is it to avoid the collateral damage of battle and to withdraw (Alan's preferred strategy)? With different discursive norms in place, their construction of their own and of each other's positions results in very different interpretations, especially of Alan's actions. This piece of deconstructive inquiry might be said to contribute to the overall purpose of mediation by loosening the grip of these discursive positions. Once they have been acknowledged to be 'different views around conflict' (235) they can no longer do their divisive work behind the scenes. They may still be influential but their influence is at least more open to scrutiny than it was. Gerald is careful to construct both viewpoints as conscious and agentic choices rather than as reactions to others' actions. Theresa is described actively as

'meeting' conflict, 'working it through' and 'declaring' her passion (222-3). Alan is described as 'weighing everything up' and 'making a decision to step back' (230).

In his reflections on the transcript, Gerald speaks about his intentions here and of his ambivalence in pursuing this conversation further. First, he references this inquiry into ideas about conflict to the narrative therapy and narrative mediation practice of building externalizing conversations.

I am looking at joining the parties around the notion that conflict has a significant presence in this mediation and that both have a different relationship with it. By externalizing conflict I am inviting the parties to explore their different relationships with conflict rather than focussing on how each other may be the source of conflict in some way.

However, he also acknowledges that this deconstructive enquiry is not as complete as it might be. He indicates that he had thoughts about pursuing it further and was also constrained by some competing thoughts about doing so.

It may have been helpful at this juncture to deconstruct conflict further and enquire from each of the parties about their experience and understanding of conflict in their lives... knowing the context from which their respective ideas around conflict were formed may have built further understanding and connection between Alan and Theresa. However there is a risk in doing this as the parties may experience my questioning as being too intrusive. It invites them into a subject area that they may think is not directly related to the immediate issues at hand. Deconstructing questions have the potential to be intrusive.

Once again, his concern is with discursive positioning. He does want to open up the possibility of the parties re-positioning themselves in relation to the meaning of conflict (both their own and the other party's). But he does not want to do this in a way that risks them exposing material that is too personal in front of someone else with whom they are in conflict.

237 GERALD: ... what I'm wanting to know is .. where you're at right at this moment in
238 terms of how much room each of you see .. you should have as caregivers in
239 Rebecca's life ... I hear you (*looks at Theresa*) saying earlier that you would .. if
240 Alan was talking to you directly on the telephone you would definitely not hang up,
241 in fact on the contrary you would make efforts for Becca to be able to meet with Alan
242 in the park and have time with him and .. you sound that there have been periods of
243 time when you have been very supportive of that contact ... and I hear you say
244 (*turning to Alan*) that grandmothers are very important in children's lives .. (*Alan*
245 *nods*) there's a sense that this could be an important relationship to foster and
246 continue for Rebecca .. is that, is that accurate .. have I understood that right?
247 ALAN: That's right.
248 GERALD: I just want to know right now .. acknowledging that things can change ...
249 what ideas you have about .. one another having involvement with Rebecca .. how do
250 you see it right now?
251 THERESA: Well I'm totally against him having custody .. of Rebecca .. I think that
252 it's .. it's just too drastic a change for, for a child to go through .. and I don't think
253 that he's equipped to deal with a child .. I don't think he has a clue what it's like to
254 raise a little girl .. what's he going to do with her hair.. I mean this is a child with
255 bushy African hair, this is a white man .. what's he going to do with that .. who's
256 going to comb her hair .. do you know what colour .. what her favourite colour is ..
257 or what toys she takes to bed with her at night .. these are things that are part of our
258 everyday life and he has no clue about .. so I don't mind him having contact with her
259 .. but I think it should be just you know a few hours maybe once every couple of
260 weeks or something like that .. (*Alan shakes his head*) because I don't think that .. I
261 don't think Rebecca deserves to have her whole world turned upside down 'cause
262 suddenly he's decided to be a father.

In this segment Gerald continues his pursuit of some relational basis for cooperation and agreement between Theresa and Alan. Having not found a strong enough story of this in their relational history, he moves to the future. He attempts to

move past the mouthing of polarising slogans by addressing his question to the complexities of daily life. Interestingly, in terms of the entitlement claims based on 'closeness' of relationship that both Alan and Theresa have made, he addresses this question by also using a metaphor that constructs relationship in terms of spatial relations when he asks about how much 'room' (238) they each see for the other person in Rebecca's life. In support of this strategy, he cites two examples from what they each have said that suggest more inclusive positioning of the other. These are unique outcomes (White & Epston, 1990) in relation to the conflict story.

However, while Alan offers brief agreement with the idea that Gerald is developing, Theresa has not yet finished arguing her claim to be entitled to have the major role in Rebecca's life. So she refuses the conciliatory position Gerald offers her and instead goes back on the offensive by throwing up the word 'custody' (250) again and establishing her position in reaction to it. Then she goes on to elaborate some of the kinds of details that Gerald was asking for, not in support of a shared story but in support of her own entitlement claim. Moreover, she introduces some new elements to this claim. For the first time, she raises an argument based on racial and cultural grounds (she is African-American and her granddaughter is a bi-racial child). She also extends her earlier statements of entitlement based on intimate knowledge of the details of Rebecca's life. In the end she does offer a glimpse of the kind of vision that Gerald was asking for. She speaks about a role for Alan in Rebecca's life, but uses the term 'contact' (258) which positions him more in a role of occasional visitor rather than responsible caregiver. Alan's moves to seek greater involvement in his daughter's life are described as 'turning her whole world upside down' (261) and characterised as a sudden whimsical decision. The positions offered to Alan in these descriptions are those of a parent who cannot be relied upon and who casually and insensitively disrupts his daughter's life. The phrase 'suddenly decides to be a father' has a familiar ring to it from many other conversations from the genre of custody disputes. It is no doubt borrowed from other people Theresa has heard use it.

263 GERALD: Alan what's your perspective .. on the kind of involvement that each
264 of you would have in Rebecca's life right now?

265 ALAN: Oh I'd like to see something more .. half and half .. really ... what she said
266 about you know .. her African American roots is true and .. and the hair and those
267 kinds of things but there's also things that I can offer her as a father that no
268 grandmother can offer her and ... I know how much she cares about me .. the things
269 that she told me when she was a little girl .. she used to say that I was her one and
270 only Dadda and .. I know how much she loves me and that's really important for a
271 little girl to have a father .. and no one else can take the place of that ... and ... and
272 sure it will take a while for us to .. get back to where we were but I'm confident that
273 we can the love is there .. the bond is there .. the physical connection is there and it
274 will happen.

275 ... (13 lines omitted)

276 GERALD: So what ideas did you have around what that would look like in terms of
277 having more involvement?

278 ALAN: Well I think it would be nice to have the three of us do things together .. go
279 to the beach or go and do .. do different things and .. and .. and then I could learn
280 from some of the things that we do together about how she .. how .. how Theresa is
281 with her granddaughter and things I can learn about some of her up to date, up to the
282 minute, up to the minute interests that she has .. I'm pretty good at picking up on
283 things like that .. so I think to ease into it I think that it would be good for us to do
284 some things together and uh ...

285 GERALD: Do you have any thoughts .. I know I often end up talking very
286 specifically about this and just want to have a sense of what it looks like.. how .. what
287 would you imagine in terms of the hours .. that would be involved in terms of this
288 development?

289 ALAN: ... Well ... maybe to start with I could .. could ... could meet with her for a
290 few hours three or four times a week and ... (*Theresa shakes her head*) sort of slowly
291 expand beyond there and .. Grandma would always be welcome to come by.

292 GERALD: You're saying that you would be open to doing things with Theresa and
293 Rebecca to learn .. more about where she's up to now ..

- 294 ALAN: Sure.
- 295 GERALD: .. and to ease into it .. do you see that you would do that first before
- 296 meeting more regularly with her on your own?
- 297 ALAN: Yeah .. yeah right it makes logical sense.

In this section of the conversation, Gerald pursues with Alan the same kind of question that he asked Theresa earlier. Just as Theresa had deployed an expression common amongst women to describe men in custody disputes, so Alan uses the stock expression 'half in half' (265) which is standard to the requests many fathers make for custody. But he does not stay with answering Gerald's question for long. The conflict story still exerts a powerful pull on him as well and he begins to respond more to Theresa's previous utterance than to Gerald's question. There is a concessionary acknowledgment of Theresa's entitlements on the basis of race, which is then countered with a reference to the special entitlements based on biological fatherhood, backed up with more assertions of emotional closeness. The discursive argument that male role models are essential for children is produced to support Alan's claims. There is some popular psychological knowledge to this effect (for example, Bly, 1990, Moore & Gillette, 1991, & Biddulph, 1997), often based on an uncritical acceptance of gendered social roles and sometimes used to render inadequate the work done by mothers (Silverstein & Rashbaum, 1995).

Gerald's move as mediator at this point is to ignore the re-ignition of the conflict story and the inflammatory rhetoric that has gone before and to pursue the development of a story of inclusion. He does this by bypassing the claims of entitlement as a basis for a tug of war over Rebecca's life and asks about the possible futures Alan is constructing on the basis of these entitlements. He seeks details (hours, activities, purposes) about the kind of contact with Rebecca Alan would prefer. Such details serve the purpose of developing greater coherence (Cobb 1994) for the story of Alan's 'involvement' with Rebecca. In the process, he constructs with Alan a story of gradual development of relationship in a modest sounding way. Gerald comments in his reflections on the transcript that his intentions here were to:

... invite the parties to talk as explicitly as possible about what their plans were and what they were wanting from one another and what they were wanting from the child. Explicit discussion helps clarify what each is wanting. There is quite a lot of vagueness present in the discussion so I persevered with wanting more specific information.

The meaning of what Alan is seeking from this conversation shifts at this point, possibly for him, and likely for Theresa. He gets to hear himself detail a story of future possibility that now starts to include some of Theresa's expressed concerns (such as not to introduce large sudden changes into Rebecca's life). She gets to hear a story of future possibility that does not resemble the ones that she feared on Rebecca's behalf (for example, the sudden disruptive uprooting of a child from what is familiar to her). As this story emerges they slowly start to take up positions in relation to it.

298 GERALD: So you Theresa you mentioned about a few hours every couple of
299 weeks looked like something that would work for you .. do you have any .. I'm sure
300 y'know you're responding to .. inside to Alan's comments, what do you .. what are
301 your thoughts and feelings about what he's proposing?

302 THERESA: Sounds like he's moving too fast for me .. I don't think there's room in,
303 in Rebecca's life right now for him to see her a few times a week for a few hours .. I,
304 I just don't see how that works ... I don't think he .. he realises just how short the day
305 is once .. once she's picked up from .. from the after school centre ... she's busy doing
306 homework, we have a routine and then we eat dinner and then we go over her
307 homework watch a little tv and then it's bedtime for her .. and I can't see how he
308 really fits in that, I can see doing something on the weekend .. (*Alan grimaces*) you
309 know I can see us .. the three of us doing something on the weekend maybe .. but in
310 terms of her day to day life I don't see how that's going to work.

311 GERALD: OK... so ... from your perspective you're definitely open for Alan to
312 feature more prominently in Becca's life but you're very concerned about the pacing
313 of that .. (*Theresa nods*) and you're also concerned over time that large chunks of

314 time with Becca going backwards and forwards between your home and Alan's
315 home would be problematic (*Theresa nods*) but despite that, that you are seeing Alan
316 having a place in .. Becca's life .. that he hasn't had before.

317 THERESA: I .. I think .. that's possible .. but I also think we have to check in with
318 Rebecca and see how she handles that .. I'm not sure that it's a good idea to rush her
319 right now .. she's just so vulnerable .. so I think we have to really..

320 GERALD: Well her Mum .. her Mum's .. been dead a little over a month .. this must
321 be a huge turmoil for you and for her ... so you're thinking anything dramatically
322 changing right now would be problematic.

323 THERESA: Yeah.

Now Gerald moves back to Theresa to explore the possibility of developing a joint story around what is now an opening to some relational re-positioning between Alan and Theresa. He puts to her Alan's imagined picture of how contact between himself and Rebecca might go. She responds apparently negatively by saying it would not work. In the process she uses Gerald's earlier spatial metaphor, arguing that there would not be enough 'room' (302) in Rebecca's life for him to do what he is suggesting. But she also engages in the task of imagining something that would work better. She mentions the possibility of a weekend outing (308) which Gerald interprets in a larger frame of meaning as 'openness for Alan to feature more prominently' (312) in Rebecca's life. Her nods suggest that she goes along with this expansion of meaning. Gerald also stretches her statement grammatically. She has spoken in the language of tentative possibility - 'I can see .. the three of us doing something on the weekend maybe' (309). Gerald's response moves into the indicative mood and states that, '... you are seeing Alan having a place in .. Becca's life..' (315-6). Again she does not refuse this move, although she does hedge slightly by using the word 'possible' (317). In this way, she takes up the position of inclusion that has been offered to her. And she also offers back to Alan a sense of possible inclusion. This is not yet a negotiation of options for resolution as in a problem-solving approach. They have not got that far yet. But it is a segment of

conversation in which possible and imagined trajectories of story are brought together and some relational re-positioning is taking place.

At the same time, there is considerable caution about how Theresa engages with this new story. She is not yet ready to commit to it. Rather she is thinking about all the meanings of what is involved. This brings her to thinking about Rebecca's response to these ideas and to suggest asking Rebecca for her opinion. It is interesting to note the discursive position being constructed for Rebecca in this utterance. Even though she is only seven, Rebecca is accorded by Theresa a voice in decisions about her own life. Not all seven-year-olds might expect to be offered this position. In different cultures or historical periods, such discursive positions would not exist for children (who should be 'seen and not heard'). Chouliaraki and Fairclough (1999) talk about the trends for discourse in late modern society to shape the constitution of families in ways that emphasise a more democratic set of relations between family members. This can be seen as an example of that.

324 GERALD: There's something occurring .. occurred to me as I'm hearing both of
325 you talk ... I've been involved for a number of years as a mediator working with
326 where there are disputes that exist between people about caregiving arrangements for
327 children .. and I'm just struck .. by each of you .. despite all you've gone through ..
328 both of you .. that there's some appreciation of the other and their role in Becca's life
329 but more than that .. that .. you Alan were saying that you felt comfortable spending
330 time with Theresa ... for periods of time in the weekend to .. start to slowly connect
331 with .. with her (*Alan nods*) and to learn to be in .. Rebecca's life again and an
332 openness to engaging with Theresa in a fuller way than you have in the past and I
333 hear you (*turning to Theresa*) also say that despite everything that happened with
334 your daughter ... and .. I'm sure the conflicts that you witnessed first hand that they
335 both went through and that .. Genna's perspective (*Theresa nods*) on it, you know,
336 and the affair and so on ... despite all of that you still felt .. like you could open your
337 heart enough to Alan for him to telephone you and that you were prepared to make
338 space and time for ... him to be with Becca and I .. I'm really struck by that
339 recognition of the importance of each of you in Becca's life .. I'm just wondering

340 how come it's like that .. because oftentimes those relationships after the kind of
341 conflicts and certainly the pain that you're experiencing now often destroys that
342 fact .. destroys those kind of connections and I .. would you mind just expl- .. telling
343 me a little bit each of you how that hasn't been just written off completely.

At this point Gerald makes a little speech. In his reflections on the transcript he refers to it as a 'summary' made with the purpose in mind of helping 'develop a joint narrative about the emerging conversation.' He is wanting to capitalise on the unique outcome that has happened - the move that both parties have made into a story that positions them more as cooperative with each other. Treating this move as an event on the landscape of action (Bruner, 1986; White 1992; Winslade & Monk, 2000), he seeks to develop meaning around it on the landscape of consciousness. He wants to develop its significance such that it will be taken more notice of. The moves here are worth paying close attention to.

First Gerald uses a nominalisation to downplay a presentation of himself as an expert interpreter. He says somewhat vaguely there is 'something occurring to him' (324) as if he is slowly catching up from behind, rather than more directly, say, 'I think this is what you are both saying...' Theresa and Alan are thus positioned as informing him rather than the other way round. Then, a story of appreciation and respect is plucked out of the numerous other stories that have been spoken about during the conversation so far. This is constructed in Gerald's utterance as the central story by its placement in the foregrounded clause of the grammatical construction. The conflict story which has dominated both parties' communications so far is relegated to a backgrounded clause headed by the word 'despite' (three times: 327, 333 and 336). In the foreground in the third instance is placed the agentive statement, '... you still felt .. like you could open your heart enough...' (336-7). The backgrounded aspects introduced by the word 'despite' are framed as annoying and unfortunate restraints on the emergence of a more heroic story of courage and strength of purpose in the interests of cooperation. Gerald offers them both different positions in relation to the conflict itself (that is different from how they have positioned each other) and in relation to the substantive issues. They are constructed

as holding onto some positive things in the face of adversity, rather than as polarised around a problem to be solved. The problem in this utterance looms smaller rather than larger.

Having developed briefly a plausible story in this regard, Gerald asks a question that presupposes the story that he has just told. He asks Theresa and Alan to theorise and explain how they have managed to do this. Thus they are positioned as agents in the construction of this alternative story. They are also positioned as editorial commentators on a selected aspect of their own experience. Gerald has been offering some editorial comment himself and he asks them to join him in this. In the process of making this invitation, he begins to ask them to 'explain' their actions and then revises this usage in favour of one that does not carry with it some connotations of 'justifying before an authority'. Gerald comments himself on this correction that he makes:

I was about to say, 'Would you mind explaining?' This word feels to me too authoritarian, too much like me being the expert.

Alan and Theresa are also positioned in this summary as exceptional people in comparison to some unnamed others whom Gerald has met who would not be able to do this, who would have had their best intentions swamped by the events that Theresa and Alan have been through. The question now becomes one of whether or not Alan and Theresa will take up the positions Gerald is inviting them into, or whether the conflict story will pull them back into its orbit.

- 344 ALAN: Well I .. I've never had a problem with Theresa I mean .. she .. she was
345 correct before when she said that like on the phone that she was pleasant with me and
346 .. and she didn't get in the way between me and Rebecca.
- 347 GERALD: Did you know .. have you discovered anything right now that you didn't
348 know about Theresa's ideas about you having involvement with Rebecca.
- 349 ALAN: Well what she said about her hair and her African-American culture and so
350 forth I mean that .. I didn't, hadn't thought that through as clearly before so .. but

351 there's another thing here that I'd like to say I mean .. I think .. I think we could be
352 potentially working well together at co-parenting but I think one thing that .. that
353 Theresa hasn't addressed is I think because of .. I think the apron strings are a little
354 too tight in a way .. I think that she's .. what .. what I'm concerned about her saying ..
355 asking Rebecca what Rebecca thinks .. that Theresa's gonna be sort of nudging her
356 you know like what the correct answer is .. which is that Grandma really wants to
357 spend as much time as she's always spent with her and this is .. it's not .. normal for ..
358 I mean sometimes grandparents are involved in kids' lives but usually you know it's
359 the direct parents .. and .. and .. I'm just concerned how .. how you know how she's
360 going to be contaminating things so to speak .

361 GERALD: So right now your pointing out maybe a little bit of distrust .. of Theresa
362 in impacting on Rebecca's ideas about what she's going to .. (*pause - change of*
363 *videotape*)

364 GERALD: From what you just said it strikes me that .. you have a little distrust ..
365 present as you think about Theresa and ... talking with Rebecca and maybe
366 influencing her in terms of some the things she might say regarding the pacing and
367 connection .. I hear that .. but I also hear a willingness to work with Rebecca .. and a
368 willingness to .. and I'm just wondering whether you're open to speaking a little bit
369 about .. the connection with Theresa that you could consider going and spending a
370 few hours in the weekend with the three of you .. how that could be the case .. and
371 how come you're prepared to do that given all the things that you've gone through..
372 and the fact that you felt very alienated and cut off from your daughter.

373 ALAN: Yeah well again the major thing was between me and .. and Genna ..

374 GERALD: And Genna .. yeah.

375 ALAN: .. and and Theresa to her credit you know .. at the beginning didn't get in the
376 way between me and my daughter and she was always polite with me and .. and I
377 think she even knows in her heart that Genna wasn't that available a lot of times .. so
378 I never felt ... the same thing I felt from Genna from from Theresa so I think there's
379 potential to .. to work together hopefully.

380 GERALD: OK .. thank you ..

In Alan's response there is considerable ambivalence. He swings back and forth between the position that Gerald has offered and his more familiar position in the conflict story. Yes, he acknowledges Theresa's actions that suggest openness to a basis for relationship that could be cooperative. Yes, he is taking into consideration and makes room for things she has said (for example about Rebecca's hair and her links with African-American culture). Yes, he can speculate about 'working well together' (352) and 'co-parenting' (352). But also he still has concerns that pull him back towards the conflict story. His concerns can be seen to be expressions of several conventional discourses. The gendered story of children being too tightly tied to women's 'apron strings' (353) appears in his speech. As does a notion of the 'normal nuclear family' and the 'normal' role of grandparents (357-359) in relation to this. And he is concerned about Theresa's use of her privileged position of access to Rebecca to sway her opinions against him. Then Gerald ensures the evenhandedness of the conversation by inviting Theresa to respond to the same question.

381 GERALD: .. what do you make of ..

382 THERESA: Well ..

383 GERALD: .. your willingness to continue to engage?

384 THERESA: I think it's interesting that Alan's not trusting me .. in terms what I'm
385 going to say to Becca because Becca's my priority I'm not going to say tell her
386 anything that's going to hurt her in any way I'm not going to mislead her in all these
387 years I've never told her anything bad about her father .. I figure .. I mean it's
388 interesting that he doesn't trust me .. he's the one that had the affair .. I've never
389 thrown that in his face or anything and .. and I don't intend to .. and I'm not trying to
390 ... I'm not trying to interfere with him having a relationship with his daughter, I'm
391 just trying to make sure that she has stability in her life and right now I think stability
392 for her is .. is being with me and continuing the lifestyle that she's .. as closely as
393 possible that she's used to and that's .. living with me.

Theresa's response is not so much to Gerald's question as to Alan's distrust of her expressed in a previous utterance. And it is a selective and reactive response to

how she has been positioned by Alan. It selects out for reaction one side of Alan's expressions of ambivalence and ignores the other. Thus, in this moment, the conflict story is selected out ahead of the cooperation story. Or perhaps she is wanting to emphasise some aspects of her meanings that she wants in future to see included in any story of cooperation (the importance of stability for Rebecca and her primary living context being with her grandmother) and therefore feels that it is important to reassert them.

Gerald is persistent though in following up on the story of possible cooperation. He directs her attention back to his question and this time phrases it as a simple yes/no question asking her to confirm his own meaning statement.

- 394 GERALD: So despite the fact that you're really clear about what .. what
395 Becca's needs are right now in terms of the stability and routine and the familiarity
396 with what she's experiencing .. despite your real clearness about that .. you still have
397 some openness to Alan being present in some way ... is that accurate?
398 THERESA: Yeah.
399 GERALD: What .. what's your sense of what Alan might add to Becca's life?
400 THERESA: Well she's a bi-racial child .. and so even though when people look
401 at her they're gonna make assumptions about who she is I think it's important for her
402 to know her heritage on both sides .. so that's something that he can provide in her
403 life ... and I think the child needs a male role model .. and so he's, I'm sure he's able
404 to do that or I think he is ... and I think it will give her a certain amount of balance ..
405 to have a loving parent now that Genna's gone .. I think that's, those are important
406 things but I ..
407 GERALD: Do you see ... Alan as a loving parent?
408 THERESA: .. That's my hope. I'm not sure, he's going to have to demonstrate that
409 ... I hope that's who he is.

The commitment invited by a yes/no question is a small one. This time Theresa takes up the position that Gerald offers her. Her response supplements his question. Gerald seeks to build on it by asking a further question that is clearly

directed towards expanding any thoughts she may have about Alan's inclusion in her relationship with Rebecca. She responds to this question by accessing a discourse about the psychological importance of knowing cultural heritage. Then she cites the same discourse that Alan has already alluded to about the necessity of positive male role models for healthy psychological development. And Alan is described as 'providing' something in her life, an expression that is faintly evocative of the conventional male role in the patriarchal family - that of 'provider.' At this point she drops into her utterance a comment about Alan as a 'loving parent.' The moment is significant and Gerald does not let it pass. He asks more about the significance of this expression. In so doing, he invites Theresa to perform meaning around it, to step further into a commitment to these words and to extend the story of cooperation and mutual respect another pace forward.

410 *(15 lines of transcript omitted)*

411 GERALD: ... So you've added a real concern about conflict could drive a real
412 wedge between Alan and Becky as she goes through her adolescent years and that's
413 something you wonder about .. however despite that ... what has .. I'm just
414 interested to know this because .. a lot of parents in a circumstance .. or caregivers or
415 .. grandparents in a circumstance like you has .. could easily close her heart right off
416 and close that connection right off and I'm wondering .. what is it that Alan's done
417 over the years .. despite the fact that he's had very little contact with her that's kept
418 alive in you the idea that .. he has the potential to be a loving parent .. a fa-.. a good
419 father to Becky .. an important parent in Becky's life ... are there things that he's ..
420 that you've seen in Alan .. or things he's done despite the little contact and your ..
421 your views about that.

422 THERESA: Well I think his relationship with her when she was younger .. they were
423 very close .. and I think the potential is there for them to do that again .. um I think
424 more than him actively doing anything to make me have hope is that .. the, the main
425 thing that he hasn't done was to be in her life, he hasn't actively done anything to
426 harm her .. it's kind've been he's just been not active in her life..

427 GERALD: Right .. right..

428 THERESA: and so I kind of see this as he's trying to correct that.
429 GERALD: Uh huh.
430 THERESA: at this point ..
431 GERALD: Is that a desirable move from your perspective?
432 THERESA: It's late .. it's late .. it's just really late .. you know I ..
433 GERALD: But not too late.. given all the other things that you've said.
434 THERESA: I think .. that the timing of it .. limits just how close he's gonna be able
435 to get .. I think he's missed a really important part of her life .. already and .. you
436 know and .. and that pisses me off .. that she's missed that time with him .. but I don't
437 think no you're right it's not too late for him to have some kind of a relationship with
438 her .. I just think there's .. there's limits to how much, how close it can be just
439 because he's messed up.

I have omitted a brief conversation about each party's distrust of the other that does not develop far and remains something of a sidetrack away from the main direction of the conversation. At the beginning of this segment, Gerald summarizes this conversation using the externalising language of narrative mediation. Conflict is externalised and personified as a separate being from both Rebecca and Alan with the potential to affect their relationship. Neither is positioned as at fault in this construction. He comments in his reflections on the transcript:

A new area of conflict arises that was a surprise to me. I externalise distrust to avoid the awkwardness of locating distrust in each person and suggesting that it might be an internalised quality that is less movable, owned and more trait-like, rather than existing relationally in the present moment.

Gerald goes on to ask a long and subtle question of Theresa that requires her to speculate about Alan's qualities as a parent (418-422) and to relate these to events that she has witnessed. It is a question that asks her to generate new meanings rather than simply to report on what has happened. In the process of asking this question, Gerald carefully positions Theresa in a place of respect. First, he speaks of her as

exceptional to Gerald's knowledge of other parents who would have 'closed their hearts' (415). The inference is that Gerald sees her as openhearted. He has offered her this identity construction to step into simply by answering his question and he has done this by use of contrast with what can be safely expected to be an unattractive position by way of comparison (someone who is cold hearted and quickly closes off connections with others.) Secondly, he corrects his reference to 'parents' to include both 'caregivers' and 'grandparents' (414-5) such as Theresa. This is an effort to ensure that his language does not inadvertently create a position of exclusion for her. Thirdly, he refers to a process of 'keeping alive an idea' (of Alan's potential to be a good parent). Keeping something alive stands in contrast to letting it die. In view of Theresa's recent experience of her daughter's death, this image may have particular personal poignancy.

Moreover, let us look at what the step is that she is being invited to take. It is to 'keep alive' the 'idea' that Alan has the 'potential' to be a 'loving parent' and a 'good father' and then to search through her memory for experiences that would corroborate this description. This is such a small step that it is hard to refuse. To do so could appear churlish and carries the risk of being called 'coldhearted'. It fits Alan Jenkins' (1990) description of questions that are 'irresistible invitations'. Theresa does not refuse the invitation. She steps into the position of constructing Alan as a potential parent, referencing his relationship with her when she was young and adding that he has not done her any harm.

The dominant conflict story reasserts itself still in her reference to his lack of presence in his daughter's life, indicating that there is a degree of ambivalence in her responses. She is being tugged by two competing stories of Alan. The moment is a delicate one in the direction of this conversation. She swings back to the story of potential and assigns a motive to Alan as currently trying to correct his past failures. There is even a hint of a more positive interpretation of Alan's distance from Rebecca. It has at least prevented harm. Gerald picks up on Theresa's concession and invites her to evaluate it, to take a position in relation to it. Is it desirable or not? This is another invitation to take a step forward into a relational position that will include Alan in future in a positive fashion. Theresa teeters on the edge of

responding to this invitation. It is 'late' (432), she prevaricates. Gerald agrees and suggests 'not too late' (433), which keeps the ambivalence alive. In the end though, Theresa opts for the idea that she can envisage Alan having a positive relationship with his daughter (437). Her statement to this effect includes some comments that refer to the dominant story but also clearly and decisively opens up space for a negotiation of how this can happen. She has stepped into a position in a new story at this point. The rest of the conversation will amount to an effort to elaborate this story. However, as we shall see, the dominant story is not yet done with. It still has questions which need to be addressed.

440 (4 lines omitted)

441 GERALD: What do you make of Alan's efforts to .. send birthday cards and I
442 understand you (*looks at Alan*) sent cards on other occasions as well .. is that ..

443 ALAN: And all the time at school..

444 GERALD: .. and that .. the occasions he's seen her at school and .. consulted with
445 the teachers about her .. her wellbeing .. are those examples of .. someone that is ..
446 still wanting to find connection with her or how do you see that?

447 THERESA: ... I think that's the minimal effort .. I think it's the easy way out ... I
448 think he should have been doing a lot more than that .. and I think .. when Rebecca
449 gets those cards it just points out the fact that she doesn't have a father that's active in
450 her life anymore and it kind of reminds her of that .. so actually those were kind of ..
451 painful .. it would almost have been better for her just to forget about him .. than to be
452 reminded of that he's here he's alive he's well .. but he's not having an interaction
453 with you .. and you know a card here and there ..

Gerald's question seeks to extend the viability of the story of Alan's potential as a parent by attaching it to known events in the past. He wants to grow the story of potential cooperation in the relationship. Theresa is ambivalent in response. Clearly, she can answer in the positive, but she is again pulled by her other story of Alan as neglectful, a story that is fueled by her witnessing of Rebecca's pain at not seeing her

father. She references a scale of judgment against which Alan's efforts are assessed as 'minimal'. Gerald says about this that his intention was:

... to assist Theresa to remember that Alan does have an ongoing relationship despite his physical absence from Rebecca.

It is part of the narrative perspective that stories do not only exist in one person's mind. They are not just cognitive events in that way. Rather they have a life in discourse and can be enlivened through another person's remembering, particularly as it is spoken into existence in conversation with a mediator in this instance.

454 *(4 lines omitted)*

455 GERALD: Mhmm. .. given your openness to this contact but caution about how
456 that's done and the frequency of it .. what .. what would you imagine if Becky was
457 here right now .. listening to Alan declare what he wants to do in her life .. what's
458 your hunch about what Becky would be saying .. about Alan.

459 THERESA: I'm not really clear ... on what it is that Alan wants ... I know that
460 if Becky thought that he wanted to take her to live with him that she wouldn't want to
461 leave me .. her home .. the friends and the school and all the different familiar
462 surroundings that she knows, I know, I'm sure that she wouldn't want to do that ...
463 but I think she would be open to having interactions with him.

464 GERALD: Would it be a positive experience for Becky to hear .. how Alan would
465 like to start off by maybe even the three of you going and doing something, going for
466 a few hours on the weekends ..

467 *(10 lines omitted)*

468 What about .. the ... the desire to want to be part of her life now and want to .. be very
469 present in her life right now .. if she listened to that part of the conversation .. what
470 effect do you think would that be a positive step?

471 THERESA: I think .. I think we need to approach it very delicately .. because .. she
472 could hear that as .. I'm glad your Mom's dead now I can see you .. she could

473 interpret it as that and we want to make sure that's not .. that's not the message we
474 want her to get.

This time Gerald comes at the task of thickening the story of cooperation by including Rebecca's voice in a hypothetical way. He comments:

I was wanting to 'bring in Rebecca' and invite Theresa and Alan to consider what her perceptions might be. This is a symbolic attempt to bring in the child's voice in her absence as it is understood by the conflicted parties.

He is also here privileging Theresa's knowledge of Rebecca's views by asking her to speak on her granddaughter's behalf. In Theresa's response, she indicates her view of Rebecca's openness to the story of potential contact with Alan (463) but also represents some limits to the meaning of the interaction. Again Gerald invites Theresa into the position of making an editorial judgment on Rebecca's behalf. Would this be a 'positive' experience (464)? In a sense he is positioning her here as the responsible parent, intimately knowledgeable about Rebecca's interests. Theresa supplements this by taking up a protective role on Rebecca's behalf, especially protecting her sensitivity around her mother's death. Her representation of Alan's discursive strategy as, "I'm glad your mother's dead, now I can see you" (471), actually bears some resemblance to Alan's own earlier statement. She may now be responding not just to Gerald's question but at the same time to this earlier comment. She positions herself as protecting Rebecca against this interpretation and goes further by including Gerald and Alan in her protection of Rebecca by the inclusive use of the word 'we' in, "That's not the message we want her to get" (472-3). The usage is significant in terms of the position she is taking in relation to the cooperation story (we are now working together) and in terms of the invitation for Alan to join her in the parental role of protection.

475 GERALD: (..) I'm wondering whether .. her hearing her Dad wants to engage in the
476 way that he's .. and the effort he's making to do that now, right now .. today .. she
477 would warm to that .. that would be a positive rather than a negative experience?
478 THERESA: You know .. at this point I'm not sure..
479 GERALD: Uh huh.
480 THERESA: She's pretty fragile .. given what she's recently gone through.
481 GERALD: Uh huh.
482 THERESA: So I'm think- .. I don't know .. I guess we could just approach her and
483 ask her .. you know what do you think about us going to the beach this weekend with
484 your Dad or the movie .. or whatever.
485 GERALD: Mmm.
486 THERESA: I think we could ask her and I mean she's pretty verbal and she'll ..
487 she'll be honest about what she's feeling .. I can't really predict because she's been
488 rather moody lately ... which is understandable .. so I'm not sure.
489 GERALD: Would you be willing to encourage .. the .. you know as parents and .. and
490 loved ones, caregivers, grandparents have a .. do have an enormous influence and
491 sway on children at seven ... (*3 lines omitted*) would this conversation you'd be
492 having with Becky about Alan stepping in gradually in the way that you've described
493 .. would you .. from what you've said it sounds like you would be supporting that
494 kind of conversation rather than undermining it .. what .. what's your take on that?
495 THERESA: I think what I could support is asking her about one visit .. I think that
496 she's young and I think it's difficult for her to see .. like long range processes and ..
497 (*9 lines omitted*)
498 GERALD: (overlapping) Would there be encouragement .. in your voice .. or
499 discouragement do you think .. as you think about .. doing that with Alan.
500 THERESA: Well there wouldn't be discouragement .. I don't know, I don't know
501 whether it's encouragement or neutral .. I wouldn't discourage her at all .. I'm not
502 against it.
503 GERALD: Would you convey that your Dad would really like to see you on the
504 weekend .. would you have some kind of part of the conversation including Alan's
505 motives as well for Becky to hear?

506 THERESA: Yeah.

This section of conversation takes place largely in the subjunctive mood. It is uttered in the language of future possibility and wondering (Bruner, 1986, speaks of stories as ‘subjunctivizing reality’) rather than of current indicative statement. It is the realm of ‘as if’ rather than the realm of facts, or of ‘what is.’ It is a linguistic space in which possibilities can be explored without being finalized. In this realm the story of Alan’s and Theresa’s joint care for Rebecca is being slowly fashioned. Gerald is pursuing this process of story construction by asking a series of questions that press for details about small developmental increments. He comments:

I am inviting the parties to step out of one frame of reference for a moment and look at another.

In each question Theresa is invited further into the position of supporting the story of Alan’s involvement. On each occasion she takes up this position, albeit with some caution and careful thought about the consequences. There is still a genuine sense of dilemma and Theresa continues to position herself as protective of Rebecca.

507 GERALD: Alan what are you making of the conversation .. we’re having right
508 now.

509 ALAN: I really liked that you asked that because that’s exactly the fear that I had
510 was that she would be discouraging with the tight apron strings ... and so I think that
511 that’s .. you hit the nail on the head on that .. that the way she does it is.. is really
512 important .. you know cause if she says .. you know honey I have a lot of things
513 planned here I know we can do with each other .. but would .. your Dad .. would you
514 like to see your Dad .. I mean she could stack the cards really easily if she chose to ..
515 and I know what it’s like you know to .. have certain routines and certain familiar ..
516 habits and .. inclinations and .. so I think what you said before is really important, you
517 know, if she asks that in a positive way and tells her .. how much I really love her

518 and want to see her .. I think that at least it's a fair chance for her to .. to know .. to
519 answer .. you know.

520 GERALD: What have you heard about what Theresa has said about you being in
521 Becky's life?

522 ALAN: I think she's scared .. yeah (*very softly*) and you know listen .. to be
523 honest I have some of my own .. fears too .. you know I haven't been .. the kind of
524 parent I would have .. dreamed of being .. it just hasn't worked out, I mean I can't ..
525 you know I can take some responsibility but .. Genna also is very much involved in
526 this and .. in making it really really hard .. but I do take my responsibility .. and I feel
527 sad and I, and I have .. I have my own fears and doubts about .. how it'll go .. but I
528 know my heart is pure on this I know that I love my daughter and I want to .. do
529 whatever I can to make it work .. I'm really convinced that I will do that.

530 GERALD: So you're talking about fear both in terms of Theresa's fear about you
531 engaging more fully .. and you've talked about your own .. did you hear any other
532 things that Theresa said about her perspective on you being in Becky's life, in
533 Rebecca's life?

534 ALAN: ... That she doesn't want to .. upset the applecart .. really quickly and .. and
535 disrupt .. disrupt Rebecca's world and I can understand that .. that's why I suggested
536 that we .. that you start by doing things together.

537 GERALD: Did you hear about her seeing the validity, seeing the value of you being
538 involved in Rebecca's life as a father and ..

539 ALAN: I heard some of that.

540 GERALD: .. and as a parent?

541 ALAN: I heard some of that.

542 GERALD: What .. what was it like to hear that from Theresa?

543 ALAN: Well .. I would have enjoyed hearing a little bit more (*smiles*) but .. what I
544 did hear was nice.

In an effort to knit the story of cooperation in further still, Gerald asks Alan a series of questions that invite him to make meaning out of Theresa's preceding utterances. In this way, the story that was set in future possibility can be woven into

the present reality. It is noticeable that the mood is not subjunctive now but indicative. But the subject matter is the exchange that has taken place in the subjunctive mood. In other words, what was talked about first in the tentative language of possibility is now moved into the language of material reality. Talk of what could possibly be is realised through its very utterance as a discursive event which now can be talked about as having happened. This does not yet mean that the imagined conversation with Rebecca has taken place, but its likelihood is increased through the discussion of the meanings that not only would ensue if it did take place but which are also already ensuing through its even being envisaged.

However, as has happened in this conversation already several times, the old story of conflict and distrust re-appears. Alan attributes Theresa's cautious protective comments on Rebecca's behalf to an underlying 'fear' in her, supporting this with reference to his own 'fears'. Such nominalisation (and reification?) of emotion as essential and originary is common within humanistic psychological discourse. One consequence of it here is that it blinds Alan to a possible interpretation of Theresa as a practising caregiver, appropriately protecting her granddaughter in a time of fragility. The interpretation he is persuaded by constructs her as acting more selfishly out of her own emotional disposition, than altruistically out of her assessment of what is important for Rebecca. This construction threatens the delicate new story, and Gerald is deliberate and persistent in steering the conversation back to a basis on which the new story can continue to develop. He asks in the end a very specific question about whether Alan has heard Theresa's statements in (cautious) support of his inclusion in Rebecca's life. He has. So Gerald asks about the significance of these to Alan. This time Alan is being positioned as editorial commentator.

545 GERALD: OK .. OK .. right ... so where are we up to in this conversation right now
546 in terms of your understandings about .. what .. to do next?

547 THERESA: Well I'm .. sensing that ... sometime soon .. I guess we'd have to figure
548 out when what day or time you'd be available .. and I'll just ... approach Becca and
549 ask her what she feels about .. spending some time with her Dad .. doing whatever
550 activity we figure out

551 ALAN: But see I think it's really important to do what you said .. about saying how
552 much I .. I care about her .. cause I want her to know that .. and that may influence
553 her decision.

554 THERESA: I think that she'll hear that better coming from you .. directly so ... I
555 don't think you let me finish what I was saying so if we could .. if, if it can be
556 arranged so that I just introduce the idea and let her think about it I'm just kind of
557 introducing it neutrally I'm .. not against it .. but I don't want to pressure her .. either
558 .. at this point .. but .. and just say well you know your Dad's gonna call you .. and ...
559 we can talk about it .. and just let her mull it over .. and I think it's important for her
560 to hear how much you love her from you .. not necessarily from me I don't think it
561 will have the same meaning .. and if you're going to start building some .. contact
562 with her I think you need to tell her that directly.

563 GERALD: Is this news for you that you could talk .. to .. Rebecca directly and
564 calling Theresa's number?

565 ALAN: Well .. yeah .. I mean .. yeah.

At this point in the mediation a kind of negotiation begins to take place around the details of implementing the story of cooperation. It differs from a problem-solving conversation in that they are not brainstorming options in the abstract, so much as trying to concretise on the landscape of action a relational stance that has already been set up. The foundational work has been done and the negotiation is not around a settlement so much as around plans for further story development with the major themes already agreed upon. It is noticeable here that Theresa and Alan are now addressing each other rather than speaking through the mediator. They each contribute ideas about what they will do and will request the other to do. The positions being constructed in this exchange are different from those earlier in the mediation. Albeit somewhat tentatively, they are now positioning each other as partners in a joint enterprise. Rather than expressing competing entitlement claims in finalizing ways that exclude the other, they are now discussing each other's concerns in an inclusive, more dialogical manner.

566 GERALD: Uh huh .. OK .. um .. what's occurring to me is um .. that the distr- .. the
567 distrust is still around a little in terms of these ... beginning points of reconnection ..
568 I'm hearing you say that you'd really like Theresa to be very supportive of .. and
569 being encouraging of ..Rebecca to have some time with you and Theresa in an outing
570 of some kind in the first instance.

571 ALAN: And she could ..

572 GERALD: .. and that would be really important to you.

573 ALAN: Yeah .. and she could even say .. if she didn't want to say it the other way
574 she could say .. your Dad has a message that you wanted to pass from him .. a
575 message saying that he really wants, loves you ..

576 GERALD: Right.

577 ALAN: .. and he really wants to see you .. she doesn't have to vouch for me if she's
578 worried about that .. you know .. she could just deliver the message from me ..

579 GERALD: Right.

580 ALAN: .. it's just to let her know I .. you know that it's important to me.

581 GERALD: OK .. and I hear you (*turns to Theresa*) loud and clear about your concern
582 about .. a lot of what's going on in Becky's life and the stability issue and .. things
583 being fragile and needing to take things very very carefully ... and I also hear at the
584 same time an interest in you seeing Alan having a place in her life .. you've heard
585 Alan talk about how he would like you to be supportive of this conversation .. so that
586 he has some chance to make at least one meeting happen .. in the first .. in the first
587 instance .. What .. what are you wondering about as you hear Alan ask you to .. be
588 encouraging?

589 THERESA: I'm trying to think of a way that I can be genuine with her because that
590 is our relationship ..

591 GERALD: Mhmm.

592 THERESA: .. and I think that I can say .. well Becky you know I spoke to your Dad
593 today and he wants us to go to the park on Saturday .. and I think it's a good idea ..
594 but I want you to talk to him about it and he's gonna call you later .. so because I still
595 .. I don't want to be the one to convey your feelings to her .. because .. if you
596 disappoint her then I lied to her .. and so I think it's important for you to talk to her

597 directly about your feelings and what you want .. in terms of a relationship with her ..
598 I would like to witness it but I don't want to be .. the go-between between the two of
599 you in that way .. I can support it by saying I think it's a good idea .. because in
600 saying that I think I'm not .. pressuring her .. I'm still allowing her to make choices
601 because she's at that age where I encourage her .. to think through making decisions
602 and .. and to be sensitive to her own feelings .. and to be genuine with me about that
603 and if I give her whole song and dance or a spiel I'm gonna, I'll be pressuring her to
604 do a particular thing and I want to her to be honest with me .. if she doesn't want to
605 do it or if she doesn't feel this is the right time .. I want to leave to leave room for her
606 to be able to say that to me.

607 ALAN: And I .. and I understand that .. I mean I wouldn't want you to pressure her I
608 think what you said before was fine .. just to say that you .. you .. Dad wants to get
609 together and you think it's a good idea, just like a couple of sentences is fine .. and
610 then I .. I would be happy to tell her how much I love her when I see her and I don't
611 expect you to be the go-between .. I'm just talking about the initial set-up so that at
612 least there's a fighting chance that I'll get a chance to see her .. that's all.

613 THERESA: Yeah .. I don't think I've done anything to discourage you having an
614 interaction with your daughter .. and I'm not gonna start at this point .. I just .. I just
615 wanna see that we're doing it in a way that's respectful .. of her and that's considerate
616 of who she is .. and what she's used to and what's comfortable for her.

Gerald begins this exchange with an externalisation of distrust (566) that sets it apart from Theresa and Alan. Rather than describing it as an internal feeling state, it is nominalised and objectified. In the process, he positions them as committed to 'reconnection' and posits 'distrust' as a discursive restraint upon their joint purpose. This contrasts with an approach that would construct the distrust as a problem to be overcome in some way, or as intertwined with some identity project. Putting things this way round constructs the 'distrust' as diminished in size in comparison with the parties' intentions and desires and invites them to disidentify with it and to identify further with the 'reconnection'. As they both respond to this position call, they take up such positions and speak them further into existence.

After setting up the discursive context in this way, Gerald offers some acknowledgement and understanding of concerns that each party has in relation to the process of reconnection. For Alan, it is the issue of how Theresa sets up his conversation with Rebecca. For Theresa it is about Rebecca's fragility being respected and finding a way to convey to her what needs to be said without speaking too much on Alan's behalf. The issues that are being discussed are things like 'pressure' versus 'free choice'; being 'supportive' versus being 'undermining'; carrying a 'message' versus 'vouching for' that message; being genuine and honest versus being dishonest. Alan makes a plea for Theresa to speak to Rebecca in support of reconnection with Alan. Theresa takes up this invitation and explores in some detail how she can do this in ways that do not compromise her integrity and which do not cause distress to Rebecca. The negotiation is in considerable detail and is finely nuanced but it is also done in a spirit of cooperation. The position calls they offer each other are not being refused as frequently as they were earlier in the conversation.

617 GERALD: So what are the next steps?

618 THERESA: I guess ... looking at our schedules and .. setting a time .. a
619 tentative time .. assuming that Becky goes along with it and .. then for me to talk to
620 her and make arrangements when you'll call .. after I've talked to her.

621 ALAN: Sounds good .. we could go to the beach .. it's supposed to be really nice this
622 weekend ... I can ... get some boogie boards and .. you know get there early to get a
623 nice space and everything.

624 THERESA: OK we'd have to do that on Sunday because she has gymnastics on
625 Saturday.

626 ALAN: That's fine.

627 GERALD: I hear you both starting to .. talk with one another about planning this
628 meeting and I'm also aware that when we began this meeting .. that .. what was on the
629 table was more around the primary caregiving arrangements and I'm wondering ..
630 whether .. the two of you in the spirit that you've presented today will look at .. the
631 situation one step at a time and looking at the chance of having a week- .. a weekend

632 experience for a couple of hours whatever we decide .. and that .. we meet together
633 again to .. talk through the nature of ongoing .. an ongoing caregiving relationship
634 and how that .. how that looks .. while recognising right now that you're really clear
635 about .. wanting to continue to be the primary caregiver .. and recognising that you
636 came here today wanting to have at least a significant equal share in the parenting and
637 I just want to honour both of your intentions as you came to the meeting but also
638 recognising your willingness to take a step to having you connect, Alan, ... with
639 Rebecca and you being open to .. in a very gradual and careful way .. seeing how
640 that's going to look and how that will work ... what are your thoughts about you
641 deciding to sort out the specific details about this first meeting and then we return to
642 have another meeting ... to talk more about the nature of ongoing arrangements?
643 ALAN: You know as you were saying that I was thinking it's been four years since I
644 really had the opportunity to see her and so you know .. a few weeks or months
645 transition is not gonna .. it's not gonna be that big a deal and so I think it's .. I'm fine
646 with going slow .. I don't wanna cause disruption for Rebecca and I realise that you
647 have .. a lot of history together and ... and I frankly from what you've said today I feel
648 like I could learn from you .. learn from what you've done with her .. so maybe we
649 could .. you know when I spend time with .. you know if that works out with Rebecca
650 .. then we'll both feel differently about how to proceed in the future coming back to
651 map out more specifics.

652 THERESA: Yeah .. in the back of my mind though I still have the concern that
653 eventually you're going to try and take her away from me .. I still have that.

654 ALAN: ... I have no desire to take her away from you .. again I recognise that you
655 guys have been very close .. and any third party is gonna be unfamiliar .. but .. you
656 know .. I .. I guess I would hope that in the coming weeks and months you'll see what
657 kind of provider I can actually be and that I'm not out to push you aside .. maybe ..
658 maybe I could show that .. prove that to you .. and you won't feel that way .. that
659 would be my hope.

660 THERESA: We'll see.

661 GERALD: We'll see .. so can we make another appointment to .. discuss the
662 caregiving arrangements, caregiving plan for Becky and ... we'll schedule that for
663 our next meeting
664 ALAN: Sounds good.
665 THERESA: OK.
666 GERALD: Thank you both.

In the final segment of the conversation the details of time and place for the agreed upon reconnection meeting are begun to be sorted out. Since the relational context for these has been carefully established, it does not appear to be difficult to achieve this. Gerald comments in his reflections on the transcript:

It feels like we have come to a point where these two might enter into a problem-solving sorting out stage and can maybe do it without my help and with goodwill. Attending to the relationship in a full way throughout the mediation so far has brought us to the point that can begin to take ownership of the process of sorting things out.

Gerald has another concern though and that is to locate the small agreement that has been established in the wider context again. The larger picture of caregiving for Rebecca is still not settled. This needs to be acknowledged. Gerald seeks to contextualise this particular conversation in relation to this bigger picture and invites Alan and Theresa to join him in this meaning. He uses words like 'one step at a time', 'take a step', 'very gradual and careful way', 'see how that's going to look' and 'talk more' to emphasize the partial nature of this conversation and to appeal for time for the progress made to be embedded. It amounts to an appeal not to finalise the conversation but to keep it open.

I was feeling really good about the progress made... However this was early days. It was a very fragile connection that may be tested over the next few weeks. I would

track the story of connection and cooperation in future sessions ... and would want to meet with Rebecca at some point.

He avoids finalising language like 'custody' and speaks in language which suggests ongoing dialogue about the care of Rebecca: viz 'ongoing caregiving relationships' (629); 'the nature of ongoing arrangements'; 'the caregiving plan' (663). The number of present continuous tense verbs and noun gerunds he uses is striking in this utterance. The discursive message seems to amount to something like, 'Get used to the idea that this is going to be a continuing conversation.' In his reflections he comments:

Neither Alan nor Theresa choose to refuse this position call. Alan speaks about moving slowly and about a period of transition to some new relational position. He hints at how he has learned from this conversation about the importance of this slow transition. Theresa agrees and refers to a concern in the 'back of her mind' that Alan will try to force the issue and 'take' Rebecca from her. What she is implying to be in the 'front' of her mind, however, is her accordance with the idea of taking things slowly and not rushing to any finalised position.

CHAPTER EIGHT

Discourse Analysis Of Narrative Mediation (continued)

In the previous chapter, I have worked through a piece of text, produced from a role-played mediation, analysing the text as a sequence of utterances. My focus was in close at the detail of positioning in conversation. In this chapter, I want to pan back and bring the background discursive picture more into view. My aim is to develop the analysis to make links between the general orders of discourse at work and the particular subjective experience being produced; to specify the positions calls being offered and either taken up or refused; to tease out the places where there are contests over meaning taking place; and to show the mediator's work and its discursive effects.

In the course of doing this, I wish to lay further claim for the usefulness of discourse theory in general, and positioning theory in particular, to the practice of mediation. My focus is on the moment-by-moment effects of utterances, described as the offering and taking up of position calls against a background of more general orders of discourse. As participants in mediation conversations issue, take up or refuse the discursive positions available in a particular context, they take on identity projects, negotiate relations, privilege some meanings over others, and work through the task of 'knowing how to go on' in a conflict situation.

Background orders of discourse

Chouliaraki and Fairclough (1999) recommend that discourse analysis should proceed by first drawing a 'charcoal sketch' of the orders of discourse as a 'backdrop for more detailed analysis of discursive practices' (p.115). In the foreground of the conversation between Gerald, Theresa and Alan, a discussion is taking place about the care of a young girl. However, it is not taking place simply in terms decided upon and chosen by the participants. In the background lies a discursive world against which the exchanges in the foreground make sense. While discourse always has its local and particular aspects, we can expect the background orders of discourse to be evident in the expressions available for participants to use in the construction of their utterances. People live in discursive

communities and draw on these communities for the 'sense of oughtness' (Linehan & McCarthy, 2000) that guides their expectations of what is normal. If life is more than just a concatenation of events, we need to make meaning of things that happen. To do this requires us to draw upon fields of meaning that we share with others. In the discursive formations that constitute the background to our use of discourse will also lie the hegemonic arrangements that punctuate the possibilities and limitations of life. In some sense, we can expect a conversation such as this to reproduce elements of such hegemony. But we need also to look for ways in which the outcome is not fixed by hegemonic patterns from the social world around these people. This is a significant conversation that may well be pivotal for future family relations. The participants are forging their relations within a struggle to articulate competing perspectives. They are making up these relations in a conjuncture that lies between public and private worlds, or between systems and lifeworld in Habermas's (1987) terms. My aim in this chapter is to articulate my reading of the struggles for positioning that are taking place in relation to the background orders of discourse. Mine is not the only possible reading of the data. It can only be a provisional reading. However, it is the one that, I believe, coheres best with the theoretical arguments I have been mounting in this dissertation.

In this mediation conversation, there appear to me five background discourses that deserve to be highlighted because of their strong influence over the discursive positions available from which to speak here. These are: a legal discourse, a discourse of the family, a discourse about gender relations, an individual psychology discourse and a discourse about race and ethnicity. I shall examine the constitutive effects of each of these in turn in the construction of this mediation conversation.

Legal discourse

Through the institutions and processes of family law, the modern state exercises control over the private world of the family. This is achieved at times through the use of sovereign power (such as through the enforcement by the police of court orders, if necessary with physical force) but more commonly through the disciplinary powers of the courts. In the family courts, norms are laid down, against which behaviour of family members is assessed and in line with

which decisions are made about the care of children. These discursive norms extend well beyond the domain of court hearings, however. They shape the advice given by lawyers and can be expected to shape the practices of mediation as well. This mediation clearly takes place against the backdrop of family law. Alan speaks of having consulted his lawyer. Theresa may have as well. Many of the terms that crop up in this conversation have legal connotations: terms such as custody, proceedings, rights, caregiver.

Traditionally under the law, children were defined as chattels owned by parents (originally fathers and later mothers as well). One lawyer articulates this discursive formation in the following way:

The language of custody and access creates notions of 'ownership', 'winning' and 'losing'. It gives the perception that the parent who gains custody has 'won' the child as a prize at the end of a battle with the parent who has access being able to 'borrow' the child on an occasional basis.

(Dodds, 2002, p. 9)

The spectre of a possible custody order hangs over this conversation, steering the participants away from certain possible utterances and towards others. However, the discourse of legal ownership, while it still exerts a hegemonic pull, has been modified considerably in the climate of liberal humanistic discourse about the family. The existence of family mediation at all owes its existence to such modifications. In mediation (reflecting late modern legal discourse), family members, even children, are constructed as individual democratic citizens with rights and with a voice in legal proceedings. This is not to say that such rights are always equal in weight. Equality is always constrained by the pull of many other discursive influences. Norms are also laid down about the care of children that exert influence over what can be expected here of a father and of a grandmother. With the death of this child's mother, there is a genuine legal dilemma between the claims of an estranged father who has biologically based claims of entitlement and a grandmother who has claims based on a history of care and daily involvement. The conversation, in part, amounts to an attempt to articulate a resolution of the opposition between the discourse of legal ownership of children

and more recently developed challenges to this discourse based on democratic notions of children's relational and emotional needs.

Discourse of the family

There are many assumptions built upon in this conversation that are drawn from conventional discourse about family. Not just in law but in many other cultural sites, family norms are laid down and expectations formed. Families should have two parents, a father and a mother. Traditionally at least, fathers should be the breadwinning head of the household and mothers should provide for the emotional and physical care of children. Although these norms have been hugely modified in the course of the last fifty years they persist in various ways and are interpellated in this conversation in a series of places. The word 'provider' is used to refer to Alan on two occasions (*lines 402 & 658*). The role of Theresa as mother-in-law is referred to as 'interfering' (*line 390*). Good parenting is referenced in relation to participation in schooling, attending parent-teacher conferences, taking children to out of school activities (for example, gymnastics), providing physical affection, not arguing in front of children, continuous involvement in children's lives. This picture can all be complicated or disrupted by divorce and death, as in this example.

Within the discourse of the family, a marriage partner who has a sexual relationship with someone outside of the marriage is spoken of as having an 'affair'. Alan has done this in this scenario and as a result he appears to have forfeited a position of privilege within the family. He is no longer considered a 'good' father, and his involvement with his daughter has been actively blocked.

Within this family discourse, certain norms for a mother's behaviour are referenced. Mothers should stay committed to their primary domestic duties, be 'available' to their husbands, fight for their offspring against any threat to remove them and be responsible for the stability of the family. But they should not hold the 'apron strings' that attach them to their children too tightly. Fathers, as well as being providers, are expected to be involved with their children's lives, act as role models for children's development, express affection within specified limits, be sexually faithful and, following divorce, see their children in weekend access visits. Against these standards, Alan is judged as falling short and Genna is described in terms that make her less than committed to her designated role.

Theresa, in this conversation, has stepped into the mother position on her daughter's behalf but, as grandmother, her role is somewhat ambiguous following her daughter's death. Nevertheless, the only critical judgment that is raised against her relates to 'holding apron strings too tightly.'

Such discursive themes can be traced back in the history of the family for some distance. However, the existence of an African-American cultural tradition in the background of this conversation also needs to be taken into account. There are accounts of the discourse of family in African-American culture that differ from the dominant white assumptions that have been built into legal discourse. In particular, the tradition of 'othermothering' taken up by grandparents, aunts, sisters or friends is much more legitimate within African-American discourse of the family (Hill Collins, 1991). Within this cultural tradition, 'othermothers', like Theresa, would have legitimate claims of entitlement that do not pertain within dominant legal discourse. We might consider such claims to be built on a subjugated discursive knowledge. As Theresa positions herself as a legitimate caregiver within this knowledge, she also challenges Alan and Gerald to accept and legitimate such a claim in this conversation. This is tantamount to a position call into a place of resistance in relation to the dominant discourse of family, based on the assertion of a minority cultural tradition.

It is also important to pay attention to recent subtle developments in mainstream modernist discourse of the family. Chouliaraki and Fairclough (1999), (in part citing Giddens, 1994), refer to the trend in (what they call) 'late modern society' for a reflexive approach to the construction of personal identity projects that are constantly being revised. One feature of this, they suggest, is that relationships with intimates (lovers, friends, children) are:

.. shaped less and less by traditional norms, and increasingly take on the character of 'pure relationships' which are to do with the rewards that those involved can gain from them. Such relationships depend on reflexive control, and democratic principles which have hitherto had force in different social domains come to be seen as having force within these relationships. In particular they come to be regulated through democratic dialogue, and the problem of 'dialogical democracy' comes to be a central political concern which transcends the traditional division between the public and private spheres.

These trends can be seen in this conversation. The willingness of both parties to participate in the democratic process of mediation rather than to battle this issue out in court is itself evidence of the trend. The entitlement claims that each of them put forward are founded in large part on the basis of quality of relationship with Rebecca, rather than on other possible claims based on biology or social role. Alan even claims that his 'heart is pure' (528) at one point. Moreover, Theresa makes it clear that she will give Rebecca considerable democratic say in whether or not she will meet with her father. The arrangement for Rebecca to meet Alan is intended as the basis making further decisions about the development of their relationship based on interpretation of experience rather than on fixed social roles or biological rights.

Once again, we have a dominant background discourse and a social world in which there exist many departures from and modifications of its influence. The struggle is again one in which the hegemonic arrangements are constantly in process of revision in one direction or another. This conversation is one local site where such hegemonic arrangements are in process of being shaped. The three participants are seeking to articulate the particulars of how this hegemonic contest will be settled (temporarily at best) for Rebecca's ongoing care.

Gender discourse

At times, the family discourse is hard to separate from gender discourse, which is not surprising since the family is a major institutional site for the playing out of gender discourse. But not all aspects of relations between men and women are inscribed in the discursive practices of the family. It can well be productive to look at how a wider view of gender discourse impacts on the family. The question is to do with which of these two lenses will be placed in front of the other. There is a danger in subsuming any discourse under another one because placing one lens in front of the other always runs the risk of making particular forms of power relations invisible and silencing voices on the margins.

In the ways that the parties in this conversation speak, a number of gendered assumptions become implicated in the exchange of discourse between the participants. I am not suggesting that anyone in this conversation is

intentionally exploiting gendered power relations to their own advantage (although this can and does happen). However, the general discourse of gender can readily become implicated under our very noses in reproducing such power relations, even when we do not intend it to do so. Some of the assumptions embedded in this conversation (although not necessarily shared by the participants as personal attitudes) can be summarised in the following propositions:

1. That men are the primary financial providers in households (402 & 658).
2. That women are better suited to be emotional caregivers (for example: ... *'I don't think that he's equipped to deal with a child'*, line 253).
3. That father's have 'rights' over their children (*'... I just want what's .. what .. what rightfully is a father's right to be part of his daughter's life, line 196*).
4. That children are tied (loosely or tightly) to a woman's 'apron strings' (lines 353 & 510).
5. That women 'naturally' know better how to parent little girls (line 253).
That men deal with matters 'logically' and 'reasonably' (*'I tried to ... to talk to Genna reasonably'*, line 143) and women are more 'emotional' and more likely to become 'hysterical' (*'... she would yell and become hysterical and scream at me and ... it just became too difficult,' line 153*).
6. That children need men to be 'male role models' while the role of women is taken for granted without being theorised in such a way (line 403).

There are also places where some of these assumptions are contradicted in this conversation as well. It would be a distortion to suggest that these assumptions reign unchallenged or even that they are always dominant in any specific relational context, just because they continue to dominate in general public discourse. We can find examples of Alan taking up childrearing tasks that fit with the discursive descriptions of a woman's role in a family. We find Theresa prepared to look after Rebecca without Alan's presence as a role model. We find all three parties discussing Alan's ability to be emotionally close to his daughter. We find openness to a parenting relationship that is defined along different lines than gendered role division.

The question in an analysis of a mediation conversation is not just about the presence or absence of either assumptions that reproduce dominant discourse (they cannot so easily be eliminated from our interpretive repertoires) or of efforts

to contradict such dominant discourse (contradictions cannot so easily become the norm). The question is about which agenda gets advanced in the course of the conversation. Therefore, it is necessary to trace the trajectory of both dominant discourse and its contradiction through the course of a conversation and to determine which has gained ground along the way. In this regard, it can be argued that, by the end of this conversation, more space has been opened for Theresa's voice. Her knowledge of Rebecca's developmental needs has been heard by Alan and her caregiving role has been validated. It can also be argued that more space has been opened for Alan's fathering to be based less along rigid gender role specifications than was the case at the start of the conversation. Nothing is, of course, finalised in this hour. But then again, nothing ever really is finalised in the contests over discourse. Hegemonic struggles go on and on. The ground shifts continually and dominant discourses, at times, reassert themselves and, at other times, people position themselves in places of resistance to dominant discourse.

Liberal-humanistic psychology

It is worth spotlighting the psychological assumptions that lie in the background of this conversation as well. They are drawn from the dominant psychological knowledge with reference to which individual subjectivity is constructed in the modern world. Without this psychological discourse, many of the statements made by the participants in this conversation would not make sense. One way to notice this is to imagine oneself in another time or place where such statements could not be heard. In this way, we can understand how psychological knowledge has impregnated general discourse to the extent that we take it for granted and seldom question its validity. Let us look at some examples of this.

There is a general assumption of individual psychological needs that underlies much of the talk about Rebecca's life. A notion of emotional stability and the importance of particular kinds of emotional nurturing (for example expressed in 'cuddles', *line 110*) is stressed in ways that would not have been common before the development of modern psychology.

The notion of childhood trauma having lifelong determining effects on a person's life underlies much of the discussion about the care needed to avoid

disruption for Rebecca, as it does in the assumptions of special vulnerability in the aftermath of grief. It would not have been likely that parents and caregivers in the process of settling custody issues would have considered the psychological effects of trauma before the twentieth century impact of modern psychology.

Within the development of family discourse about democratic relationships, there is a corresponding need for the construction of a reflexive individual subjectivity to take part in such relations. So we have a discussion about Rebecca in ways that constitute her as a speaking subject, even at seven years old, with the ability to reflect on her own experience and to have an influential say in the decisions about how and when her father and grandmother will interact with her. Being able to verbalize one's feelings is a key skill for participation in this discursive world. Both Alan and Theresa are concerned to see that she develops and exercises this skill.

Another feature of modern psychology has been the development of elaborate taxonomies of pathology for the description of psychological problems and, ostensibly at least, to enable their 'treatment'. In this way, psychological knowledge has modelled itself on medical knowledge and carved out a position of social influence for itself. In this conversation, there is no actual mention of the 'deficit discourse' (Gergen, 1994) of psychological pathology, but its presence can be felt as a spectre in the background of some of the concerns about Rebecca's development. There is an expression of concern about the 'turmoil' (*line 321*) that Rebecca has been going through and a desire not to increase this through making further 'disruptive' psychological waves in her life.

Race discourse

Finally, in this section, it is necessary to mention the presence of culture and race and the general discursive conditions that shape experience of this in the mediation. Racial or cultural issues are not featured overtly in more than a couple of exchanges in this conversation. However, their presence should not be ignored. Often background discourses can have powerful effects.

Theresa is African-American and Alan is white or Anglo. They are talking about the care of a child who comes from a bi-racial marriage. Rebecca is therefore categorised as a 'bi-racial' child. Theresa speaks in the text of the special knowledge needed to care for African hair and makes a part of her claim

of entitlement on this basis (*line 254*). Since hair care itself can be learned presumably without huge difficulty this could appear to be a small insignificant point. However, as a window to a whole world of understanding about the effects of pervasive racist discourse on personal development, this statement assumes greater import.

Although Rebecca has one white and one black parent, no doubt it will be her black skin that will be marked in a post-colonial world as more defining of who she can be than her white heritage. Theresa hints at this and alludes to the special coaching that she can offer along the way in how to deal with the racism that she will likely encounter in life. It is noticeable that Alan does not dispute this claim and indeed Craig (who roleplayed Alan) was to say after the mediation:

Craig: I think part of where I was at is .. I wanted a voice but I'm a little afraid of just how capable .. you know, how am I going to do her hair .. I didn't have an answer for those things.

Jackie: I know. (continues - inaudible)

John (overlapping) : That was telling when she said that? (..)

Craig: Yeah .. (..)

Craig: .. with the hair and stuff .. you know it's tricky cause I .. I .. you know in an adversarial process I can't give away too much and still claim .. but I did feel the legitimacy of that and I felt my own .. fears about how capable could I be and that's why I said at the end that I think I could learn from her ..

These comments suggest that the brief, somewhat oblique, mention of the spectre of racism did play a significant part in the production of the ongoing relations in the mediation. Without the background orders of discourse that specify the dominant patterns of racial and cultural relations, the exchange between Theresa and Alan which Jackie and Craig are referring to here would not make sense. Theresa's raising of this subject (somewhat tactfully, it might be said) positions Alan as needing to declare his opposition to racism in some way. He moves to make more room for Theresa's ongoing involvement in Rebecca's life as a result. Moreover, Theresa is aware of the leverage she has in raising this issue. Jackie's (who played Theresa) comment, 'I know,' in the above exchange was expanded in the following way:

John: Did you .. did you know that .. that he was doing that .. that he was experiencing that at that point .. that fear and .. ?

Jackie: That he didn't have an answer for me?

John: Right .. you knew that?

Jackie: I knew I got him there huh (..) I know that's an issue with bi-racial children..

I would therefore argue that a counter-story to the one that racism would author for Rebecca's life is being produced in the dialogue between Alan and Theresa. Theresa takes a lead in this production and Alan is willing to join with her. In the need for such a story to be made explicit and consciously worked at, however, lies the continued power of racist discourse and its attendant material effects on life opportunity.

Positioning And Positions Calls

In the course of this conversation, both parties to the mediation seek to establish reflexive positions for themselves in relation to the above discourses. They also call each other into position or interpellate (Althusser, 1971) each other into the discourses that wash their way across the landscape of this conversation. Let us focus on the discursive positions that each of the parties take up and offer each other early in the conversation and then look to see how these positions change as the conversation develops. If such movement does take place, it is reasonable to assume that the dialogue is having an effect and that a judgment about effectiveness can be made.

Since mediation is intended to serve a conflict resolution purpose, the most salient positioning moves will be in relation to the subject of the conflict. As I have theorised above, in conflict situations people are concerned to establish for themselves positions of entitlement and, frequently, to discredit the entitlements of the other party. Often, too, they seek to finalise the conversation on the basis of their own sense of entitlement without taking into account the sense of entitlement of the other. So how does this happen in this conversation?

Theresa begins by positioning herself as Rebecca's current and most appropriate caregiver. She establishes a history to this function that precedes Genna's death and goes back to the time of Alan and Genna's separation. It is

founded in her intimate knowledge of Rebecca's daily life, her consistent availability for her granddaughter, her link to her through her deceased daughter, her cultural knowledge and her relationship with Rebecca which features emotional closeness. She claims to be a 'major figure' in Rebecca's life. Standing on this ground, she makes comparisons with Alan. She offers Alan a position of something close to exclusion on the basis of his record of 'distance' from his daughter, his failure to fight harder for his daughter against Genna's restrictions of his access to her, and his being 'the one who had the affair'. As she establishes herself as the representative of stability, familiarity and continuity in Rebecca's life, she positions Alan as disruptive. His disruptions, moreover, are on the basis of sudden unpredictable and, therefore, untrustworthy moves. They are overdue and 'late' and therefore not legitimate. In relation to the race discourse, she claims the position of having privileged knowledge and positions Alan as not knowing and, therefore, less entitled to be Rebecca's caregiver.

In response to his beginning of 'these proceedings,' she is a willing participant. She indicates a readiness to contest strongly any suggestion of Alan making a legal custody move. But she is also careful to participate in dialogue. In the context of the workings of the modern family court, it is important to present as reasonable and not hostile and, no doubt, she is aware of this. So she positions Alan as someone to be responded to and dialogued with. She recognises him as a father wanting a relationship with his daughter.

Alan begins by adopting a position of reasonableness in this conversation. Craig makes this explicit in talking about how he played the role after the mediation:

Craig: .. you know .. I was into reasonableness.

The position from which he seeks to claim entitlement is that of concerned, reasonable parent. The flipside of this reflexive positioning is the implicit position call for Theresa. If she objects to his claims too strongly, she will be positioned as unreasonable. Alan does not stand on a rights discourse very much, despite occasional inserted comments that indicate his awareness of the potential of this legal discourse. Throughout the whole conversation, he does not make a claim for custody of Rebecca and generally avoids speaking in a legal discourse. In these choices, he avoids positioning Theresa as adversary in a legal battle,

although the background institutional power can still be felt. Jackie commented on this after the roleplay.

Jackie: I was surprised because at no point did you talk about custody .. or taking her .. you know I kind of thought that was where you were going to come in from .. that was my expectation..

John (overlapping): You were ready for that.

Jackie: Yeah .. and then I probably would have taken a hard stance.

In relation to Rebecca, Alan stakes a claim based on emotional closeness in the past. He positions himself as somewhat aggrieved, because he has been kept away from his daughter by Genna. In his story, Genna is placed in the position of persecutor and he is the victim (*line 151ff.*). As already indicated this is a risky strategy since ‘speaking ill of the dead’ can provoke Theresa to her dead daughter’s defence and make her more hostile to Alan’s cause, but he tries to manage this possibility by acknowledging Theresa in various ways as: not getting in the way of his relationship with Rebecca (*line 346*); as a good caregiver for Rebecca; as a possible ‘co-parent’ (*line 352*); as having important cultural knowledge that he does not have (*line 349*). He does not want to come across as ‘pressuring’ (*line 603*). He explicitly says at the outset that he does not want to ‘exclude’ Theresa (*line 23*), or to ‘shock Rebecca and cause a stir’ (*line 534*). The main critique Alan has of Theresa is that she is holding the ‘apron strings’ too tightly and he is concerned that she will use her influence with Rebecca to undermine the possibility of his relationship with Rebecca.

By the end of the conversation, it is clear that some subtle shifts in position have opened up. Theresa has moved to a place of willingness to involve Alan in joint activities with Rebecca, with a clear view to ongoing relationship being made possible. Alan has conceded that his custody move is not really in Rebecca’s best interests and is willing to take things slowly and work with Theresa to build relationship with his daughter. Both have stepped back from places of opposition to each other’s entitlement claims. Theresa has dropped the positioning of Alan as not deserving contact with Rebecca because of his affair and his lack of regular contact with Rebecca for some time. She acknowledges that Alan has things to offer his daughter from a different racial and cultural perspective from what she can offer. She acknowledges him as a father who loves

his daughter and as making desirable moves to correct the distance that has dominated his relationship with her and states her willingness to encourage Rebecca to respond to this. Alan has dropped his accusation of tight apron strings and his concern that Theresa might undermine his relationship with Rebecca has eased. He expresses a willingness to learn from Theresa, positioning her as an experienced teacher whose knowledge he respects.

What has opened up is a cautious mutual positioning as partners in a joint enterprise. At the moment, this enterprise is the limited one of setting up a weekend outing, but the promise is there that this will build into an ongoing sharing of the caring for Rebecca. They begin to speak directly to each other, rather than through the mediator. In this exchange, an enriched dialogue begins to take shape in which they negotiate details about how to organise the outing. Each positions the other as a dialogical partner worthy of engagement and having something worthwhile to say.

In relation to the dominant discourses referred to above, how then do the two parties fare in terms of the possibility of agency? Clearly they have withstood the pressure of legal discourse to subject each other to notions of ownership of children. They have not even discussed 'custody' and yet have begun to form some important aspects of a shared arrangement for the care of Rebecca. To do so, they have had to consciously stand apart from the dominant story of family. The positions they are offering each other in the latter part of the interview do not seem to fit with suggestions of 'interfering grandmother' or 'unfit father'.

With regard to gender, I would argue that, by the end of the interview, Alan has recognised a greater degree of legitimacy for Theresa's position than he was doing for Genna's at the start. He may be said to have learned something from her, rather than simply assimilated her wishes into a compromise arrangement. The arrangements discussed recognise both parties' relational claims for participation in Rebecca's life, but entitlement claims based on legal discourses of ownership have not been privileged in the choices made, either by the mediator or by the disputing parties, despite the existence of these in the available repertoires. Nor has anyone used the discourse of race to make exclusive claims either. Theresa has used it to claim specific knowledge that will be of advantage to Rebecca, but she has clearly also recognised that Alan also has special knowledge that will be of use to her.

The Mediator's Moves To Invite Re-Positioning

It is clear from the previous section that some discursive re-positioning has occurred during the conversation. The mediation conversation, then, has had an effect. And an analysis of positioning enables the development of a precise account of the shifts that have been made. On this basis, this study makes a claim to demonstrate the value of positioning theory to the understanding of mediation effectiveness from a microanalytical perspective.

What remains to be established is the mediator's contribution to this process. In this section, I want to examine the social practice of mediation, as it is articulated by Gerald, in this conversation. I have outlined above in theory the conceptual rationale for a narrative mediation practice. Let us now look at how this has been realised in this conversation. In particular, I am interested in illuminating the discursive strategies Gerald is employing – the lexical choices, grammatical shaping, content selection for emphasis and the positions he adopts himself in relation to the disputing parties, as well as the positions he invites them into in the course of the conversation.

Before examining these discursive strategies, it is worth noting that Gerald himself considers this conversation to be a good representation of his work as a mediator. In his reflections on the transcript of this conversation, he noted:

I felt really pleased with how I conducted the mediation... and I would have done much the same if I had the time over, except for perhaps deconstructing their understandings of conflict more..

Working assumptions

It is clear in the first utterance he makes that Gerald is taking a position in relation to the general legal discourse with regard to the custody of children. He does not echo the words of this discourse and instead frames the focus of the conversation as on 'caregiving arrangements' for Rebecca. This positioning is maintained throughout, and he makes deliberate efforts to select out for attention discourse that supports this purpose and to pass over expressions that would take the conversation into a discourse of rights and legal ownership. In this sense, he is not adopting a neutral stance with regard to content. He does mark out a

position in relation to the general orders of discourse. Within this general position, however, he does not favour one party over the other. With regard to their desires and intentions, he is neutral in the sense that he is evenhanded in his attention and appears to offer roughly equal encouragement to both to take up the positions of openness with regard to possible futures for Rebecca's sake.

The language Gerald chooses avoids the categorising and objectifying language that is common in custody issues. He does not use the word 'custody' itself, preferring to speak of caregiving arrangements. Words like 'access', 'visitation' and 'primary custodial parent', which are part of the hegemonic discourse of parenting after divorce and carry traces of legal conversation are also bypassed. He uses personal names in preference to descriptions such as 'your ex-wife'. He makes efforts to use inclusive expressions like 'caregiver' rather than 'parent' in order to avoid rendering Theresa's role in Rebecca's life invisible and thus privileging Alan's position as a biological parent. In all of these ways, he is taking the position of favouring an outcome in which both Alan and Theresa play a part in Rebecca's life without specifying how this might be articulated in detail. In effect, then, Gerald's use of language and his discursive strategies in this conversation amount to a participation in a larger project of 'rearticulation' (Chouliaraki & Fairclough, 1999; Laclau & Mouffe, 2001) of the practice of making decisions about the care of children.

Gerald noticed his own positions as he read the transcript of this conversation and commented on this:

It occurs to me that my own biases are coming through of wanting Rebecca to have a chance to reacquaint herself with her father. I guess I am believing at this point that by the way Alan is presenting in this session he may have a positive presence in her life. The direction I am taking is definitely one of supporting Alan to make a connection with his daughter. Here I am immersed in a discourse of wanting children to have mothers and fathers in their lives if they are not going to be harmful. Of course I have no idea at this point whether Alan could be harmful or not and neither does Theresa. I am also positioned in a discourse of supporting testing out how this relationship will unfold with the father and the need for it to go gently. I was struck by what I would term Theresa's wisdom of taking things a step at a time and re-evaluating how it went later. I was supporting this step at this stage in both direct and indirect ways.

Several points are worth pausing to notice here. One is that Gerald is carefully maintaining openness about the outcome as well as making transparent his working assumptions. Despite the fact that he seems to favour Alan achieving at least some of what he wants from the mediation, he also hears and values Theresa's wisdom and supports the idea of taking things slowly. Is this experienced by the parties as bias? Let me include some comments that they made immediately after the conversation was finished. Craig, who played Alan made this (edited) comment:

Craig: I think ... that there was a key .. junction .. when Gerald was underlining .. her having said positive things about me as a father ... that made me feel number one that he was really hearing me and he was a conduit between me and this other person I need to work with you see my way of thinking was that he was enthusiastically being my advocate at that one moment I felt supported.

He also makes it clear that this was not a general feeling about the whole mediation:

I didn't feel like he was my advocate throughout the whole process in terms of being biased or anything like that but that one moment I felt like I needed a little .. connection .. connective tissue to get the .. to you know get the point across..

I asked Jackie about this. Gerald's work may have been problematic at this point if it was experienced by her as two men joining forces against her.

John: OK .. did you feel like he was .. Alan's advocate?

Jackie: No .. no I felt like he was asking me whether .. whether that was something I felt comfortable doing so I mean I heard him .. I just heard him paraphrasing what I thought you (indicating Alan) had already said .. so I didn't hear it .. hear it as him advocating .. I heard it as paraphrasing ...

Focusing On The Relational Context From The Start

At the start of this conversation, Gerald does not do what we might expect in a problem-solving mediation. He does not identify the problem. Instead, he seeks to establish the hopes of each party from this conversation. This is not a request for Alan and Theresa to express their 'side' of the story or to announce their goals so that he can work towards identifying their underlying interests. The hopes he asks for are relational and inclusive of both parties' goals right from the start. Individual self-interest is not privileged ahead of relationship. It is clear at the outset, and all the way through, that Gerald is seeking to privilege a dialogical and positive story of relationship, one in which he makes the assumption that not all the possibilities have yet been explored. He commented in his reflections on the transcript:

I was thinking that narrative approaches to mediation invite me to be consistently attentive to the relationship between the parties rather than being focussed on solving the substantive issues and seeing the relationship as peripheral.

The emphasis on creating a relational context in which shifts in position can easily be made contrasts with an emphasis on negotiating a substantive resolution as a basis for improved relationship. It emphasises relationship as an evolving narrative that has a history, a present and a future and makes possible a consideration of how power becomes manifest in the evolution of a relation.

Use Of Empathetic Acknowledgment And Curiosity

Two types of utterance dominate Gerald's contributions to the conversation. One is repeated acknowledgement of the core content of the parties' utterances. He is careful to take time to give this acknowledgement in detail and to assure both Alan and Theresa in turn that he has heard their concerns. Professional acknowledgement can be considered to serve a legitimating function. Gerald uses professional authority to make legitimate each party's perspectives in front of the other party. Such acknowledgements are used as platforms on which to base the questions that he asks. This is active listening, but it does not use active listening simply for the purpose of giving the parties the experience of

being listened to. It serves the larger purpose of laying the foundation for a constructive inquiry. Along the way, he refers to each party's perspective and never seeks to resolve differences in perspective. Philosophically, he is articulating in practice a commitment to multiple perspectives in any conversation and the possibility of holding a variety of perspectives at the same time. He even draws attention to the differences in perspective that each party has within their subjective experience. His questions make room for the appreciation of such differences in the light of history, in the light of ambivalent feelings and in the interplay between what has been and what might be. There is no search for the underlying facts on which might be built a 'true' perspective. Nor are the parties invited to integrate their multiple perspectives into a singular viewpoint. When the conflict story invites them to do so, Gerald opens up the multiplicity of possible meanings again.

The other type of utterance is the use of questions for selected purposes. At first, these questions are used in a curious exploration of what the parties are hoping for, how they describe the issues, the history of their respective relationships with Rebecca and their experience of the current situation. As the interview develops, Gerald's questions become more purposeful. They focus attention more selectively on the emerging story and he becomes less curious about the problem story. These questions propel the conversation forward and shape the moves that the parties make towards each other and towards a commitment to a new story.

As Gerald asks these questions, he calls Theresa and Alan into position as addressees in a particular way. They are positioned as authorities on their own experience, as commentators on their own and on each other's utterances, as agents in the construction of the future care of Rebecca. The particularities of the arrangements for the care of Rebecca are shaped by dominant discourses but are not determined by them. Throughout the conversation, these arrangements remain indeterminate and, even at the end of the conversation, the pattern for the future is not finalised. Alan and Theresa are positioned, therefore, as having a genuine say in what the outcome will be. Neither has exclusive say and the outcome remains open-ended.

Historicising And Contextualising Entitlements

When Alan and Theresa express their claims to be entitled to care for Rebecca, Gerald's approach is not to examine these entitlements in the abstract against some established norm. Nor does he invite negotiation around these entitlements. He first seeks to locate these entitlements in their history. He asks Theresa to speak about her daily life with Rebecca, and the history of that. He asks Alan details of his relationship with his daughter when he was married to Genna and after their separation. This approach represents a strategy that does not focus on entitlements as linked to essential legal or ethical positions but as growing out of the specifics of localised experience.

Similarly, when Alan and Theresa speak in terms of the dominant discourse of custody disputes and repeat formulaic expressions common to this discourse, one of Gerald's strategies is to avoid a head-on challenge to this discourse. He works on the assumption that this discourse will exert a conventional influence, but that, through the detailed examination of instances of social practice, its influence will start to break up and contradictions to it will start to emerge. When Alan speaks of wanting to 'play a part' in his daughter's life (24), Gerald asks him to imagine what this would look like in day-to-day detail. When Theresa speaks of Rebecca being comfortable living with her, Gerald seeks details of the daily routine of relationship that they practice.

Externalising Conversation

The narrative practice of externalising conversation is not strongly evident in this conversation, but it is present. Gerald uses externalising nominalisations to speak about 'ideas of conflict' (122) and about 'distrust' (361) in an effort to loosen the parties' internal identification with these experiences. More subtly, perhaps, he refuses any temptation to join with exclusionary or objectifying thinking. He does not support or join with totalising discursive notions that could have been invited forward, such as the picture of Theresa as 'interfering' or Alan as a 'failure' of a father. Nor do pathologising descriptions of Rebecca feature in the conversation he seeks to advance. He does not seek out a story of Rebecca as damaged by her mother's death or by her parents' divorce. Thus, even when he is not utilising an externalising phraseology, his language choices are consistent

with an externalising conversation in their rejection of an internalising logic.

Conflicts often feature such internalising logic strongly, particularly in the use of totalising accusations aimed at the other party.

Picking Out Unique Outcomes And Assembling An Alternative Story

The more prominent narrative strategy Gerald pursues in this conversation is that of picking up on moments of contradiction or exception and stretching such moments into viable storylines through the use of carefully crafted questions. In the process he positions Theresa and Alan as participants in these storylines and invites them to try on these positions for size. The storylines that each of the parties is intent on developing at the start of the conversation have contradictory trajectories and are likely to produce conflict and discord. It is easy to imagine at the start of the conversation that Alan and Theresa might each intensify their sense of entitlement in the face of the other's opposition and that they might position each other as opponents in a potential legal battle. There are certainly discursive elements present in their repertoires that would urge them into stances of mutual disrespect, negative attribution of the other's motives, a dismissive rejection of each other's desires and purposes and a falling back on entrenched positions of power. In this context, it is hard to imagine relational events such as cooperation, mutual understanding, joint enterprise, empathetic exchanges, appreciation of each other's historical and potential contributions to Rebecca's life and straightforward, problem-solving dialogue taking place. Yet these are the very relational events that are shaped in this conversation.

How does Gerald seek to open enough space for a story of cooperation and respect to emerge? In order to make sense of this process, it is necessary to pay attention to the work done in discourse to 'assemble' meanings, or even 'jerry-rig' them on the spot, out of diverse available features. He does not simply unconsciously use discourse to 'defer to pre-existing patterns of meaning' (Gee, 1999, pp. 46-7). Gerald is alert to any utterance or word that might connect with a discourse of shared caregiving and mutual respect. When these instances materialise, he seizes on them and asks Alan and Theresa to make meaning of them. For example, when Alan inserts parenthetically in the middle of a description of his envisaged time with his daughter, 'And Grandma would always

be welcome to come by' (291), Gerald picks up this comment and acknowledges it as openness to doing things with Theresa and Rebecca. His response contains an element of interpretation that goes beyond the meaning that Alan has made, but it is consistent with Alan's words.

And when Theresa inserts a comment about how she, '... can see the three of us doing something on the weekend,' (309) in the midst of a long explanation of what will not work about Alan's proposals, Gerald picks up the smaller inserted comment rather than the larger discourse about what will not work. He is using a very selective empathy as he acknowledges back to her, 'So ... you're definitely open for Alan to feature more prominently in Becca's life...' (311-2). Again, when Theresa slips in a comment about there being a positive value for Rebecca's having 'a loving parent' in her life (405), Gerald picks up this comment as a description of Alan and asks, 'Do you see Alan as a loving parent?' (407). What may have been an inadvertent use of a stock expression is invited to become a deliberate statement of relational appreciation. If the positioning was inadvertent, she is invited to step into the relation with more deliberation. The narrative force of such a comment grows therefore in such meaning-generating exchanges.

There are, however, many occasions where Gerald is not waiting for such moments to appear. He deliberately asks questions to create their appearance. Let me list some examples of these questions.

- (To Theresa, line 95) *What are you aware of in terms of Alan's contact with Rebecca?*
- (To Theresa, line 210) *Can you think of a time where the connection with Alan was under easier circumstances?*
- (To Alan and Theresa, line 238) *How much room do each of you see you should have as caregivers in Rebecca's life?*
- (To Alan, line 245) *I hear you saying that this could be an important relationship (Rebecca's relationship with Theresa) to foster and continue for Rebecca .. have I understood that right?*
- (To Theresa, line 399) *What's your sense of what Alan might add to Becca's life?*
- (To Theresa, line 441) *What do you make of Alan's efforts to send birthday cards...?*

In these questions, Gerald is seeking out the remembering of plot elements that might be incorporated in a nascent story of cooperation and mutual appreciation. They are 'unique outcome' questions (White, 1989; White & Epston, 1990;

Winslade & Monk, 2000). Unique outcomes might be referred to as specific moments of relational positioning that do not square with the dominant discourse in a particular context.

This story is also advanced by the asking of questions that invite the making of meaning about what the other person has said. These can be called unique account questions (White 1989; White & Epston, 1990; Winslade & Monk, 2000). Here are some examples:

- (To Alan, line 347) *Have you discovered anything right now that you didn't know about Theresa's ideas about you having involvement with Rebecca?*
- (To Alan, line 520) *What have you heard about what Theresa has said about you being in Becky's life?*
- (To Alan, line 537) *Did you hear about her seeing ... the value of you being involved in Rebecca's life ..?*
- (To Alan, line 563) *Is this news to you that you could talk to Rebecca directly...?*
- (To Theresa, line 445) *Are those examples of someone that is still wanting to find connection or how do you see that?*
- (To Theresa, line 459) *What's your hunch about what Becky would be saying about Alan?*
- (To Theresa, line 300) *What are your thoughts and feelings about what he's proposing?*
- (To Alan, line 542) *What was it like to hear that from Theresa?*
- (To Theresa, line 587) *What are you wondering about as you hear Alan ask you to be encouraging?*

Such questions position the parties in the emerging story of cooperation and invite them to fold their responses into this story. They do this by contextualising a previous utterance as a plot event deserving of comment and positioning the listener to the original comment as making meaning of the other person's utterance. The utterances to be interpreted in this way are not just any utterances. They are carefully selected to be those that might contribute to the emergence of the story of cooperation and mutual respect. As these questions are answered, the person who uttered the original statement gets to hear their words being incorporated into an appreciative framework of meaning, one that has become larger than that in which their words were originally uttered. Thus the relational context of cooperation and respect is expanded in the space between the two

parties. Jackie spoke after the conversation about the effect of this process for her:

Jackie: ... for me that was really skilful the way that was the way that was done and also the things that ... the things that Gerald chose to magnify and to extract from whatever we said ... the way he said well did you hear the good things she said about you .. about you as a father ..

John: What was that like to hear that? To have those things asked about?

Jackie: It was like .. it.. well it was real interesting because ... I didn't realise that I had even expressed that .. I didn't realise that that's what I was thinking .. until he reframed it even as I said it I still didn't realise the impact of what I was saying until he reframed it for me and then it was like .. oh .. OK I have expressed that .. I can see the value of .. of him being in his daughter's life ... because what that said to me was both of us had value in her life and I .. I had acknowledged that .. whereas I came in thinking well you know what she's done fine without him up all this time she can be fine the rest of her life without him ..

Another class of questions are those that take the meaning process a step further by inviting a specific type of meaning making: the evaluation of the plot developments that have been proposed (White 1992; Winslade & Monk, 2000). An example occurs when Theresa says that she sees Alan as trying to correct the fact that he has not been active in Rebecca's life. Gerald asks her, 'Is that a desirable move from your perspective?' It is a simple yes/no question asking Theresa to take a stand and make a judgment of Alan. The judgment is a small one and therefore easy to make. Even so Theresa prevaricates a little and thinks carefully before assenting. But once she has assented, she has moved a step further into a commitment to a story of appreciation of Alan's potential as a caregiver for Rebecca. She has positioned herself in an emerging story. And she has done this in front of Alan who is himself invited to think positively of his move to take a more active role as he overhears what happens. He is also positioned by her assessment. Another subtle example of this positioning occurs when Gerald asks Theresa about how she would speak to Rebecca about the plan for Alan to see his daughter, 'Would there be encouragement in your voice?' In a small way this is a request for her to take a position as she speaks to Rebecca. To

prepare to take this position she is being asked to evaluate now the worth of doing so.

Once the fledgling story of potential cooperation around the caregiving for Rebecca has been established, Gerald asks another type of question in which he invites Alan and Theresa to project the relational story they have been developing forward into the future. He poses hypothetical questions in the subjunctive mood about what might be, and how it would look if it were to be, and how people might make meaning of it when they saw it. These can be called unique possibility questions (White 1989; Winslade & Monk, 2000). Here are some examples of these questions:

- *If Becky were here right now listening to Alan declare what he wants to do in her life, what's your hunch about what Becky would be saying...? (line 457)*
- *Would it be a positive experience for Becky to hear how Alan would like to start off by maybe the three of you going and doing something...? (line 464)*
- *Would you be willing to encourage ... that kind of conversation? (line 489)*
- *Would you convey that her Dad would really like to see her on the weekend...? (line 503)*

The story that is being spoken into existence in the language of 'as if' in these questions is later followed up with more direct questions that focus attention on the material plane of decisions, specific plans and actions. Examples of such questions are:

- *So what are the next steps? (line 617)*
- *I'm wondering whether... you will look at the situation one step at a time...? (line 630)*
- *What are your thoughts about you deciding to sort out the specific details about this first meeting and then we return to have another meeting...? (line 641)*
- *Can we make another appointment to discuss the caregiving arrangements? (line 642)*

There are not many of these questions asked by the mediator in this conversation, however. The earlier questions that have established a relational context have done enough work so that Theresa and Alan can begin to talk with each other to brainstorm a plan for the future without Gerald having to ask them to do so.

In the process of picking up these unique outcomes and building story around them, Gerald directs the focus of the conversation onto the small details of the issue at hand. They end up not discussing the future of caregiving

arrangements for Rebecca at all but make an agreed plan for handling a small piece of the development of an ongoing plan. To be sure, Gerald, as do Alan and Theresa, acknowledges at the end that the process is not complete and they will have to return to address the future more broadly. But the emphasis has been on building a foundation for the future that involves both parties. This foundation is constructed through the invitation to each person to take up positions of mutual inclusion around small issues. As they do so, it becomes possible for a larger narrative of inclusive positioning to be envisaged. They each commented on how positive this experience was after the end of the roleplay. Jackie's comment was:

Jackie: I found it really interesting how we came in with this big thing .. a big thing .. you know the idea of losing your granddaughter .. is how I was experiencing it .. and then we got it down to one step that we could take care of in one day within the next week or something .. and you know it .. to me that's pretty amazing how he talked it to get us to agree to this one little specific thing.

John: So what difference did that make?

Jackie: It made it doable and it didn't .. it .. it made it easier to make concessions and to find the happy .. the medium between us .. because .. even though the issue was still in the back of my head that this may be one step towards me losing my granddaughter and I had to bring that back in there because it's still back there I can make this concession and still feel safe..

Craig found the focus on a small step rather than a major decision emotionally reassuring:

Craig: I think that was one of the key things that you had said that .. felt reassuring to me .. like you used a lot of language like right now and for the time being and that's a small step and I felt like yeah I don't have to .. I had these fears like can I really deliver and you had fears of me and how vulnerable could I be .. but when the whole issue came down to just taking this next step right here .. there's so much room for reassuring.

This whole process of the construction of a story of mutual respect and cooperation can be described in Berger and Luckman's (1966) terms for the process of social construction. They focussed on larger social processes than this

microcosmic example but they suggested three stages to the construction of a social reality: externalisation, objectivation and internalisation. (The term externalisation is used here very differently from the way that it is used in Michael White and David Epston's work.) To illustrate, I shall briefly co-opt these terms and use them for this analysis. First, Gerald develops an 'externalisation' of the idea of a cooperative relationship. He pulls together some details and puts it out as a story. Then he asks some questions which treat this story as an object. This is the step of objectivation. As Alan and Theresa interact with Gerald around this story object, it achieves a kind of factual existence. It becomes an object of consciousness. They make plans to embody this object in further realities of time and place, which can make it an objective feature of the world. In the end, they have internalised it as a story that, at least in some small measure, has become their own. It will take some time for this process of internalisation to mature. Chances are, however, that as they perform meaning around this story, Rebecca will come to internalise it as just an aspect of the world. This is how things are for her. But it has begun for her as a position in the midst of a story that can be traced potentially to a particular comment in a conversation and grew, through being taken up by others, into a storyline.

The particular comment that is a unique outcome with regard to the dominant discourse would not sustain, on its own, the relational positions in the new storyline. Nor could the storyline exist without the possibility of the relational positions implicit in such comments. The link between the relational positioning implicit in a momentary utterance and the ongoing production of forms of life lies, therefore, in how an utterance is contextualized. In the context of a conflict story, utterances which position conflicted parties in opposing stories, or in storylines that offer no sustaining place from which to act, need to be recontextualised (Bernstein, 1996) in a new story of cooperation. The mediator's primary task is not to write this story over the top of the participants, but to be alert to the possibilities for repositioning that emerge out of the complexity of conversation and the richness of discourse, and to work hard to develop the possibility of such recontextualisation when it arises.

CHAPTER NINE

Discussion

The Value Of This Approach

Having provided an example of an approach to mediation that makes use of the concept of discursive positioning, and having examined this example in some detail, I now want to discuss the potential value that this whole approach has for the practice and the study of mediation. Specifically, I want to draw together the argument that has been developed so far and spell it out in order to answer the major question that has guided this study. That question is: how might the concept of discursive positioning be useful to both the practice of mediation and to the study of effects of mediation? I shall deal with the research issues first and then the practice ones.

Developments in research method

The analysis of discursive positioning is not strongly established as a research tradition. Critical discourse analysis is the closest field of research endeavour. In CDA analyses, there has been attention given to the ways in which people work up identity projects through the establishment of subject positions that draw upon discourse, including ways in which people resist the influence of dominant discourse. Less attention has been paid to processes by which people shift and change positions. How people make changes in identity projects is crucial, however, to the kind of research that might inform the practice of mediation or therapy. I have, therefore, needed to seek out a research method in this study that is sensitive to such issues. This led me to positioning theory because it promised sensitivity to the moment-by-moment negotiation of meaning in conversation in a way that did not lose sight of the larger political context of discursive influences. Therefore, this study has focussed on the ways in which the participants in a mediation conversation position each other in subtly different ways in each utterance. They are conscious of each other as addressees in the course of such positioning and they often refuse or modify the positions into

which they are called by the other, particularly in the midst of conflicts. Identity and relationship management is fluid and indeterminate in the process of such exchanges of positioning, despite the restraints exercised by dominant discourse. If mediators hold in mind a consciousness of the fluidity of positioning in conversation, then they need not be caught by a sense that ongoing conflict is inevitable. Rather, they can stay alert to the openings that will always exist for relational re-positioning. And they can make use of such openings for the re-storying of relationship that opens the way for stories of peace to emerge.

This study has demonstrated the use of positioning theory as a research tool. The analysis of positioning combines well with critical discourse analysis in its attention not just to the immediate features of conversational exchange but to the background functioning of dominant discourse to render meaningful the content of what is said. It combines the analysis of content with the analysis of linguistic process. But it also adds to critical discourse analysis, as it has been used to date, a focus on the negotiation of discursive shifts. Power relations are shown by the discursive analysis of positioning in the moment of their reproduction, re-negotiation or re-contextualisation.

Positioning theory is a promising tool, therefore, for the analysis of conversation in contexts where exploring the possibility of discursive shifts is the goal. Mediation is one such context and therapy is another. The analysis of positioning can track the conversational processes that produce change. It can be used to analyse the negotiation of meaning, even in situations where there is conflict over whose meaning will dominate. The analysis of positioning holds much promise, then, for showing, through research, the significance of what happens in therapeutic conversation, that is, conversation in which changes happen.

What I have articulated in this study does not, however, constitute a completely new approach to discourse analysis. It is better described as a variant on CDA, in which the principles of CDA are adapted to a particular purpose. It is an application of the theoretical development of positioning theory to the study of therapeutic change. I believe the method deserves further application in other contexts of therapeutic conversation. The application of such analysis need not be restricted to narrative mediation. It can potentially be used to analyse what happens in mediation or therapy conducted from a variety of perspectives.

Developments In The Practice Of Mediation

With regard to the practice of mediation, let me first return to the critiques of mediation theories that featured in Chapter Two. These critiques were that the dominant problem-solving approach can be found wanting in the light of questions about its underlying assumptions. I argued that a problem-solving approach, despite embracing the concept of practitioner neutrality, was bound up in a cultural worldview that was far from neutral. This worldview was expressed in assumptions of the individual as a rational prime mover expressing his or her personal interests in the marketplace of life. I argued that this account of the individual does not take adequate account of the shaping effects of culture, or of power relations, in both the formation and the expression of people's interests. In Chapter Three, I added to this critique some theorising of how power relations work, through the assignment of subject positions in discourse. I also argued that the problem-solving approach to mediation is built on some assumptions about the value of bringing various aspects of life under a particular form of rational control. It is the application of the modernist, scientific method to problems of everyday life. In order to achieve this application, the scientist practitioner, in this case the mediator, has to be constituted as a neutral actor, disinterested in the outcome of the mediation. The disputants become an object of her or his study, as the mediator seeks to establish the underlying interests that will have caused the dispute. All this I argued was problematic, because its cultural and philosophical bias remains unacknowledged and is allowed to do its work in secret. I believe that the field of mediation can do better.

Now it is time to assess how the approach to mediation that I have outlined fares with regard to these critiques in relation to the example analysed. Narrative mediation claims responsiveness to the shaping effects of discourse on conflicts and on what is spoken about in mediation. In the example analysed in Chapters Seven and Eight, these effects are seen in the mediator assisting the participants to negotiate their relationship within dominant discourses and to re-position themselves in these discourses. The influence of culture and power relations in the construction of persons and relationships, including relationships where conflict is present, is made manifest through the analysis of positioning. In the process, dominant discourses themselves are denaturalised, as are the positions that are prescribed within them. From this perspective, mediators are not so much

working with discrete individuals, each with their own separate interests, who are surrounded by cultural and social worlds. They are working with social and cultural influences as they are being expressed in individual struggles to establish positions of legitimacy for people's concerns in life. Academic disciplines in modernist social science have been constructed upon agreed boundaries between the social and the psychological. Discourse theory renders these boundaries more permeable. In response to these theoretical developments, new professional practices are starting to develop. Narrative mediation is an example of one of these.

In the examples of mediation conversations provided, I have shown in detail some ways in which shifts in positioning take place. I have also argued that these shifts are not coincidental. They take place because a mediator works deliberately with a concept of discourse and discursive positioning in mind. Now, I want to spell out the specific advantages that this approach, referred to here as 'narrative mediation', can offer. These advantages relate to the ethics of professional practice, to the utility of a narrative approach in producing desired outcomes, to the explanatory potential for making sense of what happens in mediation, and to the political changes that accrue from taking a discursive perspective.

Ethics

First, let me speak to the ethical argument for the approach to mediation I am advocating. While Chapter Two detailed some critiques of power relations in the modernist practice of mediation, a discursive perspective allows us to theorise these critiques more fully. The usual ethic of practitioner neutrality is inadequate as a basis for practice in the light of the analysis of discursive positioning. If all meanings are products of some kind of hegemonic arrangement, and conflicts are understood as sites where meanings are contested, then the meanings that are traded back and forth in mediation conversations are always going to be imbued with socio-political colouring of some kind. Any place from which the mediator speaks will also be politically coloured. We have seen how the utterances made by disputing parties, and by the mediator, position themselves and each other in loaded stances. Since no utterance can be made without establishing a set of positions, that is, a relation, then every utterance has a political meaning.

Mediator claims of neutrality with regard to meanings are a ruse. When we look closely at discursive positioning, the postulate of neutral positioning becomes an impossible ethical goal.

A better proposition upon which to base an ethical practice in mediation is the idea of reflexivity. A reflexive practice (see Chapter Six) takes power relations and the politics of meaning-making into account and seeks to be transparent about and accountable for the positions that the mediator takes up. A narrative approach to mediation seeks to embody such an ethic. And a research method that concentrates on the reflexivity of the researcher has the best chance of also making evident the effects of reflexive practice through the elucidation of discursive positioning.

The analysis of discursive positioning is also a useful tool for making explicit the way that professional power functions to render more legitimate the voice of the mediator over the voices of the participants. Mediators who are conscious of the subtle ways in which their own power can be expressed in the discursive positions they take up, and into which they call others, are in a better position to curb their power to control meaning. The more they do this, the more they make room for their clients to pierce mediators' frameworks of meaning.

The attention given to the politics of meaning-making in a narrative approach increases the possibility of ethical practice in mediation. Positioning theory points mediators towards a noticing of the disrespectful effects of ways of speaking that diminish people. Totalising language, for example, can produce exclusionary effects. Monological utterances fail to respect the voice of the other. By contrast, when a mediator takes care with the positions created for others in any utterance, she or he is practising respectfully. Respectful practice embraces the possibility of agency for all parties and requires that mediators use discursive positioning in ways that call people into agentic positions. Moreover, the concept of agency, as I am using it, is itself bound up in the concept of discursive positioning. Agency amounts to the exercise of the opportunity to respond to the utterances of others by taking up, modifying, resisting, recontextualising or outright refusing the discursive position calls entailed in these utterances. It is an achievement of deliberate discursive positioning or re-positioning rather than of accepting the discursive positions assigned by others.

Utility

Secondly, let me speak to the utility argument for the narrative approach to mediation. The usefulness of the current dominant mode of mediation practice (the problem-solving approach) relies primarily on the distinction between positions and interests (Fisher & Ury, 1981). Positions, understood here as the relatively polarised stances that disputants adopt in conflict situations, are broken down through a pursuit of the underlying interests that inform these positions. While the distinction between polarised positions and interests, as I mentioned in Chapter Two, has been subject to various critiques, it also prefigures the idea of deconstruction in mediation conversation. Enquiring about underlying interests is an elementary form of deconstruction, because it does not treat the espoused meanings in parties' statements of position as essential. It renders polarised stances into objects of curious enquiry. In the process, it creates new conversation that gives greater purchase on the possibility for change.

However, seeking out underlying 'interests' does not go far enough in analysing the discursive positioning involved in the stances taken up by people in disputes. It leaves the interests that underlie polarised positions appearing to be fixed and essential rather than fluid and negotiable. It does not take cultural influences, discourse or power relations sufficiently into account. Privileging underlying interests has been successful to a degree in fostering negotiations between the interests of different parties. It is, however, limited as a deconstructive practice, and as a basis for negotiation, by the limits of the questions that it asks. When we go further, in narrative mediation, in deconstructing the assumptions that underlie the 'interests' of disputants, we get even more purchase on the possibility for change. In the examples presented in this dissertation, this work made possible smoother shifts to the eventual process of negotiation and the easier opening up of paths forward in relationships that were in conflict.

In the analysed mediation, there is a relationship between the ethics of practice and the effectiveness of practice. The particular formulations of respect in narrative mediation position parties in places where they experience their relationship differently. Externalising language allows the mediator to speak to the parties without joining with either party's blaming of the other. As a result, blame is less present in the conversation and entitlements are held less tightly. In

the space created, stories of co-operation are given opportunity to take root and to flourish. When this kind of context was strongly enough established, Theresa and Alan were able to shift away from the positions and entitlements that they appeared committed to at the start of the conversation. The negotiation of these shifts was not grudging but was achieved with relative ease and without huge loss of face.

In my experience of mediating in a problem-solving mode, the hardest part of the process was often the shift from the telling of stories to the brainstorming of options for resolution. Parties often could only make this shift with considerable reluctance, because the story of relationship between them was still not strongly supportive of resolution. A comment by Howard Raiffa (1985) on the problem-solving approach emphasises why. He says,

A shift of attitude from belligerent positional bargaining to constructive collaboration with an intervenor might very well take place after each side has gained the security of a negotiated agreement.

(Raiffa, 1985, p. 108.)

He is arguing for the development of a settlement as a precursor to some relational shifts that make a different relationship possible. The new story of the relationship seems to originate in the agreement.

By contrast, the narrative practice of paying initial attention to relational ethics works much more smoothly. It involves positioning parties in agentic places and deliberately calling them into stories of cooperation before (and also after) addressing substantive issues that need to be resolved. We see that happen in both the examples I have presented. Once the disputants are positioned in a story of relationship that they value, and that features both parties in a respected agentic place, then the process of moving towards a resolution happens quickly and without a sense of grudging reluctance. A narrative practice avoids over-emphasis on a settlement orientation by first developing a story of relationship intentions, and then rooting them in a relational history, in order to produce a relational context that favours resolutions and agreements, rather than continues to constrain them. The relationship story does not so much follow from the agreement as precedes it, flows through the drawing up of agreements, and continues on after it. In other words, the respectful practice of valuing parties'

best relational intentions, and avoiding joining with the discourse of blame and pathology, leads to greater effectiveness in facilitating negotiation. In this way, ethical practice makes for more effective practice.

Explanatory Power

Thirdly, let me speak to the theoretical value of the concept of discursive positioning in mediation. My argument here is about the explanatory power of an analysis that focuses on discursive positioning. Discourse analysis is a relatively recently established mode of research practice and is subject to constant debate about competing approaches (van Dyke, 1999). It does, however, have a growing body of literature behind it (for example, Burman & Parker, 1993; Fairclough, 1992; Gee, 1999; Parker, 1992) as outlined in Chapter Five. That literature served as a base for my work, because it had the power to explain the significance of the smallest of utterances in the context of large-scale social forces.

But not all discourse analysis has taken account of positioning. The concept of positioning adds to the explanatory power of discourse analysis in general, particularly in the micro-analysis of conversation. It enables a researcher to show, not just that there are substantial 'orders of discourse' (Chouliaraki & Fairclough, 1999) at work in the background of a conversation, but also how particular utterances in moment-by-moment interaction shape and re-shape the relationship of participants to these background orders of discourse. I have shown how participants in a mediation conversation repeatedly take up positions in relation to background discourses and also call each other into position in relation to these discourses. But the positions taken up or resisted are in constant flux in the course of a conversation. Relations between people are formed by negotiating these fluctuating positions in the context of background meanings against which their utterances make sense.

Because of this sensitivity to the process of fluctuation, the discursive analysis of positioning is suited to the research task of analysing change processes. Much discourse analysis is not so sensitive to discursive shifts and changes. Studying the process of change is, of course, important to the study of what happens in mediation and in therapy. These are conversations that are expressly aimed at producing changes in the meanings being made in a relationship and, from a discursive perspective, changes in meaning cannot be

made except in relation to discourse. Hence, the approach I have been advancing here explains more clearly, and more elegantly, shifts that happen in mediation. Explanations that make reference to discursive positioning are especially relevant for understanding the practice of narrative mediation, because of the congruence of theoretical understandings in practice and in research. Such explanations also, however, have potential for explaining what happens in other mediation approaches. Developing this explanatory potential is important for the field of mediation, if it is to grow its theoretical foundations, rather than to develop only in loosely-theorised pragmatic directions.

Political Value

Fourthly, let me speak to the argument for the discursive analysis of positioning on the grounds of its political value. The explanatory power referred to above has political implications. Making the politics of meaning-making more explicit cannot be a politically neutral act. It can serve, in the context of particular relationships, to change the balance of what is possible to talk about, since the dominance of particular frames of meaning can be upset, simply through their deconstruction. Meanings that have relied on their taken-for-granted nature to successfully hide other meanings from view are now opened up for contest. Deconstruction of dominant meaning systems makes it more difficult for parties to a conflict to assert such meanings without challenge and therefore less likely that they will succeed in doing so.

Mediation practitioners can make explicit use of this possibility to good effect. Theorists and researchers can also make use of the same concepts to argue for greater equity in practice. Moreover, in the wider scheme of things, what happens in the context of, say, family mediations (these are particularly sensitive sites in the production of family relations) might have a strong effect in a given society on the ongoing evolution of the social practices that constitute family relations.

It is, therefore, possible to argue that a focus on discursive positioning both in the practice of mediation, and in research into mediation, can serve the political purpose of opening new opportunities for people whose social position is tightly circumscribed in discourse. If these are opportunities for being able to say things that have not been possible to give voice to in a problem-solving mediation,

then there is reason to claim that such an approach might make a difference to power relations on a local scale.

The analysis of positioning in discourse enables us to study the micro-level effects of conversational moves, without losing sight of the macro-level contextual influences on such moves. This focus has much potential for the study of professional practice. If we can study the effects of conversational strategies, then we can, by implication, also study the effectiveness of deliberate professional strategies. As a research tool, the analysis of discursive positioning can demonstrate, on a micro level, the effects of particular utterances in terms of the position calls exchanged. Thus, it has the potential to enhance the practice of mediation through informing mediators of the discursive effectiveness of their work. Since discourse analysis attends to the construction of power relations in discourse, we can also study the ethical questions of the purposes to which professional power is put in the practice of mediation.

However, there is not currently a body of literature that can provide a straightforward model for such an analysis. It has been necessary to draw together ideas from several sources, in order to mount this analysis. These sources suggest a range of questions that can be asked of a piece of text, in order to bring into focus the work being done by discourse in the background of people's utterances. This study, therefore, contributes to the discourse analysis literature both an approach to critical discourse analysis that takes more account of positioning theory than has been accorded it to date, and an example of the usefulness of the analysis of discursive positioning.

In the example of this work that I have provided, several things are clear. First, Gerald does not take up a neutral stance with regard to the cultural politics of child custody disputes. His questions have particular values embedded within them. And he is explicit about those values. He is interested in the inclusion of both parties in the care of Rebecca, rather than the exclusion of either of them through a discourse of custody as possession. In other words, a narrative approach does not confuse the ethic of neutrality with shying off from an explicit position with regard to power relations. Indeed, a focus on the function of discourse in the production of conflict enables a mediator to be explicit about a stand informed by ideas of social justice, and still to be even-handed in distributing professional respect to the parties.

The practice of mediation from a narrative perspective, therefore, needs to be admitted to be an explicitly political practice. It is about the transparent articulation of practices of social inclusion rather than about practices of social division and exclusion. It is about the promotion of dialogue, rather than monologue. It is about the moment-by-moment application of an ethic of respect in relationships. It is about resistance to practices of power that might consistently privilege one party in a dispute.

It may be objected that I am arguing for an ethical or a political perspective, more than for a professional practice. I would answer that any professional practice produces or reproduces some form of political hegemony and has more integrity if it makes this explicit. A professional practice also needs to be understood as more than a technology. To be professional, it should profess something. Mediation, by its very existence as a professional practice, proclaims a preference for the peaceful and respectful resolution of conflict, rather than for practices of power and colonising. Such ethics should be made transparent and explicit, rather than hidden behind notions of neutrality, in order for members of the public to make informed choices about the value of mediation. In a sense, what I am arguing for is an approach to mediation that grapples with this challenge. Carrie Menkel-Meadow (2001) has recently argued that the existence of mediation at all 'represents a political theory about the role of conflict in society' (p. xiii). She refers to political ideals like equality, participation, and self-determination as expressed in the theory and practice of mediation. The analysis of discursive positioning is an alternative approach to these politics, based not so much on striving for ideals as on analysing the material effects of discourse.

The basis for the effectiveness of a narrative approach to mediation lies in the analysis of power relations in a way that can be of use to mediators. The move away from a singular emphasis on either structural power or individual personal power is, I believe, important for mediation. Structuralist critiques have queried the possibility of promoting social justice through mediation. A poststructuralist focus on discursive positioning renders mediation in general less vulnerable to being discredited as a practice by these critiques. Instead, a poststructuralist analysis of power relations, as they are constituted through discourse, underlines the importance of what happens in mediation conversations in a new way. Mediation becomes a site where discursive positioning can be seen to be in process of negotiation. All is not structured in advance, as we have seen in

the examples I have analysed. On the other hand, neither does mediation create a context in which anything goes, or in which all outcomes are possible. Discourse continues to operate as a constraint, even if sometimes a loose constraint, upon what might be said.

An appreciation of discursive positioning becomes a useful tool that mediators can apply to their interpretation of the politics of meaning-making in mediation. It enables the deliberate taking of political stands by a mediator through the privileging of some discursive meanings over others. It enables the refusal by the mediator of position calls that serve an exclusionary purpose. It enables the mediator to enquire respectfully into the meanings of any utterance and, in doing so, to open up for review the power relations implicit within that utterance. It enables the mediator to ask questions that deliberately invite parties to re-position themselves in more inclusive storylines and therefore in altered power relations. Even when the political shifts I am referring to are miniscule in nature, their importance can be grown by scaffolding greater discursive significance for them through narrative elaboration.

What Is Different About A Narrative Approach To Mediation?

In the mediation example in Chapter Seven, Gerald does not follow the problem-solving approach of first defining the problem and then exploring the parties' stories with a view to establishing their separate underlying interests, which must then be satisfied in a win-win solution. Rather, he works to deconstruct the positions each of the parties take up for themselves, and offer each other, in the stories they tell. He is selectively curious about openings to possible storylines that include both parties as having something to offer Rebecca. In the process, rather than speaking in a way that isolates individual interests from their cultural context, he invites the parties to speak about the cultural influences of gender and ethnicity on their positioning. In the other example in Chapter Six, the mediation involved a deliberate focus on the parties' relationship with conventional discourse about the family. This focus served as the basis for the construction of a different story that amounted to a conscious departure from the dominant discourse.

In both examples, the endpoint of the story is not a 'settlement'. In fact, in neither case is an agreement finalised in the space of an hour-long conversation,

despite the fact that some implicit understandings have been established. But a shift in the narrative trajectory of relationship has taken place and this shift can be explained in terms of shifts in discursive positioning. The parties have re-positioned themselves in relation to the discourses that dominate the field of custody disputes. Their claims for entitlement have been modified in a more inclusionary direction rather than in an exclusionary one. The basis for ongoing relationship is stronger and clearer at the end of this conversation than it was at the beginning. The parties have developed a shared view of how caregiving arrangements will go forward.

Therefore, I want to claim that this kind of conversation is trafficking in the politics of meaning-making in a way that makes a difference. Shifts of position occur in the local politics of family relations. As a story of cooperation and respect emerges, so the parties begin to step into relations of greater equity than would be predicted from the claims of entitlement with which they started. These are relations in which they each have an opportunity for agency and yet also accord respect towards the other.

Could the same thing happen in a problem-solving or transformative approach to mediation? I would have to say that it might. Discursive re-positioning may be embedded in conversations that focus on interest-based win/win solutions or on empowerment and recognition. Re-positioning in discourse is not restricted to contexts where it is named as such. I would argue, however, that a conscious focus on discursive positioning makes it more likely that such shifts would happen in a less haphazard way. Preferences for mediation approaches have to be based on greater or lesser degrees of likelihood, rather than on absolute distinctions, simply because the conversational medium of mediation is so complex.

Empirically, this has not been a comparison study, and, therefore, no comparative claims can be established. It is not possible to say on the basis of the evidence presented here that a narrative approach to mediation is proven to be more ethical or more politically and culturally sensitive. My conclusions need to be more modest than that. However, I believe there are sufficient grounds for advancing a claim (as opposed to sheeting it home) that a narrative approach can produce shifts in relational positioning more effectively than a problem-solving or transformative approach can achieve. I would also expect that these shifts would be experienced by parties as more satisfying than those achieved through the

formation of an agreement through problem-solving. Although at this point I cannot prove these assertions on empirical grounds, I would reasonably expect the distinctions between the theoretical assumptions on which these approaches are built to be reflected in such a difference. At the least, I believe that I have demonstrated the potential for such advantages to an extent that warrants further study along empirical lines.

So what has been established? I believe that this study demonstrates the viability and effectiveness of narrative mediation in practice, at least in the field of family mediation from which both examples have been drawn. Would the same principles apply in other fields of dispute resolution? Theoretically, I would argue that they should do so. All disputes between human beings must be constructed in discourse and involve discursive positioning. Therefore, a method of mediation that pays attention to discourse and positioning should be helpful whatever the substance of the dispute. My claim for the viability of narrative mediation is based on the demonstrated claim that it does promote shifts in discursive positioning, which, in turn, produce satisfying outcomes for disputants.

Moreover, these discursive shifts have, I believe, been demonstrated to occur in response to the particular invitations issued by the mediator, rather than by chance. At times, negotiating parties themselves might also initiate such shifts on their own account. I am claiming, though, that these shifts in discursive positioning are, frequently enough, effects of mediator practice that can be tracked, as I have shown, through detailed analysis of conversation. The accumulation of such micro-level effects adds up to a basis for establishing effectiveness claims for a practice. Through the analysis of a case study, I can claim to have demonstrated the process by which this approach works to good effect and therefore that it is a practice deserving of further attention.

As already stated, the concept of discursive positioning need not be restricted to the narrative practice of mediation. However, there has been a special fit in this study between the constructionist philosophical assumptions built into the narrative mediation approach and the same assumptions built into the research tools used to investigate it. If research is going to enhance public confidence in the value of a particular practice, then such philosophical congruence of research method and theory of practice surely gives a better chance of doing justice to the effectiveness of the practice.

In the end that is what this study has been about – analysing the effectiveness of a form of practice. It has been necessary to develop an explanation of both the research method and the practice along the way. The last word has been written on neither, however. What I have argued can serve only as the basis for further exploration and development of both narrative mediation and of the study of discursive positioning. That is as it should be.

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