Governance and Susceptibility in Conflict Resolution: Possibilities beyond Control

Morgan Brigg

Introduction

Critics of conflict resolution informalism have for several decades argued that community mediation and other “alternative” dispute resolution processes in the West entrench rather than mitigate regulation and governance. The most credible and nuanced critique that has emerged thus far draws upon a broadly Foucauldian approach (see Matthews 1988; Pavlich 1996a: 67-88; van Krieken 2001 for overview and analysis). The key argument, advanced primarily by George Pavlich (1996a; 1996b), is that mediation and other so-called alternatives to adversarial court processes involve a “governmentalisation” of the state, or the increasing involvement of individuals in the exercise of formal (sovereign) power through informal means (Foucault 1997a: 68). In this mode of governance, subjects act upon and discipline themselves without direct state intervention in a paradoxical exercise of “freedom” that generates behaviours and ways of being in concert with (neo-) liberal state goals. This acting-upon-oneself, which is managed by mediators and other conflict resolution experts, helps to constitute rather than challenge formal regulation. Formal and informal demarcate and bring each other into existence as citizens accept the formal sanctions of law and state on the basis of the “freedom” exercised in conflict resolution and the informal realm more broadly (see Fitzpatrick 1988; 1992).

This nuanced critique of informalism has several advantages. It challenges the popular and sometimes unequivocal imagining of conflict resolution as normatively opposed to the juridical and the formal both within states and the wider (liberal) global order. This allows a more satisfactory understanding of the interplay of formal and informal spheres than is available through earlier critiques that tended to debate informalism through oppositions between formal/informal and control/freedom. In this way governmentality analyses also advance on the tendency in conventional political and social theory to mirror liberal
ontology by conceiving of the informal as a “zone of freedom” populated by pre-
constituted subjects. Instead, the informal sphere is suffused with power relations crucial
to the operation of liberal governance.

Individual subjects do not exist apart from power relations in this operation of governance,
but come into existence, or are manufactured (Foucault 1997b: 59), through a range of
diverse and apparently apolitical practices from education to therapy and conflict
resolution. By inducing subjects to pursue their own welfare these practices generate
particular ways of being and behaving, including understandings of selfhood, order and
dispute, aligned with those sanctioned by the state. Governance thus proceeds through
what may be termed “regulatory practices of freedom”. By providing a means for
regulating the majority of subjects’ behaviours through apparently apolitical means, the
non-interference of law, sovereignty and the state is possible. A sphere of “freedom” is
thus carved out apart from state intervention while the state and associated formal
institutions maintain their standing as the absolute basis for order. The governmentality
approach, then, offers a nuanced and compelling analysis of the power relations operating
through informal conflict resolution by not reducing to oppositions between informal and
formal spheres.

However, the governmentality critique remains largely silent on the possibilities of
resistance to governance in conflict resolution. This is curious lacuna given Foucault’s
contention that ‘there are no relations of power without resistances’ (1980a: 142). It is also
important given the continued growth and popularity of informal conflict resolution. Some
may object that Pavlich (1996a) suggests possibilities other than control following his
critique of community mediation. He calls us, for instance, to ‘experiment with the
However, this language implies surpassing, and perhaps even transcending current
practice and its relations of power. This is so despite his advice to the contrary (1996b:
729) that we engage directly with governmental political rationalities. And while I indicate
that parties may not perform selves as the mediator and liberal governance requires (Brigg
2003), I do not elaborate the possibilities that might arise from this. This relative silence
elides the possibility that resistance, and non-regulatory (rather than regulatory) possibilities, might be enacted within conflict resolution, and that these may contain (unanticipated) possibilities for transforming governance relations in conflict resolution beyond current arrangements. This paper explores the resistances which Foucault suggests invariably accompany power relations, and hence non-regulatory possibilities imbricated within the operation of power in mediation.

To consider possibilities for transforming governance relations from within conflict resolution it is necessary to look beyond resistance behaviours which manifest as non-compliance with mediators or the mediation process. This limited type of resistance does not promise to significantly modify conflict resolution practice because ‘constant registration of “failure” … [and] the discrepancy between ambition and outcome’ (Rose and Miller 1992: 191) are internal to governance. Within mediation practice it is expected, for instance, that some disputes will be unable to be resolved. Governance, in other words, accommodates partial failure within its operations. At the same time, the very existence of non-compliance gives credence to the idea of individual “freedom”. Both the acceptance and possibility of non-compliance help, therefore, to make governance practical and viable.

Rather than straightforward non-compliance or disruption, then, I am interested in resistances characterised by the distinction that they fold back upon or otherwise interact with the operation of governance in ways that contain possibilities for its transformation. The point of this approach is not to seek spaces beyond governing because relations of power and governance permeate all social formations. Rather, the goal is to explore non-regulatory possibilities within conflict resolution that might contain potential for transforming governance so that we might more ethically respond to difference and open to conceptions of order and dispute beyond those currently available.

Interactions between participant (party) and practitioner selves are crucial for exploring governance and possibilities for its transformation within conflict resolution. These interactions both characterise power relations and serve as the conduit between parties and
mediation programs. The affective nature of interactions between parties and practitioners raises, though, methodological issues that require supplementing typical Foucauldian analysis. While Foucault is famous for articulating how *techniques and mechanisms* of power mould bodies and souls, this is of only some assistance for analysing power relations occurring through affective interpersonal interactions. I therefore supplement Foucauldian analysis with Emmanuel Levinas’ (1991b; 1991a) micro-level phenomenological insights about intersubjectivity, and autoethnographic reflection on my mediation practice. This somewhat innovative and exploratory approach is partly an extension, and partly a provocation to Foucauldian and governmentality analyses. Where governmentality analyses typically discern the operation of mentalities of rule, I want to theorise and explore micro-level and affective encounters of governance relations as they operate through my self in mediation practice. This predominantly theoretical formulation is useful to explore relevant conceptual issues and undertake some interpretation and analysis. Definitive claims are not my goal here for these would require a different and a more empirical approach.

After briefly elaborating the contingency of governance through mediation and then introducing my supplementing of governmentality analyses with phenomenology and autoethnographic reflection, I discuss two complementary mediator capacities – technical ability and susceptibility – which are essential for mediation practice. I argue that these capacities are qualitatively different, but not intrinsically opposed. I show that their interplay is crucial to the operation of power and governance in conflict resolution, and also to the emergence of the non-regulatory possibilities. To elaborate these possibilities I draw upon my practitioner involvement, as a White-settler mediation practitioner, with Australian Aboriginal people. Here juxtaposition and exchange through susceptibility and among individuals embodying very different political traditions helps to illustrate how conflict resolution processes such as mediation contain possibilities for mitigating and transforming the very operations of power occurring through them. This leads me to call for expanded critical thinking about the power relations operating through conflict resolution informalism, and to suggest that policy makers and practitioners might consider
cultivating a susceptible sensibility to mitigate the dominant governance relations in mediation and more ethically respond to difference in conflict resolution practice.

**Mediation, Governance, and Contingency**

Parties to mediation processes often adopt and comply with requirements specified by mediators and mediation processes. In doing so they apparently enact an operation of liberal governance consistent with that articulated by wider governmentality literature.\(^3\) Regarding mediation in particular, George Pavlich’s (1996a) book-length study shows in detail how community mediation mobilises normalising and confessional techniques to discipline selves toward a norm of rational and peaceful subjects (see also 1996b). Of the British Columbian case, Pavlich (1996a: 157) concludes that ‘community mediation’s promise to liberate litigants from the inhospitable procedures of the courtroom has so far turned out to be an empty one’. I similarly argue, with attention to cross-cultural dynamics, that the overall trajectory of the operation of power through mediation reframes parties’ selves and behaviour from emotional to rational, and combative to conciliatory to encourage the (re-) production of dominant Western understandings of selfhood, order and dispute (Brigg 2003).

The extent and effectiveness of the operation of governance through conflict resolution is likely to be significant because the use of mediation and related processes has increased rapidly in many parts of the world in recent decades. While there appears to be no easy way of quantifying the success of mediation in governing selves, mediation and similar conflict resolution processes are now an established part of the administration of justice and wider conflict management. The likely impact of this form of governance upon minorities, including many non-Western and Indigenous peoples, is particularly notable given that, as Kevin Avruch (1991: 5) has pointed out, conflict resolution has reified Western (read liberal) folk knowledge into systems ‘where specialists codify, systematize, and administer’.
There are numerous reasons, though, for not leaving critical analysis rest with the argument that conflict resolution informalism contributes (only) to governance and control. The operation of power through informal mechanisms requires, for its efficacy, that selves act upon their (own) selves, thereby enacting their “freedom” in concert with the goals of formal governance. This operation is marked by a weakness for it requires (re-) iteration through time (Butler 1993: 237). In working upon and through subjects, the operation of power involves the complex circulation of forces, materials and discourses that is invariably characterised by contingency and uncertainty. Governance through “freedom” is thus intrinsically incomplete, and open to subversion. One possibility is that selves might not perform in accordance with the mediation process or the mediators’ wishes. They may, instead, play out other patterns, thereby resisting liberal governance (see Brigg 2003: 297-298). A further possibility is that the effects generated in the mediation session might not be durable beyond it. Yet another prospect is that the boundary between the adoption and mimicking of the behaviours encouraged by mediators and the mediation process may blur. This scenario threatens to mock rather than enact the operation of liberal governance through mediation.

The need to expand analyses beyond the tendency to focus upon control has also been noted in critiques internal to the governmentality literature. Several scholars observe that emphasis on “rationalities” and “mentalities” of governance tends to obscure disruption and resistance (see O'Malley, Weir and Shearing 1997; O'Malley 2001: 25; Brown 2001: 110). Here it is also useful to return to Foucault’s contention that ‘there are no relations of power without resistances’ (1980a: 142). These resistances are, as Foucault elaborates ‘all the more real and effective because they are formed right at the point where relations of power are exercised’ (1980a: 142). He concludes that ‘resistance to power does not have to come from elsewhere to be real, nor is it inexorably frustrated through being the compatriot of power’ (1980a: 142). The operation of informal governance in conflict resolution is thus likely to be more contingent, and contain more non-regulatory possibilities than current analysis tends to suggest. Treating some methodological issues accompanying the operation of power in mediation is necessary to establish a basis for exploring these possibilities.
Encounter and Exchange in Conflict Resolution

Foucault consistently urges attention to the micro-level analysis of power – to how mechanisms of power are able to function (1980b: 100). He examines power as sets of actions upon other actions (1982: 221) that bring out and take hold of the forces of the body (1981: 139). A multiplicity of forces circulates in any given social encounter, linking with other forces and networks and the broader social formation. The operation of power and governance in mediation processes may be considered, in a preliminary and schematic interpretation, as an encounter between two sets of forces. One set of forces – those promoting behaviours and ways of being consistent with the liberal non-disputing subject – can be termed “governing forces”. The second – those associated with the behaviours and ways of being marked errant, deviant and different – can be termed the “forces of difference”. Beyond this interpretation, which serves to map the broad terrain to be dealt with, it is necessary to turn to interaction between party and practitioner selves as the key site for the operation of power in mediation.

Interpersonal exchange in mediation between parties and practitioners is the predominant means by which the selves of parties are acted upon, and brought to act upon themselves. This exchange is necessarily affective because mediators mobilise a broad range of human faculties to generate empathy, support, encouragement, and so on. In this encounter, mediators manifest the forces of advanced liberalism. They embody and act, in other words as vehicles for “governing forces”. Yet in acting as the agents of governance they are also necessarily exposed to the “forces of difference”. To act upon others, mediators necessarily come into contact with other people and the forces which they embody. A wide array of forces are thus operating at any one time, swirling, competing and interacting as they circulate through the selves of mediators and parties. This flow and interaction of affective micro-level forces through human subjects directs us to the affective relatedness of selves in mediations.
To consider relations of power through affective encounters among mediators and parties I draw upon autoethnographic reflection drawn from my experience as a mediator and the phenomenological insights of Emmanuel Levinas. Autoethnography, a relatively recent innovative and cross-disciplinary development, (re-) introduces the self as a methodological resource.⁴ Although not beyond criticism (see Sonia Ryang 2000), autoethnography usefully expands the researcher’s repertoire by allowing him/her to work more openly with aspects of experience – including the visceral, aesthetic and affective – which have been masked or disavowed in traditional social science. Here I reflect upon my practice as a mediator with a government dispute resolution service (in Queensland, Australia) from the mid-1990s to consider micro-level and concrete force relations operating through my self. Levinas’ (1991b; 1991a; 1987; 1986) thoroughgoing emphasis upon relationality is useful to explore the accompanying relatedness of selves in mediator-party encounters. For Levinas, the phenomenological turn to “things in themselves” cannot sustain the independent consciousness of Husserl. Instead, subjectivity in Levinas is constituted in and with the world, and is therefore fundamentally relational. This provides a way of accessing the micro-level affecting of selves by other selves in mediation encounters.

This conjunction of autoethnography (method) and Levinasian phenomenology (theory) cannot be used to make unequivocal claims about the interactions that occur in mediation. Rather, my goal is to augment more conventional governmentality analyses to expand possibilities for thinking about the politics of informal conflict resolution. To pursue this task I want to articulate interlocking “technical” and “susceptible” capacities to provide a perspective on the mobilisation of the mediator-self that is necessary for working as a third party in conflict resolution. These capacities, which emerged with my mediation training and have been consolidated through practice, are crucial for the mediator’s interaction with parties in mediation and the exercise of power.

Technical and Susceptible Capacities for Governing through Mediation
Exercising power in mediation processes requires mediators to make focused use of intellectual and cognitive faculties. These faculties are necessary for exercising core techniques and skills such as careful listening, questioning, paraphrasing, summarising, and for reframing the tenor of discussion, parties’ orientation to each other, and the issues at stake. They are required for proficiency with the overall mediation process, assessing and monitoring parties’ behaviour, formulating questions and directions to put to parties, judging when to move on to the next stage of the process and so on. The related use of memory to recall elements of earlier discussion and an ability to analyse dynamics among parties are similarly important.

The intellectual and cognitive faculties employed through core conflict resolution skills and techniques are mobilised, in the language of Levinas (1986: 348), to convert the mediator’s experience with parties into categories. The mediator, for instance, uses cognitive abilities to identify and target a particular behaviour for intervention. This allows him or her to isolate this behaviour and place it alongside a particular norm about conflict (for example, rational dealing) that is communicated by the mediator and mediation process. In turn this mobilises a normalising operation vis-à-vis the party’s behaviour as s/he is acted upon and acts upon him or her self (see Pavlich 1996a: 119-121; for other accounts of how mediators exercise power in mediation though interactions with parties see Silbey and Merry 1986; Greatbatch and Dingwall 1989; Mulcahy 2001: especially 511-513). The capacity to effect such operations can be termed technical or, in slightly different language that identifies the governing functions that are served, administrative. This technical capacity resonates and overlaps with governing operations identified in Foucauldian and governmentality terminology. Foucault uses terms such as technique, technology and apparatus (dispositif) to elaborate his analyses of power. And Nikolas Rose (1996b: 26) uses “technology” to refer to the operation of ‘any assembly structured by a practical rationality with a more or less conscious goal’.

Yet governance is not straightforwardly technical. The importance of other qualities partly arises because the operation of power through liberal governance proceeds in the name of the welfare of subjects. In the case of mediation, the success of skills and practices that
rely upon technical capacity requires that mediators proceed with respect and appreciation for parties, including attention to their “empowerment”. This is particularly necessary because mediation is both highly interactive and requires substantial support and understanding of parties by mediators. Technical capacity must be accompanied, therefore, with a capacity to render assistance and support, and to generate and sustain rapport. This combination of governing and helping leads to a somewhat paradoxical relation between mediator and parties which combines governing with helping. The professional helper, as Alphonso Lingis (2000: 181) states, is ‘[s]ly and treacherous’, instructing people to examine their ‘needs and desires, and strengthening … [their] self-assurance and self-satisfaction’.

To attend to the welfare and empowerment of parties and sustain effective working relations with them, mediators must mobilise somewhat ineffable empathetic qualities alongside technical capacity. The resulting affective rapport allows parties to consent to mediator guidance. Conflict resolution necessarily relies, in other terms, upon a relational-affective capacity. This capacity is not necessarily opposed to the technical dimension of mediator practice, but it is of a qualitatively different order. This capacity and the accompanying empathetic qualities should be “natural” or “genuine” rather than contrived in order to maximise party receptivity and the likelihood of affirmative and compliant response. Such qualities and capacity are, of course, difficult to specify, particularly in mainstream social science terms. But they are also enduring features of human encounters. As Lingis (2004: viii-ix, 64-66) notes of his experience in remote and foreign places, we trust others when we are failed by the categories of Western knowledge, “rational” ways of knowing, and even by language itself. Mediators similarly rely upon these intersubjective capacities – which may be termed “intuition” or “feel” – to guide (or at least inform) aspects of their practice.

Here the phenomenological elaborations of relationality among human subjects offered by Emmanuel Levinas provide a way of approaching the affective relations indicated by terms such as natural and genuine. Through notions including proximity, passivity, approach, and fecundity, Levinas pursues ‘heteronomous experience …that cannot be
converted into a category’ (1986: 348). Here the Levinasian approach to intersubjectivity is distinct from both technical capacity and social science that begins with being and privileges the (knowing) subject by seeking out that which it can comprehend by appropriating the world to itself. Instead, Levinas uses the idea of face (-to-face) to draw out an ineffable relation that is prior to and other than cognition, communication, and categorisation (1991a: 119; Lingis 1989: 135).

“Face” does not refer to simply seeing an other, for this would refer back to a perceiving consciousness and hence to being and essence. Rather, Levinas considers the situation prior to consciousness wherein one is with another, and particularly when one moves to approach an other. Here the presence of the other undoes all understandings that would figure being as complete in itself before involvement with an other/s (Levinas 1986: 352). Here the “I” cannot exclusively know the world for the other always remains unassimilable, is always in some sense unknowable beyond representations that I may give to him/her (Lingis 1989: 135). “Face” marks the epiphany or revelation (Levinas 1991b: 187; Davis 1996: 46) that the world and existence are necessarily shared such that I am responsible for the (possibility of) the other’s existence just as s/he is for mine. As one approaches an other to communicate, one is exposed and made vulnerable to and responsible for an other’s being (Levinas 1991a: 48). The result of this exposure is a “given-overness” of oneself to others and a corresponding co-responsibility for existence.

This fundamental relationality of human subjects is of particular interest for thinking about the relations of power in conflict resolution on two counts. First, it is of a register other than representation, cognition, and technical or administrative capacity. It is therefore also of an order other than the rational techniques and technologies that tend to be analysed in governmentality literature. Second, it provides a way of articulating “naturalness” or “genuineness”, and particularly the pre-cognitive micro-level and relational “affecting” of people by each other which is the necessary condition for responsiveness among people in conflict resolution. This includes the affecting of the mediator by the party and vice versa. This two-way affective force relation, in which the selves of the mediator and the party participate in and are vulnerable to each other, is
required for mediators to be able to act upon parties in mediation. Levinasian relationality thus articulates the mutual vulnerability of human subjects necessary for the operation of power and governance in conflict resolution. This affective-relational efficacy brought out through Levinas’ emphasis upon relationality can be termed a capacity for susceptibility.

It may be objected that “listening techniques” employed by mediators and professional helpers throughout the Western world can be contrived, and hence that genuineness and even susceptibility can be a pretence or deception. It is true that listening and similar techniques may be “produced” in some instances, or mechanised through years of practice in others. Yet while empathy may be contrived in some instances, this is unlikely to result in genuine feeling for others or, therefore, in the most effective forms of mediation practice. Aside from and prior to any mechanisation, susceptibility to others is the original condition for responsiveness, genuineness and empathy. Susceptibility, then, necessarily operates through mediator selves alongside a technical capacity in effecting operations of power through mediation.

Interactions between parties and mediators in mediation generate sets of actions upon other actions through the interplay of technical and susceptible capacities. Mediator and party are opened to each other on an iterative basis, in the lead-up to the mediation and in the mediation process proper, through susceptibility which is necessary for generating and sustaining rapport. Moments pregnant with possibility arise as mediators and parties come into being together while sharing the frustration and upset of conflict. As the mediator I am susceptible to the party’s world, as they are to mine. In these moments moving interpersonal exchanges and rapid progress toward resolution are possible. Animus can dissolve and apologies can be forthcoming, generating what some practitioners refer to as the transformative and magical dimensions of mediation practice (see Cloke 2001; Umbreit 1997).

Yet no particular ethico-political valence is assured by the mutual susceptibility of parties and mediators. It is not the case, for instance, that technical capacity is intrinsically directed toward governing while susceptibility is directed toward freedom. The effect of
The combination of technical and susceptible capacities in mediation cannot be easily foretold. Nonetheless, to characterise the dominant operation of power it is important to note that the lines of force of liberal governance almost always overshadow the proximity and susceptibility of selves in mediation practice. The mediation setting is most often an administrative one in which the mediator carries an institutional legitimacy within the liberal order as an expert who is licensed to resolve conflict. In these circumstances the technical (normalising) operations analysed by Pavlich (1996a; 1996b) gain purchase through the very susceptibility internal to exchange between mediator and party. Mediators, for instance, routinely draw upon their rapport with parties to acknowledge people’s emotions and move them to treat their conflict in ways that are consistent with the liberal norm of a rational and peaceful subject.

The mediator’s capacity for susceptibility is often leveraged to effect the technical operations of governance in mediation. Mediators affect parties’ approaches to conflict by managing how they constitute themselves as they engage in self-work and self-transformation in the processing of conflict through the mediation process. By summarising a party’s concerns, for instance, the mediator draws upon both technical skills and empathetic qualities before directing her/him toward addressing “underlying interests” and resolving the conflict. Rational calculation of individual interest helps to distil meaningful reference points from the murky flux of relations and forces that swirl through conflict experiences. In this process the outcome of mobilising susceptibility is organised by a technical ordering directed by the mediator. The effect of the mediator’s intervention, if successful as an operation of liberal governance, is to formulate the party as an autonomous, rational and peaceful subject, linking her or him to resolution and the Western political ontology of order and dispute. The conjoining of technical and susceptible capacities is crucial for this operation of power because it proceeds by way of insinuation with(in) the being of parties rather than through attempts to exercise power over them.

Technical and susceptible capacities operate in concert in most mediation sessions. These capacities are mobilised, in other words, in complementary and compatible ways with
Limit Events in Mediation: Tracing Boundaries of Inclusion-Exclusion

In the mid-1990s I trained as a mediator with a government dispute resolution service in Australia. I was subsequently involved in preparing parties for mediations (an “intake” role), mediating in a variety of conflicts, coordinating an Indigenous mediation project, and dealing with conflicts between Settler and Aboriginal Australians both inside and outside the service. Across this range of practice it is sometimes the case that mediation is unable to assist with or accommodate a person’s problem. At other times parties may experience conflict but cannot specify the issue they want addressed or resolved, or the individual/s they want to mediate with. And mediation sessions sometimes fail to resolve or adequately manage conflict when, for instance, a party or parties do not, or are unable to, use the process for moving toward agreement. In one way or another, then, it can emerge that mediation is inappropriate for, or incompatible with, the parties.

At this limit-zone where mediation practice is unsuitable or fails, technical and susceptible capacities come into tension. Here the intake worker or mediator cannot serve the responsibility that arises out of being-with parties. In resolving this tension (something
which may happen somewhat automatically) the intake worker or mediator faces an ethical dilemma. In somewhat simplified terms, s/he must give greater priority to either the party or to the mediation processes and its political and ontological entailments. The former aligns with susceptibility, the latter with the technical and administrative functions of mediation. This dilemma is most frequently resolved in favour of the technical, thereby bolstering mainstream mediation practice and accompanying political relations. Intake workers and mediators over time come to understand that it is not always possible to meet the needs of parties, or to solve all conflicts. Practitioners conclude that mediation does work in all cases and that some people are unable to make use of the process or are beyond the assistance that mediation can provide. This is so regardless of the attentiveness to party’s interests promoted through training and, usually, mediators’ personal orientations. From these understandings and conclusions it becomes possible to justify some level of failure, or inappropriateness of mediation to particular situations as a type of statistical fact.

In my employment I practiced a form of self-preservation, which I also noted among my colleagues, by rationalising troubling events as aberrations. To focus upon difficult situations or failures, upon the times when parties remained frustrated or upset regardless of my and my colleagues’ best endeavours, would have made completing my work too difficult. In these circumstances, the far greater numbers of successful cases carry mediators through difficult periods, allowing difficulties and failures to figure as anomalies. This understanding of practice is supported by explicit or implicit policies and procedures specifying the parameters of mediation and of a mediator’s obligations. The idea that in some cases mediation is not appropriate, or cannot work, becomes “official” thereby reinforcing mediators’ actions and rationalisations. This designation of relatively rare failures and other difficult events as a type of statistical abnormality is sometimes also facilitated by designating parties themselves or their behaviour as aberrant. Rationalisations can include that parties are simply “too difficult”, or that they are “too entrenched”.

15
Marking the bounds of normality through statistical understanding of the limits of mediation, or by naming parties as abnormal, occludes the affective impact that parties can have on mediators. It both dissipates the mediator’s responsibility for the party and affirms the boundaries of a self-subsistent and autonomous “expert” and “professional”. This resolves the ethical dilemma between the mediator’s obligations to the party or to conflict resolution and its accompanying liberal political ontology in favour of the technical. Technical capacity – including knowledge about conflict and the behaviours accompanying it – trumps susceptibility. This exclusion of abnormal cases or parties also helps to constitute its converse: the “normal” operation of power and governance through mediation and accompanying Western liberal norms about selfhood, order and dispute. Exceptional cases affirm the boundaries for the inclusion of parties in mediation processes and for the normalisation of the vast majority of conflict behaviours which are included within mediation practice (see Foucault 1979: 182-183).

Exclusion, however, is not the only way in which difficult behaviours and situations are treated in conflict resolution. Nor is it the only way in which tensions between technical and susceptible capacities are dealt with. Mediators may respond to troubling events in unpredictable ways because these events approach and sometimes exceed the limits of the “normal” in conflict resolution practice. “Other” possibilities arise precisely because troubling events at the limits of mediation practice involve exposure to forces that cannot be readily contained or processed by liberal governance. Mediators may find themselves compelled, for instance, by complexes of forces that lead them to improvise their mediation practice in ways that transgress the boundaries that are established through training and accepted practice (see Mulcahy 2001: especially 516-520). In my case, troubling situations arising through my involvement with Aboriginal people intensified the interplay of technicality and susceptibility in ways I could not easily avoid, and with effects I could not have predicted. These experiences are useful for exploring the prospects for fissuring the dominant exercise of liberal power and governance through conflict resolution because they occur both at the limit of mainstream mediation practice and involve an encounter between very different sets of political values and forces.
Susceptibility and Setter-Indigenous Encounters: Relationship and Possibilities beyond Control

Encounters between White Settler mediators and Australian Aboriginal parties to mediation are unique and useful sites for exploring the interaction between different forces in mediation and reflecting upon possibilities for transformation of governance relations through conflict resolution. Differences between the political ontologies of White mediators and Aboriginal parties – between Western liberalism the world’s oldest living culture – are likely greater than those to be found between any other two traditions. These differences suggest opportunities for instructive juxtaposition and provocation, particularly because these traditions are entangled through ‘antagonistic intimacy’ (Thomas 1999: 10) in the Settler-Colonial situation. The fact that Settler and Aboriginal selves emerge through governing and other processes that are ‘mutual rather than separate and separating’ (Attwood 1997: 116) means that the disputes involving Aboriginal people which I managed as a (White Settler) mediator were characterised by a complex intersection and (often implicit) negotiation of Aboriginal and Western understandings of conflict, selves, order, and accompanying political ontologies.5

Although complex and not given to ready explanation, the difference between Settler-European and Indigenous political ontology can be understood in very abbreviated form as turning upon the question of world-ordering. In Aboriginal tradition, entities (both human and non-human) are ordered by their complexly networked interrelatedness, which has its basis in place. In the Western tradition, by contrast, entities and order are revealed or produced through the knowing subject’s ability with reason, speech, or the word.6 These bases for ordering the world are associated with different, although certainly not incommensurable, ontologies. Take understandings of the self, for instance. The dominant Western conception of the self as a more or less coherent, bounded and self-subsistent entity is very different from a much more enlarged understanding of the person in Aboriginal Australian tradition (Stanner 1979: 25). Here selves may be located in the body (as is partly the case in the Western tradition) but they may also be located within ‘the
bodies of other people and other species, and within the world in trees, rockholes, on rock walls, and so on” (Rose 1999: 180). Fundamentally different understandings of this type manifest in a variety of ways in mediation encounters.

The behaviour of Aboriginal parties in conflict situations often reflects, through a relatively expansive conception of selfhood, continuity with a wider set of social, political, and material relations and forces than is expected in mainstream mediation practice. These relations can include, for example, connection with extended kin, spirit ancestors, and particular landscapes. These can lead to a definition of “consistent” behaviour which differs markedly from that typically applied by Westerners. Aboriginal people may, for instance, very rapidly shift their identities and the contexts for their action and behaviours (Rose 2000: 172). This can be interpreted by (inexperienced) White-Settler mediators as inconsistency. Conflict may also be expressed by Aboriginal parties through emotional vocal outbursts including strong swearing (see Langton 1988), and more frequent threats of violence than in common in White contexts. A public gathering or mediation session to address a particular conflict may be used as a forum for raising other or earlier conflicts which, in a cyclical ontology may not strictly “end” (see Williams 1987: 65). Other manifestations of Aboriginal political ontology include the emergence of decisions within a group (see Williams 1985) in ways that may appear – to Western observers – to involve limited or no explicit communication.

These and other aspects of Aboriginal peoples’ disputing behaviour challenge Western mediators, mediation processes and accompanying political ontology by clashing with the expectations that selves should be peaceful rather than combative, rational rather than emotional, self- rather than otherwise-oriented, and focused on the task at hand rather than wider issues. As a result Aboriginal parties sometimes refuse to acknowledge or accept the authority, processes and frameworks of Western mediators. In my mediation practice with Aboriginal people I consistently encountered these and related difficulties accompanying Settler-Aboriginal differences. This challenged me personally, but more importantly, also undermined the possibility of passing off these problems as aberrations in otherwise satisfactory mediation practice. Instead, tensions between technical and susceptible
capacities intensified through my self as I tried to work with the difficulties of behaviour unfamiliar to me and maintain involvement with Aboriginal parties in order to undertake my work.

The core requirement for involvement with people – for being-with – that is necessary for mediation practice manifested more strongly than in my mainstream mediation practice as these tensions intensified with the challenge to my mediation practice arising out of Settler-Aboriginal difference. It quickly became clear that forging and practicing strong relationships, and hence prioritising susceptibility over technical capacity, was a condition of working with Aboriginal people and being able to guide Settler-Indigenous mediation processes. Completing my work often required extended “informal” conversations, attentiveness to spiritual, cultural and family matters, and sometimes use of work vehicles for “personal” purposes. These activities pushed and occasionally breached the conventional bounds of mediator impartiality. In these ways I was drawn into the importance that Aboriginal people place on relationship (Stanner 1979: 34), and toward adjusting for the predominance of technical capacity in mainstream mediation practice.

On other occasions the prioritisation of relationship by Aboriginal people manifested in ways that allowed me to continue my work beyond (potentially) difficult incidents. During a large mediation an Old Woman loudly and publicly berated me following my summary of discussion because of implications it had for how it may have made her appear before the group. I had begun to develop a relationship with her and was concerned that all was lost. When I went to apologise to her during a break, she dismissed the issue, saying “that was just business [formalities]” and “you’re alright [fine, a good person]”. The relationship appeared to be more enduring than the impact of what she saw as a shortcoming in my performance for there was subsequently no acrimony between us. The separation of her relationship with me from my behaviour in performing the technical dimension of my mediation work meant that both she and I were able to continue to participate in the mediation process.
These dynamics involve an adjustment between me and Aboriginal parties that reflects both the importance of relationship for Aboriginal people, and of susceptibility and being-with people for mediation practice. Moreover, they have implications for the operation of power and governance relations in mediation. The foregrounding of susceptibility resulted in the mitigation, and in some cases reversal, of the usual domination (characterising much mainstream mediation practice and the usual management of limit events) of the technical over the susceptible. As a result I was pushed to inquire after what it might mean to know the world and conflict resolution in Aboriginal ways. This set of dynamics, emerging out of Settler-Aboriginal difference is more than disruption and resistance. It is neither a meeting of oppositional forces accommodated by mediation practice nor an aberration that can be marked as beyond the “normal”. It is, rather, a fissure in the programmatic technology of mediation as governance. Here mediation practice folds back upon itself and upon the dominant politico-cultural relations of conflict resolution and liberal governance. This signals, in other words, the possibility that Aboriginal (and other) forces might mix with Western forces to generate shifts in the practices of governing through the selves of mediators.

Although not surprising that Aboriginal parties to mediation might manifest resistance, the fact that the accompanying forces manifested through my self is more remarkable. The mediator is, after all, a type of “agent of the state”, legitimated as an expert and contracted to deliver a process. Thus although mediation processes typically effect an operation of power and liberal governance by trading in the susceptibility of selves to have parties reconfigure themselves as directed by mediators, my experience with Aboriginal people generated something different. A type of reversal occurred, with the mediator partially reconfigured through Aboriginal forces. Many Aboriginal Old People would likely be unsurprised about this seemingly magical turning of power against itself in the Settler-dominated setting. As Stephen Muecke (2004: 129) notes, a ‘paradoxical power of political weakness’ operates in the Australian Settler-Colonial situation.

Some might argue this is simply the recounting of (my) personal experiences which have little importance for wider mediation practice. It might be further objected that I was
particularly sensitive to Aboriginal forces by dint of personal proclivity. It is true, of course, that I was part of resistance enacted by Aboriginal people. More significantly and accurately though, resistance occurred through me via the actions of Aboriginal people and forces acting upon me in effecting the prioritisation of relationship in Aboriginal political ontology. This was possible because Aboriginal emphasis upon relationship compounded the capacity for susceptibility required for mediator practice more broadly. Aboriginal forces took hold of me in ways that are unanticipated by the predominantly technical operation of power and liberal governance. This suggests that possibilities for shifting the dominant pattern of governance relations through conflict resolution accompany the necessity of susceptibility for effective mediation practice.

Encounters across Aboriginal-Settler difference suggest, then, that possibilities for working against the dominant power and governance relations identified by governmentality critique are contained within the relations between selves in conflict resolution. The intensification of tension between technical and susceptible capacities through my self in encounter with Aboriginal parties led to a partial reversal of the dominant pattern of force relations through mediation. Because this experience was facilitated by the requirement for susceptibility in mediation practice, broader prospects for shifts in relations of governance may accompany the susceptibility of mediator-selves. Conflict resolution practices such as mediation may, then, fold back upon, mitigate, and transform the very operations of power occurring through them.

**Susceptibility and Governance in Mediation: Implications and Prospects**

The foregoing discussion of the interplay of technical and susceptible capacities within mediation practice suggests that the critique of conflict resolution informalism drawn through the governmentality approach is too narrow and may be unnecessarily pessimistic. In particular, the necessity of “being-with” parties for mediation practice, which Levinas’ phenomenology helps to draw out, is of a register other than the technical order that tends to be identified in governmentality literature. Here I have considered the interaction of
Western liberal and Aboriginal Australian forces to show that liberal governance, frequently discussed through governmentality notions such as mentalities and rationalities of rule, may be fissured and perhaps even transformed by the affective relations operating through the very agents and processes of governance. What, then, are the associated implications and prospects for analysis and conflict resolution practice?

Examining affective relations in mediation beyond the exploratory formulation provided here promises to complement the more usual attention to mentalities and rationalities of rule and expand our critical thinking and analysis of advanced liberal operations of power and governance in conflict resolution. The affective dimension of relations of power may be particularly valuable for altering the register of critique. Complementing the metaphor of rationality deployed by governance programs in this way may provide additional and subtler ways of understanding and critiquing governance through informal conflict resolution. Challenges do accompany such efforts because affective relations are by their nature difficult to study. Yet, attending to the “messiness” of selves, forces, and affect promises a more rounded understanding and analysis of power and governance operating through informal conflict resolution.

Expanding our analyses to include the interplay between affective and technical dimensions of mediation practice offers opportunities for a productive policy engagement and dialogue with practitioners to engage the currently dominant ethico-political relations reproduced by liberal governance in conflict resolution informalism. Exploring affective relations within conflict resolution networks is likely to resonate with popular ideas of responsiveness to parties needs, and of practice as an art form that works with emotions and intuition. Reworking the operation of power through this approach is more accessible to practitioners than conventional governmentality critiques which have thus far had very limited circulation in mainstream practitioner conflict resolution literature. Engaging the ethico-political dynamics of affective efficacy can also be relatively easily linked with practitioner training, education and professional development. Through this means, and particularly by highlighting and leveraging the ethical responsibilities accompanying practice, greater responsiveness to difference might be achieved. This in turn may mitigate
emphasis upon technical capacity and the normalising effects of liberal governance in contemporary conflict resolution practice to promote more ethical responses to difference and to open to conceptions of order and dispute beyond those currently available. At the least, considering power relations by attending to the interplay of technical and susceptible capacities through the selves of practitioners promises to intensify the interplay between these capacities to generate important questions and debates for policy and practice.

It is, of course, not possible to guarantee particular political outcomes by taking up the interplay of technical and susceptible capacities through the selves of practitioners in conflict resolution practice. One risk is that pursuing susceptibility may lead some selves to fold back upon themselves and dominant liberal forms of selfhood and Western individualism rather than engaging with others and difference. Beyond this danger, the interaction and constitution of selves are fluid and unpredictable processes. Mitigating liberal governance through the possibility suggested here requires the ‘becoming-other’ (Deleuze and Guattari 1987: 232-309) of mediator-selves. The outcome of this contingent process cannot be foretold. The interplay of susceptibility and technical capacity needs, then, to be approached cautiously and its ethico-political valence needs ongoing evaluation and debate. Nonetheless, the option of working with and intensifying the relatedness of human subjects through the promotion and cultivation of susceptibility does promise possibilities which much current critical thinking and practice, including governmentality analysis, is yet to engage.

These prospects for responding to difference and mitigating governance in conflict resolution practice by attending to the centrality of affect and susceptibility in the operation of power in mediation do not, it is important to note, involve or require the agency of individual subjects as traditionally conceived. Developing education and training for mediators, for instance, does not rely on individual enlightened agents “making a difference” by resisting liberal governance. Rather than reaffirming the self-subsistence of mediator-subjects and related conflict experts (activist, reformist, or otherwise), the possibilities indicated here speak to the circulation of a wider range of forces and difference through mediators. The prospect, then, is that forces other than those
of Western liberalism (with its accompanying assumptions about selves, order and
dispute) might come to operate through informal conflict resolution practice as they did
through my involvement with Australian Aboriginal people. To redeploy Pavlich (1996a:
157), mediators might ‘experiment with the impossible …[and] calculate and envision
practices of justice yet to come’ by themselves becoming other and different.

**Notes**

Thanks to anonymous reviewers, Simon Kitto, Jen Laakso, and Rebecca Duffy for comments on earlier
drafts of this article.

1 See also Malcolm Voyce (1999) and Morgan Brigg (2003). Trina Grillo (1991) puts broadly similar
arguments from a slightly different perspective.

2 For discussion of these debates, see Roger Matthews (1988). For a sample of earlier critical perspectives,
see the edited collections (Volumes One and Two) by Richard Abel (1982a; 1982b). For a recent evaluation,
see van Krieken (2001).

3 Important contributions (including edited collections) to this literature are made by Mitchell Dean (1991;
1994; 1999), Nikolas Rose (1991; 1993; 1996a; 1996b), Barry, Osborne and Rose (1996) and Hindess and
Dean (1998).

4 See Mark Neumann (1996), Deborah E. Reed-Danahay (1997b) or Atkinson, Coffey and Delamont (2003:
64-67) for some contextualisation and history of autoethnography. For some key publications see the
collections by Flaherty and Ellis (1992), Reed-Danahay (1997a) Bochner and Ellis (2002), and various
issues of the journal *Qualitative Inquiry*. See Andrew C. Sparkes (2002) for an overview of
autoethnography, including some criticisms and defenses.

5 The range of conflicts and issues with which I have been involved include land disputes, community
conflict, cultural heritage, and development projects.


7 Old Woman is a term of respect in Aboriginal English.
References


Atkinson, Paul, Amanda Coffey and Sara Delamont (2003) *Key themes in qualitative research: continuities and changes*. Walnut Creek, Calif.: AltaMira Press.


Muecke, Stephen (1997) *No road (bitumen all the way)*. South Fremantle, W.A.: Fremantle Arts Centre Press.


