The Domestication of Violence in Mediation

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This article, based on an analysis of 30 community mediation sessions, provides a theoretical frame for tracking the emergence and domestication of violence stories in the sessions themselves. Challenging the Cartesian distinction between mental and physical violence, I use Scarry's 1985 work to identify the presence of violence stories as stories in which speakers (1) objectify pain through the discursive production of weapons and wounds, (2) describe the loss of voice itself, and (3) describe attempts to reappear as agents in the elimination of pain itself. Drawing on Minow's 1987 analysis of rights discourse, I offer a definition of the "domestication" of violence as a movement from "rights" to "needs" in the discourse of the session. With this framework, and consistent with Silbey and Sarat's 1989 research, I found that violence stories were domesticated in 80% of the sessions in which such stories emerged. Finally, drawing on Foucault (1979), I describe this domestication process as a function of the "microphysics of power" and track the rules of transformation through which violence is subducted into the discourse of mediation itself. I argue that the mediation process contributes to erase any morality that competes with the morality of mediation and, in the process, disappears violence.

Critics of mediation have long argued that mediation operates as a site for the deregulation and decriminalization of violence, particularly violence against women (Lerman 1984; Rifkin 1989). However, advocates of mediation argue that cases where violence is an issue will, in fact, be referred to criminal legal settings; their presumption that mediation does not contribute to the decriminalization of violence reflects the assumption that the legal system will "fit the forum to the fuss" (Sander 1976), appropriately designating the process to address the complaint. The "multidoor courthouse" has, indeed, provided a model for articu-

lating informal to formal processes, designating the informal set-
tings as sites to address "minor" disputes where the alleged vio-
lence does not cross over into felonious criminal categories
(McGillis 1986),[1] preserving the formal (criminal) system for "se-
rious" cases.

Outside criminal legal codes, denied (and resisting) any sub-
stantive code for defining and redressing violence, mediation
cannot intrude into the arena where bodies are injured and pain
is materialized. Yet, critical legal scholars,[2] as well as feminist
legal scholars,[3] have collectively decried the dangers of media-
tion for the "violated," arguing that mediation favors the contin-
ued oppression of women and the domination of state's interests
(Harrington 1985; Abel 1982).[4] Lerman (1989) and others
(Rifkin & Harrington 1987; Rifkin 1989; Fineman 1988) have ar-
gued that informal processes reconstitute gender inequalities
(Lerman 1989), decriminalizing violence against women (Stal-
lone 1984) and reducing women's access to formal arenas where
claims of injustice have the potential for social reform (Germane,
Johnson, & Lemon 1985; Lerman 1984).

Among this group, there is condemnation of the use of medi-
ation for disputes that explicitly involve violence; some further
claim that the diversion of violence to informal settings contin-
ues the historical practice of delegalizing family conflict and per-
petuating women's inequality (Lefcourt 1984). These critics ar-
gue that mediation undermines the legal rights and literal safety
of women and other less advantaged parties (Lerman 1984) pre-
cisely because mediation evaporates claims of rights; a discourse
of rights is central to redressing violence because such a dis-
course names the victim, the victimizer, and the harm done to
the victim (Bumiller 1988).[5]

One might draw an analogy to political repression by point-
ing out that whenever violence is "disappeared,"[6] the victimizers

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[1] Harrington (1985) has noted "the issue of violence . . . influenced the develop-
ment of alternative grievance mechanisms," and she cited the use of alternative dispute
resolution (ADR) to resolve disputes in prisons and schools (p. 95). Clearly, informalism
has a history of dealing with violence, despite its attempt to distinguish "major" from
"minor" disputes.

[2] See Trubek and Esser's (1989) description and review of critical legal studies.

[3] See Rifkin's (1989) review of the feminist critique of informal processes.

[4] See Pavlich's (1996) discussion of the limitations of the debates on community
mediation. He argues (p. 714) that the focus on mediation as an extension of state power
fails to explicate the complexity of community mediation as a site for "technologies of
self."

[5] See Martha Minow's (1990) analysis of rights, particularly in chapter 9, in which
she advocates a relational perspective on rights that highlights its function as a discourse.

[6] This analogy to the "disappeared" grows out of my personal life. I am married to
an Argentinean who came to the United States to escape political terror, and the "disap-
peared" have lived in our conversations about the past, the present, and our collective
future. This investigation into the evaporation of violence in mediation was sparked by
the connections I drew between the disappearance of bodies under a military regime and
the disappearance of violence in discourse. Elaine's Scarry's (1985) *The Body in Pain* made

go free, the victims are left socially isolated to manage the conse-
quences of the violence, the harm goes unaddressed. Wherever
victims are disappeared, silence inevitably supports the existing
regime, legitimates those who silence victims, and undermines
the rule of law itself (Taylor 1994). Conversely, victims of the re-
gime could argue that justice requires denunciation in institu-
tionalized public settings where victims can be witnessed and vic-
timizers must be disciplined (Cover 1986).

From this perspective, the institutionalization of mediation
coincides with a reduction of the "public space"—the public is
reduced to the participants in the mediation session, and as me-
diation is increasingly utilized for multiple types of "disputes,"[7]
the belief that mediation is unjust (and unsafe) for the violated
gains credence. The questions about the practice of mediating
violence become more political, more polarized. Victim-offender
mediation (VOM), an outgrowth of the restorative justice move-
ment, does use mediation to redress violence.[8] Drawing on a cri-
tique of retributive justice, advocates of VOM argue that shame
and forgiveness bring victims and victimizers together and repair
social bonds (Retzinger & Scheff 1996). Despite Braithwaite and
Mugford's (1994) claim that VOM may reduce recidivism, this
claim does not reduce our anxiety that mediation may violate the
civil rights of the accused, may subject victims to further fear and
intimidation, and may erase the moral frames that enable us to
denounce and punish victimizers. As Harrington and Merry
(1988) have noted, there remain serious and unresolved ques-
tions regarding the relationship between justice and mediation.
I seek to explore this relationship through a deconstruction of
the discourse on violence that frames our understanding of
violence in mediation, for our capacity to witness and recognize
violence is a function of the discourse we use to identify, classify,

those connections for me and has continued to shape my understanding of the manage-
ment of violence in multiple social settings. This article is my attempt to explore the
application of Scarry's analysis of torture to the analysis of mediation, on the assumption
that the process of the evaporation of violence is a social and discursive process and is not
limited to Third World countries and military regimes.

7 A number of states have passed legislation mandating mediation of all cases involv-
ing custody and other family-related issues (American Bar Association 1988). A few states,
such as Colorado and Massachusetts, are beginning to experiment with the use of media-
tion in abuse and neglect cases (as I learned in personal communication with agencies in
Springfield, MA, and with researchers in Denver). And except in the few states that have
passed "mandatory arrest" policies, police continue to use mediation as their primary
intervention strategy in situations of family violence (Straus & Gelles 1990).

8 See Braithwaite (1989) for a good account of the ideology that supports the use of
mediation in the criminal justice system; see Messman & Otto (1992) for a critique of
victim-offender mediation. See also Mika (1995). I am explicitly examining community
mediation, a practice that theoretically does not deal with "serious" violence. And
although I have not examined the transcripts of victim-offender mediation, I imagine that
violence is also "domesticated" in those processes as well. In other words, I am hypothesiz-
ing that the mediation process itself reduces, deletes, and evaporates violence, perhaps
even when that process is explicitly designed to address violence.

and evaluate it. On the basis of this critique, I offer an analysis of the evolution of violence stories in the mediation sessions.

Specifically, first, I argue that the Cartesian assumptions about the nature of violence perpetuate the distinction between "relational"[9] and "criminal" cases, effectively disabling empirical analysis of violence in mediation. Drawing on Scarry (1985), I offer a theoretical framework for identifying the presence of violence in mediation cases and explore the presence of violence in community mediation sessions.[10] Second, using Minow's (1987) analysis of "rights" as a discourse, I offer a definition of the "domestication"[11] of violence as movement from a "rights-based" discourse advanced in violence stories to the "need-based" discourse of mediation itself. This framework enables the description of rights[12] as a discursive formulation that constructs moral obligation; in contrast, the discourse of mediation as a need-based discourse removes any morality other than the morality of mediation itself. And third, using Foucault (1979), I attempt to describe the progressive transformation of rights into needs, explicating the "micro-physics of power" by describing the rules of transformation through which violence is subducted into the discourse of mediation. Tracking the domestication of violence, I describe the discursive process in which victims and victimizers are erased, rights are reframed as needs, and relationships are constructed as economic arrangements. On the basis of this analysis, I argue that mediation processes contribute to the erasure of any competing morality by folding that competing morality into the morality of mediation itself. Scarry (1985), Minow (1990), and Foucault (1979) together provide a framework for (1) identifying the presence of violence in mediation, (2) defining the "domestication" of violence as the transformation of rights into needs, and (3) tracking the "rules of transformation" that contribute to domestication. Fundamentally, I seek to alter the way we witness violence as well as to describe its disappearance in community mediation.

The Data

My analysis involves 30 mediation sessions that were taped and transcribed in 1990 as part of research on the social construction of neutrality. The data collected for the "neutrality"

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[9] See Yngvesson's (1988) research on the role of the clerk in the court system; she noted that the clerk in the system she studied distinguished between relational and criminal cases; mediation is regularly described as a context for processing relational problems.

[10] See Merry and Milner (1995) on community mediation.

[11] I intend this play on words—slipping between the reference to domestic violence and the root "domestic," meaning "ordinary."

[12] I am not implying that rights discourse involves the invocation of legal rights as such; I am, instead, following Minow's definition of rights as a social construction of a relation between self, other, and a moral order.

project included taped mediation sessions and 15 interviews with mediators and the mediation program directors from the five mediation centers where data were collected. These centers were community mediation centers in New England; four were court-based programs; four centers were in small rural communities— one of these four was on a major university campus and served both the area and the university students. The fifth center was located downtown in a city (pop. 100,000) and served businesses, individuals, and families.

All these centers mediated cases referred from courts; 2 of the cases had been referred to the center by the Department of Social Services, 2 were referred from schools, and the rest (26) were court referrals. In all four of the court-based programs, the director of the mediation program had close working relation-ships with the clerks, who routinely set aside cases that might be routed to mediation. In the largest program, the assistant direc-tor of the mediation program would go to court in the morning and look over the docket to assess which cases he thought were suitable for mediation. In this context, the mediator had consid-erable authority to decide which cases were routed to mediation and which were heard in court; when I asked one program direc-tor how he distinguished cases appropriate to mediation, he spoke of experience and "gut" instinct rather than any formal criteria.

In the data set there were 13 cases of family conflicts, 4 cases that dealt with school-related conflicts, and 13 cases that dealt with either neighbor-to-neighbor problems or "money cases" (conflicts between consumers and businesses). There were in-ses-sion agreements in 24 cases. Interestingly, there were restraining orders in place prior to 3 of the family mediations, 3 of the school mediations, and 3 of the money or neighborhood cases. Half of the cases that contained violence were mediated in the context of restraining orders.

The disputants in these sessions were predominantly white and middle class; except for one African American, the mediators were white. In 10 of the 30 cases, there were male/female mediator teams. In the remaining 20 cases, 8 were medi-ated by women and 12 were mediated by men. Of the 8 cases that were mediated by women, 3 had 2 women mediating as a team. Of the 12 cases mediated by men, none had a male co-mediator.

No data were collected on the meaning of mediation to the disputants. However, I conducted open-ended interviews with 10 of the volunteer mediators and all 5 of the program directors, and their rationale for mediation fit the textbook arguments which legitimate the practice: improved involvement on the part of the disputants; cheaper, faster, less adversarial, and healing to

relationships.[13] In all 15 interviews, mediators said that "empowerment" was the most significant result of their practice. While there was discussion about the "dangers" of mediation (e.g., mediating in the context of domestic violence), there was no discussion of mediation as "cooling out" conflict or homogenizing values. Two program directors referred to the importance of "balancing power" if they suspect domestic violence; only one program director indicated that confidentiality was limited because mediators would be obligated to report any concerns regarding child abuse.[14] But because the focus of this research is on the discourse in the sessions themselves, not on the talk about the sessions, what I learned from the interviews is not pertinent to this analysis. However, the problem regarding mediating violence is certainly part of the discussion about the validity of mediation and shows up in the way that "relational" and "criminal" problems are differentiated.

Critiquing the Categories: Escaping Cartesian Distinctions in Our Violence Discourse

Mediation's distinction between "relational" and "criminal" problems, between "minor" and "major" disputes, enables the distinction made *in* law and mediation, *between* law and mediation. Violence is a disruption in the social order; because mediation celebrates relativism (there are multiple moral codes and all are legitimate), all moral orders are legitimate in mediation. There is no way for mediation to advance an absolute moral code that stands outside the moral code of the mediation process itself. The moral code of mediation is thus a second-order code, one that legitimates the multiplicity of moralities. Thus, the exclusion of blame, the refusal to construct "victim," the flattening of moral difference, is a function of the ideology *within* alternative dispute resolution (ADR) concerning violence, an ideology that simultaneously denies the presence of "serious" violence in informal settings *and* advocates the use of informal settings to deal with violence that occurs between persons who know each other.[15] This "denial" is, in turn, a function of (and constitutive

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[13] See Silbey and Sarat (1989) for discussion of the various rationales for informalism.

[14] Since 1990, when the data were collected, there may well have been important strides toward sensitizing mediators to violence through their mediation training. This is most probably the case, as the culture is more attuned to issues of abuse than it was seven years ago.

[15] Note that formal or substantive justice is evaluated on the basis of a written (objective/material) code but informal or procedural justice is evaluated on the basis of internal (subjective) criteria, that is, "satisfaction" and "frustration." This dichotomy, central to the distinction between law and mediation, replicates the Cartesian dualism between mind and body and provides the theoretical machinery for erasing the presence of bodies in mediation and, by extension, violence. Even in the victim-offender mediation programs, it is the "satisfaction" of the victim that is at issue, not the violence. Victims are

of) the way violence is recognized and marked as violence in so-
cial processes (McKenna 1992).

According to Scarry (1985), violence materializes as a social
construction; it is formulated in discourse, and its visibility de-
pends on the codes, the signs, for categorizing and naming vio-
lence as such. Violence, from this perspective, is a semiotic sys-
tem used in multiple social contexts to enable *and* disable the
recognition of violence. In legal as well as everyday social interac-
tion, violence is categorized by way of a set of continuums that
distinguish intensity and intentionality (Scarry 1985).[16] Following
the model of the criminal code, we daily attempt to distinguish
between degrees of violence, as if violence can be put on a con-
tinuum. For example, consider the instruments used to deter-
mine the severity of family violence; using Straus's (1990:542)
"Severity Weighted Scale," subjects categorize the violence used
against them into types that are preweighted: "kick, bite, punch =
2; hit with object = 3; beat-up, choked, burned, or scalded = 5;
threatened with knife or gun = 6; used knife or gun = 8." While
these categories are particular to Straus's research protocol, vio-
lence has routinely been categorized on a continuum of severity
in multiple social institutions and is especially visible in criminal
legal proceedings as defendants struggle to redescribe their ac-
tions so as to reduce the severity of the alleged violence. But be-
cause violence is weighted according to intensity, victims can also
regularly erase the violence against them either by minimizing it
in their descriptions of it or by reformulating the victimizer's in-
tentions.

Consider Scarry's (1985) account of the structure of torture.
The torturer intends to gather information for the protection of
the state and, because of that, legitimates the infliction of pain,
establishing the torturer's innocence.[17] Research on victims
shows that, in fact, they often adopt the logic of their victimizers
in their accounts, minimizing the intensity, reformulating the sa-

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encouraged to "move past" their anger and pain in order to "reconcile" with their victim-
izer.

[16] These distinctions are supported in correlate social institutions, such as the De-
partment of Social Services, where child abuse is defined in terms of "irreparable harm"
(as opposed to harm that is not irreparable). Therapists, schoolteachers, and childcare
workers are mandated to construct the boundary between serious and nonserious vio-
lence.

[17] See the film *Closetland* for a gripping and horrifying drama that depicts how the
torturer establishes his innocence. As the drama unfolds, the victim is accused of support-
ing the "underground" and undermining the authority of the state. She repeatedly denies
that the storybooks for children that she has written are allegories of the resistance; how-
ever, her denials are transformed into screams of pain and fear as her torturer inflicts
pain and then mystifies his responsibility for that pain. She begs for understanding and at
times accepts his explanation that he is "forced" to cause her pain. He describes himself
as "on her side," and just as she begins to relax into trust, he betrays her again and inflicts
more pain. This movie provides an opportunity to examine the way violence is mystified.

distic into the benign (Scarry 1985:13).[18] Intentions are re-framed: The victimizer was not intending to cause pain—pain was only a necessary byproduct of the main intent, that is, to obtain information, to obtain money, to reduce chaos, to create order. No matter how intentions are reformulated, the relationship between intentionality and violence in the discourse of violence is often used by victims to deny their pain and by victimizers to deny their culpability.

Intensity and intentionality make possible distinctions between mental and physical violence, between actions that are willed and those that are accidental[19] (see Fig. 1). Formal legal codes, as well as many informal social practices, distinguish between hitting someone on purpose and striking that person by accident, between hitting and frightening. These mental/physical and accidental/willful continuums are based on, and reconstruct, a Cartesian distinction between mind and body, the spirit and the corporal, subjectivity and objectivity. Mental violation is never as regulated/disciplined (and can never be) as is physical violation; and because violence is a function of degree, categorized on a continuum, victims of violence (and their victimizers) are continually able to normalize pain by arguing that the violence, upon consideration, was not significant or serious: "It was only a bruise; he did not mean to hurt me." Thus, these Cartesian distinctions between accidental and willed, mental and physical, violence delimit what can be named as violence and make possible the distinction between "serious" and "minor" violence; these "accounts"[20] of violence grow out of the everyday explanations that people make about their own actions as well as the actions of others. From this perspective, these continuums of intentionality and of severity are central to the accounting practices as persons address and redress violence. These practices, in turn, preserve the distinction between mediation and law.

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[18] Once this Cartesian view of violence is in place, both "intensity" and "intentionality" are used to categorize violence. These categories, Foucault (1979) points out, have been central to the development of the penal system. This Cartesian distinction is also core to the most current and respected research on family violence. Straus and Gelles (1990) have defined violence as "an act carried out with the intention or perceived intention of physically hurting another person" (p. 21). Note that the definition rules out verbal abuse, or suffering caused by the continued drinking of a family member, or the pain of the loss of a loved one in a car accident. Likewise, a slap in the face may not be, according to the slapper, intended to harm. Sarat (1993) noted that the law's description of violence demands and constructs both the rationality of actors and the instrumentalism of action, leaving jurors unable to opt for "a world of events governed by causes beyond human control" (p. 49).

[19] See Fairclough's (1990) critique of the instrumentalism that is at the core of Wittgensteinian approaches to discourse; elsewhere, I have noted that the presumed relation between intentions and action leads to inquiry that promotes essentialist, individualized, and patriarchal descriptions of social processes (Cobb 1994). Such descriptions are particularly obvious in criminal proceedings.

[20] See Scott & Lyman (1968) for discussion of the accounts persons make of their actions. As everyday explanations, actors use accounts to position themselves in social processes.
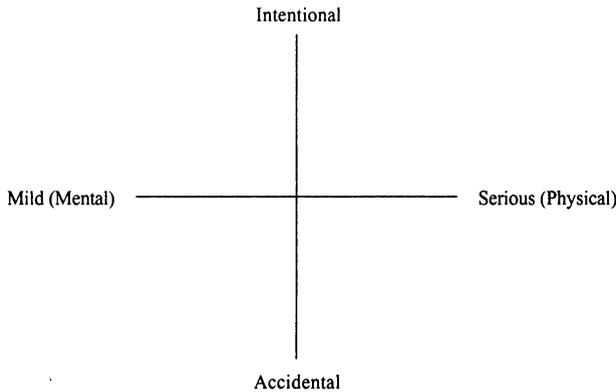
Fig. 1

Scarry (1985) offers a potential resolution to this Cartesianism at the core of violence discourse by arguing that pain is the manifestation of violence: Since pain is totally subjective, pain remains ultimately indescribable. And because it resists language, pain "unmakes" the world; we can only witness/assess pain by the way it is objectified, via what Scarry refers to as the "language of agency" (pp. 15–19), which is the language used to construct and reflect agency in the infliction of pain. Because pain is so subjective, it is objectified, that is, it is presented as located in that which inflicts pain (the weapon), as well as in the wound (the recipient of the weapon). Within the "language of agency," weapons/wounds take on the attributes of the pain and require that the "violated" position themselves as victims of the weapons and, by extension, victims of the weapon wielders. The language of agency is a discursive requirement for the construction of the victim—pain, objectified in weapons and wounds, takes on a history and a directionality (from the actions of the victimizer to the wounds of the victim). In this way, we trace in discourse the actions of the victimizer on the body of the victim.

However, the objectification of pain can also be equally witnessed/assessed by fear, as well as by weapons, and described in terms of (1) the presence of those conditions or objects that could eliminate pain and (2) the elimination of those objects or conditions that cause pain. In both cases, power is conferred onto object/persons relative to a state of fear;[21] from this per-

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[21]   Cover (1986) made a similar argument when he said that although he had criminal processes in mind as he described violence in legal interpretation, the description holds in civil cases as well: "It is enough that it is the case that where people care passionately about outcomes and are prepared to act on their concern, the law officials of the nation state are usually willing and able to use either criminal or violent civil sanctions to control behavior" (p. 1607). Here, he is making the point that civil cases are also sites for law's violence. Scarry (1985:356) makes a similar point that fear and pain are alike: "Thus the external object occasions a modified and diminished form of sentient suffering (fear), in order to allow the object to be acted upon, in order to prevent the more extreme form of sentient suffering (physical pain). Fear-and-object can thus itself be understood as a partially objectified, hence halfway eliminated form of pain."

spective, both weapons and fear are objectifications of pain and are central to the discursive processes in which pain is transformed into power. As Scarry (1985) points out, it is precisely because pain resists language that the mystification of violence is possible; the only way to "hear" pain/violence is to read the accounts about "weapons" and "fear" that are the distinctive and recognizable signs of violence's presence.

But the language of agency does not free the victim from the subjectivity of the pain, nor does it return the dignity of self to self—rather, it effaces, reduces, and denies the subjectivity of the victim.[22] Pain and its objectification are accompanied by a loss of self, a loss of voice that both signals the disintegration of the world of the person and confers the attributes of pain on the object of the pain—in the process, pain is read as power. The paradox is this: The only way to represent pain is through the alchemy of the language of agency that functions to transpose pain into power and, in the process, to mark the victim as victim, desubjectifying the body. Violence marks victims, not only by the signs imprinted on the body but in and through the process of returning from violence in language; persons must mark themselves as victims, which in turn excludes them from the very communities that are brought forth through their own sacrifice (McKenna 1992).

This point is crucial, for it has import for a theory of both law and mediation because it raises questions about the relation between law's violence and the production of culture. If McKenna (1992), Girard (1979), and Hamerton-Kelly (1987) are right, violence and the production of the victim are constitutive of cultural formation. This suggests that legal forums operate as sacred rituals, reenacting the violence in the creation of the victim, which in turn operates as a ritual sacrifice for meaning making. Law as sacrificial ritual operates through the precise recreation of the violence;[23] in formal procedures, photos and physical evi-

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22 See Bumiller (1992). McKenna (1992), in a section entitled "Tracing the Victim," argued that the act of constructing "victim" *is* the act of making meaning, community, and culture; he noted that the marking of violence designates the victim as a sign filled with meaning *in and through the victim's exclusion:* "The victim is the supplement of an origin that is constituted only by the victim's expulsion" (p. 76). In that expulsion, "meaning is free to proliferate" (ibid.). In the proliferation of meaning, culture is born: "The community comes out of the victim no less than the victim comes out of the community. It is transcendent in that it is the matrix of differences and values (life/death, good/bad, and true/false, as they depend on being in or outside the community), which are in no wise antecedent to the power of attraction and repulsion emanating from the victim" (p. 73). This account of the victim as signifier supports Bumiller's argument that the category of victim effaces the subjectivity of those so constructed and simultaneously exposes desire, for the victim is both desirable *and* forbidden. However, McKenna ultimately argued *for* the construction of victims, noting that it was only in the identification with victims that we can have any hope of avoiding the violence to end all violence—nuclear war.

23 See Bumiller (1988:99–101) where she points out that the discursive requirements of becoming a victim of discrimination involve the production of "evidence," much of which can be dismissed as subjective rather than factual information. The category of "victim" is fluid, and the law can be used to unmake as well as create victim.

dence tie legal actors to the ceremony in the construction of their own desire, pulling them to the victim while repulsing them. From this perspective, *nomos* does not precede law—law, as the ritual construction of the victim, is constitutive of *nomos* (Cover 1986) only to the extent that the law can regulate the construction of the category "victim."

> The victim represents the violence of the community and its subsequent peace as coming from outside itself, as other than its own. In sacralizing the victim, the community turns its violence inside out, and it is just this inversion from effect to cause that (1) affords the possibility of experiencing an inside and an outside, (2) generates for the first time its temporal coordinates of a before and an after, and (3) generates the very notions of cause and effect, of consequentiality itself. The victim is sacralized for representing the origin of both the community and the unanimous violence that ends with the destruction of the victim. The sacred is just this quid pro quo which takes the effects of violence for its cause: the sacred is this misconstruction of its origin by the community. (McKenna 1992:15)

The violence story, as a re-presentation of the relation between pain and violence, remakes not just the personness of the victim (Scarry 1985) but also the moral context for the evaluation of action. It is a moral context which functions to create the norms and standards that make up community. In this way, the telling of a violence story repairs the moral code by establishing persons in relation to each other within the context of a shared code for distinguishing right from wrong (McKenna 1992), within a normative order. Violence stories remake the world, not through their accuracy but through the connections they create between wounds, weapons, and community.

Scarry's (1985) concept of the "language of agency" obviates the necessity of any distinction between mental and physical violence, between serious and minor violence, because the focus is on the discourse of violence; following Scarry, I conclude that violent acts "undo" or "unmake" the world of the sufferer; but

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But, as Bumiller has argued, *that* "victim" is socially constructed is not the only concern—it is equally disturbing that the construction of this category accompanies the effacement of subjectivity and reenactment of violence, disappearing the *person* in the construction of the victim. McKenna (1992) argued that this process occurs in the exclusion, separation, and distinction of the victim from all others; but he also notes that this exclusion marks the difference between good and evil, right and wrong. This difference makes meaning and community "mediated by the victim" possible (p. 72).

The fact that victims are reduced to representations of violence, representations that then function to *distance* observers/witnesses from violence, suggests that law operates as a sacred ritual, sacrificing victims in the process of reconstructing violence and its own disciplinary power. If we accept this description, law's authority is always contingent on the *stability* of the categories of "victim," once constituted; if this is the case, the victims of law's violence cannot materialize.

their reappearance in discourse enables us to recognize violence as a set of features in the discourse itself:[24]

1. The objectification of pain (through wounds/weapons), read as power
2. A retrospective description of the loss of "voice" correlate to the loss of self
3. The descriptions of attempts to reappear as agent in the elimination of pain/fear

Collectively, these features of violence stories operate as empirical markers of pain; they thus are the means by which pain is represented in language. Using these as criteria for identifying a violence story bypasses the Cartesian dichotomies serious/mild, mental/physical. They focus attention on the connections between power and pain; they enable the analysis of violence in mediation, providing criteria for the analysis of the discourse in the sessions.

Using Scarry's concept of the "language of agency" as a criterion, I found that 82% (18 out of 22) of the cases contained stories of violence where the connections between power and pain appear as narratives. In all these cases, there was a narrative in which (1) pain is objectified in weapons and wounds; (2) disputants describe a loss of self or voice—an inability to be heard; (3) disputants describe their own (futile) attempts to stop the pain/fear. In the mediation sessions I examined, the "weapon" through which power is "read" included a hand, fingers, a foot, a car, a pizza, a guitar, a telephone, a screen, a penis, a child, a bed, a house, a bulldozer, Burger King, dirty laundry, messy rooms, a boyfriend, a mobile home; none of these items are weapons per se, but all appeared in a narrative about violation and were used to "story" that violence. All these items were constructed as instruments for the infliction of pain and fear, inflicted by the victimizer and central to the construction of the victim as victim. Wounds were located in hymens, bruises, cars, windows, screens, faces, women, women's hands, and children. All of these were constructed as sites which bore the effects of the weapons and were also central to the social construction of the victim and the victimizer.

For example, in one mediation session a mother constructs herself and her daughter as victims and the other disputant in the mediation session as the victimizer (case #7). She tells of the complaint she lodged against a 15-year-old boy because he "broke into" her house to see her daughter at midnight one night.[25] This event took place after the mother forbade him to

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[24] The first item in this list is directly taken from Scarry's (1985) analysis of the structure of torture; the second and third items are drawn from points that she made in chapter 1 and in note 7 (p. 356).

[25] The woman had already entered a restraining order against the boy. (The boy is an only child and lives with his father, who is recently remarried to a much younger

see the daughter because, she said, he had attempted to impreg-
nate the daughter with "the demon's seed" and involved the
daughter in rituals such as "drinking blood." The mother ob-
tained a restraining order to restrict the boy's contact with her
daughter (at home) and then lodged a civil complaint to recover
the money for damage he did to a screen window when breaking
into her house; the court referred this civil complaint to media-
tion.

Drawing on Scarry's analysis, we can find many weapons and
wounds, signs in which power is inlaid in the mother's story (sites
at which pain/fear is objectified and read as power): the broken
screen where the boy entered (raped) her house, the bloodied
sheet which became the (contested) evidence of her daughter's
impregnation, the poor grades on her daughter's report card,
the boy's penis, the daughter's hymen. In all these instances, the
attributes of pain/fear are lifted from the body of the mother/
daughter, lodged in weapons/injuries, and read as the power of
the boy to harm, objectifying pain.

Second, the mother tells a story of her own inability to pro-
tect her daughter and the failure of the boy's parents, the school,
or the police to "hear" her cries for help. She is, by her own ac-
count, unable to be agent and becomes simply a repository for
the signs of domination. She tells a story in which she had no
voice, no power to speak and be heard. And she brings up her
lack of voice explicitly in the session.

Third, she explains that she has come to mediation (having
been referred by the court) to avoid further pain/suffering, to
stop the violence (literally the violation of her daughter). The
recounting of this story in the session is an explicit example of
the mother's effort to eliminate pain and fear. This story, told via
the language of agency, has all the elements of an account of
violence; it functions as a story about a violation and in that way
is paradoxically a remaking of the "unmaking of the world"[26]
which is accomplished through violence. The story brings the
mother back into the world by providing her with language to
describe and reconstruct her own victimization. She is able to
account for her own and her daughter's pain and establish the
role of the victimizer. The normative order is constructed and
rights are delineated, despite the fact that it does not hold for
long; by the end of the session, it is not the violation but the cost
of the repair of the screen ($32.34) that becomes the focus of
discussion.

The normative order emerges only to dematerialize in the
formulation of the mother's need to have the screen repaired;

woman.) The woman described the restraining order as something that protects her
daughter as well as setting a boundary for the boy (implying that neither the father nor
the stepmother is involved enough to care).

[26] This phrase appears in the subtitle of Scarry's (1985) book.

the mediators never discuss the mother's story outside of her request for damages. The normative order the mother constructed fades in the economic exchange framing the agreement; moral obligation becomes pragmatic compliance by the end of the session as rights are transformed into needs. Minow's notion of "rights" offers a basis for examining the consequences of this shift from rights to needs relative to the domestication of violence.

Rights and Needs: The Construction of Self and Community in Mediation

As Silbey and Sarat (1989) note, the discourse of mediation (and more broadly ADR) constitutes needs and interests, as opposed to rights, as the basis for evaluation and action. Citing Ury, Brett, and Goldberg (1987), they describe the theory of disputes that legitimates the language of needs and interests:

> In [their] analysis, disputes arise from conflicts of interests that frustrate the satisfaction of wants, [needs] and desires. The disputing process can be modeled, following [their] approach, as a series of "dispute decisions" designed to maximize the free exchange of individualized wants, perceptions and resources. (Silbey & Sarat 1989:483)

Within this discourse of needs,[27] rights, which function as a system judging moral claims, are sidelined, or as Silbey and Sarat put it, they are "domesticated" (p. 491). And in this process, the basis for the normative order collapses the "we" back into the singular, first-person, the "me."[28]

Silbey and Sarat note that Minow's (1987) dialogic notion of rights allows for the remaking of a normative order that extends to "we" rather than terminating in "me." For Minow, rights paradoxically operate to invoke the community;[29] rights discourse

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[27] Silbey and Sarat's (1989) article compares and contrasts the discourse of rights, the discourse of interests, and the discourse of needs, in the context of the constitution of the juridical subject. For my purposes, I am not distinguishing between "interests" and "needs" because I am simply making the point that mediation grows out of a discourse that attends to individual preferences rather than rights.

[28] Silbey and Sarat (1989) address the consequences of the discourse of rights, as well as its absence, on the "we" and the "me": "Although rights talk in its classical formulations may seem to constitute an alienating individualism, as the radical critique suggests, its voice, nonetheless, creates a recognizable way to understand social life, that is, what constitutes the 'we' rather than solely 'me'" (p. 490).

[29] For consideration of the meaning of "community" in community mediation, see Merry & Milner 1995. They describe the development of community mediation as a function of both the dissatisfaction with formal law as well as an investment in the return of "community": "For many, the loss of community became a more fundamental social problem than inequality. Law, with its adversarial, coercive characteristics, was re-interpreted as a problem rather than as a means of reform. Replacing the state legal system with community legal processes and building the capacity of communities to manage conflicts, promised to restore this sense of community" (p. 11). However, Merry and Milner note that the meaning of "community . . . remained elusive" (ibid.). In my view, *community* has a twinned meaning—it refers to a physical locale as well as to a shared vision, norms, and

constructs a system for evaluating action that signals relationship, history, and social obligation (Minow 1987).[30] The construction of a relation between persons and moral community distinguishes (creates) the position of the claimant in that community.[31] Minow (1987:1876–77) wrote: "Rights provide a language which depends upon and expresses human interconnection at the very moment when individuals ask others to recognize their separate[ness]." This perspective on rights makes visible the social construction of the claimant (the self) and has implication for the kinds of selves that are constructed in mediation sessions.[32] Identity emerges within a storied relationship to the other, a relationship that reflexively constructs the moral code for the evaluation of action. As a positioning device, the language of rights functions discursively to connect (1) speaker (2) with a moral code that (3) obligates the actions of others (see Fig. 2). What is constituted is the position of the speaker (as an individual) in relation to a moral fabric that implicates the actions of others.[33]

For this reason, rights discourse is invoked as an antidote to violence; it sets up victim roles for the speaker, victimizer roles for the other, and a moral framework that holds these roles in relief. Not only does it return the violated to their own subjectivity (often by making themselves an object of the actions of others), but it constitutes a moral framework (theme) for the interpretation of history (plot) and its extrapolation into the future.

It follows from Minow's perspective that while rights construct the relation between self and community, their reformula-

values. See MacIntyre's (1988) discussion of the relationship between community and justice; he considers the basis for commonality advanced by Aristotle's notion of *polis*. "Community mediation" can be seen as a return to the Aristotelian notion of *polis* where just deserts are debated democratically, contributing to the construction of standards of judgment and common moralities. See also Kymlicka (1995), who addresses the relationship between rights and communities; his discussion addresses the way in which group identity (community) relies on the declaration and enactment of rights.

[30] As Merry (1989) has pointed out, communities vary with respect to how they resolve and construct responsibility for problems. It is very likely that rights claims are a feature of our culture's process of rectifying breaches in the normative order; as such, rights may be part of the normative construction of community in the United States but not necessarily part of other cultures' normative ordering.

[31] I am intrigued by Minow's (1987) argument that rights claims assert "an equality of attention": "Rights—as words and as forms—structure attention even for the claimant who is much less powerful than the authorities" (p. 1879). If this is the case, then mediation itself is a practice which was born out of rights discourse (as the right to participate); but, paradoxically, this rights discourse is located at the level of process to the exclusion of rights claims at the substantive level. The right to attention in mediation paradoxically works to neutralize any specific rights claims.

[32] See Pavlich (1996) for discussion of the social construction of identity in community mediation.

[33] Claims to rights also have implications for the actions of both the speaker and the referred-to others, given the reflexivity of discourse. It is often the case that speakers reference the moral code which ends up (through interaction) obligating *their own* actions instead of the actions of others.
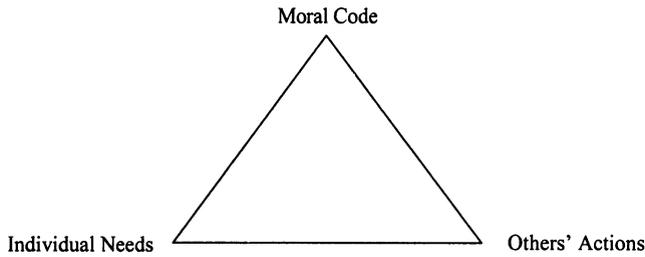
Fig. 2

tion 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.[34] 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.[35] In the process, the community that was invoked in the rights discourse evaporates in the discussion of individuals' needs. Pragmatism becomes the code for framing and interpreting action[36] (see Fig. 3). The dissolution of a moral frame other than pragmatism necessarily dissolves the role of the victim and victimizer and disrupts the violence plot line; events which constitute victimization are reformulated as events which lead to a shared painful

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[34] I found that needs can be constructed by one person (or conjointly) for self or others. In this way, a mother can describe the needs of her child or a neighbor can discuss the needs of the children down the street: "They need a mother who can control them." In either case, the basis for obligation is individual need, rather than rights.

[35] The discourse of needs can at times function like the discourse of rights. For example, if a woman says in a mediation session, "I need for you to stop hitting me," the statement, framed as a need, may function like a right in that it may construct a code external to the woman's internal states (where needs live). Mediators are (supposedly) sensitized to domestic violence, and, therefore, this statement could invoke the moral code that prohibits violence against women. Whether or not it will is a function of the interaction through time—either a statement like this will invoke the code that will be elaborated in subsequent exchanges, or it will tend to marginalize the code by centering on the needs of the woman. So, I am not suggesting that needs cannot function as a right; whether or not they do is an empirical question.

[36] The tension between rights and needs can also be seen in the discourse that surrounds the attempt to redress the violation of human rights in Latin America and Africa; in these countries, the discourse of human rights which frames the stories of torture, death, and disappearance exists in an uneasy relation to the discourse of reconciliation, which is itself a discourse of bargaining and negotiation. Often, there are literally negotiations between the violators and the tribunals set up to hear the testimony of the violated: The violators require amnesty in exchange for that testimony, and the state, in an effort to "reconcile" its own past, agrees to provide amnesty to practically reduce the threat of yet another military coup (Taylor 1994). "Reconciliation" is often seen as the only way to move past a violent history, and yet to do that, the state and the public must overlook the bodies that were thrown alive out of planes or burned with electric prods. The need of the state subsumes the rights of the tortured and disappeared (Cobb 1993).

conflict, fueled by misunderstanding due to poor communication.

Because mediation ideology flows out of pragmatism, the goal of mediation is to reach agreements, to meet the needs of individuals, not instantiate a moral code. In fact, mediation is designed to subsume moral differences by colonizing competing moralities: There is no "right" way to live, except that morality which permits and enforces relativism.

Silbey and Sarat (1989) note that mediation legitimates itself as a practice by distinguishing between rights and needs: Rights discourse is suitable for formal settings in which hierarchy and power are at issue; needs discourse is suitable for mediation where not power but "participation"[37] (rather than hierarchy[38]) is the issue. Given that formal legal settings have a disciplinary function, rights will be rhetorically required as judicial justification for legal action (Cover 1986); given that informal legal processes have distinguished their practice as one that is not disciplinary, rights (which call for discipline) must be suppressed, transformed, and evaporated in favor of needs that are constitutive and reflective of the moral code of "participation." In mediation, differences in moral orders are not subjected to any external or general moral code outside the moral code of mediation itself, which operates in an exclusionary fashion, subducting and enfolding any and all normative challenges into its own authority.[39] Ultimately, moral codes are evaporated in mediation as rights are transformed to needs, as Fineman (1988) noted in her analysis of custody mediation; the rights of parents are collapsed into the needs of the children through the discourse fostered by the "best interest" doctrine.[40]

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[37] Harrington (1985) noted that informalism has invoked "participation" as a rationale for its own institutionalization (see her ch. 5).

[38] I was interested to note that in all 10 of the "family" mediation sessions that I examined for violence stories, the needs of both the parents and the children came up; the discussion, in effect, leveled the natural hierarchy in families. Children's needs appeared at the same level as the parents' needs. In all 10 cases, there was at least one reference to democratic values: "Everyone has to have a chance to give their input," "You both (mom and daughter) have needs that we can recognize and try to respond to," and so forth. The absence of any hierarchical relation between parents' and children's needs blurs the structural boundaries in the family (Minuchin 1974).

[39] Elsewhere, I have noted that the discourse of empowerment draws from and gives life to democratic values (Cobb 1993); the legitimacy of informalism is rooted in the legitimacy of the discourse of equality. However, it is curious that the discourse of equality is based on a discourse of rights and personal liberties, which mediation skews. Absent any basis of rights, mediation speaks a language based on empowerment, yet remains disconnected from the foundation of democracy and personal liberty.

[40] Rights are also enfolded into a discussion of relationships, as Harrington (1985) has noted; but I have chosen not to focus on this transformation because it is a transformation evoked in the conversations *about* mediation, as opposed to the conversations *in* mediation. This distinction is more useful for the examination of the relation between formal and informal processes than would be a distinction that captures the alterations in participants' discourse.
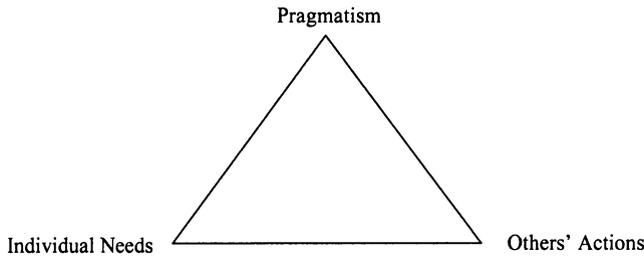
Pragmatism

Individual Needs   Others' Actions

Fig. 3

The construction and persistence of a moral code other than that of mediation itself is revealed when the concluding portion of the session contains an apology and/or when the agreement itself functions as a form of discipline to protect the victim. In these cases, the victim's and victimizer's roles have remained stable, moral themes (other than mediation morality) persist, and the plot line of the violence story extends out beyond the session itself, either requiring constraints on the victimizer and protection for the victim or dissolving the mediation process itself. In these cases, rights discourse resists transformation.

Focusing on needs rather than rights disrupts victim/victimizer roles, dissolves moral frames that stand outside of pragmatism and utilitarianism, and disappears events central to the violence plot line. Ideologically, the survival of the community is constructed as depending on "healing," which in turn requires pragmatic attention to reconciliation (Bush & Folger 1994). And reconciliation is the morality espoused in and by the mediation process.[41] Paradoxically, reconciliation destroys the very community it seeks to protect in the moment it dissolves all morality that competes with it.

Maintaining Rights: Undomesticated Violence

Let me apply Minow's (1990) analysis of rights discourse to violence stories in mediation. When violence is domesticated, the morality of mediation itself frames the interpretation of action—"right" and "wrong" are subsumed by the ideals of "participation" or conflict resolution. Conversely, when it is not domesticated, rights are maintained in the discourse. When I applied Minow's analysis of rights discourse to violence stories in this data set, I found that in only four cases were violence stories not transformed into needs discourse (18%).[42] Three of these four cases

[41] This is precisely the discourse used by defendants in human rights tribunals: They present themselves as serving the needs of their superiors, who in turn had needs to preserve the regime. Torture and "disappearance," imprisonment and genocide, become the result of individuals' and the state's need to survive.

[42] The four cases are #5, #12, #14, and #21.

had apologies in the agreements; three of the four cases were mediated in the context of restraining orders; two had restraining orders maintained via the agreement. In all four cases, there was a morality beyond the morality of participation that was invoked and maintained. In case #5, morality was constructed as "obedience" and "self-control"; a school bus driver described herself as a victim of a 10-year-old boy who pushed and shoved her when she tried to enforce the rules; the bus driver demanded that that boy not ride the school bus any longer and the boy agreed; charges against him were dropped. In case #12, a father was requesting payment from his daughter's boyfriend for hospital bills incurred when the father was hospitalized following a shouting match with the boyfriend; he was thought, at the time, to be having a heart attack, but it turned out to be a panic attack. The father constructed himself as "protecting" his daughter from her boyfriend, who was described as a "liar" and a "coward" because he had been discharged from the military.[43] Patriotism, loyalty, courage, and sobriety were central moral themes used by the victim to oblige the victimizer to stay away from the victim's daughter; there was no agreement. In case #14, a Muslim doctor demanded an apology from a man who assaulted him; violence itself was constructed as a violation of (unspecified) rights—the victimizer was constructed as a violent person subject to fits of rage and in need of discipline. In the agreement, the victimizer had to apologize and pay the victim's medical bills or face assault charges (and the victimizer was already on probation for assault). In case #21, the rights of property owners became the explicit theme; victimizers (a group of teens) had to apologize for their behavior in exchange for having the charges against them dropped. There was an agreement: The teens apologized to the victim, who lectured them about the meaning of "respect" prior to signing the agreement. In all these cases, victim/victimizer roles resisted transformation; a morality beyond the morality of mediation itself was invoked; and the violence story was extended into the future as a plot line, obligating the victimizer to perform some action relative to the victim. However, when violence is domesticated, agreements/discussions are framed in the discourse of needs/interests, draining the disciplinary power of the violence story; victim and victimizer roles disappear and are replaced by "disputant" roles in which the parties are equated to each other as co-participants in the resolution of conflict.[44]

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[43] This man revealed in the private session that he had been discharged from the military because he had panic attacks.

[44] Pavlich (1996) makes the point that community mediation is a technology for the production of certain "selves"; I am making a similar point here, noting that when violence is domesticated, certain selves are constructed in the discourse.

Needs Discourse: Violence Domesticated

When the themes of mediation itself are the dominant themes that frame and evaluate action, "responsibility," "resolution," "participation," and "peacemaking" are valorized. The violence plot line does not extend beyond the session, so there is no plan for protection for the victim and there are no apologies. Violence becomes mutualized as it is reformulated as a "dispute."

For example, in case #17,[45] middle-class white parents bring their (white) adopted child—a 15-year-old girl—to mediation because she continually refused to do her chores and to "disobey" her parents.[46] The latest bout of "disobedience" came on the heels of the parents' refusal to let her attend a cast party (for a play she was in) on a Friday night because she had to be in bed at 10:00. (Her week-night bedtime hour was 8:30.) The daughter described her pain resulting from her social isolation; she said she had no friends because her parents were too controlling; she stated that she had no rights and compared her relationship with her adoptive parents with her victimization by her biological parents (they "hit" her and "yelled" at her). She described how she repeatedly has tried to be heard by her parents, to no avail. She demanded equality. The adoptive mother then explained that she and the daughter are not "equals," in the same way that she herself and her husband are not equals: "We're not equals, but we each have places that we are comfortable with and we have roles and we agree on them . . . but within those roles we're equals." This discussion of equality is followed several turns later by a series of exchanges that exemplify the semantic transformation of the daughter's claim to rights (the right to make some of the decisions about her own life, like her own bedtime) to a claim of needs.

> **Father:** I don't think I have anything in particular on rights and responsibilities written down here. That sounds like an interesting phrase, but I don't know quite why. Maybe it's because we haven't been talking about rights before. We were talking about rights in terms of (*pause*) this was said in terms of, ah, rights of participation, I think.[47] I'm really not

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[45] This family was referred to mediation by the school counselor after the daughter came to school one day crying. The mediation, which took place at a community mediation center in a small New England town, was concluded after one session. There were two white middle-class mediators—both females—one of whom was the director of the program, the other a volunteer.

[46] This girl defined herself as "learning disabled" and several times alluded to her inability to remember to do what she has been told, effectively excusing herself from the parents' accusation that she is disobedient.

[47] The daughter's claim to a right to be heard is perfectly contained and enfolded into the ideology of mediation that valorizes participation. Thus, her moral claim is made equivalent to the morality of mediation itself.

sure, but I think that's sort of the sense that I had of it. Fuller participation then.[48]

Mother: Yeah. When you talk about equal (*pause*) we talk a lot about privilege and responsibility, which is similar, and that's maybe even the word I was looking for rather than equal, that you get a lot more privileges rather than being absolutely without, sometimes.

Mediator 2: You hold up your end of the bargain.

Daughter: Right. Sometimes . . . .

Mediator 2: (*Overlapping*) Everything is bargain.

Daughter: Right.

Mediator 2: Deal this way, that way. Everything's dealing.

Daughter: Barter.

Mediator 2: You got to learn to do it now 'cause you're gonna have to do it the rest of your life.

In this exchange, rights are explicitly discussed as appropriate or inappropriate. The topic of rights unfolds from a discussion on equality (the right to have an equal say in discussions about rules); rights are linked to participation, which is in turn linked to responsibility, which is in turn equated to "hold[ing] up your end of the bargain," "dealing" and "barter[ing]." The semantic links are explicit: rights can be enfolded into responsibilities which, when framed in commercial metaphors,[49] can be equated with negotiation.

This transformation from rights to responsibilities is possible, given the structure of rights: the connection established by a claim to right between (1) a speaker, (2) a moral code external to that speaker (for example, "equality"), and (3) the others referenced in the claim (i.e., the parents).[50] Responsibilities constructed as mutual[51] reformulate the moral code; both speaker and others are mutually obligated in a commercial exchange of duties to each other. Once responsibilities become detached from rights, responsibilities become "privileges" *earned* and the

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[48] The father was referring to the daughter's claim that she should have more say in her own life.

[49] Commerce metaphors are very common; they appear in all of the 30 cases in this data set. They involve the appropriation of words or phrases concerning "exchange" for understanding the mediation process; "bartering," "negotiating," "trading," "deal-making" are terms that import the values of commerce, including its goal, "satisfaction." This goal has even been used by researchers to evaluate the mediation process and is evidence of how commerce and mediation are "articulated" in Hall's (1985) sense.

[50] It is precisely *because* of this connection that it is semantically possible to foreground the actions obliged by the moral code for speakers, rather than the actions obligated by the moral code for the other(s). This is precisely what happens in rape trials when the woman is held responsible for her own safety. Mediation is a kind of conversation that elaborates moral implications for both speaker and the referred-to others, reducing the functional difference between accuser and accused. When there is no functional difference between the accuser and the accused, the moral position of the victim is emptied of any social/political significance.

[51] Note that despite the focus on "mutual responsibility," the parents' responsibilities never appear; this term only functions as a moral framework to coerce the daughter to accept the "terms" offered by the parents. Note also that "mutual responsibility" falls from and constitutes the moral order of mediation itself.

bargaining/negotiation metaphor is inlaid in the discourse. Whereas rights foreground the community's obligation to the speaker, privileges (and responsibilities) foreground the speaker's obligations to that community. Once the individual is foregrounded, the stage is set for the reversal (or mutualization) of obligation. The victim disappears as each becomes responsible for meeting their own needs.

Domestication as the patterned transformation of rights discourse into needs occurs in 18 out of 22 cases (82%),[52] that is, violence stories were dissolved into a needs discourse that reformulated victim/victimizer roles, themes, and plot lines with significant regularity.[53] Throughout these cases, there is no relationship between the "severity" of the violence and the domestication process. Domesticated violence included stories of demon possession, rape, sexual abuse, sexual harassment, hitting, yelling, harassment, spitting, pushing, swearing, threats to murder, loud music, egg throwing, kicking, slapping, stealing, "throwing [pizza]," "DSS [Dept. of Social Services] interference," and beating. The reformulation of the violence is routine in this data set, despite the differences in the nature of the violence or the specifics of a particular mediator's participation. And this pattern can be seen as a pattern in the discourse, in the evolution of meaning in the sessions.

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[52] To distinguish features of these stories that were domesticated, I have examined two variables: (1) the structural location of the violence story in either subplots or main plots; and (2) the interactional elaboration (or lack thereof) of the violence stories by others. I assumed that the structural location of a violence story could correlate to domestication; subplots were more likely to be domesticated, while main plots are more "hardy." Second, interactional elaboration (or its absence) of violence could be related to the process of domestication; unelaborated stories could be domesticated simply because they have no interactional presence, while elaborated stories, by definition, do. Collectively, the examination of these two features of violence stories could begin to account for the domestication process.

However, of the 22 cases that contain stories of violence, 15 contain violence stories told in subplots and 15 contain violence stories told in the main plot (obviously, there is overlap—8 cases had violence stories in both subplots and main plots). Contrary to my assumption, the "disappearance" of the violence story cannot be predicted on the basis of this structural variable. I had assumed that subplots would be easier to marginalize; what I found is that a violence story can be domesticated whether it is launched from subplot or a main plot. There is no pattern related to domestication that can be seen as a function of the structural location of a violence story.

In addition, I found that violence stories that are elaborated do, in fact, operate as accusations; in all cases where violence stories were elaborated, there was (at least one) accusation, followed by denials, excuses, or justifications. Out of 22 cases that contained violence stories, 19 cases have elaborated stories and 8 cases have unelaborated stories (all of the unelaborated violence stories appeared in subplots). While elaboration does seem to be negatively related to the location of the violence story (i.e., violence in subplots is less likely to be elaborated), domestication occurs both in cases where violence is elaborated and where it is not. In sum, I found that neither the structural location of the violence story nor the presence/absence of elaboration correlates with the domestication.

[53] Of the cases that contained domesticated stories of violence, eight were mediated in the context of restraining orders; in one of these cases, the restraining order was lifted; in the other seven, the restraining orders were, in some cases, referred to by disputants but in all cases remained unaddressed in the agreement.

The disappearance of this violence, the denial and reformulation of victims' stories, is discursive work, accomplished in the conversation in the session. Violence stories, constitutive of rights discourse, are routinely reformulated into needs discourse in these mediation sessions. The transformation of moral frames, the reorganization of roles, the evaporation of violence plot lines all are functions of the regulation of meaning in interaction (Sluzki 1993).[54] And even though meaning is inherently emergent and unstable (Fairclough 1989), the regular disappearance of violence in mediation reveals how mediation practice institutionalizes mediation values. The systematic subduction of alternative moral frames used to recognize violence is evidence of the power of the mediation discourse itself. Following Foucault (1979), we can conclude that this subduction is made possible via "rules of transformation" by which one discourse folds other discourses into itself, contributing to its own evolution as a dominant discourse, reducing challenges to its authority and expanding its domain of application. As Foucault (1979) has noted, power is a "micro" process in and through which meaning and identity are regulated. By exploring the rules of transformation which regulate the movement from the discourse of rights to the discourse of needs, I hope to explicate the "micro-physics" of the management of violence in mediation.

Deconstructing Domestication: Tracking the "Rules of Transformation" in Discourse

Mediation operates as a form of ceremonial discourse in which both interactional sequences (turn-taking) and themes are set out in the mediator's introduction at the opening of the session. This introduction instantiates the moral code of "participation," forecasts the turn-taking structure, instantiates a pragmatic goal (i.e., the agreement), and sets up needs discourse. As mediators establish their own role as "neutrals," they authorize themselves to ask questions, frame responses, and generally orient speakers to mediation values, that is, "conflict resolution," "empowerment," and "mutual responsibility." This code establishes a set of interactional rules that narrowly constrain the evolution of meaning in the session, restricting themes as well as the nature of the selves that can be constructed in the interaction.[55]

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54 Sluzki (1993) describes the interaction in a family therapy session where both mother and father were "disappeared" in Argentina; Sluzki's analysis points out that the return in the discourse of the "disappeared" is a function of the evolution of meaning in the session.

55 See Pavlich's (1996) analysis of community mediation as a process for the regulation of identity; he describes mediation as a practice that fosters the reformulation of self, "from disputing to nondisputing" (p. 724). His analysis is focused on the production of

Greatbatch and Dingwall's (1989) research on "selective facil-itation" also suggests that mediators shape the topics and the in-teractional sequences. However, "domestication" as a concept is fundamentally different from "selective facilitation" in that the latter is described as a function of mediators' "interests"; "domes-tication" as a discursive process is not coterminous with descrip-tions of individuals' (mediators') preferences. From this perspec-tive, mediators are not willfully "selecting" but are themselves constrained by the ideology and the "confessional" practices in mediation discourse. Pavlich (1996:724) notes: "Community me-diation deploys a regulatory environment that shapes disputants' self-reformation through a version of confession that solicits very particular narratives of self."

Mediation narratives are constrained not by the interests of the mediator but by the complex processes by which roles, themes, and plot lines that are coherent with the mediator's in-troduction are adopted and elaborated by participants (mediators and disputants) in the session. From this perspective, the introduction can operate like a "strange attractor,"[56] auto-poietically authorizing those portions of disputants' stories that fit the themes, the roles, and the proposed plot line of the medi-ation.[57] In the following introduction of a mediation session, the mediator begins by explaining how a criminal "show cause" hear-ing is processed, contrasting that description to mediation:

> At that point, there is really no flexibility in terms of settlement. The court . . . it's part of the court process and it's sort of taken out of your hands. What we do instead is to see if through some discussion with both parties, I ask some questions, we can't see if there is room to move here, so you can address your own concerns and develop your own options that maybe you weren't previously aware of to get this resolved peacefully so you don't have to come back here and avoid future problems. The only rule . . . is that I ask that one person talk at a time. I'll direct questions at one person. My job is different from the judge's—I am only here to help you come to an agreement and I can't do that for you. If you have a question, I'm gonna give you a piece of paper . . . and I'll give you another chance to talk. I might ask that certain parties leave the room at one time so that I can speak to you privately, but, um, that's all in the effort . . . to help the group here come to some sort of resolu-tion that you are satisfied with. So if it goes to the judge, the

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identity, but in general it supports the claim that mediation is a process that constrains meaning and the evolution of the discourse itself.

[56] See Kauffman (1995) for a good introduction to this concept.

[57] Introductions to the mediation process vary; some are quite elaborate and specify clearly the roles and themes to be enacted; others, however, are very vague. But even in cases where the introduction is not elaborate, mediators are trained to refer their neutral-ity, to refer to the ground rule of turn-taking, to offer confidentiality, and to suggest the goal of the session, i.e., agreement. This description frames the mediation in the way I am describing, even though it may not be an elaborate description.

judge decides. We're trying to give you the power and authority to resolve this thing yourself, um, the process is voluntary. You don't have to do anything that you don't want to in this part. And if the court takes over, it's a different story. Ah, and also, it's confidential. What is said and even the tape here is protected by law, ah, from becoming part of the court process. OK? So what I'd like to do here is, Mrs. Green, since you brought the complaint, basically give me a little of the background of what's going on, what you would like to see happen, and then I'll do the same thing for Tom. OK? And then I might, we'll go from there. I'll ask some questions. All right?

This introduction to mediation has several functions. (1) It equalizes the disputants, as they both get a "turn" and are defined as mutually responsible for the resolution. (2) Resolution is constructed as the end of the "problems" and equated to "peace," while the formal legal processes are described as authoritarian and a continuation of "problems." "Resolution" is thus antithetical to criminal proceedings. (3) The narrative of mediation itself is one that begins in participation and ends in self-determination and the resolution of conflict. (4) The mediator sets outs his role as a facilitator, establishing his right to ask questions and direct the conversation. (5) Differences between disputants' stories are presumed in and through the allocation of turns; each person gets a chance to recount events and make requests to meet their needs. In sum, this introduction embeds certain themes, authorizes interactional sequences, forecasts a plot for the evolution of the conversation (toward an agreement), establishes certain roles, and authorizes needs discourse.

Violence stories are at odds with the code that is established in the introduction because (1) they call for punishment rather than reconciliation; (2) they construct nonmutual relationships; (3) they generate adversarial exchanges of accusations and counteraccusations; and (4) they advance a morality other than mediation morality. Only a small percentage (20%) of these stories actually manages to survive the mediation process; most of the time, the stories are dissolved and disappeared.

The fate of a violence story is a function of the way it is either completely ignored or elaborated/reformulated in the session. In three cases, violence stories were completely ignored by both disputants and mediators; the absence of the elaboration of violence ensures its domestication. Within the remaining 19 cases, 4 were undomesticated and 15 were domesticated. In the 4 cases where violence was not domesticated, the original story of violation was elaborated by session participants; while victimizers and mediators made attempts to reformulate the violence story, the original story was not reformulated. In the 15 cases in which violence was both elaborated and domesticated, the original violence story was reformulated by victimizers and mediators during the course of the session.

The work to reformulate violence occurs at "critical discourse moments" which are sites in the discourse where meaning central to legitimacy of the speakers is contested and reframed (Chilton 1986). When disputants contest and reframe the meaning of a violence story, they are reacting to an accusation by denying, justifying, or excusing either the intentions and the actions attributed to them as victimizers or, by counteraccusing the "victim" of some violation, reversing the directionality and the nature of the violence.

Participants' successful management of their locations as persons in the discourse constructs for them legitimate, as opposed to illegitimate, positions in the social space (Goffman 1971). And the difference between legitimate and illegitimate social locations is significant: Discipline and punishment are the consequences of illegitimacy, while legitimacy breeds positive recognition and all that goes with it—relational and economic security.

The introduction of the mediation session offers legitimacy for both disputants, as co-participants in the resolution of conflict, as responsible owners of the dispute, as capable of listening and learning from others, as interested in peace rather than conflict. The introduction thus offers a code for legitimacy that "disputants" can adopt through the course of the session. However, as the session opens, the first disputant invariably positions the other in a negative or illegitimate social location; the second speaker then struggles to reformulate his or her position in the discourse, by either denying, justifying, or excusing actions/intentions or counteraccusing the other of some negative intention/action.

While it is possible to reformulate an illegitimate position, from within that position it is extremely difficult; paradoxically all of the moves to do so require speakers to reiterate and elaborate the very stories they are struggling to reformulate. It is much more probable that someone not implicated in the story will be able to reframe the positions of the characters in the story, offering new moral themes or reconstructing the plot in a new way.[58]

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[58] Support for this claim grows out of speech act theory which has been used by Pomerantz (1978) and others for the analysis of sequences of interaction initiated by an accusation. That research shows that accusations are paired with justifications, denials, and excuses, all of which elaborate the story from which the accusation emerges. Garcia's (1991) research on interaction cycles in mediation suggests that the mediation process disrupts the accusation cycles. This would suggest that violence stories, enacted through an accusation episode, are, in fact, dissolved in the mediation process. However, I have also done a study of accusations in mediation and found that the mediation process alone is not sufficient to stop the accusation and subsequent justifications, denials, and excuses (Cobb 1992b); this research showed that it was the reformulation of positions in discourse that altered the interaction episode. While it could be said that the mediation process favors the alteration of disputants' positions in discourse, I have argued that this reformulation requires specific narrative conditions: positive intentions or positive character traits must be elaborated by all participants. This research suggests that it is not the mediation process itself but specific interventions on the part of the mediators that facilitate the reformulations of disputants' positions in discourse and interrupt cycles of accusation.

In the 30 cases analyzed for this study, disputants accused of violence (victimizers) were *never* able to reformulate their positions by themselves; in all instances, positive positions became instantiated via the participation of the mediators. Domestication cannot occur unless victim roles are reformulated with the help of the mediator. Conversely, in all cases where violence was *not* domesticated, the mediators did not (or were not able to) reformulate the violence but instead elaborated it. Examination of the critical discourse moments in the following case study exemplify how victims/victimizer roles were established by disputants and never effectively reframed by the mediators; in this case, rights discourse is not transformed into needs.

In case #21, a Muslim doctor tells a story of his violation. He returned a pizza that had pork on it to the restaurant; his religion forbade contact with, or consumption of, pork. As he came in the door, Bob attacked him, hurling him back out the door of the restaurant. In this scuffle, the doctor had his face and a hand cut and his clothes stained. He could not work for three weeks, and he could not sleep from being shamed in front of his wife and children. He filed a criminal complaint, and the case was referred to mediation. As he finishes his story, the mediator prompts the doctor for a request and the doctor refuses to comply, asking instead to hear the story of his victimizer:

> **Mediator:** OK. So how would you both, you know, here to see if we can come to some agreement. What would you like to see happen here today? What sort of settlement . . . .
>
> **Doctor:** Well, let him tell you the story of what happened. Maybe he has a different story.

Bob opens his story by agreeing with "90%" of the doctor's story. However, he adds new elements to the plot, elements which position him as protecting his girlfriend who owned the restaurant. He jumped at the doctor because the doctor was yelling and threatening his girlfriend. In this way, Bob constructs himself as legitimate, but the doctor begins to frame Bob as a liar, connecting "being a man" with telling the truth:

> **Bob:** I'm telling you right now, I know I hit you, I know I was wrong. But I'm 23 years old, I don't have shit for money. I mean you could probably buy and sell me 20 times over, you're a doctor. Right? Face it. What could you possibly want from me? I mean you could probably send me to jail and ruin my life, but I just don't know what you want from me. I was nervous, you scared my girl—that's why I hit you, all right?
>
> **Doctor:** You just use your conscience. For one minute, be man enough to tell the truth, just the truth the way it is. When I hear it, then I say, "You are man enough" but if you try to make stories . . . .

Bob protests this framing, claiming that he is telling the truth, recounting his version of the events. As he recounts his physical location in the restaurant, he notes that he was sitting so that he could not see how the altercation began, but he could hear shouting; he then assumed that the irate customer who had just yelled at his girlfriend on the phone had indeed come to return a pizza and was causing a fight. The mediator makes a move to construct Bob as "confused," in which case violence was not intentional but was the result of a "misunderstanding":

> **Mediator 2:** OK. It is feasible. Let me just ask both of you that because tensions are running high that conversations between other parties that aren't here may have been misunderstood as far as the content of that conversation.
>
> **Bob:** OK. I know what you're getting at. I only know of from the time when I was behind the counter and I stuck my nose into something that I probably shouldn't have. I ran out and I hit him. I don't know what was said on the phone because I'm taking the girl's word for it, but I saw she was scared. I don't know what was said on the phone. I'm going by what I was told. He seems to think I'm not telling the truth but I'm only going by what someone else told me.

Clearly, the mediator's move to alter Bob's role was blocked by Bob himself, as he again admits his role as a victimizer. Her attempt to dissolve the intentionality of Bob's action is an effort to dissolve the violence story itself, but it failed as Bob reconstructs himself as intentionally harming the doctor. Undaunted, the mediator tries again:

> **Mediator 2:** (*To the doctor*) Again, it seems as if emotions were running high and that scuffle . . . . Again, I'm going to ask you if it's possible if it was interpreted whether you were just trying to get in the door with the pizza and this other gentleman was trying to stop you. It obviously looks like there was a confrontation . . . .

Here, the mediator has explicitly constructed the victimizer as "gentle" and reframed his victimization as a "confrontation," mutualizing the event. Violence moves closer to a misunderstanding. However, this frame is demolished by the doctor, who reiterates his story, reestablishing his victimization. Bob again agrees that he did push the doctor. The mediator apparently gives up and asks, "How can this be resolved right now?" The next interaction solidifies the violence story, and it lives, unchanged, to provide context for the agreement:

> **Dr. X:** It's open, this discussion. I'm not seeing . . . I'm here to get my right. I've been pushed, insulted, I've been stepped on, had pizza in my face, made me look terrible. You know, it never happened to me in my life and it happened now.
>
> **Bob:** Well, how could I make it up to you, Doctor?

The mediators then ask for a break; they caucus, conduct private sessions with each disputant; however, in a private session, Bob's work to appease the doctor becomes clarified. Bob reveals that he is on probation and cannot risk going to court, where his probation would be revoked. Clearly, he has elaborated the violence story to avoid going to jail. He then asks the mediators for the doctor's "dollar price"; $1,000 is established as the cost of the medical bills, and the mediators move toward the construction of a payment plan that Bob can manage. Once the doctor indicated that he would accept an apology and Bob agreed to avoid future contact and repay the medical bills, the mediators move to write the agreement itself. But even though the violence has been elaborated by all parties, including the mediators, they struggle with what Scarry has called the "language of agency" where pain is made objective through the presence of injuries.

> **Mediator 2:** Bob agrees to apologize for the incident, or that is the subject of that . . . .
>
> **Mediator 1:** Regarding the incident. They didn't write down the date, unfortunately, they should have. Regarding the incident as the subject of . . . . But that's not very specific . . . .
>
> **Mediator 2:** Agrees to apologize to him . . . does this push them more toward personal injury?
>
> **Mediator 1:** Agrees to apologize for injuries . . . .
>
> **Mediator 2:** This is awful . . .we're stuck on it.
>
> **Mediator 1:** Because you want to keep it neutral, right?
>
> **Mediator 2:** Regarding the incident at the . . . .
>
> **Mediator 1:** I'm trying to think. Apologize for . . . .
>
> **Mediator 2:** Injuries?
>
> **Mediator 1:** OK. This is unbelievable. I can't believe this. To Dr. X for any injuries caused him . . . .

Here, the mediators make an explicit connection between "neutrality" and the disappearance of violence. Discussion of injuries—the materialization of pain—is dissonant with the ideology of mediation itself. They finish writing the payment structure and complete the agreement:

> **Mediator 1:** So, number 1, Bob agrees to apologize to Dr. X for any injuries caused him. Number 2, Bob agrees to pay a total of $1,000 for medical bills incurred by Dr. X. And Number 3, Bob agrees to refrain from any future contact with Dr. X or his family and Number 4, Dr. X agrees to drop any pending court procedure.

Using Scarry's framework, the mediators have considerable difficulty referring to the injuries or to their cause. In the first and second clause, the passive voice obscures agency and the source of injuries; the ideology of mediation struggles against the

materialization of violence—violence remains present yet obfus-
cated through the passive voice.[59]

Throughout this session, the mediators were unable to
reformulate the violence, and the "victimizer" further instanti-
ated the violence story. The agreement, as an extension of the
violence story, "materialized" the violence by (1) providing pun-
ishment for the victimizer and protection for the victim and (2)
consolidating nonmutual roles (the doctor remained innocent,
while Bob bore the blame). The mediators were not able to dis-
solve the violence, but they were able to obfuscate it by obscuring
agency in the agreement and failing to require the enactment of
the apology. In this case, the code offered in the introduction
was not instantiated in the conversation. The discourse of rights
remained dominant.[60]

The "rules of transformation" which regulate the movement
from rights discourse to needs discourse are momentarily visible
in the sites in the discourse where reformulation moves failed. By
noting the critical discourse moments where mediators and dis-
putants tried to alter the violence story, it appears that domestica-
tion could occur via (1) the reformulation of violence as uninten-
tional (as accomplished by describing the victimizer as
"confused," reframing violence as a "misunderstanding"); and
(2) the reformulation of violence as "confrontation" (victim/vic-
timizer roles disappear as both parties are constructed as mutu-
ally contributing to the "conflict"). However, the fact that these
moves failed is evidence that neither the introduction nor the
moves of the mediator automatically disrupt the discourse of
rights. The movement from rights to needs is a function of emer-
gent meaning that cannot be predicted, despite its regularity.

In all four of the cases where violence was not domesticated,
all the mediators moved to reframe the violence as a "misunder-
standing"; in each case, the "victim" returned to his or her origi-
nal story, reiterating the violent plot line, making explicit the
moral themes central to the story. In all these cases, this return to

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[59] Note, however, that the apology itself never materialized in any of these cases—
only the agreement to apologize; the naming of the speech act constitutes the speech act!

[60] The relationship of gender to domestication is interesting. In the previous case, a
male (with status) manages to maintain his position as victim throughout the session. In
the other 3 cases where violence was not domesticated, men also maintained their victimi-
zation; in the third, a female victim maintained her victimization with the help of her
husband who entered the conversation adamantly, insisting that he would not permit the
victimizer (a young boy) to put his wife at risk. In the 18 cases where violence was domes-
ticated, 5 cases involved female victims and male victimizers; 5 cases involved female vic-
tims and female victimizers; 6 cases involved male victims and male victimizers; 1 case
involved a male victim and a female victimizer; and 1 case involved a female victim and
her parents (male and female). The data may suggest that, indeed, gender plays a role in
the domestication of violence, for in all the cases where females were victims (11 out of 18
cases), the violence was domesticated.

the violent plot line leads to accusations and counteraccusations in the interaction.[61]

In all these cases, the "victimizers" routinely attempted to justify their actions by offering another plot line, new moral themes, and a new role for themselves. However, in all four cases, these attempts by the "victimizers" to dissolve violence failed; their stories were instead colonized by the "victims" who, in three of these cases,[62] drew on a cultural myth to instantiate their story of their violation. For example, in case 5, a woman school bus driver accused a 10-year-old of pushing and shoving her; as he denied his role as victimizer, he struggled to reformulate his role by counteraccusing the bus driver of "persecution"—a role he advanced by providing new plot events and new themes. In his story, he supported his role as a victim by recounting how the bus driver broke the rules by failing to stop the bus to pick him up or by refusing him entrance to the bus when he did not have his bus pass, even though many other students did not have their passes either. He finishes the story with a mini-lecture on "fairness," arguing that adults should not be unfair to children simply because they are bigger than children. His story was, in turn, reformulated by the bus driver, who framed the role of the adult as one that required limit setting and guidance. She reframed "persecution" as a natural and appropriate example of adult limit setting for boys, who are by nature uncivilized. The boy's story remained reframed, as the bus driver's story is extremely consistent with dominant stories about children. The boy's "punishment" (he could never ride the bus again) exemplified a disciplinary process made natural and normal by the cultural myths about the nature of little boys themselves.[63]

These cultural myths establish the presence of the "community" in that they import a moral order other than mediation itself; victimizers are obliged by this moral order that itself resists reformulation. In all four cases, "victims" explicitly said that they were interested, first and foremost, in teaching the victimizer a lesson. Therapy or counseling was recommended for the victimizers by the victims in all cases; they all expressed interest in some real change on the part of their violators. Therapy as a form of social regulation functioned in the discourse as a recommenda-

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[61] Even in case 14, Bob offered an alternative plot—he was trying to save his girlfriend. So even though he admitted to the violence, he moved to reformulate the meaning of his actions.

[62] Cases 5, 12, and 14. I did not see a cultural myth invoked in the "pizza case" (21).

[63] Cultural myths used to stabilize violence stories included in case 12 the myth that soldiers are always strong and that soldiers are "real men" who have good character; in cases 5 and 14 the myth was that teenagers (children) are by nature uncivilized and that if order is to be maintained, adults must set limits.

tion for discipline.[64] The presence of discipline as a topic in the discourse signals the presence of the discourse of rights: A morality other than pragmatism calls for the punishment and regulation of the victimizer.

The fact that the discourse of rights can be maintained through the session suggests that the mediation process alone is not sufficient for the reformulation of roles in violence stories; clearly, there are some specific interactions that are critical to these reformulations—interactions that reinstate the mediation ideology offered in the introduction. In the following case study, I examine the critical discourse moments where roles, themes, and plot lines are contested and reformulated in the discourse, offering a description of the microphysics of the transformation of rights into needs. Following Foucault (1979), I can view this case study as describing the rules of transformation that are central to the domestication of violence, an alchemical process by which the discourse of rights is folded into a discourse of needs.

Narrative Reformulation: Instantiating the Morality of Mediation

Case 30 involves the mediation of a visitation dispute. Mary, the mother, has obtained a restraining order against John, the father, following several incidents of violence toward her. The judge has granted the restraining order and referred the couple to mediation to work out the details of the visitation, which is how John defined the problem. The daughter, Beth, is three years old. (John is also on probation for drug possession.)

Like all the mediation sessions, this case opens with a mediator's description of the ground rules and processes. The moral code of "participation" is advanced and provides a thematic context which eventually subsumes all other moral codes. This evaluative system "classifies" (in the cybernetic sense that it operates as information about) all other value systems that emerge in the session. In the cases where violence was domesticated, this introduction offers a discourse that is invoked, through the course of the conversation, to reframe and reformulate the unfolding narratives in the session. The morality of mediation itself, flowing from the discourse of needs, colonizes the morality flowing from the discourse of rights in the violence story. Domestication occurs at the critical discourse moments where the moral themes in the violence story are folded into the morality of mediation itself. These are invariable moments where the mediators move to reframe the violence story in ways that are consistent with the mediation narrative offered in the introduction of the process.

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[64] Following Foucault (1979), one can view therapy as a form of discipline in that the therapist operates as an interrogator encouraging the "confession" from the patient; this is certainly true in therapies where the reform of the "client" is the goal.

In this case study, there are seven critical discourse moments (CDMs)[65] where the morality of the violence story threatens the mediation narrative; in these sites, the mediators move to overlay the discourse of needs on the emerging discourse of rights, domesticating violence.

CDM 1: The mediators frame the session as an exploration of needs, invoking the delineation of the needs by disputants. After Mary describes the history of the violence, she is asked by the mediators to identify what "she hopes to get out of the session." Mary responds by framing the violence story as terminating in her need rather than in any rights: "I need for the violence to stop so that I can build some stability for my daughter and myself"; the mediators then focus on "*other* goals," constituting "stability" as a goal for the mediation process. Thus, the cessation of violence is explicitly framed as a need and equated to "stability," which then becomes an item on the "shopping list."

The mediators' failure to elaborate the violence and its social and moral implications mystifies the fact that violence is *not* a problem of the same logical type as visitation schedules and furniture. To equate violence with other practical/logistical problems is to separate it from the moral code that protects and disciplines. Mary ultimately does not construct herself as the location for rights; cut off from the moral order and the community which would condemn her violation, she has no basis on which to formulate the obligations of her victimizer. Her needs, equivalent to his needs, become the mechanism for the reversal of responsibility and blame; by the end of the session, Mary will be forced to construct herself as responsible for the cessation of the violence. All of this flows from the mediator's question to the "disputants" which requires persons to create the telos of the violence story as a need rather than as the fulfillment of a right. The repair of the moral order is no longer the issue because needs are foregrounded.

CDM 2: After a discussion about "communication" problems, Mary asserts that the problem is that she and John have "a very strong difference of opinion as to what constitutes acceptable behavior and . . . in terms of . . . what the definition of abuse is." Here, she invokes the violence story explicitly. But by focusing on "differences," Mary again shows the constraints on the violence story initially placed on the session in the preamble: Problems are often a function of differences. This perspective legitimates differences in general and provides a context in which violence is once again separated from the moral code that mandates discipline. The mediator confirms the appropriateness of the "difference" frame: "And that is something we can work with and outline."

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[65] See Chilton's (1986) use of CDMs for the analysis of discourse.

Bypassing the content of the violence story, the mediator forecasts the focus on the differences in the parties' definitions of "abuse." With the focus on differences, violence is folded back into the moral code of mediation—participation. And relativism reigns. The reframing of violence as "difference" domesticates violence and reinstates the morality of mediation.

CDM 3: In the caucus, the mediators are constructing a logic to guide their decisions about whom to talk to first and what themes to focus on. Here, they reformulate violence as "this physical thing," unable to name it as violence:

> **Mediator 1**: He was probably pretty accurate when he talked about holding a grudge, her tensions, this physical thing that she talked about, and she's a very intensive person. She zeros in and holds on, um, perhaps if we could call her back in order to pass some of that tension over . . . .

Clearly, the disturbing presence of the violence stories in the session is being psychologized, relocated from social dimensions to an intrapsychic dimension, from the relationship to the individual. The mediators are attributing the violence to *Mary's* strong emotions and, therefore, they decide to let her "vent." Psychological explanations for violence are very common throughout the data set and are consistent with the focus on individuals' needs, interests, and feelings that dominates the discourse of mediation.

When violence is "psychologized," the role of either the victim or the victimizer is reformulated; the "language of agency" that frames a violence story is disrupted as the focus moves beyond the weapon/injuries to the intentions, feelings, and needs of the victimizer or the victim. Intrapsychic processes can be constructed as the consequence of violence, and it is this slippage in the directionality of violence (who does what to whom) that can dissolve the violence story. The creation of violence as "psychological" also enacts the Cartesian distinctions between physical and mental violence, between serious violence and minor violence; this distinction is ultimately used in this session, as well as in others, to make possible the claim that the violence is imagined (of the mind). This transformation of violence depends on its reconstruction as a psychological problem, not through the construction of the psychological effects of violence (psychological wounds) but through the construction of the psychological causes of violence.

CDM 4: In this exchange, the mediators and Mary are discussing what Mary wants with respect to the conversation between herself and John when she picks up or drops off the child. Mary is concerned about the conversations as opportunities for the escalation of violence; to minimize the possibility of violence, she wants to limit the conversation at those times to information about the daughter. The mediator refers to the restraining order

as her insurance that these conversations will not escalate. Mary responds by describing the kinds of violence that cannot be contained by the restraining order, and the mediators again move toward the formulation of a question that Mary can ask of John (the move from rights to personal responsibilities).

> **Mediator 2:** I mean because of the restraining order you can feel secure that there won't be any . . . .[66]
>
> **Mary:** Pretty much. I mean, it's like, you know, one of my real problems with him is not so much, I mean, his . . . really violent tirades are few and far between, but . . . it's sort of a manipulative kind of cat-and-mouse game . . . .
>
> **Mediator 2:** It could be a clearer question . . . .
>
> **Mary:** Yes.
>
> **Mediator 2:** It could be a question like, "Is there anything that I need to know before I take her home?"

Again, the violence is contained by the structure imposed at the beginning of the process; mediation expressly functions to transform disputes by focusing on the future, simultaneously shifting the locus of blame to a locus of responsibility. Again, the directionality of violence is obfuscated, as the victim becomes responsible for ending the violence. This transformation, effected in these turns, *dehistoricizes* violence: Without directionality, violence becomes a circular set of interactions that victims can effect through their own actions.[67] The capacity of a violence story to have an impact on the future is minimal, because the violence story is severed from the historical context for its interpretation. The future orientation of the mediation process, celebrated in the preamble, requires that mediators consistently shift complaints into requests, emptying the violence stories of their moral force and dissolving the victim/victimizer roles. Violence is domesticated through the future orientedness of the mediation process.

CDM 5: In the private session with Mary, the mediators ask if she has any other issues to include in the agreement, and Mary responds by saying that she wishes John would agree to go to therapy for his problems with "rage and violence." Interestingly, there are several (seven, in fact) other sessions in which the victim in a violence story suggests that the offender go to therapy or counseling. In this way, therapy operates as a disciplinary forum which has the potential to normalize (control) aggression and violence.[68] Mary finishes her turn by admitting that her request

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[66]   Here, the mediator cannot even name the violence.

[67]   Harrington (1985:127–30) noted that the dehistoricizing of conflict is accomplished through "behavior contracting," which involves the appropriation of the commercial/legal contract to define expectations and make promises.

[68]   Christine Harrington commented on earlier drafts of this article that "impartiality" functions to protect violent males by refusing to allow them to be constructed as intentional (and, therefore, culpable) victimizers. They are, instead, constructed as in need of therapy, as "needing help": The violent male becomes a victim of himself.

that he go to therapy will not be very helpful, and the mediator agrees: "Especially in the purview of a business relationship with you."[69] To characterize this relationship as a "business relationship" is a recontextualization that fits the economic metaphors presented in mediation *and* disrupts the logic of Mary's violence story: Persons in business relationships need not fear each other because the rules that regulate business and personal relationships differ. This, again, fits the themes established in the first part of the session and reenacts the ideology of mediation.[70] Negotiation becomes the strategy for responding to problems in (business) relationships; the presumption of equity erases differences in resources, status, legitimacy, power, and physical strength. The obfuscation and disappearance of violence requires the erasure of differences that are core to the production of the categories "victim" and "victimizer."

CDM 6: In the second caucus, the mediators again minimize violence by doubting the "facts"; this is one way to collapse the rights discourse by contesting the veracity and authenticity of the features of the violence story. Sadly enough, not only is the violence minimized but the woman is once again made responsible for ending it.

> **Mediator 2:** She feels good about the relationship (between John & Beth), so, um, she has fears though . . . .
> **Mediator 1:** Maybe she's exaggerating . . . .
> **Mediator 2:** Yeah, but she can change. She has a good relationship with Beth. I just don't think he's capable.

In this amazing exchange, the mediators enact the ideology of mediation that persons participate in the creation of their own problems and, therefore, can participate in their resolution by changing their own behaviors *in exchange* for changes in the behaviors of others. In this context, there is no hierarchy, and power is erased in the economic and democratic metaphors. A quick glance at the SPIDR ethical code (promulgated by the Society for Professionals in Dispute Resolution) shows how impossible (and paradoxical) it is to deal with power within the ideology of mediation (Harrington 1985; Hofrichter 1987; Shapiro 1988; Cobb & Rifkin 1991). Yet, violence stories are about power; the telling of the violence story is a challenge to the dominant, for it is invariably the weak who recount their violation by those with the authority to do violence in the first place. Yet, in mediation, the violated become, through the ideology of participation, responsible for their continued violation, responsible for ending the violence.

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69 To characterize the couple's relationship as a "business relationship" is yet another appropriation of the discourse of commerce, where relationships are constituted through the act of exchange.

70 I found that relationships were characterized as business relationships in 19 out of 22 sessions that contained stories of violence.

There is another interesting feature of this text: The woman is constructed as the most flexible and therefore is given the responsibility for change; the man is constructed as less flexible and therefore less responsible. Her fear becomes the site for the inscription of her as responsible. Not only is the directionality of violence reversed, it is very clearly gendered. The construction of men as incapable of change leaves women, by default, the "disputants" responsible for reconciliation.[71] The domestication of violence in this case accompanies the gendered reversal of obligation.

CDM 7: This exchange between Mary and the mediators is perhaps the most explicit example of domestication in the whole data set. In the second private session, the mediators are wondering about when to set up the next appointment for the follow-up mediation. Mary is sitting there, shaking her head.[72] The mediators ask her what is wrong, and Mary explicitly brings up the fact that the violence story is not being "addressed." The mediators cite the restraining order to suggest that the violence has stopped; Mary then continues to complain about John's treatment of her, and the mediators frame her complaint in John's language, mutualizing the violence.

Mediator 2: What's the problem?

Mary: I just think that the one issue that isn't getting addressed, and I'm not sure it's even addressable, is the whole thing of this sporadic sort of violence weirdness, which, you know, I mean, he's never like hit me per se, but things like stabbing a kitchen knife into the kitchen counter in front of my face and smashing my things and doing things like grabbing at her and yelling at me, which is like, it doesn't happen all the time . . . but I'm wondering if there is any way to address the whole issue.

Mediator 2: Sure, but would you want that as part of . . . . Didn't incidents happen at the times you were exchanging her?

Mary: Um, sometimes, yeah . . . .

Mediator 2: . . . Meeting in order to either bring her back.

Mary: Yeah, yeah.

Mediator 2: Any of them happen in Anywhereville?

Mary: Yeah. One time he like, right, definitely, yeah.

Mediator 2: Well, no, we didn't. The restraining order, what, what, what is its effect on that?

Mary: If I feel, I mean it's not . . . .

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[71] While I am not claiming that this situation is particular to mediation, I am trying to describe how violence is disappeared in mediation; there is probably considerable overlap between the way violence is domesticated in mediation and the way it is disappeared in formal legal proceedings where women bring charges against their male victimizers. See Adrian Howe's (1991) discussion of the "legalization" of women's injuries that contributes to the disappearance of women's pain.

[72] Although I listened to the sessions on audiotape and, therefore, did not observe nonverbal behaviors, I called the mediation service when I heard this tape and discussed this portion of the tape with the mediator, who told me that Mary was shaking her head.

Mediator 2: Has it happened, has that behavior happened since
. . . .

Mary: Since I got the restraining order, no.

Mediator 1: No.

Mary: No, it hasn't. Not that really outrageous violence stuff.

Mediator 2: So, maybe in the agreement we could also put in
something about, I don't know how, you'll both have to
help me, how to phrase that, um, behavior and the re-
straining order, you know, I mean that could be in the
agreement that there would be no—

Mary: (*Overlapping*) One thing that I would like, which I think
would really help, is if he not even begin things like,
"You're awfully blah, blah, blah," or "You're really a blah,
blah, blah, aren't you?" Like that sort of thing. Like no, no
affixing adjectives to me or labels or any, you know—

Mediator 1: (*Overlapping*) You know, one of the things he said
was he would like to have some statement made about com-
mon respect. So why don't we . . . .

Mediator 2: That's exactly what he did say. Common respect
for the other parent as parents. So, let's go on.

Mary: I've had this before, though . . . .

Mediator 2: You have?

Mary: You see, that's the thing. It's like just glowing generalities
. . . .

Mediator 2: Well, I want to make it specific. Let's make it spe-
cific, so that . . . .

Mary: Yeah, right, I'd rather it be specific.

Mediator 1: So, he's—

Mediator 2: (*Overlapping*) One of the ways . . . we can make a
general comment, but one of the things we can include in
that statement of common respect is that conversation is
limited in that there is no discussions about anything ex-
cept—

Mary: (*Overlapping*) Yep.

Mediator 2: —emergencies and no-shows. He was saying, "Well,
this is a bit much," but let's limit it.

Mary: Yeah, let's limit it for at least this month.

Mediator 2: Yeah.

Mary: Yeah, right, right, okay . . . .

Mediator 2: So, one of the ways that you could help—

Mary: Yeah?

Mediator 2: —limit it if he makes a remark—

Mary: Yeah, right.

Mediator 2: —or do something not to answer it . . . .

Mary: Not even respond.

In this remarkable set of turns, violence is reintroduced by
Mary, reinstantiating the accusation against John. Mary has the
opportunity for a moment to write some form of restraint in the
agreement, and at this point the mediator is clearly stumbling
over the language of how to do this. Mary responded by offering
a "specific" request that she could make of John, that he not call

her names.[73] The mediators use this request to address what Mary *herself* can do to help reduce the violence.

The remainder of this interaction in this private session connects "common respect" to the daughter's "best interests." In keeping with Fineman's (1988) research on the discourse of custody mediation, the "best interest" doctrine includes that which promotes the maintenance of the relationship between the child and each parent. This analysis supports her claim that mediation discourages discussion of rights and the legitimate concerns of women about the safety and well-being of their children. The fact that the meaning of "best interest" is defined outside the boundaries of the conversation and therefore functions to constrain the content of the turns of speakers again points to the power of the discourse of mediation (visible in the preamble) to create "participation" as dominant. That which does not fit the frame is actively prohibited and, if persistent, transformed, folded into the economic and psychological metaphors that are consonant with needs discourse.

In summary, analysis of these critical discourse moments where victim/victimizer roles are reformulated makes visible the "micro-physics" of domestication:

- Violence is transmuted into an item on the "shopping list"; pain, fear, and injuries become needs, conflating violence with other practical/logistical problems that are of a different order.
- "Difference" is invoked to account for violence; the violence narrative is framed as one possible reality that can be compared and contrasted with other viable realities.
- Violence is redescribed as a psychological feature (paranoia) of the person who tells a violence story.
- Violence is dehistoricized as mediators and disputants transform complaints into requests.
- Relationships in which violence occurs are redefined as "business" relationships.
- "Participation" reverses and/or mutualizes responsibility for violence; "participation" is gendered—women are constructed as more able to change and therefore as bearing more responsibility for ending violence. By implication, victims are responsible for their own victimization.
- Victims' stories can be reframed into the moral language of the victimizers; fear is denied as the violence story is framed in an alternate, and equivalent, morality.

Together, these practices disrupt the violence story; wounds mutate into needs, needs are enacted as "requests"; the directionality of violence dissolves, and the distinction between victim and

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[73] Given that abusive cycles often begin with verbal abuse, Mary's focus on "name calling" could be read as her effort to avoid the initiation of violence.

victimizer evaporates. The telos of the violence story (obligation) is exchanged for the telos of mediation itself (agreement and reconciliation) and the conversion of rights into needs is complete. These evolutions operate as "rules of transformation," not because they can predict the domestication of violence but because they describe the layers of the discourse by which rights are mutated into needs.

Analysis of three cases shows that while there are, indeed, "rules of transformation" that bring about the domestication of violence, meaning is emergent and thus can never be predicted. While it is possible for victims to forestall the reformulation of their role, as case #21 demonstrates, the analysis of the microphysics of power in mediation documents the strong pull of needs discourse.

Discussion

The findings from this study suggest that violence appears with significant frequency in community mediation sessions; when it does appear, it is domesticated with significant regularity. Accounts of pain and suffering (which construct a moral order beyond the morality of mediation) are transformed into accounts of pragmatic needs. Social obligations become extinct as individuals' "responsibilities" reign. Order is restored, not by redressing violence but by discursive rules that tame it. The category "victim" dissolves, as pain is dehistoricized; the sacred, as a display that marks the body of the victim, is transformed into the profane; the community, constructed in the sacrifice of the victim, evaporates.

In the case vignettes presented here, violence materialized in the "language of agency"; stories about the loss of voice, the presence of wounds, the agency of the weapons and victimizers consolidated the position of victim and invoked a moral code for evaluating action. When violence was not domesticated (4 out of 22 cases), the discourse of rights was maintained throughout the session, as it was in case #21 involving the Muslim doctor; victims refuse to elaborate alternative stories and express their desire to "teach the other a lesson." Cultural myths are invoked to either anchor or alter the victim's story; definitions of good parents, bad boys, "real" men, and good daughters are used by victims and victimizers to position themselves as legitimate and moral.

However, the mediation process, which insinuates the discourse of needs, favors technocratic[74] solutions and, in the pro-

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74 "Technocratic" is a description of agreement taken from Silbey and Sarat (1989); they note that mediation agreements operate like lists of behavioral mandates, rather than reflecting substantive shifts in the meaning systems of the relationships. Furthermore, they note mediation advocates' rationale for mediation: "Because technocratic problems involve control through explicit and exhaustive instructions and rules, they appear to be independent of human will; thus technological decision-making is presented

cess, reformulates moral dilemmas into pragmatic problems. Mediators reframe conflicting and competing moralities into the morality of mediation itself, and the discourse of rights is progressively exchanged by the discourse of needs. In case #7, the mother's story of her daughter's violation rotated into a discussion of the cost of the repair of the screen; in case #30, Mary finally pushed the mediators to address the violence, only to have it mutualized as it was reframed as "respect." When these reformulations occur, the positioning that Minow (1987) describes, which occurs via rights discourse, is impossible: There is no community outside the self because there is no moral order beyond the boundaries of individual preferences and needs.

Feminists have deplored this, pointing out that mediation condones and harbors violence, thereby extending the awful secret of violence beyond the boundaries of the family into the community and the legal system itself. But to critique mediation because it does not function to preserve rights and protect the violated misses a central point because the critique accepts law's definition of itself as a haven where safety and security are rendered to the hapless and the helpless. As Fineman and Mykitiuk (1994) have pointed out, law does not shelter victims from violence; formal legal processes revictimize victims as their stories are subjected to "legal interpretation" (Cover 1986:1628).[75] The politics of storytelling inevitably contaminate both objectivity and neutrality, twinned pillars of law and mediation's legitimacy. However, according to this analysis, mediation, like law, is a disciplinary practice that must represent itself as a process *seemingly* independent of the varied violent practices that collectively constitute it,[76] including the social construction of meaning itself.

To challenge the domestication of violence effectively, the feminists must step outside the frames provided by the discourse on violence (serious/nonserious, mental/physical violence) to examine the alchemy through which pain is made ordinary, "disappeared" into reconciliation and amnesty, in our homes, in our institutions, in mediation and law. If domestication is, indeed, as Minow's (1987) work would suggest, destructive of community, precisely because it flattens competing moralities, mediation markets an ideology that, like some reengineered social DNA, may well pose a grave threat to the very communities that have so enthusiastically embraced it.

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by its promoters to be apolitical and uncontroversial" (p. 496). Mediation is thus promoted as an apolitical technology for resolving conflicts.

[75] Cover (1986) noted that disciplinary power comes not only from the criminal code but also from the secondary rules that construct the "terms" for, and the "norms" of, legal interpretation.

[76] This is a major premise of the scholarship that addresses the relationship between law and violence. See Cover (1986); Sarat & Kearns (1991, 1992a, 1992b); and McKenna (1992).

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