

# The End of Mediation

## A Ramble on Why the Field Will Fail and Mediators Will Thrive over the Next Two Decades!

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<http://www.mediate.com/articles/adlerTheEnd.cfm>

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*"We [mediators] are victims of unintended consequences - a 'revenge effect' - a result unanticipated that is almost the exact opposite of the one we designed."*

- Robert Benjamin, JD, MSW

### I. The End is Coming!<sup>2</sup>

Brothers and sisters, mediators and facilitators, consensus-builders and collaboration gurus: gather up. The end of mediation is upon us. In the words of William Butler Yeats, 'Things fall apart and the centre cannot hold.' And, as T.S. Eliot added in a famous postscript, those same things that cannot hold will inevitably 'end with a whimper, not with a bang.'<sup>3</sup>

Should we grieve? No way! Uncork your favorite beverage. Drink to the best of our past and the great things that lie ahead. Then wake up tomorrow morning, shake off your headache, and pass the fire to those who will carry the passion to geographies unexplored!

I can already hear it: "Come on Peter, get real. Mediation is just getting started, not ending. Look at where we have come from in the last three decades. Look at all the innovative adaptations that are taking place as thousands of mediators help tens of thousands of disputants bring their conflicts to a close by decisions they themselves crafted. Look at the reports on [www.mediate.com](http://www.mediate.com) or [www.keithseat.com](http://www.keithseat.com) and watch the mounting gravitational pull of mediation into

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<sup>2</sup> This article is an extension of ideas originally discussed in "Keystone Conference: No, we are not a field and here is why the question matters." Video and text are at <http://www.mediate.com/articles/fieldno.cfm>. Many colleagues offered helpful advice, ideas, insights and counsel.

<sup>3</sup> Paraphrased from William Butler Yeats, "The Second Coming," 1921 and T.S. Eliot, "The Hollow Men," 1925.

new institutions. Look, for example, at Texas where mediation programs have been started for hurricane claims, in the courts of Florida and other states where mediation is mandatory, or in England where insurers like Allianz Cornhill are expanding its mediation efforts after seeing that both claimants and insurers achieve better results than in litigation. Or in Washington DC where the U.S. Department of Housing and Urban Development (HUD) has created a program for the resolution of disputes over defects in manufactured (mobile) homes.”

All those developments to the good, grant me the following assumptions if you choose to read further, and please do not be insulted by my frankness. It is time we confront reality.

First accept the notion that mediation isn’t one thing. Some call it facilitation. Others call it consensus-building, collaboration, or peacemaking. The great story of mediation over the last three decades has been its protean malleability. Mediation materializes in different settings and for different purposes and morphs into collaborative law, deliberative democracy, collaborative governance, family conferencing, peer mediation, settlement weeks, joint fact finding, appreciative inquiry and the work ombudsmen do. It pops up as facilitated study groups, cross-sector roundtables, corporate inter-departmental task forces, government appointed blue ribbon commissions, and technical best-practice committees at NASA and the National Institutes of Health.

Second, assume that the correct way of mediating lies in the eye of the beholder and the work we beholders do is shaped in and by our different contexts, domains, and settings. Yes, there are some common elements. Virtually every mediator who has taken a basic training workshop understands that they must avoid (or at least disclose) conflicts of interest, remain impartial, and assure appropriate levels of confidentiality. And most every mediator professes one or another version of party self-determination, the empowering of individuals and groups to come to conclusions that meet their own tests of fairness and do-ability.<sup>4</sup> Beyond these canons lie the orthodoxies of different teachers and trainers who occasionally seem to think their particular style of mediation is universal and immutable.

Third, assume that the perfections we associate with our own particular version of mediation are marred by the truths held by others who are just as smart, experienced, and knowledgeable as we are. Beyond the continuing fashion wars that take place between the transformative, evaluative, facilitative, and narrative schools, most mediators who have been at their work for awhile have developed

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<sup>4</sup> See Hoffman, D. “Ten Principles of Mediation Ethics” reprinted from *Mediation: Approaches and Insights*, Juris Publishing, 2003, also at <http://www.iamed.org/pdf/Ten%20Principles%20of%20Mediation%20Ethics.doc>.

their own rules of thumb.<sup>5</sup> These differ considerably. One person's playbook requires the development of a calm, dignified and trustworthy communication environment. Another person's rules of thumb focus on detailed technical preparation and a robust cross-examination of each party's assertions. Still a third mediator's practice might center on discovering transcendent purposes and visions. All of these mediators believe their past successes auger well for their future work, which can sometimes be a fatal mistake when we are dealing with different circumstances.

So is all of this reconcilable or is the end upon us? If the ideas in this paper are wrong-headed, I will willingly enter the Great Hall of Shame with those other doomsayers who have told us the end is nigh. Francis Fukuyama charted *The End of History* for us in 1989 and history didn't stop. Paul Roberts wrote about the *The End of Oil* in 2004 and *The End of Food* in 2008 and we are still using oil and enjoying the flavors of animals and plants. A few years ago John Horgan described *The End of Science* (1996) and before that, Bill McKibben suggested we had arrived at *The End of Nature* (1989). Last I noticed, both science and nature have persisted. The same with *The Death of God and the Meaning of Life* by Julian Young (2003), *The Death of Common Sense* by Phillip Howard (1994) and *The Death of Superman* by Dan Jurgens and friends. God, common sense, and Superman are all muddling along in our imaginations.

Most prediction books like these carry a whiff of trickery but let's assume all of these obituaries are metaphoric and have some things in common with mediation. McKibben's speculation on nature is a good example. Despite the doomsday title (hatched up by his publisher, I presume) McKibben never actually argued that nature had suffered from some kind of fatal cardiac infarction. What he said is that our central, identity-forming notions of nature as a constant and steady force in our lives have eroded, that the boundaries of what is natural and artificial are blurring, and that humankind is rapidly moving into a "managed" universe.

So it is with our work. I believe that our identity-shaping notions of mediation are at an odd point of climax and the end of our paradigm is being fueled by three forces:

- (1) The dawning realization that our skills aren't unique;
- (2) An awareness that we really are not a real field or profession; and

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<sup>5</sup> These schools are well described by Pruitt, D. "Mediation at the Millennium" in *Handbook of Mediation*, Mermann, M. (ed), Blackwell Press, 2006, pp.395-411.

- (3) A growing comprehension that the social, political, economic and technical problems we face will accelerate the adoption of our value-propositions, strategies, and skills into other domains.

Ironically, as the word “mediation” comes to obscure more than it reveals, it brings us full circle back to the beginning and the unanticipated “revenge” effect Benjamin describes. It raises the question of exactly who has gotten empowered to do what and to whom. It also opens exciting new possibilities if we can get beyond ourselves.

## II. Our Skills Aren’t Unique

I have a small plaque in my office that someone gave me after an unexpectedly successful negotiation over a water problem. The sign says:

*Blessed are the Peacemakers  
For they shall never be unemployed!*

It is a nice sentiment but, with certain exceptions, it isn’t true.

In the world of courts, litigation, and lawyers there are plenty of mediators charging good fees and making a substantial part of their living settling various sorts of kerfuffles and brouhahas. The practice of mediation in legal settings is by far the most institutionalized. It is replete with statutes and rules that define the word “mediator,” grant privileges of immunity, protect confidentiality, maintain rosters, set fees, and protect lawyers against the unauthorized practice of law by competitors.<sup>6</sup> Along with those doing cases under the aegis of the courts, there are also any number of mediation trainers who have figured out how to make a good living off lawyers and judges by running trainings and workshops.

A few numbers and facts help paint the picture. The courts of all fifty states, Puerto Rico, and the District of Columbia now have established court-annexed alternative dispute resolution programs, as have many Federal Courts.<sup>7</sup> Pursuant to the 1996, the Administrative Dispute Resolution Act (ADRA) all federal agencies have been required to adopt a policy on ADR use. The Equal

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<sup>6</sup> See Young, P. M., “A Connecticut Mediator in a Kangaroo Court?: Successfully Communicating the ‘Authorized Practice of Mediation’ Paradigm to ‘Unauthorized Practice of Law’ Disciplinary Bodies,” South Texas Law Review, Vol. 49, No. 4, pp. 1047-1293.

<sup>7</sup> American Bar Association, <http://www.abanet.org/dispute/court/state.html>.

Employment Opportunity Commission (EEOC), for example, now requires settlement programs during the pre-complaint and complaint stages of the EEO process.<sup>8</sup> Meanwhile, perhaps as many as five-hundred community mediation and neighborhood justice centers have come into existence since the mid-1970s. Some have also gone out of existence but many of them receive funding and referrals from their local courts.<sup>9</sup> One result of this growing institutionalization is The American Bar Association's Dispute Resolution Section which now has more than 17,000 members and fifty separate committees on different facets of mediation and arbitration. Institutionalization will continue. The National Conference of Commissioners on Uniform State Laws ("Uniform Law Commission") is working on a uniform mediation code and has established a drafting committee for a uniform collaborative law act.<sup>10</sup>

For better or worse, mediation is now fully married to the law and hard-wired into the judicial systems of the U.S.<sup>11</sup> Within that realm, mediation is also being progressively more defined and regulated, perhaps even constricted, to the narrowing circumstances of the criminal, civil, family and appellate courts. For the foreseeable future, courts will continue to be a Nirvana for those who mediate and those who want to. I won't be surprised if a new penalty soon arises called "Contempt of Mediation." Willy Sutton robbed banks because that's where the money is. Mediators go to the courts because that's where the cases are.

Beyond the steps of the courthouse, however, many mediators seem to struggle for work and identity. Some see occasional cases and projects that come to them from corporations, government offices, or social service agencies. Others volunteer in community mediation centers. A few pick up work as sub-contractors to planning and public relations firms. Still others take on mediation activities that come from individuals who know them. This excludes the obvious political rock stars – the George Mitchells, Jimmy Carters, Dennis Rosses, Richard Holbrookes, Bill Richardsons and others - whose intuitive diplomatic abilities coincide with personal profile and political opportunity.

These days, however, the energy lies elsewhere and has little or nothing to with people who formally declare themselves "mediators." Instead, it is with people who are unfamiliar with the language, literature, rituals, associations, and style arguments we mediators have encased ourselves in. These people have never taken a course or workshop on mediation or gone to a mediation conference, nor

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<sup>8</sup> Federal Sector Alternative Dispute Resolution, <http://www.eeoc.gov/federal/adr/index.html>.

<sup>9</sup> National Association for Community mediation, <http://www.nafcm.org/index.cfm>.

<sup>10</sup> Uniform Law Commission, <http://www.nccusl.org/Update/DesktopDefault.aspx?tabindex=3&tabid=39>.

<sup>11</sup> Krivis, J. "End of the Cold War: The Marriage of Mediation and the Court System," January 2001, at <http://www.mediate.com/articles/krivis7.cfm>.

do they identify with the different geographic or topic-specific communities of mediators that have popped up around the world and in other countries.

These people have day jobs that require them to exercise the exact same talents and skills mediators declare themselves to be the sole possessors of. Unlike mediators, they carry the more pedestrian titles conveyed on them by their institutions and organizations. They are called “Senior Manager,” “Finance and Operations Director,” “Program Specialist,” “Patrolman,” “Technician,” and “Coach.” You know who I am talking about! We have all encountered these people in our work and in our cases. We have been delightfully surprised at how effective these people were at doing what we do and we refer to them as “natural” mediators.<sup>12</sup>

I know several of these instinctively facilitative and mediative people. One of them, let’s call him Brian, is a former educator who late in life became a minister. In his post-career-career as a pastor he gravitated towards “interim ministries” to work with churches all over the country that were profoundly convulsed philosophically, politically, organizationally and, above all else, emotionally. Usually, these churches had effectively fired their ministers (or were about to), were on the brink of splitting into two or more congregations, and were seeking some kind of civil and productive way to talk about their divisions and make conclusive decisions.

Turns out Brian does many of the same things we mediators do but never thought of it as “mediation” until we had an in depth conversation about it. He believed mediation is something lawyers and judges with specialized training do. But when I probed about what he actually does with his congregations, it sounded familiar. He does reconnaissance. He strategizes a starting point and brings representatives of different factions to the table. He crafts ground rules, meets with people in joint and private sessions, and strives for written agreements. When I asked him what he thought the secret for success was in a particularly rancorous church fight he described, he laughed and said: “I did a lot of listening and drank a couple thousand cups of coffee.”

Then there is Naomi. Naomi heads a small construction company she inherited from her father. As a woman in a male-dominated world of builders, she has carved out a reputation for fairness and firmness as she works on complex projects with owners, subcontractors, and regulatory officials. She is perpetually polite in any business meeting and typically let’s everyone else talk first. To those who don’t know her, she might seem demur but it is a façade. In addition

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<sup>12</sup> One of my colleagues, Professor John Barkai at the University of Hawaii’s Richardson School of Law, calls these people “undercover mediators.”

to being smart, tough, and organized, she is extremely politic, careful when she says “yes,” and has a way of saying “no” without causing hurts.

Not so long ago, she bid on and won a project larger than her company would normally have taken on: the construction of two new wings on an existing veteran’s hospital. The project was tricky. It was funded by government, constrained by severe cost-containment rules, and driven by stubborn scheduling deadlines. The new construction would be next to a highly vocal residential community concerned about dust, noise, and traffic disruption and some of the potential excavation issues – old water mains, electric conduits, and a possible hazardous waste plume – could not be fully priced.

Working closely with federal project managers from the Department of Veteran’s Affairs, Naomi organized a two-day “retreat” for everyone involved: project representatives; federal and local regulators; site managers; neighbors; subs; bankers; and representatives of the local utilities. The retreat was exquisitely organized with an agenda that included overview presentations on the project and schedule, an open discussion of potential challenges, break-out sessions to discuss safety and communication problems, and shared meals. All of this culminated in the creation of a charter of commitments (not to be confused with legal contracts) that everyone signed. The project came in on budget and on time and became a model for new “partnering” procedures adopted by several federal and state agencies.

Finally, there is Sam, a born facilitator who has a special intuition for bridging vast social chasms. Sam is senior vice president for a major electric utility. His day-to-day life is filled with complicated technical and financial issues. Every time he thinks he is on top of these, along come unexpected blackouts, billing system failures, new rate and rule hearings before the public utility commission, demands that he appear instantaneously at legislative hearings, and the usual shock and awe oil prices. Sam wears a perpetual look of sleep-deprived weariness. He is as wrinkled as a Shar Pei and his hair is thinning but he has become known as the “conscience” of his particular company.

After years of being hated by the local community, his company, through Sam, has single-handedly ushered in an era of better cooperation with community opponents who have, for various good reasons, felt betrayed by the utility’s bullying behavior in the past. Knowing that a new power plant would need to be built, and that it would be fiercely fought by not-in-my-backyard objectors from previous battles, Sam quietly identified a set of opposing community and non-profit leaders, met with them extensively in private, and then invited them to a meeting chaired by a community leader and held in a local home.

At that meeting, and in subsequent discussions, he forthrightly (and refreshingly) acknowledged the serious mistakes made by his company in the past and said he was there to explore any and all new ideas that might help his company meet its legal burden to provide power to the larger community at a reasonable rate and, simultaneously, to impose the least possible burden on the community and in ways that were fairly compensated. When one of the community leaders asked, “Sam, why should we trust you?” he said “Because I will insure that my board of directors puts anything I agree to in writing.” At the second meeting, Sam asked if a mediator or facilitator of the community’s choosing might be useful and offered to provide the funding. The community said, in essence, “No, we trust you and a third party would probably just slow us down.” After a year of meetings, an agreement between the utility and the community on a new power plant was signed.

When I think about what lies below the surface of our work, and what we, Brian, Naomi, and Sam all do that may be similar, here are some common elements.<sup>13</sup>

1. We and they have an instinct for applying good process as a way of preventing unnecessary conflicts or reducing and resolving them when they have manifested.
2. We and they believe that the application of good process should not be done as an afterthought or to help institutions “game” people on decisions that have already been made. To do it right requires intentionality, reconnaissance and design.
3. We and they believe in the inclusion of the fullest possible diversity of voices and viewpoints needed to work on a particular conflict, issue, or problem knowing full well that this will sometimes require converting hundreds or even thousands of different groups and people into meaningful representation.
4. We and they have a preference for negotiation over unfettered fighting.
5. We and they think people need to be heard, and feel heard.
6. We and they believe that idea exchange, respectful questioning, and mutual listening are integral parts of productive dialogue, practical outcomes, and the reconciliation of competing ideas.

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<sup>13</sup> These elements are evolved from an exchange with Professor Carrie Menkel-Meadow, Professor of Law, Georgetown University.

7. We and they value the participation of those who hold the problem (“stakeholders”) in both the approval of the process of discussion and leadership on its content.
8. We and they think high quality information – technical, legal, economic, cultural and scientific – needs to be an important part of any process.
9. We and they favor fair decision rules that do not tilt the playing field or the marketplace of ideas in favor of one party or another.
10. We and they think that outcomes should, to the greatest extent possible, be transparent so that tradeoffs are understandable to those who are affected by decisions but not present for deliberations.
11. We and they urge personal and organizational accountability so that those who make decisions participate in their implementation.
12. Where possible, we and they think the planned adaptability of decisions at the time of agreement-making is important so that outcomes can be reflexive to new information, changed conditions, or unexpected future challenges.

Much as these ideas, and others, are part of our mediation bedrock, they also are foundational to Brian, Naomi, Sam and many others. While not every belief is equally important to every circumstance, these notions permeate our work and that of the unschooled “naturals.” As innovative and original as we might think our methods and techniques are, the work we do comes from a set of “knacks” shared and practiced by many others.

### **III. We Really Aren’t a Field**

Suppose you were about to engage in a very challenging mediation involving twelve parties and their various sub-spokespersons and advisers. Some of these parties come from other countries. From your preliminary assessment, you know that the dispute involves billions of dollars, high levels of social, financial and technical complexity, ambient emotional drama, the potential for violence, and an impending deadline. Without revealing confidences, you talk with some colleagues in our field who have had considerable experience with some of the parties and they give you the following advice:

- Accept paradox and emphasize intelligence.

- Sometimes doing nothing is the best reaction.
- Manage information and expectations.
- To create an environment of trust and mutual understanding, empower people at the lowest level of organization.
- Watch what is going on, learn, and adapt.
- Remember that your tactical success guarantees nothing and if a tactic works this week, it may not work next week.
- Use pressure tactics sparingly.

The generators of this advice could have been Mahatma Gandhi or Martin Luther King. As it turns out, it comes from three military men, General David Petraeus, Lt. General James Amos, and Lt. Colonel John Nagl, all of them experts in countering guerilla warfare.<sup>14</sup> About them, Robert Benjamin has written:

“Setting aside, for the moment, the political and policy considerations of the Iraq War, military tacticians like Petraeus are moving toward the use of negotiative techniques to build alliances and consensus with and among former adversaries, effectively developing ‘weapons that don’t shoot,’ as they are termed. Obversely, negotiators and mediators would do well to incorporate time tested warfare strategies in their pursuit of workable settlements.”<sup>15</sup>

My issues are a little different from Robert’s. Are Petraeus, Amos, and Nagl part of our “field”? After all, they also see themselves in the business of conflict resolution. Are we and they colleagues in the same profession?

The words “field,” “discipline,” and “profession” have different meanings but are also kindred terms. Apply them to cardiology, fire fighting, advertising, or mechanical engineering, and they bespeak certain relationships that bring together strands of theory, research, practice and pedagogy. Together, they shape occupational coherence. Strictly speaking, to be a profession calls for some preponderance of the following: (a) specialized knowledge; (b) evidence-based diagnostics; (c) agreed upon intervention procedures that have been tested, verified, and codified; (d) a code of ethics; (e) some counterpoint definitions of

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<sup>14</sup> Petraeus, D., Amos, J, and Nagl, J. *The U.S. Army and Marine Corps Counterinsurgency Field Manual*

<sup>15</sup> Benjamin, R. “Of War and Negotiation: Part 3, The Allure of War: If You Want Peace, Study War,” at <http://www.mediate.com/articles/benjamin40.cfm>, 2008.

what it means to be “masterful” and “incompetent”; and (f) some level of public oversight or self-regulation. Domains that have all or most of these have higher levels of occupational legitimacy.

At the risk of sounding like the skunk at the party, mediation and its allied processes have made some moves towards broader general legitimacy but, beyond the courthouse, these efforts have not achieved critical marketplace traction in the way other professions have. Too often, the shared values and techniques that seemingly link us together turn out to be surface yearnings rather than real common ground. They are like the interfaith conferences my friend Brian tells me about in which Catholics, Muslims, Jews, Mormons, and others profess a general belief in something universal. Those conversations inspire and cross-pollinate theological thinking but don't fully converge except when talk turns to more mechanical matters like tithing, property management, and board contracts.

These aren't irrelevant or trivial matters, but they also don't equate to a more coherent profession, occupation, or field. They are “guild” issues. Perhaps the better analog for us lies with trades and crafts. I find a certain parallel between my work and what plumbers, framers, electricians, and dry-wall specialists do. In the end, those various technical trades have a shared and vested interest in the fate of the construction industry just as we share an interest in the larger universe of conflicts and disputes. But each group maintains its own apprenticeships, certifications, regulations, and unions. Our various species of mediators – our different “crafts” as it were -- seem to do something similar. The victim-offender people have their meetings as do the environmental mediators. So too with mediators and facilitators who specialize in commercial and construction problems, family matters, health care, divorce, disability, or farmer-lender practices.

Trades, no less than professions, are interesting phenomena. They evolve, mature, persist or die in relation to changing technological, economic, or social circumstances. Barbers, who were our original doctors and dentists, lost their business to the emerging medical and dental professions. Weavers who used hand looms (and became Luddites when automated wide framed looms were introduced) were forced out of business by industrialization. Beaver hat makers disappeared with the beavers the same as today's print newspaper professionals are bending before blogs, twitters, and RSS feeds.

Occupational impulses bind together people who share like-minded ends or means, who claim a special intellectual and practice domain that is different from other domains, and who ultimately define, regulate, and defend the boundaries of their work. In our work as mediators, however, we are as different from each

other as astronomers and astrologers. We share the general principles described earlier and have a lot of techniques in common but techniques by themselves, and even the standards for applying those techniques, do not create or constitute a profession.

My favorite example goes back to the 1850s when two European doctors, Charles Gabriel Pravaz and Alexander Wood, working independently, developed the modern syringe through which fluids can be extracted or delivered into human bodies. It was an astoundingly important and profession-changing innovation but it didn't become a profession by itself. We don't have "syringators" or "hypodermicologists." Instead, that breakthrough tool was rapidly adapted for many different uses. Today, the manufacture and use of syringes is regulated and follows various critical production and usage protocols but the larger professions to which these techniques apply – clinical medicine, research, veterinary, nursing, etc. -- are not built around the syringe as a tool or the techniques of injection.

So, in the aggregate, what are we? Are we an innovation to other fields, a social movement, a trim tab on the rudder of bulky institutions, or an evolutionary footnote on the road to some other unforeseen place? Perhaps we are a bit of all of these. Or perhaps as Carrie Menkel-Meadow suggested in our previously footnoted conversation, mediation is a "calling," an emotional disposition and intellectual commitment many of us are drawn to for different reasons.

At the end of the day, and from a wide angle view plane, I believe mediation is a "meme," a word coined by Richard Dawkins that is a cultural proxy for a gene, the basic mechanism of inheritance discovered by Gregor Mendel in the 1850s. Genes are packages of biological information. Memes are packets of cultural information. Though genes have been empirically verified and mapped, memes are still a concept. Nonetheless, Dawkins believes that memes evolve, mutate, combine, and shape our lives. Memes begin to explain both continuity and variation: certain religious beliefs and rituals that are transmitted across generations; proverbs and catch phrases that recur; and various habits of grooming, clothing, food, and architecture that get handed down.<sup>16</sup>

The mediation meme probably goes back to our deepest history as human beings, perhaps to the end of the Pleistocene 40,000 years ago. It spans 6,000 historical and current language groups and runs parallel to our deepest destructive impulses. Matt Ridley has marshaled considerable biological and cultural evidence for this countervailing cooperation urge and Robert Axelrod has simulated it with his computer iterated versions of the "Prisoner's Dilemma.

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<sup>16</sup> Dawkins, R. *The Selfish Gene*, Oxford, 1976.

<sup>17</sup> I find the sheer variety of mediation forms and structures even more compelling.

Across time and distance, biological necessity and social ingenuity have created artful processes that fit particular circumstances, among them, the Leopard Chief practices of central Africa, the Jewish Rabbinic interventions of Central Europe, the “sit downs” of the Kalahari Bushmen (and the American Cosa Nostra), Afghanistan’s Loya Jirga procedures, the disentangling ceremonies of Melanesia, the rules of certain panchayats and barangays in India and the Philippines, the moot courts of the Kpelle people in Liberia, the reconciliation procedures of the Abkhazians in the Caucasus Mountains, the Chatham House process in England, the peace pipe rituals of Native Americans, the song contests of certain Eskimo peoples, and a long line of specific but varying diplomacy procedures used in virtually every known country and culture. Forms differ. The impulse is universal. <sup>18</sup>

Here is an example of a Hawaiian mediation meme called “Ho’oponopono,” handed down from ancestral Polynesian origins but evolved and adapted to the particular cultural circumstances of modern Hawaii. Ho’oponopono is an extended family conference built on discussion, confession, problem solving, and the restoration of harmony. Ho’oponopono means “to make things right,” not just within the family, but also within the network of family gods and the even larger universe of supernatural forces which surround and ground everyone. The guiding metaphor is the interrelatedness of many human and non-human strands and of a fish net that has become tangled and is no longer functional.

Ho'oponopono begins with a prayer (or *pule* in Hawaiian) asking the deities for their blessing in solving the problems at hand. Then come statements of the problem done in a particular way such that each person must identify his or her part of the problem. This is the beginning of cleansing and forgiveness and, ultimately, the larger loosening in which all knots are unraveled and the net of the family is restored. If the process has succeeded, the matter is declared closed forever, never to be brought up again by anyone. If not, the process continues. When it is truly finished, a closing prayer is said and the family eats food prepared and shared by all. <sup>19</sup>

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<sup>17</sup> Ridley, M. *The Origins of Virtue*, Viking, 1996; and Axelrod, R. *The Evolution of Cooperation*. Basic Books, 1996. See also Aureli, F. and DeWaal, F., *Natural Dispute Resolution*. University of California Press, 2000.

<sup>18</sup> See, for example, Barnes, B. *Culture Conflict and Mediation in the Asian Pacific*, Rowman and Littlefield Publishers, 2007.

<sup>19</sup> See *Nana I Ke Kumu*, Vols 1 and 2, Pukui, M. E. Haertig and C. Lee, Honolulu: Hui Hanai, 1972. Also, [http://www.yourpersonalwebmd.com/index.php?option=com\\_content&task=view&id=271&Itemid=292](http://www.yourpersonalwebmd.com/index.php?option=com_content&task=view&id=271&Itemid=292).

Here is another mediation meme, this one from Japan called "Yoriai," also a conferencing process done in rural villages and extended families. Little is written about Yoriai but a colleague of mine at the University of Tokyo, Dr. Masahiro Matsuura, sent me the following:

Dear Peter,

Regarding the "Yoriai," I have translated some paragraphs from a book called *The Forgotten Japanese* by Tsuneichi Miyamoto (1960). It is an ethnography of Japanese rural communities in the early part of the 20th century. There are many similarities between his description of Yoriai and the current form of mediation. His analyses of the role played by elderly persons are most especially interesting. They would perform mediation because not only were they respected, but also they did not have a stake in the village's decision-making. Based on my interviews with Japanese, there still seems to be some forms of these community gatherings of small Mura ("Mura" means village) in rural areas. Miyamoto writes:

*"I have an unforgettable memory. When I was a kid, I went to a Mura's Yoriai for no reason. I guess I went there with my grandfather, or with my father, but I'm not sure. Many people were discussing. One of them was arguing for something. I couldn't understand what he was saying because I was a child, but the image of the guy who was speaking something unilaterally is imprinted on my mind. Then, one elderly person said, "Speak out by looking at your feet." Then the guy went speechless. That image still remains vivid in my mind. I started my journey afterwards, but I had many chances to meet this kind of elderly person. At the same time, I found the significance of the role played by this kind of elderly persons." (p. 38)*

*"This role of caring for the people should be taken by someone who can observe the relationship between individuals based on their humanities, without simply judging one's act as good or bad. And that role can only be successfully taken by the elderly people who have given up the family business to their children, are in the position of retired, and bear no social obligations." (p. 42)*

*"This tendency is often found on Setonaikai islands and Western Kyushu islands. When groups with different names live together, joint ventures by people with different names or territorial connection groups emerge inside the village. In that kind of society, area-based gatherings have been developed since the early days in order to solidify the relationship. This gathering is called Yoriai. The most common form of*

*Yoriai is religious rituals, but there are many others for village-based tasks." (p. 44-5).*

*"The reason that this Odou (community shrine) is used for Yoriai in many cases would probably be because the Yoriai emerged out of religious gatherings. Therefore, the characteristics of Yoriai still have the atmosphere of a gathering. In that society, the elderly with experiences is respected." (p. 47-8)*

*"It is not clear when this system of Yoriai was established, but the livelihood of the village, viewed from the inside, might have been similar to today's community-based governance, and that could be found in the villages by the early modern ages (\* Edo period). Above that kind of thing, elderly people existed as a watchdog group. However, they did not have the decision-making power when the village made decisions. At the same time, the discussion at Yoriais paid immaculate attention to the relationship among its participants, and some sort of knowledge was exchanged, but decisions were not made. Arguments were integrated by the Hyakusho-Dai and Azegasira (community leaders) into written documents." (p. 57-8).*

Best wishes,  
Masa <sup>20</sup>

Finally, here is a mediation meme from Von J. Christianson's observations in a Chinese village. <sup>21</sup> In his time there, Christianson noted a series of elements in certain rural Chinese processes that seem oddly reminiscent to mediation in the U.S. He described them this way:

- 1. A Sacred Role.** The role of the "mediator" is that of a respected counselor, an expert, an elder, and a trusted peacemaker. In China, the role carries weight and responsibility and his or her presence helps bring people together in times of stress and fracture.
- 2. The Gathering.** This respected counselor chooses a place where parties are convened and must face each other. It is a place that has "rules" of behavior that lend gravitas and that proscribe an order to things.

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<sup>20</sup> E-mail correspondence with Professor Masahiro Matsuura, Graduate School of Public Policy, University of Tokyo, March 1, 2005.

<sup>21</sup> Christianson, V. J. "The Role of Reconciliation in the Mediation Process - Lessons From A Chinese Village," *Dispute Resolution Journal*, Fall 1997, pp. 6-78.

3. **The Telling of the Story.** In this place, civility is required and, in accordance with the “rules” of form, the accuser who has brought the complaint is required to speak his or her truth. The accused must listen.

4. **The Story Retold.** In matters of human relationship, it is understood that there is no single immutable truth. There are many “truths” and for every story, there is an alternative perspective or explanation. The accused has time and opportunity to tell the story from a different perspective.

5. **Understanding.** Contrasting stories form a dialectic, an opportunity for questions aimed at illuminating similarities and differences, common and divergent interests, areas of agreement and disagreement.

6. **Conciliation.** Each party comes to see their own part in the drama. “Third” possibilities come to life and intellectual solutions are discovered or invented. “Face” is salvaged, created, and managed.

7. **Reconciliation.** The emotional solution is found. There are apologies and mutual absolution. The parties are asked to forgive each other.

All three of these memetic adaptations suggest a very old master pattern that keeps repeating itself in new and interesting ways. The meme recurs repeatedly in our culture as well. In colonial times, and on into and beyond the Civil War, various versions of mediation flourished inside American factories, in small towns, and in guilds and businesses. In the 1900s, labor-management mediation gained legitimacy when collective bargaining was codified with the passage of the Wagner Act. In the racial turmoil of the 1960s, mediation became a *modus operendi* with the establishment of the Community Relations Service. And in 1976, the Pound Conference on the causes of court delay turbo-charged the launch of neighborhood justice and community mediation centers.

All of these remind us that the real root of our work as mediators, the primal mud if you will, doesn't reside in our judicial system or in ADR- adopting organizations and institutions like Motorola Inc. or the U.S. Air Force. Mediation and facilitation descend from a long line of cultural, intellectual and political experiments. At different moments and in its different forms, it brings together pieces and parts of organizational development, sociology, psychology, law, labor relations, community studies, and political science and it finds traction in unexpected places.<sup>22</sup>

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<sup>22</sup> I once had a fascinating conversation with a gentleman who had spent most of his career developing, managing and owning rock quarries. His current job focuses exclusively on mediating matters related to rock quarry conflicts.

Jerry Barrett, author of a fine history of ADR, writes: “I have stood in lines, at SPIDR, ACR and other ADR events, listening to new ADR practitioners talking enthusiastically about their field, as if the field started the day they discovered it. They display no awareness of ADR’s long history.”<sup>23</sup> What these newly minted mediators, products of some 40-hour training, don’t know is that mediation has always been around and that mediation programs will come and go for a multitude of not always predictable political reasons. The mediation and facilitation meme itself, however, will endure. It represents a fundamental, dynamic, and fluid response to two permanent and intertwined human needs: to resolve disputes and to cooperate in the face of stress. The ideas and practices embedded in convening, communication, and negotiation cannot be contained by any one group. They will keep getting reinvented as human circumstances change. It might be smart of us to get on the front end of that curve.

#### **IV. Imagining the Future**

Some years ago, I had an opportunity to facilitate an unusual meeting of futurists, all of them well regarded scholars and top flight private and public sector prognosticators. These men and women were focused on the long view in human affairs, 50 to 100 years out and beyond. One of them was trying to develop a strategic plan for the year 3,000. The issues I was there for were short term, helping them come to conclusion on a few organizational matters that were the subject of some contention. They, in turn, were obsessed with what the world would be like fifty to one hundred years from now. The issues I facilitated got sorted out with minimum fuss and pain. Their debates didn’t. They talked. I listened.

Futurists like to construct scenarios, typically working off variations of at least three master patterns: things will get better, things will get worse, and things will be an oscillographic mix of better and worse imaginings. A scenario might be “Corporations Become Government,” or “Free Fusion Energy for All.” It could be “America Goes Green,” a “Global Police State”, or “Everyone Becomes Muslim.” Every scenario has some extended implications, effects that ripple and cascade out from the central proposition. Each also has unintended consequences that no one foresaw and that sometimes overwhelm the powerful and compelling dreams the scenarios are built on.

Futurists also like to help people construct their own “preferred scenarios,” visions of the future that represent the best aspirations of whatever group they

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<sup>23</sup> Barrett, J. “Does the History of our Field Matter to Us ADR Types?,” November 2006 at <http://www.mediate.com/articles/barrettJ1.cfm>. Also, Barrett, J. *A History of Alternative Dispute Resolution*, Jossey-Bass, 2004.

are working with. If a futurist was working with us, he or she might ask us to map out a world in which mediation has triumphed and become the dominant dispute resolution paradigm. Like mediators, futurists stress self determination. They say we can't really predict or design a perfect future but we can, collectively, exert significant architectural influences over it.

Some of their scenarios are distinctly dystopian, a dark amalgam of Hobbes, Malthus, and Orwell mixed together with some of the grimmer imagery of Cormac McCarthy's *The Road*. In the bad times that are coming, we will see climatic, demographic, and economic disruptions from cascading anthropogenic influences the likes of which haven't been experienced since the Black Death and Cholera epidemics in Europe in the 1300s. Many of our most famous cities will become uninhabitable and population numbers will drop dramatically from wars, famines and pandemic diseases. Watch for dirty bombs, walled enclaves, small armies of Mad Max-like road thugs, and crazed fundamentalists convinced this is God's retribution for a dissolute civilization. <sup>24</sup>

Another future is ecotopian, built on a new kind of post-industrial bio-regionalism in which we humans simplify our existence, live close to the land, grow and hunt our food, and more fully reconnect to nature. Reminiscent of Jean Jacques Rousseau's natural man philosophy, this vision sees a pervasive new sense of "place" replacing the rootlessness of the past several centuries and the unprecedented growth of large urbanized mega-cities. Communities get smaller and populations shrink, not from disease and war, but through a restored balance with nature. Forests return and aquifers refill. Watersheds are cleaned up and the natural flows of rivers and streams come back along with their once bountiful biota. <sup>25</sup>

Yet another vision has us leaving the planet altogether. Earth is a "Gaia-spore" and humans are destined for the stars. Our future lies in deep space exploration and the search for habitable planets that offer rich mineral deposits, endless solar energy, and the right conditions for oxygen and food production. Some of this has already been imagined in books like the Mars Trilogy by Kim Stanley Robinson, in films like *Star Trek*, and in NASA's ongoing mission plans which call for a sustainable, long term human presence on the moon and eventually Mars. NASA puts it this way: "Why do we explore? From the time of our birth, humans have felt a primordial urge to explore - to blaze new trails, map new lands, and answer profound questions about ourselves and our universe." <sup>26</sup>

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<sup>24</sup> See Goodell, J. "The Prophet of Climate Change: James Lovelock," Rolling Stone, Nov 1, 2007. [http://www.rollingstone.com/politics/story/16956300/the\\_prophet\\_of\\_climate\\_change\\_james\\_lovelock](http://www.rollingstone.com/politics/story/16956300/the_prophet_of_climate_change_james_lovelock)

<sup>25</sup> See Snyder, G. *The Real Work: Interviews and Talks 1964-1979*. New Directions: 1980.

<sup>26</sup> "Exploration: NASA's Plans to Explore the Moon, Mars and Beyond" at <http://www.nasa.gov/exploration/home/index.html>.

All of these futures are worthy of our contemplation and place key facets of our current dilemmas in sharp relief. They reflect some of our worst fears, deepest yearnings, and highest hopes. I can easily imagine the mediation meme being transmogrified into every vision that the futurists invent as they throw the bones and read the tea leaves.

A dystopian world will need a new generation of Dag Hammarskjölds who can build alliances among the civilized and deescalate rabid conflicts with the barbarians. Ectotopia will require a counterpart to the real and historic Hiawatha, a member of the Onondoga Tribe who was called The Great Peacemaker for his founding of the six-nation Iroquois Confederacy which persisted for nearly three hundred years. As for the colonization of space, new mediative strategies will be required for both the decade long voyages to other solar systems no less than the new space treaties that will be needed as different Planet Earth nations try to replicate themselves in the heavens.

For me, the problems the futurists are responding to are more tangible and immediate. While we wait for their big shifts, you and I are faced with the unenviable tasks of rebooting our economy, reducing poverty, cleaning up the environment, taking care of our elderly, securing ourselves against terror, preventing crime, ensuring clean and homegrown energy, reducing homelessness, and improving public education. These are tasks worthy of our best work as mediators, facilitators and consensus-builders. And that is precisely why the diffusion and adaptation of our value-propositions and our attending strategies and skills will, and must, accelerate into other professions and domains.

Albert Einstein famously said that solving the big problems we face now cannot be done with the kind of thinking that got us into these messes in the first place. This is not good news for many professionals. To the dismay of professors, no one discipline or mental model can fully explain these problems. To the dismay of government officials, no one agency or bureau owns them. To the dismay of scientists and engineers, technical remedies are insufficient. To the dismay of business and industry, there isn't enough collective money to seriously attack them. To the dismay of advocacy groups, no special interest group has the full rhetorical power needed to sway everyone to a solution. And to the dismay of communities and locales everywhere, it is impossible to wall ourselves off from everyone else and deal with the problems exclusively.

Solving these problems will be a team sport and the process of forging solutions will require the wisdom of many voices and clever new forums conducive to bridge-building, critical thinking, good information, and political courage. In an

underappreciated book called *Catalytic Leadership* (Jossey-Bass, 1998), Jeffrey Luke perfectly captures this ever more interconnected nature of our public problems and the growing demand for something different:

“In the last twenty years, a quiet crystallization of interdependencies has set in that has changed the way we engage in public action. We are now tied into multiple webs of interconnection never before witnessed in human history. Public and corporate executives have mistakenly focused on complexity while lamenting the increased turbulence and unpredictability in which they are forced to manage and lead. The cause of this turbulence and complexity, however, is an underlying interdependence and interconnectedness that creates unforeseeable and unintended consequences on organizations and agencies.” (p.5)

Luke goes on to argue that people wanting or needing to solve these problems must move beyond the old command-control-decide-and-defend paradigm of leadership. In effect, leaders must become catalytic converters. Catalytic converters are marvelous inventions. They attach to automobile exhaust systems, make cars more efficient, and convert harmful gases like carbon monoxide and uncombusted hydrocarbons into mostly harmless products like water. In the realm of leadership, catalytic conversion work will require meaningful cross-sector stakeholder groups, the facilitation and mediation of tough issues, and disciplined processes that engender short- and long-term actions and impacts. “We live in a world of complex interconnections,” says Luke, “in which take-charge leaders are less successful than individuals and groups who provide the spark or catalyst that truly makes a difference.” (p.4)

There are no lack of issues and possibilities. At this moment, I know mediators and facilitators (including some of those unschooled “naturals”) who are doing exactly what Luke argues for. They are trying to pull together rigorous, solution-seeking discussions on the economics of renewable energy (including nuclear power), endangered species conservation incentives for landowners, the decommissioning of obsolete and still lethal chemical weapons, the cleanup of the Missouri River, the development of safety standards for nano-technology products, new strategies to combat obesity, sustainability metrics for production agriculture, vaccination priorities for future pandemic influenzas, the improvement of green product consumer information, and new strategies for carbon capture and sequestration.

Our skills, packaged into the increasingly arcane rules of our judiciaries, offer insufficient guidance for these kinds of issues or for the problems the futurists are responding to. To lead in a “catalytic” way will require us to build issue-by-

issue partnerships that can overcome the stasis of political fragmentation and solutions that can survive the hard centrifugal pulls of left and right, blues and reds, liberals and conservatives. This isn't foreign territory. It is something we help people do all the time in the more microscopic settings of lawsuits, families, and workplaces. If we have learned nothing else, we know one thing for sure: conflict can be a "transformer," a way to change people and situations no less than voltages and electrical currents. The challenge now is to think big.

## V. Getting Beyond Oz

Sometimes when I attend gatherings of mediators and facilitators, I get the feeling I just rode in on a tornado and have suddenly lit down in *The Wizard of Oz*. With no disrespect meant to those investing so much time on staging professional gatherings – I have done a lot of that myself – I see all manner of Ozian scripts playing out.

There are lots of Dorotheys (myself included), more or less average people looking for a reasonable intellectual and professional home and perhaps hoping for a little artisanal inspiration. There are plenty of Scarecrows, people with heart searching for brains, and a fair number of Tinmen, people of great technical prowess searching for heart. We have our Cowardly Lions – fears searching for courage – and a bunch of enchanting munchkins running around absolutely committed to mediating playground disputes. We have our Wizards behind various curtains and we also have a few Totos nipping at their heels. We even have our Yellow Brick Roads which some people are sure will lead to spiritual awakening.

But where we have come to seems very different from where we started. When we set out on this journey, mediation and its kindred activities embraced a truly revolutionary idea: empowering people to negotiate their own decisions. In a culture accustomed to giving deference to experts – doctors, lawyers, judges, scientists, engineers, and social workers – that single core principle was a game-changing assumption about the dynamics of conflict and its prevention, management, and resolution. It was about changing America and the strange and professionally adversarial culture in which we are all enmeshed.

Somewhere, along the way, our world got constricted and narrowed and we now seem to want to empower ourselves. In the land of Mediator-Oz, we have lots of people who desperately want to be part of a real profession. They want certificates, go-to codes of practice and procedure and, above all, a long line of paid cases. We also have others who are hungry for bigger, bolder, and more imaginative impacts. As one of my colleagues told me in response to an early

draft of this article: “All of this field-ifying bores me silly.” This woman, I’ll call her Betsy, is a very experienced and accomplished mediator. She lives in a small town not far from several big cities. Her practice is mostly in the fields of labor and environmental disputes. What she really wants to do, however, is apply her talents to patching up the socially fractured and disconnected communities she sees around her.

Revenge effects are unintended consequences which come back to haunt our original purposes. Football pads and vaccines, both designed to prevent injury and damage, sometimes cause them. Automated tellers which were going to save us time and money, have created new lines in front of the bank, additional charges to your account, and a perfect place to have your identity or wallet stolen. Cars that got heftier and faster turned out to be gas guzzlers and carbon emitters. Computers that were going to de-clutter our offices have created new electronic messes, some of them in our own heads.<sup>27</sup>

In the decades to come, our work will get reinvented in new and unexpected ways. The philosophies and technologies behind our efforts will inevitably be adopted and adapted in ways we haven’t yet thought of, some of them subtle, others ingenious and bold. Personally, I can’t wait! I welcome those coming changes and suggest a few concrete things we can do to accelerate the journey:

**1. Look to the Boundaries.** If W. B Yeats was correct and the center is destined to collapse, then the boundary is the place to be. Some of the most exciting intellectual work relevant to mediation is coming from other disciplines. Our usual bibles of mediation practice – Fisher and Ury’s *Getting to Yes*, Chris Moore’s *Mediation*, Deborah Kolb’s *When Talk Works* – are fine texts but for those who are moving beyond playing scales on the piano and whose intellectual curiosities are aroused, let’s send them to the boundary, to books like Robert Jay Lifton’s *The Protean Self*, Jim Collins’ *Good to Great*, James Surowiecki’s *The Wisdom of Crowds*, James McPhee’s *Encounters with the Archdruid*, Gerard Diamond’s *Guns Germs and Steel*, and Malcolm Gladwell’s *The Tipping Point*. These and others will refresh our inventory of ideas, strategies and tools, provoke our thinking and help carry us to the new frontiers of our work.<sup>28</sup>

**2. Track the Biggest Problems.** In my organization, my colleagues and I are often approached to take on large and long running mediation projects on regional, national and international problems. I tell people we are not a think tank. We are a “think and do tank” for serious stakeholders. So people come to

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<sup>27</sup> Tenner, E. *Why Things Bite Back*. Vintage: 1996.

<sup>28</sup> Also: *Organizing Genius* by Warren Bennis and Patricia Biederman, *The Spirit Catches You and You Fall Down* by Anne Fadiman, Donald Trump’s *The Art of the Deal*, Saul Alinsky’s *Rules for Radicals*, Phil Jackson’s *Sacred Hoops*, and others that you can scout out on your own.

us with a lot of interesting ideas but before we accept any particular project mission, we ask ourselves some obvious questions. “Is there a real policy driver?” “Is it politically timely?” “Can we get people to the table?” And “Is it fundable?” We also scan current events and listen hard to what other observers of the political landscape have to say. For example, columnist David Brooks wrote a piece last year in which he identified five large problems which will command everyone’s attention in the next few years in the U.S. and inevitably result in epic legislative battles. His list was (a) the erosion of America’s social contract as safety nets and entitlements are shed; (b) the growing energy shortage; (c) the stagnation of human capital as our education systems lag farther and farther behind; (d) the reform and probable re-regulation of financial markets; and (e) the rebuilding of our infrastructure systems which are in a shambles.<sup>29</sup> These are the kinds of matters that will make a difference to many people if we can successfully apply our mediative talents to them in ways that are scalable to the scope of the problem.

**3. Champion the Naturals.** Our mediator-centrist tendencies work well enough in the courts and for other matters prescribed by statute and regulation. Outside these confines, we require allies. We need to stand behind, partner with, and propel forward the Brians, Naomis, and Sams of this world. We will do well to learn more about these people, what they do, why they do what they do, how they acquired their skills, and what is being achieved by them. These are the catalytic leaders Luke talks about. They have the potential to be the moral exemplars of the twelve elements described in Section II. They will also be in a stronger position to make a real dent in the adversarialism that so dominates our mass and political cultures.

**4. Teach the Fundamentals.** Recently, and as a kind of thought experiment, I tried to distill what I have learned and experienced about mediation into a handbook on leadership. I wanted to add to Jeffrey Luke’s ideas and try to make our tools and techniques more relevant to others who find themselves in the eye of one political storm or another. I wrote it without ever using the word mediation.<sup>30</sup> The twelve shared elements described in Section II of this paper form a teachable curriculum. Of these, the core skill set of our craft is probably negotiation. Forget making mediation a profession. If we can teach others to negotiate more effectively, we will advance the larger aims of finding

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<sup>29</sup> Brooks, D. “The Coming Activist Age,” New York Times, July 18, 2008. Also at [http://www.nytimes.com/2008/07/18/opinion/18brooks.html?\\_r=1](http://www.nytimes.com/2008/07/18/opinion/18brooks.html?_r=1).

<sup>30</sup> Adler, P. Eye Eye-of-the-Storm Leadership: 150 Ideas, Stories, Quotes, and Exercises on the Art and Politics of Managing Human Conflicts. RIS, Inc., 2008.

effective solutions, repairing relationships, and building new political understandings across competing interests and needs.<sup>31</sup>

**5. Diffuse our Innovations.** There are plenty of books, manuals, blogs and websites focused on mediation. The latest count for “mediation” on Google gave me 20,100,000 hits today. That number multiplies greatly when we add in mediation’s other synonyms and surrogates – facilitation, deliberative democracy, settlement, and so on. More than aggregating additional mediation “stuff,” there is a pressing need to demystify what we already know and take it out to others. There is a rich sociological literature on the diffusion of innovation and how new ideas move from concept to proof-of-concept to marketplace entrance to the achievement of full currency and acceptance. One outstanding example, in the tradition of *Getting to Yes* now being translated into a dozen languages, is *Breaking Robert’s Rules: How to Run Your Meeting, Build Consensus, and Get Results* by Lawrence Susskind and Jeffrey Cruikshank (Oxford University Press, 2006). These authors have taken the basics of the work we do as facilitators, removed the jargon and insider-babble, and turned those ideas into an everyday set of procedures that will be absorbed and adopted by huge new audiences.

**6. Infiltrate the Political Culture.** As with our court system, politics in most Western democracies rests on elaborate theories and practices of opposition. Our current political meme of choice assumes that the way forward on any given policy matter is best forged by having elected officials hammer each other with opposing positions until something useful magically materializes. In the heat of these fights, negotiation is reduced to its least effective forms. Diplomacy goes missing and statesmanship is overwhelmed by prolonged nose-grabbing, ear pulling and towel snapping. This has three bad consequences: (1) legislative and executive bodies become do-nothings and gridlock ensues; (2) bad deals are made and the public ends up with shoddy policies; and (3) cycles of competitive revenge are perpetuated in which one party inflicts its quorum on the other only to have the situation reversed in a later election. Over time, we can begin to make a difference. We can find ways to highlight and honor the naturals who show us something different. We can find a place in the influential think tanks that are churning up new ideas for consideration. And we can write Op-Ed pieces on specific undertakings and profile real successes.

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<sup>31</sup> Robert Benjamin and I recently taught a workshop on mediation to self-avowed advanced practitioners and were both stunned at how little they had read about negotiation. They had all ingested *Getting to Yes* but knew nothing of thinkers and researchers like Howard Raiffa, David Lax, James Sebenius or Steven Brams and Alan Taylor.

## VI. On to Kansas

*"If you want to start at the top of your own profession, invent your own profession." - Ashleigh Brilliant*

At the end of the *Wizard of Oz*, Dorothy makes it back to Kansas. Kansas is home and home is that special nest that nurtures and anchors each of us. I can't tell you what your home should be but I confess that mine is constructed of things bigger and hungrier than we now seem to be evolving into. I'm delighted there are a few kindred spirits who are also looking for something more than the next case in a long line of paid gigs. Social critic Eric Hoffer once cynically observed: "Every great cause begins as a movement, becomes a business, and eventually degenerates into a racket." That is the great seduction of the moment we have arrived at.

Brothers and sisters, friends and colleagues, bold challenges and bright opportunities lie before us.

I'll see you on the way there.

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