



MÉTODOS E PRÁTICAS PEDAGÓGICAS:

estudos, reflexões e perspectivas

Denise Pereira
Karen Fernanda Bortoloti
(Organizadoras)

3

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02



Transformative mediation and otherness

Tássio Túlio Braz Bezerra

Full Professor at Universidade Federal de Mato Grosso do Sul

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Abstract

The present work intends to present transformative mediation, from the theoretical perspective of Luis Alberto Warat, as a proposal to promote a culture of human rights. Transformative mediation articulates in its practice the subjects' autonomy and the inclusion of otherness in the conflict. The article seeks to answer the following problem: what is the potential of transformative mediation to promote a culture of human rights through the insertion of otherness in conflicts, from the theoretical perspective of Luis Alberto Warat? Therefore, an analysis of transformative mediation was carried out, based on the bibliographical review of the theoretical contributions of Luis Alberto Warat. Thus, an articulated discussion between human rights and mediation was promoted through the debate on the recognition of equality and difference. It was possible to conclude that transformative mediation aims to insert otherness into conflicts, through a dialogical relationship, which aims to build with the other a participatory and shared approach to human problems and dilemmas as common to social life.

Keywords: mediation. human rights. difference. otherness.

INTRODUCTION

The perception that human rights education must necessarily articulate theory and practice, as a transformative praxis, leads to the search for social experiences that enable the construction of a human rights culture.

From this perspective, this article intends to articulate the discussion of mediation and human rights, based on the search for a method of conflict resolution that can promote human rights, based on the insertion of otherness in conflicts.

Having made these considerations, this paper aims to answer the following problem: what is the potential of transformative mediation to promote a culture of human rights through the insertion of otherness in conflicts, from the theoretical perspective of Luis Alberto Warat.

This research is justified by the current debate on the practice of mediation in Brazil, especially as a result of Resolution 125/2010 of the National Council of Justice - CNJ, which established the national judicial policy for the proper treatment of conflicts of interest within the scope of Judiciary Branch, of Law N^o. 13,140/15 which regulates mediation between individuals and within the public administration, and the prominent role of mediation in the new CPC, in addition to so many other legislative initiatives that have given special importance to mediation. However, the aforementioned approaches have attributed to mediation the task of unburdening the Judiciary Power, as its practice should precisely be aimed at resolving conflicts in a larger dimension than that allowed by the judicial system. It is from this perspective that it is essential to rescue the theoretical debate on Warat's transformative mediation, in order to make a counterpoint to the increasingly judicialized approach to the practice of mediation in Brazil.

It should be borne in mind that, in the mediation process, people are encouraged to resolve their day-to-day conflicts based on a dialogue with each other, in the search for mutual satisfaction of disagreeing desires, rebuilding and transforming the conflicting relationship - and themselves in conflict.

In this way, it is possible, at the beginning, to highlight two important aspects that integrate transformative mediation and that simultaneously constitute pillars for the promotion of human rights: autonomy and otherness. The latter will be the focus of attention in this work and which constitutes an important category for the discussion of one of the most contemporary debates on human rights: the recognition of equality and difference.

Thus, the present work aims to: i) present the singularities of Luis Alberto Warat's transformative mediation, highlighting one of its main aspects, otherness; and ii) investigate the potential of Warat's transformative mediation to promote a culture of human rights, through the recognition of equality and difference, based on the insertion of otherness in the conflict.

TRANSFORMATIVE MEDIATION

An important aspect that distinguishes the transformative mediation model is precisely the perspective of transformation of the subjects involved in the conflict, due to the possibility of reinterpreting the situations/problems and the active participation of all those involved. From this perspective, it presents itself as a practice that promotes the autonomy and alterity of subjects.

Thus, despite the more traditional concept of mediation, the most diverse theoretical models can be found in the specialized literature, of which the main ones can be indicated: the facilitative (traditional) model – from the Harvard School – centered on the satisfaction of the parties to obtain the agreement, in which the work of Fisher, Ury and Patton stands out, *Getting to Yes*; the transformative model – developed by Bush and Folger – from which we can highlight the text *La Promesa de Mediación*, which focuses on transforming the meaning that people give to conflict, so as to constitute itself as a possibility for growth; and the circular-narrative model – created by Sara Cobb and Marinés Suárez – in which we can cite the book *Mediación: condición de disputes, comunicación y Técnicas*, which is based on communication and circular causality, but concerned with links and the reflexive question between the parties.

In Brazil, such theoretical models, which are covered by a set of their own techniques, were imported without much rigor. In turn, since mediation consists of practical knowledge, the use of such methods, especially in communities with a high degree of precariousness, gave rise to what could be called Brazilian-style mediation (BEZERRA, 2014, p. 53).

In this way, mediation in terra brasiliis can be grouped into two broad approaches, which in practice are often employed either together or separately. The first is mediation in its traditional model, also called focused on agreement, structured according to the American model of the Harvard School, focused on the negotiating issue with a view to reaching an agreement; the second model, widely used in community practices, is transformative mediation whose purpose is not the search for an agreement, but the reestablishment of ties and broken affections and the re-signification of conflict, as an opportunity for transformation.

It is important to highlight that mediation focused on the agreement is guided by a process of conflict resolution, while transformative mediation is proposed as a process of transforming the parties' perception of the conflict.

The resolution process is focused on discussing the content of the conflict, seeking to close it, with the purpose of finding an agreement for a current problem, based on the immediate conflict, in a short-term horizon. In turn, the transformation process assesses how to put an end to something destructive and build something desirable, with the purpose of promoting constructive and inclusive change processes aimed at relationships, not limited to immediate solutions, based on a horizon of medium and long term, seeing conflict as a necessary dynamic for constructive change (SALES, 2010, p. 1).

After the due considerations, it is worth stating that it is the transformative mediation model that we will discuss and that will be taken as a reference for the present work. Thus, it is a good idea to start the discussion from the conceptualization, even if provisional, of the type of mediation we are talking about, which according to the words of Warat (1998, p. 5) is:

[...] an ecological way of solving social and legal conflicts; a way in which the intention of satisfying the desire replaces the coercive and outsourced application of a legal sanction. Mediation is an alternative way (with the other) of resolving legal conflicts, without the concern of dividing justice or adjusting the agreement to the provisions of positive law (free translation).

In this sense, the best way to understand the Warat's proposal of a transformative mediation is based on the perception of the centrality of the conflict theory in its elaboration. For Warat (2004c, p. 61), mediation is an intervention procedure for all types of conflict, based on a theo-

retical proposal that is more psychological than legal, as jurists, by reducing conflict to litigation, exclude many sometimes the most important elements for your solution. In this way, the conflict is not resolved, but just hibernates and can return aggravated at any time.

Conflicts are manifestations inherent to human beings. Constant change is the only certainty we can have. Thus, conflicts arise as much from our internal inconsistencies as from our relationships with others.

In fact, the law lacks a theory of conflict that presents it as an opportunity to produce the difference with another and that, consequently, enables the realization of the new with the other (WARAT, 2004c, p. 61). This change in approach allows us to perceive our natural differences as opportunities for the maturing of our relationships (WARAT, 2004c, p. 55).

Changing the way conflict is faced makes it no longer perceived as something negative or harmful and can be recognized in its constructive potential “life as a conflicting duty has to be vitally managed” (free translation) (WARAT, 2004c, p. 62).

Thus, the approach presented here seeks to give a new meaning to the conflict, from a constructive reencounter with the other's place, thanks to the assisted possibility of being able to look from the others gaze, so that we can both transform the conflict and transform ourselves in the conflict (WARAT, 2004c, p. 69).

From the perspective of transformative mediation presented on how conflict is perceived, it is easier to better characterize and distinguish it from other approaches to conflict mediation.

It is now important, albeit briefly, to distinguish the Warat's proposal of a transformative mediation for the traditional model of mediation, of North American origin. The accordist current considers the conflict as a problem to be resolved in terms of an agreement. We are talking about a model that is based on liberal ideology and individualism. The agreement is the destination of a process aimed at satisfying individual interests and desires. From this perspective, satisfaction belongs to the interests (WARAT, 2004c, p. 63).

On the other hand, transformative mediation is always carried out in the name of the agreement, but that does not mean that it is important (WARAT, 2004c, p. 63). Unlike the accordist model, in transformative mediation the agreement is secondary, in a way that it is invoked, throughout the entire procedure, with a rhetorical rather than a finalistic emphasis. Thus, Waratian mediation differs in that it is a work of symbolic reconstruction of the conflict based on the meaning of the subjects involved, in order to provide them with the autonomy to provide a solution.

The purpose of transformative mediation is not the mere hitting of an agreement – in distinction from accordist mediation –, but a re-encounter with the other, a rescue of the human being and concern for the future implications that that decision will bring. In this sense, “mediation is a work on affects in conflict, not an agreement between parties, exclusively patrimonial, without affective frameworks” (WARAT, 1998, p. 8).

Mediation, in this model, seeks to reframe the conflict, as the problem is often not found in the conflict itself, but in the meaning given to it.

Thus, it is important to distinguish the apparent conflict from the hidden conflict, leaving aside the competitive logic of the lose-win, for a perspective of cooperation, taking the focus from

the individual to the collective, moving from the negativity of the concept of guilt to the recognition of responsibility (SALES, 2007, p. 25-28), realizing the consequences of the dispute and its implications in the relationship of all involved.

Through sensitivity, Mediation must promote a subtle perception of the invisible, because, according to Warat (2004c, p. 25) “the visible hides the invisible” (free translation). Thus, transformative mediation will seek to reveal hidden truths through dignified communications between people stripped of their armor and appearance.

The mediator, in his interventions, must try to reveal the problem, leave it boiling, remove merely apparent issues that lead people away from situations that are actually the source of dissatisfaction.

The mediator must act in such a way as to encourage each person in the conflict so that they can use it as a vital opportunity to talk to themselves, reflect and stimulate inner mechanisms that can place them in an active position in relation to their problems.

Basically, the mediation procedure is strongly influenced by the role of the mediator, his training and the techniques he will apply throughout the process. So it can be said, with confidence, that the final result of any mediation is a synergy between the performance of all participants: the mediator(s) and the parties.

Thus, we can state that transformative mediation is an undisciplined procedure of assisted self-composition of conflicting bonds with the other. A free and heterodox practice, as it allows the mediator the necessary freedom to come and go, collecting the necessary fragments from the parties' reports to facilitate, introduce the novelty and transform the conflict (WARAT, 2004c, p. 57).

The vision of transformative mediation on the conflict perceives it as a problem-situation common to coexistence and that should serve as an opportunity for the maturing of relationships. On the contrary, the jurisdictional power perceives in the conflict the action which must be brought to an end, as it reflects some disturbance or breach of the social order. The judicial approach to conflicts represents their passage from the private to the public domain, causing both parties to lose control of their outcome (MOORE, 1998, p. 24).

Thus, the authoritarian decision puts an end to the procedural dispute, remaining or even worsening the conflict, as in most cases the court order works in a binary manner with the Manichean perspective of winners and losers, often not satisfying the result for either parties. The restriction of the conflict to its judicial dimension ends up harming the individuals subject to its tutelage (RABELO; SALES, 2009, p. 84).

The terrible problem is that the magistracy decides conflicts of third parties, without feeling the people and the respective dramas that are often behind the records. They decide without responsibility, as they project this in the norm (WARAT, 2004c, p. 151).

It should be noted that whenever a third party is called, delegating to them the responsibility of deciding a conflict, in which the parties themselves gave up, it is almost undeniable that the solution involves some type of violence, whether legitimate or not, to some of the parties.

Consequently, it can be inferred that one of the great differences of Waratian mediation

from traditional (judicial sentences) and alternative methods of conflict resolution (direct negotiation, conciliation, arbitration and agreement mediation) lies in the fact that in that mode of mediation there is a reconstruction symbolic of the conflict from the speech and a search to satisfy the real needs of individuals based on the meaning they give to the disagreement. It also analyzes the affective-conflictual dimension, looking for the origins, causes and consequences of the conflict.

Transformative mediation does not summarize the conflict in its legal dimension, much less in its procedural terms. Differently from an agreement perspective of mediation – which sees agreement as the ultimate end of the process – in which the mediator works to seek consensus, like the merchant negotiating the merchandise, transformative mediation is concerned with the construction of a dialogical relationship that enables the understanding of meanings, based on the determination of the autonomy of individuals. The simple facilitation of the dialogue already demonstrates the success of the mediation, because even if it does not lead to an agreement, it results in understanding and respect with the other (RABELO; SALES, 2009, p. 82), when not enabling the maturation itself of individuals in their relationship to each other.

Thus, transformative mediation is not concerned with making word agreements, often weak agreements that tend not to resolve the conflict. Its focus is that the parties can celebrate understandings based on their feelings.

The great security that an understanding (or agreement) signed by transformative mediation can provide is not its formalization and consequent possibility of execution, pursuant to art. 585, II, of the Brazilian Code of Civil Procedure, but the commitment of the parties to comply with it¹, as it represents a solution autonomously constructed by both and that manifests the justice of the parties². The question that arises is who better than them to say what would be fairer.

In this sense, it is interesting to highlight the approximation between mediation and holism, as the first tries to build a right focused on life, in its integral apprehension. Thus, “[...] mediation is manifested as a right of alterity, as a realization of autonomy and bonds with the other” (free translation) (WARAT, 2004c, p. 53).

From what has been stated, we will analyze transformative mediation from one of its main constitutive dimensions: alterity.

Mediation and Otherness

Based on the assumption that autonomy can only be achieved in a relational space with the other, producing with it the new and the difference, it is necessary to analyze the issue of otherness.

Otherness is perhaps the least explored dimension of mediation in research and theoretical production about its practice. As it is one of the main elements that characterize transformative mediation, a few words will be woven about it. First, as we can extract from what has been developed so far, there is no way to talk about autonomy without referring to the issue of otherness³.

1 There are several studies that point to the high degree of compliance by the parties to the agreements carried out through mediation, regardless of their formalization in writing, such as the data collected in the mediations carried out in the municipality of Ouro Preto-MG, carried out by the Legal Assistance Center of the Federal University of Ouro Preto and the Mediation and Citizenship Center (DIAS; PEREIRA, 2012, p. 61-102).

2 In this regard, a very curious story narrated by Warat (2004c, p. 30), on the occasion of a mediation course given to magistrates, in which, when asked about the possibility of judicial execution of an agreement entered into in a mediation procedure, he replied: “[...] affections can never be executed”.

3 It is important to emphasize the need to develop empirical research that can demonstrate the influence of mediation for the

When we talk about alterity in the mediation debate, we are referring to the revaluation of the other within the conflict, to the detriment of our reasons that invalidate the places of the other's reason (WARAT, 2004c, p. 71).

Thus, one can conceptualize otherness as the recognition of the other and of oneself in their differences, giving dignity to the human being in concrete⁴, based on theoretical contributions by Luiz Alberto Warat (2004a, p. 402/443).

In this sense, one of the concerns of transformative mediation is the institution of a subject of autonomy that also manifests itself as a subject of desire (WARAT, 2009, p. 177).

What we are asserting is that the institution of sensitivity within a framework of alterity does not necessarily invalidate the institution of the juridical in society, but puts the conflict under the control of the parties that will decide it (WARAT, 2004b, p. 42).

More important than the legal field for the resolution of conflicts is the establishment of a space for expressing feelings and recognizing oneself and the other in their humanity. This place among us Warat called otherness:

I will conceptualize otherness as the space, between one and the other, for the joint realization of trans-citizenship (or eco-citizenship) and transhuman rights. It can also be seen as the space built with the other for the realization of ethics, autonomy and the configuration of another conception of Law and society. And the flight together as the other, from alienation (either we escape with the other or we have no way out (free translation) (WARAT, 2004c, p. 137).

In this sense, transformative mediation represents a procedure for the humanization of human relations in conflict, pointing to the construction of justice concerned with the quality of life and not with punishment or the fulfillment of abstract and universal moral values (WARAT, 2004c, p. 113).

When we talk about the recognition of rights based on otherness – from a space between us – we refer to a right that seeks to satisfy needs and desires, which are much more intimate than legal (WARAT, 2004c, p. 140). The subject of desire always needs to be constituted and recognized by the other. A recognition that is affectionate and symbolic (WARAT, 2009, p. 177).

Basically, the recovery of the debate on alterity within the realization of transformative mediation brings to light for the law a sensitive dimension of conflicts that requires the necessary recognition of a right to tenderness.

Mediation is manifested as a practice that promotes cultural education for sensitivity, giving recognition to the need to care for the other. This could be called a right to tenderness.

In this sense, mediation points to the foundation of a new paradigm of law that also involves the recognition of the right to tenderness, which can be understood as follows:

insertion of alterity within the conflict. This purpose will be carried out in a future opportunity, with no space to discuss it in the present work, given its limitations.

4 It alludes to the concrete man as opposed to the abstract man of modern rationality.

[...] deep down, with the expression “right to tenderness”, he is talking about mediation as an emerging cultural and legal paradigm. The right to tenderness is an indication of the functions that tenderness plays in the autonomous development of people, who need to refound culture and society on the basis of an affective coexistence, more than in angered competence, and in punishments. Tenderness, as a paradigm of coexistence, and which must win in the loving, productive and political, educational and legal fields, and among many other established ways of relationships (free translation) (WARAT, 2004c, p. 104).

So we don't need to eradicate tenderness, we need to reinstate it. There is no transformative mediation without tenderness, just as there can be no right without it, without recognizing the other in their humanity.

The big question that arises in contemporaneity, especially in this moment of crisis of the dominant legal paradigm of modernity, is the need to promote a re-articulation between reason and sensibility, something that modern rationality has tried so hard to separate.

From the initial perception of mediation as an alternative method of conflict resolution, we now begin to see it as a proposal for a new paradigm for law. When speaking of mediation as a paradigm, reference is made to a rupture in modern knowledge in the search for a transmodern wisdom that manifests itself as a pedagogy that helps to learn to live (WARAT, 2004c, p. 52).

Mediation placed at the center of the discussion of conflict resolution considers the law only as a framework for containing discussions, but recognizes that the command of the conflict is under the law of desire. In the conflict, the parties do not want to know their legal possibilities, but rather to know what they do not know about their wishes. Mediation does not interpret the right to resolve the conflict, but it does so regarding the conflict of desire. In the mediation process, meanings and truths are produced in an integrated way with the other (WARAT, 2009, p. 169-170).

Mediation as a paradigm is a general form of attitude towards life that proposes, through dialogue, a better knowledge of ourselves through the recognition of the other and his/her gaze. In the field of law, it is a reference that removes the norm and its negative charge of authoritarianism over desires and understands law as a way of producing autonomy from alterity.

The recognition of mediation as a new paradigm for law brings a series of implications that will be discussed from the perspective of human rights.

MEDIATION BETWEEN EQUALITY AND DIFFERENCE

One of the presuppositions of mediation is a dialogue between equivalent subjects. What should be done then when intellectual, social and economic differences between the parties make the contact so unequal that it entails the risk of a solution being agreed at the clear disadvantage of the most fragile individual? In situations like this, it is up to the mediator to identify the levels of inequality and seek to endow the most vulnerable side with knowledge and perceptions that can lift it to a situation of equivalence in the dialogue with the other.

Thus, mediation can also be perceived as a process that allows for a dialogue of equality between different people. This discussion resumes a fruitful debate between equality and difference in the context of human rights.

The discourse of equality, in its modern sense, takes shape in the struggle of the rising bourgeoisie against the nobility privileges guaranteed by statutory law. In this sense, equality be-

fore the law undoubtedly represented a great advance.

From the consolidation of the bourgeoisie, the discourse of equality served to guarantee and even naturalize relations of inequality, under the cover of an isonomic formal status. If everyone is equal, they would, in theory, be endowed with the same abilities and, consequently, with the same possibilities.

No wonder that Marx's vision of human rights, including the principle of equality, is quite derogatory, as he perceives human rights as an ideological discourse of the bourgeoisie that artificially tries to create a logic of general interests, when in capitalism there are only interests of class (ATIENZA, 1983, p, 112).

One of the central questions posed by historical materialism is to know how men are equal if their access to the means of production that guarantee and reproduce their livelihood is in turn unequal? In response to this inquiry, Atienza (1983, p. 124) states that “the right of bourgeois private property was, according to Marx, incompatible with the right to real equality between the hombres, and by eso debía abolirse” (free translation).

The issue of equality is one of those great problems of modernity, alongside freedom and fraternity, for which there is no satisfactory modern solution (SANTOS, 2006, p. 15).

It is worth emphasizing, contrary to what is usually presented in this debate, that the values of equality and difference are not contradictory, much less mutually exclusive. In this sense, the words of Candau (2007, p. 400) are accurate in stating that:

[...] equality must not be opposed to difference. In fact, equality is not opposed to difference, but to inequality. Difference is not opposed to equality but to standardization, to serial production, to everything “the same”, to “sameness” [...] Neither standardization nor inequality. And yes, fight for equality and recognition of differences (free translation).

Thus, there can be no equality without the proper recognition of difference. For it is this that enriches us as a culture and makes us truly human. In this way, “we have the right to be equal whenever difference makes us inferior; we have the right to be different whenever equality deprives us of character” (free translation) (SANTOS, 2006, p. 199).

It is important to make it clear that not every difference is inferior. Any homogenization parameter must be rejected. The equality policy that does not recognize non-inferiorizing differences as positive ends up necessarily becoming a policy of inequality (SANTOS, 2006, p. 313).

It should also be borne in mind that the simple recognition of the most diverse differences, whether in the racial, sexual, ethnic, religious and other spheres, is meaningless if it is not accompanied by the economic conditions that guarantee their due effectiveness (SANTOS, 2006, p. 38).

It remains very clear that in global capitalism, both the recognition of equality and difference are restricted to their formal dimensions, implying in abstract parameters of equalization, by the very practical denial of differentiation, as Santos (2006, p. 283) well states:

The denial of differences operates according to the standard of homogenization that only allows simple, one-dimensional comparisons (for example, between citizens), preventing denser or more contextual comparisons (for example, cultural differences), by denying the terms of comparison (free translation).

However, as a counterpoint to the denial of difference, there are several movements

claiming for identity politics of: race, gender, sexuality, ethnicity, beliefs, etc. The segmentation of flags and struggles brings with it the problem of fragmentation and, along with this, the risk of ghettoization, tribalism, and re-feudalization.

Thus, the proliferation of differences and non-occurrence of communication between them can culminate in the absence of recognition and indifference itself (SANTOS, 2006, p. 68). In this sense, it should not be forgotten that:

[...] we lack theories to unite and this shortage becomes particularly serious at a time of danger. The gravity of this lack is not in itself, but in the fact that it coexists with a plethora of theories of separation. What is serious is the imbalance between theories of separation and theories of union (free translation) (SANTOS, 2006, p.84).

The risk of non-recognition of difference, as the other common face of humankind, is to transform it into a foundation of inequality, which may even evolve into a framework of exclusion itself.

In the face of differences, one must propose not only tolerance, but active respect that consists, in Cortina's words:

[...] not only in stoically supporting others to think differently, having different ideals of a happy life than mine, but in a positive interest in understanding their projects, in helping them to take them forward, as long as they represent a point of view respectable morals (free translation) (CORTINA, 2005, p. 189).

It should not be forgotten that “[...] human needs are non-negotiable” (free translation) (HICKS, 2007, p. 151). Thus, any conflict resolution methodology cannot allow for the total suppression of the interests of either parties, as it is ultimately unmet human needs that are almost always at the roots of almost all types of conflict. Trying to mask or dissimulate this statement will only leave the conflict inoculated, ready to break out again and even with greater fury when it is detonated by the smallest of fuses.

Within the scope of this debate between equality and difference, mediation should be understood as a process that allows the translation of conflicting wills, providing recognition and valuing of differences so that they can be perceived in an intelligible way by the parties. It is through recognizing oneself and the other as subjects with their inherent particularities that we seek to guarantee equality in the mediation process, searching like this:

[...] encourage shared critical reflections within the spirit of human rights values, emphasizing cooperation, tolerance and respect for different points of view (free translation) (CLAUDE, 2007, p. 584).

The practice of transformative mediation boosts participatory citizenship insofar as it reinforces the subjects' autonomy to build a dialogue of equality between different people.

For classic authors such as Rousseau and Kant, autonomy, true freedom, consists in the possibility of the individual giving himself orders, which, being free to do what he wants, he chooses to obey (BERLIN, 2004, p. 89).

The apparent absence of authority – at least outsourced and coercive – in the mediation process does not suggest that the solution adopted will have less possibility of compliance than that which can be imposed through a hetero-compositional conflict resolution.

A solution articulated through dialogue allows the subject to recognize himself and the

other as equals in dignity, even based on their differences. The word put into dialogue, and actively listened to, gives dignity to a human experience and facilitates the recognition of the other in the cooperative search for truth and justice (CORTINA, 2005, p. 166).

The dynamics and tension of conflict must be recognized as a historically natural element in human development (HEGEL *apud* BERLIN, 2004, p. 116), before a rupture which needs to be brought to an end.

Transformative mediation is the possibility of articulating a dialogue of differences guided by equality, in the search for an understanding between the feelings in disagreement. For Cortina (2005, p. 195):

Dialogue is, then, a path that totally compromises the person of all those who undertake it because, while entering it, they are no longer mere spectators, to become protagonists of a shared task, which bifurcates into two branches: the shared search for the true and fair, the fair resolution of conflicts that arise throughout life (free translation).

Mediation, as presented here, seeks in a creative way to rearticulate a proposal of law that is in harmony with life and that can escape the assumption of logical adequacy and submission of everyday life to a supposed legal world (POUND, 2004, p. 179).

The mere possibility of individuals constituting themselves through transformative mediation as protagonists of the dilemmas of their existence, in itself drives a perspective of empowerment and autonomy in the resolution of their problem-situations, extending from conflict in particular to a new behavioral logic of exercise of participatory citizenship which in turn contributes to the construction of citizen justice.

As a result of what has been stated so far, the fact that the horizon opens up for the possibility of recognizing mediation as a pedagogical process for an education for human rights cannot be overlooked.

The driving idea of an education in/for human rights is the strengthening of socially vulnerable groups (MAIA, 2007, p. 85), based on three main dimensions: the formation of subjects of rights, the favoring of empowerment processes and the transformation processes necessary for the construction of truly democratic societies (CANDAU, 2007, p. 404-405).

The big difference from human rights education to a knowledge banking model is that, in the latter, individuals are passive depositaries of pre-constituted and external knowledge. In turn, in a problematizing education, in Freire's anthropological view, human beings are subjects of knowledge who are committed to identifying and transforming the world through dialogue (MEIN-TJES, 2007, p. 131).

It is noticed beforehand that more than any theoretical knowledge, an education in/for human rights must be based on a concrete practice, constituting a praxis that transforms reality.

In this sense, education in/for human rights methodological strategies must be coherent with their purposes, making use of active, participatory methodologies, of different languages (CANDAU, 2007, p. 405). The educational process in/for human rights is continuous and actually aims at the formation of a culture of human rights (TAVARES, 2007, p. 487).

Within this debate, transformative mediation, in Warat's theoretical perspective, can be

perceived as an informal pedagogical practice⁵ that has as one of its premises the creation of an atmosphere of mutual recognition of equality and difference through a shared construction through dialogue.

The pedagogical practice of education in/for human rights should promote, in the words of Tavares (2007, p. 490) “[...] individual and collective empowerment, with the objective of expanding the spaces of power and participation of everyone, especially from excluded and vulnerable social groups”. In this sense, it should not be forgotten that the empowerment of the parties, one of the main purposes of mediation, is for an education in/for human rights a unique pedagogical objective, and it differs markedly from the objectives of other areas of education (ANDREOPOULOS; CLAUDE, 2007, p. 40).

Mediation provides a favorable environment for the practice of skills essential to the exercise of citizenship, as it promotes the recognition of diversity, valuing a harmonious coexistence of mutual respect and solidarity. Thus, as a pedagogical practice of education in/for human rights, mediation can offer the possibility of deepening the awareness of one's own dignity, the ability to recognize the other, to experience solidarity, sharing, equality in difference and freedom (TAVARES, 2007, p. 490).

Taking conflict as a starting point, transformative mediation can promote “the understanding of the essence of development: the improvement of the human condition” (DIAS, 2007, p. 106). Conflict cannot be understood as a moment of rupture, but as a circumstance of maturation of human relationships.

FINAL CONSIDERATIONS

From what has been exposed so far, it can be inferred that the practice of transformative mediation, from the theoretical contributions of Warat, enables the promotion of a culture of human rights, insofar as it encourages the insertion of otherness in conflicts, enabling recognition equality and difference in situations of conflict.

Thus, returning to the problem originally proposed: what is the potential of transformative mediation to promote a culture of human rights through the insertion of otherness in conflicts, from the theoretical perspective of Luis Alberto Warat? It is possible to affirm that Warat's mediation provides, in its exercise, a significant boost to one of the main elements for the promotion of a culture of human rights: otherness. The possibility of reinforcing a practice of alterity, based on the recognition of the other as simultaneously equal and different, is what constitutes Warat's transformative mediation into an instrument for the promotion of human rights. In this sense, it becomes possible to identify Warat's transformative mediation as a practice that drives a pedagogy for human rights, based on the insertion of otherness in conflicts.

Thus, we can see that Warat's transformative mediation points to a practice committed to human rights, through the insertion of otherness in conflicts, providing an environment that allows for the recognition of equality and difference within conflicts.

⁵ When defining informal education, Claude (2007, p. 566) states that: “it may or may not be organized, and it is usually non-systematic education, which has an impact on the processes throughout life through which each person acquires or accumulates knowledge, skills, attitudes and perceptions about life from everyday experiences and exposures [...]” (free translation).

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