

Regret and reimagination in art and mediation

Sargent's Portrait of Madame X shows how revision reveals growth – a reminder that, in mediation as in art, change can transform conflict into clarity.

By Greg Derin

In 1883, an aspiring American artist sought to advance his career by painting a captivating portrait of a famed Parisian beauty. John Singer Sargent's *Portrait of Madame X* depicted his model in an enticing black dress presented against an affective background. The pose and depiction of Madame X suggested alluring temptation as well as distance. The portrait immediately created controversy, in large part due to the strap of Madame X's dress evocatively slipping off one shoulder.

Despite the controversy, Sargent refused to abandon his painting. Instead, he repainted the shoulder strap so that it rested coyly on the arm of his subject. Madame X, well known in society, nevertheless suffered socially. Sargent fled Paris for England, where he became one of the leading portrait artists of his age. Today, *Portrait of Madame X* is considered one of Sargent's best works and resides in New York's Metropolitan Museum of Art.

Pentimenti in art and literature

Portrait of Madame X is renowned not merely for its history and technical proficiency; it is also a defining example of *pentimento*. *Pentimenti* are traces of earlier images that become visible when layers of paint are exposed; they reveal an artist's change of mind or corrections. The Italian term means to repent or regret. In the case of *Portrait of Madame X*, technical analysis has revealed that Sargent adjusted not merely his subject's dress strap; he changed the color tone to a warmer,



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more neutral hue and adjusted his model's chin, ear and arms to better capture her beauty and distract from the overall provocative aura.

In literature, *pentimenti* have been used by authors to uncover deeply hidden meanings in past events and to reflect upon their lives. Perhaps most famously, Lillian Hellman titled one of her memoirs *Pentimento*, drawing readers' attention immediately to her intent.

trade craft; we absorb wisdom from others; we recognize the need to adapt to our changing environment and circumstances. If we scrape the layers of our lives and reflect on our past and present, the revealed images tell important stories.

Pentimenti in mediation

Mediation is a layered process in which the stories parties tell themselves and others, as well as their perceptions of what is important, are subject to revision and reinterpretation. The parties may not be attuned to the images beneath the surface, but an attentive mediator perceives evolving impressions of facts and events, and the participants' changing perspectives of their own interests and goals. By acknowledging these *pentimenti*, the mediator can encourage participants to value the process, and to appreciate their earlier positions and perceptions not as failures or errors but as necessary steps toward clarity and resolution.

How can awareness of *pentimenti* influence one's approach during mediation?

Litigation and negotiation are evolutionary processes. Parties learn new facts, courts rule on motions, insurance limits are reached, property values change and interests shift. When parties are encouraged to be attentive and open to revisiting their points of view, and reframing their initial accounts to recognize new information, a zero-sum negotiation can be converted into a vibrant search for a win-win solution. When a mediator "reframes" language or an event in different terms, parties are able to see their situation from a different perspective

Winston Churchill said that "[t]o improve is to change; to be perfect is to change often." *Pentimenti* are not simply, or always, mistakes. Rather, once revealed, they can evidence an evolving vision, adjustment or reconsideration that occurs as a work, or a life, progresses.

Every person goes through this process as they or their thinking matures. We learn from our mistakes, from our education and from

– one no longer obscured by layers of argument built up in a combative environment designed to achieve a predetermined outcome.

Shifting perceptions

Reflecting on hindsight bias in “Thinking, Fast and Slow,” Nobel laureate Daniel Kahneman observed that “[a] general limitation of the human mind is its imperfect ability to reconstruct past states of knowledge, or beliefs that have changed. Once you adopt a new view of the world (or any part of it), you immediately lose much of your ability to recall what you used to believe before your mind changed.” It is a positive attribute to maintain an open mind capable of questioning one’s prior perceptions and, more importantly, recognizing how a third party (e.g., a trier of fact) might perceive events or facts.

Substantial research indicates that parties’ perceptions of facts and events do change during negotiations and that these shifting perceptions can significantly affect their behavior and the negotiation outcomes.

Parties are often reluctant to engage in direct conversation with each other during a mediation. Joint sessions held early in the process

rarely add value when they involve substantive discussion; they tend to be dominated by counsel obligated to demonstrate their zealous representation, which ends up driving the parties further apart in anger or frustration.

However, well-timed conversations, especially those solely between principals with the mediator present, can be groundbreaking. When focused on an established agenda and assured a safe environment, the parties listen more attentively, reflecting on and clarifying important facts and needs. Central to such candor is a reminder that mediation is a confidential process in which the discussion may not be used in an evidentiary manner if settlement is not achieved.

Normalizing change

John Singer Sargent was not alone in his artistic revisions. In the recently published volume “Closer to Vermeer,” four authors explore what is buried beneath the rich layers of Johannes Vermeer’s masterworks. In “A Maid Asleep,” a man at an easel is buried beneath pigment in the corner. The image of Cupid disappeared from “Girl Reading a Letter at an Open Window” when an unknown artist obscured it on

the famous canvas. Vermeer himself painted over an empty cradle in “The Milkmaid.” Why these changes?

Perhaps we will never know what compelled the *pentimenti* of famous artists. Whether motivated by technical adjustment, repentance, remorse, reinvention or reinterpretation, changes can obscure the original vision and redirect attention. When done, entire meanings can be altered.

In mediation, negotiators need to be reminded that the process of change and accommodation is normal. Parties reflect, they adapt, and they make different decisions when they are exposed to new information. When a mediator builds trust, parties are more willing to adjust and compromise, rather than defend views they can no longer justify.

Conclusion

Socrates said that “[t]he secret of change is to focus all of your energy not on fighting the old, but on building the new.” Negotiation is a transformative process, presenting parties with potentially critical moments for the emergence of new understandings and interpretations. The biases we carry influence and reinforce our perceptions but may

also create opportunities for reframing and resolution as we update our perceptions. In uncovering the layers of our thoughts and our past, we may find the path to opportunity and future success.

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