

Transformative Mediation

By Brad Spangler

General Basis and Background of Transformative Mediation

In their 1994 publication, *The Promise of Mediation*, Robert A. Baruch Bush and Joseph Folger explicitly outlined a framework for the practice of transformative mediation. Although practitioners had already touched on the possibilities of mediation in this realm, Baruch Bush and Folger's work defined transformative mediation, in contrast to the dominant orientation of problem-solving mediation. Problem-solving mediation is aimed at resolving specific disputes between parties and coming up with a mutually acceptable solution to the immediate, short-term problem. In problem-solving mediation, the mediator normally plays a very active role in guiding the process.

Instead, Bush and Folger proposed that mediation can effect much deeper changes in people and their interpersonal relationships, beyond just remedying a short-term problem. They proposed a way of practicing mediation that seeks to address deeper levels of social life. In the preface of their seminal work, they stated that, "mediation's greatest value lies in its potential not only to find solutions to people's problems but to change people themselves for the better, in the very midst of conflict." [1] By employing a specific perspective on mediation practice as well as specific techniques, they believe mediation possesses the power to change how people behave not only toward their adversary in a particular conflict, but also in their day-to-day lives thereafter. Mediation, in their opinion, can transform individuals. For mediators who adhere to the framework of transformative mediation, achieving this type of long-term change is more important than solving a specific problem between parties.

Two Keys to Transformative Mediation: Empowerment and Recognition

The transformative approach to mediation does not seek resolution of the immediate problem, but rather, seeks the empowerment and mutual recognition of the parties involved. *Empowerment*, according to Bush and Folger, means enabling the parties to define their own issues and to seek solutions on their own. *Recognition* means enabling the parties to see and understand the other person's point of view -- to understand how they define the problem and why they seek the solution that they do. (Seeing and understanding, it should be noted, do not constitute agreement with those views.) Often, empowerment and recognition pave the way for a mutually agreeable settlement, but that is only a secondary effect.

The primary goal of transformative mediation is to foster the parties' empowerment and recognition, enabling them to approach their current problem, as well as later problems, with a stronger, more open view. It should be noted as well that achieving empowerment and recognition is assessed independently of any particular outcome of the mediation. [2] This approach, according to Bush and Folger, avoids the problem of mediator directiveness, which so often occurs in problem-solving mediation. Transformative mediation instead puts responsibility for all outcomes squarely on the disputants.

Empowerment

Empowerment is used by Bush and Folger in a way that differs from common usage. It does not mean power-balancing or redistribution, but rather, increasing the skills of *both* sides to make better decisions

for themselves (see empowerment debate for more on common usage). Specifically, Bush and Folger define the term "empowerment" as: "The restoration to individuals of a sense of their own value and strength and their own capacity to handle life's problems." [3] They explain that through empowerment, disputants gain "greater clarity about their goals, resources, options, and preferences" and that they use this information to make their own "clear and deliberate decisions." [4]

- Clarity about goals means that parties will gain a better understanding of what they want and why, and that their goals are legitimate and should be considered seriously.
- Clarity about resources means that the parties will better understand what resources are available to them and what resources they need to make an informed choice. In addition, parties need to learn that they hold something that is of value to the other party, that they can communicate effectively with the other party, and that they can utilize their resources to pursue their goals.
- Clarity about options means that the parties become aware of the range of options available to them, they understand the relative costs and benefits of each option, and that they understand that the choice of options is theirs alone to make.
- Clarity about preferences means that the parties will reflect and deliberate on their own, making a conscious decision about what they want to do, based on the strengths and weaknesses of both sides' arguments and the advantages and disadvantages of each option.

Developing clarity in these areas will strengthen parties' own ability to resolve the conflict in which they are involved. This type of empowerment may be called *skill-based empowerment*, meaning that parties are empowered by improving their own conflict-resolution skills. Parties are empowered when they learn how to listen, communicate, analyze issues, evaluate alternatives, and make decisions more effectively than they could before. [5]

Empowerment occurs in transformative mediation when the mediator watches for opportunities to increase the parties' clarity about or skills in these areas. The transformative mediator aims to foster parties' clarity and skills in a way that allows the parties to maintain control of both the process and the substance of the discussions. Unlike problem-solving mediators, transformative mediators are careful to take a secondary role, rather than a leading role in the process. It is said that they "follow the parties" around, and let the parties take the process where they want it to go.

Recognition

By *recognition*, Bush and Folger mean considering the perspective, views, and experiences of the other. Recognition, they say, "means the evocation in individuals of acknowledgment and empathy for the situation and problems of others" [6] (see empathic listening). As with empowerment, the effect of recognition in transformative mediation is meant to extend beyond a particular conflict and into the parties' everyday lives. In the long term, achieving recognition in transformative mediation should help expand parties' ability and willingness to relate to others in a more understanding and considerate way. [7]

Recognition is something one gives, not just something one gets. It is a process of acknowledging one's adversary as a human being with his or her own legitimate situation and concerns. According to Bush and Folger, recognition must be based on empowerment in that parties must be confident in their freedom to make decisions regarding the course of the dispute. [8] Given the importance of empowerment, transformative mediators allow the parties to choose how much they want to recognize the views of the opponent. It is possible that recognition will lead to complete reconciliation between disputants. On the other hand, parties may recognize each other to a much lesser extent, and may be willing to suspend self-interest only momentarily, or not at all, in order to recognize the other.

Comparing Transformative Mediation to Problem-Solving Mediation

There are many differences between transformative and problem-solving mediation. The only similarity is that each uses a third party to assist the disputing parties to deal with the dispute in a new way. That "new way," however, differs considerably from one process to the other, as can be seen in Figure 1, below.

Comparison of Transformative and Problem Solving Mediation

Note: These are idealized descriptions. Actual mediators will hold these ideas and follow these actions to a lesser or a greater degree.

	Transformative Mediation	Problem-Solving Mediation
Assumptions about conflict	Conflict is an opportunity for moral growth and transformation.	Conflict is a problem in need of a solution.
	Conflict tends to be a long-term process.	Conflict is a short-term situation.
Ideal response to conflict	Facilitate parties' empowerment and recognition of others.	Take collaborative steps to solve identified problem; maximize joint gains.
Goal of mediation	Parties' empowerment and recognition of others.	Settlement of the dispute.
Mediator role	Secondary: parties are seen as experts, with motivation and capacity to solve own problems with minimum help.	Mediator is expert, who directs problem-solving process.
	Mediator is responsive to parties.	Mediator directs parties.
Mediator actions	Mediator explains concept of mediation, but lets parties set goals, direct process, design ground rules. Makes it clear settlement is only one of a variety of possible outcomes.	Mediator explains goal is settlement, designs process to achieve settlement, sets ground rules. May consult parties about these issues, but mediator takes lead.
	Mediator "microfocuses" on parties' statements, lets them frame issues themselves.	Mediator "categorizes" case, frames it for disputants.
	Mediators allow parties to take discussions where they want them to go; encouraging discussion of all issues that are of importance to the parties, regardless of whether or not they are easily negotiable; Mediators encourage mutual recognition of relational and identity issues as well as needs and interests.	Mediators direct the discussions, dropping issues which are not amenable to negotiation (for example, relational or identity issues) and focusing on areas "ripe" for resolution (usually negotiable interests).
	Mediators encourage an examination of the past as a way of encouraging recognition of the other.	Mediators discourage discussion of the past, as it tends to lead to blaming behaviors; focus instead is on the present and future -- how to solve the current problem.

	Emotions are seen as an integral part of the conflict process; mediators encourage their expression.	Emotions are seen as extraneous to "real issues." Mediators try to avoid parties' emotional statements, or emotions are tightly controlled.
	Mediators encourage parties' deliberation of situation and analysis of options; parties' design settlement (if any) themselves and are free to pursue other options at any time.	Mediators use their knowledge to develop options for settlement; can be quite directive about settlement terms.
Mediator focus	Mediators focus on parties' interactions, looking for opportunities for empowerment and/or recognition of the other.	Mediators focus on parties' situation and interests, looking for opportunities for joint gains and mutually-satisfactory agreements.
Use of time	Time is open-ended; parties spend as much time on each activity as they want to. No pre-set "stages" as in problem-solving mediation.	Mediator sets time limits, encourages parties to move on or meet deadlines. Mediator moves parties from "stage" to "stage."
Mediation: definition of success	Any increase in parties' empowerment and/or recognition of the other -- "small steps count."	Mutually-agreeable settlement.

Copied (with permission) from "Transformative Approaches to Conflict," by Heidi Burgess and Guy Burgess with Tanya Glaser and Mariya Yevsyukova.

Problem-solving or "settlement-oriented" mediation, which is by far the dominant approach in the field today, is just what the name implies; it is focused on solving a problem by obtaining a settlement. The settlement-oriented mediator usually explains that this is the purpose at the outset, and defines a process that will assist the parties to work toward that goal. All of the mediator's actions are designed to facilitate settlement. Emotions that might escalate anger and thus prevent a settlement are controlled. Issues that are nonnegotiable are diverted, while parties are encouraged to focus on negotiable interests. Mediators tend to discourage a discussion of the past as that often involves blame, which can make progress more difficult. Rather, parties are encouraged to focus on what they want in the future, and develop ways in which their interests can be met simultaneously (see joint/assisted reframing). Sometimes the settlement-oriented mediator acts more as an arbitrator than a transformative mediator, proposing a solution and working hard to "sell" it to the parties (see arbitration). Settlement-oriented mediators often try to keep the parties moving forward, encouraging them to move from one stage to the next as quickly as possible and using a deadline as an inducement to come to an agreement.

Transformative mediators work very differently. They explain in the opening statement that mediation provides a forum for the parties to talk about their problem with a neutral third party present. It is explained that this can be helpful for clarifying the nature of the problem from both parties' points of view. It also helps disputants develop a range of options for dealing with the situation. This process should help the clients make better choices about how to proceed, and may help them better understand the views of the other party. This understanding may enable the clients to reach a mutually satisfactory solution, or it may suggest other approaches for handling the situation. Thus settlement is presented as one, but clearly not the only possible, successful outcome of mediation.

Usually, transformative mediators will then work with the parties to develop goals, ground rules, and a process they want to use. Mediators will make suggestions about process and ask questions (usually to encourage either empowerment or recognition of the other), but they will not direct the conversation, nor will they suggest options for settlement. In transformative mediation, this is the parties' job. Bush and Folger describe the mediator's job as "following the parties around." The mediator follows the parties' leads and then helps them clarify for themselves and the other, what their real concerns are and how they want to see them addressed. Sometimes, recognition by the other is all that is really needed to reach mutual satisfaction. Other times, parties must go further and negotiate interests. Interest-based negotiation is, of course, allowed in a transformative process, but usually shares center stage with the discussion of feelings and relationship issues.

The definition of success also differs in the two kinds of mediation. Typically, settlement-oriented mediation is not considered successful unless a settlement is reached. Transformative mediation, however, is successful if one or both parties becomes empowered to better handle their own situation or the parties better recognize the concerns and issues of the other side. Very often, the empowerment and recognition gained by the parties allow them to develop a mutually agreeable outcome. However, according to Bush and Folger, the opposite often does not occur. The settlement-oriented mediation process does not lead to empowerment and recognition, because it tends to ignore relationship issues in favor of narrower, more concrete interests.

Bush and Folger's Ten Hallmarks of Transformative Mediation

In a 1996 follow-up article to their book *The Promise of Mediation*, Bush and Folger presented a list of 10 hallmarks of transformative mediation that distinguish its practice from other forms of third-party intervention processes. One may summarize these hallmarks as follows:[9]

1. In the opening statement, the transformative mediator explains the mediator's role, and the objectives of mediation as being focused on empowerment and recognition.
2. Transformative mediators leave responsibility for the outcomes with the parties.
3. Transformative mediators are not judgmental about the parties' views and decisions.
4. Transformative mediators take an optimistic view of the parties' competence and motives.
5. Transformative mediators allow and are responsive to parties' expression of emotions.
6. Transformative mediators allow for and explore parties' uncertainty.
7. Transformative mediators remain focused on what is currently happening in the mediation setting.
8. Transformative mediators are responsive to parties' statements about past events.
9. Transformative mediators realize that conflict can be a long-term process and that mediation is one intervention in a longer sequence of conflict interactions.
10. Transformative mediators feel (and express) a sense of success when empowerment and recognition occur, even in small degrees. They do not see a lack of settlement as a "failure."

Applying the Transformative Approach

Transformative mediation is a relatively new concept, though many mediators had been acting in this way for a long time, but did not have a name for their style until Bush and Folger defined transformative mediation as a concept. Because empowerment and recognition are phenomena that happen to people, the transformative approach is usually thought to be useful in interpersonal conflicts such as family conflicts, conflicts between neighbors, and conflicts between co-workers. However, Bush and Folger argue in the *Promise of Mediation* that the approach is just as applicable in other kinds of settings. For example, legal mediation has been criticized for being overly directive compared to other forms of mediation. Bush and

Folger argue that legal mediation would benefit greatly from the adoption of a transformative approach, leaving directive intervention to the courts and judges. The same is true, they argue, for business mediation.

Mediation with organizations, rather than individuals, becomes more complicated. Organizations are always represented by individuals, but the changes and learning that those individuals experience are hard to relate back to the people they represent. Problems can develop when the mediation process transforms representatives, but not their constituents, who are not at the table (see stakeholder representatives). Methods must be found to extend this transformation to constituencies, if the effect of transformative mediation is to have widespread significance at the organizational, public policy, or societal level.

The same is true for inter-group and international situations. Improving relationships and transformation of the conflicts to ones that are less destructive is critical in these situations, but transforming the leaders or the group representatives is not enough. Somehow, this transformation must be brought to the grassroots level before conflict transformation or resolution can be achieved.

[1] Robert A. Baruch Bush and Joseph P. Folger, *The Promise of Mediation: Responding to Conflict Through Empowerment and Recognition* (San Francisco: Jossey-Bass Publishers, 1994), xv.

[2] Ibid.2.

[3] Ibid, 2.

[4] Robert A. Baruch Bush and Joseph P. Folger, "Transformative Mediation and Third-Party Intervention: Ten Hallmarks of a Transformative Approach to Practice," *Mediation Quarterly* 13, no. 4 (Fall 1996): 264.

[5] Robert A. Baruch Bush and Joseph P. Folger, *The Promise of Mediation: Responding to Conflict Through Empowerment and Recognition* (San Francisco: Jossey-Bass Publishers, 1994), 85-87.

[6] Ibid, 2.

[7] Ibid, 94.

[8] Ibid, 93.

[9] Robert A. Baruch Bush and Joseph P. Folger, "Transformative Mediation and Third-Party Intervention: Ten Hallmarks of a Transformative Approach to Practice," *Mediation Quarterly* 13, no. 4 (Fall 1996): 266-275.

[10] There is a long discussion of the Bush and Folger approach in the Dugan essay on Empowerment. There is also much material that is discussed in both essays.

Also available at http://www.beyondintractability.org/essay/transformative_mediation/?nid=1293