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Developing mediation theory

Transformative mediation: differentiating principles from illusions — Part 1

Tom Fisher

This two-part article explores the confusion surrounding the idea of transformative mediation or transformation in mediation. Part 1 discusses the various meanings attributed to ‘transformation’ in mediation and proposes a specific definition for Transformative Mediation. Part 2 of this article, to appear in a future issue, will look at the role of the mediator and specific practices, and at training, certification and resources. This has some relevance for the discussion on mediation standards.

‘I haven’t had formal training in Transformation Mediation, but I think I’ve been practicing in a transformative way for years.’

‘I’ve read about Transformative Mediation and use some of their techniques in my mediation practices.’

‘It is those magical moments of “transformation” that keep me in the business.’
‘The goal of Transformative Mediation is to change unjust social structures, prevent conflict and promote peace.’

‘Transformation Mediation is a generic approach to mediation associated with therapeutic styles and reconciliation’.

‘How dare they appropriate the term “transformative!”’

‘Transformative Mediation is a very specific approach to mediation and cannot be used in conjunction with other styles.’

The sample of statements above illustrates confusion about how the word ‘transformative’ is utilised in the mediation field and expresses sentiments that contribute to misunderstandings when the term is used. In what follows, I shall try to differentiate among some ways in which the words ‘transformative’ and ‘transformation’ are employed and then focus on what I see as some of the distinctive qualities of what I suggest we call Transformative Mediation (with the two capital letters) as an outgrowth of the work sparked by the publication in 1994 of the first edition of *The Promise of Mediation* by

Baruch Bush and Joe Folger.¹

Dispelling the type of confusion illustrated above may be useful so that:

- Practitioners can reflect more clearly on their own practice and communicate more clearly to fellow practitioners about what they do and why they do it.
- Clients who recognise that there are different ways of mediating can select a specific approach.
- Researchers can design descriptive and evaluative tools to analyse and measure practice according to specific, rather than generic, criteria.
- Accreditation bodies can avoid the pitfalls of policies guided by the principle of ‘one size fits all’.

Diversity in usage

The terms ‘transformative’ and ‘transformation’ seem to be used in several distinct ways in connection with mediation.

Everyday usage

A recent article² refers to transformative practice as helping parties ‘to frame their comments constructively’,³ linking ‘recognition’ to framing the dispute as a ‘joint problem to be solved’,⁴ and encouraging ‘empowerment by working with the parties to improve their communication ... skills’.⁵ An earlier article⁶ suggests that ‘the ethic of impartiality be joined by other guiding principles such as *transformation*, equality, relationship, and justice’. Mediators thus ‘need to challenge power imbalances, appeal to moral authority, and encourage disputants to exercise self-actualizing and cooperative forms of power’.⁷ Later, the same author reflects on a mediation in which, he believes, ‘personal transformation was required ... to reach a fair and durable resolution’.⁸

In relation to social or attitudinal change

‘Conflict transformation’ is sometimes used to describe goals of peacemaking, community and civic development, and prevention of future conflict. A theoretical treatment of the term suggests that it refers to a process beyond ‘conflict settlement’ and ‘conflict resolution’ and has some resonances with John Burton’s concept of ‘conflict prevention’.⁹ In this sense, it refers to ‘outcomes, process and structure oriented long-term, peacebuilding efforts, which aim to truly overcome revealed forms of direct, cultural and structural violence’.¹⁰ One major scholar-practitioner associated with this approach states, ‘I have been using the phrase “conflict transformation” since the late 1980s.’ For him the term is ‘embedded in justice, the building of right relationships and social structures through a radical respect for human rights, and non-violence as a way of life’.¹¹ An approach to managing public conflicts proposes that creating sustainable relationships between social groups is a goal of ‘transformative practice’, in which the third party also may represent the interests of stakeholders who are not present.¹² A related view describes an aim of conflict transformation as being to ‘transform the parties’ perceptions and feeling to prevent future conflicts’.¹³ A more specific social change usage can be found in some treatments of victim–offender mediation, for example Umbreit’s contention that many of these programs articulate their goals ‘more as transformation than settlement’¹⁴ or in a related field called ‘Transformative Justice’.¹⁵

Broad usage

Laurence Boulle, in his laudable attempt to dispel taxonomic confusion,



offers 'four paradigmatic models' of mediation, one of which he now calls 'transformative', having referred to it previously as 'therapeutic'.¹⁶ Boulle proposes that the transformative model also can be called 'therapeutic' or 'reconciliation mediation' and seems to emphasise emotional, relationship and counselling dimensions as making it distinctive from more settlement-oriented and structured models.¹⁷

Narrow usage

Bush, Folger and their associates at the Institute for the Study of Conflict Transformation use the term 'Transformative Mediation' in a very specific sense. They define 'transformation' as 'a change in the quality of conflict interaction'¹⁸ and the process of Transformative Mediation as one 'in which a third party works with parties in conflict to help change the quality of their conflict interaction from negative and destructive to positive and constructive, as they explore and discuss issues, and possibilities for resolution'.¹⁹ Its practice is a micro-focus on the moment by moment party interaction in the room,²⁰ though it also is optimistic about long-term social change. In this usage, among other things, the specific practices of reframing, power balancing and teaching communication skills play no part, and reconciliation, peacemaking and therapy are not goals, though they may result from the practice.

Sectarian purposes

The term also has been the focus of harsh criticism by some who have viewed it as attempting to appropriate a broader concept for sectarian purposes, usurping the moral high ground, devaluing other forms of mediation, or putting a new spin on something already practiced by many mediators.²¹

Transformative Mediation

The examples above illustrate several uses of the concept of transformation. These include specific moments of client behavioural or perceptual change, change in perceptions of social justice, deep-seated change in socio-political structures, qualitative change in party

interaction, and a variety of practices. They not only reveal inconsistencies and contradictions but a tapping into strong and disputed values, all of which discourage effective mutual understanding. Rather than pursuing these differences in more depth or arguing for a specific usage, however, for the remainder of this article I shall concentrate solely on the narrow usage proposed by Bush and Folger. For the sake of clarity, I suggest that this usage alone be called 'Transformative Mediation' (using capital letters at the beginning of each word), differentiating it from other 'transformative' goals and practice. For the sake of brevity, I shall abbreviate it to 'TM'.

value-based beliefs about the nature of conflict and the capacities of human beings in conflict'. From our premises flow the 'principles' or guidelines that support our purpose and thus inform our behaviour as mediators.²⁴ This is not to say that any one purpose is inherently more valid than another but that the way in which we approach mediation will differ if, for example, we believe that parties must be guided to an optimal solution than if we believe they are capable of making their own decisions.

Among the premises of TM are a *theory of conflict* and a *set of beliefs* about human beings and their capacities for dealing with it. Most conflict

The TM framework explicitly recognises that mediation practice is always more than a simple matter of applying 'skills', or, put another way, 'purpose drives practice'. Whatever mediators do (or don't do) reflects their understanding of the nature of conflict and their response to it, the 'why' upon which the 'what' we do and the 'how' we do it are based.

Transformative Mediation: premises, purpose and principles

The TM framework explicitly recognises that mediation practice is always more than a simple matter of applying 'skills', or, put another way, 'purpose drives practice'.²² Whatever mediators do (or don't do) reflects their understanding of the nature of conflict and their response to it, the 'why' upon which the 'what' we do²³ and the 'how' we do it are based. Whether or not we are conscious of our purpose, it informs both the general structure of our process and the specific interventions we choose to practice. Awareness of this purpose allows us to test the congruence of our practices against it.

Our purpose for mediating, according to TM theory, is itself based on even deeper 'premises', or 'fundamental

theories define conflict analytically from the outside in political, economic social, or psychological terms, focusing on power, rights, or needs.²⁵ The TM approach draws on the inner experience of those in conflict. It is based on research in areas like social psychology, communication science, cognitive psychology, neuroscience, law and reports of TM trainers and researchers that support the view that interactional degeneration is what disturbs people most about conflict.²⁶ Thus conflict is defined as a destabilising 'crisis in human interaction' in which parties experience a sense of relative weakness (even if often expressed as belligerence) and self-absorption. Another premise of TM, however, is that, given appropriate conditions, human beings normally have both the desire and capacity to reverse this negative interaction to enhance



strength and responsiveness.²⁷ Although there may be overlaps with certain therapeutic interventions,²⁸ the goal of TM is not to 'fix' or 'cure' anything;²⁹ nor does it seek to 'destabilise' client narratives so they can be reconstructed in order to change relationships and negotiate solutions.³⁰

So, consistent with the premises of TM, what is the scope of 'transformation', as described in the

negative conflict spiral into a positive one that fosters relative strength and responsiveness. In broader terms, it would seem, such individual experiences of conflict transformation can eventually translate into greater social connection beyond the confines of the mediation room.

The TM approach explicitly recognises a *moral dimension*, which critics have interpreted in various

Bush and Folger see as overcoming of weakness and self-absorption through the assertion of 'the capacities for strength and connection'³⁹ which, they claim 'embody an intrinsic goodness inherent in human beings'.⁴⁰

This view also can be expressed in *ideological terms*. As early as 1989 Bush wrote about the private and public advantages of the communitarian or relational view of society in contrast

to the rights-based one of liberalism and individualism.⁴¹ More recently, Bush and Folger, examining the major approaches to mediation, point specifically to the ideology of TM as providing meaning to its advocates. They see other current practices as based on an ideology of social separation and conflict control, in which conflict is seen as negative and potentially dangerous. Instead, they advocate a shift toward a more positive view of conflict that promotes social connection and conflict transformation and is embodied in the TM approach.⁴²

From the premises and purpose of the way in which we mediate, we can proceed to the *principles* that underlie our practices. Principles are the ends

toward which a mediator directs his or her attention and efforts.⁴³ From a TM perspective there are several principles that promote the purpose of transforming conflict interaction from a negative one in which the parties experience themselves as relatively weak and self-absorbed to a more positive state of relative strength and openness. Perhaps the single most important principle is to recognise and support opportunities for *empowerment* and *recognition* as they arise.

Empowerment is achieved 'when disputing parties experience a strengthened awareness of their own self-worth and their own ability to deal with whatever difficulties they face, regardless of external constraints'.⁴⁴ It is 'independent of any particular outcome of the mediation'⁴⁵ and has nothing to do with power balancing or redistribution.⁴⁶ *Recognition* is 'achieved when, given some degree of empowerment, disputing parties experience an expanded willingness

In narrow terms ... transforming the interactional qualities of the conflict occurs through the mediator's support of opportunities created by the parties for shifts in empowerment and recognition ... In broader terms, it would seem, such individual experiences of conflict transformation can eventually translate into greater social connection beyond the confines of the mediation room.

TM literature? There seem to be both broad and narrow usages of the term. In 1994 Bush and Folger explicitly wrote that the 'transformation story' (an approach to mediation that contrasts with other 'stories' like the dominant 'satisfaction story') had the potential to 'transform the character of both individual disputants and society as a whole'³¹ and aimed at creating a 'better world'.³² In the 2005 edition of their book, however, there appears to be a greater emphasis on the more circumscribed goal of transforming 'the quality of interaction in the room', which, it is said, 'can actually strengthen the parties themselves and the society they are part of'.³³ In narrow terms, then, transforming the interactional qualities of the conflict occurs through the mediator's support of opportunities created by the parties for shifts in empowerment and recognition (see below). Supporting shifts in empowerment and recognition, in turn, may lead to a reversal of the

ways,³⁴ and which has elicited further clarification from TM advocates. Bush and Folger recognise that the word 'moral' appears in many places in their writings,³⁵ most famously perhaps in a chapter entitled 'Changing People, Not Just Situations', where they write: 'disputes can be viewed *not as* problems ... but as opportunities for moral growth and transformation'.³⁶ Rather than deny or shy away from such issues, they have placed them front and centre, arguing, '[i]deological clarity is necessary for theoretical choice'.³⁷ Indeed, they 'believe that an explicitly value-based approach to practice has helped practitioners understand their work and its purpose in ways that a purely "conceptual" understanding does not'.³⁸ To illustrate their use of the word 'moral', they cite the explicit attention to moral development by social scientists and philosophers who espouse a *relational view* of society to describe the balancing of the competing social claims of self and other, which



to acknowledge and be responsive to other parties' situations and common human qualities'.⁴⁷ Giving recognition is neither reconciliation nor enlightened self-interest but rather a 'letting go' of one's 'self-focus'.⁴⁸ ●

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Endnotes

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