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Transformative Mediation

A Self-Assessment

Joseph Folger & Robert A. Baruch Bush*

Abstract

Transformative mediation is an approach to third party intervention that has been implemented in a range of dispute settings over the past twenty years. This article offers an explanation of what led us to develop the transformative model of mediation, and an assessment of the body of work related to both the theory and practice of transformative mediation. Specifically, we offer an assessment of: how well the relational premises of the model have been articulated, whether transformative practice remained aligned with its underlying premises, what the impact of practice has been, and what effect this approach to conflict intervention has had on the discourse of the conflict field in general.

Keywords: relational approach to mediation, transformative mediation, ideology and mediation, Institute for the Study of Conflict Transformation, USPS REDRESS Mediation Program.

1. The Project

Since the early 1990s, we have been fortunate to work with a talented group of colleagues – both practitioners and academics – in developing and implementing the transformative model of mediation. We launched this effort out of a concern about the evolving direction of mediation practice during the 1970s and 1980s. We had both been directly involved in that practice, working in community mediation centres in Ann Arbor and San Francisco. In 1990, we came together from very different disciplines but with a common conviction that the human capacities for self-determination and understanding lay at the centre of human identity and that mediation had a unique potential to realize them.

That sounds pretty academic, but what led us to this insight was very practical. When we first met, we compared stories of mediating community disputes and found that our experience was the same: The most memorable cases were the ones where parties came in looking ‘small and closed’ but left seeming ‘bigger and

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more open' – and the 'shift' was as striking to them as it was to us. In other words, the parties themselves taught us about the importance of what we later called 'empowerment and recognition' shifts. We simply reflected on what was happening before our eyes and tried to find words to describe and explain this key positive impact of mediation. The result was the transformative theory.

At the same time, we reflected together on the overall state of mediation practice at that time, and we were concerned that mediation was losing its unique and valuable potential for supporting these kinds of shifts, and becoming more and more like the forms of conflict intervention it was intended to replace – directive, top-down processes of resolution by an authoritative outsider. These reflections led to a far-ranging project over the past two decades that included the publication of four major books, numerous articles and several journal issues devoted to the model. It also led to the development of training and practice supported by two large grants and by work done for the U.S. Postal Service's REDRESS mediation program.

In the spirit of this issue's theme of evaluating success and failure in the conflict field, we offer our own self-assessment of the body of theoretical and applied work on transformative mediation. This means addressing the broad question 'What were we trying to do and to what extent did we succeed in doing it?' Breaking this down, we reflect on four thematic questions: (a) whether the work was effective in articulating and clarifying an alternative, relational model of conflict intervention practice; (b) whether the practice methods at the heart of transformative mediation are aligned with the underlying ideological premises of the model; (c) whether transformative mediation, when implemented, has been successful in achieving what it aims to achieve; and (d) whether the introduction of transformative mediation has had a useful impact on the discourse and practice of the mediation field in general.

2. Four Key Questions

2.1. *Articulating a Relational Model of Mediation Practice*

2.1.1 *Has the Body of Work on Transformative Mediation Clarified the Conceptual Foundations of a Relational Model of Mediation?*

In writing the first edition of *The Promise of Mediation* (Bush and Folger, 1994), we had two primary goals. First, we wanted to alert the field to emerging concerns about the evolution of mediation practice. We offered a critique of the prevailing problem-solving or facilitative model of mediation, based on the emerging research on actual practice – what mediators did when they intervened. Our critique, based on the values mentioned earlier, also focused on the ideological premises of the prevailing mediation model and suggested that these premises were steering practice away from the most unique and valuable aspects of mediation. We argued that underlying assumptions about human limitations and the volatile nature of conflict were leading to highly directive practices that threat-

ened the preservation of mediation's unique capacities for supporting self-determination and communication.

Second, the book offered a broad vision of an alternative, relationally based model of mediation practice. Our belief was that if mediation was to preserve its core value, including its emphasis on party-driven dialogue, then the underlying ideological premises that shape practice needed to shift to a more relational (rather than individualistic) view of human beings, conflict and institutional structures. Mediation needed to be based on a view that people have as much need and capacity for self-determination and human connection as they do for the fulfillment of their material needs and interests. These two broad conceptual themes – the critique of existing practice and the need for a relational model of mediation – were developed in other published works by ourselves and others (Bush and Folger, 2005; Della Noce, 1999, 2004; Della Noce *et al.*, 2004; Folger and Bush, 1996, 2001a; Folger *et al.*, 2010).

We believe that this body of work has been quite successful in articulating the ideological foundations of the model. The discussion of transformative mediation has led to continuous and thoughtful engagement with practitioners and theorists, not only about third-party intervention but, more importantly, about the core assumptions on which mediation and other forms of conflict intervention are founded. We also see it as a success that the articulation of the model's foundation made sense to people from very diverse intellectual, cultural and even religious outlooks – including the two of us. The fundamental principles of the theory have had broad appeal.

Challenges/Failures – We were gratified that the relational model has resonated with many, but there were three noteworthy challenges associated with this effort to articulate the conceptual foundations of the model. These challenges hindered the understanding of the model, and we see them as failures in the effort to clarify the conceptual foundations of the framework.

First, our choice of the name 'transformative mediation' was problematic and sometimes undermined an accurate understanding of the model. We were hesitant to use this label from the outset because of the anticipated associations with the term and the likelihood that this label would be misleading. But we felt that a strong alternative label was needed to distinguish relational practice from existing problem-solving and harmony models of intervention. This was important because we saw the model as an ideological shift in practice, not simply a variation in mediator style. Nonetheless, the term 'transformative' has been a continuous hindrance to an accurate understanding of the purpose and goals of the practice.

Second, initial discussions and illustrations of the model (especially in the first edition of *The Promise of Mediation*) understated the centrality of party empowerment in transformative mediation. Although the model emphasizes the balance of empowerment and recognition in both concept and practice, the original discussion of the theory did not establish clearly enough that empowerment is the cornerstone of transformative practice (Bush, 2010). As a result, misunderstandings arose about the role of the mediator in supporting recognition shifts, sometimes without honoring the empowerment of the parties. Explaining this

key conceptual point about the centrality of empowerment was important in understanding transformative mediation as a purely party-driven process.

Third, there is a persistent myth that transformative mediation devalues resolution, settlement, or the development of tangible outcomes for disputes. Perhaps because of the terms 'transformative' and 'relational', many have assumed that transformative mediators' primary focus is on the transformation of interpersonal relationships. This misunderstanding is often rooted in confusion between the transformative and harmony views of practice (Folger, 2008). Transformative practice supports a *relational* orientation to conflict, not a *relationship* orientation. It assumes that people in conflict may decide to end relationships but they are capable of doing so in a relational way. In addition, this misunderstanding persists because the transformative model does, in fact, intentionally and fully shift the *mediator's focus* away from settlement to avoid leading the parties towards mediator-preferred outcomes. But the transformative view of conflict assumes that the parties often bring a resolution focus to the table, and the parties are always supported by the mediator in exploring whatever outcomes they want to focus on. It has been surprisingly difficult to clarify that this model of practice simultaneously avoids a *mediator* focus on agreement but fully supports the *parties'* focus on agreement when they bring this focus to the conversation.

2.2. *Linking Purpose to Practice*

2.2.1 *Are the Intervention Methods and Practices of Transformative Mediation Clearly Aligned with the Underlying Premises of the Model?*

In developing training for transformative practice, we were hyper-conscious of the importance of linking the specifics of practice with the underlying premises of the model. This goal was critical for us because our core analysis (and our critique of the prevailing facilitative model) hinged on how the ideological premises of any model define its practice and intervention methods. As a result, those who worked on the development of training were continuously guided by the axiom *Purpose Drives Practice*. In the early published articles and in the initial volume on transformative practice and methods, the ideological premises of the model were explicitly linked to the discussions of all intervention choices and communication skills (Beal and Saul, 2001; Charbonneau, 2001; Della Noce, 2001; Folger, 2001b; Folger and Bush, 1996, 2001a, 2001b; Moen *et al.*, 2001; Pope and Bush, 2001).

In addition, all of the core training materials for the practice framework include clear explanations about how specific mediator skills and interventions are directly linked to the goals of supporting empowerment, recognition, party-driven dialogue and deliberation, and positive changes in the quality of parties' conflict interaction. The first third of the basic mediation training is focused solely on understanding the relational view of conflict and its implications for understanding the challenges people face in addressing difficult conflict issues. The training delves into the ideological premises behind the model, including its underlying view of human capacity, its view of conflict (as a crisis in human inter-

action) and the struggle people face in trying to balance empowerment and recognition in difficult conflicts.¹

Our insistence that mediators should know *why* they are doing *what* they are doing – linking practice to purpose – grew out of our ‘day jobs’ as educators who train graduate students for professional roles. We know that students who learn skills without understanding the values served by using them are ‘flying blind’, without a clear vision of their mission or their ethical limits. We saw this with mediators too and wanted to challenge all mediators – transformative or not – to be clear about the purposes underlying their practices. More on this is discussed below.

Challenges/Failures – One of the challenges of linking the goals of transformative mediation with intervention practices is that transformative mediation places the mediator in a role that can best be described as ‘proactively following’ the parties (Folger and Bush, 2001b). This role is somewhat paradoxical and highly challenging to master, especially for those who have worked with more directive models of mediation or who have had professional roles that are aimed at creating outcomes and solutions for clients. The transformative role asks mediators to be continuously active and engaged with the parties, but not to lead or direct them. Mastering and sustaining such a challenging role is usually not feasible unless the core premises and goals of the model are understood and valued.

Moreover, in the transformative model, the value of supporting and building parties’ capacity to better deal with conflict trumps other possible goals for mediation such as generating solutions or ensuring justice (Bush and Folger, 2012). Many mediators attracted to the model can still have difficulty ‘letting go’ of control unless they have great clarity about underlying goals, so the challenge has been to find ways of always teaching transformative practices in tandem with the value premises that underlie and explain them. We’ve tried to produce useful ‘pictures of practice’ in video form, but even showing a video of transformative practice, without linking the demonstration to the core values of the model, can be severely misleading. We’re still working on this one.

1 The implementation of transformative mediation in the U.S. Postal Service program also attests to the alignment of premises and practice. The Postal Service chose transformative mediation for its nationwide REDRESS program mainly because of its core values and goals. The leaders of this program “made a conscious decision to use the transformative model of mediation in order to maximize the opportunity to address not only the immediate conflict but also the underlying issues and fundamental problems related to how people interact with each other” (Intrater & Gann, 2001, p. 470). As a result of this clear rationale, the sponsors of this program were highly invested in assessing whether mediators who were chosen to work in the program aligned their practice with the transformative framework. Research was conducted to assess those mediators who were trained in the transformative model and who then mediated within this large government organization. The results showed that the mediators’ practice reflected the ten hallmarks of transformative mediation (Bingham & Nabatchi, 2001), thus indicating that the intervention methods mediators employed were aligned with the theoretical goals and aspirations of the model.

2.3. Research and Assessment

2.3.1 *Has the Implementation of Transformative Mediation Delivered Valuable Outcomes that Are Consistent with its Purpose?*

When we formed our partnership 25 years ago – between a social scientist and a legal academic – we did so with a keen awareness of the need for research that would document the impact of transformative practice. The adoption of transformative mediation by the U.S. Postal Service program in 1997 meant that transformative mediation has been the most researched model of practice over the past twenty years. Extensive research was conducted by a team of independent researchers led by Lisa Bingham over a ten-year period (Anderson and Bingham, 1997; Bingham, 1997, 2003, 2010; Bingham and Nabatchi, 2001, 2010; Bingham and Novac, 2001; Nabatchi *et al.*, 2010). Although Bingham's team addressed a wide range of research questions, we consider two areas most important.

Transformation of Conflict Interaction – Was there in fact some transformation of the parties' conflict interaction through empowerment and recognition shifts? On this point, the research revealed that the majority of participants felt the mediator helped them to clarify their own goals in the conflict, supported their understanding of the other person's point of view and helped the other understand their point of view. A vast majority of participants also indicated that they were satisfied with the outcomes of the mediation (Bingham, 2010: 330). In addition, a large majority of parties also reported that the other person listened to them during the mediation, that they learned more about the other person's point of view and that they acknowledged the legitimacy of the other's perspectives, views, or interests (Bingham, 2010: 331). All of these reported behaviors by parties in mediation indicate that an improved quality of interaction was supported by the mediators and that this support was valued by the parties themselves. Our own study of Postal Service mediation cases also offered documentation of how conflict was transformed during the mediations (Antes *et al.*, 2001).²

Upstream Effects – The leaders of the Postal Service program hoped that this large mediation effort could result in 'improved workplace culture' in the organization based on the potential upstream effects of parties' participation in mediation (Hallberlin, 2001: 378). Several studies indicated that such long-range impacts resulted from the program. For instance, two-thirds of the parties indicated after participating in mediation they expected the mediation to have a long-term positive impact on their future relationship with the other party (Hallberlin, 2001: 380). Other studies revealed changes in the way supervisors described how

- 2 Specifically, this study found the following indicators of conflict transformation, as reported in case studies of mediation sessions: The manner in which participants express themselves changed from strong emotion to calm, from defensiveness to greater openness, from speaking about the other party to interacting with them; participants acted more confidently and competently as the mediation progressed; participants established more personal connections with each other; participants gained new understandings during the mediation about the other party and their actions; participants gained new understandings during the mediation about themselves and their own actions; discussion of a specific incident often led participants to talk about larger issues that were significant to them.

they addressed conflict after participating in mediation. For example, managers reported that their own conflict behaviors changed after experiencing the value of mediation. They tended to listen more to the other person, they were more open to expressions of emotion by the other party and they relied less on top-down responses to handling conflict with employees (Bingham, 2010: 332).

Challenges/Failures – Although all of the above research is valuable in assessing transformative practice and its impacts, the kinds of studies that would best assess and document positive shifts in parties' interaction during mediation, and upstream effects, have not yet been conducted. Because of confidentiality restrictions in the Postal Service program, no attempts were made to document qualitative shifts in interaction via direct observation or recorded transcripts of mediation sessions. As a result, the data available in these studies have been mostly self-reports from parties and mediators, and such research has well-acknowledged limits. Alternative forms of qualitative and discourse analytic research are clearly needed to strengthen the assessment of transformative practice and its impact (Folger, 2001a), but as with all such research, funding and institutional support is difficult to arrange. Still, we're keenly aware that more and better research is needed.

2.4. *Mediation Discourse/Evolution of Practice*

2.4.1 *What Impact Has the Introduction of Transformative Mediation Had on the Discourse and Practice of the Mediation Field in General?*

At the beginning of our work, we had a 'food' metaphor for what kind of impact we could realistically hope to have on the mediation field: We probably wouldn't convince everyone to give up meat, we said, but we might get more people to try vegetarian cooking! At this point, it's fair to ask whether the development of the transformative model has had at least some broader impact, even of the latter kind. This is a less tangible goal and one that is difficult to assess, but the possible impact that transformative mediation has had on the discourse of the field in general is important to gauge. Although there is no direct measurement of this impact, we do see indirect indicators of broader impact in a few general areas.

Debate and Dialogue in the Field – From the beginning, the ideological critique of practice and the suggestion of an alternative relational model of mediation sparked controversy and elicited strong response in print and at professional conferences (Bush and Folger, 2013; Conklin, 2013; Folger, 2002; Folger and Bush, 2005; Gaynier, 2005; Menkel-Meadow, 1995; Milner, 1996; Seul, 1999; Williams, 1997). This intense reaction was predicted by Jeffrey Rubin, the consulting editor for the first edition of *The Promise of Mediation*. Rubin wrote, "The fact that Bush and Folger are so frankly ideological and value driven in their analysis will also disturb those readers who wish for a value-neutral appraisal of the mediation industry" (Bush and Folger, 1994: xii). The clear focus on ideology – the examination of core premises about human nature, conflict and institutional values in mediation – struck a nerve in the field.

As van Dijk suggests in his analysis of ideological clashes, ideological conflicts are played out in the discourse of vested groups through arguments about the

legitimacy and non-legitimacy of new ideas and practices (van Dijk, 1998: 260-262). Much of the critique and debate about transformative practice centred on the legitimacy of the underlying values of the relational model (Bush and Folger, 2013; Folger and Bush, 2010). Questions were raised about the model's broad commitment to party capacity and its insistence on a relational vision of conflict. But through our hitting an ideological nerve, the discussion and debate about these issues was enriched. It encouraged practitioners and theorists to move beyond the design of intervention techniques – beyond the 'toolbox' – to examine the premises that give rise to practices, the assumptions that ultimately define what mediation is and what it can and does achieve. And these conversations about the ideological dimensions of mediation have moved beyond the United States to the international arena. We're gratified by this impact.

Indeed, a range of volumes has been published since the transformative model was articulated that are explicitly influenced by the goals and focus of the model, although not identified as transformative practice *per se* (Arielli and Scotto, 2003; Billikopf, 2004; Bloom, 2012; Bowers and Moffett, 2012; Domenici, 1996; Domenici and Littlejohn, 2001; Grenig, 2005; Sampaio and Braga Neto, 2007). And in general, transformative mediation is now seen as an established, alternative model of practice described in parallel with problem solving, restorative justice and other forms of conflict intervention (Alfini *et al.*, 2006; Folberg *et al.*, 2004; Folger *et al.*, 2013; Oberman, 2005; Riskin *et al.*, 2005; Umbreit *et al.*, 2003; Vindelov, 2012).³

Mediation Policy: Definition, Certification, Ethics – Formal definitions of mediation have been changed in legal and informal settings to accommodate transformative mediation's focus on supporting constructive changes in the quality of parties' conflict interaction (Simon, 2012). These changes are significant in that they support a broader conception of the goals and outcomes of mediation, thereby including the value of conflict transformation. Inclusion of these broader definitions in mediator ethics codes has led to the articulation of new standards for resolving ethical dilemmas, standards that make preserving party self-determination the highest ethical imperative for mediators (New York State Unified Court System, Division of Court Operations, Office of ADR Programs, 2005). Similarly, some professional organizations in the United States have changed their criteria for certifying mediators to reflect the significant differences in practice that the transformative model entails (Bush, 2004). Without these kinds of changes, transformative mediators would not have been able to achieve the professional status needed to practice mediation in their regions.

Challenges/Failures – Although the ideological critique of practice that accompanied the initial presentation of transformative mediation was helpful in mov-

3 In addition, the core premises on which transformative mediation is built have been adapted by a range of practitioners, who have extended the ideological foundations and goals of practice beyond traditional two-party mediation settings. The relational vision of practice has been linked to the development of diverse forms of conflict intervention including third-party work in ethnopolitical and multi-party disputes (Saul & Sears, 2010), public dialogue projects (Stains, 2001), organizational conflict/development (Cuzzo, 2010), team development (Folger, 2010a), group facilitation (Kraybill, 2004) and victim-offender interventions (Umbreit *et al.*, 2003).

ing the focus in the field from methods and techniques to core premises, it also produced a strain of divisive and contentious discourse, primarily in the United States. This response may have been inevitable given the nature of ideological clashes in any professional context, but it nonetheless inhibited productive debate and, at times, created unnecessary backlash. On a personal level, the response to our work has sometimes been not only uncivil, but downright hurtful (Condlin, 2013). We have often asked ourselves whether it would have been possible to present the transformative model and the need for it without the critique. It is a significant rhetorical challenge to question existing practice (even if documented by independent research) and argue for needed change, while not offending those who support existing paradigms (van Dijk, 1998).

At a more practical level, we are disappointed that our view that sound practice must be based on coherent underlying theory has not gained wide acceptance in the field. The contrary view, that mediators can and should employ whatever methods are needed, from their 'toolbox' of techniques, continues to hold wide sway. So does the notion that good practice means incorporating elements from all models, even though doing so involves a practice with no coherent foundation. Though we have a deep commitment to relational premises, we believe even more strongly in the principle that responsible practice must be based on some set of coherent premises, and not simply on 'what works'. We consider it a failure that we have not persuaded a wider segment of the field of the need for coherent theory as a basis for sound practice.

Third, from the beginning, we knew that the transformative mediation was based on a view of conflict that was potentially valuable, not just for mediation and other forms of third-party intervention, but for understanding conflict in general. This relational view has the potential to help people respond to and manage their own conflicts by encouraging thoughtful consideration of how to balance empowerment and recognition – strength of self and connection to others – in all challenging conflicts. The implications of this view for managing one's own conflicts have not been developed, illustrated or disseminated. Therefore the transformative view of conflict has not had a significant impact on theory and practice related to negotiation, or the self-management of conflict. We hope this may change in the future.

Finally, though our original intentions for the transformative model were modest, in terms of seeing its acceptance in practice, we had hoped that it would attract more practitioners and users. The surge of interest from the Postal Service and several other large agencies, and from several smaller community centres and private practitioner communities, was encouraging; but it was not followed by a wider move to use the model. Today, in terms of actual mediators using it, and clients served, the transformative model remains a significant but still a 'minority' form of practice, compared with the dominant problem-solving (or evaluative) approaches. Our original conviction remains strong that people are eager to exercise self-determination in truly party-driven processes. It seems that this conviction is not yet widely shared in the mediation field, but we're still hopeful that others will see what we saw in those early mediation cases – that relational 'shifts' are the heart of the matter – and we'll keep working to support those who do.

3. Holding Practice Accountable to Theory

For us, the strongest feature of the entire body of work on transformative mediation is its consistent and intensive effort to link sound theory with useful practice (Della Noce, 2004). Whether or not many mediators adopt transformative practice, we believe the work on this model provides a clear illustration of how practice methods can be consistent with the underlying ideological and conceptual premises of a theoretical model. This focus on theory-to-practice – and the accomplishments it generated – were only possible because of the wide range of talented practitioners in the field who worked on the development and implementation of this framework. Their primary interest in this work came from their deep resonance with the relational vision of conflict. But it was their willingness to challenge themselves and their own practice, to make insightful contributions to the design of training and to implement transformative mediation (often in the face of institutional resistance) that made the alignment of theory and practice possible (Folger, 2010b; Miller, 2010). We are deeply grateful to these colleagues for their leadership, tenacity and creativity. Without them, none of the successes noted above would have been possible. And we continue to hope that more will join this circle of colleagues, and help to address some of the challenges discussed in this assessment.

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Joseph Folger & Robert A. Baruch Bush

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Joseph Folger & Robert A. Baruch Bush

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Joseph Folger & Robert A. Baruch Bush

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