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# The Promise of Mediation

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## The Transformative Approach
## to Conflict

Revised Edition

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# A Transformative View
# of Conflict and Mediation

A mediator is someone who intervenes to help when people are in the middle of conflict. Therefore anyone interested in serving as a mediator needs to reflect on two basic and related questions. The first one is this: What kind of help do these parties want and need from me? The second is this: What indeed is this phenomenon of conflict—with which I am supposedly going to help these parties—all about? A mediator who starts to intervene without clear and coherent answers to these questions could easily do a disservice to the parties, and to him- or herself. However, the answers are by no means obvious.

## Why Mediate?
## Four Theories of Conflict and Intervention

Consider the case of Jim and Susan, the adult children of Walter Ellis, who founded their family business. This case, which we will use throughout this chapter to illustrate our discussion of the transformative theory of conflict and mediation, is based on a real case mediated by one of our colleagues (though we have altered details to preserve confidentiality):

> *Jim and Susan share equally in the profits of the business and are due to inherit it when Walter, now quite ill, passes away.*

*Jim, forty-eight, has worked at his father's side in the company since graduating college, taking on more and more of the management as Walter aged. Susan, forty, a homemaker and mother whose children are now in college, has had only a minor role in the business, helping to deal with employee grievances, and is now shouldering most of the responsibility for dealing with Walter's decline from a terminal illness. Still joined in both family and business, they are now deeply divided about the roles each should play in the two areas. Jim wants Susan (and her husband) to stay out of his way in the company. He feels that he has full right of management based on his years of hard work. And he also believes the business would suffer badly if Susan or her husband were to be given any significant role. Susan wants a much larger role in the company for herself and her husband. She feels that with her children grown, she has an equal right to share not only profits but control. And she also needs to find a place for her husband in the family business, because he was downsized from his company and can't find another job. Finally, she thinks that Jim owes both her and their father the obligation to spend more time with Walter in the hospice before he passes away. Jim and Susan are weighing their options about how to handle the conflict between them over all of this—including mediation.*

Why does a person involved in a conflict, like Jim or Susan, come to a mediator? Clearly, the person is seeking help in dealing with the conflict—but what kind of help? In fact, people involved in conflict seek different kinds of help, from different kinds of intervenors. Some seek help in consolidating their power in order to dominate the other side (or resist domination)—typically provided by organizers or advocates. Some seek help in constructing principled arguments that will convince some outside authority of the rightness of their claims—typically provided by lawyers or legal advocates. Some seek help in searching for a solution that meets the seemingly conflicting needs of all sides—typically provided by counselors or planners.

The kind of help that people want depends on many factors, but at the most basic level it depends on how they themselves answer the second question mentioned previously: What indeed is this phenomenon of conflict all about? To put it another way, the kind of help I seek depends on what being involved in conflict means to *me*—what I find most significant and affecting, positively or negatively, about this experience. If I feel that the most significant aspect of conflict is that it may affect my power over others (or theirs over me), I want help in consolidating power. If I feel that the most significant aspect is that it may threaten my rights, I want help in vindicating those rights. If I feel that the most significant aspect is that it may result in my needs being unmet, I want help in finding a way to make sure my needs are met.

In essence, this describes what might be called three *theories of conflict*, three different views of what human conflict is about—all of which are indeed found in the literature of the conflict field: *power theory* (Abel, 1982), *rights theory* (Fiss, 1984) and *needs theory* (Menkel-Meadow, 1984). Arguably, people's behavior reflects all three theories; that is, they see conflict in all three ways, depending on their specific situation. This is probably why they seek help from different kinds of intervenors at different times—sometimes from organizers, sometimes from lawyers, and sometimes from planners. However, from the perspective of the *intervenor* reflecting on what kind of help the client wants, one theory alone is generally the primary basis for answering that question: lawyers assume clients want help in vindicating rights, organizers assume clients want help in asserting power, and planners assume clients want help in solving problems to meet needs. In effect, these assumptions really represent *two* levels of theory, the second one being the intervenor's theory *about* the client's theory of conflict. To put it more precisely, the intervenor has a *theory of client expectations*, which is itself based on certain assumptions about the client's own theory of conflict.

Ultimately, the intervenor's view of client expectations is what sets the intervenor's own views of his or her role in the intervention, obligations to the client, and methodology of practice.

We have associated each of the three theories of conflict with a different kind of intervenor—none of them mediators. However, because of the multifaceted character of the mediation field, as described in Chapter One, there are also mediators whose assumptions about client expectations reflect each of these three different theories of conflict—that is, some mediators assume clients are seeking protection from domination; some assume clients are seeking outcomes that come close to vindicating their rights; and some assume clients are seeking resolutions that meet their underlying needs and interests. Depending on which assumption the mediator makes about client expectations, the mediator's sense of role, obligations, and best practices will differ accordingly. The language of the mediation field has actually developed to reflect this diversity of views about the services that mediators can and should offer to clients (Riskin, 1996; Guthrie, 2001; D'Alo, 2003). Recent literature therefore recognizes that potential mediation users can retain *evaluative mediators*, who will steer them toward outcomes in substantial conformity with legal rights. Or they can retain *facilitative mediators*, who will work to generate a settlement that meets the needs of all sides. Or they can retain *activist mediators*, who will ensure that parties (and even outsiders) are protected against domination and unfairness in the process.

It was against this background that we first articulated the *transformative theory* of conflict and mediation, in the previous edition of this book. The transformative theory, like each of the others, starts with a unique set of answers to the questions with which this chapter began, leading to a different view of the mediator's role, obligations to clients, and practice methods. Before examining these specifics, however, it is important to acknowledge that we do not (and could not) claim that only the transformative theory is valid and the others are not. We therefore do not dismiss the other the-

ories, a subject we return to in Chapter Seven. Rather, it is our purpose here to fully articulate the transformative theory itself and to explain why it represents a view of conflict and mediation that is not only valid but highly appealing, both because of the social scientific evidence that supports it and because of the values it reflects.

There is one final introductory point: Even though each of the different theories of conflict and mediation may be valid—including the transformative theory—we do not believe that they can be combined or integrated, at either the theoretical or practical levels. In effect, each of these theories represents a coherent viewpoint that guides one's view of both the meaning of conflict and the value of intervention. It is difficult, indeed impossible, to pilot a ship without a set course with a fixed point of orientation. One who tried to do so would risk getting lost or running aground. The same is true of any human undertaking. Many different courses may be chosen, with different orientations. But choice is ultimately necessary. We believe that most mediators ultimately choose a mode of practice that stems from one—and only one—of the underlying theories of conflict discussed here. We do not argue that only one of these theories or modes of practice is valid. But we do argue that only one can be coherently practiced at a time. The support for this proposition has been set forth elsewhere and can be examined. However, to fully understand and appreciate what follows in this volume, it is best to encounter the principles and practices of the transformative approach on their own terms. Doing so will give a sense of the coherence of the approach, even for those who remain skeptical about it.

## The Transformative Theory of Conflict

The transformative theory of conflict starts by offering its own answer to the foundational question of what conflict means to the people involved. According to transformative theory, what people find most significant about conflict is not that it frustrates their satisfaction of

some right, interest, or pursuit, no matter how important, but that it leads and even forces them to behave toward themselves and others in ways that they find uncomfortable and even repellent. More specifically, it alienates them from their sense of their own strength and their sense of connection to others, thereby disrupting and undermining the interaction between them as human beings. This crisis of deterioration in human interaction is what parties find most affecting, significant—and disturbing—about the experience of conflict.

### Negative Conflict Interaction: A Case in Point

The transformative theory starts from the premise that interactional crisis is what conflict means to people. And help in overcoming that crisis is a major part of what parties want from a mediator. According to this view, what would transformative theory expect people like Jim and Susan to say about the family business conflict mentioned earlier in this chapter, if they were asked questions such as these: "What affects you most about this conflict you're involved in? What's the impact that seems to strike you hardest?" Here is a suggestion of how they might respond (and their voices echo what we regularly hear when parties talk about their personal experience of conflict, though these two may be more articulate than many):

> *Susan: From the very beginning, it was very hard to just suddenly feel so frustrated and helpless. You know, Dad is at the heart of this. So to have Jim tell me that Dad never wanted me to play a major role in the business, didn't think I was capable of it, when I knew that simply wasn't true at all. To have him tell me I don't know how my own father sees me! And tell me that, anyway, I just wasn't up to the work, that I should just satisfy myself with taking care of Dad. That made me so angry . . . but it also made me doubt myself. I was outraged, but I was also shaken. I mean, should I insist on pushing myself into the business more? Did I really know my abilities? And anyway, what could I do against this kind*

> *of solid resistance that Jim was putting forth? That feeling of helplessness and uncertainty was really hard for me.*
>
> *Plus, I have to say, it was hard to find myself so full of anger and venom for Jim, the older brother I had admired for so long. How hard he had worked to make things work in that business, to build it up and make it a support for both our families, even when things had been very tough. But you know what? I couldn't see that anymore. All I could see was him closing his mind and his heart to both Dad and me. Locking himself up in his precious office and shutting the family out, scarcely even showing up at the hospice to see Dad or take some of the load off me. And for what? Power? Ego? Just to keep himself "in charge"? I didn't like myself—I don't like myself—for seeing him this way. But I just couldn't help it. The helplessness and the hostility. That's what was so hard. And the more this has gone on, the worse that has gotten.*
>
> *Jim: What's been hardest? Well, first of all, when Susan started showing up at the office and sounding off, handing out orders to the staff, that really threw me. After all the twenty-four-hour days and seven-day weeks I've poured into this business, especially since Dad's been out of the picture! Sure, there are problems with the staff, and sometimes Sue's been a help. But only when Dad or I asked her to help. I thought we both understood that there's got to be only one authority in the place, or else everything gets screwed up. She can't just march in and start taking over. Now, all of a sudden, she's telling me I've got major problems with two of my key people. I just didn't know how to respond to that. Don't I know my own managers? Wouldn't I know if something was out of whack? I thought so, but then I wasn't absolutely sure. And then she went and shuffled both employees' responsibilities without even checking with me! I was stunned . . . confused, I didn't know what to do!*

*The other hard part is the unbelievable bad feeling that welled up toward Susan and her family. Her husband was always needling her about how she should "take more of a hand" in the business and "be more assertive" with me. I've always believed in keeping the peace, not letting anything split up the family. I thought I was pretty good at overlooking things and refusing to be negative. But I started to see Sue, and her husband, as selfish, greedy, ingrates, and worse. At one point, I thought to myself, the real reason she's down here at the office making trouble is that she just doesn't want to be bothered with Dad anymore. For her, he's as good as gone, and she wants to make sure that when he's really gone, she and her husband are positioned to muscle their way in and push me out of what I've worked my whole life for. I felt ashamed for attributing these kinds of motives to Sue. But I couldn't help it. The worst thing about this conflict is that it's brought out the worst in me. All my insecurities. All my mean-spiritedness. All my . . . small-ness. At some point, I thought, I'd be willing to give in just to end this nastiness. But by that time, it seemed that giving in wouldn't help. The air was just poisoned.*

Insights from the fields of communication, cognitive psychology, and social psychology, among others, all support this view of what conflict means to people (Folger and Poole, 1984; Folger and others, 2001; Bush and Pope, 2002; Beck, 1999; Rubin and others, 1994; Goleman, 1995). For example, in one study that asked people to describe their experience of conflict in metaphors, almost all of the negative metaphors reflected two primary states: powerlessness and alienation from the other person (McCorkle and Mills, 1992). Similarly, trainers who ask people to draw pictures that express their experiences of conflict report similar results (Charbonneau, 2001). Still other studies, examining what people value most in processes for handling conflict, find a strong preference for processes that maximize party decision making and interparty communication, because

these features counteract and remedy the negative experiences of weakness and alienation that parties find so distressing (Lind and Tyler, 1988; Bush, 1996). In general, research like this suggests that conflict as a social phenomenon is not only, or primarily, about rights, interests, or power. Although it implicates all of those things, conflict is also, and most importantly, about peoples' interaction with one another as human beings. The evidence confirms the premise of the transformative theory, as reflected in the voices of Jim and Susan: what affects and concerns people most about conflict is precisely the crisis in human interaction that it engenders.

### The Picture of Negative Conflict Interaction— and the Evidence Behind It

Figure 2.1 represents this view of the phenomenon of conflict as transformative theory understands it. Conflict, along with whatever else it does, affects people's experience of both self and other. First, conflict generates, for almost anyone it touches, a sense of their own *weakness* and incapacity. That is what Jim and Susan both mention first. For each of them, conflict brings a sense of relative weakness, compared with their preconflict state, in their experience of self-efficacy: a sense of lost control over their situation, accompanied by confusion, doubt, uncertainty, and indecisiveness. This overall sense of weakening is something that occurs as a very natural human response to conflict; almost no one is immune to it, regardless of his or her initial "power position." At the very same time, conflict generates a sense of *self-absorption*: compared with before, each party becomes more focused on self alone—more protective of self and more suspicious, hostile, closed, and impervious to the perspective of the other person. In sum, no matter how strong people are, conflict propels them into relative weakness. No matter how considerate of others people are, conflict propels them into self-absorption and self-centeredness.

Support for this account of the human experience of conflict comes from work in the fields of cognitive and social psychology, and neurophysiology, among others. For example, Aaron Beck
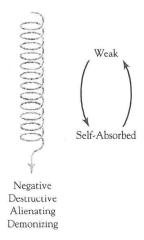
Figure 2.1. The Negative Conflict Spiral.

(1999) describes extensive work documenting how people who are confronted with challenge or threat, as is common in conflict, experience a sense of their own powerlessness, diminishment, disregard, and victimization, leading to a sense of hostility, suspicion, and anger toward the other party. Daniel Goleman (1995), in his pathbreaking work on *emotional intelligence*, describes research showing how the neurophysiological response of the brain itself to conflict leads to the phenomena described by Beck. None of this occurs because human beings are "defective" in any way. It is rather because conflict has the power to affect our experience of ourselves and others, in virtually every context in which it occurs.

Indeed there is more to the picture, as Susan's and Jim's comments imply. As the cycling arrows in Figure 2.1 suggest, the experiences of weakness and self-absorption do not occur independently. Rather, they reinforce each other in a feedback loop: the weaker I feel myself becoming, the more hostile and closed I am toward you; and the more hostile I am toward you, the more you react to me in kind, the weaker I feel, the more hostile and closed I become, and

so on. This vicious circle of *disempowerment* and *demonization* is exactly what scholars mean when they talk about *conflict escalation*. The transformative theory looks at it more as *interactional degeneration*. Before a conflict begins, whatever the context, parties are engaged in some form of decent, perhaps even loving, human interaction. Then the conflict arises, and propelled by the vicious circle of disempowerment and demonization, what started as a decent interaction spirals down into an interaction that is negative, destructive, alienating, and demonizing, on all sides.

That is what the spiraling line descending at the left of Figure 2.1 is meant to represent. The interaction in question does not end when conflict begins, but it degenerates to a point of mutual alienation and demonization. That is the conflict escalation or degeneration spiral. When nations get caught up in that spiral, the outcome is what we've seen all too often in the last decades—war, or even worse than war, if that's possible. For organizations, communities, or families who get caught up in the conflict spiral, the result is the negative transformation of a shared enterprise into an adversarial battle. The negative conflict spiral pictured by transformative theory is also documented by research studies on conflict. Beck (1999), for example, closely examines this kind of vicious cycle, describing how it ultimately can lead to mutual hatred and violence, at both the interpersonal and intergroup levels. Jeffrey Rubin and his colleagues in the field of social psychology describe the central role of fear, blame, and anger in producing conflict escalation (Rubin and others, 1994). International conflict theorists also recognize how escalation is the flip side of interactional degeneration into weakness and self-absorption (Northrup, 1989).

## What Parties Want from a Mediator: Help in Reversing the Negative Spiral

Taking the transformative view of what conflict entails and means to parties, one is led to a different assumption, compared with other theories of conflict, about what parties want, need, and expect from

a mediator. If what bothers parties most about conflict is the inter-actional degeneration itself, then what they will most want from an intervenor is help in reversing the downward spiral and restoring constructive interaction. Parties may not express this in so many words when they first come to a mediator. More commonly, they explain that what they want is not just agreement but "closure," to get past their bitter conflict experience and "move on" with their lives. However, it should be clear that in order to help parties achieve closure and move on, the mediator's intervention must directly address the interactional crisis itself.

The reason for this conclusion is straightforward: if the negative conflict cycle is not reversed, if parties don't regenerate some sense of their own strength and some degree of understanding of the other, it is unlikely that they can move on and be at peace with themselves, much less each other. In effect, without a change in the conflict interaction between them, parties are left disabled, even if an agreement on concrete issues is reached. The parties' confidence in their own competence to handle life's challenges remains weak-ened, and their ability to trust others remains compromised. The result can be permanent damage to the parties' ability to function, whether in the family, the workplace, the boardroom, or the com-munity (Folger and others, 2001). Recognition of this possibility and its ramifications for the workplace was the main reason for the U.S. Postal Service's decision to employ the transformative model exclusively in their REDRESS program for mediating workplace conflicts (Bush, 2001; Hallberlin, 2001). Moving on, in short, nec-essarily means moving out of the negative conflict interaction itself, and parties intuitively know this and want help in doing it.

From the perspective of transformative theory, reversing the downward spiral is the primary value that mediation offers to par-ties in conflict. That value goes beyond the dimension of helping parties reach agreement on disputed issues. With or without the achievement of agreement, the help parties most want, in all types

of conflict, involves helping them end the vicious circle of disem-powerment, disconnection, and demonization—alienation from both self and other. Because without ending or changing that cycle, the parties cannot move beyond the negative interaction that has entrapped them and cannot escape its crippling effects.

This is transformative theory's answer to the question posed pre-viously: What kind of help do people want from a mediator? As trans-formative theory sees it, with solid support from research on conflict, parties who come to mediators are looking for—and valuing—more than an efficient way to reach agreements on specific issues. They are looking for a way to change and transform their destructive conflict interaction into a more positive one, to the greatest degree possible, so that they can move on with their lives constructively, whether together or apart. In fact, just as research supports the transformative view of conflict in general, it supports this view of what parties want from mediators. For example, extensive research on workplace medi-ation at the U.S. Postal Service shows that parties view interactional transformation as one of the most important reasons for using medi-ation (Bingham, 1997; Antes and others, 2001). The transformative model of mediation is intended to provide this benefit.

## The Theory of Mediation as Conflict Transformation

Clarifying the transformative theory of mediation, and especially its view of the mediator's role, requires further discussion of the model of conflict interaction introduced in the previous section. However, to anticipate the endpoint of that discussion, transfor-mative mediation can best be understood as a process of *conflict transformation*—that is, changing the quality of conflict interaction. In the transformative mediation process, parties can recapture their sense of competence and connection, reverse the negative conflict cycle, reestablish a constructive (or at least neutral) interaction, and move forward on a positive footing, with the mediator's help.

## Party Capacity for Conflict Transformation: Human Nature and Capacity

To explain this view of mediation, we first return to the concept of interactional degeneration in conflict. How does mediation help parties in conflict reverse the negative conflict spiral? Out of what resource is that kind of transformation generated, and what is the mediator's role in doing so? The first part of the theoretical answer to this question points not to the mediator at all, but to the parties themselves. The critical resource in conflict transformation is the parties' own basic humanity—their essential strength, decency, and compassion, as human beings. As discussed earlier, the transformative theory of conflict recognizes that conflict tends to escalate as interaction degenerates, because of the susceptibility we have as human beings to experience weakness and self-absorption in the face of sudden challenge.

However, the theory also posits, based on what many call a *relational theory* of human nature, that human beings have inherent capacities for *strength* (agency or autonomy) and *responsiveness* (connection or understanding) and an inherent *social* or *moral impulse* that activates these capacities when people are challenged by negative conflict, working to counteract the tendencies to weakness and self-absorption (Della Noce, 1999). The transformative theory asserts that when these capacities are activated, the conflict spiral can reverse and interaction can regenerate, even without the presence of a mediator as intervenor. In fact, the same research that documents the negative conflict cycle also documents the power of the human capacities for strength and understanding to operate in the face of challenge and conflict, and ultimately to transform conflict interaction (Beck, 1999; Goleman, 1995; Kohn, 1990).

Figure 2.2 expands the picture presented earlier and illustrates this positive potential of conflict interaction. It is true, as we have seen with hundreds of parties in all of the different contexts that we've worked in, that people in conflict tend to find themselves

falling into the negative cycle of weakness and self-absorption. But it is equally true that people do not necessarily remain caught in that cycle. Conflict is not static. It is an emergent, dynamic phenomenon, in which parties can—and do—move and shift in remarkable ways, even when no third party is involved. They move out of weakness, becoming calmer, clearer, more confident, more articulate, and more decisive—in general, *shifting from weakness to strength*. They move away from self-absorption, becoming more attentive, open, trusting, and understanding of the other party—in general, *shifting from self-centeredness to responsiveness* to other. Just as studies document conflict's negative impacts and the downward conflict spiral, they also document the dynamics of these positive shifts and the upward, regenerative spiral they engender (Beck, 1999).
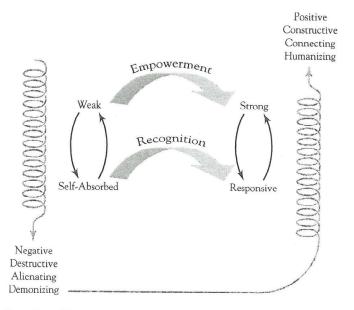


Figure 2.2. Changing Conflict Interaction.

The arrows moving from left to right in Figure 2.2 represent these shifts: the movements parties make from weakness to strength and from self-absorption to understanding of one another. In transformative theory, these dynamic shifts are called *empowerment* and *recognition* (Bush, 1989; Bush, 1989–1990). Moreover, as the figure suggests, there is also a reinforcing feedback effect on this side of the picture. The stronger I become, the more open I am to you. The more open I am to you, the stronger you feel, the more open you become to me, and the stronger I feel. Indeed the more open I become to you, the stronger I feel in myself, simply because I'm more open; that is, openness not only requires but creates a sense of strength, of magnanimity. So there is also a circling between strength and responsiveness once they begin to emerge. But this is not a vicious circle, it is a "virtuous circle"—a virtuous circle of conflict transformation.

Why conflict transformation? Because as the parties make empowerment and recognition shifts, and as those shifts gradually reinforce in a virtuous circle, the interaction as a whole begins to transform and regenerate. It changes back from a negative, destructive, alienating, and demonizing interaction to one that becomes positive, constructive, connecting, and humanizing, even while conflict and disagreement are still continuing. This reversal of the conflict cycle from negative and destructive to positive and constructive is what the spiral line ascending at the right of Figure 2.2 represents.

The keys to this transformation of conflict interaction are the empowerment and recognition shifts that the parties themselves make. No matter how small and seemingly insignificant, as these shifts continue and accumulate, they can transform the entire interaction. Is it hard for those shifts to occur? It most certainly is, especially for parties who have been overcome by the sense of weakness and self-absorption that conflict first brings. It's hard, but it's eminently possible.

Consider the case reported on National Public Radio some weeks after the September 11 tragedy in 2001, during a program of

listener comments about how their lives had changed since the events of that day. One woman recounted how she'd been involved in an auto accident in Colorado. Her car was hit from behind by another driver—who didn't have any insurance. She said that if the accident had happened before September 11, she "would have gone after the man, taken legal action," and then continued:

> Much to my personal amazement . . . I found myself thinking instead about this middle-aged man. Obviously in some financial need, old car, had to let his insurance lapse. I followed the probable impact my signatures [on the legal complaint] would have on his life. He becomes a frequent recipient of steady threatening phone calls, probably winding up in court and getting his wages garnished.
>
> It didn't take me long to believe that if I made the expedient choice, I would become a terrorist. I kid you not. Americans are already stressed out, in need and in fear. Was I going to dump another load of terror, fear of the future, stress, and financial hardship on this guy? Was I really? I just couldn't do it.

The woman reported that the man promised to pay for the damage to her car, if he could do it in small increments over several weeks, and she said that this was what he'd been doing. Then she concluded:

> Maybe we both just got lucky. I suspect we're both surprised at who each other turned out to be. But I bet we're not the only Americans amazed at what we're finding within others and within ourselves these days [National Public Radio, Nov. 9, 2001].

The empowerment and recognition shifts are clearly visible in this woman's brief story, and the transformative impact is clear. As

she says, it is amazing; yet this kind of conflict transformation almost certainly occurs between parties to conflict on a regular basis, when the capacities for strength and connection "kick in" and reverse the negative conflict spiral. It's important to note that, as illustrated by this case of two strangers involved in a car accident, the potential and value of conflict transformation is by no means limited to cases where the parties have some kind of preexisting and ongoing relationship. The reason is simple, as the case also illustrates: the negative conflict cycle is almost always a part of the parties' human experience of any conflict and almost always something that they want to change. The transformative model of mediation simply supports and builds on the parties' inherent human capacities for doing so, and the positive potential they hold for conflict transformation, no matter what type of case is involved.

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A resident in an apartment building had slipped on icy stairs and broken his ankle during a tough spell of Michigan's winter weather. Several tenants in the building, including the one who suffered the injury, had previously notified the landlord about a crack in the gutter that ran directly above the staircase leading into the apartment. Every time the temperature hovered just above freezing, the gutter would leak. The water in the gutter would drip onto the stairs and then freeze overnight as the temperature dropped, making it treacherous for the tenants who left the building early in the morning. The landlord had never responded to any of the requests to fix this dangerous situation. Because the tenant thought the landlord was negligent and because he suffered through ankle surgery and eight weeks in a cast, he sued the landlord for lost wages and personal suffering.

As the case approached a hearing, depositions were taken from both sides. When the tenant was being deposed, the landlord's attorney asked at one point to look at the injury. The tenant's ankle had been, at this point, out of the cast for several weeks. When the attorney for the landlord looked at the swollen and black-and-blue ankle, he was somewhat startled and without thinking blurted out, "Is that swelling ever going to go down?" On hearing himself, the attorney immediately changed his startled expression, looked away from the ankle, and asked a different question. It seemed that the attorney wanted to acknowledge the suffering that the tenant experienced, but his formal role would not allow it. Although the legal process itself deters the transformation of the conflict through empowerment and recognition, the human impulse to respond this way often shines through even in the most adversarial forums of conflict.

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## Party Motivation for Conflict Transformation: The Relational View of Human Nature

Before going further, it is important to clarify some key premises that are implicit in the transformative theory's concept of conflict transformation. Thus far, we have emphasized that substantial evidence supports both the view that what people dislike most about conflict are its impacts of disempowerment and disconnection, as well as the view that people have the capacities to reverse the cycle that produces them. However, even if this evidence is accepted, two important questions remain: *Why* are people so deeply affected and touched by these impacts? And why, as a result, do they care so much about reversing the negative conflict spiral? Answering these "why" questions means going beyond the realm of practice and research, to the realm of belief or ideology.

Thinkers in different fields offer insights that shed light on these why questions—and all of their insights are grounded in the idea

that there is a basic human nature or identity, common to all people, the core of which is a dual sense of both individual autonomy and social connection (Della Noce, 1999). Put differently, as a matter of basic human consciousness, every person senses that he or she is a separate, autonomous agent, authoring his or her own life, and at the same time senses that he or she is an inherently social being, connected to other people in an essential and not just instrumental fashion. Moreover, in this relational view, awareness of both individual agency and social connection is not just a peripheral characteristic—it is the very essence of human consciousness, the core of our identity as human beings. Each part of this duality—individuality and connectedness—is equally important to our fundamental sense of human identity, and we struggle constantly to give each its place and balance or "relate" them—hence the term *relational*—in all of our affairs.

This relational view of human nature is expressed in many fields today, in different terms. In social psychology, the study of human happiness and well-being finds that they are the results of having an integrated, relational sense of autonomy and social connection, more than any other factor (Bettencourt and Sheldon, 2001; Lind and Tyler, 1988). In political science, sociology, and law, communitarian theory asserts the importance of fostering both individual freedom and social responsibility, linking this to a belief in the relational nature of human identity (Sandel, 1982; Etzioni, 1996; Glendon, 1991). In moral philosophy, postmodern and feminist thinkers reject views of moral consciousness as stemming from *either* autonomy or connection, adopting instead a dialogic conception in which the fully developed *moral sense* attends equally to both, to the claims of self and other in dialogic relation, however difficult this may be (Gilligan, 1982, 1988; Handler, 1988; Koehn, 1998). The overall *relational worldview* implied by these different disciplinary views is discussed in Chapter Seven. The references here are offered as indicators that the relational view of human identity finds broad support today, in many fields.

We return to the previously asked questions: Why are people so affected and disturbed by the disempowerment and disconnection of the negative conflict cycle, and why does reversing that cycle matter to them so much? The answers flow from the relational conception of human identity as just summarized. If a person's core sense of identity is linked to a sense of both autonomy and connection, and if both of those are compromised at the very same time, it makes perfect sense that this will be a profoundly disturbing experience. In effect, the core sense of identity that undergirds the person's life—strong self connected to other—is thrown into question by conflict. This is why the weakness and alienation produced in negative conflict is so repellent to parties in conflict—it violates their very identity, their sense of who they are as human beings. To remain in such a condition is as painful to people as being imprisoned and forced to live in inhuman conditions.

This also explains why people who find themselves in negative conflict interaction look for ways to change and reverse the interactional degeneration, with or without a third party's assistance: because to remain in that negative interaction is to remain cut off from their basic human identity. This is the motivation for conflict transformation, although in a negative sense—people want to get out of the essentially inhuman experience of negative conflict interaction. However, the motivation for changing conflict action can also be seen from the positive angle. That is, we can assume that people retain some sense of their core humanity, even when embroiled in negative conflict interaction. Therefore the impulse to reassert their humanity, in terms of both strength of self and connection to other, can also be seen as the motivator for their efforts to change the conflict interaction. This was referred to in Chapter One as the social or moral connection inherent in human nature. Whichever adjective is used, the meaning is the same: it is the impulse to reassert one's core human identity, in a situation where it has been compromised.

Some years ago, a citizen called our Center and asked whether we could help her talk to her neighbor. We told her we would be glad to set up a mediation. She replied that no, she didn't want to mediate, she wanted to talk directly to her neighbor. It seems that she had been in a mediation before and was not allowed to talk directly to the other party. More recently, a party wrote, after a mediation at our Center, "I'm proud to have let everything off my chest. . . . You don't have to talk through lawyers. You talk for yourself" [Wahlrab, 2004].

The point of this discussion was to explain clearly why it makes sense to say that parties' motivation to change negative conflict interaction is both real and powerful. This view of party *motivation* is a fundamental element of the transformative theory. An equally fundamental element of the theory is the view that parties have the *capacity* to change negative interaction, as argued above. Without both of these elements, the transformative theory of mediation would make little sense: if parties don't have the desire or motivation to change conflict interaction, it would be pointless to offer them the means to do so; and even if they do have that desire, it would be pointless to proceed if they did not also have the capacity to do so. The most important premises of the transformative theory are that parties have both the desire and the capacity for conflict transformation. Helping to support this desire and capacity is the "value-added" that the mediator brings to the table.

### The Role of the Mediator in Conflict Transformation: A Case in Point

For a more concrete sense of what the mediator's help can mean to parties in conflict, consider what Susan and Jim might say about the impact of participating in a mediation of their family business conflict—with a transformative mediator:

*Susan:* It's odd to say this, but I have to say that in a way the mediation helped me start to take myself back. I mean, come back to the way I know I am. Even though I was still fighting with Jim about Dad and the business. For one thing, the mediator's invitations to me to talk, and her attentiveness, created a space for me to do just that—talk it out. Even if I wasn't always making sense or wasn't very clear, she'd listen, and she would repeat and go over what I said. It was like she was holding up a mirror, an audiovisual mirror, to let myself see and hear what I was saying. It was almost like talking with myself. And doing that helped me actually listen to my own thoughts, and as I did that I started to realize what I was trying to say and understand it better for myself. Then I could say it more clearly. So I began to get clearer, calmer, less desperate, and less frustrated. I mean, overall I'd say I began to get stronger right there in that room during the conversation. That was terrific!

When that happened, it began to be a different situation, because then I was experiencing the whole thing differently. More calmly. More confidently. So I could see the situation differently in some ways. And I could even listen differently to Jim. I could see him again without that cloud of anger and ill will. That in itself—that I could see him that way again—was really a tremendous relief, and it made an enormous difference in our ability to keep talking to each other. To go back to talking to each other about our disagreements in a constructive way.

*Jim:* As I said before, the really bitter part of the conflict was that it brought out the worst in me. My doubts in my judgment and understanding. Even worse, my need and my willingness to blame and demonize Susan, the very person I have to go on working and living with, to keep Dad's legacy to us intact. You know, you can't divorce your own sister. In the mediation, I don't know how, but I began to reconnect with,

*how should I say it, the angels of my better nature. It's not just that I became more confident and clear about what I was thinking and saying. I did, but I also managed to take off those dark glasses. I began to see Susan again for who she really is (even if I totally disagree with her), a great sis and a loving daughter who is totally devoted to Dad and who cares about the business he built for us.*

*I also realized, like I said, that Susan and I are connected in this life, whatever happens. But you can't stay connected to someone you don't trust and you don't respect—and you hate. It was so easy to lose that trust. It was happening so fast, and I couldn't seem to do anything about it. The mediation allowed me to realize that's what was happening and to choose not to let it happen, not to let it continue. Whether or not we agreed about what was the best course for the business, or for Dad. Once we turned that corner back to being ourselves, me and Susan, and being in control of ourselves, I knew that we'd eventually figure out how to do the right thing, whatever it was.*

In sum, as Jim and Susan describe it, the nature of the mediation process in their case was one of interactional change (or transformation). That is, both of them changed the way they experienced and interacted with both self and other, in the midst of their continuing conflict. To put it differently, mediation supported them in a process of changing the quality of their conflict interaction and—most important—in reversing its negative and destructive spiral.

Mediators provide important help and support for the small but critical shifts by each party, from weakness to strength and from self-absorption to understanding. As suggested in Jim and Susan's comments, and as illustrated in depth in the case study in Chapters Four and Five, they do this by using their skills both to highlight the opportunities for shifts that surface in the parties' own conversation and to support the parties' efforts to utilize them. Figure 2.2 de-

scribes the potential effects of the mediation process on conflict interaction and the transformation and regeneration of the human interaction between the parties, even as the conflict continues to unfold. The figure as a whole reflects Susan's and Jim's descriptions of their experience of both the original spiral into destructive conflict and the regeneration of positive interaction through the mediation process.

In this picture, the mediator stands, as it were, at the bottom of the figure, offering specific forms of support that help the parties make empowerment and recognition shifts, when and as they choose, and thereby change the quality of their conflict interaction. This is perhaps the central claim of the transformative theory—that mediators' interventions can help parties transform their conflict interaction. And like the other elements of the theory, there is research to support it (Antes, Folger, and Della Noce, 2001; Moen and others, 2001).

## Mediation as Conflict Transformation: Definitions and Guiding Principles

The previous discussion brings us to the definition of mediation itself, and the mediator's role, in the transformative model. Both of these definitions differ markedly from the normal definitions found in training materials and practice literature—in which mediation is usually defined as a process in which a neutral third party helps the parties to reach a mutually acceptable resolution of some or all of the issues in dispute, and the mediator's role is defined as establishing ground rules, defining issues, establishing an agenda, generating options, and ultimately persuading the parties to accept terms of agreement (Stulberg, 1981; Alfini and others, 2001; Moore, 2003; Folberg and Taylor, 1984).

By contrast, in the transformative model

• Mediation is defined as a process in which a third party works with parties in conflict to help them 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.

- The mediator's role is to help the parties make positive interactional shifts (empowerment and recognition shifts) by supporting the exercise of their capacities for strength and responsiveness, through their deliberation, decision making, communication, perspective taking, and other party activities.

- The mediator's primary goals are (1) to support empowerment shifts, by supporting—but never supplanting—each party's deliberation and decision making, at every point in the session where choices arise (regarding either process or outcome) and (2) to support recognition shifts, by encouraging and supporting—but never forcing—each party's freely chosen efforts to achieve new understandings of the other's perspective.

Specific practices tied to these definitions and goals are discussed in connection with the case study in Chapters Four and Five. How-

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Separating content and process is, in practice, impossible. The distinction between content and process is not at all like the relationship between setting the table and preparing the food. It is more like the relationship between how food is prepared and the way it ultimately tastes. Choices about frying, baking or micro-waving have a direct impact on the texture and taste of the food. Similarly, process and content are intertwined—the choices made about process have a direct and inevitable influence on the way conflict unfolds. . . . The decisions a mediator might make about process at the beginning of a session have direct influence over how the conflict is likely to unfold at that moment and throughout the entire session [Folger, 2001, p. 57].

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ever, it is important to introduce here a few important principles that should guide the mediator in supporting empowerment and recognition shifts—all of which grow out of a proper understanding of the dynamics through which these shifts occur.

First, these are shifts that the parties, and the parties alone, can make. No mediator can "get" parties to shift out of weakness or self-absorption, nor should he try. Parties gain strength and openness by making decisions by and for themselves, in their own way and at their own pace. A mediator who tries to "get" shifts to happen actually impedes this process by removing control of the interaction from the parties' hands. In other words, this mediator violates the defined goal of supporting empowerment by *supplanting* party decision making.

Second, the mediator should expect that parties do not normally begin to shift out of self-absorption until they have first shifted out of weakness and gained greater strength in some degree. Simply put, people are unlikely to extend themselves to others when they are still feeling vulnerable and unstable. Empowerment shifts are therefore usually the first to occur, as the desire and capacity for strength reasserts itself, and supporting them is where the mediator's help is likely to be needed first. When such shifts do occur, however, they are often followed quickly by recognition shifts, as the desire and capacity for connection reasserts itself. Thus gains in strength often lead directly and quickly to gains in responsiveness. This dynamic is clearly visible in both examples of conflict transformation discussed in this chapter—Jim and Susan's family business case and the highway accident story. In each, interactional change begins with a party calming down, getting clear, and thus regaining strength; with this renewed strength, the party then begins to open up to a different view of the other. This pattern is very common in the dynamic that unfolds in a transformative mediation session.

Add this into our conceptual picture of conflict transformation: in the graphic representation of conflict change in Figure 2.2, one might draw a third arrow moving diagonally back from "strength"

to "self-absorption," so that together with the "empowerment" and "recognition" arrows, it forms a "Z" across the figure. The diagonal represents the dynamic of the empowerment shift prompting a recognition shift, which is the full meaning of the virtuous circle discussed earlier.

Third, even though there is likely to be a dynamic interplay of empowerment and recognition, the move toward conflict transformation is unlikely to be smooth and even. Rather, empowerment and recognition shifts are often followed by retreats back into weakness and self-absorption, as the interaction reaches new or deeper levels; and the retreats are then followed by new shifts into strength and openness, and so on. In pursuing the goal of supporting shifts, the mediator has to be prepared for this back and forth, in order to follow along and be ready to provide support for new shifts as the opportunities for them arise. Ultimately, the cycling shifts and retreats tend to move forward, and the overall interaction changes in quality from negative to positive—but great patience is required of the mediator in *allowing* that movement rather than trying to "move" the parties forward.

Fourth, even though the mediator's job is to support empowerment and recognition shifts, the transformative model does not ignore the significance of resolving specific issues. Rather, it assumes that if mediators do the job just described, the parties themselves will very likely make positive changes in their interaction and find acceptable terms of resolution for themselves where such terms genuinely exist. Consider the strong logic of this claim: if empowerment and recognition shifts occur, and as a result the parties are interacting with clarity and confidence in themselves (strength) and with openness and understanding toward each other (responsiveness), the likelihood is very high that they will succeed in finding and agreeing on solutions to specific problems, without the need for the mediator to do that for them. More important, they will have reversed the negative conflict spiral and will have begun to reestab-

lish a positive mode of interaction that allows them to move forward on a different footing, both while and after specific issues are resolved and even if they cannot be resolved. Research on transformative mediation has shown that it can and does produce both of these impacts—resolution of specific issues and, even more important, interactional change—just as the theory predicts (Antes, Folger, and Della Noce, 2001; Intrater and Gann, 2001; Bingham and Nabatchi, 2001; Bingham, 2003).

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A study of mediation cases that were conducted at the U.S. Postal Service REDRESS program documented the changes that can occur when conflict is transformed through mediation:

The manner in which participants express themselves changes from strong emotion to calm, from defensiveness to openness, and from speaking about or at the other party to interacting with the party.

Participants interact more confidently and competently as the mediation progresses.

Interactions between participants that are negative and difficult often lead to discussions that are positive and productive.

Participants establish or reestablish personal connections with one another.

Participants gain new understandings during the mediation about the other party and their actions.

Participants gain new understandings during the mediation about the situation.

> Participants gain new understandings during the mediation about themselves and their own actions.
>
> Discussion of a specific incident often leads participants to talk about larger issues that are significant to their relationship and the workplace [Antes, Folger, and Della Noce, 2001].

Finally, it is important to point out that to focus on and successfully pursue the goal of supporting interactional shifts, two fundamental things are required of the mediator (apart from various specific skills to be discussed in Chapters Four and Five). The first requirement is that the mediator never lose sight of the overall point of his or her mission: to help the parties transform their conflict interaction from destructive and demonizing to positive and humanizing. Maintaining this clear perspective is not all that easy in a professional culture that generally views attainment of agreement or settlement as all important. One thing that can help is to have a firm mental anchor that keeps the mediator on course, and our suggestion is that the picture of conflict transformation presented in Figure 2.2 can be one such anchor. Holding that picture in mind can be a great help in keeping on task.

The other requirement is a deep acceptance of the premises about human motivation and capacity that constitute the ultimate foundation of the transformative theory. It will be very difficult for a mediator to stop trying to get the parties to make shifts, unless the mediator is firmly convinced that doing so is not only impossible but *unnecessary*—because the parties have both the desire and the capacity to make those shifts for themselves. Indeed certain hallmarks of transformative practice show how a transformative mediator's approach reflects the premises about human nature that underlie the model, including these: leaving responsibility for outcomes with the parties, refusing to be judgmental about the parties'

views and decisions, and taking an optimistic view of the parties' competence and motives (Folger and Bush, 1996).

Holding in mind clearly both the picture of the conflict transformation mission and the premises about human nature that underlie it, the mediator can steer clear of a few serious missteps that are easy to make. First, she is reminded that empowerment is independent of any particular outcome of the mediation. If a party has used the session to collect herself, examine options, deliberate, and decide on a course of action, significant empowerment shifts have occurred, regardless of the outcome. Whether the outcome is a settlement that the mediator finds fair and optimal or unfair or even stupid, or a decision not to settle at all, the goal of supporting empowerment shifts has been achieved. And as a result, the party has gained increased strength of self from the process of self-awareness and self-determination enacted in the mediation session.

So even if a mediator is tempted to think, "Perhaps steering the party to what I know is a better outcome is really more empowering," the clear understanding of empowerment as a shift from weakness to strength reminds the mediator that even a "poor outcome" produced by the party's own process of reflection and choice strengthens the self more than a "good outcome" induced by the mediator's directiveness or imposition. That is, such "good outcomes" do not engender strength of self, unless accompanied by the process of empowerment. Solving problems *for* parties is not transformative mediation, because it fails to support—and probably undermines—genuine party empowerment. It is the concrete steps toward strengthening the self within the session that constitute empowerment, not the nature of the outcome or solution.

In addition, we put "good outcome" in quotation marks in the foregoing discussion, because even beyond the empowerment effects of the process, the quality of an outcome must itself be measured not only by its material terms but also by the process through which it was reached. Outcomes that are reached as a result of party shifts toward greater clarity, confidence, openness, and understanding are

likely to have more meaning and significance for parties than out-comes generated by mediator directiveness, however well-meant. Early research on mediation's impacts supported this conclusion (McEwen and Maiman, 1984), and there is no reason to suspect that this is not still the case—a point discussed further in Chapter Six.

Similarly, clarity about mission, premises, and goals can help avoid missteps in supporting recognition. As discussed earlier, recognition is not recognition at all unless it is freely given. It is the *decision* of the party to expand his focus from self alone to include the other that constitutes the recognition shift. If that decision is itself the result of pressure, cajoling, or moralizing, it represents nothing but self-preser-vation. Forced recognition, in short, is a contradiction in terms. When parties have made only slight recognition shifts, the mediator may be tempted to push for more, especially if he thinks he can get the party to see things differently. Yet when force is applied, recogni-tion vanishes altogether. The key is for the mediator to understand that the goal of supporting recognition shifts is fulfilled through what-ever degree of recognition the parties are genuinely willing to give.

This actually points back to the critical point made earlier about the interplay between the two kinds of movement: recognition shifts are almost always based on empowerment shifts. Until the point is reached where parties are consciously choosing their steps, recognition is unlikely to occur or to be genuine or meaningful.

## Clarifications

Some of the terms central to this chapter's discussion of the trans-formative framework deserve additional clarification so that the framework is understood fully and accurately.

### Conflict Transformation and Moral Connection

At various points in this chapter and in Chapter One, we have made reference to a *moral vision* of society, the human *moral sense*, and the sense of *moral connection*, in explaining the value of con-

flict transformation. In other places we have similarly used the terms *moral growth* and *moral development* (Bush, 1989–1990; Folger and Bush, 1994). Our use of this terminology might be taken by some readers as suggesting that the mediator's role in the transformative model is to improve the parties' moral character. However, it should be clear from the overall description of the theory in this chapter that this is not at all the case. We have written elsewhere about this point, clarifying the difference between mediation's potential effects and the principles by which it should be conducted:

> Some take the view that the transformative theory of mediation . . . encourages mediators or other intervenors to actively engage in efforts to "transform people's char-acter." This misinterpretation confuses and conflates the transformative theory's claims about mediation's poten-tial *effects* with the theory's suggestions about how the mediation process can and should be *conducted*. . . . Fur-thering party empowerment is one of the very corner-stones of this approach to practice. If third parties were to consciously try to "transform" disputants, or pursue any "agenda" beyond the parties' own wishes, this would directly negate the goal of empowerment. Attempting to change or transform the parties would be as directive as attempting to construct settlements for them. Clearly, this cannot be (and is not) what the transformative the-ory suggests for practice. . . . The distinction is between the possible effects of mediation and the concrete goals and processes of a transformative approach to practice. As pointed out earlier in this article, if mediators follow an approach that concentrates on the specific *goals and processes of empowerment and recognition*, the experience of the mediation process itself offers the *possibility* of transformative *effects*. The focus of practice is on estab-lishing and sustaining a context which allows parties to

make clear and deliberate choices and to give consideration to other disputants' perspectives if they decide to do so. The third party is not there to *insist* on transformation, but to *assist* in identifying opportunities for empowerment and recognition, and to help the parties respond to those opportunities *as they wish* [Folger and Bush, 1996, p. 277].

Beyond the distinction between the goals of the mediator and the effects of the mediation process, one further clarification may be helpful. Any use of the term *moral* might be read by some as if it referred to certain religious or spiritual qualities that mediators were supposed to inculcate in the parties. This is the inevitable result of the use of a highly charged word in a culture not accustomed to its usage in practical, professional contexts. However, we hope that we have been clear in assigning a very specific meaning to this term, which is entirely consistent with the use of the term by relational thinkers like those referred to in the previous discussion of changing conflict interaction.

Many theorists use terms like *moral development* or *moral discourse* to denote a particular kind of response to the tendencies in human interaction, especially in conflict, toward weakness and self-absorption (Gilligan, 1982; Burns, 2001; MacIntyre, 1981; Sandel, 1982; Etzioni, 1996). In the work of these thinkers, overcoming those tendencies by asserting the capacities for strength and connection is the very essence of what is meant by moral connection or moral discourse (which they often associate with conflict). It is, of course, also what is meant here when discussing changing conflict interaction or conflict transformation, so that for us these terms are different ways of expressing the very same phenomenon. The use of the word moral in this context connotes the balancing of the claims of self and other and the relation of the two—nothing more, nothing less.

### Empowerment and Recognition: What the Terms Do and Do Not Mean

Clarification is also called for regarding the key terms empowerment and recognition, although some of this was also spelled out in the first edition. Mediator goals such as finding good solutions or ensuring fairness, even if they sometimes prove elusive to define and measure in practice, are familiar enough that people can discuss them without worrying that they will be totally misunderstood. Not so for empowerment and recognition. Even though they are based on ideas that have been around for a very long time in the mediation field, the ideas themselves have rarely been presented in succinct and precise form to define concrete objectives for mediation. As a result, it is important to distinguish our use of the concepts and terms empowerment and recognition from other usage with which they might be confused.

Before clarifying what empowerment and recognition do not mean, it is important to add here one very essential clarification of what they *do* mean. As should be clear from the earlier explanation of conflict transformation (and Figure 2.2), empowerment and recognition are not end states or products of the conflict transformation process. They are *dynamic shifts* from one mode of experiencing self or other to a different mode. In fact, we make it a point today to always use the words empowerment and recognition as adjectives attached to the word *shift*. In an *empowerment shift*, the party moves from weakness to greater strength. In a *recognition shift*, the party moves from self-absorption to greater understanding of other. This clarification is important because, as in any process, a mediator wants and needs to know if she is succeeding. Success in transformative mediation is measured by the *delta factor*, the occurrence of shifts and changes in the parties' experience of self and other and, as a result, in the quality of their interaction. In fact, the ability to notice such shifts as they occur is an important skill for a

transformative mediator, because it gives her the confidence that comes from seeing the effects of her interventions. Furthermore research methods are being developed and tested to document the effectiveness of transformative mediation in producing interactional shifts, rather than simply surveying for party satisfaction levels.

Beyond this initial clarification, it is important to distinguish our usage of the primary terms, empowerment and recognition, from other usage. *Empowerment* is a term used currently to mean so many different things that it is important to clarify what we do *not* mean by it. As we are using the term, supporting empowerment does not mean "power balancing" or redistribution of power within the mediation process itself in order to protect weaker parties. In fact, supporting party empowerment is always practiced with both parties. Of course, empowerment shifts by both parties may indeed change the balance of power, if one party starts off with greater self-confidence and self-determinative ability. That, however, is an effect of supporting empowerment and not a conscious mediator objective.

Similarly, supporting party empowerment does not mean controlling or influencing the mediation process so as to produce outcomes that redistribute resources or power outside the process from stronger to weaker parties. It does not mean using the mediation process—and the substantial powers of the mediator to influence how problems are defined and how solutions are chosen—to give more power to those who are members of defined weaker groups. Even though some mediators may in practice see this as their role, we do not endorse it, and it is not what we mean by supporting empowerment.

Finally, supporting empowerment does not mean adding to the strength of either party by becoming an advocate, adviser, or counselor. We acknowledge that the distinction between supporting empowerment and advice giving or advocacy is sometimes difficult to draw in practice (Bernard, Folger, Weingarten, and Zumeta, 1984; Folger and Bernard, 1985; Bush, 1992). Still, supporting empowerment does not require—or involve at all—the mediator's

taking sides, expressing judgments, or being directive, all of which are central aspects of advice giving and advocacy. In fact, supporting party empowerment in a transformative approach to practice requires avoiding all of these behaviors. Therefore, even if there are questions at the borders, the general concept of empowerment remains quite distinct from advice giving and advocacy.

*Recognition*, unlike empowerment, is not a term in wide use, so confusion over language is less likely here. However, a number of concepts common to discussions of mediation and dispute resolution may be confused with recognition in the transformative sense. Most important, a party who makes a recognition shift gives recognition *to* the other, rather than getting it *from* the other. Beyond this, several other distinctions are important.

Recognition, first of all, does not mean reconciliation. Of course, a recognition shift may sometimes go so far as to bring about reconciliation. But this need not happen for the recognition shift to be significant. This distinction is very important, because if reconciliation is the goal, it is very easy to argue that it is simply unattainable in all but a tiny fraction of cases. Although that may be true, it is certainly not true for the movement of recognition. A recognition shift is a much more modest, practical, and attainable event. In effect, an increase in understanding or openness to the other party, in any degree, constitutes a recognition shift.

At the other extreme, recognition does not mean the mere realization of one's enlightened self-interest, the experience of interdependence in instrumental terms. When one party sees how she can get more of what she needs by giving the other some of what he needs, this is a fundamentally self-referential awareness and experience. In it, the consideration of the other stems essentially from concern with oneself. The hallmark of a recognition shift is *letting go*—however briefly or partially—of one's focus on self and becoming interested in the perspective of the other party as such, concerned about the situation of the other as a fellow human being, not as an instrument for fulfilling one's own needs.

This discussion brings up a broader point. The phenomena of empowerment and recognition are considered important today in many fields outside mediation. Management experts in both the private and public sectors stress participatory measures that empower individual employees and citizens as the key to effective enterprises (Osborne and Gaebler, 1992; Rosen and Berger, 1992). Educators see students' achievement of confidence and self-reliance, not just acquisition of knowledge or skills, as a key objective of the teaching process (Bouman, 1991). Political theorists observe that in order for democratic institutions to be healthy, individual citizens must develop the power to define and address their own needs (Lappé and DuBois, 1994). Public health professionals document the importance in treating serious illness of fostering empathetic recognition through patient support groups (Spiegel, 1993). Social theorists argue that connection and empathy in everyday life are crucial in maintaining healthy social institutions (Putnam, 2000; Kohn, 1990; Bellah and others, 1991; Scheff, 1990). In sum, there is widespread acknowledgment across many fields that empowerment and recognition shifts are concrete and important events. This acknowledgment reinforces our suggestion that they deserve greater attention in the mediation process, where there are such rich opportunities to support them.

## The Value of Conflict Transformation: Private and Public

A final and important clarification concerns the value or benefits associated with conflict transformation. Various views of the benefits of mediation are found in the literature, and discussion of private and public benefits of the process generally mixes the two together, not differentiating between them. Questions have been raised about why disputing parties themselves—as opposed to public policymakers—would find this approach to mediation useful. We hope that most of those questions have been implicitly answered by

the discussion of this chapter, and the value of conflict transformation was also discussed at the end of Chapter One. It is nevertheless useful here to "unpack" the transformative view of mediation's benefits, separating private from public as clearly as possible.

Disputing parties themselves want and value conflict transformation and regard it as a benefit, because they want to escape the negative personal impacts of destructive conflict interaction, and they want to reestablish the positive experience of competence and connection that is found in constructive conflict interaction. Transformative theory posits that the greatest benefit mediation offers to parties in conflict is that it helps them conduct conflict itself in a different way. It helps people find and take the small but meaningful opportunities for empowerment and recognition shifts that arise. It supports the virtuous circle of personal empowerment and interpersonal recognition that de-escalates and "de-embitters" conflict, so that even if conflict continues, it is no longer dehumanizing and demonizing. It helps turn conflict interaction away from alienation, from both self and other, toward a renewed connection to both, restoring strength of self and understanding of other, even while conflict continues. Transformative mediation thus helps disputing parties move on with their lives, with the capacity for living those lives restored—including a sense of their own competence as well as confidence in their ability to connect to others.

These claims all relate to private benefits that according to transformative theory are sought and valued by disputing parties themselves. In fact, there are two kinds of private benefit involved—short term and long term. The short-term benefits relate to the specific situation that brought the parties to mediation. In that situation, conflict transformation allows the parties to reestablish their sense of self-confidence and common humanity, thereby allowing the parties to reach closure on the matter and move forward, with or without specific issues having been resolved in mediation. At the same time, when conflict transformation occurs—because empowerment and recognition shifts were made during mediation—there may also be

long-term benefits to the parties. These are what some have called *upstream effects* of conflict transformation: impacts of the mediation experience that carry over into future situations (Hallberlin, 2001). For example, from having made empowerment shifts from confusion to clarity in mediation, parties may carry forward an increased confidence in their ability to clarify and express their views in future situations. Or having made recognition shifts from suspicion to greater openness, parties may be more willing and able, in other situations, to withhold judgment and give others the benefit of the doubt. The result is that they are more likely to avoid the negative conflict spiral in the future or to have greater ability to reverse it on their own—important long-term benefits of mediation for the parties themselves. In the REDRESS Mediation Program at the U.S. Postal Service, the likelihood of such upstream benefits for both managers and employees was one significant reason for the decision to use the transformative model, and research is under way to study these effects (Bingham, 2003).

In addition to these benefits to the parties themselves, conflict transformation has important public benefits, effects that advance the goals of society generally. Identifying these distinct public benefits is especially important in formulating public policy on mediation. If all mediation's benefits are private, there is no value in establishing public policies to promote or support its use. Private users can be counted on to make their own decisions about whether to use the process, based on its benefits to them. However, if using mediation creates value for society, public policy should encourage disputants to use mediation even when they might not do so for the private benefit alone. Indeed the widespread adoption of court-ordered mediation is one example of the kind of policy that can *only* be justified by mediation's public benefits. In general, discussions of the public benefits of mediation have focused on its value in saving public resources, especially court resources, when cases are settled (Galanter, 1985). Specifically, mediation is seen as reducing court backlogs and facilitating speedier disposition of cases, thereby allow-

ing more efficient use of limited public resources, as noted in Chapter One.

The public value of conflict transformation is overlooked in most discussions of the public benefits of mediation. The reason for this omission may be the fact that the Transformation Story itself received less attention until recently than other views of the process. However, the public benefits of conflict transformation are quite important, particularly in debates over the value of mediation in comparison with the formal legal process, debates that were quite intense some years ago and have resurfaced more recently (Bush, 1989–1990; Hensler, 2002). Indeed, some fifteen years ago, one of the authors of this volume explained the public benefits of mediation—beyond systemic efficiency—in the following terms:

> Parties to mediation [are affected] in two ways: in terms of their level of self-awareness and capacity for self-determination, and in terms of their level of other-awareness and their capacity for consideration and respect for others. And *that itself* is the public value that mediation promotes. In other words, going through mediation [is] for both parties a direct education and growth experience, as to self-determination on the one hand and consideration for others on the other. . . . Simply put, it is the value of providing a moral and political education for citizens, in responsibility for themselves and respect for others. In a democracy, that must be considered a crucial public value and it must be considered a public function. . . . The experience of the mediation process and the kind of results it produces serve the public value of civic education in self-determination and respect for others. . . . Let me clarify that I'm not talking about a religious function here—unless it is what has been called the civil religion of the traditional civic virtues that is now being rediscovered in many quarters [Bush, 1989–1990, pp. 14–17].

Of course, the public benefits described here are benefits of conflict transformation. That is, they are the results of experiencing empowerment and recognition shifts within a mediation process aimed at supporting these shifts, thereby supporting conflict transformation. In our contemporary society, citizens increasingly suffer from learned dependency—whether on experts, on institutions, on addictive substances, or otherwise—and from mutual alienation and mistrust, especially along lines of race, gender, and class. The resulting civic weakness and division threaten the very fabric of our society (Etzioni, 1996; Handler, 1988). Personal experiences that reinforce the civic virtues of self-determination and mutual consideration are therefore of enormous public value—and this is precisely what the process of conflict transformation provides. This is the public benefit of conflict transformation, and it is critical to discussions of the public value of mediation, in comparison with the formal legal process or other alternative dispute resolution (ADR) processes.

Interestingly, the efficiency arguments for mediation's public value have long been given great weight, yet it increasingly appears that those arguments have been overstated and that they lack evidentiary support. That is, according to the most recent and thorough research, the use of mediation actually has little impact in reducing the time and cost of case disposition in the legal system (Hensler, 2002). If that is so, then what justifies public policy ordering—or even encouraging—parties to use mediation? This question has resurfaced recently with considerable force, and it cannot be answered except by pointing to public benefits of mediation beyond efficiency. Those are the very benefits just discussed, and they are all connected to conflict transformation, and to the practice of mediation as a transformative process.

Nevertheless this clarification is not intended as an argument that *only* the conflict transformation benefits of mediation matter—whether to private parties or to public policymakers. Parties may indeed be interested in other kinds of private benefits, especially

those related to expeditious settlement of the dispute on favorable terms, and public decision makers may also be drawn to mediation for other reasons, including efficiency. The point here is rather that conflict transformation should also be seen as an important benefit of mediation, sought and valued by both private parties and policymakers charged with furthering public, societal interests. The question of how to accommodate possible differences about private and public benefits is taken up in depth in Chapter Seven.

## The Promise of Mediation as a Transformative Process

The transformative view of what mediation can and should offer to parties and to the public, as demonstrated by this chapter, is both practically and theoretically based. From the insights of psychology, communication, philosophy, and other fields, we have understood why conflict transformation matters to people and how it can theoretically occur through mediation. From the insights of political and social theory, we have learned why conflict transformation benefits not only private parties but society as a whole. From the parties, groups, and mediators that we have worked with and studied over many years, we have learned that this theoretical promise of what mediation can offer is real. It is not a magical vision, nor naive; its belief in human strength and decency carries the deepest truth within it. The promise that mediation offers for transforming conflict interaction is real, because skilled mediators can support the parties' own work, create a space for that work to go on, and—most important—stay out of the parties' way. Transformative mediators allow and trust people to find their own way through their conflict—and even more important—find themselves and each other, discovering and revealing the strength and understanding within themselves.

In Chapter Three, we offer a wide range of examples of how the transformative theory of conflict and mediation has taken hold and

affected the field in the decade since it was articulated in the first edition of this book—because of the increasing recognition of the value of conflict transformation. Then, in Chapters Four and Five, we illustrate and discuss many of the specific practices that transformative mediators use to do this, by presenting a case study of a full mediation session, with accompanying commentary.

3

# Gaining Sight of the Goal of Transformation

The transformative vision of conflict and mediation has existed since the field of dispute resolution began expanding in the late 1960s and early 1970s. As noted, some early supporters of mediation were proponents of the Transformation Story and sought to practice in ways that were consistent with its goals, even without a fully articulated practice framework. But these practitioners were relatively few in number, and their voices within the field were somewhat muted because transformative practice was not employed widely, nor was it supported by many mainstream mediation programs, which sought only efficient case management. As suggested in the first edition of *The Promise of Mediation* a decade ago, the prevailing and most widely adopted forms of practice were aligned with the Satisfaction Story. Research demonstrated that most practice tended to be directive and settlement driven; and as such it had little or no emphasis on the transformation of the parties' interaction or the core elements of empowerment and recognition, the shifts that produce such transformation.

But where do things stand now? How much has changed over the past ten years? Are the voices supporting the transformation story louder and more articulate? Are there signs in the mainstream of theory and practice that point to greater support for transformative mediation? Is the institutional climate within traditional or nontraditional arenas of practice more receptive to the premises