<center>CHAPTER 3</center>

Taking Self-Determination Seriously: The Centrality of Empowerment in Transformative Mediation

<center>Robert A. Baruch Bush</center>

"Empowerment and Recognition": Articulating the Values of Mediation

Both of the "founders" of transformative mediation – this chapter's author and his colleague and *Promise of Mediation*[65] co-author, Dr. Joseph Folger – began their work in the mediation field as practitioners rather than scholars. Both were deeply involved with community mediation centers in the late 1970s when such centers were just beginning to function across the country.[66]   Each was an active mediator of the kinds of cases that such centers typically handle, and their experiences shaped their sense of the values at the heart of the mediation process. However, as was the case with many practitioners, that sense of values was inchoate and not clearly articulated. It was not for another decade or so that the articulation began to emerge.

Two early publications captured how each of the "founders" began to articulate the values of mediation. In 1985, Folger co-authored a research study that documented how a majority of practicing mediators shaped, directed, and even "overruled" party choices on outcome in divorce mediation.[67] The study implicitly expressed Folger's sense that the value of party choice was central to mediation, and that it was being threatened by the directiveness that characterized the practice of a majority of mediators. Only a few years later, Bush wrote a critique of then-existing mediator ethics codes showing that, although party self-determination was recognized as a core value of mediation, many ethics codes contained provisions that subordinated that value to others when value conflicts arose.[68] Bush challenged this practice, arguing that according to the weight of mediation authorities, there were two primary values at the heart of mediation, and that ethical standards should always place those values first. Bush described those values

as party self-determination, or "empowerment," and inter-party understanding, or "recognition."[69] This was the first time those terms were used to define an ethic of mediation, ultimately to become the basis of the transformative model.

My articulation of these concepts in published work also stemmed from my experiences as a mediation practitioner, first in the San Francisco center and then in a mediation clinic at Hofstra Law School in the mid-1980s.[70] Reflecting on those experiences led to the realization that the truly "successful" cases were the ones where, as Lon Fuller had put it nearly twenty years earlier, mediation was able to "reorient the parties to each other … by helping them to achieve a new and shared perception that redirects their attitudes and dispositions toward one another."[71] In a dispute between elderly quiet homeowners and noisy worshippers in a San Francisco neighborhood, the success was the realization on both sides that the other was not the "demon" they had imagined. In a "dog bite" case, in which a young fellow's Labrador mangled the tiny Pekinese of an older female neighbor, the success was the way in which he understood her sorrow, she understood his regret, and both understood each other's distress. The success was not so much the agreement achieved, but the moment the "light went on" for each party, as they realized the other's common humanity.

The obvious value identified in the above cases is what transformative theory calls the value of recognition – the shift in each party's view of the other. Less obvious in the examples, but equally important, is the value of empowerment – meaning that each party came to their change in perspective by their own self-determined choice – the same value underlying Folger's critique of directiveness in divorce mediation. Thus, Folger and Bush found in each other kindred spirits committed to articulating a view of mediation that stressed its capacity for supporting empowerment and recognition, rather than its capacity for generating settlements, creating value, or offering protection against power imbalances.[72]

To make this view salient to working mediators, we had to articulate and advocate an alternative view of conflict itself, not just mediation. As long as conflicts were seen primarily as problems of frustrated

needs, or threats to the vulnerable, the values of empowerment and recognition would be easy to overlook. Only if conflict itself were understood differently – as a crisis in human interaction causing the deterioration of each party's sense of competency and connection to one another – would it make sense that a process of addressing conflict would have to address that crisis of disempowerment and alienation. Then the capacity of mediation to support empowerment and recognition would gain prominence for practitioners and theorists alike. Necessity is the mother of invention, and thus was born the transformative theory of conflict, articulated for the first time in *The Promise of Mediation*.[73] The book resonated with many and put empowerment and recognition on the map of the field.

This short history sets the stage for the focus of this essay – the waxing and waning of attention to the empowerment shift, in particular, since the transformative model was first introduced.

Empowerment, Recognition, and "Pushiness": A Self-Critique of Early "Pictures" of Transformative Practice

From today's vantage point, it is clear that the early writing on empowerment and recognition contained significant elements of contradiction – particularly regarding party empowerment and the practices needed to support it. Thus, in the same 1989 article that first articulated the empowerment concept, I argued that the "empowerment-and-recognition" conception of the mediator's role requires a "pushy mediator," who will not be passive but will push the parties to make informed and deliberate decisions and to reexamine negative views of each other.[74] In other words, supporting empowerment and recognition might well require *pushing* the parties to think *for* themselves and *about* each other. Looking back, this obviously involves a contradiction, one that was not evident to me at that early stage. The kind of pushiness being called for would, in itself, undermine party self-determination in many cases – by insisting that "the parties consider and understand fully the consequences of either outcome, before they decide for or against agreement," and by pushing "for each party to hear and understand the other's position … and if possible somehow express a measure of recognition of the other party's situation."[75]

By the time the first edition of *Promise of Mediation*[76] (*Promise I*) was published in 1994, the picture seemed to be clearer. For example, a "successful mediation," according to *Promise I* is one in which, "the parties have been helped to make informed, deliberate and free choices about how to proceed at every decision point" and "helped to give recognition whenever it was their decision to do so."[77] This emphasis on "helping" rather than "pushing" the parties to make informed choices and to extend (or refuse) recognition is much more consistent with the primary value of party self-determination that underlies the transformative model.[78] So is the clear statement that "the definition of empowerment per se 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" – or "pushiness."[79] It appears that the initial contradiction between "pushiness" and empowerment has been resolved in favor of empowerment.

However, the picture was actually not yet so clear. Elsewhere in *Promise I,* the authors summarize the three main patterns of transformative mediation practice as "microfocusing on parties' contributions," "encouraging deliberation and choice making" and "encouraging perspective taking."[80] In spelling out the latter two patterns, they explain that: transformative mediators "try to clarify parties' choices at all key junctures and encourage parties to reflect and deliberate with full awareness of their options, goals and resources;" and "[t]o aid perspective-taking, mediators reinterpret, translate, and reframe parties' statements" and "ask parties to consider the significance of such reformulations, pointing out opportunities for recognition without forcing them."[81] These two patterns could, depending on how they are carried out, involve the kind of "pushiness" I had advocated five years earlier. In fact, in the case study used in *Promise I* to illustrate transformative practice as then conceived, the mediator's practices seem to do just that – and the author of this chapter was the mediator in that case.

In the Landlord-Tenant case of *Promise I*, the session began with a fairly standard "opening statement" in which the mediator "*explained*

the ground rules for the session."[82] When one party interrupted the other, the mediator "*turned to [Tenant] and reminded her* that she would have ample time to respond and to say everything she wanted to but that *it would be easier for him to understand* the situation and help if each person took turns … *according to the ground rules* mentioned earlier."[83] Later in the session, after several other party exchanges and mediator interventions, the mediator "stepped in and said that, if neither party objected, *he wanted to speak to each privately*."[84] In these instances and many others in the session, the mediator's interventions preempted party choices. Of course, the choices preempted were choices about process, not outcome. But in comparison to the view of "supporting party decisionmaking" set forth in more recent explanations of transformative mediation, [85] the practices of the "transformative mediator" of *Promise I* could certainly be called "pushy" rather than supportive of party empowerment.

Interestingly, although the mediator of *Promise I* engaged in directive interventions of the kinds described above, he didn't hesitate to support one party's last-minute doubts about an emergent settlement when questions arose – by asking the tenant "whether she felt confident about this or whether she wanted to think about it some more,"[86] and by refraining from pushing either her or the landlord into the deal under discussion, despite the fact that the parties then backed away and left without an agreement. In other words, his directiveness was limited to *process issues* and did not translate into directiveness on *outcome*, and the mediator was ready and willing to sacrifice a settlement agreement to support party self-determination. There is, nevertheless, a sense in which the directiveness of the mediator in *Promise I* went beyond process issues. That was with regard to his effort to "support" inter-party recognition.

Beginning in his caucuses with the parties, the transformative mediator of *Promise I* focused on interventions that exemplify the second pattern referred to above: "to aid perspective-taking, mediators reinterpret, translate, and reframe parties' statements" and "ask parties to consider the significance of such reformulations."[87] And the case study shows a transformative mediator being quite

"pushy" in doing so. For example, in caucus with the tenant, the mediator asked how her once-friendly relationship with the landlord had soured, and she answered that the landlord had pressed her hard for the rent even though she had obviously been in the midst of some "personal problems … that pulled her way down."[88] After sympathizing, the mediator asked her

> *whether she thought it was possible that the reason [the landlord pressed by] continuing to call her was not that he didn't trust her but that he honestly didn't and couldn't understand how serious her situation was, because he didn't have enough information and couldn't get it from her or anyone else. After all, she hadn't told him when the problems started, and she refused to talk to him when he first inquired.[89]*

The mediator then continued to ask

> *whether [she] thought that perhaps, since it was wintertime, [the landlord] felt pressed himself to find out about the rent, because his bills were higher, so he couldn't be as flexible as he might have wanted to be.[90]*

Promise I describes these interventions as "offering possible reinterpretations to evoke recognition,"[91] and the explanatory comment is:

> *Without insisting on the alternative views he offers, the mediator asks [tenant] to consider whether there are plausible alternative explanations for [landlord's] actions…. The mediator's goal is not to convince the tenant that she was wrong about her interpretations of [landlord's] behavior, but to indicate that there are possible other ways of understanding these past events which might be more sympathetic…. [She] is made aware that, if she chooses, she can let herself explore and question assumptions she holds and decide to take a more sympathetic view of [landlord].[92]*

Therefore, for the sake of trying to "evoke recognition," it seems clear that this mediator was "pushing" the tenant quite a bit to consider things that she hadn't thought of – and probably wouldn't have – without the mediator's reconstructions. He was in effect telling her that she *should* entertain reconsiderations like these, without her having come to such insights on her own. In effect, he was employing a measure of directiveness for the sake of producing a recognition shift. In *Promise I*, this is offered as a good example of how transformative practice tries to support recognition shifts. The same kind of intervention is repeated several times, with each party separately and both together, through the latter part of this mediation session.[93]

The point of this self-critique is this: Despite a clear theoretical commitment to the value of party self-determination and empowerment, the concrete examples offered in *Promise I* as transformative interventions actually involved a significant degree of mediator "pushing" and directiveness. And the strongest motive for this directiveness seems to have been the goal of "evoking recognition." To put it differently, as between empowerment and recognition, *recognition* emerged as the higher value in actual practice, so that evoking recognition would justify directive interventions, even though they may have diluted party self-determination or empowerment. This is quite inconsistent with the theoretical statement of *Promise I*, that:

> *[R]ecognition 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…. If that decision is itself the result of pressure, cajoling, or moralizing, it represents nothing but self-preservation. Forced recognition is a contradiction in terms…. Another way of saying this, which begins to explain the relationship between the two objectives of transformative mediation, is that recognition must be based on empowerment.* [94]

It is hard today to read the Landlord-Tenant case without seeing that there is a good deal of "pressure and cajoling," if not moralizing, in

the mediator's interventions recorded in that case study. Thus, while the stated theory claimed that empowerment had to be the foundation for recognition, the examples of practice displayed a willingness to move away from empowerment in order to evoke recognition.[95]

Over the course of the past decade's work on transformative mediation, a good deal has been done to place empowerment in its proper place at the center of practice, as discussed below. But the first question is: Why did the value of recognition seemingly override the value of empowerment, in the practice of transformative mediation as originally enacted – especially since the theory behind that practice put the values in precisely the opposite order?

Other Allures: Why Empowerment got Overshadowed

Answering this question involves looking at the larger context of the mediation field and its history prior to the advent of transformative mediation. From the earliest years of the "modern" mediation field, the principle of party self-determination was seen and stated as the foundation of the mediation process.[96] As one leading mediation scholar put it, "the overriding feature and value of mediation is that it is a consensual process that seeks self-determined resolutions" and thus frees the parties from reliance on or subjection to outside "higher authorities," legal or otherwise.[97] Indeed, this core principle of party self-determination was seen as the distinguishing feature of mediation, by comparison to other third-party processes like arbitration or adjudication, in which the third party was the authoritative decision maker.[98] Only in mediation could disputing parties have the help of a third party who would help them make their own decisions, rather than making decisions for them. Even in mediator ethical codes, the principle of party self-determination has been enshrined as a guiding principle from very early on.[99]

Nevertheless, despite its supposedly central role, the value of self-determination has always faced competition from other values in the world of mediation. Perhaps the most persistent and effective competitor has been the value of justice, or protection of vulnerable parties. One classic example is the "debate" in 1981 between

Joseph Stulberg, a leading mediator and trainer, and Lawrence Susskind, a prominent environmental and public policy mediator, about the mediator's "accountability" for the fairness of settlements. [100] In effect, the tension was between the value of self-determination and the value of justice or protection, and there was substantial disagreement about which value was superior. The problem of vulnerability to injustice, and need for protection, is by no means limited to environmental disputes. It is arguably endemic in mediated conflicts, and certainly extends to conflicts involving divorcing couples (with or without children), employers and employees, school systems and parents, patients and hospitals, and many others where mediation is widely used. As a result, mediators and theorists in all these domains have regularly argued for practices that limit self determination in order to protect vulnerable parties and avoid injustice.[101] Indeed, in the late 1980s, I conducted a research study of mediator ethical dilemmas which found that the most common dilemma identified by mediators was: What should be done when upholding self-determination would potentially place a vulnerable party at risk?[102]

Another value that has long competed with self-determination, for the minds and hearts of mediators, is the value of relationship or reconciliation. This competition has probably been most obvious in the arena of restorative justice and victim-offender mediation, where a primary goal of the process is to promote understanding and empathy between the parties, and thereby heal or restore the relationship or community that was damaged by the original offense. [103] The same value of promoting understanding and empathy also underlies much practice and theory in the area of divorce and family mediation.[104] And this value plays a prominent role in several emerging new theories of mediation, including "insight mediation"[105] and "understanding-based mediation."[106] For many theorists and practitioners, it is seen as appropriate to engage in practices that may limit party self-determination, in order to promote greater understanding, empathy, and improved relationships.

In sum, from the early days of the mediation field, at least two other powerful and important values have worked to "lure" mediators away from their ostensible prior commitment to party self-determination – the value of justice/protection and the value of relationship/reconciliation. Indeed, in some streams of mediation practice and theory, such as "narrative mediation," it seems as if both values are at work as competitors to self-determination.[107]

This context helps to answer the question posed above: Why did early pictures of transformative practice display a directiveness that is inconsistent with party empowerment? The answer is that the lure of other values was difficult to identify and resist, even as transformative practice was being articulated on different grounds. In particular, for early transformative mediators the alluring competitor was the value of promoting understanding, empathy or relationship – in the terms of transformative theory, the value of recognition. And the lure of this value worked to overpower the supposedly more basic value of empowerment. As described earlier, the mediator in the Landlord-Tenant case employed directive practices, and did so out of a concern not for ensuring justice or protection, but rather for promoting recognition.[108]

To return to the comments at the beginning of this chapter: for many mediators, the great "successes" were the cases where the parties came to a new understanding of each other.[109] Promoting understanding, empathy and connection between people separated by conflict – what could be more significant?   It is thus understandable that transformative mediation practitioners, including the model's originators, were initially drawn into focusing on recognition and giving less attention to empowerment, despite the fact that this contradicted the basic theory itself. Indeed, as the transformative model grew in popularity, a major reason for this growth was that people were very interested in the recognition shift. The appeal of the transformative model was the possibility that, through using it, parties' attitudes towards each other would change for the better. Mediation would "get" parties to change the way they saw each other, so their relationships and lives would improve – in families, in communities, in the workplace. This was part of what

interested corporate agencies like the United States Postal Service in using transformative mediation for workplace conflict.[110] It seems that it was natural for both the suppliers and the consumers of transformative mediation to implicitly take the view that the recognition shift was the main point, precisely because the recognition value is so alluring. So if recognition tended to displace empowerment in the value hierarchy of transformative practice, one reason was the great allure of the recognition value. Another reason was the unobtrusiveness of the empowerment value itself.

An Unlikely "Star": Why Empowerment got Overlooked

In teaching law students – and mediators – about transformative mediation, my colleagues and I have encountered many challenges. One of the most basic is to find ways to demonstrate that empowerment and recognition shifts are real and important phenomena, occurrences that might actually matter to parties in conflict. One way to do this is to have students reflect on their own life experiences, and to identify instances when one of these "shifts" actually occurred and made a real, positive difference to them. The responses to this exercise have a consistent character: respondents almost always describe recognition shifts. They see these shifts – in conflicts with parents, friends, roommates – as very real and substantial, once they are asked to think about them. By contrast, they almost never identify empowerment shifts in their responses.

However, when I listen to their "recognition shift" stories, there is always an *empowerment shift* embedded in the story, preceding the recognition shift. For example, a student told a story about a "selfish, inconsiderate" spouse who was always late with the car when she needed it to get to school, so she was always late to class; but when she realized that the reason for his lateness was the errands he'd done to make things easier for her at home, her view of him shifted radically. She rightly saw this as a classic example of a recognition shift. But when asked to reflect on what it took her to get to that shift, she slowly saw that, in order to come to her "sudden realization" of a positive view of her spouse, she had to first calm down, get some space for herself, take time to think – all of which

are classic elements of *an empowerment shift* in herself. She saw this when it was pointed out; but she had not noticed it on her own.

This is the second reason why recognition has tended to get more attention than empowerment: Empowerment shifts simply went unnoticed. It is not just that empowerment is *overshadowed* by recognition; it is easily *overlooked* in itself. There are a few important factors that help explain why this has happened. First, as implied above in the account of my students' "shift" stories, empowerment shifts went unnoticed because they are harder to identify. This point can be explained by reference to the discourse studies concept of conversational "markers."[111] Markers are forms of expression, verbal or nonverbal, that signify a development in conversation that is considered important for some reason. As used here, "markers" are expressions in conflict conversation that are signs of a party shift from weakness to strength, or from alienation to connection.[112] Though conflict conversation usually contains both kinds of expressions, the markers of empowerment shifts are typically less obvious than those of recognition shifts. Apologies, statements of changed perspective, even changes in tone of voice and manner of address, are all markers of recognition shifts. These markers are all quite noticeable in a mediated conversation – not only because of the high value placed on recognition, but also because expressions of recognition usually involve a sharp contrast with the tone and substance of the conversation preceding them. Moreover, these expressions are themselves noticeably positive. It is not just that the negative of hostility or suspicion is lessened; rather, the positive of acceptance or understanding appears quite visibly. So these markers stand out, attract our attention, and seem central to mediation "successes."

The markers of empowerment shifts, by contrast, tend to be less dramatic. When a party's statements become less confused and rambling, more focused and articulate, this often comes as a relief to a mediator or observer. But it does not necessarily stand out as a dramatic change – although it is definitely a marker of an empowerment shift. Similarly, when a party's expressions become less hesitant and more confident, or less agitated and more

measured, such changes are markers of empowerment shifts. But these also may attract less attention, both because they are often quite subtle and also because they are noticed as the absence or removal of a negative – less confusion, less agitation, less hesitancy – rather than the occurrence of a positive. The positive appearance of clarity, calm and confidence may simply be subsumed in the dissipation of the negative; and when this happens, the marker of an empowerment shift is missed.

Another reason empowerment was overlooked stems from the documented tendency of mediators in general to depend on directive interventions,[113] a tendency that probably also affected transformative mediators in their early practice. The majority of transformative mediators began their careers employing models of practice in which directive mediator interventions are commonly used – whether to generate agreements, avoid unfairness, promote reconciliation, etc. When these mediators adopt the transformative approach, the directive impulses rooted in their work with other models often remains strong for a time.[114] Recognition shifts can be supported – at least seemingly so – by interventions that aren't all that different from those of other models of practice, as the account of the "pushy mediator" in the Landlord-Tenant case from *Promise I* illustrated.[115] But supporting empowerment shifts requires learning an almost entirely new repertoire of practice skills.[116] Until those skills were fully understood and integrated, transformative mediators could reduce the dissonance they felt when using directive moves that contradict the model, simply by paying less attention to empowerment shifts that would require transformative interventions. Overlooking empowerment, in effect, could be a short-term coping strategy for mediators in transition to the transformative approach. This is one way to understand the practice of the Landlord-Tenant case mediator as critiqued above.

These reasons help explain why empowerment itself, despite its foundational importance in transformative theory, tended to be overlooked and underemphasized in transformative practice, at least in the early years of the model's emergence.[117] However, the work done in refining and developing the model, in the nearly two

decades since its introduction, has begun to return empowerment to its rightful place as the "senior partner" in the values at the heart of transformative mediation.

Getting Serious About Empowerment: A "Second Generation" Picture of Transformative Practice

As summarized above, despite a strong theoretical commitment to party self-determination, the early practice of the model seemed to focus more on recognition as the primary value, and tended to employ directive interventions in order to further that value. That early practice period began more than five years prior to the publication of *Promise I*, first with the earlier published work of Bush and Folger in the late 1980s, and then with work done in clinical practice in the early 1990s.[118] The Landlord-Tenant case of *Promise I* was actually mediated during that period of clinical practice.

Starting a few years after the publication of *Promise I*, a new period began in the development of transformative mediation practice – largely due to the efforts of talented mediators who were attracted to the theory presented in *Promise I* and who undertook to put the theory into practice in their own work. Prominent among these was Sally Pope, an experienced family and commercial mediator trained in "facilitative mediation."[119] After reading *Promise I*, Pope resonated with the transformative model and began to experiment with using it. In that process, she began to question many of the practices she'd learned earlier in her career and to look for different practices more consistent with the transformative model.

Pope's earliest moves in this direction involved the opening of her mediation sessions, which she'd always conducted using a standard opening statement describing the process, setting groundrules, establishing confidentiality, informing parties about caucusing, and so on. Gradually, she realized that every one of these elements in her opening was "supplanting" party decision-making, so she began to "throw open" the opening – inviting the parties into an "opening conversation" in which they themselves decided about groundrules, confidentiality, goals and reasons for using mediation.[120] For

Pope and others, this "rethinking" of how to begin a session was the beginning of a continued exploration of the concrete meaning of transformative practice.[121] Most significant for this chapter, most of this exploration focused directly on practices that supported party empowerment shifts. This new generation of work began to realign the development of transformative practice with the premise of the model that empowerment shifts were primary and foundational in transformative mediation.

Another step in this direction was taken when, in order to help translate the concepts of *Promise I* into practice, Bush and Folger began to develop training materials and conduct training programs in transformative mediation. In the earliest of these programs, one of the key elements was an exercise that presented participants with a brief scenario describing a "critical point" in a mediation session. Participants were asked to describe a possible directive response to the scenario, and then identify and act out a nondirective alternative response that would support empowerment or recognition.[122] The important point here is that this exercise focused attention directly on the centrality of avoiding directiveness – and instead supporting empowerment shifts – in transformative practice. Additional work on training continued to develop this focus.[123]

As this initiative to develop training continued, a unique opportunity arose that further clarified the centrality of empowerment in transformative practice. The opportunity came from the decision of the U.S. Postal Service to adopt the transformative model for its REDRESS workplace mediation program, and its subsequent request that Bush, Folger and their colleagues develop a curriculum to train nearly 3,000 mediators across the country in the basics of transformative practice.[124] Bush and Folger worked with Sally Pope and Dorothy Della Noce to develop the curriculum. In that process, the four colleagues identified a basic repertoire of interventions that supported empowerment and recognition shifts, drawing on their collective experience during roughly five years of practice in the model.[125] In addition, in order to clearly identify the differences between standard and transformative mediation practice, a videotape was made showing the same case mediated by two

mediators, one using a conventional approach and one a transformative approach.[126]

The transformative mediator on the tape was Sally Pope, who by this time had developed considerable expertise using transformative interventions. Pope's practice on the videotape clearly demonstrated what it meant for a mediator to take seriously the principle of supporting and not supplanting party decision-making, and thus supporting empowerment shifts. The videotape was used for training beginning in 1998, and the impact on training participants was electric. They saw for the first time a set of practices that consistently supported party choices at every decision point in a mediation session, and they saw how the impact of those practices was to facilitate empowerment shifts for both parties to the mediation. For some the picture was inspiring, and for some it was shocking; but for all the training participants, the centrality of empowerment in transformative mediation was made very clear. However, the REDRESS training materials and video were not disseminated for the field as a whole, so for many mediators the picture of transformative practice remained the Landlord-Tenant case of *Promise I* – even though that picture and its seeming preference for recognition over empowerment had been corrected in the developments described here.[127]

Wider dissemination of this "second generation" picture of practice came with the publication of a new videotape/DVD, complete with commentary and transcript, called "The Purple House Conversations" (*Purple House*).[128] That video (produced by Pope and featuring the author of this chapter as the mediator of an interracial housing conflict) presented a picture of transformative practice in which empowerment shifts are clearly treated as the foundation for recognition shifts, and for conflict transformation generally, rather than vice versa. This picture was further reinforced with the publication of an article describing a method that was developed to assess competence in transformative practice by the Institute for the Study of Conflict Transformation (ISCT), the transformative model's intellectual center.[129] The assessment process detailed the kinds of interventions that demonstrate

competence in the model, and the common character of those interventions is the way they support party self-determination first and foremost.

Finally, the picture of "second generation" practice was crystallized and disseminated still further with publication of a completely revised edition of *Promise of Mediation* (*Promise II)* in 2005. *Promise II* clarified the relative place of empowerment and recognition shifts in conflict transformation, and it presented *Purple House* in transcript form as a case study of transformative practice.[130] In addition, the repertoire of basic transformative interventions, as identified first in training materials and then in the ISCT assessment model, was described and explained in *Promise II,* in the commentary to the *Purple House* case study. Thus the second-generation picture of transformative practice, with empowerment seen as central to mediation and conflict transformation, became clear; and the early gap between theory and practice was bridged.

Like the response to the REDRESS video, the response to the *Purple House* video, on its own and in *Promise II*, was powerful and diverse. Some could not understand why the mediator in the case does not do more to bridge the misunderstanding between the parties and promote recognition.[131] Others understood that the reason for this is that the mediator's works first and foremost to consistently promote party *empowerment shifts*, and that it is on the foundation of these *primary* shifts that recognition shifts can – and *do*, in *Purple House* – subsequently take place. This picture was also clarified in the narrative exposition of the model in *Promise II*, in which the authors explained that:

> *The mediator's role is to help the parties make positive interactional shifts (empowerment and recognition shifts) …. [and] 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.[132]

The explanation made it clear – as did other passages and diagrams in the text of *Promise II* – that the empowerment shift is the condition on which all else in conflict transformation, including the recognition shift, depends.

This clarity is the answer to the objection of some to the "lack of attention" given to promoting recognition shifts by the mediator of the *Purple House* case. That attention is given, but only by means consistent with supporting party choice and empowerment. Comparison to the Landlord-Tenant case of *Promise I* is instructive. There are certainly places in *Purple House* where the mediator could "suggest reinterpretations" to each party of the other's current statements or past conduct, asking them to imagine more favorable motives for each other's behavior. This was the key example given earlier to illustrate how the Landlord-Tenant mediator, to use the language of *Promise I*, tries to "evoke recognition." By contrast, there were no interventions of this kind by the mediator in *Purple House* – precisely because, to use the language of this newer picture, such suggested reinterpretations would risk both "supplanting party deliberation" and "forcing recognition." That is, mediator reinterpretations would undermine rather than support empowerment shifts, as well as the genuine recognition shifts that might be built on them. Instead, the mediator was careful to "reflect" and "amplify" the conversation in ways that always supported the parties in making their own choices – including the choice of whether, when and how to extend recognition to each other.

Thus, from early on in the *Purple House* mediation it was obvious that there is a document involved in the case – the housing development regulations – that might clarify the central question regarding whether the purple house color violates any guideline. But the mediator never suggested that the document be consulted, instead leaving that choice to the parties. Ultimately this support for party choice led to one party acknowledging – entirely through her own choice – that there was no limitation on color in the guidelines,

and that the other was right.[133] This acknowledgement is freely chosen recognition, and it is possible precisely because of the mediator's care to support rather than supplant party choices.

Another example concerns the very volatile exchange about whether the objection to the purple color was a mask for racism.[134] It is obvious that the mediator could, as did the Landlord-Tenant mediator, "decide to caucus" and could then suggest to each party separately more favorable "reinterpretations" of the other's behavior in and before the mediation session, in order to promote recognition. In fact, the mediator never made this decision to caucus – because it was not his to make, unless he was willing to "supplant" party decision making. Nor did he ever pose a question to either party that might suggest a different view of the other's motives, because doing so might have "pushed" them to accede to that view – and this mediator did not see "pushiness" as consistent with supporting party deliberation and decision making. Instead, the mediator concentrated on reflecting to each party what *she herself* was saying about her own and the other's motives and attitudes. Ultimately, this support for each party's self-expression allowed both to clarify their thoughts and decide for themselves whether, when and how to reconsider what they think about each other. In the end, both parties *did* decide to engage in such reconsiderations, and expressed their new views to each other – making remarkable recognition shifts. [135] But those shifts were clearly (and slowly) built on a long series of empowerment shifts that the mediator consistently and carefully supported.

The purpose of this comparison is not to prove that the approach of the Landlord-Tenant mediator is wrong, and that of the *Purple House* mediator right. Rather, the point is that the second is a clear picture of mediation practice consistent with the transformative theory, and the first is not. The picture of transformative practice has become clearer – and more consistent with its underlying theory – in the intervening years. And the early missteps, whether due to the allure of the recognition value or the unobtrusiveness of the empowerment value, have begun to be corrected. The result is not only a theory, but a form of practice, in which empowerment comes first, in terms of

its conceptual value and its practical importance. The picture of transformative mediation today, the "second generation picture," is a picture that acknowledges and maintains the centrality of party self-determination and empowerment, not only in theory but in mediation practice.

Empowerment First, but Not (Alone) Foremost: What Works, and What Counts, in Conflict Transformation

The subject of this chapter is the relative importance of empowerment and recognition in transformative mediation theory and practice. The account presented above shows that, despite some early tendencies for this balance to waver and sometimes place recognition first, the development of both theory and practice has clarified that empowerment is the primary dynamic of conflict transformation, from which recognition as well as overall conflict transformation can evolve. In short, in transformative mediation, empowerment comes first. However, a more precise statement would be: "Empowerment comes first, but is not necessarily foremost." This statement can be clarified by some final comments regarding "what works" and "what counts" in transformative mediation.

What Works in Practice: Supporting Shifts Effectively

The main reasons offered in this chapter to explain why empowerment takes precedence over recognition relate to "what works" in transformative mediation practice. As detailed above, it became evident at a certain point in the development of transformative practice that for various reasons, recognition was being treated as more important than empowerment, but that this was a mistake for several reasons, all relating to "what works" and what doesn't.

First, placing recognition before empowerment meant that transformative practice involved a contradiction of its own underlying theory – asserting that mediator directiveness is improper, but then using directiveness to promote recognition shifts. As some of the

early critiques noted, a practice that gave precedence to recognition was inevitably as directive as other models of practice, even if the directiveness aimed at a different target – recognition rather than settlement. In effect, putting recognition first would make transformative mediation into a variant on "restorative" or other models of mediation, which are willing to be quite directive for the purpose of promoting understanding and forgiveness.[136]

Second, putting recognition first simply wasn't viable as a practical matter. That is, despite the original concept of the "pushy mediator,"[137] pushing people into recognition shifts rarely if ever worked: The mediator could "push" a party to see the other's viewpoint, but if they didn't see it on their own, this so-called shift just didn't penetrate or "stick." By contrast, if the mediator simply helped parties express their viewpoints (amplifying them by reflection or summary), then as their viewpoints became more clearly presented, each party would usually begin to see the other differently, on their own, in a "virtuous cycle" of changed interaction. [138] However, even if this full cycle doesn't always occur, *pushing for it doesn't help*. People don't open up to each other until they feel solid in themselves – and the movement to that sense of solidity is the empowerment shift, which can't be skipped or given short shrift. Therefore, in terms of "what works," empowerment comes first: recognition shifts depend on and have to be preceded by empowerment shifts.

Third, even if it is not recognition alone that displaces empowerment, but some other "alluring" value – such as reconciliation, or justice, or needs satisfaction – the strong likelihood is that none of these ends can be achieved in a *sustainable* way by mediator-driven, top-down practice. Any commitment that is produced by outside pressure, including mediator directiveness, is inevitably a weak commitment. This is indeed a primary argument for the use of mediation rather than authoritative, impositional forms of conflict resolution: the element of party self-determination in mediation produces a sense of ownership and commitment to solutions that can't be matched in other processes.[139] But if the element of self-determination is weakened by making party empowerment second to some other

value, commitment is lacking, and the main advantage of mediation is thus lost. So even if the goal is agreement, sustainability requires that empowerment come first – and without sustainability, agreement in itself is a pyrrhic victory.[140]

Thus, in terms of "what works" in mediation, and certainly in transformative mediation, empowerment comes first. And if so, the practice of transformative mediation must focus first of all on supporting empowerment shifts, which as they occur will engender recognition shifts and drive the cycle of conflict transformation. Any practice that supplants party decision making, at any level, will drive parties back into the experience of weakness and incompetence, and stall the cycle of conflict transformation.

What Counts: The Value within Both Transformative Shifts

However, the fact that empowerment comes first in practice does not mean that it is "foremost," a distinction suggested at the beginning of this section. This distinction relates not to *"what works"* in mediation, but rather to *"what counts."* By "what counts," I mean the impacts of mediation that are seen as having the greatest value for parties to conflict, both by parties and by mediators. As explained in depth in *Promise II*, "what counts" in the transformative view of conflict is a *change in the quality of conflict interaction*, in which parties reclaim *both* their sense of strength/competence/agency *and* their sense of understanding/responsiveness/connection to each other, despite the fact that both of those have been compromised by the disempowerment and alienation engendered in the negative conflict cycle.[141] This means that *both* empowerment and recognition shifts count, and that they count *equally*. Therefore, while empowerment is *first* in terms of the way conflict transformation works, it is not *foremost* in terms of the valued impact of conflict transformation. That distinction is shared by empowerment and recognition together, each for different reasons. In concluding this chapter, it is worth articulating those reasons.

Regarding the value embodied in recognition shifts, we need only return to the earlier discussion of why those shifts attracted such positive attention in early transformative mediation practice: The

restoration of understanding and a sense of connection, between two human beings who have experienced alienation and bitter division in conflict, is a truly powerful expression of the human capacity for self-transcendence.[142] It shows that the boundaries of self are not as firm or impenetrable as they seem, and that to go beyond those boundaries is a basic capacity – and desire – of human nature.[143] Given our usual image of ourselves as bounded, limited beings with competing needs, conflicting values, and minimal appreciation for the needs and values of others, the emergence of this capacity and desire for connection always comes as a surprise – and in conflict interactions, a big surprise. That is why, as noted earlier, the real "successes" of mediation, the cases that stay with us, are the ones where "the light goes on" for the parties and they see each other in that "new light" – the cases where recognition shifts occur. And indeed, those cases do represent the "real successes" of mediation. This essay is not meant in any way to diminish the significance of those shifts, or question the value that recognition shifts embody. Recognition, in this sense of "what counts," or what is important, is indeed first.

But – and this is the stress of this chapter – *so is empowerment*. Empowerment is not (by itself) foremost, but it is *also* first, in terms of "what counts" in mediation. The justification for this view is that the restoration of a sense of strength and competence, to a person deeply shaken if not shattered by negative conflict, is *also* a testimony to a basic and precious human capacity – the capacity for sustaining the self in the face of any adversity. In teaching my mediation students, I ask them to reflect on this in an essay, in order to bring home to them the value of empowerment shifts, which as noted above are so easily overlooked. The essays that students submit in response to this assignment are deeply moving, as they describe their struggles with various circumstances, including conflicts with family, friends, co-workers, and the like. Their accounts of their own spirals down into self-doubt, confusion and helplessness, and their climb back into self-confidence and clarity, are as inspiring as many great works of literature or theater – which indeed often present the very same theme, because it is one that

touches us so deeply and brings us back to the sense of who we truly are.

The reason that it is so inspiring to reflect on our own shifts from weakness to strength, our own empowerment shifts, is that these shifts "count" every bit as much as the initially more visible "recognition shifts" that we also make. And they count not simply because they are almost always the necessary foundation for recognition shifts, but because the empowerment shift carries a value of its own that is equally important. That value is not only instrumental to the value of recognition; it is essential, with its own intrinsic importance. As explained in *Promise II*, the relational theory of human nature posits that human beings have a core identity with two aspects, equally basic and essential – "separate, autonomous agent [but] inherently social," "individual agency and social connection," "strong self connected to other."[144] There is no denying this core duality, and there is no valorizing one aspect over the other. As human beings, we embody both aspects, both capacities, both desires. The strength of transformative theory is that it fully acknowledges, and offers ways to help sustain, this *whole* human identity, precisely when both aspects of it are compromised by negative conflict.[145] It does so by supporting, and valuing equally, both empowerment and recognition shifts.

The Link between Values and Practice

It is appropriate to conclude this chapter by returning to practice, because theoretical clarity should always help support good practice. Theoretical clarity about this "dual" sense of what counts in mediation – that *both* empowerment *and* recognition are "foremost" – can help transformative interveners to "keep empowerment first" when it comes to practice. Unlike the mediator of the Landlord-Tenant case of *Promise I*, who succumbed to the allure of recognition alone and therefore sacrificed empowerment, transformative practitioners with full theoretical clarity will realize that genuine recognition cannot be supported in that fashion – both because doing so almost certainly "won't work," and because doing so denies an equally important part of "what counts." In fact, pushing for recognition actually winds up denying *both* aspects of

"what counts," because the recognition "given" as a result is not *freely* given and thus not genuine, and also because the pushing itself undermines rather than supports empowerment.

Clarity about the dual "foremost-ness" of empowerment and recognition will also help practitioners understand and accept that in cases where the parties seem to make only empowerment shifts but not recognition shifts, their work is still "successful." Sometimes the coming back to self is all that a person can manage during a particular, difficult conversation, and that change needs to settle before any other kind of shift is possible. Sometimes the return to strength allows a person to realize with clarity that there is a gulf between the parties than cannot be bridged at that time. Neither of these cases involves a "failure" of transformative intervention; rather, each is a success in its own way, because empowerment has served as a foundation for considering and deciding on recognition – whatever decision is made. When the time is right and connection is possible, strong and clear people can be trusted to bridge the gulf between them. When it is not, their decision not to do so can and should also be trusted, and doing so is the practical ramification of a sound theoretical understanding that empowerment and recognition are both foremost.

In the end, the committed transformative mediator keeps empowerment *first* in practice, because doing so is the best – the only – way to keep *both* of the values of the transformative theory *foremost*; and doing that is important because both of those values are of ultimate, and equal, importance in the transformation of human conflict and interaction.