Is the Mediator a Therapist?
A Critique of the Role of the Mediator in Bush and Folger's Transformative Model of Mediation

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Abstract

Mediation as a dispute resolution process came into being in response to the need to manage the growing problem of overflowing court dockets. By implication, the Mediator's role in mediation proceedings could be said to be that of dispute settlement. However, divergent views exist as to the actual role of the mediator and one of such views given by the originators of the transformative model of mediation, Robert .A. Baruch Bush and Joseph. P. Folger is the subject matter of this paper. A careful perusal of the objectives of the transformative model of mediation suggests that the role of the transformative mediator is akin to that of a therapist as he is not expressly charged with the function of ensuring dispute settlement between the disputing parties. He is primarily concerned with helping disputing parties achieve the joint goals of developing the capacity for strength of self (empowerment) and developing the capacity for relating to others (recognition). This, I believe, defeats the purpose of mediation because the primary reason for the parties' referral of their dispute to the process is the resolution of such dispute. I believe that since the object of mediation is dispute settlement, it follows that the role of the mediator should primarily be that of problem-solving. This essay therefore seeks to compare the role of the transformative mediator to that of the 'traditional' problem-solving mediator as well as that of the therapist in a bid to show the deviation of the role of the transformative mediator from the original idea of mediation.

1. Introduction

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Alternative Dispute Resolution (ADR) processes like mediation became popular ways to deal with a variety of disputes because they helped relieve pressure on the overburdened court system.[1] The use of mediation has grown significantly in many countries over the years. In recent times, mediation has taken over the reins of ADR and had fast become one of the most used, most popular forms of ADR. Professionals and private individuals alike testify to the effectiveness of this process especially in comparison to other dispute settlement processes. This has led to a proliferation of scholarly writing on the subject of mediation and consequently, a variety of approaches to the process and diversity in the mediation practice. Notwithstanding the flood of scholarly effort on this subject, mediation has yet to develop a coherent theoretical base and an accepted set of core features, which enables it to be differentiated from rival processes. Therefore, it is difficult to give a uniform definition of mediation.

2. Mediation

Mediation is generally defined as, "the intervention in a negotiation or a conflict of an acceptable third party who has limited or no authoritative decision making power, who assists the involved parties to voluntarily reach a mutually acceptable settlement of the issues in dispute.'[2] It has also been defined as a process in which an impartial third party facilitates communication and negotiation and promotes voluntary decision making for parties to the dispute.[3] According to The Center for Effective Dispute Resolution (CEDR), mediation is essentially assisted negotiation.[4] From the definition of mediation above, a mediator

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[1]   Brad Spangler, *Alternative Dispute Resolution* (June 2003) available at http://www.beyondintractability.org/essay/adr/ accessed on 23 February, 2012.

[2]   Christopher Moore, T*he Mediation Process: Practical Strategies For Resolving Conflict*, (San Francisco: Jossey-Bass, 2003), p. 15.

[3]   Preamble, *Model Standards of Conduct For Mediators*, American Bar Association, American Arbitration Association, Association For Conflict Resolution (August 2005).

[4]   Center For Effective Dispute Resolution (CEDR), *Mediation: Processes, Roles And Skills* (2007) available at www.cto.int/Portals/0/docs/ event_docs/adrdelegatepack/Background_Material.pdf retrieved January 27, 2012.

therefore is an impartial third party who facilitates communication and negotiation and promotes voluntary decision making by the parties to a dispute. He is a third party, generally a person, who is not directly involved in the dispute or the substantive issues in question. For the purpose of this paper, the term 'role' is used to refer to the overall aims and objectives of mediator as well as the actions the mediator uses to fulfill this role. The roles of the mediator are therefore dependent on the overall aims and objectives of the model of mediation. It should be noted from the above that, different goals exist for the different models of mediation and this presupposes that there will be different roles for different mediators.

2.1. Forms of Mediation

There are numerous models of mediation. Also referred to as forms or approaches, these models include the facilitative model, the narrative model, the transformative model, the traditional interest-based problem-solving model, etc. However, for the purpose of this paper, the Problem-Solving and the Transformative models will be discussed.

2.1.1. The Problem-Solving Model

This model, which finds its basis in the negotiation model propounded by Roger Fisher and William Ury[5] emerged from studies of negotiation and is the most widely accepted and used model of mediation. It declares the cause of conflict to be the frustration of needs and conflict itself, an issue or problem between the parties that needs to be resolved or a dispute that needs to be settled. It views mediation as a process by which disputing parties through integrative bargaining may settle their differences, address their needs and maximize mutual gain. It envisages a 'win win' situation where parties achieve their objectives and enjoy mutual satisfaction at the end of the process. The major objective of this model of mediation is dispute settlement and this is why it is perceived as the most utilitarian, and efficiency orientated model.[6] This model

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[5] See generally Roger Fisher and William Ury, *Getting to Yes – Negotiating Agreement Without Giving In* (New York: Penguin Books, 1991).

[6] For the evaluation of ADR Programs in terms of efficiency criteria, see Carrie Menkel Meadow *et al.*, *Dispute Resolution: Beyond The Adversarial Model*, (New York: Aspen Publishers, 2005), pp. 873-892

usually has four or five stages depending on the mediators. The Center for Effective Dispute Resolution (CEDR) divides the mediation process into five stages: Preparing, Presenting, Exploring, Negotiating and Concluding[7].

The model is based on the four underlying principles[8] found in Fisher and Ury's negotiation model. They are:

i.   Separate people from the problem: the model encourages parties to detach themselves from their problems, to perceive themselves as working side by side, attacking the problem and not each other.

ii. Focus on interests, not positions: Interests are believed by the proponents to be the reason behind the positions of the disputing parties. The problem-solving mediator therefore attempts to help the parties to overcome the drawback of focusing on their stated positions when the object of the process is to ascertain and satisfy their underlying interests.

iii. Invent options for mutual gain: Parties are required to brainstorm to generate a wide range of options that would satisfy their individual and collective interests. The mediator at this stage encourages the parties to 'expand the pie' by inventing creative options that would potentially lead to the satisfaction of the needs of both parties.

iv. Insist on objective criteria: Having generated options for mutual gain, parties are then encouraged to adopt the use of fair standards, independent of the will of the parties to the dispute to make a fair choice.

The problem-solving model of mediation set its sights on problem-solving as its primary objective. The problem-solving mediator therefore plays the role of a problem solver. His primary aim would be assisting with the amicable settlement of the dispute between the parties. This mediator's primary role therefore involves facilitating

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7   Center for Effective Dispute Resolution (CEDR), above note 4 at p. 16.
8   Fisher and Ury, above note 5 at p. 10.

parties' negotiations. He initiates, sustains or revives negotiations[9] with a view to achieving settlement of the dispute between the parties.

The functions of the problem-solving mediator change as he passes through the stages of mediation. His first function therefore is to help the parties move through the different stages of the process and for cases with deadlines, within the time limit set for the mediation.

In the first two stages of preparation and presentation, he is charged with educating the parties about the mediation process; developing trust and confidence; analyzing the conflict and designing appropriate interventions by facilitating disclosure and acknowledgment of party needs, identifying, clarifying and communicating the issues in dispute.[10] In the exploration and bargaining stages, the mediator's most important functions are effective questioning and promoting constructive communication.[11]

This is ultimately necessary for the process because it enables him acquire knowledge to aid the parties during the mediation process. This strategy not only facilitates communication between the parties, but also solidifies the mediator's role as one who assists the parties in communicating. He promotes constructive communication by controlling the parties' emotions to ensure they do not escalate and lead to anger, insults and destructive communication. He also focuses on the party situation and discussion in a bid to discover underlying interests behind positions, facilitates negotiation and problem-solving, establishes a framework for co-operative decision making, encourages empowerment of the parties[12] and helps the parties reach settlement. He uses knowledge acquired from parties in the course of meetings to develop and propose settlement options or push the parties towards realizing such options. The concluding stage requires the mediator to

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9   Simon Roberts and Michael Palmer, *Dispute Processes – ADR and the Primary Forms of Decision Making* (Cambridge: Cambridge University Press, 2005) p. 155.
10   *Ibid.,* at p. 157.
11   Laurence Boulle and Miryana Nesic, *Mediation: Principles Process Practice* (London: Butterworths, 2001), p. 158.
12   John Winslade and Gerald Monk, *Narrative Mediation: A New Approach to Conflict Resolution* (San Francisco: Jossey-Bass, 2000), p. 51.

make clear the terms of the settlement agreement and assist the parties to draft such settlement agreement.[13]

2.1.2. The Transformative Model

This model was developed as a critique of the problem-solving model. It argues that the dispute settlement objective of the problem-solving model is deficient. The transformative approach defines the objective as improving parties themselves from what they were before[14] (the mediation process). It declares that success is achieved when parties experience growth in two dimensions of moral development– developing both the capacity for strength of self and the capacity for relating to others. These are the objectives of empowerment and recognition.[15]

The empowerment objective refers to the restoration to individuals of a sense of their own value and strength and their own capacity to handle life's problems while recognition refers to the evocation in individuals of acknowledgement and empathy for the situation and problems of others.[16] According to this model, mediation should concentrate on transforming the character of both individual disputants and society as a whole. Transformative mediation is usually a long-term process as it goes further than the dispute at hand to seek the development of disputing parties and society in general.

This model views conflict as positive, as an opportunity for moral growth. It therefore states that conflict affords parties the opportunity to develop and exercise self-determination and self-reliance as well as exercise respect and consideration for others.[17] It focuses on listening, reflecting and enabling parties to expose emotions and deal with past events. This model is without stages and is therefore

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13	Roberts and Palmer, above note 9 at p. 156.
14	Robert Bush and Joseph Folger, *The Promise Of Mediation: Responding to Conflict through Empowerment and Recognition* (San Francisco: Jossey-Bass, 1994), p. 84.
15	*Ibid*
16	*Ibid*., at p. 2.
17	*Ibid.,* at p. *82*; Arnold Zeman, *Transformative Mediation Misunderstood'* (June 2009) available at http://www.mediate.com/articles/Zeman Abl20090629.cfm accessed on 10 December, 2009.

essentially dependent on the progress of the disputing parties. It is almost always a long process. Proponents of this model argue that the mediation process should not concentrate on improving communication between parties to achieve dispute settlement but should help the parties gain a deeper understanding, not just of themselves but also of other parties to the dispute. The leading scholars of this model include its originators, Bush and Folger and other writers such as Menkel Meadow, Lederach, Albie Davies, etc.

The Transformative model thrives on three basic principles. Firstly, the mediator takes a micro-focus on parties' issues. Early in the process, the mediator endeavours to listen attentively to the parties' discussions in a bid to identify issues and opportunities for empowerment and recognition. Secondly, he encourages party-deliberation and choice making. Upon pinpointing the issues in dispute, the mediator takes conscious steps to encourage the parties to think clearly and independently on options available to them for the achievement of their goals in order to foster empowerment of the parties. Finally, he encourages perspective taking. In the last stage of this process, parties having experienced empowerment are encouraged to give recognition.[18]

The Transformative Mediator tries to change the parties for the better, that is, to make them better than they were before the mediation. His role is to help the parties first to achieve empowerment and then to give recognition. Empowerment involves strengthening the self. The transformative mediator through his actions helps the parties realize and strengthen their inherent capacity for dealing with difficulties of all kinds by engaging in conscious and deliberate reflection, choice and action. The second dimension, recognition, involves reaching beyond the self to relate to others. The transformative mediator's second role therefore lies in encouraging the parties to realize and strengthen their capacity for experiencing and expressing concern and consideration for others especially those whose situation is 'different' from theirs.

As mentioned earlier, three overall patterns of mediator conduct characterize the transformative model of mediation. Firstly, the transformative mediator focuses specifically on the parties' moves –

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[18]   *Ibid.,* at p. 101.

their statements, questions and stories. These are the most important to the mediator because they enable him detect opportunities for the parties to achieve empowerment and give recognition. Then, he creates the atmosphere for effective interaction between parties thereby encouraging them to think extensively of their goals and the options and resources available to enable them achieve these goals. He concentrates on encouraging the parties to make decisions best suited to their circumstances independent of any input or influence by the mediator.

Finally, in the course of concentrating on the parties' individual moves, the mediator looks for opportunities that would allow each party to consider the other party's point of view. He does this by reframing and interpreting parties' statements to make them less antagonistic and more intelligible to the other. He encourages perspective taking in other to help parties give recognition of their own accord. Like all the other mediators, the transformative mediator educates the parties about the process and helps them develop trust and confidence. As there are no stages, the transformative mediator encourages extensive discussions irrespective of time to enable parties spend as much time as they would like to achieve the goals of empowerment and recognition.

2.2   Objectives of Mediation

This paper will examine the objectives of mediation in relation to the different models mentioned above. The primary objective of mediation according to the problem-solving model is dispute settlement. The concept is easy to grasp if it is understood that Mediation is a dispute resolution process and that it is therefore primarily geared towards dispute resolution. The proponents of the transformative model state that dispute resolution should not be the primary objective of mediation but that a higher outcome should be sought. They state that the goal of mediation should be empowerment and recognition for the good of society in general. They also declare that it would be beneficial if dispute resolution is also achieved during the empowerment and recognition process, but its occurrence is not paramount. This empowerment and recognition objective of the transformative model of mediation gives it a therapeutic element and has thus led to it being likened to the process of psychotherapy.

3. Psychotherapy

Psychotherapy means 'mental healing.'[19] It is a blend of the Greek root term for the mind (psyche) and the Latin root term for healing (therapia).[20] Psychotherapy is enormously diverse so one universal definition would be almost impossible to achieve. 'Psychotherapy involves the psychological treatment of problems of living by a trained person, within the context of a professional relationship, involving heather removing, reducing, or modifying specific emotional, cognitive or behavioural problems and/or promoting social, personality development and/or personal growth.'[21] It has also been defined as the treatment of emotional, behavioural or personality problems by psychological means.[22]

Generally, the process of psychotherapy is divided into four stages.[23] The first stage is the beginning stage. Here, the therapist focuses on developing a working alliance with the patient. He tries to create a good atmosphere for effective communication and to prepare the patient for the process. In the second stage, the central stage 1, the therapist explores the background to the patient's problem seeking to clarify particular thoughts, feelings and actions, which may be connected to the problem. The third stage, called the central stage 2, involves the translation by the therapist of the patient's understanding of the problem in a bid to help him effect positive change. The last stage, the termination stage, the therapist uses to prepare the patient for 'life beyond therapy.'

3.1. Forms of Psychotherapy

There are many forms of psychotherapy. The number of practices that might be described as 'psychotherapy' certainly runs into hundreds. The

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[19] Phil Barker and Bobbie Kerr, *The Process of Psychotherapy: A Journey Of Discovery* (Oxford: Butterworth Heinemann, 2001), p. 1.

[20] *Ibid.*

[21] *Ibid.,* at p. 5.

[22] Patricia Hughes, *Dynamic Psychotherapy Explained* (Oxon: Radcliffe Medical Press, 1999), p. 34.

[23] Barker and Kerr, above note 19 at pp. 14-15.

Psychotherapy Handbook[24] lists over 300 types. Some of the most popular ones include the following;

3.1.1. Psychodynamic (Psychoanalytic) psychotherapy[25]
This form of psychotherapy focuses on how life events, desires and past and current relationships affect the feelings and choices people make. It also focuses on the patients' interaction with other people. The therapist here helps the patient identify painful thoughts and emotions, as well as relationship and relationship needs in a bid to improve his ability to communicate, deal with conflicts within relationships, etc.

3.1.2. Group psychotherapy[26]
This is psychotherapy delivered to more than one person at the same time, i.e. in a group format, especially where members share a common goal. The therapist here is charged with encouraging trust and acceptance as well as emotional growth among members. Group psychotherapy also enables parties become self-aware and learn how to relate to others. Group psychotherapy focuses on interpersonal interactions, so relationship problems are addresses well in groups.[27] Group psychotherapy solves emotional difficulties and encourages the personal development of the participants.[28]

Other types include Family psychotherapy (Systemic), Cognitive psychotherapy, Behavioural Psychotherapy, etc.

3.2 Role of Therapists

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24 Chris Barker, 'The Psychotherapist' In: N.T. Singleton (Ed.), *The Analysis of Real Skills: Social Skills* (Oxford: Oxford University Press, 1983).

25 Harvard Medical School, *Types Of Psychotherapy*, (August 2011) available at http://www.health.harvard.edu/newsletters/Harvard_Womens_Health_Watch/2011/August/types-of-psychotherapy accessed on 22 January 2012.

26 Jenny Southall, *Group Psychotherapy* (May 2009) available at www.bbc.co.uk/health/emotional_health/mental_health/therapy_group.shtml accessed on 27 January 2012.

27 Haim Weinberg, *Group Psychotherapy: An Introduction* (April, 2000) available at www.group-psychotherapy.com/intro.htm accessed on 06 August, 2012.

28 *Ibid.*

Patients entering therapy are likely to be demoralized, distraught or otherwise 'suffering'. The therapist's primary responsibility is to develop a relationship within which patients may feel emotionally secure, so that they may begin to address the problems that they have brought to therapy. Therapy aims to help the individual gain greater understanding of himself and others in the interest of fuller growth and development. The therapist's role therefore is to encourage insight plus adjustment to relationship with others.

The therapist's functions depend on the stages of the process of therapy. However, generally, he educates patients about the process, builds trust in the therapist and the therapy process, creates atmosphere for effective communication, helps the patient identify and clarify underlying issues, interacts with patients in ways, which will help him to become more reflective, more aware of his own behaviors, feeling and motives[29] and improve his self-esteem[30] thus achieving empowerment. He also helps the patient adjust his relationship with others[31]

3.3   Objectives of Psychotherapy

Despite the apparent diversity of psychotherapies, there are three core features, which are common to most of the types. The first is support. A common goal of the different types of psychotherapy is strengthening the patient. Each process has as one of its major objectives, the encouragement of patients to learn more about themselves, that is, to become more self-aware to enable them avoid and/or deal with future problems effectively. The second goal is re-education. All psychotherapies are geared towards effecting positive change in the patient's patterns of living. The third is reconstruction. This involves delving deeper into the personality structure of the patient to gain insight into the unconscious conflicts in a bid to effect positive change in the patient.[32] Therapy aims to help the patient think for himself and become

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29   Hughes, above note 22 at p. 111.
30   *Ibid.,* at p. 121.
31   *Ibid*; Anthony Bateman, Dennis Brown and Jonathan Pedder, *Introduction to Psychotherapy: An Outline of Psychodynamic Principles And Practice* (Sussex: Brunner-Routledge, 2003), p. 132.
32   Barker and Kerr, above note 19 at pp 8-9.

more satisfied with his life.[33] The object of psychotherapy can therefore be said to be the creation of some change in feelings, thoughts, attitudes or behaviour, which have been troublesome to the patient in a bid to improve him and consequently, his relationship with others.[34]

4.   Comparative Analysis

The basis for a sound understanding of the transformative mediator's role is to gain an understanding of what he can do that the problem-solving mediator cannot do and vice versa. In other words, the following question should be asked: what capacities does the transformative mediator have that are unique to him? To what extent are these capacities similar to that of the therapist? To what extent does his role achieve the 'dispute settlement' goal of mediation?

It can be deduced from a careful examination of the text above that the functions and ultimately the role of the transformative mediator even though sharing some similarities with those of the problem-solving mediator are more *like* that of the therapist. Both mediators and the therapist obviously share similar functions. They all are responsible for the creation of a comfortable atmosphere to aid effective interaction as well as build relationships and trust between the parties. They all encourage the parties to become self-aware and also create an enabling environment for them to discover themselves and try to solve their problems, thereby creating some form of empowerment for the parties.

The point of divergence arises in the outcome of the processes. While the problem-solving mediator works hard towards dispute settlement, the transformative mediator and the therapist focus on empowerment and recognition. Despite the fact that a careful look will reveal that all the processes at some point try to achieve some degree of empowerment for the parties, giving recognition, an outcome common to therapy and transformative mediation is noticeably lacking in problem-solving mediation.

Where the problem-solving mediator aims to *improve the parties' situation* – the conflict, the settlement of which brought them

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[33]   Hughes, above note 22.
[34]   Bateman, Brown and Pedder, above note 31.

to mediation in the first place – the transformative mediator aims to *improve the parties themselves*.

What capacities does the Transformative Mediator have that are unique to him? The transformative mediator's role of achieving recognition is clearly the major differentiating factor between him and the problem-solving mediator because the capacity to encourage and achieve recognition is local to him.

To what extent are these capacities similar to that of the therapist? The outcome of empowerment and recognition is peculiar to the transformative mediator and the therapist. An answer to the question above would be that the transformative mediator's capacity to encourage recognition is so similar to that of the therapist that he could pass for a therapist. Both processes consider dispute settlement to be an outcome that may be *incidental* to the process, which is first and foremost geared towards empowerment and recognition.

To what extent does his role achieve the 'dispute settlement' goal of mediation? As stated earlier, the birth of mediation was as a result of the need to settle disputes outside courts to reduce the court's dockets. Therefore dispute settlement is at the core of mediation, it is its *raison d'être*.[35]

It is my submission that the transformative mediator, by tailoring his functions towards the achievement of empowerment and recognition and relegating the outcome of dispute settlement to second place, if at all it occurs, fails to achieve the goal of mediation. The fact that his desired outcome is different from the desired outcome of mediation and is the same as that of the therapist raises the question: is the transformative mediator (then) a therapist?

One would not be wrong to assume that the transformative mediator could indeed be referred to as a therapist in the light of the information above and I believe that if this model of mediation is not altered to include the objective of dispute settlement, then its mediator might as well be a therapist. In a bid to 'better' society, the transformative model loses sight of the reason why the parties came to mediation in the first place: for resolution of their dispute. This situation

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[35]   French for 'reason for being' available at *en.wikipedia.org/wiki/Raison_d'être* accessed on 22 January, 2012.

raises a lot of questions:

If the disputing parties come to mediation to settle their disputes and they instead receive empowerment and recognition, does this model by implication tell the parties that their need is not important and does it purport to go a step further to say *and do* what it thinks is best for the parties? To suggest an analogy, Mr A goes to the doctor to complain of a headache and the doctor gives him medication for tuberculosis. In this situation, not only does the doctor fail to solve Mr. A's immediate problem by not treating his headache, he goes ahead to give him medication for another illness which he, the mediator, believes to be right. Does this not defeat the purpose of the transformative mediator's non-directive role?

5.   Conclusion

It is my view that the transformative model is an excellent approach to mediation but it loses sight of the original reason why mediation came into being in the first place: dispute settlement. Empowerment and recognition to ensure moral growth and societal harmony are great values to inculcate into the mediation process but without focus on dispute settlement, the process is not mediation for the purposes for which mediation was intended.

I would suggest that the best solution would be a marriage of the problem-solving and the transformative approaches to mediation. Integrating the two approaches - to create a 'merged' mediator, one who employs the strategy and style of the problem-solving and the transformative mediator - would in my opinion, create a formidable approach to mediation. If the parties to the mediation process are able to achieve the advantages of both processes, i.e. achieve empowerment and recognition and settlement of their disputes simultaneously, they would get the best of both worlds. They would become more self-aware and in control, achieving a better sense of strength and self-worth. They would be able to look beyond their problems to consider the perspectives and problems of other people and finally, they would be able to settle their dispute and even avoid other possible causes of disputes in the future, thus ensuring growth and satisfaction of both individual and society.

I recommend the use of both models in every mediation process. In such a situation, the merged mediator uses the transformative approach first and once its objectives are achieved, he would try to gain dispute settlement with the problem-solving approach. The basis for this recommendation is that, if the objectives of empowerment and recognition are achieved, the disputing parties would be amenable to problem-solving and the mediator would easily achieve this as well.

The originators of the transformative approach believe that an integration of the two approaches would present enormous practical and conceptual difficulties because the approaches are fundamentally distinct and inconsistent, especially at the level of concrete practice.[36] They gave three reasons for this position.

The first is that the problem-solving mediator takes a *macro-focus on situation* while the transformative mediator takes a *micro focus on interaction of parties*.[37]

It is this writer's view that a merger of the styles is possible. The transformative mediator's micro focus on the interaction of parties will help the 'merged' mediator identify opportunities for and achieve empowerment and recognition and afterwards, the problem-solving mediator's *macro focus on the situation* will help him achieve dispute settlement.

The second reason revolves around each models perception of conflict. The transformative mediators submit that problem-solving sees conflict as creating an opportunity *for winning or losing* while the transformative approach sees conflict as an opportunity for *growth*.[38]

This writer submits that in spite of the fact that the problem-solving model views conflict as creating situations for winning or losing, its mediation process is usually geared towards *win-win* settlements. The merged mediator would therefore, explore all opportunities for *moral growth* of the parties and this growth will ease the transition to the *win-win* process to achieve the objective of the problem-solving model.

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[36]   Bush and Folger, above note 14 at p. 108.
[37]   *Ibid.,* at p. 109.
[38]   *Ibid.,* at p. 111.

Finally, the authors of the transformative approach suggested an analogy to further explain their case. They likened the idea of switching from the transformative to the problem-solving model in the course of the session to a decision making group switching from consensus to voting.[39]

It is submitted that switching from the transformative to the problem-solving model would be easy. It could be argued that the objectives of empowerment and recognition by implication could *in fact* stimulate dispute settlement and dispute prevention. Imagine a scenario where Mr. A and Mrs. B have successfully achieved empowerment and given recognition in a mediation process. They would be better equipped to successfully control their relationships with others and be ready and willing to accommodate other people's needs to the extent that they will be able to identify and avoid potential causes of future conflict. This implies that empowerment and recognition can lead to conflict prevention as well as conflict settlement. In the case of the decision making group, if the aim is consensus and this objective is actually achieved, the need for voting would not arise. The problem with the transformative model is that it does not pursue 'dispute settlement'. Rather, it prepares parties for possible dispute settlement *outside* the mediation process while it can easily achieve this objective within the process.

Opportunities for the peaceful co-existence of the problem-solving and the transformative models of mediation in one mediation process abound. Self-empowerment, mutual human understanding and dispute settlement, all are necessary to increase individual happiness, make society a better place and to achieve the 'original' promise of mediation: dispute settlement.

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[39]   *Ibid.,* at p. 110.