

Transformative Approach To Mediation: Radical Insight Or Pie In The Sky?

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1. Introduction

The transformative approach to mediation described by R. Bush and J. Fogler in *The Promise of Mediation*¹ is a radical insight into mediation and conflict resolution but not on its own. Kenneth Cloke adds some profound insights with what he calls *dangerous* mediation, essentially a “modified transformational model”². Cloke’s mediator is not neutral and not merely a facilitator. Rather, the mediator is more interactive, intuitive and reflective.³ Cloke’s use of conflict as a teacher opens the door for the mediating parties to realize their interrelatedness, interconnectedness and inter-dependency.

From the perspective of the mediator, conflict can generate possibilities and opportunities that reveal latent options and choices available to the parties. Bush, Fogler and Cloke understand that the parties’ notions of “truth” are relative, as are their own underlying value systems and ethics. However, Cloke approaches mediation with a theoretical framework that encompasses concepts that have traditionally been dealt with by post-structuralist and critical theorists; including, thinkers ranging from Nietzsche, Foucault, Habermas and Derrida to political theorists such as William Connolly and even general semanticists like Alfred Korzybski. The philosophical backdrop that can be said to loosely tie these thinkers together is their interest in human communication and perception, their critique of ideology, identity, self and other. It is precisely from within this philosophical context that the properly equipped mediator can

¹ Robert Bush and Joseph Fogler, *The Promise of Mediation: Responding to Conflict Through Empowerment and Recognition*, (San Francisco: Jossey-Bass Publishers, 1994). [hereinafter *Promise of Mediation*]

² Kenneth Cloke, *Mediating Dangerously: The Frontiers of Conflict Resolution*, (San Francisco, Jossey-Bass Publisher, 2001) at 11. [hereinafter *Mediating Dangerously*]

³ *Ibid.* at 12.

facilitate an evolutionary process of change between entrenched conflicting identities as seen for example in the Israeli-Palestinian context.

From an academic standpoint, it is interesting to see how concepts about identity and communication, that found a voice in the above mentioned thinkers, are infused into the mediation process and in a sense speak to one another. It is with this in mind that I will demonstrate why the transformative approach to mediation is a radical insight to both mediation practice and theory.

First, I will outline what value the mediator can provide to a negotiation process. Second, I will give a brief survey of the theoretical and philosophical background already mentioned to highlight the inherent power of what Cloke calls dangerous mediation. Third, I will examine the transformative approach described by Bush. Fourth, I will discuss the benefits of mediating with conflict as the teacher as advocated by Cloke. Finally, I will provide an example of how these concepts manifest themselves by examining a dialogue that took place between Jewish-Israeli teachers and Arab-Palestinian teachers who work under the same ministry of education but are politically opposed to one another.⁴ Though this meeting was not a mediation per se, it was a dialogue where the groups attempted to develop education programs where students on both sides could meet and converse with one another. What came out of the dialogue speaks directly to the issues confronting parties in Cloke's dangerous mediation.

⁴ Z. D. Gurevitch, "The Power of Not Understanding: The Meeting of Conflicting Identities" (1989) 25:2 Journal of Applied Behavioural Science 161.

2. The Mediator's Added Value

It is imperative to state at the outset why a mediator is valuable. Parties in conflict face enormous barriers in a negotiation process. According to Bush, parties in conflict sustain two types of informational barriers that impoverish the negotiation process; strategic and cognitive barriers.⁵

A strategic barrier is where the negotiator withholds information from the other party. Each side believes they have a strategic incentive to mislead the other. Doing so results in gaining a larger piece of the pie. Bush explains that the effect of this behaviour on the negotiation is “informational poverty”.⁶ In other words, there is neither enough reliable information on the table for the parties to develop a mutually beneficial exchange of ideas, nor is there any ability to improve the information environment as long as both parties perceive a strategic advantage to mislead the other. As a result, if there is going to be a settlement at all, it would likely be less than ideal.⁷

A cognitive barrier stems from how a person/party perceives reality. In one's processes of perceiving the world and assimilating information, there can be departures from rationality, distortions, and misinterpretations. Bush gives us the example of loss aversion. People tend to feel the pain of loss more than the pleasure of a gain.⁸ This skews a party's ability to both perceive the other, as well as to share or express him/herself to the other. Again, this also limits the amount of reliable information that can be exchanged between the negotiators. Analysis of

⁵ Robert Baruch Bush, “What Do We Need a Mediator For?: Mediation's ‘Value Added’ for Negotiators” (1996) 12 Ohio St. J. On Disp. Resol. 4.

⁶ *Ibid.* at 5.

⁷ *Ibid.*

⁸ *Ibid.*

information is done from a potentially and likely distorted perspective. As a result, the negotiators will ultimately miss out on opportunities to make mutually beneficial gains.

The mediator can help reduce these barriers by making the parties aware of them. The mediator can take advantage of opportunities to put more information on the table; whereas the parties in a negotiation would have missed such opportunities as a result of the barriers. The mediator can help the parties better perceive themselves and the other more accurately by reality checking, assumption checking and reframing issues and ideas. Procedurally, the parties will have greater involvement in the negotiation and become more participatory in the decision making process. The mediator can ensure that each party has a full opportunity to express him/herself and communicate its views. The mediated process is more valuable for the parties because there is a more accurate exchange of ideas and, as a result, any decision to settle will stem from more empowered parties who have had more control over their own decision making. The focus or success of a mediation should not be settlement. That must be the decision of both parties. More importantly, the mediator and the mediation should provide a forum for the parties to become increasingly and more accurately self aware and better able to recognize each other.

The mediator improves the quality of information and communication which results in better decisions being made by the parties. Another good example specifically related to conflicting identities and what Bush described as departing from rationality is the tendency of the parties to demonize the other.⁹ Parties to a conflict will often distort the other side's statements and expressions of reality. In serious conflict, the other side is typically viewed as the enemy and perhaps even characterized as evil. The mediator can encourage and support recognition of

⁹ *Ibid.* at 15.

both side's perspectives. The mediator can foster an environment that encourages mutual recognition.

3. Theoretical and Philosophical Background

Post-structuralist or post-modern thinkers like Nietzsche, Foucault, Habermas and Derrida have sought to expose the underlying ontological assumptions behind epistemology or theories of how we know what we know. Essentially, every "truth" that is claimed in the world and the ethics and moralities that flow from it, contains within it or hides an assumed fundamental logic of reality. This paper cannot deal with an extensive analysis these thinkers. Collectively however, one can generally and safely say that they would all agree that there is no one truth. For meaningful communication to occur, we as individuals have to be aware of our assumptions about the world and reality. We must be made aware that our ethics and systems of morality are equally limited to our perceived reality and effectively exclusionary to those who do not or cannot conform to them.

Of more interest to the mediator is what political theorists like William Connolly have done from the point of view of identity politics and his analysis of identity/difference and otherness.¹⁰ What is applicable to the mediator is how Connolly understands the nature of identity and the inherent paradox that flows from identity. Essentially, there are two aspects. First, every identity maintains its own understanding of the world and its relation to it. As such,

¹⁰ William E. Connolly, *Identity/Difference: Democratic Negotiations of Political Paradox*, (Ithaca: Cornell University Press, 1991). I will simply provide a cursory overview of Connolly's basic premise.

identities (of a person, community, society) uphold and maintain systems of ethics and morality. The problems that identities face are the general adversity, pain and suffering that occur in every day life that have no explanation. For example, when a child dies, or to a lesser extent when someone loses a job, the person who perceives himself as inherently good, who has done everything 'right', necessarily asks why such a thing happened. Who is responsible? In fact, who is responsible for the general unfairness that exists in life? What happens is that the identity, in the face of uncertainty, needs to consolidate itself.

In consolidation, the self recognizes difference that exists in the world. While existing with other identities, each identity is aware of other different identities. It is how these other identities experience each other and how an identity defines itself in relation to difference that is of most importance. It is in this process of consolidating one's identity when faced with adversity that one's ability to negotiate difference entails an inherent potential for violence. While difference can be incorporated into the logic of one's own identity, "otherness" is a creation of identity when the self cannot come to terms with the difference it is presented with. Recognizing otherness is a defensive product of the self's attempt to reassure its identity. At its most extreme, what is perceived as otherness must be eliminated for the self identity to regain its sense of security and harmony in the world. The perfect example of the elimination of otherness is the Nazi attempt to exterminate Jews, Gypsies, and anyone that did not or could not conform to the Aryan identity.

For Connolly, what is important is to expose ontological assumptions created or projected by self identities. It is important to reveal the paradox created by self identity. At its most basic

level, an individual's self identity is fundamentally exclusionary. In one's attempt to live in harmony in the world one can either incorporate difference or otherwise push it away and even destroy it. Effectively, the self becomes the very source of instability and violence in its own right. By challenging and being critical of one's assumptions, people can cultivate an ethic of care and respect for difference. While Connolly himself is interested in developing sensibilities that could counter the hegemony of larger systems of identity, at an individual level, greater independent and thoughtful identities can be cultivated by self intervention aimed at revealing the unconscious processes of identification of the individual. The mediation process can be a tool for achieving or cultivating that end. It can be the vehicle for negotiating difference.

General semantics also provides an interesting tool for the mediator. It teaches us about the processes of human abstraction and the limitations of communication by virtue of the inaccuracy of language and nature of elementalism. Alfred Korzybski was interested in facilitating self realization by making people aware of their own processes of abstraction. Korzybski is known for his Structural Differential.¹¹ This is a diagram illustrating the psychological factors and processes involved in our ability to observe and perceive the world we live in. Essentially, human beings mistakenly identify their representations with truth. As human beings our ability to obtain an accurate understanding of reality is limited by our faculties. We can never truly know what is going on in the world. As we move from lower levels of abstraction to higher levels of abstraction, we start with a simple awareness of a thing, then give it a name, and then attach labels as we move to higher levels of abstraction from our initial observation. Abstracting is tied to our very own language and from it flows our epistemology and ethics. We

¹¹ J. Samuel Bois, *The Art of Awareness: A Textbook On General Semantics and Epistemics*, 3rd ed., (Dubuque: WCB, 1973). See chapter 6 for a more detailed discussion of the process of abstracting.

have a personal experience of an event; what we see, hear or touch. That is our initial limited experience of what is going on. Then we apply a name to it. We have now moved from the physical experience to talking about it which is an abstracted level of representation. What one necessarily says about an experience is personal and different from the next. As human beings we communicate at these higher levels of abstraction. For example, we will talk about alcoholism without ever having to refer to a drink, beverage, disease and so on.

The fundamental point for Korzybski is to challenge Aristotelian linear thinking. What we say something “is”, in reality it “is not”. A rose is not rose. We can talk about the rose never having seen one. To illustrate, Korzybski was famous for saying “the map is not the territory”.¹² As human perception allows us, we identify what is going on in the world through our representations of it. This is done by labelling and creating symbols. This is our map of reality. The map however, is not the territory. We mistakenly identify the map, our representation, as “truth” or the “territory” of what is going on. In reality, we are abstracting from the “territory” of what is going on in the world to the “map”, our limited perception of what is going on. We then identify that representation or map with the truth. All of this is done in language. The complicated factor that is pertinent to the mediator is that the very “transaction between our semantic self and the ‘objective’ world is now taken as the territory in its turn, as an event that has a certain type of existence of its own.”¹³ The mediator has to actively turn his or her attention to the parties’ maps and how they express their experience of the world.

¹² *Ibid.* at 83.

¹³ *Ibid.* at 84.

Fundamental to this is an awareness of elementalism in language. We are guilty of speaking in high levels of abstraction whereby we say something *is*. For example, I can say “he is my enemy” but that, at a semantic and likewise cognitive level, denies that *he* may also be other equally valid things like a son, father, brother, and lover. The mediator can make the parties aware, even at a grammatical and semantic level, of the larger processes of which we are all a part of. The mediator can draw attention to the parties relationality to the larger processes and systems we are all a part of in reality.

4. The Transformative Approach

With the above background in mind our attention can now be turned to the transformative approach to mediating conflicting identities. Bush and Fogler view conflict as an opportunity for growth and transformation at the moral level. They are less interested in solving problems and more interested in transforming the parties at the moral level. First, they seek to strengthen the self by deepening one’s awareness of his or her own capacity to deal with difficulty. This is done through reflection, analysis of choices and actions. Second, they seek to strengthen the self’s ability to relate and experience the others’ experiences and express concern for the others’ situations that are different from the self’s.¹⁴

The focus of the transformative model is not problem solving but a deepening personal awareness in relation to the other whose experience is different. Conflict becomes an opportunity

¹⁴ *Supra* note at 1 at 81-83.

to move away from one's strong position in the conflict and move closer to a more relative or relational consideration of the other.

The moral objectives of strengthening one's self awareness and strengthening one's ability to relate to others is achieved in the transformative model by what Bush and Fogler call *empowerment* and *recognition*. Empowerment is a goal of mediation. It is where the mediator ensures that a party can explore its self, examine its values and deepen its awareness of its own self worth. Feeling and perceiving themselves as worthy allows the parties to better deal with whatever difficulties lie before them. They have increased self awareness and determination.¹⁵

Once a party is empowered, it is then able to reach the second objective of mediation, that of recognition of the other. Empowerment enables the party to be more willingly acknowledge and respond to the other's situation. The parties turn their attention to the common human qualities of each other.¹⁶ They can move from a defensive position that faces adversity and discover empathy and attentiveness to the other's situation.

The combined advantage and goal of the transformative model is that if and when settlement occurs, it is by the decision of empowered parties. More importantly, the parties have moved themselves from defensive and self protecting positions to positions of security, self worthiness and a readiness to acknowledge the other's humanity.

¹⁵ *Ibid.* at 84.

¹⁶ *Ibid.* at 89.

The job of the mediator is to take advantage of any opportunity or point in the process whereby one party can feel empowered enough to recognize and acknowledge the other. Equally important, the mediator continually tries to take advantage of opportunities to get the parties to re-evaluate and reflect on their own options, resources and goals. This allows the parties to continually clarify their choices available to them.¹⁷ Empowered parties are secure enough to take different perspectives on the various issues that are confronting them.

The mediator has an equally important position in relation to the parties' progress. The mediator using the transformative model has no incentive to influence the outcome. As mentioned, the settlement, should there be one, must come from the parties themselves. The mediator is neutral and committed to use whatever influence he or she may have only to make sure the decisions stay with the parties.

5. Dangerous Mediation: Conflict as Teacher

The transformative approach to mediation, coupled with Cloke's dangerous mediation espouses the proper philosophical and ethical framework to achieve the goals that the above mentioned thinkers have been advocating. While accepting that settlement, agreement or resolution between the parties are not the prime objective of mediation, the mediator can be equipped with the right tools to facilitate a process of mutual recognition and change between the parties. In many conflicts, settlement is merely a temporary fix. Conflicting identities, identities that are so interconnected through a history of conflict, that have essentially created each other within and

¹⁷ *Ibid.* at 100-101.

through historical conflict, do not necessarily need to reach settlement. Settlement in situations like the Israeli – Palestinian conflict is always going to be tempered by international and internal political constituencies that make it difficult to move beyond strong positional stances.

Nevertheless, through the mediation process being advocated here, the right parties can begin to truly meet each other, dialogue and mutually evolve over time. This is important because despite the political dimension, the parties' constituencies must continue to live together or at least along side one another.

The added value that Cloke provides to the transformative approach is his use of conflict as teacher. By understanding the conflict in a myriad of different ways, it can be redefined in order to reveal that the parties are like two sides of the same coin where neither can stand alone. The conflict can become a teacher that gives rise to opportunities the mediator can use to guide a transformation of the parties themselves.

a) Limitations of the Transformative Approach

In *Mediating Dangerously*, Cloke adds a fundamental element to the transformative approach. His mediator is not neutral. The mediator's main value is his or her ability to dismantle the parties respective illusions or delusions they have accepted as the truth about themselves, the other, and the conflict. The mediator tries to enable the parties to see the diversity and relativity of truths and their interconnectedness to the other. The parties are helped to transform themselves by redefining and transcending the conflict itself.

Starting from the philosophical premise that Martin Buber stipulates where “I can only become I through my relationship with you so truth is never just mine or yours”, Cloke understands that the self and other are like two sides of the same coin.¹⁸ They create each other. The conflict is the locus of their own mutual definition. The parties’ identities in conflict establish their own truths and notions of good and evil and in doing so become their own worst enemies. For Cloke, mediation is dangerous because the parties have to give up the comfort of the known for the uncertainty of the unknown.

The transformative approach articulated by Bush and Fogler does not quite get this far. While conflict is a source of opportunity to build self awareness and worthiness that allows the parties to recognize the other, under this model it appears to be only a recognition of mutuality. Each side is encouraged to realize their mutual humanity. It does not seem radical enough that the self is forced to reflect on its inherent power to harm the other by virtue of its own existence. Cloke comes closer to putting the paradox of identity/difference dealt with by Connolly into the practice of mediation. Cloke comes closer to revealing the subconscious processes of abstraction and their articulations in language that ultimately replace what is true with what we think is true and likewise good.

b) Conflict as Teacher

In conflict, it is very easy to see how individual identities manifest themselves. They have accepted themselves and the world in a very particular way. More importantly, Cloke correctly

¹⁸ *Supra* note at 2 at 10.

points out that people in conflict actually become addicted to the conflict itself and to what he calls the “dysfunctional systems that generate [it]”.¹⁹ Any attempt to deepen their own understanding of who they really are is dangerous. Everything they have done to affirm their identity and support themselves in conflict is now at risk. In reality, it seems as if they must give up their self in order to rediscover it.

If the parties can come to understand that their conflict can be their teacher, they realize that their identities seem to have little in common. More importantly, they fit together “like interlocking parts in a system”.²⁰ One cannot simply isolate one party from the other. Neither stands alone. Each party creates the other simultaneously over time. Where a mediator can redefine the conflict for and with the parties, each party can rediscover its truer and more realistic self.

Cloke explains that change is painful but can produce positive results. Redefining the conflict is a means for opportunities and choices to be revealed. Mediators “need to ... bring a deep, *dangerous* level of honesty and empathy to the dispute resolution process. Otherwise [they] become characters in other people’s scripts, rationalizing their torments, fears and avoidances.”²¹ Redefining the conflict in different ways is the means for doing this.

Conflict can be defined in a number of ways in order to reveal the inner logic of the parties and ask difficult and honest questions. Cloke provides a number of examples. A few of them are represented here:

¹⁹ *Ibid.* at viii.

²⁰ *Ibid.* at 6.

²¹ *Ibid.* at 4

- Conflict arises whenever there is a failure of connection, collaboration, or community, an inability to understand our essential interconnectedness and the universal beauty of the human spirit.
- Conflict represents a boundary violation, a failure to value or recognize our own integrity or the personal space of others.
- Conflict is simply the continued pursuit of our own false expectations, the desire to hold on to our unrealistic fantasies.
- Conflict represents a lack of listening, a failure to appreciate the subtlety in what someone else is saying.
- Conflict is often a result of secrets, concealments, confusions, conflicting messages, cover-ups, and what we have failed to communicate.
- Conflict is the sound made by cracks in a system, the manifestation of contradictory forces coexisting in a single pace.
- Conflict is the expression of one-half of a paradox, enigma, duality, polarity, or contradiction.
- Conflict is often a fearful interpretation of difference, diversity, and opposition, which ignores the essential role in polarity in creating unity, balance and symbiosis.
- Conflict is a result of our inability to learn from our past mistakes, our failure to recognize them as opportunities for growth, learning and improved understanding.²²

It is apparent that Cloke is speaking directly to the theories discussed above. What is important from these definitions is that they make the parties realize that the conflicts begin and end within themselves alone. Conflict is a system created by both parties. The mediator can use these alternative definitions to allow the parties to experience more deeper awareness and meaningfulness about themselves. Doing so will allow the parties to understand the inaccuracies of their assumptions about reality, or that their accepted truths are relative to one another.

The mediator has a tough challenge. He or she must attempt to transcend the conflict. As Cloke puts it, the mediator must “transcend the notions of good and evil, allow for paradox, affirm the unity of opposites and identify the real enemy as none other than ourselves.”²³ This makes the mediator more radical than envisioned by transformative approach. The mediator is

²² *ibid.* at 6-8.

²³ *ibid.* at 11.

not simply a facilitator. He or she is a coach, an interactive party to the process who gives recommendations, and at times even evaluates and provides instruction.

c) Deeper Issues

From within the context of redefining conflict, Cloke's mediator has deep issues to negotiate within and between the parties. Some of the more important ones that Cloke outlines for the mediator are: (1) dealing with the parties resistance to change; (2) the mediators need to mediate negative emotions; (3) dismantling the parties' desire for revenge; and finally, (4) addressing the possibility of forgiveness. While the mediator who operates within the transformative model attempts to empower the parties such that they can recognize the other, the mediator is more facilitative in nature. This will not be enough with respect to the fundamentally deeper issues.

Cloke's modified transformative approach requires the mediator to be more integrative. He or she must interact with the parties and even suggest how to reflect and re-evaluate their position/story. The importance of this approach is that it tries to avoid the problem of compromise. The mediator does not want a process that facilitates capitulation where parties ultimately compromise over matters or issues of principle. Compromise is often temporary and superficial as far as solutions are concerned. Compromise fails to get at the truth of the situation and denies the integrity of the parties.

i) Resistance to Change

Truth and meaningfulness are aspects of the parties' identities that are relative. They need to be expressed deeply rather than compromised upon. The problem is that people are often irrationally (but understandably) committed to their 'truths' and meanings. To suggest that truth or a perceived reality is relative is a very difficult thing for the parties to accept. The search for relational truth between the parties requires the mediator to break down the identity system of the parties and suggest appropriate steps for them to be reflexive and open, thus allowing the parties to evaluate their deeper underlying issues.

As Cloke explains, "[e]ven the most destructive pattern, dysfunctional ruts, and painful routines seem safer than doing something different that could result in change."²⁴ What the parties are familiar with is their established identity manifested from within the conflict. This is comfortable and safe. Change is always fearful and dangerous. It involves abandoning the known for the unknown.

In light of a party's resistance to change, the mediator cannot be neutral and facilitate. That is a disguise for fairness. It is a tactic that avoids uncomfortable and strong feelings and emotions. Neutrality is consistent. As Cloke accurately states:

When confronted with something unique, or with paradox, contradiction, or enigma, a stance of neutrality makes us incapable even of observing without denying or destroying the very thing being observed, which is often a conflict that is riddled with paradoxes, contradictions, and enigmas.²⁵

The mediator then, cannot not be a neutral observer as would be a judge in a litigious matter. The parties cannot be seen as similar, where all other things being equal only one is correct at law. In

²⁴ *Ibid.* at 4.

²⁵ *Ibid.* at 13.

the mediation of conflict, it is the differences that must be appreciated along with the similarities. In fact the differences are what illuminate the opportunities for deeper understandings and choices between the parties. All this does not mean that the mediator cannot come across as being fair. However, the mediator should not be neutral to the point of being impartial, so that he or she cannot bridge both sides stories.

ii) Mediating Fear

In light of the previous discussion of resistance to change, Cloke adds a rather existential element to the transformation of a party's identity or story that is presented in a conflict. Cloke suggests that with change, there is an inherent, subconscious reminder of one's immortality. While the importance of dangerous mediation is to liberate the parties from rigid conformity to their respective systems of identity, actively doing so forces the parties to relinquish control. They must negotiate within themselves the loss of what they have strongly committed to. Ultimately, if at least metaphorically, they face a subconscious awareness of their own immortality and death. The fear of death, at the subconscious level, is the catalyst for the human being's need to be in control. However, death and immortality can also be a source of opportunity. They can be analyzed and used to make the parties aware of what really matters.²⁶

Cloke explains that the parties ultimately, at some level, must confront their fear of death. This is because the fear of death is manifested as a resistance to change. The parties are unwilling to accept their truths as illusion at some level. They insist on sticking to unrealistic expectations. In doing so, their stories tell only partial truths. The parties tell the story that

²⁶ *Ibid.* at 59-60.

portrays their side in a good light. Every story and every account of history always conceals the real truth. The mediator must treat the story of each party as metaphor. The mediator must ask probing questions. He or she must, for example, penetrate a party's anger or strong commitment to a particularly rigid position, to expose the real pain and suffering that the conflict has created.

iii) Desire for Revenge and Forgiveness

Revenge is the result of unchecked anger that turns into rage. For Cloke, anger is an opportunity to get at the heart of the conflict. For the mediator, anger reveals the vulnerability of a party. Deep active listening allows the mediator to lead the party to better understand itself. Addressing anger and the desire for revenge, Cloke's mediator reveals the underlying assumptions that give structure to the parties' identities and thus brings to life the theoretical framework outlined above. In doing so, the mediator makes it possible for the perceived victim, the party brutalized by conflict, to embrace his or her own suffering. The mediator can only do this by not remaining neutral. The mediator must empathize with the parties anger and encourage its expression in a constructive manner.²⁷

Also in line with the party's resistance to change is a party's resistance to forgive. Parties in conflict have spent so much time creating an identity which demonizes the other and even perceives the other as evil. Forgiveness means that the party must accept its own suffering and move beyond its perception of self as victim. Again, the mediator must ask deep and probing questions. He or she must challenge the parties to separate the people from the problem and separate the people from their behaviours and actions. In doing so, the parties can move toward

²⁷ *Ibid.* at 80-84.

giving up their old patterns and obsessions which have maintained their identity that was created within the conflict. Here too, the mediator is not neutral. He or she tries to move the party from the familiar to the unknown. The party must, at a fundamental level, give up its own identity as victim and self identification with being treated unfairly.²⁸

6. The Power of Not Understanding

One could argue that Cloke's transformative model of dangerous mediation cannot effectively be applied to complex political conflicts where the parties to the negotiation have their hands tied behind their backs by the constituencies that they represent. This may be true, as evidenced by the Israeli – Palestinian efforts to negotiate a peace settlement. At the same time, the study that will be outlined below demonstrates that at a deeper level, the identity systems that the dangerous mediator seeks to deconstruct are, in fact, self evident to the strong conflicting identities that attempt to collaborate. Even if at the political level, the solution to a conflict will largely be defined by a positional approach to negotiation, the constituencies themselves will ultimately have to live together and collaborate. The role of the dangerous mediator can and should play a pivotal role in effecting collaboration and co-existence between the two strong identities that have grown up side by side through conflict.

Z. D. Gurevitch, in his article “The Power of Not Understanding: The Meeting of Conflicting Identities”,²⁹ explains the nature of the dialogic framework between conflicting identities with an accuracy that Cloke would likely agree with. Conflicting identities can never

²⁸ *Ibid.* at 93-95.

²⁹ *Supra* note 4.

truly communicate or dialogue if the focus is only on revealing mutual understanding and the common between the parties. Focussing on the common ignores the element of otherness that the parties recognize in each other as the opposite of self. It does so by downplaying the conflict itself and focussing on what the parties have in common. Between conflicting parties, there are many possibilities of understanding. Mutual understanding and commonality that can exist between conflicting parties is contained within the parties' *ability to understand* the other. This must be discarded. For the dialogue or mediation to get at the heart of the conflict, the parties have to move beyond their ability to understand. They must acknowledge the otherness and realize their *ability to not understand*. This means that they have to set aside what they thought they knew about the other, what they thought they knew about themselves, and begin to experience one another from the starting point of truly not understanding the other side.

a) The Ability to Not Understand

The ability to not understand is a party's ability to "recognize and behold the other as an other. In a moment of not understanding, what has been considered 'understood' is relinquished as mere image."³⁰ In a sense the party has recognised the other as strange. It has given up whatever it might have projected onto the other and can admit that it does not know and cannot understand the other. The party may begin to step into the shoes of the other and learn. It can begin to view its own self as the other. The party can move beyond placing the other within the context of their own truth and sense of justice. It can begin to learn and experience how their own identity has caused fear, anger and pain in the other. To borrow Cloke's expression, this is dangerous. It

³⁰ *Ibid.* at 163.

requires the party to recognise that it's identity is fallible and capable of being unjust, harmful, and painful to another. This approaches a destruction of the self.

The ability to not understand reveals itself in dialogue where parties seek to reach understanding but are confronted with obstacles that make it appear such an end is impossible. Gurevitch describes a dialogue between two groups of teachers, Israeli and Palestinian, who attempted to meet with one another in order to create a dialogue concerning their respective political and cultural realities. The success of the meeting would determine whether similar dialogues could be set up with their students.

The conversation began with an exchange of stories by both sides of non-conflict events that each side had experienced with the other in their lives. They shared commonalities, awareness of each other's food, accents, slang, and behaviour. Then the conversation stalled. This commonality was mere superficiality which covered or hid the truer anger and restlessness that each side had for the other.

The conversation then moved to a sharing of stories of relations that each side had with the other. This involved stories about their lives, their villages, and the connection to the land. Gurevitch explains that at this point both sides were already experiencing their inability to understand the other. Neither side could accept that 'their' land could invoke feelings of belonging for the other. The groups tried to side-step or deny the tension created by the issue and continue to try and understand the other. However this eventually became burdensome as the conversation approached the topic of war. As one Palestinian teacher described his family's

flight from their home in the 1948 war, the Israeli teachers were unable to accept the characterization of the Israelis as unjust aggressors. To do so would mean to accept that they would have to be self derogative.³¹ Stories followed from both sides that described their pain and suffering. Each side attempted to prove the justness of its own self identity. As Gurevitch explains, the conversation ultimately became a “zero-sum game of identities”.³²

The ability to continue dialogue with the parties’ respective commitments to their understandings of reality was apparently impossible. The dialogue was at an impasse. Neither side could grant the other the power to express itself and to listen in return. The discussion culminated with a realization of the other side’s immovable position. More importantly, however, was that it became obvious to both parties that there was more than one version of truth, justice and meaning. They realized their own ability to not understand. They were aware of their own respective closed, inflexible perceptions of reality. There was no settlement, no agreement, and no commitment to having their respective students meet and dialogue. However, each party gained insights to their own self identities and saw the other in light of their own self.

What is most important from the above example is that there are two approaches to dialogue. There is the pursuit of understanding based on the misleading goal that there is, in fact, a common reality with common meanings that can be embraced and accepted by both parties. Under this misconception of common understanding, the problems faced in dialogue are the result of a commitment to pursue further information and explanations to clarify each side’s position. The second approach is to come at dialogue from a position that there is a strangeness

³¹ *Ibid.* at 170.

³² *Ibid.*

that exists between the parties. This strangeness brings the parties to a point where they realize that they cannot understand the other. For the mediator's purposes, it is this strangeness that must be embraced and capitalized on. The parties must encounter it. This does not mean that the mediator should abandon the pursuit of common understandings. However, it is the ability to accept that one doesn't understand the world, oneself, and the other, that allows for more accurate and evolutionary dialogue to occur.

7. Conclusion

The dialogue described in the above example is a clear indication that the transformative approach to mediation described by Bush and Fogler is a radical insight. Their model's main limitation is its commitment to pursuing the agenda of recognizing the common humanity between the parties in conflict. While this is necessary, Cloke correctly suggests that it is not enough. True empowerment and recognition will occur only with a more actively involved mediator who can help reveal to the parties their underlying rigid systems of identity by enabling the parties to confront and negotiate the very differences between them. By recognizing the self from the position of the other, a party can begin to see its perceptions of truth and reality as relative. Parties may never choose to abandon their positions. They can, however, begin a process of re-evaluation with honesty and self reflexivity. This opens up possibilities for healing, acceptance, and mutually beneficial change that is acceptable to both parties. Settlement, whatever shape that may take, will be more authentic, as it will come from decisions of both parties who have gained a deeper awareness of themselves and their conflict.

With the use of proper techniques, the mediator can probe the parties identities. The mediator can reframe the language of the parties to describe their identity, thus highlighting the rigidity and elementalistic formulations of the self. By this method, each party is provided with the opportunity to re-evaluate and rediscover itself and the other.