

WHAT PRIVATE MEDIATORS CAN LEARN FROM THE PEACE-BUILDERS

*By: Kenneth Fox **

I. INTRODUCTION

The emergence of modern American dispute resolution is often traced to the 1960s¹. In the context of American courts, the movement was propelled significantly forward as a result of the “Pound Conference” of 1976, at which over 200 judges, scholars and leaders in the legal community gathered to examine concerns about the efficiency and fairness of the nation’s court systems and their administration.² One consequence of this movement was wider recognition and use of mediation in legal and other settings. In the succeeding thirty years, the American dispute resolution field has grown, matured and become an increasingly important resource through which to address conflict, with mediation emerging as one of its core processes.

Notwithstanding the explosion of mediation over the past four decades, it is not new. Rather, it is a form of conflict intervention with ancient and global roots.³ Moreover, the modern dispute resolution field is actually part of the broader peace and conflict studies field that dates at least as far back as the dawn of the twentieth century.⁴ Where the dispute resolution field has developed largely in the context of individual disputes, the broader peace and conflict studies field has focused primarily on large-scale social, often vio-

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¹ See JAMES ALFINI ET AL., *MEDIATION THEORY AND PRACTICE 1* (Matthew Bender 2001).

² Although popularly called the “Pound Conference”, the meeting was formally named the “National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice.” The conference took place between April 7-9, 1976 in Minneapolis, Minnesota.

³ Jerome and Joseph Barrett offer a useful history of the Alternative Dispute Resolution field, including mediation, in their recent book, *A History of Alternative Dispute Resolution: The Story of Political, Cultural, and Social Movement*. (Jossey Bass 2004). For a brief summary of mediation’s roots, see also Alfini, *supra* at 1-2.

⁴ Sociologist Lewis Coser describes one of the first meetings of the newly organized American Sociological Society in 1907 as having “social conflict” as its main topic of discussion. Lewis Coser, *The Functions of Social Conflict* 15 (Free Press 1956). In the field of labor relations, the National Labor Board (forerunner of the National Labor Relations Board), was not established until 1933. The NLB was established to enforce the collective bargaining provisions of the then-recently passed National Industrial Recovery Act.

lent, conflict. As these two arenas of practice and scholarship have evolved, they have sometimes followed different intellectual and ideological paths. As a result, a variety of related – and yet distinct – conceptions of conflict and constructive conflict response have emerged.

The different paths taken by scholars in the dispute resolution and the peace and conflict fields have also influenced the development of mediation in each arena. While this can lead to confusion,⁵ the breadth of perspectives on what mediation can mean also provides an important opportunity to learn from across fields of practice, enriching our understanding of this important process.

The purpose of this article is to examine “mediation” and facilitated intervention from the perspective of the peace and conflict studies field. My hope is to provoke deeper thinking and broader consideration of how we, as professionals, can be more informed and intentional interveners in the service of constructive conflict response.

II. PRIVATE MEDIATION

Within the dispute resolution field, mediation is considered one of three core processes.⁶ It is typically described as a process where a third party assists private disputants in reaching a mutually agreeable resolution.⁷ However, over the past thirty years various distinct models of mediation practice have emerged, reflecting an increasing sophistication and growing pluralism within the field.⁸

⁵ To illustrate how confusing the word “mediation” can be, the definition of mediation found in the Dictionary of Conflict Resolution fills nearly twelve and a half pages. DOUGLAS YARN, *DICTIONARY OF CONFLICT RESOLUTION* 272- 284 (Jossey Bass 1999).

⁶ The three core processes most commonly identified with the dispute resolution field are negotiation, mediation and arbitration. See, MICHAEL L. MOFFITT AND ROBERT C. BORDONE, *THE HANDBOOK OF DISPUTE RESOLUTION* (Jossey-Bass 2005).

⁷ Moffitt, *supra* note 6, at 304.

⁸ I make a distinction here between “models” of mediation practice and mediator “styles”. A “model” of practice is an orientation to mediation that is informed and guided by underlying conflict theory. A “style” is how a particular mediator interprets and expresses a theoretical model of practice, often reflecting the mediator’s own personality. Thus, for example, a very quiet and reserved mediator may enact the same facilitative problem-solving approach (or “model”) of mediation practice as a gregarious and talkative mediator. By comparison, two other mediators might have the same businesslike personality (or “style”), and yet one enacts a very evaluative model of practice, while the other enacts a purely transformative model of practice. In the first example, the two mediators have different “styles” of how they enact the same “model” of practice. In the second example, the two mediators have the same personal “style,” and yet practice distinctly different “models” of mediation.

The most commonly articulated models of practice are evaluative, facilitative and transformative mediation.⁹ Evaluative mediation is often associated with a strong settlement orientation, where the mediator employs a broad array of techniques to move the parties to a settlement agreement. These techniques can include offering views of the merits of the legal case (if court-connected), predicting the consequences of not settling, and articulating the benefits of particular settlement proposals.¹⁰

Facilitative mediation, also referred to as “problem-solving” or “interest-based” mediation, is built on the principles that underlie interest-based negotiation. In this model, conflict is seen as (perceived or real) conflicts between the parties’ respective individual interests. The mediator focuses on the parties’ underlying needs and interests, with the goal of helping the parties generate options that can satisfy those interests.

Transformative mediation is built on the view that conflict is primarily about human interaction where people struggle to balance concerns for self with connection to others. This is distinct from the views that conflict is about violations of rights or conflicts of interest. From the perspective of the transformative mediator, when the balance is upset, parties’ interactions become alienated and destructive, leading to a “crisis of human interaction.” This crisis interferes with the parties’ own capacities to interact constructively with one another as they work through a conflict. Thus, the mediator’s goal is to help the parties identify opportunities to change their interaction from destructive to constructive, as they work through their conflict.¹¹

⁹ I focus here on the most commonly discussed American models of mediation. Other models of practice exist, a variety of which have been formally articulated. Examples include “narrative mediation,” (JOHN WINSLADE AND GERALD MONK, *NARRATIVE MEDIATION: A NEW APPROACH TO CONFLICT RESOLUTION* (Jossey Bass 2000)); and “client-centered” mediation (STEVE K. ERICKSON AND MARILYNNE S. MCNIGHT, *THE PRACTITIONER’S GUIDE TO MEDIATION: A CLIENT-CENTERED APPROACH* (JohnWiley and Sons 2001)). Moreover, a host of other models exist outside the United States. For example, Jacqueline Nolan-Haley, Harold Abramson and Pat K. Chew describe a number of distinct and culturally-specific mediation models in their text *International Conflict Resolution: Consensual ADR Processes (American Casebook Series)* (West, 2005). A careful study of these different models can add important insights to our growing understanding of mediation. However, that analysis goes beyond the scope of this current article.

¹⁰ Harold Abramson provides a concise summary of the three predominant models of mediation in his recent text on mediation representation. HAROLD I. ABRAMSON, *MEDIATION REPRESENTATION: ADVOCATING IN A PROBLEM-SOLVING PROCESS* 71 (NITA 2004).

¹¹ See Robert A. BARUCH BUSH, AND JOSEPH P. FOLGER, *THE PROMISE OF MEDIATION: THE TRANSFORMATIVE APPROACH TO CONFLICT, REVISED EDITION* (Jossey Bass 2005).

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Each of these mediation models reflects a different and distinct understanding of the role of the mediator. Yet at the same time, all these models have evolved largely in the context of American private mediation practice, focusing primarily on interpersonal or interactional conflict and often in professional settings. As a result, the private mediation field has been greatly influenced by American professional culture. This reinforces a peculiar view of conflict and the role of conflict intervention.

III. THE CHALLENGE TO PRIVATE MEDIATION PRACTICE

In the nearly twenty years that I have been involved in the mediation field, the vast majority of training programs I have encountered (and, for that matter, participated in or conducted) have focused on skill development based on one or another of the three models described above. In most cases, training is devoted to “how to” skills and practices, with relatively little examination of the theories – let alone the cultural assumptions and worldviews – that underlie those practices. The result is that for most mediators, our own “standpoint,” with respect to the theories that drive our practice, remains largely unexamined.¹²

Much of our professional mediation practice may appear to involve parties whose “standpoint” is similar to ours. We often work with lawyers and professional clients who we assume are like “us.” We practice in courthouses and professional conference rooms that fit our assumptions about what is right and how things should work. However, if left unexamined, these assumptions can lead to a provincialism that inhibits our ability to understand and

¹² By “standpoint”, I mean where one stands in the larger social structure and how that informs one’s experience and understanding of conflict. See, Julia T. Wood, *Gender and Moral Voice: Moving from Women’s Nature To Standpoint Epistemology*, 15 *WOMEN’S STUD. COMM.* 1, 1-24 (1993). To illustrate, I, as a middle-aged, middle-class, white, American, straight, male, professor, likely experience and understand the world (and, therefore, conflict) differently than another person whose “standpoint” is significantly different than mine. The relevance of this illustration to mediation is three-fold. First, my “standpoint” necessarily influences how I understand and relate to parties in conflict, whose “standpoint” may or may not be different than mine. Second, much of the theory-building in the mediation field has been developed by others with many of the same social attributes as mine, leaving open the question of how theory-building might take on a different shape by scholars of different social standpoints. And third, as discussed below, as mediation becomes increasingly global, the need to understand the impact of standpoint increases greatly.

respond appropriately to conflict that is beyond our own frame of reference.¹³

Against this backdrop of provincialism, mediation is becoming an increasingly inter- and trans-national tool. Private mediators are moving beyond the familiarity of domestic practice and squarely into the global marketplace. In the business world, trans-national mediation is increasingly commonplace. As teachers and trainers, we are exporting American and Western European models of mediation to commercial centers and villages on virtually every continent on earth.¹⁴ Yet, as we move farther from the physical boundaries of our domestic practice, we are also moving farther away from the educational, disciplinary and social boundaries of the world we know. We must resist the hubris that comes with the excitement of global practice and recognize the limitations of our own training and education. We must slow down and learn from people, disciplines and professions that can teach us about the larger world of conflict and conflict response. One direction to which we can turn is to the larger peace and conflict studies field.¹⁵

IV. LEARNING FROM THE BROADER PEACE AND CONFLICT FIELD

Unlike the professional dispute resolution field, early research in the peace and conflict studies field focused largely on deadly conflict, war and disarmament.¹⁶ Drawing on disciplines such as sociology, political science, and international relations, this scholarship sought to address large-scale social conflict by understanding the social structures, political systems and ideologies that underlie

¹³ For example, Leah Wing and Janet Rifkin argue that a mediator needs specific understanding of racial identity development concepts in order to help parties address racism and other dynamics that arise from racial difference in conflict. Leah Wing and Janet Rifkin, *Racial identity development and the mediation of conflicts in* NEW PERSPECTIVES ON RACIAL IDENTITY DEVELOPMENT: A THEORETICAL AND PRACTICAL ANTHOLOGY (C.L. Wijeyasinghe and B. W. Jackson III eds., New York University Press 2001).

¹⁴ In October, 2005, Hamline University School of Law's Dispute Resolution Institute focused its biennial symposium on advanced issues in dispute resolution on the globalization of ADR. See conference proceedings in 27 *HAMLIN JOURNAL OF PUBLIC LAW AND POLICY* (Spring 2006).

¹⁵ Clearly, we must also learn from scholars and practitioners from other cultures and "standpoints." However, I cannot offer those perspectives and do not attempt to do so here. In that regard, I join other practitioners and scholars in welcoming different "standpoints" as we broaden our body of knowledge and understanding of the conflict field.

¹⁶ HO-WON JEONG, *PEACE AND CONFLICT STUDIES: AN INTRODUCTION* 41 (Ashgate 2000).

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the actors.¹⁷ However, as the peace and conflict studies field evolved, so too did the ways in which scholars understood social conflict and constructive conflict response.

A. Recognizing and Working with Difference

One way the peace field has evolved relates to how practitioners address social “difference” in conflict. As a point of reference, a dominant part of private mediation practice is based on a search for common ground. Most mediators are trained to identify parties’ individual needs and interests and to look for common ground between them on which to build agreement.¹⁸ However, as mediators increasingly cross social and cultural boundaries, the principles of individual interest and common ground can become increasingly problematic. Assumptions about shared underlying beliefs, values and attitudes (even about the very *concept* of individual interests) may come into question. The broader peace studies field may shed light on ways to engage parties across such social divides.

In the peace studies field, one area of scholarship focuses on the cross-cultural nature of trans-national mediation practice. For example, peace scholar Mohammed Abu-Nimer has turned to linguistic and cultural anthropology to describe a framework for understanding cultural difference in conflict. Drawing on the work of anthropologists such as Kenneth Pike and Marvin Harris, Abu-Nimer describes two ways to build conflict resolution theory: an “emic” and an “etic” approach to knowledge.¹⁹ The “emic” approach to conflict theory-building identifies and adopts native terms and institutions as key organizing concepts for describing conflict practice. In so doing, this approach uncovers the details and roots of relevant cultural contexts of conflict practice. In this way, the emic approach to conflict resolution “emphasize[s] the elucidation of the natives’ own understanding and theories of conflict, and their own techniques or processes for resolving it.”²⁰ Im-

¹⁷ *Id.* at 31.

¹⁸ As described above, not all models of mediation practice are built on identifying party interests or seeking common ground. As a consequence, even within the field of traditional private mediation practice, a healthy debate remains concerning the question of what principles should drive mediation practice.

¹⁹ MOHAMMED ABU-NIMER, *NONVIOLENCE AND PEACE BUILDING IN ISLAM: THEORY AND PRACTICE* 5 (University Press of Florida 2003).

²⁰ *Id.* at 63, (quoting Kevin Avruch, *Culture and Conflict Resolution*), (1998).

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PLICIT in this approach to theory-building is the assumption that different cultures have their own techniques and processes for working through conflict.

From this perspective, trans-national mediation practice requires working with the parties' "own understanding and theories of conflict". The mediator must understand the parties from their own frames of reference and be able to support each (or all) of their particular ways of working through conflict. In my experience, this goes well beyond traditional mediation practice.²¹

Even beyond Abu-Nimer's description of the emic approach to understanding conflict, W. Barnett Pearce and Stephen W. Littlejohn argue that a significant part of the conflict we experience emerges from interaction between "incommensurate moral orders."²² As used here, a moral order is "the theory by which a group understands its experience and makes judgments about proper and improper actions."²³ Put more plainly, it is "the basis for what most people think of as common sense [which] provides a tradition of truth and propriety."²⁴ These different moral orders (or social worlds) are not only the result of cultural difference, but can also reflect a wide range of social and experiential differences within our own society. These differences manifest in fundamentally different ways of experiencing and understanding conflict.

When conflict reflects this deeper division in social worlds, nominal strategies such as negotiation (and thus, negotiation-based intervention) are inadequate. Interveners and parties need to engage in a different kind of interaction — a "transcendent discourse" — in order to constructively work through conflict.²⁵ This different form of discourse aims to express moral difference in ways that build understanding and respect. It "recognizes difference and no difference. It acknowledges that human beings are richly different and are defined in large measure by their differ-

²¹ It does, however, resemble some of the principles of transformative practice, where the mediator "follows" the parties' own ways of working through conflict. See, for example, Joseph P. Folger & Robert A. Baruch Bush, *Transformative mediation and third-party intervention: Ten hallmarks of a transformative approach to practice*, *MEDIATION QUARTERLY*, 13 (4), 263-278 (1996).

²² W. BARNETT PEARCE & STEPEHEN W. LITTLEJOHN, *Moral Conflict: When Social Worlds Collide* 51 (Sage Publishing 1997).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 122.

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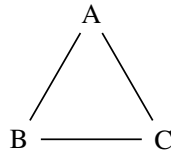
ences.”²⁶ Such an approach to working through conflict also goes beyond most traditional mediation training and practice.

In contrast to the “emic” and “transcendent discourse” approaches to understanding conflict, the “etic” approach to understanding conflict is characterized by identifying “underlying, structurally deep, and transcultural forms, expressed in terms of certain descriptors that are putatively capable of characterizing domains across all cultures.”²⁷ Put simply, an etic approach to understanding conflict seeks to identify those extrinsic measures that are meaningful to an observer of conflict and that allow theory-builders to conceptualize “different cultural patterns of response to conflict and violence.”²⁸ For the mediator who works across cultural boundaries, this means not only understanding social groups on their own terms, but also recognizing broader cultural patterns that transcend any one social group. This, too, calls for an approach to practice that goes beyond traditional mediation training.

V. UNDERSTANDING THE MULTI-DIMENSIONAL NATURE OF CONFLICT

Adding to the challenges of trans-national practice, mediators must also appreciate the complexity of conflict embedded in larger social systems. A founding scholar in the modern peace research and education field, Johan Galtung looked at the complexity of conflict and developed a useful framework for understanding and working with conflict in a broader social context. His framework may also be useful to the private mediation field as it moves across social boundaries.

Called the “A-B-C Peace (or Conflict) Triangle,”²⁹ this framework has three inter-related dimensions that can be pictured as follows:



²⁶ *Id.*

²⁷ Abu-Nimer, *supra* note 19, at 5.

²⁸ *Id.*

²⁹ JOHAN GALTUNG, *Solving Conflicts: A Peace Research Perspective* 2 University of Hawaii Press, (1989).

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“A” stands for the *attitudinal* dimension of conflict.³⁰ In general terms, “attitude” refers to our disposition toward an adversary. According to Galtung, this dimension of conflict has both cognitive and emotive elements. In social conflict, the cognitive element refers to the “enemy image” we hold of our adversary in relation to how we perceive ourselves. Galtung refers to this with the German term *Feinbild*.³¹ The emotive element relates to our affect in relation to the adversary.

“B” stands for the *behavioral* dimension of conflict. Building on the cognitive and emotive attitudes we hold toward our adversary, Galtung argues that our image of the adversary crystallizes, leading to greater polarization and readiness for destructive action, if not the taking of action itself.³² Depending on the degree of polarization, one may feel compelled to engage in conflict behavior. Finally, “C” stands for the conflict itself, which Galtung defines as the “incompatibility of goals” among the adversaries.³³ When taken together, the three dimensions of conflict constitute an inter-related system, where one dimension reinforces the others. Thus, attitudes affect behaviors, which influence the experience of conflict, which reinforces attitudes, and so on. According to Galtung, all three dimensions must be addressed in order to move from conflict to greater stability.

This model is instructional for several reasons. First, the model explicates how conflict operates simultaneously in different dimensions. Conflict has attitudinal, behavioral, and structural dimensions.³⁴ As interveners, we cannot fully know which of these dimensions is most salient to the parties. Particularly when working across social and cultural boundaries,³⁵ it can be difficult to intuit what underlies conflict and conflict interaction. While this insight is not new to the dispute resolution field, it takes on greater significance when interveners step outside their own familiar social and cultural context.

³⁰ *Id.* at 3.

³¹ *Id.*

³² *Id.*

³³ *Id.* at 4.

³⁴ Other scholars also focus on the interactive dimension of conflict. *See, for example*, Tricia S. Jones, *A Dialectical Reframing of the Mediation Process* in *NEW DIRECTIONS IN MEDIATION: COMMUNICATION RESEARCH PERSPECTIVES*, J.P. Folger and T.S. Jones, eds. Sage Press (1994).

³⁵ By “social and cultural context,” I do not limit myself to international settings. I also include the full range of social identities and standpoints, including race, gender, class, and sexual orientation, among others.

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Second, conflict is an essential ingredient in social change. The ways in which we intervene in individual conflicts can have consequences beyond the immediate parties and situation. As a consequence, we are by definition either promoters or inhibitors of social change. In cross-national settings³⁶, the risk of missing important cues increases greatly, exacerbating the probability of having unintended social consequences.

Finally, conflict intervention can be sought for a variety of reasons and ultimate purposes. Each purpose calls for the intervener to hold different mind-sets and different skills. These purposes may be settlement of the instant dispute; resolving the underlying sources of the conflict; providing opportunities for transformation and reconciliation between parties in conflict, among others. For these parties, these purposes may also change and evolve as the conflict intervention unfolds. Finally, these purposes may be understood differently from the perspective of a private professional mediator than from the perspective of parties in conflict who emerge from different social contexts.

VI. THE THREE DIMENSIONS OF INTERNATIONAL PEACE WORK

The three dimensions of social conflict described in Galtung's "A-B-C" conflict triangle correspond to the three dimensions of social conflict response articulated in the peace literature. Taras and Ganguly³⁷ describe the three dimensions of conflict response as *peace-keeping*, *peace-making* and *peace-building*.³⁸

A. Peace-keeping

Peace-keeping is the dimension of peace work that corresponds to Galtung's *behavioral* ("B") dimension of conflict. Recognizing parties' "readiness to engage in conflict behavior," peace-keeping focuses on strategies by which conflict behavior can be re-

³⁶ Or, for that matter, any setting that crosses social worlds.

³⁷ RAYMOND C TARAS AND RAJAT GANGULY. UNDERSTANDING ETHNIC CONFLICT: THE INTERNATIONAL DIMENSION 101 (Longman 1998).

³⁸ Former U.N. Secretary General Boutros Boutros-Ghali also referred to the three inter-related concepts of peace-keeping, peace-building and peace-making in his "Report of the Secretary-General pursuant to the statement adopted by the Summit Meeting of the Security Council on 31 January 1992" reproduced at <http://www.globalpolicy.org/reform/initiatives/ghali/1992/0617peace.htm> (last visited Mar. 30, 2006).

duced, stopped or prevented, often referring to the reduction or cessation of violence.

Traditional conceptions of this role involve, among other things, attempts “to create institutions and spaces for the peaceful resolution of disputes between states.”³⁹ Contemporary peace-keeping activities include traditional peace-keeping functions of separating combatants, peace enforcement, managing social and institutional transition, peace support operations, confidence-building measures, power-sharing arrangements, electoral support, strengthening the rule of law, and economic and social development,⁴⁰ among others. Some scholars describe this broader conceptualization of peace-keeping as a form of third-party mediation.⁴¹

B. Peace-making

Peace-making is the second dimension of conflict response. It corresponds to Galtung’s conflict (“C”) dimension. Recognizing that the “C” represents the parties’ perceived incompatible goals, this dimension of peace-work refers to the processes by which contradictions or incompatibilities among the conflicting parties are addressed. According to former U.N. Secretary General Boutros Boutros-Ghali, peace-making is “action to bring hostile parties to agreement.”⁴² Its focus is settlement and its primary actors are at the level of political and diplomatic interaction. The objective is “to bring the leaders of the disputing parties closer to a political settlement achieved through peaceful negotiations. In other words, peace-making require[s] international third parties to play the role of intermediary during the negotiation process between the adversaries.”⁴³

Where the goal of peace-keeping is the reduction of conflict (which may create conditions for further constructive conflict work), the goal of peace-making is settlement. Much of the international peace-work reported in the popular press relates to peace-

³⁹ ALEX J. BELLAMY, ET AL., UNDERSTANDING PEACE-KEEPING 11 (2004).

⁴⁰ “What is Peace-keeping? Meeting the Challenge” found at the United Nations Peace-keeping site, <http://www.un.org/Depts/dpko/dpko/index.asp> (last visited Mar. 4, 2006)

⁴¹ *Id.* at 13.

⁴² BOUTROS BOUTROS-GHALI, AN AGENDA FOR PEACE, 2ND EDITION 61 (United Nations Publications 1995).

⁴³ Taras, *supra* note 36, at 98.

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making initiatives. Interveners such as George Mitchell,⁴⁴ Dennis Ross,⁴⁵ and Jimmy Carter,⁴⁶ among others, typically serve a peace-maker role, brokering settlements between adversaries, often through their political or military representatives.

C. Peace-building

The third, and perhaps richest, dimension of social conflict response is “peace-building.” This corresponds to the attitudinal (“A”) dimension of Galtung’s triangle. The focus of peace-building work is not on the overt conflict behavior or on negotiation among elite representatives of the adversaries. Rather, it is grass-roots work focused on supporting attitudinal and social change. Unlike the conflict reduction of peace-keeping or the settlement focus of peace-making, peace-building promotes capacity-building, reconciliation and individual and societal transformation.⁴⁷ Put differently, “[p]eace building is largely equated with the construction of a new social environment that advances a sense of confidence and improves conditions of life.”⁴⁸

Peace-building takes the long-view. In the international arena, peace-builders must “undertake long-term socioeconomic and cultural activity directed mostly at the ordinary members of the disputing parties to change their negative images, perceptions, and attitudes toward the followers of the other side. At the level of social conflict, the main objective of peace-building is to implement

⁴⁴ Mitchell is widely credited with brokering the “Good Friday Peace Accord” between Unionist and Nationalist communities in Northern Ireland in 1998. Mitchell reports on his experiences in *MAKING PEACE: THE BEHIND THE SCENES STORY OF THE NEGOTIATIONS THAT CULMINATED IN THE SIGNING OF THE NORTHERN IRELAND PEACE ACCORDS TOLD BY THE AMERICAN SENATOR WHO SERVED AS INDEPENDENT CHAIRMAN OF THE TALKS*. (University of California Press, 1999).

⁴⁵ Dennis Ross was the chief Middle East negotiator for both the George H.W. Bush and Bill Clinton administrations. His experiences are chronicled in *THE MISSING PEACE: THE INSIDE STORY OF THE FIGHT FOR MIDDLE EAST PEACE*, (Faurer, Straus and Giroux 2004).

⁴⁶ Numerous books chronicle the peace-work of former President Jimmy Carter, most notably in relation to the Camp David Peace Accord between Israel and Egypt. See, LINDA B. MILLER, *SHADOW AND SUBSTANCE: JIMMY CARTER AND THE CAMP DAVID ACCORDS* (Georgetown University Press 1992). Carter is also founder of the Carter Center which, among other things, actively works around the world on peace and conflict resolution initiatives.

⁴⁷ HO-WON JEONG, *PEACE AND CONFLICT STUDIES: AN INTRODUCTION* 37 (Ashgate 2000), citing Jean PAUL LEDERACH, *BUILDING PEACE: SUSTAINABLE RECONCILIATION IN DIVIDED SOCIETIES*. (U.N. University Press 1994).

⁴⁸ *Id.* at 38.

‘peaceful social change through socio-economic reconstruction and development.’⁴⁹

Peace-building operates at structural, relational, and personal levels. At the structural level, the peace-builder asks “what are the social and institutional conditions that foster conflict?” The peace-builder must understand how the conflicting groups’ institutional and social dynamics and structural frameworks promote conflict.⁵⁰ At this level, peace-building efforts focus on transforming conflict situations “in such a way to identify and support structures that tend to consolidate peace.”⁵¹

It is important to recognize the impact of social and institutional structures on conflict. For example, Galtung makes a distinction between “negative” peace and “positive” peace. “Negative” peace is defined as the absence of direct, personal violence. However, there can still remain institutional structures and social arrangements, such as Apartheid or other discriminatory policies, that do harm or otherwise disadvantage some groups over others. By contrast, “positive” peace is not only the absence of direct violence, but also the absence of structural and institutional harm as well.⁵² As private mediators increasingly work across social boundaries, we can learn from the peace-builders by recognizing the social structural implications of the processes of which we are a part.⁵³

Peace-building also operates at the relational level. In addition to supporting long-term structural change, “[c]hanging psycho-

⁴⁹ Taras, *supra* note 36, at 101, quoting Michael Herbottle, *The Strategy of Third Party Interventions in Conflict Resolution*, 35 INT’L J. 121 (Winter 1979-1980). In fact, the conflict field makes an even further distinction with respect to terminology. The cessation of violence, or the achievement of a political settlement, may yield a “negative peace.” It is thought of as achieving a condition of “more or less lasting suspension of rivalry between the political parties.” DAVID P. BARACH AND CHARLES P. WEBEL, *Peace and Conflict Studies* 5 (Sage 2002). This state may be associated with the “*peace-making*” functions of interveners. In contrast, *peace-building* work focuses more on conditions that can lead to “positive peace.” Positive peace reflects those changes necessary to support more stable and, ideally warming of relations, between adversaries. At its best, positive peace supports a “broader, deeper effort to rethink the relationship of human beings to each other and to their planet.” *Id.* at 427.

⁵⁰ Taras, *supra* note 36, at 101.

⁵¹ Boutros Boutros-Ghali, 1992 “An Agenda for Peace, Preventive Diplomacy, Peace-making and Peace-keeping”. Report of the Secretary-General pursuant to the statement adopted by the summit meeting of the Security Council on 31 January 1992 61 (The United Nations 1992).

⁵² *Id.*

⁵³ This is not a new concept. Critical Race theorists and other scholars looking critically at the conflict field have argued for many years that social and institutional structure must be factored into developing mediator practice. Trans-national conflict work simply makes the impact of social structure more apparent.

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logical dimensions of adversarial relationships supported by the opportunities to understand different views is undoubtedly an inevitable part of the movement toward conflict de-escalation.”⁵⁴ Thus, the focus of the peace-builder at a relational level includes such activities as trust-building, forgiveness, reconciliation, relational transformation, and future imaging.

Finally, peace-building operates at a personal level. Attitudinal change requires more than improved communication and changed perceptions of the “other.” It also requires a shift in how the parties understand themselves in relation to the “other” and the conflict – often redefining identity, power relations, and more.⁵⁵

VII. APPLYING LESSONS OF THE PEACE FIELD TO PRIVATE MEDIATION PRACTICE

As private mediators journey further from the apparent homogeneity of domestic business practice, it becomes increasingly important to understand conflict and conflict interaction in its greater social complexity. The three dimensions of social conflict response examined here — peace-keeping, peace-making and peace-building — provide a useful framework for understanding the complexity of conflict. Adding to that, Abu-Nimer’s articulation of emic and etic ways of knowledge provoke us to step outside our own frames of reference about conflict and to appreciate the importance of understanding parties’ deeper realities on their own terms. Taken together, these examples of work from the peace and conflict studies field offer important lessons for private mediators. Among them are the following:

A. Social Standpoint Matters

The peace and conflict field, by definition, works across social, cultural, political and ethnic boundaries. Central to its work is the recognition that these differences, or moral orders, are important

⁵⁴ Jeong, *supra* note 46, at 37, citing C.R. Mitchell, *The Anatomy of De-Escalation* in *CONFLICT RESOLUTION: DYNAMICS, PROCESS AND STRUCTURE* 37-58 (H. Jeong ed., Aldershot 1991).

⁵⁵ *Id.* at 37-38.

and have an impact on conflict.⁵⁶ At the individual level, these differences play out through the parties' and the mediators' individual standpoints. As private mediators increasingly work across social boundaries, we must understand the importance of these differences and develop practices that respond appropriately.

Understanding different moral orders and social standpoints is not only important in trans-national dispute resolution. It is also important to our understanding of conflict within our own society. In a pluralistic society like the United States, it is particularly important because parties come from a broad spectrum of racial, political, regional, ethnic and other identity communities. As Leah Wing and Janet Rifkin have written elsewhere, "the social group memberships of the disputing parties and of the mediators make an impact, regardless of the conflict that instigated the use of mediation."⁵⁷ If social group differences make an impact on conflict, then our intervention practices must understand and work intentionally toward the impact we consider appropriate. This rekindles the need to re-examine social identity and standpoint as it relates to the mediation field. While much good work has already been done, our push into the global marketplace reminds us, yet again, of the importance of looking closely at ourselves and how our own standpoint matters.

B. Social and Institutional Structures Matter

The peace and conflict field recognizes the impact that social and institutional structures have on social conflict. One may be able to achieve "negative peace" simply by focusing on the parties themselves. However, to achieve "positive peace," one must be aware of how social structures impact the conflict and the parties. Whether trans-nationally or within our own society, this suggests that private practitioners need to develop greater sensitivity to the ways in which social structures and institutions impact the parties and the conflict at hand. For example, a mediator working with parties who operate from within very different social structures may need to notice what impact the structures themselves have on the conflict. This also raises in a new way an old question of

⁵⁶ Kriesberg refers to these as "identity" differences. Because identity is a social construct, it can change and shift depending on the context in which a conflict emerges. Kriesberg, *supra*, at 61

⁵⁷ Wing and Rifkin, *supra* note 13, at 182.

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whether it is, or should be, within a mediator's role to actively engage in influencing the structural dimension of conflict.⁵⁸

C. Systems-Level Awareness Matters

Systems thinking offers a holistic perspective for viewing the world around us. Just as Galtung's A-B-C triangle provides an integrated model for social conflict intervention, so too can mediators think more holistically. This means "thinking in terms of facts and events in the context of wholes, forming integrated sets with their own properties and relationships."⁵⁹ In the context of mediation, systems-level awareness means developing a greater appreciation for the systems in which each party functions, the interactions between the different parties' systems and the conflict system in which we are a part as interveners. It also means carefully considering what is the appropriate role of the mediator as the parties work through their conflict in all its complexity.

VIII. CONCLUSION

The peace and conflict studies field is rich with insights that can inform the private mediation field. This article does not attempt a comprehensive overview of what private mediators can learn from the peace and conflict field. Instead, it seeks to take a small but important model and illustrate the richness that it can offer those of us who practice private mediation. As the practice of mediation becomes increasingly globalized, we cannot escape the need to understand and function among and between different social worlds. As Walter Truitt Anderson states, "reality isn't what it used to be."⁶⁰

⁵⁸ This begs yet a deeper question of how one views the ultimate purpose for mediation. See Robert A. BARUCH BUSH AND JOSEPH P. FOLGER, *THE PROMISE OF MEDIATION: RESPONDING TO CONFLICT THROUGH EMPOWERMENT AND RECOGNITION* 15 (Jossey Bass 1994).

⁵⁹ ERVIN LASZLO, *THE SYSTEMS VIEW OF THE WORLD: A HOLISTIC VISION FOR OUR TIME* 16 (Hampton Press 1996).

⁶⁰ WALTER TRUITT ANDERSON, *REALITY ISN'T WHAT IT USED TO BE: THEATRICAL POLITICS, READY-TO-WEAR RELIGION, GLOBAL MYTHS, PRIMITIVE CHIC, AND OTHER WONDERS OF THE POST-MODERN WORLD*. (Harper Collins 1990).