Reconstruction and innovation of mediation: an integral approach

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Mediation as a practical science for an adult profession

Introduction

About three years ago, Baarsma asked the provocative question whether mediation remains the eternal promise or whether it will be a mature market. Her advice was to make quality of mediators more transparent and to embed mediation in the justice chain. This advice has been taken to heart. The various organisations of mediators have joined forces and have, in the face of it, started to lobby successfully to provide mediation with a more structural place in the case-law chain through the Van der Steur initiative law. In addition, as of 1 January 2012, a successful assessment was made a condition of registration.

However, the question remains whether this is sufficient to make mediation a significantly more attractive professional offering. Even with the current requirements of assessment, it is very possible that the public will remain sceptical about mediation. This is, after all, a profession which pretends to be superior to justice as a form of conflict management, despite training requirements that are low in comparison to those imposed on judges and lawyers.

According to Baarsma, the methodical fragmentation also gives the public a lower appreciation of the professionalism of the mediator. Whether that is the case, must be questioned. After all, few (potential) customers have any awareness of this fragmentation. The MfN (Mediators Federation Netherlands) does not address methodical diversity on the public part of its website. Mediators will also be of little affection for this. It may raise the question of why the mediator prefers one method to another. For the vast majority of mediators, the answer to that question is that they are only trained in one method. In such a deficitary answer, some mediators will add that after their training they have developed a personal style in which techniques of other methods also figure out. However, this answer amounts to an implicit admission that mediation is characterised by a considerable degree of methodical anarchy. Each mediator can choose the method that appeals to her or him the most and can also add his own personal style.

Unlike the methodical anarchy, the relatively small heaviposition of the training is visible to the public, 40% of which is reasonably well known to mediation. This anarchy is at odds with

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a development towards a professional profile that can compete with that of lawyers and which is reflected in the heaviand level of mediation training. For the development of such a profile of mediation, theoretical integration is desirable in which the various methods are no longer seen as competitors aimed at the same purpose, but as options tailored to the variable needs of parties.

Such an approach, which states that it is possible, implies a much broader, multi-methodical training based on a coherent and comprehensive science theory of mediation. This is a practical theory of science, of which research is of a strategic nature. Such an investigation serves to determine the identity of mediation and its values and theoretical purposes. The following questions are therefore addressed:

1. What is mediation and how does it stand out from other forms of treatment of social conflicts?
2. What are the values that mediation is supposed to serve, what is the ideological background of mediation and by what principles is it guided?
3. What are the methods of mediation and in what relationship in terms of coherence and strengths and weaknesses are they combined?

The development of such a practical theory of science is what we will pursue here, with a view to a multi-methodical training based on a deeper understanding of the unity and diversity of mediation. It should be noted that this concerns only the strategic analysis. The tactical analysis (the technical implementation of the methods) is not systematically discussed here. On the other hand, detailed attention will be paid to the question of the relationship between methods and techniques. It will criticise the dilution of this distinction through terms such as 'style' and 'approaches', which may relate to both methods and techniques.

1. Usefulness and function of multi-methodical training

If a theoretical integration of the various methods of mediation will prove possible, it is by no means certain that a multi-methodical approach is also practically feasible in training and practice. It is clear in advance that it is too much to ask the mediator to be able to apply all methods of mediation at a professional level. However, against specialisation as such there is little to say, in fact, it is a characteristic of professionalization. Specialisation is desirable in order to meet the specific needs of parties as well as possible. However, this also requires that there is a generalist who is able and willing to refer to the right specialist in case he or she cannot provide for that specialism himself.

The generalist must be sufficiently familiar with the various specialisations in order to be able to refer properly. The position of the generalist mediator is reminiscent of that of the general practitioner in the medical world. However, whether the analogy with the medical specialist also applies is very much a question. Specialisation is problematic if specialists do not recognise each other's specialism and believe that their approach is the best for all the problems that arise. If this superiority is not already explicitly stated, mediators at least behave as if this were the case. One applies one's own method as if there are no substantial differences in the objective of the various methods corresponding to the diversity of the needs of parties.
Specialisation of mediators has increased considerably in recent years, however this concerns specialisation in social problem areas, such as divorces and labour disputes. This specialisation does not in itself have a methodical meaning, but is mainly determined by the

idea that extensive knowledge of legal and social facts is of great importance if mediation is to be able to compete successfully. Around this kind of specialisation, sometimes a private interest organisation with training and all of this is developed, precisely because the (un)usefulness of fact-finding is highly dependent on the applicable method. One and the same social problem area can lend itself to a variety of methodical approaches. In the case of divorce, for example, in addition to a business conflict, there is often also a serious relational issue at stake. How these two aspects relate to each other and what kind of mediation is primarily in need of parties is typically a multi-methodical issue.

It will be clear that if there are relational problems, which can hinder the business handling of divorce, for example. Extensive knowledge of the facts of divorce, according to some, means that the mediator is not sufficiently open to dealing with the relational issues. However, this is a side note. Research shows that there is a regular beneficial effect on the fact that the issues to be settled in divorce are approached from the perspective of the future, while the relational issue naturally focuses on the past. The multi-methodically trained mediator will therefore have to be eminently competent as a pointer based on the assessment of the needs of the parties. If he notices that the future perspective is appreciated by parties, then a problem-oriented approach can be preferable to a solution-oriented form of mediation.

By now, it should be clear that the introduction of the generalist mediator calls for its own diagnostic methodology. But that is only at issue if it proves possible to theoretically integrate the methodical diversity of mediation.

2. Mediation as an ideology

The basis for a rational strategy is to clarify the values that the strategy aims to serve. What are the underlying ideal values of mediation? Mediation is based on the idea that people are better off if they have the ability and capabilities to settle their conflicts without coercion and in a peaceful, discursive manner. Historically, mediation has developed as a criticism of the accessibility of justice and the acceptability of its decisions. They are often arbitrary and binary, i.e. they tender it or lay it wrongly or unevenly with one of the parties.

In the accessibility of justice, expenses plays an important role, which can lead to a significant degree of inequality between parties in terms of knowledge, experience, relationships, endurance and strategic possibilities. Although the State subsidizes legal aid to the unemployed, subsidy does not help if a case is lost and the legal costs of the opposing party are condemned. Moreover, the government wants to further reduce the subsidy of legal aid, while the court fees are in danger of increasing. This will increase the need for cheaper, more accessible and faster alternatives to justice.

In this way, mediation is part of a society based on peace, freedom and equality. However, each method of mediation has its own ideology, in addition to this common denominator, which sometimes linked the pretension of superiority. They differ from each other to the extent to which they consider people in general capable of conflict management. In our view, such pretensions are not only theoretical and empirically unrealistic, but above all irrelevant, because the needs of the parties must determine the choice of method.
This immediately follows from the principle of party autonomy fundamental to mediation.

Remarkably little attention has been paid to the question of when there is a conflict relevant to mediation. In the Mediation Handbook, Prein defines conflict as a situation in which "two or

more parties pursue goals or aspirations, have interests or represent values that cannot be reconciled". Such a definition implies that there is mediation in any conflict of interest involving a neutral third party. However, such a definition is far too broad. For example, a broker acting for both parties would be a mediator because there is a conflict of interest every time contractual negotiations are negotiated. However, a conflict of interest does not imply a social conflict. If the seller does not want to lower the price and the buyer does not want to increase, no contract will be established, but there is no conflict. In general, there is no legal or moral obligation to allow a contract to be established. Mediation is, if it is not to be a rip-off phenomenon, essentially limited to social contradictions of a normative nature. This does not, of course, mean that all kinds of treatment of non-legal or morally charged conflicts of interest can be strongly related to mediation or that such treatment can have the effect of solving legal or morally fraught issues. We will come back to this later on our presentations on the solution-oriented method (see p. 15)

3. Party autonomy

Party autonomy is virtually uncontroversial as the most important principle of mediation. This is also obvious in view of the criticism of the judiciary that underlies the development of (modern) mediation. Nevertheless, the question is to what extent the parties can really be autonomous. After all, if they were truly autonomous in conflict management, they would not need a mediator either.

Traditionally, in addition to party autonomy, impartiality, neutrality and confidentiality are considered as principles of mediation. We think this is incorrect. There is, in principle, no good reason why the effectuation of these three values could not be left to the autonomy of parties. With the exception of facilitating mediation, the mediator can also participate in the discussion in substance and the mediator's position is sometimes inevitable. At most, altering or multiplying partisanship is sometimes achievable. Even facilitating the unequalness of one of the parties is not considered to be contrary to the principle of party autonomy that leaves parties free or not to settle for (alleged) partisanship.

Neutrality means that the mediator has no personal interest in the outcome of mediation. This, too, is a prerequisite for independent justice that does not always apply to mediation. After all, parties can have so much confidence in the expertise and integrity of a mediator that they are increasing the lack of neutrality. In fact, this is always the case when the mediator maintains a permanent relationship with a client.

Confidentiality is often also considered to be a principle inherent in mediation. However, we do not recognise that confidentiality cannot be left to the autonomy of parties. They may have a predominant interest in using information on other occasions.

Whereas, unlike mediation, impartiality and neutrality are fully valid in the case of case law, this is not the case with confidentiality. Even in arbitration, confidentiality is not a principle. The initial proposal to revise the Dutch Arbitration Act sought to change this, but in the meantime it has been returned to it in favour of party autonomy. A fortiori is therefore not a principle of mediation, even though the opposite is suggested in the Mediation Handbook and Article 4.1 of the MfN's (mandatory) standard agreement.

What about the mediator's obligation to confidentiality? This can also be arranged by the parties themselves as part of the mediation agreement. However, this arrangement cannot

cover the possible obligations of the mediator as a witness in law, unless the legislature would grant the mediator a right to change. We will not be discussing the merits of this because, even if there is a right to change, parties can decide whether the mediator should also use it if he is heard as a witness in court.

Nevertheless, this criticism does not alter the fact that impartiality, neutrality and confidentiality are important issues to which the mediator should explicitly pay attention in the conclusion of the mediation agreement. After all, party autonomy is a positive value that cannot be achieved on the basis of ignorance.

Conversely, however, this does not mean that the mediator is entirely dependent on what the parties consider desirable. Nevertheless, if the parties have not negotiated confidentiality, the mediator can conclude that the mediation process is stagnating in the absence of confidentiality and demands that this be negotiated. If not, he can terminate the agreement on the basis of his autonomy as a professional expert.

4. Expediency

Expediency is usually split between effectiveness and efficiency. Effectiveness is about the extent to which a set goal is achieved (output). Efficiency is on the cost of achieving that goal (input). If the aim is to express only financially or at least in monetary value, effectiveness and efficiency coincide.

Expediency has hardly been explicitly recognised as a principle of mediation, yet it is the basis of, among other things, the principle of professional autonomy of the mediator. The given example of the mediator who finds that mediation cannot succeed if a confidentiality clause is not agreed is still concerned is a question of effectiveness and efficiency of mediation. In fact, the principle of effectiveness stems directly from the mediation ideology under which party autonomy leads to better, more committed parties and nevertheless cheaper solutions to conflicts. You could therefore see the principle of effectiveness as more fundamental than the principle of autonomy. However, the vision of which the principle of effectiveness is at two levels is better, namely once the basis of mediation and once as a basis or principle in mediation. The decommission of the principle concerns the latter. Perhaps the reason for the lack of effectiveness in mediation is that mediation has developed as a criticism of the effectiveness of justice and thus took a somewhat complete view of the possibility of inefficiency of mediation. In addition, the actual inefficiency, about which later more, so eclatant and therefore also so threatening, that she could provoke a head in the sand reaction and all the more so where mediation was nevertheless quite successful.

We will come back to the aforementioned detail later. But before we move on, it should be examined whether the methods of mediation are internally consistent, clearly distinguished from each other and form a well-ordered and complete set. If this were not the case, the demand for efficiency is unnecessary in the absence of clarity of the relationship between purposes and resources.

5 Historical relationships between mediation and justice

The lack of knowledge of differences between the principles of justice and that of mediation is a lack of historical awareness. Mediation clearly preceded justice in social evolution. The historical mediator was only trusted if he did share substantial interests with both parties and

thus put those interests at risk if he were to operate partisanly.

The independence of the court, on the other hand, was a product of state-building, with the central authority either settling long-distance conflicts or intervening in local conflicts to strengthen the values, norms and interests of central authority. This independence from the court concerned local or personal interests. However, local interests as such continued to play an important compensatory role in the form of jury or sheriff justice, thereby limiting the power of the independent court.

It was only with the development of national justice as an exclusive source of law that the issue of judicial independence of political authority was added in cases in which the government itself was a party. Curtailing political authority by the court was initially seen as an abuse of his independence, because the court had been made independent to represent the interests of the state. Hence the tendency to set up specialised administrative tribunals for such matters. In the administrative tribunals, the administration checked itself.

In the Netherlands, at least only about 20 years ago, the abolition of the so-called Crown Appeal came to an end formally, after it was rejected by the European Court of Justice in the well-known Bentham case in 1985. The irony of this history was that the Crown Appeal offered the citizen the opportunity not to confine himself to legal arguments, but that he could also complain about inefficient consideration of interests. The Council of State often played the de facto role of mediator by examining whether there were acceptable solutions to the conflict for both sides. Remarkable and understandable in this regard is the recent emergence of use of mediation by the government.

Does the given historical-evolutionary sketch of mediation imply that modern mediation is a form of romantic regression? Here and there, a hint of romance can be seen in the history of the development of modern mediation. However, it is essentially a new form of specialisation in social control that can be classified as postmodern, because it is a recombination of old and new. Modern mediation is based on a critical relativism of socio-evolutionary "progressivity" on the one hand and on empirical-functional scientific research on the other. Modern mediation is recombinative as well, because it uses also scientifically supported techniques of conflict management, such as negotiation and mediation, coaching and therapy.

6 Methodological coherence?

Evaluative mediation (EM) shows the clear traces of a hybrid of justice and mediation. It has its origins in court-led mediation procedures in the US. These serve to increase the efficiency of the courts and the belief that "settlements" are often better conflict solutions that are more acceptable to the parties than case law.

EM is problem-oriented. The intermediary mediator, on the basis of his expertise and experience, considers the best outcome of the conflict and aims to encourage parties to discount that outcome in the choice between litigation and arranging. Party autonomy is therefore limited here to expressing interests and saying yes or no to reasoned proposals from the mediator. However, that justification can also be of a tactical, unverifiable nature, such as the fact that the other party no longer wants or can make concessions at any point or that something is difficult to implement in practice. The evaluative mediator often shuttles between parties in a process that is not transparent. Its outcome may differ from the outcome that the parties would have preferred if they had negotiated themselves.

The criticism on the part of the facilitating mediation (FM) is in line with this. FM was born out of the practice of 'out of court settlements' by American lawyers. They noticed that if they presented themselves as integrative process guards, the parties would be much more easily agreed and were more committed to implementing the decision.

FM's criticism of EM is that party autonomy requires parties to negotiate themselves to reach an optimal, mutually acceptable solution rather than subjecting the parties to transparency that is often even greater than that of justice. The task of the FM mediator is therefore limited to that of process guard. He must persuade parties to view their dispute as a conflict of interest and not as a values conflict. After all, there is not much to negotiate about values with their often emotionally charged nature. Anyone who marches with values will soon be called an opportunist.[2] The task of the mediator is to mute the emotions in order to facilitate business negotiation. A major advantage of conflict resolution through a swap of interests is that things can also be brought in that are not in itself part of the conflict.[3]

However, one might ask a critical question concerning why the parties could not reach a solution even without the support of the mediator. Only then will the parties really be called autonomous. Transformational mediation (TM) blames this on a lack of empowerment (decisiveness and communication clarity regarding one's own interests) and recognition (responsiveness and openness to the interests of the other party). In order to empower, the mediator will try to make it clear that the conflict has not just happened to the parties, but that they have made choices that have led to conflict. The question then arises as to why these choices are made. Was it a conscious choice with the conflict on the bargain and what importance was served by it, or did this choice come from communicative inability? Because the ambition is to make parties fully competent, the TM mediator also does not act as a process guard. However, he gives critical commentary on the approach to both the process and the content by parties, as well as understanding how empowerment and recognition can be strengthened.

Suppose, for example, that one of the parties puts his feelings on the table and the other party does not respond to them, then mediator the latter can ask the question: "Can you move well in those feelings?" If that question is answered in the affirmative, the next question is "what does you prevent you from saying that spontaneously?" The latter question can also be asked if the understanding of the other party is lacking. In the first case, the importance of the expression of empathy is made clear. In the second case, it stresses the importance of providing information for empowerment purposes. The example shows that the role of the TM mediator is reminiscent of that of a coach.

The criticism of TM is that the assumption that conflicts are caused by a failure in normal communication capabilities cannot explain how and why such a failure occurs. The narrative method (NM) answers this, according to NM, conflicts arise because there is no such thing as an unambiguously known reality, but that other interpretations of it are always possible. A conflict arises when the interpretations ("stories") of parties do not trace each other. For example, a man works a lot of overtime to prevent his family from shortcoming. His wife, however, sees this as a lack of personal interest in her. The NM mediator will help parties

deconstruct the conflict story as a storyline not compelling in the context of other stories. Recounting their very good relationship, for example, it turns out that the man worked so hard when there were no children, but that no accusations were made on the part of the woman at the time. The mediator then supports a reconstruction of storylines in such a way that the conflict does not fit in: the extra-income of the man was spent on dating and foreign holidays with his wife when no children had yet been spent. It is therefore not the many working as such that the woman deems unacceptable, but the loss of compensation for that.

If the conflict is not only based on wrong or, on reflection, at least not plausible interpretations, but is related to important needs, the dissatisfaction expressed in the conflict as a secondary conflict substance will also have to be defused. A suitable starting point for this is, for example, that the man tells about how enjoyable and important personal attention was in the relationship with his wife at the time. She no longer doubts the good intentions of her husband, to whom she then proposes to hire a babysitter once a week to go out together. The man probably says that he was already thinking about this because he also misses that personal attention very much now that everything seems to revolve around the children. The original problem has therefore been exorcised. It is something that has happened to the parties, not something they deliberately chose and with slightly different timing there was no conflict at all because the man himself had come up with a solution.

With NM, unlike TM, it is not about learning competences, but the parties under the direction of the mediator are looking for constructive connection to their stories about their relationship in such a way that there is no longer a substantial place for the conflict.
However, if there are no suitable points of reference, then an excellent general competence to resolve conflicts does not provide any solace. According to NM supporters, however, there is almost always such a starting point.
However, this does not seem to guarantee that conflicts can always be resolved. After all, there are always differences in the credibility of stories.

Where NM falls short, it may then be replaced by a discourse of negotiation in which the parties make concessions over and over again in view of the more important common interest of continuing the relationship. The chances of success of such a discourse will be all the greater if there are successful precedents of compromise in the relationship. However, we have in fact switched to negotiating without an FM obligation for the mediator to confine himself to interventions in the negotiation process. This process of negotiation is, as it were, incorporated into the solution-oriented method (SOM).

The possibility of narrative discontinuity is seen not only as an objection from the perspective of SOM, but also the problem orientation characteristic of the methods other than TM as such. The objection of the Public Prosecutor's Office to this is that it accentuates contradictions and thus can block solutions. Instead of investigating the emergence and development of the problems, the SOM mediator directly asks what is (still) good about their relationship and whether and how this good can be strengthened. Whether this also solves the problem that gave rise to mediation is of secondary importance. Often explicit problems are branched out

with other problems, which cannot be solved one by one either. It is in fact only important whether sufficient agreement can be found on the future of a relationship to be pursued. In addition, the experience of what went well in the past is relevant in so far as it is possible to gain insight into the factors that are determining, possibly renewable.

One possible criticism of SOM is that it is in fact not a method of mediation precisely because it is not problem-oriented. The existence of a conflict is seen as a symptom of a non-functioning relationship as the actual problem. The symptomatic problem need not play a role at all. Even without that problem, the parties could have approached the mediator, complaining that the relationship with the other is worse than before and then received exactly the same treatment as if they had reported a conflict. However, this is not a reason to regard SOM as a form of pseudo-mediation. This is not because SOM can be seen as a reconstructive form of mediation. However, the solution found will have to be such that the symptomatic problem cannot arise again as long as the relationship remains at the level of its recovery. In that case, the problem that gave rise to mediation does not need to be solved as such. From NM's perspective, it could be argued that "those who do not know history are doomed to repeat it", but that is for the time being only speculation about the relative applicability of both methods. In one case, the importance of connecting to the past will be important, in the other case it will have to be ignored as much as possible. This illustrates once again the importance of connecting in terms of method to the needs of parties.

We have seen that the methods are positioned as successive answers to critical questions about the quality of the previous method of conflict resolution. Each method pretends to answer the deficit of a different method and thus meets different needs of parties.

EM provides for a lack of expertise from parties. In the case of FM, the problem is not that of the substantive expertise, but of the processual competence or the transition from a discussion on values applicable to the conflict to a discussion and negotiation of interests. NM, on the other hand, seems appropriate if the common past of parties is rich enough in starting points to de- and reconstruct the conflict as a narrative misconception. However, SOM is preferable if these points of reference are not there or do not allow plausible interpretations that support the possibility of a common future, arguing that the parties attach value to them on their own. The discussion can then be better about that value and how it can be realised.

These methods seem inwardly consistent, provided that the limitations of each method are recognised. But are they also complete as a collection of methods, i.e. no more methods in principle? In our opinion, there may well be a need for such a method and one that aims to confront the moral visions of the parties.

7 Moral as a *missing link*?

Above, we have assumed that the man in the NM is prepared to revise the spending of his income. What if the man had complained about the unjust distribution of lusts and burdens in the relationship? There is then nothing to negotiate before it is clear what standards should be set for justice in this matter. But then we encounter a gap in the methods of mediation. There is no such thing as moral mediation (MM). Mediators assume that moral arguments can only reinforce contradictions. They see moral argumentation as a matter of subjective taste that

popular wisdom says is not (rationally) to argue about. Moral thinking, like legal thinking, would tender up to binarity (I'm right or you're right) and thereby also reinforce negative emotions instead of making them manageable.

On the other hand, people regularly consider justice more important than their direct self-interest. Even if parties cannot agree, it could be enlightening to know what and why moral principles are and cannot be agreed upon. The above picture of moral argumentation is also strongly distorted in that, despite their conflict, parties can often make positive moral judgments about the opponent. A little mediator, of course, tries to provoke this, even if this creates no more than favourable conditions to find a solution. Moreover, moral reasoning is not only a question of taking a stand, but of arguing for this position and its compatibility with other positions taken. Both deductive (from a rule to a case) and inductive (from cases to a rule) moral reasoning quickly becomes a complex affair. That is precisely why legal reasoning can be attractive.

The lawyer adopts rules and precedents as given and can be a great abstract of their moral correctness. On the other hand, in moral arguments, all relevant values can be put forward. This is not the only cause of complexity. The parties may also differ in their views on the facts of a dispute and on the moral consequences of alternative proposals to resolve them. However, this complexity does not fit with binarity. That does not alter the fact that, indeed, it can be difficult to find a solution on the basis of moral arguments. It can certainly be difficult, but it is not impossible.

This applies not only to the everyday moral conflicts that we can dismiss relatively easily without a mediator, but also to more complex conflicts in which a moral mediator can play a useful role.

Disagreement on principles does not preclude the parties from coming to the same conclusion in a concrete situation. The reverse is also possible, namely that one agrees in terms of relevant values, but not in their application in a specific case. After all, the parties can have a different picture of the facts or of the moral consequences of a conflict resolution proposal. The solution can then consist of doing further examination of the facts and the consequences.

Finally, there is still the possibility of finding a solution that amounts to a compromise between the two positions. The reason for its acceptance may be that it is sufficiently served by its interests. However, MM is a cover for the exchange of interests, which does not mean that FM would have achieved faster or better results. However, it may also be the case that the compromise as a moral position is superior to the (often one-sided) positions with which the parties have entered the mediation process. This is often the case when there is something to be said for both points of view. Here, there is no longer a cover for the exchange of interests, but of deepening moral insight.

How can MM be positioned within the collection of methods? The place of MM is where FM mediators are used to letting parties change their minds in terms of values to those in terms of interests, but without an a priori assumption that parties cannot come to a solution through discussion of values. In EM, it is also evaluated on the basis of values. What should the difference between EM and MM be? That is that a moral-based solution is not something that outside parties can be put forward, as the EM mediator would. It is parties themselves who must understand the moral acceptability of a solution on the basis of their moral principles. MM also operates with an evaluative framework. The difference with EM, however, is that

this framework cannot be developed independently of the parties and therefore cannot be used in such an intransparent manner.

The critiques on MM for not leading anywhere because of the subjectivity of morality is therefore very debatable. It is not the binarity, but the complexity of morality that can make it difficult to find suitable solutions. However, complexity implies not only more evidence of disagreements, but as well for compromises when there is something to be said for both positions.

8. Moral as *hidden persuader*

It is a somewhat naïve representation that the FM mediator would only be interested in moral questions insofar as they block thinking in terms of interests. Experienced mediators confirm that even in the phase of negotiation, the moral weight of interests can indeed play a role. Measures to prevent accidents, for example, place a different weight in the negotiating scale when it comes to children or adults. Morality can, in other words, be the origin of an interest.

Morality is also built into the general ideology of mediation: peacefulness, freedom and equality. The same applies to the particular ideologies of the various methods. There is also a certain blindness to moral elements in existing techniques.

At first glance, mediators already use many morally charged techniques, such as empathy, externalizing, relabeling, normalising, neutralising and mirroring.

Whether MM has the right to exist is the (empirically) to answer question. We think that there are sufficient points of reference for the development of such an ethics-oriented method. The competence required for this form of intervention is that of an auditor who tests whether the positions taken in the conflict are consistent with the explicit values of a party or the values whose money is not contested.

9. Completeness

The question of completeness can only be answered if we first determine the identity of mediation. However, what is the practical importance of that question? This interest lies in the distinction of methods of conflict resolution that may or may not belong under the head of mediation. With the successful rise of mediation and its increasing diversity, the question became urgent whether and how this diversity can be understood as a whole. Third parties play all kinds of roles around conflicts and can help bring them to a solution, but when is something mediation? Why, for example, don’t we see meditation or hypnosis led by a third party as a form of mediation, even if this proves to dissolve the conflict?

The reason is that mediation seeks to serve party autonomy. In case meditation were to be applied, its possible effect is clearly outside the parties. Although manipulative techniques are also used in mediation, they are ultimately in the service of strengthening the *subjective* practical rationality of the parties. The principle of party autonomy is a dimension of mediation that varies between autonomy only with regard to the acceptance of the intermediary mediator's proposals for full autonomy of parties on the process and content of the conflict.

The second principle of mediation is that of efficiency, it has been argued. Again, it is about practical rationality, but now specifically about the *objective* aspect of it. Efficiency is a

dimension of mediation that varies over the size and depth of the problem definition. This ranges from one concrete problem in mediation, for example the extent of an insured damage, to a thorough overhaul of the relationship of the parties, in which the number of parties involved or interests can also vary. The question of the completeness of methods can then be answered by examining whether the possible variation in terms of party influence and the extent and depth of the problem definition is covered by the various methods in their interconnection.

A related two-dimensional planning room for the methods of mediation was presented as early as 1996 by Leonard Riskin in his influential article "Understanding mediators orientation, strategies and techniques: a Grid for the Perplexed."[2] According to Riskin, mediation on the dimension varies evaluationally as well as on the size of the problem definition. The former opposes the dimension of the party influence proposed here. However, there is an important difference, as Riskin himself acknowledged in 2003. EM does not have to be accompanied by any deterioration of party autonomy.

It can also be a tool for parties to be informed about the chances of the court compared to a compromise. He therefore proposed to replace the dimension evaluative-facilitative with directive-elicitative.

However, that same year he also rejected that distinction (and called it the "New Old Grid") because an intervention by the mediator can be both executive and elicitative at the same time. Relabeling, for example, is both directive and elicitative. It is a procedural intervention because it focuses attention on a particular aspect of what a party says and it is an attempt to make that party agree to a more neutral representation of the saying. This distinction was therefore replaced by Riskin with that of the party influence as the most substantial of what the earlier awards had intended to express. However, Riskin also made a distinction by the nature of the influence, namely substantive and procedural influence, in which the latter is still distinguished depending on whether it is pre-regulated influence or (still) irregular meta-procedural influence.

However, only the substantive influence is relevant to the question of the completeness of methods. No one is interested in procedural influence as such, but only to the extent that it indirectly determines the substantive influence. Moreover, the distinction is dubious in view of Riskin's relativism of the distinction between procedure and content. It looks a bit like he's letting back in through a back door, which he threw out through the front door. This is, of course, without prejudice to the fact that the impact on the procedure in general will be conducive to conflict resolution by the fact that the parties are more likely to experience the solution as self-produced.

Either way, Riskin's New New Grid, without having acknowledged it, is the expression of the principles of mediation that we have reduced above. In our view, this explains that Riskin's model could be so successful despite its failures until 2003.[17]

Riskin's second dimension, the breadth of the problem definition, has hardly been controversial. However, what does it have to do with expediency (effectiveness and efficiency)? The question of effective completeness is an effective question that can be formulated as: do the methods address each other's shortcomings in such a way that mediation can be met in every conceivable need?

A (too) simple model of completeness looks as follows:

		Definition of the problem	
		Small	Broad
Party influence	Small	EM	MM
		FM	SOM
	Large	TM	NM

The model is too simple because it suggests party influence be constant horizontally. However, it aims to indicate only that the party influence of MM is at least as great as in EM, but smaller than with the other four methods. The same applies to SOM in relation to FM (at least the same size) and TM (smaller), and between TM and NM (at least the same size).

When presenting the various methods, we have already mentioned how each method can be interpreted as an answer to the criticism of another method. Now, let us look again at whether and how that criticism refers to the two dimensions of the model, namely party influence (P) and breadth of the definition of the problem (B).

The criticism of EM is that it leaves little of party autonomy very late. According to some, therefore, it cannot even be qualified as a form of mediation (P). In addition, EM is limited to a legal frame of reference, whereas in practice there are also issues of a moral nature that can play a role in whether appropriate or litigated (B) should be applied. However, this broadening of the problem definition does not always imply greater party influence (P). The auditor will have to sit on the parties in order to give them a position – morally responsible – and precisely if that goes against the self-interest of a party.

FM is distracted from two-way criticism of EM. The first is that EM operates positionally and therefore does not achieve utility maximisation achieved by negotiating (B). The second is that the mediator is not an expert when it comes to valuing interests. Parties themselves know best what's good for them (P). So there is no reason to limit party autonomy. However, the FM mediator is in place to stimulate the transition from a conflict over values/positions to interests (B) and to ensure that the negotiation process is conducted in an orderly manner (P). This criticism from fm's perspective also affects MM in so far as it hinders the transition from value positions to interests (B). However, as previously argued, this does not have to be the case if conflicting interests are both morally defensible. This encourages a willingness to compromise.

OM’s criticism of FM is that problem solving and conflict resolution is not the same (B). Provided that the relationship can be improved in general, a problem that is not solved as such can sometimes be "put on sale". Furthermore, the problem orientation is annoying because it stimulates preoccupation with the past (B). Finally, the separation of process and content is not always effective, but rather artificial. The mediator's task is to promote the goal of

achieving. It can be very effective to give parties co-responsibility for the process; but it can be equally effective when the mediator intervenes in substance (P).

This criticism is further prompted by TM: learning to control the process is the goal from the perspective of party autonomy (P). Parties must learn from their mistakes, as it were. The mediator's job is to encourage parties in that learning process. According to the NM view, TM does not recognise that communicative quality of parties is not a sufficient condition for conflict resolution, but that there should also be points of reference in the stories of parties in which the conflict does not fit and the facts underlying the conflict can be interpreted in a different way (B).

NM also makes no distinction between process and content (P). The task of the mediator is to identify positive points of reference, while the parties further develop the alternative narrative, but this is not a formal division of tasks. In relation to SOM, nm's criticism is that it assumes in advance that a problem-oriented approach cannot produce the better story and can be more efficient if there are no structural relational problems (B). This criticism is only partly justified because SOM does indeed recognise the possibility of its own failure in the attempt to bring parties on the same page towards the future. However, the criticism is broader, namely that SOM can succeed, but that it can be inefficient not to limit itself to the business aspects. Just as problems can disappear as a result of the revision of the relationship, a business solution to the problem can greatly improve the relationship, as empirically demonstrated in the case of divorces (see p. 4). However, we have already arrived at the second aspect of efficiency, namely efficiency.

Efficiency is the adjustment of the width of the problem definition to the needs of parties, a method should not take the problems unnecessarily wide. In this context, we can speak of completeness if all the wider methods can be replaced by a narrower method in so far as in the specific case the criticism of the narrower method is not relevant to parties. For example, it is inefficient to apply the SOM if parties are not interested in the continuation of the relationship. The same applies in case the conflict is not directly related to the history of the relationship (NM), but to communicative incompetence (TM). Finally, it is rather pointless to assess a conflict by moral standards (MM), if parties are only interested in "the marbles" or the presumed judicial judgment.

We have now demonstrated completeness in an approximate way by showing that the extremes of the two relevant dimensions are occupied and that the other two methods can be seen as intermediate positions in terms of partisan influence. As regards the breadth of the problem definition, it has been argued that, horizontally, there is a narrow versus broad relationship between the three pairs.

10. Methods as a communicative technique

According to our description, the different methods rely on special communication skills:

1. *Mediation* is the issue if the realisation of a goal depends on the cooperation of someone else. Mediation should be the articulation of everyone's interests in cooperation and the disadvantages of non-cooperation; EM
2. *Auditing* requires the ability to analyse values and interests at stake; MM
3. *Negotiation* is the exchange of interests that make cooperation (even) more attractive than not working together; the negotiator as process supervisor pursues the maximum usefulness of both parties: FM
4. *Coaching* is providing advice about and control over the expediency of behaviour; OM
5. *Meta-communication* is necessary when people unjustifiably ascribe each other ideas, intentions or attitudes as a consequence of insufficient communication; TM
6. *Therapy* is intended to alight and when possible eliminate contradictions in someone's values and interests; NM.

Method is now replaced by communicative style in the following model:

		Definition of the problem	
		Small	Broad
Party influence	Small	Mediation (EM)	Auditing (MM)
		Negotiation (FM)	Coaching (OM)
	Large	Meta-communication (TM)	Therapy (NM)

If the completeness theorem proves effective, each method in the right column should be able to be construed as an extension of the parallel method in the left column.

Auditing is an extension of mediating that relies not only on self-interest in cooperation, but also on the moral obligation to do so. Coaching is an extension of negotiation if agreement is also required on the process by which the common goal achieved by negotiations can be achieved. Finally, therapy is an extension of metacommunication because an individual's ideas, intentions or attitudes can be contradictory.

With this "proof" of the completeness theorem, the question of the identity of mediation has also been answered. Mediation is not a confluence of disjointed approaches to conflict, but a collection of intervention methods in social conflicts ordered according to the principles of party autonomy and efficiency.

These communicative techniques are also useful outside of conflict. As has already been said, some people already speak of a conflict if there is only a conflict of interest. But if not one of the parties claims a legal or moral right, there is no conflict. An interesting methodological

question then is what difference it makes when or not there is a conflict at issue. Thus, once again, the importance of morality appears in the foreground, the stepchild under the methods of mediation.

After answering the strategic questions on mediation formulated on p. 2. we are able to outline a methodology for the generalist mediator.

11. Methodological diagnostics

The needs of the parties are not only related to the breadth of their problem definition, but are partly determined by the stage of a conflict (input), by the communicative competence of parties (process) and by the small or greater variety of possible outcomes of mediation (output).

Van der Hoek[2] explained that there is a link between glasl's escalation and the suitability of methods of mediation. The order he proposes is: FM (if parties no longer come out themselves) in the win-win phase, TM and NM in the win-loss phase, where NM is deployed when TM no longer works, and finally, in the loss-loss phase, EM. After that, the mediator must clear the field for arbitration or case law. The logic of this sequence is clear and Glasl's empirically well-confirmed phase theory thus contributes to the objectification of party needs. Nevertheless, a number of questions arise. The first question is how SOM can be fitted in.

SOM is a facilitating, process-oriented method as well. It distinguishes itself from FM by decoupling conflict resolution from problem solving. SOM primarily aims to improve the relationship of the parties. The further the conflict has escalated, the harder it is to get it done. In this way, it is obvious to bet on SOM and to switch to FM if the positive support of the former proves irreparably damaged.

The second question is what the diagnostic place of MM is. MM is the moral pendant of EM. Given the escalation value of EM (image and coalitions, loss of face, threat strategies), MM may be useful in highlighting the essence of mediation as a preference for cooperation rather than further escalation. This is easy to the extent that parties have both opted for mediation. From there, it is only a small step towards cooperation from when there was no conflict (SOM). If this does not turn out to be a viable card because one does not detach from the positional discourse, then there are two possibilities. The first is to persevere with an evaluative role of the MM mediator. The second possibility is that the moral approach is jammed and the mediator will the escalation to the loss-loss phase in order to shift the focus from values to interests, as is customary in the pre-phase of FM.

However, MM still has a third application option. The linking of methods to the escalation phase makes little sense if, in advance, as a result of the legal arrangement, there are only two or three possible outcomes, for example shared parental power or not. The MM mediator can then advise on the moral considerations that are at issue or attempt to bring parties to the same position.

The second reason why the escalation phase may be less relevant is too little communicative competence among parties. It is not a local incompetence, because it can be remedied with TM. If there is any doubt about the local or general nature of incompetence, there is no point in applying methods that are rather demanding in terms of the use of parties. The mediator can then propose non-binding arbitration.

Assessment of the adequation of methods is also a matter of a quickscan of whether and how each method appeals to the parties. The aim of EM is an opinion on the possible outcome of a lawsuit and the possible added value of an alternative devised by the mediator. However, one is particularly interested in the ethical aspects of the dispute (MM). This can also be of practical importance if a person's reputation is at stake. FM is obvious for parties who, in view of their interests, see opportunities for negotiations and already feel little for a court case.

The quality of communicative capabilities is more or less evident in the representation of the problem's history. Was one clear in terms of desires, did one show understanding for the other party? Do one listen carefully to the mediator, one asks if something is not clear? OM is suitable for people who used to be reasonably satisfied with the relationship with the other party and who would like to restore it. NM will appeal to people with a strong sense of perspective, i.e. with the understanding that one can interpret the same facts differently and that differences in interpretation can make a difference in consequences. In this way, it should be possible to develop a psychological test for mediation. The results of such a test can then be tested again against the representation of the problem history. It should be noted that this does not help with the importance that OM attaches to minimal attention to the conflicting past. However, the representation of the positive part of the past can be used as an indication of the degree of desire for an improvement in the relationship between parties.

In broad lines, the parties will express multiple needs. In this case, it should be identified which method appeals most to both parties. More difficult than the question of multiple interests of one party is the situation in which the primary needs of parties differ. Secondary common needs can then be decisive that there is a impression that the parties are very interested in finding a solution through mediation.

12. Diluted distinction between methods and techniques

Meanwhile, the diagnostics advocated here are purely speculative for lack of multi-methodically trained mediators. Methodical thinking is now fairly artisanal. The method in which one is trained is applied to almost every case. In addition, one develops what is called a personal style, a style to which elements have been added with which one has gained beneficial experiences. Craft, a mix of largely teacher tradition with some personal experience adjustments. However, craft can degenerate into methodical anarchy. In a recent interview with conflict management magazine (no.3 2014, p.7), this is well illustrated by an experienced mediator:

"However, the style I apply now does not fit into any box. I mainly use what comes to mind… I try to steer as little as possible, but sometimes I let go of that too. I believe you should do what works. And what always works sometimes doesn't work, then you have to do something else."

Because of this subjective component, methods have started to be called styles, as if the purposes of mediation are always the same, but only their techniques can vary.

How are techniques distinguishable from methods? Why, for example, do we see "mirroring" as a technique and not as a method? A method consists of an orderly set of processes and techniques with which a certain goal can be realized. A technique can be part of different methods and therefore has no inherent purpose to date, even though some techniques are more or less typical of a particular method. The question, for example, of why parties have failed to resolve the conflict itself seems to be a typical TM question at first, because this question suggests a lack of empowerment. However, it also fits very well in the context of FM.

The question also makes sense in the NM framework. Contradiction of interests can be the cause of the no more trace of storylines, as the example of the hard-working partner given above shows. Although the question is typically TM-like, it does play a different role in FM and NM than in TM. At FM, he needs to determine the complexity of the conflict and the assessment of the compatibility of interests. At NM, the question should be the determination of the point where things went wrong or the identification of starting points for the development of alternative storylines. Conversely, there are techniques that are incompatible with some methods. Techniques that appeal to the emotions of parties will prevent an FM mediator as much as possible. because they can be a nuisance to negotiate. That is precisely why it may be necessary for parties to express their emotions first, but if they do, the FM mediator will soon intervene through reformulation and relabelling.

Even experts in the methodology of mediation, the distinction between methods and techniques is not always entirely clear. Prein, for example, seems to regard the systemic approach as a method of mediation. Although he does not speak of a systematic method, he places the systemic approach under the same head of "approaches" as TM and NM. On the other hand, Choy, a writer on the systemic approach in the book " Approaches and sources of inspiration of mediation" edited by Prein, argues that there is "not so much an indication of systemic mediation as for the mediator to set up systemic glasses". As a background theory for various techniques of mediation, this theory is very valuable, but therefore it is not yet a method linked to an independent goal.

Prein distinguishes result-oriented (EM), problem-oriented (FM) and communication-oriented (TM and NM) 'approaches'. The coincidence of the first two with EM and FM suggests that there is no question of technization of methods. This is the issue if TM and NM are brought under the same umbrella of the "communication-oriented or interactive" approach. Below, Prein understands that the mediator "does not directly interfere with the content of the conflict", but "primarily wants to improve communication between parties." Given this definition, however, FM is also focused on communication. The mediator is supposed to interfere only in the process and not with the content. It should steer the communication from a discussion on positions to a discussion about interests in order to start negotiations. These negotiations, in turn, should only be procedurally controlled through Harvard rules for negotiation. These rules dictate how to communicate in negotiations and the mediator acts only as a guardian of those rules and not as a substantive mediator.

Because NM does not distinguish between procedure and content, it is also not clear why NM would be eminently communication-oriented. Prein's definition of that term actually only fits tm, when it comes to improving empowerment and recognition. NM, on the other hand, is indeed solution-oriented and very radical: the disappearance of the problem.
Although the classification "communication-oriented" is therefore wrong, there are undoubtedly other classifications imaginable that are correct. For example, Prein refers to authors who speak of a "therapeutic style" in both TM and NM. Above it is stated by us that

TM shows characteristics of coaching rather than therapy. After all, it is about improving skills and not, as with NM, about a substantive change in the relationship between the parties. However, Prein also explains his distinction by referring to the 'homo economicus' at EM and FM and contrasts it with the more emotionally irrational nature of TM and NM. That is an acceptable distinction, but one without methodical meaning. It does not imply that TM and NM are more methodically related than to EM, FM and SOM. This raises the question of the usefulness of these types of classifications. Unlike the principles from which we derive our classification, they are fairly arbitrary.

13. Unity in variety?

Prein distinguishes three visions on how the wide variety of ways of working mediators can be seen:[2]

- As a loose set of techniques from which mediators can more or less freely operate; Prein rejects this because as a mediator you do not escape working from a certain purpose and vision. In other words, the mediator must use a methodical criterion to use techniques in a targeted manner.
- If depending on contingency factors such as the nature of the conflict, the needs of the parties, the barriers to a possible solution or the escalation rate; Prein cites, however, all kinds of research showing that mediators do not work if not but rather rigidly stick to their own style.
- The third view is that the differences in working methods are determined by "something that is complex and coherent and goes back to an orientation, philosophy, ideology, professional ethical view, human image or identity", a vision to which Prein joins.

Methodical rigidity does not rule out the possibility of the necessary technical variation within a method... If, for example, there is a lot of outrage among the parties, the mediator will have to intervene against this drive, and the mediator will have to congratulate the parties on their business. However, if the method is TM, the former interventions are taboo for methodical reasons. The parties must then discover for themselves that it is more effective not to show more emotion than is necessary to improve communication over and over again rather than block it.

The implication of the methodical rigidity of mediators is that the needs of the parties do not determine the purpose of mediation. The fact that there is a connection between ideology and method has already been argued above, but that does not imply that ideology and human image are important causes of the methodical rigidity of mediators. One-sided training during training could also be a cause. Prein himself suggests that this is a major cause. Mediators, he says, are "little aware of their own style", as has been confirmed more recently by American research.[3]

Yet that is again difficult to reconcile with the idea that ideology or human image would be the cause of rigidity. After all, methodical awareness only arises when one is also familiar with alternative methods. However, it may also simply be too difficult to use two or more methods side by side at level. This indicates that even mediators who had indicated in the register that they could use more than one style were also found to use only one style in practice. On the other hand, however, a large number of mediators are also lawyers and

apparently have no major problems of changing the legal approach to conflict resolution to that of mediation.

14. The emperor's new clothes

By suggesting that mediators can do no different than what they do for such pompous reasons, Prein creates a sense of inevitability among his reader. In this way, he can rather carelessly ignore the fact that he himself has relived the research that the needs of the parties do not affect the methodical manner of action of the mediator. This is remarkable, because the lack of methodical flexibility is in flagrant violation of the principles of party autonomy and efficiency accepted in all forms of mediation. It is up to the parties to decide what purpose they wish to submit to mediation and deviation from it is by definition ineffective. Following prein would be mediation theory and practice logically completely incoherent. In fact, there can, of course, be consistency in so far as the needs of the parties happen to fit with the rigid methodical offer of their mediator.

After this analysis, it is also clearer what the function of watering the distinction between methods and techniques is under the heading of approaches or styles. As long as the relationship between purpose and means is undetermined, technical differences can be charged to methodical differences and be exempted from the demand for their methodical coherence. Conversely, methodical differences can be treated as only technical differences. In this way, each mediator can develop a "personal style" and possibly claim ideological superiority for it. It seems very much that prein's "communication-oriented" style is an example of this. Prein is clearly charmed by TM (the "perhaps most consistent form within this communication-oriented approach") and apparently wants to combine TM with unspecified NM techniques. A good example of a personal style, but also of operation to your own taste from a collection of loose techniques. But how can this be reconciled with Prein's objection to it, namely that the mediator does not escape working with a certain purpose or vision?

Prein's objection is a petitio principii. The overall aim of mediation is to resolve conflicts or to improve the conditions for this. A mediator can develop his own style based on experience with techniques that he believes work (at least with him) or do not work without having to ask themselves the methodical question of why they work in mutual cohesion. He is, as stated before, similar to a craftsman. He also develops his own style of work without being hindered by the theoretical knowledge required of an engineer. This knowledge is only necessary if the technology needs to be adapted to variable, innovative needs of clients. The still great admiration-inducing architecture of Gothic cathedrals, for example, was based not on theoretical knowledge of building, but on experience acquired (literally) trial and error.

The master builder of such a cathedral would have been totally disengaged if he had been asked to build a 500-metre-high skyscraper, although it's still unknown theoretical building principles are in principle the same.

Prein's objection to the model of mediation as a collection of loose techniques is therefore justified, but he seems to care little about it himself. In addition, the importance of personal style in the practice of mediation should not be underestimated in any way. But it is the importance of craftsmanship in a discipline that has scientific pretensions. With the idea of a personal style, however, an even more far-reaching pretension is linked, namely the pretence of being able to eliminate the incoherence between the theory (party autonomy) and the

practice (methodical rigidity) of mediation.

15. Methodological contamination and party autonomy

Presently, almost all mediators are trained in one method and apply them independently of the needs of the parties. If experienced mediators are confronted with this, it is suggested that the diversity of methods is discounted in their personal style.

In theory, one can imagine a personal style that seems to be flexible in responding to the needs of parties. For example, the mediator starts in FM style, encounters a small degree of empowerment and recognition and throws some TM technique at it by asking how the parties could solve conflicts independently in the past. The mediator then notes that the parties begin to tell various stories about the development of their relationship and uses this semi-narrative interlude to allow the parties to experience the relativity of their positions and then switch to an FM discussion about interests that leads to negotiations.

What we find here is not methodical flexibility, but something like exploring the needs of parties. In the scenario outlined, it is certainly not the case that parties could know what the methodical purpose of the mediation process is and what their tasks and roles are in relation to those of the mediator. In any case, a continuous change in the methodical perspective in the scenario just outlined would be virtually impossible for parties. The actual methodical work only begins when the mediator finally decides to operate in a certain methodical framework. The scenario is nevertheless interesting. It shows how mediators using these techniques of other methods can derive from it the illusion that they are methodically versatile thanks to their personal style. That illusion can also be easily created. In the history of conflict, interests, competences and the diverse narrative experience of history are more or less naturally addressed. Mediators can therefore feel that they are doing justice to all methodical angles. In reality, they impose a method on the parties, although the TM and EM options are not further explored in our scenario, although parties may need it most. In the absence of a massive lack of familiarity with methods other than FM, such a lack of further research is also obvious.

A second explanation for methodical contamination may be that some techniques are useful in various methods, albeit with a different purpose. In the scenario outlined, for example, this is the case with the use of narrative technique. Apparent methodical versatility can also result from using one method as a cover for another (see p. 19). Finally, there are also interactive effects imaginable in the use of methods. For example, participation in an FM or NM procedure can strengthen empowerment and recognition through unconscious learning effects.

We have explained why mediation is an incoherent strategy if there is no way of aligning methods with the needs of parties rather than those of the mediator. In that case, there can be no party autonomy, the fundamental principle of mediation. The choice of a given method should therefore depend on the needs of the parties in the light of the other contingency factors mentioned above prein. Whether this can actually be achieved remains to be seen. Further investigation must answer that question. However, we are committed to the possibility that mediators other than their own favourite "method" can at least get to know them so well that they can refer parties to a colleague more giveable in the relevant alternative method.

16. Recommendations for multi-methodical training

The conclusion of our analysis is that while mediation is methodically consistent, it is not entirely coherent because of a missing link. In principle, however, it is more objectionable that the theory and practice of mediation are in flagrant conflict with each other. Methodically, mediation still shows artisanal traits because no clear distinction is made between methods and techniques. The extent to which multi-methodical training and improvement of methodological understanding can change this is a question that needs to be answered by experimental research. The assessment, which is now entirely FM-oriented, will then need to be more varied for the increase in the level of education, more extensive attention to ethical argumentation theory, conflict sociology and – psychology is desirable. Much more attention is recommended for the theoretical foundations of the various methods. Greater legal expertise in areas attractive to mediation will also be able to benefit the usefulness and prestige of mediation and reduce the risk of juridification of mediation by ensuring that multi-methodical training sharpens methodical awareness. Furthermore, a more general training in the special communication techniques relevant to mediation, which also know their applications outside of conflict, could be a valuable contribution. The mediator will then be able to act outside of conflict as mediator, negotiator, coach or narrative therapist. Finally, it is important to give special attention to techniques that are useful in almost all methods. In particular, this is a think of the systemic approach.

The usefulness of a multi-methodical approach lies not only in adapting supply to the demand of parties, but also to the construction and personality of the mediator. By being able to get acquainted with all methods both theoretically and practically, one can also consciously choose specialization in a method that one feels the most affinity with and operates well in the opinion of more experienced specialists in that method.

On its own, it would also be advisable if the mediator training could pay attention to MM.

Finally, we would also like to call for a multi-methodical approach, namely by means of a primary caucus.

17. Primary Caucus

Since almost all mediators are trained in only one method, the question is whether the practical imchange of the method used would also occur if all methods were covered in the training. A correct methodical approach can be supported if the descriptive and curative phase of mediation are also procedurally distinguishable, as seems to be very common among EM and NM mediators.

In order to assign a mediator methodically fit for a conflict, it is necessary for the parties to let each individual do their story. In this way, the mediator can give himself a clear picture of the contradictions and of the interests and needs involved in mediation. Without a fairly extensive intake, this is not possible. If it is immediately worked in plenary, these contradictions will be distorted by the interaction with the other party. This extensive intake is further referred to here as the primary caucus (PC).[2] As mentioned earlier, OM is against an extensive intake. However, this is about the selection of methods. One can first point the test at SOM. whenever SOM turns out to catch on, it's probably the best to choose right away.

An extensive intake with some depth is very common in EM and NM,[2] but is considered taboo in FM and TM. In the view of FM and TM, an extensive intake is accompanied by a dominant role of the mediator that does not fit with the principle that "parties ... tell their story not so much to the mediator, but to each other."[3]

However, the fact that the mediator would dominate during a PC does not speak by itself. If it is right, the parties in particular are speaking, while the mediator occasionally asks for clarification or a summary to check that he has understood correctly. In addition, when the intake phase is complete, there will be a primary confrontation phase in which the parties still make their stories to each other, but interactively. Because the mediator is already quite well informed thanks to the PC, he can pay a lot of attention in the confrontation phase to how the parties react to each other, both verbally (the phrasing) and nonverbal. He can also observe how the narrative of each of the parties changes as a result of the interaction with the other party. Dominance of the mediator will be limited to the PC in the case of reference to a specialised mediator. The role of referral and practitioner can also be structurally separated.

The PC has a number of other advantages. The parties receive the undivided attention of the mediator so that they can really tell their story without constantly wondering how the other party might react. This allows them to blow off steam without increasing steam at the other party. There are also considerable benefits for the mediator. It does not have to form two images of the dispute at the same time, while in the meantime he also has to clear up misunderstandings and register the non-verbal communication of the parties.

An objection to a PC is that it could entail additional costs. However, these are relatively small (one meeting). They can also be further reduced through online mediation.

18. Conclusion

The conclusion of our analysis is that while mediation is methodically consistent in general terms, it is not entirely coherent as a result of a missing link referred to here as moral mediation. However, MM will have to be developed as a method first. In principle, however, it is more objectionable that the theory and practice of mediation are in flagrant conflict with each other. Methodically, mediation still shows artisanal traits because no clear distinction is made between methods and techniques. In doing so, mediators commit unchangeably to the method in which they are trained in combination with techniques based on their own favourable experience that is referred to as personal style. The extent to which multi-methodical training and improvement of methodological insight, as recommended by us above, can change this is a question that needs to be answered by experimental research. The recommended primary caucus will also need to be empirically examined. Finally, the assessment, which is now entirely FM-oriented, will have to be methodically more varied or specialised.

In the meantime, we have not paid systematic attention to the tactical level of mediation, i.e. the coherence of methods and techniques.[2] Only once this has been realised can there be adequate professionalisation.