

Mediation - Six Ways in Seven Days



Hans Boserup

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Mediation

Six Ways in Seven Days

- Special Part of The Mediation Process

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Hans Boserup

MEDIATION

SIX WAYS IN SEVEN DAYS

SPECIAL PART OF THE
MEDIATION PROCESS

PREFACE

In 2001, Susse Humle¹ and I published the book, *The Mediation Process*. That textbook² was a general introduction to mediation, while this book tries to take the reader to the next level, specialising in what actually takes place inside the mediation room within the variety of mediation styles offered. The terminology and concepts in this book are explained in the normal hierarchical way that was used in *The Mediation Process* and in the works referred to in annotation #2. Over the years, the practice of mediation has taken great leaps in the European countries. In my home country of Denmark, court-annexed mediation is now offered nationwide for select cases, conducted by specially trained judges and lawyers and paid for by the government. The number of cases referred to mediation by the courts is large and growing all of the time, and the settlement rates (60-70%) together with the satisfaction rate by the parties are promising. The literature about mediation is increasing, too. Nevertheless, I have discovered a need for this book as texts presenting and comparing the mainstreams in mediation and the microdynamics of the individual styles are missing from the arena.

THE AUTHOR'S VANTAGE POINT

Research in and textbooks about mediation are highly influenced by the researcher's and author's priorities, professional background and experience.

¹ When Susse Humle died at just 50 years of age in 2000, mediation lost a special and very competent contributor. *The Mediation Process* was published one year after her death. Without knowing about existing cognitive systemic mediation, she developed that style, and after learning about the systemic mediation conducted by John Haynes and Larry Fong, she refined their excellent work to bridge the apparent gap between generic and cognitive systemic mediation. Moreover, she predicted that a narrative style would emerge. Her postmodern approach and her huge clinical experience aiding people in crisis would have added much to what this book tries to deal with. It has been extremely difficult for the mediation community to compensate for this loss.

² As that textbook is not yet translated into English, general introduction to the mediation styles can be achieved in: Vibeke Vindeløv, *Mediation - A Non-Model*, DJØF Publishing, Copenhagen, 2007 (generic mediation), Robert A. Baruch Bush and Joseph Folger, *The Promise of Mediation*, Jossey-Bass, San Francisco, 1994 (transformative mediation), Mark Umbreit, "Moving to a Higher Plane: A Humanistic Model of Mediation." In M. Umbreit, *Mediating Interpersonal Conflicts: A Pathway to Peace*, West Concord, CPI Publishing, 198-216, Minnesota, 1995 (humanistic mediation), John Haynes and Larry Fong: *Mediation - Positive Conflict Management*, State University of New York Press, 2004 (cognitive systemic mediation), John Winslade and Gerald Monk, *Narrative Mediation, A New Approach to Conflict Resolution*, Jossey-Bass, San Francisco, 2000 (narrative mediation) and Riskin, Westbrook, Guthrie, Heinsz, Robbennolt and Reuben *Dispute Resolution and Lawyers*, Westgroup, Thomson Publishing, 2005 (settlement-driven mediation).

My position as a lawyer (solicitor and barrister), practicing mediator and mediation researcher has provided me with a special interest in what can succeed on the microlevel, from individual to individual. That was my motivation when, in 1992, I imported the new paradigm of mediation to Denmark, and I am influenced by the current discussions at universities and among practicing mediators in the United States, Canada, New Zealand, Australia, United Kingdom, Ireland, Germany and Norway. This textbook collects many of my experiences practicing and teaching mediation throughout a number of countries. The mission of this textbook is to meet the needs of inexperienced mediators and mediators-to-be, uncovering what it is in the important detail that promotes or hampers the mediation process. The practical detail originates from the mediator's own paradigm and value system.

ACKNOWLEDGEMENTS

Each of us can get a better outlook by standing on the shoulders of another, and by inspiring one another. This is especially true in the mediation environment. For me, the following people have enthusiastically and generously shared their expertise and experience with me, and I will always be grateful to them: Karl Tomm, who kindly provided me with his analysis of questions; the University of North Dakota, kindly supplying me with transcription from the Kris and Don dialogue from the training video of The Greeting Card Company; Niels Dahl Christensen, having taken on the burdensome work of transcribing the Jacob and Awwad dispute; John Winslade, who kindly furnished me with the Marlene and Dennis dialogue; and Larry Fong, who kindly furnished me with the transcript of the Vicky, Janice and Henri dialogue; Erik Maalø who was my inspiration for the chapter about efficiency; Diana and John Lampden, who provided me with their conflict ladder; CEDR, who allowed me to copy their mediation clause.

Also, thank you to my uniquely wonderful secretaries, Maria Auerbach and Mette Callesen; and to Palle Gad, for his commitment to my project. A very special acknowledgement to my English language editor, Erin Kaser, who has had the challenging task of smoothing my particular English into educated English.

Lastly, much gratitude to my family for making allowances for my mental absences as this book came into existence

STRUCTURE

I have noticed that satisfactory and effective education in mediation rarely follows the flow of the textbooks. From this, I have therefore designed this textbook along the lines of a seven-day training course. My hope is that this innovation will please the majority, if not all, of those who read it.

Part of this experiment is the textbook's website. The website contains a huge number of small cuts from video demonstrations of what is depicted in the textbook. The demonstrations on the website reflect my use of demonstrations in a training room. On each of the seven training days, there would be a large number of exercises and role-plays. Demonstrations, exercises and role-plays are, in my opinion, paramount to the training process. When I teach, I currently credit individuals who have had a hand in creating the presented material, as is the case with this textbook, as well. While you may search in vain for a more systematic bibliography in annotations, I feel that detailing the vast amount of resources in the literature would stagger and slow the mission of the textbook, and so I have opted to omit it altogether to preserve the vitality and flow of the training presented in these pages. If the reader requires any referrals to literature sources, I invite anyone to have that need met by sending me an email.

You may notice the author consistently uses the term he/him/his rather than the more gender-respecting terms he/she, him/her and his/hers. As gender is no issue when it is about qualified mediators, the simplification only serves the purpose of preserving the vitality and flow of the text.

I am looking forward to mediating together with you. Have a good time!

Sønderborg, June 2007

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MEDIATION AND HEALTH

‘To the extent that mediation is going to work, the costs of the National Health Service will decrease’. (Palle Gad)

That was my prediction when, in 1993, Hans Boserup explained the ideology and the process that comprises the conflict resolution procedure.

Since the mid-seventies, the basic understanding I had from my daily experience working with patients in a medical clinic was this: All kinds of physical symptoms depend on any variation in lifestyle - positive and negative.

So-called psychosomatic conditions, which are the negative-loaded variants, are better handled by solving the deeper, underlying problems rather than with chemicals and pharmaceuticals.

In my therapy room, hundreds of patients have provided insight via clarifying dialogue to the connections between conditions and events in work life, family relations, loss, desertion or frustrations on one side, and their somatic and mental conditions on the other side.

In the vast variety of conflicts handled by mediators, I have observed these same mechanisms as in the therapy room.

By resolving a dispute, one’s health conditions actually improve or are prevented altogether. Once the perceived or actual negative influence comes under control, the experience of this transition will itself cause optimal handling of the individual’s possible conflicts in the future. Compare the notion of mediation. As this textbook will teach you, the outcome of a dispute in the party’s own design and content will, in principle, create a win-win element, something not often found in external (or court) resolution.

As a strong case for using mediation as dispute resolution, I can point to the Danish Health Service’s extraordinary number of complaints filed, in particular the approximately three thousand cases every year of unintended events that find their way to the patient claims board. These are examples of complaints that start as written complaints, but which end up as an official board decision. While this is probably better than nothing, it is far from acceptable, and that can easily end up as something worse than nothing

being done at all. I have written about this subject in a featured article in the Danish Medical Journal⁴; May 24, 2004).

Troense, June 2007

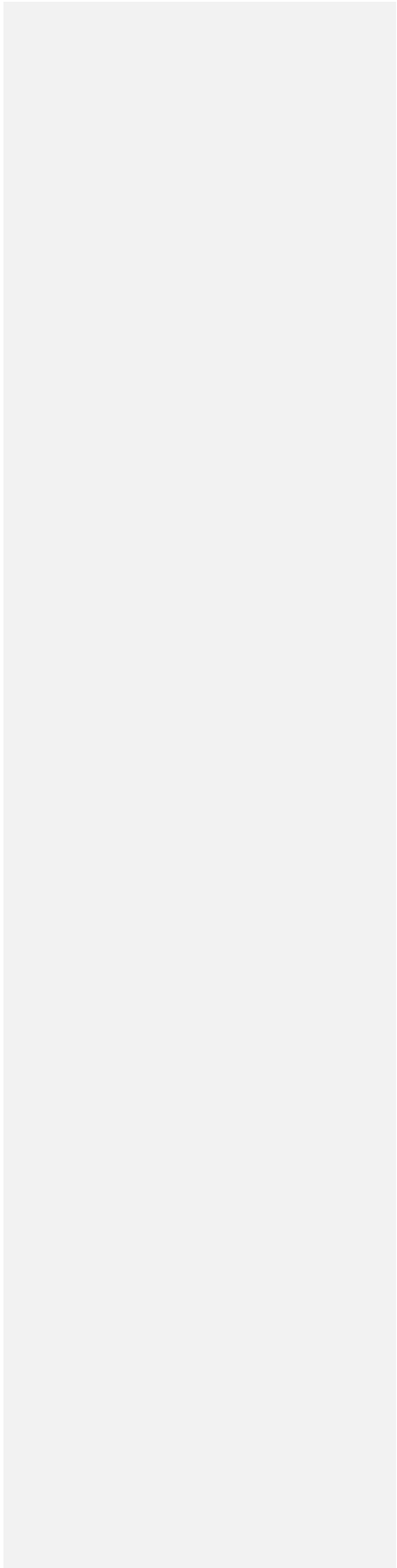
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⁴ www.ugeskriftet.dk, Ugeskrift for Læger, tidligere numre, 24. maj, 2004

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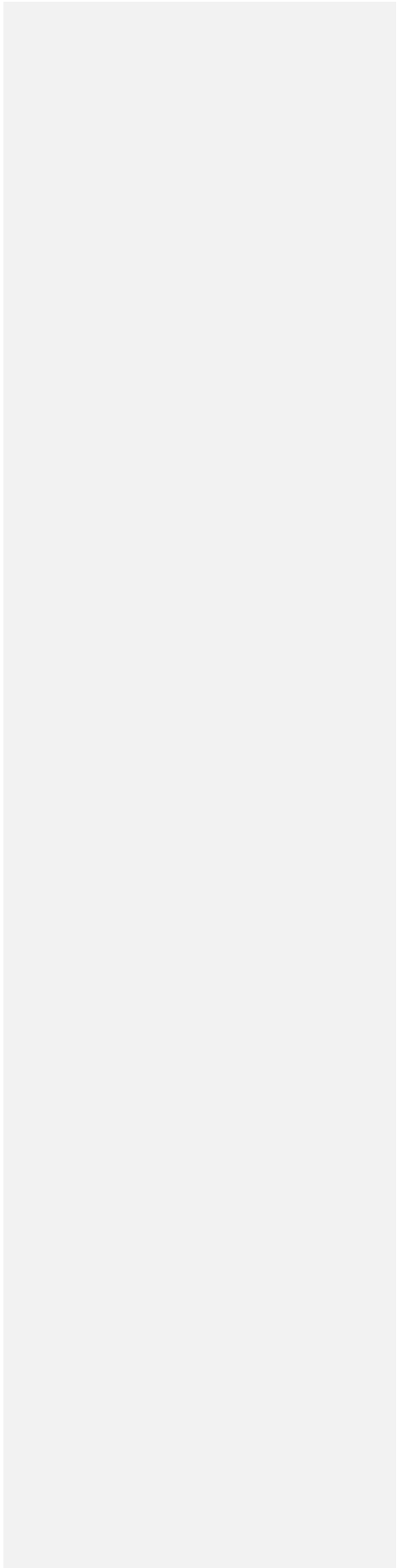
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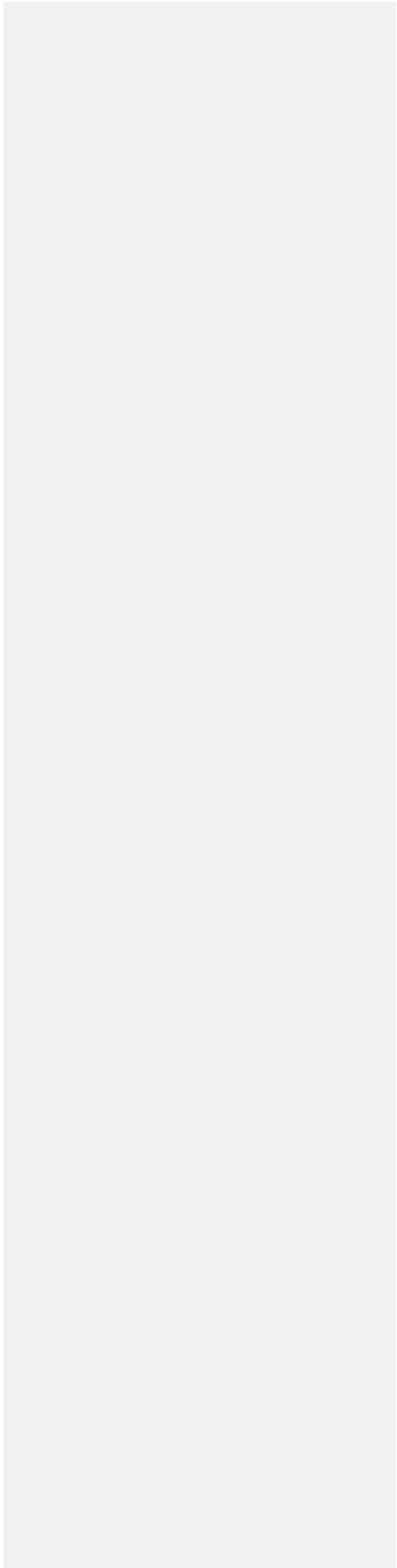
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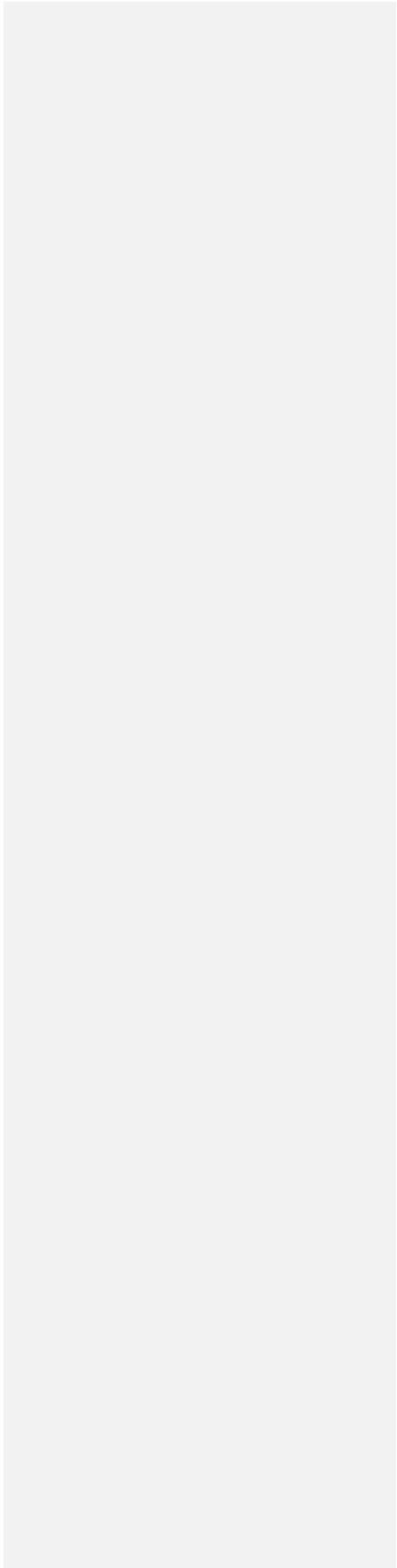
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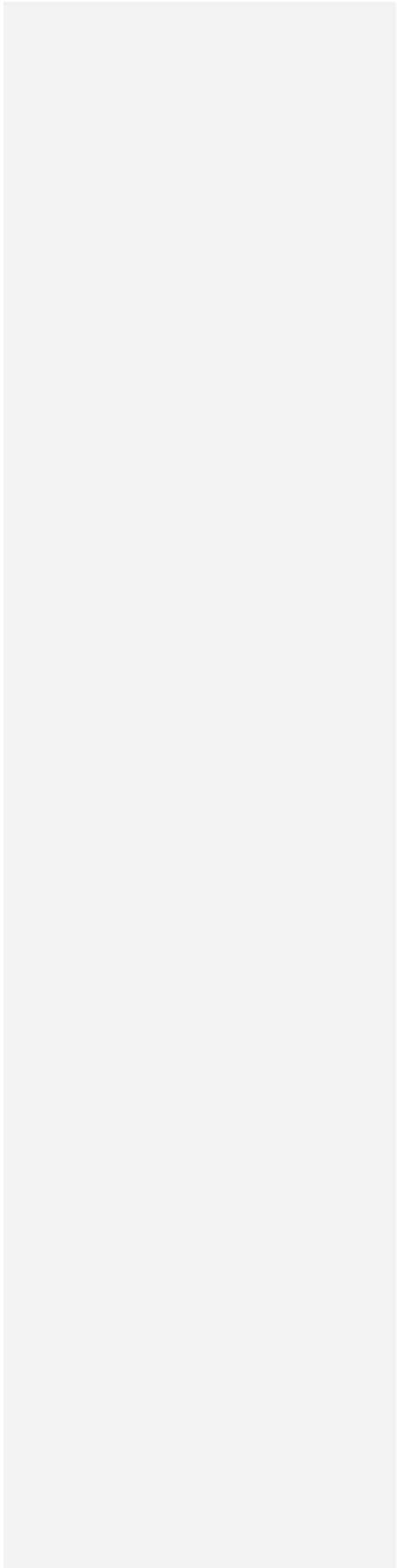
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INTRODUCTION

INFLUENCE AND SUSTAINABILITY

Mediation appeals to many people for many reasons – partly because of its focused nature, partly because the process resolves disputes quickly, partly because of low costs, partly because the solution rests upon mutual understanding of subjective experiences, and partly because the control remains with the parties involved. This textbook is centred on how particular microdynamics may, and often do, shift the influence from the parties to the mediator. As influence moves from the parties to the mediator, the parties' autonomy is challenged, and the results of the mediation become less sustainable. The textbook pays attention to how the variety of mediation styles influences the parties' empowerment or recognition, and also to who holds the influence in mediation at any given point in the ever-shifting process.

Mediation is carried out in a variety of ways, depending on the mediator's background, professional experience, paradigm, value system, view on conflicts, and his evaluation of what best promotes resolution of the parties' dispute at hand. The textbook presents six mainstream mediation styles, each originating from the point of what is happening in the mediation room. The book illustrates how the individual styles differ from one another, and also considers their respective commonalities.

STYLES

Even though literature written about the practice of mediation clearly suggests that mediation is played out in a variety of ways, there are no textbooks comparing and outlining the variety of styles used today. This book shows that mediation is far from unambiguous, that the individual styles are grounded in diverse paradigms about collecting and treating data, that mediators approach the dilemmas of mediation distinctively, that mediators regard the components of the dialogue differently, and that the mediator's chosen style has a significant influence on the form, content and outcome of the mediation.

Even though Bush and Folger in 1994⁵ meritoriously turned the focus to communication in mediation – qualifying the dialogue, microdynamics, empowerment and recognition – not much has been written about what it is in the individual styles of communication that makes for a successful or a failing mediation. This textbook differs from other textbooks about dispute resolution in that the focus is shifted from the *frames* around mediation processes to the *content* of the dialogue between the participants in mediation room.

MACROPERSPECTIVE AND MICROPERSPECTIVE

Today's mediation literature is still dealing mainly with what we could call in professional jargon the macroperspective. This book, however, starts from the point of the microperspective. The macroperspective is concerned with, among other things, when mediation is a suitable means for resolution, what kind of education a mediator should have, whether they should be certified, and a wide variety of mediation dilemmas such as autonomy, power balance, neutrality, impartiality, capacity, codes for appropriate mediator behaviour, the role of lawyers, negotiation techniques, conflict theory, ethics, positions on interests and needs, enforcement and breach of contract, professional secrecy, confidentiality and the witness privilege.

EFFICIENCY

The mediation participants together form an ad hoc organisation, and efficiency can be evaluated by the criteria of organisational efficiency (page ...). Whether an organisation is efficient depends on the perspective. Examples of this include the goal perspective, the process perspective, the system perspective, the interest perspective, the symbol perspective and the paradox perspective.

⁵ *The Promise of Mediation*, Jossey-Bass, SF, 1994

Two distinct reasons for efficiency stand behind the forty-year history of the modern mediation process.

One **reason** has to do with efficiency, specifically, reaching the greatest potential for agreement while consuming the least amount of resources available (goal perspective, system perspective and symbol perspective).

Another **reason** addresses reaching satisfying agreements or understandings or optimising the quality of the dialogue, subjectively experienced as the best alternative by the conflicting parties involved (goal perspective, process perspective and interest perspective).

LONG-DISTANCE MEDIATION

Mediation over distance (page ...) means less consumption of resources. Parties and their lawyers are often positive about and open to long-distance mediation as an alternative to face-to-face mediation, even though they generally prefer the process to occur in the same room. Mediation over a long distance requires something special from the mediator.

ATTITUDE AND PERSONALITY

The attitudes and personalities⁶ of the parties involved may hamper the success of the mediation process. A party wanting an external (or court-mandated) decision will normally not wish to participate in a mediation process. If a party has nevertheless agreed to participate, it is often to share with the other party his frustration, or to gain access to information. In such events, body language, extraverbal language and verbal language show a lack of empowerment, recognition and negotiation abilities. A party considering his case to be a winning case will usually only participate if he can sense a quick end to the conflict. A party in internal tension between an immediate need for satisfaction and moral duty (intrapersonal conflict) can prove unfit for mediation (page ...). That is, the procedures of mediation are

⁶ Be aware this wording is everyday logic according to which internal psychological conditions are prioritised. Social Constructivists, for example, would find the wording too narrow and would rather focus on interaction and communication.

not equally suitable to all parties. The mediation process can be adjusted by carefully choosing the right style that best fits the involved parties. Even if the mediation does not lead to an agreement, experience shows that the process can be meaningful nonetheless for the parties.

Example

Before the mediation began, the parties had experienced a breakdown in communication, and during mediation, a new opportunity to revive the dialogue was created. As a result of this practice, there was a fresh chance to express frustrations of lesser importance from a legal point of view. Through storytelling, the plaintiff could recount his negative experiences in a broad and non-formulaic manner. Likewise, the defendant now had a new opportunity to tell what he or she has done to solve the problem. Even if it is not of great relevance, for instance, he could still describe how unpleasant it has been for his staff to deal with the plaintiff's poor communication.

Providing a forum for dialogue can reduce frustrations, thereby promoting a more harmonious state of mind for both parties than what often results from legal intervention. The mediation process encourages the speaker to tell his story freely in a comfortable, stream-of-consciousness manner. This natural method of communicating is an effective technique that does not create feelings of hierarchical power or unfair influences, as is often the case in the court system.

DAY ONE

ADR

Alternative Dispute Resolution (ADR) is resolution outside of the court system, examples of which include:

- mediation
- arbitration
- tribunals
- expert statement
- fact-finding
- mini-trials

In some countries, arbitration (or a similar process) is the preferred alternative model. Over the past forty years, ADR in western countries has concentrated more and more on resolution of conflict by mediation.

MEDIATION

Mediation is a very old means of dispute resolution. The new format introduced by the mediation movement approximately forty years ago is different from traditional mediation in that the parties define their tasks, generate proposals on their own, and independently decide which of these proposals to pursue in order to reach agreement.

The word “mediation” stems from the Latin root meaning “in the middle.” In the *traditional* mediation scheme, the conflicting parties approach a trusted third person and present the dispute to him either for advice or for binding proposals to reach resolution. The mediation technique introduced by the mediation movement is different from the older paradigm in that the parties agree to undergo a specific procedure:

- improving their consciousness of what the nuclear points in dispute are
- together generating proposals for possible solutions

- select proposals for a solution via negotiation and resting on win-win and dialogue principals
- execute these proposals to completion

The mediation movement first developed what we now refer to as *generic mediation* (also known as community mediation). Over time, additional styles have been developed and introduced as well. This textbook compares six main styles of mediation, describing each method and how it works in the conflict resolution arena.

WHAT IS CONFLICT?

One way to define mediation is “a process in which conflicting parties arrive at resolution by a trained and neutral third party, identifying issues⁷, generating options, and selecting the solutions that best represent both parties.” Another definition is “a process in which conflicting parties, by assistance of an impartial and educated third party, realise that the conflict is an expression of crisis or breakdown in their interaction⁸, and with help from the neutral third party, optimise the quality of their dialogue in terms of empowerment and recognition.” These two definitions are just examples among many, each covering several outlooks or paradigms. The first definition looks to socioeconomic challenges, while the other focuses on communication.

SIX MODES

Six mainstream mediation modes are, in chronological order:

1. Generic (1970)
2. Settlement-driven (1980)
3. Cognitive-systemic (1980)
4. Transformative (1990)

⁷ In transformative and in narrative mediation focus is not on problems but rather on situations and stories.

⁸ In transformative mediation *interaction* is much more important compare to *transaction*.

5. Humanistic (1990)
6. Narrative (1990)

The development of these styles can be regarded as a reaction to one another. Each mode was presented above in chronological order as they emerged into public usage. Below, all but the settlement-driven style are presented as they connect with one another.

Generic mediation (community mediation) equally upholds the goals of empowerment, recognition, agreement and understanding. The starting point looks to emotional experiences, and it is performed in successive stages. Empathy and assertion play very large roles in that communication through initial joint meetings is done via storytelling. The mediator sets the tone with empathetic dialogue and empathetic listening, which takes precedence over asking questions. When questions are asked, the mediator poses them in a circular or a linear open-ended (page ...) manner so as to encourage the storytelling process. (See page ...)

The *humanistic* approach maintains focus on the parties' agenda rather than that of the mediator. The goal is healing of trauma and peacemaking. Prior to the first joint meeting, private preparatory meetings occur. In the joint meeting each party is encouraged to have a direct dialogue with one another. Empathy, particularly from the wrongdoer, and assertion, particularly by the victim, plays a significant role. If a law or an agreement is violated, the focus is instead placed on the conflict that has appeared in their lives. The goal is understanding the event and its consequences and neutralising the negative consequences of the conflict at hand. (See [page](#) ...)

The *transformative* model is not a stage model, but consists of repeated, concentric cycles. Whenever a situation creates opportunity for empowerment or recognition, a new cycle begins. The goal is to optimise the quality of dialogue by improving empowerment and recognition. The focus is not on agreement. Communication occurs directly between the parties. When the mediator senses an opportunity for improving empowerment, dialogue or recognition, he slows down the process and returns the focus to these key ideas. (See page ...)

The *cognitive-systemic* style (Haynes or Milan Model) is not divided into stages, but consists of repeated cycles. Whenever a negotiable problem is

identified, a new cycle begins. This style attempts to move the parties' concentration from the emotional (affective) to the common sense (cognitive) and decision-making. This style is influenced by systems theory, and therefore works with circular questioning, strategising and hypotheses. The focus relies upon the particular notion of neutrality (domain theory) and on relation rather than on the individual. The cognitive-systemic method is very decision-oriented, and for the most part, communication goes solely through the mediator. However, communication between the parties is certainly allowed, and is viewed as a sign of empowerment. (See [page](#) ...)

The *narrative* style assumes that neither language nor stories convey objective information. It is assumed that the parties make decisions on grounds of stories rather than facts. It is assumed that conflict is a social construction created within the language, and enhanced by the parties' place in the chosen story. After the parties have articulated their individual hopes for the mediation, their stories of conflict follow. The aim is to deconstruct and minimise the conflict-saturated story with the purpose of making room for an alternative story, making each party take a position in another history, and then from these new places, with the mediator as co-author, reconstruct a new story together, in hopes of ultimately reaching an agreement. The problem is not the individuals involved, but the *story* of the conflict and the conflict language itself. The main goal is to externalise problems regarded as *obstacles* to achieving expressed *hopes*. (See [page](#) ...)

Settlement-driven mediation prioritises reaching an agreement while providing wide leeway for the mediator to achieve this goal. Empowerment, recognition, empathetic communication and emotional experiences are regarded as meaningful, but are not viewed as important as, for example, risk considerations. This style is a stage-based model and is often carried out with the parties separated from one another much of the time in private meetings with the mediator, who serves as a messenger between the individuals involved. Questions and hypotheses are frequent occurrences, and occasionally the mediator evaluates proposals, solutions and agreements. (See [page](#) ...)

These six styles do not share the same starting point of recognising a variety of ways to comprehend the world (epistemology), but instead they have different ways of collecting and processing data, have a different view on dilemmas within the mediation process, have a different understanding of

the importance of language, and have different understandings on freedom and human choices. They differ from one another and have commonalities with one another on a variety of levels and within a variety of dimensions.

Generic mediation and settlement-driven mediation rest on practical experiences and modern negotiation theory together with psychological insight rather than on a **theoretical basis**. The starting point is based within the notion of :

- 1) the neutral facilitator is only interested in
- 2) process and not product, that the polarised positions (as parties to conflict tend to be) are governed by
- 3) underlying interests and needs, that conflicts can be solved when focusing on
- 4) meeting interests and needs, and the aim of mediation is a
- 5) win-win solution.

Problem-solving mediation has captured the theorists' attention, and many skilled researchers⁹ claim that problem-solving mediators intentionally focus on certain issues over others which may raise doubt about neutrality. The question, "So, you are here to discuss custody issues?" activates completely different thought processes than this question does: "So, you are here to talk about caring for your children?" As Foucault¹⁰ suggests on exchanges: "They are practices that systematically form the objects of which they speak." Narrative mediators want clarification from the first talking point in order to ensure that all participants surely understand what the exchanges (the discourse) really are about. This way, it becomes more transparent whether an exchange is a contradiction or a change of subject (issue).

Transformative, cognitive-systemic and narrative mediation are grounded in postmodern theory. Cognitive-systemic is further grounded in constructivist theory, while transformative and narrative take more to constructionist theory. The individual and the inner self are not as interesting

⁹ See among others: John M. Winslade, *Mediation with a Focus on Discursive Positioning* (unpublished manuscript), October, 2003.

¹⁰ M. Foucault, *The Archaeology of Knowledge*, p. 49, Tavistock, London, 1969.

study subjects as compared to interaction and relation, which will be described below (page ...). Whereas the transformative mediator opts not to choose certain issues over others (more or less), the cognitive-systemic as well as the narrative mediator in the context of the overriding defined goals find it legitimate to illuminate some issues while leaving other issues in the shadows. The cognitive-systemic mediator expressly directs his attention on problems, while the notion of addressing problems is completely ignored by the transformative mediator, and the narrative mediator only touches on problems that may be obstacles to be externalised in order to realise expressed hopes.

Humanistic mediation is clearly connected to humanistic psychology and person-centred therapy.

Systemising mediation into a variety of mainstreams only serves to assist mediators to use a language and a system in which they can share and repeat their successes while avoiding common mistakes and pitfalls. Organising this process is a pedagogical simplification of reality, although is only justified if acquisition and understanding of such varieties, such as those detailed above, becomes universal.

PROFESSIONAL DISPUTES: COURT-ANNEXED MEDIATION

The more dispute resolution concerns professional matters, the more the process seems to be directed or steered. We see the same tendency in court-annexed mediation. This is likely due to cultural expectations of the commercial or corporate environment, and probably also due to the assumption that directive mediation provides more efficiency. (See page... for more about settlement-driven mediation.)

WHAT IS MEDIATION?

In court, dispute resolution in principle contains a high level of outcome predictability. Predictability leads to certainty, which cannot be provided by a mediation clause. Through mediation, any variety of outcomes out of the range of a court of law can, and does, occur. This means that what law can

ensure (certainty) is a modest subset of what mediation can provide in terms of results (range). Yet it is not only common sense that is so satisfying about mediation. Optimisation of dialogue, reparation of exchanges – exchanges of words – realising that parties frequently express themselves through a variety of language conventions and values norms, and restoration of emotional damage contain a potential for satisfaction which common sense cannot naturally deliver. For centuries, western governments have encouraged those in disputes to find solutions outside of the public systems. In Denmark, for instance, a royal decree from July 10, 1795 provided out-of-court mediation to disputing parties as an alternative to a legally binding court decision.

In the macroperspective, mediation serves to find relatively satisfying solutions for all parties involved, and also to reduce consumption of resources. Mediation often has a shorter and less expensive process than do decision, or court, cases. Additionally, mediation reduces the duress on courts of law and other parts of the legal administration. In the microperspective, it is easier to examine precisely what is repelling the disputing parties from one another, and to act quickly to correct it. Modern mediation research places more significance on the microperspective rather than the macroperspective. This microperspective on interaction is based on documented experiences of psychiatrists, psychologists, sociologists and language and communication experts. Mediation can be described as an academically regulated practice, following the lines and theories of intellectual thought. It can also be rooted in emotional experiences, in humanistic philosophy¹¹, in language¹² exchange, and in experiences related to alternative¹³ discourses. Or, mediation can be something else altogether. Looking at the last forty years of modern mediation's development, it is now possible to outline some standard mainstream mediation models.

ADR (Alternative Dispute Resolution) is an umbrella term for a diverse grouping of dispute resolution styles, all having in common the idea that they live outside the domain of administration of justice via the courts system. Complaints boards, arbitrations and mediations are examples of these other methods. The terminology is not precise, neither in an individual

¹¹ Man is spirit, too.

¹² Language cannot objectively describe the conflict. Conflict's existence is language.

¹³ Where is your place (position) in all the other stories?

country, nor within a particular dispute area, or even within a specific style of process. It is wise not to deduce or make assumptions about the content of the terminology, as it is impossible to know how a court case under public administration unfolds just by looking to the law. Not at least the attempts made to separate mediation from conciliation have proved without merit, and to deduct because of names would only contribute to the confusion. Instead, it is recommended to pin down the mainstreams, and to discover what their main characteristics are. This textbook regards mediation as a process in which an educated, mutual and impartial third party assists the mediation participants in developing and choosing the best solution. Each mediation mainstream regards conflict in a variety of contexts.

Conflict can be understood as a 1) tension between unmet needs for change and unmet needs for status quo, 2) position following a breakdown or crisis in an interaction, 3) damaging interference, or 4) result of insufficient (less shaded) storytelling.

LINEARITY AND CIRCULARITY

Traditional legal dispute resolution is founded on an individual focus and linear cause-effect thinking. This basic view is shared by many, but not all, mediators. Mediators generally favour an idea within conflict resolution held by many indigenous populations that anything depends on everything. That is, conflict and resolution are naturally holistic, each idea serving as a result and a catalyst for the other. Linear cause-effect thinking is a useful pedagogical and social construction. However, it is not always practical to reality. With this evolutionary theory, as human and social sciences took over from the natural sciences, linear one-dimensional thinking was supplemented with circular three-dimensional thinking. In a three-dimensional universe, the connection between causes and effects is far more complicated yet far more precise.

According to systemic and human social science theory, reality consists of individuals in constant interaction, and can only be meaningfully described within the context of how they interact with one another. Therefore, it is not sufficient to focus on intellectual processes as internal actions done by independent individuals. The especially interesting part involves the

individual in connection with others, and the interactive process between them. In other words, the interaction is more interesting than the transaction. In the circular way of thinking, one does not sort out two components on a timeline and name one of them “cause” and the other “effect.” Rather, anything depends on everything, and words and actions can only meaningfully be understood in context, and so a framing context must always be present. Be sure to ask circular questions in order to encourage the party to reflect freely on which options are feasible for the mutual inference between cause and effect. Also, openly ask what would change if the conditions were different, but try to resist the specific at this point.

To aid our understanding, it is not sufficient to chart cause and effect on a timeline. The notion that something comes first (cause) and something follows (effect) is far from the full picture. The notion that there is a straight line between cause and effect may hide important information. If you believe in discovering the cause, then you must also logically be sure who or what is responsible for the events. In mediation, this thinking is far too simplistic.

In (systemic) circular thinking, an event can be *both* cause and effect at the same time (the chicken and the egg). Events take place amid a complex pattern of communication, relationships, actions, mutual expectations and interpretations of intentions.

RESPONSIBILITY

Legal conflict resolution is based on placing responsibility on someone. When responsibility is a subject in mediation, there is a much higher degree of personal accountability undertaken. Mediation focuses on the present and on the future, whereas legal dispute resolution focuses solely on the past. Therefore, it is unnecessary in mediation to pin down the past history of the situation.

GUIDING PRINCIPLES

The experienced mediator knows that the higher the level of empowerment, recognition, empathy and assertion (cf. immediately below) can be reached, the greater the chance that a satisfying resolution will be attained.

ASSERTION

The ability to 1) identify own needs, 2) to recognise and to clearly¹⁴ express identified needs, and to 3) express the needs cleanly¹⁵.

EMPATHY

The ability to temporarily (so you do not lose yourself) step out of one's own universe into that of a party, assuming all of the other's present experiences, attitudes and values while providing the party with the genuine impression that you see, hear and feel his world as he sees, hears and feels his world.

EMPOWERMENT

To be understood as moving from a relatively weaker level to a relatively stronger level of self-confidence or power.

Empowerment is this movement¹⁶:

Unsettled	becomes	Calmer
Confused	becomes	Clearer
Fearful	becomes	More confident
Disorganised	becomes	More focused
Unsure	becomes	More decisive

¹⁴ Meaning understandable to the other.

¹⁵ Meaning without evoking a defensive attitude by the other.

¹⁶ Bush and Folger, *Ibid.*

RECOGNITION

To be understood as moving from a relatively weaker level to a relatively stronger level of openness and insight.

Self-protective	becomes	More attentive to other
Defensive	becomes	More open
Suspicious	becomes	More willing to accept other's good faith
Incapable of stepping outside own frame	becomes	More able to see other's perspective

GENERIC MEDIATION

A VARIETY OF GENERIC MEDIATION

During the course, we will take a look at some examples of mediation styles from the so-called mediation movement, which started around 1970. The first approach we will consider is known as the *generic* style (community mediation) of mediation, a method that has developed significantly since 1970. The reader is encouraged to visit this book's website to view demonstrations of generic mediation. (Whenever the book refers to demonstrations they can be found on the website – www.mediator.dk.)

We will begin with a demonstration of a simple and very structured mediation that is taught to pupils in schools, commonly known as peer mediation¹⁷. During the following sections, we will see how the generic style of mediation is performed with a looser¹⁸ structure, where the stages slide more easily into one another than in peer mediation. Peer mediation is conducted very quickly (normally in less than 15 minutes, when it is done by other pupils), and it is a project that all pupils, teachers, staff and parents are introduced to and educated in eventually. This firm yet simple structure is regarded as key within peer mediation, due to the fact that the individuals in dispute, mediated by other pupils, have specific expectations of the process, thus creating safety and trust. At first glance, peer mediation may appear very mechanical and emotionless, but without empathy, it descends into an ineffective and meaningless practice, thus the success of a peer mediation project will vanish.

You are encouraged to study the two examples of peer mediation on the website. Play them several times until you have a feel for the method and how it is carried out. Next, proceed to the first part of Leonard Riskin's¹⁹ mediation of a dispute between Anne and Frank (tenant/landlord). The reader should pause in Riskin's mediation when the parties in the joint meeting and in the first separate meetings have told their conflict stories, and

¹⁷ The reader is encouraged to view the examples on the book's website.

¹⁸ Ibid.

¹⁹ Leonard L. Riskin, *Decision-Making in Mediation: The New Old Grid and the New New Grid System*, 79 NOTRE DAME LAW REVIEW 1 (2003).

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