# Between a rock and a hard place: challenges, strategies and resolution of value conflict mediation

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**CHAPTER 1**
General Introduction

We all encounter conflicts in various stages of our lives. From as early as we can utter words to express our opinions, we may find ourselves quarrelling with our parents and siblings. These differences of opinions continue as we grow older and disagree with friends at school, partners at home, colleagues at work and neighbours in the community. Most disputes experienced in our daily lives are resolved by the parties involved. When the conflict escalates, however, the situation can call for an intervention. A third person with an outsider's perspective may be able to assist disputants in coming to a resolution through of a variety of strategies. Indeed, siblings fighting over a toy may benefit from an intervening parent suggesting compromises. Classmates arguing about a school project may require the guidance of a teacher assigning clear roles. Married couples experiencing 'a rough patch' may need the help of a therapist to strengthen their marital bond through exercises. Two employees blaming each other over a failed procedure caused by miscommunication on both ends may see things clearer once a supervisor points out the error. And the chairman of a community association may bring the rules of the neighborhood forward when intervening between disputing neighbours. The third parties in the above-described examples all functioned to some extent as mediators. Mediators are independent third parties who guide the communication between conflicting parties in order to reach a mutually beneficial solution.

The benefits of mediators in resolving disputes have been experienced for as long as differences of opinions have been expressed. Anthropologist and negotiation expert William Ury describes how various forms of mediation can be observed around the world, from the most primitive to the most modern societies. The peaceful method of the Bushmen for example, where the members of the community—including the disputing parties—all gather to discuss the

problem until it is resolved is called a kgotla (Ury, 2000). Modern societies, which are not made up of 25 hunters and gatherers living in the Kalahari Desert, however, may not offer the opportunity to resolve disputes by involving an entire community to discuss an issue for days.

In this age of increasingly populated, technologically advanced and globalized nations, people are exposed to different cultures on a daily basis. Being in contact with people who have different customs, traditions and beliefs than our own may cause frictions that are experienced more sensitively than conflicts about scarce resources such as money, territory or any tangible material. Conflicts about scarce resources have been studied widely resulting in numerous mediation techniques that can be employed to resolve such disputes. Conflicts concerning people's cultural or religious beliefs on the other hand, also termed value conflicts, are studied less and have been identified as difficult if not impossible to resolve (Prein, 2009). Indeed, an employer in conflict with an unsatisfied and overworked employee may resolve the dispute by increasing the pay. But asking a female Muslim employee to agree to not wearing her hijab during working hours in exchange for a higher salary may result in moral outrage. As the world continues to see more migration and different cultures are in closer contact, how must mediators approach the types of conflicts that emerge with this development? This dissertation aims to answer this question by investigating mediation techniques that may or may not be productive in resolving value conflicts.

## Value Conflicts

Value conflicts occur when people disagree on an issue that has no distinct correct answer. These disputes concern evaluative issues; specifically, they are about what is right or wrong based on the different values that people hold dear

(Bazerman et al., 2008; Coombs, 1987; De Dreu et al., 1999; Druckman et al., 1988; Druckman et al., 1977; Harinck, 2004; Harinck & De Dreu, 2004; Harinck et al., 2000; Kaplan, 1987; Kaplan & Miller, 1987; Kelley & Thibaut, 1969; Laughlin, 1980; Laughlin & Ellis, 1986; Levine & Thompson, 1996). Justness, for example, has no objective universal measure (Gergen & Gergen, 1986; Levine & Thompson, 1996; Maier, 1963; Raiffa, 1982). When an employer deems it just to pose behavioral rules such as the prohibition of taking prayer breaks or wearing a hijab at work, while a Muslim employee regards the regulations as unjust, coming to terms may not be easy. The employer may be defending the company's value of efficiency while the Muslim employee may be defending the value of religion. Conflict management literature separates such disputes from other conflicts about scarce resources such as time and money because value-based disputes are particularly personal.

Our values represent who we are and how we define ourselves as individuals (Wade-Benzoni et al., 2002). For this reason, value conflicts are also termed identity conflicts (Prein, 2009). When our values are challenged by others who do not hold the same beliefs as our own, our personal identities as being good and moral people are violated. Receiving identity-challenging information threatens our integrity and ideal self (Higgins, 1987; Stone & Cooper, 2001).

Encountering people with different values than our own may also threaten our sense of shared identity. Shared identity occurs when people categorize others in their self-concept (Druckman & Olekalns, 2011). The values we share with others contribute to our sense of shared identity (Bettencourt & Hume, 1999). A strong shared identity is important for dispute resolution as it has been associated with reduced interpersonal conflict (Jehn et al., 1999) and a sense of concern

for the other's outcome (Kramer et al., 1993). Indeed, shared identity promotes trust between conflicting parties (Riek et al., 2010), highlights similarities that diminish the salience of the unshared values and reduces the sense of competition and perceived threat (Brewer, 2000).

When we do not share the same values, however, our shared identity is reduced as it becomes difficult to perceive others as similar to ourselves (Rothman, 1997). As a consequence, people facing those who do not share their values are highly intolerant of others' views (Wright et al., 2008) and keep social as well as physical distance from their opponents (Skitka et al., 2005) while exhibiting competitive rather than cooperative attitudes (Hinds & Mortensen, 2005).

The reason it is difficult to accept that others hold different values than our own is partly rooted in our tendency to have shared value expectancy (Kouzakova et al., 2012). Because we consider our values to be true and just, we often assume that others share the same values as well (Kenny & Acitelli 2001; Krueger & Clement, 1994; Krueger et al., 2005; Mussweiler & Bodenhausen, 2002). When the shared value expectancy is not confirmed, people become particularly self-involved— making the conflict more difficult to resolve. Indeed, studies presenting participants with the same disagreement, framed as either stemming from diverging values or diverging resources, showed that when framed as a value conflict, people tend to feel more self-involved and see less common ground (Kouzakova et al., 2012) than when considering it as a dispute over resources. As self-involvement increases, so too does the risk of conflict escalation, which may hinder resolution (De Dreu & van Knippenberg, 2005; Steinel et al., 2008).

These divergent responses do not only emerge in self-reports but are also visible in psychophysiological responses. That is, value conflicts have been shown to induce a

cardiovascular profile indicative of negative threat while resource conflicts produce a cardiovascular profile indicative of positive challenge (Kouzakova et al., 2012). Research has also found an increase in levels of testosterone among males after a resource conflict and not among males after a value conflict (Harinck et al., 2018). This finding is telling when we consider the circumstances that tend to give rise to testosterone levels. Specifically, individuals who perceive a competitive situation as important, and have the means to successfully cope with the situation, experience an increase in testosterone levels (Eubank et al., 1997; Salvador, 2005). Harinck et al. (2018) concluded that the results of an increase in testosterone levels among participants in resource conflicts and no increase among those in value conflicts show that people feel more capable of tackling conflicts about tangible resources than conflicts about personal norms and values.

When we feel particularly incapable of handling stressful social interactions such as value conflicts, we may resort to counterproductive behavior. Indeed, findings have shown that the conflict handling behaviors of disputants in value conflicts are not effective for dispute resolution. When negotiating about values, people tend to make fewer trade-offs, are less willing to give in (Harinck & De Dreu, 2004), less willing to compromise, exhibit less problem-solving behavior (Rexwinkel et al., 2012) and achieve lower joint outcomes (Harinck et al., 2000; Rexwinkel et al., 2012) than when negotiating about resources. In addition to their behaviors, disputants in value conflicts show a particular attitude towards negotiating on the conflict issue. Considering that values represent people's core beliefs, the mere idea of negotiating on values is often viewed as inappropriate, unacceptable (Lax & Sebenius, 1986; Weingart et al., 1993) and a betrayal of principles, to the point of being seen as 'taboo' (Tetlock et al., 2000).

The above-described factors suggest that value conflicts are more likely to reach stalemates than other types of conflicts. Disputants unable to resolve their conflict may request the assistance of an independent third party, such as a mediator, to help guide the process. However, as Kressel (2014) noted, mediation should not be considered as the "magic bullet" for resolving any and all disputes. In fact, mediation has a higher rate of success in resolving resource conflicts (70%) than other types of conflicts such as value conflicts (ideology disputes, 50.4%) and ethnicity disputes (66.7%) (Bercovitch & Houston, 1996). Although some value-based disputes may seem impossible to mediate, it is exactly because value conflicts are so difficult to resolve, that people might seek help from external evaluators or mediators.

Even though value conflicts are reaching the mediation table, little research has been conducted on mediation strategies specifically geared at managing value-based disputes. Indeed, the mediation literature has widely explored the effects of mediation processes focusing on the resolution of resource conflicts. However, traditional strategies such as seeking 50-50 compromises to meet each other halfway may not seem acceptable when values are at stake. It is crucial to establish and develop specific mediation procedures for such cases, which can be adopted by professional mediators when intervening in value conflicts. As a first step to exploring the mediation of value conflicts and further developing the practice thereof, my point of departure in this dissertation is the present state of mediation.

## Mediation

Mediation is one of the oldest forms of conflict resolution (Wall et al., 2001). Parties who are unable to resolve a dispute on their own may opt for the assistance of an independent

third party to guide the negotiation process to reach a mutualy beneficial solution. Alternatively, conflicting parties may also resolve the dispute in court. However, presenting the case in front of a judge has been shown to be more expensive, takes more time (Stamato, 1992) and is more frustrating (Ferstenberg, 1992) than mediation. In most cases, disputants experience satisfaction directly caused by the process of mediation (Depner et al., 1994). This is because mediation is generally cheaper (Coltri & Hunt, 1998), more swift (Severson & Bankston, 1995), and more enduring (Elleman, 1997) than other forms of managed conflict resolution, such as litigation.

Another reason disputants experience satisfaction from mediation is that they perceive procedural justice in the process of mediation (Bush, 1996). As disputants adopt an active role in shaping the resolution, mediations tend to produce agreements that are tailored to the needs and underlying interests of the conflicting parties (Wall et al., 2001). This process of joint decision-making may not only increase the sustainability of the agreements but may also improve the relationships between disputants (Gaschen, 1995).

## Stages of Mediation

Prior to reaching an agreement, however, parties must go through the mediation process. Scholars and practitioners distinguish between different sub-stages of the mediation process but the general procedure is typically characterized by three main stages. First, there is an intake phase (also termed introduction or preparatory phase, in which the issue is explored), then the mediation phase follows and the process is completed by the agreement or closing phase (Bonenkamp, 2009). The intake period begins as soon as the parties first contact the mediator and lasts until the first official

mediation session. During this stage, further exploration of the issue takes place, and the mediation process is explained to the parties. The mediator determines the type of conflict (e.g., labor dispute, neighbor conflict) and the conflict issue (e.g., salary issue, noise disturbance issue). At this stage, the mediator also checks whether there are more parties involved in the dispute. Parties are informed about the cost of the mediation session and once they are ready to begin, the parties and the mediator sign a mediation agreement.

The second stage—the mediation stage—typically contains five steps: opening, exploration, turn-and categorization, negotiation and decision-making. In the opening step, the mediator allows the parties to share a little bit more about themselves, while the mediator gives information about his or her background and experience. The communication rules and expected conduct are discussed along with the structure of the mediation sessions. Once the elements of the first step have been covered, the mediator moves on to the next step.

During exploration, the parties receive the opportunity to share their version of the conflict issue. The mediator poses follow up questions to paint a broader picture of the conflict. Once each disputant has fully expressed their side of the conflict and the mediator has understood both perspectives, the mediator moves on to determine preferred outcomes. In the turn-and categorizing step, the mediator lists the preferences expressed during exploration and verifies with the parties whether all interests have been documented and whether they have been correctly termed. The next step is negotiation, where parties try to resolve their conflicting preferences. The negotiation ends with an agreement, which is formed during the decision-making.

The mediation session is considered complete when all parties sign the settlement during the last mediation stage: the agreement. Although the three main stages of mediation—the

intake, mediation and agreement—remain uniform across the practice of mediation, the mediation style and the specific techniques used by mediators to guide conflicting parties to come to a resolution differ among mediators.

## Mediation Techniques

During the mediation stage, mediators may choose from over 100 mediation strategies (Wall, 1981) and about 25 mediator styles (Kressel & Wall, 2012) to employ. The mediation style and strategy that is chosen by the mediator is influenced by several factors such as the mediator's training, environment, disputants' characteristics and the nature of the dispute (Wall et al., 2001). The present dissertation focuses on the latter factor, specifically when the dispute concerns diverging values. Although the mediation literature extensively describes the mediation styles and strategies, little research has been conducted on their efficacy when employed on value conflicts. To date, three interventions have been shown to be effective when attempting to resolve value conflicts and may be adopted by mediators to help resolve a value conflict.

First, both self- and other-affirmation techniques have been found to be productive based on their impact on self- and shared identity. In the case of self-affirmation, a mediator allows parties to affirm their self-identities in another domain than the conflict issue (e.g., a skill). This fosters their feelings of self-worth and may promote open-mindedness to the beliefs of their opponent, thereby decreasing the threat to their ideological identity (Cohen et al., 2007). In terms of other-affirmation, research has found that a mediator allowing parties to affirm their opponent by mentioning positive characteristics about the other may increase their sense of shared identity. Research showed that once a sense of shared identity was established, the conflict handling

strategies were improved (Rexwinkel et al., 2012). Mediators might invite and support parties involved in a value conflict to engage in such affirmation of themselves and each other as a way to make them more open to attempts to resolve the conflict together.

The second strategy takes form in deemphasizing the values and emphasizing the interests (Kouzakova et al., 2012). In this case, the mediator must avoid framing the problem in terms of values. Kouzakova et al. (2012) showed that even though the topic of each conflict remained the same, the underlying reasons made the difference in how people responded to the conflict. For example, when mediating a conflict between disputants disagreeing on environmental issues, the mediator may explore whether there are material interests such as different budgets that can be focused on thereby framing the conflict in terms of resources rather than values. This strategy brings the conflict to a more practical level, where mutually acceptable solutions may be found, instead of continuing to challenge the values that anchor the different positions. Whenever opponents argue for their positions by invoking values, a mediator might initiate a shift in what the conflict is about, and steer the negotiation back to interests. In an experimental setting, instructing parties to do this has been shown to decrease parties' feelings of self-involvement and can increase perceptions of common ground (Kouzakova et al., 2012).

The third technique that might be employed by a mediator intervening in value conflicts is that of a pre-negotiation workshop (Druckman et al., 1988; Druckman & Zechmeister 1970, 1973; Druckman et al., 1977; Korper et al., 1986). This technique can be used in mixed conflict situations, i.e., when the dispute involves issues concerning both resources and values. A mediator employing this technique may request parties to discuss their conflicting values

during a pre-negotiation workshop before the negotiation session. Such a pre-negotiation workshop might also include elements of the first two techniques, namely, self- and other-affirmation, and/or helping the opponents construct the discussion as being about opposing interests instead of incompatible values. The goal of such a pre-negotiation workshop would be to achieve that values are no longer the primary concern, and the then disentangled resources can be discussed during the negotiation.

Further documentation of techniques aimed at resolving value-based disputes is often presented in the form of suggestions lacking empirical verification. These suggestions often contradict other advice for mediators intervening in value conflicts or seem to contradict available evidence. Consider for example the suggested value conflict intervention of encouraging parties to share information about their divergent views (Prein, 2009). This technique diverges from the empirically investigated technique of deemphasizing the values and emphasizing the interests (Kouzakova et al., 2012). Asking parties to further explore their conflicting values may make these beliefs more salient thereby decreasing open-mindedness. Highlighting their divergent values may also cause parties to lose hope in resolution in light of their apparent differences. Furthermore, Amason (1996) noted that when dealing with personal and highly emotional conflicts, mediators are motivated to reach a solution quickly. An example of a technique used to reach an agreement quickly is 'pressing.' Thus mediators intervening in value conflicts may be advised to steer clear from reflective techniques such as encouraging parties to share information about their divergent views as advised by Prein (2009) and press parties to come to a solution quickly.

Although Prein's (2009) advice seems to contradict previous empirically verified techniques, his suggestion

of encouraging parties to share information about their divergent views has not been studied when employed in value conflicts. Therefore, we cannot deem the strategy ineffective to resolve value-based disputes. Perhaps there are certain circumstances under which mediators encouraging parties to share information about their divergent views may be productive, yet these factors should be identified. By examining the results of previous research on these strategies and their impact on resource conflicts, and by comparing these findings to what we currently know about value conflicts, we can begin to pinpoint strategies that may not be compatible with value conflicts. Furthermore, by documenting the strategies professional mediators are currently employing to resolve value conflicts, we can highlight the most frequently used strategies, thereby signaling the areas in dire need of research. Lastly, we must investigate the impact of these strategies in order to provide professional mediators with the tools necessary to resolve value-based disputes.

For this reason, the present dissertation aims to first identify the mediation strategies that are currently being employed in value conflicts by making an inventory based on extensive interviews held with professional mediators. Secondly, this dissertation contributes to the research on the impact of mediation strategies when used to resolve value conflicts by investigating the effects of previously unstudied mediation strategies that are currently being used by mediators when intervening in value conflicts.

### Overview of the Dissertation

The present dissertation aims to empirically examine the impact of mediation techniques used to intervene in value conflicts. The three empirical chapters are based on separate papers that have been published or have been submitted for publication. Each chapter can be read independently

and overlaps between chapters may exist. The aim of this thesis is twofold: first I will make an inventory of techniques currently used by mediators when intervening in a value conflict. Second, I will experimentally test the effectiveness of two key interventions.

The first empirical chapter (Chapter 2) is an exploratory study aiming to investigate the development, escalation and resolution of value conflicts as experienced by professional mediators. As there is a lack of research on the impact of mediation strategies when employed in value conflicts, I first sought to gain insight into the strategies that are currently being used at the mediation table. Interviews of nineteen mediators revealed sixty-six different techniques currently used to intervene in value conflicts. I examined the perceived effectiveness of these techniques and assessed the extent to which the efficacy of these techniques has been supported by empirical research. A number of specific propositions were derived from the analysis of the interview transcripts. The findings also revealed a set of (15) techniques, which mediators identified as possibly counterproductive when employed in value conflicts. Interestingly, some of the (15) techniques mentioned as possibly counterproductive were also among the (66) techniques that are currently being employed by mediators. The inventory derived from these interviews allowed me to conclude that there are possibly counterproductive techniques currently being employed by mediators when intervening in value conflicts as well as techniques that had never been tested. The remaining chapters of the dissertation are dedicated to investigating two of these techniques.

In Chapter 3, I study the impact of the cost-risk tactic of threatening litigation when employed in value conflicts. When the mediator threatens litigation, parties are warned about the increased costs (i.e. attorney fees) they would encounter

and/or the loss of control they would experience should the case be presented in front of a judge. A mediator faced with headstrong parties unwilling to negotiate on their values may threaten litigation in an effort to promote flexibility among the disputants. However, threatening disputants to negotiate on their values in order to avoid monetary consequences may cause them to defend their values even strongly. Indeed, previous research has shown that people respond with moral outrage to the idea of trading off sacred values for monetary outcomes (Tetlock et al., 2000). Alternatively, warning parties about the loss of control of the outcome they would face should the case proceed to court, may motivate parties to arrive at a resolution at the mediation table where they still retain control. With the threat of loss of control in their minds, mediators may accomplish more flexibility among the parties to actively participate in the mediation arriving at a resolution that may reflect both values. Mediators intervening in value conflicts may then be better off framing the threat in terms of loss of control of the outcome instead of warning parties about the increased costs they might face.

The mediator interviews described in Chapter 2 revealed that mediators are currently threatening litigation when intervening in value conflicts, i.e., warning parties that they might face increased costs and/or a loss of control of the outcome if they do not resolve the conflict at the mediation table. Considering previous findings suggest that threatening litigation framed as incurring increased costs may be counterproductive when values are at stake, I found it important to investigate the impact of this technique. Although threatening litigation can include warnings of increased costs as well as warnings of a loss of control of the outcome, I looked at each separately to draw specific conclusions on the impact of each warning. The results may give insight into how this technique should be used

when intervening in value conflicts. To test the efficacy of threatening litigation framed as incurring increased costs versus threatening litigation framed as losing control of the outcome, I conducted two studies.

Participants were exposed to a mediator threatening litigation in a predetermined value conflict (Study 1) or a self-experienced value conflict (Study 2). When threatening litigation, the mediator either referred to the increased costs the parties would face or the loss of control of the outcome they would experience should the case remain unresolved and must then be dealt with in court. The findings showed that threatening litigation framed as loss of control may increase parties' motivation to continue the mediation session. The results also showed that the emergence of this overall effect depended on the power relations between the disputants. Furthermore, disputants exposed to threatening litigation framed as incurring increased costs were less willing to exhibit the conflict handling strategy of avoidance behavior. These findings represent the first step in establishing criteria for the use of the cost-risk tactic of threatening litigation as a productive strategy when mediating value conflicts.

In Chapter 4, I investigate the controversial technique of mediator-expressed anger. The mediator interviews described in Chapter 2 revealed that some mediators employ the tactic of expressing anger when mediating value conflicts. This finding was surprising since mediators are known for their neutral approach to conflicts, which includes refraining from expressing emotions. However, when faced with hopeless situations and headstrong parties often found in value conflicts, mediators seem to resort to more forceful tactics such as expressing anger in an effort to move the process along. I selected this technique for further investigation because of the possible consequences the findings may have on the practice of mediation. Research on mediator-expressed

anger should indicate whether this technique should make its way to the list of interventions found in official handbooks or keep its position on the list of things not to do when mediating a dispute.

The expression of anger is an extensively researched negotiation technique used by disputants and negotiators. The impact of anger expressed by mediators as a mediation technique, however, has not been researched. Drawing on the results of research on disputant-expressed anger, I conducted two studies to test the efficacy of mediator-expressed anger. Participants were exposed to a mediator expressing anger in a predetermined value conflict (Study 1) or a self-experienced value conflict (Study 2). The mediators either had high power (i.e., the mediator turns into an arbitrator and makes the final decision if the mediation ends in no resolution) or low power (i.e., no decision is made if the mediation ends in no resolution). The findings showed that low-power mediators who expressed anger fostered compromise behavior among disputants while mediators with high power elicited forcing behavior among disputants. In addition, mediators who expressed anger, regardless of their power, were rated as less social, less moral and less competent than neutral mediators. Mediators who expressed anger, regardless of their power, also elicit forcing behavior among disputants. These findings suggest that low-power mediators should decide whether it is more important to foster compromise behavior among disputants than being positively evaluated by the disputants. Mediators with high power on the other hand may want to avoid utilizing this technique when intervening in value conflicts. Similar to Chapter 3, the findings described in Chapter 4 offer a first step in identifying the factors that may influence the impact of the unconventional tactic of mediator-expressed anger when mediating value conflicts.

Finally, Chapter 5 positions the combined results of the investigations conducted in the present dissertation in the broader picture of the conflict management literature. In this chapter, I show how the findings extend insights on the development, escalation and resolution of value conflicts. Furthermore, I discuss the general implications of the findings and how they relate to the current practice of mediation. Lastly, I suggest a direction for future research.