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

Illes, R.M.

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CHAPTER 2

Mediating Value Conflicts

A mediator was called to assist in a dispute between neighbors. A man had been complaining about loud noise persisting through late hours of the night. His neighbors, a married couple, were not responding to his requests to 'keep it down'. Upon arrival, the mediator listened to both sides of the story. As the parties exchanged their views, the conflict became less about noise disturbance and more about their diverging values. It seemed the male neighbor was not only complaining about noise disturbance but was in fact reporting a case of domestic violence. Violence against women in romantic relationships is heavily frowned upon in his culture, whereas, this is seen as more commonplace according to his neighbor's culture. The neighbors differed in cultural beliefs about gender equality. The man wanted justice for his female neighbor, who in turn preferred for him to remain uninvolved. As for her husband, participating in mediation could not be further from his interests. With ideological differences on the mediation table, the mediator is faced with a classic case of value conflict.

Mediation is defined as a form of intervening in conflicts where a neutral independent expert guides the communication and negotiations between parties in order to – based on parties' actual interest – reach agreements about desired behaviors and a mutually beneficial optimal solution (Brenninkmeijer, 2009). Parties who find themselves in an escalated conflict may opt for the assistance of a professional mediator. In general, mediators are equipped to intervene in different types of conflicts. One specific type of conflict that has been identified as particularly difficult – if not impossible – to resolve are those involving diverging values (Prein, 2009). Value conflicts occur when people disagree on an issue due to the different values that they hold dear (Druckman et al., 1977). An example of such a conflict is illustrated in the above real-life anecdote. Here, a mediator

was asked to intervene in a dispute involving the value of gender equality. By guiding the parties through the structural process of 4 phases, namely, intake, exploration, negotiation and documenting the agreement (Brenninkmeijer, 2009), the mediator may assist the parties in resolving this dispute. However, the manner in which practitioners guide parties from the intake to the agreement phase in any conflict is far from uniform. With approximately 25 identified mediation styles (Kressel & Wall, 2012) and more than 100 mediator tactics (Wall, 1981), experts may choose to intervene in value conflicts in a variety of ways. The question is, do parties in a value conflict effectively respond to the numerous interventions or are there specific techniques that may be particularly productive or counterproductive in fostering resolution when mediating value conflicts?

The current, preliminary, research forms part of a larger project aimed at verifying and —where necessary— designing sustainable interventions that can be adopted by professional mediators when encountering value conflicts. The lack of systematic procedures to intervene in value conflicts may result in trial and error approaches to the point where solutions may seem to be more rooted in luck or gut feelings rather than the result of carefully diagnosed conflicts. By firstly interviewing professional mediators in the field, we aim to gain insight into the mechanisms involved in the development, escalation and resolution of value conflicts. The objective of this study is to document mediators' experienced results of employing mediation techniques when intervening in value conflicts. Based on the current findings, we shall seek to conduct empirical studies to further identify techniques that are likely to function productively (or counterproductively) when employed in value conflicts.

Value Conflicts

One of the main reasons value conflicts are particularly difficult to resolve is rooted in the nature of the issues discussed in value-based disputes. Values communicate our principles and beliefs about how we think the world should be. These principles represent who we are as people (Wade-Benzoni et al., 2002). Encountering people with different values may threaten our identities (Wade-Benzoni et al., 2002; Kouzakova et al., 2012) thereby producing higher levels of distancing, (Skitka et al., 2005) intolerance and egocentrism (Wright et al., 2008) leading to more competitive rather than cooperative attitudes (Hinds & Mortensen, 2005). Further, parties in a value conflict tend to be less encouraged to seek win-win opportunities (Harinck et al., 2000), are more likely to expect zero-sum outcomes (Rapoport, 1964) and often view classic conflict solutions such as trade-offs and compromises as unacceptable (Druckman et al., 1977; Harinck et al., 2000; Harinck & De Dreu, 2004; Tetlock et al., 2000; Wade-Benzoni et al., 2000). These mechanisms separate value conflicts from other types of conflicts (for example disputes about material possession) and may require tailored techniques to foster resolution.

Previous research investigating techniques specifically geared at resolving value conflicts have produced three types of interventions that may be particularly effective in mediating such cases. First, asking parties to affirm their counterpart by recalling positive characteristics about the other has been shown to increase shared identity. This so-called other-affirmation technique allowed parties to view their counterparts as part of the self-concept, which in turn improved conflict-handling strategies (Rexwinkel et al., 2012). Secondly, de-emphasizing values and emphasizing interests in an objectively similar disagreement has been shown to decrease parties' feelings of self-involvement

and increase perceptions of common ground (Kouzakova et al., 2012). Similarly, instructing parties to discuss their conflicting values during a pre-negotiation workshop prior to the negotiation session has been shown to disentangle the resource from the value aspect of the conflict, thereby facilitating the negotiation process (Druckman et al., 1977; Druckman et al., 1988; Druckman & Zechmeister, 1970, 1973; Korper et al., 1986).

With the exception of the above-described interventions, the development of techniques specifically geared at resolving value conflicts has received little attention in academia. Moreover, research empirically verifying the efficacy of techniques currently employed when intervening in value conflicts is also lacking. The discrepancy between the literature of the mediation of value conflicts and the practice of mediating value conflicts is evident. The current research forms a first step in addressing this gap.

Study Rationale

The present study is of an exploratory nature. Since little is known about the mechanisms involved in the development, escalation and especially the resolution of value conflicts we were mainly interested in gaining insight into these procedures in order to extend our understanding beyond theoretical inferences. By interviewing professional mediators in the field, we were able to obtain accounts of mediators' experiences with specific techniques when intervening in value conflicts.

Before summarizing our research question, however, it is important to address the difference between the theoretical distinction and the practical existence of value conflicts. In theory, value conflicts refer to disputes that exclusively involve diverging views. In practice, however, conflicts are often 'mixed' (Druckman et al., 1988; Druckman &

Zechmeister, 1970), that is, conflicts about resources such as money can include value-related beliefs about the right way of distributing the money. To illustrate the interplay between value conflicts and more resource-based disputes, Druckman et al. (1977) envision a continuum ranging from pure conflict of resources on one extreme, to pure conflict of values on the other extreme, with varying degrees of mixed conflicts in between. In the present study, we sought to explore practitioners' experiences with conflicts where values played a more predominant role than resources. By posing key questions, we hoped to generate rich descriptions allowing us to separate the resources from the values and clearly distinguish between techniques employed to address the value aspects of the dispute.

By focusing on strategies used to manage value conflicts, we aimed to depict a practical overview of conflict management with respect to value conflicts. With the present research, we aimed to address the following questions:

1. What are the mediation styles and tactics currently employed by mediators in value conflicts?

2. To what degree are the mediation styles and tactics currently employed in value conflicts experienced and/or perceived as (counter)productive by mediators?

3. To what degree is the (in)effectiveness of these techniques supported by empirical research?

Methodology

Design

This study consisted of a semi-structured interview of 15 questions (see appendix) geared at investigating the interventions employed by professional mediators when mediating value conflicts. We executed a grounded theory method to analyze and interpret the transcripts of the interviews (see explanation below).

Participants

Ten female and nine male mediators (Mage = 51, Range = 27 – 75 years) participated in this study. The academic background of participants included law ($N = 8$), psychology ($N = 5$) and other disciplines ($N = 10$) such as dispute resolution, sociology and pedagogy, with several practitioners holding multiple degrees. Participants ranged in years of experience from 1.5 years to 26 years (Mexperience = 7.87). They were specialized in different areas of mediation, which we classified into 3 categories, namely, family (for example divorce mediation, $N = 8$), community (for example neighborhood feuds, $N = 8$) and corporate (for example labor mediation, $N = 5$), with two mediators specializing in more than one area. During the interview, mediators were asked to recall examples of value conflicts that they have mediated in the past. To this end, mediators discussed value conflicts that occurred in different conflict domains, specifically, between divorced parents ($N = 10$); between neighbors ($N = 7$); between employers and employees or among colleagues at the workplace ($N = 7$); between family members ($N = 4$); between the government and citizens ($N = 2$); between doctors and former patients ($N = 1$) and between parents and teachers ($N = 1$).

Procedure

All practitioners were registered at the Dutch Mediators Federation. Their contact details were retrieved through the institute's online database. Invitations to take part in this study were sent out via private emails. Fifty-three mediators were contacted of which 28 did not reply, 3 declined and in 3 cases we were unable to make appointments after the initial contact. The remaining 19 practitioners were all interviewed in one-on-one private settings, with the exception of 2 cases — in one case a second mediator was present and in the other

case the interview was held in a booth in a public hallway. The interviews took approximately one hour and were audiotaped and subsequently transcribed. Before the interview, participants were given a brief introduction to the study and were asked to sign a consent form indicating voluntary participation and assuring anonymity. Participants were then asked to elaborate on a series of 15 questions related to their experiences with mediating value-based conflicts. Finally, participants were asked to fill out 6 questions relating to their background and were then debriefed and thanked for their participation. As a token of appreciation, each participant received a €10 gift card and a university pen.

Grounded Theory Coding Analysis

A grounded theory method (Charmaz, 1995; Glaser & Strauss, 1967) was undertaken to analyze the interview transcripts. In a first round, one researcher assigned codes to responses to each question posed. Following the grounded theory method, these codes emerged from the data and were not predetermined by the literature review. In a second round, the same researcher raised the assigned codes to categories encompassing a broader, more abstract level, of characterization. Codes were assigned to categories originating from established terminology in the mediation and conflict management literature or separate categories in cases of unorthodox practices and circumstances. In the final round, a blind researcher assigned the predetermined categories to each transcript to enhance reliability. The final set of categories was then used to formulate the (social-psychological) interpretation of the entire data set. The interpretations were summarized into several propositions.

Results

The analysis of the interviews produced a relevant set of categories related to mediators' experiences with mediating and resolving value conflicts. In this section, we present the findings that respond to our research questions.

Firstly, we aimed to explore the mediation styles and tactics that are currently employed by mediators when intervening in value conflicts. During the interview, mediators were asked to recall a previously mediated value conflict. By taking us through the mediation process of the chosen example, mediators informed us of the tactics used to intervene in the dispute. From the rich descriptions, we have identified and categorized a set of 66 techniques (see Table 2.1). Interventions included communication techniques; techniques aimed at influencing the physical, emotional and spatial proximity of the parties and the mediator; specific activities; cost/risk tactics; and techniques pertaining to specific mediation styles and approaches.

Table 2.1
Techniques employed to mediate value conflicts (N = 19)

Techniques	N
Communication	
Performed by the mediator	
• Listening, Summarizing, Posing follow up questions	14
• Promoting self-reflection	8
• Identifying	7
• Relabeling	6
• Confrontation (on behavior)	3
• Paraphrasing	2
• Humor	2
• Other (for example storytelling)	4
Requested from the parties by the mediator	
• Instruct parties to listen, not interrupt each other	4
• Requesting parties to paraphrase opposing parties' statements	2
• Other (for example talking stick round	3
• Questioning	
• Peeling the onion	4
• Asking parties to voice what they need to reach solution	3
• Other (for example asking parties whether the situation could be worse)	4
Proximity	
Physical	
• Caucus (conducting separate conversations during mediation)	6
• Conducting separate conversations prior to start	4
• Other (for example taking a walk)	3
Emotional	
• Building a trustworthy relationship with the mediator	3
• Creating a safe environment to promote information exchange	4
• Building a trustworthy relationship among parties	2
Spatial	
• Desired future state	7
• Break (time)	4
• Background search	4
• Projection	3

• Past, present, future	2

Activities

Performed by the mediator

• Listing concerns/interests	9
• Emphasizing common interest	7
• Providing compliments	5
• Sketching the problem on paper	3
• Increasing awareness of litigation procedures/referring to legal frameworks	3
• Paradox intervention	3
• Encouraging escalation	2
• Bringing in an external expert	2
• Separating value and resource conflict	2
• Other (for example exhibiting anger)	7

Requested from the parties by the mediator

• Encourage voicing own concerns/views	7
• Perspective taking	4
• Take home exercises	3
• Other-affirmation	3
• Moving from views to interests	2
• Practice executing concrete agreements made	2
• Allowing parties to decide who begins	2
• Allowing parties to decide where to begin	2
• Brainstorming	1

Cost/risk tactics

• Threatening termination	3
• Threatening litigation	1

Mediation styles/approaches

• Solution-focused mediation	6
• Narrative mediation	2
• Transformative mediation	1

Note. In an effort to avoid overload on techniques mentioned only once, in some cases, techniques were placed into the category 'other.' Apart from techniques currently employed in value conflicts, this list also includes techniques mediators anticipated that may be effective in mediating value conflicts. Since mediators generally employ multiple techniques in a given situation, the total frequency of techniques mentioned exceeds $N = 19$.

1. Motives for employing techniques when mediating a value conflict

With such a large number of different techniques used to mediate value conflicts, the question becomes how do mediators then decide which techniques to apply? Our analysis identified nine different motives for choosing to employ a given technique when intervening in a value conflict (see Table 2.2).

Table 2.2
Motives for employing a specific technique (N = 19)

Motive	N
Conflict-related	
• Based on interpretation and/or analysis of the conflict	11
• Based on techniques used in all types of conflicts	2
• To escape an impasse	2
• Based on the process	1
Mediator-related	
• Based on fitting to mediator's personality	7
• Based on belonging to solution-focused mediation	4
• Based on intuition	4
• To avoid mediator's own values and norms	1
• Based on belonging to acquired method of structure	1

Note. Since mediators were allowed to mention multiple motives for choosing specific techniques, the total frequency of motives mentioned exceeds $N = 19$.

Even though many mediators chose their techniques by analyzing the conflict and diagnosing it as one consisting primarily of diverging views, a number of mediators based their choice on more personal motives such as their intuition or mediation styles. Furthermore, three practitioners claimed to employ identical tactics in every situation, regardless of the conflict type. These findings suggest that the choice between techniques may not only relate to the nature of the

conflict but also to the character of the mediator. What is unclear, however, is whether mediators intervening in value conflicts should be advised on a set of techniques specifically geared at resolving value conflicts or whether mediators would be better off employing techniques that they feel most comfortable with. This question poses a need for further investigation.

Proposition 1. *The efficacy of chosen techniques deriving from conflict-related motives versus mediator-related motives when intervening in value conflicts requires empirical verification.*

The above two-sided decision-making process suggest there may be a lack of consensus among mediators as to techniques that may or may not be effective when mediating value conflicts. This observation was further evidenced by the analysis of our second and third research question. Specifically, we aimed to investigate the degree to which mediation styles and tactics employed in value conflicts are seen as productive or counterproductive by mediators and the extent to which the (in)effectiveness of these techniques are supported by empirical research with respect to value conflicts. To this end, we asked participants whether there are specific techniques that may function counterproductively when intervening in value conflicts. Table 2.3 presents the result of our analysis of the segments responding to this question.

Interestingly, 9 out of the 15 possibly counterproductive techniques were also among interventions currently being employed in mediating value conflicts (see Table 2.1). At this point, it is useful to further elaborate on the mediators' reasoning for claiming the inefficacy of the techniques presented in Table 2.3.

Table 2.3
Possibly counterproductive techniques when mediating value conflicts

Communication
• Identifying*
• Confrontation*

Proximity
• Exclusively conducting joint sessions

Activities
Performed by the mediator
• Formal procedures
• Making a list of interests*
• Encouraging escalation*
• Paradox intervention*
• Exhibiting anger*
• Bringing in an external expert*

Requested from the parties by the mediator
• Traditional negotiation techniques
• Focusing on the solution too quickly
• Dwelling in the past
• Perspective taking (when parties are of equal intellectual levels)*

Mediation approaches/styles
• Transformative mediation
• Narrative mediation*

Note. The mediator who mentioned exhibiting anger in this segment unexpectedly experienced a productive effect of exhibiting anger, but holds that anger should never be exhibited as it is against the mediator's conduct.
*Possibly counterproductive technique that is currently being employed (see Table 2.1).

2. Addressing versus Over-Addressing

In clarifying the perceived factors accounting for the inefficacy of the techniques found in Table 2.3, mediators

discussed the differences between parties in a value conflict versus parties in other types of conflicts. In doing so, mediators particularly highlighted the impact values may have on established techniques. One mediator explained:

> …I think the pure negotiation techniques… in this case, it indeed concerned a value and I think that people will not let go of that… you cannot negotiate about that and if people suspect that that is what they must do then I think they will refuse to yield… and then you will not get anywhere, so there must be space for both values and that makes the given situation… you must then search for solutions within the situation, but to ask people to give up some part of their values, no, that will definitely function counter-productively.

Indeed, the above anecdote ties in with previous research showing that parties in a value conflict tend to view classic conflict solutions such as trade-offs and compromises as unacceptable (Druckman et al., 1977; Harinck et al., 2000; Harinck & De Dreu, 2004; Tetlock et al., 2000; Wade-Benzoni et al., 2000). Although, on the one hand, the formal and structured nature of traditional negotiation techniques (for example trade-offs) may not provide the proper space for values to be adequately considered, on the other hand, some practitioners especially avoid techniques that give values too much weight. As one mediator described:

> There is the transformative mediation… I think that if parties were to undergo transformative mediation they would have had heavier discussions and that it would possibly function counterproductively and that we would not have reached a solution… because they would have then stood more strongly by their norms and values, so they would place that above the current issue… [with transformative mediation] you really explore within and try to identify what about this makes it a problem for me, and then you really reach your own personality and own values and own norms etcetera. so I think that that would not have worked here.

Therefore, techniques that do not grant diverging values a specific or appropriate place at the mediation table (traditional negotiation techniques, formal procedures and focusing on the solution too quickly, Table 2.3), may function just as counterproductively as those giving diverging values a predominant role (identifying, dwelling in the past, making a list of interests, perspective taking and the transformative and the narrative mediation styles, Table 2.3). The latter may make values too salient to the point of inhibiting resolution.

Proposition 2. *Techniques geared at intervening in value conflicts should address but not over-address diverging values.*

3. Intensifying versus Pacifying

A number of techniques pertaining to the activities section in Table 2.3 seem to be rooted in the emotional aspect tied to parties in value conflicts. As mentioned previously, values communicate our identities (Wade-Benzoni et al., 2002). Since values are strongly linked to who we are as people and how we define ourselves, finding ourselves in a situation where our values are at stake can be experienced as threatening (Kouzakova et al., 2012) and may induce emotional responses. Mediation tactics such as confrontation, encouraging escalation and paradox intervention, which may very well be effective in breaking through impasses when mediating other types of conflicts, may function counterproductively due to the already escalated tendency of value conflicts. In light of this phenomenon, one mediator predicted:

> … I think encouraging escalation would not have had a positive effect… at the mediation table, everything was geared at calming the situation down, while with other people you would sometimes let them vent and

you would pose further questions to explore what was behind all of it but no, I think that would work counterproductively here.

Similarly, another mediator recalled: "I did not use the paradox intervention in this case because it was already so overly exaggerated, that did not fit in this case but in other situation, it can work very well." Indeed, mediators do employ intensification techniques in other situations. To this end, one mediator described the positive effect paradox intervention may have when employed in other conflicts: "…or precisely the opposite, exaggerate that it is indeed hopel ess… I wouldn't have done it in this situation but you can also do that … that can help sometimes because then they will say "it's not *that* bad."' Thus it seems when mediating value conflicts, mediators may benefit from steering away from techniques that further intensify the situation (encouraging escalation, paradox intervention, confrontation and exclusively conducting joint sessions, Table 2.3) and adopt techniques that aim to calm parties down.

Proposition 3. *Techniques geared at intervening in value conflicts should aim to pacify and not intensify.*

4. Exhibiting Anger

Parties in a conflict are not the only ones that can be overcome with emotions. Mediators may also exhibit signs of frustration and hopelessness when progress seems to be out of sight. One particular emotion exhibited by mediators in our study is anger. Negotiation literature reveals that anger is a common technique used by parties to force concessions and cooperative responses from their counterparts (for example Van Kleef et al., 2004a). According to mediation guidelines, however, mediators are generally not advised to exhibit anger for any purpose, as this may imply judgment on

the part of the mediator, which does not correspond with the mediator's conduct. As one mediator explained:

> … [anger] is perhaps a good example of something that in essence you must not do, that you have learned that… you must not say "you should shut up now" and things of the sort… but I became angry and that is not appropriate for a mediator…

Although negotiators commonly use anger, employing this technique does not guarantee concessions from counterparts. Indeed, parties expressed anger during mediation has been found to be both counterproductive and productive (Friedman et al., 2004). The effects of exhibiting anger may be dependent on certain circumstances such as the direction of the anger (Steinel et al., 2008), the power of the party exhibiting anger (Lelieveld et al., 2012) and the conflict issue, for example, resource or value (Harinck & Van Kleef, 2011). In terms of the latter, Harinck and Van Kleef (2011) found negotiators expressions of anger to be experienced as more unfair by counterparts in value rather than resource conflict, leading to retaliation and escalatory behaviors. It should be noted, however, that the above studies focused on the effects of anger expressed by dyads in a negotiation or by parties in mediation. The impact of anger expressed by *mediators* intervening in value conflicts on the other hand, has yet to be established. Nevertheless, anger is among techniques currently being employed by practitioners in the field. One mediator discovered its positive effects unintentionally:

> …I once stepped out of my role as a mediator, this does not happen easily because I am very patient… but at a certain point I became very irritated and I stepped out of my role and I became angry and, you must never do that, that is not right, but in this case it worked very well.

Meanwhile, another mediator consciously exhibits anger during mediation sessions:

> One of the aspects of solution-focused mediation is connecting with the client and… sometimes you get very peculiar clients and… you must also connect with them so if parties tend to exhibit rude violent behavior, sometimes you have parties that communicate in a rude way towards each other then I tell them it's enough, be quiet, you know… and that works, if I just sit there and nod understandingly… and if you give the space then it will lead nowhere… but sometimes I do ask myself 'what in God's name have you done?', because I want to be able to justify my actions and then I notice that I have just connected with the clients.

Taking the literature into account and considering the mediators' experiences with the exhibition of anger — despite its incompatibility with the mediator's conduct — it is evident that more research is necessary to clarify the circumstances, if any, under which exhibiting anger may function productively when mediating value conflicts.

Proposition 4. *The efficacy of exhibiting anger when mediating value conflicts is in need of empirical verification.*

5. Bringing in an External Expert

Another possibly counterproductive technique that is currently being employed is the addition of an external expert. During mediation sessions, mediators may suggest including an external expert to facilitate the procedure. In divorce mediation, for example, a mediator may request the assistance of a financial expert to calculate alimony payments, while in a religious conflict, a mediator may propose to invite a pastor to shed light on parties' ideological differences. In our study, two mediators made use of external experts while mediating value conflicts (see Table 2.1) while one mediator predicted that the

addition of external experts in cases of value conflicts may function counterproductively (see Table 2.3). An analysis of the cases where mediators employed this strategy provides some initial insight.

In one situation, a mediator brought in an external accountant to assist in a mediation session between family members: "… at a certain point I brought in the accountant because I thought that by doing so I could make the case more objective and bring in more written documents." In another situation, one mediator included a child psychologist to the mediation table:

> … I also brought in a child psychologist to… provide a sort of expert evaluation of the situation, and it was very important that we did that and that the parties also wanted to do that… so I worked together with the child psychologist because I do not have any notion of the topic so I am not going to judge the situation, what was important for me was the phenomenon between the parties and how they could talk about the situation in a sensible manner and so I thought it might be good to receive judgment from a child psychologist, and that happened and it played a role in the further developments.

In both of the above cases, the mediators experienced positive effects by including external experts. It seems the conflicts benefitted from the objectivity provided by the experts. However, not all parties in a value conflict may be as responsive to the addition of external experts. As one mediator claimed: "…because this is about values and then [adding an external expert to give binding advice] is not an alternative because I mean, then a third party expert cannot say your value is nonsense." Indeed, a closer look at this phenomenon throughout all the transcripts led to one interesting account that was shared by another mediator:

> … there was a conflict between members of an extreme religious group and there was a lawyer present, who was also a preacher, and he said 'you know what let me intervene in this conflict, let me do something

> about this as a lawyer' and the people responded by saying 'we already
> have a lawyer and his name is Jesus and he is in Heaven'… so these
> situations are difficult to resolve.

Taken together, it seems the impact of including an external expert in the mediation of value conflicts is rather unclear. On the one hand, financial experts may steer the focus away from the values and more towards the interests, which may facilitate the agreement phase. Further, experts with a background in social sciences or humanities may be more equipped and allowed (by parties) to judge and weigh in situations involving conflicting values. On the other hand, in some cases, values may be perceived as too sacred or too personal to undergo the evaluation of any external expert. That being said, research is needed to establish the circumstances under which parties are more likely to accept or reject the input of an external expert.

Proposition 5. *The efficacy of bringing in an external expert when mediating value conflicts requires empirical verification.*

6. Cost/Risk Tactics

One technique not mentioned by any of our participants as possibly functioning counterproductively has particularly caught our attention due to its conflicting nature with respect to current theory. Currently, participants are employing cost/risk tactics such as threatening termination or litigation when intervening in value conflicts. When a mediator threatens termination, parties are reminded that by not coming to a solution at the mediation table, they lose the already invested fee in the mediation. Similarly, when a mediator threatens litigation, parties are reminded that by coming to a solution at the mediation table, they avoid the substantially increased fee (for example attorney costs). Thus, threatening termination or

litigation requires parties to shift their attitudes and exhibit a more flexible approach in relation to their values in order to come to a solution at the mediation table and avoid monetary loss.

Previous research has shown that people resent the idea of trading off sacred values for monetary purposes (Tetlock et al., 2000). Thus theoretically, cost risk tactics employed in value conflicts should backfire. Since people's values are personal and represent who they are, it can be suspected that parties holding diverging views will not respond positively to cost risk tactics. Giving up some part of a sacredly held value and doing so with a monetary purpose challenges the sacredness of the value, which, according to previous research, should lead to moral outrage (Tetlock et al., 2000). Nevertheless, mediators in this study not only employ these tactics when intervening in value conflicts but also tend to generate positive outcomes when doing so.

So how come do mediators generate positive results by employing these techniques? Perhaps the reason threatening termination is effective in mediating value conflicts is driven by loss aversion (Kahneman & Tversky, 1979). The threat of termination may be motivating parties to avoid experiencing negative feelings caused by losing the money invested in the mediation sessions. This threat may be looming larger than the possibility of experiencing positive feelings by reaching a mutual solution. The success of threatening litigation, on the other hand, might have less to do with avoiding additional fees but may be more rooted in avoiding loss of control of the outcome. Parties may realize that their own objectives may be better achieved at the mediation table, while proceeding to court may result in suboptimal outcomes for both.

Alternatively, parties in value conflicts may be yielding under external pressure when a mediator threatens termination or litigation in an effort to save face, that is, to resolve the

conflict while still being able to justify letting go of their values for monetary purposes. Arriving at a solution while risking termination or litigation may provide parties with a suitable excuse of 'my hands were tied', which may reduce feelings of guilt and betrayal towards their values.

Furthermore, mediators generating positive results by threatening litigation or termination in value conflicts may not be dealing with value conflicts after all. Parties in conflict about their values, who respond positively to cost/risk tactics, may in fact be in a resource conflict disguised as a value conflict. Indeed, scholars have inferred that those in pursuit of self-interest in the form of resources tend to use ideological arguments to justify and achieve their goal (Druckman et al., 1977; Hegtvedt & Cook (1987). Research has shown that this form of beating around the bush is more prevalent in resource- than value conflicts (Harinck, 2004). The reason behind this finding is attributed to the notion that in resource conflicts parties are more reluctant to share honest information about their demands, as doing so can lead to a vulnerable position, which may lead to exploitation. In value conflicts, on the other hand, expressing one's true motives (i.e. sacredly held values) can be seen as a strong position communicating inflexibility. For this reason, disputants in a resource conflict may express their motives in the form of values to persuade their opponent or make them more conciliatory. Once threatened with increased costs then, parties who are willing to give up their views for monetary purposes may have not been defending their values to begin with. The real conflict issue may have been rooted in scarce resources and once threatened with increased costs, parties may have given in for monetary purposes without betraying their values as these were merely used to conceal the resource conflict.

The above reasons possibly accounting for the efficacy of cost risk tactics when intervening in value conflicts should be researched to identify conflicting parties' underlying cognitive processes.

Proposition 6. *The efficacy of cost risk tactics when mediating value conflicts requires empirical verification.*

7. Value Conflict Outcomes

In addition to (counter) productive techniques that can be used to manage value conflicts, our data also revealed insight into the types of outcomes achieved through mediation of value conflicts. Traditionally, negotiation literature identifies four types of negotiation outcomes, specifically, victory, compromise, win-win agreement and a failure to reach agreement (Pruitt & Carnevale, 1993). Our analysis of the interviews identified two traditional negotiation outcomes (compromises, $N = 6$ and failure to reach agreement, $N = 1$), and one specific type of outcome that we termed concrete agreements establishing new norms ($N = 12$[1]). The latter outcome was achieved in the majority of cases discussed by the mediators. These agreements consisted of an evaluation of the diverging values resulting in new behavioral standards adopted by each party, thereby establishing new norms. An example of such an agreement is illustrated by a mediator discussing the solution of a conflict about noise disturbance between neighbors from different cultural backgrounds:

> … the solution was actually that the Russian family would inform the Dutch family in advance when for example they were expecting visitors. This way the Dutch family could anticipate that it would be noisier and that the noise may persist later than usual… and the Dutch family would… simply notify the Russian family when they were bothered by

[1] One of the outcomes in this category was an estimated solution since the discussed case was an ongoing mediation.

it and the Russian family would take this into account, so it was actually more about going back and forth… simply notifying.

In the above mediation, parties informed each other of their values. The Russian neighbors adhered to the norm of the importance of family, since in their culture it is common to invite a lot of family members to visit and stay the night. The Dutch neighbors held the norm of courtesy, since in their culture it is common courtesy to officially notify others when anticipating circumstances that may cause inconvenience. Together, the neighbors were in a dispute about the value of neighborliness (what it means to be a good neighbor). By exchanging their values, they were able to come to an agreement about their norms. As the mediator described:

> … so that the Dutch family knows that today there will be visitors and then it is logical that the children will stay up later and… play games and make noise and the Dutch family did not really mind this but when they had the feeling that their neighbors were at it again without providing any notification, they became very angry.

In the above example, the Russian neighbors were still able to adhere to their norm of the importance of family and the Dutch neighbors were still able to receive their desired courteous behavior from the Russian family. The adaptations were more rooted in the norms, in other words, the manner in which the values are expressed. By setting behavioral standards parties were able to create new norms that are accepted by both sides.

Proposition 7. *Outcomes reached in value conflicts tend to consist of concrete agreements establishing new norms.*

Discussion

Mediation is increasingly being used as a form of alternative dispute resolution. Although the practice of mediation has evolved into a rich discipline consisting of numerous mediation styles and tactics, less attention has been dedicated to identifying and developing techniques specifically geared at resolving value conflicts. As a first step to addressing this gap, we interviewed professional mediators in the field to explore the techniques currently being employed when intervening in value conflicts. Furthermore, we examined the degree to which these mediation styles and tactics are experienced and/or perceived as (counter)productive by mediators. Finally, we aimed to identify whether the (in)effectiveness of these techniques are supported by empirical research, in order to pinpoint domains in need of further research.

The analysis of the interview transcripts provided a broad overview of mediators' experiences with value conflicts. Our findings revealed a set of 65 techniques currently employed by mediators when intervening in value conflicts. Some mediators make their choice of techniques based on the type of conflict, that is conflict related motives, while others employ techniques that are more related to their personalities or mediation styles, that is mediator related motives. With respect to value conflicts, it is unclear whether mediators should be advised to employ techniques that derive from conflict related motives versus mediator related motives (Proposition 1).

Our findings also revealed a set of 15 techniques that may function counterproductively when mediating value conflicts. Among these techniques are those that aim to downplay diverging values (for example traditional negotiation techniques) and those that aim to over-address diverging values (for example the narrative mediation

style). According to our findings, techniques that are used in value conflicts should instead consist of a balance between addressing and over-addressing diverging values (Proposition 2). Furthermore, techniques that aim to intensify the situation (for example confrontation) have also been identified as possibly counterproductive. Our findings suggest that techniques geared at resolving value conflicts should instead aim to pacify and not intensify the situation (Proposition 3). Other possibly counterproductive techniques that are in need of empirical verification include exhibiting anger (Proposition 4), bringing in an external expert (Proposition 5) and cost risk tactics (Proposition 6).

Finally, our analysis of the transcripts revealed that in the majority of cases discussed by the mediators, parties in a value conflict tended to reach a new type of agreement that did not include the traditional outcomes of victory, compromise, win-win agreement and a failure to reach agreement (Pruitt & Carnevale, 1993). Instead, parties in value conflicts often reached solutions that included new behavioral standards accepted by both sides, in other words, concrete agreements establishing new norms (Proposition 7).

Although the current study provided rich insight into mediators' experiences with value conflicts, there are some limitations. By conducting one-on-one interviews with mediators in the field we made use of a self-reporting methodology. Conducting additional observational studies would enable us to contrast and combine the current data, leading to more robust propositions. Further, during the interviews, we requested participants to discuss a previously mediated value conflict in more detail. In practice however, conflicts are hardly pure value-based. Thus although the follow-up questions were geared at the value aspect of the conflict, the extent to which a discussed conflict was value based is unclear. Moreover, in the present study, we were

interested in interpersonal value conflicts. However, some participants also discussed cases where the conflict manifested between more than two people. Distinction should be made between interpersonal and intergroup conflicts and future research could also focus on intergroup value conflicts.

Finally, even though we separate value conflicts from other types of conflicts, perhaps a further distinction within value conflicts is due. The observation that parties in value conflicts reach agreements about new behavioral standards may suggest that these conflicts are perhaps a subtype of value conflicts in the form of normative conflicts, that is, conflicts about what is considered proper behavior. We are not suggesting that this new category should replace that of value conflicts, on the contrary, normative conflicts may serve to further clarify the distinction between different types of conflicts. For example, if it is true that our thoughts and beliefs are more difficult to change than our behaviors, value conflicts may be more difficult to mediate and/or resolve than normative conflicts. That being said, it might be the case that value conflicts become more accessible to mediate and/or resolve when efforts are not placed into changing parties' values or forcing parties to give up on their values but are instead focused on finding new norms (behavioral standards) to manage parties' ideological differences without jeopardizing their core beliefs.

Conclusion

In this study we aimed to explore the mediation styles and tactics currently employed by mediators when intervening in value conflicts. In an effort to decrease the research practice-gap, we were interested in gaining more insight into the effectiveness of specific strategies used to foster resolution in value conflicts. The objective of this study is to identify strategies in need of empirical validation. By interviewing

professional mediators, we obtained useful accounts in relation to the mediation of value conflicts. Several propositions were formulated and the areas in need of further attention were identified. Evidently, research is necessary to establish the effectiveness of techniques currently being employed in value conflicts. Research should also result in an indication of the conditions under which the execution of specific techniques may lead to desired outcomes. We aim to address these propositions in upcoming studies in order to develop more robust interventions that can be adopted by professional mediators when intervening in value conflicts.