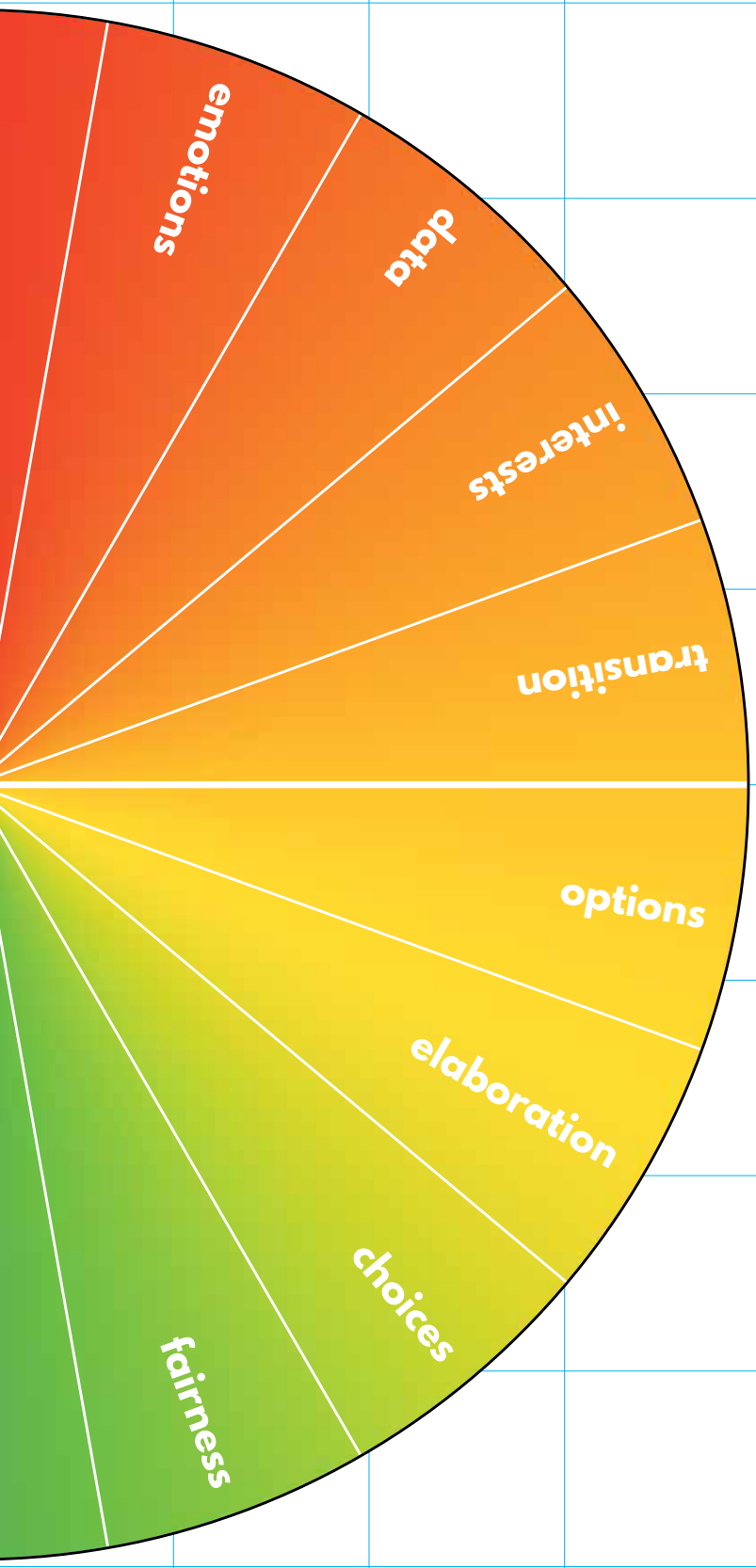


PUBLISHED UNDER THE AUSPICES OF CVC

MODELS FOR MEDIATION

SURVEY AND VISUALS



LENKA HORA ADEMA – LINDA REIJERKERK – JACQUES DE WAART

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Preface

The mediator has a splendid profession. Isn't it marvelous to see how parties transition from opponents to negotiating partners, from "I against you" to "Us for a solution"? If things go well they can even acknowledge the other person and leave the conflict, empowered.

However, the mediator's profession is also difficult, in spite of what some people may think. When, at the start of a mediation course, participants watch a demonstration, it all looks relatively simple. But as soon as novice mediators take their first real steps, it turns out to be harder than they thought. Parties do not commit to the process or cannot agree about who pays what. Emotions are building up and communication is usually under par. How to deal with this? Fortunately, the aspiring mediators are given many professional skills and competences to help them supervise the mediation process. And of course, the connection between (conflict) *theory*, *skills* and *process* is essential in mediation. More important even is the mediator's *attitude*. Can the mediator connect with all those involved, and be sincerely interested in what moves them? Skills should not be tricks but honest interventions. Developing this mediator's attitude demands continuous self-reflection, and specific feedback from colleagues, trainers and parties involved. You don't learn that from a book, but only by extensive practice.

The Centrum voor Conflicthantering (Center for Conflict Resolution) gives training workshops for mediation and conflict management and Harvard negotiation courses. Our experience is that mediators profit from a process model that gives something to hold on to, and goes further than showing the main mediation stages. This is why the CvC mediation circle and the MediationWheel have been developed, dynamic models that do justice to the mediation practice. The MediationWheel is the basis for this book.

Linda Reijkerker as director of the CvC came up with the idea for this book. Together with Lenka Hora Adema and Jacques de Waart, she took up the challenge. Just as in mediation we had an intake phase to determine objectives and lay the foundations. In the exploration phase we explored the various models. Then we negotiated and selected the models, which resulted in this book. We are all three experienced mediators and feel inspired by our profession. This is why we want to share our knowledge by teaching and training people. Of course, we also want to pass on our enthusiasm by sharing our practical experiences. We have written these down for each model.

Why this book with models? Mediation is a relatively young profession, mainly drawing from psychology, sociology, communication sciences and law. In our efforts to raise the level of mediation and to contribute towards the development of our profession, CvC was looking for order in the information coming from these and other disciplines – something to help mediators do their job. A first step was to link the various skills to the structure of the mediation process. By degrees we gained the insight that as mediators we use models from various movements and disciplines – often implicitly. This made us wish to make these choices explicit. *Models for Mediation: Survey and Visuals* is the result.

Why choose to publish in English? Clearly because in different countries our interdisciplinary profession produces different approaches. We would love to stimulate an international exchange of views and practices. This is why we invite our readers to send us mediation models used in their country. These models might be published in the following edition of this book.

We would like to express our gratitude to Caroline de Lint MA, graphic designer, book designer and former Typography Lecturer at the Royal Academy of Art, The Hague, and to Vera van de Seyp, BA, her former student at the same Academy, who together are responsible for the book design. We would also like to say thank you to Heleen van Loon who translated and edited the whole. The great co-operation with these professionals has been essential for this book production.

But most of all we would like to thank our CvC colleague trainers and course participants who are a continuous source of inspiration. Learning is a joy for each of us as it is for the CvC, where we use this joy to educate new mediators and help them towards specializing and gaining more in-depth knowledge. From this love of the profession and each from our special expertise, we have contributed to this book and made it into what it is now. The qualities and insights of each of us enhanced the whole and led to new insights. Almost as in a real mediation.

Linda Reijerkerk
Lenka Hora Adema
Jacques de Waart

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Introduction

Paradigms and perspectives, the value of models

ABOUT THIS BOOK With this book *Models for Mediation: Survey and Visuals* we want to support each of our colleagues in their daily work. Think of a moment that you cannot see your way out and wonder how to continue with your mediation. Or of the moment you notice that the way you are looking at it, is not getting things moving. We imagine you leafing through the book and how the insights you are gaining by examining the various models, give you different points of view, so that you'll see more. You'll see more intervention options so as to get the conflict parties moving. Many models can also help parties to develop those insights themselves. In those cases the model is used in the mediation procedure as a work method¹.

In this introduction we will stress how important self-knowledge is for a mediator. Then, in the second chapter we will introduce the structure of this book which is based on the facilitating mediation process style.

I SEE I SEE WHAT YOU DON'T SEE² As mediators³ we must depend on what we see. That is where our next intervention begins. What do we expect to get the conflict parties moving? Will we use a pregnant silence, reflection on content, emotions or intentions, or feedback on the way parties communicate? Do we want to invite parties to reflect on their own behavior or do we want them to examine the system they are keeping up jointly? Do we want to speak with conflict parties separately, in caucus, or are we going to give them homework? Or will we perhaps put the question up for discussion whether the right conflict parties are sitting at the table? Whichever intervention we choose, our choice is always based on what we think we are seeing.

MODEL: GLASSES THAT HELP US SEE BETTER WHILE AT THE SAME TIME LIMITING OUR VISION Our senses are continuously exposed to what is happening around us. This is so much information that we cannot avoid selecting and simplifying. We do that with our own internal models. We have glasses on through which we look at reality. This is why we sooner recognize familiar than unfamiliar patterns. A situation reminding us of an earlier situation quick as lightning triggers a subconscious model so that we can act swiftly. In psychology this is called 'schemas'. Our schemas determine what we see. We do, of course, adapt these schemas continually; we can learn from our experiences and can abstract knowledge from them and about them, in a mental model. What we see as mediators, is therefore also determined

by our own mental models. Prein distinguishes four models or schemas: the person schema, self schema, role schema and the event schema⁴.

Moreover, we must of course deal with what each participant sees in the mediation, and what their individual mental models are, as they can contribute towards conflict escalation. It is therefore important for mediators to recognize their own models as well as those of the participants.

The *person schema* concerns the model you have of other people in general, the idea you have of mankind. If, in that model, you have the idea that people cannot be trusted, your interpretation of the other party's behavior will be entirely different from what it would be if your person schema were more positive about trusting other people. If the latter, you will interpret someone's behavior more positively and there will be less danger of escalation.

The *self schema* – the idea you have of yourself – also determines how much conflicts may escalate, as the schema contains a norm about what kind of person you are and which behavior is appropriate for that person. This may also determine how much a conflict will escalate. If, for instance, I think it is inappropriate to assert yourself so strongly, then I will sooner condemn a person who does so.

The *role schema* is also a factor in mediation. It involves the behavior we think appropriate between people with specific roles. For instance, how should a father, mother, employer, employee, civil servant or manager behave? Our minds contain models for these roles. Is the behavior inappropriate? Then we will judge and condemn. For instance, 'Mothers should be with their children'. Are they working? Then they must be bad mothers. And where norms clash, conflicts will come into existence. The role schema can therefore add fuel to the fire.

Finally, there is *the event schema* or script that describes the fitting sequences for events in well-known situations. These schemas also determine someone's expectations and norms, and should not be underestimated.

To mediators all these schemas are, of course, well-known and they know how they work. Our mental models influence the way we look at situations and how we deal with them. We interpret from the perspective on which our mental models are based. This is fine as long as what we do, works. For we then have a handle on the situation with which we can quickly structure and interpret the complex and multiple information confronting us. But if people have conflicts and still need to be in a relationship, for instance if there is interdependence, then such models can work as self-fulfilling prophecies. I expect something, based on my role schema; I base my actions on this, and in doing so, invite a reaction that confirms my idea of the role schema. In some conflicts parties can achieve a solution that improves the situation

with all schemas involved for each individual remaining the same. This improvement – play the game better – is a *transformation of the first order* (see the Paradigm below). However, there are situations where such a transformation of the first order will not be feasible because underlying convictions are clashing. An actual solution can then only be achieved by looking at these underlying convictions. This involves a *transformation of the second order* – changing the rules of the game – an actual transformation at the level of convictions. Only if we seriously adjust our mental models can we change the rules of the game and then play the game differently. Finally there is the *transformation of the third order*, in which we play a different kind of game. We step outside our frame and find a new game, a new frame. You might say a new paradigm. Or simply, we put on new glasses to look through.

Three paradigms and perspectives on change

Every human being, and therefore every mediator too, bases their actions on mental models. This coherent system of models and theories that constitutes our mental framework and inside which we analyze and interpret reality, we call a paradigm. The word *paradigm* comes from an ancient Greek word meaning ‘showing side by side’; hence the original meaning ‘example’. This evolved into the meaning ‘model’ and ‘framework’. These are the glasses you use to look at reality, and which determine your view of reality. Take, for example, the paradigms that the earth is round or that the earth goes round the sun. For us, this is a matter of course. But there was a time when these ideas were considered foolish or sacrilegious. The same goes for the concepts of the ‘conscious’ and the ‘unconscious’. Before Freud became known, the idea of the unconscious mind did not exist; now it is taken for granted (see also the various models in the book that refer to it).

Paradigms, according to the philosopher of science Thomas Kuhn, describe the progress of scientific knowledge in a model.⁵ If advancing observations do not fit into existing models (or paradigms), the model can be adapted for some time. But sometimes so many adaptations, exceptions to the model, in fact, are needed that a new set of theories – a new paradigm – comes into existence. There will be a new group of scientists adopting the new paradigm but there will also be resistance to and conflict about the change. When the new paradigm, the new way of looking at things, has become dominant, we nowadays call it a paradigm shift.

For the sake of convenience, we divide these larger frames from which we look at reality, into three paradigms. Each paradigm influences how, as mediators, we look at change; for that is what mediation basically is about, getting things moving. The conflict parties are stuck and come to us for movement, for transition. They want to get on. And so they expect something from us – an intervention that gets them going again.

To our opinion it is relevant for a mediator to be able to recognize three ideas of reality or three paradigms: an objective one (there is

a reality), a subjective one (the reality is a construct by an individual) and an intersubjective one (the reality is a construct developed in an interaction between the individuals involved). Depending on your idea of reality you will deploy specific interventions to coach parties towards their objective. However, the conflict parties' idea of reality will also influence the choice of intervention (see below for the paragraph about the mediator's paradigm). The *reality paradigm*⁶ on the next page demonstrates the connections between the mediator's various ideas of reality, the mediation style and what kind of transition can be expected as intended during the mediation process.

Paradigm (or how the mediator sees reality)	Objective: there is an objective reality	Subjective: reality is a construct by the individual	Intersubjective: reality is a construct coming into existence in interaction
Mediation style	Evaluative	Facilitative	Transformative
Perspectives on mediation interventions	Changing patterns by testing parties' realities using an objective norm	Changing reality as perceived by parties and its interpretation, by reflection and re- formulation	Changing patterns by creating a new perception of reality in the context of the interaction between conflict parties, through mutual recognition and empowerment
Kind of transformation in mediation	First order: play the game better	Second order: change the rules of the game	Third order: play a different game

In the second column from the left one sees the pattern of the first order: 'play the game better'. The perspective is that there is an objective idea of reality. This is the perspective of the evaluative mediator, the deal-maker. According to evaluative mediators, content and process are their responsibility.

The third column from the left shows the pattern of the second order, learning and changing during mediation. The game is the same, but the rules change. The mediator has a multiple perspective of the conflict. The mediator initiates the discussion about the various perspectives, often within the paradigms of the conflict parties. The aim is for the parties to adapt their paradigms and to 'do things differently' because of their new awareness of a multiple reality. The content is the parties' responsibility. According to the facilitating mediator the process is the mediator's responsibility.

The right-hand column shows the pattern of the third order learning and changing, or 'playing a different game', what we also know as transformation. Mediation is here a tool to achieve a new

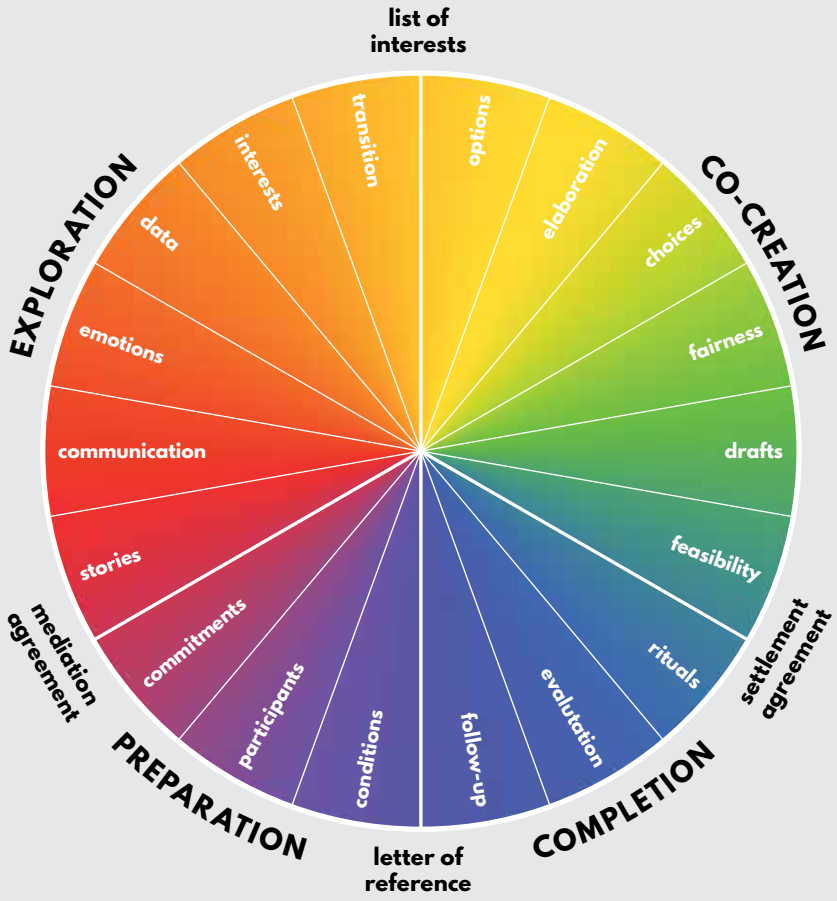
reality. There is no specific thought paradigm. Instead, participants together reflect on their paradigms in order to achieve new points of view for thinking and acting. Both content and process are the responsibilities of the parties. The transformative mediator stimulates empowerment and recognition.

Know thyself

What is the mediator's view of reality and how decisive is it? If mediation is about conflicts and about change, then, for mediators it is decisive what their own personal experiences with their own conflicts are, and how they have learned to deal with these conflicts. We think it is essential for every mediator to know himself or herself. This awareness can be developed in various ways. One way is to get to know analyses and insights from other people. The six perspectives of conflict⁷ offer a handle for this and an interesting framework.

You can look at a conflict from the specific conflict dynamics for this specific group of individuals, i.e. how they influence and affect each other (*the systemic perspective*). You can also look at it from the exchange perspective; the mutual interdependence expressed in 'You scratch my back and I'll scratch yours' and 'What's in it for me?' (the social exchange perspective). Then again, the conflict can also be looked at from the inner battle of the individuals involved, e.g. the narcissistic conflicts (*the psychodynamic perspective*). However, the conflict can also be approached as a clash of groups, each with their respective norms and values (*the intercultural perspective*). Another valid approach is to determine which rules in force have been infringed (*the rule perspective*). Finally the conflict can be looked at as the common creation of parties and their intersubjectivity (*the social-constructivist perspective*).

Knowledge of these perspectives makes mediators aware of their own way of looking. It also enables insight into the perspectives that the parties involved use to look at their situation. And this clears the way for the mediator to bring other perspectives to the fore. The models in this book can be considered to broaden the mediator's outlook and serve as a source for mediation interventions. They help you recognize what your model is – whether conscious or unconscious – and how this limits or in fact supports you. Moreover, it helps you get a clearer picture of what you actually do as a mediator and based on what. With this book we hope to help you get to 'know yourself', as the ancient Greeks would have it... which might be your prelude to a paradigm shift.



PREPARATION

Participants

- 1 Nine mediation roles
- 2 Conflict constellations
- 3 Power of numbers

Conditions

- 4 VISIC process choices
- 5 Stairs of escalation
- 6 Triads

Commitment

- 7 Interests, rights and power
- 8 BATNA
- 9 Process design

ESSENCE This model is an analyzing instrument used to clarify the different roles people can play when involved in mediation (in or outside the mediation room). In mediation 9 roles can be distinguished:

- PRT party (A, B, C, D and E)
- REP representative (F and G)
- COA coach (H and I)
- EXP expert advisor (J, K and L)
- CON third contractor (M)
- REF referrer (N)
- ABS absent stakeholder (O and P)
- INV passively involved (Q)
- MED mediator (R).

This instrument helps to analyze the conflict system for a better understanding of the various influences during mediation. This model also helps mediators to prepare the first session, by giving them a perspective on who will or needs to be at the mediation table and in what role. It is therefore very useful for group mediation and multi-party mediations. First, it gives insight into the various responsibilities and manages the expectations. Second, it gives all those involved a clear picture of everyone's role. Third, it helps to find out who is needed at the mediation table when, with whom, about what and in what role.

EXPERIENCE We use the model especially in multi-stakeholder situations. It is especially helpful in an intake caucus as well as during the rest of the mediation process. For instance it might be that an advisor needs to be asked to join or a third party has to be taken into account in the negotiation phase. The definition of these different roles can be used as a checklist for finding out in what way someone is connected to the conflict situation and in what way that role can change during the process.

EXPLORE Thiebout, M., K. van Oyen, L.J. Reijerkerk and J.A.Th.M. de Waart. *Groepsmediation: Dynamiek, procesontwerp en werkvormen*. The Hague: SDU Publishers, 2nd edition, 2015.

