THE RELATIONAL MEDIATION APPROACH THROUGH THE LENS OF INTERSUBJECTIVITY: THE PROMISES AND LIMITS

NATALIE DUPUIS

Thesis submitted to St Paul University
in partial fulfillment of the requirements for the
Doctorate in Conflict Studies

School of Conflict Studies
Faculty of Human Sciences
Saint Paul University

Summary

This thesis endeavours to make a critical assessment of the relational mediation approach and discerns gaps that remain insufficiently accounted for in the models selected. Accounting for these gaps and how they impact relational mediation processes creates opportunities to improve and further develop relational mediation theories. Further development in the theory may thus equip mediators with additional aptitudes for assessing how they can best assist parties with unique needs and help to determine if the conditions for mediation are propitious for success.

Using an interdisciplinary approach to understanding relational mediation practice, this thesis develops a view of relational mediation models as distinctly phenomenological in orientation with the ultimate goal being the emergence of a new intersubjective understanding between parties in conflict. However, in addition to enriching the description of relational mediation practices, theories of intersubjectivity also offer an analysis that includes dimensions of conflict that may prove to be resistant to developing new intersubjective understanding between parties in conflict and thus, may resist resolution when certain approaches are used.

This thesis employs a three-part structure. The first part of this thesis lays the foundation for the development of the argument, namely that conflict is experienced through the lens of subjectivity and that relational mediation tends to work in this realm. Working under the assumption that conflict is created in the subjective experiences of parties, mediation presumes that addressing conflict through the subjective experiences of the parties offers a suitable path to resolution. Furthermore, this thesis offers a review of how the conflict studies field views *success* in mediation and the various mediation models developed in various contexts and narrows the field of inquiry to a particular mediation approach, the relational mediation approach.

The relational mediation approach, consisting of a series of mediation models, describes an approach to conflict resolution that presumes that while people are concerned with their own interests, they also are simultaneously concerned with the interests of others. This mutual-concern approach stands in contrast to individualist interpretations of conflict resolution as a problem-solving approach that prioritizes having one's own needs met with minimal concern for the interests of the other party. In this thesis, the scope for examination is narrowed to the transformative, insight, narrative, and nonviolent communication models of mediation as they share the relational orientation to their respective theories and practices.

Having narrowed and clearly defined the goals of relational mediation models, the second part of this thesis situates relational mediation practices within the phenomenological approach to conflict resolution. This approach explores conflict through the lens of first-person experience using methods familiar to phenomenologists. Using a phenomenological approach, relational mediators seek to guide mutual understanding between parties about how the conflict has presented itself to each party. Thus, this thesis further contends that relational mediators are unknowingly working with theories of intersubjectivity to guide parties toward new shared understandings of self, other, and the conflict as they promote mutual cognitive and empathic understanding. Indeed, the mediator is equally participatory in this intersubjective understanding as it is often considered as an integral part of the mediation process.

Having established that relational mediation models employ their own version of theories of intersubjectivity, the final part of this thesis uses literature from theories of intersubjectivity to discern likely blocks to intersubjective understanding. With the definition of these blocks established through the lens of intersubjectivity, this thesis contends that some conflicts are

inherently resistant to resolution through mediation because of individual dispositions or structural influences on the parties and their conflicts.

This thesis contends that applying the lens of theories of intersubjectivity to relational mediation theories and practices provides new paths in mediation's theoretical and practical maturation and adds to the tools mediators may already be applying. Specifically, theories of intersubjectivity shed light on the quality of dynamics mediators seek to prompt during a mediation process. However, theories of intersubjectivity also point toward explanations about party dispositions and contexts that are likely to contribute to mediation failure. Exploring these dimensions of relational mediation approaches offers paths for mediator development to help them address these challenges in mediation or to help to guide them in determining whether a conflict should be referred to another dispute resolution mechanism.

Table of Contents

Acknowledgements

To my thesis supervisor - Helene Tessier - thank you for encouraging me to discover and refine my own intellectual rigour and for pushing me to defend my ideas, a tendency I had more less trained out of myself for professional reasons. To my committee - Brent Epperson, Matthew McLennan, Isaac Friesen, and Jessica Senehi - thank you for finding value in my work while pushing my thinking beyond what I had written and to talk about how this work matters. Your collegiality through the experience was impactful.

To my fellow doctoral student colleagues at SPU - Martin Samson, Shannon Gallagher, Kevin Klein, Mohammed El-Jabi, Peace Muzaki, Sylvie Lemieux, and Constance Morley - thank you for the words of encouragement, the bouncing ideas of one another, and sharing resources and strategies to get the job done.

To my Saint Paul University faculty and cheerleaders - Heather Eaton, Jean-Francois Rioux, Enkelejda Sula-Raxhimi, Stephanie Larrue, and Peter Pandimakil - thank you for being the academic and professional guides that you were throughout this process.

To my family, who might not have always understood what I was up to but never stood in my way - thank you for your words of encouragement, prayers, and confidence throughout the process.

To my informal conflict management colleagues and mentors - Kim Forward, Darlene Doiron, Vincent Morin, Pascal Khawam, and the many others I've crossed paths and worked with - thank you for being part of my learning about the field in addition to being the supportive and challenging voices that I needed from my field.

To my Women in Conflict Studies - Marie Boglari, Kristina Dings, Amy Dillon, and Evelyne Poisson - thank you for listening to my rambles and telling me at every turn that I was capable.

To my close friends - Ulyana Osorio, Annie Ng, Brunella Porco, Phil Tullock, Luis Vasquez, and Laura Hughes - thank you for offering me moments of support, connection, and distraction from this overwhelming project.

To my colleague, mentor, friend, and fellow learner, Gail Huang - your time, presence (even from NL!), energy, encouragement, and careful attention at the most pivotal moments in my thesis process made a profound difference for me.

Finally, to my husband, Glenn Yu - this achievement is as much yours as it is mine because it would not have been possible without you and everything you did. Without you and Ginger The Thesis Cat, it would have been an even lonelier journey that would have lasted much longer. Your agreement to allow me to return to school to do the PhD (twice!) showed me the faith you had in me and I'm so happy I can honour that faith by bringing this to completion.

Introduction

I have always known I wanted to work for peace in the world around me. I did not always know what that would look like or with whom I would be working. I started out with a bachelor's degree in political science and then a master's in conflict studies, thinking my peacemaking efforts would take me to some far-off land. But through my master's degree, I took a mediation course and found a path toward peacemaking that resonated with me and my hopes for doing good in the world, albeit a little closer to home than I had initially imagined. I eventually got a graduate diploma in conflict resolution and began practicing as a mediator in the community, for an industry ombuds, and eventually in the workplace. But it turns out that being a channel of peace, as the hymn describes, is complex work. And rather than peace flowing like a river out of you and me, as another hymn promises, the flow of peace is often retained behind a dam.

I want to know more about the dam.

1. A pracademic's search

I, like many actors in the conflict studies field, am a *pracademic,* a professional who combines practice with research. I have been a trained conflict resolution practitioner since 2012, with experience in the community, industry ombuds, and workplace contexts delivering mediation and conflict coaching services. I am also an instructor in the field, delivering theoretical and practical courses at the post-secondary level and attending to students' very pointed questions (that I frequently share). Finally, I am also a researcher in the field, focusing on conflict theories that support the development and practice of conflict resolution approaches.

Together as practitioner, instructor, and researcher, I have ongoing and profound questions about how to think about, practice, and teach my trade to those who want to "be the change" they want to see in the world. This *pracademic* positioning uniquely allows me a line of sight between theory, practice, research, and instruction in conflict resolution.

Having drawn a weaving path from theory, to practice, to research, and to instruction, I must acknowledge my regular return to theory to hone my practice and to teach about it to others. I understand conflict resolution through the lenses provided by conflict studies, theories of conflict resolution, and in particular, the mediation theories that support a number of conflict resolution methods. They provide intelligible explanations for the origins of conflict and what it takes to achieve effective conflict resolution. They often propose helpful guides and structures for mediation processes, complete with underlying foundations that explain why mediators should do what they do.

But, like any practitioner, I have noticed that theory and practice do not always align in the neat ways the literature often promises they will. Clients come to my services hoping for something better than they have been experiencing and sometimes through mediation or coaching, they find some satisfaction in the outcomes or even in trying to resolve it at all.

However, despite my skills and best intentions, successful mediation outcomes often do not materialize. Thus, my reflective practice demands that I ask myself many questions when things do not go as hoped, as much as when they go well. Several authors advocate for reflective mediation practice including Lang (2019), Lang and Taylor (2000), and Bowling and Hoffman (2003). Using these reflective practices, I can ask myself questions about my own blunders and misunderstandings and wonder what I could be doing differently. What tools should I be using for what challenge? Which strategies will be effective for which issues? What skills am I

lacking? How can I develop those skills? Which skills or help are needed but lie outside of the boundaries of mediation or coaching? While the resources of reflective practice can be helpful for my own self-exploration, I find this approach to practice development limited. Sometimes I need to recognize that I can only own so much of the mediation's failure and I am pushed to question if mediation is just not up to the task of helping some parties because their needs surpass what mediation can satisfy either by process design or by unacknowledged limitation.

Part of my reflective practice includes a consistent review of literature and perspectives that contribute to my understanding of conflict, people in conflict, the contexts of conflict, and mediation skills. My conflict resolution communities of practice have a penchant for popular literature in the field. These texts tend to offer relatively simple responses to these complex questions about mediator practices and the nature of conflict. The self-help and interpersonal communication genres such as Fisher, Ury, and Patton's *Getting to Yes* (2011), Patterson, Granny, McMillan, and Switzer's *Crucial Conversations* (2012), and Stone, Patton, and Heen's *Difficult Conversations* (1999), among others offer simplified models for understanding conflict and how to resolve or manage it. Somewhat of an outlier is Eddy's *High-Conflict Personalities* (2018) which offers a perspective on the limits of collaborative conflict resolution with certain personality types and the skills one can use to cope with them. These resources are not academic in tone or depth but I do find that they offer useful analysis and communication skills to understand and manage some impasses in mediation. Indeed, many of them rhyme with one another (and with a great deal of the academic and theoretical literature) as I can identify analogous structures and ethical foundations between them, though they may be packaged differently from one another. They offer cursory explanations of what keeps parties from understanding one another and finding resolutions together as well as a few strategies to

overcome barriers to communication, empathy, and understanding. However, my experience is that many of the tools these texts offer can be unwieldy and I sometimes question their relevance for mediators working with particularly stubborn parties. Again, this brings me to question what I can be doing differently to support collaborative processes as well as sorting through the limits of mediation practices.

Since completing my formal education and mediation training in the insight mediation model, I have broadened my knowledge base to add to my existing tools to help parties in conflict. I have moved beyond unearthing cares and threats-to-cares as insight has guided me to do, and I have learned about Bush and Folger's (1994) empowerment/recognition structure, Monk and Winslade's (2000) conflict narratives model, and Rosenberg's (2015) nonviolent communication four-step formula. These texts are more academic in tone and depth and offer additional theoretical framings that address human needs, context and communication dynamics that specifically guide conflict resolution and mediation processes. Each model offers its own intelligence into the sources of conflict and how mediators can contribute to a shift in dynamics and relationships between conflicting parties. However, these four models offer decidedly optimistic outlooks for those practicing them and are based on ideologies that are decidedly idealistic.

2. Problematization

In light of this contrast between the models' optimism and the failures I have observed, I want to know *what makes mediation fail?* While I acknowledge there are a variety of approaches I could use to address this question, in this thesis, I intend to interrogate the mediation theories

that support the mediation models that are popularly practiced in North America to determine where some gaps may lie and how these can be conceptualized in a different way.

I am consistently in a feedback learning loop, trying new strategies with parties and evaluating how they help or hinder progress toward peaceful resolutions or, at least, relationships that do less harm. I am getting a little better at it all the time and have developed some intuition of my own, but my intuition is also telling me that there's something missing in the theories and models I have been learning and applying. This intuition has motivated me to study and question the gaps in my training and practice in greater detail. Furthermore, my observation has been that practitioners in the field are enamoured with their mediation models of practice. They are motivated by inspirational professors and trainers who are passionate about their work in conflict resolution and who tell heartwarming stories of successful conflict resolution. But my experience still tells me that the stories of success are only part of the picture. I want to see more of the picture that includes the failures and what led to that point. I want to know what the models do not tell me about the parties before me, their conflicts, and about myself as a helper. The approaches, skills, and techniques offered by these models and that third party intermediaries can use to help settle disputes are constantly developing, but thorough critical assessments of them are in short supply outside of the academic realm.

My ultimate goal with this thesis is to understand the limits of the mediation theories that support the models that many of us are practicing in the field. When mediation does not result in success, it is incumbent upon us to reflect on the reasons for this in order to improve our practice. Therefore, this is a scholarly work aimed at critical appraisal of the mediation models in use around me and the insufficiencies of the models.

Discerning what the causes of mediation failures are is complex, given the number and weight of the variables to be considered: there is me and my competencies as a mediator, which are constantly evolving; there are the clients and their readiness to participate in the mediation with openness and authenticity; there is the context in which we are working together and the accompanying patterns of thought and behaviour that influence parties' expectations and behaviours; there are the parties' *best alternatives to a negotiated agreement* as discussed by Fisher and Ury that could be more appealing to a party; there are the mediation model and skills themselves that I am applying in mediation; and there is the mediation theory that explains *why* I do what I do.[1]

Many of these variables in themselves would be difficult to pin down to definitively understand what leads to mediation failure, and while any of these variables is worth studying on its own, I have chosen to investigate the mediation theories that support the practices. Mediation theories lay the foundation for mediators to understand what prompts conflict and what could prompt resolution (Lang & Taylor, 2000). Using these assumptions, mediation models prescribe practices and skills that mediators use to help parties find new paths to resolution. These theories do not tend to change over time, though how they are practiced may evolve as new generations of mediators learn the artistry of their trade. Mediation theories are the most constant of all the variables outlined and therefore make a sensible place to start such an endeavour.

This thesis acknowledges that there is a significant amount of work already in existence that develops and defends mediation practice in general as well as specific mediation theories and models. There are also a number of authors who attend to the failures of mediation's promise and the gaps in its development and this work intends to add to the critical literature around

[1] Another series of studies that investigate the other variables offer a relevant research program, though would require a different research methodology.

mediation theory and practice. This thesis also proposes that applying a new lens to the critical analysis will define new paths in mediation's theoretical and practical maturation and add to the tools mediators may already be applying.

Working with the assumptions that many mediation processes suggest that mutual or shared understanding about self, the other, and the conflict at the cognitive and/or emotional levels is imperative for parties to find a satisfying resolution to their conflicts, this thesis will describe the central dimensions of conflict, conflict resolution, and the qualities that mediation theory and practice, and relational mediation in particular, declare are essential to resolving conflict between parties. Based on this rich description, this thesis will use an interdisciplinary method to understand relational mediation theory and practice as a process that helps parties in conflict develop deeper understandings of themselves, the opposing party, and the conflict. This thesis deepens insights into questions about what it is that keeps conflicting parties from understanding each other at the cognitive and/or emotional levels and what can a mediator do to undermine these barriers.

As I explore the resources to help me answer this question, I often find some common themes around what mediators are trained to accomplish in mediation. Themes that emerge throughout this review include *communication, empathy, experience, perspective,* and *understanding*. This series of emerging themes led me to work on *theories of intersubjectivity,* a concept explored in great depth in a number of disciplines but most intensively by philosophy and psychology. Therefore, the research question proposed by this thesis is *what does the lens of intersubjectivity tell us about the gaps in relational mediation theory that lead to mediation failure?*

Using the frame of theories of intersubjectivity to orient the exploration, the topic of this thesis is firmly rooted in conflict studies and recognizes the complex nature of conflict and conflict resolution processes. However, this thesis also finds the contributions of these other disciplines germane to the research question. The disciplines principally drawn on include conflict studies, philosophy, and psychology as these disciplines each offer contributions to theories of intersubjectivity, a central concept explored in the second and third parts of this thesis.

My preliminary conclusion as I embark on this research is that the relational mediation theories do not sufficiently account for two dimensions of intersubjectivity that are integral to mediation success: first, they do not sufficiently account for individual dispositions that may present barriers to mutual understanding; and second, they do not sufficiently account for contextual or structural barriers to mutual understanding. This thesis intends to use the lens provided by theories of intersubjectivity to identify and explicate the gaps in relational mediation theory. It is my contention that theories of intersubjectivity offer a valuable lens through which these barriers can be explored and ultimately used to guide mediators' practice or to determine whether redirection to other dispute resolution mechanisms would be more appropriate or effective.

3. Structure of the thesis

This thesis is organized into three parts. Part I is descriptive and lays the groundwork for understanding mediation as distinct from other methods of conflict resolution. Furthermore, it narrows the scope of this thesis to mediation, creating the scaffolding for the remainder of the thesis.

The second chapter departs from a review of conflict studies literature to develop a definition of conflict as a principally subjective experience, a notion that is integral to understanding conflict and its resistance to simple or formulaic steps to resolution. It follows the definition of conflict with an exposition of the assumption that among the methods that exist for ending conflict, each option considers the role of subjective experience in the generation and resolution of conflict in its own way. This chapter also attends to the range of outcomes toward which the various methods of resolution are oriented, suggesting that what is considered *successful* mediation may be found along a spectrum. The second chapter concludes with the position that mediation as a method of conflict resolution considers the subjective experience of parties in conflict to be the primary content of the mediation process. This is in contrast to other methods of conflict resolution that may consider an appeal to objective standards for resolution, as outlined in many individualist-oriented approaches. Thus, relying on a subjective experience of conflict requires a particular set of skills and a theoretical frame for conflict resolution processes.

The third chapter outlines that mediation practices have seen a great deal of development over the decades in theory and practice. However, despite the theoretical and practical development of the field, mediation practices are defined by a few values at the root of the practice. Specifically, mediation practices often attend to a past experience of ineffective communication and relationship patterns that have been more dysfunctional than functional for one or more of the parties. Mediation is a process that seeks to help parties develop new patterns of behaviour and interaction that will prove more effective for solving their immediate conflict and, ideally, benefit their future relationship. This chapter further narrows the scope of the study to the relational mediation approach that attends to subjective experiences of conflict very

narrowly with particular attention paid to nature and quality of the parties' relationship, the influences on their relationship, and their hopes for the future of their relationship. The four models explored under the relational mediation approach - transformative, narrative, insight, and nonviolent communication (NVC) - offer theoretical groundwork for the relational nature of conflict and provide language for the conflict analysis a mediator carries out. Not only do these models rely on the subjective experience of conflict, they also rely on the subjective hopes for resolution that the parties bring. Finally, these models employ an ethic of balancing one another's needs and hopes to achieve the best outcomes. This balance defines the interdependent and relational nature of conflict and conflict resolution that goes beyond the individualist approach that is favoured by many other conflict resolution methods. While the view of relational mediation is by nature optimistic, this thesis recognizes that it comes with its own risks that represent significant challenges to relational mediation theory and practice.

Part II of this thesis situates the relational mediation models within the phenomenological approach to understanding the conflict experience for both the mediator and the parties. This situation leads to a conclusion that relational mediation is, in effect, a process directed toward new intersubjective understanding between parties in conflict.

The fourth chapter argues that the relational mediation approach is explicit in its method of relying on parties' subjective experience of conflict and the implications for this reliance on the mediation process. Furthermore, this thesis creates a distinct connection between a phenomenological approach to knowledge about a phenomenon and relational mediation practices, noting practices such as *phenomenological reduction* and *bracketing* play a significant role in relational mediation practices. Finally, this chapter assesses the place of the self and

subjectivity in relational mediation, suggesting that these play a significant role in the phenomenological approach.

The fifth chapter delves into several perspectives regarding prevalent theories of intersubjectivity, noting the multidisciplinary nature of the concept. This chapter contends that intersubjectivity offers a useful intellectual framework through which to thesis relational mediation as it denotes a place where subjectivities may intersect, if given the necessary conditions of more effective communication, ethical intention, and guided exploration of the self, the other, the conflict, and the context. This chapter further contends that intersubjectivity attends to the shared experience of conflict resolution to redefine the relationship and constitute intersubjectivity between parties in conflict. *Intersubjectivity* is a key concept of this work that will be developed in greater detail in chapter four and relies heavily on philosophical and psychological literature for development and uses *subjectivity* as a point of departure. Here, *subjectivity* refers to the quality of the mind endowed with feelings, tastes, desires, and first-person experiences. For the purposes of this thesis, Zlatev's (2008) description of intersubjectivity, "the sharing of experiential content (e.g. feelings, perceptions, thoughts, and linguistic meanings) among a plurality of subjects (Zlatev, 2008, p. 1)" is adopted. A non-totalist approach is accepted here, suggesting that no single part of the human being - the cognitive or emotional self - can completely account for what the individual knows or feels. Various mediation theories refer to each of these elements of subjectivity in some form and with emphasis on various elements over others. Thus, these multiple perspectives of intersubjectivity will be explored to create a comprehensive understanding of the concept.

Thus, *intersubjectivity* implies three distinct meanings of *meeting*. First, intersubjectivity can refer to rendering perspectives, feelings, and experiences accessible to the other, akin to a

meeting of minds. This is most often done through various forms of communication but does not imply a perfect imparting of this information to another. In this regard, the notion of *intersubjectivity* finds its roots in phenomenology. The second part of this meaning suggests a model of relationship that regards the other subjectivity as possessing equal moral status. This suggests that *intersubjectivity* requires equality of status, thus an *encounter between equals*. The third form of this meaning is the recognition that the inner world of the individual is inevitably impacted by those around him and likewise, that the individual has an impact on the inner world of the other. This *meeting of worlds* presumes a mutually impactful encounter and the coordination of meaning through this encounter in order to engage with the external world and other subjectivities. Each of these forms of *intersubjectivity* suggests something comparable to the metaphor of an intersection and thus, *intersubjectivity* could be thought of as the *intersection of subjectivities* - the space where subjectivities meet one another and, to some extent, merge for a time.[2]

Finally, this chapter contends that intersubjectivity takes form in two distinct yet often overlapping structures in the mediation process: mediator-party intersubjectivity that considers the nature of the communication and relationship between each party and the mediator; and

---

[2] While a good number of authors from a variety of disciplines have expended a great deal of words to explain and contextualize intersubjectivity, it is not universally accepted as a premise upon which to rely. Writing from the psychology perspective, philosopher, psychologist, and psychoanalyst Mills (2012) laments the "relational turn" taken in psychology as it has oriented away from expert psychoanalysis and the role of the unconscious, and toward a post-modern constructivist view of therapy. Mills also notes the shifted role of the therapist who no longer applies analytical skills from a relational distance but is now included in direct relationship with the client and engages in co-construction and meaning-making in the therapeutic process. Mills' critique speaks to the tension between the expert who possesses thoughtful answers to a client's needs and the trends away from providing such expert answers, which is not such a distance from expert views of conflict resolution found in arbitration and adjudication processes intended to end conflict from an expert perspective rather than empowering parties in conflict to find their own solutions to their problems through forging better communication and relationships. This thesis does not maintain that parties are always equipped to accomplish this, with or without the help of a skilled mediator. Indeed, a third party skilled in settling disputes from an evaluative perspective is an option to parties in conflict with one another. However, this thesis does contend that promoting and supporting parties to discover their own imperfect solutions through the paths offered by mediation with a relational orientation can offer positive outcomes to parties in conflict.

party-party intersubjectivity that attends to the quality of communication and relationship between the parties in conflict.

Thus, Part I of this thesis brings forth a deeper exploration of the relational mediation approach, the promise that it offers parties in mediation, and the deep connection between the practice and theories of intersubjectivity.

In response, Part III attends to the literature on intersubjectivity that discusses aspects of the self and the surrounding context that can hinder or block new intersubjective understanding in relationships between parties in conflict, leading to failed mediation. The sixth chapter explores the literature around intersubjectivity and the individual, and aspects of the self that could present barriers including diminished competence, mental health, neurodivergence, and histories of trauma. While this chapter explores challenges already known to mediators practicing many models of mediation, it explores the challenges through the lenses provided by theories of intersubjectivity, suggesting that further development with particular attention to these challenges may create areas of growth for mediation theory and practice.

The final chapter also explores barriers to intersubjectivity but focuses on power as a relational structure that has distinct negative impacts on intersubjectivity, especially in the mediation process. Again, this is a known challenge for mediators but has been explored from a limited number of angles in the conflict studies and mediation literature. This thesis contends that overlaying the lens of intersubjectivity to understand the problem of power imbalances that flow from structures of dominance and the victimhood identity offers a valuable position from which to analyse the problem and contribute to mediation practice development.

The conclusions drawn by this thesis suggest that the relational mediation approach pays insufficient attention to some barriers to mediation success. Identifying such barriers may pave

the way for practice developments to overcome these barriers. However, identifying these barriers and their impacts may equally help mediators assess the appropriateness of mediation for some conflicts.

The path this thesis follows begins from a description of *conflict as a subjective experience* and defines mediation as a process that takes this assumption into account as the mediation process is structured around experiences of conflict, and what these subjective experiences suggest ought to be satisfying and durable outcomes. While the mediator plays a role in the resolution process, the solutions remain in the hands of the parties in conflict. Following a description of mediation skills, processes and models, this thesis narrows the line of inquiry to relational mediation approaches, in this case, transformative, narrative, insight, and nonviolent communication (NVC) that have been identified as the *relational models* that expressly seek to promote a balanced concern for all parties and their subjective experiences of conflict throughout the process. These relational models employ a *phenomenological approach* to understanding conflict from each party's perspective in order to expose how the conflict presents itself to each party. However, the process does not end here as mediators attempt to promote a deeper understanding of one another that promotes not only understanding the conflict from each other's perspective, but also promotes empathy and equality between them, with the assumption that these are the qualities that promote clearer communication, sounder solutions and, ultimately, better relationships. As mediators work with theories of intersubjectivity in their practice, they may find their processes will miss the mark as intersubjective understanding may be impeded by conditions found within the individual person of each party, or embedded in the structures in which they find themselves. Ultimately, this thesis excavates neighbouring

disciplines' research on theories of intersubjectivity to speculate as to some blocks to successful mediation and suggests future paths for research to improve relational mediation practices.

Chapter 1: Scoping and Methodology

1. Existing relevant literature

The scholarly literature discussing mediation theory and practice is situated in the conflict resolution literature, under the greater umbrella of conflict studies.[3] Of the conflict studies field, Dar (2017) notes that "The main purpose for developing this cross-disciplinary subject is to promote an understanding of the disastrous consequences of war and violence and find solutions that lead to peace (Dar, 2017, p. 48)." Much of conflict studies theory and research is concerned with conflict at the intergroup or international level through the contributions of authors such as Galtung (1976, 1996, 2002, 2004), Burton (1962, 1990, 1996, 1997), Rummel (1984), Lederach (1996, 1997, 2002, 2015), Volcan (1994, 1997, 2018) and Kriesberg (1973, 1982, 1998), and many others. These authors' contributions to methodologies and studies that describe, analyse, and develop conflict prevention and resolution approaches are multidisciplinary. They come to conflict studies that attend to greater systems of human relationship including political science, international relations, sociology, economics, development studies, large-group psychology, and philosophy, among other disciplines. At the international and intergroup levels, the methodologies, risks and dynamics of conflict prevention and resolution require an analysis of multiple dimensions of conflict and the systems that contribute to it. However, these

[3] While I have consulted and included cursory references to popular literature on conflict resolution, they do not make up the basis of analysis upon which I have conducted my research for this thesis. However, it would be inadequate if I did not acknowledge the contributions of authors such as Fisher, Ury and Patton (2011), Patton and Stone et al. (2000), Patterson et al. (2011), and Eddy (2012, 2021), for example. These authors' contributions provide a line of sight into the popular literature around conflict resolution ideas and practices that many practicing in the field consult. While the form and function of these texts are not scholarly in tone or structure, an analysis of the ideas they present reveals substantial correlations to many notions explored in the scholarly literature around the nature of interpersonal conflict, communication, listening skills, ethics, and human needs, which are persistent themes in the conflict studies field and the scholarly work on conflict resolution.

contributions do not target the dynamics and conditions of interpersonal mediation and their contributions have been limited to inclusion of their definitions of conflict and conflict resolution.

While the intergroup and international realm of conflict present a field that has the potential to impact large numbers of people, groups, and the environment, conflict studies is not limited to the study of large-scale systems and conflict. Dar notes that significant contributions to interpersonal conflict resolution literature began joining the body of literature by the 1970s with contributions by Deutsch (1973) and Gulliver (1979) and into the 1980s with Fisher, Ury, and Patton's (1981) work and Moore's (1986) work on interpersonal mediation. As this thesis explores questions about mediation theory and its gaps that may lead to failures, this thesis constitutes a contribution to the conflict studies field.

A number of authors have made significant contributions to the subfield of interpersonal conflict resolution including Deutsch (1973, 2000), Avruch (1991, 2006), and Dominici and Littlejohn (2000, 2007), Ting-Toomey and Oetzel (2001), and Cloke (2006). These authors make specific contributions to interpersonal conflict resolution through the lenses of their own disciplines including sociology, psychology, and communication studies, among others. These authors' contributions serve to deepen the understanding of what drives interpersonal conflict, how communication failures impact conflict, and what is required to resolve or mitigate it. Attending to the psychological, communicative and intercultural aspects of conflict resolution in general, these contributions contend with the intercultural realities of the North American and international contexts as well as the impact of individual psychology on conflict resolution processes. However, these texts are quite general in nature, discussing the general dynamics of communication patterns in conflict, intercultural communication and conflict, and overall conflict analysis at the interpersonal level.

To narrow the scope further, authors that attend to specifically mediation theory and practice including Moore (1996), Riskin (1996), Menkel-Meadow (1991, 1996, 1997 2003, 2013, 2017, 2017), among many others, offer analyses and critiques of Alternative Dispute Resolution and mediation practices in particular. They highlight the variability of mediation practices in the North American context, including the environments in which they are practiced, the competencies of mediators, and its position within the grander scheme of available dispute resolution options. These authors' contributions advance theoretical, practical, and ethical thinking about mediation practice in North America.

Somewhat apart from the mediation literature noted above, here is a significant and rich body of literature already in existence that critiques and questions mediation practices in general as well as specific mediation theories and practices. While there are a handful of authors who attend to the failures of mediation's promise and the gaps in its development. These challenges and critiques include the place of justice in mediation processes (McRedmond, 2024), the influences of alternative dispute resolution and its stifling of justice (Nader, 2001, 2018), the disadvantage women may experience in mediation, leading to unfair outcomes (Grillo, 1991), and the challenge of mediator neutrality in conflicts involving elements of discrimination (Mayer, 2022). This thesis intends to add to the critical literature around mediation theory and practice, especially the sanguine reassurance of relational mediation models that offer sensible theories and step-by-step processes. Specifically, this thesis aims to conceptualize and produce a qualitative analysis of relational mediation theory and practice through the lens of intersubjectivity to explain and analyse the conditions that are likely to lead or contribute to a failed mediation process.

A search for conflict studies literature that discusses and develops the application of phenomenology (which is the source of the concept of intersubjectivity), intersubjectivity, and conflict resolution yielded a handful of results. The idea of *phenomenological peace,* as developed by Behr and Devereux (cited in Richmond & Visoka, 2022) and Behr, (2014) offers a logical point of departure. *Phenomenological peace* is a concept used to describe conflict resolution methods that resist essentializing the perception of difference that leads to conflict, seeing such essentializing as producing more conflict rather than resolving it (Richmond & Visoka, 2022, p. 1117). This reading of conflict resolution departs from an assumption of liberalism and post-liberalism's dependence on universalising liberal individualism and Western ideals of state-building that sees difference as an obstacle to peace. These liberal and post-liberal approaches to peace seek to neutralize difference and create a shared identity and a universal social order under which a people must unify while essentializing difference. *Phenomenological peace* challenges these assumptions and accepts that human difference is inevitable. Furthermore, it asserts that peace must be conceptualized with this reality. Shifting focus away from the state as the guarantor of peace, *phenomenological peace* favours local definitions of peace-making that recognize difference as a positive force for peaceful relations. *Phenomenological peace* presents an innovative approach that affirms that "difference and 'otherness' are conceptualized as matters of perception, and thus as open to transformation, rather than as possessing fixed substances and identities that could be grasped, stigmatized, or acted upon" (Richmond & Visoka, 2022, p. 1118). Phenomenological peace favours flexibility and local solutions to local problems and requires dialogue that values empathetic conceptions of the other and differences. These practices also challenge established conceptions of reality.

While *phenomenological peace* is offered as a response to liberal peace theory that proposes that liberal states provide the conditions for peaceful societies, this concept may be applied at the interpersonal level in societies that may already be built on liberal foundations. Its orientation toward relationship, recognizing difference, and moving beyond essentialist views of fairness and justice that are often promoted by state and organizational structures creates an analogous framework to relational mediation practices. Rather than relying on standardized and universalizing approaches to peace through the application of laws, regulations, and policies, these conflict resolution practices prioritize dialogue between practitioner and recipient to determine what is known about the self, the other, and the peace they are seeking. Thus, *phenomenological peace* asks participants in peace interventions how they perceive peace rather than this conception being devised and imposed by some authority. Relational mediation offers an interpersonal iteration of this process. For individuals who have grown used to the authority of the liberal state and its imposition of a singular identity for all, shifting to a hyper-local view of peace may create challenges of its own, but also unique opportunities.

Weixel-Dixon (2017) offers a mediation method guided by an existentialist paradigm. For Weixel-Dixon, using a phenomenological approach to conflict permits parties and the mediator a greater and deeper understanding of a situation. Weixel-Dixon's phenomenological approach consists of four basic 'rules.' First, the epoché focuses on an attempt to set aside one's own judgement or evaluation of an experience in an attempt to recognize and acknowledge one's assumptions and set them aside in order to consider the experience absent preconceived notions of what one will discover. Having suspended these assumptions, one seeks to describe the experience, allowing one to discover the true essence of the experience, that is what makes the experience what it is and perhaps see something in the experience that had previously been

overlooked and may impact one's evaluation of the experience and the people implicated in it. As new information comes into focus, the hierarchy or values placed on the experience is avoided in favor of creating space for a more complex comprehension of the matter at hand, leading to a more nuanced consideration of the previously held assumptions.

For Wiexel-Dixon, approaching a dispute from an existentialist perspective allows a facilitator to address deep cares that are being threatened and initiating a defensive response. If parties to a dispute come to understand that they may care about the same things or even come to more fully understand their own cares and how they work to defend those cares, parties are more likely to achieve some understanding and work toward a resolution. Furthermore, parties who are able to work through their concerns with each other and perhaps with the assistance of a skilled facilitator are more likely to reach a resolution that will suit the needs and attend to the cares of the parties involved. This is more likely to be achieved with a mediator that uses a facilitative approach without the injection of evaluation or judgment. In this approach, there are some existential givens that are present in all cultures and eras and can readily be applied to situations of conflict between individuals. Relatedness, angst, embodiment, freedom, choice, meaning/lessness, language, change, death, and uncertainty are constitutive of the human condition with all of this being fundamentally related to time or temporality, which is the basis of the human experience. The approach advocated by the author places a focus on freedom and choice in moving parties to recognize the agency they possess over the conflicts they experience.

Weixel-Dixon's contribution is descriptive and prescriptive, providing a theoretical basis for the origins of conflict and the mediator's limited role in assisting parties to collaboratively work through their conflict. The psychotherapeutic basis and tone are prevalent throughout the text and speak to the deeply held beliefs and perspectives each party brings to conflict and the

methods a mediator may use to excavate and expose them. Weixel-Dixon does suggest that the approach advocated is limited by situations where violence is part of the dynamic. Specifically, Weixel-Dixon notes that groups who imbue their ambition with cosmological or spiritual qualities, appealing to worldly or temporal values and goals may be too big of a challenge for this model. As Weixel-Dixon writes "...even though it appears that the principles reviewed in this book do have some relevance in many situations of aggression, it is also apparent that violence is the preferred choice for some whose private logic is impenetrable, and who are impervious to entreaty" (Weixel-Dixon, 2017, p. 3). Thus, Weixel-Dixon acknowledges that these conditions may not lend themselves to successful conflict resolution as developing a deep understanding and empathy with one another's perspective may prove to be more than many people can muster. This leads to the conclusion that there are limits in perceptions that can be shared and understood and this situation is likely to lead to an unsuccessful mediation.

Another author who attends to the intersection of phenomenology, existentialism and conflict resolution is Hanaway (2021), reflecting on psychologically-informed mediation. Hanaway's background in existential and phenomenological psychotherapy informs the approach to understanding the dynamics of conflict and mediation methods. Hanaway recognizes the place of phenomenology in conflict and conflict resolution as conflict is never driven by facts but by differences in experiences and perceptions about events. As conflict is directly related to perception and emotions regarding experiences, Hanaway advocates for an approach to conflict resolution that is psychologically-informed, that is, it attends to changes in perceptions and emotions throughout its practice and to the core existential elements embedded in the conflict experience.

Hanaway suggests that processes aiming at conflict resolution must attend to the emotions and perceptions of parties in conflict (Hanaway, 2021, p. 40) and cannot be resolved based on facts alone. However, and more fundamentally still, Hanaway suggests that conflict is a quintessentially existential experience and that conflict cannot exist without the existence of a self and another. Thus, it is relational by nature, even when it is an internal conflict. Hanaway thus advocates for an approach to mediation that attends to psychological needs for identity, security, and recognition (Hanaway, 2021, p. 43).

Again, much like Weixel-Dixon, the text is oriented toward a psychological understanding of the mediation process, favouring a relational and facilitative approach that privileges the understanding of and empathy between parties from each parties' perspective of the conflict. Hanaway makes parallel between elements of the existentialist psychotherapy and the conflict experience, considering elements such as relatedness, authenticity, time and temporality, values and beliefs, meaning, uncertainty, freedom and responsibility, and emotions in the mediation process. These parallels lend clarity to the psychologically-informed approach to mediation and can be relatable to any mediator working in this or a neighbouring approach that attends to these aspects of the conflict context. Hanaway's approach also seems to suggest that there is a substantial benefit to possessing a background in psychology that contributes to deeper understanding of interpersonal as much as intrapersonal conflict dynamics. This may be true and while many mediators may apply some therapeutic practices in their mediation work, such as person-centred active listening (Rogers, 1957) and self-calming techniques, many mediators are not mental health professionals. Thus, Hanaway's contribution enriches an understanding of mediation as a practice that attends to the psychological life of parties, confirming that research

in the direction of psychology to be a worthwhile one but is limited by the likely competencies of its audience.

Another contribution that highlights the intersection of psychology and mediation is Gray (2015), though this work focuses on lenses offered by Jung and Levinas. Like Weixel-Dixon and Hanaway, Gray regards the mediation process to be closely connected to psychotherapeutic healing processes, though it is accomplished through relationships with others and with understandings of the world. This process may take place through a dialogical undertaking, or as Gray terms it, a "social therapeutics" (Gray, 2015, p. 1). Gray points out that psychotherapy and mediation seem to depart from opposing starting points: psychotherapy from the interiority of the person and mediation from the exteriority. However, Gray discerns that this dichotomy is insufficient to delineate between subjectivity and intersubjectivity, which are mutually constitutive. Indeed, the other leaves a striking mark on the self and is part of the individuation one undergoes. As Gray points out, both processes require self-revelation, honesty, the presence of a stranger, thinking beyond oneself, listening, recognition of the other, and openness.

Through the structure of time, narrative, and the other, Gray sets out a conceptual framework for mediation as much as for psychotherapy. For Gray, narrative and time are mutually reinforcing, as narratives unfold over time, providing a form of organization to the narrative. This narrative account of life requires honesty and authenticity and in the mediation process, calls on the past as the source of explanation and the future as liberating from crisis. Finally, interaction and relationship with the other is constantly present, though there is often insufficient consciousness applied to how one moves through the world in relationship with the other. Finally, conflict calls the person into a conscious relationship with the other.

Gray's contribution resonates with Weixel-Dixon's and Hanaway's about the roles of psychology and philosophy in guiding mediation practice. Furthermore, lends additional credence to the psychological directedness of mediation, though Gray's contribution is decidedly as philosophical as it is psychological and its audience is clearly one that is well-acquainted with both Levinasian phenomenology and Jungian psychology, which is a notably limited audience.

Froese (2022) explores the possibility of justice in mediation from the phenomenological lens with a focus on a reading of phenomenologist, Emmanuel Levinas, as it applies to the mediation process, and offers a mediation framework based on Levinasian ideals. As Froese notes, Legal proceedings have long been sought to settle disputes and the relationship between law and justice have often been presumed to be inseparable. However, the author suggests that Levinas' concept of justice may create a relationship between mediation and justice. Despite the promotion of mediation as a means to settle disputes quickly and with less financial costs, uptake of mediation for this purpose has not been as strong as many would have hoped. One reason speculates that when disputants seek to have their dispute settled, they *want* justice, not simple dispute settlement and mediation provides no guarantee of this.

Levinas' concept of justice exists in freedom as empowerment with responsibility for the other (Froese, 2022, p. 11). This stands in contrast to traditional Western Liberal thinking that sees ideas such as Hobbes's Leviathan whereby the individual gives up some of his individual freedoms to the state in exchange for a form of peace and security as determined and executed by the state. Extending beyond Hobbes are Locke, Rousseau, Habermas, and Rawls whose theories of justice rest on individuals ceding responsibility for executing justice to the state, an approach that persists into contemporary times. Levinas suggests that ceding this right to define justice through laws to the state may have succeeded in regulating violence and promoting pacification

but it did not, in fact, guarantee a state of justice. While a universal law may be commonly applied, it does not equate justice for individual concerns (Froese, 2022, p. 13). Levinas suggests that the response is not to perfect laws or legal systems that impose justice but rather, that "justice proceeds from the irreducible responsibility of one for all" (Froese, 2022, p. 14).

Froese notes Levinas' view of *proximity* which describes the nearness and distance one has to the other. It brings to the fore that the other is fundamentally just like oneself but also fundamentally outside of oneself, a world unto themselves. This proximity necessitates an ethical relationship of responsibility for the other, which is not to mean that one must find and sustain a relationship with the other. Rather, Levinas suggests that this ethical relationship is actually a fundamental structure of human experience - it is phenomenological as this relationship "informs the self and being" (Froese, 2022, p. 19). In a mediation setting, this is a relationship of responsibility and empowerment. Each party has a unique power to satisfy (or not) the needs or interests of the other, encompassing both responsibility and empowerment.

Froese's contribution proposes a model of mediation based on a conception of justice that is based on parties' own conception of justice using a phenomenological and ethical approach to conflict resolution. The approach is deeply rooted in Levinasian ethics of responsibility toward one another rather than toward a structural account of justice. Indeed, this is a unique articulation of a salient undercurrent in relational mediation theoretical foundations. Froese's contribution is at the idealist end of the spectrum, noting the need for dialogic engagement among equals, a condition that may be difficult, if not impossible to meet in many or all circumstances, depending on one's perspective.

Jull's (2022) contribution narrows the scope to conflict resolution using the insight approach to conflict resolution and applies the lens of intersubjectivity to the analysis. Using an

autoethnographic methodology, Jull's work is focused not on the outcome of conflict resolution processes or behaviour change as the output of conflict resolution but on the *operations of consciousness*, or rather, the processes of change that occur within parties as they realize different ways of approaching their "everyday arguments." As Jull notes, "Arguments between people involve a dynamic intersubjective process that is enacted in spaces of encounter within complex social contexts" (Jull, 2022, p. 6) that include knowing, valuing and deciding (Jull, 2022, p. 18). Jull notes the place of intersubjectivity in the study of conflict and conflict resolution and poses questions about the *self-in-system*, creating a unit of analysis for conflict behaviour and the questions that result from such an approach. Specifically, the questions investigate how individuals change their minds, change their behaviour, shift their understanding of the conflict, and how decisions made by the self may be different in relation to another.

Jull's work privileges a psychotherapeutic interpretation of intersubjectivity, relating the approach described in the psychotherapy literature, with specific attention to Bohleber's work on intersubjectivity. Drawn to the approach and its recognition of subjectivities interacting with and being mutually constituted by other subjectivities, Jull recognizes the potential application of the theory to conflict resolution practices. While Jull's lens is distinctly directed at the consciousness of the individual experiencing another individual through an everyday argument, the field in which this encounter occurs, and the change that may take place in their intersubjective understandings, it is wholly accepting of the applying the concept of intersubjectivity to the conflict *and* the conflict resolution processes.

Jull's contribution offers a viable bridge between mediation and intersubjectivity theory, providing verification that the path of inquiry could yield some intriguing contributions to further mediation theory development. Its preoccupation with the operations of consciousness and

decision-making in mediation through the lens of intersubjectivity theory make it unique. While there are obvious limits to an autoethnographic approach to research into what happens during conflict resolution, it does offer a line of sight to what could prompt shifts in intersubjective understanding through conflict resolution processes.[4]

The literature exploring the intersection of phenomenology and intersubjectivity theory in the conflict resolution field is rich but limited. These authors each offer theoretical framing and procedural recommendations intended to promote mutual understanding, questioning and sharing perceptions, encouraging empathy, and recognizing the interrelatedness of parties in conflict. Each of these authors and their texts pose questions about how conflict is generated and what it takes to resolve it so parties in conflict can be engaged in the process, reach satisfactory solutions, and retain their relationships at the conclusion of a meditation process. However, while they may subtly answer my question about what blocks mutual understanding, shared perceptions and experiences, and mutual empathy, none of them offers a sufficient description of how the lens of intersubjectivity can be applied to mediation failures.

2. Scoping

Having studied and practiced in the field of mediation throughout my scholarly and professional endeavours, I have developed a keen awareness and professional curiosity about the variability of mediation approaches available to those who practice.[5] Often delineated by

---

[4] In the literature, an honourable mention should go to Tallodi (2019) for their contribution of a phenomenological investigation into parties' experience of workplace mediation. Tallodi's contribution is unique in its phenomenological approach to research aimed at discerning what brings about relationship changes in parties throughout mediation and how this could be reflected in party satisfaction with the mediation experience. However, as this work does not focus on mediation models or theories but on the experiences of the parties, it is not included in the literature review.

[5] While this thesis recognizes that mediation may take place international and intergroup levels, this thesis focuses on the *interpersonal mediation* field which is composed of mediators working in family, community, and workplace contexts, whose clients are parties who have had a direct relationship with each other and who opt to resolve their

substantive expertise and domain of practice, mediation methods are as diverse as other fields of practice that attend to people's needs and desires. Being able to identify the different theoretical foundations, prescribed processes, and range of possible outcomes is a skill in itself that can help mediators be intentional in their selection of strategies and options for assisting parties in conflict. It can also be the source of disagreement among mediators in communities of practice where articulation of best practices, ethical standards, and credentialing are concerned. These variations are unduly underestimated in mediation communities of practice and it is not uncommon for mediators to stand in disagreement about any number of aspects of the practice and what is in the best interests of the clients before them.

In light of the variability of the available mediation practices, I have opted to narrow the scope of this thesis to include a particular approach to mediation: *the relational mediation approach* that proposes that conflict is an experience that occurs in relation to others and thus, it is through the lens of those relationships that conflict is best resolved. This approach to mediation stands in contrast to conflict resolution methods and processes that favour *individualist* orientations, that consider the satisfaction of individual desires as the central driver of conflict resolution. In the individualist orientation, others are little more than instruments for the satisfaction of the individual's desires and are often considered the barriers to realizing the satisfaction of those desires. Finally, in the individualist orientation, conflict is a distinctly negative phenomenon and players tend to lack the agency or empathy to reach satisfactory agreements. Thus, parties in conflict attempt to carefully manage and control conflict in order to minimize damage (Bush & Folger, 2005, p. 244).

---

disputes with assistance. The *mediators* to whom this work is directed are often trained in some variety of interest-based mediation. The mediator's role is that of a third party who is voluntarily accepted by all parties in conflict to perform an intermediary role that helps facilitate an agreement.

The relational mediation approach describes the orientation of at least four mediation models: transformative (Bush & Folger), narrative (Winslade & Monk), insight (Melchin & Picard), and nonviolent communication (Rosenberg). These models were selected for four reasons: first, I am trained in and practice the insight model of mediation and therefore have enough familiarity with it to embark on an analysis of its strengths and challenges. Second, throughout my professional and academic journey, I have clearly seen the influence of the other three models of mediation in the many education and training programs locally available and have adopted many of the strategies they offer in my own conflict management practice. This exposure and practice has confirmed for me that there are enough similarities between these models that make them well-suited to analysis as a collection of comparable models. Third, these models are particularly well-developed with sufficiently rich literature and training resources that they provide enough theoretical and practical substance that I can engage in an in-depth analysis. Fourth, my observation from practice and research indicates that while these models may not be named specifically in the training and development programs or by fellow practitioners I have encountered, the theories and practices these models offer are salient among my local communities of practice and in much of the mediation literature. Indeed, as Lang and Taylor (2000) note, it is common for mediators to borrow skills and strategies from neighbouring models, often without aknowledging the theoretical foundations beneath them. Their popularity among mediators thus makes them a worthy site of investigation. To address the whole of the mediation field with this question is unwieldy and will yield very different outcomes without sufficient specificity. Therefore, this thesis will narrow the scope of investigation to these four mediation models connected to the relational mediation approach.

3. Methodology

The methodology employed for this thesis is a theoretical literature-based approach, focusing on the available scholarly resources that discuss the topics of conflict, mediation, relational mediation models, phenomenology, and intersubjectivity. The authors consulted and whose ideas are employed for this endeavor have been drawn from the scholarly and practice-oriented literature. A few French-language resources were consulted but English translations of texts written in French and German formed the basis of the texts reviewed and included in this thesis.

This thesis endeavors to better understand the problems of relational mediation theories that may be contributing process failures in order to discern what it could take to improve the models or perhaps even to make a decision to refer the conflict for another method of dispute resolution or settlement. As such, this thesis employs a pragmatic worldview as it considers actions, situations, and consequences and favours pluralistic approaches to derive knowledge about the problem (Creswell, 2008, p. 11). Furthermore, as Jeong (2017) notes, research in the peace and conflict studies field is oriented toward an explanation of the conditions supporting conflict that demand change in order to move toward peace through peaceful means (Jeong, 2017, pp. 45-46). This thesis is concerned with understanding barriers to mediation successes or, more broadly, understanding what works and what does not work in mediation practices and what solutions could be proposed to solve the problems that are identified. This paradigm is thus well-suited to the research as it seeks to locate gaps in relational mediation theory with the potential to improve practices.

In addition to the pragmatic worldview, this thesis employs an interdisciplinary approach to the research. While Jeong (2017) describes peace and conflict studies to be a transdisciplinary

approach as it breaks through disciplinary barriers (Jeong, 2017, p. 44), other authors note the interdisciplinarity of conflict studies (Dar, 2017; Storch and Liening, 2025; Borstein & Wiener, 2014) and of conflict resolution (Stepanova et al., 2020; Dai & Chen, 2023). Indeed, it would be difficult to study the dynamics and methods of conflict resolution, and mediation in particular, through a uniquely conflict studies lens and arrive at new conclusions. Therefore, in order to broaden and enrich the study of conflict resolution broadly, and relational mediation theory specifically, it would be reasonable to engage other disciplines. Therefore, the method employed here is interdisciplinary, as it seeks convergences between conflict studies and the literature from other relevant disciplines in order to answer the questions posed by this thesis. On defining interdisciplinary research, Bruhn (2000) notes that

> Interdisciplinarians ask questions in a different way about phenomena they see from various angles, and believe answers or solutions must come from common findings from these disciplines. In other words, interdisciplinarians believe that the search for knowledge to complex problems is transdisciplinary. Interdisciplinarity is a philosophy of integrative thinking. (p. 60)

Beyond conflict studies, a variety of disciplines interrogate mediation theory and practice, each with a unique angle on the problems including legal studies, political science, and sociology. More narrowly, however, there is a notable trend of interrogating theory and practice in the relational approach placed in the philosophy, psychology, and sociology disciplines, with a smaller place for political science. As such, this research consults and includes content from all of these disciplines, demonstrating the intersections between these domains and the theories developed out of conflict studies.

In order to answer the supplementary questions about *perception, empathy, experience,* and *understanding* in mediation theory and practice*,* and ultimately my questions about *intersubjectivity,* the first part of this thesis establishes conflict as an experienced phenomenon, and mediation as a means to facilitate understanding of the conflict experience. This thesis includes specific contributing fields to help answer these questions, while still leveraging the existing conflict studies literature as a point of departure. This thesis builds on literature from the conflict studies field that support a view of conflict as a phenomenon experienced by individuals and the subjective nature of that experience. This is in contrast to a view of conflict as a dispute that can be settled through transactional or, to a lesser extent, evaluative approaches to settling conflict that attend little to the subjective experiences of conflict. Such a narrowing of focus in the conflict studies literature offers opportunity for greater depth of exploration for the strengths and gaps of the relational mediation models through the lens of intersubjectivity.

With conflict studies as the point of departure, this thesis begins with a definition of conflict as it is most saliently discussed in the conflict studies field and by mediators followed by an analysis of the role of mediator, the goals of bringing about understanding, promoting connection between parties in conflict and of promoting exploration of the self, the other, and the context of the conflict. This approach describes a lineage of methodologies, theories, analyses, and practices in conflict and conflict resolution that provide some of the scaffolding for this thesis. However, the conflict studies approaches are insufficient to answer the questions I have posited about the lens of intersubjectivity theory that can tell us about the limits of conflict resolution in mediation.

This exploration of mediation leads to questions about the mediation process itself, how mediators work with parties to develop a thick description of their unique conflict experiences,

which are the theme of the second part of this thesis. This thesis then explores the philosophical lens of phenomenology as it relates to the experience of a conflict for the benefit of both the mediator and the other party to better understand how each party experienced the conflict, presuming that there are variances and unknowns between the parties in how they each interpreted, felt, and made decisions about their behaviours regarding the conflict. Here, the work of Husserl (1960, 2024), often considered the author who laid the foundation of phenomenology, is consulted. However, other phenomenologists, including Merleau-Ponty (1962), have also made significant contributions and have been included here. Contemporary contributions to the field include those by Haney (1994), Crossley (1996), Foolen et. al. (2012), Daly (2016), and, most notably, Zahavi (2003, 2005, 2011, 2012, 2017, 2018, 2021). These authors bring Husserl's ideas into the late 20th and 21st centuries, providing commentary and perspectives relevant to this research.

However, thick descriptions of conflict alone do not realize the full intention of relational mediation. The concept of intersubjectivity, a concept that emerged from phenomenology, is introduced and the notion of intersubjective understanding is developed in the latter half of part two of this thesis. Here, authors discussing theories of intersubjectivity included many of the same from the field of phenomenology but extended beyond these to include Levinas (1969) and Buber (1970) as their contributions include not only tenets of theories of intersubjectivity but add the weight of ethical considerations to the place of intersubjectivity to relational mediation practice. Somewhat of an outlier but nonetheless relevant, Gallagher's (2006, 2012, 2013, 2024) contribution to the field by way of developing the intersection between phenomenology and modern cognitive sciences brings the philosophy into the 21st century.

However, philosophy does not hold the monopoly over theories of intersubjectivity. Contributions from the field of psychology have made substantial scholarly contributions to the field including such authors as Benjamin (1990, 2005, 2013, 2017), Bohleber (2010, 2013), Buirski et al. (2020), and Reisberg and Hertel (2004) and have thus been included in the review and description of intersubjectivity theory. Each of these scholarly contributions describe theories of intersubjectivity as they have been applied to relational mediation theories, demonstrating distinct parallels between theories of intersubjectivity and the theories that support relational mediation practices. However, this description of conflict and conflict resolution as echoing intersubjectivity theory does not answer the question about mediation failure. What they do offer, however, are paths for further elaboration of the theory of intersubjectivity and what prevents new intersubjective understanding from occurring between parties in conflict during a mediation process.

The third and final part of this thesis addresses the problem of intersubjectivity from two perspectives: first, from the perspective of the individual and challenges of sharing experience between individuals owing to some block to the individual's disposition or openness to a new intersubjective understanding; and second, from the structural challenges of letting new intersubjective understanding take hold of parties to create a new dynamic between them that esteems what is shared during mediation. The separation of these perspectives seems rather arbitrary but methodologically, it is a sound choice as the literature supporting each perspective is distinct, but with some theoretical overlap. From the individual perspective, the literature discussing intersubjectivity at the interpersonal level dominates a description of the barriers to new understanding found in the psychological make-up of the individual. From the structural perspective, the barrier is in the social norms and expectations imposed by power structures that

are knowingly or unknowingly enacted by parties in conflict. In either case, there is a resistance to participation in new intersubjective understanding, thus creating the potential for limited success using relational mediation processes. Here, the scholarly works authors including Campbell and Manning (2018), Capri (2014), Charbonneau and Parent (2013), Devers (2025), Fuchs (2015), Fuchs and de Jaegher (2009), Gabay et al. (2020), Govier (2015), and Schulman (2016) offer contributions from sociology, the humanities, philosophy, political science, cognitive sciences, and disability studies.

Thus, the next chapter will commence building the foundations for the rest of this thesis. It will present a survey of the conflict studies literature that yields a description of conflict and focuses on conflict as something that lies in the subjective experience of parties to a conflict. It will also attend to the range of methods for addressing conflict to varying degrees of success and with a focus on mediation as a series of practices aimed at addressing conflict through the lens of subjective experience.

Part I: Defining conflict and mediation

Chapter 2: Conflict and conflict resolution

Introduction

This thesis acknowledges that the objective presentation of conflict is often characterized by observable instances of hostile words, aggressive actions, and violent behaviours. However, while these may be the basis for determining that conflict has occurred and requires attention to resolve or suppress it for many, this thesis contends that the subjective experiences of conflict are inherently related to the causes of conflict and thus, deserve definition and exploration within the realm of the experience of each party. Specifically, conflict is primarily a subjective experience which suggests that parties in conflict each hold a singular and unique point of view or expectation about the things of life and these views and expectations may come into conflict with one another. Expectations about how relationships ought to be structured, which procedures could or should be used to accomplish tasks, expectations for respectful behaviours, differing perspectives and priorities, and a myriad of other aspects of life lived in relationship with others and institutions are often the content of conflict, but not necessarily so. Conflict does not necessarily arise when differences in perspectives about such things arise. These become conflicts through the lens of individual perspectives influenced by context and thus, this chapter argues that while conflict may be observed and evaluated by someone external to a conflict, conflict exists in the *subjective experience* of parties engaged in a difference or challenge that matters to them both. Furthermore, it is the *subjective* nature of conflict that renders it a challenge to resolve to the satisfaction of all parties using normative standards found in policy, law, or social convention and thus requires an understanding of the subjective nature of conflict.

This chapter will draw out elements of existing definitions of conflict to support a view of conflict that is located in the subjective experiences of parties, in contrast to views of conflict that position it as an objective event or pattern of behaviour that is observable. Thus, this chapter will define conflict in terms of a *subjective experience*, introduce the range of thought regarding what constitutes *conflict* and *conflict resolution,* and examine the range of resolution options that follow now conflict is defined. The chapter will then conclude with a focus on mediation as the method of conflict resolution that regards subjective experience as the focal point of conflict resolution practice.

1. Conflict as a subjective experience

There is significant focus on conflict as a subjective experience throughout the literature focusing on conflict and conflict resolution. A theme throughout the conflict studies literature suggests an intimate intertwining of (1) feelings and emotions about the (2) *ought to's* of a relationship, that is, how each party believes the relationship *ought to* operate and (3) the distance between each party's *ought to's*, including how goods and entitlements are divided and/or the procedures for accomplishing a task. These aspects of *ought to's* often relate to judgements, evaluations, and expectations around fairness and predictability. The literature draws a cycle between the *ought to's* and the thoughts, behaviours, feelings and emotions surrounding a disagreement about the *ought to's*. These two aspects of the conflict experience and the distance between them are subjective as described in the literature. Specifically, they belong in the mind and experience of each party to the conflict.

A foundational aspect of this chapter is that emotions or feelings[6] are subjective in nature, as are thoughts, opinions, judgements and evaluations, which are also fundamental aspects of the conflict phenomenon. While multiple people may share similar thoughts, emotions, feelings, opinions, judgements, and evaluations, they are subjective and limited in nature, unique to each individual, and have significant impacts on the experience of conflict. Thus, conflict is an experience of a clash with another's expectations about the *ought to's* of their relationship that is founded in judgement, opinions, and evaluations and give rise to thoughts, feelings, and emotions

This is in contrast to a view of conflict as opposing forces that contend for something objectively desirable and that rational negotiation or a few quick tricks can be employed to settle conflict. MacFarlane (2003) notes that while conflict is often prompted by a disagreement over an uncompromisable moral principle or a contest over an indivisible good, they will often shift to include, if not focus on, the parties' perception of the ethics or morality of their position, compare it to that of their opponent. For MacFarlane, this position on conflict is in contrast to the Western justice system that emphasises the individualist approach that favours the individual's rights that are recognized and upheld by the justice system. Such a system of rights and justice prioritizes the moral entitlement of the person and of those "others" who may be subjected to the same infringement on rights. As MacFarlane notes, this shift in substantive focus from incompatible goals, to ethical or moral principles, and to finally highly personalized attributions made by

[6] In a cursory introduction to the notion of *emotion,* Dylan (2019) notes that the idea of grouping together human desires, passions, affections, and sentiments as a particular grouping of mental states did not take place until the 19th century. While previous authors tended toward distinctions between these experiences, the first use of the idea of *emotions* as such a grouping was by Scottish psychological Alexander Bain in 1859, writing "all that is understood by feelings, states of feeling, pleasures, pains, passions, sentiments, affections (Dylan, 2019, p. 1)." Dylan notes that throughout history, the idea of emotions has been flexible and elusive at the same time, with philosophers, psychologists, anthropologists, and artists all weighing in with their contributions. Dylan also notes literature describing culturally specific emotions that are grounded in specific cultural realities (Dylan, 2019, pp. 5-16). While there is a greater reference to *emotions* rather than *feelings* in much of the academic literature, for the purposes of this thesis, these terms are used interchangeably, as they tend to be in the conflict studies and conflict resolution literature.

parties to place blame on one another for the conflict, remains obscured and impacts normative approaches to conflict resolution as the disputants' realities are shaped by this shift (MacFarlane, 2003, pp. 71-73). MacFarlane's analysis highlights the shift from the perception of conflict as something that can be objectified and analysed using normative standards, such as by law and other standards of fairness, to a phenomenon that becomes fundamentally subjective. Indeed, Fisher and Ury's (1981) popular text on negotiation mixes the notions of the objective nature of conflict, that is, aspects that can be settled using "objective criteria" to determine what fair outcomes to help parties objectively evaluate their positions with notions of "separating the people from the problem" in order to depersonalize the conflict. This shift away from the objectifiable aspects of conflict to the subjective aspects of conflict mark the beginning of understanding the challenging nature of conflict and its resolution.

There are significant references to emotions or feelings and their cyclical relationship with perceptions when describing conflict experiences in the conflict studies literature. Burton (1996) describes a useful distinction between *disputes* and *conflicts*, describing *disputes* as "contenting issues, especially material issues" (Burton, 1996, p. 7) which stands in contrast to *conflicts*, which are described as "struggles between opposing forces, implying that the issues are more serious than those related to disputes, possibly stimulating physical confrontations" (Burton, 1996, p. 7). Coser's (1956) work contributes to these descriptions of conflict as a first-person experience by distinguishing between *realistic* conflict over tangible outcomes and *nonrealistic* conflict that includes tangible outcomes but is accompanied by tension related to an opponent (Coser, 1956, p. 49) and that the reinforcement of nonrealistic elements of conflict may lead to its intensification (Coser, 1956, p. 68). These descriptions of conflict are supported by a number of authors who refer to the feelings of hostility that accompany conflict (Redekop &

Rioux, 2013, p. 3), including emotions and deep-seated needs (Burton, 1996, p. 8), often subject to misperception and miscommunication as norms, relationships, and decision-making methods are challenged (Jeong, 2008, p. 15), that is constructed by parties and can be impacted by the selection of words and framing used throughout the life of a conflict (Littlejohn & Dominici, 2001, p. 4), is subject to the cognitive, emotional, and behavioural dimensions of experience (Mayer, 2000), and "in our heads alone" (Rummel, 1984, p. 80). Cloke (2002) provides well over a dozen perspectives about what conflict is, with notions ranging from a lack of skillfulness in communication and relationships, the absence of understanding, challenging attempts to achieve recognition, indications of failing or failed systems, and manifestations of individual psychological processes (Cloke, 2002, pp. 6-8).

Moore and Mayer's contributions point to the power of emotions that may seem unreasonable to a second or third party, adding further complexity to the role of emotions or feelings in the subjective experience of conflict. Moore (1996) further notes that parties in conflict who experience unusually strong negative emotions related to the conflict may be experiencing these emotions because of reasons indirectly related to the conflict but may be based on an unrelated experience. Moore continues to note that feelings can remain unresolved despite tangible solutions that may result from a settlement process (Moore, 1996, pp. 163-164) and Mayer's (2000) description of emotion as a dimension of conflict describes the role of feelings and emotions in conflict. Indeed, these are profoundly personal experiences such that during conflict, parties' reactions that may be the result of emotions that colour their perception of conflict (and vice versa) are not always intelligible to second and third parties without effort. While there may be behavioural manifestations of conflict that offer indicators that there *is* conflict, these behavioural manifestations may not offer comprehensive explanations of the

party's experience of the conflict. Rather, conflict behaviours are symptomatic of the underlying perceptions that stimulate the feelings or emotions of the party or parties to the conflict.

The literature notes a relationship between conflict and the psychological dimension of experience. Deutsch offers that the psychological conditions of perceived conflict, including aspects such as tension and disagreement with another party, need to be present to consider that it is experienced by at least one party and that cultural conditioning contributes to both the perception and resolution of conflict (Deutsch, 1973, p. 11). Here, Deutsch is suggesting that contexts and systems that influence how people relate to one another may play as significant a role in the perception of conflict *as well as* objective competition to accomplish incompatible goals. Further supporting the subjective nature of the conflict experience, Weixel-Dixon (2017) notes that conflict is *always personal* (Weixel-Dixon, 2017, p. 11) and it always involves at least one person. However, conflict is more often understood as involving more than one person, pointing to the description of conflict as occurring in the mind of at least one party and not necessarily as the experience of multiple parties. Furthermore, Weixel-Dixon suggests that conflict would be nonexistent if objective rationality was the sole method used to settle every challenge and writes "if the details of a stand-off could be fed to a computer or some other form of artificial intelligence, the mechanism could probably arrive at a settlement that would appear to be legal, equitable, and comprehensible" (Weixel-Dixon, 2017, p. 11). However, as Weixel-Dixon suggests, the parties may not be in agreement with the outcome prescribed by artificial intelligence. As described here and further developed by several other authors, conflict itself defies this robotic approach to settlement. This further develops an understanding of conflict as something that lies in the perception of the one experiencing it, despite what outsiders may observe and presume.

These perspectives are further supported by authors who explore the *ought to's* of conflict. Deutsch (1973) posits that conflict's presence is often not conclusively determined by what is observed from outside the parties, rather, conflict is characterized by an attachment to something that is deemed valuable by the parties in conflict (Deutsch, 1973, p. 11). From a sociological perspective, Campbell and Manning (2018) state that "Conflict occurs whenever anyone has a grievance against someone else (Black 1998:xiii). It exists whenever someone treats someone else's conduct as wrong - rude, immoral, evil, inappropriate, insane, criminal, negligent or otherwise objectionable" (Campbell and Manning, 2018, p. 71). Sargent et al. (2011) add to this perspective in their definition of conflict that states that conflict arises "from a person's subjective experience of … "threat-to-cares"..." (Sargent et al., 2011, p. 345). In the authors' jargon, *cares* relate to the aspects of life that matter most to them, including values and expectations regarding how others ought to behave and how society ought to be arranged. Furthermore, threats are experienced in relation to these expectations and values. While they may not necessarily be physical threats, they will elicit a defensive response, which is often in turn understood as a threat and create a cycle of defense and attack between two parties (Sargent et al., 2011, p. 345). Sargent et al. suggest that this cycle of interpretations and actions are specific to the individual and their perceptions of harm and what is necessary for well-being. This description places the origins of conflict and the conflict dynamic as being squarely subjective and unique, if relatable, to the person or people in conflict.

Many of the above contributions to the discussion of conflict and perception suggest that it is constitutive of a person's *subjective and limited experience.* Rummel's (1984) view of selective perception as it pertains to experience and to conflict. Furthermore, in Moore's (1996) contribution to analyzing the causes of conflict, there is a connection between a subjective

experience that is grounded in a person's values, expectations, hopes, perceptions, and other components of subjectivity that influence the experience of conflict. While some of these values, expectations, hopes, and perceptions may be shared by a good number of people, *how* they are experienced within any given context and relationship will be unique to each participant. As noted by Daly (2016), "Exteriority (in the guise of things, world and others) weighs heavily on the subject and conversely the subject, who is already burdened with a personal history, spins narratives and overlays each experience with memories, images, desires, hopes, fears and expectations" (Daly, 2016, p. 88). Thus, it is the history experienced and re-experienced by the embodied self that shapes the perspectives held by a party in conflict.

While perception relies on the information offered by the senses - hearing, seeing, tasting, smelling, and touching - the perception of this collection of data can be erroneous or incomplete. Rummel (1984) offers a list of reasons for this error or incompleteness: First, the perceivers' vantage points and visual perceptions may be different, offering different views of the same phenomenon and collecting different data about it. Second, the meaning imbued into what is observed will depend on the perceiver's culture and the language itself used to describe the phenomenon and attach evaluations of good or bad, dangerous or safe, or peaceful or tumultuous. Third, individual experiences and learning capacities, which are certainly variable from person to person, will influence the perceptions of the data. While these aspects of perception may be widely shared as a result of cultural affiliation, there can equally be wide disparities in background and experiences that will contribute to variable perceptions of a phenomenon. Rummel goes on to address the misunderstanding that there can be multiple truths of a thing and that reality is relative. Rummel suggests that different perspectives may all be correct as each holds a different part of the truth. However, he equally asserts that the use of trial and error to

arrive at a sufficiently correct truth that allows mankind to survive and prosper has been the contribution of science toward finding truth to support such cooperation (Rummel, 1984, p. 20). Thus, Rummel asserts that while different perceptions that rely on different data are no less real than others' perspectives, it takes a measure of collaboration to come to a comprehensive truth about a thing. Mayer's (2000) text expands on this definition of conflict that considers the *cognitive dimension of conflict*, noting "there are both objective and subjective elements to the cognitive dimension of conflict" (Mayer, 2000, p. 4), including values and goals. In addition, assumptions about these values and goals may appear to be incompatible, which itself is subject to unique perception. Perception as cognition may or may not be easily shared by two or more parties, thus creating a possible challenge to sharing and grasping the cognitive dimension of a party's conflict experience.

The conflict dynamics that generate and support conflict are not easily captured by parties external to a conflict. Vallacher et al. (2013) suggest that while multidisciplinary approaches to conflict analysis offer richness and complexity, they fail to effectively capture each variable in a way that offers orderly and readily intelligible explanations of conflict (Vallacher et al., 2013, p. 11). Vallacher et al. suggest an approach to conflict analysis that favours *dynamical science* because it "can give us some understanding of how the properties of whole systems arise from the interactions of their parts…" and that "because the variables that describe the state of the system are dynamic - they evolve over time" (Vallacher et al., 2013, p. 11). This approach favours observing the interaction between various elements in a given object for analysis. This approach presupposes that in conflict, action may provoke a reaction that may provoke a reaction, and so on. As Vallacher et al. propose, such an approach is well-suited to conflict analysis as their definition of conflict includes a reference to the subjective nature of it.

Conflict as constituted in part by subjectivity demands exploration. Sammut (2013) notes that the everyday meaning of subjectivity is *that which is known to only one,* while the everyday meaning of objectivity is *that which is known to many* and thus less susceptible to bias (Sammut, 2013, pp. 18-19). Together, the authors outlined above along with Sammut describe conflict as something more than goods that can be traded and negotiated using objective calculations and standards for fairness. These authors are referring to the *subjective experience of conflict*. These positions point to the notion that the conflict experience may or may not be intelligible between parties to the conflict or to those on the outside of the conflict. They also point to unique and subjective evaluations and expectations of self, other, and the context surrounding the conflict and the parties. Thus, these definitions frame the challenges in applying norms in order to achieve settlement when grasping the experience of the conflict defies objective definition. This experience includes sequelae that give shape to experience through perception and emotional interpretations. It is the perceptual and emotional parts of experience as they relate to the differences in expectations, values, desires, and hopes that are the defining characteristics of conflict and thus require practices beyond objective evaluation of what it takes to settle a conflict.

Common threads between Moore, Mayer, Rummel, Deutsch, Coser, Cloke, and Vallacher suggest that conflict exists in the perceptions and experiences of those at odds with another person or group. These authors also point to deep connections between the perception of conflict and the feelings and emotions that accompany it. This further points to the primacy of the individual experience of a situation and the possibility that conflict may or may not be relatable to an observer. So deep are these perceptions and feelings that parties may struggle to "separate the person from the problem," as is noted by integrative bargaining authors Fisher, Ury, and Patton (2011). Where feelings and perceptions are concerned, the person and the problem are

often deemed one and the same by parties in conflict. Indeed, it is often counterintuitive to separate the person from the behaviours that are perceived as threatening or otherwise problematic but that are so deeply embedded in the person's way of being with others.

When the conflict becomes disruptive enough, parties in conflict may see fit to seek out methods and processes that serve to settle or resolve the conflict. The next section will explore the range of options for concluding conflict, with or without including the entirety of each party's subjective experience of conflict and with or without satisfaction of the all conflicting parties.

2. Options for dealing with conflict

While a range of options exist for concluding conflict, each option considers the place of the subjective experience of conflict differently and acts according to its assumptions about the role of subjectivity in conflict. While the range of options will be explored and compared, this thesis focuses on mediation for conflict resolution. The situation of mediation in relation to other forms of conflict resolution requires some explanation in order to more fully grasp the depth of the promise that mediation proponents propose. For these proponents, mediation, and in particular, relational mediation as will be further explored later in this chapter, offers the greatest opportunity for parties in conflict to attend to parties' subjective experiences of conflict in order to achieve the greatest possible measure of resolution.

The place of conflict resolution in the identity of a group is significant. Picard et al.'s (2004) text directs attention to the necessity for a social group to develop methods for ensuring a measure of stability and peaceful relations among its members, including acceptable and accepted processes for dealing with conflict. The absence of such structures or arrangements leaves ample space for conflicts to escalate, spread, and become harmful to the group and its members. Thus, finding methods for dealing with conflict becomes integral to group and individual functioning

and, ultimately, group and individual prosperity. The North American context has developed several options for dealing with interpersonal conflicts and continues to develop in this area. Some of the approaches consider the subjective experience of the parties involved in conflict, while others unequivocally set these facets of conflict aside in favour of narrowed and rational approaches that attend to predefined justice and fairness to settle a conflict.

The method by which parties decide to settle or resolve their disputes may include a number of behaviours that exist along a continuum between avoidance and violence, as Moore (1996) describes. The choice of resolution mechanism essentially impacts the degree of agency parties enjoy throughout the process, control over the outcome, the likelihood of a win-lose outcomes that favour one side to the disadvantage of the other, costs and benefits to the relationship, party satisfaction, and the durability of decisions between parties (Moore, 1996, p. 7-8). Within this scheme, mediation offers a higher degree of agency, greater process control, more balanced outcomes, more benefits to parties' relationship, increasing party outcome satisfaction, and more durable solutions.

As cited above, Picard et al. (2004) note that there may be a variety of actors involved in resolving conflict. The *who* of conflict resolution, in many situations, may involve more than the parties in conflict with one another and Picard et al. offer three distinct paths that answer the *who* of conflict resolution. By this, the *who* refers to *who makes the decision about how to conclude the conflict and on what basis. Power-based* approaches, including unilateral action, are used by one party (or group) to resolve conflict without the engagement of the other. This approach may employ force or coercion to realize their intended outcomes, including strikes, lockouts, protests, and boycotts. A power-based approach may also appeal to a recognized authority to settle a dispute. In this approach, one or more parties may appeal to a person or body with the authority

to dispense an outcome without reliance on formal rules or standards to settle a dispute. However, as fairness, justice, and efficiency may be favoured in some dispute settlement processes, unilateral action and authoritative command may not be considered fair, just or efficient by all parties involved (Picard et al., 2004, pp. 31-34). In this arrangement, the power to resolve the conflict is concentrated in a single party or group rather than shared between the conflicting parties. The process and outcomes may not consider all of the parties' subjective experiences of conflict. This process and outcome may also be considered unfair or unjust by any number of the parties involved and may result in less durable solutions that are not satisfactory to one or more of the parties involved.

Second, a *rights-based* approach calls on a third party such as an adjudicator or arbitrator with the authority to settle the dispute using some standard of justice or fairness. This person is called to conduct fact-finding, may use a relatively formal process to make a binding determination that is likely to be zero-sum, and will provide the reasons for such a decision. A rights-based approach will also narrowly define the issues to be adjudicated and may not attend to all aspects of the conflict. However, it is possible that some issues outside of the narrow scope of the rights-defined process may be significant for one or more of the parties and may result in a less-than-satisfying process and outcome. Finally, rights-based approaches suggest adversarial approaches, again, with potential costs to the relationship between the parties involved and may also be inefficient and costly (Picard et al, 2004, pp. 34-42). Again, like the *power-based* approach, the power to conclude the conflict is concentrated in a single party, though this time it is a third party with the authority and expertise to apply policies, regulations, and laws in order to settle the dispute. In this arrangement, the agency to conclude the conflict is removed from the parties themselves and effectively calls on the third party to review the dispute through their own

objective, informed, and unique lenses, often with limited or no direct experience of the conflict or, in some cases, the experience of the parties. Evidence may be presented and reviewed through the objective lens of the decider and this evidence may be complete, incomplete, accurate, inaccurate, truthful, or untruthful. Regardless of the completeness or accuracy of the evidence, the decider will only have access to limited parts of the conflict as it is presented. This includes limited access to parties' experiences and the supporting evidence they present. The decider will inherently be limited in the amount and quality of information they will access to make their decisions, thus limiting the range of possible outcomes and the resulting satisfaction of parties. Most importantly, the decision-making is limited to either one party to the conflict or to a third party, limiting the mutual engagement of all those involved in the conflict. In the rights-based approach, much like the power-based approach, the inclusion of the subjective experience of conflict is limited.

There are many advocates for authoritative or rights-based approaches to settle disputes as they consider that a functioning justice system is integral to a functioning democracy and ever-evolving standards of justice and fairness, as will be discussed later in this text, including Nader (2001, 2018) and McRedmond (2024). Conversely, it is possible that the trust placed in adjudicative and authoritative institutions and individuals to render the best solutions to settle presenting conflicts ought to be challenged. Indeed, compromised judgement is possible but as has been noted by Schulman (2016), laws can also be enacted that are unduly punitive, calling into question the normative standards themselves. Furthermore, Schulman presents a further argument that reliance on the state for intervention to settle conflict grants the state excessive powers to govern the relationships between individuals. Effectively, Schulman advocates for a view of interpersonal conflict resolution that places the responsibility to settle conflict directly

between the disputing parties through direct communication and the practice of empathy. However, such an approach is diminished if not impossible if the state's dispute management processes are inordinately promoted and relied upon. Schulman's argument does not advocate for the abolition of such apparatuses; rather, it promotes the empowerment of individuals to address conflict directly and balances this empowerment with self-reflection and honest self-examination of one's contribution to conflict.

A third option considers *interest-based* approaches, such as direct negotiation and mediation between the parties in conflict. Fisher, Ury, and Patton (2011) are among the most referenced when the notion of interest-based negotiation is discussed. In this approach, negotiation to reach an agreement holds some consideration for the relationship between the parties. Fisher, Ury, and Patton's (2011) model of negotiation can follow a handful of principles that draw parties away from their firmly held positions and closer to a negotiated agreement through the exploration of their interests, in contrast to their immovable positions. For Fisher, Ury, and Patton, *positions* are described as something a party has decided upon while *interests* describe the reasons underlying that position (Fisher, Ury, & Patton, 2011, p. 34). For Fisher, Ury, and Patton, negotiating an agreement based on positions is unnecessarily difficult and may lead to agreements that are unsustainable with little regard for the parties' relationship. Conversely, principled bargaining that favours the separation of the people from the problem, focuses on interests rather than positions, seeks options that favour mutual gain, and when interests clash, bargaining could include objective criteria against which negotiators can assess the available options create the conditions for outcomes that favour interests over positions (Fisher, Ury & Patton, 2011). While positions are apparent in most negotiations, interests require

deeper inquiry, curiosity, and self-examination. In short, positions are considered *what* a party seeks, while interests represent *why* they seek it.

As Picard notes, *interest-based* approaches are often contrasted with *rights-based* and *power-based* approaches and tend to focus on the agency and autonomy afforded to all parties involved in the decision-making. By attending to the *reasons* supporting parties' desired outcomes, otherwise known as *interests*, rather than attending strictly to parties' narrowly defined rights, or appealing to a third party to solve the dispute, parties can attend to the conflict more comprehensively and with greater agency using interests. The *interest-based* method broadens the scope of possible options, prompts collaboration and joint problem-solving, and parties are more likely to remain committed to the outcomes as it is presumed that this method will have been negotiated directly by the parties. Indeed, where it is an option, an *interest-based* approach to dispute resolution may be undertaken with guidance from a skilled mediator. Such processes are often understood to promote more productive and healthier relationships between disputants and increase the likelihood that decisions are more satisfying and therefore, durable in the long term (Picard, 2004, pp. 39-42). Most importantly, *interest-based* approaches to conflict resolution allow space for the decision-making to include the subjective experiences of all parties involved. The underlying assumption to this approach is that including such content as perception, feelings, desires, values, and the myriad other sequelae of the conflict experience will promote sounder relationships and more durable and satisfying outcomes that do not require coercion for enforcement. Furthermore, by omitting a third party from the process, costs are reduced and results are more timely as fewer resources are needed to initiate and engage *interest-based* conflict resolution processes.

The arguments for the *who* of conflict resolution continue to be the subject of debate in the legal and dispute resolution fields. Indeed, the informal and formal dispute resolution process advocates often find friction in their arguments against one another, keeping the scrutiny of the fields alive and ever-evolving. Bush (1989) offers an allegory of dispute resolution where a judge has been empowered by a statute to direct how cases are diverted from a civil court to mediation at his own discretion.[7] This allegory suggests that it is not necessarily a matter of intrinsically understood ideas of right and wrong or good and bad that determine which is the most appropriate means to settle or resolve a dispute. Rather, Bush suggests that it is individuals themselves, influenced by their context, backgrounds, and values who determine which approach will best respond to the perceived needs of an individual or a group in a given conflict situation. For the mediator, when conflict between parties is identified, the impulse may not be to seek out adjudication as a first option, though it may remain *an* option if mediation is not successful or if parties are not amenable and there may be an impulse to informally resolve or settle the conflict.

---

[7] In the allegory, the judge seeks the professional and enlightened opinion of a law clerk, a court administrator, a law professor, a practicing mediator on a series of four very different yet emblematic case types. His request to his professional acquaintances is to receive opinions on which cases, if any, should be sent automatically to mediation, and those that should be sent automatically to adjudication. To his surprise, the judge receives starkly divergent opinions, each with their own arguments supporting their recommendations. The point made by Bush's allegory is that each professional opinion regarding dispute settlement or resolution is influenced by ideological goals and values. Each opinion holds different concerns as central to the decision-making process which thus determine which, if any of the emblematic cases, ought to move forward to adjudication and which ones ought to move directly to mediation for remedy. For the law clerk, protecting the rights of individuals in society and ensuring substantive fairness is the primary role of the justice system and it should be able to do this without intervention from other processes, including mediation. For the law professor, the goal of a public institution is to protect and promote public values, such as civil rights, the pursuit of substantive social justice, efficiency, and the establishment and articulation of public values that give rise to solidarity. The law clerk considers the courts to be a public good that does the important work of protecting these rights. For the court administrator whose values are found in stewarding public funds, he sees mediation as a means to this end and favours mediation for many cases. For the practicing mediator, mediation offers a superior settlement process since such settlements are going to be better for the parties than adjudication. Mediators also consider the public value in encouraging self-determination, education, and consideration for others among disputing people and the potential for these to be applied throughout the community through the instigation by mediation. The mediator also considers that mediation is also non-adversarial and less traumatic. Finally, this allegorical judge also consults with a European judge who, in their own meta-analysis and cultural distance from the scenario, notes that all of these arguments rest on divergent views of the nature of the individual and society.

However, how their version of mediation is carried out may vary considerably and is equally influenced by the mediator's culture, education, values, and context. This variety exists as a consequence of the variety of beliefs about the human being, the roots of conflict, and the best way to resolve it, which are inevitably influenced not only by mediation education and training programs but also by influences external to the mediation context.

The above section has described the range of options for conflict resolution that offer various degrees of attention to the subjective experience of conflict. The literature points toward an assumption that the greater the inclusion of the parties' subjective experience of the conflict - of the *why* of the conflict - in the process leads to an increased satisfaction with the resolution and to improved relationships after the conclusion of the outcome. While this is a correlation, it is based on the proposed benefits of interest-based conflict resolution theories.

Whatever method the parties are offered and selected, however, there is no guarantee of justice, fairness, or satisfaction in the outcomes. Parties in conflict may experience a range of possible results that respond to their subjective experience of conflict and their subjective hopes for favourable outcomes, or remain unresponsive to these dynamics. Thus, an exploration of the meaning of *successful* conflict resolution deserves attention.

3. Defining "successful" conflict resolution

Mediation theories propose that there is a range of outcomes for concluding conflict that depends on many variables but success is increased as the parties' subjective experience is included in the proceedings. Despite the reassurance of satisfaction that many theories and mediation practices offer conflicting parties, there is a range of possible outcomes that are neither considered complete failure nor complete success but can nonetheless be considered valuable to the parties.

The range of possible outcomes is supported by a number of authors from the conflict studies and conflict resolution fields who offer critical evaluations of what ought to be considered successful and failed conflict resolution processes. The goal of the conflict resolution process ought to be considered if a conflict professional is to plan a process for parties and achieve an outcome that is more favourable than the situation had been up to that point. Jeong (2009) offers a succinct distinction between conflict *settlement* and *resolution,* noting that *settlement* refers to strategies that privilege compromises rather than removing deeply-held issues. While there may be a collaborative endeavour to end hostilities, the underlying relationships between parties may remain antagonistic in this approach. Indeed, Joeng's work suggests that conflict *settlement* may include coercive strategies by the parties, which may affect the durability of any such arrangements (Jeong, 2009, p. 9). Jeong further suggests that the goal of conflict resolution is to "avert the recurrence of destructive conflict by qualitatively altering antagonistic relationships" (Jeong, 2009, p. 4). Thus, settlement strategies are unlikely to fully consider and balance the subjective experiences of all parties involved in the conflict, impacting the parties' satisfaction and thus, the durability of the conflict.

On the matter of *settling* conflict, Burton's (1996) perspective notes that *disputes* may be *settled* through compromise while *conflicts*, which include emotions and deep-seated needs which are resistant to compromise, require *resolution*. Burton further reflects on the inappropriateness of applying dispute settlement processes to conflict resolution, suggesting that analysis of the dispute or conflict is a requirement in order to determine the root causes of the problem and apply the appropriate process to end it (Burton, 1996, p. 8). Thus, Burton notes the depth at which conflict may take root and the preferred framing of conflict resolution approaches matters. Those clashes that reach deeper into the conflict issues that touch on emotions and

perceptions presume that there is more to conflict than objects that can be negotiated, traded, or compromised.

Jeong's perspective is aligned with Mayer's (2000) text that notes, "the usual assumption is that resolution is equivalent to agreement about particular issues underlying a dispute. If the parties to a dispute can agree on an outcome that is mutually acceptable, then the conflict has been resolved" (Mayer, 2000, p. 97). More specifically, Mayer's notion of *resolution* tends to discuss the three dimensions of conflict - cognitive, emotional, and behavioural resolution - and that when all parties to a conflict achieve a feeling of settlement in each of these domains of conflict, *resolution* can be said to have occurred. It is worth noting while Mayer makes a passing reference to their interrelatedness, the three dimensions of conflict resolution have a great deal of influence on one another. Regarding the *cognitive* dimension, parties have achieved resolution when they believe their needs have been met and the conflict is in the past, rather than the future. Mayer suggests that this can be done as a deliberate choice but notes that cognitive resolution more often occurs when the other dimensions, the behavioural and emotional dimensions of resolution have been achieved. Mayer further suggests that perception remains an integral attribute of the cognitive dimension of resolution as the party's view of the conflict as settled, resolved, or as part the past constitutes a significant facet of conflict resolution. This angle not only considers the conflict itself but also includes how parties perceive themselves as well as one another and thus constitutes the most influential of the three dimensions of conflict resolution.

The *emotional* dimension of resolution suggests that the party's negative feelings about the conflict and the other party or parties have shifted, de-escalated, or are less frequent. Mayer suggests that an indicator of emotional resolution is the diminished time and emotional energy spent by the parties on the conflict. However, the emotional dimension can remain a pernicious

element of conflict if one or more of the parties do not feel that their needs have been respected. Mayer suggests that emotional resolution may occur through active processing, time and distance, even if the parties' needs are not met and they do not feel the emotional release of resolution.

Finally, where the *behavioural* dimension of conflict resolution is concerned, Mayer suggests that the abandonment of conflict behaviour and the adoption of behaviours that promote resolution are demonstrative of this dimension of resolution. Mayer proposes that documented agreements and settlements regarding actions or abstention from some actions fall into the behavioural realm. While conflict behaviour may fall into the dimension of observable behaviour and are subject to conscious decision-making about actions, honouring agreed-upon actions may meaningfully contribute to both cognitive and emotional conflict resolution.

As Mayer notes, achieving resolution in each of these three domains often demands a great deal of individual and collaborative work for parties. Each party must become aware of their own needs and the needs of the other party as well as developing a degree of confidence that their needs could be met through such a conflict resolution process and the resulting agreement. While Mayer's analysis is descriptive and hopeful, Mayer further suggests that while possible, it is indeed rare that a process directed at full *resolution* can be neatly secured for *all* parties in *all* of these domains (Mayer, 2000, p. 97). Indeed, for Mayer, the promise of resolution that is promoted throughout conflict resolution literature seems to be overstated, despite the mediator's best intentions and developed skills.

Further along this spectrum from conflict *management/settlement* and following *resolution* is Lederach's (2003) concept of conflict *transformation*, offering a response to deep-rooted conflict. Such an approach accepts that conflict is a normal and continuous dynamic of

human relationships that may be life-giving, rather than entirely negative or worthy of dread. Lederach affirms that conflictual relationships between parties are the heart of conflict transformation but does not limit this ongoing process to the relationship between disputing parties. Rather, Lederach includes the web of relationships and the context surrounding the disputing parties (Lederach, 2003, p. 17). The conflict *transformation* approach to dealing with conflict appreciates the peaks and valleys of the conflict dynamic (Lederach, 2003, p. 15). Lederach's work further submits that peace is not an end goal in itself but is a continuous and iterative process that grounds itself in values of understanding, equality, and respect in relationships that take place through dialogue (Lederach, 2003, p. 21). Indeed, Lederach's vision of conflict transformation includes four dimensions: the personal, relational, structural, and cultural dimensions. Lederach's approach appears to overlap with Mayer's (2022) approach to conflict resolution as they both regard structural implications of conflict. However, Mayer's approach orients from the structural toward the individual while Lederach's approach orients from the individual toward the structural/cultural dimensions in terms of where action is most effective for impacting change toward more peaceful arrangements between people in conflict with one another.

Understanding how one defines *success* in conflict resolution is relevant as it effectively frames the interventions for mediators and other intervenors. Mediators and others who work in conflict resolution practices are not entirely in consensus about what constitutes success in conflict resolution practice. For some, a cessation of hostilities will suffice. This cessation could be imposed by a third party, such as an arbitrator, who outlines the conditions to bring an end to the dispute. This arrangement may or may not consider the needs or wishes of *both* disputing parties but may be sufficient to end the confrontation between disputants. For others, a better

understanding of self, other, and the conflict is enough to deem the process effective, even if the conflict were to continue or the relationship would end. In this arrangement, there may not be an agreement to end the conflict, but it may present new ways of perceiving and new feelings about the self, the other, and the conflict. As will be discussed in the following section, framing the problem to be addressed in relational terms will impact the orientation of the mediator and their management of a mediation process.

4. Mediation is for resolving the subjective experience of conflict

Having anchored the definition of conflict in its subjective nature, explored the options available for resolving the subjective aspects of conflict, and the variability of what constitutes "success" in conflict resolution outcomes, this section will narrow the scope of the thesis to mediation. Here, mediation as a conflict resolution method primarily takes the subjective experience of conflict as the principal content of the conflict resolution process.

As described above, other conflict resolution methods that rely on power-based and rights-based processes include third party intervention that plays a very active and decisive role in decision-making. In these processes, the authority to examine positions and evidence as well as issue resolutions according to which parties are expected to abide serve to diminish the agency and self-determination of parties in conflict. However, interest-based processes, including mediation processes, consider the parties' interests, which are fundamentally subjective in nature and ideally drive the decision-making process. Furthermore, the role of the mediator as a third party intervenor is distinct from the roles played by adjudicators, arbitrators, and other third parties with the authority to settle a conflict *for* the conflicting parties. Three principles distinguish the mediation process from other dispute resolution mechanisms: party self-determination, mediator neutrality, and confidentiality.

The principle of party self-determination allows the subjective experience of conflict to guide the process toward what each party will subjectively determine to be reasonable or acceptable solutions. Simon and West (2022) note that self-determination in mediation serves several functions, not the least of which is attending to a human need for autonomy and its impact on human dignity. Simon and West note the relationship between autonomy, that is, the ability to act in ways that are congruent with one's own interests, values; as well as agency, which is action that is defined by self-awareness and reflection in action directed at making decisions that affect one's own life circumstances (Simon and West, 2022, p. 10). The principle of self-determination applies at every step of the process, including the decision to participate, choosing the issues to be discussed, and agreeing to the outcomes. This approach is in particular contrast to rights-based processes that will often pre-determine the scope of the conflict and the solutions which could settle it *for* the parties, without necessarily including the input that the parties see as relevant to the conflict.

The principle of self-determination may seem reasonable or even appealing but there are critiques of its primacy in the mediation context. Grillo's (1991) feminist analysis of power dynamics and gender in mandatory family mediation suggests such programs leave women at a disadvantage in mediation processes because of a feminine tendency to prioritize nurturance, connection with others, and contextual thinking. This tendency is the antithesis to masculine tendencies that prioritize justice and individualism. This feminist critique of mediation, especially in the practice of family mediation, has led to a concern for the potential or real disadvantage of women in the settlement of family disputes. In addition, this tendency often leads women to prioritize others' needs despite the urgency and legitimacy of her own needs. Furthermore, power relations between genders that favour the masculine create an environment

where a woman may not feel entitled or safe to assert her own needs during mediation out of fear, habit, or the espousal of a value for selflessness. For Grillo, mediation will do little, if anything, to challenge unequal power dynamics in a relationship or the general social context.[8] In this context and using this argument, there is an apparent different consideration of a woman's subjective experience of conflict in the decision-making that occurs during mediation, favouring a more objective view of fairness or justice with the goal of protection of the vulnerable.

Thus, the principle of party self-determination segways into the second principle of mediation, that of mediator neutrality or impartiality. Though the terms *neutrality* and *impartiality* may be distinguished from one another, they are often used interchangeably, sometimes causing confusion (MacFarlane, 2003, p. 444).[9] Several authors offer descriptions of neutrality in mediation: Maute (1990) suggests that a mediator is said to be neutral when he/she has no stake in the outcome, offers a procedurally fair process to the parties, with respect and dignity for all parties, and creates the conditions where intimidation and abuse are stemmed by the mediator's involvement. MacFarlane (2003) suggests that neutrality refers to non-partisan fairness relating to an unbiased and non-prejudicial approach in dealings with each party involved in the mediation to ensure that the needs and interests of each party are equally attended to throughout the process. Astor (2007) describes neutrality as the absence of practitioner influence on the content of the process or its outcome, non-partisan attitudes and behavior, absence of influence from outside connections with the disputants, and freedom from government influence.

---

[8] Indeed, Grillo suggests that processes such as *mandatory* mediation in many court systems further aggravate the disadvantage as it does not sufficiently account for safety issues that may exist for women seeking to separate and protect themselves from a violent partner. However, it should be noted that *most* mediation programs and practices do not advocate for *mandatory* mediation as this would be antithetical to the principle of self-determination and voluntariness which is often considered an imperative for effective mediation.

[9] For the purposes of this work, the term *neutrality* will be used to focus the discussion of this practice principle as the distinctions are not material to this thesis.

Picard (2005) further notes that such a non-partisan and non-prejudicial position in practice is impossible thanks to culturally-determined mindsets, and is supported by Astor (2007) who suggests that neutrality cannot and should not be viewed as a fixed notion, destined to define success and failure of a practitioner in terms of neutral or non-neutral. Together, there is a high-level assumption that a mediator guides a process that is equitable for the parties involved and ought not favour one party over the other in its procedures or outcomes. Ultimately, mediator neutrality allows for a space for each party's subjective experience to be considered with equal dignity and respect and constrains the mediator's involvement in the problem-solving.

The preoccupation with mediator neutrality and impartiality is prevalent in the mediation literature, with concerns ranging from its definition, its application, its feasibility, and its desirability. Simon and West (2022) raise a series of concerns including the possibility for mediator bias and interpretation to shape the process and outcomes in ways that do not reflect the needs or desires of parties but of the mediator. Furthermore, the authors recognize that the principle of self-determination may be subordinated to mediator's values of ensuring that there is a successfully mediated agreement at all or ensuring that what they determine to be a bad agreement is avoided. Finally, mediators may lose sight of their relatively minor role in the conflict story and fail to acknowledge the breadth and depth of memory and meaning that parties possess when it comes to their own conflict. As Mayer (2022) notes about the humility that mediators will ideally embody, "We should never assume we know better than others about what they need, what is important, what is wise. If having a background as conflict intervenors has taught us anything, it is to trust that people know what they need and why" (Mayer, 2022, p. 35). The mediator's ability or drive to favour self-determination may be hindered by bias or judgement or, put otherwise, the mediator's own subjective perceptions of the conflict and the

parties. Thus, the principle of the mediator as a third party whose goal is to promote self-determination may not be as clear or as rigorous in practice as many authors may suggest. Despite this, mediator neutrality or impartiality is considered a hallmark of mediation practice.

Much like the criticism of the self-determination principle in mediation as it relates to the mediator's role, Maute (1990) notes the disagreement in mediation theory regarding the mediator's role regarding the safeguarding of fairness in mediation. The role of the mediator offering legal opinions in mediation remains unresolved as the mediator may have an opinion (legal or otherwise) regarding the fairness of an agreement resulting from mediation. However, disagreement about the interpretation of fairness becomes apparent when discussing what is considered fair within a rigid legal system and what is fair within a given circumstance, such as a personal relationship. The public interest and broader societal norms are not necessarily considered in these calculations of fairness that may be based firmly in personal values. However, for Maute, questions of power imbalances that can be righted by a mediator who can provide information to this effect may bring parties closer to a fairer and thus, more sustainable agreement. Offering parties in mediation information about legal and societal standards of fairness ensures a complete and informed approach to the resolution of their own concerns. Without this, mediator accountability is rightly questioned and may lead to questions of liability but may betray the principle of mediator neutrality or impartiality. This perspective is resonant with Mayer's (2022) critique of neutrality's role in perpetuating systemic oppression of marginalized people. Mayer suggests that a mediator who adheres strongly to the value and practice of neutrality fails to directly address systems of oppression and thus misses an opportunity to advocate for a more just society through the vehicle of mediation. Furthermore, Mayer notes that most dialogue and conflict resolution processes that are guided by experienced

professionals tend to favour the rules of engagement defined by the dominant group. The principle of neutrality or impartiality supports the notion that mediator prioritizes the parties' subjective experiences of the conflict rather than the third party's objective *or* subjective view of the parties' presentation of the conflict and how it ought to be resolved.

Finally, the third principle of mediation to be explored here is confidentiality. Confidentiality in mediation satisfies a need for privacy that would permit a secure space in which parties may feel more prepared to share about their private subjective experience of conflict. The context in which mediation is practiced will have impacts on the expectations around confidentiality and thus, this discussion will not be exhaustive in its exposition of this principle. Variations across mediation practices such as family, community, and workplace have their own standards for confidentiality and include the specifics of each context and its standards would take this study beyond its scope. However, this thesis will offer an overview of some of the debates around confidentiality in mediation as well as the impacts of the context surrounding mediation practices.

The implication of keeping the content of mediation within the confines of the mediation process suggests a number of risks and practical challenges. Picard (2004) notes that confidentiality is an instrumental principle for mediation practice as it allows parties to work together and with the mediator with a certain measure of trust and forms a significant piece of a mediator's ethical responsibilities (Picard, 2004, p. 330). Moore (1996) supports this, noting that assurance of confidentiality allows parties increased candor that may allow more opportunities to explore options that might otherwise be rejected (Moore, 1996, p. 323). Finally, mediator-party confidentiality also provides that information pertaining to each party is shared on their own

terms, not on the mediator's terms (Moore, 1996, p. 324), further supporting party self-determination.

The limits around confidentiality tend to focus on the health and safety of others, such as children as well as legal liabilities and providing testimony in the context of formal processes. Mediators do not possess the same status as lawyers and priests and thus are not entitled to keep such strict confidences (Picard, 2004, p. 330), that the limits ought to be explained to participants (Moore, 1996, p. 200), while the same professional standards for maintaining confidentiality cannot generally be extended to parties (Tayler, 2002, pp. 222-223). Manwaring (cited in MacFarlane, 2003) adds that courts are not bound by the mediator's promise of confidentiality and may call them to testify and mediators may provide the courts their notes and opinions, especially in the family law context or in criminal law proceedings (MacFarlane, 2003, p. 513). Finally, Manwaring notes that agreements reached and documented in the public sector are subject to access to information legislation which thus limits the confidentiality of such documents (MacFarlane, 2003, p. 514). While confidentiality is a hallmark of mediation in an effort to promote openness and honesty that would support the development of trust and more acceptable solutions, it does have its limits in the professional sense.

Like party self-determination and mediator neutrality, there are notable criticisms of the confidential nature of most mediation processes. Nader (2001) notes that the turn toward private and individual methods for resolving many disputes that could be of public interest risks denying moves toward greater justice for American society. Nader suggests that by following a recourse to private settlement of conflict, there is a missed opportunity for public judgementality, indignation, and anger which can be positive forces for the evolution of society. In a similar vein, McRedmond (2024) suggests that the inclusion of mediation as a means to settle disputes

that had originally been brought to the civil justice system may serve to mask bad practices, bias, and unfair settlements, thanks to the confidential nature of the process. Furthermore, Redmond suggests that recourse to mediation to settle civil disputes offers "cheaper" means to settle disputes, leading civil courts to abdicate their responsibility to provide justice and impede the functioning of the judicial system for a democracy. McRedmond and Nader's arguments point to the inhibition of active policy development that takes the greater whole of society into consideration, rather than favouring individual and private conflict resolution processes. Menkel-Meadow (2003) counters this assumption with the perspective that policy and legal development does not equate progress in questions of justice. Menkel-Meadow notes that the application of justice or policies is variable and it does not guarantee a sense of justice for the parties involved (Menkel-Meadow, 2003, p. 480). Thus, the interplay between confidentiality and the broader responsibility for justice offer another field for fruitful debate about the place of mediation, though it is beyond the scope of this thesis.

Confidentiality is a principle of mediation that is intended to create a secure space and opportunity for parties to share their own subjective experience of conflict, which sometimes includes an ugly facet of conflict that could promote deeper resolution, along with their hopes for resolution. While the context and jurisdiction of the mediation practice creates limits around confidentiality in order to assure the health and safety of the parties and the mediator, it is considered instrumental in assuring parties that it is their own experiences and hopes for the future that will be the primary concerns to be addressed through the mediation process. This also creates a measure of accountability for the parties to share what is most important to them with honesty and completeness.

Conclusion

While conflict may proceed from a contest over objectively defined and understood goods or interests, the situation of conflict is located in the subjective experience of the contest. Furthermore, notions of conflict resolution in processes aimed at concluding conflict are more sustainably achieved when the subjective nature of the conflict experience has received due attention. It has offered a definition of conflict that rests on subjective experiences with a focus on feelings and perceptions and the role these play in conflict resolution processes available to parties experiencing interpersonal conflict in the North American context. It has explored the place of subjective experiences in resolving it through power-based, rights-based, and interest-based approaches to resolving conflict. It has also noted that while there is a range of options for resolving conflict in the North American context, interest-based approaches, including mediation, often offer the greatest possibility for mutually satisfying and durable outcomes because they give greater weight to the subjective experiences of conflict and subjective views of what is needed to resolve it.

Finally, mediation in particular deploys the principles of party self-determination, mediator neutrality, and confidentiality to support the privileged position of the subjective experiences of conflict and subjective views of best resolutions.

While mediation practices share a number of principles, they are not uniformly practiced by mediators. There is, in fact, a wide variety of mediation styles, skills, models, and practices supported by as many theoretical groundings. The next chapter will explore the array of mediation models and approaches with an aim to narrow the scope of the remainder of this thesis to focus on relational mediation practices.

Chapter 3: Mediation theory and practice

Introduction

As discussed in the previous chapter, mediation is one of the methods often available to resolve conflict in the North American context. It is distinct from other conflict resolution methods such as arbitration or adjudication in that it prioritizes the parties' subjective experiences of conflict and their hopes for resolution, in contrast to rights-based and power-based approaches that attend to other notions of procedural or substantive fairness. Each of these approaches have their benefits but do not attend specifically to the subjective experiences of conflict of all parties to a conflict.

This chapter explores relational mediation models that are designed specifically for mediators to guide parties through a sharing of their subjective experience of conflict and their unique hopes for the future. Mediators using these facilitate this sharing while attending to the communication patterns that are hindering the parties' relationship development. While the models provide theoretical grounding and are prescriptive of strategies and techniques, the relational mediation approach does contain weaknesses that are also addressed in this chapter.

This chapter will explore the general qualities and skills a mediator possesses that are situated to promote communication, trust, and understanding between parties in conflict. It will then provide a description of the range of mediation models and approaches, highlighting that while most mediation practices share the basic principles of party self-determination, mediator neutrality, and confidentiality, there is room for interpretation and variety of theory and practice in the profession. It will explore the methods for distinguishing between the various mediation models and will focus the study of the relational mediation approach. It will then offer

descriptions of four of the salient mediation models that rely heavily on the relational dimension of conflict: transformative, narrative, insight, and nonviolent communication mediation and the characteristics that the models share, along with what makes them distinct from one another.

1. The role of the mediator in theory and practice

In the narrowest description, the mediator attends to two dimensions of the process: communication that supports collaborative decision-making; and more favourable patterns of behaviour in the future of the parties' relationship. As described and discussed below, mediators are trained intervenors who possess a number of competencies and personal qualities that make them fit for promoting effective communication and optimistic views of the future relationships between parties in conflict. Furthermore, the mediator's personal and professional background and training will determine the methods that a mediator will use to help parties achieve resolutions.

The content of the communication in mediation considers more than the goods to be calculated, negotiated or traded. Mediation processes often include these aspects of disputes but often attends to the personal experiences of conflict, as the definitions of conflict in the previous chapter have outlined. In mediation, the intention is intended to create the conditions that are fertile for frank discussions about the conflict and how the parties wish to bring a conclusion to the conflict. Mediation theory and practice generally contend that the most effective way to accomplish this is through direct communication between parties that attends to each of their unique experiences of the conflict and their hopes for resolution, with the mediator playing the role of facilitator of this communication between parties in conflict.

The role of communication in conflict is well-explored across the conflict studies literature. For some authors, communication as the exchange of information is too basic of a

theme for conflict resolution as the meanings conveyed and received and their impacts on the parties' relationship contain greater nuance in conflict resolution. Moore (1996) highlights that many theories of conflict connect the emergence and maintenance of conflict to poor communication patterns. Citing Deutsch, Moore also suggests that the essential role of communication in a conflict resolution is to diminish competitive modes of communication that leave ample opportunities for misunderstanding, misleading, suspicion, and bad-faith interactions (Moore, 1996, p. 182). Deutsch's (1973) discussion of communication in mediation focuses on the element of trust. In this context, trust relates to the parties' actions that may not be properly aligned with the other parties' expectations and what corrective steps are taken when trust is violated (Deutsch, 1973, p. 166). Deutsch also proposes that both the mediator and the parties must make exceptional attempts to understand one another. Mayer's (2000) commentary on communication suggests that before the communication even begins, parties must possess a willingness to participate in a two-way communication loop that favours more than simply solving a problem. An interaction loop must disrupt the previous pattern of communication and, hopefully, the dysfunctional relational patterns. This disruption, if accompanied by support and a shifting attitude in the parties, will promote understanding and connection. The disruption of unhelpful patterns in communication and relationships may not resolve all of the problems raised, but it will offer more possibilities for the parties' mutual appreciation of needs, opinions, hopes, and concerns (Mayer, 2000, p. 119). Noting that relationships between conflicting parties may be steeped in their own history or be limited, Lang and Taylor (2000) submit that parties in conflict have developed patterns of behaviour that are influenced by both their experiences of the relationship and on the perceptions they have of one another and that mediation provides opportunities to correct these perceptions and to correct misleading or inaccurate views of one

another (Lang & Taylor, 2000, pp. 159-160). Thus, for these authors, communication in conflict resolution is directed at mutuality, collaboration, and shifting problematic patterns.

Communication patterns and the impact of emotions on communication effectiveness are also a central feature of conflict resolution theory and practice. Picard et al. (2004) go further to connect poor communication to difficult emotions and to assumptions about each party's own rightness and the other parties' wrongness. These assumptions will often lead to communication behaviors that block understanding and effective conveyance of messages (Picard et al. 2004, p. 229), much like Mayer's notion of pattern disruption. Picard et al. thus suggest that while emotions may play a significant role in conflict and communication, communicating *about* emotions may be difficult for reasons of comfort and capability to name emotions and cannot be underestimated. Littlejohn and Dominici (2001) also refer to mediation as a safe environment where difficult emotions may surface. More specifically, these authors suggest that the expression of these emotions allows parties to better understand one another's perspectives and explore empathy, both of which are beneficial for interpersonal relationships (Dominici & Littlejohn, 2001, p. 37). Mediators are generally equipped to help parties recognize the role of emotion in their communication and mitigate or neutralize the negative impacts.

Communication within the context of mediation is usually understood to be in service of developing a more favourable relationship that benefits all parties involved in a conflict. DiGrazia (cited in Georgakopoulos, 2017) notes that mediation is usually considered a form of compromise in action, a process between disputing people who are willing to forego hard and fast positions and negotiate mutually satisfactory outcomes to end the conflict, often faster and with reduced costs. However, while DiGrazia notes these potential strengths, it is the benefits to the disputants' relationship where mediation shines as a form of *appropriate* dispute resolution, in

contrast to the more adversarial forms of dispute settlement. Furthermore, parties in mediation work to find solutions that favour all parties and do not prioritize win-lose outcomes. Moore (1996) adds to this description of mediation's potential impact on relationships by including that over and above resolving substantive issues, mediation has the potential to "establish or strengthen relationships of trust and respect between parties or terminate relationships in a manner that minimizes costs and psychological harm" (Moore, 1996, p. 15). Mediation's focus on relationships seeks to shape the parties' ongoing patterns away from the potential destructive forces of competitive conflict resolution that orients toward win-lose outcomes, to the detriment of the relationship.

Beyond impacting the quality and content of communication, parties in mediation may find the structure of their relationships may shift as a result of mediation. Lang and Taylor (2000) suggest that pursuant to mediation, conflicting parties may see an equalization in the power differentials that may not have existed before or following the mediation process (Lang & Taylor, 2000, p. 161). Likewise, Tallodi's (2019) work suggests that mediation is a means to shift the relationships between parties to new conditions that are different from the previous ones is at the heart of mediation practices that attend to relationships. For Tallodi, the mediator's intervention influences party interactions in mediation by priming parties for receptiveness through promoting openness to change and the provision of a safe space and encouragement during mediation, which would thus promote openness to change in behaviours and attitudes. Further, and as suggested above, the mediator creates conditions of safety through their own behaviour that encourages authenticity and trust throughout a mediation process (Tallodi, 2019, p. 7). Tallodi adds that relationship changes between parties in mediation have been most researched in the family mediation domain but that civil disputes can equally be sites of changed

relationships, despite the limited scope and duration of relationships between disputants (Tallodi, 2019, p. 16). Tallodi further explains that while the field of mediation widely proclaims that it prompts positive impacts on relationships, there is scant literature that confirms these assumptions (Tallodi, 2019). In these assumptions, there is a recognition that either because of culture, education, or circumstances, collaborative communication may not be the norm and mediators are working to demonstrate that parties can choose a less adversarial form of communication.

While mediation may propose benefits for the communication and relationship patterns, discomfort can also accompany the process. As Bush and Simon (cited in Georgakopoulos, 2017) also suggest, conflict can be a destabilizing experience as it calls relationships, which are a central feature of social life, into question. This questioning of who one is, how one should behave, and who one is to other people in the world undermines the stability toward which humans aspire (Georgakopoulos, 2017, p. 74). Thus, the goals and orientation of mediation are to facilitate communication between conflicting parties in such a way that their relationship is held in some regard to reach an understanding that was not previously attainable. However, to determine which aspects of relationship and communication stood in the way of achieving their desired results, a mediator will require some capacities of conflict analysis to best target the skills and strategies needed to facilitate mutually-favourable agreements.

Salient throughout the mediation literature are references to a mediator's communication and relationship building skills, priming them for successful mediation practice. However, some literature refers to something more akin to qualities of character over and above learned skills to help mediators find success with their parties.[10] In addition to some mediator personal qualities,

[10] Bowling and Hoffman (2003) provide a series of narratives highlighting these qualities, including the ability to connect with parties, mediator self-awareness, integration, and a commitment to personal development that permits

mediation education and training can take many forms and is often combined with other areas of expertise such as social work, therapy, human resources, and the legal field. Thus, there are regulatory bodies and communities of practice that attend to the development of the mediation field but, given the variety of fields and their relative standards, each view training and certification differently from one another. In fact, as Merry and Milner (1993) note in their work, there is tension between the legal field's value for the professionalization of the mediation field and the mediation field's resistance to such pressures. Proponents that resist the uniformization brought by professionalization see risks in defining a singular mode of mediation when the field itself is by design open to a variety of approaches, as seen suitable by the mediator.[11]

---

and facilitates deeper understanding of self. Benjamin (cited in Bowling & Hoffman, 2003) suggests that a mediator possesses an ability to work with parties in ambiguity and that a mediator's comfort with ambiguity supports a neutral stance and empowers them to guide parties to question their own assumptions about themselves, the other person, and the conflict (Bowling & Hoffman, 2003, p. 85). Johnson, Levine, and Richard (cited in Bowling and Hoffman, 2003) discuss the value of emotional intelligence for practicing mediators, as they presume that emotions are always part of conflict and conflict resolution. For the authors, an emotionally intelligent mediator will be able to manage their own emotions and goals throughout mediation as well as the emotions and goals of the parties. The authors further assert that a mediator who is scared of emotions or discounts their role in resolution are missing opportunities to help parties reach their goals. Benjamin (cited in Bowling and Hoffman, 2003) also suggests that mediators have a penchant for eschewing the 'techno-rational culture' that prescribes "rational analysis and reasonable discourse ((Bowling and Hoffman, 2003, p.79)" as they recognize that a dispassionate approach may be insufficient to help parties find resolution. For Benjamin, mediators working through the lens of neutrality and without the weight of determining rightness and wrongness may employ strategies that help parties shake the certainties that are preventing them from considering different perspectives. For Benjamin, the mediator must be less concerned with what is right and more concerned with what will work to settle the dispute (Bowling and Hoffman, 2003, p. 86), noting that seeking what is *right* serves to constrict the range of approaches the mediator may employ (cited in Bowling and Hoffman, 2003, p. 82). While Benjamin's support of mediator neutrality is one that is echoed across much of the mediation literature, it is equally countered, as will be explored with more depth later in this chapter.

[11] In the Canadian context, provincial and national professional associations have assumed the task of administering mediation designations to those who meet their criteria. These criteria typically include proof of having completed a set number of hours of mediation training, a particular number of additional hours of training on topics related to more advanced mediation, and proof of having conducted a number of mediations. The Alternative Dispute Resolution Institutes in Canada will typically list the themes for the advanced training and the number of hours required for thematic training. While these standards outline the training and education preferred by accreditation bodies, they do little to describe the desirable qualities for practicing mediators. Finally, while a designation from these bodies may contribute to a mediator's credibility and provide access to professional liability insurance, they are not *required* to practice mediation in Canada. Indeed, the community mediation field is built on volunteer mediators who require basic training to take cases but are not required to acquire any official designations.

The number and variety of mediation practice models is often underestimated, even by those who complete a training program. Writing about the mediation approaches in the family dispute resolution context, Taylor (2002) suggests that this field of practice has seen rapid development since the 1970's and with that, there has been an expansion of the methods used to mediate family disputes (Taylor, 2002, p. 104). Taylor notes that while family mediators demonstrate a certain ingenuity around the development of their own models of practice, there is little transparency or precision when it comes to identifying the model a mediator is using. Taylor, supported by Tallodi (2019), goes on to suggest that mediators may find themselves using a conglomerate of practices from a variety of models, or they may have created their own models and designed a business around its unique application. Finally, mediators receiving training may not be properly informed as to the distinct model in which they are being trained, and those seeking mediation training may not consider comparing the model in which they are being trained to other available models (Taylor, 2002, pp. 104-105).[12] Finally, like Tallodi (2019), Taylor further notes that research into the effectiveness of the various mediation practices is sparse (Taylor, 2002, p. 105).

Picard et al. (2004) add to the discussion as they examine the varieties of mediation dichotomies across the literature, citing that many opposites are used to compare and contrast the various approaches from one another. For example, Picard et al. refer to Kolb's (1983) dealmaker/orchestrator duality, Silbey and Merry's (1986) bargaining/therapeutic duality, Kressel's (1994) settlement/problem-solving duality, Kressel and Pruitt's (1989) task-oriented/socioeconomic duality, Bush and Folger's (1994) transformative/problem-solving

[12] This was my experience when registering for a training program in conflict resolution. I registered for a *Graduate Diploma in Conflict Resolution* but I was trained in the insight model of mediation, without this information being expressly indicated in the relevant marketing materials, to my memory.

duality, Schwerin's (1995) facilitator/activist duality, and Riskin's (1996) facilitative/evaluative duality. Picard et al. add to this list broad/narrow, open/closed, positional/interest-based, settlement/process-oriented, and individualist/relational. The models will also vary in what aspects of the conflict and the parties draw the mediator's focus and what strategies they will use to guide parties to resolution. Silbey and Merry (1986) describe different approaches as trending toward the bargaining approach often used by legal professionals and other subject-matter experts, with the mediator exerting more control and influence without a priority for the parties' emotions; or therapeutic approaches that prioritize direct communication between parties where they can express their feelings and attitudes and will promote exploration of the relationship before the conflict. Mediators who employ a therapeutic approach focus on creating agreements collaboratively rather than focusing on the legal norms (Silbey & Merry, 1986, pp. 19-21). While there is a wide assortment of mediation methods, mediators will generally share the few principles of neutrality/impartiality, confidentiality, and party self-determination.

A mediator's practice is profoundly affected by the measure to which the mediator views their role as a helper or as an expert, the independence of the parties, the impacts of the systems at play in the conflict, and the role of norms in the parties' relationship. Riskin's articles (1994, 1996, 2003) propose a number of methods to distinguish between mediator orientations in their practice. As Riskin notes, there is often an underestimation of the fact that mediators oscillate between styles and approaches, depending on the parties' needs and the mediator's skills and experience. Notably, Riskin's 1994 article proposes two questions that serve to guide analysis of the mediator's approach: first, *Does the mediator tend to define problems narrowly or broadly*? which offers a scoping mechanism for what will be discussed in mediation; and *To what extent does the mediator intervene to guide the parties*? which will clarify the extent to which the

mediator will influence decision-making between the parties. As Riskin notes, "The answers reflect the mediator's beliefs about the nature and scope of mediation and her assumptions about parties' expectations" (Riskin, 1994, p. 111). Regarding the mediator's degree of intervention, the facilitative-evaluative spectrum is often used to clarify the mediator's level of influence on the parties' decision-making. Along this spectrum, evaluative mediators may offer solutions or predictions about how formal dispute resolution would evaluate a given dispute and give space to legal, industrial, or technological expertise to inform or motivate parties' decision-making (Riskin, 1994, p. 111). Conversely, facilitative mediators actively refrain from such evaluative input, assuming that parties are more capable of arriving at appropriate solutions than the mediator. Each of these approaches has their strengths and weaknesses and holds some space for party self-determination and mediator impartiality, though each of these principles are applied differently depending on the mediator's practice norms.

2. Relational mediation models

In contrast to problem-solving, evaluative or bargaining mediation models and other models, relational mediation models espoused by many mediators work more closely with the subjective experiences of those experiencing conflict. However, defining the relational mediation model in comparison to other models requires some explanation. Taylor's exploration of mediation *models* suggests specific ways or methodologies that are based on two basic elements: the mediator's core beliefs, and their theoretical groundwork regarding conflict and human nature (Taylor, 2002, p. 106). Per Taylor, a model is described as "organized collections of thoughts that guide and inform and usually summarize the practitioner's ideal or best practices. They explain how a practitioner should function… Models tell us *why*, whereas methods, skills, and techniques tell us *how to*" (Taylor, 2002, p. 106). For Taylor, models provide "appropriate,

aspirational, or best practices" and that rookie mediators tend to learn "guidelines, rules, procedures, and ways of understanding mediation practice…" and when these new mediators find gaps in their practice, they are encouraged to read further about their model and learn from other mediators (Taylor, 2002, p. 106). In the language of models, the model the mediator uses offers answers to the mediator's questions about how to proceed without necessarily considering options outside of the model.

Approaches, however, "are general perspectives and prescriptive ways of looking at the work being done" (Taylor, 2002, p. 106). *Approaches* are broader in scope than *models* and encompasses a broad set of ideas about the best ways of working with parties to help them work toward a solution according to ideals and can employ parts of a variety of models as they suit the general approach. The dichotomy used to contrast the approaches discussed in this thesis is the individualist/relational (Picard et al., 2004, pp. 134-135). Some of the literature, including that of Picard et al., equates the relational approach to mediation with the transformative mediation model proposed by Bush and Folger (1994) and taken up by Lederach (2003). However, this thesis proposes that several mediation models have been developed around the relational approach to conflict resolution and have developed beyond the transformative model. Thus, this thesis suggests that the transformative model of mediation is only one of several relational models. Thus, for the purposes of this thesis, the following notion of relational mediation is privileged:

> The relational view assumes that people are concerned with their self-interests, but they are also simultaneously and pervasively concerned with their connection with others. The human urge to connect is as strong as the human urge to fulfill one's individual needs, but

> balancing both is often deeply challenging, especially in conflict situations. (Folger & Simon, cited in Georgakopoulos, 2017, p. 73)

For the purposes of this thesis, a relational approach to mediation constitutes more than the transformative mediation model and, as will be seen below, there is a distinctiveness to each model that remains firmly united in the fundamental relatedness of conflicting parties.

At the foundation of the relational worldview that supports the relational mediation approach is the assumption that societies ought to place the highest values on the individual's moral development and concern with other members of society (Picard et al., 2004, p. 135). This is in contrast to the individualist approach to dispute resolution that tends to favour interest-based and problem-solving approaches to having individual needs met without (or with less) concern for the needs of the other. The distinction is that a relational approach favours a transformational approach to conflict, which accepts conflict as natural and a means to develop ways of being together in a relationship rather than settling some difference. As Picard et al. note, much of what is accepted as mediation serves as little more than a dispute *settlement* process rather than a transformational one (Picard et al., 2004, p. 109). These cursory settlement processes and outcomes may offer some attention to the disputants' relationship, but the focus in these processes rests on reaching an agreement that will more or less satisfy the parties. The agreements may be integrative, but unlike the relational mediation approach, this is not necessarily the goal of these approaches.

A survey of the relational mediation literature reveals several models. These include models such as Froese's (2022) model based on Emmanual Levinas' work on phenomenology and its focus on forging a path toward a just arrangement as defined by the parties in conflict; Kleiman's (cited in Georgakopoulos, 2017) Values-Centered Mediation (VCM) model that is

based on Viktor Frankl's logotherapy principles that focus on exposing the meaning the conflict holds for parties and using them as stepping stones to creating understanding and collaborating on new paths forward; and Weixel-Dixon's (2017) existential psychotherapeutic model that accepts the reality of conflict in relationship and that conflict itself reveals the deep connection between individuals in relationship. While these models present cogent notions around what parties in conflict need and how mediators can help, they are less prominent among the models discussed in the conflict resolution literature but could be the subject of later studies on this topic.

While the worldview describing a mediation model's theoretical grounding is foundational to understanding conflict and conflict resolution, it is but a small portion of the *constellation of theories* that guide a mediator's practice. As Lang (2019) writes, a mediator's practice and the model they follow is influenced by their *constellation of theories*[13]. Such theories provide explanations about the nature of conflict, human behaviour, power, neutrality, and some aspects of mediation and are drawn from disparate sources including books, trainings, and academic courses, with no organization and loose connections between them (Lang & Taylor, 2000, pp. 102-103). Other aspects of the constellation of theories include the mediation models and approaches that detail the specific skills and steps for conducting mediation. With this in mind, this thesis concedes that it is not solely the mediation model that defines a mediator's practices but it can be a significant contributor.

---

[13] For mediation practice, this *constellation* is defined by five types of theories that sketch-out the mediator's approach to conflict analysis and, in turn, their conflict resolution practice. This *constellation of theories* consists of a mediator's learnings, which constitute "a vast collection of beliefs, principles, biases, models, doctrines, philosophies, and standards that shape our perceptions of the world around us and influence our decision making (Lang, 2019, p. 71-72)." Lang's constellation of theories offers an explanation of the values, assumptions, and behaviours that shape how the mediator makes sense of people and their experiences (Lang & Taylor, 2000, p. 93). The mediator's constellations consider their core beliefs, theories, and abstract ideas that explain phenomena. Such theories and abstracts offer meaning and structure to events and observations and may be predictive or descriptive of what is being experienced. In the context of mediation, these theories and abstracts offer consistent and organized explanations, and, according to Lang & Taylor, the simpler and more explanatory the theory, the more apt it is to provide understanding for diverse situations (Lang & Taylor, 2000, p. 102).

To better ground this thesis, specific theories and practices of relational mediation provide clearer focus for the remainder of this thesis. Therefore, four relational models of mediation have been selected for deeper study to provide this clear grounding and to illustrate the arguments that follow. These models are similar to one another in that they contain common currents of theories and values that place them firmly in the relational orientation of mediation theory and practice. Furthermore, the practices and processes they propose to mediators are among the more salient across conflict resolution and mediation practice literature. Yet, despite their commonalities, they each propose something unique to mediation practice that adds to the possible tools mediators may employ in their trade. Below are limited descriptions of each model, as these descriptions will receive further elaboration and development in the chapters that follow.

a. Transformative mediation model

Among the more established and developed of the relational models is the transformative mediation model introduced by Bush and Folger. Bush and Folger (1994) introduce the notion of moral development with their transformative mediation approach that favours the balancing of empowerment and recognition. For Bush and Folger, the problem-solving approach that had been common mediation practice in the preceding decades regards the goal of the mediation to be the identification and attempted satisfaction as the conflict is framed as a problem to be solved (Bush & Folger, 1994, p. 81). Conversely, for the transformative model, a conflict is regarded as "a crisis of human interaction" (Bush & Folger, 2001, p. 11). They go on to suggest that in situations of conflict, people tend to become distrustful and suspicious and allow their view of the situation to be obscured or narrowed. Such a narrowing of the view permits an obscuring of the problem as it is covered in layers of emotion and assumptions. Ultimately, the propensity to

narrow one's focus during conflict enables disconnection from the opponent's needs and a degraded ability to communicate and make favourable decisions (Bush & Folger, 2001, p. 11).

Transformative mediation recognizes that mediation is a venue for solving a problem but considers the problem itself to be a secondary matter to the transformative process. In the transformative model, the primary matter being addressed is the moral development of the parties through the two distinct alternative goals. First, reinforcement of *empowerment* of the self through "realizing and strengthening one's inherent human capacity for dealing with difficulties of all kinds by engaging in conscious and deliberate reflection, choice and action;" and second, *recognition* which "involves reaching beyond the self to relate to others. This occurs through realizing and strengthening one's inherent capacity for experiencing and expressing concern and consideration for others, especially others whose situation is 'different' from one's own" (Bush & Folger, 1994, p. 81).

The role of the transformative mediator extends beyond guiding a process for parties to find a solution to the problem(s) they have identified; rather, the transformative mediator creates the opportunities for parties to shape the process itself, following parties as they navigate the conversation and offering opportunities to highlight moments that allow for empowerment and recognition between the parties (Bush & Folger, 2001, p. 12). Transformative mediators are called to let go of hopes for resolution and regard small steps in empowerment and recognition as successes in the process that might lead to a different way of relating to one another that values this paradigm of relating to self and other.

Several volumes, articles, and chapters discussing the transformative model are in circulation, and many authors have explored the keys to the model's effectiveness in resolving conflict. Among the more prominent studies of the transformative mediation model is the

evaluation of the United States Postal Service (USPS) Resolve Employment Disputes Reach Equitably Solutions Swiftly (REDRESS) Program. Established in 1994, this program is a service directed at employees of the USPS to bring resolutions to internal employment disputes. The program is clear in its adherence to the transformative mediation model as it identified this model as being suitable for addressing complaints of discrimination, which had seen a steep increase before the establishment of the program. A study conducted from 1998 to 2003 found that approximately 69% of employees and supervisors who had partaken of the REDRESS Program to resolve workplace disputes found the process to be fair and approximately 90% of participants were satisfied with the mediation process and the individual mediators handling their cases, regardless of the outcome (Moon & Bingham, 2006, p. 48).

While transformative mediation is not the sole model that offers a relational approach to conflict resolution, it is worth noting that it is often synonymous with the term *relational mediation*.

b. Narrative mediation model

Monk and Winslade (2000) turn toward the sense-making of a conflict experience with their model of narrative mediation, positing that individuals are raised in contexts with narratives that shape who they are and how they see themselves within their respective contexts. Not only do the narratives offer sense-making, but these narratives can be based in fact or not, and their basis in objective reality (or not) is of little consequence. The authors note that rigid views of reality are dependent on the knower's dominant narratives. Therefore, narrative mediators rely on the construction of a conflict story as the parties each see it (Winslade & Monk, 2000, p. 3). Further to this, Winslade and Monk emphasize the impact of broader discourse on identities and

subjective experience, noting that much of these are bound within social and historical contexts (Winslade & Monk, 2000, p. 133).

The narrative mediation model suggests that given these differing social and historical contexts, there is a great diversity in how meaning is made. Furthermore, without a single definable reality with a universal sense-making mechanism, diversity will give rise to conflicts and thus, for narrative mediation "conflict is understood from the outside-in as the almost inevitable by-product of diversity, rather than as the result of the expression of personal needs or interests" (Winslade & Monk, 2000, p. 41). As parties often do not have access to a universally accepted or comprehensive view of the truth or facts of a situation, this incoherence will also contribute to the emergence of conflict. For narrative mediators, parties to a conflict will always view their conflict from a particular perspective and a particular social position regarding that conflict situation. This perspective functions as facts or truth for the party and may lead to a diametric opposition from the position of the other party who may not share those facts or truths (Winslade & Monk, p. 41). Winslade and Monk go further to recognize the essential role of power and entitlement in the construction of the conflict narrative for parties in conflict. In this model, narratives about the role of power and entitlement in creating the social world and influencing the view of a conflict from a given perspective are explored in depth.

In narrative mediation, the role of the mediator is not to guide parties to an agreement on the facts or reality of the conflict. Rather, a mediator works with parties to uncover the many layers of the story that undergird a conflict to help parties:

> open up possibilities for alternative stories to gain an audience. Rather than searching for one true story, the narrative mode of thinking welcomes the complexity of competing stories and numerous influential background stories. Out of this complexity can emerge a

> range of possible futures from which parties to mediation can choose. (Winslade & Monk, p. 53)

Creating space for alternative stories evades the narrowing of parties' perspectives and generates opportunities for possible change.

Authors Winslade and Monk themselves note their backgrounds as narrative therapists, suggesting a close link between the practice of narrative therapy and narrative mediation. Indeed, the theoretical grounding of narrative therapy mirrors that of narrative mediation in its basic assumptions regarding the role of social, political, and cultural contexts in the production of problems **(**Monk et al., 1996). It also regards a re-telling of the discourse of the problem to uncover talents, resources, and abilities for the client to re-create their own view of themselves.

While not as prolific throughout the mediation literature as transformative mediation, narrative mediation has been the subject of journal articles, books, and practice guides along with a twice yearly published journal *Narrative and Conflict: Explorations in Theory and Practice* and continues to be among the mediation models available for aspiring or experienced mediators to learn.

c. Insight mediation model

Melchin and Picard (2009) offer another model of relational mediation in their work on insight mediation. This approach follows philosopher Bernard Lonergan's insight theory of learning. The insight model prompts parties to learn about themselves, the other party, and the contexts and conflicts in which they find themselves. As read in the definition of conflict from the insight approach, "Conflict is defined as emerging from the experience of threats-to-cares. The use of the term *cares* is not intended to simply connote the idea of caring, but is consistent with Lonergan's levels of the good he calls values" (Picard & Jull, 2011, p. 153). Embedded

within the point of departure is the assumption that conflict pertains to the subjective experience of behaviour that is interpreted as a threat to something that is of fundamental importance to one or more people. The insight model of mediation directs attention toward how personal transformation occurs through learning. For the authors, it is this change that alters meaning perspectives is at the root of resolving conflict. Lonergan's ideas that insights affect cognition as well as emotions offer the insight model's foundations of conflict resolution (Melchin & Picard, 2009, p. 21).

The insight model works according to a preoccupation with what matters most to parties, or their *cares*, and how those *cares* are threatened throughout the conflict experience (Melchin & Picard, 2009, p. 78). The mediator's questioning is intended to prompt parties to consider where the meanings that they have ascribed to what they observe and experience originate, especially inaccurate or incomplete meanings. The goal of such interactions is to lead parties to a deeper understanding of what is important to them in a way that leads them toward different attitudes and perspectives that elicit different actions (Melchin & Picard, 2009, p. 78). The insight mediator questions parties about what they find important in the conflict and from where that importance stems. This line of questioning is thought to prompt insights or new learnings about what matters most to them and prompting curiosity about that matters to the other party and to come to new understandings about how these cares and threats are interpreted by the other and vice versa. Through such insights, insight mediators seek to "achieve breakthroughs in perspectives and attitudes that shift relationships to new ground" (Melchin & Picard, 2009, p. 78).

Much like narrative mediation, the insight model has not seen as wide of a following or theoretical or practical development as transformative mediation. Two volumes and several

journal articles, as well as a small number of training programs, including a partnership with the Ontario Association for Family Mediation, appear to be the current sources of insight mediation training and development. However, while insight mediation may have seen limited reach, it has sparked the development of insight policing, which has seen a steady development. Following the insight mediation model, insight policing employs many of the basic communication and analytical skills taught to insight mediators and follows the same theoretical foundations as the insight mediation model. According to Price (2016), training in this policing model was piloted and studied in 2012 and 2014 as a partnership between academics and two police forces in the United States. While the scope of the study is limited, Price (2016) notes that it did successfully respond to some of the needs identified by the policing partners. As of the time of writing, insight policing training continues to be administered by the Centre for Applied Conflict Resolution.

d. Nonviolent communication mediation model

Rosenberg's (2015) nonviolent communication (NVC) approach to understanding and resolving conflict departs from the assumption that people behave violently and exploitatively when their needs, which are fundamental and universal, are unmet. The role of listening, empathy, feelings, and giving voice to these in accurate and collaborative ways are at the heart of the NVC method of communication and the mediation model upon which it was built.

While not often conventionally understood as a mediation model, Rosenberg's foundational text that describes and prescribes NVC practice includes a section that guides mediators on how to harness the NVC language for conflict resolution purposes as third-party helpers. For Rosenberg, the primary role of a mediator is to promote empathic connection between parties, helping each of them to identify and communicate about their own needs,

identify the other party's needs, distinguish between needs and strategies used to satisfy those needs, provide empathy when possible since pain often accompanies conflict and often blocks empathy, and propose strategies to resolve the conflict (Rosenberg, 2015, p. 164). Arieli and Armaly (2022) add that beyond establishing connection and empathy, NVC mediation is intended to challenge and change the negative views that parties hold of each other (Arieli & Armaly, 2022, p. 358). For Rosenberg, the quality of the connection is what facilitates or blocks conflict resolution, thus making the facilitation of connection the mediator's primary role in mediation (Rosenberg, 2015, p. 161).

Rosenberg's work asserts that conflict takes the form of life-alienating language or, more commonly, language that conveys judgment of one another. Such language creates a block to compassion, which sits at the root of conflict and constitutes "tragic expressions of our own needs and values" (Rosenberg, 2015, p. 15) that perpetuate division and compel life-alienating behaviour. In the NVC model of communication, parties are encouraged to engage in a four-step process, starting with what they have *observed* from the other or heard the other person say with as much objectivity as possible. They are then invited to express the *feelings* that the observation evoked and state the *need* that has been fulfilled or frustrated as a result of the action or words of the other person. Finally, the fourth step is to make a *request* of the other person to help the speaker have their needs met. The four steps are complemented by the speaker's attempts to discern the same information about the observation, feeling, needs, and requests that the other person might be holding within them. The reciprocity of the method is ultimately intended to create an empathic connection between the two (or more) parties. This empathy and understanding improves the possibility that harmful conflict will either be avoided or will be

resolved with cooperation and is born of the innate enjoyment of compassionate giving and receiving from one another .

These components of NVC are intended to promote authenticity and honesty in self-expression as well as curiosity and connection to the other. The universality of these needs offers opportunities for conflicting parties to relate to one another at the most fundamental human levels. NVC emphasizes nonjudgement in its practice, understanding of one's own feelings and needs, empathy with the other's frustrated needs, and collaboration with the other to have needs met. It also underlines the need to balance satisfying one's own needs with having curiosity about, and the possibility of satisfying, the other's needs.

Apart from the application of NVC to mediation practice, NVC is among the most prolific of the conflict resolution models reviewed in this thesis. Its application to healthcare (Sears, 2010), education (Rosenberg, 2003), parenting (Kashtan, 2004), youth mental health (Givehchi, Navabinejad, Farzad, 2017), international settings such as the Israeli-Palestinian context (Lifshitz, Kashtan, and Kashtan, cited in Kuriansky, 2015), and other contexts demonstrates the appeal of the model as a method to avert and resolve conflict in virtually any context.

3. Similarities between the relational mediation models

This thesis contends that the relational mediation models summarised above share common elements and it is appropriate to group them together based on their convergence of foundational ethics of balancing concern for self, an assumption of interdependence between parties, and other and in their reliance on parties' experience of conflict as a path to resolution. This becomes especially prevalent when considering the role of the self and subjectivity in conflict and conflict resolution. First, each of the approaches takes parties' experience as real and true for them. Relational mediation practices employ strategies that help parties consider how

they have experienced the relationship and the conflict from their own perspective with the hope that this reflection gives deeper understanding of the experience and the meaning parties may be making of the experience. On this matter, each approach presumes that a given incident or relationship may be experienced in a completely unique way, dependent on the parties' previous experiences, values, fears, hopes, expectations, needs, and desires. Indeed, each approach acknowledges that based on this assumption, there are things that are considered subjective truth for the party that may only exist for that party or that take different forms for each party. It is not necessarily the event itself that is in question when it comes to mediation practices. Rather, each of the approaches attempts to call attention to the unique nature of the party's experience, the impacts on the party, and, ultimately, the impacts on the relationship and how they relate to one another.

Second, each approach presumes that parties hold these first-person experiences of a relationship or incident tightly and are often resistant to questioning of the experience itself. In each approach, it is not the mediator's goal to establish facts that support the meaning that has been made by either or both parties. Rather, each model seeks to offer paths to deeper and clearer understanding of the party's own difficulty with the relationship through various avenues and framings of the issues, including moral development and self-knowledge (transformative), shedding light on entitlements and embracing complexity (narrative), self-knowledge and learning (insight), or through grasping and taking responsibility for feelings and needs (NVC). Each approach posits that through such avenues toward self-understanding, parties will better understand the differences and convergences between their experiences and the unacknowledged impacts the conflict may have had on themselves. It is also posited by each of the approaches that such self-understanding will lead to alternative methods or strategies for resolving the

conflict as parties shift away from their positions. More specifically, mediators practicing these models believe that there are multiple avenues to resolve a conflict that can satisfy the majority of each party's expectations, concerns, needs, desires, or cares, depending on the jargon espoused by the model.

Third, and related to the second point, each of these four models is cognizant of the conditions that create the most fertile ground for self-reflection and self-understanding. The four approaches also value a measure of supportive questioning of the meaning the parties make of their respective first-person experience of conflict. Indeed, each approach notes that a mediator's techniques with parties require trust-building behaviours that foster the conditions for parties to be more likely to engage in such self-reflection and self-questioning. For this, each approach prescribes mediator interactions that convey some form of acceptance and non judgement. In this regard, the mediator has an appreciation for the subjective experience of each party and works with those experiences in ways that do not seek to invalidate the experience. Rather, mediators seek to deepen the self-reflection and meanings ascribed to these subjective experiences and broaden the scope of the experience to include more perspectives, as will be explored in the following chapter.

Fourth, each of the four approaches included here considers the mediation process to be more than a conflict resolution process to address aspects of the past relationship. They also seek to demonstrate and practice different ways of interacting relationally for the future of the parties' relationship that attends to the subjective experience of all parties. Put simply, relational mediators attempt to prepare parties for interactions that target how the parties can respectfully and effectively interact with one another in the future of their relationship, regardless of the matter to be discussed. This suggests an attempt to alter or change how the other party and the

conflict appear to each other through a broadening of interactions. This piece of relational mediation practices presumes that mediation is an opportunity to discover more productive and healthy patterns of interaction that can influence or transform parties' subjective experiences going forward. This is significant as it assumes that such influence or transformation is possible, given the proper conditions, strategies, and positive experiences of the mediation process. In the relational approach, conflict resolution is more than a singular event of conflict resolution. They promise new patterns and new or altered subjective opinions about the other party and the possibilities for the future of the relationship.

While each of the four models use their own framing and jargon, they all target analogous aspects of the self, the other, the context, and the conflict. Furthermore, as noted above, many mediators may not be trained in a specific model and/or they may borrow concepts from any of the models to which they have been exposed. Such a "mix and match" of mediation models is common and thus, distinguishing which model from which a mediator is drawing may not be a worthwhile endeavor for the purposes of this thesis. What is worthwhile for the remainder of this thesis is an understanding that relational mediation targets something different from other models of mediation and is the focus of this thesis because of these particularities and how mediators work with them.

4. The problems with relational mediation theory and practice

Relational mediation proposes an approach to conflict resolution that takes parties' subjective conflict experience as the primary content for mediation processes and the source of conflict resolution but that this approach comes with risks. This is in contrast to conflict settlement and resolution processes that rely on more objective elements including submission of evidence, as in the case of adjudication or arbitration by a third-party decision maker, or the use

of objective criteria to settle disputes informally, as advocated by evaluative mediation practices. While these approaches leave final decision-making in the hands of parties, mediators practicing according to these models rely on normative criteria that are applied to the situation as the third-party sees it through their evaluative lenses and influence the process accordingly. While there is a place for such processes, relational mediation orients toward the more elusive and subjective views that the parties hold of conflict, themselves, and the other party. The orientation toward the subjective experience of conflict presents several challenges that optimistic mediators are challenged to overcome.

First, the relational mediator uses the conflict analysis tools their models provide but these tools are applied by the mediator with a measure of their own subjectivity. That is, the mediator's own perceptions, feelings, and experience will influence or determine the methods they employ in their intervention. While based in some theory about conflict, human nature, and what parties need for resolution, the mediator's analysis remains open to their own interpretation and judgment as they analyse the sources of conflict that are often in themselves subjective. Specifically, the relational mediator is committed to grasping each parties' subjective experience of conflict but the mediator's own assumptions about conflict and the parties' dispositions will always be shaped by their own subjective views of how communication ought to operate for best results and how improving relationships can be best supported. There is nothing inherently nefarious or necessarily avoidable in this method of conflict analysis but it does leave the mediator somewhat vulnerable to the blind spots in their own subjective views.

Second, despite the procedural and somewhat objective approaches suggested by the relational models, there is a great deal of mediator subjectivity implied in the application of relational mediation practices that could be perceived or actually impact mediator neutrality or

impartiality. Central to the vulnerability of mediator subjectivity is the idea that mediator neutrality or impartiality is intended to privilege the parties' self-determination and, to some extent, restrict the mediator's involvement in the conflict to reinforce the parties' responsibility to resolve the conflict. However, as Mayer (2004) suggests, neutrality is not entirely possible and may not even be desirable. In the mediator's attempt to avoid substantive influence, mediators do, in fact, wield substantive influence intentionally and unintentionally thanks to the common interpretation of the mediator as *process expert,* an expert on how parties should communicate with each other, rather than *substantive expert,* ready to give an informed opinion regarding the content of the conflict. For Mayer, the process and content of a mediation are inextricably connected and this often goes unaccounted for by practicing mediators (Mayer, 2004, p. 32). This argument is somewhat aligned with Mayer's (2022) assertion that mediators may find themselves in a *neutrality trap* that prevents them from acknowledging the objective reality of systemic harm and its impacts on their mediation cases and clients. For Mayer, a neutral and impartial relational mediator is less focused on the facts of the conflict as the parties describe them as they will not be evaluating the facts to judge what the solution ought to be. However, Mayer asserts that such neutrality toward the conflicts and parties serve to reinforce power imbalances, and ultimately, may lead to unfair outcomes and to no impact on the greater systems of injustice. In this regard, Mayer is advocating for mediators to apply their own subjective lens of social justice that attends to the objective reality of systemic discrimination, a perspective that receives limited attention in the relational mediation models explored here but is addressed through a Levinasian lens on justice by Froese (2022).

Third, and closely related to the above points, despite an assertion that relational mediation theories and models transcend cultural boundaries, the assumptions about human

nature, conflict, and conflict resolution, including the assumption of the subjective nature of the conflict experience, are culturally-determined. While not specific to the relational mediation approach, Kahane's (2007) criticism of many ADR approaches suggests that despite attempting to transcend cultural boundaries, ADR practices are indeed culturally-bound and effectively uphold a particular cultural dominance. While the relational mediation models are perhaps more procedurally flexible and considerate of emotions than many other ADR processes, it remains that these approaches are rooted in modern Western thought and may not appeal to culturally-other sensibilities. Brigg (2008) echoes this perspective, noting that practitioners in the field tend to bypass differences found in cultural, ethnic, religious, and values conflict. While practitioners do not do this with an intentional dominance or imperialism, they remain unreflective in their export of colonial ways of knowing and doing and of colonial institutions that serve as vehicles for these ontologies and epistemologies without proper regard for cultural *others*.[14] Thus, an approach that prioritizes individual experiences of conflict based in the culturally-defined Western frames of understanding could create challenges mediating conflicts between parties from diverse backgrounds, especially if the mediator is inattentive to the cultural specificities and intercultural dynamics of the parties before them.

[14] Ting-Toomey and Oetzel's (2001) contribution to the question of culture in conflict resolution notes that conflict between culturally different parties often comes with cultural expectations about the conflict handling methods themselves. For Ting-Toomey and Oetzel, cultural values impact the norms, symbols, and meanings that are employed in addressing conflict. These norms, symbols, and meanings will prescribe who should play what role in the conflict management process, what behaviours and words are favourable and unfavourable in conflict management processes, and that communication patterns are encoded at the unconscious level, acquired early in life through a variety of socialization methods (Ting-Toomey & Oetzel, 2001). Finally, Ting-Toomey and Oetzel maintain that intercultural conflict, that is, conflict between parties who do not belong to the same cultural groups, implies that those engaging in these processes require skills particular to the intercultural context, including attention to certain needs and conflict dynamics, such as those for saving face, deeply-held beliefs about the cultural *other* including biases and intergroup perceptions, differing culturally-determined definitions of the conflict episode and methods for resolving it, and systems thinking by the intervenor, and thus require particular skills to manage conflict in an intercultural context.

Avruch's (2006) work challenges such a position, suggesting that while culture has some determinative functions within the individual and group, culture should not be reduced to a reified, uniformly distributed, timeless, and homogenous aspect of the human self, including the way in which an individual defines and experiences conflict. In practice, Avruch challenges the reification and uniformity of culture as a unit of conflict analysis with specific attention to conflict resolution. Rather, Avruch suggests that individuals belong to multiple groups, each possessing their own cultural norms, thus creating an array of influences on the individual defined as much by culture as other social determinants (Avruch, 2006, pp. 15-17). Despite this orientation toward individual experience, Avruch maintains that culture(s) distinctly influence(s) the mind, including the cognition and affect, as culture is loaded and internalized by the individual, and impacts reactions, values, and desires of individuals (Avruch, 2006, p. 19). As Avruch asserts, "... that culture is to some extent always situational, flexible, and responsive to the exigencies of the worlds that individuals confront" (Avruch, 2006, p. 20). Finally, while Avruch acknowledges the problem-solving wisdom implicit in cultural systems, it ought not be assumed that such wisdom is sufficient or optimal. Avruch's arguments point away from the definition of culture as something that can be known and navigated based on group membership and toward a view of culture as contributing multiple facets to how the individual experiences the world and, in particular, conflict.

Finally, the relational approach to mediation is not intended to develop objective, universally accepted, and grounded facts about the conflict and this can have profound impacts on developing trust and mutual understanding between parties in mediation. As mentioned above, relational mediation practices are based on parties' subjective experiences of conflict and the potential paths to understanding the conflict through this lens. As Stone, Patton and Heen

(2000) astutely note, conflict often occurs as a result of a disagreement over *what happened.* By this, the authors suggest that "conflicts are almost never about getting the facts right. They are about conflicting perceptions, interpretations, and values. They are not about what a contract states, they are about what a contract *means*… they are not about what is true, they are about what is important" (Stone, Patton, and Heen, 2000, p. 10). The authors, like many of the authors discussed above, suggest that identifying and letting go of assumptions and subjective evaluations opens parties in conflict up to see the problems of their own perceptions and make room for the experiences and perceptions of the other parties.

The problem posed by the relational approach to mediation is that without shared facts about past events, parties often find themselves without common points of reference and agreements over facts, which fuels mistrust. The absence of accepted facts of the conflict can create challenges for the mediator working with parties who are intent on asserting the certainty of their facts about the past and their impacts on the present interaction and future of the relationship. Notable challenges arise when there is a fundamental disagreement over what constitutes harm, how it has been experienced, the wrong-doer's intentions, and the impacts on the harmed party. Such a difference in subjective experience of an incident or pattern may lead to impasse as the parties' divergent experiences do not seem to compare to one another despite mediator intervention. Without some established set of facts of events that are not embedded in perceptions, interpretations, and values, moving past impasses and toward communication built on trust becomes particularly difficult.[15]

[15] The NVC approach does attend to observations that exclude perceptions, interpretations, and values as the first step of nonviolent communication. The logic of the approach serves the purpose of diminishing defensive responses to statements describing events in order to create better conditions for connection between parties in conflict as well as an opportunity to take a step back from the situation and consider a more objective position in relation to a moment, a person, or a conflict. However, parties who are resistant to such an approach, who are unskilled in this

Further to this, inaccurate, incomplete, or erroneous accounts of the conflict experience may render relational mediation difficult as the mediator navigates the process with parties who may feel a need for recognition of something the other party cannot or will not perceive.[16] This challenge is the province of memory, cognitive distortion, unconscious bias, and egocentric perceptions of fairness.[17] The studies on the fallibility of memory are voluminous and multidimensional, taking on psychological, neurological, and philosophical orientations. For the purposes of this thesis, it suffices to recognize that memory fallibility is a particularly persistent challenge for many mediators. Specifically, differences in how parties remember (or do not remember) incidents has implications for the establishment of shared facts and the development of mutual trust.[18] Recalling that a mediator is not empowered with the role of deciding which party's story is true, complete, or real, this creates challenges for parties with genuinely different recollections of the past.

Much like memory being fallible, other cognitive processes may offer problematic data for a mediation process. Bias, defined as systematic error in thinking that prevents an objective and accurate perception of the world, explains how two people can interpret the same thing very

---

capability, and who hold tight to their perceptions, interpretations, and values may not be amenable to questioning whether their "observation" is tainted by perception, interpretation, or values.

[16] This thesis recognizes that parties may be tempted to knowingly share falsehoods throughout the mediation process. Waldman (2011) notes this in a text devoted to mediation ethics that intentional lying in mediation is an issue with which mediators contend. Waldman further notes that mediators may or may not be aware that parties are fabricating parts of their conflict experience and that in either case, mediators have strategies for addressing such instances, such as reminding parties about the likely shakiness of agreements based on falsehoods. This thesis does not suggest that fabrication does not occur in mediation. It does, however, suggest that when a mediator is unaware of the fabrication, there may not be reliable ways to determine this and thus, must work with this possibility in mind. For the purposes of this thesis, however, fabrication is not the subject of this thesis and will thus not be directly addressed in the body of this thesis.

[17] Memory, cognitive distortion, and egocentric perceptions of fairness are each worthy of their own volumes. This work offers a few cursory definitions of these phenomena and how they apply to relational mediation processes.

[18] The quantity of texts written about recollection, time, and memory and their intersection with experience would fill multiple theses and continue to develop. The role of memory in conflict resolution is explored extensively in studies on post-conflict collectivities (Charbonneau & Parent, 2013 and Amadiume & Na'im, 2000, for example) but is addressed in limited measures at the interpersonal level. Thus, this thesis will only briefly mention memory as an aspect of conveying an experience related to a conflict in the context of relational mediation practice.

differently (Devers, 2025, p. 1), representing another class of information that is unintentionally inaccurate. The range of such biases and their impacts on judgement and decision-making is extensive and lists and descriptions abound in popular culture (McRaney, 2011; Gladwell, 2007; Kahneman, 2011) and in professional training settings. Lang (2002) notes that cognitive biases in negotiation may present blocks to communication. This is supported by Allred (cited in Deutsch & Coleman, 2000), who notes studies into the impacts of bias on emotions in dispute resolution may lead to impasses. Specifically, biases affect the thinking-feeling-acting frames that are experienced by individual parties but affect the interactional field. Cognitive biases specific to negotiation such as scarcity and deprivation thinking, zero-sum assumptions, ignoring others' cognitions, and reactive devaluation can be difficult to tease out. These biases alter the parties' focus of what is possible as well as the participants' view of the other as an equal with whom they are negotiating (Lang, 2002, p. 96). By definition, biases are systematic and hidden from consciousness, making them difficult to recognize or address in a mediation setting.

In addition to cognitive biases, cognitive distortions can and do impact parties' subjective experience of conflict. Summarized by Burns (1980), these can take many forms and alter the thoughts, and in turn, the feelings a person will have about something. Burns' proposal is that these distorted thoughts are not based on objective reasoning and serve to limit expansion of reflection and reasoning. For Burns, pervasive negative thoughts provoke negative emotions that in turn create negative thoughts in a cycle that can not only lead to depression but also to a cycle of distorted thoughts. This type of distortion relies on an assumption that feelings are facts and that disrupting this cycle requires a disruption of the connection between the thoughts and the feelings. This is strongly connected to Mayer's (2000) contribution to the definition of conflict and conflict resolution through the tripartite lenses of conflict as thoughts and feelings that

impact behaviour. The prospect of cognitive distortions in meditation processes presents a challenge for a mediator who may or may not presume that the parties' experience or perception of a conflict is distorted. Essentially, the mediator has no reliable way of knowing how much of what a party shares is distorted and how much is accurate and therefore relatable to the other party and where there could be possible correction. While a mediator is not placed to make this determination, it can make navigating distortion during mediation a real challenge and may equally lead to impasse.

Likewise, disparate views of fairness can also be within the province of an inaccurate, incomplete, or erroneous account of the conflict experience. The concept of *fairness* itself is not an absolute construct and is coloured by self-interest (Deutsch & Coleman, 2001, pp. 213-219). This point is further supported by Weitzman and Weitzman (also Deutsch & Coleman, 2001) who note studies of fairness in negotiation regarding collective bargaining simulations. The study showed discrepancies between interpretations of fairness between parties with each party unknowingly favouring their own self-interest (Deutsch & Coleman, 2001, p. 200). Thus, unknowingly favouring one's own interests over and above that of the other party is a risk in an account of the subjective experience of conflict that could result in an impasse in mediation.

This thesis does not argue that differences between parties' subjective conflict experiences that are found in memory, biases, distortions, and perceptions of fairness are inherently negative aspects of relational mediation processes. Rather, these are part of the human experience and form the content of mediation and require skill for the mediator to navigate. Indeed, while Cloke (2002) suggests that all subjective experiences of conflict have an element of falseness to them as parties often fail to tell the whole truth and leave out distasteful parts out of their conflict story, usually about their own regrettable behaviour or attitudes, this thesis does not

assert that such falseness is devoid of meaning. On the contrary, there is a greater potential for this falseness to be laid bare, challenged, and explored, if parties are open enough to this and the mediator is skilled enough. For Cloke, mediators working with these dynamics attempt to bring party honesty and authenticity to their processes in such a way that values parties' and the process' integrity. Focusing on the impacts of dishonesty on mediation outcome, Cloke suggests that mediators better serve the parties before them by orienting interactions toward their relationship rather than the facts (Cloke, 2002, p. 69). However, leaving these parts out can often represent challenges to mediators who work to establish common understanding of the past and build trust between parties.

Abstaining from challenging the subjectivity of the conflict experience can allow a mediator to develop trust with the parties. By accepting the description of the parties' conflict experience, the mediator is creating an opportunity to understand the experience from a different angle and with new depth. The relational mediator works to assist parties with coming to terms with the narrowness and limitations of their own perspectives and this is best achieved when that narrowness is acknowledged. The general theory suggests that once this acknowledgement occurs, the inclusion of others' perspectives becomes more possible.

While a relational mediator will grasp that there are objectively events that took place and that all parties may agree have occurred, it is not the event that necessarily draws the mediator's attention; rather, the mediator will guide parties in their consideration regarding the aspects of the conflict that have drawn the parties' attention, how they perceive it, and how it impacts the their relationship. As Cloke (2002) notes, mediation is "the search for relational truth" (Cloke, 2002, p. 9) and that "Mediators who assume one party is right and the other wrong have ignored the fact that, in mediation, being right is a form of being wrong" (Cloke, 2002, p. 10). Cloke's point is to

assert that mediators have a responsibility to examine their own biases about the nature of right and wrong and that such biases reinforce the adversarial thinking mediation is intended to challenge and ultimately, shift to a more integrated and cooperative approach to relationships and conflict.

Conclusion

This chapter is offered a description of the variety of mediation practices with particular attention to the relational mediation models. Mediation as a practice, and relational mediation models in particular, propose theoretical assumptions about the origins of interpersonal conflict and practices that respond to these assumptions. The relational mediation models share the assumption that the most sustainable and satisfying path to conflict resolution favors honest communication and improved relationships between parties in conflict. While the mediator may not realize it, they are approaching how the conflict is discussed and analysed through the parties' subjective experience but that the sharing about that experience between parties can lead to improved communication and relationships between the parties. The argument laid out here is that mediators' perspectives on conflict and how to resolve it are inherently limited by their assumptions, their constellation of theories, and the judgement mediators use to apply the mediation strategies they have learned. Finally, the prioritizing of subjective experiences and hopes for resolution are subject to challenges that relational mediation models may not be sufficient to address, if the disparity in conflict experience is too great, the parties will be unwilling to recognize the subjectivity of their experiences, or the mediator is unable to recognize the subjectivity of the account.

Part one of this thesis has provided the scaffolding for the remainder of this thesis and its exploration and evaluation of relational mediation and the goals it attempts to achieve. The

second part of this thesis situates the relational approach to mediation within the phenomenological approach to knowing, facilitates the parties' deeper understanding of the conflict, and sets it up for new intersubjective understanding between parties in conflict.

Part II: Relational mediation and the issue of intersubjectivity

Chapter 4: The intersection between subjectivity and conflict

Introduction

The previous chapter asserted that relational mediators work to facilitate understanding between parties in conflict to help them reach mutually-acceptable solutions and consider the future of their relationships. The content to be understood in the mediation process includes how each party has experienced the conflict and mediators facilitate this understanding using the strategies prescribed by relational mediation models. For relational mediators, the conflict is found in the subjective experience of the parties, and the resolution will also be found in what their subjective experience tells them will bring resolution. Specifically, parties are encouraged to use their self-determination to arrive at their solutions, which are more likely to be aligned with their own and the opposing party's experience of the conflict and their view of what can be done to end it. However, relational mediation theories tend to find inconsistency in the role of the mediator and their subjective view of the conflict. On this question, neutrality is the tool of choice employed by mediators to ensure mediation stays within the realm of the parties' experiences.

This part of the thesis explores the notion that relational mediators take for granted that conflict is experienced through a subjective lens and that this is the content with which they can effectively work with parties experiencing conflict. Despite the problems with this approach listed in the previous chapter, relational mediators work with the conviction that this is the path to parties developing greater mutual understanding of their conflict experiences while also developing their own solutions that will better respond to the cares, values, or needs underlying their conflict experiences. While it might not be explicitly considered so, this approach valorizes

the conflict experience without the need for absolute objective accuracy and resists the urge to judge or evaluate the experience, creating opportunities for the parties to see the conflict from one another's position in the conflict.

As will be described below, there are fitting parallels between relational mediation theory and practices and a phenomenological approach to conflict. The phenomenological approach favours a detailed description of the parties' experiences of conflict from their own subjective positions rather than a neutral or objective description of the conflict and the parties. This practice is relevant as this step of preparing parties to understand themselves and their conflict presents a crucial dimension of conflict resolution according to relational mediation theory and will be closely linked to the content on intersubjectivity developed in the fourth chapter. While the previous chapter described relational mediation as distinct from other approaches, this chapter will enrich the description of relational mediation as a phenomenological approach to interpersonal conflict, which will create the scaffolding for the fourth chapter.

This chapter will begin with a brief account of phenomenology's conception of experience, perception, and consciousness, with particular regard to conflict. Following this, a comparative description of relational mediation and a phenomenological approach to examining conflict for the purpose of guiding parties' own understanding of the conflict is made explicit. Finally, this chapter will demonstrate that each of the relational mediation models included in this thesis applies its own frame to this phenomenological approach.

1. Phenomenology, subjectivity, and the experience of conflict

The definitions of conflict outlined in the first chapter draw attention to the limited nature of conflicting parties' experiences in the course of conflict. As perspectives and emotions remain the province of experience and subjectivity, and as it is these perspectives that make up conflict,

an approach to investigating and understanding subjective experience is a reasonable path to develop. Phenomenology offers a set of tools and an approach to support an approach to conflict resolution that takes the subjective experience of conflict as a primary consideration and forms the basis of relational mediation theoretical models, though with some limitations. Specifically, phenomenology provides a point of departure for the examination of a subjective experience.

Phenomenology attempts to answer questions about *how an object presents itself* or, rather, *how an object is experienced.* Such a question speaks to the subjectivity of the experiencer and is distinct from other methods of inquiry that prioritize an objective and scientific explanation of an object rather than from the experience of the investigator. Phenomenology does not insist that the world exists unto the subject alone. Rather, phenomenology suggests that the mind is "intrinsically world-involved" (Zahavi, 2018, p. 29) and, as Husserl asserts, there is an inseparability between the world and subjectivity (Husserl, 1960, p. 62). Husserl further suggests that generating knowledge or understanding of an experience cannot depart from a 'view from nowhere' and must consider the experiencer as influencing what is being learned and how. Such a view of subjectivity presumes that while a subject may experience conflict from their own unique perspective, it does not do so in a vacuum. In the context of mediation, this suggests that the individual's experience of conflict is inescapably influenced by the world itself, as will be further elaborated in the following sections.

Zahavi (2018) goes on to suggest that objects and states of affairs may be perceived and experienced using the five senses to describe an observed or experienced thing to develop a comprehensive description. This approach stands in contrast to many scientific approaches that attempt to discover and describe experiences of the lifeworld that prioritize precision. These scientific approaches do not offer justice to matters of study in the social and human sciences,

which are most often characterized by vagueness. Furthermore, this vagueness can be amorphous, and the study of it can be approximative at best (Zahavi, 2018), offering further credence to its suitability in matters of conflict and conflict resolution.

For Zahavi, the directedness of consciousness or intentionality, is not inherently preoccupied with subjective experience but rather that "if we really wish to understand the status of physical objects, mathematical models, chemical processes, social relations, cultural products, etc., then we need to understand how they can appear as what they are and with the meaning they have" (Zahavi, 2018, p. 26). Thus, phenomenology is concerned with the intentionality toward an object, not only for creating a manner of objective understanding of the object or reality but to investigate the connections between the intentionality and the structure of the experience of the object. This structure of experience leads to presentation, judgment, valuation, and finally, the relationship between the object being perceived and the subject (Zahavi, 2018, p. 26). Phenomenology does not insist that the world exists unto the subject alone. Rather, phenomenology suggests that the mind is "intrinsically world-involved" (Zahavi, 2018, p. 29). Within the context of conflict resolution, this suggests that an individual in conflict will perceive that there is conflict, that there is an awareness of conflict and that it can be described for clearer articulation of how it presents itself to each party.

The mediator's task of directing consciousness to how conflict presents itself to parties is also aligned with a phenomenological approach to dealing with conflict. Furthermore, phenomenology's assertion that the 'view from nowhere' is impossible questions the attempt to confirm the reality or truth of experiences since there can be no common base. Crossley (1996) notes that Descartes's point of departure was that one ought to question the reality of everything that exists outside of himself and the only thing of which anyone can be sure is the existence of a

thinking mind. Husserl's thought diverges from Descartes' path, suggesting that *knowing* beyond one's consciousness is not possible and that consciousness cannot exist without some *knowing* of consciousness itself.

Phenomenologists are interested in understanding the structure of consciousness because this structure offers insight into the relationship between the mind and the world, including others or alterities that also exist in that world (Zahavi, 2018, p. 23-24). As Zahavi states,

> Consciousness has a directedness to it, it is a consciousness of something, it is characterized by intentionality. Consciousness is not concerned or preoccupied with itself, but is, rather, by nature self-transcending. For the phenomenologists, 'intentionality' is the generic term for this pointing-beyond-itself proper to consciousness. It is important not to confuse this sense of the term with the more familiar sense of intentionality as having a purpose in mind when one acts. (Zahavi, 2018, p. 16)

As Zahavi (2018) offers, objects and other people in the world are not separate from the context in which they are experiencing the world together. As noted above, one's experience is impacted by one's judgements, assumptions, and other subjective lenses through which the world is experienced. As such, phenomenology does not insist that the world exists unto the subject alone, rather, that the intention is to discover how the mind defines and experiences the world. Zahavi notes that phenomenology may seem rooted in the subjective perspective, but among its most basic objectives is to question the *possibility* of objectivity and the role of consciousness in reaching this state of objectivity.

Likewise, in the phenomenological approach, there is an acknowledgment that perception that extends from a single perspective is inherently one-sided and incomplete. As such, the perceiver will tend to create for himself what he considers to be a full account of an object,

despite only ever perceiving one side (Gallagher & Zahavi, 2010, p. 8). While this creation *could* be considered an *accurate* account of the experience, it is likely to be *incomplete* and ultimately flawed. Zahavi claims that despite the uniqueness of an object, it can appear in multiple ways as "phenomenology can be seen as a philosophical analysis of these different types of givenness" (Zahavi, 2009, p. 10). Thus, phenomenology acknowledges that individual perspectives, while limited, remain valid as data is collected throughout a phenomenological investigation. Zahavi (2008) also notes that phenomenology does not suggest that first-person knowledge is infallible. Rather, first-person knowledge is a starting point and may be corrected when new evidence is presented (Zahavi, 2008, pp. 12-13).

Demonstrating further alignment with the tasks of conflict resolution, another fundamental task of phenomenology is to give structure to the empathic approach to describing how an object presents itself and to distinguish it from other modes of thinking, such as imagination, perception, and recollection (Zahavi, 2008, p. 156). Indeed, one's subjectivity contains in it an awareness and anticipation of the other which are "the seeds of alterity" (Zahavi, 2008, p. 160). It is this quality of animate sameness and observation of behaviour and expression that permits empathy between self and other. While this view of the other permits what might be called a view to the internal states of the other, it is not to be considered infallible. Despite this fallibility, Zahavi maintains that empathy ought to be trusted (Zahavi, 2008, p. 155). This approach not only acknowledges the subjectivity of experience, it also refuses to dismiss it entirely in favour of more objective approaches to perceiving and describing a phenomenon.

Notoriously, conflict is a phenomenon that is experienced with a great deal of plurality, depending on the role and perspective one takes in conflict. Developing a comprehensive description of conflict will inevitably require multiple accounts of it, including the variety of

perspectives involved in the conflict and the interaction between these perspectives. Phenomenology does not presume that there is a singular explanation or description of a phenomenon and accepts a pluralistic view of studying and understanding a phenomenon. This supposition suggests that there *could* be agreement between the multiple experiencers of a conflict, but it does not presume this to be inevitable or objective by definition.

Phenomenology offers guidance on how to build awareness of the "world-involved mind" that must effectively account for the subject's inherently subjective view of itself and the world. Phenomenology's task is fundamentally to call into question the naive approach of the *natural attitude.* Taking up Husserl's work, Gallagher (2012), outlines that the *natural attitude* consists of a "collection of beliefs, judgments, opinions, or theories about how things work – these could be scientific theories or folk" (common sense) theories (Gallagher, 2012, p. 43). This attitude is characterized by taking one's experiences of the world as truth, fact, or objective reality without further investigation. Rather, the phenomenological approach calls attention to the *natural attitude*, an account of positional views and internal experiences of a thing and questions the universality of that experience of a thing. As Gallagher and Zahavi suggest, there is value in acknowledging the role of the subject and the parts of the self that are included in the viewing of the *thing itself* that is under investigation. As Gallagher (2012) notes, Husserl's phenomenology calls the investigator to notice the *natural attitude* and recognize it at work, that is, recognizing an approach to the experience of a phenomenon that is taken for granted.

The phenomenological approach employs *bracketing* to distinguish between the things themselves and habits of thought, or the "taken-for-grantedness" that gives structure to the experience of the things themselves (Zahavi, 2018, p. 33). To practice *bracketing*, the phenomenologist will conduct *phenomenological reduction*. The *phenomenological reduction*

consists of analyzing the relationship between the object's givenness and the subjective frames unwittingly influencing the perception of the object. *Bracketing* sheds light on the theories, interpretations, and conclusions that often replace the things themselves throughout the investigation. In this way, phenomenology is a descriptive methodology that favours a dispassionate and unprejudiced description of how a thing presents itself and serves to identify the parts of the self that have served as the grounding for the *natural attitude* - the parts of the self that colour of the experience, give it meaning and provide lenses for observing a phenomenon. Thus, *bracketing* prompts the investigator to take note of the aspects of experience that may not be universally shared and place brackets around them for further investigation. It is not a negation or a discarding of these facets of experience, but rather, a recognition of them and a registering of their influence on the experience of the thing itself. *Bracketing* and *phenomenological reduction* are intimately tied to one another as they provide data regarding an experience of a thing: noticing that aspects of that experience are being taken for granted as truth or reality and going back to the source of that assumption. As Gallagher and Zahavi (2010) suggest, "once we adopt the phenomenological attitude, we are no longer primarily interested in *what* things are… but in *how* they appear, and thus as correlates of our experience" (Gallagher & Zahavi, 2010, p. 25).

A common theme throughout much of the conflict resolution literature is a reference to a party's *perceptions* of the conflict and the relationship to the other. Indeed, mediators often attend to perceptions a great deal thus, the notion of perception requires some exploration. Among the phenomenologists, Merleau-Ponty's (1962) work on *Phenomenology of Perception* directly addresses this question. He notes that "Our perception ends in objects, and the object, once constituted, appears as the reason for all the experiences of it which we have had or could

have" (Merleau-Ponty, 1962, p. 67). Merleau-Ponty's exploration of perception is a salient one to the experience of conflict as he notes that, indeed, it is one's body that collects experiential data through perception and the self has no veritable means to confirm the interpretation as one has only oneself to consult, noting that "...when I say that I see something with my own eyes, I am saying something that cannot be challenged…" (Merleau-Ponty, 1962, p. 67). Merleau-Ponty affirms that the embodied experience of the world allows the self to question itself, though to a limited degree and with little else external to that embodied consciousness against which to compare its conclusions. For Merleau-Ponty, there is no separation of a bodily experience through the senses and the mind that perceives it.

Merleau-Ponty contributes to the focus on things perceived using the senses and the connection of experience to the mind, affirming the subjective nature of experience and the basic inaccessibility of others to directly share in those perceptions. Merleau-Ponty equally cautions against 'the experience error' whereby perception is confused with the object of perception and the perception itself rather than an element of consciousness (Merleau-Ponty, 1962, p. 5). As Merleau-Ponty adds, even the conscious construction of an objective truth would result in an objective truth only for the self who has constructed it (Merleau-Ponty, 1962, p. 355). Merleau-Ponty further suggests that knowledge of the self is incomplete and fallible thanks to faulty memories, reinterpretation and meaning-making processes and that knowledge of the other is perhaps more accessible than previously thought (Daly, 2016, p. 40). Merleau-Ponty is pointing to the obvious challenges of creating objective truths out of the stuff of experience and that reaching an objective truth regarding the dynamics and constitution of relationships may be a fruitless goal. Indeed, this is an assumption with which most mediators working with a relational model would agree, as will be explored below.

As is often described by relational mediators, they employ strategies to bring reflection to the pre-reflective parts of experience, bringing to light aspects of the parties themselves, the opposing party, their relationship, and the context that they may have intuited were important but had not necessarily explored, with or without the assistance of a third party. Indeed, it is what is described by Simon and West (2022) who frequently reference "lights and mirrors" in their work describing mediation strategies that prioritize self-determination in mediation. According to this way of practicing, when working with parties, relational mediators work to help parties discover and communicate aspects of themselves that may have escaped their attention and that may be perceived by others differently than they may perceive it themselves. They work to develop self-awareness for all parties, each through their model's unique lens and with the help of their model's tools, which frequently resemble consciousness of the *natural attitude, phenomenological reduction*, and *bracketing*.

Mediators are acutely aware that conflict is punctuated by diverging experiences and the evaluations of those experiences by the parties. As will be explored further below, among the four relational mediation models explored, there is convergence on the assumption that parties often hold tight to their subjective experiences as truths and may resist questioning, or bracketing those experiences for exploration of the natural attitudes that undergird them. These models each account for this through their particular lens using the tools of phenomenology not only for themselves but for parties to question their conflict experiences and challenge the completeness of their perceptions.

2. The relational mediator as unwitting phenomenologist

Much of the relational mediator's activities during mediation are undertaken using a phenomenological approach to conflict with the parties. Relational mediators use a

phenomenological approach to the conflict experience to help them understand the parties and their conflict as much as to help the parties understand themselves, each other, and their conflict. Using this approach leads a relational mediator away from the objective facts of the situation and toward a phenomenological approach to describing how a conflict presents itself to each party, recognizing the inherently subjective nature of the experience. In effect, the relational mediator is focused on the phenomenology of the conflict experience as they guide a mediation process, even if they do not use this language to describe their practice.

The relationship between relational mediation and phenomenology is examined by a handful of authors. Weixel-Dixon (2017) refers to a phenomenological approach when working toward conflict resolution and discusses the idea of *subjective truth* specific to mediation practice. As Weixel-Dixon (2017) positions it, "'truth' and 'reality' are constructs that are subject to re-interpretation. They are malleable, and basically lack permanence or absolute certainty" (Weixel-Dixon, 2017, p. 49). Weixel-Dixon also adds that it is these "truths" that are vigorously defended throughout conflict, often remain unexamined, and form the basis upon which people stake their positions (Weixel-Dixon, 2017, p. 7). This description of a subjective truth leads the way to an analysis of the first-person experience of conflict with truth being something that may go unquestioned without being prompted. Hanaway (2021) further supports this perspective, noting that "in conflict, there is very little we can be certain of, although we may believe that we feel very certain that we are right and the other person is wrong" (Hanaway, 2021, p. 50). However, as Hanaway concludes, such certainty is about little more than one's perceptions of a situation or person that are based on past experiences and beliefs (Hanaway, 2020, p. 50). Hanaway's point is reinforced by the connection between the phenomenology of conflict experience and some definitions of conflict.

These views of conflict experience align with studies of phenomenology. As Gallagher (2012) aptly states,

> The 'whatever appears to be as such' and the 'manner of appearing' or 'its manifestation' – these are all ways of talking about the phenomena, which is a Greek word for appearances…. The way things appear in conscious experience may be very different from the way things actually are in reality. But the phenomenologist, on this definition, is not concerned about how things actually are in reality; the phenomenologist is rather concerned about how we experience things. (p. 8)

As noted in the previous chapter, relational approaches to mediation recognize the constructed nature of experience. These approaches are less focused on the objective facts of the situations being addressed with and by parties or on determining the veracity of each party's experience or position. Put otherwise, the conflict resolution process that relational mediators guide is not about *what happened* but is about *how parties relate to one another through their subjective experience of the conflict.* The point of departure here is that phenomenology offers a method for analysing conflict as a phenomenon that is more than an objective set of circumstances or events. Rather, phenomenological investigation considers that conflict may present itself differently to different parties and the mediator, depending on their previous experiences, values, expectations, and other attributes that shape social life. More specifically, relational models of mediation require that mediators possess the aptitude to grasp the subjective experiences of parties in conflict to be effective in their practice.

In relational mediation theory and practice, there typically is no initial establishment of the facts of a conflict. Rather, the relational mediator will prioritize a description of the conflict from the experience of each party as well as questioning about the meaning that shapes, or the

evaluation, of the experience. The mediator guides these parallel lines of inquiry to clarify and perhaps to generate a questioning of the party's assumptions that support their experience of a conflict, that is, the thoughts, feelings, perceptions, beliefs, and judgments about the person or events related to the conflict that are surfaced and explored. These are the realms of consciousness in which a relational mediator works with parties to direct intention to gain insights into what makes the experience a veritable conflict for the party. Furthermore, it provides a path through which a mediator can help parties expand their views of what it could take to resolve the matter.

Phenomenology does not require universal agreement regarding the appearance of a thing for it to produce useful information. This is wholly relevant to conflict resolution as divergence in perceptions of an incident or pattern of incidents is a central feature of what is in dispute. As outlined in a previous chapter, it is among the qualities of a mediator to accept that there may be ambiguity in their work with conflicting parties and that comfort with such ambiguity is counted as a strength among mediators. Thus, leading parties through a phenomenological investigation may carry with it risks, which the mediator must be capable of managing or mitigating. Writing about a model of existential psychotherapy and its influence on her mediation practice, Weixel-Dixon (2017) suggests that the possible implications of having one's assumptions questioned or hypotheses disproved can be difficult for parties in mediation, noting,

> If the possibility of being mistaken in one's assumptions is entertained, a shift in some aspect of the world-view is likely to occur; this in turn is likely to affect other dimensions of the world-view: the aspects of self, others, the world, and the cosmos. Such changes can be challenging, as they indicate our existence is permeated with chaos. (p. 48)

Weixel-Dixon adds that assumptions play the role of combatting uncertainty, something sought by most human beings. However, relying on assumptions may complicate matters when they become the basis for actions, as they may be considered universal truths by the believer, despite others not sharing in those truths. Indeed, Weixel-Dixon affirms that it is holding to such erroneous or mistaken assumptions that generate or sustain conflict (Weixel-Dixon, 2017, p. 23). As such, Weixel-Dixon affirms that a mediator takes risks when engaging in techniques that lead the party to hold up their own experience of the conflict for examination. However, the mediator also recognizes the risks of *not* questioning assumptions and will often work to create the conditions where questioning assumptions may be permitted without creating the perception of threat to either party.

Each of the four relational mediation models explored attends to phenomenological *bracketing* through their own techniques and lenses. For Bush and Folger, the notions of empowerment and recognition remain central to the prospect of bracketing and phenomenological reduction in the transformative mediation model. Through consistent techniques that allow parties to attend to a "*mircofocus on the parties' contributions* (Bush & Folger, 1994, p. 192), "*encouraging the parties' deliberation and choice making*" (Bush & Folger, 1994, p. 194) and "*encouraging perspective taking*" (Bush & Folger, 1994, p. 196), transformative mediation implicitly creates circumstances that promote empowerment and recognition that challenge the parties' previous patterns of interaction that were characterized in a very different way. In effect, the transformative model seeks to bracket parties' preceding methods of solving disputes that kept them stuck in their impasse. Shedding light on this impasse through bracketing leads to an experience where feelings of threat, debilitation, and self-centeredness can be supplanted with a positive experience as parties begin to reconsider their

options. The newfound experience can then bring parties to question their assumptions about themselves, the other party, and perhaps about the conflict itself.

For Winslade and Monk, the language of entitlement identifies the content to be bracketed and to receive the phenomenological reduction treatment. As Winslade and Monk note, "Patterns of entitlement emerge from within a complex network of power relations and societal narratives. Although entitlements often arise from dominant discourses that are present in the community, they sometimes emanate from alternative discursive content" (Winslade & Monk, 2000, p. 94). Winslade and Monk note that entitlements are expressions of needs that are "nonnegotiable and taken for granted" (Winslade & Monk, 2000, p. 96) and, unlike the concept of needs, an entitlement is something that can be scrutinized, deconstructed, and challenged (Winslade & Monk, 2000, p. 96). Winslade and Monk note that common entitlements such as those about identity-based entitlements, such as gender, race, age, physical/intellectual ability, sexuality, religious affiliation, and wealth status create expectations of others' behaviours that appeal to the standards of fairness outlined by entitlements. Indeed, narrative mediation is explicit in its techniques around identifying, exploring, and interrogating these entitlements in order to shed light on the accepted bias and injustice that they engender and that promote conflict between entitlements. These are classic phenomenological tools of bringing consciousness to the natural attitudes of entitlements, conducting a phenomenological reduction of the discourses that protect entitlements, and bracketing the assumptions that entitlements carry.

Melchin and Picard's insight model very clearly engages in a bracketing and phenomenological reduction in the linking and de-linking techniques that attempt to help parties question assumptions about observed behaviours of others. The linking technique in the insight model describes the mediator's attention being drawn to a party's sharing about a conflict and its

connection to deeper values, and connections to past events that are often unrelated to the current conflict. This attentiveness exposes the cares (values) that concern the party and connects it to threats that they may have observed, experienced in the past, or are worried will happen based on an assumption. For insight mediators, the experience of threat is found in the opposing party's behaviour that falls outside of expected patterns that would be reassuring to their own cares. As Melchin and Picard put it,

> Quite often, the threats that dynamize a party's involvement in conflicts are contained in these expectations. But because the value narratives are carried in feelings, they often remain hidden and cannot be dealt with until they become externalized and understood. Connecting issues to underlying values, past narratives, and anticipated outcomes is the goal of linking. (p. 91)

The de-linking technique serves to question the connection the party makes between their perception of threat and the opposing party's reasons for behaving in a way that is not consistent with a consideration for their own care, thus constituting a threat (Melchin & Picard, 2009, p. 97).

Rosenberg's NVC in mediation places brackets around habitual forms of communication that promote disconnection, which leads to violence and exploitative behaviours. Rosenberg's approach fundamentally performs the phenomenological reduction on the violence of everyday language and attitudes, prompting mediators to demonstrate curiosity and connection, which offers a model for a different kind of communication. NVC's method performs a similar linking and de-linking function as the insight model such that it connects conflict behaviour and the feelings sensed by parties to the underlying need that has not been fulfilled in the situation. It also performs the de-linking function by separating the *strategy* a party is using to satisfy a need

from the need itself. The assumption bracketed here is that conflict is often understood as a clash of strategies to get needs met, while it is actually about disconnection from one another. By bracketing the strategies and performing a phenomenological reduction from strategies used to meet needs, NVC seeks to strip the conflict down to the needs that are at its heart and discover alternative strategies to get needs met.

A relational mediator's analytical framework is based on the theories or notions about conflict and the most effective paths toward resolution that is often imparted during mediation training. As explained above, relational mediators are using phenomenological approaches to determine what parts of the parties' conflict experience, such as the quality of communication and relationship, are limiting parties' abilities to resolve their differences. To conduct this analysis, the mediator will assess several aspects of the conflict including but not limited to the origins of the conflict, the surrounding context(s), each party's ability to engage in a mediation process in good faith, with care, and greater awareness of self and the other. It is therefore important to note that the mediator be attentive to their own *natural attitudes* as they situate themselves in the mediation relationship with parties. The principle of neutrality is intended to be a counterbalance the mediator's natural judgement of parties and possible influence over outcomes but the question arises routinely the literature about the definition and feasibility of neutrality (Maute, 1990; Taylor, 1997; MacFarlane, 2000; Moore, 2003; Astor, 2009; Mayer, 2004) and even the desirability (Grillo, 1991; Nader, 2001; Mayer, 2022) of strict neutrality. Therefore, the commitment to reflective practice to maintain a resistance to the mediator's own natural attitude is often embraced by steadfast relational mediators is a necessity.

The paradox here is that relational mediators use the theories and practices handed to them by their training, education, and experience, that themselves often go unquestioned, or

unbracketed. As noted in the previous chapter, these theories and practices themselves are natural attitudes that may skew a relational mediator's assumptions about what is resolvable in such a model of mediation. This assumption about mediation practice creates boundless optimism when it ought to be tempered with the skepticism of phenomenological reduction and bracketing of its own.

3. Consciousness, subjectivity, and the self in relational mediation theory and practice

Consciousness and subjectivity play significant roles in phenomenology and consequently, in relational mediation. The role is so significant that each of the models considers the self and what constitutes the self with specific attention to the self as it experiences conflict. For the relational mediation models, the self always exists in relation to another self and a context. However, the relational mediator will work with parties to draw attention to and situate the experience of conflict within the embodied self as much as within their relationship with the other. Each of the models uses its own lens through which to carry out this exercise, always with the goal of understanding the parties, building trust with them, enabling them to understand themselves more deeply, and guiding them to express themselves effectively. On the matter of subjectivity, the relational mediator is acutely aware that parties have experienced the conflict from their own unique perspective. Thus, part of the mediator's objective is creating awareness of this unicity of experience that may be inaccessible to others unless steps are taken to make the sequelae of the conflict experience available to others through communication or a different quality of communication.

On the concept of the self, subjectivity, and conflict, Bush and Folger's transformative mediation model is more vague than the authors discussed. Bush and Folger's (1994) work considers two *worldviews* that are typically understood in conflict resolution practice. More

specifically, Bush and Folger contrast the relational worldviews: the *individualist worldview* that prioritizes individual satisfaction and the *harmony worldview* that prioritizes community or group harmony at the possible cost to the individual. In these accounts of contrasting worldviews, there is a limited description of the role of the self and subjectivity in conflict as they outline that there is no objective definition of "the goodness of life" and that each person is permitted to seek this out for themselves and that while this is subjectively defined by individuals (Bush & Folger, 1994, p. 238). Bush and Folger insist that individual satisfaction requires reflection and self-knowledge and is founded on assumptions of separateness, autonomy, and self-interestedness. Furthermore, social institutions often reinforce these values regarding the individualist self and subjectivity stands in contrast to a collective. However, the notion of the self remains undefined and subjectivity is correlated with what leads to a sense of satisfaction with what the individual considers to be 'good', 'right' or 'brings fulfilment.' However, Bush and Folger note that the transformative approach focuses on a *relational worldview* that is based on values that balance the integration of the self and compassion toward others (Bush & Folger, 1994, p. 242). Bush and Folger also recognize these dual aspects of the human as an autonomous, self-interested, and self-aware being that is nonetheless capable of connection, sensitivity, and responsiveness to others (Bush & Folger, p. 242). It is this second half of the dual aspect, connection, sensitivity and responsiveness to others, will be explored in the following section.

Winslade and Monk's work on narrative mediation note the resistance mediators encounter when attempting to guide parties to an objective account of 'what really happened' and seek rather to note points where differing stories converge on points of agreement (Winslade & Monk, 2000, p. 3). Monk and Winslade offer some qualities of conflict stories, including *totalizing descriptions*, judgement and accusations as to what was intended by the opposing

party, thereby simplifying the situation into something that more easily makes sense (Winslade & Monk, 2000, p. 5). Finally, among the first tasks of the mediator is to create the conditions where these story qualities can be identified, challenged, and deconstructed to make alternative and collaborative narratives possible. Winslade and Monk argue that the narrative approach to mediation contrasts with traditional problem-solving or interest-based approaches to mediation. The authors state that these popular approaches consider parties to a conflict to be independent, stable, unitary, and self-regulating entities that seek out causal factors leading to a conflict (Monk & Winslade, 2000, p. 44). Winslade and Monk's employment of entitlements as being foundations for the emergence of conflict contrasts with other approaches to conflict resolution that rely on explanations that focus on human needs satisfaction as being generators of conflict. In response to this needs satisfaction assumption, Winslade and Monk regard such needs as being discursively constructed in themselves. According to Winslade and Monk, it is not only historically and socially-constituted entitlements that may be contributing to the conflict but newer discourses that seek to challenge the established discourses that may also contribute to conflict and its dynamics (Winslade and Monk, 2000, p. 94). Deconstruction of these discourses figures prominently in the narrative approach as they form the basis according to which parties evaluate a situation and take action, often without consciously recognizing the role of discourse in their action-taking (Winslade and Monk, 2000, p. 140). Finally, narrative mediators do not rely solely on joint mediation sessions for the relational work to occur and may rely on work done separately in advance with each party to come to grasp the discourses that are influencing or determining how they are constructing their conflict story. This separation may allow for more frankness and comfort for the mediator to listen for the discursive elements that may be deserving of additional attention in the conflict story (Winslade and Monk, 2000, p. 137-139).

According to narrative mediation theory, the constructionist approach to understanding conflict broadens the understanding of the self who finds himself in the midst of a problem. Winslade and Monk thus posit that narrative mediation's goal is to expand the concept of the self beyond the discourses and include parties' contexts, stating, "the social context is the key to understanding self and identity. The self is constituted by myths, traditions, beliefs, assumptions, and values of one's particular culture, all developed within this discourse (Winslade and Monk, 2000, p. 44-45)." Furthermore, Winslade and Monk maintain that in contrast to problem-solving and interest-based approaches that view conflict as resulting from the frustration of needs satisfaction, the narrative model assumes that repetitive and stable relational patterns of interaction satisfy needs for comfort and harmony. However, when these expectations for familiar patterns differ from one another in a given relationship, this is where a conflict may emerge (Winslade and Monk, 2000, p. 45).

Monk and Winslade do not place a great deal of value on coherence in storytelling and are clear in their embracing of complexity and contradiction of their approach (Winslade and Monk, 2000, p. 47). They further develop the narrative model's assumptions about the self by leaning into postmodern ideas of the *multiply-positioned subject.* According to this understanding, individuals possess multiple identities throughout their lives and each of these identities offers their own norms and expectations. These expectations develop within the individual, shaping how they make sense of and tell their stories. Indeed, "the viewpoints people express in a conflict situation are constructed by discursive fields that produce shifting, multiple, and contradictory forms of subjectivity" (Monk & Winslade, 2000, p. 46). While the self and sense-making appear to be moving targets for mediators, Winslade and Monk regard this complexity and discursive process to be an opportunity. With these assumptions as a foundation for their

practice, mediators can guide parties to see the possible resources for better grasping the situation presented by all parties as well as opportunities to learn about the perceptions of the opposing parties. Indeed, it is the complexity and possibility of contradiction that will be further explored in the following chapter.

In contrast to the other two models outlined, the insight approach has perhaps the most developed concept of the self, consciousness, and subjective experience among the mediation models explored in this thesis. Melchin and Picard's (2009) approach departs from the position of self-understanding through insight, a method introduced by philosopher Bernard Lonergan who advocated for a method that refers to not only the action of doing something but also to the awareness *that* one is doing something. This method for self-understanding seeks insights into how, when, or why something is learned. In the insight mediation theory, the mediator prompts the self to turn attention to itself. With insight mediation, mediators are trained to be attentive to the conditions propitious for learning and insights, including asking questions that lead parties to deeper self-understanding and privileges the roles of subjective experience and questioning in the learning process, noting that it takes more than sensory experience for learning to occur. Rather, there is a distinction between acquiring sensory experience and creating learning *about* that experience, or otherwise put, understanding the meaning connected to sensory experience. Once there is a deeper understanding of the experience, the experience itself takes on new meaning, lending itself to insights about the self and, hopefully, about the other, and relates to the past, present, and future understanding of past experiences and expectations for the future (Melchin & Picard, 2009, pp. 57-60).

As Melchin and Picard note, this attempt at fuller comprehension is often met with resistance as parties often find themselves beholden to their correlations and confirmations about

their experiences, that is, their subjective understanding of the other and the conflict. However, this knowledge or rather, subjective understanding may or may not be accurate or complete. For insight mediators, the learning orientation to the mediation process recognizes the possible feelings of shame and ignorance that accompanies 'not knowing.' Thus, the approach seeks to create not only safe conditions to acknowledge a limited knowledge about a conflict situation but also to stimulate curiosity about what is not known in order to generate insights (Melchin & Picard, 2009, p. 61).

In addition to the active exploration of meanings, beliefs, assumptions, and learning during a conflict situation, Melchin and Picard shed light on the role of values and feelings in conflict. Specifically, they note that both values and feelings are experienced from a first-person position and are seldom neutral in character. These values and feelings carry notions about how the world ought to be ordered, shaping narratives and judgements of the other, their values, and their experience of the conflict. Despite this clash of values that appear as feelings and judgments, insight mediation seeks to de-link these feelings and judgements about what parties have experienced and present the option that these may be assumptions about the other party and the conflict, rather than objective knowledge (Melchin & Picard, pp. 73-74).

Effectively, exploring and understanding the subjective experience of a relationship, how it is understood, the meaning it holds, and its influence over decisions for action or inaction are at the heart of the insight approach. They figure so prominently not because they establish truth, but because they shed light on the multiple perspectives of a conflict phenomenon as they relate to values and possible paths to alternative perspectives. It is this exploration of the other party's subjective perspectives and shared values that will be further explored in the following chapter.

On the face of it, much of Rosenberg's (2015) work on NVC appears to fall within the realm of psychoeducation or self-help with only a chapter of the central text being dedicated to instructing those who want to act or find themselves acting as mediators. While Rosenberg's approach holds relationships and a particular style of communication to be prime for conflict resolution, the view of the self and the subjective experience of conflict are deeply embedded in the approach, if not overtly articulated as a subjective experience of the self, the other, and relationship.

For Rosenberg, humanity has a long and notable history of violent language and behaviour that is indicative of patterns of communication he terms *life-alienating communication.* For Rosenberg, this pattern of communication reflects beliefs about the self, others, and contexts that are based on moralistic judgments. These judgments are articulated by words and ideas characterized as good/bad or right/wrong or variations on these themes. As Rosenberg notes, "It is my belief that all such analyses of other human beings are tragic expressions of our own values and needs" (Rosenberg, 2015, p. 16). For Rosenberg, these moralizing words and beliefs give way to judgments that contribute to disconnection from the other, which is at the core of conflict.

Recalling Rosenberg's approach to communication that favours conflict resolution, there are four distinct components of NVC with which a mediator may assist: (1) naming the *observation* of an action or statement that led to a (2) *feeling* that was the result of an (un)met (3) *need* and a (4) *request* for an action on the part of the other person to help meet the identified need (Rosenberg, 2015).[19] The initial step of NVC prompts the objective naming of one has observed seems to initially run counter to what might be regarded as a subjective experience and Rosenberg acknowledges that naming and objectively describing the behaviour observed is

[19] Rosenberg also notes that NVC can also be used to express when needs *have* been met and that use of NVC for this purpose is equally helpful to create connection (Rosenberg, 2015, p. 209).

indeed a challenge. More specifically, Rosenberg maintains that when behaviour is named and described, these descriptions often either conceal or are transparent in their moralistic judgement of the behaviour. Rosenberg advocates for questioning one's description of the behaviour by applying filters for blame, attributions, conclusions, and comparisons, among other descriptive methods that convey perception rather than observable fact. This advocacy for a separation between observation and evaluation is instrumental for Rosenberg's model, as the mixing of observation and evaluation creates conditions for disconnection which can lead to conflict. Thus, recognizing the role of subjectivity in the observed experience remains a challenge but is a skill that can be learned and will advance the project of connection and conflict resolution between parties in conflict.

NVC invites parties to identify the feelings that arise as the result of the observed behaviour and, by extension, the subjective experience of that behaviour. The role of feelings in NVC is that of an indicator of a need that has gone (un)met. However, part of this step is accepting that the feeling is not *caused* by the observed behaviour of the other but is the result of an unmet need. With this assumption, the person is encouraged to *take responsibility* for the feeling. By this, Rosenberg suggests that the feeling is indicative of a subjective experience of an observed event and that there is *choice* in how one can receive what others say and do (Rosenberg, 2015, p. 49). This approach acknowledges the range of possible ways to perceive or receive the words or actions of other people and further acknowledges the role of subjectivity in the experience of conflict.

Rosenberg's approach makes references to the self less evident but the subtext is that the self is sensitive to moralistic judgment and rejection. Awareness of this fundamental part of self requires awareness of relationship with the other, which is consistent with the phenomenological

approach outlined above. Specifically, attempts at creating a distinction between the world inside and the world outside creates a false dichotomy that cannot withstand such a parsing. Despite this, Rosenberg does suggest that fundamental human needs are universal while affirming that they require connection and relationship for individual satisfaction. Furthermore, by creating awareness of the role that subjective judgement and evaluation play, attribution of wrongness/badness, awareness of needs and feelings, and the effect of communication that conveys alienating criticism, there is not only the development of self-awareness but also an awareness of how one can be perceived by the other.

Each of the four models share common elements when they regard the role of the self and subjectivity in conflict and conflict resolution. First, each of the models takes parties' experience as real and true for them, as the phenomenological approach suggests. Relational mediation practices employ strategies that help parties consider how they have experienced the relationship and the conflict from their own perspective with the hope that this reflection gives deeper understanding of the experience and the meaning parties may be making of the experience. On this matter, each model presumes that a given incident or relationship may be experienced in a completely unique way, dependent on the parties' previous experiences, values, fears, hopes, expectations, needs, and desires as they have developed in the self. Indeed, each approach acknowledges that based on this assumption, there are things that are considered subjective truth for the party that may only exist for that party or that take different forms for each party. It is not necessarily the event itself that is in question when it comes to mediation practices. Rather, each of the approaches attempts to call attention to the unique nature of the party's experience, the impacts on the party, and, ultimately, the impacts on the relationship.

Second, each model presumes that parties hold these first-person experiences of a relationship or incident tightly and are often resistant to questioning of the experience itself. Indeed, they each recognize the risks that are inherent in the phenomenological approach to conflict. In each approach, it is not the mediator's goal to establish facts that support the meaning that has been made by either or both parties. Rather, each model seeks to offer paths to deeper and clearer understanding of the party's own difficulty with the relationship through various avenues and framings of the issues, including moral development and self-knowledge (transformative), shedding light on entitlements and embracing complexity (narrative), self-knowledge and learning about self and other (insight), or through identifying and taking responsibility for feelings and needs (NVC). Each model posits that through such avenues toward self-understanding, parties will better understand the differences and convergences between their experiences and the unacknowledged impacts the conflict may have had on themselves. It is also posited by each of the models that such self-understanding will lead to alternative methods or strategies for resolving the conflict. More specifically, mediators practicing these models believe that there are multiple avenues to resolve a conflict that can satisfy the majority of each party's expectations, concerns, needs, desires, or cares, depending on the jargon espoused by the model.

Third, and related to the second point, each of these four models is cognizant of the conditions that create the most fertile ground for self-reflection and self-understanding, as per the phenomenological approach. The four models also value a measure of supportive questioning of the meaning the parties make of their respective first-person experience of conflict. Indeed, each approach notes that a mediator's techniques with parties require trust-building behaviours that foster the conditions for parties to be more likely to engage in such self-reflection and self-

questioning. For this, each approach prescribes mediator interactions that convey some form of acceptance and non judgement. In this regard, the mediator has an appreciation for the subjective experience of each party and works with those experiences in ways that do not seek to invalidate the experience. Rather, mediators seek to deepen the self-reflection and meanings ascribed to these subjective experiences and broaden the scope of the experience to include more perspectives, as will be explored in the following chapter.

Fourth, each of the models outlined above considers the mediation process to be more than a conflict resolution process to address aspects of the past relationship. They also seek to demonstrate and practice different ways of interacting relationally in the present to set new patterns for the future of the parties' relationship that attends to the subjective experience of all parties. This suggests an attempt to alter or change how the other party and the conflict appear to each other through a broadening of interactions and the inclusion of phenomenological tools in the process. This piece of relational mediation practices presumes that mediation is an opportunity to discover more productive and healthy patterns of interaction that can influence or transform parties' subjective experiences going forward. This is significant as it assumes that such influence or transformation is possible, given the proper conditions, strategies, and positive experiences of the mediation process. In the relational approach, conflict resolution is more than a singular event of conflict resolution. It promises new patterns and new or altered subjective opinions about the other party and the possibilities for the future of the relationship.

A relational mediator will be equipped with one or more of the above frameworks that proffer some detail of how the self is constituted, how this affects the subjective experience of conflict, and how this impacts the parties' relationships. The approach to investigating these

aspects of conflict and conflict resolution requires a method for discovery and investigation that is offered by phenomenology.

Conclusion

This chapter has exposed how relational mediators employ a phenomenological approach to understanding individual parties and their subjective experience of conflict. They work to identify the assumptions or *natural attitudes* held by parties that may be contributing to the endurance of the conflict, *bracket* these attitudes for further examination through the *phenomenological reduction*. Furthermore, relational mediators take for granted that the self who is experiencing conflict is not always on full display in conflict and that the phenomenological approach to investigating the subjective experience of conflict will allow opportunities for a more developed awareness of the self that is challenged through conflict. Finally, each of the four relational mediation models examined provides a lens for framing the self in conflict that provides direction and tools for relational mediators to conduct their work.

Having explored the phenomenological tools that mediators employ to explore, understand, and contextualize the first-person experience of conflict and the relationship with the other party, the second half of the process is the work of ensuring that the experience of conflict can be imparted and understood by others involved in mediation. The following chapter will explore the notion of *intersubjectivity* as a feature of phenomenology, how it applies to relational mediation's goals of shared understanding at the most fundamental levels, and its meaning for helping parties come to know more about themselves, the other party, their context, and their conflict. Phenomenology as an approach to consciousness and its relationship with apprehending the world indeed recognizes that which both separates and integrates those who inhabit and

cognize the world. However, the concept of intersubjectivity and intersubjective understanding offers a framing of the intersection between subjectivities.

Chapter 5: The intersection between intersubjectivity and conflict resolution

Introduction

The previous chapter explored some instrumental concepts of phenomenology. Specifically, it offered a basic outline of how it considers first-person experience, perception, some aspects of the self, phenomenological reduction, and bracketing in its pursuit of understanding the first-person experience of conflict. Furthermore, each of these concepts was related to specific practices found in the relational mediation models explored throughout this thesis. These practices and their relationship to phenomenological approaches to apprehending how a thing is perceived serve to demonstrate that relational mediation models aim to work with the experiences of parties in conflict as the object to be examined and explored throughout the mediation process. The assumption proposed in these models is that the conflict can be experienced from several perspectives and that for parties to reach the best agreements, they will benefit from deepening and broadening their self-understanding and understanding about the other's experience of the conflict using phenomenological methods. This process of understanding is carried out through the frameworks provided by each relational mediation model's view of the human being, the genesis of conflict, and how parties are influenced by the conflict experience.

While conflict is experienced through a subjective lens, it is indeed intersubjective as parties' actions and behaviours influence each other and thus, the approach to resolution ought to also attend to the intersubjective nature of conflict and resolution. This chapter will focus on theories of *intersubjectivity* and *intersubjective understanding* as the orientation of the relational

mediation approach. In this context, this orientation is characterized by the promotion of interactions that advance deepened mutual understanding and mutual recognition in the service of determining the best solutions for the parties, by the parties, and with the assistance of a third party, the mediator. Furthermore, it will deepen the discussion of intersubjectivity as it relates to mediation, adding the ethical dimension of relationship and, by extension, relational mediation, to the discussion.

Relational mediators may not recognize it or name it as such, but their methods seek to create spaces for new intersubjectivity, or rather, as will be employed below, intersubjective understanding through two channels: the first channel is between the mediator themselves and each of their parties. The second channel is between conflicting parties. While these two channels are not mutually exclusive, they each have something to contribute to the mediation process.

Describing the concept of intersubjectivity from a single perspective is insufficient and lacks the multiple dimensions of intersubjectivity as it applies to conflict, the study of which is also interdisciplinary. While several academic disciplines have developed theories of intersubjectivity including political science (Schmidt, 2017; Head, 2016) and communication (Politi, 2011), these disciplines have provided a limited development of the concept. However, a handful of other disciplines including philosophy, psychology offer more salient developments of the concept and hold a greater relevance for this thesis and will be afforded more attention throughout this chapter.

1. Intersubjectivity

Intersubjectivity and, by extension, intersubjective understanding, offer a valuable conceptual frame through which to understand relational mediation's goals of improved

communication, understanding, and patterns of interaction that are conducive to improved relationships between parties in conflict. As Husserl suggests and as has been explored by a number of authors explored here, theories of intersubjectivity explore multiple dimensions of social life and relationships. These dimensions include human development, the constitution of shared knowledge about the world, the mutually-constituting influences of relationships on self and other, contemplation of the other's inner world, and an ethical drive to recognize the subjectivity of the other as equal to one's own subjectivity.

For the purposes of this thesis, a definition of intersubjectivity is derived from philosophy with specific regard for the works of Husserl (2024 translation) and other phenomenologists, and a hand of authors from psychology. As the previous chapter's assertion that relational mediation practice employs phenomenological tools in its practice to help parties articulate their experiences, sharing this exploration at fundamental levels between parties becomes the next step in the process. Thus, Husserl's view of intersubjectivity has been prioritized as it suggests that:

> For each, again, the fields of perception and memory actually present are different, quite apart from the fact that even that which is here intersubjectively known in common is known in different ways, is differently apprehended, shows different grades of clearness, and so forth. Despite all this, we come to understandings with our neighbours, and set up in common an objective spatio-temporal fact-world as *the world about us that is there for us all, and to which we ourselves none the less belong.* (p. 105; emphasis in original)

Husserl's point of departure regarding intersubjectivity cites it as the means by which social life is able to occur and that it is largely dependent on shared understandings.

Additionally, from the field of psychology, Atwood, Stolorow, and Orange's (2009) work describes intersubjectivity as "the field - two subjectivities in the system they create and from

which they emerge - in any form of psychoanalytic treatment" (Atwood, Stolorow, and Orange, 2009, p. 3). The authors further suggest that potential for alteration to subjectivity through engagement with this field and that intersubjectivity theorists intend a relatedness in their practice. This thesis recognizes that the mediation field, and the relational mediation field in particular, employ many therapeutic practices developed by the field of psychology and as such, this work regards this contribution by the psychology field as worthy of inclusion in the definition of the concept of intersubjectivity in this thesis.

Thus, the definition of intersubjectivity that is operationalized in this thesis holds that intersubjectivity is the field where subjectivities, characterized by their experiences of self, other and context, intersect with other subjectivities, and where commonly held understandings emerge and shift the quality of their relationship. However, a definition alone is inadequate to grasp the role of intersubjectivity in relational mediation theory. Thus, a fuller overview of some significant currents of thought on intersubjectivity will further support its relationship to relational mediation practice.

As Duranti (2010) notes, modern social sciences have come to misunderstand and reduce the concept of intersubjectivity to something akin to a *common understanding* between subjects. This simplification neglects the essence of Husserl's concept of intersubjectivity as a space between subjects in which they come to regard one another as constitutive of one another and the world around them. In a similar vein, Zlatev (2008) suggests that human beings are connected through intersubjectivity rather than working as "functioning monads" who essentially guess what the other is thinking. This approach of "functioning monads" to understanding how a singular human mind operates may be aligned with individualist approaches to conflict resolution. However, the functioning monad theory is less aligned with the relational approaches

to conflict resolution. The assumption of connection or lack thereof becomes a challenge in conflict, as will be discussed in the section following this one.

a. Intersubjectivity and the embodied mind of the other

Sharing and understanding are based on "embodied interactions" such as empathy and imitations. As Zlatev notes, cognitive abilities begin as interactional but become the field of the interior after some time (Zlatev, 2008, p. 3). Thus, there is a fundamental role for each to play in the other's constitution of knowledge of the world around them. In line with this, discussions around phenomenology also focus on distinctions between the world 'out there' and 'in here', with a preference for understanding that there is no clear distinction between these two perspectives. The integration of the "out there" and "in here" is significant in theories of intersubjectivity as it relates to how individuals come to know and understand a phenomenon. While there is often a distinction made between the *world outside* of the individual and the *mind inside*, the notion of intersubjectivity asserts that actually drawing a line between the two realms is impossible and they are interdependent.

Theories of Intersubjectivity further suggest that individual subjectivities are generally cognizant of the existence of other subjectivities in the world and that there is an inherent distance between them. As Daly (2016) commenting on Merleau-Ponty notes, the crux of the matter is found in plurality that poses the question of the other's existence and of how the other experiences the world in a different or the same manner as the self (Daly, 2016, p. 39). For Daly, there is a question of the plurality of the 'I's in the world and the questioning of how this can be reconciled with a singular perception of the world as experienced by the self.

Gallagher (2012) suggests that one may acknowledge that other perspectives of the lifeworld exist but accessing those other perspectives is limited or impossible. More specifically,

despite the supposition that one can acknowledge the experience of another and that it may be analogous or different, Gallagher notes that there will always be an asymmetry in accessing the contents of that experience (Gallagher, 2012, pp. 183-184). While humans may fancy themselves effective mindreaders and while some may indeed have a talent for this, there will always be a gap between what is inferred or perceived by the mindreader and the actual contents of that mind. Gallagher's statement is particularly relevant if one considers the experience of conflict and the assumptions parties hold about themselves, the other, and the conflict, which will be further explored later in this thesis.

Despite the asymmetry of access to the perspectives about a shared experience, intersubjectivity as a theory of shared experience or understanding of a phenomenon offers further perspectives on this method of knowing about a thing. As Sammut (2013) describes, humans tend to test their subjectivities using the subjectivities of others. This suggests that there is some assumption that perception can be shared or measured against others' perceptions. Thus, others become a means of verification of subjective perception to render it objective and possibly even shared between two distinct and separate minds. Despite the assumption of subjective human experience that is not easily imparted to others, humans have succeeded in creating an ability to move through the social world with some degree of agreed-upon reality (Sammut, 2013, p. 2). This suggests that there is, more often than not, *enough* shared understanding of a phenomenon to render cooperation in society feasible.

Theories of intersubjectivity are generally preoccupied with accessing the inner world of the other to achieve some external validity of perspective. *How* this is achieved is the basis for a handful of theories that explore the processes and mechanisms that lead to gaining this access to the other. Gallagher (2012) discusses Husserl's *problem of other minds,* taking stock of the

human experience as it is lived from within the body and its limitations in knowing the inner life of the other. According to this point of view, one has his own body, has kinesthetic power over the body, has proprioceptive abilities to monitor and experience movement, and can recognize the other person as equally possessing corresponding qualities (Gallagher, 2012). However, one's inability to experience the body of the other including all of its properties from the inside limits shared understanding. As a researcher who studies the intersection between cognitive sciences and phenomenology, Gallagher (2012) suggests that while there may be an analogous appreciation of a given experience, the individual considering how a phenomenon is being experienced by the other will ultimately refer to his own experiences to infer what the other is experiencing, thus accessing that experience through analogy and empathy (Gallagher, 2016). While analogy presents an opportunity to empathize with the other, one will always arrange one's interpretation of the experience according to one's own version of common sense.

Several authors on phenomenology refer to the *Theory of Mind*, which is described as the ability (or inability) to infer the mental state of another and to predict actions as well as consider and predict one's own mental states and actions. *The Theory of Mind* is often considered instrumental to the development of empathy and is affected by mirror neurons (Daly, 2016). According to Foolen (2012), there are two arguments advocating for at least two approaches to *Theory of Mind*. *Theory Theory* suggests that to move toward reading the mind of the other, there must be some formulation of theory regarding their "beliefs, desires, or intentions" (Foolen, 2012, p. 172). Such a theory is often drawn from general knowledge or folk psychology regarding generally normal behaviour in a given situation. Foolen notes that theorists often disagree about whether such knowledge is based on experience or some element of human

development. They also disagree about whether this ability is conscious or nonconscious (Foolen, 2012, p. 172).

Alternatively, *Simulation Theory* suggests that folk psychology is not the basis upon which one bases mindreading conclusions; rather, one is more apt to infer the mental states of the other via simulation. Simulation describes placing oneself in a given situation and using an 'as if' model to determine the other's mental states, much akin to the notion of analogy mentioned above. Much like *Theory Theory*, there is a debate about whether this approach is conscious or unconscious and the role of experience in stimulating such a cognitive process (Foolen, 2012, pp. 173-174).

However, two problems have arisen from the *Theory of Mind* notions: the first is that one cannot intimately know the thoughts and intentions of other minds as these are effectively obscured to others. Second, the notion of a knowable and objective reality becomes a problem as reality is effectively found in the human experience, which cannot be completely externalized. This leads to the question of how human beings may be able to impart deeply personal experience despite individual differences in perceptions and experiences that define the quality of experiences in such deeply individual ways (Sammut, 2013, p. 2).

b. Intersubjectivity and empathy

Literature on intersubjectivity also includes a significant volume of content about the role of empathy in coming to some shared understanding or sense of togetherness. Daly (2016) notes that empathy can take the form of sharing another's feelings or being moved by the other's feelings. Citing Scheler's view of empathy, Daly suggests that fellow-feelings are integral to primary empathy which cannot be achieved without some understanding of the other's internal states. As Zahavi (2018) notes, there is an inherent limit to an absolute understanding of others'

emotional states as the other expressing it will be experiencing it in a unique way that defies a complete grasp by another. In effect, no two people will experience sadness, anger, or joy in the same way as they will each come upon those experienced emotions through their context, history, and body that is fundamentally distinct from the other (Zahavi, 2018, pp. 92-93). Furthermore, phenomenologists maintain that empathy as a transmission of emotion from one mind to another is effectively impossible (Zahavi, 2018, p. 93).

In contrast, the theories of intersubjectivity often address the role emotions and empathy play in relationships between individuals, including the effects they have on behaviour and judgment. Commenting on Merleau-Ponty, Crossley (1995) notes that emotions operate at the pre-reflective level and that one may not be aware of their operation (Crossley, 1995, p. 45). Merleau-Ponty's discussion of affect and emotion goes on to propose that there is contextual significance to sensation that is tied to the ways one behaves in a given situation and may continue to affect behaviour long after the situation that gave rise to the feeling has passed. This suggests three significant points regarding intersubjectivity and emotions: first, emotions affect how one behaves, indicating that they are more than simple reflection of inner states and that they manifest themselves in the intersubjective world; second, emotions are relational in that they form part of the systems that connect oneself to others; and third, emotion is "dialogically constituted" in that emotion shapes and is shaped by interactions with others in these systems" (Crossley, 1995, pp. 45-46). Thus, feelings and emotions which are contained in the other gain relevance in the discussion on conflict resolution and, in particular, mediation as they are not simply held in the other but tend to impact behaviour.

Finally, theories of intersubjectivity suggest an ethical component that favours a mutual equality between subjectivities. As Bower (2015) notes, Husserl's constructed intersubjectivity

contemplates a shift in one's perception of the lifeworld such that it transforms others from "mere things" to animate beings much like oneself. Following this line of thinking, empathy is little more than the "enrichment of the sense of perceptual presence" (Bower, 2015, p. 459). As such, empathy is as much about recognizing the internal affective state of the other as it is about recognizing the other as a conscious being like oneself.

Daly (2016) also explores the ethical implications of this likeness between self and other, noting that ethics are only available when one has a fellow-feeling with another. Without this fellow-feeling, there would be no motivation toward ethical action. Where the other becomes dehumanized or vilified, ethical action is almost an impossibility as the fellow-feeling itself becomes a virtual impossibility (Daly, 2016). Thus, the other is constituted through authentic attempts to grasp the thoughts, intentions and beliefs of the other as well as their emotional states. There is equally something to be said for the possibility of empathy in coming to regard the subjectivity of the other as analogous to one's own. This is the data used to come to some form of understanding with the other but also recognition that the other is equally a cognizing animate being with whom one must negotiate meaning and being in the social world. When attention is turned to the act of being in the social world, communication may offer another means to come to know the internal states of the other.

Theories of intersubjectivity include a wide range of considerations for how people relate to one another both cognitively, emotionally, and behaviourally. It implies an ability to apprehend what the other may be thinking, feeling, and what could be driving behaviour. It also considers the mutually-constitutive nature of social relationships between the self and the other, from the very beginning of human development and throughout social life. Finally, it may form the basis for ethical relationships that favour mutual recognition of equality between self and

other. Indeed, all of these dimensions of self and self-in-relationship are applicable to discussions of conflict resolution, and to relational mediation practices in particular.

2. Intersubjectivity, quality of relationship, and conflict

The previous section addressed several aspects of intersubjectivity as it pertains to the sharing of information between individuals, including thoughts and feelings and the role intersubjectivity plays in mutual understanding at the cognitive and emotional levels. The ethical dimension of intersubjectivity was introduced but there is a depth of literature that explores this notion very narrowly. Indeed, the ethical dimensions of relationship are integral to the relational mediation models that are premised on supporting relationships based in qualities such as equality, interdependence, trust, and care.

Jull (2022), the only author reviewed who has created a direct connection between intersubjectivity and how parties deal with conflict, notes the intersubjective process in mediation is about more than understanding and empathy. Broadly, Jull considers intersubjectivity to "be understood in one aspect as a dynamic cognition by which a self grasps the intelligibility of others and their actions" (Jull, 2022, p. 25). Jull's text approaches the matter from an insight (Melchin & Picard) theory of conflict resolution, suggesting that the insight model offers a frame for understanding intersubjectivity through learning. Specifically, Jull asks, "If intersubjectivity is a mutually constituted space of encounter, what is the process of constituting? How are 'self and other' mutually constituting encounters? If intersubjectivity is also a complex intersecting of systems of meanings, how is this system of meanings manifested concretely as individuals encounter each other?" Ultimately, Jull proposes that "... these questions equally apply to interpersonal conflict as a site of intersubjectivity in action" (Jull, 2022, p. 19). Jull explains that conflict behaviour is part of a conflict dynamic in a mutually constituted space of encounter and

that behaviour and the conflict dynamics are embedded in a system of complex meanings (Jull, 2022, p. 20).

Jull's work suggests that the intervention by a skilled and impartial third party may offer an opportunity to interrupt this dynamic and model a different dynamic for and with the participants. Mediation is thus considered a forum and a form of assistance to explore alternative roles and interactions and becomes the space of encounter with the intention of changing the pattern of conflict behaviour. In essence, a mediator's basic goal is to shift parties away from an intersubjectivity focused on conflict perceptions, emotions, and behaviours that give way to conflict interactions, and shepherd parties into an intersubjectivity focused on collaborative and relationship-favouring interactions.

As Jull is suggesting, the quality of relationship explored by theories of intersubjectivity goes much deeper than working toward behaviours that favour communication and collaboration. Rather, theories of intersubjectivity dig into the ethical nature of relationships. A central author on the topic explores this question is Buber (1970) who speculates about the structures and qualities of relationships between those who live together in community. As explored above, the quality of relationships can be considered from the intersubjective qualities of empathy, shared perceptions, and the ability to share experiences in order to achieve shared understanding about a phenomenon. However, one of the basic tenets of these assumptions is that individuals engaged in such exchanges must hold a certain regard for the other. For Buber, basic words including 'I', 'You', 'It' and other such pronouns inherently imply the existence of at least two sides of a relationship. Buber posits that institutions and societies have become accustomed to a characteristic of I-It pairings, preferring to leave the "in here" world of feelings as secondary to the "out there" world of institutions. For Buber, institutions serve as a sort of self-preservation

structure that removes feelings from relationships with the world, creating a "freedom from feelings" (Buber, 1970, p. 94). With these form-giving structures by which the state and the economy may operate, it becomes inevitable that the I-It comes to dominate public life. This development may have led to the improved ability to experience and use other Yous but correlatively led to a decreased ability to relate to the You as another subject equally experiencing the world (Buber, 1970, p. 92). The I-It relationship regards the other not as another similarly subjective I but as something that is part of the exterior world. Buber suggests that while the I-It assumptions of many relationships have their place, such pairings resist the I-Thou quality of relationship that considers the possibility of deeper connection to other I's in the world.

The reciprocal recognition inherent in the I-You relationship is central in Buber's thought. For Buber, one can consider an object an It, along with the things that make it up. These aspects of an It that allow one to classify it and to understand the pieces of it that make up the whole It. However, there is no relationship to an It and therefore cannot be constituted as a 'You', as this requires some reciprocity. However, the attempt to diminish the You through the pulling apart of his constitutive elements will drive him into something that is no longer a You but becomes an It, which is to diminish the relationship and essentially drive away the possibility of reciprocity (Buber, 1970, p. 59). Indeed, Buber suggests that hatred acts not on the You but only on *part* of the You. Such acts diminish the human capacity to say You but hate and love bring one closer to a relationship than those with no love or hate at all (Buber, 1970, p. 68).

Buber furthers this comparison of the I-It and the I-You relationships, noting that the You is of the present and not of the past or future or of the over there. Buber distinguishes between *experiences* and *relationship*, asserting that one *experiences* an It but is in *relationship* with a

You, that is also in relationship with the I, engaging reciprocal impacts on one another. However, the here and now as one is confronted by it, is acted upon by it and as the I acts upon it. This recognition bears two relevant points for this thesis. First, this reciprocity creates a relational way of being with another in that "I require a You to become; becoming I, I say You" (Buber, 1970, p. 62). The relationship with the other is grounded in the necessity of the other's presence and interaction in their simultaneous sameness and difference in order to define a definite I; the self is only the self because of the presence of a You. Second, encounter with the other may be part of the quality of community but it is by will that the recognition is enacted by the I. Crossley (1996) furthers the analysis, noting the reliance of Buber's thought on language to convey and accept such recognition as Buber considers speech a constitutive action noting that "for Buber, the basic structure of the interworld is formed through the conventions and forms of a shared language" (Crossley, 1996, p. 14). Indeed, Buber's thought is widely considered as foundational to dialogue theory and practice (Johnson, 2020; Valatka & Asakavičiūtė, 2020; Toledano 2018) and dialogue for the purpose of intersubjectivity (Muth, 2009). Invariably, the idea of productive dialogue only being possible if it takes place between individuals to perceive one another as equals who are owed respect often factors into a vast array of conflict resolution literature, not just relational mediation models.

Another significant contribution to the concept of intersubjectivity is the work of Levinas (1969) and his contention that subjectivity has a propensity to totalize the world around it. Not only is this totalization inherently limited in its truth-making capacity, when applied to the process of totalization of the other, totalization is what gives way to the alienation and objectification of the other. This totalization and objectification results in assumption of all-knowing about the other, a line of thought that is aligned with Buber's I-It relationship. For

Levinas, the distance created between the self and other is facilitated by totalization of the other and creates the conditions for war (Levinas, 1969, p. 22). Levinas contrasts the notion of totality with infinity, which he considers to be contained in every person. This infinity defies totalization, as Levinas remarks, "The relation with infinity cannot, to be sure, be stated in terms of experience, for infinity overflows the thought that thinks it" (Levinas, 1969, p. 25). This is indeed a challenge for an inherently limited subjectivity as Levinas notes that to presume that infinity can be found in the other and cannot be fully grasped is to challenge the nature of knowing (Levinas, 1969, p. 27).

As much as Buber suggests that I-It relationships have their place in the world, Levinas suggests that one's subjectivity is used to thematize the other, using one's own subjectivity to relate to the other rather than acknowledging the radical difference between one's own and the other's subjectivities, defying analogy or relatedness. This thematization represents an application of power over the other and does not a09llow space for the infinity of the other (Levinas, 1969, pp. 46-47). In Levinas' *Totality and Infinity,* history is susceptible to totalization and the judgement of what is contained in those stories influences one's experience of the other today. History either as personal experience or as knowledge handed down across generations could conceivably be applied to notions of expectations, judgement, and prejudice that contribute to the subjective experience of conflict. Indeed, what one knows to be a historical truth either through first-person experience or through stories handed down can influence a party's subjective experience of conflict through prejudice and other such predispositions.

This thesis contends that conflict is the result of or creates the conditions for an I-It and totalizing relationship, rather than the I-You or infinity-recognizing relationship. As many experiences of conflict suggest, the deep relational distance between parties in conflict and the

one-sided assumptions they bring to conflict often fail to either recognize one or both of two things: the radical differences between one another and what has led to such a difference of opinion, values, desires, or needs satisfiers; and/or the inherent sameness of the other that includes an infinity, and the access to which is asymmetrical. The intense focus on one's own goals in conflict without sufficient consideration for, or complete exclusion of the goals, needs, or values of the other party are at the heart of what relational mediation practices intend to address.

Levinas' view of totalization and infinity is yet another type of assumption with which relationally-oriented mediators would be inclined to agree. More specifically, relational mediators often work with the totalizing assumptions parties hold about themselves, the other, their context, and their conflict. The effect of totalizing assumptions is the simplification of the self, the other, and the conflict, denying the complexity inherent in any of these elements of conflict. The strategies mediators use to work with these totalizing assumptions are intended to render elements of the conflict more complex, thus adding context and information to the experience that the parties may not have considered or known about previously. Following Levinas' thought here, it becomes apparent that relational mediators often work to surface these simplifying assumptions and to expand what the self may know or be aware of when it comes to themselves, the other, and the conflict.

Buber and Levinas offer perspectives about the breakdown or limited nature of relationships impacted by conflict and of the tendency to objectify or totalize the other. Likewise, relational mediation theories and practices direct parties to recognize the simultaneous sameness and difference between them using their own language, theoretical foundations, and processes to guide them there. Relational mediators are working to shift intersubjective

understanding away from totalization and reification and toward ethical notions of equality, infinity, and dual concern (for self and other) in order to achieve sustainable conflict resolution.

3. Intersubjectivity and relational mediation models

Relational models of mediation offer avenues for the (re)constitution of intersubjectivity between parties who have experienced either a break in intersubjective understanding or who have had limited or no experience of intersubjective understanding between themselves and the other in order to encourage conflict resolution. The relational models of mediation, each through the articulation of their unique theoretical foundations, jargons, and skills carry an understanding of theories of intersubjectivity and intersubjective understanding that has been broken and is in need of attention, if not outright construction.

As described in the second chapter, the relational worldview is distinct from the individualist worldview, which is aligned with theories of intersubjectivity. As Haney (1994) writes,

> Husserl and Merleau-Ponty have both resolutely rejected the view that subjects are atomistic, individualistic, sovereign egos. Rather, they propose that subjects are innately intersubjective; that, underlying the various levels and modes of intersubjective engagement, there is an essential sociality, a kinship which is integral to the very structure of subjectivity. (p. 252)

Thus, intersubjectivity proposes that while the world may be perceived by a singular individual, individuals can find agreement about many aspects of the lifeworld, thus permitting coordination between them. It is within this framework that relational mediation proposes to address conflict between conflicting parties in order to create opportunities for resolution that consider the subjective experiences of conflict of all parties involved. However, how each of the

four models discusses this takes a slightly different form from one another but all target the same result: a different quality of intersubjectivity between parties.

As discussed in the preceding chapters, Bush and Folger's (1994) transformative model's view of conflict suggests that problem-solving is insufficient for the development of conflicting parties' relationships as it is based on the assumption of the individualist orientation to conflict resolution. Rather, the capacities that transformative mediators attempt to support are the "inherent human capacity for experiencing and expressing concern and consideration for others, especially others whose situation is 'different' from one's own" (Bush & Folger, 1994, p. 81). Bush and Folger call on Carol Gilligan's moral thinking, promoting an integration of individual autonomy and concern for others that represents "human moral maturity" and thus, Bush and Folger view mediation as an opportunity to develop this ethical approach to the other (Bush & Folger, 1994, pp. 81-82). The transformative orientation to mediation prioritizes this opportunity to discover other perspectives and cultivate concern for the other while balancing it with one's own concerns.

Bush and Folger note that *recognition* is a term that is not intended to convey a kind of validation. Rather, it indicates "the experience of moving beyond a focus on the self that a party experiences from *giving* recognition to another" (Bush & Folger, 1994, p. 92). Recognition of this variety may ebb and flow throughout mediation. Furthermore, when recognition is present in mediation, Bush and Folger state that such changes can carry over into the post-mediation relationship (Bush & Folger, 1994, p. 94). However, the authors acknowledge that while empowerment is possible in all cases, recognition represents a greater challenge and may not be achieved as parties must be *willing* to give recognition to the other party. Furthermore, mediators

can always bring parties to focus on the possibilities for recognition (Bush & Folger, 1994, p. 94).

Bush and Folger note that parties in conflict tend to behave with defensiveness, self-absorption, and hostility which presents a challenge to the shift toward recognition. More notably, however, parties tend to be unable to see beyond their own needs, or, otherwise expressed, beyond their own subjective experience of conflict. From this point of departure, Bush and Folger consider success is achieved when parties willingly display openness, sympathy, attentiveness, and responsiveness to the other party, allowing them to broaden their view of the issues at hand. Bush and Folger offer a lengthy list of indicators that confirm a party has reached a point of recognition of the other. These indicators focus on the party's *desire* to consider the other party's situation, behaviours, and experiences; *thoughts* about the other party, their circumstances, their behaviour, and their interpretations of or assumptions about these; the party's *words* about the situation, stated to the mediator or the other party, including expressions of changed understanding, sympathy or an apology; and future *actions* that seek to accommodate the other party's needs, negotiate to have these needs accommodated and should a mutually satisfactory accommodation not be possible, regret about these circumstances (Bush & Folger, 1994, pp. 89-91).

Bush and Folger offer descriptions of techniques intended to promote empowerment and recognition in mediation practice. First, microfocusing is the practice of revealing and reviewing the parties' moves and how they define the problem. With this technique, the mediator is sensitive to moments in the exchange that highlight opportunities for *empowerment* and *recognition*. This microfocus approach is contrasted with global views taken by more superficial problem-solving approaches to defining the problem and seeking solutions. Second, mediators

actively encourage parties to engage in defining the problem, deliberating, and choice-making. This is in contrast to a problem-solving mediation approach where mediators influence and direct the decision-making and settlement process. Third, encouraging perspective-taking suggests that mediators find moments throughout the process where parties may be able to consider the other party's perspective. The specific skills for this technique include reinterpreting, translating, and reframing parties' statements to make them more graspable for the other party and offering, but not forcing, the opportunity to offer recognition to the other party. According to Bush and Folger, empowerment and recognition are mutually reinforcing. As empowerment increases, recognition becomes more possible and vice versa, suggesting that as empowerment increases, desperation decreases (Bush & Folger, 1994, pp. 100-102).

The intersubjective dynamics that Bush and Folger identify here are evident in the principle of *recognition* that strives for a quality of interaction that favours understanding and a willingness to recognize the legitimacy of the other's subjective experiences. Bush and Folger go as far as to identify that the *willingness* to engage thusly may present a barrier to reaching an intersubjective understanding that is based on such recognition. Bush and Folger describe a mediation experience that is both cognitively and emotionally-oriented, both salient qualities of intersubjective understanding. However, the possibility of building new intersubjective experiences is not discounted entirely as Bush and Folger suggest that there is value in even small moments of recognition.

Winslade and Monk's work compares with Bush and Folger's in that it takes for granted that the orientation toward the relational nature of the parties' interactions are central in a mediation process. It is equally critical of problem-solving and interest-based approaches to mediation that do not sufficiently attend to the past relational experiences of parties. However,

where the narrative model departs from the transformative model is how it focuses parties on their future relationship. While the transformative model favours focuses on recognition of the other party and the concerns they hold throughout the process itself, the narrative approach seeks to help first help parties understand their own discursive patterns of entitlement that are embedded in their relational ways of interacting. For Winslade and Monk, entitlements describe the power distribution in a relationship based on historically and culturally-bounded discourses. These discourses and the manner in which they impact the relational patterns between conflicting parties offer mediators cues regarding what is generating and perpetuating the conflict (Winslade & Monk, 2000, p. 96).

Winslade and Monk's emphasis on the entitlements located in discourse suggests that the mediators must work with each party to create awareness of these entitlements and their roles in the conflict. Exploring the role of these entitlements allows mediators to shed light on the origins of feelings, attitudes, and behaviours that play roles in the conflict. To achieve this, mediators use dialogical practices that engage curiosity to expose the discourses and entitlements at play in the conflict. While much of this work may be conducted with each party separately, the mediator will note how discourse has affected the relationship in joint sessions. This exploration and exposition is done in an attempt to externalise a discourse to make it evident for all parties involved in a conversation. Among the goals of the mediator is to draw the party's attention to their desired outcomes regarding a relationship between equals. This orientation presumes that the parties are inclined toward equal relationships and the authors note that parties with whom they work are generally oriented in this way (Monk & Winslade, 2000, p. 108). Thus, mediators draw attention to the unequal nature of many relationships and the impacts of inequality on conflict while working with parties to understand the relational patterns found in discourse that

have implicitly supported an unequal dynamic. Finally, mediators work with parties to determine methods of eschewing these attitudes and behaviours in favour of more equal relationships between them.

For the narrative model, there may be multiple paths to new shared views of cooperation and respect. Reflection on past positive experiences between parties, questions that explore a possible (better) future, and confronting and defining the kind of relationship the parties desire with each other that include respect offer fertile ground for shared goals and understanding (Monk & Winslade, 2000, pp. 147-155). Furthermore, Monk and Winslade address additional aspects of relational ways of being that note the role of curiosity is a central feature of this approach to mediation. Specifically, mediators ought to be attentive to their assumptions that they have understood what a party has stated. This approach favours a stance that presumes that even basic ideas pertaining to a situation or relationship are open to multiple meanings and interpretations and that assuming understanding may lead to missed opportunities to explore meanings that may not be universally shared. Furthermore, narrative mediation's brief mention of empathy indicates that this path to understanding is insufficient for creating connections as it does not create sufficient space for thinking of alternative ways of being in a relationship with the other (Monk & Winslade, 2000, p. 125). Of particular interest to viewing the strategies of narrative mediation and their resemblance to an intersubjective approach is the externalization of discourses as a tool that may be particularly phenomenological in nature. Specifically, externalization offers an opportunity for parties to make the experience of conflict, including the discourses and entitlements, accessible to the mediator of the other party. This externalization offers an opportunity for shared explorations of feelings, attitudes, and behaviours and may help parties make sense of their experiences and explore alternative ways of interacting together that

run counter to discourses and entitlements. Indeed, Monk and Winslade suggest that developing new perspectives about cooperation and respect may be more valuable than any agreement drafted as a result of a mediation (Winslade & Monk, 2000, p. 82). In this perspective, developing communication that facilitates intersubjective understanding is the goal with the possibility of an agreement being something of a bonus.

Monk and Winslade's work is transparent in its caution of the inclusion of the mediator's subjectivity in mediation practice. Furthermore, it appears to advocate for an active intersubjective engagement at both the mediator-party and the party-party levels in order to come to terms with biases, assumptions, and entitlements among all of the parties involved. Such caution serves to draw the mediator's attention to the impacts of their own actions and attitudes on the parties and attend more narrowly to the hoped-for future that the parties will (hopefully) determine for themselves.

Melchin and Picard's (2009) insight model shares a handful of characteristics with the narrative model including reflection on the provenance of some beliefs and behaviours that underlie party's understandings of each other's meanings, values, cares, threats and possibilities and the relational dimension of the conflict. Notably, the insight mediator's line of questioning seeks to help parties grasp each other's perspectives and attitudes to nudge the parties into new relational territory (Melchin & Picard, 2009, p. 78). Ultimately, insight mediators strive to bring this information to the fore to assist parties in articulating what they care about most, what makes them feel threatened, and how parties can work to attain their own goals without threatening those of the other (Melchin & Picard, 2009, p. 78). Like narrative mediators, insight mediators are intentionally curious, aiming to help parties reshape their views of each other and the conflict. More specifically, the insight approach is interested in the information related to the problem at

hand but endeavours to dig further into the relational aspects of the conflict. The deepened understanding seeks to shift feelings and surface new possibilities for ways that parties can relate to one another.

Melchin and Picard outline four principles of insight mediation that underpin the practice. First, it takes for granted the social nature of the human being and recognizes that it is always a subject in the world who makes meaning and interacts with other subjects. Second, while humans may possess a measure of self-interest, they still hold values and cares that motivate prosocial behaviour, influence identity, and create expectations for others' behaviours. Moreover, values also play instrumental roles in grasping where feelings of threat may originate, offering indicators of what is important to a person. Third, the role of values, cares, and threats cannot be underestimated as constitutive of conflict. Acknowledging feelings and naming values and cares are instrumental to understanding from where the conflict comes for both parties. Fourth, insight mediators presume that values and cares impact the experience of conflict and can also play a role in resolving conflict. For insight mediators, values are not only cognitively understood but are also affective. Shifting how parties think and feel about their own and the other party's values and cares can represent a shift toward working on a solution together. Ultimately, this new learning and understanding about self and the other are the goals of insight mediation as these serve as the grounds for parties' new ways of being in relationship with each other (Melchin & Picard, 2009, p. 119).

Melchin and Picard outline the mediation process, with each step attending to the parties' needs, values, feelings, and mutual understanding of the process, the conflict, and possible ways forward. At the outset and following the *attending to process* step, mediators will ask questions that *broaden understanding,* that is, they invite the parties to articulate what it is they would like

to discuss, how they have experienced the conflict, and to share their hopes for the future of the relationship and themselves. Following this step, mediators may begin to probe to *deepen insights* where parties are invited to share more about their values, cares, and threats that have given rise to feelings and behaviours around the conflict. At this stage, mediators are particularly attentive to feelings and display curiosity and active listening skills to invite parties to question what lies beneath their own experiences of the conflict. Mediators work with the assumption that many of the parties' feelings of threats are often connected to previous experiences of threat or anticipation about the future and how these aspects of experience function within their current conflict. Furthermore, as mediators work with parties to raise these feelings, threats, and expectations regarding what they are currently observing, there is a hope that surfacing these before the other party will demonstrate that there is no ill will and that this realization will diminish a feeling of threat and promote understanding (Melchin & Picard, 2009, p. 80).

The authors note that with improved understanding, the fourth stage, *exploring possibilities*, begins to take shape as a matter of course. Once the parties begin this stage, the mediator's role begins to be more facilitative in nature as parties sort through and reality-test possibilities. Finally, at *making decisions,* parties settle on some plans for the future that will honour both parties' cares and threats (Melchin & Picard, 2009, pp. 79-81). This collective exploration is intended to drive understanding, collaboration, and shift the relational dynamics between parties. As Jull (2022) notes, the insight model promotes the altering of intersubjectivity from one that co-creates conflict to one that co-creates relationships. This alteration is prompted by the mutual exploration of the meanings and values that underlie behaviour and the feelings experienced throughout a conflict. By raising the subjective experiences and offering deeper as well as broader explanations of what has been experienced, mediators create opportunities for a

different quality of relationship that promotes intersubjective understanding that is focused on understanding and cooperation.

Among the models included in this work, Nonviolent Communication (NVC) mediation articulates the strongest orientation toward relationship and compassion based on universal human needs and communication about these needs. "Words are windows (or walls)" is the title of the French translation of the text, suggesting that communication and words allow a proverbial line of sight into the inner world of the other. As the model suggests, many communication patterns that are often considered normal in many societies tend to function as walls, creating barriers to connection and compassion and this is what Rosenberg considers to contribute to, or be emblematic of, violence - something that hurts or harms another. For Rosenberg, the back-and-forth of communication in a nonviolent fashion will create the conditions for compassion to manifest naturally (Rosenberg, 2015, p. 7). The proposed outcomes of NVC on relationships include deep listening, respect and empathy, and a wish to give from the heart (Rosenberg, 2015, p. 12).

Regarding the relationships between parties, Rosenberg asserts that the more prevalent modes of communication favour moralistic judgements of self and other; comparison between self and other; denial of responsibility for one's thoughts, feelings and actions; and demands made upon one another that imply that a failure to comply will result in punishment. For Rosenberg, these aspects of communication create communication barriers and block the development of compassion between people. These create communication blocks because of the implications of wrongness or badness embedded in them and these hinder connection between people. Furthermore, they promote relationships of domination which are antithetical to a relationship based on honesty, empathy, and compassion (Rosenberg, 2015, pp. 13-24).

As already noted several times, empathy is a recurring theme throughout Rosenberg's work. Within the NVC model, empathy is projected as "a respectful understanding of what others are experiencing" (Rosenberg, 2015, p. 91). Rosenberg affirms that empathy can only occur when preconceived notions and judgements regarding the other have been emptied (Rosenberg, 2015, p. 91). Despite its necessity, Rosenberg notes the difficulty faced in cultivating space for empathy in many relationships and interactions, suggesting that those who believe they possess this capacity are often mistaken (Rosenberg, 2015, p. 91).

Finally, Rosenberg argues that intellectualizing a situation functions as an impediment to empathy as it creates a block to the quality of presence that empathy requires. The block occurs when listening is done not to connect with the other but to consider whether or not what they are sharing fits into their own theories or pre-existing notions (Rosenberg, 2015, p. 93). Rosenberg attempts to direct attention toward the feelings and needs the person is sharing. This can be done through direct questioning or paraphrasing about the feelings and needs upon hearing something from the other person, phrased as requesting confirmation of the feelings and needs interpreted from something that had been shared. Rosenberg maintains that reflecting the feelings and needs of the other brings about a different relational dynamic that not only ensures an accurate understanding of the other's words (Rosenberg, 2015, p. 100) but also fosters connection rather than contention. For NVC, the intersubjectivity by way of empathy and universal human needs that can be understood by all people is strong. Citing therapist Carl Rogers, Rosenberg (2015) notes the impact of empathy,

> When I have been listened to and when I have been heard, I am able to reperceive my world in a new way and to go on. It is astonishing how elements that seem insoluble

become soluble when someone listens, how confusions that seem irremediable turn into relatively clear flowing streams when one is heard. (p. 113)

Throughout much of the work, Rosenberg proposes a type of self-help and other help, when one is party to conflict. However, he recognizes the role of a mediator in working with parties who have experienced a block of empathy and compassion for one another. According to this approach, understanding one's feelings, needs, and desires as well as those of the other are keys to facilitating connection and conflict resolution. Notably, Rosenberg notes that in his experience, the quality of the connection between the parties is the priority rather than the issues themselves as the quality of the connection will be a determinant in conflict resolution (Rosenberg, 2015, p. 163). Through such a connection, parties are more likely to recognize and acknowledge the other party's feelings and needs and explore alternative strategies to satisfy them.

The intersubjectivity conveyed by Rosenberg's model is unique in that it prioritizes empathic connection and understanding between parties. This connection is based on the assumption that human needs are universal and forms the basis of empathy and understanding (Larsson, 2010, p. 65). Rosenberg maintains that needs are often confused with the strategies to satisfy them and that gaining clarity on this offers a great deal to support the connection between individuals. Such a focus on mutually shared needs forms a point of intersubjectivity that the other relational models explored do not address in such detail. Finally, the NVC model places an emphasis on the notion that *feeling of being heard and understood* in creating a space where connection between people is more likely to occur. Indeed, his work suggests overtly that it is the mediator's role to understand and translate parties' statements into feelings and needs in ways that the other party can understand (Larsson, 2010, p. 98). This activity plays a dual role. First,

it allows the party being translated to feel heard and understood, which contributes to openness to hearing the other. Second, this process provides information about the party's experience of the conflict into terms to which the other party can connect. Rosenberg suggests that once someone is heard, they are more capable of hearing. As Larsson (2010) writes, "Mediation is both about feeling heard by the other and taking in the reality of the other" (Larsson, 2010, p. 102). Indeed, this sharing of reality and connection at the level of needs is a project aimed at intersubjective understanding that leans on intersubjective feelings and needs. The mediator modeling, translating, and helping parties understand each other and recognize parts of themselves in the other party, a shared space where mutual influence takes place becomes more likely at a profound level.

Thus, the four models of relational mediation each propose a path toward a new and more hopeful intersubjective understanding between parties that allows space to share each party's experience of the conflict and their hopes for the future, attending to both the cognitive and affective aspects of the conflict experience and the relationship. Each approach also attends to some aspect of promoting equality of the parties and their perspectives throughout their processes, though the groundwork for that equality is articulated differently within each approach.

4. Structures of intersubjectivity in relational mediation

The preceding has described a structure of intersubjectivity and intersubjective understanding between subjects interacting with one another, collaboratively understanding and creating reality toward the objective of creating a new dynamic that will respond to and diminish the assumption of the unicity of the conflict experience. However, there are two distinct, though overlapping, structures of intersubjectivity that takes place throughout the course of relational

mediation practice: the first being mediator-party intersubjectivity between each party and the mediator; and the second being party-party intersubjectivity, between the parties and prompted by the mediator.

a. Mediator-party intersubjectivity

As noted in chapter three of this work, there is a significant amount of literature exploring mediation practices and mediator qualities that seek to foster trusting relationships between the mediators and each party. Success in this area is often seen as a precondition to successful mediation, especially within the relational mediation approaches. Textbooks on mediation practice often describe the skills necessary to build relationships with parties that are based on trust and understanding. These skills include empathic listening, validation, paraphrasing feelings, paraphrasing content, reframing, asking clarifying questions, honouring silence, (McCorkle & Reese, 2015, p. 39), attending to nonverbal communication, reflective listening that gathers information, processing and decoding information, interpreting the speaker's meaning, and verifying the interpretation, identifying emotion (Picard et al., 2004, pp. 232-236), listening openly and without attempting to determine who is right and wrong, and listening with compassion (Erickson & McKnight, 2001), among others. These authors also note the more subtle skills around the different types of questions intended to not only draw out information from the parties but also create a relationship between the mediator and each party. More specifically, modeling curiosity through questions that do not convey judgement is considered in each of the above-mentioned texts and play a particularly significant role in the insight model (Melchin & Picard, 2009). As mediators do their best to maintain neutrality and/or impartiality and confidentiality in their practices, there is a generally-accepted drive to create trusting relationships with parties in order to reach a level of comfort where parties can share what is most

important to them regarding their experiences of their conflicts. Such sharing may lead parties to more vulnerable states, thus necessitating a measure of trust between the party and the mediator. Indeed, this process is made easier when parties are not judged by the mediator for their subjective experience.

While there are clear demarcation lines between psychoanalysis and mediation practices, as noted previously in this work, these fields do share concerns regarding relationships between helper and client/party and the integral nature of a relationship of trust and security. The parallels between the mediator-party relationship bear a striking resemblance to many therapeutic relationships, including psychotherapeutic and counseling relationships. Benjamin (2017) organizes the relationship between intersubjectivity and the psychoanalytic relationship around the notion of recognition. As Benjamin notes, past generations of intrapsychic theory considered the properties of a single mind. However, more recent generations of this theory have begun to consider the "interpenetration of minds" (Benjamin, 2017, p. 1) and to reconsider the model of the the psychoanalytic relationship that is composed to subjects that simultaneously deny the subjectivity of the other - the client as an object to be helped and analyzed and the therapist as the object rendering expertise. The supposition that recognition may play a role in this relationship suggests that each subject may recognize the subjectivity of the other as more than simply the one being helped or the one helping but rather, as a space for the two subjectivities to connect (Benjamin, 2017, p. 3). This interconnection between therapist and client recognizes the competence of client as much as therapist and seeks to allow a form of partnership between the interlocutors.

As Benjamin notes, therapeutic relationships include the risk of the analyst not sufficiently meeting the patient in their own subjectivity but forcing the analyst's subjectivity on

the client. The result is that the analyst does much of the analysis of his/her own without collaborating or working through the matters brought to therapy in partnership with the patient (Benjamin, 2013). Specifically, by not including the client and his/her subjectivity in this process, the analyst does much of the meaning-making independently and according to his/her own subjectivity, paying insufficient attention to the client's subjectivity that may hold much of the keys to the meaning-making. Imposing meaning-making runs counter to the notions of a co-created understanding of a given matter and more affective expression (Benjamin, 2013). Thus, the relationship between therapist and client ideally tends toward an intersubjective encounter where each party is an equal contributor to the dynamic interactions. Benjamin characterizes such a failure to sufficiently collaborate in meaning-making. This perspective aligns with the principles of self-determination and neutrality in mediation that are very intentional about leaving the space open for parties to make meaning and come to decisions about what is important for them with limited mediator influence.

An additional perspective proposed by Buirski et al. (2020) suggests that intersubjectivity in the therapeutic setting "is concerned with the field created by the interplay of worlds of subjective experience and personal meanings" (Buirski et al., 2020, p. 9). Indeed, the authors note that the objective reality imposed by the universal assumptions of the therapeutic models is dismissed and replaced by the therapist's acceptance of the patient's personal experience and the lived reality (Buirski et al., 2020, p. 9). The newer models (post-Freud) suggest that these experiences and the resulting personal meanings are determined in early childhood and carry with them the expectations of behaviour of those surrounding them. However, these expectations are influenced and impacted throughout life by the interactions with others as they influence and impact those of the people around them. Finally, the therapists' access to the client's subjectivity

is inherently limited and thus, the therapist must work with a great deal of openness and humility in order to strive for understanding of the patient's experience. Through such an experience, the client and the therapist create opportunities for new patterns to emerge and disprove the patterns that had previously existed and been the cause or contributor to the client's suffering (Buirski et al., 2020, p. 10). As the authors suggest in a description of intersubjective therapy that privileges a patient's description of experience rather than an objective reality, Buirski writes

> We referred to the patient's experience of the father, rather than to what the father 'actually was.' The reason for this semantic distinction is that, from the intersubjective perspective, the tools of psychoanalytic psychotherapy do not permit us to know another's reality in any objective sense. We cannot know how the father really was with the daughter; we can only know the daughter's subjective experience of the father as she communicates it to the therapist today. (p. 13)

Again, Buirski's perspective aligns with the phenomenological approach to conflict applied by relational mediators who work in the realm of experience rather than objective reality.

Bohleber (2010)'s review of the place intersubjectivity takes in psychoanalysis suggests that it is heavily informed by a variety of philosophical foundations. These approaches consider human development, pre-reflective engagement, and the role of conceiving of the distinction between the self and alterity in the psychoanalytic process. Bohleber's (2013) text offers yet another perspective by Ogden (2004) on the *third,* as the emergent intersubjective experience between analyst and analysand. This emergence of a new experience of healthy object relatedness may constitute a *third* for both the analyst and analysand - something different, new, and a model of psychological growth that must be understood as both extending from the individual subjectivities that are interdependent (Bohleber, 2013, pp. 804-805). Bohleber's point

is well-situated for a context of mediation where the *third* is constituted in the context of the conflict that remains alive in the mediation process. In this analysis, intersubjectivity is considered to be an act of drawing an individual out from isolation (Bohleber, 2013, p. 805) which is resonant with the relational mediation's goal of drawing attention to the relational element of conflict, in contrast to the commonly assumed view of the self acting for itself alone.

For the mediation context, there are multiple relational dynamics and cautions that require attention. First, the mediator's role as a professional neutral or impartial third party resonates with Bohleber's point, despite the different context and role of the mediator in contrast to the therapist. A mediator is indeed a helper who relies on the creation of a relationship with each party. However, the mediator is often beholden to their position as third party neutral between the two parties and thus, must retain a measure of consideration for the process they are tasked with guiding for the parties that have sought their services. This position requires a certain distance from all parties for both the *perception* of neutrality as well as the attempt at *practicing* neutrality, in spite of the challenge of retaining this position in relation to both parties.

Second, these texts become particularly relevant to relational mediation when mediators are thought of as helping professionals who formulate a limited but significant form of 'knowing' with parties and their conflicts using a phenomenological orientation. In the therapeutic context, there is risk in forcing an analysis on someone that may not be entirely accurate, complete, or tainted with assumptions. Likewise, in mediation, the risk is found in directive mediators who may betray a bias or assumptions about the parties and/or conflict that may not be entirely complete or accurate and result in a less than satisfying interaction or overall outcome. And riskier still, such directiveness is antithetical to the self-determination principle of mediation and may possibly harm the relationship between the mediator and one or both of the parties. Thus, as

is discussed in the relational mediation literature, there is a strong and central regard for party self-determination as it holds parties' experiences of conflict as central to the work, rather than the analysis of the mediator.

Mediator neutrality deserves consideration within the context of mediator-party intersubjectivity. Specifically, the mediator engaging in relational mediation practice favours skills that are oriented toward building and sustaining relationships with (at least) two parties simultaneously. The challenge in this is obvious: positively influencing relationships with all parties may convey partiality if the mediator is unbalanced in their ability to foster trusting relationships with all parties, or if there is an unbalance between parties in their acceptance of this trust-building. Moreover, should a mediator find themselves in a conflict dynamic with one or both of the parties, this might suggest that there will be limited opportunities for a successful mediation. Thus, as outlined by the mediation literature explored thus far, the imperative of mediators to be authentically (or as authentically as possible) non-judgmental with both parties supports the development of a relational intersubjectivity in the mediation context as well as between each party and the mediator. However, this must be balanced with the risk of being unable or limited in the ability to connect with both parties in a balanced way that conveys impartiality, as will be explored in the third part of this thesis.

Thus, mediator-party intersubjectivity considers both the mind and the feeling of the other, as evidenced by the skills favoured by the mediation textbooks and literature explored. This orientation is in contrast to relying on the mediator's view of the conflict as the expert in conflict resolution to prompt resolution. It also considers a balanced dynamic between helper and helped, while recognizing the mutually-influencing interactions that are found in such a relationship. Furthermore, neutrality/impartiality presents a unique challenge to the mediator

who intends to work with intersubjectivity with more than one party in their practice. Finally, mediators engage empathic skills including qualities of emotional intelligence with each client to several ends: first, to favour empathy between mediator and each party to create a connection based on trust with the mediator; and second, that a climate of trust will hopefully create the conditions necessary for trust and improved relationship between the parties throughout the course of the process.

b. Party-party intersubjectivity

Relational mediators see their goal as creating the conditions that are propitious for a change in the relational dynamics, or intersubjectivity, between parties in conflict. Of central importance to relational mediation practices is the cultivation of a climate of trust and openness between themselves and each party, as described in the previous section, and between the parties. The hope is that with the introduction of interactions that favour trust and openness, there may be a shift in the intersubjective dynamics between the parties in mediation. In addition to the support offered to each party, relational mediators also develop a particular grasp of, or even multiple perspectives of, the source of conflict, as their particular model frames it, through their phenomenological approach. They use this information and framing to engage in work with parties to create the conditions that are propitious for a shift in dynamics based on the parties' experiences of the conflict.

Relational mediators employ strategies that target several areas of development for the parties before them. They strive to create spaces where new information can be drawn out of each party, lay it bare for the other party to understand, and alter how the conflict has presented itself previously. Furthermore, they explore the relationship, their meanings, the expectations, needs, values and cares touched upon through the conflict, and the real and perceived threats, and

they highlight that the parties have impacts on each other by nature of their interdependence and co-location in a context and relationship. Shifting or altering these perceptions is intended to broaden the scope of what is known, including the information hidden by virtue of the parties' own limited perspective in relation to the conflict. Thus, mediators seek to help parties correct erroneous perceptions that they may hold of the conflict, the other party, and perhaps even themselves. This will include perceptions about the possible solutions they had previously dismissed or had not explored. These may be factual or perceptual pieces of information. For the relational mediators, all information and parties' experiences can constitute relevant content to the mediation process.

Mediators are acutely aware that parties may have limited abilities to acknowledge the other party's experience of a conflict, including the thoughts and feelings related to the experience. This limited ability to consider and explore the other party's subjectivity and feelings are often considered barriers to mutually satisfying solutions to conflict. Furthermore, the persistent conflict dynamic of action-reaction-reaction and so forth further diminishes the possibility that the pattern will be interrupted unless there is an external intervention. Mediation is not the only form of external intervention that has the potential to interrupt this dynamic but it does present an option worthy of consideration for parties who wish to have or require a future relationship with one another.

With consideration for the role of intersubjectivity in conflict dynamics, relational mediators work to not only interrupt and acknowledge the patterns of conflict behaviour, thoughts, and feelings, but seek to introduce and practice an intersubjectivity that shifts the patterns of behaviour, thoughts, and feelings that acknowledge the separate yet equally human and valid consciousness and feelings of their apparent opponent. Mediators apply skills and

structure processes intended to create an intersection between the subjectivities of the parties before them. They subtly integrate the display of a phenomenological approach for the parties to follow along, to interrogate their subjective experience of conflict in the presence of the other with the hope that new knowledge about the opposing party, themselves, and the conflict will emerge. This integration of experiences and a new way of perceiving are effectively the project of relational mediation. The new intersubjective understanding between parties is what mediators hope to prompt throughout their processes.

Conclusion

This chapter has explored several elements of theories of intersubjectivity to grasp its utility in framing relational mediation practice as a bid by the mediator to cultivate a new shared experience of conflict resolution while creating expanded understandings of the conflict. Furthermore, it provides theoretical resources through which to understand how shared knowledge circulates, is questioned, shared, and contributes to the ability to form empathic connections and contribute to cooperation. Intersubjectivity allows for a recognition of the distinct subjectivities of those surrounding the self while also recognizing that the self and other are mutually-constituted through intersubjectivity. The *world inside* and *the world out there* are not mutually exclusive as selves influence each other through social exchanges and relationships.

However, the limits of intersubjectivity are made clear when the inability to access the inner world of the other. There are attempts to glean what the other may be experiencing through Theory of Mind and other empathic connections but they are limited and subject to the asymmetry of experience that favours one's own perspective. Despite this asymmetry, there remains a recognition that there is a distinction between one's own subjectivity and the other's but that they are mutually-constituting of the conflict experience. Furthermore, Buber and

Levinas offer valuable lenses through which to appreciate the necessity for parties to perceive each other as radically same and radically different in order to promote an enduring equality that supports sustainable conflict resolution. Harnessing Buber and Levinas' thought and its intersection with the ethical qualities of intersubjectivity, it becomes clear that the quality of relationship between conflicting parties is integral to accepting or at least considering the other's perspective of a conflict. Without such quality, relational mediation models will encounter barriers to success. The four relational mediation models each offer valuable theories and practices that are intended to circumvent these relationship-limiting orientations and reach the objectives of I-You and infinity-favouring relationships that support conflict resolution.

Relational mediators work with theories of intersubjectivity in two distinct ways: first, they work toward the intersubjective experience between themselves and each of the parties individually. This quality of relationship is thought to promote trust, openness, and create patterns of interaction between themselves and each party that favour conflict resolution. Second, relational mediators work to create the conditions for this quality of relationship between parties in mediation in ways that favour self-determination and cooperation between parties in conflict in order to shift patterns of interaction built on ethical foundations.

However, relational mediation may not always be successful in achieving this quality of relationship, despite the application of the skills and practices prescribed by the models. The third and final part of this thesis will address the barriers to conflict resolution that may be found in the individual's idiosyncrasies and/or in the structures in which their relationships are embedded.

Part III: Failed mediation as failed intersubjective understanding

Chapter 6: Barriers to intersubjective understanding extending from the person

Introduction

Thus far, this thesis has created a deeper and more expository account of relational mediation practices through the lenses of phenomenological mediation practices and, by extension, the development of the skills and conditions that are propitious for intersubjective understanding between the mediator and each party as well as between the parties. Relational mediators, according to their frames for understanding parties and their conflicts, do not seek to directly analyse and correct problematic attitudes or behaviours nor to pronounce judgment regarding conflict. Rather, mediators, and relational mediators in particular, take for granted that parties will know the best ways to resolve their conflicts and guide parties through collaborative navigation. Thus, mediators rely on *how the conflict presents itself to the parties* and processes favouring trust and communication to create new intersubjective understanding between parties.

However, as is well-known by mediators of all stripes, mediation is not a fail-safe or a guarantee that the conflict will be resolved. Regardless of how one defines "success" in mediation, it can fail to deliver on its promise of better relationships, improved communication, and more satisfying resolutions. This chapter will use the lens of intersubjectivity to speculate about and explore the reasons mediation may fail for many parties.

Each section of this chapter is structured such that the challenge in mediation practice is outlined and then viewed through the lens of theories of intersubjectivity as it is presented in the peer-reviewed literature. This structure develops the insights into what contributes to difficulty or failure in resolving many conflicts through mediation. The situations discussed in this chapter

relate to some conditions that could affect one or both of the parties (or the mediator themselves). Each of the conditions discussed has been addressed in some capacity in the intersubjectivity literature and thus offers contributions to the discussion of the place of intersubjectivity in relational mediation. Indeed, each of the conditions explored suggests that one or more parties and the mediator may possess exceedingly unique ways of perceiving the world around them, making intersubjectivity a problem that may or may not have a solution.

This thesis recognizes that most mediators are not trained in diagnosing or treating the conditions explored. However, this reality does not negate the possibility of encountering them through mediation case management. Indeed, there may be situations when parties self-disclose a diagnosis of any of the conditions discussed. However, as most mediators are not experts on each of the conditions, it may be difficult to discern the functional limitations experienced by the client. This chapter is not intended to propose solutions to the challenges presented, but to expose the nature of the challenges to mediating for intersubjective understanding between one or more parties (or the mediator) who may live with any of the conditions described here.

1. Competency

The ability to participate fully and productively in mediation can be affected by several conditions and circumstances related to the competence to participate, such as limits to parties' cognitive capacities. Congenital or acquired disabilities, legal or illegal substance use, mental health conditions, and the effects of aging are all aspects of the human condition that may impact one's ability to participate in a sensitive discussion where significant decisions may be made. An inequality in competence may present barriers to intersubjectivity through mediation, and thus may lead to failed mediation that satisfies both parties in the conflict.

Among the assessments mediators make at the start of a mediation process is parties' competence to effectively participate in mediation and their ability to negotiate for their own best interests. Waldman refers to the gauge of *readiness* to participate and goes on further to distinguish between legal competence and medical capacity. Waldman (2011) notes that legal competence suggests that the state may take action to prevent harm that may result from a decision-maker's impaired judgement, while medical capacity refers to the individual's functionality with particular tasks. Furthermore, the question of capacity asks about the specific context of the decision-making, such as complicated financial decision-making (Waldman, 2011, p. 28). As further discussed by Waldman (2011), a mediator is tasked with determining parties' abilities to participate in mediation and make decisions that are properly aligned with their own stated values and that these abilities can be compromised by illness or disability. In such situations, mediators are often not experts in making such assessments and must rely on their own standards and the support of other professionals to decide on effective and meaningful paths to settling conflict. Coy and Hedeen (1998) suggest there might be several reasons that the matter of the suitability of a conflict for mediation presents challenges to mediators in their party and conflict assessment. Among these reasons are the limited literature outlining this challenge and the delicacy of mediators' assessment of these challenges without the requisite education and training to assess the parties' competence.

There is the possibility that the parties' immediate presentation of capacity may not meet professional standards (or organizational standards in the case of volunteer mediation) for effective and meaningful participation at that moment, but it does not preclude them from participation in the future. Waldman (2011) offers criteria to support mediator assessments to determine if the parties possess the capacities to make decisions that will be fair in the parties'

estimation and durable. First, the parties must be able to *understand* the mediation process and purpose, including the mediator's and parties' roles. Second, parties must be able to *appreciate* the seriousness of mediation engagement and the weight of engagement with the agreements reached following mediation. Third, parties must be able to *communicate* either directly or with the assistance of an interpreter. These criteria speak to the parties' functionality rather than reasonableness. Coy and Hedeen (1998) provide an overview of the literature on the matter with particular concern for disabilities that may impair a party's capacity to participate fairly and productively in mediation. The article itself is rather dated, but it offers relevant content about this particular aspect of a party's competence. Specifically addressing the community mediation context, Coy and Hedeen suggest that a party's mental health and social skills ought to meet some minimum requirements for mediation to be appropriate or helpful for the parties involved (Coy & Hedeen, 1998, p. 116).

The question of capacity becomes increasingly relevant if a party's decision-making capacity limits a party's fully-informed decision-making or permits decisions that may lead the party to choices that are not in their best interests. Often, this is where mediator neutrality becomes challenged as it comes into tension with party autonomy. As briefly discussed above, neutrality itself remains a challenged concept as it risks leaving parties vulnerable to exploitation and unfair outcomes. It is also an aspirational rather than absolute practice in mediation settings, meaning that mediators must apply some measure of judgment in the ethical practice of mediation to centre the experience, wants, needs, and values of the parties throughout the process. Neutrality also centres on party decision-making, lending further commitment and satisfaction to mediation outcomes, which may be meaningful regardless of the parties' mental capacities.

As discussed at the outset of this thesis, certain conditions apply to the appropriate practice of mediation, including that of neutrality and the promotion of party self-determination. Party self-determination, also a standard for the appropriate practice of mediation, suggests that parties retain decision-making power throughout mediation. Assessing a party's capacity to participate may reveal a mediator's bias in either direction. On the one hand, the combination of an empowerment ethic espoused by community mediation programs in particular and the responsibility of a mediator to evaluate the capabilities of a party to participate may create challenges in accurately making this assessment. While a mediator may wish to offer opportunities to empower traditionally disenfranchised parties, they also are at risk of disempowering these parties by way of inappropriately informed judgments of party capacities to participate in mediation (Coy & Hedeen, 1998, p. 116). On the other hand, a mediator who may not possess the requisite skills to manage a party's particular limits may unduly limit their access to mediation to resolve a conflict because of their limited skill and knowledge around understanding a party's condition or needs. A mediator without the tools to understand or manage some parties' unique capacities may be limiting a party's access to a process that may be helpful.

This thesis again acknowledges that mediators possess a particular set of skills and mental capacity evaluation is not necessarily one of them. However, this thesis suggests that an expertise in mediation does not preclude the development of skills to support or to consider conditions that can accommodate party needs as they are understood and/or requested. Both Walman and Coy and Hedeen outline accommodations that can be made for parties who may express particular needs, such as bringing a support person with them to mediation, timing the mediation to account for the mediation's effects, or ensuring the duration of mediation sessions

accounts for the attentional and energy needs for effective participation. In sum, the authors suggest that while a mediator may not be a diagnostician, they can be attentive to their parties' needs, accommodate many of their expressed needs, and be flexible in their mediation practice.

Mediators need to be attentive to ableist biases while balancing the ethic toward protecting parties that may require it. Disability and limitations can strike at any moment as the result of an accident or disease, making a once-fit person less fit or unfit for mediation participation. Furthermore, this condition may fluctuate depending on circumstances, medication consumption, or injury healing process status. The family mediation context, and in particular elder mediation, has special consideration for assessing parties' capacities to participate. As Martin (2015) notes, concerns about aging in context, capacity, and dementia remain considerations for mediators working in this field. These considerations may give rise to discrimination, stigma, and power imbalances that may lead to unsatisfactory solutions. Capri (2014) adds to this perspective, noting that psychotherapy has tended to neglect those living with intellectual disabilities, noting a form of discrimination that has generally gone unchecked.

The literature discussing the matter of competence and intersubjectivity is somewhat sparse, except in the memory care area of study. Some literature discussing dementia care addresses the possibility of intersubjective understanding for people living with dementia, though it is the caregivers that must take more responsibility to work toward intersubjective understanding with people in their care. Pilnick et al. (2025) note that the relational impact of dementia often presents as "competing realities" or *reality disjunctures* as the person living with dementia experiences a distortion of time and space in their experience of the world around them. This disjuncture can be distressing both for the person living with dementia and their caregiver. The authors suggest that this limited ability to experience intersubjective understanding between

patient and caregiver may require that caregivers prioritize shared experiences to promote intersubjectivity and relieve distress. This attends to the social self, rather than the subjective self and has shown positive results for both parties. Froggett et al. (2020) suggest that studies indicate that people living with dementia retain capabilities for emotional intersubjectivity and that caregivers would be well-advised to attend to this aspect of the person living with dementia's personhood to retain this level of support and relationship. Specific to mediators working elder mediation, Martin (2015) notes that mediators working in this field may find ways of addressing or integrating these realities into their practice and may employ a focus on the elder's strengths as a measure to meaningfully attend to their dignity and autonomy (Martin, 2015, p. 481). Capri (2014) suggests that there is the possibility for therapist and client with intellectual disability to have an intersection of subjectivities, otherwise understood as intersubjectivity, but that this possibility is often overlooked as a result of pervasive ableism (Capri, 2014, p. 418).

The discussion of cognitive capacities and the challenges they may pose to intersubjectivity in mediation presents an intriguing opportunity for mediators engaging parties who may be experiencing cognitive decline or intellectual limitations. Indeed, family mediators practicing in the field of elder mediation are expected to have sufficient training in these particular challenges (OAFM Designation Requirements, 2025). The studies reviewed regarding creating the conditions for intersubjectivity with people living with dementia and intellectual disabilities suggest that this is an area of development that could or has influenced elder mediation practice and could influence other areas of mediation practice. The lens of intersubjectivity offers a path when one considers the impacts of the two structures of intersubjectivity in mediation - mediator-party intersubjectivity and party-party intersubjectivity.

In the context of relational mediation practice, a mediator will be attentive to the party's ability to make sound decisions for themselves but will also be attentive to the party's capacity to express themselves in ways that are intelligible and to be cognizant and appreciative of the other party's subjectivity. Assessing these abilities in the parties will offer some frames to assist the mediator in assessing whether intersubjective understanding may be possible for the parties.

A review of the literature regarding intersection of competence and intersubjectivity shows that there could be room for development in mediation theory that attends to particular instances where parties arrive at conflict and mediation with challenges that are beyond the mediator's average scope of challenges. However, the literature also suggests that despite extending beyond what a mediator might normally encounter through their work, there are resources that may influence and build a mediator's practice to include persons living with dementia or intellectual disabilities in their work. Seeking out literature on intersubjectivity in these areas of work and study may add valuable resources to a relational mediator's toolkit to learn how such limits could present and what possible areas of opportunity could be for parties facing these realities.

2. Mental health

Mental health, when viewed through the lens of theories of intersubjectivity, may present another barrier to conflict resolution. While the situation of people living with dementia or cognitive limitations are obvious examples of conditions that are characterized by limited capacities, other conditions follow a similar pattern of limited abilities to *understand* mediation, *appreciate* its seriousness, and *communicate* effectively while demonstrating *readiness* for mediation, including a range of mental health conditions. Hickerson (2017) discusses the challenges of working with parties who are experiencing diminished mental health. With the

ubiquity of mental health concerns among the population estimated at one in five people, Hickerson suggests that it is reasonable to assume that several parties seeking mediation may be subject to this concern and notes that people with mental health limitations may be overrepresented in the mediation clientele (Hickerson, 2017, p. 54). Hickerson notes that "the common element in mental health disorders is that all relate to the inappropriate functioning of the human mind" (Hickerson, 2007, p. 55). Hickerson notes that it is impairment rather than eccentricity that is a call for concern as the mediator works with parties (Hickerson, 2007, p. 55). Hickerson offers perspectives regarding the role of mental health disorders and impairments, suggesting that the disorder or impairment may have an impact on the party's perceptions of the conflict, their participation in mediation, and the strategies a mediator may employ to help the parties. As Hickerson notes,

> Helping parties come to a common understanding of each other's narratives may be particularly challenging if a mental health disorder (or a medication taken to ameliorate a disorder) is distorting the disputant's conflict narrative. Assuming the parties will have ongoing interactions, the difficult task of learning to understand each other's narratives—and when necessary, revise that understanding - is made even more difficult by the influence of a mental illness. (p. 62)

Coy and Hedeen (1998) also acknowledge the possible connections between the conflict itself and the parties' capacities to participate, citing traumatic events such as divorce, child custody disputes, job dismissal and property division that may be contributing to diminished mental health and social skills in the short-term. Thus, it could be possible that despite the diminished capacities, creating opportunities to resolve aspects of these experiences may contribute to wellness and healing overall (Coy & Hedeen, 1998, p. 118). Beck and Frost (2007)

support this position as they write from a family mediation perspective, but also consider that a case that may inappropriately proceed to mediation in favour of party autonomy may, in fact, deny vulnerable parties the protections afforded by a judicial process (Beck & Frost, 2007, p. 255).

Coy and Hedeen advocate for flexible processes that may engage other supportive agents, such as mental health professionals, to create more promising conditions for successful mediations while honouring the autonomy and safety of the parties they assist. Furthermore, the authors offer a standard for assessing party suitability for mediation that includes evaluating that parties can acknowledge the cause and effects of events and behaviours, acknowledge their own contributions to a conflict, focus on one issue at a time, articulate their desired outcomes, understand the commitments into which they may enter, and understand the role of the mediator and the rules of the mediation process (Coy & Hedeen, 1998, p. 121). Beck and Frost add that ensuring that parties can understand the impacts of their decisions, that they can participate in mediation according to its ground rules, and that they have a rational and factual understanding of the situation (Beck & Frost, 2007, p. 259). With consideration for the impacts of mental health and the medication that may impact participation, Hickerson (2007) suggests mediation processes that incorporate flexibility for those who wish to proceed and adds that allowing for breaks as needed, encouraging parties to recruit support people, slowing down negotiations and decision-making, understanding how a party's worldview could be influencing their participation, encouraging parties to engage legal counsel can be added to the measures intended to support and protect parties who may experience mental health concerns (Hickerson, 2007, p. 64).

Eddy (2012, 2021), a mental health, legal, and mediation professional, has authored several volumes on working at the intersection of mental health and conflict, having developed a

model of *High Conflict Personalities*, or HCPs, intended to help parties experiencing high conflict situations, including conflict resolution professionals such as lawyers, human resource professionals, and mediators. While not academic in tone or structure, Eddy's work notes that personality disorders such as narcissistic personality disorder, borderline personality disorder, antisocial personality disorder, paranoid personality disorder, and less-extreme yet associated traits, though perhaps undiagnosed, can lead to persistent patterns of interpersonal conflict. Specifically, these disorders or traits in conflicting parties (one or both parties) present as blaming behaviours, a lack of insight into their own behaviours, rigid thinking, difficulty empathizing with others, splitting or all-or-nothing thinking, and emotional intensity that is disproportionate to the situation. While Eddy cautions against laypeople diagnosing individuals with difficult behaviours as having a personality disorder, he does encourage monitoring for particular behaviours that might indicate that a shift in mediator behaviours might be required to meet the needs implicit in those living with such conditions. Eddy also suggests that working with HCPs in conflict will be limited. In particular, shifting their high conflict behaviours will be challenging or impossible because it is unconscious and caused by *internal upsets* that cannot be easily tamed (or at all) thanks to distorted interpretations of the situation. Eddy's work does not rely on characterizations of HCPs as inherently bad or sick people with impossible personalities, but orients readers toward strategies that recognize the defensive nature of HCP behaviours that are rooted in heredity, early childhood experiences, and the larger culture in which a child was raised.

The strategies outlined by Eddy trend toward compassion for the HCP, despite impulses to do otherwise when their behaviour becomes inordinately difficult. Eddy suggests leaning into empathy, attention, and respect while working with HCPs in order to calm the defensive instincts

that are often engaged during conflict. Eddy's work also suggests limiting the volume of correspondence to avoid fueling the emotional upset that often comes with high conflict, responding to misinformation or distortions when others outside the conflict with influence have been privy to it. The volumes also suggest directing attention away from the conflict and toward analyzing options for the future, and setting limits on behaviour to contain the damage that might be inflicted by an upset HCP. Finally, Eddy offers mediators working HCP parties special advice that sets practice with HCPs apart from others. Mediators should resist trying to bring HCPs to have insights about their own behaviour, resist accentuating the past, limit focusing on emotions (the parties' or the mediator's) throughout the course of the work, or call attention to their high conflict behaviour. Eddy maintains that these approaches will not result in favourable outcomes for anyone.

Based on these authors' assessments of the impacts that diminished mental health and social skills may have on a party's perceptions and experience of a conflict and mediation, it is worth engaging with peer-reviewed literature that addresses the impacts of mental health on intersubjectivity. Indeed, Hutto (2013) notes that interpersonal exchanges depend on high-level interpretation of another's psychological states while other exchanges require a simple grasp of another's expressed attitudes and emotions while choosing responses that are affectively appropriate, timely, and well-managed . Hutto notes that the *Diagnostic and Statistical Manual of Mental Disorders* notes that dysfunctional interpersonal relating characterizes a number of mental health conditions, including autism spectrum disorder, borderline personality disorder, and schizophrenia (Hutto, 2013, p. 241). Fuchs (2015) further notes that schizophrenia involves "some incapacity for meta-awareness, self-monitoring, and theory of mind" (Fuchs, 2015, p. 198). According to Fuchs, the incapacity for meta-awareness and self-monitoring may result in

symptoms such as thought-insertion, delusions of being controlled by an alien being, and failure to infer mental states using Theory of Mind, leading to bouts of paranoia (Fuchs, 2015, p. 198). Furthermore, symptoms brought on by schizophrenia may inhibit building trust between the person and others and, as Fuchs notes, "Delusions are relational phenomena, precisely because they escape our attempts towards understanding; they manifest themselves through the negation of the established order of sense by which we aim to grasp them" (Fuchs, 2015, p. 208). Hutto notes that schizophrenia's effect of distorting normal thought processes compounds relational difficulties as it interferes with tasks requiring well-ordered thought processes, especially those that require complex thought processes, such as relating others (Hutto, 2013, p. 242).

Likewise, Fuchs's (cited in Tewes & Stanghellini, (2021) analysis goes on to suggest that affective disorders, such as manic and depressive states, also have an impact on intersubjectivity. Specifically, patients experiencing these disorders have difficulty emotionally communicating their experience, empathically perceiving and relating to others, and cannot be affected by others and thus impede their ability to relate intersubjectively (Tewes & Stanghellini, 2021, p. 27). As Hutto (2013) notes, the impairment such mental health conditions bring to interpersonal relating varies between these conditions but also within them. As Hutto adds, theories surrounding these conditions suggest that these conditions induce an impairment to engage in Theory of Mind, or contribute to mindblindness, limiting those living with these conditions to respond to and understand the mental states of those with whom they are interacting. However, some studies have shown that those living with some mental health conditions do not suffer from mindblindness, though their consciousness around recognizing and attributing the internal states of the other were not always clear (Hutto, 2013, p. 245).

Mediation best practices are clear that assessment of parties seeking or considering mediation is necessary to both protect vulnerable parties (McRedmond, 2024, p. 126) and ensure that there is a measure of efficiency, fairness, satisfaction, and effectiveness (Bercovitch, 2007, p. 292). Thus, mediators bear a responsibility to balance party self-determination with ethical guidelines to protect parties as well as the mediation process. Considering mental health and competency from the perspective of intersubjectivity, there is an argument that there may be aspects of the parties' current state that will challenge the emergence of intersubjective understanding with the other party, and thus impact the parties' abilities to reach sound and mutually-satisfying agreements in the long term. As noted above, the mediator can influence the environment and the parties they are assisting. However, this thesis argues that, depending on their nature and intensity, diminished mental health and inadequate social skills may present a barrier to having the circumstances necessary for parties to reach states of empathy and understanding necessary to support intersubjective understanding between parties. Thus, without a measure of potential intersubjective understanding between the parties, a mediator may not have the necessary conditions to help parties achieve the objectives of relational mediation.

The literature brought forward by Eddy in relation to mediation practice is intriguing. The work suggests that mediators working with HCPs may work with some tools to promote some measure of relationship that will encourage cooperation to develop solutions to the problems at hand. Indeed, Eddy's suggested strategies are not far off from the approaches of interest-based mediation (focus on solutions rather than the past, less emphasis on emotions and hopes, for example) with a touch of a relational approach in the intentional emphasis on empathy, attention, and respect. Specifically, Eddy's suggestion to resist continuous pushing back or defending against HCP behaviours but to respond with empathy instead is properly aligned with

relational mediation's approach. However, Eddy's advice of promoting a self-protection for the mediator (or other party, depending on the text referenced) betrays a measure of guardedness, the avoidance of being "hooked" into the emotional amplification, and the accompanying defensiveness that it provokes, suggests that it is not aligned with a full commitment to the intersubjective approach to understanding that relational approaches envision.

Mediators are certainly challenged to work with parties whose distorted views of the conflict, the opposing parties, and perhaps even the mediator interfere with the effective application of relational mediation practices. Most mediators do not possess the requisite skills to diagnose parties who display behaviours and ways of relating that present as extraordinary. However, tools such as those offered by Eddy may offer alternative ways of working with clients to find solutions that will work for the parties, at least for a period of time. Eddy's contribution suggests that it is possible to bring even the most difficult personalities to the table if the right tools are used to keep problematic behaviours at bay. However, Eddy also recognizes that these tools are not a panacea.

3. Autism Spectrum Disorder (ASD)

Much like the challenges of mental health, neurodiverse conditions may present a challenge to achieving satisfying conflict resolution for parties in conflict, especially when the lens of intersubjectivity is considered. Much like the mental health conditions mentioned above, autism spectrum disorder (ASD) is also included in the *Diagnostic and Statistical Manual of Mental Disorders* (American Psychiatric Association [APA], 2022). This thesis has chosen to explore it separately from the mental health disorders mentioned above as it is also explored in its own right in the intersubjectivity literature, with its own unique perspective.

The DSM-5 offers a criterion for ASD, a neurodevelopmental condition, that begins with "Persistent deficits in social communication and social interaction across multiple contexts, as manifested by all of the following, currently or by history" (APA, 2022, p. 50) and goes on to list behaviours including "deficits in social-emotional reciprocity… Deficits in nonverbal communicative behaviors used for social interaction… Deficits in developing, maintaining, and understanding relationships" (APA, 2022, p. 50). The criterion goes on to include manifest behaviours that relate to a preoccupation with sameness and order; inflexibility to changes in surroundings, routines, and rituals; repetitive statements or uttered words; fixations on interests and objects; and hyper- or hyposensitivity to sensory inputs. Finally, these characteristics drive an autism diagnosis when they cause sufficient impairment to social, occupational or other important areas of functioning (APA, 2022, p. 50). The definition of autism, as mental health professionals describe it, suggests that an individual on the spectrum and those with whom they are in relationship find conflict particularly baffling. The impairment of communication, recognizing or making assumptions about social cues, and social-emotional reciprocity may contribute to misunderstanding and disconnection that, according to relational mediation notions, may lead to or exacerbate conflict. In their volume on coaching neurodivergent clients, Doyle and McDowall (2024) broadly discuss several characteristics of autism, summarizing that it presents as a developmental condition that affects how people think, interact, communicate and behave. Neurological presentation often includes diminished executive functioning that is affected by a consistent state of overstimulation without the necessary faculties to process the stimuli; differences in the neurotransmitter GABA that manages anxiety in the amygdala; as well as a hypersensitivity to stimuli. Doyle and McDowall suggest that these characteristics necessitate approaches to working with autistic coaching clients that consider these attributes as

well as the contexts in which they are working (Doyle & McDowall, 2024, p. 22).[20] Together, these sources describe a condition that may inhibit one's ability to connect with others and understand one another in ways that are often considered typical (or neurotypical) and cause considerable perplexity when encountered both within and outside a conflict context.

There is limited literature connecting intersubjectivity and ASD, but it does exist and presents some intriguing perspectives that are relevant to the current discussion, considering the role of *Theory of Mind* discussed in the previous chapter on theories of intersubjectivity. Dant (2015) offers an account of autism and intersubjectivity, noting that autism as a diagnosis remains somewhat fluid as it is recognized as presenting on a spectrum of manifestations and impacts on those with autism. As Dant notes, it is difficult to diagnose as a mental or physical disorder and is therefore diagnosed according to behavioural traits displayed by those who have autism. Gallagher (2005) suggests that neurodiversity may play a role in determining individuals' abilities to relate to one another intersubjectively, citing research on children with ASD from the 1980s and 1990s that found that they displayed an impaired ability to mentally understand others. Specifically, the poorly developed *Theory of Mind* mechanism in children with autism was pinpointed as the origin of the impairment.[21] However, Gallagher does note that this analysis is not universally true for all autistic subjects and only accounts for social symptoms of autism with little attention paid to other aspects that may define autism (Gallagher, 2005, p.

[20] Doyle & McDowall's work on Neurodiversity Coaching also considers Attention Deficit and Hyperactivity Disorder (ADHD) as well as dyslexia, dyscalculia, dyspraxia, and dysgraphia as other neurodiverse diagnoses. I have not decided to treat them here as their prevalence in the intersubjectivity literature is not as great. For the time being, I have opted to limit the scope of this section for the sake of brevity and clarity of argument.

[21] This was demonstrated in experiments using false belief tasks, which included a comparison of the performance of these tasks to neurotypical children and children with Down Syndrome. Additional theories suggest that children with autism possess an impaired capacity for metarepresentation, which impacts their ability to formulate *Theory of Mind*.

231). Dant supports this and prefers to take the phenomenological approach to intersubjectivity as it pertains to those living with ASD.

Dant (2015) also suggests that while *Theory of Mind* might offer an avenue for understanding how ASD affects a person's interactions in the world, it might be more instructive to consider the directedness of a person's consciousness or their intentionality. Dant suggests that people living with ASD are more apt to direct their consciousness differently than neurotypicals, possessing greater capacities and orientations toward recalling details, facts, and systems along with a greater understanding of rules, categories, and material objects or animals than most (Dant, 2015, p. 57). Specifically, "It seems the intentionality of autistic minds, the directness of their consciousness, is oriented differently with less focus on achieving the emotional connectivity of intersubjectivity with other human beings" (Dant, 2015, p. 58). Considering the potential role of a *Theory of Mind* and the directedness of consciousness that may permit or lead to intersubjective understanding, the effects of ASD suggests that it presents a challenge to successful mediation if the needs of a party with ASD are not considered or remain unnoticed or unexplained. Indeed, mediators may not be effectively equipped with such an awareness or attentiveness to such particularities and may themselves find it difficult to find intersubjective understanding with parties with ASD.

Gallagher (2024) further notes studies that showed that people with ASD have a difficult time discerning between intentional actions and those undertaken without specific intention, as well as discerning the meaning behind emotional micro-expressions of others in the moment of interactions (Gallagher, 2024, p. 249). Fuchs (2015) supports this position, suggesting that research supports the theory that autism is a disorder of intersubjectivity characterized by a variety of basic sensory-motor abnormalities at the neurological level, a limited ability to imitate

others that impact affect attunement, intercorporeality, acquisition of 'mind reading' skills, and narrowed perceptual scope of perception. For Fuchs, these tendencies contribute to decontextualization of objects perceived and a limited ability to find attunement and read social cues (Fuchs, 2015, pp. 196-197). These aspects of social functioning contribute to intersubjectivity, and their limitations or absence suggest a limited ability to respond to the social environment with flexibility and reach shared understanding through interaction with others (Fuchs, 2015, p. 192).

While not attending directly to the conflict context, research by Doyle and McDowall (2024) and their work on coaching neurodiverse clients has something instructive to offer. In their work, the authors seek to understand neurodivergent clients who are looking for ways to both work around their limitations and capitalize on the talents their neurodivergence may offer. This is instructive for those working in conflict resolution fields who will undoubtedly encounter neurodiverse parties in conflict, regardless of whether or not it is diagnosed or disclosed. Much like the coaching models advocated in Doyle and McDowall's work, the mediation models explored here call on mediators to develop trust and rapport with parties. As this step in the mediation process can help to develop mediator-party intersubjectivity, it may be helpful to acknowledge how the skills taught to many mediators are limited and may not be optimal for some neurodiverse clients. Thus, it may be incumbent upon mediators to research and access training to better understand the risks and rewards in this unique area of practice.

While the academic literature addressing or studying the intersection of neurodiversity and conflict resolution is limited, a variety of blog posts[22] have acknowledged the role of

[22] For example, https://www.conflictmanagementacademy.com/neurodiversity-emotions-and-conflict/ discusses neurodiversity, emotions, and conflict; It's time we started talking about neurodiversity in dispute resolution by Hutchinson & Hutchinson at https://resolutionresources.com.au/our-publications/its-time-we-started-talking-about-neurodiversity-in-dispute-resolution/; and Navigating conflict in a neurodiverse Team: a manager's guide to

neurodiversity in workplace conflicts. Indeed, this challenge has also been identified by members of the Federal Informal Conflict Management Systems Network, a community of practice for conflict management practitioners in Canada's Federal Public Service.[23] In a presentation made to the network in April 2024, the researchers/presenters noted that most mediation strategies are designed with neurotypical clients in mind and that greater awareness of the needs of neurodiverse clients will require additional consideration for optimal results. This thesis agrees with this proposition and suggests that a phenomenological approach that regards neurodiverse ways of understanding and their impacts on intersubjectivity would further develop the skills available to mediators.

Inherent in the challenge of providing mediation services that are sensitive to the needs of neurodivergent parties is the knowledge that these challenges exist for some parties, and maybe even disproportionately as neurodiversity may create the conditions for conflict that neurotypical people may not experience. Furthermore, mediators are not called to diagnose parties (nor are most mediators qualified to do so) with particular neurodiverse qualities, nor are they required to demand this information from their parties. However, much like accommodating the unique needs of parties and expanding the pathways of connecting with neurodiverse parties, awareness of implicit ableist tendencies that unduly disadvantage one (or both) parties living with neurodiversity is worthy of attention in mediation practice.

inclusive resolution found at https://enna.org/navigating-workplace-conflict-in-a-neurodiverse-team-a-managers-guide-to-inclusive-resolution/.

[23] Presentation to the Federal Informal Conflict Resolution Network, April, 2024.

4. Trauma

Having explored other relevant aspects of mental health that may interfere with intersubjective understanding facilitated through mediation, this thesis considers the impacts of trauma as an element of a party's disposition may interfere with achieving conflict resolution when viewed through the lens of intersubjectivity. While some of the analysis presented in this section resembles that outlined in the sections above regarding mental health and neurodivergence, there are aspects of intersubjectivity and trauma that distinguish it from the general questions around mental health and intersubjectivity.

Herman (2015) notes that while common views of trauma suggest that it is composed of uncommon events, they are quite common when one considers that war and other violence occur rather commonly. However, while traumatic events may not be uncommon, they are exceptional in that they overwhelm the body and mind's ability to adapt (Herman, 2015, p. 33). Herman notes that traumatic events provoke feelings of helplessness and terror as the victim's bodily integrity is threatened (Herman, 2015, p. 33). Herman goes on to state that normal human responses to experiences of threat and danger include arousal of the sympathetic nervous system and altered perceptual orientations that serve to protect the individual from harm. However, when a traumatic event occurs, the person's ability to self-protect is overwhelmed and disorganized, and such an event may lead to lasting and profound changes to physiological arousal, emotion, cognition, and memory. Herman further notes that reactions relating to these changes may be disconnected from one another, meaning that a person experiencing a strong emotion may be unaware that there is a relationship between the memory and the response that is being provoked in the current moment (Herman, 2015, p. 34).

Wilde (2019) outlines the hallmarks of Post-Traumatic Stress Disorder (PTSD), noting that there is no universal definition of the condition. However, drawing on the Diagnostic and Statistical Manual (DSM), Wilde notes that "A traumatic event is usually one that involves an involuntary, uncontrollable threat to the individual's life or bodily integrity" and can occur through experiences of combat, sexual assault, robbery, terrorist attack, natural disaster, or other significant event. Wilde also notes that there is a distinction between traumatic events that originated from an aggressor and those that were the result of uncontrollable events, such as natural disasters. Finally, while many people may experience events that could be considered traumatic, not every individual will be afflicted with PTSD (Wilde, 2019, p. 144). Additionally, Wilde cites research that describes experiences of traumatized individuals as detached, estranged, and socially alienated and that these qualities make the ability to develop an empathic understanding with others more challenging, if not impossible (Wilde, 2019, p. 144). Such definitions permit a view of trauma's impacts on the mind, perception, and relationships as being profound and likely to have consequences on the sufferer and others' abilities to connect and understand one another.

Literature at the intersection of trauma and intersubjectivity is sparse but exists. Wilde (2019) proposes that the literature discussing the phenomenology of PTSD, unlike that of the phenomenology of depression and schizophrenia, is limited but worthy of development, asserting that "intersubjective experience is vulnerable to traumatic disruptions" (Wilde, 2019, p. 144). For Wilde, empathic understanding is a cornerstone of intersubjectivity, and thus, the PTSD experienced by an individual may compromise their ability to reach some measure of intersubjective understanding with another person. Wilde thus considers PTSD to be a pathology of intersubjectivity as the ability to offer and receive empathy is often impaired (Wilde, 2019, p.

144), and treatment is more effective for those living with PTSD but who already have strong social connections (Wilde, 2019, p. 145). While Wilde recognizes the common view that PTSD is often characterized by a lack of trust and a sense of safety, the role of empathy in altering perception remains a more fundamental feature of PTSD and its impacts on intersubjectivity. As such, the impacts of PTSD diminish the space allowed for intersubjectivity as the ability to experience mutual connection and trust becomes more difficult to develop as the sufferer of PTSD is in a pervasive and heightened state of self-protection. This may also suggest that vulnerability has a place in intersubjectivity and that a sufferer of PTSD may not be capable of such a measure of vulnerability.

In a somewhat different vein of understanding the intersection between intersubjectivity and PTSD, Matthies-Boon's (2023) work on PTSD among activists who lived through the Arab Spring in Cairo proposes that the experience of PTSD is more than a disorder born of an episodic experience of trauma. Matthies-Boon's criticism of this theory of trauma, which is based on Western experiences of trauma, asserts that it does not sufficiently account for the experiences of those living in the global south who live in persistent states of insecurity. Thus, the trauma experienced broadly in these circumstances is greater than an episode of threat and demands that the greater political and contextual factors be considered in trauma studies. This points to the insufficiency of a broader medicalized understanding of trauma and, beyond that, posits that there is a need to investigate the structural causes of insecurity, such as poverty or authoritarianism, to understand trauma responses. Furthermore, such an approach would require caution in a therapeutic setting, since trauma responses may be considered helpful survival mechanisms in some contexts (Matthies-Boon, 2023, p. 7). As Matthies-Boon notes, this alludes to a philosophy of the subject that assumes that "trauma became regarded as an objective (medical) fact instead of

a violation of intersubjective norms" (Matthies-Boon, 2023, p. 7). Matthias-Boon offers an account of *trauma-broken intersubjectivity* where trauma is considered to be "the violent betrayal of the counterfactual presupposition of being treated as an equal peer in relation to others" (Matthies-Boon, 2023, p. 9). Matties-Boon's study considers the forced subordination of activists in the political and social spheres that have contributed to individual trauma defined in these terms. Matties-Boon ponders the distinctions between political, social, and individual trauma and acknowledges the difficulty in disentangling each of these varieties of trauma. Matties-Boon's analysis refers to an interconnection between individual and structural realities that are not easily solved with individual treatment. Rather, the analysis points to greater structural circumstances that oblige a persistent drive to self-protect rather than connect, understand, and be understood, a series of behaviours connected to intersubjectivity.[24]

Where trauma is considered in mediation practice, there are several considerations and mitigation measures that mediators can engage in. First, regarding the possible vulnerability and resultant disempowerment of traumatized parties through mediation, the literature regarding trauma-informed care offers constructive insights. Sweeny and Taggart's (2018) work on trauma-informed approaches to mental healthcare suggests that helpers such as those providing psychiatric services often use practices that build on rather than mitigate the negative impacts of trauma through the implementation of coercion and control in their practices (Sweeney & Taggart, 2018, p. 383). Furthermore, trauma-uninformed practices contribute to dynamics between the service provider and client that may result from the use of authoritarian control and violence for the service provider to feel safe in their service provision. Indeed, Sweeny and Taggart suggest that such a dynamic may serve to retraumatize the client rather than facilitate

[24] Further analysis of structural impacts on and of intersubjectivity will be further discussed in the following chapter.

healing (Sweeney & Taggart, 2018, p. 384). Additionally, writing from the perspective of post-secondary institution ombuds services, Peggs (2023) suggests that a trauma-informed approach to conflict resolution services on campus offers support that will better meet the needs of many people who access the services, including those with histories of trauma. Peggs notes that a trauma-informed approach includes behaviours such as being fully present with parties seeking dispute management services when they meet, showing genuine interest in the party and their perspectives on their experiences, keeping the party as the centre of the conversation, being clear about the ombudsperson's role and limits, being accurate with any information that could be shared, and being consistent about boundaries and hoped-for behaviours from parties (Peggs, 2023, pp. 60-61). Peggs' description is properly aligned with a phenomenological approach that affirms a party's experience, as it is related by the experiencer. Noting that integrating a trauma-informed approach does not suggest diagnosing or treating those who seek assistance, Peggs advocates for integrating these practices into every interaction as a universal precaution against perpetuating harm, regardless of the disclosure of previous harm.

Indeed, integrating trauma-informed practices has been considered a priority among mediation communities of practice and training organizations such as the Alternative Dispute Resolution Institute of Canada (ADRIC). Furthermore, as Herman notes, trauma is a relatively ubiquitous experience (Herman, 2015, p. 33). Thus, this thesis considers that the impacts of trauma on intersubjectivity could present an opportunity for further development in mediation theory and practice and further integration of trauma-informed practices as part of initial mediation training to optimize the chances for mediation success, when possible.

From a trauma-informed practice perspective, this thesis cautions that the bracketing aspect of relational mediation practices ought to be undertaken with caution. Recalling that

bracketing is a tool that set aside an aspect of experience for deeper investigation that calls into question underlying assumptions of the experience, the potential for invalidating the experienced trauma through an attempt at broadening the party's perspective could be perceived as an attempt at invalidation of the experience. Such an invalidation may result in closing off opportunities for mediator-party intersubjective understanding as well as party-party intersubjective understanding.

Conclusion

This chapter has outlined several challenges that mediators may face in several aspects of their practice. First, mediators must attend to the parties before them with neutrality in order to assure that it is the parties who are responsible for the process. This responsibility for the content of the mediation process is intended to ensure that the outcomes are resonant with the needs, hopes, and values that the parties bring to the mediation room. However, this principle of neutrality may conflict with ethical obligations towards parties who may not be well-positioned to advocate for themselves. This is a challenge mediators encounter when determining whether or not the parties and the conflict are appropriate for mediation or if their interests would be better served by another dispute resolution mechanism. The problem is yet again complicated by values of promoting party self-determination and empowerment embedded within relational mediation theory and practices. Mediators who may rush to evaluate a party or conflict as inappropriate for mediation may actually further disempower parties who have seen a pattern of paternalism in dealing with relationships. However, by providing opportunities to address conflicts directly and with support, mediators are hopefully contributing to skill-building and personal empowerment to effectively address difficulties in the future.

This framing of the challenge, however, suggests that mental health, mental capacity, adequate social skills, the ability to connect, and the ability to make sound decisions for oneself

may allow parties to each find intersubjective understanding, and may present new directions in relational mediation theory and practice development. As noted by Coy and Hedeen (1998), recruiting external professional support may be an option when the mediator's skills or training may have gaps. However, such recruitment raises questions about the principle of confidentiality and self-determination as well as the limits of the role of the engagement of other supportive individuals, such as mental health professionals, social workers, and other concerned third parties.

Conversely, each of these potential impediments is becoming increasingly studied and understood with strategies for helping those who live with the challenges these unique ways of seeing the world and their respective conflicts bring to them. It may be up to training programs and communities of practice to continue to support the learning of their membership to meet the needs of many clients while supporting parties' self-determination, maintaining their confidentiality, and doing so with the greatest aspirations for impartiality.

Acknowledging that parties can experience a conflict in profoundly different ways due to experiential, neurological and/or biological factors and the impacts of events and structures outside of their control may help mediators re-orient themselves and concede that conflict may present itself extraordinarily to some parties and may inhibit the ability to achieve a helpful measure of intersubjective understanding. Relating to self and other, including through the lenses of feelings, thoughts, and behaviours may take different forms for many and thus, a universalizing understanding of these notions ought to be bracketed and reconsidered by relational mediators.

An obvious and significant challenge in working with parties who may experience the world differently is the typical relational mediator's ability to recognize the party's

distinctiveness but this is also the relational mediator's strength. Most mediators are not psychotherapists with the ability to diagnose mental health conditions, trauma or neurodivergence. However, they are guided by a practice that takes for granted the unique experience of conflict of each party. Finally, as noted by many of the authors listed above, mediation may not present the most appropriate dispute resolution mechanism for parties who may be vulnerable or less likely to meet the basic criteria for mediation party candidacy.

The next chapter will explore structural components of intersubjectivity and how they may impact the shift toward intersubjective understanding in a mediation context.

Chapter 7: Structural barriers to intersubjective understanding

Introduction

The previous chapter highlighted aspects of individuals and their unique experiences and dispositions that may present barriers to mediator-party intersubjectivity or party-party intersubjectivity, or both. As explored in that chapter, the effects of competency, mental health, neurodivergence, and trauma may prove to be greater than the skills and optimism the typical relational mediator may bring into the mediation room. However, there is some space for mediators to learn strategies to assist them in managing parties who live with these challenges.

This chapter will explore barriers to intersubjective understanding that are implicitly or explicitly imposed by social, political, and economic structures that surround parties in conflict. It will explore the nature of power, its relationship to conflict and conflict resolution, and explore two presentations of power in mediation that could create barriers to intersubjectivity: structures of domination that permit implicit and explicit prejudice and discrimination; and victimhood identities that shift the narrative of where power comes from how its impacts are experienced in conflict.

In contrast to the previous chapter that focused on barriers to intersubjective understanding found in the individual and focused a good deal on the intersection of intersubjectivity theory and psychology, this chapter regards structural matters and their impacts on the individuals and their interpersonal relationships. Much of the literature supporting the work in this chapter is drawn from the conflict studies field, with particular attention to the conflict resolution literature and its potential to intersect with theories of intersubjectivity.

1. Power, conflict and intersubjectivity

The conflict studies literature offers a number of authors who discuss the role of power in conflict and conflict resolution. Whether it is the role of power in international or interpersonal conflict, violent or latent conflict, or in determining the process for settlement or resolution, power's role in conflict is undeniable. Power imbalances have impacts on the trajectory of the conflict, the perception of the conflict, and on party motivations to engage in conflict resolution. Indeed, exploration of power imbalances in conflict shows how it can and does create barriers to intersubjective understanding and by extension, the quality of settlement or resolution. Power imbalances become matters to which mediators must attend. More pointedly, within the context of mediation, power influences party engagement, authenticity, and decision-making.

Power itself is a concept that requires some exposition, especially regarding its impacts on conflict. Ramsbotham et. al. (2005) admit that the term *power* is ambiguous, noting that it can include the ability to command, coerce, order, or enforce as much as it can mean to induce cooperation, legitimize, or inspire. Cloke (2002) suggests that power can take several forms, including possessing greater wealth, superior strength, more military might, better communication skills, superior status, or being a better organizer of support and notes that power alone has been used for generations to resolve conflicts (Cloke, 2002, p. 141). Zartman (2023) speculates that a theory of power as it relates specifically to conflict resolution has seen a great deal of useful development and theorizing, noting that it is more complex than most authors realize. Zartman credits psychological theories of power in the development of the notion that "Power is what parties do in relation to their perception of what other parties do" (Zartman, 2023, p. 56) suggesting that power itself is relational and based in perception and action rather than being objective and static. Furthermore, Ramsbotham et. al. allude to the role of power in the

symmetry or asymmetry of conflict, suggesting that symmetrical conflict occurs between relatively similar parties while asymmetrical conflict is characterized by a conflict of interests between dissimilar parties, such as between a majority and minority, an employer and labour, or between a master and his servant. As the authors note, conflict is not about interests or issues that arise between parties. Rather, conflict is directly connected to a bid to change the nature of the relationships between parties whose identities are bound by the structures of those relationships" (Ramsbotham et. al., 2008, pp. 20-21). Deutsch (1973) deepens the role of power in conflict, noting that:

> Although there have been conflicts between ruler and ruled, between parents and children, and between employers and employees, I suggest that this is the characteristic conflict of our time. It arises from the increasing demand for more power and prosperity from those who have been largely excluded from processes of decision-making, usually to their economic, social, psychological, and physical advantage… It is apparent that those who are content with their superior roles in the decision-making process may develop a vested interest in preserving the status quo and appropriate rationales for this purpose. (p. 390)

Indeed, the role of power in conflict resolution dominates a great deal of the literature is often discussed as part of every conflict (Mayer, 2000, p. 50), a limit to what can be negotiated (Fisher, Ury, Patton, 2011, p. 99), used in mediation in bad faith to undermine self-determination and respectful dealing (MacFarlane, 2003, p. 459), about mediation as second-class justice for the less-powerful of society (McRedmond, 2024, p. 2), and considers mediator power and influence over conflict resolution (Moore, 1996, p. 327), for a few narrow examples.

Taking a broader approach to understanding power in conflict resolution, Cloke (2002) notes that the power-rights-interests spectrum regards the flow of power between parties in their

bid for trust and security. Power flowing from above to below represents the power-over arrangement, and shifts when agitation for rights prompts those in the superior position to give up some of their power. Despite this power shift that results from a challenge to the status quo, the status quo is continually challenged as new rights create a new status quo that is challenged; such is the nature of democracy and is aligned with what Lederach (2015) describes in his view of conflict transformation. However, the creation of rights creates responsibilities for the state to protect those rights but does not create dynamics or the satisfaction of interests. While rights and interests may overlap, they are distinct from one another. As Cloke notes,

> What makes mediation *dangerous* is its implicit, even explicit, request that everyone disarm, lay down their power, and surrender their rights in exchange for the satisfaction of their interests. Fundamentally, power and rights are based in fear and distrust of others, but these are not easily surrendered, even when people are happier doing so. (Cloke, 2002, p. 147)

Thus, power is a defining feature of most relationships and every conflict. The established nature of power relations, however, create a pernicious arrangement that resists addressing to the satisfaction of all parties involved as the motivation for the party in the superior position of power is unlikely to possess an innate or intersubjective understanding of the other party and is equally unlikely to feel a motivation to give up the power they enjoy.

It is worth noting that many studies about power and its impacts on conflict resolution often come from the international conflict resolution literature. These sources tend to focus on large groups, their leadership, and their access to social, economic, and political power within a given context. These contexts are distinct from interpersonal conflicts in that most interpersonal conflicts have an authority to which they may appeal to settle their disputes for them, which may

not be the case in international (and especially in violent) conflicts. International bodies and even highly respected individuals may influence the power imbalances in such situations, but they carry no authority to decide on the *settlement* outcome. While there may be an authority to which parties may appeal to settle the dispute, there is no guarantee of *resolution* to the dispute by this method. Structures developed to *settle* disputes are often ill-equipped to provide a *resolution* to conflicting parties, and thus, the role of power in interpersonal conflicts remains relevant. Indeed, Zartman (2023) notes that the distinction between settlement and resolution is often lost among practitioners in the field, but to their detriment, as each of these outcomes requires different exercises of power (Zartman, 2023, p. 60). A party's readiness to share power to achieve resolution, in contrast to a party's attempt to restrain such power-sharing, may leave conflict *management* as the only option for a negotiator, rather than resolution or transformation.

The role of power creates risks to all parties involved in mediation but for very different reasons. Cloke suggests that mediators take risks when engaging parties committed to using power to settle conflict. The tendency to use power to settle conflicts not only harms the party in the inferior power position but also adds an addictive quality to such use of power by the superior power party. For Cloke, the answer lies in carving a path from power to rights and interests in order to resolve conflict (Cloke, 2002, p. 140).

The power symmetry or asymmetry in a relationship and in the conflict has impacts on party and mediator behaviour in mediation. Moore's (1996) view of power in the mediation process considers the nature of symmetrical and asymmetrical power as it appears to the mediator and the parties in mediation. For Moore, mediators working with parties of equal power attend to different aspects of mediation than those working with asymmetrical power. For situations of symmetrical power, mediators attend to improving parties' cooperative behaviour, amplifying the

perception of equal power, and curbing the expression of coercive power. Moore further notes that challenges tend to lie with parties' perceptions of power a/symmetry and with the negative emotions that are the result of past experiences of coercive power in the relationship (Moore, 1996, pp. 334-335). Moore proposes that where power imbalances exist between parties, a mediator ought to tread carefully in their attempt at balancing power, lest the mediator compromise their neutrality/impartiality in the process. However, Moore notes that mediators are equally concerned with helping parties reach acceptable agreements and may thus opt to engage in empowering moves for a lower-power party. Such moves may include providing education and advice on a negotiation strategy, acquiring and analyzing data, assisting the party in developing financial resources that would permit continued participation in negotiations, and encouraging the party to make sensible compromises (Moore, 1996, p. 337). The impacts of such mediator actions could be considered as betraying a partiality, however, as the mediator steps in to actively balance power in favour of the lower-power party. Indeed, the question of power and the role of the mediator in protecting vulnerable parties (or the powerful) is the root of the neutrality and impartiality concern levied by critics of mediation practice.

Real and perceived rigid power imbalances create conditions that are not conducive to intersubjective understanding and thus the conflict may resist ripeness for resolution, to use Zartman's (2023) concept for readiness for conflict resolution. Specifically, conditions that lend themselves to new intersubjective understanding are those where parties perceive themselves and each other to be equal in moral status and can be guided to negotiate on these terms to find mutually-beneficial resolutions. Such a situation requires a *kind of* ripeness for the parties to engage in conflict resolution that favours intersubjective understanding based in empathy and equality. Conflict tends to impact the lower-power party more than the higher-power party, thus

limiting the higher-power party's perception of and need to understand the conflict from other perspectives. Effectively, the party in the higher-power position is protected from the effects of the conflict and is perhaps less motivated to fully engage in the process, curtailing parties' readiness for intersubjective engagement through mediation. Thus, significant power imbalances present a barrier to intersubjectivity for relational mediation approaches.

However, where conflict persists between parties with a more symmetrical balance of power, Zartman's notion of *ripeness* is even more relevant. While *ripeness* is most often discussed in international conflict resolution scenarios and presumes that parties will seek the most cost-effective way to achieve their political goals and considers the role of power asymmetry or symmetry in compelling parties to persist in conflict or decide to move toward negotiation (Zartman, 2023, p. 68). A central feature of the ripeness concept is a Mutually Hurting Stalemate (MHS). An MHS describes a situation where one or both parties have reached a point in the conflict where the costs incurred as a result of the conflict have exceeded what they are able or willing to sustain, and may be harming their own interests. The MHS does not need to be shared symmetrically by conflicting parties, but there is usually some pain experienced by both sides of the conflict. This is the point where a party realizes or contemplates the undeniable limits to unilateral attempts to realize one's interests, and that engagement with the other will be necessary to avoid ultimate defeat and a possibly more disastrous situation.

Ramsbotham et. al. further support Zartman's view, observing that the costs associated with suppressing lower-power parties may be more than they are willing to bear. Furthermore, parties may assess that collaborative conflict resolution is an option when the costs of suppression and of retaining power become greater than the one in the higher-power position is ready to bear. This situation may be prompted by agitation by those in the lower-power position

to confront the power imbalance through the steps of education or conscientization, organization and collective confrontation, negotiation among equals, and establishing new structures leading to resolution. Beginning such a process can happen without coercion, as was demonstrated by Gandhi's tactics, and/or may require multiple actors to shine a light on the costs of the unequal power imbalances, such as the role of the international community in Apartheid South Africa. Ideally, those in the higher-power position develop an acute awareness of the limits of their power and begin to see the benefits of negotiating for peace (Ramsbotham, 2005, pp. 21-22). As these perspectives demonstrate, power is not a zero-sum reality, can be wielded with creativity, remains a dynamic in conflict, and can be leveraged in conflict resolution processes.

Zartman notes that it takes more than a motivation to avoid or end pain to move parties to resolve their conflict. While pain and stalemate may move parties to create temporary measures to halt hostilities, it is Mutually Enticing Opportunities (MEO) that pull parties away from conflict and into negotiations, and then away from negotiations and into resolutions. MEO will contain measures to satisfy the parties' interests and needs while normalizing relations between the parties. Working through MEO is a measure to promote cooperation, interdependence, and needs to be perceived as available for a limited time only and as superior to any other option available (Zartman, 2023, p. 73). Effectively, parties in negotiation must perceive that their counterpart shares vulnerability in the conflict, is equally motivated to end the conflict, and can move toward an agreement that provides more benefits than they enjoyed before or during the conflict. Here, Zartman highlights that individuals and groups may need a dual motivation to end conflict; a balance between the *push* (away from pain) and *pull* (toward satisfaction), but that these are all subject to perception as much as objective reality. They are also subject to parties'

abilities to recognize their weakness, concede some measure of defeat, and trust their counterpart's good faith.

Zartman's *ripeness* concept speaks to the shift in perception that negotiators and mediators may prompt as they shift their focus away from the goals they seek and toward a shared understanding of the harms being experienced as a result of the conflict and the benefits of a mutually-satisfying outcome for all involved. This could be a useful concept for relational mediators whose objective is to find common ground or shared understanding through the lens of intersubjectivity with an eye to the harmful impacts of power on a relationship. However, the conditions for intersubjective understanding at the empathic and relational levels between these disputing parties might be limited if each sees the other as a stumbling block to achieving their ends rather than equally-deserving subjectivities also seeking to satisfy their needs. In such situations which could be characterized as an I-It relationship, such a perception of the other and the relationship will be insufficient to achieve intersubjective understanding and move toward shared experiences of improved communication and relationships that are encouraged by I-You relationships.

Considering that conflict may be generated or perpetuated by rigid views of oneself, the other party, or the conflict, the mediator's task of shifting focus may be a difficult one and it is possible that power can play a role in this inflexibility. Deutch (1973) offers advice to those working from lower power positions in order to have their voices heard. He suggests strategies such as articulating a clear statement regarding the desired actions and changes; articulating an appreciation for difficulties for the higher power party to conform to the desired changes, challenges, and costs that the higher-power party may anticipate; articulating the values and benefits that the higher-power party may realize by cooperating with the lower-power party;

articulating of the consequences should the lower-party's wishes not receive a positive response; and expressing their commitment to their cause (Deutsch, 1973, pp. 391-392). In this approach, there is a sense that in conflicts in which there is an unequal distribution of power, the lower-power party could undertake strategies that could increase the chances of success. Specifically, Deutsch suggests that if the concerns of the higher-power party are considered and acknowledged by the lower-power party and not at the cost of the lower-power party's interests, there may be a greater chance of success. However, success in such a situation would hinge on the lower power party's communication abilities and commitment to this strategy.

The view of power from the intersubjectivity theory perspective can provide some intriguing frames through which to regard power in conflict resolution. Through an analysis of Habermas' and Foucault's analysis of power, Crossley (1996) affirms , "Power relations are always intersubjective" (Crossley, 1996, p. 127). This proposition suggests that power itself is intersubjective in the sense that power requires coordination through intersubjectivity to create its effects. Crossley suggests that intersubjectivity requires a lifeworld in which to operate and that it is these shared meanings in the lifeworld that animates the power in relationships. More specifically, power relations define behaviour not only because the powerful enact their power within a context but because the context itself has predefined behaviour for both the powerful and the powerless in the relationship. In effect, power works in the absence of direct action and is not dependent on a person wielding it but is based on the social meaning active in relationships (Crossley, 1996, p. 137) and these effects are achieved with or without the intended actions of the powerful (Crossley, 1996, p. 142). As Crossley notes, Foucault's view of power does not require consent in order to be functional and is thus asymmetrical. As such, power relies on "different rights of action" (Crossley, 1996, p. 139) and imposes that the subordinate must act accordingly

to “achieve certain things” and attain or retain an identity (Crossley, 1996, p. 141). Referring to Habermas’ view of power, Crossley further notes that notions of power at work today are forms established and perpetuated by colonization and favour inequality and control (Crossley, 1996, p. 146). Finally, Crossley notes that this orientation to power does not favour mutual recognition and presupposes the subordination of otherness and the distortion of the other’s opposition for its own purposes. Crossley suggests that hierarchies will persist in such situations and that such otherness that prevails in its modern form is located in the differentiation of identities and classifications based on gender and ethnicity, rather than roles (Crossley, 1996, p. 147). Of particular interest to this analysis is Crossley's suggestion that the study of power offers intriguing possibilities when its adaptability becomes the orientation of the study.

Crossley’s review of power as an intersubjective quality of social relationships and the orientation to study its adaptability is particularly salient for conflict resolution practices. In particular, relational mediation models attend to the influences and impacts of power through their own lenses and languages. Each model may not refer to power specifically, but underlying each model is the assumption that power is intersubjective and is active in each relationship regardless of the consent of the parties. However, relational mediation practices ultimately work toward ethics that prioritize the mutual recognition of interdependence, acknowledgement of other subjectivities worthy of inclusion, and a shared project of redefining power in that relationship that challenges the contextual assumptions of inequality and legitimacy.

2. Power structures, conflict, and intersubjectivity

Power in the form of formal and informal power structures present their own problems for intersubjective understanding and, as a result, for conflict resolution. In the context of this thesis, formal structures of power include but are not limited to workplace hierarchies, social roles

responsible for safety and security such as law enforcement, and other such sanctioned and recognized roles. In addition, informal power structures include structures that privilege certain identities over others, including, but not limited to, age, gender, race, and ethnicity in a given context. Power offers a relevant subject for this thesis as power described above offers intersubjectively shared meaning and a set of social expectations. This is central to the impacts of behaviours and attitudes around interactions, especially during conflict. As discussed above, power acts without being enacted and colours interactions, often in a covert manner and often unbeknownst to the parties. However, these intersubjectively shared meanings and expectations present challenges to conflict resolution processes.

Formal and informal power structures result in unequal power distribution between parties in conflict, both implicit and explicit, based on one's relational identity to the other that is defined by the social, economic, and political structures surrounding the relationship. These structures may or may not be conscious, are defined by inequality, and often present barriers to creating the conditions propitious for new intersubjective understanding between parties in conflict. Parties' experiences with or blindness to formal and informal power structures create challenges to developing intersubjective understanding around the conflict experience and possible ways to resolve it. While the role of relational mediation as described above implies the possibility of shedding light and renegotiating the parameters and distribution of power in a relationship, this can prove inordinately challenging for relational mediators. Indeed, the roots of those power structures are found in the surrounding social, economic, and political structures and are not easily recognized, acknowledged or negotiated.

a. Implicit bias and structural discrimination

Power structures rooted in social, economic, and political structures become prevalent in discussions of discrimination as a driver of conflict. Gadlin (1994) discusses the subject of incommensurable experiences at the intersection of identity issues and conflict resolution. Gadlin writes from the perspective of an ombudsperson in a post-secondary institution and is conscious that something is deserving of attention when a neutral third party is presented with a conflict that is either based on a form of racial or sexist discrimination or contains hints of such discrimination. Specifically, Gadlin recognizes the role that systemic racism and sexism can play in many conflicts, either on the face of it or hidden inside some conflict. In this particular article that focuses on the role of racism in conflict, racism means more than overt statements and actions that harm or demean a particular group. Rather, Gadlin refers to *racist cultures,* which describes

> A culture in which there is a clear hierarchical structure in which one racial group dominates all other racial groups on the basis of differences - real or imaginary - that the dominant group defines, reifies, assesses, and valorizes. 'Racist' here is an adjective, a descriptor. By culture of racism, I am referring to the entire constellation of social relationships, beliefs, attitudes, and meanings that develop among those living within a racist culture. (p. 39)

Using this definition of racism and racist culture, Gadlin discusses the difficulty of imparting the experiences of racism and racist systems to those who do not experience this category of discrimination and its harmful effects. Gadlin points to the lived experience of racialized people and to the inability of members of the dominant groups to relate to such experiences, as they would not have lived through the experience of systemic discrimination. Gadlin notes that

conflicts that include some element of discrimination, especially the subtler expressions of discrimination, present particular challenges to alternative dispute resolution processes. Specifically, members of the dominant group may fail to recognize the subtle and systemic nature of racism, preferring to see racism as an aberrant and immoral set of attitudes and actions, and will consider the intention of their interactions before acknowledging impacts (Gadlin, 1994, p. 40). Inversely, Gadlin notes that people of colour will see themselves as moving within systems that are arranged around white privilege which is considered "a set of assumptions whites have about the culture being theirs, about belonging and taken for granted that is rarely if ever available to people of color" (Gadlin, 1994, p. 40). Thus, the disparity of experiences between those belonging to a dominant group and those belonging to a marginalized group will be difficult or impossible to share. The incommensurability of experience may create too great a gap to foster sincere and sustained understanding.

With this, Gadlin describes a triple problem. First, imparting experiences of conflict that include subtle indicators of racism in ways that are objective and intelligible is often difficult when the receiver of the description of the phenomenon has no frame of reference for such experiences. Second, the one who has been an accessory to systemic racism and who would feel challenged to bear the responsibility of participating in a harmful system may either actively or passively resist understanding their role in the harm they may have caused or in which they have participated. Third, such a defensive dynamic suppresses conversation that could lead to greater and deeper understanding and movement toward reducing future harms and the systems that perpetuate them. Gadlin shines an additional light on the position of the designated neutral who is tasked with assisting in such cases and who may not belong to a racialized group themselves and is thus equally limited in their ability to relate to a party imparting an experience of racism.

While somewhat dated and simplistic, Gadlin's work describes the ongoing challenge of dealing with issues of discrimination in the conflict resolution field, including the role of mediator neutrality when faced with such systemic injustice or even *perceptions* of injustice. Furthermore, while it does not make specific reference to the dynamics of intersubjectivity, the work is relatable to many aspects of intersubjectivity: a challenge to empathic understanding, analogical thinking, a recognition of the moral equality of another subjectivity, recognition of the validity of the other's experience, the mutual impacts of thoughts, feelings, and behaviours between interactants in a conflict, and a similar break in intersubjectivity that is described by Matties-Boon's view of trauma's impact on intersubjectivity resulting from structures of domination.

From another angle that considers a phenomenological approach, Slater and McGuire (2020), in their offering of a phenomenology of hate crimes, suggest that the Husserlian *natural attitude* functions as the progenitor of prejudice. The authors note that in this sense, all derogatory and prejudicial attitudes and behaviours are based on what is considered *natural* or *customary,* and this is what is deserving of phenomenological analysis. The authors further note that the Husserlian approach to identifying and bracketing the *natural attitude* that accounts for prejudice is not done for its own sake but to lead toward an embrace of intersubjective understanding and "the possibility of developing empathic understanding of the impact of being subjected to hate crime victimisation" (Slater & McGuire, 2020, pp. 4-5). Indeed, the authors point to the unquestioned nature of prejudiced thinking and the damage that it can perpetuate. The authors also suggest the possibility of bracketing such aspects of experience and the relationship between disputants to facilitate inquiry and reflection that may be required for intersubjective understanding to develop. Slater and McGuire offer a phenomenological account

of discrimination as a pre-reflective view of the world that allows inhabitants to create common understandings of what is "normal" or "desirable" and that which ought to be diminished or rejected as "abnormal" or "undesirable." For the authors, it is these understandings of "normal" and "desirable" that create the conditions for prejudice and discrimination. Indeed, this bracketing is resonant with much of the relational mediation models' approach to understanding relationships, discourses of entitlements, cares and threats-cares, and universal human needs.

When considered alongside relational mediation, the discussion of discrimination, bracketing and the natural attitude poses at least two problems. First, as prejudice is a pre-reflective attitude, a mediator may share those same *natural attitudes* or prejudices and may not be aware of their existence or how they may be impacting the conflict. Similar to Gadlin's view, there may be a lack of understanding on the part of a mediator who has not had the experience of racialization or discrimination to grasp the experience. This is often a question that is raised in the mediation literature around mediator neutrality and the implicit biases that mediators may carry with them and into their practices. For example, as noted by Smith (2019), a mediator who works with unacknowledged or implicit bias may have an impact on the fairness of the process as they may be ill-equipped to notice bias in operation and provide a balanced process to the benefit of the parties (Smith, 2019, p. 182). Mayer and Font-Guzman's (2022) work on mediator neutrality and its deleterious effects on marginalized individuals attempting mediation supports this position. Smith suggests that ethical standards for mediation practice provide for this eventuality of bias and promote self-reflection among mediators to create awareness and overcome these biases.

Where intersubjectivity in relational mediation practice is concerned, two significant considerations concerning power structures are deserving of attention. First, the mediator's

inability to notice or grasp these prejudices or biases may inhibit the development of mediator-party intersubjectivity, as outlined in the fifth chapter of this thesis. As discussed above, party-mediator intersubjectivity is thought to support an overall atmosphere of trust and openness. In the absence of this form of intersubjectivity, it is possible that the conditions that promote a change in the dynamic between parties may not materialize. To add to the risk of a mediator's lack of bias awareness in mediation, a mediator who does not account for the experiences of discrimination may contribute to the reproduction of power dynamics and allow the parties to leave the mediation unchanged. Indeed, Mayer and Font-Guzman (2022) suggest that while dialogue is a laudable goal that requires equal consideration for dialogue norms of listening and sharing, most mediation practices tend to favour the more powerful contributor to the exchange and reinforce the dynamics that support the existing inequality between the parties involved (Mayer & Font-Guzman, 2022, p. 29). Mayer and Font-Guzman suggest that dialogue and negotiation are insufficient to bring about changes to systems of privilege and oppression. Thus, the authors advocate for *strategic disruption* to these systems and patterns.

Second, working with parties who may display prejudices or biases that are unconscious or implicit presents a challenge to establishing and maintaining mediator-party (between the discriminating party and the mediator) intersubjectivity. Specifically, as DiAngelo (2018) notes in her work on anti-racism, and as supported by Gadlin, there is a tendency to understand discrimination, such as racism and by extension, White supremacy, as an intentional dislike of others based on the colour of their skin and considers racism to be a moral failing. This understanding of racism does not account for the unintentional and unconscious impacts of prejudice. This limited understanding of racism creates difficulty in promoting conversation about racism as the discussion itself implies a moral failing, which creates instinctual blocks to

exploring it in a manner that preserves the relationship between the parties. As DiAngelo suggests, voicing the observation and prompting the discussion often provokes a defensive reaction and constrains learning about the harms of these behaviours, attitudes, and words. A mediator who does this in the interest of shining a light on the harms caused by behaviours that imply power imbalances risks compromising trust and their overall relationship with this party. Thus, effectively bracketing prejudice and discrimination may be necessary to promote both mediator-party and party-party intersubjectivity, but remains a challenge in mediation practice. For the mediator to provoke defensive reactions would run counter to the relational mediation approach and requires skillful and brave intervention. Therefore, the mediator must be skilled at navigating conversations that imply a judgment of the party displaying problematic behaviour.

While this section has offered a focus on racism, the same could be said of any form of structural prejudice or discrimination and the process of subordination of some identity group to a dominant group. Fundamental to the question of prejudice and discrimination is the notion of power disparity between identity groups, the ability and willingness to empathize with the other and their impacts on promoting intersubjective understanding between very dissimilar individuals located within a grander power structure.

b. Victimhood

Victimhood is another form of relational identity based on power structures and sources that may present challenges to relational mediation processes. While many of the studies on victimhood tend to examine it from the perspective of transitional justice after political or ethnic violence (Jacoby, 2015; Druliolle, 2018; Lawther, 2024; Vollhardt, 2020), there are several parallels with victimhood as it may be claimed in interpersonal mediation processes. As it is discussed in the literature reviewed for this thesis, relational mediation does not tend to focus on

the identity of victimhood as a source of power. However, this thesis suggests that victimhood is based on a distinct view of structural power, though its source and nature is different from the structural power described above.

Many of the relational mediation practices, such as preparing, questioning, negotiating and reflecting, are easily integrated into restorative justice and other similar practices that focus on addressing the experiences of victim and perpetrator. As Lawther (2024) notes, the victim identity depends not only on the one claiming it - the victim - but also on the recognition of this identity by third parties, their assessment of the victim, the harm they experienced, the source of the harm, and the broader political and structural context surrounding the harm. Lawther's work further notes the possibility for manipulation of the term *victim* to meet political and legal elites' egoist ends. The work of Campbell and Manning (2018) who, through the avenue of discussing microaggressions on college campuses, describe victimhood culture as a new moral culture that elevates the status of the victim to moral superiority. In this paradigm, belonging to a group that has historically held privilege becomes a liability. For these authors, the culture of victimhood serves as a method of social control, which plays a role in controlling and resolving conflict.

Lawther's work sheds further light on the ability to define the victim and perpetrator and the implications of these identities in shaping the moral landscape in the aftermath of political violence or ethnic conflict (Lawther, 2024, pp. 6-7). As Lawther suggests, the victim identity allows outsiders to judge who is a 'good', 'innocent', or 'worthy' victim. Furthermore, an *idealized victim* considers someone who is weak, going about their own decent business, is without blame, has been victimized by a wicked offender, and can leverage appropriate power and influence to around sympathy without appearing threatening to those with more power. Once having subscribed to or been ascribed the victimhood identity, Govier (2015) describes

particular behaviours in which victims and those surrounding them may engage. Responses by third parties include an increased sensitivity to the victim's experience which has led to *deference* to the innocent victim as their suffering should not be silenced, blamed, or ignored. Furthermore, there is a belief that society ought to offer sympathy and put the victim's needs first. Govier notes this is a prevalent reaction in Western cultures, especially for those victims who are members of marginalized groups who have a history of being denigrated or ignored. Govier suggests using caution as "in their sense of righteousness, and in their demand and need for social resources, victims may acquire a powerful sense of entitlement and even become obstacles to peace processes" (Govier, 2015, p. 10).

Jacoby (2015) offers a theory of victimhood, suggesting that this notion provides an identity that is founded on power as much as any other identity that conveys the effects of a power structure. Despite the unfortunate situation that led to victimization, claimants of victimhood leverage this identity to "seek recognition to attain values (material, political, spiritual and other) that accompany a victim identity (victimhood) in contexts that support rights-based recognition" (Jacoby, 2015, p. 514). However, as Jacoby notes, claims to victimhood for a given conflict may be made by numerous groups and individuals on more than one side of the conflict. The possibility for multiple parties to claim victimhood confounds attempts to distinguish between aggressor and victim in many scenarios and a single individual or group may be both victim *and* aggressor. Those attempting to claim the victimhood identity must effectively communicate their grievances and exhaust other rights-based methods of recognition to be recognized as being worthy of a victimhood identity. While Jacoby is describing a political identity based on some collective experience of violence, it remains that, like other structures of

dominance, it may play a similar role as traditional social structures, including those in which interpersonal conflict takes place.

In a similar vein, Manning and Campbell (2018) describe victimhood as a form of power that is founded on sympathy and moral righteousness that is nonetheless capable of using coercion to obtain their ends, though this is not achieved one on one with the opponent. Rather, claimants to victimhood engage the court of public opinion or engagement with a third party authority, using a type of moral authority to coerce decisions in their favour. The authors' assessment of victimhood demonstrates that victimhood culture normalizes appealing to a third party, often an authority, to address even minor insults to bring the outrage to the attention of more people and discourage the perpetrator and others from engaging in the same harmful behaviour.

In response to Campbell and Manning's work, Sue (cited in Torino et. al., eds., 2018) rebuts their assumptions around victimhood culture, suggesting that it denigrates and insufficiently appreciates the impacts of microaggressions on those belonging to marginalized communities. Furthermore, Sue suggests that Campbell and Manning's position unfairly characterizes victimhood culture as one that promotes dependency on third-party intervenors. Rather, Sue projects a new culture of people able to name harms and take the steps available to them as disempowered individuals and groups to contain, end and remedy these harms (Torino et. al., eds., 2018, p. 238). The emergence of victimhood culture, with specific regard for microaggressions as a harmful behaviour, sets a precedent in creating, justifying, and enacting norms that shed light on and question power imbalances in conflict.

Theoretically, relational mediation models could attend to victimhood using a variety of tools available in the models. Transformative mediation would attend to it through dual

attention: empowerment of the victim to move beyond this identity and into something that grants them the power to engage their agency going forward in the relationship, and through recognition of the impact of one's behaviour on the other. Narrative mediation would direct exploration of the narratives about the self and the other that the victim identity has supported, a more balanced and complex view of power in the relationship, and what a future with more balanced power could look like. Insight mediation would explore victimhood through the lens of cares as preoccupations with equity or equality and explorations of the offence as threats-to-cares, attending to intentions and impacts of all parties. NVC mediation would attend to victimhood through the needs lens, giving language to the feelings and needs that accompany the experience of victimhood. It would also direct attention to requests for changes in individual behaviour and compassion for the experience itself while fostering conditions for connection between all parties without the disconnection judgment brings. Each of the models may offer opportunities to shed light on the individual experience of victimhood and to promote understanding of harms, intentions, and connection between parties. Each of the models would also not seek to disprove the victimhood identity, nor would they automatically condemn the other party for their alleged offence.

Recalling that intersubjectivity assumes a fundamental moral equality of participants in an interaction, that they can attempt to grasp how the other sees the world, and that a shared experience can be facilitated, the dynamic introduced by a victimhood identity may create some challenges. First, victimization could be an experience that many, if not all, people can relate to, including feelings such as shame and powerlessness. However, victimhood may imply some complexity that is not fully understood by both parties. As Jacoby (2015) notes, when discussed in the socio-political post-conflict context, victimhood does not fully provide for a victim who

has participated in harmful behaviour throughout conflict and how this may have perpetuated or exacerbated the conflict. In this vein, the assumption is that multiple sides of a conflict may claim victimhood. Mutual recognition of one's dual role as victim *and* perpetrator may create a measure of cognitive dissonance that could be difficult to challenge if a mediator intends to retain the trust and neutrality that promotes intersubjectivity in mediation practice.

Second, much like the impacts of social stratification that gives way to discrimination, victimhood disrupts power balances but does not readily replace it with new intersubjective understanding or anything other than an inverted power structure. As discussed above, intersubjectivity requires a measure of recognition of one another as beings possessing a subjectivity that is worthy of equality and complexity. Invoking victimhood and the power it brings during conflict and possibly throughout conflict resolution would require attention and skillful navigation in a context that seeks to describe, bracket, and share the unique conflict experience of both parties for shared understanding.

Third, victimhood can appeal to the empathy a mediator typically values in their practice and risks influencing mediators and parties in mediation, with less regard for the possibility of a complex victim that may have engaged in conflictual or harmful behaviour. A mediator, in their endeavour to support parties through empathy, may inadvertently reinforce the victim identity of one or both parties. Conversely, a mediator who works to bracket the assumptions supporting a victimhood identity risks creating additional harm.

In cases where victimhood remains a steadfast identity that resists complexification of self and other, it is possible that such cases are not suitable for mediation but should be directed at other rights-based dispute resolution mechanisms or processes that are specifically designed for restorative justice. Much like the power structures that favour some identity groups over others

as described above, the inversion of the power structure also creates challenges to intersubjective understanding as it is proposed by the theory. The dynamic it creates is often characterized by a defensive reaction to the allegation, regardless of its accuracy, creating resistance to recognizing the validity of the subjective experience and recognition of contribution to the conflict.

The challenges of power imbalances in mediation and the measures available to mediators to promote equality between parties are subject to each party's perception of their and the other party's power in the relationship. Furthermore, it is equally subject to each party recognizing their own role in the conflict, a challenge when one or both parties finds empowerment in claiming the victimhood identity at the expense of the other party.

3. Power and relational mediation

Addressing the question of relational mediation and intersubjectivity, this thesis considers how a mediator addresses the following concern: In what ways does a relational mediator work to promote intersubjective understanding that will transcend the power imbalance that already exists in the parties' relationship? Bush and Folger's transformative mediation model is weak in its specific address of this power question. Specifically, the transformative model positions power as something that can be supported within each party to better understand what matters to them, develop the skills to effectively engage in mediation, realize that *all* parties are in an interdependent relationship, and claim their agency in their decision-making both within and outside of mediation (Bush and Folger, 1994, pp. 85-87). Writing about the transformative model, Simon and West (2022) validate that power imbalances take many forms between parties that may offer an advantage to one over the other in mediation. Despite these imbalances, the authors assert that all parties to mediation have the potential to develop responsiveness to the other party, but that "The stronger or more dominant party becoming more responsive is often the

best path to a better outcome for the weaker party. The weaker party, becoming clearer and more realistic about the stronger party, can make better choices about how to deal with that power imbalance" (Simon & West, 2022, p. 113). In its most obvious sense, the *empowerment* dimension of transformative mediation does not play the role of balancing power; rather, *empowerment* seeks to question the internal assumptions about a party's options for acting contrary to the accepted intersubjective norms of power in the relationship. This ability to question these norms for oneself is thought to lead toward greater freedom to generate options, weigh their benefits and disadvantages, and communicate about them more readily.

In Winslade and Monk's narrative model, the view of power as a commodity that can be controlled and wielded is challenged by its postmodern perspective. Specifically, Winslade and Monk conclude that power does not adhere to structural positions as found in hierarchies. Rather, the authors understand power to function in and through discourse. Thus, narrative mediation seeks to challenge the entitlement discourse as it considers that power is not a static phenomenon but a relational phenomenon (Winslade & Monk, 2000, p. 50). In this way, the authors advocate for an understanding of power that is more akin to a network of power relationships. The authors take a discussion about parties' desired power structure in a relationship and "ask someone whether they want to be in charge or in control of their partner or in an equal relationship that involves respect and care, they opt for the latter" (Winslade & Monk, 2000, p. 108). Winslade and Monk maintain that such a question invariably leads to an affirmation that the person prefers an equal relationship rather than a hierarchical one. The intersubjective understanding of power that is proposed by Crossley is alive and active in Winslade and Monk's narrative mediation model. These discourses provide the intersubjectively understood power relationships, and narrative mediation's goal is ultimately to lead parties to

develop an awareness of these shared meanings (or not shared, as the case may be) of power and to create their own intersubjectively developed and shared understanding of power for the future of their relationships.

While reference to power imbalances and power structures take up less space in Melchin and Picard's insight model, it does refer to threat-to-cares and a shared orientation toward empowerment as articulated in the transformative model. This implies a perception of the other party's ability to act in opposition to one's cares as much as the acknowledgement of the choices that are available to each party within the conflict and beyond. This is equally aligned with Crossley's exploration of intersubjective meanings of power in relationships. Central to this line of thought is the *perception* of a threat, if not an actual threat. This suggests diminishing this threat (real or perceived) through learning, verifying insights, and a shift of relationships that favours new perspectives and appreciation for both parties' values and cares that will diminish the impacts of perceived power in a relationship (Melchin and Picard, 2009, p. 78). In effect, Melchin and Picard are sensitive to the construction of power in relationships and the impacts of questioning the reality of that power. The authors are also sensitive to power's effects and attend to relationships that recognize the interdependence, mutuality, and need for continual curiosity and questioning of assumptions to address conflict throughout an ongoing relationship.

Finally, and perhaps most interestingly, Rosenberg's addressing of power in conflict resolution suggests that power is indeed a dynamic that requires attention to improve the chances of a successful mediation. Rosenberg makes an explicit reference to the role that power plays in experiencing empathy and connection, stating, "It's harder to empathize with those who appear to possess more power, status, or resources" (Rosenberg, 2015, p. 115). For Rosenberg, the entire approach to conflict resolution recognizes the violence and control of hierarchies and the role of

power in maintaining and perpetuating them throughout fundamentally violent societies. Thus, Rosenberg appears to advocate for the individual in the superior position of power coming to terms with their position, recognizing the power they hold, and working counter to intersubjectively understood expectations of those wielding power in favour of connection. This also aligns with Crossley's position that hierarchies are not built on human connection but on the need for control and inequality, and the ability of power to adapt to new circumstances. Rosenberg recognizes this challenge and issues a call to reject such applications of power.

Each of the relational mediation models proposes its own approach to the question of power in conflict and mediation. While there is some resonance between them, they do treat the matter in their own distinct ways, using their own distinct jargon and framings. For relational mediation practices as well as other parts of conflict resolution literature, power is understood to be active and alive in all conflicts, as those in the inferior power position begin to agitate for rights and recognition, while those in the superior power position may or may not negotiate sharing power. Indeed, those who enjoy the superior position may not feel the need to negotiate such a redistribution. Relational mediation processes are arranged such that they lead to adapted and eventually shared perceptions of power, but only once parties are aware of the harmful or hurtful effects of power, decide that these are not the effects they desire for their relationship, and agree to create a new arrangement for sharing power in the relationship.

Crossley's position regarding the role of intersubjectivity in creating and maintaining implicit understandings of power is particularly relevant, especially when they remain implicit, unseen, or undefined. Without recognition of the role of power in conflict and the necessity to negotiate its reallocation, imbalances and resistance to sharing create real barriers to successful and profound conflict resolution.

Conclusion

This chapter has reviewed the meaning and effects of power in interpersonal relationships and its impacts on creating connection and intersubjective understanding between parties in conflict. Having explored the nature of power in conflict, the literature demonstrates that it is by nature relational and must thus be considered in relational mediation practices. However, the role of the relational mediator in disrupting the intersubjective assumptions around power are limited as their role of third party will inherently limit their influence over parties to share and deeply understand each other's (and their own) experience of power in the relationship. Furthermore, parties' readiness to explore the exercise and experience of power in their relationship to the end of developing a shared understanding can be particularly challenging as power is intersubjective and may evade conscious exploration. Ultimately, the relational mediator's task is to create the opportunity to question, negotiate, and redesign that power relationship, which can be profoundly threatening to parties unable or unwilling to do so.

Power imbalances present opportunities for parties to remain guarded and protect themselves from the pain of conflict. This protection does not create the conditions propitious for connection, empathy, or an openness to hearing and accepting the other party's experience of conflict and their hopes for the future. Power may be too appealing to defend and retain, limiting the possibilities for a solution based on equality that recognizes the sameness and differentness of one another.

Based on this analysis of the relational mediation models explored, power asymmetry remains an underappreciated and underexplored element of interpersonal conflict. When the asymmetry is too great, the distance it creates between parties may be too substantial to overcome

using relational mediation methods. In such circumstances, alternative methods of dispute resolution should be explored.

Conclusion

This thesis set out to explore the question of what leads to mediation of interpersonal conflict to fail. This work established an explicit connection between the definition of conflict as a unique and subjective experience. Following this, the argument was made that mediation, and in particular, relational mediation models follow a phenomenological procedure that allows the mediator and other parties to grasp each other's experience of the conflict. By interrogating the content of the conflict experience using phenomenological tools rather than relying on factual or evidence-based procedures to settle disputes, this approach to mediation favours parties' experiences of the conflict and how their own experience has constructed or interpreted the events around the conflict. Furthermore, this approach offers subjective experiences as a path toward resolution that is considered suitable by the parties themselves. The expectation is that a mediator's skills in facilitating the sharing of those experiences through communication and empathy help each party gain access to some version of the opposing party's inner world and understand how the conflict is perceived and experienced. In addition to this sharing, the mediator helps parties interrogate their own experiences, creating additional space for possible perceptions of the conflict experience. With this interrogation, sharing, and understanding, the mediator attempts to create a new kind of intersubjectivity for the parties. This new intersubjectivity allows the parties to consider a different set of options to resolve the dispute that contemplates all parties' perspectives with more equitable weight. This approach is imminently focused on parties' abilities to balance their own hopes for resolution with those of the other party.

This thesis has demonstrated that relational mediation is a process intended to facilitate broadened mutual understanding and appreciation between the mediator and parties and between the parties themselves in an effort to achieve intersubjective understanding between parties. The relational dimension of conflict as a path toward durable and satisfying resolution is the cornerstone of relational mediation models that presume conflict is fundamentally a relational phenomenon and thus must be addressed through the lens of the relationship between the parties. The four relational mediation models selected, transformative, narrative, insight, and nonviolent communication (NVC) each address the subjective experience of conflict and the new intersubjective understanding that contributes to conflict resolution. In this context, intersubjectivity suggests a sharing of subjective experiences of the conflict between the parties and the mediator, a recognition of the coordination of this sharing and mutual impacts, as well as the presumption of moral equality between the parties. These three aspects of intersubjectivity help parties reach beyond themselves to understand the other party, themselves, and the conflict and to work toward satisfying and durable resolutions. The role of the mediator in this process is to create a trusting and understanding relationship with each party to create the conditions for a similar type of relationship between the parties. The mediator is also tasked with helping the parties develop a broadened and deepened understanding of themselves, the other party, and the conflict in order to facilitate a resolution that takes the subjective experience of the conflict as well as that of the opposing party into consideration. Beyond grasping the experience of the other and an evolved understanding of the conflict, relational mediation intends to have a positive influence on how the parties' relationship is perceived and valued going forward.

Mediation theory and practice are intended to bring two subjectivities, or three subjectivities, if the mediator's is included, into a space where they can recognize one another as

similar to each other while distinct and to come to shared and informed decisions about the future of their relationship. However, mediation best practices do not presume that mediation is a suitable dispute resolution mechanism for every party or conflict. Mediators are guided by ethical considerations for neutrality and self-determination but are also called to determine which conflicts and parties possess the capabilities for informal conflict resolution. This responsibility recognizes that informal processes such as mediation may afford little protection to vulnerable parties but may offer opportunities for communication skill development and empowerment. Balancing these values and considerations represents several challenges including the accurate evaluation of parties' capacities and their conflict to determine if they meet the basic requirements for parties to be successful in mediation.

While this approach to evaluating parties' capacities may support a level of success for the parties in mediation, it does not guarantee a positive outcome. This thesis recognizes that the mediator's skills and the model they use may limit parties' abilities to find new understanding. Beyond this, however, this thesis' findings go beyond mediation models and mediator skills to suggest that there may be aspects of the parties' capacities and aspects of the parties' relationships mediated by their contexts that create barriers to achieving new intersubjective understanding and, by extension, resolving the conflict at its most fundamental levels. Parties' abilities to relate to one another may be limited by their psychological and/or neurological make-up, past experiences of trauma, and the structural impacts of power on the relationship, however it manifests or is interpreted. While mediators may find strategies to work around these challenges, they do this because they implicitly understand that they present barriers to achieving intersubjective understanding, even if this name is not applied to the achievement of understanding and an equitable relationship. However, applying this lens of intersubjectivity

explicitly may promote mediator professional development that helps a mediator better analyze a situation and understand what blocks may interfere with the development of intersubjective understanding and select a strategy to either navigate it or determine that the block is too great for mediation to be helpful.

The challenge then, is how a mediator who may not be an expert in these facets of human experience can choose the appropriate strategy to work with or around it, and when it might be appropriate to do so. Parties may not be aware of parts of themselves that may present blocks to new intersubjective understanding. They may be aware of these parts of themselves but may not disclose it to the mediator. They may be aware of these blocks and disclose them to the mediator and the mediator may decide that party self-determination takes priority over the risks of failure or even further harm. An enhanced understanding of what a mediator is attempting to accomplish may offer further avenues for a mediator's professional development that attends to these blocks when possible.

In my own mediation practice, I know that when I see parties very intent on trying mediation to resolve their issues, I often see parts of the parties and their experience of conflict that I am confident will stand in the way of achieving success. The causes are often an intention to convince or coerce rather than respect and understand themselves and the other. There is often a denial to consider other perceptions of the situation, which effectively holds at least one party squarely in their subjective truth. Sometimes, I see an explicit or implicit hierarchy at play, limiting openness to another perspective and holding fast to their status as an authority with decision-making privileges. Sometimes I see a party's blindness to how their biases are harmful to their counterpart and a reluctance to learn alternative ways of interacting that mitigate these harms and promote openness. And sometimes I see mental health limiting parties' objectivity

and openness to other perspectives. When I notice this, I am often torn between providing opportunities to exchange experiences toward the end of creating opportunities for greater understanding and deeper relationships on the one hand, and protecting parties from unproductive time together that may further harm their relationship in the long run on the other hand. As a result of this research, I have begun adopting strategies in my mediation practice that explicitly account for some blocks and I am still evaluating their effectiveness.

When I was attending the Graduate Diploma in Conflict Resolution at Carleton University where I learned and practiced the insight model of mediation, there was a moment when a series of questions to the professor resulted in her stopping, turning to the whiteboard and scrawling, "MEDIATION IS NOT A PANACEA." This moment has stuck with me throughout my work as a mediator. Despite my efforts to develop my skills and stay optimistic about the potential for mediation to be more helpful to parties than other adversarial or harmful dispute resolution methods, I am able to acknowledge the limits of mediation for helping some parties struggling with conflict in their relationships. Thus, mediation is just one option that can be tried. But when more formal options are available, these deserve equal exploration with parties.

Where the limits of mediation and intersubjectivity lie is often obscured. Those limits may also expand with more education and training for the mediator. Acquiring trauma-informed practice training, learning about coaching and learning strategies that may work with neurodiverse individuals, and learning more of the skills associated with multiple mediation models has contributed to my practice and allowed me to undermine some of the barriers to conflict resolution my clients present. Additionally, the value of coaching as part of the premediation stage of mediation cannot be underestimated as this may create the a space where introspection and perspective-taking can be taken with face-saving for both parties. This is where

the mediator's ability to connect to each party with skill and nonjudgment is truly instrumental to convey an intention to develop intersubjective understanding that will support this introspection that may help diminish barriers to connection between parties.

This thesis may also lead us to understand that a singular conflict resolution mode may be insufficient to help parties find something better in their relationship than they had been experiencing. Effectively, mediators may need to resist a drive for parties to *resolve* their conflict and may be best served by cultivating comfort with helping parties to *manage* or *settle* their dispute. Releasing the mediator from an expectation of a transformative experience may be liberating the mediator from a dogmatic ethos to resolving conflict and permit parties a greater range of options.

References

Adams, George W., and Naomi L. Bussin. "Alternative Dispute Resolution and Canadian Courts: A Time for Change." *Advocates' Quarterly* 17 (1995): 133–57.

Adrian, Lin, and Solfrid Mykland. "Creativity in Court-connected Mediation: Myth or Reality?" *Negotiation Journal* 30, no. 4 (2014): 421–39. https://doi.org/10.1111/nejo.12069.

Alexander, Nadja. "The Mediation Metamodel: Understanding Practice." *Conflict Resolution Quarterly* 26, no. 1 (2008): 97–123. https://doi.org/10.1002/crq.225.

Alexander, Nadja Marie. *Global Trends in Mediation*. 2nd ed.. Kluwer Law International, 2006. https://login.proxy.bib.uottawa.ca/login?url=http://www.kluwerarbitration.com/CommonUI/book-toc.aspx?book=TOC_Alexander_2006.

Alfini, James J. "Evaluative Versus Facilitative Mediation: A Discussion." *Florida State University Law Review* 24, no. 4 (1997): 19.

Amadiume, Ifi, and ʻAbd Allāh Aḥmad Naʻīm. *The Politics of Memory: Truth, Healing and Social Justice*. Zed Books, 2000.

American Psychiatric Association. *Diagnostic and Statistical Manual of Mental Disorders: DSM-5-TR*. 5th edition, text Revision. American Psychiatric Association Publishing, 2022.

Arieli, Daniella, and Oriana Abboud Armaly. "Nonviolent Communication (NVC) Based Mediation: Practice Insight." *Conflict Resolution Quarterly* 40, no. 3 (2023): 357–66. https://doi.org/10.1002/crq.21370.

Armaly, Miles T., and Adam M. Enders. "'Why Me?' The Role of Perceived Victimhood in American Politics." *Political Behavior* 44, no. 4 (2022): 1583–609. https://doi.org/10.1007/s11109-020-09662-x.

Astor, Hilary. "Mediator Neutrality: Making Sense of Theory and Practice." *Social and Legal Studies* 16, no. 2 (2007): 221–39.

Atwood, George E. *Structures of Subjectivity: Explorations in Psychoanalytic Phenomenology and Contextualism*. 2nd ed. With Robert D. Stolorow. Psychoanalytic Inquiry Book Series. Routledge, 2014. https://doi.org/10.4324/9781315770680.

Auerbach, Jerold S. *Justice Without Law? Resolving Disputes Without Lawyers*. 1st paperback ed. Oxford University Press, 1984.

Avruch, Kevin. *Culture & Conflict Resolution*. 5th printing. United States Inst. of Peace Press, 2006.

Avruch, Kevin, Peter W. Black, and Joseph A. Scimecca, eds. *Conflict Resolution: Cross-Cultural Perspectives*. Contributions in Ethnic Studies, no. 28. Greenwood Press, 1991.

Bader, Elizabeth E. "Self, Identity and the IDR Cycle: Understanding the Deeper Meaning of 'Face' in Mediation." *International Journal of Applied Psychoanalytic Studies* 8, no. 4 (2011): 301–24. https://doi.org/10.1002/aps.295.

Balmer, Alexandre, and Jacques Hébert. "Les médiations en question." *Nouvelles pratiques sociales* 21, no. 2 (2009): 20–30.

Bassot, Barbara. *Doing Qualitative Desk-Based Research: A Practical Guide to Writing an Excellent Dissertation*. Policy Press, 2022. http://ebookcentral.proquest.com/lib/ottawa/detail.action?docID=7019010.

Bazzano, Manu. "Togetherness: Intersubjectivity Revisited." *Person-Centered & Experiential Psychotherapies*, 2013, 1–14. https://doi.org/10.1080/14779757.2013.852613.

Beck, Connie J. A., and Lynda E. Frost. "Competence as an Element of 'Mediation Readiness.'" *Conflict Resolution Quarterly* 25, no. 2 (2007): 255–78. https://doi.org/10.1002/crq.207.

Behr, Hartmut. *Politics of Difference: Epistemologies of Peace*. Global Horizons 12. Routledge, 2014. https://doi.org/10.4324/9781315776538.

Benjamin, Jessica. "An Outline of Intersubjectivity: The Development of Recognition." *Psychoanalytic Psychology* 7, no. S (1990): 33–46. https://doi.org/10.1037/h0085258.

Benjamin, Jessica. *Beyond Doer and Done to : Recognition Theory, Intersubjectivity and the Third*. Routledge, 2017. https://doi.org/10.4324/9781315437699.

Benjamin, Jessica. "Creating an Intersubjective Reality: Commentary on Paper by Arnold Rothstein." *Psychoanalytic Dialogues* 15, no. 3 (2005): 447–57. https://doi.org/10.1080/10481881509348842.

Benjamin, Jessica. "Thinking Together, Differently: Thoughts on Bromberg and Intersubjectivity." *Contemporary Psychoanalysis* 49, no. 3 (2013): 356–79. https://doi.org/10.1080/00107530.2013.10779254.

Bercovitch, Jacob. "Mediation Success or Failure: The Search for the Elusive Criteria." In *Theory and Practice of International Mediation*. Routledge, 2011.

Bohleber, Werner. *Destructiveness, Intersubjectivity, and Trauma: The Identity Crisis of Modern Psychoanalysis*. Developments in Psychoanalysis Series. Karnac, 2010. https://doi.org/10.4324/9780429473623.

Bohleber, Werner. "The Concept of Intersubjectivity in Psychoanalysis: Taking Critical Stock." *International Journal of Psychoanalysis* (Oxford) 94, no. 4 (2013): 799–823. https://doi.org/10.1111/1745-8315.12021.

Bollen, Katalien, and Martin Euwema. "Angry at Your Boss: Who Cares? Anger Recognition and Mediation Effectiveness." *European Journal of Work and Organizational Psychology* 24, no. 2 (2014): 1–11. https://doi.org/10.1080/1359432X.2014.895327.

Bollen, Katalien, Heidi Ittner, and Martin C. Euwema. "Mediating Hierarchical Labor Conflicts: Procedural Justice Makes a Difference—for Subordinates." *Group Decision and Negotiation* 21, no. 5 (2012): 621–36. https://doi.org/10.1007/s10726-011-9230-1.

Bornstein, Brian H., and Richard L. Wiener. *Justice, Conflict and Wellbeing: Multidisciplinary Perspectives*. 1st ed. 2014. Springer New York, 2014. https://doi.org/10.1007/978-1-4939-0623-9.

Bower, Matt. "Developing Open Intersubjectivity: On the Interpersonal Shaping of Experience." *Phenomenology and the Cognitive Sciences* 14, no. 3 (2015): 455–74. https://doi.org/10.1007/s11097-014-9346-2.

Bowling, Daniel, and David Hoffman. *Bringing Peace Into the Room: How the Personal Qualities of the Mediator Impact the Process of Conflict Resolution*. John Wiley & Sons, 2003.

Bresnahan, Mary Jiang, William A. Donohue, Sachiyo M. Shearman, and Xiaowen Guan. "Research Note: Two Measures of Conflict Orientation." *Conflict Resolution Quarterly* 26, no. 3 (2009): 365–79. https://doi.org/10.1002/crq.238.

Brigg, Morgan. *The New Politics of Conflict Resolution: Responding to Difference*. 1st ed. 2008. Rethinking Peace and Conflict Studies. Palgrave Macmillan UK, 2008. https://doi.org/10.1057/9780230583375.

Buber, Martin. *I and Thou*. T. & T. Clark, 1970.

Buirski, Peter, Pamela Haglund, and Emily Markley. *Making Sense Together: The Intersubjective Approach to Psychotherapy*. Rowman & Littlefield, 2020.

Burns, David D. *Feeling Good: The New Mood Therapy*. Morrow, 1980.

Burton, John W. *Peace Theory: Preconditions of Disarmament.* Knopf, 1962. https://catalog.hathitrust.org/Record/001153965.

Burton, John Wear. *Conflict: Resolution and Provention*. St. Martin's Press, 1990.

Burton, John Wear. *Conflict Resolution: Its Language and Processes*. Scarecrow Press, 1996.

Burton, John Wear. *Violence Explained: The Sources of Conflict, Violence and Crime and Their Prevention*. Manchester University Press, 1997.

Busch, Dominic, ed. *The Routledge Handbook of Intercultural Mediation*. Routledge, 2022. https://doi.org/10.4324/9781003227441.

Busch, Dominic editor, Claude-Hélène Mayer, and Christian Martin Boness. *International and Regional Perspectives on Cross-Cultural Mediation*. Studien Zur Interkulturellen Mediation ; Bd. 5. Peter Lang, 2010.

Busch-Jensen, Peter. "Rethinking Power and Agency through the Lens of Intersubjectivity." *Annual Review of Critical Psychology (Online)* 18 (October 2024): 185–213.

Bush, Robert A. Baruch. “Mediation and Adjudication, Dispute Resolution and Ideology: An Imaginary Conversation. (Symposium: Alternative Dispute Resolution).” *The Journal of Contemporary Legal Issues* 3, no. 1 2 (1989): 1–35.

Bush, Robert A. Baruch. *The Promise of Mediation: The Transformative Approach to Conflict*. Rev. ed.. With Joseph P. Folger. Jossey-Bass, 2005.

Bush, Robert A. Baruch, and Joseph P. Folger. “Mediation and Social Justice: Risks and Opportunities.” *Ohio State Journal on Dispute Resolution* 27, no. 1 (2012): 1–51.

Bush, Robert A. Baruch, and Joseph P. Folger. *The Promise of Mediation: The Transformative Approach to Conflict*. John Wiley & Sons, 2004.

Campbell, Bradley, and Jason Manning. *The Rise of Victimhood Culture: Microaggressions, Safe Spaces, and the New Culture Wars*. Springer, 2018.

Capri, Charlotte. “On Developing an Intersubjective Frame for Intellectual Disability Work.” *Disability and Rehabilitation* 36, no. 5 (2014): 418–23. https://doi.org/10.3109/09638288.2013.793407.

Carnevale, Peter. “Strategic Choice in Mediation.” *Negotiation Journal* 2 (July 2007): 41–56. https://doi.org/10.1111/j.1571-9979.1986.tb00337.x.

Carnevale, Peter J. “The Usefulness of Mediation Theory.” *Negotiation Journal* 8, no. 4 (1992): 387–90. https://doi.org/10.1111/j.1571-9979.1992.tb00681.x.

Caverni, J.-P., J.-M. Fabre, and M. Gonzalez. *Cognitive Biases*. Elsevier, 1990.

Charbonneau, Bruno, and Genevieve Parent. *Peacebuilding, Memory and Reconciliation: Bridging Top-Down and Bottom-Up Approaches*. Routledge, 2013.

Charkoudian, Lorig, and Ellen Kabcenell Wayne. “Fairness, Understanding, and Satisfaction: Impact of Mediator and Participant Race and Gender on Participants’ Perception of Mediation.” *Conflict Resolution Quarterly* 28, no. 1 (2010): 23–52. https://doi.org/10.1002/crq.20011.

Cheng, Helen H. L. “Beyond Forms, Functions and Limits: The Interactionism of Lon L. Fuller and Its Implications for Alternative Dispute Resolution.” *Canadian Journal of*

Law and Jurisprudence 26, no. 2 (2013): 257–92. https://doi.org/10.1017/S084182090000607X.

Clemants, Elizabeth, and Alan Gross. "'Why Aren't We Screening?' A Survey Examining Domestic Violence Screening Procedures and Training Protocol in Community Mediation Centers." *Conflict Resolution Quarterly* 24, no. 4 (2007): 413–31. https://doi.org/10.1002/crq.182.

Cloke, Kenneth. *Mediating Dangerously: The Frontiers of Conflict Resolution*. John Wiley & Sons, 2002.

Cloke, Kenneth. *The Crossroads of Conflict: A Journey Into the Heart of Dispute Resolution*. Janis Publications USA Incorporated, 2006.

Coser, Lewis A. *Functions of Social Conflict*. Simon and Schuster, 1964.

Costello, Peter R. *Layers in Husserl's Phenomenology: On Meaning and Intersubjectivity*. New Studies in Phenomenology and Hermeneutics. University of Toronto Press, 2012.

Coy, Patrick G., and Timothy Hedeen. "A Stage Model of Social Movement Co-Optation: Community Mediation in the United States." *The Sociological Quarterly* 46, no. 3 (2005): 405–35. https://doi.org/10.1111/j.1533-8525.2005.00020.x.

Crampton, Alexandra. "Elder Mediation in Theory and Practice: Study Results From a National Caregiver Mediation Demonstration Project." *Journal of Gerontological Social Work* 56, no. 5 (2013): 423–37. https://doi.org/10.1080/01634372.2013.777684.

Creswell, John W. *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches*. 2. ed., [Nachdr.]. Sage Publ, 2008.

Crossley, Nick. *Intersubjectivity: The Fabric of Social Becoming*. Philosophy & social criticism. SAGE, 1996.

Cumming, Joy. *Literacy Demands of Mediation: Issues of Fairness for Low Literacy Australians*. 2, no. 10 (2000): 5.

Curle, Adam. *Making Peace*. Tavistock Publications, 1971.

Daanen, Paul, Fathali M. Moghaddam, and Gordon Sammut. *Understanding the Self and Others: Explorations in Intersubjectivity and Interobjectivity*. Routledge, 2013.

https://login.proxy.bib.uottawa.ca/login?url=https://www.taylorfrancis.com/books/9780203331415.

Dai, Xiaodong, and Guo-Ming Chen. *Conflict Management and Intercultural Communication: The Art of Intercultural Harmony*. 2nd ed. Routledge, 2023.

Daly, Anya. *Merleau-Ponty and the Ethics of Intersubjectivity*. Springer, 2016.

Dant, Tim. "In Two Minds: Theory of Mind, Intersubjectivity, and Autism." *Theory & Psychology* 25, no. 1 (2015): 45–62. https://doi.org/10.1177/0959354314556526.

Dar, Shaheen Showkat. "Disciplinary Evolution of Peace and Conflict Studies: An Overview." *International Journal on World Peace* (New York, United States) 34, no. 1 (2017): 45–79.

De Jaegher, Hanne. "Social Understanding through Direct Perception? Yes, by Interacting." *Consciousness and Cognition* (Amsterdam) 18, no. 2 (2009): 535–42. https://doi.org/10.1016/j.concog.2008.10.007.

Deutsch, Morton. *The Resolution of Conflict: Constructive and Destructive Processes*. Yale University Press, 1973.

Deutsch, Morton, and Peter T. Coleman, eds. *The Handbook of Conflict Resolution: Theory and Practice*. 1st ed. Jossey-Bass, 2000.

Devers, Erin. *The Unbiased Self: The Psychology of Overcoming Cognitive Bias*. InterVarsity Press, 2025.

DiAngelo, Dr Robin. *White Fragility: Why It's So Hard for White People to Talk About Racism*. Beacon Press, 2018.

Domenici, Kathy, and Stephen W. Littlejohn. *Mediation: Empowerment in Conflict Management, Second Edition*. Waveland Press, 2001.

Donohoe, Janet. *Husserl on Ethics and Intersubjectivity: From Static to Genetic Phenomenology*. Contemporary Studies in Philosophy and the Human Sciences. Humanity Books, 2004.

Doyle, Nancy, and Almuth McDowall. *Neurodiversity Coaching: A Psychological Approach to Supporting Neurodivergent Talent and Career Potential*. Taylor & Francis, 2024.

Druliolle, Vincent, and Roddy Brett. *The Politics of Victimhood in Post-Conflict Societies: Comparative and Analytical Perspectives*. Springer, 2018.

Drummond, John J. "Empathy, Sympathetic Respect, and the Foundations of Morality." In *Empathy, Intersubjectivity, and the Social World: The Continued Relevance of Phenomenology. Essays in Honour of Dermot Moran*, edited by Anna Bortolan and Elisa Magrì. De Gruyter, 2022. https://www.degruyterbrill.com/document/doi/10.1515/9783110698787-018/html.

Duranti, Alessandro. "Husserl, Intersubjectivity and Anthropology." *Anthropological Theory* 10, nos. 1–2 (2010): 16–35. https://doi.org/10.1177/1463499610370517.

Eddy, Bill. *It's All Your Fault!: 12 Tips for Managing People Who Blame Others for Everything*. Unhooked Books, 2012.

Eddy, Bill, and Michael Lomax. *Mediating High Conflict Disputes*. High Conflict Institute Press, 2021.

Erickson, Stephen K., and Marilyn S. McKnight. *The Practitioner's Guide to Mediation: A Client Centered Approach*. Wiley, 2000.

Evans, Dylan. *Emotion: A Very Short Introduction*. Oxford University Press, 2019.

Feerick, John, Carol Izumi, Kimberlee K. Kovach, et al. "Standards of Professional Conduct in Alternative Dispute Resolution. (Symposium)." *Journal of Dispute Resolution* 1995, no. 1 (1995): 95–128.

Fehrenback, Keri Szejda, and Amy S. Ebesu Hubbard. "Future Directions in Neutrality Research: Symmetry and Transparency." *International Journal of Conflict Management* 25, no. 2 (2014): 226–42.

Fisher, Roger. *Getting to Yes: Negotiating Agreement Without Giving In*. 3rd ed., rev. Ed.. With William Ury and Bruce Patton. Penguin, 2011.

Folberg, Jay, Ann Milne, and Peter Salem. *Divorce and Family Mediation Models, Techniques, and Applications*. Guilford Press, 2004.

https://login.proxy.bib.uottawa.ca/login?url=http://books.scholarsportal.info/viewdoc.html?id=/ebooks/ebooks2/pda/2011-12-01/1/12752.9781606231586.

Folger, Joseph, and Robert A. Baruch Bush. "Transformative Mediation: A Self-Assessment." *International Journal of Conflict Engagement and Resolution* 2, no. 1 (2014): 20–34.

Folger, Joseph P., and Robert A. Baruch Bush. *Designing Mediation: Approaches to Training and Practice Within a Transformative Framework*. Institute for the Study of Conflict Transformation, 2001.

Foolen, Ad, Ulrike M. Lüdtke, Timothy P. Racine, and Jordan Zlatev. *Moving Ourselves, Moving Others : Motion and Emotion in Intersubjectivity, Consciousness and Language*. John Benjamins Publishing Company, 2012. http://www.oapen.org/search?identifier=643259.

Froese, Ursula. *Levinas, Justice and Mediation*. Viadrina-Schriftenreihe Zu Mediation Und Konfliktmanagement, Band 37. Wolfgang Metzner Verlag, 2022. https://www.vfst.de/sites/default/files/filefield_paths/SR_Viadrina_Froese_978-3-96117-118-7_E-Book_%5Bgeschuetzt%5D.pdf.

Fuchs, T. "Pathologies of Intersubjectivity in Autism and Schizophrenia." *Journal of Consciousness Studies* (Exeter, UK) 22, nos. 1–2 (2015): 191–214.

Fuchs, Thomas, and Hanne De Jaegher. "Enactive Intersubjectivity: Participatory Sense-Making and Mutual Incorporation." *Phenomenology and the Cognitive Sciences* 8, no. 4 (2009): 465–86. https://doi.org/10.1007/s11097-009-9136-4.

Fuller, Lon L. "Mediation--Its Forms and Functions." *Southern California Law Review* 44 (71 1970): 305.

Gabay, Rahav, Boaz Hameiri, Tammy Rubel-Lifschitz, and Arie Nadler. "The Tendency for Interpersonal Victimhood: The Personality Construct and Its Consequences." *Personality and Individual Differences* 165 (October 2020): 110134. https://doi.org/10.1016/j.paid.2020.110134.

Gallagher, Shaun. *How the Body Shapes the Mind*. Oxford University Press, 2006.

Gallagher, Shaun. "Intersubjectivity and Psychopathology." In *The Oxford Handbook of Philosophy and Psychiatry*, edited by K. W. M. Fulford, Martin Davies, Richard Gipps, et al. Oxford University Press, 2013. https://doi.org/10.1093/oxfordhb/9780199579563.013.0019.

Gallagher, Shaun. *Phenomenology*. 1st ed. 2012. Palgrave Philosophy Today. Palgrave Macmillan UK, 2012. https://doi.org/10.1057/9781137283801.

Gallagher, Shaun. *The Self and Its Disorders*. Oxford University Press, 2024.

Gallagher, Shaun, and Dan Zahavi. *The Phenomenological Mind: An Introduction to Philosophy of Mind and Cognitive Science*. Repr. Routledge, 2010.

Galtung, Johan. *Peace by Peaceful Means: Peace and Conflict, Development and Civilization*. 1st ed. International Peace Research Institute, 1996.

Galtung, Johan. *Peace, War and Defense*. BRILL, 1976.

Galtung, Johan. *Searching for Peace: The Road to TRANSCEND*. 2nd ed. With Kai Frithjof Brand-Jacobsen and C. G. Jacobsen. Pluto Press in association with TRANSCEND, 2002.

Galtung, Johan, and David Baronov. *Transcend and Transform: An Introduction to Conflict Work*. Paradigm Publishers, 2004.

Garcia, Angela. "Dispute Resolution Without Disputing: How the Interactional Organization of Mediation Hearings Minimizes Argument." *American Sociological Review* 56, no. 6 (1991): 818. https://doi.org/10.2307/2096258.

Gauthier, Benoît. *Recherche sociale de la problématique à la collecte des données*. 4e éd. Canadian electronic library. Books collection. Presses de l'Université du Québec, 2003.

Gaynier, Lisa P. "Transformative Mediation: In Search of a Theory of Practice." *Conflict Resolution Quarterly* 22, no. 3 (2005): 397–408. https://doi.org/10.1002/crq.110.

Georgakopoulos, Alexia. *The Mediation Handbook: Research, Theory, and Practice*. Routledge, 2017.

Glocer Fiorini, Leticia. “Intersubjectivity, Otherness, and Thirdness: A Necessary Relationship.” *International Journal of Psychoanalysis* 97, no. 4 (2016): 1095–104. https://doi.org/10.1111/1745-8315.12432.

Göncö, Artin, and Virginia Cannella. “The Role of Teacher Assistance in Children’s Construction of Intersubjectivity during Conflict Resolution.” *New Directions for Child and Adolescent Development* 1996, no. 73 (1996): 57–69. https://doi.org/10.1002/cd.23219967306.

Govier, Trudy. *Victims and Victimhood*. Broadview Press, 2015.

Grathoff, Richard, and Elżbieta Hałas, eds. *Life-World, Intersubjectivity and Culture: Contemporary Dilemmas*. Studies in Sociology: Symbols, Theory and Society, Volume 8. PL Academic Research, 2016.

Gray, Frances. *Jung and Levinas: An Ethics of Mediation*. Routledge, 2015.

Grillo, Trina. “The Mediation Alternative: Process Dangers for Women.” *The Yale Law Journal* (New Haven, Conn) 100, no. 6 (1991): 1545–610. https://doi.org/10.2307/796781.

Guillaume-Hofnung, Michèle. *La Médiation*. 3e éd. mise à jour.. Que Sais-Je? ; 2930. Presses universitaires de France, 2005.

Hanaway, Monica. *Psychologically Informed Mediation: Studies in Conflict and Resolution*. 1st ed. Routledge, 2021.

Haney, Kathleen M. *Intersubjectivity Revisited: Phenomenology and the Other*. Series in Continental Thought 20. Ohio University Press, 1994.

Hansen, Miles. “Parallel Mediation: Ordering the Chaos of Multiparty Mediation.” *International Negotiation* 17, no. 2 (2012): 237–63. https://doi.org/10.1163/157180612X651430.

Hanyez, Colleen M. “Whither Community Justice? The Rise of Court-Connected Mediation in the United States.” *Windsor Yearbook of Access to Justice* 25 (2007): 167–210.

Hardy, Samantha. *Neurodiversity, Emotions and Conflict - Conflict Management Academy*. Articles. August 12, 2023. https://www.conflictmanagementacademy.com/neurodiversity-emotions-and-conflict/.

Harrington, Christine, and Sally Engle Merry. "Ideological Production: The Making of Community Mediation." *Law and Society Review* 22, no. 4 (1988): 709–35. https://doi.org/10.2307/3053707.

Harrison, Russell S. "Community-Based Mediation Programs: A Case Study and Comparison." *International Journal of Public Administration* 25, no. 11 (2002): 1427–57. https://doi.org/10.1081/PAD-120013353.

Haynes, John M. "Matching Readiness and Willingness to the Mediator's Strategies In Theory." *Negotiation Journal* 1, no. 1 (1985): 79–92.

Head, Naomi. *A Politics of Empathy: Encounters with Empathy in Israel and Palestine*. 42, no. 1 (2016): 95–113. https://doi.org/10.1017/S0260210515000108.

Hedeen, Timothy. "The Evolution and Evaluation of Community Mediation: Limited Research Suggests Unlimited Progress." *Conflict Resolution Quarterly* 22, no. 1-2 (2004): 101–33. https://doi.org/10.1002/crq.94.

Hedeen, Timothy, and Patrick G. Coy. "Community Mediation and the Court System: The Ties That Bind." *Mediation Quarterly* 17, no. 4 (2000): 351–67. https://doi.org/10.1002/crq.3890170407.

Hedges, Tris. "Expectation and Judgment: Towards a Phenomenology of Discrimination." *Continental Philosophy Review* 57, no. 1 (2024): 89–111. https://doi.org/10.1007/s11007-023-09624-0.

Herman, Judith L. *Trauma and Recovery: The Aftermath of Violence--From Domestic Abuse to Political Terror*. Basic Books, 2015.

Hickerson, Glen. "A Bridge over Troubled Water: Managing Parties' Mental Illness in Mediation." *Negotiation Journal* 33, no. 1 (2017): 53–69. https://doi.org/10.1111/nejo.12173.

Hobson, R. Peter. *Autism and the Development of Mind*. Essays in Developmental Psychology. Routledge, 2018.

Hodge, Gary, Katherine Froggatt, Mark Limmer, and Amanda Bingley. "Exploring the Barriers and Gateways to Intersubjectivity in Dementia Care: A Meta-Ethnography." *Journal of Clinical Nursing* 31, nos. 13–14 (2022): 1947–59. https://doi.org/10.1111/jocn.15439.

Hudson, Nathan W., and R. Chris Fraley. "Does Attachment Anxiety Promote the Encoding of False Memories? An Investigation of the Processes Linking Adult Attachment to Memory Errors." *Journal of Personality and Social Psychology* (Washington, US) 115, no. 4 (2018): 688–715. https://doi.org/10.1037/pspp0000215.

Husserl, Edmund. *Cartesian Meditations: An Introduction to Phenomenology*. The Hague: M. Nijhoff, 1960.

Husserl, Edmund. *Ideas: General Introduction to Pure Phenomenology: General Introduction to Pure Phenomenology*. Martino Fine Books, 2024.

Hutto, Daniel D. "Interpersonal Relating." In *The Oxford Handbook of Philosophy and Psychiatry*, edited by K. W. M. Fulford, Martin Davies, Richard Gipps, et al. Oxford University Press, 2013. https://doi.org/10.1093/oxfordhb/9780199579563.013.0018.

Jacoby, Tami Amanda. "A Theory of Victimhood: Politics, Conflict and the Construction of Victim-Based Identity." *Millennium* 43, no. 2 (2015): 511–30. https://doi.org/10.1177/0305829814550258.

Jeong, Ho-Won. *Conflict Management and Resolution: An Introduction*. Routledge, 2009.

Johnson, Donovan D. *Turning to the Other: Martin Buber's Call to Dialogue in I and Thou*. Wipf and Stock Publishers, 2020. http://ebookcentral.proquest.com/lib/ottawa/detail.action?docID=6348039.

Jull, Marnie. *An Anatomy of Everyday Arguments: Conflict and Change Through Insight*. McGill-Queen's University Press, 2022.

Kahane, David. "Dispute Resolution and the Politics of Cultural Generalization." *Negotiation Journal* 19, no. 1 (2003): 5–27. https://doi.org/10.1111/j.1571-9979.2003.tb00277.x.

Kahneman, Daniel. *Thinking, Fast and Slow*. Doubleday Canada, 2011.

Kashtan, Inbal. *Parenting From Your Heart: Sharing the Gifts of Compassion, Connection, and Choice*. PuddleDancer Press, 2004.

Kim, Young. "Achieving Synchrony: A Foundational Dimension of Intercultural Communication Competence." *International Journal of Intercultural Relations : IJIR* 48 (2015): 27.

Kjosavik, Frode, Christian Beyer, and Christel Fricke, eds. *Husserl's Phenomenology of Intersubjectivity: Historical Interpretations and Contemporary Applications*. 1st ed. Routledge, 2018. https://doi.org/10.4324/9781351244558.

Kovach, Kimberlee K., and Lela P. Love. *"Evaluative Mediation" Is an Oxymoron*. SSRN Scholarly Paper ID 2349775. Social Science Research Network, 1996. https://papers.ssrn.com/abstract=2349775.

Kressel, Kenneth, Edward A. Frontera, Samuel Forlenza, Frances Butler, and Linda Fish. "The Settlement-Orientation vs. the Problem-Solving Style in Custody Mediation." *Journal of Social Issues* 50, no. 1 (n.d.): 67–84. https://doi.org/10.1111/j.1540-4560.1994.tb02398.x.

Kriesberg, Louis. *Constructive Conflicts: From Escalation to Resolution*. Rowman & Littlefield Publishers, 1998.

Kriesberg, Louis. *Social Conflicts*. Prentice-Hall, 1982.

Kriesberg, Louis. *The Sociology of Social Conflicts*. Prentice-Hall, 1973.

Kuriansky, Judy. *Beyond Bullets and Bombs: Grassroots Peacebuilding between Israelis and Palestinians*. Bloomsbury Publishing USA, 2007.

Lang, Michael D. *The Guide to Reflective Practice in Conflict Resolution*. Rowman & Littlefield, 2019.

Lang, Michael D., and Alison Taylor. *The Making of a Mediator: Developing Artistry in Practice*. Jossey-Bass, 2000.

Lascoux, Jean-Louis. *Pratique de La Médiation: Une Méthode Alternative à La Résolution Des Conflits*. Formation Permanente En Sciences Humaines. ESF éd, 2001.

Lawther, Cheryl. *Constructing Victimhood: Beyond Innocence and Guilt in Transitional Justice*. Oxford University Press, 2024.

Leadbeater, Bonnie J. "Relational Processes in Dialogue: The Problem of Intersubjectivity." *New Ideas in Psychology* 7, no. 2 (1989): 173–84. https://doi.org/10.1016/0732-118X(89)90024-X.

Lederach, John. *Little Book of Conflict Transformation: Clear Articulation Of The Guiding Principles By A Pioneer In The Field*. Simon and Schuster, 2015.

Lederach, John Paul. *Building Peace: Sustainable Reconciliation in Divided Societies*. United States Institute of Peace Press, 1997.

Lederach, John Paul. *Preparing For Peace: Conflict Transformation Across Cultures*. Syracuse University Press, 1996.

Lederach, John Paul, and Janice Moomaw Jenner. *A Handbook of International Peacebuilding: Into The Eye Of The Storm*. John Wiley & Sons, 2002.

Lee-Baggley, Dayna and Pizzo, Ronald. "Trauma Informed Dispute Resolution – a Practical Process [Webinar]." November 24, 2021. https://adric.ca/trauma-informed-dispute-resolution-a-practical-process/.

Lévinas, Emmanuel. *Totality and Infinity: An Essay on Exteriority*. Duquesne Studies. Philosophical Series ; v. 24. Duquesne University Press, 1969.

Littlejohn, Stephen W., and Kathy Domenici. *Communication, Conflict, and the Management of Difference*. Waveland Press, 2007.

Littlejohn, Stephen W., and Kathy Domenici. *Engaging Communication in Conflict: Systemic Practice*. SAGE, 2000.

Lury, Celia, Rachel Fensham, Alexandra Heller-Nicholas, et al. *Routledge Handbook of Interdisciplinary Research Methods*. First edition. Routledge International Handbooks. Routledge, 2018.

Mackay, Robert E., and Susan R. Moody. "Diversion of Neighbourhood Disputes to Community Mediation." *Howard Journal of Criminal Justice* 35, no. 4 (1996): 299–313. https://doi.org/10.1111/j.1468-2311.1996.tb00880.x.

Martin, Jennifer. “A Strengths Approach to Elder Mediation.” *Conflict Resolution Quarterly* (Hoboken, USA) 32, no. 4 (2015): 481–98. https://doi.org/10.1002/crq.21119.

Maslow, A. H. *A Theory of Human Motivation*. Simon and Schuster, 2013.

Matthies-Boon, Vivienne. *Breaking Intersubjectivity: A Critical Theory of Counter-Revolutionary Trauma in Egypt*. Rowman & Littlefield, 2023.

Maute, Judith L. “Public Values and Private Justice: A Case for Mediator Accountability.” *Georgetown Journal of Legal Ethics* 4 (1991 1990): 503–36.

Mayer, Bernard S. *Beyond Neutrality: Confronting the Crisis in Conflict Resolution*. John Wiley & Sons, 2004.

Mayer, Bernard S. *The Dynamics of Conflict Resolution: A Practitioner’s Guide*. Wiley, 2000.

Mayer, Bernard S., and Jacqueline N. Font-Guzman. *The Neutrality Trap: Disrupting and Connecting for Social Change*. John Wiley & Sons, 2022.

McCorkle, Suzanne, and Melanie Reese. *Mediation Theory and Practice*. Second edition. SAGE, 2015.

McGillis, Daniel. *Community Mediation Programs: Developments and Challenges*. DIANE Publishing, 1997.

McRaney, David. *You Are Not So Smart: Why You Have Too Many Friends on Facebook, Why Your Memory Is Mostly Fiction, and 46 Other Ways You’re Deluding Yourself*. Penguin, 2011.

McRedmond, Penelope. *Mediation and Justice*. Routledge, 2024. https://doi.org/10.4324/9781003271444.

Melchin, Kenneth R., and Cheryl Ann Picard. *Transforming Conflict Through Insight*. University of Toronto Press, 2008.

Menkel-Meadow, Carrie. *Dispute Processing and Conflict Resolution: Theory, Practice and Policy*. Collected Essays in Law. Ashgate Pub., 2003.

Menkel-Meadow, Carrie. *Dispute Processing and Conflict Resolution : Theory, Practice and Policy*. Routledge, 2017. https://doi.org/10.4324/9781315257600.

Menkel-Meadow, Carrie. *Foundations of Dispute Resolution : Volume I*. Routledge, 2017. https://doi.org/10.4324/9781315255118.

Menkel-Meadow, Carrie. "Introduction: What Will We Do When Adjudication Ends: A Brief Intelletual History of ADR." *UCLA Law Review* 44, no. 1613 (1997): 1613–30.

Menkel-Meadow, Carrie. *Mediation: Practice, Policy, and Ethics*. Second Edition.. With Lela Porter author Love and Andrea Kupfer Schneider. Aspen Casebook Series. Wolters Kluwer Law & Business, 2013.

Menkel-Meadow, Carrie. "Pursuing Settlement in an Adversary Culture: A Tale of Innovation Co-Opted or 'the Law of ADR.'" *Florida State University Law Review* 19, no. 1 (1991): 1–46.

Menkel-Meadow, Carrie. "The Many Ways of Meditation: The Transformation of Traditions, Ideologies, Paradigms, and Practices Book Review." *Negotiation Journal* 11, no. 3 (1995): 217–42.

Merleau-Ponty, Maurice. *Phenomenology of Perception*. Routledge, 1962.

Merry, Sally Engle, and Neal A. Milner, eds. *The Possibility of Popular Justice: A Case Study of Community Mediation in the United States*. Law, Meaning, and Violence. University of Michigan Press, 1993.

Mills, Jon. *Conundrums: A Critique of Contemporary Psychoanalysis*. Routledge, 2012. https://doi.org/10.4324/9780203148198.

Milner, Neal. "Mediation and Political Theory: A Critique of Bush and Folger." *Law & Social Inquiry* 21, no. 3 (1996): 737–59.

Monk, Gerald D., John Winslade, Kathie Crocket, and David Epston. *Narrative Therapy in Practice: The Archaeology of Hope*. Wiley, 1996.

Moon, Yuseok, and Lisa B. Bingham. "Transformative Mediation at Work: Employee and Supervisor Perceptions on USPS Redress Program." *International Review of Public*

Administration (Seoul, United Kingdom) 11, no. 2 (2006): 43–55. https://doi.org/10.1080/12294659.2003.10805084.

Moore, Christopher W. *The Mediation Process: Practical Strategies for Resolving Conflict*. 2. ed. The Jossey-Bass Conflict Resolution Series. Jossey-Bass, 1996.

Muth, Cornelia. "How to Teach Intersubjectivity." *Journal of Social Work Practice* 23, no. 2 (2009): 201–13. https://doi.org/10.1080/02650530902923791.

Nader, Laura. "Controlling Processes in the Practice of Law: Hierarchy and Pacification in the Movement to Re-Form Dispute Ideology'." In *Mediation*, 1st ed., by Carrie Menkel-Meadow. Routledge, 2018. https://doi.org/10.4324/9781315204826-10.

Nader, Laura. "Harmony Coerced Is Freedom Denied." *Chronicle of Higher Education* 47, no. 44 (2001): B13.

Nieuwenburg, Paul. "The Agony of Choice: Isaiah Berlin and the Phenomenology of Conflict." *Administration & Society* (Beverly Hills, United States) 35, no. 6 (2004): 683–700. https://doi.org/10.1177/0095399703256778.

Noce, Dorothy J. Della, Robert A. Baruch Bush, and Joseph P. Folger. "Clarifying the Theoretical Underpinnings of Mediation: Implications for Practice and Policy.(Transformative Mediation: New Dimensions in Practice, Theory and Research)." *Pepperdine Dispute Resolution Law Journal* 3, no. 1 (2002): 39–65.

Noll, Douglas E. "A Theory of Mediation." *Dispute Resolution Journal* 56, no. 2 (2001): 78–84.

Orange, Donna M. *Working Intersubjectively: Contextualism in Psychoanalytic Practice.* With George E. Atwood and Robert D. Stolorow. Psychoanalytic Inquiry Book Series. Routledge, 2009.

Pasquier, Sylvain, and Julien Rémy. "Être Soi Peut-Il Être Professionnel ? Le Cas Des Médiateurs Sociaux." *Sociologies*, January 1, 2008. https://doaj.org.

Patterson, Kerry, Joseph Grenny, Ron McMillan, and Al Switzler. *Crucial Conversations Tools for Talking When Stakes Are High, Second Edition*. McGraw Hill Professional, 2011.

Pavlich, George. "The Power of Community Mediation: Government and Formation of Self-Identity." *Law and Society Review* 30, no. 4 (1996): 707–33. https://doi.org/10.2307/3054115.

Pavlich, George Clifford. *Justice Fragmented*. Routledge, 1996.

Peggs, Heather. *Supervising Conflict: A Guide for Faculty*. University of Toronto Press, 2023. https://doi.org/10.3138/9781487554286.

Picard, Cheryl A. "Learning about Learning: The Value of 'Insight.'" *Conflict Resolution Quarterly* 20, no. 4 (2003): 477–84. https://doi.org/10.1002/crq.41.

Picard, Cheryl Ann. *Mediating Interpersonal and Small Group Conflict*. New edition, Revised. With distributor Canadian Electronic Library (Firm). desLibris. Books Collection. The Golden Dog Press, 2002. https://login.proxy.bib.uottawa.ca/login?url=http://deslibris.ca/ID/433095.

Picard, Cheryl Ann. *Practising Insight Mediation*. University of Toronto Press, 2016. https://login.proxy.bib.uottawa.ca/login?url=http://books.scholarsportal.info/viewdoc.html?id=/ebooks/ebooks3/utpress/2016-04-19/1/9781442629387.

Picard, Cheryl Ann. *The Art and Science of Mediation*. Emond Montgomery Publications, 2004.

Picard, Cheryl, and Janet Siltanen. "Exploring the Significance of Emotion for Mediation Practice." *Conflict Resolution Quarterly* (Hoboken) 31, no. 1 (2013): 31–55. https://doi.org/10.1002/crq.21078.

Pilnick, Alison, Rebecca O'Brien, Suzanne Beeke, Isabel Windeatt-Harrison, Lauren Bridgstock, and Rowan H. Harwood. "'I Want to Get out … I've Got a Child at Home': Intersubjectivity, Reality Disjunctures and Distress in the Care of People Living with Dementia in the Acute Hospital." *Social Science & Medicine (1982)* (England) 369 (2025): 117805-. https://doi.org/10.1016/j.socscimed.2025.117805.

Pincock, Heather. "Does Mediation Make Us Better? Exploring the Capacity-Building Potential of Community Mediation." *Conflict Resolution Quarterly* 31, no. 1 (2013): 3–30. https://doi.org/10.1002/crq.21077.

Pirie, Andrew J. *Alternative Dispute Resolution: Skills, Science, and the Law*. Canadian Legal Skills. Irwin Law Inc, Irwin Law, 2000. https://login.proxy.bib.uottawa.ca/login?url=http://deslibris.ca/ID/408790.

Politi, Mary C., and Richard L. Street. "The Importance of Communication in Collaborative Decision Making: Facilitating Shared Mind and the Management of Uncertainty." *Journal of Evaluation in Clinical Practice* 17, no. 4 (2011): 579–84. https://doi.org/10.1111/j.1365-2753.2010.01549.x.

Price, Megan Clare. "The Process and Partnerships behind Insight Policing Special Issue: Police Accountability." *Criminal Justice Policy Review* 27, no. 5 (2016): 553-568–70.

Pruitt, Dean G. "Process and Outcome in Community Mediation." *Negotiation Journal* 11, no. 4 (1995): 365–77. https://doi.org/10.1111/j.1571-9979.1995.tb00752.x.

Pruitt, Dean G., Robert S. Peirce, Neil B. Mcgillicuddy, Gary L. Welton, and Lynn M. Castrianno. "Long-Term Success in Mediation." *Law and Human Behavior* 17, no. 3 (1993): 313–30.

Putnam, Linda, and Michael E. Roloff. *Communication and Negotiation*. Sage Annual Reviews of Communication Research ; v. 20. Sage, 1992.

Ramsbotham, Oliver, Tom Woodhouse, and Hugh Miall. *Contemporary Conflict Resolution: The Prevention, Management and Transformation of Deadly Conflicts*. Polity, 2005.

Redekop, Paul. *Inner Peace and Conflict Transformation*. n.d.

Redekop, Vern Neufeld, and Jean-François Rioux. *Introduction to Conflict Studies: Empirical, Theoretical, and Ethical Dimensions*. OUP Canada, 2012.

Redekop, Vernon Neufeld. *From Violence to Blessing: How an Understanding of Deep-Rooted Conflict Can Open Paths to Reconciliation*. Novalis, 2002.

Regan, Paulette. *Unsettling the Settler Within: Indian Residential Schools, Truth Telling, and Reconciliation in Canada*. UBC Press, 2010.

Regina, Wayne. "Bowen Systems Theory and Mediation." *Conflict Resolution Quarterly* 18, no. 2 (2010): 111–28. https://doi.org/10.1002/crq.3890180203.

Reisberg, Daniel, and Paula Hertel. *Memory and Emotion*. Oxford University Press, 2004.

Richmond, Oliver P., and Gëzim Visoka. *The Palgrave Encyclopedia of Peace and Conflict Studies*. Springer Nature, 2022.

Ridley-Duff, Rory, and Anthony Bennett. "Towards Mediation: Developing a Theoretical Framework to Understand Alternative Dispute Resolution." *Industrial Relations Journal* 42, no. 2 (2011): 106–23. https://doi.org/10.1111/j.1468-2338.2011.00614.x.

Riskin, Leonard L. "Decisionmaking in Mediation: The New Old Grid and the New New Grid System." *The Notre Dame Law Review* (Notre Dame) 79, no. 1 (2003): 1-.

Riskin, Leonard L. "Retiring and Replacing the Grid of Mediator Orientations." *Alternatives to the High Cost of Litigation* 21, no. 4 (2003): 69–76. https://doi.org/10.1002/alt.3810210402.

Riskin, Leonard L. "Understanding Mediators' Orientations, Strategies, and Techniques." In *Discussions in Dispute Resolution*. Oxford University Press, 2021. https://doi.org/10.1093/oso/9780197513248.003.0036.

Riskin, Leonard L. "Understanding Mediators' Orientations, Strategies, and Techniques: A Grid for the Perplexed." *Harvard Negotiation Law Review* 1 (1996): 7.

Rogers, Carl Ransom. *Active Listening*. Industrial Relations Center, The University of Chicago, 1957.

Rosenberg, Marshall B. *Nonviolent Communication: A Language of Life*. Independent Publishers Group, 2003.

Rosenberg, Marshall B. *Raising Children Compassionately: Parenting the Nonviolent Communication Way*. PuddleDancer Press, 2004.

Rosenberg, Marshall B. *Speak Peace in a World of Conflict*. PuddleDancer Press, 2005.

Rummel, Rudolph J. *In the Minds of Men: Principles Toward Understanding and Waging Peace*. Sogang University Press, 1984.

Sammut, Gordon, Paul Daanen, and Fathali M. Moghaddam, eds. *Understanding the Self and Others: Explorations in Intersubjectivity and Interobjectivity*. Routledge, 2013.

Sander, Frank E. A., and Stephen B. Goldberg. "Fitting the Forum to the Fuss: A User-Friendly Guide to Selecting an ADR Procedure." *Negotiation Journal* 10, no. 1 (1994): 49–68. https://doi.org/10.1111/j.1571-9979.1994.tb00005.x.

Sandole-Staroste, Ingrid. *Handbook of Conflict Analysis and Resolution*. With Dennis J. D. Sandole and Jessica Senehi edited by Dennis J. D. Sandole ... [et al.] foreword by Dean G. Pruitt. Routledge, 2009.

Sargent, Neil, Cheryl Picard, and Marnie Jull. "Rethinking Conflict: Perspectives from the Insight Approach." *Negotiation Journal* (Malden, USA) 27, no. 3 (2011): 343–66. https://doi.org/10.1111/j.1571-9979.2011.00311.x.

Schmidt, Vivien A. "Theorizing Ideas and Discourse in Political Science: Intersubjectivity, Neo-Institutionalisms, and the Power of Ideas." *Critical Review* 29, no. 2 (2017): 248–63. https://doi.org/10.1080/08913811.2017.1366665.

Schulman, Sarah. *Conflict Is Not Abuse: Overstating Harm, Community Responsibility, and the Duty of Repair*. Arsenal pulp press, 2016.

Sears, Melanie. *Humanizing Health Care: Creating Cultures of Compassion with Nonviolent Communication*. PuddleDancer Press, 2010.

Silbey, Susan S., and Sally E. Merry. "Mediator Settlement Strategies." *Law & Policy* 8, no. 1 (1986): 7–32. https://doi.org/10.1111/j.1467-9930.1986.tb00368.x.

Simon, Dan, and Tara West. *Self-Determination in Mediation: The Art and Science of Mirrors and Lights*. Rowman & Littlefield, 2022.

Smith, Shadeequa M. "Implicit Bias and the Case for Testing and Redress Prior to Mediation." *Ohio State Journal on Dispute Resolution* 35, no. 2 (2019): 169–92.

Stepanova, Olga, Merritt Polk, and Hannah Saldert. "Understanding Mechanisms of Conflict Resolution beyond Collaboration: An Interdisciplinary Typology of Knowledge Types and Their Integration in Practice." *Sustainability Science* (Tokyo) 15, no. 1 (2020): 263–79. https://doi.org/10.1007/s11625-019-00690-z.

Stevanovic, Melisa, and Sonja E. Koski. “Intersubjectivity and the Domains of Social Interaction: Proposal of a Cross-Sectional Approach.” *Psychology of Language and Communication* 22, no. 1 (2018): 39–70. https://doi.org/10.2478/plc-2018-0003.

Stillwell, Will. “Conflict Transformation.” In *Interdisciplinary Applications of the Person-Centered Approach*, with Michael Lux, Jeffrey H. D. Cornelius-White, and Renate Motschnig-Pitrik. Springer New York, 2013. https://doi.org/10.1007/978-1-4614-7144-8_19.

Stolorow, Robert D., and George E. Atwood. *Contexts of Being: The Intersubjective Foundations of Psychological Life*. Routledge, 2014. https://doi.org/10.4324/9781315803418.

Stone, Douglas, Bruce Patton, and Sheila Heen. *Difficult Conversations: How to Discuss What Matters Most*. Penguin Books, 2000.

Storch, Katharina, and Mascha Liening. “Critical Reflections on Peace and Conflict Studies: Empirical Insights into the Self-Perception of an Interdisciplinary Field.” *Zeitschrift Für Friedens- Und Konfliktforschung*, ahead of print, 2025. https://doi.org/10.1007/s42597-025-00150-9.

Sweeney, Angela, and Danny Taggart. “(Mis)Understanding Trauma-Informed Approaches in Mental Health.” *Journal of Mental Health (Abingdon, England)* (England) 27, no. 5 (2018): 383–87. https://doi.org/10.1080/09638237.2018.1520973.

Tallodi, Timea. *How Parties Experience Mediation: An Interview Study on Relationship Changes in Workplace Mediation*. Springer, 2019. https://doi.org/10.1007/978-3-030-28239-4.

Talpin, Julien, and Jacques Faget. “Mediations. Les ateliers silencieux de la democratie.” *Revue française de science politique* 61, no. 6 (2011): 1166–67.

Taylor, Alison. *The Handbook of Family Dispute Resolution: Mediation Theory and Practice*. John Wiley & Sons, 2012.

Tewes, Christian, and Giovanni Stanghellini. *Time and Body: Phenomenological and Psychopathological Approaches*. University Press, 2021.

Ting-Toomey, Stella, and John G. Oetzel. *Managing Intercultural Conflict Effectively*. SAGE Publications, 2001.

Tobi, Hilde, and Jarl K. Kampen. "Research Design: The Methodology for Interdisciplinary Research Framework." *Quality & Quantity* (Dordrecht) 52, no. 3 (2018): 1209–25. https://doi.org/10.1007/s11135-017-0513-8.

Toledano, Margalit. "Dialogue, Strategic Communication, and Ethical Public Relations: Lessons from Martin Buber's Political Activism." *Public Relations Review* (Silver Spring) 44, no. 1 (2018): 131–41. https://doi.org/10.1016/j.pubrev.2017.09.009.

Torino, Gina C., David P. Rivera, Christina M. Capodilupo, Kevin L. Nadal, and Derald Wing Sue. *Microaggression Theory: Influence and Implications*. John Wiley & Sons, 2018.

Valatka, Vytis, and Vaida Asakavičiūtė. "Martin Buber's Dialogical Communication: Life as an Existential Dialogue." *Filosofija, Sociologija* (Vilnius) 31, no. 1 (2020): 51–60. https://doi.org/10.6001/fil-soc.v31i1.4178.

Vallacher, Robin R. *Attracted to Conflict: Dynamic Foundations of Destructive Social Relations*. 1st ed. 2013. Peace Psychology Book Series. Springer-Verlag, 2013. https://doi.org/10.1007/978-3-642-35280-5.

Vayrynen, Tarja. *Culture and International Conflict Resolution: A Critical Analysis of the Work of John Burton*. Manchester University Press, 2001.

Verhagen, Arie. *Constructions of Intersubjectivity: Discourse, Syntax, and Cognition*. Oxford University Press, 2005.

Volkan, Vamik D. *Bloodlines: From Ethnic Pride to Ethnic Terrorism*. Farrar, Straus and Giroux, 1997.

Volkan, Vamik D. *Psychoanalysis, International Relations, and Diplomacy: A Sourcebook on Large-Group Psychology*. Routledge, 2018.

Volkan, Vamik D. *The Need to Have Enemies and Allies: From Clinical Practice to International Relationships (Masterworks)*. Bloomsbury Academic, 1994.

Vollhardt, Johanna Ray. *The Social Psychology of Collective Victimhood*. Oxford University Press, 2020.

Vu. "The Way We Manage Conflicts Needs to Take Neurodiversity into Consideration." Nonprofit AF. Accessed December 29, 2024. https://nonprofitaf.com/2022/04/the-way-we-manage-conflicts-needs-to-take-neurodiversity-into-consideration/.

Waever, Isabel Bramsen, Poul Poder, Ole, ed. *Resolving International Conflict: Dynamics of Escalation, Continuation and Transformation*. Routledge, 2019. https://doi.org/10.4324/9781315102009.

Wahrhaftig, Paul. "Dispute Resolution Retrospective." *Crime & Delinquency* 27, no. January 1981 (1981): 99–105.

Waldman, Ellen. *Mediation Ethics: Cases and Commentaries*. John Wiley & Sons, 2011.

Weixel-Dixon, Karen. *Interpersonal Conflict: An Existential Psychotherapeutic and Practical Model*. Routledge, 2017.

Welton, Gary L., Dean G. Pruitt, and Neil B. Mcgillicuddy. "The Role of Caucusing in Community Mediation." *Journal of Conflict Resolution* 32, no. 1 (1988): 181–202. https://doi.org/10.1177/0022002788032001009.

Wilde, Lillian. "Trauma and Intersubjectivity: The Phenomenology of Empathy in PTSD." *Medicine, Health Care and Philosophy* 22, no. 1 (2019): 141–45. https://doi.org/10.1007/s11019-018-9854-x.

Winslade, John, and Gerald D. Monk. *Narrative Mediation: A New Approach to Conflict Resolution*. John Wiley & Sons, 2000.

Winslade, John, and Gerald D. Monk. *Practicing Narrative Mediation: Loosening the Grip of Conflict*. John Wiley & Sons, Incorporated, 2008. http://ebookcentral.proquest.com/lib/ottawa/detail.action?docID=353382.

Wissler, Roselle L. "The Effectiveness of Court-connected Dispute Resolution in Civil Cases." *Conflict Resolution Quarterly* 22, no. 1-2 (2004): 55–88. https://doi.org/10.1002/crq.92.

Zahavi, Dan. “Beyond Empathy. Phenomenological Approaches to Intersubjectivity.” *Santalka: Filosofija* 18, no. 1 (2011): 69–82. https://doi.org/10.3846/coactivity.2010.08.

Zahavi, Dan. *Husserl’s Legacy: Phenomenology, Metaphysics, and Transcendental Philosophy*. First edition. University Press, 2017. https://doi.org/10.1093/oso/9780199684830.001.0001.

Zahavi, Dan. *Husserl’s Phenomenology*. Stanford University Press, 2003.

Zahavi, Dan. *Phenomenology: The Basics*. Routledge, 2018. https://doi.org/10.4324/9781315441603.

Zahavi, Dan. *Subjectivity and Selfhood: Investigating the First-Person Perspective*. MIT Press, 2005.

Zahavi, Dan. *The Oxford Handbook of Contemporary Phenomenology*. 1st ed. [Oxford Handbooks]. University Press, 2012.

Zahavi, Dan. “We in Me or Me in We? Collective Intentionality and Selfhood.” *Journal of Social Ontology* (Vienna) 7, no. 1 (2021): 1–20. https://doi.org/10.1515/jso-2020-0076.

Zartman, I. William, and Siniša Vuković. “Rethinking Conflict Resolution and Management.” In *Rethinking Conflict Resolution and Management*. Edward Elgar Publishing, 2023. https://www.elgaronline.com/monobook/book/9781800376991/9781800376991.xml.

Zlatev, Jordan. “Intersubjectivity, Mimetic Schemas and the Emergence of Language.” *Intellectica (Orsay, France : 1985)* (PERSÉE) 2–3, nos. 46–47 (2007): 123–51. https://doi.org/10.3406/intel.2007.1281.

Zlatev, Jordan, ed. *The Shared Mind: Perspectives on Intersubjectivity*. Converging Evidence in Language and Communication Research 12. Benjamins, 2008.

Zolyomi, Annuska, Anne Spencer Ross, Arpita Bhattacharya, Lauren Milne, and Sean A. Munson. “Values, Identity, and Social Translucence: Neurodiverse Student Teams in Higher Education.” *Proceedings of the 2018 CHI Conference on Human Factors in Computing Systems*, ACM, April 21, 2018, 1–13. https://doi.org/10.1145/3173574.3174073.

"About the Journal | Narrative and Conflict: Explorations in Theory and Practice." Accessed October 22, 2024. https://journals.gmu.edu/NandC/about.

ADR Institute of Canada. n.d. Accessed February 26, 2018. http://adric.ca/.

"Becoming an Accredited Elder Mediator." *Ontario Association for Family Mediation*, n.d. Accessed May 17, 2025. https://www.oafm.on.ca/elder-mediation/becoming-an-accredited-elder-mediator/.

"Legal REDRESS Home - Who We Are - About.Usps.Com." Accessed October 20, 2024. https://about.usps.com/who/legal/redress/.

Mental Health Research Canada. "Trauma and Stress in the Workplace." Accessed December 29, 2024. https://www.mhrc.ca/workplacetrauma.

Positive News. "Peacemaker Leaves Lasting Legacy of Nonviolent Communication." March 5, 2015. https://www.positive.news/society/positive-people/peacemaker-marshall-rosenberg-leaves-lasting-legacy-nonviolent-communication/.