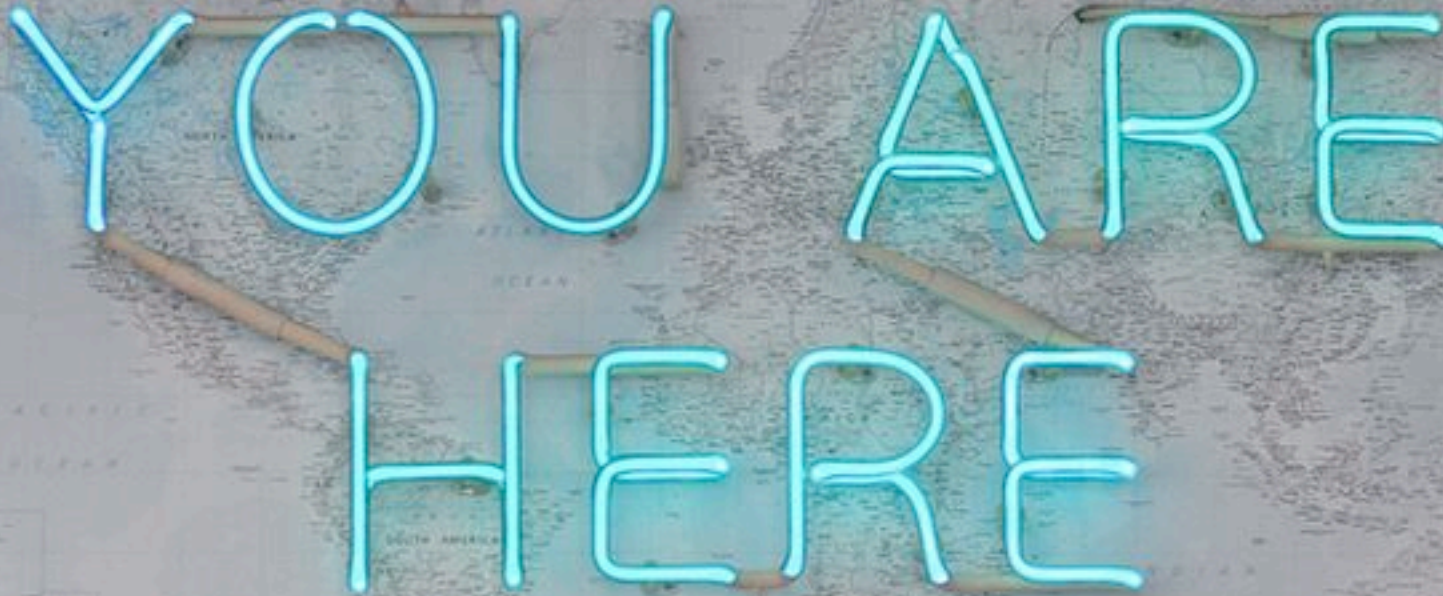


Patterns, key conditions and causalities in public mediation processes

10. Kolloquium der Forschungsgruppe Mediation, 4.-6. Juni 2015

Anatol Itten





YOU ARE
HERE

- Doktorand an der Graduate School of Humanities and Social Sciences der Universität Luzern
- Betreuer Prof. Dr. André Bächtiger, Universität Stuttgart, Abteilung für Politische Theorie und Empirische Demokratieforschung
- Fellow am Public Mediation Programm der Universität Amsterdam
- Senior Specialist Participation and Conflict Management bei der 100 prozent erneuerbar stiftung
- Ausgebildeter Mediator und Mitglied im FMÖB e.V

In one sentence

Public mediation is when 20 parties work 4 months with 3 mediators to reach an agreement, only then to be defeated by 1 person.

<http://lolmythesis.com/>

- Victorians were Very Upset about Lesbians and Séances
- People can't even with "I can't even."
- French bees stink...slightly differently on the western part of the country as compared to the eastern part
- Octopuses do, or don't do, things.
- Composers can't write good music, unless they can.
- Yo, David Cameron is a Dick.

Criticism in research about (public) mediation

- Wall and Dunne (2012, 238): “Most studies of mediation **fail to relate an outcome to specifically applied** mediation styles - of the hundreds of articles reporting the outcomes of the overall mediation process, only a limited few report the **effects** from separate techniques.”
- Kochan (2012, 393): “Explanations for mediation outcomes usually do not embrace a **sufficient wide range of variables, constructs and configurations.**”
- Orr et al. (2008): “There is a tendency of research efforts to focus on what can be more easily measured, such as settlement rates and participant satisfaction, at the expense of more **complex effects**, such as changed relationships and conflict management behaviors.”
- Pruitt (2012): “It is known more about the nature of mediator styles, tactics, and designs than it is about the **conditions** under which they should be employed.”
- Wall and Dunne (2012: 238): “The primary shortcoming of many reports is that they contain **no or insufficient data.**”
- As Gunton and Day (2003: 16): “Research on environmental conflict resolution requires **more meta-analyses of a set of cases.**”

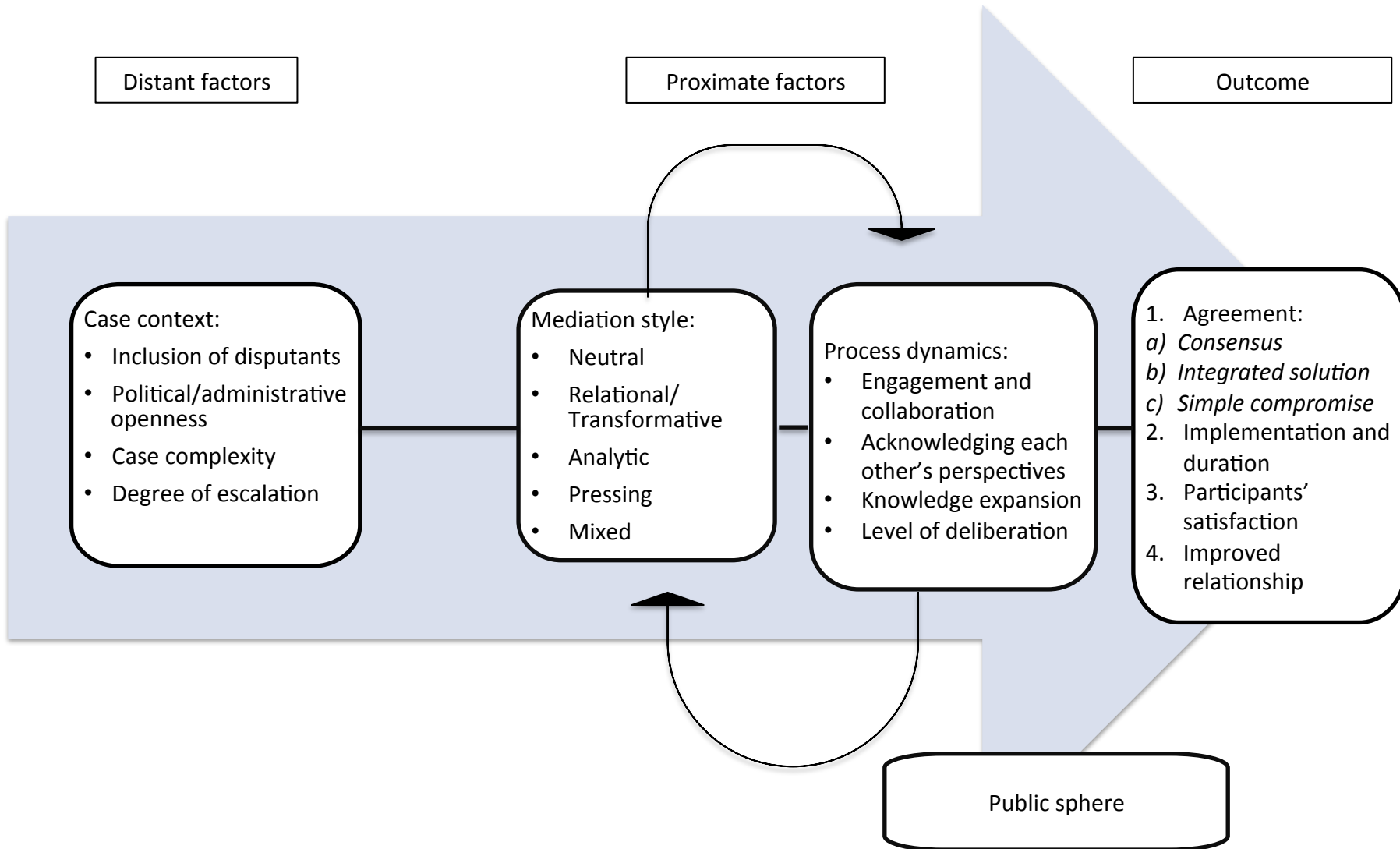
And suggested approaches

- Wall and Dunne (2012) recommend the use of **comparative cases or control groups** to determine the effects of mediator techniques and strategies as well as reports of the conditions under which mediation is most effective.
- Kochan (2012: 393): “Good research has to take into account the **design, sequencing, and dynamics of the overall mediation process.**” He further suggests a **causal chain** in which the situation determines the disputants’ behavior, which in turn affects the mediators’ style and therefore the outcomes.
- Bingham (2012: 363): “Controlled experiments using random assignment and survey methods do not peer inside the black box to see which effect mediator style is having upon the relationship between the disputants.”
- McDermott (2012: 347): “It is helpful to **mix quantitative and qualitative designs,** because of the difficulties of developing an experimental design in disputes such as civil law, community and environmental disputes.”

Influencing factors in theory

- Henderson (1996): (1) situational factors (intensity, length and complexity of the dispute and number of parties as well as party characteristics in the dispute), (2) mediator characteristics and interventions, and (3) procedural status of the dispute (timing, amount of discovery, rules used to guide the process)
- Kleiboer (1996): (1) the level of intensity and the nature of the issue, (2) the disputing parties and their relationships and their distribution of power, (3) mediator attributes such as impartiality, leverage, and status and (4) the international context.
- Wall et al. (2001): (1) conflict level, (2) type of issues, (3) stage of the conflict, (4) disputant's relative power, (5) mediator's resources, (6) disputant's commitment to mediation, (7) mediator's rank and (8) visibility of mediation.
- Emerson et al. (2009): (1) Case context (willingness to collaborate, number of participants, case difficulty), (2) appropriate procedure, mediator and parties engaged, (3) parties have time, skills and recourses, (4) relevant high-quality trusted information, (5) participants effectively engaged

Figure: Variables and stages in the mediation framework



Why a two-step fsQCA?

- Remote factors are (almost) completely outside the reach of the conscious influence of present actors and are referred to as the “context”
- Proximate factors vary over time and are subject to changes introduced by actors
- A small n-sample with causal complexities
- Limited diversity - reduction of logical possible cases
- Understanding the context under which factors are effective
- Detection of patterns and discovery of enabling factors

“Although the occurrence of ideal types and truth tables are very helpful to compare such a case setting, they are not made to jump to conclusions. It is an imperative to know your cases when conducting a QCA” (Schneider and Wagemann 2006: 45).

What is new?

- Focus on causal chains with clear defined outcomes
- Comparative case study with a fsQCA-Method
- Including process dynamics
- Advancing existing analytical frameworks
- Comprehensive data-collection
- in public mediation
- in Germany

Case selection

- Problem of documenting cases
- Problem of documenting information
- Problem of definition of public mediation
- Problem of remembering what happened
- Problem of biased information
- Problem of participation and limited time

→ Reflection of the contemporary research on public mediation in Germany

Sources: Overview study from 2004 (Meuer und Troja), few case studies, ZKM, media requests (including mediation blogs), main mediation bureaus, the German Association of Mediation and the Association for the Promotion of Public Mediation as well as the largest Xing-Group of Mediators in Germany.

The 23 Cases

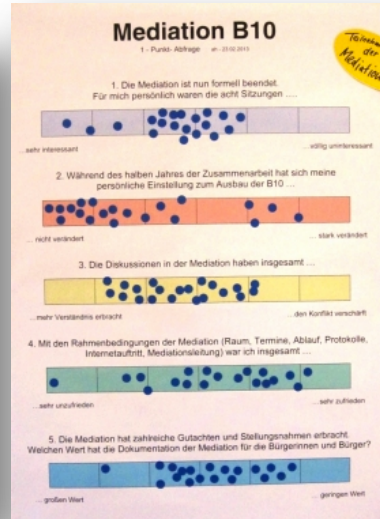
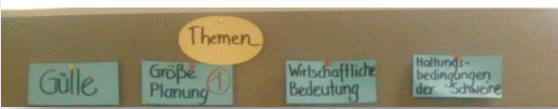
- 1995-1996: Forum Innenstadt Offenburg
- 1996-1997: Mediationsverfahren Detmolder Straße
- 1997: Mediationsverfahren Abfallwirtschaftsprogramm Berlin
- 1998-2000: Mediationsverfahren zum Ausbau des Frankfurter Flughafens
- 1999: Verkehrsforum Vahrenwald-List
- 1999: Mediation interkommunales Gewerbegebiet Hechingen – Bodelshausen
- 2000: Wiener Platz Forum
- 2001: Mediation Umbau Hauptplatz Landsberg am Lech
- 2005: Mediation Sporthalle Halstenbek
- 2005-2006: Mediationsverfahren Stadtmitte Nieder-Olm
- 2007-2013: Mediationsverfahren Landwehrkanal Berlin
- 2007: Mediationsverfahren Holzkraftwerk Piesteritz
- 2008-2009: Mediationsverfahren Schweinemastanlage Mockzig
- 2008-2010: Mediation Kies- und Sandabbau Rheinhessen
- 2010-2011: Mediationsverfahren Isar-Plan – Renaturierung der Isar
- 2011: Runder Tisch Einkaufszentrum Weiden
- 2012-2013: Mediation B10 zwischen Landau und Hauenstein
- 2012-2013: Mediation Sanierung einer innerstädtischen Straße in Rostock
- 2013: Bürgerdialog Wittnau
- 2013-2014: Runder Tisch Feuerwache Freiburg
- 2013-2014: Konfliktmoderation Naturraum Wutachschlucht
- 2013-2015: Mediationsverfahren Repowering Hellwegbörde
- 2014: Mediationsverfahren zur Erweiterung eines Flüchtlingsheims in Köln

Supportive case material

ABSCHLUSSBERICHT

MEDIATIONSVERFAHREN
SCHWEINEMASTANLAGE MOCKZIG

STAND 20. MAI 2009



Kooperative Planungsansätze in der interkommunalen Zusammenarbeit Konfliktschlichtung am Runden Tisch?

*Mediationsverfahren "Runder Tisch Interkommunales Gewerbegebiet Hechingen-Bodelshausen"**

Kerstin Langer und Ortwin Renn

100 Millionen Euro Projekt im Konsens ausgehandelt
Mediation zum Einkaufszentrum in Weiden/Oberpfalz setzt Zeichen
Von Brigitte Gans

Auseinandersetzungen um Einkaufszentren bestimmen an vielen Orten die öffentliche Diskussion. Während in den



Umstritten, aber wirkungsvoll: die Frankfurter Flughafen-Mediation

Geis, Anna

Veröffentlichungsversion / Published Version
Arbeitspapier / working paper

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Institut für Konfliktforschung (HSFK)

Claudia Schelp/Jana Pfarr

Wenn um Bäume gestritten wird, geht es nie nur um Bäume

- Zum Mediationsverfahren „Zukunft Landwehrkanal“ in Berlin -



Case	Komplexität des Konfliktgegenstands:	Eskalation: 0: Absolut nicht eskaliert 1: Absolut eskaliert	Inklusivität 0: Absolut nicht inklusiv 1: Absolut inklusiv	Politisch-administrative Offenheit gegenüber dem Verfahren 0: Absolut nicht offen 1: Absolute Offenheit	Mediationsstil: Neutral Transformativ Analytisch Pressing Mix	Kollaboratives Engagement: 0: Absolut kein 1: Absolut engagiert	Perspektivwechsel: 0: Absolut kein 1: Absoluter Perspektivwechsel	Wissensgewinn: 0: Absolut kein 1: Absoluter Wissensgewinn	Deliberation: 0: Absolut keine Deliberation 1: Absolut deliberativ	Ergebnis: 0: Keine Meinungsbildung 0,2: Teillösung 0,6: Simple compromise 0,7: Kombination aus SC und IS 0,8: integrative solution 1: consensus	Implementations des Ergebnisses: 0: Absolut keine Implementations 1: Völlige Implementations	Teilnehmerzufriedenheit: 0: Absolut unzufrieden 1: Völlige Zufriedenheit	Teilnehmerzufriedenheit: 0: Absolut unzufrieden 1: Völlige Zufriedenheit
1	0,6	0,8	1	0,8	Neutral und analytisch	0,8	1	0,8	0,8	1	0,6	1	1
2	0,8	0,8	0,6	0,4	Mix	0,8	0,6	1	0,8	0,6	0,4	0,8	1
3	0,4	0,8	1	0,4	Transformativ-Analytisch	0,8	0,6	0,8	0,8	0,8	0	0,8	1
4	0,6	0,6	0,8	0,8	Transformativ	0,8	0,6	0,8	0,8	0,8	0,2	0,8	0,8
5	0,8	0,8	0,8	0,8	Mix - Moderativ	0,8	0,8	0,8	0,8	0,7	0,6	0,8	0,8
6	0,6	0,8	0,8	0,8	Neutral-Transformativ	0,8	1	0,8	0,8	0,7	0,6	0,8	1
7	1	0,8	1	0,6	Neutral - Analytisch	0,6	0,4	0,8	0,6	0,2	0	0,4	0,8
8	0,6	1	1	0,4	Transformativ-Analytisch	0,4	0,2	0,8	0,6	0	0	0,2	0,6
9	0,4	0,4	1	0,6	Analytisch	0,6	0,6	0,8	0,8	0,4	1	0,6	0,8
10	1	0,6	1	0,8	Transformativ-Analytisch	0,6	0,8	0,8	0,8	0,7	0,8	0,6	0,8
11	0,4	1	1	0,4	Transformativ-Analytisch	0,8	0,6	0,8	0,8	0	0	0,2	0,8
12	1	1	0,6	0,6	Neutral - Analytisch	0,6	0,6	0,8	0,8	0,7	0,8	0,6	0,8
13	0,4	0,4	1	0,6	Analytisch	0,6	0,6	0,8	0,6	0,6	0,8	0,6	0,6
14	0,8	0,6	0,8	0,2	Analytisch-Pressing	0,4	0,4	0,6	0,4	0	0	0,4	0,6
15	1	1	1	0,8	Transformativ	0,8	0,8	0,8	0,8	0,8	0,8	1	1
16	0,8	0,4	1	0,8	Transformativ	0,8	0,8	0,8	0,8	0,4	0,8	0,6	0,8
17	0,4	0,6	1	0,8	Transformativ-Analytisch	0,8	0,8	0,8	0,8	0,8	1	0,8	1
18	0,4	0,4	1	0,6	Analytisch	0,6	0,6	0,6	0,6	0,7	0,6	0,6	0,8
19	0,4	0,4	1	0,4	Analytisch	0,8	0,6	0,6	0,8	0,7	0,2	0,6	0,8
20	0,6	0,4	1	0,8	Analytisch	0,8	0,6	0,6	0,6	1	1	1	1
21	0,4	0,8	1	0,8	Mix - Moderativ	0,8	0,8	0,4	0,6	0,7	0,8	0,6	0,8
22	0,4	0,4	1	0,4	Transformativ-Analytisch	0,4	0,4	0,6	0,4	0,2	0,2	0,4	0,6
23	0,6	0,4	1	0,6	Analytisch	0,6	0,8	0,8	0,8	0,8	1	0,8	0,8

First results (1)

- Cases show a limited diversity of public mediation processes in reality
- Successful in reaching agreement: 17 out of 23 with an agreement = 75% and out of 14 which have at least part or full solutions with a win-win and consensus character

„Win-Win ist meiner Erfahrung nach ein eher hypothetisches Ergebnis im öffentlichen Raum“

- Not so successful in implementation: in 9 cases no real implementation and only in 10 cases a very high level of implementation
- Throughout high scores in knowledge increase and many high scores in the quality of deliberation. Varying scores in change of perspectives.
- Throughout high satisfaction rates towards the process, even when an agreement failed, whereas satisfaction rates with the outcome tend to relate strongly with achievement and the character of an agreement
- Mixed Mediators change their style mostly due to the stages in the process, rather than through external influences
- Using a pressing mediation style in public mediation is not very common in Germany



First results (2)

- Low engagement leads to lower amount of change in perspectives and lower level of deliberation
- A visible low political-administrative openness from the beginning results in lower engagement rates
- Other reasons for low engagement: either-or discussions (zero-option), pre-fixed scope of issues, unclear procedure
- Transformative or with a high amount of transformative methods working mediators achieve in the caseset higher rates of perspective change but not necessary higher rates in the quality of deliberation
- Mediation style, even if mixed, does not seem to have a direct influence on an outcome
- Inclusiveness, even if it's a major precondition of mediation, does not seem to have an effect on an outcome or implementation
- Stated reasons for a low level or non-implementation: political intervention, no budget, no ownership, problems with applicability

Turning points

- Turing points are transformative moments in the conflict process in which parties reach new understandings of their situation, ones that redefine the nature of the conflict, the relationship among the parties, or the problems they face.
- Turning points are usually circular: positive/negative departures increase positive/negative developments and outcomes.

Positive:

- Acknowledged external expert presents all-acceptable facts
- Acknowledgement of complexity and interdependence
- Mutual appreciation of the conflict subject
- The creation of a community of fate
- A meta agreement increases space for cooperative negotiations and solution finding
- Opposition moves from a fundamental rejection to certain opposing aspects and giving understanding reasoning
- Restoration of trust (in process/authorities/politics)

Negative:

- Disputants leaving the mediation – question of legitimacy
- BATNA increases in value for one party and it gets more tempting to make use of it
- Pressure through lack of time- and financial resources
- Limitations on the mandate prevent creative solutions
- Change of representatives
- Upcoming elections
- Unexpected incidents

- *„Für Fachverwaltungen gewährt der mediative Kommunikationsraum Bürgernähe ohne an der Sachkompetenz zu kratzen.“*
- *„Für Politik ist Mediation eher eine laienhafte, dilettantische und lästige Konkurrenz zum professionellen politischen Aktionsfeld.“*

Politics of mediation

- A conflicting perception of public mediation by authorities and politicians: used as opinion making, mechanism to ease conflicts and prolong decisions, a negotiation for certain parameters – especially problematic when non-transparent
- “Public mediation can be seen as a competition to parliamentary democracy”
- “Issues in public mediation can be politicised, especially in combination with high media attention”
- “Politicians are often recognized as participants without clear negotiable interests”
- “Politicians and local governments can have hidden agendas and preferred outcomes which lead to irresponsibility towards mediation outcomes”
- “Council orders to install mediation can help securing and defining the tasks of the mediation process however can also limit the scope and constrict an open process”
- “Public authorities have a distinct wait-and-see attitude, they often act just before a collapse and they often have the urge to control processes”
- “Budget cuts restrict creative solutions or their implementation, authorities also face state aid problematic”

However: Politics also value and adopt powerful consensual outcomes of a mediation-sometimes even against their interests, as it would be better to publicly opposing it

Politics of mediation

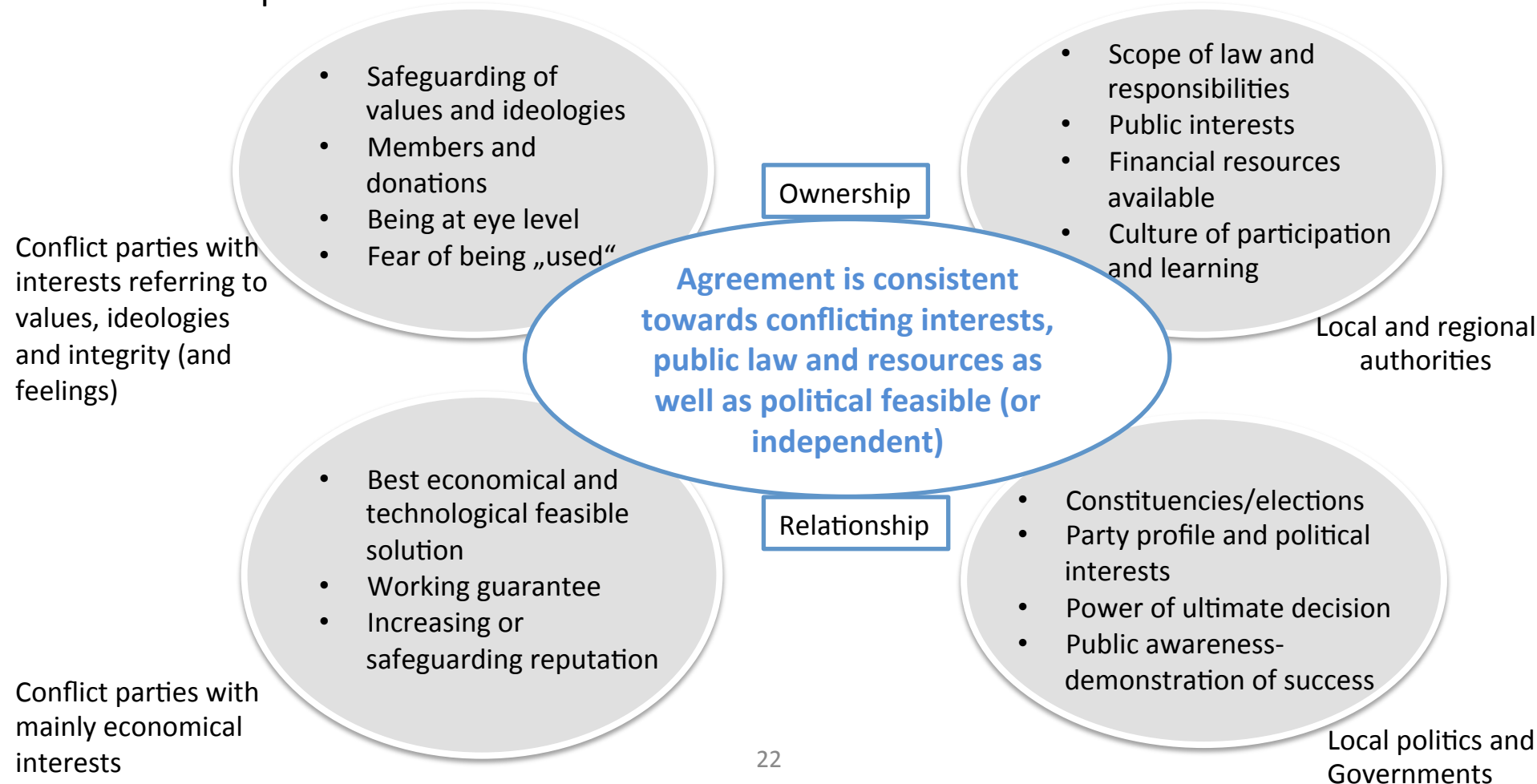
- *„Die Gruppe war durch die Vorbestimmungen des Ratsbeschluss nicht arbeitsfähig – erst die Restrukturierung des Verfahrens ermöglichte eine konstruktive Zusammenarbeit“ – Analytische Mediatorin*
- *„Die Themen der Mediation waren durch den politischen Auftraggeber zu eng bemessen. Daran scheiterte letztlich die Mediation.“ - Analytischer Mediator*

Key conditions from 23 cases

Process structure	Behaviour of conflict parties	Behaviour of mediators	Behaviour of politics and authorities
<ul style="list-style-type: none"> • Clear identifiable conflict parties • The inclusion of the right parties at the table is crucial • Thorough conflict assessment and preparation • A certain amount of openness towards the process and outcome must be given • Confidentiality, no direct media involvement 	<ul style="list-style-type: none"> • Confidence in the negotiation process and negotiation skills of the parties must be given • Must have tradable “goods” and clear preferences • Must be willing to engage and cooperate in such a process • Feedback-loop to constituencies must be given • Acceptance of the complexity of conflict situations • Refrain from maximal claims 	<ul style="list-style-type: none"> • Provides clarity during facilitation and mediation • Provides clarity how binding the agreement will be • Counters the information deficit • Enhances the change of perspectives to abolish condemnations • Creating room for manoeuvre • Supports the recognition of roles and interests • Enables an interest based process design 	<ul style="list-style-type: none"> • Mediation is supported through a high administrative level • Authorities should refrain from limiting the openness of the process, through pre-determining scope and resources • Administrations have to learn that their actions should be understandable • Administration should be included but politics should only be backing the process, if not directly identified as a conflict party - inner and outer circle of participants • Securing the transfer of the agreement into the policy cycle

Acceptability of an agreement

A theory of cooperation and competition (Deutsch 1973): interdependence among goals of the people involved in a given situation and type of action taken by the people involved in a mediation process.



Thank you and discussion

- Der Mediationsstil kann nur einen Teil des Wirkens des Mediators erklären – wie kann ich damit umgehen?
- Weitere Strategien/Argumente, um sich gegen die „biased“ Auskünfte der Mediatoren abzusichern.
- Gibt es substantielle Faktoren, die aus Eurer Sicht in der Studie ungenügend repräsentiert sind und wo gibt es Verschlinkungsmöglichkeiten?
- Sind Politik und Verwaltungen das Damoklesschwert und die Daumenschraube der öffentlichen Mediation?