

## **Italian Mediators in Action. The Impact of Style and Attitude\***

**Pre-print version**

**To cite this article:**

**Cominelli, L., & Lucchiari, C. Italian Mediators in Action: The Impact of Style and Attitude. Conflict Resolution Quarterly.**

Luigi Cominelli, University of Milan, [luigi.cominelli@unimi.it](mailto:luigi.cominelli@unimi.it)  
Claudio Lucchiari, University of Milan, [claudio.lucchiari@unimi.it](mailto:claudio.lucchiari@unimi.it)

**Abstract:** We analyzed a questionnaire sent to Italian mediators. We sought to investigate three areas: style of mediation; personal attitude towards the conflict; effectiveness in leading the parties to a negotiated agreement in mediation. We found no significant correlations between the style of mediation and the attitude of the respondents to the conflict. Respondents with a post-graduate training in economics or accounting achieved higher rates of settlement. The style of the mediator may be of some use as a paradigm of orientation, but has no sufficient predictive value to be confirmed as a key to the functioning of the mediation.

### **1. Objectives**

In recent years, mediation has been at center stage of legislative initiatives at the international level and at the European level (De Palo and Trevor 2012; Schonewille and Schonewille 2014). With two EU directives on civil and commercial mediation (2008/52/EU) and on alternative resolution for consumer disputes (2013/11/EU), the few member states that had not yet considered encouraging alternative methods to adjudication were faced with a EU law requirement to do so. In some countries, and in countries with a “legalistic” tradition in particular, the obligation to introduce rules on mediation in cross-border

---

\* The authors wish to thank Nicola Giudice and Rinaldo Sali of the Chamber of Arbitration of Milan for their feedback on the draft questionnaire and for access to the lists of mediators of the Italian Chambers of Commerce.

disputes between EU subjects has been interpreted as an invitation to promote mediation based on a “formal legislative approach” (Alexander 2008, 4), and above all as a means to deflate traditional court justice.

Italy has long been criticized for the excessive length of its civil proceedings. The European Court of Human Rights has repeatedly condemned the Italian government for the violation of right to fair trial— the first court instance averaging about three years (CEPEJ 2011, 2012)—and its over five million pending civil cases. The Italian judicial system is swamped and inefficient (Cassese 2001; De Palo and Keller 2012) because all disputes are directed to adjudication. Aply, the Italian approach to disputes has been called “the worst example of legal constructivism” (Resta 1999). A debate was launched in the country several years ago regarding the virtues and usefulness of mediation, producing refined doctrinal contributions (Cuomo Ulloa 2008; De Palo and Harley 2005), though the underuse of mediation has not changed (Bonsignore 2011; Luiso 2010). Legislative Decree no. 28/2010 introduced a comprehensive regulation of mediation in civil and commercial matters, first to allow enforcement of mediation agreements concluded in other European countries as required by the European directive, but above all to encourage the creation of mediation providers, to protect confidentiality, to allow enforceability including for domestic mediation, and to grant tax exemption for mediation settlement within a certain value. Even more important was that, starting from March 2011, mediation conducted with one of the accredited ADR providers became mandatory for many disputes, estimated at about 8% of all litigation in Italian civil courts (Italian Ministry of Justice 2016).

Though results in terms of settlements are still considered below expectations (De Palo et al. 2014), the introduction of these new rules has led to an initial substantial number of mediation procedures to be actually processed, and therefore to the “field training” of a large group of mediation practitioners. Although data on the flow of mediation proceedings is based partly on projections, since communication to the Ministry of Justice of the number of mediation cases by ADR providers is voluntary, we can conservatively estimate that a few thousand civil and commercial mediations currently take place in Italy each year: according to Ministry of Justice projections based on the data disclosed by the ADR providers, 65,000 applications to initiate a mediation process may have been submitted in the last quarter of 2016 (Italian Ministry of Justice 2016). However, this estimate should be revised downwards, since we assume that providers who did not disclose their data (about half) are likely to be those not handling mediations at all. However, if we consider that in 46.9% of cases, the defendant (or responding party) agrees to appear before a mediator, and therefore some form of mediation meeting takes place, the total number of mediation attempts is at least in the order of several thousand per year.

With the assistance of the conciliation service of the Chamber of Arbitration of Milan, we sent a questionnaire to several hundred mediators working with ADR providers set up by the Italian Chambers of Commerce. Accreditation as civil and commercial mediator in Italy requires a college degree or enrolment in a professional register, and a 50 hours course covering negotiation, communication, mediation techniques and ADR legislation. The Chambers of Commerce are public

institutions offering services to enterprises, and were tasked with establishing mediation services in 1993. Following Legislative Decree no. 28/2010, most Italian Chambers of Commerce have established ADR providers, enrolling in their rosters the most experienced mediators available locally. Two hundred mediators returned our questionnaire, and we analyzed the data with multiple regressions. To our knowledge, this is the first quantitative research study to consider a significant sample of Italian mediators.

Mediation as a method of dispute resolution has been largely theorized in legal theory and deontology (Fuller 1971; Fiss 1984; Menkel-Meadow 1995), but also in sociology (Eckhoff 1983; Kurczewski 1983; Bonafé-Schmitt 1992; Simmel 2014) and in the philosophy of law (Twining 1993; Cosi and Foddai 2003). Dispute resolution dynamics have been examined from multiple points of view in the social sciences, and inevitably lend themselves to an analysis that is multidisciplinary in nature. We have seen some notable theoretical and qualitative works in Italy (Pellegrini 2005; Bonsignore 2013), sometimes focusing on specific areas of mediation (Mestitz 2007; Vaira and Nosenzo 2007; Quadrelli and Scivoletto 2009), and specifically on family (Quadrelli 2003; Cagnazzo 2012) or financial mediation (Consolo and Stella 2011). However, an equally sophisticated quantitative-inferential analysis on a large sample of mediators from various backgrounds has been lacking. This sample did not exist until a few years ago, or was composed mainly of accredited mediators with little, if any, practical experience. The historical times for mediation in the country justified a first attempt at quantitative empirical research on mediators having acquired some practical experience. In

addition to collecting a variety of demographics, we tried to capture as complete a picture as possible of the professional traits of mediators, including their academic credentials (undergraduate, postgraduate and professional specialization), main occupation (none of the mediators practice exclusively as a mediator) and experience in terms of mediated disputes. We also wanted to examine personal attitudes toward conflict resolution, which might be considered a dispositional trait of mediators that implicitly modulates their professional style. Indeed, it has been argued that mediation research has not taken into account implicit models to which mediators make reference, such as implicit cognitive processes (Wall and Kressel 2012, 418; Kressel and Wall 2017) and intuitive processes (Cunningham 2012, 47). Mediators' way of thinking is reflected in their behavioral choices and reactions to what happens in the dispute (Zarankin, Wall, and Zarankin 2014, 140).

Finally, the style adopted by mediators is considered pivotal in most of the literature. From the pioneering works of the 1970s (Kressel 1972) to the development of multivariate grids (Riskin 2003), behavioral strategies adopted by mediators represent one of the few observable and measurable elements used to analyze the mediation process. Given the traditional lack of professional and ethical standards in mediator training and practice (Baruch-Bush 1994, 1), the mediator's style is also one possible criterion for the regulation of the profession and the establishment of a deontological ethos.

### *Mediation styles*

The most popular stylistic labels for mediators can be summarized as follows.

1) Evaluative style: notwithstanding her non-adjudicative role as a non-decision-making neutral, the mediator does not give up the ability to direct and influence the parties through a technical assessment of their positions, and provide advice on how to find a balance for their interests; 2) facilitative style: the mediator seeks to lead the parties to a negotiated solution primarily through communication techniques and by recovering the relationship, without ever assessing their respective positions; 3) transformative style: the mediator first and foremost attempts to transform the parties' relationship (either personal or social), and the settlement agreement is purely a functional byproduct of this process. While the facilitative style is more easily defined with reference (and as opposed to) the evaluative style, it is difficult to position the transformative style on the same continuum. Baruch-Bush and Folger (1994) identify the core transformative features in individual empowerment and recognition of the counterparty.

These labels—not to mention the numerous variants—have not always been applied in a consistent and coherent manner. Wall and Kressel found twenty-five different styles in the literature (Wall and Kressel 2012, 413). The evaluative style was sometimes called “directive” (Lande 1997). Kolb's study on industrial relations conflicts differentiated between “orchestrator” mediators in the private sector, where the right to strike was broader, and “deal-maker” mediators in the public sector, where the right to strike was more restricted (Kolb 1983). Some studies on family mediators redefine the facilitative style as an “interest-based” style, and the evaluative style as an “advisory” style (Baitar, Buysse, Brondeel, De Mol, and Robert 2013, 71), while others identify two families of “settlement-oriented” styles

(SOS) and “problem-solving” styles (PSS) (Kressel, Frontera, Forlenza, Butler, and Fish 1994). Silbey and Merry’s ethnographic study on family and community mediators distinguishes a “therapeutic” style from a “bargaining style” (Silbey and Merry 1986). In criminal mediation, we found reference to a “Mediterranean” mediation style, which focused on the “intolerability of pain for the shattering of a vital relational experience” (Coppola De Vanna 2007, 72). Wood classifies mediators certified for the resolution of agrarian disputes concerning land according to four different styles: “counselor”, “negotiator”, “facilitator” and “democratic” (Wood 2004, 437). Kressel and his colleagues speculated on the existence of general orientations among mediators encompassing specific mediation styles: an orientation to the agreement for the “facilitative” and the “evaluative” styles, and an orientation to the relationship for the “transformative” and the “diagnostic” styles (Kressel, Henderson, Reich, and Cohen 2012, 135).

One of the most complex and frequently cited classifications is undoubtedly Riskin’s “grid” (Riskin 1996, 24), which defines the mediator’s style by crossing two variables: the mediator’s strategy and the definition of the disputed problem, respectively. The style grid relies on combining facilitative or evaluative strategies with the decision to take a narrow view of the problem, by limiting it to the monetary aspect, or by expanding it to the personal interests beyond the single dispute, or even to the interests of the broader social community (problem definition). Riskin himself admits that although the attention aroused by the grid has stimulated fruitful discussion on the style, it may have polarized the discussion on the facilitative-evaluative continuum, often confusing the mediator style with the

purpose of intervening in the dispute. After several years, Riskin tried to improve his grid by redefining “facilitative” and “evaluative” respectively as “elicitive” and “directive”, and by adding a number of other dimensions of mediation in order to remedy the lack of success of the “problem definition” variable (Riskin 2003, 30). The thus renovated model undoubtedly gained analytical precision but lost appeal, and to our knowledge, it has never or has seldom been used as a theoretical framework in subsequent empirical research or in further attempts to index behaviors, unlike the “old” grid (Krivis and Macadoo 1997).

Some scholars advanced the idea that mediator styles and strategies do not represent a reliable indicator of the procedure, because they are used interchangeably and in a pragmatic way by most mediators, even in the same dispute. Golann noted that, when observed in action, many mediators employed facilitative techniques in the early phases of the mediation, before switching to evaluative techniques in negotiating phases (Golann 2000, 61). Similar results are reported in a participant observation conducted in an industrial conflict mediation (Kochan 2012, 393). In interviews conducted by Picard, more than half of the surveyed mediators claimed to adopt a composite approach, which might require pragmatic and directive behaviors or relational approaches (Picard 2004), depending on the context and the phase of the conflict.

Other critics object more radically to the usefulness and descriptive accuracy of styles, noting that there are no purely facilitative or evaluative mediations, and that all mediations always contain in practice both facilitative and evaluative elements (Birke 2000, 310). Pruitt notes that while some mediators can



be clearly classified as facilitative or evaluative, many others use both styles, so the evaluation and facilitation dimensions are “independent” or “orthogonal” (Pruitt 2012). Mediators easily change their style according to external directives or the training they have received (Baitar et al. 2013). This would explain how a mediator could be voted as both the best facilitative mediator and the second best evaluative mediator by his peers (Riskin 2003, 17).

In the end, we decided to adopt a definite theoretical framework on style, because we wanted to test the heuristic validity of style indexes. We relied on the assumption that every mediator has an orientation towards a particular style, while always being able and willing to use other styles that are less congenial to him (Charkoudian 2012, 367). Style is actually a visible index of the mediator’s professional ethos and could have an effect on the progress of the resolution. Because we believed that the facilitative-evaluative dichotomy was overly simplistic, we included the third most frequently cited style, that is the transformative style, in our framework. The transformative style may include a stronger or a weaker inclination to direct the parties, depending on its interpretation, but is characterized mainly by an attempt to change the social/interpersonal relationship as a whole (Baruch-Bush and Folger 1994). Unlike the other two styles, it holds the settlement agreement between the parties in mediation as an appreciable byproduct, but not a priority of the process (Bingham 2012, 358). The same choice has been adopted in several theoretical analyses (Imperati 1997; Welsh 2004; Bingham 2012).

### *Attitudes towards conflict and its resolution*

For our research, we opted for the ROCI-II scale classification (Rahim 1983). This classification aims at determining inclinations and attitudes toward conflict resolution. We argue that these attitudes may influence the way mediators approach their profession. The classification consists of five patterns that represents different ways to manage conflicts:

- Competing (CO): This conflict management style is based on competitive behavior and implies a win-lose context. A person who dominates or systematically competes ignores the needs or expectations of other parties.
- Avoiding (AV): This conflict management style involves fleeing conflict to avoid taking responsibility. The avoider may postpone problem solution or simply flee a threatening or anxiety-eliciting situation. A person who avoids conflicts fails to meet both his own and the other party's interests.
- Accommodating (AC): The search for adaptation and accommodation is the dominant theme of this style. Accommodating people seek to minimize differences and highlight common concerns in order to satisfy the interests of all parties.
- Compromising (CO): This style indicates a propensity to seek some form of compromise between one's own and others' interests. Hence, sharing information and goals is a main point of each negotiation, as is sacrificing something to arrive at a mutually acceptable solution. It can also result in eliminating differences, exchanging concessions or seeking a midway position.
- Collaborating (CL): People dominant in this style view conflicts as problems to be solved together, looking for solutions that are acceptable to all interested parties

(win-win context). Collaborating people also consider maintaining relationships as just as important as any other goal. Learning from problems and trying to merge differing perspectives are viewed as main objectives.

### *Objectives and hypotheses*

Our main objective was to describe some relevant characteristics of the Italian mediator in the actual context. In particular, we investigated three areas of mediators' professionalism and attitudes: 1) style of mediation; 2) personal attitude towards the conflict; and 3) effectiveness in leading the parties in mediation to a settlement agreement.

The first hypothesis we wanted to verify was related to relationship between the personal attitude towards conflicts and the individual style of mediation. In particular, we hypothesized that the prevalence of a transformative style in mediators with an integrative attitude to conflicts resolution is associated with a more evaluative and settlement-oriented strategy. If confirmed, this would provide helpful guidance in selecting mediators by ADR providers or mediation programs that support the adoption of a particular style of mediation, given the particular characteristics of their subject matter. Criminal and family mediation, for example, has always strongly favored transformative approaches, while commercial mediation frequently accepts evaluative strategies (and may consider them useful).

Secondly, we wanted to test whether the mediator's characteristics help predicting his settlement rate, measured in terms of the number of settlement agreements between the parties, out of the total number of cases overseen by the mediator. We then hypothesized that some subject characteristics (age, gender,

experience), the attitude towards conflict and the prevalent style of mediation are all variables that may be associated with effective dispute management as measured by settlement agreement rates. We expected age and experience in particular to be positively associated with effective dispute resolution.

We obviously acknowledge that settlement agreement rates constitute only a partial measure of the potential and the success of a mediation process. In many cases, an aborted mediation, ending with no settlement, is just the first step of rapprochement, which is completed with the resolution of the dispute at a later time, once the parties have successfully settled the real reasons for the disagreement. In other cases, mediation reduces conflicts to tolerable and non-destructive levels, despite the dispute not being resolved. However, reaching an agreement is still one of the main parameters based on which mediation is valued as a policy instrument. The level of satisfaction among lawyers assisting a client in mediation, for example, is strongly linked to the achievement of a settlement agreement (Hensler 2001, 255). Even the less settlement-oriented mediators know that their professional reputation and their clients' perception are tied closely to reaching a solution to the dispute (JAJ Wall, Stark, and Standifer 2001, 382).

## **2. Methods**

### *Sample*

Two hundred Italian mediators responded to our survey (93 men and 107 women) (Table 1), out of the 1.240 questionnaires sent (response rate: 16.12%). Most were lawyers (48.5%) members of the national bar association, with chartered

accountants and business consultants as the second largest group (22.0%). Other professions included architects, engineers, brokers and others. Most participants (84%) were already members of a professional register besides being accredited mediators, confirming that being a professional mediator is a second-level job in Italy. This fact is probably due to the low number of mediations performed throughout the country up until recently, as well as to the modesty of current mediators' fees. It is certainly significant that the category of psychologist was not present among our respondents. In Italy, psychologists generally work as mediators in family disputes, which are not included in the EU regulations, and therefore not considered by Italian legislation on civil mediation. Family mediation is offered by specialized associations and ADR providers and does not fall within the traditional competence of the Chambers of Commerce. Because of the absence from the sample of family mediators (Scaparro 2008; Bonafé-Schmitt and Charrier 2009), we were able to focus on civil mediation.

Most respondents (51.5%) had conducted ten or more mediations at the time of the study, though we also included recently accredited mediators with a lower number of mediations. However, we considered a mediator to be an “expert” in the Italian context, when he/she had conducted more than 20 mediations.

The average age of respondents was 48.3 (SD = 7.99) years, and over 60% had received accreditation as professional mediators after 2010. Geographically, there was a significant over-representation of central and northern regions (and especially the provinces of Milan, Treviso, Sondrio, Turin, Florence, Verona and

Pavia), where the Chambers of Commerce's mediation centers are more widespread.

### *Measurements*

We collected data related to mediation behavior, attitudes and beliefs through an ad-hoc questionnaire composed of both standardized scales and individual items. In particular, the first section of the questionnaire analyzed educational and professional background, experience, level of training and the mediation style of the mediator. In the second section of the questionnaire, we used a standardized psychological scale (Johnson 1990). This scale consists of fifteen statements derived from ROCI-II (Rahim 1983) aimed at determining inclinations and attitudes towards conflict and its resolution. Each item uses a five-point Likert scale (1 = Always, 2 = Very often, 3 = Sometimes, 4 = Not very often, 5 = Rarely, if ever) to measure responders' attitudes. The scale measures five independent aspects, each representing a different way of dealing with interpersonal conflicts in life (competing, avoiding, accommodating, compromising, collaborating).

In order to assess the mediation style, we used two ad-hoc items allowing responders to define an ideal style and describe the style that they think they use during mediation. In particular, the first item asks respondents "Do the following behavior describe your mediation style?". Respondents then had the possibility to rank (from 1, never, to 6, always) 6 typical behaviors:

A1. I give my opinion on the causes that gave rise to the dispute

A2. I try to find the root of interpersonal conflicts to resolve the dispute

A3. I try to work to achieve a profound change in the personal relationship between the disputants

A4. I focus on the communicative relationship between the parties

A5. I try to find the relational problem underlying the dispute

A6. I provide my opinion about possible solutions to the conflictual situation

The second item asked respondents “In your opinion, which of the following sentences represents a correct behavioral model by a professional mediator?”.

B1. Trying to let the counterparties communicate

B2. Providing a non-binding opinion about the dispute

B3. Solve the power imbalance between the disputants

B4. Suggest possible solutions

B5. Help the counterparties establish new relationships

B6. Encourage the parties to find a solution

Also in this case respondents were asked to give their answer on a scale ranging 1 (“at all”) to 6 (“very much”). The following sums were used to obtain the mediation style score:

Evaluative:  $a1+a6+b2+b4$

Facilitative:  $a2+a4+b1+b6$

Transformative:  $a3+a5+b3+b5$

The highest score determined the dominant mediation style of responders. In this way, we aimed to determine style patterns, similar to what we had done with attitudes toward conflict evaluation. We performed a multiple regression analysis to

establish correlations between the mediators' individual attitudes towards conflict and their personal or ideal style of mediation.

### **3. Results**

First, we analyzed the distribution of mediation styles and conflict attitudes in our sample (see Table 2). The facilitative style is predominant, followed by the transformative and the evaluative styles. This distribution seems to contradict anecdotal experience, according to which most mediations are evaluative rather than transformative (Barr 2012, 178), as well as the literature which established the prevalence of goal-oriented mediators over relationship-oriented mediators (Kressel, Henderson, Reich and Cohen 2012, 156-157). We found no significant differences with respect to the characteristics of respondents, since gender (chi-square = 3.91,  $p = .429$ ) and mediation experience (chi-square = 18.11,  $p = .441$ ) did not affect the mediation style (see Table 3). Even age did not seem to modulate mediation style distribution (chi-square = 18.598,  $p = .099$ ).

In terms of conflict attitudes, we found a majority of collaborating respondents (37%), followed by avoiders (17,5%) and competitive (16%). Compromising (8%) and accommodating (7,5%) attitudes were less frequent. However, about 14% of respondents reported mixed attitudes. As shown in Figure 1, there were no differences in conflict management style between men and women (chi-square = 3.51,  $p = .612$ ).

Mediation experience (number of mediations and number of settlements reached) does not seem to have a high impact on conflict style. However,



inexperienced mediators seem to be significantly more avoiding than experts. In fact, mediators with between 0 and 20 agreements tend to be avoiders, while more experienced mediators seems to be immune from avoidance (chi-square = 4.167,  $p = .045$ ). Actually, in the range 0-20 mediations (non expert mediators) we found 43 respondents (about the 27%), while in the expert groups (more than 20 mediations led) only 8 respondents (about the 12%) were found to be avoiders.

We then investigated the relationship between these variables and respondent characteristics (age, length of service, number of mediations, mediation style and conflict attitude) using a correlation analysis. The  $r$  Pearson coefficient showed no correlation between age and other variables. Instead, professional experience, measured as the number of years since the first mediation, not only positively correlates with the number of mediations conducted ( $r = .317$ ,  $p < .000$ ) as expected, but also with the style of mediation. In fact, transformative scores are associated with years of experience ( $r = .210$ ,  $p = .008$ ), as experienced mediators manifest stronger transformative styles.

The main purpose of this second level of analysis was to understand the relationship between the main variables, primarily conflict attitude and mediation style, as well as their effect on the dependent variable consisting of the rate of achieved agreements. We defined an agreement score as the proportion of disputes in which the conflicting parties reached a negotiated agreement compared to the number of mediations conducted by a respondent.

A first result was that the agreement score appears to be independent from mediation style. In fact, we did not detect any significant correlation between the

values of the three styles of mediation and the rate of agreement. Also, using the dominant style as the grouping variable, we found that respondents can be divided into five groups. Three can be described as pure, since they are composed of individuals with a higher value in one of the styles considered. The others two groups showed mixed scores, and we called them facilitative-transformative and facilitative-evaluative. We used this categorization as a five-level fixed factor in an ANOVA test with agreement score as the dependent variable. Statistically significant differences were found, with the evaluative style associated with lower agreement scores ( $F = 3.372, P = .011$ ). This result contrasts with the finding that mediators with a directive approach (i.e. evaluative and sometimes even transformative) achieve a higher rate of agreements (Kressel and Wall 2012, 409). Consequently, our data confirm the difficulty of fully appraising the mediation process and its closure, since many implicit and explicit factors need to be considered together.

We then performed a series of t tests to evaluate differences in agreement scores for some respondent categories. We found that respondents with a degree in business and economics have a higher rate of agreements than those with a degree in law ( $t(114) = 1.02, p = .045$ ). Italian lawyers have difficulties handling a negotiation with a problem-solving approach. In this regard, it is also interesting to note a potential association between settlement rate and post-graduate training. Respondents with post-graduate training in business and economics report significantly higher settlement rates than those with post-graduate training in law, Alternative Dispute Resolution, psychology or no post-graduate training

(Economics:  $M = 3.01$ ,  $SD = .414$ ; Law:  $M = .422$ ,  $SD = .303$ ; Alternative Dispute Resolution:  $M = .424$ ,  $SD = .308$ ; Psychology:  $M = .604$ ,  $SD = .147$ ; no post-graduate training:  $M = .614$ ,  $SD = .551$ ).

Finally, gender seems to affect the rate of agreement. Using an ANOVA test on the variable agreement rate using gender as fixed factor, a significant difference emerges between men and women ( $F(1, 199) = 1.807$ ,  $p = .010$ ). In particular, men showed a statistically higher settlement rate ( $M = .692$ ,  $SD = .601$ ) than women ( $M = .511$ ,  $SD = .311$ ). To test this effect further, we performed a linear regression considering the settlement rate as the dependent variable, and age, mediation style, conflict management style as predictors. Using the gender variable as the selective variable, we performed a linear regression for men and a separate one for women. We found the cooperative style ( $\beta = -.344$ ,  $p = .041$ ) and the evaluative style ( $\beta = -.299$ ,  $p = .048$ ) to be negatively associated with the agreement rate for women, while we found no significant association for men.

#### **4. Conclusion**

Our research has provided insight into Italian mediators. It partly confirms that some aspects of the mediation practice do not seem to be affected by the cultural or institutional context. The impact of implicit factors, such as attitudes toward conflict, may be considered as largely shared in different cultural contexts. The suggestions we may grasp from our data are potentially useful in a wider framework that considers mediation as a cognitive process rather than a culturally and legally located practice.

In other respects, the research offers rather surprising results. First, the experience as a mediator does not seem to have an impact on personal attitudes towards conflict. As it was expected, however, the less constructive attitudes, such as avoidance, were assumed mainly by inexperienced mediators. This aspect will obviously require more in-depth analysis on the inner motivations and the choices of values underlying the mediator's work. When mediators increase their professional experience, they tend to change their style by moving towards a more transformative approach, although this does not particularly affect their settlement rate. It is sensible to hypothesize that with experience, mediators tend to look less to the agreement as to an appreciable result in itself. Again, there is no doubt that a larger scale research could capture the evolution in time of the mediator's style, and discriminate in particular according to the type of dispute (primarily by value and by matter). However, we might presently think that evaluative attitudes emerge unconsciously in less experienced and less effective mediators, while the more experienced fall more often within the facilitative-transformative spectrum.

A significant difference that we did not expect to emerge from the data pertains to the educational background and post-degree training of mediators, as correlated with settlement rate. In this case, it is possible that lawyers' poorer negotiating skills (law students receive no specific negotiation training in Italy) are a disadvantage with respect to mediators with business and economics degrees, whose study program often includes at least basic negotiation training. It seems that the gap cannot be filled even with additional qualifications, which in theory have strong connections with dispute resolution or ADR. Future research should aim to

understand whether this disadvantage for lawyers could be overcome with specific extra training in mediation, beyond the minimum of 50 hours that is required for accreditation.

A possible limitation of this work is the fact that the data analyzed were gathered through a self-administered questionnaire. As noted in other self-report studies, the answers to such surveys are likely limited by a biased self-representation, especially since it involves subjects who are sophisticated in analyzing conflict situations, or in the case of less experienced mediators, lack sufficient self-awareness of their work or a shared vocabulary (Della Noce 2012, 399). It may be that, in such a delicate time to establish their professional standing, mediators may not have been entirely honest or may have deceived themselves in reporting the number of mediations handled or the settlement rate. It is equally possible that the mediators' statements do not reflect what they effectively do in the mediation process (J. Kressel and Wall 2012, 407). In addition to implicit models which mediators refer to, it would be interesting to reconstruct the implicit and intuitive cognitive processes, and therefore the way they think (J. Kressel and Wall 2012, 418; Cunningham 2012, 47; J. Kressel and Wall 2017), and how this is reflected in their behavior choices and responses to what happens in the process (Zarankin, Wall, and Zarankin 2014, 140).

Overall, the Italian model is definitely legalistic, but does not appear overly distant in practical terms from the results obtained in other models based on a voluntary choice of mediation. Again, it appears that the paradigm of the mediator style might be of some use as a means of orientation with respect to each phase of

the process, though it has no sufficient predictive value to be confirmed as a key for interpreting the mediation practice. Finally, the importance of acquiring negotiating skills through academic education cannot be stressed enough.

## **BIOS:**

Luigi Cominelli is assistant professor of sociology and of mediation at the “Cesare Beccaria” Department of Law of the University of Milan.

Claudio Lucchiari is assistant professor of psychology and psychology of negotiation at the Philosophy Department of the University of Milan.

## **Bibliography**

- Alexander, N. 2008. “Mediation and the Art of Regulation.” *Queensland University of Technology Law and Justice Journal* 8 (1): 1–23.
- Baitar, R., A. Buysse, R. Brondeel, J. De Mol, and P. Rober. 2013. “Styles and Goals: Clarifying the Professional Identity of Divorce Mediation.” *Conflict Resolution Quarterly* 31 (1) (September 23): 57–78.
- Barr, E. 2012. “Compassion in Action.” In *Stories Mediators Tell*, edited by E. R. Galton and L. P. Love, 171–179. Chicago: American Bar Association.
- Baruch-Bush, R. A. 1994. “The Dilemmas of Mediation Practice: A Study of Ethical Dilemmas and Policy Implications.” *Journal of Dispute Resolution* 1, 1-55.
- Baruch-Bush, R. A., and J. P. Folger. 1994. *The Promise of Mediation. Responding to Conflict Through Empowerment and Recognition*. San Francisco: Jossey-Bass.
- Bingham, L. B. 2012. “Transformative Mediation at the United States Postal Service.” *Negotiation and Conflict Management Research* 5 (4) (November 2):

354–366.

- Bonafé-Schmitt, J.-P. 1992. *La Médiation: une Autre Justice*. Paris: Syros-Alternatives.
- Bonafé-Schmitt, J.-P., and P. Charrier. 2009. “Évaluation des effets des processus de médiation familiale sur les médiés.” *Empan* (72): 81–85.
- Bonsignore, V. 2011. “La diffusione della giustizia alternativa in italia nel 2010: i risultati di una ricerca.” In *Quarto rapporto sulla diffusione della giustizia alternativa in Italia*, edited by ISDACI, 11–110. Milano.
- Bonsignore, V. 2013. “La mediazione civile commerciale dopo il D.Lgs. 28/2010 dal vivo. I risultati di una ricerca qualitativa sui casi del servizio di conciliazione della Camera arbitrale di Milano”, *Servizio di conciliazione della Camera arbitrale di Milano*. Retrieved June 1, 2015, from [http://www.diritto24.ilsole24ore.com/\\_Allegati/Free/La ricerca sulla mediazione civile.pdf](http://www.diritto24.ilsole24ore.com/_Allegati/Free/La_ricerca_sulla_mediazione_civile.pdf)
- Cagnazzo, A, ed. 2012. “La mediazione familiare.” Torino: UTET.
- Cassese, S. 2001. “L’esplosione del diritto. Il sistema giuridico italiano dal 1975 al 2000.” *Sociologia Del Diritto* 28 (1): 55–65.
- CEPEJ. 2011. “Study on Council of Europe Member States Appeal and Supreme Courts’ Lengths of Proceedings.” Council of Europe.
- CEPEJ. 2012. “Efficiency and Quality of Justice.” Council of Europe.
- Charkoudian, L. 2012. “Just My Style: The Practical, Ethical, and Empirical Dangers of the Lack of Consensus about Definitions of Mediation Styles,” *Negotiation and Conflict Management Research* 5: 367-383.



- Consolo, C., and S. Marcello 2011. “Il ruolo prognostico-deflattivo, irriducibile a quello dell’arbitro, del nuovo ABF, ‘scrutatore’ di torti e ragioni nelle liti in materia bancaria.” *Corriere Giuridico* 28 (12): 1652–1666.
- Cosi, G, and M. A. Foddai, eds. 2003. *Lo spazio della mediazione: conflitto di diritti e confronto di interessi*. Milano: Giuffrè.
- Cunningham, B. J. 2012. “The Other Sarah.” In *Stories Mediators Tell*, edited by E. R. Galton and L. P. Love, 33–49. Chicago: American Bar Association.
- Cuomo Ulloa, F. 2008. *La conciliazione: modelli di composizione dei conflitti*. Padova: Cedam.
- De Palo, G., L. D’Urso, M. Trevor, B. Branon, R. Canessa, B. Cawyer, and L. R. Florence. 2014. “‘Rebooting’ the Mediation Directive: Assessing the Limited Impact of Its Implementation and Proposing Measures to Increase the Number of Mediations in the Eu.”, European Parliament, Directorate-General for Internal Policies, Retrieved June 1, 2015, from [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/493042/IPOL-JURI\\_ET%282014%29493042\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/493042/IPOL-JURI_ET%282014%29493042_EN.pdf)
- De Palo, G., and P. Harley. 2005. “Mediation in Italy: Exploring the Contradictions.” *Negotiation Journal* 21 (4): 469–479.
- De Palo, G., and L. R. Keller. 2012. “The Italian Mediation Explosion: Lessons in Realpolitik.” *Negotiation Journal* 28 (1): 181-199.
- De Palo, G., and M. B. Trevor. 2012. *EU Mediation Law and Practice*. Oxford: Oxford University Press.
- Della Noce, D. J. 2012. “Mediator Style and the Question of ‘Good’ Mediation: A

- Call for Theoretical Development.” *Negotiation and Conflict Management Research* 5 (4): 396–402.
- Eckhoff, T. 1983. “The Mediator, the Judge and the Administrator in Conflict-Resolution.” In *Contributions to the Sociology of Law*, edited by B.-M. Persson Blegvad, 148–172. Copenhagen: Munksgaard.
- Fiss, O. M. 1984. “Against Settlement.” *Yale Law Journal* 93 (6): 1073–1090.
- Florea, N. B., M. A. Boyer, S. W. Brown, M. J. Butler, M. Hernandez, K. Weir, L. Meng, P. R. Johnson, C. Lima, and H. J. Mayall. 2003. “Negotiating from Mars to Venus: Gender in Simulated International Negotiations.” *Simulation and Gaming* 34 (2) (June 1): 226–248.
- Fuller, L. 1971. “Mediation. Its Forms and Functions.” *Southern California Law Review* 44: 305.
- Gerardi, D. 2012. “Noah’s Gift.” In *Stories Mediators Tell*, edited by E. R. Galton and L. P. Love, 19–32. Chicago: American Bar Association.
- Henderson, D. A. 1996. “Mediation Success: An Empirical Analysis.” *Ohio State Journal on Dispute Resolution* 11: 105–147.
- Hensler, D. 2001. “In Search of ‘Good’ Mediation. Rethoric, Practice, and Empiricism.” In *Handbook of Justice Research in Law*, edited by J. Sanders and V. L. Hamilton, 231–268. New York, Boston, Dodrecht, London, Moscow: Kluwer Academic - Plenum Publishers.
- Johnson, D. W. 1990. “Conflict Management Style Questionnaire.” In *Mastering Human Relations*, edited by A. Falikowski. New York: Pearson Education.

- Kressel, K. 1972. *Labor Mediation: An Exploratory Survey*. Albany, NY: Association of Labor Mediation Agencies.
- Kressel, K., E. A. Frontera, S. Forlenza, F. Butler, and L. Fish. 1994. "The Settlement-Oriented vs. the Problem-Solving Style in Custody Mediation." *Journal of Social Issues* 50 (1): 67–84.
- Kressel, K., T. Henderson, W. Reich, and C. Cohen. 2012. "Multidimensional Analysis of Conflict Mediator Style." *Conflict Resolution Quarterly* 30 (2): 135–171.
- Kravis, J. and B. MacAdoo. 1997. "A Style Index for Mediators." Accessed July 25, 2017. <http://www.mediate.com/articles/kravis4.cfm>.
- Kurczewski, J. 1983. "Dispute and Its Settlement." In *Dispute and the Law*, edited by M. Cain and K. Kulcsar. Budapest: Akadémiai Kiadó.
- Italian Ministry of Justice. 2016. *Civil mediation Legislative Decree 28/2010. Statistics for the period January 1st – December 31st 2016*, Dipartimento della Organizzazione Giudiziaria, del Personale e dei Servizi - Direzione Generale di Statistica:  
[https://webstat.giustizia.it/Analisi%20e%20ricerche/Civil%20mediation%20in%20Italy%202016%20\(ENG\).pdf](https://webstat.giustizia.it/Analisi%20e%20ricerche/Civil%20mediation%20in%20Italy%202016%20(ENG).pdf): visited on May 25, 2017.
- Lande, J. 1997. "How Will Lawyering And Mediation Practices Transform Each Other?" *Florida State University Law Review* 24: 840–901.
- Luiso, F. P. 2010. "Interpretazione dei dati e tendenze evolutive." In *Terzo rapporto sulla diffusione della giustizia alternativa in Italia*, edited by ISDACI, 127–139. Milano.

- Menkel-Meadow, C. 1995. "Whose Dispute Is It Anyway?: A Philosophical and Democratic Defense of Settlement (In Some Cases)." *Georgetown Law Journal* 83: 2663–2696.
- Mestitz, A. 2007. "Perché la mediazione penale stenta a decollare?" *Minorigiustizia* (3): 121–143.
- Nelson, N., A. Zarankin, and R. Ben-Ari. 2010. "Transformative Women, Problem-Solving Men? Not Quite: Gender and Mediators' Perceptions of Mediation." *Negotiation Journal* 26 (3) (July 1): 287–308.
- Pellegrini, S. 2005. *Il processo civile e la civile giustizia*. Padova: Cedam.
- Quadrelli, I. 2003. "I professionisti della mediazione familiare e il trattamento del conflitto coniugale." *Sociologia del diritto* 30 (2): 97–125.
- Quadrelli, I, and C. Scivoletto. 2009. "Concetti e pratiche di mediazione." In *Mediazione penale minorile. Rappresentazioni e pratiche*, edited by C. Scivoletto. Milano: Franco Angeli.
- Rahim, M. A. 1983. "A Measure of Styles of Handling Interpersonal Conflict." *Academy of Management Journal* 26 (2): 368–376.
- Resta, E. 1999. "Giudicare, conciliare, mediare." *Politica del diritto* 30 (4): 541–575.
- Riskin, L. 2003. "Decisionmaking in Mediation: The New Old Grid and The New New Grid System." *Notre Dame Law Review* 79: 1–53.
- Scaparro, F. 2008. "La valigia del mediatore." *Mediares* 11 (gennaio-giugno): 61–70.
- Schonewille, M., and F. Schonewille. 2014. *The Variegated Landscape of*

- Mediation. A Comparative Study of Mediation Regulation and Practices in Europe and the World.* The Hague: Eleven International Publishing.
- Simmel, G. 2014. *Il mediatore*. Roma: Armando Editore.
- Stuhlmacher, A. F., and A. E. Walters. 1999. "Gender Differences in Negotiation Outcome: A Meta-Analysis." *Personnel Psychology* 52 (3) (September): 653–677.
- Twining, W. 1993. "Alternative to What? Theories of Litigation, Procedure and Dispute Settlement in Anglo-American Jurisprudence: Some Neglected Classics." *The Modern Law Review* 56 (3): 380–392.
- Vaira, L., and A. Nosenzo. 2007. "Uffici di mediazione penale e magistratura minorile in Italia." In *Temi e problemi della giustizia*, edited by L. Cominelli. Milano: Giuffrè.
- Wall, J. A., and K. Kressel. 2012. "Research on Mediator Style: A Summary and Some Research Suggestions." *Negotiation and Conflict Management Research* 5 (4) (November 2): 403–421.
- Wall, J. A., and K. Kressel. 2017. "Mediator Thinking in Civil Cases," *Conflict Resolution Quarterly* 34, 331-367.
- Wall, J. A., J. B. Stark, and R. L. Standifer. 2001. "Mediation: a Current Review and Theory Development." *The Journal of Conflict Resolution* 45 (2): 370–391.
- Zarankin, A., J. A. Wall, and T. G. Zarankin. 2014. "Mediators' Cognitive Role Schema." *Negotiation and Conflict Management Research* 7 (2) (May 24): 140–154.