

Victim-Offender Mediation: Observations from Scandinavia

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Abstract

The focus of this article is the discourse between parties and mediator(s) in Victim-Offender Mediation in Scandinavia. The analysis show that mediation talk is concentrated on what happened in the actual crime situation, and what the parties and other persons present at the time did or did not do. Different “accounts” are used actively by the parties, to excuse or justify their behaviour. The explanations for crime are thus primarily found on an individual level, leaving societal issues out. A normative and evaluative inquiry of crimes and why crimes occur plays a minimal (if any) role in VOM in Scandinavia.¹

Key words

Mediation; Scandinavia; conflict; violent crimes; accounts

¹ Research was funded by the Scandinavian Research Council for Criminology.

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1. Introduction

The theme of this article is the discourse between participants in Victim-Offender Mediation (VOM) in three Scandinavian countries; Finland, Norway and Sweden. VOM was introduced in Scandinavia in the early 1980's as a measure against juvenile delinquency, especially lenient offences such as shoplifting and vandalism (Dullum & Christie 1996; Rytterbro 2003). It was thought that confronting young people with the victim of their crime, would prevent further offending. The mediation model adopted in Scandinavia was highly influenced by Nils Christie's seminal article "Conflict as property" (Christie 1977), as well as experiences from Northern-America, where mediation between offenders and victims² was established in the 1970's.

In Norway and Finland mediators are lay volunteers³, meaning they are not trained mediators. In Sweden some mediators are volunteers, others are professionals such as social workers or lawyers. The overall emphasis in the Scandinavian model, at a theoretical or rhetorical level, is the importance of giving the conflict back to the immediate parties. The parties, rather than the mediators or some other authority, are considered to be the experts on the conflict and what should be done. Thus, central to victim-offender mediation in Scandinavia, is the willingness and ability of the parties to discuss the incidence and possibly repair the harm and losses.

As in many European countries, the use of mediation in the aftermath of crimes and conflicts increase steadily in Scandinavia (Pabsdorff 2009, 2010; Rytterbro 2002), making mediation an important topic for research. In light of the idea of empowering the parties in conflict, the goal of this study is to analyse the interaction among participants and mediators in cases of threats and violence. Of particular interest is mediation talk: How is the conflict and crime talked about and discussed during mediation, what kind of explanations for the conflicts and crimes are used, and what kinds of understandings of the conflict or crime is (re)produced during mediation? This is a special interest because the traditional criminal justice procedures have been criticized for not enabling a dialogue between the parties in conflict (see i.e. Christie, 1977).

Scott and Lyman (1968) have analyzed social interaction in conflict situations. They have found out that accounts *per se* are activated in social interaction when someone's acts or behavior is called into question. Accounts will in this article be defined in the words of Scott and Lyman as "*a statement made by a social actor to explain unanticipated behavior (...) a linguistic device employed whenever an action is subjected to evaluative inquiry*" (Scott & Lyman 1968: 46). Since the mediation arrangement is based on someone's wrongdoing or unanticipated behavior, one may also expect accounts to appear in the mediation conversation. Someone or something must be given responsibility for the event occurred. Additionally, especially when a criminal offence is in focus, the relevant norms expressed in mediations can, as Shapland has shown, be expected to reflect participants' normative and cultural ideas of justice (Shapland et al 2007: 523).

Another important question in this sense is highlighted by Astor (2007) who emphasise that the culturally known and approved stories of right and wrong may be the ones appreciated during mediation. This on the other hand may also mean that the less approved explanations of crimes and conflicts may be less approved during mediation. This in turn may cause that minorities, either by age, sex, ethnicity, religious or spiritual beliefs etc, have a reduced chance to have their version of the situation approved. This however is not exceptional for mediation as a social practice as such, but is an important question in many fields connected to the social and criminal sector (Astor 2007). Thus the role of the mediators is

² Often under the title VORP: Victim-Offender Reconciliation Program.

³ In Norway mediators are given a symbolic sum.

crucial; how the mediators guarantee that both parties are heard and that power relations are balanced.

Mediation-talk in crime cases to some extent presupposes that the parties more or less share key norms and values in society. We would suggest that this also has an influence on which parties are seen as suitable for mediation. Goffman (2004) states that it is a striking problem when a person *does not* play the face-saving game. This means that parties who are *not expected to cooperate*, nor expected to cooperate *tactfully*, will not be seen as suitable for this measure, e.g. the defined offender not taking on responsibility for the crime or conflict. As a precondition for participating in mediation in the Scandinavian countries, it is stated that the offender should somehow have *admitted to* or confessed some kind of guilt.

2. Method and material

The project aimed to study mediation of cases labeled as violence or threats. Age restrictions were set at a minimum of 15 years. In each country the respective researchers contacted the regional mediation offices, who selected suitable cases from the above mentioned restrictions and made first contact with mediators and parties in the cases. In some cases neither the mediators nor the parties wished for observers to take part in the mediation session and this made the collection of data difficult. This was particularly evident in mediation sessions involving violence in intimate relationships in Finland. This may partly be due to the fact that mediation in such cases is highly disputed. The mediation services put much emphasis on not disturbing the parties more than necessary. Having a researcher present may be experienced as an extra stress factor, and was by some mediators seen as a possible threat to the parties even wanting to take part in mediation. In Sweden tape recorded mediation meetings were chosen partly because of this problem. Tape recordings also allow more thorough analyses of the conversation, since its not possible as an observer to write down whole conversations.

In the project period (2008-2009) we observed and/or tape recorded a total of 15 mediation sessions in Finland, Norway and Sweden. Additionally interviews were conducted with parties after mediation, as well as with key persons such as mediators and social workers. The vast majority of the observed cases were alcohol related and had taken place at bars or parties.

In Norway and Finland mediation can be used as an alternative or supplement to traditional prosecution, while mediation normally is used as a supplement in Sweden. In Norway and Finland the mediation offices also take on cases that are not under prosecution (civil cases). All the cases observed in this study, civil and penal, were referred to mediation by the police. Nevertheless, the juridical status of the cases seemed not to be clear to all parties. An offender in one civil case in Norway said in the interview that he took part in mediation in order to avoid problems with the police and avoid being reported. This implies that it is not only in the penal cases that the participants may be under influence of the threats of the penal system (see also Dullum & Christie 1996; Pabsdorff 2009; Rytterbro 2000; 2009).

In some of the cases the parties endured injuries, like blue and swollen eyes, head aches, broken nose, scratches or material damage. Some participants also said that the event had caused fear, e.g. fear of going out in the evening, going to the same bar etc. For some the conflict also had induced relational difficulties.

The ages of the parties ranged from 16 to 55, however most of the parties were in their 20's and 30's. Of the totality of 31 parties (in one case there were two victims, in the rest one offender and one victim), 28 were men and 3 were women. Attached at the end of the article is a table giving more information on the cases.

3. Results

3.1. Framing the purpose of VOM

Central to mediation is the empowerment of the parties, by giving them the responsibility of resolving the problems that may have arisen from the conflict. At the same time, most of the parties (as well as support persons sometimes attending the mediation meeting) have little or no previous experience with mediation. Understandably, the framing of the meeting and purpose of VOM by the mediators showed to be of crucial importance.

Although not common, introductions like the following were observed: "*the primary reason why mediation was invented was to "divert cases from courts and thus save taxpayers money"*". More common were short statements that the parties now had a chance to discuss the incident with one another. One mediator described mediation as the first step in the ladder of the penal system, while some introduced Christie's (1977) article and stated that the parties were the conflict owners. Yet others merely stated that the parties were "*here to talk about the event*".

After the introduction mediators normally explained that both parties would have their chance to tell their side of the story, after which the parties should try to come to an agreement. In Norway and Finland focus on the agreement was central. In the penal cases it was commonly stated that if the parties were able to come to an agreement, it could mean waiving the charges. In Sweden however, mediation is not an alternative to prosecution, and the same focus on agreements was not found.

3.2. Initiating and upholding the discussion

The mediators normally seated the parties opposite each other. This, according to mediation handbooks (see e.g. Iivari 2007: 44; Nehlin et al 1998), reflects the facilitating role of the mediator. The mediators often emphasised the importance of the parties to talk directly to each other, and not to the mediator, e.g. like one mediator in Sweden who encouraged the parties to: "*talk to each other as well as you are able to*". The illustration below was typical:

Mediator: *You as a victim can start to tell your story, as much as you can remember. And then it's your (the offenders) turn to tell your version of it.*

Victim: *Okay.*

Offender: *Mmm.*

Mediator: *And then after this we take up the consequences.*

Victim: *Okay.*

Mediator: *And after that, the future. What do we do now?*

The mediator then repeats the rules for the meeting:

Mediator: *Listen without interrupting. No insulting. No violence of course. And try to show respect for each other as much as possible...in the room.*

Offender: *Mmm.*

Mediator: *And what we say in this room is confidential.*

Offender: *Mmm.*

Victim: *Yes.*

Like in this example, the parties often utter short, confirming answers. In a majority of the cases the parties were not very talkative in the beginning of the meetings, and some activity from the mediator seemed to be necessary to initiate the conversation. The mediators thus are central in defining the premises for the conversation between the parties.

In the example from Sweden illustrated above, the victim was given the first opportunity to express what had happened and how the incident had affected him. Similarly in one of the cases in Norway the mediator encourages the victim to begin by asking: *"What is it that has happened? Why are you here in your opinion?"* In another case however the mediator left it to the parties to decide who would go first: *"Who wishes to start?"* The offender then states: *"I can start, since I am the reason why we are here today."* In Norway and Sweden we observed variations on who were given the first opportunity to talk, whereas in Finland, according to the observations done, the victim was always encouraged to talk first.

In the following sections, we will not differentiate between the countries. We found more resemblances than differences between the three Scandinavian countries and find it more fruitful to focus on the presentation of the content of the meetings, than making a strict comparative perspective.

3.3. *Storytelling in mediation*

The offender in one case mentioned above wished to start since he "is the reason why we are here today". The offender, an adult man, goes on by apologizing for having frightened the young girl who is the victim in this case. He insists he cannot understand how and why he lost his temper the way he did. He also explains that his outburst had nothing to do with the girl personally. The offender talks about a stressful time at work and yearning for vacation. He also mentions that he, at the time of the incidence, had just met with his friends to relax, thereby indicating that the episode was in no way intended.

In that example the offender talked for quite a long time. In some cases however, both parties were hesitant to talk, at least in the beginning of the meeting. The mediator in these situations had thus an important role initiating and keeping up the dialogue. An example of this is mediation between two young women where the one had hit the other at a party, resulting to a blue and swollen eye. The mediators asked the girl who had been hit to tell about her experiences. The young woman however showed great difficulties to talk and started crying. The mediators tried to help her by asking about the circumstances of what had happened: *"Why don't you start by telling why you were gathered that evening?"* The mediators continued to ask if there had been many people at the party, and after a while introduced the topic of alcohol, by asking if there was alcohol, and if she herself had been drunk. We see that the mediator focuses on the circumstances of the event, before narrowing it down to the role of alcohol.

One mediation session had a more court like style. This mediation concerned violence between two men; one had hit the other in the face at a bar, resulting in a blue eye and a broken nose. The mediator hands out pen and paper to both parties and to himself. The victim is invited to tell his story first. The mediator writes while the victim is talking, stopping him occasionally asking for more details on how things happened in order to get a clear picture of the incident. The search for chronology involved what was said between the two men, their movements and their behaviour that might have been interpreted as threatening. The same search for details and chronology happened while the offender was telling his story. The mediator thus focused on getting the question of guilt clear, by asking questions and comparing the two stories against each other.

As we have seen, mediators have an important role in the storytelling and the structuring of the stories. However in some cases one of the parties also lays down the terms for the meeting. This happened in a case where a doorman at a bar had been reported to the police for assaulting a guest. The doorman arrived at the mediation location before the victim. The doorman frequently checked the time, clearly signaling to the mediator that he was in a hurry. He stated that he had to *"go back to work in half an hour"*. Some minutes went by before the victim showed up. When the victim arrived the doorman immediately confronted him by asking:

"*why did you attack me?*" and went on stating that the guest was quite drunk on the evening of the event. When all had been seated, the mediator started by stating that: "*I hope we can find a solution to this quickly*", adding that the offender has to leave in half an hour. The statements by the offender were in this example clearly picked up by the mediator who tried to rush the meeting.

3.4. *The conflict in the spotlight*

Explaining the conflict by drawing on *the context* of the situation is common. However, according to the mediation discourse – including its ideals – it is the conflict or rather the crime *per se* that should be highlighted in the mediation conversation, and the mediators therefore often try to narrow the stories down to the event itself. This becomes clear in a case concerning a threat, where a man accused another for threatening him over a period of time. The two men are familiar to each other, having mutual friends and relatives. The mediator invites the victim to tell his view of the situation, and the victim begins by asking the accused offender: "*I want to know what I have done to you. I don't understand what I have done that makes you come after me like this?*" The victim goes on telling about several threats, and says he wants this to end. The offender on his turn accuses the victim of being a slob, of not working, of not living a proper life and not taking proper care of his own family. The offender also presents his concerns for the victim and his family. The mediator interrupts the dialogue by stating "*This is not what it is about. It is about threats.*" The accusations from the offender continue, and the mediator again tries to get the parties to discuss the actual threats; seemingly a more appropriate topic at the mediation meeting. Introducing the question of coming to an agreement, the mediator asks: "*Could we agree to stop the threats?*"

In a mediation where the victim's father was present, the father continuously interrupted the conversation and verbally attacked the young offender. The mediators took control of the situation by saying that: "*the mediation is between the two parties in conflict and they have to express what happened since they were the only ones present*". These two examples bring forward two important points of victim-offender mediation; discussion should be limited to the actual event (crime) and it should be the involved parties that do the talking. This emphasises again the important role of the mediator in guaranteeing that the parties get an equal opportunity to talk and solve the conflict themselves.

Sometimes both or one of the parties however cannot remember what had happened because of drunkenness. One mediation involved two young men who had started arguing near a subway, after both had been at different parties earlier in the evening. The mediator asks the offender to tell what happened at the evening of "the fight", so termed by the mediator. The offender says he cannot remember anything because he was so drunk. When the mediator again tries to get the offender to talk about the evening, he repeats: "*The thing is that I really don't remember anything about that evening. I just want to know what happened. (...) That's why I'm here (at the mediation).*" The mediator then tries to help the offender to remember something about time before the incident by bringing up the party:

Mediator: *You were at a party...*

Offender: *Yes.*

Mediator: *So already at the party you were drunk?*

Offender: *Yes, I was pissed.*

As we have seen, in these cases the discussion was limited by the mediator to the incident and the reasons for it. If the parties were passive during the mediation, the mediators helped by suggesting background factors, like "*Had something happened that led to this incident such as breaking up with a girlfriend?*" In one mediation concerning a fight between two drunken boys in a street after the bars had closed,

the mediators inquired if something had happened during the evening to the offender that made him act that way. In our observations parties tended to follow up on these questions, and this kind of search for explanations or triggers was a common and central part of all the mediation sessions observed.

However, as we also noted, the mediators in some instances try to narrow the stories *down* if they get too wide or if the parties bring in factors that are not seen as relevant by the mediators, as in one case mentioned above where the offender accuses the victim for being a slob. This brings in the question of relevancy during mediation, and the question of what are seen as legitimate versus not legitimate explanations for the incidents.

3.5. The presence of accounts

In our observations a wide range of *accounts* appeared to play a significant role in the conversation between the parties. In the mediation meetings we observed several attempts to explain the event as a result of concurrent events - and not as a result of some bad will or intention. As earlier defined by Scott and Lyman (1968) accounts are statements made by a social actor to explain unanticipated behavior. Scott and Lyman (1968) further differentiate between accounts as *excuses* and *justifications*. Excuses are used when one admits the act is wrong, bad or inappropriate, but one does not take the whole responsibility for the act. Justifications on the other hand, are expressed when one admits the act and takes responsibility for it, but does not admit the act is wrong or serious (Scott and Lyman 1968).

In our material excuses and justification were often used simultaneously. One case that illustrates this involves a man that had assaulted a boy and caused minor damage to his moped. The offender appealed to it being an accident while also blaming the victim and a third party provocation. However, at the same time he took responsibility for his actions, apologised and appeared to be truly sorry for what had happened. The example shows that accounts as excuses and justifications are not distinctive but somehow overlapping. However, for the ease of the presentation, we will in more detail illustrate accounts in mediation first as excuses thereafter as justifications.

3.5.1. Accounts as excuses

- Accidents and "mishaps"

One common way of talking about the event was claiming what happened was *an unfortunate mishap* much in line with what Scott and Lyman (1968) refers to as the accident theme. An illustration of this is from a case where the offender had been reported assaulting the victim in a bar. The offender explains that, before hitting the victim, he himself had been attacked by a stranger. The offender explains that he had felt threatened and therefore started punching around. The victim had merely been in the wrong place at the wrong time, as the offender expressed it, and there was nothing personal about it. The victim responds to this by saying he had been a little drunk and that he should not have been standing so close to the fight: "*If I had been sober, I would have known better.*"

The accident theme can also take the form of *mistakes*. At the end of one mediation meeting, the mediator turned to the offender: "*It's good to learn from one's mistakes, but there is no point in letting it weigh you down.*" "*Everybody can make mistakes*", the mediator continued, and "*that is not the end of the world*". A similar passing appeared in another case mentioned earlier, where the offender was reported to the police for having assaulted a young girl, and repeats several times during the mediation that "*I will have to take this with me - that I reacted in this way. I will have to learn from this.*" The mediator supported this by stating that: "*Everybody can make mistakes*" and 'concluded' that "*we learn as long as we live*".

The appeal to "mistakes", "mishaps", it all being an "accident", underlined that the situation was not performed by (evil) will or intention, but was an unfortunate result of series of unfortunate events.

– Appeal to defeasibility

Accounts as excuses can also be connected to mental element including knowledge or misinformation and free will or non-intentional acts. Alcohol or other drugs sometimes belongs to what Scott and Lyman (1968) refer to as *appeal to defeasibility*.

Alcohol was, as mentioned before, introduced by many participants, including mediators, in nearly all mediation meetings observed. Thus alcohol often serves as a kind of common sense explanation of why the incident occurred. This type of explanation was also commonly, but not always, accepted by those present at the mediation.

In one case where a young offender had assaulted an older man, the influence of alcohol and its use as an excuse became clearly evident: The offender explained at the mediation that he *"had been drinking for three days and had not had much sleep"*. The mediators accepted this explanation and validated it by saying *"Obviously you were tired and in a bad mood if you had not had any sleep and had been drinking for three days."*

In another case two adult men met in mediation after an episode of verbal threats that had taken place in a bar. The offender said to the victim: *"Well, you were drunk..."* hereby implicating that the victim himself had contributed to the heated discussion between them, leading to the threat. The victim, however, rejected this attempt by the offender stating: *"I was not that drunk"*.

In another mediation session, mentioned before, the victim's drunkenness was brought up by the offender before the mediation had even started. The offender, who worked as a doorman, uttered as the victim entered the room: *"Oh, so this is how you look, I had forgotten."* And continued: *"Do you remember anything at all? You were quite drunk"*.

These two last examples also illustrate that it is not always only the offender's use of alcohol that is in focus, but often that of the victim. In one other case which was an alcohol-related assault between strangers both parties had been drunk. During the mediation meeting they agreed that both of them had been very drunk and their memories were vague. Interestingly while discussing the incidents they found that *"it could have also ended up other way round"*. The parties as well as the mediators somehow shared the view that the final roles as offender and victim could have been different or that both of the parties were both victims and offenders because both of them had also been insulting and pushing each other. The victim said that: *"I was maybe more sober and that is why I did not attack and punch you"*. These kind of blurry and unclear roles seem to be typical for alcohol-related assaults that are diverted to mediation especially in Finland. Two out of three assaults in Finland include alcohol and take place among groups where all parties are drunk. They are labeled as mutual scuffles of drunkards (Lehti, 2001).

– Scapegoats

A common feature in mediation-talk is the tendency to partly divert the responsibility to other persons not present in the mediation meeting, but who were related to the crime in one way or another. This could be one person in particular, but sometimes a crowd of people, and is often brought up as a subject in the conversation by the participants in the mediation. From a theoretical perspective which has to do with accounts, this could be interpreted as a means to normalize oneself and to present one self as a good guy or in some way better compared to others who behave in an unacceptable manner.

In one of the mediations both parties talked about a quarrel between two groups of people before the assault took place. Both agreed that these other people in these groups were partly to blame since they had spurred the situation. Another example, referred to earlier, where the offender was reported injuring the victim and this had, according to the offender, happened after he himself had been attacked by a third person. This third person had, according to the offender, attacked him for no visible reason. The discussion between the two parties concentrated much on the role of this third person, and he was labelled as not mentally sane. *He was the one to blame for this assault situation, both parties agreed, and he was thus given the role of a "trouble maker".*

In another mediation the offender explained at the mediation meeting that he had been provoked by both the victim and his friend. The offender explained how this other person had caused a lot of problems before, and that he believes this third person was to blame for triggering the crime situation. This third-person during the mediation was labelled the really bad guy and the description of him took away some responsibility from the young victim.

To blame other persons (certain individuals or groups or crowds) for the incident was used both by offenders and victims and it seemed to ease the discussion between the parties. For example in one case other people were seen as mostly to blame for the incident. The victim explained to the offender that: *"We had already ended our fight when your friends started to egg you on to attack again. They made the fight continue."*

3.5.2. Accounts as justifications

We have till now looked at accounts in the form of excuses, and will continue to give some examples of accounts as justifications. One way to introduce this is with the example from a case where the offender, a doorman at a bar, had been reported for treating the victim, a guest at the bar, too roughly. At the mediation meeting the doorman/offender denies that he is responsible for the violence. The offender admits that he did lead the victim out of the bar, but he also insists there was another doorman responsible for knocking the victim to the ground. The offender also, by a rhetorical question, asks the victim if he was drunk at the time of the accident: *"You were drunk, weren't you?"* The offender further explains to the victim and to the mediator that the victim was regarded to be too drunk that evening by several guards. There was, according to the doorman, a common understanding amongst the workers that the victim would have to leave. When the victim did not respond and leave by himself, they had had to use some force to get him out. As the offender explained at the mediation. *"This is the way it works".* And adds: *"You should know since you have been out (at bars) before".* The victim objects: *"Yes, I have been out (at bars/drinking) several times before, but never been treated or seen people be treated in this way. It was misuse of power, and that is why I complained."*

The guard continues to argue that he was not responsible for the situation, emphasizing that another doorman was responsible for knocking the victim to the ground. As an example, this case involves several of the themes we have discussed; alcohol is here used partly as a way of shifting responsibility for what happened to the victim and third-person who is not present at the mediation is given a central role. At the end of the mediation session described, the mediator formulated an agreement and encouraged the parties to shake hands. The offender finally said that: *"I am sorry it was so rough then."*, thus admitting the non-acceptableness of the act but denying responsibility for the act. By saying *it* was rough, not *I* was rough, the statement implicates no *personal* responsibility for the incident occurred.

- Blaming the victim

As illustrated with the example above, accounts expressed in mediation can also involve blaming the victim. In one case the offender, a doorman at a bar, asks the victim, guest at the bar: *"What I don't understand, is why you attacked me?"* The offender states several times during the mediation that the victim had been too drunk, and that he had taken him away from the doorway. The violent act which later happened was in self-defence, the offender explains, thereby accusing the victim for his behaviour.

Partly blaming the victim was not uncommon. Often offenders explained that it is not characteristic for them to assault people and hinted that something or someone must have provoked the situation. Often the victim was seen as partly to blame together with the prevailed situation. One offender stated in the mediation session that: *"Something must have happened; the victim must have said something. I would not have attacked for no reason"*. This attempt was however in this case disregarded by the mediators.

In some cases we also observed the victim being blamed for his behaviour. The offender in one meeting explained that the victim had started the whole argument and challenged the victim to take responsibility. The mediators, and also the victim's father present in the mediation meeting, questioned the honesty of the victim by saying: *"One has to be honest in mediation"* and *"one ought to take responsibility if the story of the offender is true."*

In these examples then, the victim-offender roles are to some extent challenged in mediation, and sometimes this indicates the use of accounts which Scott and Lyman (1968) calls *"the denial of victim"*. This in turn, according to Scott and Lyman indicates that the responsibility put on the victim suggests that *"he deserved it"*.

– Rejecting injury

Related to blaming, or denying a victim, are accounts which have to do with undermining the seriousness of the offence by rejecting injury. The rejection of injury in the mediation talk however, was not always well met by the other participants in the meeting, at least not the mediators. This happened in a case where two young women had been quarrelling verbally at a party, after which one hit the other in the face. During the mediation the offender accused the victim for reporting the incident to the police, saying that the victim should have reflected more on the consequences of making a police report, and claimed that what had happened was not serious enough to be a police case. When directly confronted by the mediator, the offender sticks to this view:

Mediator: *So you are implying that this was not a serious offence?*

Offender: *Yes.*

In another case, the mediator tries to put forward the physical harm for the victim by asking explicitly about such consequences. The victim however, himself belittled the injuries.

Mediator: *What kind of injuries did you get?*

Victim: *Oh it wasn't anything serious... Just a little scratch.*

Mediator: *But how long did you have that?*

Victim: *Not long at all.*

Minimising the seriousness of the incident was often heard but seldom accepted by the mediators, whether it comes from the victim or the offender. In accordance with the mediation discourse it is important *not* to reduce the harm the crime resulted in, but instead put this forward in the mediation talk. In an alcohol-related assault, the victim was asking compensation for permanent harm; a scar and torn clothes. The offender was of the opinion that the claim of the victim was too high.

They argued for a while and finally the mediator interrupted the conversation and concluded calmly that: *"We have come here to discuss the incident which took place while you were in a taxi queue. To us it seems that you agree the incident but not about the harms and costs. I would like to remind that it is not necessary by all means to make an agreement. It is possible to close the meeting without an agreement if you wish"*. Mediators also looked at a handbook and compared the victims' claim to the examples for adequate compensation. The parties examined the scar and through examples mediators tried to show that the claim was quite high compared to the guidelines. After discussing peacefully the parties and the mediators found a sum to which the offender and the victim agreed.

4. Conclusions and discussion

The main focus point in mediation sessions studied here was not the *cause* of the incident but rather how people *behaved in the situation, what really happened and why* and most importantly *how the parties took responsibility of the event*. The mediation meetings did not seem to leave much space for talk about justice in a broader sense, but they rather diverted responsibility personally to one person or the other at a more individual than macro level.

As a *"speech community"*, set up for the purpose of dealing with the particular conflict or crime, the participants created the boundaries for what are and what are not suitable accounts and explanations for the conflict that occurred, drawing on norms and values of the wider society. These boundaries are not accidental. Goffman (2004) argues that the rules and expectations of a social setting (such as mediation), are not made up each and every time anew, but are built up and collected from relevant situations and other social settings that make sense to the social situation at hand. Scott and Lyman (1968) in a similar way argue that accounts are not incidental, but situated and standardized. This means that accounts are linked to the situation at hand and to the interpretation of this situation by the actors, but also inspired by cultural and structural norms and values. This perspective makes us able to get a glimpse of what kind of social setting mediation represents to the participants, as well as what cultural norms and values are (re)produced.

The conversations in the mediation sessions we have analysed were focused on what had happened and on the context of what had happened. Common sense knowledge about conflicts and crimes and explanations for these events were actively used by the parties and the mediators, such as alcohol, work related stress, pressure from a crowd, others acting 'worse' than oneself. These explanations in turn are built upon moral, cultural, societal and economical structures and values familiar to the participants. According to our observations some explanations were more easily accepted than others. Alcohol for example was accepted as a self-evident excuse by all parties; it was even suggested by the mediators on few occasions. Using alcohol as an explanation for otherwise unaccepted behaviour seems to be culturally accepted in Scandinavia. Using scapegoats, blaming the victim or rejecting injury however saw different variations. More often than not these excuses and justifications were not accepted. Nevertheless they were used to shift some of the blame away from the parties taking part in mediation.

The distribution of accounts points to one important feature about mediation as a form of social interaction. That is, people tend to bring their culturally conditioned beliefs about right and wrong to the mediation. As Shapland et al. (2007) pointed out, a mediation meeting *is not* made up from the bottom. Or as Sykes and Matza (1957: 672) put it: *"definitions of the situation represent tangential or glancing blows at the dominant normative system rather than the creation of an opposing ideology; and they (verbal expressions) are extensions of patterns of thought prevalent in society rather than something created de novo"*.

Mediation is a form of social interaction, where identities and meanings of events are negotiated. During this practice different accounts are put into play. In mediation the meaning of the event is constructed by all the participants in the meeting, including the mediator. This however does not mean that all participants are equally active during mediation and have equal influence on the construction of the meaning of the event. This means that analyses of power relations, due to structural power relations in society, and also the power relation between the parties, are much needed in this field. According to our observations, power imbalances were present for example in cases where one party was more verbally talented and thus more able to promote their interests. Additionally power imbalances were evident in cases where the other party was much older or in a role of an adult. However, our data suggests that mediators were capable of intervening and equalizing these power imbalances.

Our data indicate that in order to have a successful mediation meeting, parties must have the necessary social capital to succeed in the situation; to tell their story in a way that actually will contribute to repair parts of the lost face and dignity; to tell their story in a way that makes all participants able to walk away from the mediation session with their head held up high and distance themselves from the label deviant. Getting into mediation however presupposes that one is seen as suitable for mediation by the police and prosecution authority. The participants in this study can hardly be seen as "notorious criminals", and for most, both offenders and victims, this is their first meeting with the justice system. To be chosen and participate in mediation can be interpreted as a way for the offender and the victim to recreate themselves as normal "law-abiding" persons; to appear, in their own eyes and in the eyes of others, as people who do not usually get into trouble with the law.

With reference to the crime prevention discourse, it is necessary to conclude that in the mediation meetings it was seldom discussed how the re-occurrence of these types of incident and re-offending could be avoided in the future. This may be linked to the fact that the offender in these cases was not seen as a criminal *per se*, but rather as a person whose actions in some ways were seen as blameworthy but not typical for him or her. By using accounts, crimes and conflicts were transformed into sequences of unfortunate events and the incident and its consequences were given back to the parties to solve.

5. References

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6. Annex

Table 1. Analysed cases

Mediation	Crime	Offender (gender&age)	Victim (gender&age)	Mediators (genders)	Others	Relationship	Method
Fin1	Assault	M27	M40	M&F	No	Strangers	Obs.
Fin2	Assault	M21	M39	M&F	Victim's father	Strangers	Obs.
Fin3	Assault & minor damage	M53	M15 & M55	M&F	No	Strangers (older men acquaintances)	Obs.
Fin4	Assault	M26	M32	M&F	No	Strangers	Obs.
Fin5	Assault	M18	M18	M&F	No	Acquaintances	Obs.
No1	Assault	M49	F16	F	Victim's mother	Strangers	Obs.
No2	Assault	M21	M21	F	No	Strangers	Obs.
No3	Assault	M31	M23	M	No	Strangers	Obs.
No4	Threats	M27	M23	F	No	Acquaintances	Obs.
No5	Assault	M28	M33	M	No	Strangers	Obs.
No6	Threats	F19	F21	M&F	Both parties father's	Acquaintances	Obs.
No7	Assault and battery	M36	M24	M&F	No	Acquaintances	Obs.
Swe1	Assault	M19	M18	F	No	Partly acquaintances	Taped
Swe2	Assault	M20	M21	F	No	Partly stranger	Taped
Swe3	Assault	M16	M17	F	No	Strangers	Taped