

# **Settling disputes between neighbours in the lifeworld.**

## **An evaluation of experiments with community mediation in the Netherlands**

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*Summary:* Many neighbourhoods in the Netherlands have become the stage of colliding subcultures, and interpersonal conflict. The young live next to the old, the rich next to the poor, singles next to families, the white next to the brown and the black, the established next to the outsiders. In some places, this social-cultural abundance leads to fear, uncertainty, and irritation. Not everybody is as understanding and tolerant of diverse lifestyles and thinking patterns as the other person is. In places, this diversity leads to new behaviour patterns and institutions. Multi-ethnic community boards are starting to function as mediatory panels for settling disputes between neighbours and neighbourhood residents. In this article we claim that Community Mediation – a form of alternative dispute resolution designed to resolve interpersonal conflict in the neighbourhood – is both an attempt to rejuvenate the idea of community and a new way to settle differences and interpersonal conflicts between neighbours in the Netherlands. One might even argue that the neighbourhood is a level too high for social intervention and instead one should focus on a lower level in the lifeworld: the house, the block, or at most, the street.

*Keywords:*

Conflict, neighbourhood, community mediation, autonomisation, lifeworld, social policy

### **Introduction**

Modern society can be characterised by the process of formalisation of social relations. Over the years, conflicts are increasingly being defined and processed in the domain of the legal system. Conflict solving mechanisms have become monopolised by the formal institutions of social justice. Other traditional institutions that (used to) solve conflicts, e.g. the Church, the family, the community, have become less prominent conflict solvers. It is not surprising in this respect, that mediation – an anthropologically and historically non-legal way of settling disputes – originates in many modern states from the legal system. From a historical perspective, this is the world upside down. The trend of mediation has even been presented as a way to relieve case-pressure on courts.

In this article, we will discuss recent experiments with community mediation in the

Netherlands. Community mediation is a form of mediation especially designed for *neighbours* (and other community members) to resolve their mutual conflicts outside the legal system and inside the local community. Neighbour conflicts involve ongoing struggles stretching over a long period. They typically begin with a life style difference, often merge with class and/or race differences, and escalate over time through a series of acts of nuisance and mutual retaliation. In the early seventies, the idea of community mediation was given shape by founding of the San Francisco Community Boards (SFCB). The founders of the SFCB came out of a tradition of community organising. They hoped to establish a justice system apart from the state system that would be more responsive to local community needs and interests (Merry 1997).

Below, we will examine the basic principles and ideas of community mediation. Next, we will describe the background, the practical set-up and the results of the experiments in the Netherlands. After the description of community mediation in practice, we will argue that a need orientation is an important criterion for evaluating the results of community mediation, understood as a project by and for citizens (qua selection of cases, tasks of community board members, privacy-rules, etc.). We will introduce the concept of autonomisation to describe a general process in which (groups of) citizens reclaim the conflict solving action space, which has become institutionalised in modern society in the legal system. If the concept of autonomisation can be empirically grounded in future research, the process that it entails may well offer important possibilities for institutional fine-tuning in the legal system and the community at large.

### **The idea of Community Mediation<sup>2</sup>**

Community mediation is focussed on resolving interpersonal conflict between neighbours, often involving colliding lifestyles and beliefs, such as different types of cultural expectations and behaviour patterns in the community, stereotyping and prejudice<sup>3</sup>. Community Mediation takes place in the lifeworld<sup>4</sup> of people: the neighbourhood. Community mediation consists of two terms, which are equally important: *community* and *mediation*. First we will discuss the mediation element; next we will pay attention to the community element.

#### *Community mediation as Alternative Dispute Resolution*

Neighbourhood disputes have become qualified as 'home-garden-and-kitchen' conflicts, referring to the daily character and relatively small scope of many of these conflicts. In court, these cases are referred to as 'garbage cases', implying that they are hard to solve or settle, involve minor financial stakes, etc (Merry 1997). Important however, is the observation that these so called 'lifeworld conflicts' are not minor conflicts. Seen from a social-psychological perspective, people experience neighbour (hood) conflicts as unpredictable, penetrating and

often intolerable. A person cannot defend himself or herself against this type of nuisance. Neighbour problems are from the nature of things close to the senses<sup>5</sup>. Sounds, reeks, pets and insults coming from a neighbour can intrude physically on a person's sense of privacy and safety. These intrusions are hard to ignore. Most neighbours, on their own accord, seem unsuccessful in making problems go away. They could move, but cannot financially or do not want to (Spierings 1998b). One should be warned, these conflicts could seriously damage the living climate in a community.

In the early seventies, the idea of community mediation was given shape by the founding of the San Francisco Community Boards (SFCB) in the United States (Merry & Milner 1993). Central in the SFCB model is the 'dispute resolution panel'. The San Francisco panels consist of three to five trained individuals, volunteers living in the same community as the disputing parties. They organise meetings with disputants, referred to as the complainant and the respondent. The volunteers in the panel have no contractual, legal or formal power or authority over the disputants or the dispute. Participation in a 'hearing' is voluntary for all parties.

The main aim of the dispute resolution panel is to bring people together, and to try to conciliate and reconcile differences between people. The disputing parties are stimulated to communicate their differences openly, not only on the interest level, but also on the emotional and expressive level ordinarily associated with interpersonal conflict. The expression of emotions is important in order to achieve agreement in the end. Hostilities between parties, often arising from differences in interpretations of events, have to be discussed openly as a way of grounding the dispute-settlement process in the emotional needs of the disputants. The idea behind this is, that if the emotions and interests of disputants can both be addressed and reasonably satisfied, the non-legal agreement or contract will hold up without force of law or formal authority (Shonholtz 1993).

Community mediation is not only concerned with solving problems, but also with re-establishing durable relationships between neighbours. People are asked to participate actively. The participants themselves have to look for solutions. Nobody speaks a verdict; no external authority chooses a solution. This form of participation can lead to 'empowerment' - the idea that people feel their actions 'make a difference' - not only of the conflicting parties involved but also of the volunteers that help to settle the dispute (Baruch Bush & Folger 1994). The process of community mediation can be broken down into several phases:

1. *Orientation*, the mediator collects the facts about the conflict. He also gives room for both parties to talk about their emotions. Hereafter, the mediator tries to make up the balance.
2. *Understanding*, the mediator tries to start the communication between the conflicting parties. The goal is reaching common understanding.
3. *Comprehension*, after understanding, a new perspective on the other party might be possible.

4. *Negotiating solutions*, both parties try to look for solutions, and these will be put down in a sort of contract, or written agreement.
5. *Evaluation*.

Raymond Shonholtz, founder of the SFCB, hoped to establish an alternative justice system in the community, separate from the state system, which would be more responsive to local community needs and interests. He came out of a tradition of community organising (Merry & Milner 1993). The early SFCB used anti-law rhetoric's. The law was imagined as alienating and remote, a place where average people received poor services and their problems were not taken seriously.

Sally Engle Merry, who studied the SFCB intensively, concludes that mediation can be effective in conflicts between neighbours. When both sides become weary of the conflict and seek only to find a space where they are equal, mediation can provide an opportunity to declare a stopping point. Merry maintains that mediation is far less effective in producing just settlement when the parties are unequal, for instance employer-employee, landlord-tenant, domestic violence between parents and children, man and wife. The basic problem with conflicts between unequals is that mediation is a system of trading concessions. In order to reach an agreement, mediators have to build on the concessions the weaker party is willing to make. As a result, many respondents are reluctant to use mediation (Merry 1997). Importantly, inequality can also arise when a neighbourhood changes, new neighbours settle, former neighbours depart, and life style differences begin to merge with age, class, race and even sex differences (Elias & Scotson 1965; Lofland 1989).

#### *Community mediation as part community building*

When a neighbourhood changes through gentrification, urban renewal, or urban degeneration, neighbours are challenged to find a new mode of living together. In the 1980's, many neighbourhoods in the Dutch cities experienced problems of some kind with the relocation of residents. Old norms, mutual expectations and even minority rules were challenged by newcomers in the neighbourhood who did not comply to the cultural expectations of the 'old guard'. Coping strategies and identities, originally designed to create a bearable social climate, changed. Some old residents actively put pressure on the new, in order to make them behave in a 'socially' acceptable manner. In some places, this led to resentment. Residents started to avoid each other.

As a response, community mediation was introduced by local and central authorities as an instrument to re-establish a sense of community. Community mediation was a part of a comprehensive programme of social renewal. It was seen as an instrument to improve community safety and quality of life in the cities. After improving the houses, governments invested in bringing the social network in the neighbourhood closer to the people. Cities tried

to actively involve residents in community activities (like cleaning the street together, organising a neighbourhood party, etc.). Housing corporations were given a task in upgrading the social climate<sup>6</sup>. Social services were couched in the language of community-building, community policing became apparent and Justice Centres were initiated in the neighbourhood, situated close to and for the people (Boutellier 1996). This happened not, as in the United States out of a sense of community organising, but out of a sense of rebuilding social ties. All these parties were also initially involved in the implementation of the idea of community mediation.

### **Experiments with community mediation in the Netherlands**

In 1996-1997 three experimental projects were initiated in the Netherlands<sup>7</sup>, aimed at conflict mediation at the local community level; one is situated in Rotterdam (1996), one in Zwolle (1996), and one in Gouda (1997). The project in Rotterdam (the second city in the Netherlands, ± 600.000 inhabitants) concerns a comparative experiment in three distinctly different neighbourhoods. These neighbourhoods can be classified as an urban renewal area, a zone of transition and an area of cheap housing in high rise buildings. The quality of life in these areas is judged by the residents as fairly poor. Zwolle is a city with a population of 100.000 in eastern part of the Netherlands. The quality of life in Zwolle is judged as fairly good. Gouda - like Zwolle - is a middle-sized city, right on the edge of the Randstad (the western, densely populated part of the Netherlands). The quality of life is judged as average. For instance, many autochthonous residents claim there is a problem with the Moroccan ethnic community in Gouda.

The Ministry of Justice and the local council finances the projects in Zwolle and Gouda. In Rotterdam the local council, the community council and two housing associations finance the projects. On the ideological level the San Francisco Community Boards have inspired all projects. The idea of reinforcing the community is only implemented in Rotterdam. In Zwolle and Gouda one is mostly interested in resolving the conflicts. Community building is considered to be an unattainable goal.

#### *Initiating the project*

Starting an experiment like community mediation takes quite some time before it is working. In Zwolle the mediation started in the fall of 1996, in Rotterdam mediation started in the spring of 1997 in the first neighbourhood (Lombardijen), in the summer of 1997 the second neighbourhood followed (Schiemond), and recently (January 1998) mediation started in the third neighbourhood (Nieuwe Westen). In Gouda the mediation started in the fall of 1997. In all locations a professional is hired to help start up local projects. In Zwolle and Gouda this professional is affiliated with the local social service institution, and this professional input is meant to last. In Rotterdam, one was hoping that volunteers could take over the role of the

professional, but presently a facilitating professional institution is still necessary. In all the locations, thought is being given to the issue of excessive personalisation of the role of the professional.

### *Training*

In Rotterdam, Zwolle, and Gouda volunteers perform the actual mediations. The volunteers are recruited from inside the three neighbourhoods in Rotterdam, and from all over the city in Zwolle and Gouda. Volunteers only operate in their community. Not every citizen is suited to become a community mediator. Before one becomes a mediator, training by a professional mediator is required. The mediators-to-be are trained in communication skills. The most important part of the training is to develop the skill to deal with communication barriers like *blaming* and *claiming reparation or restitution*. The mediators are trained in active listening, to ask questions, and to reformulate the stories of the conflicting parties in a positive way.

A difficult aspect of the training is the position of the mediator in the conflict. The mediator plays a specific role in the mediation process. He or she is not allowed to actively participate in bringing up solutions. Also, a mediator is not allowed to direct the conflicting parties to a personal solution to the conflict. The mediator accepts the constructions of the reality of both the conflicting parties. He or she will try to support their emotions, while trying to uncover their wishes and interests. Most important, the mediator will not discuss the emotions, wishes or interests of the conflicting parties. The main purpose is to facilitate both parties in resolving their differences, by listening to the arguments, asking questions, and reformulating the stories. In some cases this can lead, as Merry indicated, to a tendency to bypass non-negotiable issues and taboos, such as violence in a relationship. Some topics cannot be discussed (Merry 1997). The role of the mediator in community mediation is therefore different from the role mediators play in conciliation or arbitration. The mediator in community mediation can be regarded as a facilitator or a panel chairman. In practice it took quite some time to teach the volunteers not to be directive in the mediation process<sup>8</sup>. It is a natural habit of people to think up solutions when people present their problems.

A big challenge for community mediation was trying to be successful in finding a representative community board in each neighbourhood. Critics doubted it was possible to find enough ethnic participation in the boards. In other resident-projects such as voluntary work, resident-boards, victim help, etc. this had previously been impossible. Critics were proven to be wrong in connection with community mediation. Through extensive communication, approaching self-help organisations, visiting schools, and meeting places, ethnic representation in the boards succeeded. Spokesmen of ethnic communities were approached and involved in recruiting members. In the end, each community board in Rotterdam had several ethnic members. Not only are most ethnic groups 'represented', the projects also succeeded in interesting young and elderly people, men and women in equal

numbers. The community boards became broadly representative of the communities they were functioning in. In Zwolle and Gouda they did not succeed to get a representation of the city. This was partly due to the fact that potential pool of mediators-to-be was much larger.

### *Two models of community mediation*

Although the experiments in community mediation in the Netherlands have all been inspired by the SFCBs, the implementation process has taken on different forms. In two years time, two models have developed: a neighbourhood model, and a city model.

The experiment in Rotterdam is most similar to the SFCB, even on the conceptual level. The 'boards' in Rotterdam are independent groups of volunteers, who are not directly associated with existing institutions in the community. The boards slowly broaden their working area, geographically, and with respect to their field of expertise (more different types of cases). Rotterdam is referred to as the neighbourhood model. Community mediation experiments in Zwolle and Gouda are instead situated within the local social services foundations. The community mediators are recruited and operate on a citywide scale. Zwolle and Gouda are representing the city model.

An important difference between the models is the scale of the pool from which cases are selected and the identification with a locality connected with it. The community board in the neighbourhood model only mediates in local cases; the neighbourhoods are approximately 4000 residents large. Local volunteers are mediating in conflicts between a local complainant (the first party) and a local respondent (the second party). The co-ordinator and the central co-ordinator of the neighbourhood model operate independently; they are not affiliated with an organisation or institution. Each of them has an independent agency. The community board in the neighbourhood model decides on the operational questions, for instance which cases to mediate and which not, how to operate with regard to privacy rules, when to meet, etc. The co-ordinator of the city model is on the pay-sheet of the social services bureau in the city concerned. The co-ordinator distributes the cases, organises meetings, intake procedures, after care procedures, etc. Where the sense of community is strong in the neighbourhood model, it plays no significant role in the city model.

Another difference is the degree of distance to professional workers in the field, the housing corporation, the police department, community workers. The community board in the neighbourhood model has only a short distance to professionals in the field. It is easier to run into one another and to discuss situations informally than it is in the city model.

On the other hand, selection of volunteers in the enrolment process in the city model is city wide, which provides for a bigger reservoir of volunteers. It appears that the level of education and income is somewhat higher than might be suspected from population statistics. This may seem advantageous, but in practice a higher level of education does not seem important with connection to mediations; good social skills are. Also, in the city model it is

more difficult to get a board of volunteers that is representative for the community. In the next table we will present an overview of the two models.

*Table 1 Two models of community mediation in the Netherlands*

	<i>City model</i>	<i>Neighbourhood model</i>
<b>Mediators</b>	Volunteers	Volunteers
<b>Pre-education</b>	None	None
<b>Mediation course</b>	Three day course	Three day course
<b>Scale</b>	The city	The neighbourhood
<b>Representation</b>	No issue	Representation of the community
<b>Housing</b>	Central Office	Neighbourhood building
<b>Professional support</b>	Central co-ordinator	3 local and 1 central co-ordinator
<b>Type of conflict</b>	Horizontal neighbour conflicts	Horizontal neighbour conflicts
<b>Selection of cases</b>	From all over the city	Exclusively from the neighbourhood
<b>Relation with neighbourhood</b>	Weak	Strong
<b>Effectivity</b>	Moderate drop out rate	Low drop out rate

The two models are largely similar. This is not surprising, considering the mutual source of inspiration.

### **Community Mediation in practice**

In this paragraph we will present the results of the experiments in Rotterdam, Zwolle, and Gouda<sup>9</sup>. As mentioned above, not all experiments started at the same time. In every city it took some time before the community mediators could start. The groundwork's for training, information, networking, and finding cases in the community had to be done, and the boards had to decide on intake procedures, privacy rules, registration, etc.

#### *Registration and nature of complaints*

During the research period 159 cases were registered in Zwolle, in Gouda 109, and in Rotterdam 94 (in the three neighbourhoods together). We choose not to discuss the results of each separate city or neighbourhood<sup>10</sup>, but instead use the two models of community mediation. Thus, in the city model there were 268 cases registered, and in the neighbourhood model 94 cases. Since the start there is a steady increase in cases. This is mostly due to the continuous increase in registration at the city model, though the neighbourhood model shows a more irregular picture.

At the start of the experiments, institutions like the police, the housing associations, and social workers were asked to cooperate by directing suitable cases to community mediation. During the start-up, residents needed to become aware that a new platform to settle

disputes was being set up in the community. Therefore, an important question is: who is making reference to the community mediation projects?

*Table 2 Registration of complaints*

	<b>City model (n=268)</b>	<b>Neighbourhood model (n=94)</b>	<b>Total (n=362)</b>
Self-registration*	34%	47%	37%
Housing associations	26%	38%	29%
Police	24%	4%	19%
Others	18%	11%	15%
<i>Total</i>	<i>100%</i>	<i>100%</i>	<i>100%</i>

\* A part of the self-registrations are those people who are told by other institutions to voice a complaint about the neighbours to the community boards.

In spite of the fact community mediation was a new phenomenon, more than one-third of the registration came from the complainants themselves. It is not strange the housing associations in Rotterdam directed a lot of cases, they were strongly involved in the project. One of the associations in Rotterdam actually initiated the project in the early 1990's. The amount of cases directed by the police in Rotterdam is, however, remarkably low. This is due to the fact that a lot of 'minor irritations' between neighbours disappear against the background of other social problems in a city like Rotterdam. This is less the case in Zwolle and Gouda.

What are the problems people complain about? In table 3 you will find an overview. In some instances more than one complaint was given. These complaints were registered as multiple problems. In the other instances the first (and dominant) complaint was registered.

Table 3 also shows the distribution of complaints in the Netherlands compared to the San Francisco Community Boards (SFCB). The data following from the SFCB were taken from an extensive evaluation project (Blad 1996; Merry & Milner 1993). Noise and garden/fence complaints are typical neighbour problems. Nuisance situations such as gossip, pet behaviour, children/teenagers, and litter/dirt could in fact be caused by residents living on the block, but the complainant attributes these 'incorrect' behaviour patterns to the neighbour. The same can be said about complaints about multiple problems and other complaints. Complaints about noise are by far the most important complaint in the community boards in the Netherlands. Compared to the San Francisco Community Boards (SFCB) this percentage is a lot higher. The other percentages are notably higher in the SFCB, especially insult/harassment/gossip and other complaints. The high percentage of other complaints is of course caused by a different manner of categorisation. Insult/harassment/gossip on the other

hand does show a significant difference in the amount of complaints that were mediated in the SFCB.

*Table 3 Nature of the complaints*

	<b>City model (n=268)</b>	<b>Neighb. Model (n=86)*</b>	<b>Total (n=354)</b>	<b>SFCB (n=2190)</b>
1. Noise	40%	53%	44%	18%
2. Insults/harassment/gossip	10%	6%	9%	27%
3. Pet behaviour	9%	6%	8%	10%
4. Multiple problems	6%	14%	8%	-
5. Children/teenagers	6%	7%	6%	-
6. Garden/fence	6%	1%	5%	-
7. Litter/dirt	4%	1%	3%	6%
Other complaints	19%	12%	17%	39%
<i>Total</i>	<i>100%</i>	<i>100%</i>	<i>100%</i>	<i>100%</i>

\* In 8 of the 94 cases the cause of the complaint is unknown.

Unfortunately, we cannot draw a distinctive picture of the characteristics of the first and second party. This is due to insufficient data<sup>11</sup>. But, we did find some interesting patterns. The first party is usually a little older than the second party. Women are filing the most complaints, since they are more at home<sup>12</sup>. There is also a tendency to complain more about residents with children, than about residents without children. Most of the people who file a complaint are autochthonous, only one third of the complaints concern allochthonous neighbours. Most of the complaints were already known by existing institutions like the police, housing associations or the local government. People were also asked if they already knew the possibility of community mediation. More than half of the first parties were familiar with its existence, while only one fifth of the second party had that knowledge.

#### *Effects of community mediation*

Community mediation is focussed on the restoration of communication between two conflicting neighbours. Naturally, such a process can take quite some time. It is also difficult to measure in objective criteria. In order to get an idea of the effects; we have divided the process of community mediation into four different phases. Whereby each phase works like a sieve.

- I. *Registration*, here we find the first selection of cases;
- II. *Intake of the first party* (the complainant), here the mediator decides if the case can be mediated and if the complainant wants his case to be mediated;

- III. *Intake of the second party*, here we find the same kind of selection as in phase II; and  
 IV. *Mediation*, both parties want to talk and come to an agreement.

In practice we found a wide variety of possible outcomes during the process of mediation. Logically we can distinguish four possible outcomes:

- A. The conflict is solved through mediation;  
 B. The conflict is solved without mediation;  
 C. The case is referred to another institution; or  
 D. The conflict is unplaceable.

In table 4 and 5 we give an overview of the case histories by combining the process and the outcomes. If you read the table horizontally, you will see per the outcomes per phase, as well as the drop out rate during each phase in the process. Vertically, you will see the outcomes related to the different phases. In other words, the rows are concerned with the process of mediation, while the columns are concerned with the outcomes of mediation. For instance; in the city model during the phase III (intake of the second party) 9% of the cases were solved without mediation, 4% of the cases were referred, and 22% of the cases were unplaceable. In phase III 35% of the cases were processed, this leaves 22% of the total registered cases to go to phase IV.

*Table 4 Case history at the city model*

<i>(n=268)</i>	<b>A. Solved by mediation</b>	<b>B. Solved without med.</b>	<b>C. Case referred to</b>	<b>D. Case not placeable</b>	<b>Total</b>
<b>Start</b>			100%		
<b>PHASE I</b>	-	-	12%	1%	<b>13%</b>
<b>After phase I</b>			87%		
<b>PHASE II</b>	-	10%	7%	13%	<b>30%</b>
<b>After Phase II</b>			57%		
<b>PHASE III</b>	-	9%	4%	22%	<b>35%</b>
<b>After phase III</b>			22%		
<b>PHASE IV</b>	19%	-	2%	1%	<b>22%</b>
<b>Total</b>	<b>19%</b>	<b>19%</b>	<b>25%</b>	<b>37%</b>	<b>100%</b>

Table 5 Case history at the neighbourhood model

(n=94)	A. Solved by mediation	B. Solved without med.	C. Case referred to	D. Case not placeble	Total
Start			100%		
PHASE I	-	-	21%	10%	31%
After phase I			69%		
PHASE II	-	5%	1%	9%	15%
After phase II			54%		
PHASE III	-	9%	1%	7%	17%
After phase III			37%		
PHASE IV	33%	-	-	4%	37%
Total	33%	14%	23%	30%	100%

When we compare both models, we notice several differences. First, the neighbourhood model shows a high dropout rate during phase I, 31% of the cases is referred or seem to be unsuitable for mediation. In the city model this percentage is only 13. An explanation for this difference could be the fact that the city model is more distant to people, which results in a first selection. In a neighbourhood the distance between people is less, which makes it easier to call community mediation with all kinds of problems.

During phase II and III we see a reversal of this pattern. The dropout rate in the neighbourhood model is low (II - 15%, III - 17%), while this is higher in the city model (II - 30%, III - 35%). The conclusion is when one reaches phase II the neighbourhood model led more people towards mediation and agreement. This is probably due to the proximity of the social relations. It is more difficult to leave the process when you know - although vaguely - the mediators. The city model may have mediated fewer cases; this does only apply to the percentages. When we look at the actual amount of cases, the city model seems steadier.

What is the effect of community mediation? Community mediation has three types of effect. The primary effect is defined as an actual mediation plus agreement (A). The secondary effect (A+B) is defined as situation A plus those conflicts solved by the parties themselves after having contact with community mediation (B). The tertiary effect (A+B+C) is defined as situation A or B or the case is referred to another organisation (C).

In table 6 we compare the effects between the city and the neighbourhood model. The neighbourhood model seems to be more effective in settling disputes between neighbours than the city model. From all cases in the city model, 37% is unplaceble. What remains is 63% and this is what we call the tertiary effect (agreement, solved by participants themselves and referred to other agency). If we narrow this down to the secondary effect (problem solved with or without mediation), the percentage is 38%. If we narrow this down to the primary effect (agreement through mediation), the percentage is 19%. From all cases in the neighbourhood model, 30% is unplaceble. What remains is 70%: the tertiary effect (agreement, solved by participants themselves and referred to other agency). If we narrow this

down to the secondary effect (problem solved with or without mediation), the percentage is 40%. If we narrow this down to the primary effect (agreement through mediation), the percentage is 22%.

*Table 6 Effects of community mediation*

	<b>City model (n=268)</b>	<b>Neighbourhood model (n=94)</b>	<b>Total (n=362)</b>
Primary effect (A)	19%	33%	22%
Secondary effect (A + B)	38%	47%	40%
Tertiary effect (A + B + C)	63%	70%	64%
No effect	37%	30%	36%

\* The three effects are cumulative, therefore adding 'no effect' to the 'tertiary effect' gives 100%.

### **Is there a niche for CM in the Netherlands?**

An important question with the introduction of an experiment like community mediation is to know if there is a niche for such an instrument viable enough to make it succeed. Local communities in the Netherlands are sometimes seen as overregulated from an institutional point of view. Every community has a lot of organisations and institutions to which a resident can turn to. We will analyse the institutional discourse with respect to community mediation, a newcomer on the institutional field. Later, we will address this question from a resident point of view, when we discuss the survey we conducted within the neighbourhood.

#### *Institutional perspectives*

The experiments of community mediation in the Netherlands must be seen in the light of the strong professionalisation in social work. In contrast with the USA - with its strong tradition of community organising and self-help organisations run by volunteers (Adriaansens & Zijdeveld 1981), the Netherlands can be characterised as a strong corporate welfare state with a high level of social organisation by professionals (Esping-Andersen 1990). At the neighbourhood level this translates itself into a sort of quilt of professional organisations, all concerned with helping neighbourhood residents. In this setting the question rises: will community mediation be accepted?

What is the communis opinio of professional (and voluntary) workers in the institutional environment? To examine this question we have conducted 150 half-structured interviews with professionals in the field, like community workers, policemen, social workers, doctors, lawyers, etc. Most respondents seem to think that in a complex, pluralistic society conflict is 'normal', often unintentional, and it has to be solved. Four types of visions can be

identified from our material<sup>13</sup>. Common in all interviews is the notion that *communing inevitably leads to conflict*.

In the first vision, the *instrumental vision*, low costs and effectiveness are the most important criteria. In this vision, spokesmen of the Police Department and Justice Department define community mediation as an instrument for conflict resolution, supplementing existing channels of conflict resolution. The type of argument used is mainly economic (reduction of the court caseload).

In the second vision, the *formalistic vision*, equal rights, equal treatment, and equal accessibility are important criteria. A situation where community mediation would function independently from existing organisations and institutions could mean a threat for its quality and authority. Legal and other procedures should be followed properly; otherwise community mediation could lead to escalation of neighbour conflicts instead of conciliation. Supporters of this view fear abuse of power, and corruption by the participants. It is inherent in this vision that community mediation has to be 'tested' by quality measures from other institutions. The type of argument used is mainly judicial.

A third vision, the *norm-forming vision*, sees community mediation as a way to establish and to reaffirm cultural expectations, values and norms that 'exist'<sup>14</sup> in the community. Through open and public discussions<sup>15</sup> citizens, e.g. neighbours learn (again) to behave as expected by others and to communicate social constructions amongst one another. The type of argument used is mainly sociological.

The fourth vision, the *service vision*, sees community mediation as a community service, provided by trained volunteers. People who ask for help in solving conflicts or discussing forms of nuisance ask a third party to provide the service of mediation (or panel chairman). The service vision maintains that people do not 'cause' problems 'on purpose'. Rather, they are not aware that their actions can be offensive for other parties. Conflicts and irritations arise from different interpretation of actions. Solutions for conflicts (and irritations) can be found by direct and private communications between neighbours, supported by a 'host' as the best way to eliminate miscommunications. The type of argument used is mainly socio-psychological.

The visions can be empirically attributed to different institutional settings. The instrumental vision is common among social engineers, policy makers, and politicians. The formalistic vision is common among police officials, public prosecutors and judges, lawyers and solicitors. The norm-forming vision is common among sociologists and community workers. The service vision is common among social researchers, doctors, volunteers and citizens, persons that have a need-based view of people and society as a whole.

The respondents are all positive about the initiative of community mediation. They support the bottom-up character of community mediation. And, they also acknowledge the

problems that result from too much professionalisation, like the problems concerning the referral and 'shopping' of clients, the fragmentation of assistance, the skimming off of the most promising clients, etc. (Spierings 1998a). There are many institutional channels for the resolution of all sorts of conflicts. But until recently, in the Netherlands, there were no channels for solving disputes about private nuisance between neighbours. Our research indicates that citizens and professional workers find community mediation a necessary supplementation to other conflict solving mechanisms.

*Is there a need for community mediation?*

Do citizens themselves say they need community mediation? We have asked 508 randomly selected community members in Rotterdam, Zwolle and Gouda. To examine the question of needs and interests we asked community members the following questions:

- *Do you have a conflict with the neighbours?* In the neighbourhood model 48% of randomly selected community members experience a nuisance<sup>16</sup> situation with the neighbours and other community members; in the city model this was experienced by 41%.
- *What forms of nuisance do you experience in daily life?* Some forms of nuisance are caused by people living in the neighbourhood (parking, pets, litter, and youths), some are mainly caused by people from outside the neighbourhood (fast driving, addiction/junkies) and some are caused by the neighbours (noise, strange smells, and litter). Therefore, not all problems are suitable for community mediation.
- *How often are your neighbours causing a nuisance?* In the neighbourhood model 22% of the people say the neighbours on a weekly basis annoy them. In the city model this percentage is a little lower: 11%. We may conclude that in big cities the problem of annoyance with the neighbours is bigger than in small cities.
- *How do you try to solve neighbour conflicts?* In neighbourhood model 21% of the community members have the occasional argument with the neighbours, vocal or otherwise (in the city model this percentage is lower: 17%). Of these people in the neighbourhood model 46% try to talk this argument over. Compared to that, only 1 in 20 community members ask a third party for help. Many people state they should solve neighbour problems themselves, but, in practice, many people do nothing.
- *Are you successful in solving the conflict?* As well in the neighbourhood model as in the city model, the results from talking out arguments by neighbours themselves seem not very promising. Half of the people - who are in conflict - try to talk. Only in one third of the cases people state that talking made the situation any better; one third states that the situation did not change after the talks; and one third states that the situation worsened (see also Ellickson 1991). In any case, the self reported success-rate is rather low.
- *Do you use other conflict solving mechanisms?* In the neighbourhood model 10% of the

community members has filed more than one complaint against the neighbour in the last year, with the police, the council or the social landlord. In the city model 2% has filed more than one complaint against the neighbours. Many community members state that complaining about the neighbours does not help to improve the situation. Many complainants are not satisfied. Neither talking to nor complaining about the neighbours seems to lead to a solution for this problem.

It appears that many community members do have a positive attitude towards community mediation. In total, 60% of the community members in the neighbourhood model say they will use community mediation in the future, and this applies to 43% in the city model. Importantly also, community members report that many conflicts stay unresolved. From this perspective, one might conclude that these problems are lying *dormant* in communities. This could explain the deterioration of the quality of life in neighbourhoods, the unravelling of social fabric and the feelings of unsafety. Could it be possible that these conflicts are ready to leap to the surface if the circumstances change?<sup>17</sup> Community mediation places these conflicts in a communication form. It prevents the unexpected and unregulated manifestation of conflicts. The survey reveals there is a need for community mediation.

Seen from a lifeworld perspective, community mediation is a legitimate supplementation to the existing channels of conflict resolution. There seems to be a surplus of unresolved neighbour conflicts, which points to a structural social problem. For two thirds, communication without an intermediary seems to lead to communication breakdown and the end of the 'neighbourly' relation, moving to another house and neighbourhood or letting the conflict 'slumber'. Not many people use other institutional channels to complain about the neighbours. Of those who do, most are not satisfied with the official handling of their complaint.

### **Discussion: approaching neighbours in the lifeworld**

The above analysis leads us to several questions. What should be the starting point of community mediation? Should one choose a city model or a neighbourhood model? And, the underlying question: should one focus on whole neighbourhoods or just neighbours? The first question deals with the practical set-up of community mediation, while the second question raises a more fundamental point.

The answer to the first question seems easy, if we look at the experiments in the Netherlands. The neighbourhood model seems more suitable to re-establish a sense of community between members of a neighbourhood. The neighbourhood model shows better results in the mediation process, on the other hand the city model offers more continuity. A large scale has the advantage of a larger social reach and better continuity in the intake of cases. When we also look at the history of the SFCB, we can conclude that it is possible for a

neighbourhood model to grow towards a city scale.

If one's goal is to introduce community mediation to solve conflicts between neighbours, and at the same time to re-establish a sense of community, starting with the neighbourhood model seems the best choice. As we stated earlier, professional workers are in favour of a bottom up approach by settling disputes between neighbours. They support the idea to intervene directly in the lifeworld of people<sup>18</sup>. This is considered as the only way to really motivate and empower people to solve their conflicts. The role of the mediator is hereby to facilitate the possibility for people to solve their conflict together.

If we start with a neighbourhood model the question remains: in what neighbourhood do we start? If we look at the experiments with community mediation in the Netherlands, we can observe the projects were started in well-known problematic neighbourhoods. This implies those areas in cities where social problems accumulate. The choice for these kinds of neighbourhoods seems obvious. However, we will argue this choice rests on a fallacy, namely the fallacy to equate neighbourhood problems with problems between neighbours.

Neighbourhood problems are problems situated on a meso-level, while problems between neighbours are taken place on the micro-level. The fact that a neighbourhood is qualified as a problematic area does not say anything about the relationships between the inhabitants of that neighbourhood. Problematic neighbourhoods are measured by the combined percentages of amount poverty, unemployment, high crime rates etc. To conclude from these indicators that neighbours are in conflict with each other, seems a too hasty step<sup>19</sup>. Neighbourhood problems are mostly social-economic problems, while problems between neighbours are mostly lifestyle conflicts. Although the two kinds of problems sometimes show some overlap, they are different. Ignoring this difference can be an explanation why community mediation seems to work fine in neighbourhood A, while it is not really successful in neighbourhood B.

Nowadays, there seems to be a trend in Dutch local government to finance all kinds of projects in the neighbourhood. Instead of earlier social policy, which was focussed on categories of people, the tendency now is to finance areas e.g. neighbourhoods. The selection of neighbourhoods is based on 'objective' criteria, and not on the experience of neighbourhood members themselves, probably influenced also by the availability of European funds stimulating backward areas. When one does not differentiate between neighbourhood problems and a problem between neighbours, the same kind of stigmatisation known from social policy for categories will happen to neighbourhoods (compare Hortulanus 1995). And the same disappointments will arise regarding the effect of the social policy. Therefore, to deploy community mediation to approach problems between neighbours on a meso-level is undesirable.

Community mediation works on the micro-level of the lifeworld: the house, the block, or at most, the street. Both the concept of 'informal justice' (Merry 1997) and the anti-law

rhetoric's (Shonholtz 1993) seem too narrow to describe community mediation as a conflict solving mechanism in the Netherlands. Community mediation can better be seen from the viewpoint of a sort of DIY-rhetoric's (do-it-yourself rhetoric's). Most of the professionals we interviewed agree with the idea that people have to deal with their own neighbours when having a conflict. It makes no sense to use courts to rule in mentality problems, because it will not be effective. Supported by the research material presented here, it is important to have a conflict solving mechanism in the neighbourhood for problems that exist close to the people. Neighbours are:

- Dependent upon one another for a safe and pleasant environment;
- Geographically close and bound to some kind of a relationship; and
- Not successful in solving conflicts by themselves (although they think they are supposed to be).

Based on this typical relationship, a conflict-solving mechanism has to be:

- Voluntary, together with a mediator (catalyst) led by community members, in the vernacular language chosen by the participants;
- Based on active participation, by people defining their own problems, and choosing their own solutions, maximising chances for personal commitment; and
- Based on a horizontal model of problem solving, instead of an adversarial model, maximising chances for lasting relationships.

The evolution of a manner of conflict solving combining these three ingredients can best be understood with the concept of *autonomisation*. By this concept we mean the process by which residents (neighbours, and volunteers) try to (re)capture the conflict solving action space in the community and with that increasingly reclaim control over their lifeworld<sup>20</sup>. The process of autonomisation can also be seen as the opposite of Habermas's idea of the 'colonisation of the lifeworld' (Habermas 1987). Community mediation can empower people to turn around the increasing colonisation of the system into the lifeworld. Instead of dealing with people on a meso-level, the process of autonomisation starts at the micro-level. The role of the (local) government will change in this perspective from an impersonal regulating system into a facilitating organisation, which is based on the needs of citizens.

### **Summary and conclusion**

Community mediation is not only concerned with solving problems, but also with re-establishing durable relationships between neighbours. This form of participation can lead to 'empowerment' - the idea that people feel their actions 'make a difference' – not only of the conflicting parties involved but also of the volunteers that help to settle the dispute. Community mediation tries to be more responsive to local community needs and interests. If both the interests and the emotions of disputants can be addressed and reasonably satisfied<sup>21</sup>,

one might assume that the non-legal agreement or contract would hold up without force of law or formal authority.

The experiments in Rotterdam, Zwolle, and Gouda show there is a need and a niche for this kind of dispute resolution in daily life. There is a market for community mediation. Which market, however, is a subject of considerable debate. The Ministry of Justice, financing several projects, would like to see community mediation as a way to reduce court case loads, and as a way to intervene before conflicts escalate. The Ministry of Internal Affairs, and local councils (both responsible for the police force), view community mediation as a way to improve (feelings of) public safety. Finally, social services and housing associations define community mediation as a way to improve social cohesion, community building through empowerment and participation.

A need orientation to solving conflicts can be an important starting point in a process of institutional analysis. Through time, institutions can become inflexible, fossilised. Seen from the needs, interests and opportunities of the citizens, conflict solving institutions can become unresponsive to human needs, somebody else's institution. From a need-oriented e.g. service vision, it is important that community mediation can develop in an inductive way, bottom up, pre-institutional, by people defining their own problems and by mediators accepting (and starting from) the definition of the situation made by the disputant and the respondent. If institutions can be fine-tuned, rejuvenated, by mirroring them against instruments that are embedded in the daily lifeworld, space is given for changing needs and mores to boil to the surface<sup>22</sup>. This holds especially true for community mediation in the Netherlands.

In this article, modern society is characterised by processes of rationalisation, professionalisation, and formalisation of relations. Institutions - like governmental organisations, social welfare systems, etc. - approach their clients in a top-down manner. Not the needs of citizens, but the supply perspective of the institutions has become dominant starting point for support. This supply perspective is becoming out of date in a late-modern (or post-modern) society, with its emphasis on cultural pluralism, and individualism, governed by market rhetoric's. We understand community mediation as a way for people to reclaim the ownership (cf. Christie 1977; Gusfield 1989) of conflicts that originated in the lifeworld in the first place. In this respect community mediation can be considered a clear example of a process of autonomisation.

## Notes

<sup>1</sup> This article is based on research both authors conduct together with Vanessa van Alena, John Blad, Stijn Hogenhuis and Wiebe de Jong (program director). All are working at the Faculty of Law, Erasmus University Rotterdam. For more information, email: peper@frg.eur.nl, phone: +31-10-4082353.

<sup>2</sup> Our colleague John Blad has reported earlier on the experiments in Netherlands in this journal (Blad 1996).

<sup>3</sup> This is not so much a conflict of interest, or a value conflict, but a conflict about not fulfilling lifeworld (silent and daily) expectations, e.g. a lifestyle conflict. See also Aubert's distinction between types of conflict (Aubert 1963).

<sup>4</sup> We understand the concept of the lifeworld in accordance with the work of Alfred Schutz (Schutz 1967).

<sup>5</sup> Furthermore, nobody knows when the conflict will be solved. This leads to an uncertainty that can have a tremendous effect on the psychological well being of people (compare Erikson 1995).

<sup>6</sup> Since the mid 1990's housing associations are required to take care of the quality of life. This is considered to be a regular part of their work.

<sup>7</sup> Gorinchem (33.000 inhabitants) has adopted a third model. In Gorinchem there is a professional mediator, and a contact officer working for the police department. Contact officers working for the housing associations redirect all the cases. Gorinchem can be referred to as a 'professional model'. In Gorinchem the experiment started at the end of 1997.

<sup>8</sup> We can distinguish between *evaluative* and *facilitative* mediation. When mediation is evaluative the mediator actively introduces a third party view to assist to settle the dispute. The facilitative mediation implies no third party view, the mediator only facilitates the possibility for two parties to settle their dispute (Mackie, Miles, & Marsh 1995). The latter is the case at community mediation.

<sup>9</sup> Our material is collected in two ways. We used the unstandardised registrations and notes of the projectmanagers in the three cities. We discussed all case material intensively. We also used so standardised registration forms, which were developed by our team of researchers in cooperation with the projectmanagers. Unfortunately, these standardised forms were not systematically filled in.

<sup>10</sup> In september 1999 the research report "Bemiddelen bij conflicten tussen burenen. Een sociaal-wetenschappelijke evaluatie van experimenten met Buurtbemiddeling in Nederland" will be released. In this report we describe each location in more detail.

<sup>11</sup> We agreed with the projectcoordinators they would keep the registration, but this was not done reliably (see note 9).

<sup>12</sup> This is also an effect of the (still) low participation of women in the dutch labour process.

<sup>13</sup> Our material is based on interviews conducted before and after implementation.

<sup>14</sup> Exist as social facts cf. Durkheim.

<sup>15</sup> Compare this with Merry's analysis of mediation in traditional small-scale societies (Merry 1982).

<sup>16</sup> Nuisance is defined as 'annoyance', 'argument' and 'insult'.

<sup>17</sup> The Netherlands has no history of big racial conflicts or other forms of social unrest, like Birmingham 1982 or Los Angeles 1996.

<sup>18</sup> A recent report of the city of Amsterdam points in a similar direction (Gemeente Amsterdam 1999).

<sup>19</sup> Goris makes a similar remark when discussing the introduction of neighbourhood justice centers in Belgium. The succes of programs on community safety are dependent on a firm social policy that is occupied with raising the quality of life in the so called 'bad neighbourhoods', and not only focus on safety aspects (Goris 1996).

<sup>20</sup> In this respect autonomisation can be seen as the opposite of alienation.

<sup>21</sup> Merry makes an important remark by pointing to the implicit power differences between the conflicting parties. These differences are mostly not given attention in the mediation process (Merry 1997). Unfortunately, due space and time constraints, we will not explore this further.

<sup>22</sup> Important in this respect is the consideration that society, even as an objective reality, is a continuous product of human conduct (cf. Berger & Luckmann 1967).

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