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The Promise in Palestine?

Examining the Applicability of the

Transformative Mediation Framework in a

non-Western Context

Erin Dyer

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Summary

"The Promise in Palestine? Examining the Applicability of the Transformative Mediation Framework in a non-Western Context" focuses on broadening the study of Transformative Mediation Framework (TMF) to investigate its potential outside of the Western context. TMF, as developed by Prof. R.A.B. Bush and Dr. Joseph Folger, considers conflict to be a crisis in interaction. As a result, the TMF approach to conflict focuses on the dynamic interplay of both individuality and the connection with others. Evolving out of a Western context, TMF has been the subject of discussion, debate, application and consideration at a variety of levels, including government bodies, community organisations, and interpersonally. What, if any, relevance does TMF have in areas of the world that are not considered Western?

Local Palestinian conflict resolution processes, such as the indigenous peacemaking process of *sulha*, operate in a complex societal context where the greater conflict relating to Israeli occupation pervades into the daily lives of the citizens, and conflicts however small can escalate quickly. Palestinian societal norms of collectivism, religion, and patriarchy imply that mediators attend to conflict in a particular way. TMF outlines the relational ideology that is at the core of its mediation practice, as well the role of the mediator in the process. By interviewing local mediators in the occupied Palestinian territory (oPT) who use a traditional conflict resolution practice, key distinctions were found in the ideology and practice of each system. This thesis answers the questions about existing theory and practice of volunteer mediators from the oPt and whether their approaches to conflict are conducive to the theory and practice of TMF.

Through examining how a non-Western society confronts conflict and contrasting the theory and practice of *sulha* and TMF, this study adds to the existing debate of what matters most in conflict. Further, it considers how culture and ideology are key in determining how conflict practices are developed.

Key features include:

- An examination of current Western mediation theory as well as theories surrounding culture and conflict resolution.
- A case study that included field research in Bethlehem, occupied Palestinian territory, and interviews with practicing mediators to identify the working theory of conflict resolution used in context.
- A thorough analysis of the themes that emerged from Bethlehem mediators, as well as the distinctions between the indigenous model and transformative practice.

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Zoughbi Zoughbi, the director of Wi'am, graciously aided my field research by contacting all of the local mediators that were interviewed. I owe Zoughbi, and all of the mediators who agreed to be interviewed about their role in Bethlehem, recognition for their contribution to my study. At Wi'am, I

List of key terms

List of Arabic terms

'Atwe: A token payment by the offending party to signify good faith, remorse and security towards a *hudne*.

Diya: 'blood money,' the compensation paid to a victim's family upon a sulha agreement. Also see *taawir*.

Hudne: 'Ceasefire,' a temporary truce period set by the *jaha* and agreed upon by the parties that marks the first stage of *sulha*.

Islah delegation: 'islah' means 'to repair' but can also mean 'to bring reconciliation'. The *islah delegation* comprises of respected and trusted male representative members making up the *sulha* or *jaha* committee who will lead the process of *sulha*. Respected male elders are chosen for their standing in society with regards to honesty, trustworthiness and credibility at handling conflict and difficult situations.

Jaha: See *islah delegation*. *Jaha* was the predominant term used in field research.

Mukhtar: 'Chosen,' a selected, respected leader of a group or village

Sulh: 'Settlement,' used in literature to mean the full settlement process, with the intent that those entering the process do so to end conflict and resume amicable relationships, which is marked through the final, public stage of *sulha*.

Sulha: 'Reconciliation,' used by this thesis to mean the *process* of reconciliation as well as the *end result* of reconciliation. This stage is reached when parties have agreed upon reconciliation and forgiveness. It is celebrated publically once agreement is reached, marked with ritual food and coffee.

Taawir: Compensation paid by the offending party to the victim's family in cases of non-murder.

List of cultural and conflict resolution terms

Mediator: A third party who intervenes between parties in conflict at their request through the process of mediation.

Mediation: One in a range of conflict resolution processes where the parties involved in the dispute work with a third party to come to an agreement on how to proceed. Typically in Western practice, this means a stage model

including introduction, story telling, identifying issues to discuss, bargaining, and final agreement.

Transformative Mediation Framework (TMF): Party controlled mediation, underscored by a *relational ideology*. Unlike in a stage model of mediation, parties enter into transformative mediation with the aim to gain clarity on individual decisions and responses (empowerment) as well as the potential for the ability to consider the alternative party's perspective (recognition), without pressure placed on mediator or parties for resolution or settlement.

Non-western: Regions that are still developing, have a history of economic struggle, colonization and insecurity.

occupied Palestinian territory (Opt): Used by the United Nations' Office for the Coordination of Humanitarian Affairs (OCHA) to describe the broad area also known as the West Bank and Gaza.

Palestinians: Those living within and beyond territorial boundaries of the 'imagined political community' of the Palestinian nation, as described by Anderson.

Relational ideology: The ideological foundation for the Transformative Mediation Framework (TMF) that suggests that all people are both striving for individual autonomy as well as social connection.

Western: Originating from Europe or North America and sharing common political, economic, legal and governmental systems.

Table of Contents

1 Chapter 1: Introduction and Methodology

Introduction

As a conflict resolution strategy, mediation has proven to be a resilient method of settling disputes worldwide. Yet, the practice of mediation is subject to cultural variation and ideological interpretation. Indeed, Kevin Avruch remarks "Conflict resolution looks rather different depending on which sense of conflict we begin with."[1] In the United States, the Transformative Mediation Framework (TMF), developed by Dr. Robert A. Baruch Bush and Dr. Joseph Folger, evolved from a culture of individualism and problem-solving.[2] In its thesis, TMF was distinguishable by the focus placed on the existence and impact of mediator ideology on the process, the establishment of a relational ideology in its foundation, as well as the articulation of the importance of the qualitative effects for the parties involved. This theory of conflict transformation has engaged scholars and practitioners across North America, Europe and Australia. Yet outside of a 'Western' cultural context, the framework is unknown. The question remains: is the Transformative Mediation Framework relevant outside of the 'West'?

This chapter will establish the introductory elements of the thesis, including the main arguments considered throughout, a broad thesis overview chapter by chapter, and a detailed presentation of the methodology applied in this study. The methodology section includes explanation of the 'interpretive qualitative' research paradigm as articulated by Dorothy Della Noce that was used in approaching the research as well as the research design model implemented in mapping the thesis. The rationale for the use of a case study, as well as how existing literature and primary fieldwork were blended for this research is explained, including details on how the interviews

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[1] Avruch, Kevin. *Culture and Conflict Resolution*. Washington, D.C.: United States Institute for Peace Press, 1998, 24.
[2] Transformative mediation was first discussed at length in Bush, Robert A. Baruch and Joseph P. Folger. *The Promise of Mediation: Responding to Conflict through Empowerment and Recognition*. 1st ed. San Francisco, CA: Jossey-Bass, 1994.

were conducted. Lastly, this chapter lists the definitions of terms, groups and contexts found commonly within the thesis.

1.1 Main arguments

The practice of mediation is varied even within the same cultural context. However, the authors Bush and Folger make the argument that theory drives practice. They establish the position that ideology, that is, ways of interpreting the world, inevitably affect the way in which practioners approach their work. In the mediation field, particular views on the nature of human beings, what conflict is, how one can acertain that a conflict intervention is going well or poorly, and what role, if any, that social institutions should have in the field of conflict resolution will guide a mediator into an associated model of practice. Using this logic, Bush and Folger describe two models and their associated ideology in the West: Problem-solving mediation and Individualist ideology, and Transformative mediation and Relational ideology.

Given a case study in the Middle East, this thesis uses the underpinning elements of the TMF approach and considers these in a cultural context that differs significantly from the Western basis for the model. The selected case study is located in an area of enduring broader regional conflict, holding the potential for further distinction in worldviews. Culture and its value in conflict resolution has been established by academics and practitioners such as Avruch and Black, Abu-Nimer, Irani, Funk, Zoughbi and Jabbour. TMF is considered with appreciation that it is not an indigenous model within the case study, but that TMF could be of potential interest outside of the confines of the West.

A case study was undertaken in Bethlehem, in the occupied Palestinian territory (oPt) of the West Bank, 10km south of Jerusalem.[3] The

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[3] The term 'oPt' is adopted for the purposes of this thesis. Noting the controversial nature of the land designation in this part of the world, the term oPt is used to describe the Palestinian regions in the broadest sense, using a recognized United Nations term that underscores the occupation by Israel on these lands, and the Palestinian demographics within these borders. The use of 'West Bank' is limited to the geographical confines of the West Bank, and 'Gaza' is used for the geographical confines of Gaza. 'Palestine' and 'Palestinians' are used where

interviews that were conducted with experienced mediators affiliated with
Wi'am produced an array of responses that were coded for themes relevant
to this study. *Sulha*, a traditional Arab model of conflict resolution, focuses on
mediator influence, restoring harmony and honour, and public
acknowledgement of the ending of conflict. Those interviewed described
their views on human nature, conflict in general, what successful and failed
conflict resolution might entail, and the role that the social institutions
should have in the process. The cultural realities specific to the Arab world
provided by Abu-Nimer, Irani, and Jabbour in the discussion on culture and
conflict resolution proved accurate.

Cultural sensitivity and respect are necessary in this and any study
involving a cross-cultural analysis. The conclusions made in this study are
based on the literature involving Western mediation theory, culture and
Middle Eastern approaches to conflict, and primary field research to the oPt.
These provide a basis for TMF within a non-Western context with careful
consideration.

1.2   Thesis Overview

The approach for analysing this overarching question consists of reviewing
existing literature in: (Chapter 2) Western-based mediation practice, (Chapter
3) the influence and importance of culture and conflict resolution, and
Middle Eastern-specific approaches to conflict resolution, as well as (Chapter
4) providing a detailed overview of the case study, (Chapter 5) undertaking
primary field research in the oPt and (Chapters 6 and 7) analysing the results
based on specific theory questions (TQ) and central research questions (CRQ).

1.2.1   Chapter 1: Introduction and Methodology

Chapter 1 aims to give an introduction to the research project and the
specific methology used. The purpose of this is to provide a basis and reason
behind attempting such a study and the approach used to analyse data and

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relevant in either referring to the literature or by use by an interview participant. This is
further discussed in Chapter 1.6.

return conclusions. The conceptual framework that guided the study and the research design model that structured the thesis is provided in detail, including the specific interview questions, TQ and CRQ drawn on throughout the dissertation. In addition, the rationale for the choice of using case study and conducting interviews is explained. In the methodology section, the general method and detailed information pertaining to the conduct of this study is presented, including information pertaining to the conducted interviews, rationale for targeting the case study location and participants, considerations influencing results or the interpretation of results, as well as the analysis and interpretation of interview material. The chapter ends with a series of definitions of terms, groups, and contexts.

1.2.2 Chapter 2: Theoretical Perspectives on Mediation and the Third Party Role

Chapter 2 provides an overview of the theoretical perspectives on mediation, with a focus on Western-practice. After a brief history of mediation and the third party role, the concept of ideology is explored and considered in the context of third party intervention. Ideology is the basis used to share four dominant stories of mediation that are told by practitioners today, according to Bush and Folger; these include Satisfaction, Social Justice, Transformation and Oppression. In each story, the general, if divergent, views of what the purpose of mediation is, the role of the mediator, and the aims of the process are discussed. Two of these stories, Satisfaction and Transformation, are the basis for the remainder of the chapter to discuss Problem-Solving, the prevailing model of mediation and its underlying ideology, and TMF, a more recent model and its underlying ideology. Individualist ideology is explored through its historical relevance and influence in Western society, and later discussed as the underlying ideology of the Problem-Solving model. Conversely, Relational ideology is presented as an emerging worldview that is later discussed in context of being the underlying ideology of TMF. These two approaches are discussed as a basis for Western-based mediation models,

and the manner in which they are discussed are used later in the dissertation to provide analysis for the TQ and CRQ.

1.2.3 Chapter 3: Theoretical Perspectives on Culture and Conflict Resolution

Chapter 3 delves into the theoretical perspectives on culture and conflict resolution. Working definitions of concepts of culture, 'Western' and 'non-Western' are given early in the chapter with associated rationale for use. Culture and conflict resolution is then discussed both in broad terms and with consideration for the regional case study. Middle Eastern approaches to conflict resolution are explored generally, and the comparison between Western and Middle Eastern values on the individual and the community. Concepts of conflict within the Middle East are presented and the understanding of the role of the third party from Arab authors are considered. The impact of religion, specificially Islam, is taken in the context of the Middle East and its methods of conflict resolution. Lastly, the indigenous conflict resolution model that continues to find relevance and use in the case study is introduced. *Sulha*, a traditional Arab conflict resolution method, is outlined in this chapter and will be referenced throughout discussion of the case study, field research and analysis.

1.2.4 Chapter 4: Case Study: A Brief History of Palestine and Conflict Resolution

Chapter 4 gives an introduction to the case study location and the history of *sulha* in the region throughout the ages. Early history begins with mentions of *sulha* and conflict resolution in the pre-biblical eras of ancient Canaan, Israel and Palestine through the Roman Empire, the Arab invasion and the Ottoman Empire. More modern history includes the use of *sulha* through the Ottoman Empire and the European involvement in the locale, including the rise of Zionism, World War I and the British Mandate, the establishment of the state of Israel, and Six Day War. Recent history and the impact on *sulha* involves

mention of the first and second intifadas, the role of the Palestinian National Authority (PNA) and current Palestinian demographics in the oPt. Finally, the city of Bethlehem in the oPt is unveiled as the case study location and the organisation *Wi'am*: Palestinian Conflict Resolution Center is offered as the base for field work and interviews with mediators within Bethlehem.

1.2.5   Chapter 5: Wi'am Field Research

Chapter 5's main function is to present the primary field research findings. Presenting summaries of each of the nine field interviews with local practicing mediators based on a set of relevant interview questions, the translated answers are intended to provide brief, accessible responses from the interview participants. They are a collection of interviews from mediators across society, including insights from mediators who are Bedouin, refugees, lawyers, politicians, businessmen, and teachers.

1.2.6   Chapter 6: Theory Question Analysis

Chapter 6 is the first of two chapters of analysis. Following a review of methodology established in Chapter 1, the chapter continues with the Theory Question (TQ) analysis. Using the primary data collected in field research, this analysis targets the questions posed relating to theory, including the views of human nature, conflict, productive conflict, destructive conflict and social institutions. The aspects of society influencing these views are considered, namely family, religion as well as government and politics. The reality for those who mediate disputes is discussed, as are the prerequisites that are commonly associated with the role of mediator in Bethlehem. Also considered are the effects of community conflict on the macro-level of greater society and with Israel, in addition to the effect of the broader and protracted conflict between the oPt and Israel on conflict at the micro-level of society.

1.2.7 Chapter 7: Central Research Question Analysis

Chapter 7 is the concluding chapter on analysis. Focusing on the Central Research Question (CRQ) Analysis, this portion of the dissertation compares the practice of mediation in Bethlehem with TMF. The chapter begins by considering an Organic ideology of Bethlehem and contrasting this with the Relational ideology of TMF. The chapter continues by outlining the expectations of the third party in a Bethlehem context, and setting these alongside the expectations within a transformative framework. The central intervention practices of Bethlehem mediators are presented, and distinctions from the intervention processes in TMF are discussed. In the fourth section, the Bethlehem Story of Mediation is developed with the support of the Social Justice Story as discussed in Chapter 2. In addition, the concept of Harmony, an additional story not included in Bush and Folger's outline of popular mediation 'stories', is used to incorporate concepts of collectivism, religion, the third party mandate, and societal pressure into the Bethlehem Story. Distinctions are made between the Transformative Story and the Bethlehem reality. The mediation stories assist in supporting the CRQ through using narratives to communicate how mediators understand and place their work in the context of society. Lastly, the CRQ are reflected upon given the analysis provided, and concluding points are made regarding the relevance of TMF in a non-Western context.

1.2.8 Chapter 8: Conclusions and Suggestions for Further Research

Concluding statements and suggestions for further research are provided for in Chapter 8. This chapter reviews the goals of the thesis and research process, includes observations and reflections on the research, and considers both practical implications of the research and possibilities for future research as a result of this study. What informs these practical implications and possibilities for future research are the conclusions reached through the research analysis. Among these conclusions are the deep ideological, practical, and narrative distinctions that frame *sulha* and transformative practices. By applying the structure of argument used by Bush and Folger

(discussed further in 1.3.2), practitioners who feel as if their values are in line with the transformative model will adopt TMF, but the adaptability is limited to those that consciously align their work to embody the core transformative value of party capacity for empowerment and recognition. This chapter outlines possible opportunities to employ the model, but acknowledges that there is a need to respect local facilities of conflict resolution – in this case, in the form of the highly regarded and widely used indigenous process of *sulha*.

1.3 Thesis Methodology

This section of the chapter will examine the methodology used in this research, namely through exploring an (1) 'interpretive qualitative' research paradigm, as articulated by Della Noce, as well as through (2) a systematic, layered analysis of ideology, third party role, key intervening strategies, and mediation stories to illustrate the central questions about the way mediators understand, interpret and apply their conflict ideologies in a politically-divided, non-Western societal context. This approach enabled exploration of perceptions of conflict and its resolution with local mediators practising traditional processes to shed light on whether these methods correlate to the Transformative mediation framework and its relational ideological underpinnings. The research design model is outlined to demonstrate the research purpose, conceptual context and research questions. The rationale for a case study as well as the methods used in considering both existing literature and a case study with fieldwork is articulated. This chapter concludes with definitions of terms, groups and contexts found commonly within the thesis.

1.3.1 Interpretive Qualitative Research Paradigm

Qualitative research describes the array of approaches used to formulate, interpret and analyse questions across a number of academic fields. Della Noce described the 'interpretive qualitative' research paradigm as one that incorporates a variety of paradigms based on core assumptions on the nature

of the social world. Denzin and Lincoln articulate that qualitative researchers are guided by highly abstract principles that combine beliefs about ontology, epistemology, and methodology, which shape how the researcher sees the world and behaves in it.[4] For Della Noce, this paradigm or interpretive framework includes:

> a relativist ontology (the belief that the human world is
> composed of multiple, constructed realities); subjectivist
> epistemologies (the researcher and the subject influence
> each other and create understandings together), and
> naturalistic methodological procedures (the data of interest
> are obtained in the natural world rather than through
> laboratory experiments).[5]

This same paradigm is used in this study as a foundation to understanding the perspectives, theoretical approaches and methodology employed. The relativist ontology perspective requires an appreciation that the comparative nature of the research undertaken in this study necessitates an understanding that the theory and practice of mediation employed by one culture may or may not differ from those used by another culture, or only partly, and that further realities are likely to exist. Second, the qualitative approach used by the researcher in this study involved in-person interview and alteration of questions where necessary to come to an understanding of what was being asked of the participant, and what response was being given to the researcher. As a result, both researcher and participant influence one another through interaction. Lastly, through fieldwork, this study incorporated naturalistic methodological procedures to arrive at conclusions from the data rather than through laboratory testing.

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[4] Denzin, Norman K. and Yvonna S. Lincoln. "Introduction: The Discipline and Practice of Qualitative Research." In *The Sage Handbook of Qualitative Research*, edited by Denzin, Norman K. and Yvonna S. Lincoln. Thousand Oaks, CA: Sage, 2005, 22.
[5] Della Noce, Dorothy. "Ideologically Based Patterns in the Discourse of Mediators: A Comparison of Problem Solving and Transformative Practice." Temple University, 2002, 81.

1.3.2 Structure of Argument

In Chapter 2, while discussing an overview of mediation and the third party role, and in Chapter 7, in providing the final analysis of the literature and the field research, a specific method is used to explore the central research questions. Through a gradual discussion of mediator ideology, the expectations of the third party role, the story of mediation and specific intervention strategies within distinct mediation practices, the same structure of argument is used to illustrate the central characteristics of the model adopted by mediators affiliated with *Wi'am*. TMF has identified mediator ideology as a key rationale behind practice. The relevance of TMF within this context is discussed through consideration of whether the ideologies of mediators affiliated with *Wi'am* align with existing Western mediator ideologies articulated by Bush and Folger, or with a decidedly local worldview.

Further, the use of mediation stories assists in distinguishing the values and purposes of mediation as articulated across a range of practitioners. Within the context of Bethlehem, the mediators of *Wi'am* told particular stories about their work, which underlined the reasoning for their roles, the rationale of the model, and the cultural values that it promoted. This structure of argument has been used by Bush and Folger in the past, and has repeatedly provided a clear analysis. For this reason, mediator ideology, the third party role, specific intervention processes and mediation stories are used as a way to explain the characteristics of the model adopted by mediators of *Wi'am*.

The structure of argument describes how Bush and Folger articulated TMF in terms of ideology, third party role, and intervention strategies initially and subsequently in both editions of *The Promise of Mediation*, as well as undergraduate coursework in Folger's module on Mediation at Temple University in Fall 2002, and in Folger's most recent article in the 2008 North Dakota Law Review. This line of argument is also seen in Della Noce's doctoral thesis when undertaking the discourse analysis of problem-solving and transformative mediators.

1.4   Research Design Model

This study adopted a cross between the Rose-Wengraf Model of the Research process,[6] and Joseph Maxwell's Model of Design Components.[7] In the Rose-Wengraf stage model, the conceptual framework leads to a central research question for the researcher to answer. Five elements support the inquiry into the research: a general theory, theoretical propositions to be investigated, instrumentation or design of data collection, fieldwork to collect the necessary information, and finally results through analysis and interpretation. In Maxwell's model of research design, component parts of the design are able to function together and sequentially to fulfill the research purpose. Maxwell names five component parts to research design: purpose, conceptual content, research questions, methods, and validity.

1.4.1   Purpose of Study

With the research design models described about applied to this study, the ultimate purpose of this research is to examine whether non-Western approaches to conflict in a politically divided societal context correlate to the Transformative approach to conflict and its relational ideological underpinnings.

There are two main facets to the central research problem: (1) the lack of research of the Transformative framework as applied in non-Western cultures or regions affected by ongoing political conflict; (2) the uncertainty of whether the relational ideology corresponds effectively with components of Middle Eastern culture and belief systems. The primary purpose of this research is to examine whether the relational ideology, which creates the foundation for the Transformative approach, and the subsequent Transformative Mediation Framework, is overwhelmingly Western-based thinking, or whether the ideology can be a shared belief despite numerous distinctions in culture and values. The secondary purpose is to examine a

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[6] Wengraf, Tom. Qualitative Research Interviewing: Biographic Narrative and Semi-Structured Methods. Thousand Oaks, CA: Sage, 2006, 54-55.
[7] Ibid, 56-59.

Middle Eastern approach to conflict: what influences in society create concepts of conflict, how is conflict analyzed, managed, resolved or transformed, and how these methods are taught within communities.

Exploring the modes of communication in the culture and comparing it to the foundation to the Transformative approach addressed the two aspects of the research problem. By observing and understanding approaches to conflict and its resolution or transformation in a non-Western setting currently engaged in a protracted conflict, the primary and secondary foci of the paper are supported in coming to an understanding of whether the relational ideology behind the Transformative framework can be shared outside of the Western frame of reference despite considerable cultural, social and political disparities.

The research of this topic is important for three reasons. First, since there is greater focus on Western values in relation to conflict management and mediation, investigation into the conceptual framework of traditional and modern Palestinian conflict resolution methods is necessary to address the question of whether Transformative methods are conducive to the cultural values of the broader Middle East. Second, this study will evaluate any barriers to using the Transformative framework within a Palestinian society. Third, examination of this subject is significant because of its implications for further research in the greater conflict education field in theory and practice, as well as developments in conflict transformation and mediation training in international, cross-cultural and political contexts.

1.4.2 Conceptual framework

The theoretical perspectives for the proposed study are divided into two main sections: (1) Transformative Mediation Framework and (2) Culture and Conflict Resolution. These two frameworks provide the conceptual and analytical tools to answer the theory questions and central research questions presented in 1.4.3.

The first half of the theoretical framework is derived from the Transformative mediation framework [TMF], and is discussed in depth in Chapter 2. Bush and Folger contend that conflict, above all, is a crisis in human interaction. Conflict upsets the parties involved not due to an unmet need or interest, but because the negative interaction that comes with conflict:

> ...leads and even forces them to behave toward themselves and others in ways that they find uncomfortable and even repellent. More specifically, it alienates them from their sense of their own strength and their sense of connection to others, thereby disrupting and undermining the interaction between them as human beings.[8]

It is this corrosion of quality interaction that the authors stress is most profound and disturbing about experiencing conflict. The authors demonstrate that the most effective way to make progress in conflict is to improve the quality of interaction, which in turn affects the parties and their relationship. As parties develop empowerment, their goals become clearer and the true nature of the conflict is expressed. Parties shift from a negative conflict spiral to points of connectivity by recognizing the other, showing signs of empathy, as well as taking natural turns in conversation. The conversation metaphor is the most illustrative way to describe TMF, as the interaction between parties builds constructively as they gain clarity and connectivity. Ultimately, the Transformative practice focuses on improved conflict interaction rather than simply solving a problem. Conflict transformation from this approach has a goal to positively impact destructive tendencies experienced in negative conflict interaction into constructive movements where parties are empowered and clearer in their own goals and more able to relate and connect with one another.

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[8] Bush, Robert A. Baruch & Folger, Joseph P. *The Promise of Mediation: The Transformative Approach to Conflict*. 2nd ed. San Francisco: Jossey-Bass, 2005, 46.

Further, and importantly in this study, Bush and Folger outline the ideological foundations of the Transformative framework, and distinguish this worldview from existing mediation practice. The relational ideology is founded on the notion that each person is aware of their individual existence as well as his or her inherit social nature. This dyadic relationship between the autonomous self and social connectivity is what Bush and Folger label "the very essence of human consciousness, the core of our identity as human beings."[9] The relational understanding of human nature has been articulated in different terms across a broad range of fields, including social psychology in terms of studies on happiness; political science, sociology, and law from the perspective of communitarian theory; and moral philosophy from postmodern and feminist approaches to dialogic sources of moral consciousness.

Within the transformative theory of conflict, the relational ideology explains why the experience of conflict as weakening both self and one's ability to relate to others is so overwhelming and unsettling, and why Bush and Folger believe that the key to conflict transformation is getting clearer and more confident in oneself and others. In Chapter 2, TMF is placed among other contemporary mediation practices through the explanation of mediation 'stories'. These predominant mediation narratives, labelled 'Satisfaction', 'Social Justice', 'Transformation', and 'Oppression', demonstrate the pluralistic conflict ideologies that are practised and understood in Western society. These mediation stories communicate the underlying values of each approach as well as the goals of conflict resolution in each approach.

Culture and its impact on conflict resolution processes is the second key focal area for this thesis. In Chapter 3, there is an in-depth discussion of culture, Western and non-Western definitions, culture and conflict resolution and conflict resolution in the Middle East. Kevin Avruch and Zygmunt Bauman influence the concepts of culture and conflict resolution. Avruch articulates both local and generic concepts of culture, as well as what are considered

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[9] Ibid, 60.

'inadequate ideas on culture' to assist those analysing conflict resolution from an outsider perspective. Bauman distinguishes three ideas on culture: concept, structure, and praxis. One main point suggests that creating and maintaining meaningfulness in culture requires rules of inclusion and exclusion to validate and protect identity.

Mohammed Abu-Nimer frames much of the concepts of conflict resolution in the Middle East and in Islam from an insider and specialist understanding. The cultural and social assumptions presented by Abu-Nimer provided a basis for approaching theory question analysis and fieldwork. Elias Jabbour provides a frame of reference for the specific model of conflict resolution used within an Arab context as well as rationale behind its application.

Personal experience and preliminary research also framed the conceptual context of the research study. Preliminary research at the case study location was carried out between June and August 2008 while undertaking a volunteer opportunity in the area. While living with a local family, conducting interviews, and learning the language of the community, notes were taken on the social reality that exist in the context, as well as initial thoughts on concepts of conflict and response to conflict.

The conclusion that the relational ideology and the Transformative framework are significant to a non-Western community or one that is affected by ongoing political divisiveness has not yet been established. There has been little research into how the theory and practice might pertain to a non-Western society, or whether this is a realistic suggestion. However, the authors of the Transformative framework continually reference a view of human nature as central to the basis of their approach, which would suggest that the theory for relational ideology and Transformative practice expands beyond Western influence. The existing literature on culture and conflict resolution as well as personal experience and preliminary research framed

the conceptual approach to the development of the research questions, methodology, fieldwork, results, and validity.

1.4.3   Research Questions

As described in Wengraf, the study has been organised in a hierarchical series of questions, or a pyramid model. This structure includes broad central research questions (CRQ) that relate to the overarching research purpose (as articulated in Section 1.2a). Below these and feeding into the answers of these CRQ are theory questions (TQ), which are phrased in relation to the existing theory and current research. At the bottom are interview questions (IQ) and interview interventions (II) that, once answered, provide documentation on "the subjective perceptions of a given individual,"[10] and influence the relevant TQ. The reason for this structure is to provide relevant support for the questions throughout, and is "based upon the primacy of the central research questions and upon the distinction of theory-language used in research questions and the interview-language used in interview interventions."[11]

The CRQ support the purpose of the research study in examining the potential for the Transformative Mediation Framework in a non-Western context. These questions include:

1.   Would the Transformative approach translate into effective theory and practice in the Palestinian model?

2.   In what ways are the approaches to conflict within a Palestinian context conducive to the theory and practice of the Transformative framework?

3.   What elements of social interaction are evident within a Palestinian setting that are not touched upon in the Transformative model? What cues exist in the culture that do not exist in a Western frame of reference?

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[10] Wengraf, 86.
[11] Ibid, 63.

4.   What added elements are evident in the practice of mediation in a politically divided society?

The TQ pertain directly to the CRQ and provide a link to the IQ/II. These questions included the following:

1.   How do mediators within this society view conflict?

2.   What does current conflict resolution or transformation look like in practice?

3.   What aspects of society impact this perspective, e.g. family, religion, education, government, history and tradition?

4.   Who mediates disputes? Does formal training exist for those who wish to practice? Or is the role of mediator bestowed upon a specific person based on cultural norms or expectations?

5.   How does gender, societal class, education, ethnicity play a part in determining active participants in conflict transformation and resolution?

6.   How, if at all, does conflict in the micro-level impact greater society?

7.   In what ways does a society engaged in a larger, protracted conflict affect the understanding and treatment of conflict at the micro-level?

Lastly, the IQ were adapted from Della Noce (2002) in developing a working theory of conflict resolution. These questions are posed to mediators to gauge their understanding for how they work in their environment, and why. The questions asked to mediators included the following:

1.   What do you try to achieve in mediation?

2.   Can you describe a situation that would be a "success" for you?

3.   Can you describe a situation that would be considered a "failure"?

4.   What do you think people want and need

    a. in conflict?

    b. from mediation?

    c. from you?

    d. from each other?

5.   What do you think people don't want or need?

6.   How do you know you've acted competently in mediation?

7.   What do you try to avoid?

8.   How do you know if you have made an error in mediation?

9.   How does the Occupation affect your work?

10.   Is there anything else you would like to add?

While initially not part of the questions drawn up for interview questions, Question 9 was added once engaged in the fieldwork with the understanding of the context in which the mediators work. Many times, this question did not have to be asked as the participant referred to the subject within the interview.

1.4.4   Case Study and Interview Rationale

As suggested in 1.4.3, the research questions that were developed for this study were intended to support the qualitative aspect of this research. In order to comprehend the local methods for addressing conflict, this study made use of qualitative approaches in terms of case study research and semi-structured interviews conducted during fieldwork. The value of the fieldwork is clear in that "case study concentrates on experiential knowledge of the case and close attention to the influence of its social, political, and other contexts."[12] Robert Stake comments further that the goal of research "is not necessarily to map and conquer the world but to sophisticate the beholding of it. 'Thick description', 'experiential understanding' and 'multiple realities' are expected."[13] This held true for this study, in both the initial aims as well

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[12] Stake, Robert. "Qualitative Case Studies." In *The Sage Handbook of Qualitative Research*, edited by Denzin, Norman K. and Yvonna S. Lincoln. Thousand Oaks, CA: Sage, 2005.444.
[13] Stake, Robert. *The Art of Case Study Research*. Thousand Oaks, CA: Sage, 1995, 43.

as in the analysis. The detailed description of how the study was carried out is articulated in the next section.

1.5 Methodology

1.5.1 General method

As explained in 1.4, this study is comprised of a stated research purpose, theoretical foundations in the form of literature reviews on the subjects of mediation as well as culture and conflict resolution, central research questions, theory questions, and a case study and interview questions adapted from Della Noce for use within semi-structured interviews with practicing mediators to gauge the concepts of their working theory and practice of mediation. Following the field research, the material was contrasted with material from Della Noce and Bush and Folger to analyse the data in light of the theory questions and the central research questions.

1.5.2 Length and Nature of Interviews

In total, interviews were held with nine mediators, who are referred to by their initials. The lengths of these interviews were between thirty minutes and one hour and a half. These were semi-structured interviews to give the participant a frame of reference to speak on, and allowed the researcher to obtain a range of answers to the interview questions that were then necessary to feed back to theory questions. The interviews took place at the *Wi'am* centre in most cases, though two interviews took place at the business office of the participant (interviews with participants HM and RR), and one interview took place at the home of a participant (AJ).

An interpreter was used for five interviews. *Wi'am* staff member Laila provided interpretation for four of these interviews (with participants AS, EK, AT and JD), while a participant's daughter acted as interpreter for one interview (with HM).

Consent forms were not used due to the area in which the fieldwork took place as well as the necessary translation that would have to be done from English into Arabic. As a result, verbal consent was given by the participants to hold the interviews for the purposes of the research and to record them for later transcription and analysis.

The nine semi-structured interviews provided significant, original information that supplemented literature readily available. This study has qualitative aims, where "improved understanding of complex human issues is more important than generalizability of results."[14] Therefore, this thesis intends to investigate unexplored elements of TMF, rather than to provide a result that is generalizable to a population. Martin Marshall discusses four rationales behind small samples in qualitative research, rather than larger random samples commonly used in quantitative research.[15] (1) A non-random sample reduces the risk of bias through sampling error. (2) Characteristics of the entire population are rarely known in complex qualitative studies to select a true random sample. (3) Random sampling is representative only if the research characteristics are, statistically, normally distributed throughout the population. However, "There is no evidence that the values, beliefs and attitudes that form the core of qualitative investigation are normally distributed, making the probability approach inappropriate."[16] (4) Focused sampling allows the researcher to select participants that are most relevant and productive for the purposes of the research, rather than including those that may not be appropriate for the study.

As illustrated in the next section, the selection of interview participants was not informed by qualitative research methods, and mediators were not selected through a process of random sampling. Instead, this thesis employed what 'purposeful sampling', a non-probability form of sampling.[17] In

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[14] Marshall, Martin N. "Sampling for Qualitative Research." *Family Practice* 13, no. 6 (1996), 524.

[15] Ibid, 522-525.

[16] Ibid, 523.

[17] Bryman, Alan. *Social Research Methods*. 3rd ed. Oxford: Oxford University Press, 2008, 415.

purposeful sampling, the goal is a strategic sampling that will provide the richest and most relevant results in comparison to the research questions. The sample provides variety in terms of participants selected for study, but due to the non-probability of sampling, is not generalizable to the population.

> [In] purposive sampling the researcher samples with certain research goals in mind. In purposive sampling, sites, like organizations, and people...within sites are selected because of their relevance to understanding a social phenomenon. The researcher needs to be clear in his or her mind what the criteria are that will be relevant to the inclusion or exclusion of cases (whether 'cases' mean sites, people, or something else).[18]

Importantly, "the essence of the qualitative approach is that it is naturalistic—studying real people in natural settings rather than in artificial isolation. Sampling therefore has to take account not only of the individual's characteristics but also temporal, spatial and situational influences, that is, the context of the study."[19] This research was conducted *in situ*, in the homes, offices and workspaces of the mediators interviewed, within the context of the West Bank. This physical location added a layer of complexity, because the current social and political situation required an understanding of the environment in which mediators worked.

At the start of the research process, the Middle East was a central focus for research for several reasons. First, the researcher developed an interest in the area generally. Second, the location of the Middle East would allow relative ease in terms of travel. Third, the Middle East would afford the consideration of additional elements of local practice, including the potential impact of faith-based initiatives or traditional processes.

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[18] Ibid.
[19] Marshall, 524.

1.5.3 Rationale for targeting case study location and interview participants

The West Bank was chosen as a case study because of the amount of mediation literature available in English on mediation centres specifically and the local mediation process (*sulha*). While the West Bank is directly beside Israel, a developed and arguably Western nation, the region of the West Bank is not. The organisation *Wi'am* was chosen because it was referenced in literature available online regarding the *sulha* process, while still located in a non-Western region.[20] In addition, the director of *Wi'am*, Zoughbi Zoughbi (referred to as ZZ), had been interviewed in the past and has written brief articles in English on the *sulha* process that are publicly available on the organisation's website.[21] The *Wi'am* centre was initially approached through making personal contact while conducting preliminary research in the region in the summer of 2008. In this preliminary research, the researcher spent two months in Bethlehem to gain education and insight into the context of the region through language study, volunteerism through research with a local organisation, and familiarisation of the culture and customs of the community by living with two host families, including a Muslim family in a refugee camp and in the home of a Catholic family. Contact with *Wi'am* was made at the end of this preliminary research stay, and the researcher met with *Wi'am* staff member Usama to discuss the potential for this at a later date. In March 2009, this fieldwork commenced with relative ease following a visit to the *Wi'am* centre and a meeting with the director ZZ in person. ZZ agreed to assist with the research, and contacted mediators with which he works from a variety of backgrounds, who then agreed to meet with the

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[20] A range of websites referenced *sulha* and *Wi'am* when initially searching for potential case studies using the term '*sulha*' combined with 'Palestinian Territories', 'Arab' or 'Middle East', including articles on the following websites, accessed September 2009: Jews for Jesus (http://jewsforjesus.org/publications/issues/6_4/sulha), the Galilee-based Sulha Peace Project (http://www.sulha.com), Global Ministries, The United Methodist Church (http://gbgm-umc.org/mission/news/confres.html), Inventing the Future (www.inventingthefuture.eu/files/Sulha%20Mediation.pdf), as well as a general reference list from the Canadian-based Peacemakers Trust (http://www.peacemakers.ca/research/MiddleEast/IsraelPalestinianTerritoriesPeaceLinks.html).

[21] For further information, see article on the Wi'am Website. Accessed 9 June 2009. http://alaslah.org/art/

researcher individually. However, the selection of these mediators was purposeful; ZZ requested participation from what he felt was a diverse range of mediators within Bethlehem. Mediators not connected with *Wi'am* were not selected for interview. The assistance from ZZ was not only a practical one as far as his familiarity of the field locally, but the community and acting mediators know and trust ZZ. Outsiders looking to speak with community mediators may not have the ease of having a respected local leader recommend and vouch for their trustworthiness outside of such a connection. Mediators were not interviewed for their involvement with political mediation or negotiation, though two mediators indicated their involvement with political parties or negotiations. Political and international mediation was not a focus of this study, nor was the ongoing conflict between Israel/Palestine; therefore the study does not focus on an Israeli or Jewish perspective. To do so would be to move far from the initial research purpose and enter into a hotly debated political subject that the study is not intended to cover.

1.5.4   Considerations influencing results or the interpretation of results

Language and the interpretation of language is an important limiting factor. The researcher is not a fluent Arabic speaker, and though the main translator Laila was born in England and the second translator had an acceptable command of the English language, there were possible misunderstandings from the participant on some interview questions and misinterpretation by the researcher on participant replies to interview questions. In these situations, the attempt was made to continue asking about the subject if the answers given were unclear, and to repeat or rephrase a question if the participant did not understand the original question as presented.

1.5.5   Analysis and interpretation of interview material

As put forward in 1.4.3, this study comprised of a series of hierarchical questions developed from a research purpose that included central research questions, to theory questions, to interview questions. Once interviews were conducted and transcripts completed, the process of analysing and

interpreting these results required taking the information gained through interviews to support answers to theory questions (ATQ) and ultimately answer the central research questions (ACRQ). This method of analysis was drawn from Wengraf in the same way that questions were structured.[22]

1.6 Definitions of terms, groups, and contexts

In this research, the locally used terms for the processes applied by the society were incorporated in order to understand and appreciate them in the manner in which they are discussed in literature and in fieldwork.[23] The most common terms used within literature and by those interviewed are included in describing the process of *sulha* (literally reconciliation), which was used by *Wi'am* to mean the *process* of reconciliation as well as the *end result* of reconciliation. The related term *sulh* is also used in literature to mean the full settlement process, with the intent that those entering the process do so to end conflict and resume amicable relationships, which is marked through the final, public stage of *sulha*.[24] For the purposes of this study, the term *sulha* is used to mean both the process and the end result in line with the case study. Aiding the parties through this process is the *jaha or islah delegation*, or the respected and trusted male representative members making up the *sulha* committee who will lead the process of *sulha*. It should be noted that women do not sit on this committee. Many of those on the *jaha* are selected because of their standing in the community as an *islah* man or a *mukhtar*, or a respected male elder within society who is chosen for his honesty, trustworthiness and credibility at handling conflict and difficult situations. Once the *sulha* process is under way, the *jaha* and individual mediators take on two main steps while mediating the conflict. First, the mediators focus on

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[22] Wengraf, 224-230.

[23] Many of these terms are used throughout the literature and in the interviews, and are explained more fully in this article: Pely, Doron. "Resolving Clan-Based Disputes Using the SULHA, the Traditional Dispute Resolution Process of the Middle East." Dispute Resolution Journal 63, no. 4 (November 1, 2008): 80-88. Accessed 25 September 2009. http://www.proquest.com/.

[24] Brill Online: Encyclopaedia of Islam (2nd Ed). Definition of "Sulh". Accessed 24 September 2009. http://www.brillonline.nl/subscriber/uid=3296/entry?result_number=1&entry=islam_SIM-7175&search_text=peace%2C+sulh#hit.

obtaining *hudne*, or a temporary truce period set by the *jaha* and agreed to by the parties while the *jaha* investigate the matter. At this time, *'atwe* may be paid. This is a token amount of money given from the offending family to the offended family in good faith and remorse during the *hudne* period. In securing a resolution in a case involving murder, the mediators will negotiate *diya*, or "blood money" as compensation paid by the offending family to the victim's family. The term *taawir* is used for compensation paid by the offending family to the offended family in the case of non-murder. *Sulha* is celebrated when parties have reached a point of agreement and forgiveness, and the end of hostility is marked in public, formal ritual through ceremony, coffee and food.

Aside from Arabic and local conflict resolution terms, terminology used within Western conflict resolution literature are referred to throughout this thesis and more thoroughly in Chapter 2, including *mediator, mediation,* and *transformative mediation*. A *mediator* is a third party who intervenes between parties in conflict at their request through the process of mediation. *Mediation* is one in a range of conflict resolution processes where the parties involved in the dispute work with a third party to come to an agreement on how to proceed. Typically in Western practice, this means a stage model including introduction, story telling, identifying issues to discuss, bargaining, and final agreement. *Transformative Mediation* differed from this as the aim changed from focusing on mediator control over the process to party control, with consideration of the relational ideology introduced earlier in the chapter. Unlike in a stage model of mediation, parties enter into transformative mediation with the aim to gain clarity on individual decisions and responses (empowerment) as well as the potential for the ability to consider the alternative party's perspective (recognition), without pressure placed on mediator or parties for resolution or settlement.

This thesis makes a distinction between "Western" and "non-Western" in geographic, cultural, political and economic terms. While any generalization risks becoming reductionist, exploitative and potentially in this case,

Orientalist, the characteristics suggested in describing these terms are in order to assess the variety of similarities and differences in mediation theory and practice within a socio-political context. These differences are discussed in depth in Chapter 3, and for the purposes of introduction, "Western" is to mean originating from Europe or North America and sharing common political, economic, legal and governmental systems. "Non-western" can be described in this study to mean regions that are still developing, have a history of economic struggle, colonization and insecurity. These characteristics are more fully articulated in Chapter 3.

The context of the West Bank, part of the occupied Palestinian territory (oPt), is a potentially divisive one. The purpose of this research is not to comment on the current state of the Palestinian/Israeli conflict, but to focus on the methods and underlying theory of mediation practice within the context of Bethlehem, a non-Western society within the West Bank. Geographically the area today is still heavily disputed, but for the purposes of this study, *Palestine* is used to refer to the area defined by the 1949 Armistice Agreements which left control of the West Bank area to Jordan and the area known as the Gaza Strip to Egypt until the war of 1967, or when referred to by the literature or by an interview participant. The term *oPt* is used by the United Nations' Office for the Coordination of Humanitarian Affairs (OCHA) to describe the broad area also known as the West Bank and Gaza, and serves the function of describing the same region in this study. *Palestinians* is used to refer to those people living within and beyond territorial boundaries of the 'imagined political community' of the Palestinian nation.[25] This is a particularly important issue for many Palestinians whose identity and existence has been questioned during the course of the conflict with Israel. As a result, definitions of what actually constitutes 'Palestine' and the Palestinian nation are significantly contested, thereby situating issues of identity within much political debate. Whilst not all Palestinians would agree on a clear definition of what constitutes or should constitute Palestine, most

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[25] Anderson, Benedict. Imagined Communities: Reflections on the Origin and Spread of Nationalism. London: Verso, 1991.

would utilise the term 'Palestinian' as an identity marker of significance and this study does likewise. While there is an element of practicality, the researcher acknowledges that this is a highly contested area geographically, religiously, historically and politically.

Discussed more fully in Chapter 4, the history of the region is a vital element to appreciating the way in which conflict resolution has in the past and continues to be practiced in Bethlehem. From the ancient history that first mentions the *sulha* process only years into the common era, to the modern evolution from Ottoman, to British, to Jordanian and Egyptian, and now into Israeli occupation, the process of *sulha* mediation has been a consistent element of the local response to conflict. The practice of *sulha* today is not only a practical method for approaching conflict, it retains a distinctly Arab and Palestinian character that is an essential part of tradition and culture.

Conclusion

This chapter introduced the main elements of the thesis, including the main arguments considered, a thesis overview, and a detailed presentation of the methodology applied in this study. The methodology section introduced the 'interpretive qualitative paradigm', articulated by Della Noce as applied in this study, and described the Rose-Wengraf research design model in place. The research purpose and research questions were presented, with reference that the conceptual frameworks will be further discussed in the literature review of Chapter 2 (Mediation) and Chapter 3 (Culture and Conflict Resolution). The rationale for use of a case study, as well as the methods used in combining literature and fieldwork for this research is articulated, including details on the interviews conducted. Lastly, this chapter covers definitions of terms, groups and contexts found commonly within the thesis, and these terms will be explained more fully throughout the study. The next chapter will describe the theoretical perspectives on Western-practiced mediation.

2 Chapter 2: Theoretical Perspectives on Mediation and the Third Party Role

Introduction

This chapter will give an overview and brief history of mediation and the role of the third party. First, the history of mediation as it developed in the Western world will be summarized referencing the main contributors to the modern mediation movement. Secondly, the definition of ideology will be given, and its application to conflict resolution processes will be detailed. The four dominant 'stories' of mediation are told. These include processes that focus on the values of satisfaction, social justice, and transformation, as well as one story that warns of oppression. Two of these stories, satisfaction and transformation, are highlighted. These stories' contrasting underlying individualist and relational ideologies, respectively, are presented with reference to the evolution of each theory's foundation. The problem-solving and transformative mediation practices that evolve from these underlying ideologies of individualism and relationality are discussed. Other existing mediation approaches are also mentioned, including processes that are harmonic, regulated and confrontational. The chapter will conclude with a summary before moving on to Chapter 3 on the concepts of culture and conflict resolution.

2.1 A Brief History of Mediation

Throughout history, third parties have been praised for their efforts in assisting competing parties in violent clashes, stubborn impasses, and trade wars. Merchants within Mesopotamian society resolved commercial disputes outside of developed legal systems. In Ancient Greece, the Iliad discusses the use of an elder arbitrator to resolve a case between a murderer and a victim's family. In Rome, Cicero expressed: "We come before the court with the

expectation that we shall either win or lose the whole case; but we submit to an arbitrator on the understanding that we shall end up neither with nothing nor as much as we asked for."[26]

Until forty years ago, the use of the particular third party intervention process of *mediation* in the United States for anything but labour disputes was unheard of. Abu-Nimer asserts that the conflict resolution field has been developing from the Second World War where the "interdisciplinary field can be traced to the human relations and intergroup relations movements which followed" the war.[27] Among the movements that contributed to the field, Abu-Nimer lists five that relate directly to the early human relations and intergroup relations movements. First, he lists organisational relations of the 1960s as influencing industrial and labour management. Second, the movement of mediation and problem-solving workshops of the 1960s evolved out of international relations thanks in part to academics such as Burton, Kelman, Doob and Mitchell. Third, religiously based peace efforts were explored in the late 1980s in a movement emphasising peacemaking. Fourth, the legal profession faced challenges from the public resulting in the creation of alternative dispute resolution (ADR). Fifth, from the 1970s and early 1980s, family and interpersonal conflicts began to be addressed in ways that reflected what Abu-Nimer calls 'human relations practices'.[28]

Indeed, mediation boomed as an innovative approach that extended to community, family, and interpersonal disputes.[29] Low-cost and accessible, the basic, quintessential mediation model was an informal process where a neutral third party helped the parties in conflict to reach a mutually-derived written agreement. In the late 1960s, two very different elements of society began to view mediation's potential in their own realms: "civic leaders and justice system officials saw in mediation a potential for responding to urban conflict and its flash points; and community organisations and legal reformers

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[26] Mesopotamian society, the Iliad, and Cicero Pro Quinto Roscio Comoedo IV 6-11 as discussed and referenced in Nelson, R. "Adapting ADR to Different Cultures" (Dec 15 2001). Accessed 5 December 2008.
http://www.gowlings.com/resources/publications.asp?Pubid=776&lang=0#N_18_.
[27] Abu-Nimer, Mohammed. "Conflict Resolution Approaches: Western and Middle Eastern Lessons and Possibilities." *American Journal of Economics and Sociology* 55, no. 1 (1996), 36.
[28] Ibid.
[29] Bush & Folger, 2005, 7.

saw in mediation a potential for building community resources alongside the justice system."[30]

To exemplify just how suddenly and widely mediation became accepted in the United States, mediation grew from a few isolated programmes in the early 1970s, to nearly two hundred in the 1980s, to more than four hundred in the 1990s.[31] Beyond local conflict, mediation gained momentum in the international sphere from the 1970s. Following the foundations set by now-prominent scholars Adam Curle, Kenneth Boulding, Elise Boulding, Johan Galtung, and John Burton, conflict resolution began to be addressed from a wide range of disciplines and institutional bases. The 1980s saw the formation of The United States Institute for Peace, Harvard University's Program on Negotiation, and other academic bases for the study of conflict and its resolution both inside and beyond the United States.[32] While figures for the new millennia are not yet available, it is estimated that mediation programmes are increasingly becoming popular within various arenas, including the workplace, community, public policy, family, housing, and school arenas. In US courts alone, mediation has become such a common first step in small claims, divorce, and general civil litigation that the "use of volunteer and professional mediators has become institutionalized" to an extent that "courts often cannot imagine how caseloads would be handled without the use of these mediation programs."[33]

Determining where mediation fits into the range of third party intervention options is one way of examining this boom of popularity and attractiveness to the process. The term "third party intervention" refers to any process where a person or a team is called upon to assist the parties in the conflict resolve it. When those in conflict assume the roles of first and second parties, the intervener is considered the "third party" and not directly involved in the conflict. There are three questions which are typically examined when considering what kind of intervention is possible: (1) Does the third party know the people in the conflict or not? (2) Does the third

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[30] Ibid.

[31] Ibid.

[32] Ramsbotham, Oliver, Tom Woodhouse and Hugh Miall. *Contemporary Conflict Resolution*. 2nd ed. Cambridge: Polity Press, 2005, 39-54.

[33] Bush & Folger, 2005, 8.

party have an interest of the outcome of the dispute? (3) Is it a single person or a group acting as the third party? The answers to these questions forms what is called the 'Third Party Mandate', or what expectation the intervener and the parties have with the intervention and the role of the intervener.[34] Appendix 1 illustrates the continuum of third party intervention processes based on the Third Party Mandate.

First, the relationship the intervener has with the parties determines how formal the intervention is, as well as the extent to which the third party role is authorized or expected. A parent would be expected to intervene often and informally, while a judge would intervene quite formally once presented with a case.

Second, the question of interest in outcome determines the type of control that the third party has. *Process control* is the term used to describe how the interaction is controlled and the way it is structured. In effect, process control decides: who gets to talk and when, who is present at the meeting, what issues are discussed and in what order, and what rules the interaction follows. The second type of control is *content control*, and this is the term used to describe how much influence the third party has over the substance of the topics discussed and how issues are framed.

The last question on how many interveners there are determines whether a single person or a board of individuals will hear the dispute, formally or informally. The role of the "third party", based on the answers to these questions, fits into a range of intervention options. Where there is high content and process control by the third party, the processes used to approach conflict are formal and may resemble a courtroom, arbitration, or a settlement or hearing panel. On the opposite end of the spectrum where there is low content and process control by the third party, the processes used to approach conflict tend to be less formal, and may resemble group facilitation or conciliation.

Mediation has hovered in the middle of this spectrum, with disputing levels of commitment to process and content control by the mediator. While

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[34] Discussion on the "Third Party Mandate" is drawn from Folger, Joseph P. "Mediation: Principles and Practice", course in Adult and Organizational Development, Temple University, Lecture 21 January 2003.

the precise definition of the process varies slightly from practitioner to practitioner, the purpose remains constant: to provide the environment for parties to work with one another to create their own solutions to problematic issues that exist between them.

This is what classically differentiates mediation from adversarial methods of arbitration and negotiation (which focus on competitive motivations to an imposed resolution), and conciliatory efforts (which rely on parties to compromise and accommodate in order to salvage an existing relationship). Essentially, where mediation sits on this scale is dependent on the understanding of whether the parties control the process and the content of the mediation, the mediator controls the process and the parties control the content, or the mediator controls both. This distinction matters because it delves to the core assumptions of what mediation is intended to provide, given an ideological context.

2.2 Ideology

Worldviews or ideologies are the ways in which human beings interpret and understand human nature and the surrounding world. As Bush and Folger express:

> Human beings need and construct organizing conceptual frameworks in order to make sense of the world. Such a framework, composed of a set of beliefs about the nature of the world – including the nature of human beings and their social processes and structures – provides the organized viewpoint from which one interprets the surrounding world. And individuals' viewpoints reflect generalized frameworks that operate within a culture of society. It is such frameworks that we mean by worldviews.[35]

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[35] Bush & Folger, 1994, 236.

In relation to the ideology behind mediators, how one interacts in conflict is dependent upon how one construes and makes sense of the world. Beliefs on human nature, conflict, and peace are drawn from "what interactions and outcomes *should* occur in conflict situations and why. These claims rest on ideological foundations that are often deeply rooted in a culture and therefore rarely unpacked and examined."[36]

Broadly speaking, all things can be comprehended through an ideological lens. Ian Adams has articulated: "To possess a form of understanding is to comprehend the world, to see it in a certain way."[37] In looking at the logical lenses in which the world is seen, the concept of ideology breaks down into two spheres: the factual and the valuable. The factual aspect of ideology is assumed to be true, while the value or evaluative aspect of ideology relies heavily on ethical and moral expectation. That is, "a moral vision, a set of ideals which provide a standard of what is right and what is important in social life, and consequently a yardstick against which the present world, the imperfect world we occupy, may be judged."[38]

Through this moral vision, ideologies provide a potential to explain "nothing less than the whole of human experience; though the immediate concern is the present situation of mankind".[39] People use ideology in their daily lives by providing a means to make sense of their surrounding world at the micro level, in dealing with individual experience, behaviours, and practice. As a result, ideology is not solely a cognitive exercise, but affected by and has effect in social interaction. Ideologies are "acquired and expressed through social phenomena; people learn (and recreate) ideologies through participation in groups and relationships."[40] Thus, ideology also has a macro level characteristic, built by institutions and social systems to create an

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[36] Folger, Joseph P. and Robert A. Baruch Bush. "Ideology, Orientations to Conflict, and Mediation Discourse" in Folger, Joseph P. and Tricia S. Jones (eds). *New Directions in Mediation: Communication Research and Perspectives*. Thousand Oaks, CA: Sage, 1994, 6. Emphasis in original.

[37] Adams, Iain. *The Logic of Political Belief: A Philosophical Analysis of Ideology*. Hertfordshire: Harvester Wheatsheaf, 1989, 27.

[38] Ibid, 38.

[39] Ibid, 60.

[40] Billig, Michael. *Ideological Dilemma: a Social Psychology of Everyday Thinking*. London: Sage, 1988, as cited in Folger & Bush. "Ideology, Orientations to Conflict, and Mediation Discourse." In Folger & Jones, 1994, 7.

understanding of expectations of behaviour at the micro level. The Marxist philosopher Louis Althusser connects the micro and macro levels of ideology when explaining the dual purpose of state bodies in both teaching 'know-how' as well as conditioning societal expectation. In this example, he describes the importance of schools and the schooling of children:

> ...besides these techniques and knowledges, and in learning them, children at school also learn the 'rules' of good behaviour, i.e. the attitude that should be observed by every agent in the division of labour, according to the job he is 'destined' for: rules of morality, civic and professional conscience, which actually means rules of respect for the socio-technical division of labour and ultimately the rules of the order established by class domination. They also learn to 'speak proper French', to 'handle' the workers correctly, i.e. actually (for the future capitalists and their servants) to 'order them about' properly, i.e. (ideally) to 'speak to them' in the right way, etc. [...] In other words, the school (but also other State institutions like the Church, or other apparatuses like the Army) teaches 'know-how', but in forms which ensure *subjection to the ruling ideology* or the mastery of its 'practice'.[41]

While Althusser saw state institutions in terms of Marxist philosophy of labour and class, the 'ideological state apparatuses' (ISA) that he discusses include social institutions that provide more than the tools or knowledge to perform a task, but also the moral framework in which that work is expected to be done. Althusser felt that ISA involved religious communities, educational schools, families, law, the political system, trade unions, media, and cultural outlets such as the arts and sport.[42] Discourse theorists may not necessarily view social institutions such as these in a manipulative light as suggested by Althusser, but certainly in an influential one. "Practical

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[41] Althusser, Louis. *Lenin and Philosophy and Other Essays*. Translated by Ben Brewster. New York: Monthly Review Press, 2001, 133.
[42] Ibid.

understanding is concerned with how we live and what we do. It involves seeing the world in terms of its relationship to our actions, individual and collective".[43] Therefore, there is an ideological relationship between broad policies at the macro level of society within institutions and the effect of these upon micro level behaviours and practice.

On another level, ideology shapes the identity of groups and those members within a group. How one reflects on their identity within a group is contingent upon the practiced ideology. Power for certain groups is established by a prevailing ideology. One's own ideology may prove difficult to alter, as it is a social construction an individual creates as a frame for understanding the world. However, it is especially difficult to alter ideology if it is seen as contrary to the prevailing ideology at the macro level of society. As Marx once remarked, "It is not the consciousness of men that determines their existence, but, on the contrary, their social existence determines their consciousness."[44]

2.2.1 Ideology in Third Party Intervention

How mediators view, utilize, and interact in conflict is dependent upon how they understand and make sense of the world at large. "The strategies and principles used by a society and all its organizations for dealing with disagreement and conflict reflect the basic values and philosophies of that society."[45]

Bush and Folger have articulated two premises in which to analyze mediation "as a form of conflict discourse shaped by ideology."[46] While deeply rooted in culture, ideologies are acquired, learned and expressed in social groups and relationships, enabling them to be recreated and passed on.[47] This is the macro level characteristic of ideology; built by institutions and social systems and includes rules and regulations that create

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[43] Adams, 34.
[44] Marx, Karl as cited in Adams, 6.
[45] Likert, R. & J. G. Likert. *New Ways of Managing Conflict*. New York: McGraw Hill, 1976, as cited in Folger & Bush. "Ideology, Orientations to Conflict, and Mediation Discourse" in Folger & Jones. 1994, 8.
[46] Ibid, 7.
[47] Billig as cited in Bush & Folger, 1994, 7.

expectations of behaviour. Secondly, there is the micro level characteristic, which includes the everyday behaviours and practices. This is nevertheless a very powerful element of ideology, as Bush and Folger articulate:

> ...people's discursive choices create important social consequences...These choices ultimately distribute power, establish the acceptability of social relationships, and constrain the ability to imagine or enact alternative social arrangements.[48]

Broad policies at the macro level of institutions and society will inevitably affect individuals and groups at the micro level. As mentioned earlier, ideologies at the macro level establish power and influence for certain groups within the micro level.[49] Consequently, it is necessary to survey what the ideologies of these groups are in order to ascertain whether the methods used in conflict resolution reinforce these influences in a negative way, or whether within alternative ideologies there are constructive communication techniques in conflict resolution.

Establishing ideology and laying out values held by mediators served two purposes: to effectively construct social institutions and to provide an explicit understanding that mediation models are not value-free as previously assumed.[50] By examining ideology in the context of a third party, Bush and Folger believe that four main points of intervention can be better understood and clarified. First, ideology can help explain what behaviours and processes are used by interveners. Personal, social, and institutional characteristics that contribute to one's understanding of the world create an assumption of what is expected of interveners when they enter into conflict. For example, by taking the impact of institutional ideology on a court-mandated mediation program, a mediator in this instance may act in particular ways that are in

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[48] Ibid, 8.
[49] Discussion on the first three characteristics of Ideology (human nature, conflict, productive conflict) are drawn from Folger, J. P. "Mediation: Principles and Practice", course in Adult and Organizational Development, Temple University, Lecture from 4 February 2003.
[50] Bush & Folger, 2005, 1.

line with the expectations placed on him or her in that context. This might include orienting the parties to a problem, ensuring a mediator-controlled process, promoting a "fault-free" definition of the problem, reframing statements into workable "issues", promoting an exchange of offers in the interest of getting a signed agreement. These mediator behaviour strategies feed back into the mediator's beliefs of how the institution views productive conflict resolution processes.

Second, ideology has the potential to reveal hidden assumptions on which third party work has been built. By assessing the ideals and standards of judging moral expectations, the prevailing ideology (and others) can be noted so that the actions that shape behaviour can be realized and questioned. Without doing so, it would be impossible to see whether the existing standards were effective. In the previous example of a court-mandated mediation program, a signed agreement on particular issues may mean success for a mediator. However, if this idealized end result of pinning success on the mediator achieving an agreement means that parties leave the mediation process dissatisfied or unheard, they are more likely to return to the courts when the conflict re-escalates.

This opens up the third dimension of Bush and Folger's emphasis on how ideology can assist in understanding intervention. Questioning the prevailing ideologies means that the intervention processes by which people work and why can be articulated, and also opens up the possibility of asking whether there are other ways to approach intervention. If in this court-mandated mediation program, mediators were asked about what the purpose of mediation was, the measures of success they use, why that was important, and what they thought the parties needed and wanted in the mediation, this would likely create an array of answers. However, this diversity in understanding in the purposes behind intervention can also highlight the spectrum of ideals and values behind those purposes.

Lastly, by creating new options to address conflict, one can begin to step away from a prevailing ideology and consider alternatives that can better serve one's purpose. If mediators decide that the ideals that they are aiming for through their work are not being achieved because of institutional

expectations, practitioners may find that creating new and alternate ideals may better serve their own purpose and that of their clients.

In mediation, there are categories of ideology that are relevant to the role of third party intervention. These 'conflict ideologies' carry implicit notions of what conflict is, as well as expectations about what moves or responses are possible or required in specific contexts, what role third parties play, and what outcomes are desirable.[51] In communication theory, conflict is considered "a socially created and communicatively managed reality occurring within a socio-historical context that both affects the meaning and behaviour and is affected by it."[52] As ideology is demonstrated through everyday actions, they "can be studied through members' interpretations and expressions in talk."[53] To gauge concepts of conflict and those in it, Bush and Folger have outlined four distinct areas where the views of mediators should be measured: View of Human Nature, View of Conflict, View of Productive/Destructive Conflict, and View of Social Institutions.

In determining a mediator's view of human nature that their practice is based on, there is a curiosity in how mediators view parties in conflict and linking this to assumptions on overall views of human nature. Mediators may think parties are incapable decision-makers during conflict, weak in discussing what it is they want, or perhaps emotionally overbearing. Understanding how mediators view human nature is one way to bring ideology to the surface.

When the view of human nature is examined, there is a wide understanding of what conflict is, and is not. "An *orientation to conflict* is a worldview of conflict... [I]t offers a sense of what conflict *is*. It tells us how we should explain conflict to ourselves, how it can be identified, thought of, and discussed."[54] By looking at whether conflict is understood by a mediator to be

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[51] Grimshaw, A. D. as cited in Folger & Bush. "Ideology, Orientations to Conflict, and Mediation Discourse." In Folger & Jones, 1994, 8.

[52] Folger and Jones, "Introduction", 1994, ix.

[53] Van Dijk, T. *Communicating Racism: Ethnic Prejudice in Thought and Talk*. Newbury Park, CA: Sage. 1987 as cited in Folger & Bush. "Ideology, Orientations to Conflict, and Mediation Discourse". In Folger & Jones, 1994, 7.

[54] Bush & Folger, 1994, 56.

a contest over perceived incompatible goals, a problem to be solved, or a crisis in human interaction, each understanding will bring very different ideals on how to tackle it both in theory and in practice.

Once a conflict is underway, knowing when the process is going well or not is another way of determining an underlying ideology of how to approach intervention. "[A]n orientation to conflict suggests a view of what the ideal response to conflict should be. It prescribes what people in conflict should do to reach successful results – results that the orientation itself defines and prizes."[55] How would a mediator know that the session is going well? Is it that parties are working on points of agreement, or respectful to one another or the process, or articulating their points clearly and being able to acknowledge the other's points? Knowing when the mediator sees the process as going well or poorly is an indication of how mediators would see an ideal process play itself out.

Lastly, a mediator's view on social institutions is an indication of their understanding of how these macro level institutions should function in day-to-day life, and what they can accomplish. These social institutions may be courts, families, schools, religious congregations, or other areas of large influence. While some mediators may think that mediation should be independent of court control and influence, others may believe that precedents set by earlier, related cases should have value in determining settlement. In addition, some mediators believe that mediation has the capacity to feed benefits experienced from the private sphere of mediation back into the public realm. That is, that the personal experience of mediation can "reinforce the civic virtues of self-determination and mutual consideration are therefore of enormous public value."[56] The concepts of social institutions and their role in conflicts provide another category in which to appreciate the ideologies that mediators use to view their work.

In appreciating these so-called conflict ideologies, one can better understand the wide variety of ways in which mediation is viewed, practiced, and received by mediation practitioners in society. In the following section,

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[55] Ibid.
[56] Bush & Folger, 2005, 82.

these ideologies are unpacked in the telling of four stories of what mediation is and what purposes it should serve.

2.3   Four Stories of Mediation

Mediation and the mediator's role are understood differently across the field because conflict ideologies are varied among scholars, practitioners, and parties alike. Bush and Folger explain four basic stories of mediation that articulate not only divergent and pluralistic ways of viewing conflict, but of addressing it appropriately.[57] By outlining these accounts, the underlying values of each approach are evident, as are the immediate goals of such intervention. The four prominent ways of viewing mediation are named: The Satisfaction Story, The Social Justice Story, The Transformation Story, and the Oppression Story.

2.3.1 Satisfaction Story

Those who view mediation as a mechanism to satisfy human needs tell the Satisfaction Story. Mediation is a process that is flexible, informal and voluntary. Outside of court, mediation has the potential to reframe the issues as shared problems. Creating a "win-win" agreement where both parties get a say in how they want to resolve problems is a major feature of the mediation process, ensuring that the needs of each party are addressed collaboratively rather than focusing merely on individual rights.

Due to mediation being an informal process, it translates into a time and cost benefit for both parties and the public. Parties need not spend money on attorneys and related court costs, and the public saves money as it frees up the court for others requiring them. By choosing mediation, parties have contributed to a "more efficient use of limited private and public dispute resolution resources, which in turn means greater overall satisfaction for individual 'consumers' of the justice system."[58]

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[57] Ibid, 8-20.
[58] Ibid, 10.

The Satisfaction Story is the most commonly told of the four stories, and describes how many mediation practitioners and justice officials understand the goals of mediation.

2.3.2 Social Justice Story

The Social Justice Story focuses on the need for bringing individuals together within communities around common interests to strengthen ties and organization. Mediation is one way to support this goal. For one, mediation has the "capacity for reframing issues and focusing on common interests" so that individuals "who think they are adversaries perceive a larger context where they face a common enemy."[59] Weaker individuals are strengthened by the alliances created between parties, and therefore mediation can be an empowering process.

Mediation also concentrates on local, community level structures, eliminating the need to refer to agencies and courts as a primary means of handling conflict. Parties that may have no influence at a larger level can participate more fully in a mediation context, thereby creating greater social justice.

The Social Justice Story rings true especially to those involved in interpersonal mediation within neighbourhoods, schools, environmental groups, and consumers to ensure individuals as well as communities are strengthened through a collaborative mediation process.

2.3.3 Transformation Story

The Transformation Story differs from the above two stories in that it contends, "the *promise of mediation* lies in its capacity to transform the quality of conflict interaction itself, so that conflicts can actually strengthen both the parties themselves and the society they are part of."[60] Parties have the opportunity to use mediation as a means to define issues and goals in their own terms, as well as assisting parties to realise their own capacity to

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[59] Ibid, 12.
[60] Ibid, 13. Emphasis in original.

address conflicts and meet goals in ways that validate the importance of these issues in their lives. This dynamic of the mediation process is described as *empowerment*.

As parties are more able to define issues and goals in the ways they are clear with, mediation also allows for parties to humanize themselves for the other party. With the support of mediators, parties often find their capacity to listen to and understand the problems as presented by the other party. This dimension of the mediation interaction is described as *recognition*, meaning that there is a concern not only for a party's own interests and feelings but for the other.

With empowerment and recognition working together within an interaction, the destructive tendencies that created a negative conflict cycle can be replaced with a transformative quality, which in turn affects the quality of the interaction itself. Those who would tell the mediation story from this perspective believe that mediation can be used with all types of disputes, not simply "certain areas in which human relationships are important (implying that elsewhere they are not)".[61] An example where this might be used is consumer mediation, which could "strengthen the confidence of, and evoke recognition between merchants and consumer, transforming the character of commercial transactions and institutions".[62] The ultimate potential is that the promise of mediation could impact and transform social interactions on multiple levels, including and especially social institutions.

2.3.4 Oppression Story

Unlike the previous three stories, the Oppression Story is one where mediation is understood to be a dangerous tool. Where the other stories see the informality and consensuality as strengths of the mediation process, those who follow this story would see the potential for weaker parties to be taken advantage of, and a potential for the state to have further control over the individual. According to the Oppression Story, mediation provides an

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[61] Ibid, 14.
[62] Ibid.

ideal vehicle for stronger parties to dominate over weaker parties.[63] Because it is an inexpensive alternative to the litigation process, it has the potential to manipulate the poorest and therefore weakest members of society. With the lack of regulation of mediation or mediators, this process can be harmful to the parties by serving as unchecked influence of state over the parties. As a result, mediation could support coercion and power imbalances by a stronger party. L. A. Pinzón is cited in Agusti-Panareda, articulating that the informality and consensuality of mediation highlights power imbalances. Informality thus "'denies the weak party the right to a system of checks and balances'; and that the 'self-posturing 'neutrality' of the mediator' gives her 'an excuse to avoid applying pressure on the stronger party.'"[64] The neutral standpoint of a mediator renders him or her unable to prevent the power imbalance from influencing the process and outcomes, and therefore indirectly encourages it. Consequently, any decision that comes out of mediation has the possibility of being unjust, as the stronger party will likely prevail. With mediation being private and consensual, mediators have power to control the discussion according to the biases of the mediator, including what issues are discussed, how issues are framed, and how settlement options are generated and evaluated.

Lastly, unlike conflicts managed by the courts, mediation cannot reference other similar cases. In this light, mediation could serve to further disenfranchise weaker parties, and on a larger scope, the public interest. Ultimately, the impact of mediation is that it could cause a wider influence of the state in individuals' lives, negate social justice as achieved through several social movements, and reinforce a privileged status quo. Michael Coyle, in Agusti-Panareda's article, states "without the information available under court discovery processes, and without access to a third party neutral with power to enforce the law without regard to rank or wealth, disputants who lack resources or strong alternatives to negotiation are vulnerable to being ignored or exploited by those with greater resources."[65]

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[63] Agusti-Panareda, Jordi. "Power Imbalances in Mediation: Questioning Some Common Assumptions." *Dispute Resolution Journal* 59, no. 2 (2004), 26.
[64] Pinzón, L. A. as cited in ibid, 26.
[65] Coyle, Michael as cited in ibid.

Situations where this is most argued include divorce, landlord-tenant, employment, and commercial mediation. Mediation, according to The Oppression Story, "has been used to consolidate the power of the strong and increase the exploitation and oppression of the weak."[66]

While these stories exist on paper side by side, they are very different realities to those who tell them. The Satisfaction Story is the most dominant of the field, sees the goal of mediation to bring satisfied needs to the parties at a low-cost, while remaining private. The Social Justice Story sees the purpose of mediation as broader: empowering the most vulnerable of individuals through a process that brings communities together through common goals. The Transformation Story sees the benefit of mediation as one of improved interpersonal capabilities, and realised potential of human interaction through conflict. The Oppression Story, differing from the others, sees mediation as potentially hazardous to individuals, as it brings conflict into the private sphere, away from public justice and increasing the likelihood of manipulation. Describing these stories in this way illustrates the complex nature of the mediation field. That being said, "not all mediators follow the practices described by any one story of the process... none of the stories is 'the true story' of the field; rather, each is probably a valid account of the practices of some number of mediators working in the field today".[67] However, there is a clear indication that the Satisfaction Story is the most held view of mediators practicing in the field, while the Oppression Story is also strongly held by some lawyers and minority campaigners.

The Four Stories are an important review of popular themes in looking at conflict, mediation, and the expected outcomes from the process. These principles of how to view the conflict cycle come from a wider societal ideology impacting the perspective of what the system of confronting conflict should be.

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[66] Folger & Bush, 2005, 17.
[67] Ibid, 19.

2.4   Individual and Relational Ideology

The *values* described in three of these mediation stories (satisfaction, social justice, transformation) are linked to wider worldviews or ideologies. These worldviews consider impressions of human nature and society in generalized frameworks, leading to groupings of ideology. Individualism and Relational ideologies, two prevailing worldviews in Western society, will be discussed in this section. As Bush and Folger have suggested, human nature is complex and while distinct worldviews are assumed to originate from perspectives on human nature, these views depend on particular values or purposes.

> ...[I]n any worldview, including its view of human nature, starts from some intuition of value or purpose. What is seen as important defines what is seen as central in human nature and social structure. Underlying everything is the assumption made at the outset about the nature of the good, about what matters and is important. Based on that assumption, the viewer perceives and stresses that aspect of human nature and social institutions that is capable of bringing it about. In the language of contemporary thought, this is a *social constructivist view* of human nature and society.[68]

With this logic, the values of satisfaction, social justice, or transformation will lead to the construction of worldviews with particular views of human nature, society, and social institutions.

> Describing each of these worldviews shows how the choice to stress one value or the other is not merely a free-standing value preference but a choice linked to and embedded in an entire worldview. This analysis helps explain further the significance of the values themselves, by clarifying what each value leads to. More importantly, it shows that the two different approaches to mediation

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[68] Bush & Folger, 1994, 236-237.

[described in the next section] are tied not only to different

values but to these two larger and very different

worldviews.[69]

2.4.1 Individualistic Ideology

Further to Bush and Folger's concepts on how ideology can assist in understanding third party intervention, the literature in communication theory argues that conflict is a deeper-seated subject than what it is commonly given credit for. Pearse and Littlejohn articulate, "conflict is usually treated as something that happens to people and communication as a tool for managing it".[70] However, these authors and others would view conflict as an element of all social interaction, and one that is socially created.

As Bush and Folger see it, there has been one predominant ideology in Western society for over 250 years, and that is one with an Individualist focus. As a result, traditional Western problem solving is "essentially aligned with Individualistic assumptions about human nature and social interaction."[71]

Individualism has evolved through the lines of reason and rationality as first discussed by Plato and Aristotle. Western political philosophers of empiricism would later refine the terms of how people should act toward each other in a particular political context. John Locke discussed the 'state of liberty' of men in 1690, following *Leviathan* by Thomas Hobbes in 1651 that claimed that liberty was built from "the absence of Opposition...*externall Impediments of motion*," and that "A Free-Man, is he, that in those what it is to be Free. Things, which by his strength and wit he is able to do, is not

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[69] Ibid, 237.

[70] Barnett, Pearse W. and Stephen W. Littlejohn. *Moral Conflict: When Social Worlds Collide.* Thousand Oaks, CA: Sage, 1997, ix.

[71] Folger & Bush, 1994, 13.

hindred to doe what he has a will to.[72] John Stuart Mill concurred much later in 1859 when he stated:

> ...[It is] imperative that human beings should be free to form opinions, and to express their opinions without reserve ... He who lets the world, or his own portion of it, choose his life for him, has no need for any other faculty other than the ape-like one of imitation. He who chooses his plan for himself, employs all of his faculties.[73]

More recently, modern philosophers such as John Rawls state first and foremost that "[p]eoples are free and independent, and their freedom and independence are to be respected by other peoples."[74] Linda Putnam has remarked: "Individual agency is a value that is esteemed in Western culture. It stems from a belief that society is made of distinct and radically separate human beings who act independently and are accountable for their own choices."[75] Similarly, Michael Noone has commented that "Western modes of dispute resolution have been predominantly adversarial and have emphasized rationality, individual rights, a restricted range of remedies and an objectively 'just' decision,"[76] however he notes in recent years that nations have adopted processes which stress self-determination.

At the micro-level, Individualist ideology can be seen to affect individuals' sense of themselves, their relationships with others and their interaction with the world around them. Individualist micro-level ideology in practice includes the focus on the individual and their distinct goals or

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[72] Hobbes, Thomas. "Ch XXI: Of the Liberty of Subjects." In *Leviathan*. 1651. Reprint, London: Penguin Press, 1985, 261-262.

[73] Mill, John Stuart. "Ch III: On Individuality, as One of the Elements of Wellbeing." In *On Liberty*, 1859. Reprint, Cambridge: UP Cambridge, 1989, 56-59.

[74] Rawls, John. *The Law of Peoples.* Cambridge, MA: Harvard UP, 2002, 37.

[75] Putnam, Linda. "Challenging the Assumptions of Traditional Approaches to Negotiation," Oct 1994. *Negotiation Journal*, 10:4, 337-345 as cited on The Conflict Resolution Information Source Website. "Article Summary of 'Challenging the Assumptions of Traditional Approaches to Negotiation.'" Accessed 5 December 2008. http://www.crinfo.org/articlesummary/10478/

[76] Noone, Michael. *Mediation.* London: Cavendish Publishing Ltd, 1996, 6-7.

interests throughout life, leaving decision-making with the individual in order to ensure autonomy.

In terms of macro-level Individualism, social institutions are "needed to facilitate joint pursuits, but they are even more important to protect against oppression and self-inflicted injuries."[77] The Declaration of Independence of the United States of America is a strong example. Built upon the ideas of liberty and equality, the concept of Individualism is strongly rooted in the culture:

> We hold these truths to be *self-evident*, that *all men are*
> *created equal*, that they are *endowed* by their Creator with
> certain unalienable *rights*, that among these are Life,
> Liberty, and the pursuit of Happiness.[78]

This perspective of equality and rights has not faltered from American philosophy. As a point of national character, Americans have stood up against the laws which restricted individual rights, including slavery, women's suffrage, and civil rights. At the present moment, the movement toward equal rights for gay and lesbian marriage can be seen as another element of this Individualist ideology. "Civil liberties have become central to American perceptions of what it is to be an individual as well as an American."[79]

In addition, this Individualism is evident in how American society values a limited government role in the lives of its citizens. According to McCormack, the popular view is that government "should provide selected public services, uphold the rule of law, and enable individuals to achieve their goals, but it should resist the temptation to make too many decisions on behalf of individuals."[80] Individualist ideology at the macro-level is therefore evident in the American example through expressions by the government

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[77] Bush & Folger, 2005, 245.

[78] U.S. National Archives and Records Administration Website. "The Declaration of Independence: A Transcription". Accessed 1 Dec 2008. http://www.archives.gov/exhibits/charters/declaration_transcript.html. Emphasis added.

[79] Annenberg Media Website. Dudley, R., C. Miller, & J. Clarke. (eds). "Democracy in America: Unit 4 Introduction—Civil Liberties: Safeguarding the Individual." 2003, Accessed 5 Dec 2008. http://www.learner.org/courses/democracyinamerica/dia_4/dia_4_readings.html

[80] McCormack, John. *Comparative Politics in Transition* 3rd ed. Fort Worth: Harcourt College, 2001, 42.

and social institutions on the expectations of behaviour at the micro-level. The government's macro-level influence on the rules and regulations that create an expectation of Individualism in society includes how the constitution (through the Bill of Rights) guarantees such individual rights, the judiciary provides a means for settling disputes or crimes through legal precedent, and members of Congress represent the needs and interests of their constituents.

Social institutions, such as universities, religious groups, businesses and families, can impart moral and ethical expectations at the macro-level as well, creating the expectation of how the world should be seen and how those within society should act within that frame. Within an Individualist ideology, these institutions should promote the value and rights of the individual because among a social world that is essentially 'an aggregate of individuals' individuals are not "fully capable of either agency or empathy".[81]

2.4.2 Relational Ideology

In contrast to the long-standing history of Individualism, the Relational ideology as described by Bush and Folger is an 'emergent' worldview. While it is gaining in interest, it has been built upon and reflective of work in a variety of fields within the past twenty years, including moral theory, psychology, political philosophy, sociology, law, and organisational theory.

According to the Relational ideology, people are *interconnected*. Individuals have freedom and independence in their thoughts and actions, and yet exist in constant relation with others. "[N]othing in the universe exists as an isolated or independent entity. Everything takes the form of relationships, be it subatomic particles sharing energy or ecosystems sharing food. In the web of life, nothing lives alone."[82] In recognising this interconnectedness, individuals are able to balance our need for autonomy with our need for others.[83] When in conflict, this balance between self and

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[81] Bush & Folger, 2005, 245.

[82] Wheatley, M. *Leadership and the New Sciences*. San Francisco: Barrett-Koehler, 1994, 89 as cited in Lederach, John Paul. *The Moral Imagination*. Oxford: Oxford UP, 2006, 34.

[83] Beal, Susan and Judith A Saul. "Examining Assumptions: Training Mediators for Transformative Practice" in Folger & Bush, 2001, 10.

other becomes frustrated, and metaphors frequently used to describe the feelings of being in conflict reflect those of powerlessness and alienation from the other person.[84] Part of this is due to the way in which "protagonists view themselves, each other, and the conflict."[85]

This Relational worldview, though a new concept in the mediation field, has foundations within other disciplines. Carol Gilligan, a theorist in morality and psychology, has noted:

> To have a voice is to be human. To have something to say is
> to be a person. But speaking depends on listening and being
> heard; it is an intensely relational act. By voice I mean
> something like what people mean when they speak of the
> core of the self. Voice is natural and also cultural... Voice is a
> powerful psychological instrument and channel, connecting
> inner and outer worlds.[86]

According to Gilligan, people are intensely relational because they are naturally a social species. But more than that, when they speak they are communicating and connecting the views of the individual with those of others. John Paul Lederach has argued that central to concept of peacebuilding is accepting that "[w]ho we have been, are, and will be emerges and shapes itself in a context of relational interdependency."[87]

There also lies a foundation for the Relational framework in Robert Kegan's Theory of Human Development. In *The Evolving Self*, Kegan notes that to be included and to be independent are lifelong tensions for individuals. In addition, "human growth occurs as people transition between increasingly complex understandings of their connection to other humans."[88]

Bush and Folger go one step further with this idea of interconnectedness between people. Beyond the Individualist ideology of

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[84] Bush & Folger, 2005, 48.

[85] Curle, Adam. *Tools for Transformation*. Stroud, UK: Hawthorn Press. 1990, 27.

[86] Gilligan, Carol. *In a Different Voice: Psychological Theory and Women's Development*. Cambridge: Harvard UP, 1982, xvi.

[87] Lederach, 2005, 35.

[88] Kegan, Robert. *The Evolving Self*. Cambridge: Harvard UP, 1982.

people having radically different needs and desires, the Relational ideology posits that:

> ...Human beings have inherent capacities for strength
> (agency or autonomy) and responsiveness (connection or
> understanding) and an inherent social or moral impulse that
> activates these capacities when people are challenged by
> negative conflict, working to counteract the tendencies to
> weakness and self-absorption.[89]

On the micro level, Relational ideology makes sense of the daily experience through the lens of interconnectedness. In addition, the Relational ideology contends "human beings not only have the desire for both autonomy and connection but also the capacity for both."[90] Conflict communication can be considered a 'moral conversation' or 'moral discourse' as suggested by legal ethicist Robert Burns.[91] The micro level moral vision within the Relational ideology values the balance between individual autonomy and social connection, and supports this vision especially when these are unbalanced (such as times of conflict). At a macro level, the Relational ideology, through a wide variety of philosophical fields, proposes that societal issues be seen through the same balance of freedom and responsibility. Michael Sandel, a political philosopher, suggests integrating individuality and social connection "through social interaction in communities that are not 'instrumental' but 'constitutive' – interaction that allows and asks the individual to 'participate in the constitution of its identity'".[92] Legal sociologist Joel Handler refers to 'communitarian feminism' where "the feminist conception of social interaction enhances autonomy, empowerment,

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[89] Della Noce, Dorothy J. "Seeing Theory in Practice: An Analysis of Empathy in Mediation." *Negotiation Journal*, 1999, 15(3), 271-301 as referenced in Folger & Bush, 2005, 54.
[90] Bush & Folger, 2005, 255.
[91] Burns, Robert (2001) as referenced in Bush and Folger, 2005, 254.
[92] Sandel, Michael. *Liberalism and the Limits of Justice*. Cambridge: Cambridge UP, 1982 as cited in Bush & Folger, 2005, 252.

and community simultaneously [and] can foster both individuality and connectedness".[93]

In essence, the Relational ideology views individual experiences as important, yet values the connections we make as human beings. This balance of autonomy and connection is what creates a higher potential and awareness in both the individual and the other.

2.5   Two Approaches to Mediation in the West

Based on the principal values of satisfaction and transformation, which underscore Individualist and Relational ideologies, two distinct approaches to mediation are found in the Western world. The most common is Problem-Solving mediation, which has the value of satisfaction and a wider worldview of individualism with regards to human nature and society. In contrast, the Transformative mediation approach has a value of transformation at the heart of a wider Relational ideological worldview on human nature and society. Each of these approaches has a foundation in the values and worldviews that help to explain the diversity in practice.

2.5.1   Problem-Solving Mediation

The most popular and widely accessible method of mediation in North America and Europe is the Problem-Solving approach. It tells the Satisfaction Story of mediation – meaning that satisfaction is a core value – and adopts an Individualist ideology. In 1986, Christopher Moore published *The Mediation Process*, a thorough and comprehensive guide to the common practice of mediation at that time. It remains a significant resource for those practicing within the Problem-Solving approach. He describes mediation as essentially an extension of the negotiation process:

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[93] Handler, Joel (1988) as referenced in Bush & Folger, 2005, 252-253.

Mediation involves the intervention of an acceptable, impartial, and neutral third party who has no authoritative decision-making power to assist contending parties in voluntarily reaching their own mutually acceptable settlement of issues in dispute.[94]

The following excerpt describes a problem-solving, settlement-based mediation approach from a series of well-known interviews with practitioners:

> [For some mediators] getting agreements that work is the overriding goal... Settlement-oriented mediators want to find a substantive outcome that will result in a 'deal.' ... First, the mediator interrogates the parties for some period of time until he or she develops a sense of how to deal with the issues presented or solve the particular problem. ... As the mediators readily acknowledge, they are often ahead of the parties on these issues. They know what should happen, but the challenge is to make it occur. Thus, discussions often bog down as the parties get stuck and repeat their claims or are not yet ready to move to any new way of seeing their issues. .... [Settlement-oriented mediators] tend to be directive in their style. They orient their activities toward concrete problem solving and frequently make suggestions on matters of substance. Most are comfortable with the idea that they are expert in the particular substantive domain in which the dispute occurs, and they use this expertise as the touchstone of their efforts at persuasion and influence. These settlement-oriented mediators are quite willing to acknowledge that they make

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[94] Moore, Christopher W. *The Mediation Process: Practical Strategies for Resolving Conflicts.* San Francisco, CA: Jossey-Bass, 1986, 6.

judgements about what is a good and bad agreement and try to influence the parties in the direction of the good... They thrust themselves forcefully into the conflict and are strongly inclined to believe that without their substantive and procedural know-how, the parties would flounder and settlement would be elusive.[95]

2.5.1.1 Connecting the Individualist Ideology with the Problem-Solving Approach

In the above descriptions, the Individualist understanding of the world is visible: "the human world is composed of radically separate individuals, each driven by his unique desires, each interested in others only in the fulfilment of his desires."[96] The third party is a neutral mediator attempting to find *settlement* between two *opposing* parties, though in the second excerpt, the mediator described was settlement-driven rather than purely neutral. Because *conflict* in this perspective is seen as a problem to be solved, the structure for this process is geared towards the settlement of problematic issues. Bush and Folger suggest that "the beliefs about conflict, social interaction, and human nature described... constitute the premises that – if accepted – support and almost necessitate the adoption of the directive, controlling practices that prevail in the field today."[97]

Bush and Folger remark that within the Individualist worldview, the framework "starts from the position that satisfaction is a supremely important value, because it means realizing life's potential for bringing fulfilment...when all individuals are allowed and helped to seek and attain the good as they see it, life's potential for bringing fulfilment is fully utilized."[98] With satisfaction as the ultimate value, "the qualities of the human being that seem central are the ones that are necessary to achieve this purpose",

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[95] Kolb, Deborah M. *When Talk Works: Profiles of Mediators*. San Francisco, CA: Jossey-Bass, 1994 as cited in Bush & Folger, 2005, 245-246.
[96] Bush & Folger, 2005, 244.
[97] Ibid, 246.
[98] Bush & Folger, 1994, 237.

including the "human capacities for self-knowledge, self-determination, and self-assertion", leading to the perspective of 'the individual as unique, separate, and autonomous, as well as self-aware and deliberate."[99]

With these views of the individual, corresponding views also emerge about the society in which one lives and the supporting social institutions. The role of society in individualism is to arbitrator between each individual's pursuit of satisfaction. Society and social institutions must be both "protective and facilitative, but not directive. It has to help people do what they want, prevent them from stepping on each other's toes, but not tell them what they ought to do or want."[100] Societies functioning under this worldview "balance political values of freedom and equality, both of which find expression in the idea of rights."[101]

In terms of the Individualist worldview in Problem-Solving practice, a telling sign of a settlement-driven, problem-solving approach is the use of 'stage models' that encourage a steady progression from story telling, to problem-solving, to the resolution stage. Most of the elements of the process, especially the 'problem-solving stage', are based on negotiation theory. For example, Roger Fisher and William Ury (in collaboration with the Harvard Negotiation Project) have developed four principles for problem solving that are heavily influential in this approach to mediation. First, the authors suggest separating people in the conflict from the problem at hand, as it is the content and substance of the dispute that can be settled (while personalities or perspectives are not necessarily resolvable). This involves adopting a future-focus in terms of the process as the mediator should take from the micro-level of discussion (what is being said) and apply it to the macro-level of problem solving (what the problem is). Second, the focus should be on interests and not positions. While parties may have polar positions, they may share some interests that may increase the possibility of a mutually acceptable solution. In addition, emotional expression should be minimal because as an intangible, it is impossible to negotiate feelings. Inventing options for mutual gain is the third principle, requiring creativity

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[99] Ibid, 238.
[100] Ibid.
[101] Ibid.

when looking at solutions that might satisfy parties, rather than focusing on a "fixed pie". Lastly, Fisher and Ury recommend that insisting on using objective criteria, or fair standards to discuss and test options, will result in "a fair and acceptable outcome."[102,103]

"This is the philosophy or worldview familiar to most of us as liberal individualism. It is deeply entrenched in our culture."[104] The problem-solving approach has gained popularity in the Western world, especially in the last twenty-five years, because of its simplicity in structure and cost-effectiveness for organizations, corporate bodies, court systems, families, and schools. The underlying Individualist ideology and the value of satisfaction are quite evident in how the approach is laid out: a central focus on the individuals' needs and interests, piecing together a mutually acceptable agreement from separate ideas brought together by individuals, the need for an impartial and neutral mediator to assist parties in problem-solving. Because conflict is a problem, the mediator's goal is an agreement acceptable by both parties. The stage model used by mediators in this approach ensures that parties are given equal time to introduce their stories and their ideas for resolution, reinforcing the value placed on equality.

2.5.1.2 Problem Solving and the Third Party Mandate

In regards to the Third Party Mandate as introduced in 2.1, the role of the mediator in a Problem-Solving framework is central. First, as stated in the previous section, it is important that from this perspective the party is a neutral and an outsider to the conflicting parties. Second, the mediator as a neutral is ideally not interested in a particular outcome for the dispute. However, in this approach, a settlement is a clear incentive to the mediation process. As a result, this affects how the intervention is conducted. Process control, the way the interaction is controlled or structured, is in effect

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[102] Domenici, Karen and Stephen Littlejohn. *Mediation: Empowerment in Conflict Management* (2nd ed). Prospect Heights, IL: Waveland Press, 2001, 83-84.
[103] For a full description of the four problem-solving principles, see **Fisher, Roger and William. L. Ury. *Getting to Yes: Negotiating Agreement Without Giving In* (2nd ed). New York: Penguin, 1991.**
[104] Bush & Folger, 1994, 239.

entirely controlled by the mediator. This is evident through the use of a stage model, caucusing with parties privately to negotiate one-on-one, a focus on party needs and interests, and the ultimate goal of settlement. Frequently, mediation literature assures "mediators control the process, while parties control the content."[105] Problem-solving mediators, then, have sufficiently high process control to ensure efficiency, order, rules of the session, and topics for discussion so that the end result of a settlement can be reached.

In relation to content control, the mediator may not have influence over the precise word choice of the parties, but the aforementioned process control over the substantive topics to be discussed and focusing the parties on a future goal of settlement means that parties' input, specifically on issues that are not deemed in line with settlement or focus too heavily on the past, may be reduced. Therefore, the content control under this arrangement lies largely with the mediator. Mediators working from this framework have high process and potentially high content control. Lastly, in terms of the number of interveners used in the intervention, mediation typically uses one or two mediators. As the underlying ideology of the rights of and focus on the individual, the Individualist-oriented mediator is primarily concerned with how to assist the parties solve a problem in a fair and self-determining way that attends to the individual needs and interests of the parties involved.

2.5.1.3 Problem Solving Mediation Process

In Problem-Solving mediation, the values of the Individualist approach construct a like-minded process for mediators. Therefore, in a settlement-driven approach, the goal is to achieve an agreement through a structured

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[105] Those working from a Problem-Solving approach use this statement frequently. Current websites that promote and advise on the mediation process within individual, business and government contexts that use this phraseology are across the West, including:
(1) Land and Resources Tribunal Website, "Code of Conduct for LRT Mediators," (Queensland, Australia). Accessed 9 April 2010.
http://www.lrt.qld.gov.au/LRT/PreHearing/CodeConductMediators.asp
(2) Integral Coaching and Mediation Website, "Frequently Asked Questions: Mediation" (Ontario, Canada). Accessed 9 April 2010.
http://www.icoachingandmediation.com/frequently-asked-questions-mediation
(3) Georgia State Board of Workers' Compensation. "Mediation." Accessed 9 April 2010.
http://sbwc.georgia.gov/portal/site/SBWC/menuitem.2f54fa407984c51e93f35eead03036a0/
?vgnextoid=33fa34a359b45210VgnVCM100000bf01020aRCRD.

process that satisfies the parties in a timely manner. The basis of this interaction is what Nadja Alexander phrases "positional bargaining discourse," which is related to the hallmark of negotiation.[106] Dorothy Della Noce articulates three intervention strategies used by problem-solving mediators: (1) solution-thinking, (2) future focus, and (3) leading the parties.[107] These strategies are demonstrated throughout the process in order to attain a resolution.

A typical problem-solving mediation process includes five to seven stages, once any pre-mediation sessions or telephone calls have been made. These may include (1) introduction by mediator, (2) story telling by parties and summary by mediator, (3) identification of issues and interests by mediator, (4) negotiation and problem-solving of issues by parties and mediator, (5) private caucus with individual parties and mediator and (6) joint negotiation of issues, and (7) signing of agreement by parties and mediator. Exact stages may vary by practitioner, though the focus is on the potential for agreement and satisfaction of the parties. Success is categorised by the achievement of an agreement, and usually given as a percentile, e.g. '85% success rate'. [108]

The first stage is an opening statement made by the mediator, where he or she introduces the parties to the mediator(s), the process, ground rules, the role of the mediator and where any documents (such as an agreement to mediate form) can be signed. The goals of the process may be articulated, signalling intent to come to resolution on amicable terms. The process is discussed with the parties, and many mediators would indicate that while the 'mediators control the process, the parties control the content' – that is, that mediators have high process control while giving parties content control.

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[106] Alexander, Nadja. "The Mediation Metamodel: Understanding Practice." *Conflict Resolution Quarterly* 26, no. 1 (2008).

[107] Della Noce, 2002, 170-172.

[108] See, for example, Henderson, Douglas A. "Mediation Success: An Empirical Analysis." *Ohio State Journal on Dispute Resolution* 11, no. 1 (1996): 105-47, The Mediators Institute of Ireland (MII) Website. "Overview." Accessed 13 September 2010. http://www.themii.ie/overview.jsp#Mediation
as well as the American Arbitration Association (AAA). "What Is Mediation?" Accessed 13 September 2010.
http://www.aaamediation.com/faces/index.jspx;jsessionid=B1CE183A51999F029157CC0374AD1282.

Ground rules may be introduced at this time, such as requesting that parties refrain from using curse words or interrupting one another. Here is an example of how the Mediators' Institute of Ireland describe mediation generally:

> While the parties control the content of the mediation, the Mediator is responsible for the process and during the course of the mediation will work with the parties - sometimes in joint and sometimes in separate sessions. The mediation process improves communication, narrows outstanding issues and defines areas of agreement, leading to successful resolution in about 80% of cases. Where full agreement is not reached, generally parts of the dispute are resolved, leaving fewer or less extreme differences to be resolved.

When the parties begin speaking in the second stage, they describe their version of events in a monologue. The mediator may ask questions to clarify the party's version of events, and summarise their comments. Some mediators actively reframe the party's description of events in order to illustrate issues, remove inflammatory statements, find commonalities, and avoid a long discussion of values or emotionally-charged statements which are usually considered non-negotiable and may create an impasse to progress, though emotions should be acknowledged and heard.[109] William Ury has described the use of reframing in mediation as "redirecting the other side's attention away from positions and toward the task of identifying interests, inventing creative options, and discussing fair standards for the

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[109] One such example of this is from the Air Force Alternative Dispute Resolution Program. "Dealing with Impasse." Accessed 13 September 2010. http://www.adr.af.mil/factsheets/factsheet.asp?id=7365. "While venting should be embraced and not feared, such a joint session should be ended if it appears that either or both parties are close to losing control of their actions. It always remains the mediator's responsibility to remain calm and maintain the quality of the proceedings."

selection of options."[110] Like the strategies articulated by Della Noce, this is based on interest-based bargaining.

Once parties have shared their stories, the mediator may progress into private caucuses or problem-solving, depending on the pace of the parties. Caucusing allows for one-on-one meetings between each party and the mediator to discuss their interests further in order to work towards resolution. In a problem-solving phase, parties are negotiating the issues that have been established through their story telling, and are highlighting their interests in those issues. The mediator looks for opportunities for mutual gain as well as creative solutions, as suggested by Ury.

Once the parties have reached agreement on the issues that they have presented, they sign a physical document that outlines their decisions on the range of topics discussed.

2.5.1.4 Problem Solving Views Summary

To summarise, the problem-solving approach is the dominant mediation framework in the field, adopting an Individualist ideology. The four distinct areas for measuring the views of mediators, namely: views of human nature, conflict, productive/destructive conflict, and social institutions are recognizable. The view of human nature in this approach is that people are distinct individuals with their own interests and needs. The view of conflict is seen as a problem to be solved. Productive conflict is seen when parties arrive at a common understanding or compromise and actively work on creating solutions within the designated stages. Destructive conflict is seen when parties are not task focused or too emotional. Mediators tend to view social institutions as supportive and necessary so long as they are not controlling of individuals' rights or freedoms.

The process of mediation from a Problem-Solving perspective has the focus on solving the conflict. This is done through a focus on the future of the conflict, mediator control of the process, and a structured stage model with aims toward resolution. Problem-Solving mediators favour tools such as

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[110] Ury, William. *Getting Past No*. New York: Bantam Books, 1993, 78 as cited in Livingood, John M. "Reframing and Its Uses." *Dispute Resolution Journal* 57, no. 4 (2003), 44.

summarising and reframing in order to construct a dialogue that fosters opportunities for agreement. Open conflict is contained, and emotional expression is given space so long as it does not interfere with the greater process. Success is measured by the percentage of mediations that have reached agreement.

2.5.2 Transformative Mediation

The Transformative framework is an evolving perspective on the theory and practice of mediation. Bush and Folger first presented the Transformative approach fully in the first edition of their book *The Promise of Mediation* in 1994. Before this, the mediation field relied heavily on the work of Problem-Solving mediators because there were few alternative resources available for what had become the most common of the alternative dispute resolution programmes.

Responding to criticism of mediation (mainly by those who adopt an Oppression Story as their understanding of mediation) as an inherently flawed method of dealing with conflict, Bush and Folger outlined that it was not mediation that was flawed, but that the values that underscored the practice were not consistent with how the process was implemented; indeed, by being settlement-driven, Problem-Solving mediators could risk the values of self-assertion and self-determination that provided the basis for the Problem-Solving approach to mediation. To distinguish the emerging Transformative approach from the existing Problem-Solving approach, the authors developed the "Ten Hallmarks of the Transformative Practice" to illustrate mediation principles from a Transformative perspective.[111] Included among these are: leaving responsibility of the outcome to the parties, refusing to make judgments about what the parties' decide, taking the view that the parties have what it takes to create a successful outcome for themselves, focusing on the 'here and now' of the conflict, being responsive

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[111] Folger, Joseph P. and Robert A. Baruch Bush, "Transformative Mediation and Third Party intervention: Ten Hallmarks of the Transformative Mediation Practice", in Folger & Bush, 2001, 23.

to emotions expressed by the parties, and believing that small steps can also be indicators of success.

2.5.2.1 Connecting the Relational Ideology with the Transformative Framework

The Relational worldview is founded by the value of transformation, "the achievement of human conduct that integrates strength of self and compassion toward others – both because of the great goodness of the human conduct that results and because of the great moral effort required to produce it."[112] With the value of transformation, the qualities of the human being that are viewed as central are those that are required to realize this value. "Starting from the value of transformation leads to the view that human nature includes *both* the capacity of self-interestedness *and* the capacity for responsiveness to others." The Relational worldview perceives the "central feature of human nature as neither individuality or connectedness, but the elements that relates the two in an integrated, whole human consciousness – the relational capacity. Human beings are thus simultaneously separate and connected, autonomous and linked, self-interested and self-transcending."[113]

The Relational view of society and social institutions follows in this same vein. While an Individualist ideology views society as a necessary referee to protect and support individuals and their wants and needs, Relational ideology views society as "a medium for the process of human relations and interaction, in which all the capacities of human nature, and especially the relational capacity, are enacted and the full potential of human decency is realized."[114] Social institutions within this worldview must engender a supportive, educational, constructive and positivist role. The role of social institutions must be to orient individuals to their sense of strength and capacity to show concern for others. While social institutions indeed should provide protection for those in society, its role should not be limited

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[112] Bush & Folger, 1994, 242.
[113] Ibid, 243.
[114] Ibid, 244.

to this. Instead, social institutions "serve not only to protect us from the worst in each other, but also to help us find and enact the best in ourselves."[115] Mediation forms one such institution.

To bridge this ideology with the practice, Folger and Bush make the argument that as human beings with interests in self and other, approaching conflict within this ideology uses the supporting value of transformation in considering response.

> Relational ideology portrays the human world as socially and discursively constructed. Human begins are depicted as fundamentally social, that is, formed in and through their relations with other human beings, essentially connected to others, and constantly relating to others through dialogue.[116]

Transformative mediation, therefore, would not see conflict as a 'problem to be solved' as in the Problem-Solving approach. Instead, conflicts can be opportunities for those to develop capacities for self and concern for others. As an opportunity, it is not a problem, but a *crisis in interaction*. This crisis references the dyadic relationship between the individual autonomy and social connectivity, and is addressed through the Relational ideology that underlies the practice. In the "dynamic relational world, conflict becomes understood as created, constituted, and transformed in the mediation process through the ongoing communicative interaction of the parties and the mediator."[117]

Initially in conflict, disruption occurs in the relationship between the autonomous self and the connection with others, parties become more alienated and destructive, distorting perception and experience of self and other. Because of this, parties feel more vulnerable and self-absorbed than before the conflict emerged. Transformative practitioners contend that for most people, this spiral is the most significant negative element of their

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[115] Ibid.
[116] Folger and Bush, 2001, 76.
[117] Ibid, 77.

experience of conflict. The authors demonstrate that the most effective way to make progress in conflict is to improve the *quality* of interaction, which in turn affects the parties and their interaction. The belief is that parties are capable to regain this strength and have the ability to acknowledge the other party and their perspective. As parties develop empowerment, their goals become clearer as parties describe the true nature of the conflict through their own words. Parties shift from a negative conflict spiral to points of connectivity by recognizing the other, showing signs of empathy, and taking natural turns in conversation. The *conversation metaphor* is the most illustrative way to describe the Transformative framework to mediation, and the purpose of this image is to show how the mediator is to assist the parties in having a conversation by following their cues. Transformative practice focuses on improved *quality* of conflict interaction rather than aiming to solve a problem.

The terms that the Transformative framework uses in describing these shifts from negative to constructive conflict interactions are 'empowerment' and 'recognition'. Empowerment relates to the party clarification and strengthening of goals, feelings, expectations, options, and events. Recognition refers to acknowledging or appreciating the other party's emerging empowerment. While conflict can be destabilising, parties engaged with the conflict have the potential to feel an overwhelming sense of weakness and self-absorption. "Conflict tends to lessen parties' ability to accurately understand and assess their situations, think clearly about their own views, and deliberate confidently about their choices and options. As a result, parties are often uncertain, indecisive, confused, and disorganized as they engage each other about the issues that divide them."[118] Conflict also tends to reduce parties' ability to consider the perspectives of the other, and can result in a loss of an otherwise comfortable social connection. This negative conflict cycle prevents parties from considering the options and goals from their own perspective and from the understanding of the other, which "often undermines sound decision-making. Parties make choices that

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[118] Folger, Joseph P. "Harmony and Transformative Mediation Practice: Sustaining Ideological Differences in Purpose and Practice." *North Dakota Law Review* 84, no. 3 (2008), 840-841.

are rooted in a reactive, unreflective posture rather than a reflective, deliberate one."[119]

In Transformative mediation, the goal is to address and transform the negative quality of the interaction in favour of a more constructive quality of interaction. To do this, mediators will assist parties to clarify individual feelings of uncertainty, as well as the support parties when there is a recognition or consideration of one another's perspectives. This improved quality of interaction evolves out of the shifts within the conflict interaction. As one party becomes clearer and more confident on his or her goals or expectations, (referred to as an 'empowerment shift'), this party can show recognition, understanding, or awareness of the feelings and statements of the opposing party, (referred to as a 'recognition shift').[120] As parties become oriented to their own agency and become more open to hearing the other, the conflict interaction changes from one that is destructive to one that is constructive; a transformation of the conflict interaction has occurred.

2.5.2.2 Transformative Mediation Framework and the Third Party Mandate

In relation to the Third Party Mandate, TMF is similar to the Problem-Solving framework in that typically, the mediator is a neutral third party approached by parties to intervene in a dispute. In addition, the two approaches are similar in that the mediators involved within a session are limited to one or two. Where the applied Transformative model differs from the Problem-Solving model is the level of process and content control. Process control refers to the manner in which the interaction is controlled or structured. While in the process of problem-solving, a mediator might keep a future focus and highlight the 'big picture' of the future ahead, a mediator's role from a Transformative orientation is to "support party empowerment and inter-party recognition as the disputants make decisions".[121]

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[119] Ibid, 841.
[120] Ibid, 841.
[121] Folger, Joseph P. "Who Owns What in Mediation?: Seeing the Link Between Process and Content". In Folger & Bush, 2001, 59.

TMF focuses largely on the potential for parties in the conflict to create their own goals and expectations for the process, while a mediator is there as a support rather than to control the process. While the Problem-Solving approach comes equipped with a stage model and an end-goal of an agreement, the Transformative framework differs in that there are no sequential phases: parties have a conversation with a party-determined agenda rather than a mediator-framed process. An agreement is not a goal, but one in a range of potential results.

Ultimately, the goal of Transformative mediation is to move from the negative interaction of conflict escalation, namely weakness and self-absorption, and toward empowerment and recognition. As a result, parties have content control: parties are able to discuss their conflict in their terms, including the past, emotional reactions, and discussing other issues that are deemed important. Process and content are entrusted to the participants, along with the responsibility to create their own outcome. Therefore, the third party mandate in a Transformative approach has low content and process control on the part of the mediator, and is an informal process that does not require an agreement for success.

2.5.2.3 Transformative Mediation Process

The Transformative mediation process may initially appear like the Problem-Solving mediation process. Parties may take part in pre-mediation sessions or phone calls, and will meet together with the mediator or co-mediators for the process at an office. The mediation process, however, is not shaped by successive stages, but through following the parties through a conversation on the issues that bring them to mediation. Unlike Problem-Solving mediation, the mediator's role is to support the parties through becoming clearer and more confident in their own goals and perspectives as well as supporting shifts that occur towards the recognition of the other party. Rather than having the mediator control the process, the parties themselves decide how their conversation is constructed and paced.

Behind this process is the acknowledgment that the parties have the capacity to resolve the conflict in a way that is acceptable for each of them, and that the value of mediation is to improve the quality of the interaction through empowering each party so that they may be able to connect with one another in ways that are constructive to the conflict. Della Noce articulates the strategies that transformative mediators employ when 'positioning the parties for constructive conversation' in great detail in her thesis "Ideologically Based Patterns in the Discourse of Mediators: A Comparison of Problem-Solving and Transformative Practice," which informs much of this description of the transformative process.

The mediator orients parties to a constructive conversation initially through the opening statement or conversation of the mediation. Rather than having simply the goal of resolution in mind, transformative mediators orient parties to the possibilities of greater clarity and understanding, considering choices, making decisions, including a decision to make an agreement. The mediator also affirms that this is a process owned by the parties, and supports this through asking the parties for their goals, any suggestions for guidelines for the conversation, and inviting discussion on these. The mediator does not establish 'ground rules', but the parties discuss any desired guidelines for the discussion at the start with assistance by the mediator. If open conflict ensues at this stage, the mediator's role is to assist parties in getting clearer on what guidelines to include or what reservations exist.

When parties begin to speak on the substantive issues that bring them to mediation, the mediator's role is to summarise narratives, reflect statements and questions, and orient parties to one another. Mediator agency is downgraded through encouraging parties to speak with one another, even if this means interrupting the mediator. Instead of outlining the issues and negotiating each methodically, the transformative mediator follows the parties in the micro-level content of the conversation. Therefore, the mediator assists the parties in clarifying their narratives and orients them to their own agency. As parties become stronger independently, they are more able to hear and consider the other party. The mediator will summarise

the conversation, including collaborative elements of both parties' stories as well as disagreements that they may still have.

As conflict emerges, the mediator opens this discussion just as he or she would with a disagreement with guidelines for the discussion. By marking the disagreement and following the parties as they describe the issues that create disagreement, the mediator opens verbal conflict and allows the parties to discuss these disagreements openly. Mediators tend to resist terminating this open verbal conflict, and instead allow for parties to speak directly with one another. Emotional expressions are addressed in the same vein, allowing parties to convey emotional responses with the support of the mediator, without framing these moments as 'venting emotion'. As one of the hallmark of transformative practice, there are 'facts in the feelings,' and therefore mediators should encourage emotional expression and support parties in becoming clearer on the origins of these emotions:

> We rely on emotional input in order to make decisions and prioritize information. Emotion is what non-verbal communication is made of and therefore, if we ignore the emotion, we also ignore more than 90% of human communication. We have found that if we recognize emotion as it is displayed, that the level of emotion naturally decreases. We have also discovered that if we fail to acknowledge emotion or prevent its revelation, the emotion in the room increases.[122]

The mediator also 'checks in' with parties in order to orient them to the decision-making nature of the process. He or she may ask the parties what topic they want to discuss and how to discuss it, especially when parties seem unsure of where next to take their conversation. Checking in is also used to determine available opportunities for decision-making, and highlighting options that parties have articulated in their conversation. Throughout this check in, mediators downplay their own agency, and instead

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[122] Bjerknes, Daniel and Kristine Paranica. "Training Emotionally Intelligence for Conflict Resolution Practitioners." *Mediate.com* (July 2002), Accessed 13 September 2010. http://mediate.com/articles/bjerknes.cfm.

emphasise the capacity for the parties to make their own decisions about how the mediation process should develop. Should parties decide to create a physical agreement at the conclusion of the mediation, they may do this but it is not the only measure of success. Success is also measured by the clarity, perspective-taking, and option consideration that parties achieved through the process.

2.5.2.4 Transformative Views Summary

In summary, the four areas of measuring mediator views in the Transformative framework are evident. The view of human nature is such that individuals are both autonomous and inherently connected with others. Conflict is seen as a crisis in human interaction. It is seen as an opportunity to activate self-determination and responsiveness to the other and an opportunity to change a conflict interaction from destructive to constructive. The Transformative mediator's view of productive conflict includes a shift in the quality of human interaction from negative to positive, adversarial to relational, objectifying to humanising. This includes parties becoming empowered through gaining clarity and confidence, as well as recognising the other party through connection. The Transformative view of social institutions is valued because they are the mediums for the process of human relations, through which potential connections between individuals are realised. The process of a Transformative mediation is fluid and conversational. It focuses on the wishes and capacity of the parties, rather than on an impetus for agreement. The mediator focuses on the 'here and now' of the party discussion, and is comfortable following the parties' lead. The goal is the qualitative change in the conflict interaction of the parties, and therefore the mediator is helping the parties become clearer and decisive on their own perspective while supporting opportunities for parties to orient with the other in ways that show connection and recognition.

2.6   Other approaches to mediation

Aside from the Individualist and Relational ideologies, and corresponding Problem-Solving and Transformative mediation frameworks, a range of mediation and conflict resolution strategies exist across occupational, geographical and cultural realms. Each of these approaches is built upon core assumptions and values that support the appropriate measures taken by the third party and expectations for the parties. While mediation in the West tends to fall broadly into one of three groupings of facilitative, evaluative or transformative,[123] the variety of mediation models is too abundant to comprehensively capture in this section. Instead, using the basic continuum presented in Appendix 1 as a guide and models put forward by Kozan, Folger, Bush and Folger, Alexander, LeReshe, and Abu-Nimer this section will discuss one example of an alternative approach in depth (Harmony) and will briefly consider the Confrontational and Regulative models.[124]

2.6.1   Harmony

Distinct from the two principle Western frameworks of Problem-Solving and Transformative mediation, the Harmony model is adopted when the collective culture of a group is highly valued, such as religious, traditional, or indigenous communities.[125] The Harmony approach, as with the Problem-Solving and Transformative models, has values that inform the model's mediation practice, including views on individuals and society, conflict, and managing conflict.

2.6.1.1 "Organic" Ideology

In the Harmony framework, a core value is the sustained well-being of the group or community. As Bush and Folger articulate: "the valued end in this

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[123] Della Noce, Dorothy. "Evaluative Mediation." *Conflict Resolution Quarterly* 27, no. 2 (2009), 194.

[124] As put forward by Kozan, M. Kamil. In Folger, Joseph P., Marshall Scott Poole, and Randall K. Stutman. *Working through Conflict: Strategies for Relationships, Groups, and Organizations*. 6th ed. Boston: Pearson, 2009, 54-55.

[125] Alexander, 114.

view is the survival and welfare of some collective entity – a family, tribe, community, society. Harmony is a way of describing the necessary condition for community well being, because conflict can rip the entity apart. The value itself is really not harmony, but community survival or welfare, to which harmony is instrumental."[126] Sections 2.4.1 and 2.4.2 detailed the underlying values of satisfaction and transformation, their subsequent Individualist or Relational ideological foundations or worldviews, and mediation frameworks that follow those values and worldviews. Within the Harmony perspective, this description is also apparent. As Bush and Folger remarked, if the value in this perspective is collective welfare, the qualities sought in a human being are those relating directly to this value, including "the capacity to be aware of participating in something larger than self, to feel connected to others and to a common entity, and furthermore the capacity for subjugating the needs of self to the needs of the whole, for self-sacrifice and service... Starting from the value of harmony, the view of human nature is one that emphasizes connectedness, devotion, commonality, and selflessness."[127] Bush and Folger categorize this ideology as 'Organic' – with a life of its own that is independent and superior to any individual member. It is collectivist, as opposed to Individualist.

Similarly, the view of society within this perspective follows from this understanding of human nature. "Society is the collective entity whose existence is primary, an organism with a life of its own apart from and superior to that of the individuals who make up its parts. It possesses a collective will, and whatever that will desires is the only definition of good."[128] Values that are protected and preserved in the wider political culture with an Organic worldview include hierarchy, loyalty, and service. "Though in some degree to many of us from 'intimate' societal spheres like family, religious, or ethnic associations, this Organic worldview is not widely seen as relevant to the larger political culture in which we live," assert Bush

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[126] Bush & Folger, 1994, 239-240.
[127] Ibid, 240.
[128] Ibid.

and Folger, and "more identified with other cultures, including premodern Western societies and contemporary non-Western societies."[129]

2.6.1.2 Connecting the Organic Ideology with the Harmony Approach

Ultimately within an Organic ideology, conflict is viewed negatively as it disrupts social order and risks the basis for stability within the community or group. "When conflict occurs among individuals or subgroups within a larger community or social institution, it is viewed as a potential disruption or challenge to the norms, behavioral expectations, or social positions people hold."[130] Further, conflict threatens wider systems of relationships that support the social order; if relationships fail due to conflict, this weakens the power and cohesiveness that the society relies on to exist. Confirming this, Abu-Nimer suggests that in a collectivist Middle Eastern context, "even though a dispute might begin between two individuals or two families, it soon escalates to involve the entire community or clans. The group, not individuals, is a central [focus] of action...[C]onflict is negative, threatening, and disruptive to the normative order and needs to be settled quickly or avoided. The interveners' message [focuses] on the damage and destruction that a conflict between two brothers, friends, or nations can bring."[131] Similarly, LeResche describes how Koreans in America "tend to perceive conflicts as negative situations that represent a shameful inability to maintain harmonious relationships with others. A conflict is not an acceptable condition; hence careful attention must be paid to avoidance of any activity that may cause discord... conflicts occur when at least one person does not behave in the proper manner toward another. When someone is selfish or insults another person, a conflict is created."[132]

A Harmony approach to conflict would take action to ensure that the factors causing the rift between two members of the community do not

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[129] Ibid, 241.
[130] Folger, 2008, 823, 828.
[131] Abu-Nimer, Mohammed. "Conflict Resolution Approaches: Western and Middle Eastern Lessons and Possibilities." *American Journal of Economics and Sociology* 55, no. 1 (1996), 46.
[132] LeResche, Diane. "Comparison of the American Mediation Process with a Korean-American Harmony Restoration Process." *Mediation Quarterly* 9, no. 4 (1992)., 326.

evolve into a wider disruption to the cohesiveness of the group. The hallmark of a successful Harmony approach to mediation, according to Folger, is "the restoration of harmonious relationships that support the values of the community at large."[133] In contrast to the Problem-Solving and Transformative frameworks, conflict resolution from a Harmony approach values the interdependence of the parties over each individual's independence. Choice for parties within a Harmony perspective focuses on the norms of the community, including "community connection, responsibility, and commitment."[134] Folger outlines three actions or conflict behaviours within this approach that aim to address the need for relationship restoration, including (1) Avoidance of Conflict Issues, (2) Saving Face, and (3) Offering Apologies and Forgiveness.

2.6.1.3 Avoidance of Conflict Issues

In groups that enact a Harmony approach, conflict is seen as negative. As Leas and Kittlaus describe, conflict issues are avoided in order to ensure that they do not threaten the community:

> The problem is that there is a big assumption inscribed in the folklore of the church that anger, hostile feelings, conflict, and differences of opinion are signs of sickness, selfishness, and failure in the church. This assumption dictates hiding, suppression, avoiding, and/or denying even the slightest twinge of dissatisfaction that one may have, because if he reveals it, he will disclose the fact that the church is not the strong superchurch it has been trying to make itself believe it is.[135]

The maintenance of strong relationships within the community is highly valued, and in this case more so than tensions that may exist on an

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[133] Folger, 2008, 829.
[134] Ibid, 829.
[135] Leas, Speed B. and Paul Kittlaus. *Church Fights*. Westminster: John Knox, 1973, 48 as referenced in Folger, 2008, 830.

interpersonal level. A peaceful community is seen as one without conflict. Leas and Kittlaus argue that the absence of conflict in this perspective is problematic in that "What is really going on in this situation is the repression of conflict for the sake of peace."[136]

2.6.1.4 Saving Face

Face saving is the way in which people maintain a positive self image. When 'face' is tarnished in some way, for example, when making a mistake, a face saving technique may be employed in order to avoid embarrassment. Folger argues that within the goal of restoring relationships, face saving can be used to stabilise and satisfy relationships where conflict has undermined the self-image of one or both of the parties. While the loss of face may not destroy every relationship "...true harmony depends heavily on interaction that assumes and conveys mutual face support... when face threats persist, they tend to escalate conflicts because issues related to identity – how parties see themselves – are rarely negotiable."[137]

2.6.1.5 Offering Apologies and Forgiveness

One of the most important behaviours within a Harmony approach surrounds apologies and forgiveness. An apology is constructed with an acknowledgement, affect and vulnerability and in line with the community expectations of how this should occur. While a loss of face can be damaging, "our moral relations provide for a ritual whereby the wrongdoer can symbolically bring himself low – in other words, the humbling ritual of apology, the language of which is often that of *begging* for forgiveness."[138] The first ingredient of the apology is recognition or acknowledgement of the harm that was done and the accountability of the person who committed the injury. Secondly, an apology should include an element of how the offended

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[136] Leas & Kittlaus in Folger, 2008, 831.
[137] Folger, Poole & Stutman, 145 as cited in Folger, 2008, 831-832.
[138] Scheider, C. "What It Means to Be Sorry: The Power of Apology in Mediation," Mediation Quarterly, 17(30, 2000, 266.

party is personally affected by the actions that he or she has taken that have injured the other. Lastly, the apology occurs in a climate of vulnerability – this apology may be accepted or refused by the injured party. In turn, forgiveness is seen as a path for healing for both the injured party and the community as a whole. Apologies and forgiveness are opportunities for parties to align with the core values of the wider community.[139] Apologies can then be an opportunity to acknowledge that "norms and expectations of the community have been violated."[140] In addition, forgiveness offers the opportunity for the injured party to "acknowledge this intent and support the offender's effort to realign with the broader norms of the community."[141]

2.6.1.6 The Harmony Approach and the Third Party Mandate

A Harmony approach is one that aims for stability of relationships following any conflict, and is frequently mediated by an insider within the community who is familiar with the parties and the issues at hand, as well as the values and ideals that the conflicting parties and the community at large wish to uphold. Folger outlines that "Because the outcomes of the conflict need to be aligned with the core values of the community, the mediator usually is assumed to have some degree of personal familiarity with these values... this means that the mediator him or herself is a member of the disputing parties' community."[142] While mediators may not be a part of the immediate family or group in which conflict occurs, mediators tend to be from within the broader cultural community.

Wehr and Lederach articulated this concept of 'insider-partial' to explain the value and trust placed on a mediator that is from within the community as well as with and for each side of the dispute.[143] This model, based on the trust placed upon the third party, views an insider-partial as legitimate because of his or her personal relationships with the parties,

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[139] Folger, 2008, 832.
[140] Ibid, 832-833.
[141] Ibid, 833.
[142] Ibid.
[143] Insider-neutral explained more fully in Wehr, Paul and John Paul Lederach. **"Mediating Conflict in Central America,"** *Journal of Peace Research*, 28(1), 1991, 85-98. Accessed on 4 July 2010. http://www.jstor.org/stable/424196.

connection with the community, knowledge of the norms and values, and their whole investment with the community. Unlike most Western models, mediators are chosen precisely because of their proximity to the parties rather than their distance or neutrality from them. These qualities result in a third party's legitimacy within the community, the confirmation of tradition, and the use of connections in order to resolve disputes. The insider-partial mediator will understand the context, the parties, the history of their relationship and the issues that the parties face. Futher, the mediator's relationship with the parties and the issues that bring them to dispute "establishes an expectation that the conflict the parties are addressing is not just their conflict, but is owned by and is threaded through the larger community."[144] The mediator represents the community when he or she assists parties to reach resolution.

Mediators "are usually sought out for their wisdom, status, and persuasive presence rather than their technical expertise."[145,146] Mediators are not necessarily professionally trained conflict interveners, but gain their credibility and influence through their role in the community. "Their presence and contributions encourage parties to recognize that their accountability is not just to each other, but to the community as a whole... The third party intervener takes on the responsibility of insuring that the conflict intervention process is linked to the community by including representative members who speak for community values."[147] The mediator position is thus filled by a person of some authority, trust, value, and respect within the society as a whole as well as with the disputants, such as elders, chiefs, or religious or political leaders. In sum, "The mediator's style tends to reflect and embody the kind of communication that the group as a whole values." The mediator's style is respectful and reflective, reminds parties of the larger commitment to the community, and remains optimistic at the ability for the relationship to be healed.[148]

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[144] Folger, 2008, 834.
[145] Alexander, 114.
[146] Similar reflections in Folger, 2008, 835.
[147] Ibid.
[148] Ibid, 835.

The third party mandate within a Harmony approach is informal in terms of the use of insider-partial mediator(s) and the avoidance of formal bodies in order to address conflict. There is expectation for the mediator to bring resolution, and the mediators involved have a high level of persuasion and influence within the community at large to bring conflicts to an end and to help restore relationships.

2.6.2   Other general models

A Confrontational model, in contrast, is an approach where the individuals involved are encouraged to pursue their own goals rigorously rather than seek compromise. Similar to an Individualist ideology, conflicts are seen as one way to attain individual goals rather than a strain on a community. With the interests of each party valued, a third party in this model would encourage a process of party negotiation and open expression of conflict. The focus is on short-term goals and not on long-term commitment. A Confrontation model would be used in negotiation, such as small claims, where parties are create agreements in their interest in clear and open language that all understand. This model also assumes that power is distributed equally among parties, which aids compliance to agreement.

Kozan also discusses a Regulative model. This model is one that is formal and values codes, rules and laws in how the parties describe and resolve conflict. Third parties within a Regulative model are likely those that have been designated or qualified to act within that role. As such, the procedure that the third party takes is highly valued even by parties that differ in power and social status, and the parties anticipate this process. With the focus on the application of principles to resolve conflict, the Regulative model sees emotional displays and personal aspects to the conflict as largely unnecessary and irrelevant. The Regulative model is explicit with its communication and its goal is short-term settlement rather than long-term concerns. Arbitration and evaluative mediation are examples of a court-alternative process where this can be seen.

In each of these alternative models, the subjects of power dynamics and cultural expectations are central to determining what process is most effective. In addition, the cultural realities need to be observed. As illustrated by Ting-Toomey,

> People in small power distance cultures tend to value equal power distributions, equal rights and relations, and equitable rewards and punishments based on performance. People in large power distance cultures tend to accept unequal power distributions, hierarchical rights, asymmetrical role relations and rewards and punishments based on age, rank, status, title, and seniority. For small power distance cultures, equality of personal rights represents an ideal to work toward in a system. For larger power distance cultures, respect for power hierarchy in any system is a fundamental way of life.[149]

The topics of power and equality are only two of the topics that are subject to alternative perspectives when discussing cultural variants to mediation processes. This topic will be revisited in later chapters when culture and the case study are explored in greater detail.

Conclusion

Mediation has grown vastly since being accepted as an alternative method for resolving a range of disputes between individuals and groups. The application of mediation is no longer limited to conflicts in the workplace, organizations, families, neighbourhoods and communities, corporations, or government. The value of conversation over adversarial means has proven effective in interpersonal and group disputes and even in political and international conflicts. However, definitions and expectations of mediation and its goals still vary according to the four accounts laid bare by Bush and

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[149] Ting-Toomey, Stella. *Communicating Across Cultures*. New York: The Guilford Press, 1999, 1 as cited in Folge, Poole and Stutman, 2009, 165.

Folger. Due to ideology and the way in which mediators view the process they are charged with, mediation can differ greatly based on the mediator's goals and interpretations of: the parties, conflict, successful resolution, and the role of social institutions.

Still mainstream, the Problem-Solving method has been explored as an extension of negotiation frameworks in a variety of environments through the use of informal meetings, political good offices, as well as academic problem-solving workshops. This process focuses greatly on the individual, with a goal of improved justice where the satisfaction of rights, needs and interests are met as much as possible. The Satisfaction Story is one illustration of the benefits of mediation in these terms. Similarly, Individualist ideology of Western culture values the rights and equality of individuals.

In contrast, the contemporary nature of the Transformative framework has meant that exploratory attempts to examine the value of Transformative mediation outside of North America, Europe, and Australia have been minimal. While the Transformative approach to conflict is a recent story to add to the existing volumes on mediation theory, it has nonetheless been used in a variety of settings and fields, including communication, psychology, therapy, and organizational development. The Relational ideology makes the use of Transformative theory in these fields natural, as these disciplines put great focus on the balance between autonomy and social connectivity.

Outside this argument between two prominent ideologies and ways of mediation practice (largely in the United States) lays a larger question of their relevance elsewhere. Where the Problem-Solving approach has been exported outside of the English-speaking West, the Transformative approach has been reluctant to do so in order to avoid any assumption that the ideology and the subsequent framework are fully translatable elsewhere. The impact of culture, geopolitical region, and faith bring with them questions of the reaction toward the Transformative Story given the anticipated differences in worldview.

A continuum based on the third party mandate is largely developed through the evolution of third party processes in the West, and is located in

Appendix 1. How areas outside of this context have developed understandings of third party process is intrinsic to assessing the value of a Western model in a different cultural context. The next chapter will consider culture and conflict resolution to provide a broader basis for this research.

3 Chapter 3: Theoretical Perspectives on Culture and Conflict Resolution

Introduction

Culture and conflict resolution are terms that were not always considered together. Leading scholars were unconvinced of culture's impact when looking at conflict resolution: "As late as 1993, William Zartman, Jeffrey Z. Rubin and numerous others debated the relevance of culture to negotiation."[150] Yet, not all academics were convinced that culture was irrelevant. Kevin Avruch, Zygmunt Bauman, Abdul Aziz Said, Nathan Funk, Mohammed Abu-Nimer, George Irani, Edward Said, John Paul Lederach, and Sharon Lang are just a few of the many academics and practitioners who have written on the topic of incorporating an emphasis on culture in examining conflict resolution practice in diverse societies. This chapter will reflect on their work and highlight the relevant areas of research in culture and conflict resolution.

First, concepts of culture will be considered, and a working definition of culture will be developed. Second, the social, historical and political construction of 'East' and 'West' will be explored, leading to a working definition of Western and non-Western with a focus on the terms economy, colonization and insecurity. This situates the case study in terms of the central research questions. Third, culture and conflict resolution will lead into a discussion on conflict resolution in the Middle East. The chapter finishes with topics covering the focus on individual and community, concepts of conflict, the third party role, the influence of Islam, and the indigenous process of *sulha* used within a Middle Eastern context.

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150 Wanis-St. John, Anthony. "Thinking Globally and Acting Locally." Negotiation Journal 19, no. 4 (2003), 389.

3.1 Culture

Like mediation, the term *culture* is subject to a wide variety of interpretations and meanings, especially when considered with conflict. Concepts of culture have been defined, redefined, and refined time and again. Some would say that even the way we view culture is in itself a cultural construct. With competing definitions of what culture is, who has it, what it is based upon, the term is easily misunderstood without providing clarification on what is meant by it. While those subscribing to the idea of 'crusading universalism' would recognise culture in hierarchical terms (e.g. advanced, civilized, or primitive), 'cultural relativists' would contend, "all things must be judged from within the culture that generates them. We cannot judge others' actions... unless we know and accept their culture as valid."[151]

Kevin Avruch spends the first part of his book *Culture and Conflict Resolution* focusing on the confusion that has developed because of very different and sometimes competing understandings of the term culture. Avruch and Peter Black in an earlier text distinguish between two understandings of culture, and emphasize the importance of including both in any study on culture. First, *generic culture* encompasses the universal attributes of human beings and is regarded as a foundational point, such as that all people are homo sapiens and will share elements of human behaviour because of this. The second understanding is what Avruch describes as the *local culture*. As a complex system of meanings that are shared, created, and socially inherited by individuals in particular social groups, local culture includes elements that distinguish individuals from one another, and adding complexity, individuals are a part of multiple local cultures which create even greater diversity even between people living in the same region.

Avruch introduces what he believes are 'inadequate ideas on culture'. Each of the six ideas he mentions is either an oversimplification of the dynamism of social relations, or connected to a political or ideological agenda where the "culture of the players is conflated with the culture of the

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[151] Ibid, 390.

analyst."[152] The categories of deficient ideas are (1) that culture is homogenous, (2) that it is a thing, (3) that it is uniformly distributed, (4) that an individual only possesses a single culture, (5) that culture is custom or tradition, or (6) that it is timeless. Basing any study on these ideas risks diminishing the usefulness of examining culture analytically. Yet, one wonders if an analyst can ever truly detach themselves from their own ideological lens sufficiently to avoid the overarching inadequacy that Avruch describes. Certainly, in comparative cultural research, the analyst may be examining a particular foreign culture in its own right with its own language and descriptors, but he or she is still doing so as an outsider, indoctrinated with meanings from individual experience. Edward Said, in his pioneering book *Orientalism*, questioned the ability of researchers to remove their biases from their study:

> How does one represent other cultures? What is another culture? Is the notion of a distinct culture (or race, or religion, or civilization) a useful one, or does it always get involved in either self-congratulation (when one discusses one's own) or hostility and aggression (when one discusses 'the other')?[153]

3.2   Working definition of culture

Having a working definition for the purposes of this thesis concedes that there are many understandings of culture. For the purposes of having a clear understanding of the use of *culture* throughout this text, Avruch and Zygmunt Bauman have written extensively on the topic, and their explanations of culture combined help form the working definition. *Culture*, for the purposes of this thesis, *is a collection of constructs of understanding the world and those in it, including a social order of relations and human interaction, which*

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[152] Avruch, Kevin. *Culture and Conflict Resolution*. Washington, D.C.: United States Institute for Peace Press, 1998, 12.
[153] Said, Edward. *Orientalism*. London: Penguin, 2003, 325.

*an individual learns, experiences and passes on as a member of the
community.*

Arguing the evolution of the term culture to mean *concept, structure,*
and *praxis*, Bauman provides a thorough account of three related but
decidedly separate understandings of the term. Ultimately, Bauman sees
culture as *praxis*, where "the identity of a society is ultimately rooted in a
more or less invariant network of social relations; the 'societal' nature of the
society consists above all in a web of interdependencies, developed and
sustained by and through human interaction."[154] Culture from a praxis
framework encompasses both the 'hard' apparent, physical and tangible
identifiers and the 'soft' introspectional data. Far from being solely an
individual experience, it is instead the comprehension attained from
community and socialization: "Human praxis, viewed in its most universal and
general features, consists in turning chaos into order - or substituting one
order for another - order being synonymous with intelligible and
meaningful."[155]

A vitally important part of maintaining and creating intelligibility and
meaningfulness, according to Bauman, is creating the rules of inclusion and
exclusion and insider/outsider dichotomies. This happens in all cultures, most
visibly in religious cultures. In creating cultural rules to protect identity,
societies do this quite obviously. Interestingly, two diverse identity groups
can adopt the same rules for very different reasons. Bauman mentions that
upon creation of the state of Israel, mixed marriages between Jews and non-
Jews were banned to establish integrity of the newly founded Jewish state. A
little more than thirty years before this, Nazi Germany created the rule
against mixed marriages to assure the future of a pure German race.

Avruch defines culture as: "a derivative of individual experience,
something learned or created by individuals themselves or passed on to them

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[154] Bauman, Zygmunt. *Culture as Praxis (Theory, Culture & Society)*. 2nd ed. London: Sage,
2000, 87.
[155] Ibid, 96.

by contemporaries or ancestors."[156] In coming to that conclusion, Avruch references outdated, colonial and hierarchical interpretations of culture, including the concepts of culture as only held among the upper class, as a continuum ranging from savagery to civility, and as an inclusive plurality of unique and diverse elements rather than universal attributes. Rightly so, Avruch comments that the use of the word 'culture' in various contexts carries with it political baggage. The "reason for the difficulty in applying the notion of culture to conflict resolution is that the notion of culture comes to the social sciences from nineteenth-century usages with very different, indeed antithetical, meanings."[157] Said illustrated this concept of culture as reflective of the dominating Western perspective, where the culture with power used their unchallenged lens to interpret, oversimplify, and depict the 'other' culture:

> My whole point about this system is not that it is a
> misrepresentation of some Oriental essence... but that it
> operates as representations usually do, for a purpose,
> according to a tendency, in a specific historical, intellectual,
> and even economic setting.[158]

Said's criticism is rooted in the history of imperialism and colonialism, and the use of particular stereotypes to validate such systems. While terms that Said relies on to make his argument such as Occident and Orient have gradually faded into disuse, there are modern invocations of 'us/them' dichotomies when discussing the cultures of the postcolonial world.

3.3 'East' and 'West'

While 'Western' can be used to describe a broad range of similarities between particular cultures, there is not an agreed upon definition that encompasses all categorisations. Historically, the use of the term 'Western' has included: the classic Graeco-Roman empires; the medieval period of

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[156] Avruch, 1998, 5.
[157] Ibid, 9.
[158] Said, 273

Christian expansion, rational thought, and exploration; and the modern period of industrialisation and political dominance. The political origins of 'Orient' come from the late Roman era describing administrative regions across what is now the Middle East, and eventually grew to where the 'Orient' "was not confined to West Asia but encompassed parts of geographical Europe and Africa, too."[159] With the Roman Empire Christianity spread, meaning, "the secular concept of the Roman Orient had to coexist, however, with the spiritual geography of the Hebrew-Christian Bible."[160] This created the distinction of East to include whatever lay east of Jerusalem, "...to countries as far as Mesopotamia and Persia."[161]

Yet, even in the modern age of political and industrial advantage for the West, the landscape of geographical, political, and economic understandings continue to change. Roderic Davison remarked, "International crisis is one of the best teachers of geography."[162] War, economic collapse, and colonization have been among factors that have resulted in maps needing to be redrawn, relationships reconsidered and the world order reframed. In 1960, Davison noted:

> All civilizations, east and west, have stuck convenient labels
> on distant lands, and the west has not been alone in this
> practice. To the Turks, for instance, all Western Europe was
> for centuries simply *Frengistan*, "the land of the Franks,"
> and even today Morocco is for Arabs the "far west," *al-
> maghreb al-aksa.*[163]

The difference between what Turkey considered *Frengistan* and what the West considered the *other* is in the power and influence the West has

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[159] Scheffler, Thomas. "'Fertile Crescent', 'Orient', 'Middle East': The Changing Mental Maps of Southwest Asia." *European Review of History* 10, no. 2 (2003/06), 259.
[160] Ibid.
[161] Hirsch, E. G. 'East', in The Jewish Encyclopedia, vol. 5, New York, 1964, pp. 28–29; idem, 'West', ibid., vol. 12, New York, 1964, 507–08; T. Kronholm art. 'qædæm', in Theologisches Worterbuchzum Alten Testament, vol. 6, Stuttgart, 1989, cols 1163–69, as cited in Scheffler, 259.
[162] Davison, Roderic H. "Where Is the Middle East?" *Foreign Affairs* 38, no. 4 (1960), 665.
[163] Ibid, 666.

had in establishing *their* perspective as lasting reality. The English archaeologist D. G. Hogarth in 1902 articulated what he understood as the Near East based on his expeditions. Countries in the Balkan region, former states of the Ottoman Empire, as well as parts of North Africa were a part of Hogarth's definition. In the same year, American naval captain Alfred Thayer Mahan proposed the term *Middle East* to describe the "sea route from Suez to Singapore,"[164] with no definitive boundaries:

> The Middle East, if I may adopt a term which I have not seen, will some day need its Malta, as well as its Gibraltar . . . The British Navy should have the facility to concentrate in force, if occasion arise, about Aden, India, and the Gulf.[165]

The Times correspondent Valentine Chirol would soon after continue to develop Mahan's idea of the Middle East to include areas that bordered India. As these terms came into use, it is clear that they were coming from the 'West': "Near East, Middle East, and Far East were all projections of European— particularly British— thinking."[166]

The West was synonymous with democracy, capitalism, and influence in nations that lacked stability in leadership, economy, and structure. The rest, however, continued to change. Countries and regions which didn't fit into a Western standard in a post-colonial, post-war, Cold War period were analysed through a new lens: poverty.

> ...[P]overty was 'discovered' and applied as a defining feature of the 'Third World' in the post-Second World War period. When the World Bank set the poverty indicator for nations at a national income level of $100 per capita, in 1948, 'almost by fiat, two-thirds of the world's peoples

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[164] Ibid, 667.
[165] Mahan, Alfred M. 'The Persian Gulf and International Relations', National Review (London), September 1902, 27–28, as cited in Davidson, 667.
[166] Ibid, 668.

were transformed into poor subjects.' The consequence of this act of definition was to entrench an economic model of poverty that implicitly took the materially 'rich' West as the desired endpoint, and depicted those regions of the world not conforming to this image of prosperity as deficient and requiring 'development.' The 'Third World' is, in this sense, an invention of a Western discourse of development, defined by what it lacks – a material abundance – rather than by what those societies now represented as 'poor' might have or value as measures of being. Poverty became solely a matter of inadequate income, the solution to which was also one-dimensional – economic growth, to be delivered through an infrastructure of 'development' designed to bring the 'poor' nations and peoples 'up' to the levels of income of the West."[167]

Any country not considered a member of the Western World was part of the developing world, and encouraged to work towards a Western model of economic growth.[168]

3.4   Working definition of Western and non-Western

For the purposes of this thesis, the terms 'Western' and 'non-Western' capture some of the most basic distinctions in cultural understandings of conflict resolution practices. These terms, as Paul Salem has ceded, are "fraught with dangers of reductionism, essentialism, and simplification, to say

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[167] Schech, Suzanne and Jane Haggis. *Culture and Development: A Critical Introduction.* Oxford: Blackwell, 2000, 72.
[168] The field of development studies continues to modify the framing of the world by classifying the North and South hemispheres as geopolitical economic regions, with notable exceptions. The North contains North and South America, Europe, Australia and New Zealand: wealthy, powerful, derived from European nations and similar in predictable political and religious orientations. The South contains Africa, and most of the Asian continent: underdeveloped, largely poor and formally uneducated, and with unpredictable but usually unruly political systems.

nothing of Orientalism."[169] To reflect on Avruch's earlier point, 'Western' and 'non-Western' are politically loaded terms based on culture and, in a nod to Said, have a history of use for purposes of exploitation. The patterns and perceptions of conflict that emerge from the different cultures as examined in this text will be analysed through the lens of Transformative Mediation Framework, but these lenses are not intended to prescribe or judge current processes, indeed quite the opposite. The goal is to highlight what approaches already exist in a non-Western context, namely a case study in the Middle East, and compare the ideologies within that context to the relatively new theory of the Transformative Framework outside of a Western environment. To do so, the term 'non-Western' is used to describe this distinct area, as the term 'Eastern' has had a rotation of meanings and geographical locations.

Based on the articulated statements of authors named throughout the chapter, the understanding of Western for this thesis captures the characteristics of originating from North America or Europe, sharing political and economic outlooks and institutions, and a predictable nature to government, law, and general security. In contrast, non-Western regions, 'developing' nations, face common threads in regards to economy, colonization, and insecurity.

3.4.1 Economy

First, those communities understood to be non-Western tend to lack the functional economy enjoyed by the West. Lack of investment translates into high unemployment rates, poor infrastructure and lack of free trade with partners for goods and services. For example, the CIA's The World Factbook confirms in data gathered within 2008 and 2009 estimate that per capita income levels in many Muslim countries in the Middle East and North Africa to all average under US $5,000, with averages in the West Bank and Gaza

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[169] Salem, Paul. "A Critique of Western Conflict Resolution from a Non-Western Perspective", *Negotiation Journal,* 9:4, 1993, 361.

being $2,900 (exceptions include oil- and gas-rich Qatar, Kuwait, Bahrain, Saudi Arabia and the United Arab Emirates). In contrast, high-income nations in North America and the EU average per capita income ranges from US $32,500 – 46,000.[170] "In many Muslim societies, economic changes and a fast-growing economic elite tied to economic globalization have left a large portion of the population behind and have created a lagging economic infrastructure."[171] In the non-West, and in this instance the Middle East, unemployment is also a great concern. "By the third quarter of 2007, the average unemployment rate in the oPt [occupied Palestinian territories] reached 23.2%, (32.9% in the Gaza Strip and 18.6% in the West Bank, respectively)."[172] More broadly in the West Bank,

> ...overall standard-of-living measures remain below those
> seen prior to the start of the second intifada in 2000. The
> almost decade-long downturn has been largely a result of
> Israeli closure policies - a steady increase in Israeli-imposed
> movement and access restrictions across the West Bank in
> response to security concerns in Israel - which disrupted
> labor flows, manufacturing, and commerce, both external
> and internal.[173]

In the oPt, substantial donor aid is among the main contributing elements of the economy in the absence of private industry.[174]

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[170] Central Intelligence Agency (CIA). "The World Factbook 2009 Country Comparison GDP Per Capita (PPP)." Washington, DC: Central Intelligence Agency, 2009. Page updated 10 September 2010. Accessed 16 September 2010. https://www.cia.gov/library/publications/the-world-factbook/rankorder/2004rank.html.

[171] Abu-Nimer, Mohammed. *Nonviolence and Peace Building in Islam*. Gainsville, FL: University of Florida Press, 2003, 115.

[172] Palestinian Central Bureau of Statistics (PCBS). Labour Force Survey, April-June 2007, Press Conference 7 August 2007, as cited in United Nations Development Programme/Programme of Assistance to the Palestinian People (UNDP/PAPP), Mid-Term Strategic Framework (2008-2011), 12. Accessed 2 February 2009. www.papp.undp.org/en/aboutundp/pappstrat.pdf.

[173] CIA. "The World Factbook 2009. The Middle East: West Bank." Accessed 16 September 2010. https://www.cia.gov/library/publications/the-world-factbook/geos/we.html.

[174] Ibid.

3.4.2 Colonization

Secondly, non-Western countries tend to have a history of colonization, exploitation, military occupation, or other forms of negative foreign interference. As Eduardo and Bonnie Duran articulate in their introduction *Native American Postcolonial Psychology*, "There are many similarities in the experience of most colonized people".[175] Such similarities may include ongoing conflict over land and territories, due to colonial influence over boundaries. African nations, for example, still face conflict as a direct result over the borders decided by European and American governments in 1884 at the Berlin Conference:

> The Berlin Conference was Africa's undoing in more ways
> than one. The colonial powers superimposed their domains
> on the African continent. By the time independence
> returned to Africa in 1950, the realm had acquired a legacy
> of political fragmentation that could neither be eliminated
> nor made to operate satisfactorily.[176]

In this example, colonial powers trumped indigenous cultures and boundaries, forcibly bringing together ethnically and linguistically distant peoples for Western gain.

3.4.3 Insecurity

Lastly, as part the heritage left from colonial experience, regions outside of the Western world have been left with growing insecurity. Uncertainty over the legitimacy of governments, militaries, boundaries, law, as well as the comfort of reliable opportunities for work, food, and shelter create tense situations. To name the Middle East's situation, the Cold War's end and the rising influence of the West were part of the experience of turning to local sources for support:

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[175] Duran, Eduardo and Bonnie Duran. *Native American Postcolonial Psychology*. Albany, NY: SUNY Press, 1995, 1.
[176] de Blij, Harm J. and Peter O. Muller. *Geography: Realms, Regions, and Concepts*. New York: John Wiley, 1997, 340.

The collapse of the Soviet Union and the pervasive impact of economic globalization have had a negative impact on individuals in the Middle East. Lacking strong and legitimate governments, they have turned to their nuclear and extended families for support and mutual assistance.[177]

The introduction of the nation-state system by colonial powers resulted in greater insecurity than in times past, according to political scientist Bassam Tibi:

> ...Unlike the imperial and territorial dynastic states that were familiar in Middle Eastern history, the externally imposed pattern of the nation-state is defined as a national, not communal, polity... In varying degrees, all states of the Middle East lack this infrastructure...The tribal-ethnic and sectarian conflicts that the colonial powers exacerbated did not end with the attainment of independence. The newly established nation-states have failed to cope with the social and economic problems created by rapid development because they cannot provide the proper institutions to alleviate these problems. Because the nominal nation-state has not met the challenge, society has resorted to its pre-national ties as a solution...[178]

Non-Western regions may experience insecurity in national governments, land boundaries, and ample living conditions. The lack of confidence at the national level results in services sought at local levels, which proves especially true in terms of conflict resolution.

The use of the term 'non-Western' within this thesis makes references to the above categories of economy, colonization and insecurity.

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[177] Irani, 9.
[178] Tibi, Bassam as cited in ibid.

3.5 Culture and Conflict Resolution

David Augsburger has remarked, "Conflict provides an in-depth view of a culture's social construction of reality."[179] Indeed, John Paul Lederach has contributed to this understanding: "People make sense of conflict from out of the meaning structure in which they're located and that's really where we needed to place emphasis on the conflict from the perspective... that there are deeply cultural elements that accompany that."[180] When examining conflict resolution from the role of a Western scholar or practitioner in a non-Western society, taking the path to "identify and legitimize similar and different concepts of managing and settling conflicts" among both the Western and non-Western societies provides the opportunity for describing or applying models without leaving the researcher to "ignore or impose his/her cultural bias."[181] Abu-Nimer suggests that research in conflict resolution within cultural contexts offers glimpses into enhanced cross-cultural dialogue: "Without an examination of the local culture and political context, there is little opportunity to apply effectively conflict resolution strategies that will aid researchers and policymakers in understanding and improving the communication between Western and Islamic societies."[182]

In looking at the frames of culture and conflict resolution, Avruch describes two approaches in making sense of cultural differences in 'negotiation styles,' namely *emic* and *etic* ways of looking at culture. *Emic* approaches keep native terms close to their main domain of relevance within the cultural context by using native terms in organising concepts and illustrating various degrees of deepness the concept has given the understood nuanced translation. One version of the approach, what Avruch and Black have called *ethnoconflict* theories and praxis, emphasizes the elucidation of the natives' own understanding of conflict and their means of

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[179] Augsburger, David. *Conflict Mediation Across Cultures*. Louisville, KY: Westminster John Knox Press, 1992, 16.
[180] Portilla, Julian. "Interview with John Paul Lederach." Beyond Intractability, 2004. Accessed 13 February 2009.
http://www.beyondintractability.org/audio/john_paul_lederach/?nid=2458.
[181] Abu-Nimer, 2001, 125.
[182] Ibid.

resolving it.[183] However, *emic* approaches are in danger of simply being descriptive and not creating opportunity for theory building. *Etic* approaches, conversely, attempt to create a shared understanding of terms and comparisons across cases, which include certain descriptors that are capable of characterizing domains across cultures. The criticism associated with the *etic* approach is the vulnerability to reduce cultural diversity into a few manageable dimensions, and to crudely turn the ideal of a continuum of variables into a dichotomy. Naturally, the attributes that an analyst decides how to scale and measure are themselves culturally defined.

Avruch examines the way culture has been used or ignored in classic conflict resolution techniques. From Burton and his prescriptive techniques that are consistently dismissive of culture, to Lederach's conflict transformation theory including the elicitive approach that offers a wide role for culture, the need to focus on culture is disputed even in contemporary times. From game theory to negotiation, theories on rationality champion that individuals are calculating and abide by set rules in order to maximize their utilities and resources. Unfortunately, in order to play one needs to know the rules, respect them, and want the same things (resources). In effect, it is a culturally defined game. Even within the experimental end of bargaining and negotiation studies, many of the subjects are what Avruch describes as "sought from Psychology 101 classes" and the research lacks 'real world' data. Instead, the popularity rests on prescriptive approaches like those laid out by Fisher and Ury in *Getting to Yes*. In looking why culture is neglected in these works, Avruch posits:

> The proposition holds that where practice is situated, there
> theory is derived. And for conflict resolution, as for some
> other expert domains, the practice overwhelmingly has
> been culturally situated within a North American, male,
> white, and middle-class world.[184]

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[183] Avruch, 63.
[184] Ibid, 78

Referring to Fisher and Ury, Avruch argues convincingly that the theory in *Getting to Yes* of 'separating the people form the problem' "corresponds deeply to the idealized Anglo-middle class model of what negotiation looks like."[185]

Avruch continues by examining third party processes and roles, noting that discourses on conflict resolution have been open to cultural concerns. Firstly, the term mediator is a complex term with potential variation. Especially where a Western third party is asked to intervene in a non-Western area, cultural differences are often highlighted. Non-western scholars, like Abu-Nimer and Salem, consistently challenge some Western presuppositions that exist in developing practice. Among these presuppositions is the Western need for a mediator to be completely impartial, as this is not always the case in non-Western areas. In addition, in looking at problem-solving workshops, culture is viewed as being generic and universal, so much so that human reasoning is universal thereby deeming culture as trivial. Yet, when analyzing topics such as the 'cost of conflict' in workshops, Burton assumes that all the participants share the value of putting a price tag on things, when it is not necessarily a generic, human trait.

Lederach, in discussing the Western concept of negotiating over issues and developing lists of interests, emphasised the distinction between analytical and holistic thinking. Where one culture in the West might see great value in the "breaking up of things down to their component parts," another culture may see great value in storytelling, where it "keeps all the parts together. It understands problems and events as a whole."[186] While problem-solving workshops were a notable step, conflict resolution can go deeper and further in the realm of appreciating cultural diversity in practice. This is especially true where "models that emerge from the resources present in a particular setting and responding to the needs in that context" validate the relevance of alternative cultural techniques and strategies other than the classic, Western, transactional approach.[187]

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[185] Ibid, 79.
[186] Ibid, 92.
[187] Ibid, 97.

3.6   Conflict Resolution in the Middle East

With regard to specific conflict resolution practices in the Middle East, influences on practice come from Islam as well as Arab traditions that predate Islam. To study this in any depth, Abu-Nimer stresses that scholars and practitioners should examine existing processes within communities fully. Doing so "means the acceptance and recognition of the proposition that Islam and Islamic societies contain beliefs, customs, attitudes and a history which can serve as rich bases for identifying constructive conflict resolution frameworks and processes."[188] This point is a valuable reminder that "conflict resolution, with its foundation and definition as a multidisciplinary field, is currently grounded in a Western cultural and social context."[189] From problem-solving workshops and citizen or Track II diplomacy, to peacemaking religious groups and conciliation, many of the processes discussed and used are derived from Western experience.

For many non-Western societies, the formal nature of conflict resolution does not exist. Without trusted state and legal institutions, community-maintained conflict resolution processes are considered legitimate means of handling conflict. Peter Just adds:

> ...in many societies composed of small-scale, morally cohesive communities, there is often an incomplete understanding and a fundamental mistrust of formal state-run legal institutions, which are perceived as exogenous, intrusive, uncontrollable, and ill-suited for representing indigenous concepts of justice.[190]

Middle Eastern society has had traditional ways of resolving interpersonal conflict, conflict within families, between families, between religious communities and regions through negotiation, mediation and

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[188] Abu-Nimer, Mohammed. "Conflict Resolution in an Islamic Context." In *Peace and Conflict Resolution in Islam*, edited by Nathan C. Funk, Abdul Aziz Said, and Ayse S. Kadayifci. Lanham, MD: University Press of America, 2001, 125.
[189] Ibid.
[190] Just, Peter. "Conflict Resolution and the Moral Community among the Dou Donggo." In *Conflict Resolution: Cross Cultural Perspectives*, edited by Peter W. Black Kevin Avruch, Joseph A. Scimecca. Westport, CT: Greenwood Press, 1991, 107-108.

arbitration for hundreds of years.[191] However, the processes and application of negotiation, mediation and arbitration in the Middle East do not mirror those in the West. While conflict resolution practices are professionalized in the West, they "mainly exist where traditional norms legitimize such actions" in the Middle East.[192] In government settings, dispute resolution as a part of labour management is a relatively new development in countries such as Lebanon, Jordan and Egypt.[193] For parties in conflict, mediation as a pure, distinct option is not normally emphasized, but included in a long line of available choices for a third party. These dispute processes can press for resolution based on tribal law, Islamic law, or cultural and traditional practices, none of which are mutually exclusive.

'Informal justice' is a term used to distinguish the choices and availability of local, community and tribal conflict resolution processes from formal court systems in Arab and Islamic contexts.[194] The existing processes within these communities place particular importance on collectivism, local concepts of conflict, a central role of the third party, as well as religious influence. One particular form of informal justice, *sulha*, will be introduced for its relevance within Middle Eastern societies as well as its prominence within the case study.

3.6.1 Individualism and collectivism

As described in Chapter 2, Western conflict resolution practice typically focuses on the needs and interests of the individual in resolving conflicts. Indeed, "conflict is accepted as a natural concomitant of self-interest and competition which, when subject to an optimal amount of regulation by carefully designed institutions, keeps societies dynamic, energetic, and

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[191] Abu-Nimer, 2001, 128-129.
[192] Ibid, 130.
[193] Ibid.
[194] Fares, Samer and Dima Khalidi. "Formal and Informal Justice in Palestine: Between Justice and Social Order." In *Conflicts and Conflict Resolution in Middle Eastern Societies: Between Tradition and Modernity*, edited by Hans-Jörg Albrecht, Jan-Michael Simon, Hassan Rezaei, Holger-C. Rohne, and Ernesto Kiza, 507-24. Berlin/Freiburg: Duncker & Humblot, 2006, 507-524.

strong."[195] As discussed in Chapter 2, the Individualist ideology underscores the Problem-Solving model of mediation and can be seen in Regulative models that have high process and content control.

One main difference within Islamic and Middle Eastern conflict practice from Western theories is the effects of conflict from the individual to a communal identity. Because an individual's identification is not based on a valued Western concept of the lone individual with independent needs and interests, conflict inherently involves the nuclear and wider family or community in which it occurs. In addition, within a Middle Eastern context, one's standing in society is ultimately connected with a man's *sharaf*, loosely translated as male honour. As Marcel Mauss describes, "Sharaf, in Arab society, is a pervasive code of beliefs and values manifested throughout interlocking moral, political, economic, kinship systems of meanings; it is a *total social fact*."[196] *Sharaf* forms a man's self-identity. It is both status and one's perception of self-worth tied to that social status; it is dependent on a web of social connection, as one cannot have *sharaf* without the regard of one's peers. As a result, the society is highly collectivist and highly values the ideals of "cooperation, negotiation, honor, and compromise" both in society and in conflict resolution.[197]

Lang rejects structural-functionalist theories of balanced opposition – that is, the anthropological assumption that in traditional Middle Eastern society, socio-political order is maintained through the threat of group reprisal in instances of attack – at least in terms of Israeli Palestinians of the Galilee. The structural-functionalist theory that emphasised balanced opposition was initially developed in the 1940s described the threat of feud and vendetta as maintaining social order that emerged from 'stateless' Arab society and politics. In this interpretation of Middle Eastern society described by Black-Michaud in 1975, social structure is created by balancing feuds – or the *threat* of feuds – and constructs the cohesive force necessary to prevent

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[195] Funk, Nathan and George Irani. "Rituals of Reconciliation." In *Peace and Conflict Resolution in Islam*, edited by Nathan C. Funk, Abdul Aziz Said, and Ayse S. Kadayifci. Westport, CT: Greenwood Press, 2001, 171.
[196] Mauss, Marcel as cited in Lang, Sharon D. *Sharaf Politics: Honor and Peacekeeping in Israeli-Palestinian Society*. New York: Routledge, 2005, 48.
[197] Ibid, 82.

complete anarchy. "Fear of aggression promotes egalitarian alliance to create a balance of forces in the face of potential anarchy."[198] To Lang, Middle Eastern society does not function through this 'Hobbesian' worldview where overarching coercion is required to prevent a state of anarchy. Rather, Palestinians in particular function in what Lang describes as a moral universe "that valorizes peaceful relations, cooperation and conciliation," where an emphasis is placed on encompassing the local ideologies, values and practices of that society.[199]

In this spirit of peaceful relations, a return to stable community relations is sought when resolving disputes. It is understood that a normal state of relations within this collective society is one that is peaceful, while conflict risks this careful balance. Therefore, attempts at resolution involve the wider community, where mediators or third parties frequently may know the parties personally, and are considered 'leverage' in convincing parties to go ahead with an agreement.

Forgiveness, which is an assumed fact of any agreement in this context, is also subject to a collectivist cultural understanding. According to Hook *et al.* in proposing a theoretical model to clarify the relationship between collectivism and forgiveness, their approach begins with two propositions:

> First, collectivistic forgiveness occurs within the broad
> context of social harmony, reconciliation, and relational
> repair. Second, collectivistic forgiveness is understood as
> primarily a decision to forgive but is motivated largely to
> promote and maintain group harmony rather than inner
> peace (as is more often the case in individualistically
> motivated forgiveness.)[200]

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[198] Black-Michaud, Jacob as referenced by Ibid, 84.
[199] Lang, 2005, 86.
[200] Hook, Joshua N., Everett L. Worthington Jr., Shawn O. Utsey. "Collectivism, Forgiveness, and Social Harmony." *The Counseling Psychologist* 37, no. 6 (August 2009), 821.

Therefore, while individualism promotes the concept that individuals are independent from one another" the collectivist understanding is that "groups bind and mutually obligate their members."[201]

Triandis defined individualism and collectivism using four main etic characteristics. According to Triandis, Individualism is understood as a social pattern where individuals:

- see themselves as relatively independent from the collectives in which they are members;
- are motivated primarily by their own preferences, needs, rights, or contracts they have made with others;
- place more importance on personal than collective goals;
- tend to make decisions on whether to associate on an analysis of costs and benefits to the individual.

In comparison, Triandis sees Collectivism as involving closely knit individuals where they:

- see themselves as connected with the collective in which they are members;
- are motivated primarily by the social norm and duties of their collective;
- place more importance on collective goals than on their own personal goals;
- emphasize their connectedness to other members of the collective.

As a result, "collectivists, concerned with maintaining relationships, promoting social harmony, and maximizing positive consequences for the honor of a group, are likely to view conflicts as requiring social resolution even at the cost of personal peace."[202] Further, within a harmony ideology of practice within a collectivistic society, "mediation discourse was normative with custom, religion, and shared values being invoked by both the parties and the mediator. Mediators used shared norms both to promote forgiveness

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[201] Oyserman et al. (2002) as cited in Hook et al., 2009, 823.
[202] Hook, Worthington & Utsey, 2009, 829.

and to pressure stronger parties to accede to demands made by weak disputants."[203] In essence, the use of mediation allows for power inequalities to be addressed, albeit temporarily, within mediation and by mediators for the purpose of gaining a lasting agreement that will restore calm social relations.

Furthermore, as described in Folger *et al.*, Glen's etic distinction on types of culture provides an insight into the perspectives that mediators as well as participants might have about conflict, those involved, and its resolution, using the terms Associative and Abstractive culture.[204]

Associative Culture is one that involves:

- reliance on a particular way of thinking,
- an awareness of obligations to others,
- the group valued over the individual (collectivism),
- highly dependency on others in the immediate situation,
- communication that is not always open and explicit, where meanings have to be inferred from contextual clues.

In comparison, *Abstractive Culture* involves:

- reliance on a universal way of thinking,
- value the assertion of self over group commitment (individualism),
- communication that is precise and explicit, where meanings are assumed to be stated openly and interpretations rely less on contextual clues.

Often, the West is seen in terms of its Abstractive Culture, which is seen through the ideology of individualism. Middle Eastern culture, and Palestinian society in particular, remains highly collectivist and associative, based on the values and ideals that are evident through the understanding of *sharaf*, the

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[203] Davidheiser, Mark. "Harmony, Peacemaking, and Power: Controlling Processes and African Mediation." *Conflict Resolution Quarterly* 23, no. 3 (2006), 287,
[204] Glen, Edmund S. as cited in Folger, Poole and Stutman, 2009, 53.

value of stable social relations (even at the cost of personal peace), and the expectations of the strength behind the social connections within the society.

3.6.2 Concepts of conflict

In describing traditional dispute management, Abu-Nimer highlights that within a Middle Eastern context, conflict is regarded as a negative and undesirable state. While in the West, typical assumptions such as "conflict is normal" and "understanding parties' interests, positions and needs are necessary for resolution" would make up some of the understanding of dispute resolution processes, the assumptions in the Middle East would be much different.

Abu-Nimer lists eleven social and cultural assumptions that shape or influence conflict resolution practices in the Middle East. These include: (1) "conflict is negative and dangerous", (2) "conflict should be avoided", (3) "conflict brings destruction and disorder", (4)"group affiliation is the most central and important identity that should be protected and sustained through conflict management processes", (5) "spontaneous and emotional acts characterize Middle Eastern processes of conflict management, particularly in regard to the parties' interaction", (6) "social norms and values rather than legal forms are the main rules of commitment", (7) "codes of honor, shame, and dignity are the main components which are used by parties, mediators, and conflict resolvers to describe or establish any process", (8) "unity is the ultimate and common goal for groups", (9) "conflict resolution and mediation are based on hierarchical, authoritarian procedures and structure (older people, males, and powerful officials)", (10) "processes and outcomes are more relationship-oriented than task-oriented", and (11) "the intervention mostly … involves the use of arbitration and mediation as the essential components of the Middle Eastern approach to conflict".[205]

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[205] Abu-Nimer, 2001, 131.

3.6.3 Third Party Role

Just as conflict resolution processes are based on the values and assumptions of societies, so too are the roles and characteristics of third parties. In the West, the third party tends to be impartial and professional, to focus on the individual interests of parties, to conform to laws and regulations, and to orient parties toward agreement. Within Middle Eastern societies, the assumptions of the third party echo those assumptions of conflict resolution practice: older, politically or religiously powerful mediators or a delegation of influential, notable men (*jaha*) who have a thorough understanding of the dispute and perhaps a vested interest to intervene are qualities expected of third parties.[206] As Lang notes:

> Each man's sharaf entitles him to the same respect as every
> other man and yet there is one category of men who are
> generally accepted to have greater sharaf, status, and
> power than others... Jaha men are not entirely set apart
> from other men, but like the sheikh figure of tribal societies,
> it is they who are socially sanctioned, more valued and
> esteemed than the rest.[207]

To reinforce the assumptions of conflict resolution practice, mediators will speak and act in ways conform to these expectations of prestige and power. They may, as noted in Lang and within this thesis, also hold political office, which reaffirms their power and status in society. However, as Lang also notes, participating in *sulha* remains the ultimate source of this prestige.[208]

Mediators working from Muslim backgrounds, for example, may declare, "God does not love the aggressor" among the initial recitations of *Qur'anic* text to create an atmosphere of expected cooperation and investment in a goal to re-establish harmony.[209] The mediator emphasizes the purpose of the process as restoration of order by focusing on the

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[206] Ibid, 132.
[207] Lang, 2005, 106.
[208] Ibid, 107.
[209] Abu-Nimer, 2003, 102.

destructive forces that have come from the conflict, including hurt and loss. The third party's role is to reach an agreement with the parties that they can accept without necessarily addressing the structural or institutional arrangements underlying the conflict. Should one of the parties object to terms or suggestions based on underlying causes, the mediator may pressure the party by challenging, "Are you going to change the world through this case? Accept what has been offered, because you will not get better compensation."[210] Toward the end of the process when the parties accept the final agreement in a public display, breaking the agreement becomes difficult not only because of the complex series of social connections that make the resolution possible, but also for the reason that the *jaha* may be disgraced by a party failing to commit with their promise.[211]

The third party, then, is someone who commands respect and is likely an elder of the community (depending on the conflict this could be at the local, regional or national level) who knows both the societal and religious norm and values well enough to influence the parties to agreement. In Gaza, third parties are representative of three levels: (1) family elders who intervene with familial conflict, (2) local community leaders who intervene in community conflicts including those in refugee camps, or (3) regional leaders who are highly regarded and well-known and asked to intervene in disputes involving different cities.[212] The disputants are likely to avoid angering or gaining disapproval from their leaders, and instead would make efforts to maintain good relations with them. Zoughbi describes the role of the third party as:

> ...the side that provides support [for the parties]...to reach
> the goal of peace and equality. Without the support, the
> other two sides wobble against each other fighting to stay
> upright, until they both collapse into the ruins.[213]

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[210] Ibid, 103.

[211] Lang, 2005, 108.

[212] Abu-Nimer, 2003, 105.

[213] Zoughbi, Zoughbi. "Alternative Approaches to Retributive Justice: The Challenge to Reconciliation." Wi'am, 2003, 4. Accessed 19 February 2009. www.alaslah.org.

In familial conflict, there is a high dependency on the *zaim*, or patriarchal leader, to manage cohesiveness within and between families:

> The zaim acts as the family referee and sanctions conflicts
> that erupt within his family, while controlling the solidarity
> and support within and between family members. He acts
> as the family's ambassador towards outsiders. Given that
> every village is made up of many families, each family is
> headed up by a zaim. The heads of each family form the
> assembly of the village zuama.[214]

Decision-making, including conflict, is managed in this instance through a strongly respected hierarchical committee assembly, through family representatives. Irani describes the realities affecting the majority of female social workers in Lebanon when they confront conflict situations, for example in child custody cases or domestic violence. In such patriarchal societies, applying Western modes of conflict control and reduction create a predicament where mediators are met with resistance when they are not the local religious or political leader that parties would typically turn to. Irani attributes this to a cultural difference from Western understandings of individuals and their relationship to the state with a system of rights and responsibilities. Instead, Middle Eastern societies have "individuals belonging to communities and abiding by their rules and rituals," though he acknowledges many young and educated professionals are "struggling to establish secular societies based on individual rights and responsibilities and state accountability."[215]

Lastly, this concept of powerful third parties within an otherwise egalitarian society is underscored by a tension between what Abu-Lughod describes in Lang as 'social resolutions of the egalitarian-hierarchy contradiction.' Overt displays of superiority are often frowned upon, as the *sharaf* and respect that each man seeks to maintain implies that every man

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[214] Irani, 7.
[215] Ibid, 12.

should be treated as morally equal.[216] While a strong egalitarian system is often touted, "the realities of power differences are inescapable, especially within the family and lineage."[217] Yet this contradiction between the value for equality and the inevitability of hierarchy is resolved through ideologies that Abu-Lughod introduces: (1) kinship and (2) honour and morality. While kinship is used in terms of describing the need to protect, care for and be responsible for others, inside and outside the family, "All relations of inequality in Arab societies... are expressed in these kinship terms."[218] The social divisions of hierarchy, on the other hand, are rooted in the notion of morality. "Authority derives neither from the use of force nor from ascribed position, but from moral worthiness. Hierarchy is legitimated through beliefs about the disparate possession of certain values or moral attributes."[219]

3.6.4   The influence of Islam

One impact of colonial interaction in the Middle East was the introduction and administration of the colonized regions by European legal codes or significant modification of pre-existing laws. For example, in Mandate Palestine, a topic that will be discussed further in Chapter 4, British actions included measures to "close the Ottoman land registers, prohibit all land transactions until a new registry was installed, and transfer jurisdiction in land matters from Islamic *shari'a* courts to new secular land courts."[220] Personal and family law became one of the only areas that was legally allowed to be overseen by the local inhabitants in order to preserve colonial stability.

> But where fundamental changes in a colonial legal system
> threatened the stability of British rule, such as in basic
> cultural or religious matters, the English common law

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[216] Lang, 2005, 103.

[217] Abu-Lughod as cited in ibid, 109.

[218] Ibid, 110.

[219] Ibid.

[220] Home, Robert. "An 'Irreversible Conquest'? Colonial and Postcolonial Land Law in Israel/Palestine." *Social and Legal Studies* 12, no. 3 (2003), 295.

system was not imposed. The special arrangements made

originally in former French Canada, the retention of major

elements of Hindu and Islamic law in India, or Ottoman

Islamic law in Palestine often helped avoid the cultural and

religious confrontations which characterized centuries of

tension and conflict between imposed Spanish law and

culture and resistant Islamic law and culture in Mindanao in

the Philippines.[221]

As a result, the Muslim *ulema*, or religious scholars, strove to encourage the "conservative paradigm that was making itself felt as the European intervention began. Islam became an effective rallying point for many resistance movements that opposed colonial encroachment."[222] Not only were Muslims unified in faith, but faith unified them in the cause of resistance against the pressure to move from tradition. John Kelsay, in *Islam and War*, discussed Saddam Hussein's public messages to the Arab world: "Iraq's confrontation with the West provided him with an opportunity to express judgments and aspirations common to a significant number of Arabs, Muslims, and others."[223] Hussein's actions, Kelsay argues, were meant to serve as a hard but unavoidable lesson for the pan-Arab community; the call to faith being necessary as a "summons to struggle for justice."[224]

Connecting Arab Muslims, then and now, is the term *umma muslima*, the community of Muslims. The Qur'an is explicit in emphasizing the connectivity of those of the *umma muslima*: "The Believers are but a single Brotherhood: so make peace and reconciliation between your two (contending) brothers" (Qur'an 49:10). Beyond the parameters of Islam, there is expectation that those outside the community are able to connect and be a part of a shared order of living. "All humans are related and spring

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[221] Schmidhauser, John R. "Legal Imperialism: Its Enduring Impact on Colonial and Post-Colonial Judicial Systems." *International Political Science Review / Revue internationale de science politique* 13, no. 3, Courts, Judges, and Political Change (July 1992): 323.

[222] Davies, Merryl Wyn and Zia Sardar. *The No-Nonsense Guide to Islam*. Oxford: New Internationalist/Verso, 2003, 100.

[223] Kelsey, John. *Islam and War: A Study in Comparative Ethics*. Louisville, KY: Westminster/John Knox Press, 1993, 8. Italics added.

[224] Ibid, 16.

from a common origin...so that you may know one another," Abu-Nimer states, recalling references from the Qur'an. "The foundational idea in the Qur'an is that people are one community. It reflects the universality and inclusivity of Islam in dealing with all mankind."[225]

A well-known Islamic traditional saying is "God's hands are with the group." The origins of collaboration and solidarity are well founded in Islam, with many stories of the Prophet Mohammed acting as a third party in cases where there is difficulty. The story of the black stone of *Kabaa* is one such example, where the Prophet was asked to intervene among the clans who were in disagreement over who would have the honour of replacing the stone at a structure that all the clans had helped to recently rebuild. He encouraged each of the clan leaders to help in bringing the stone on a cloth, where they all could participate in having the same honour of carrying it up. The Prophet then placed the stone in its place.[226]

Theologically, Islam is a force for conflict resolution based on core moral principles and teachings that provide both preventative and responsive programmes for conflict. One such principle is *shurah*, or "solidarity in society based on the principle of free consultation and genuine dialogue, reflecting equality in thought and the expression of opinion."[227] Another is *ijma'*, or consensus building, an important element of the decision-making process in Islam. Moral aspects of Islam also anticipate the need for forgiveness (*maghfira*): "precisely because human beings often fall short of ideal standards, bringing hardship and suffering to themselves and to others, they are in need of patience, forgiveness, and toleration."[228] Pardon (*'afu*) of crimes is also evident in Islamic teaching because such actions causing anger and grief challenge community cohesiveness and solidarity. While one may be allowed to seek retribution for dishonour committed against him, the *Qur'an* states that forgiveness is favoured over retaliation in responding to conflict: "The recompense of an injury is an injury the like thereof; but whoever forgives and makes reconciliation, his reward is due from God; and

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[225] Abu-Nimer, 2003, 57-58.
[226] Ibid, 63.
[227] Ibid, 76.
[228] Funk & Said, 2009, 150.

God loves not those who do wrong" (42:40). Further *hadith* traditions and *Qur'anic* verses promote forgiveness and reconciliation in order to promote communal unity, such as:

> The believers are but a single brotherhood: So make peace
> and reconciliation between your two [contending] brothers;
> and fear God, that you may receive mercy. (Holy Qur'an
> 49:10)

> Shall I not inform you of a better act than fasting, alms and
> prayers? Making peace between one another: enmity and
> malice tear up heavenly rewards by the roots. (from the
> *Hadith*)[229]

Islamic attributes from the *Qur'an*, *Hadith*, and cultural realities "support collaborative and consensus-building processes rather than authoritative, competitive, or confrontational procedures".[230]

Challenging this, Western perspectives are thought to hold universal disdain for Islam and the Middle East: "For the right, Islam represents barbarism; for the left, medieval theocracy; for the center, a kind of distasteful exoticism."[231] As a result, a confrontational image of Islam has persisted within Western mindsets. Nevertheless, from within the Muslim perspective there is an appreciation that "Human beings have the capacity to understand their duties to God and one another, if they would 'reflect'."[232] By focusing on the requirements of the broader mission to serve greater humanity (thus, God), and not simply individual needs, the community of human beings as a whole would create a more collaborative, peaceful effect.

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[229] *Qur'an* verses as cited in Funk & Said, 2009, 151.
[230] Abu-Nimer, 2003, 77.
[231] Ibid, 2.
[232] Kelsay, 23.

Bridging these ideas with the Transformative Mediation Framework, the Arab/Muslim history as presented lies closely with a Social Justice Story of the mediation field rather than a Transformation Story. The underlying interest within a Social Justice Story context is to encourage a strong alliance of individuals sharing common ties against oppressive, or at least common, adversaries. By doing so, the community has more advantage and strength, with a newfound sense of civic participation in creating social justice. Examples from the literature include Sardar and Davies' discussion of the *ulema* encouragement toward a return to a traditional, conservative state, Kelsay's mention of Saddam Hussein's call to the Arab people, and Abu-Nimer's discussion of the Prophet's fair and just way of settling the *Kabaa* dispute. All three of the texts name establishing *social justice* as a "major call of Islamic religion."[233] In contrast, the Transformation Story is chiefly concerned with transforming the quality of the interaction, so that individual parties and the greater society can be strengthened. Sardar and Davies, in a discussion about the argument of the compatibility of Islam and democracy, say that Islamists make the inaccurate assumption that, "politics is about relations between people and God, when the business of politics is one person's relation to another."[234] In that comment alone, there is a clear resonance of relational ideology that would sit well with the Transformative model. Yet, without touching on the influence of faith-based methods within the Transformative framework, the value or relevance of the role of Islam within this context has yet to be investigated.

In addition, the principles of empowerment and recognition within a strong socially collective community are also difficult to judge. While 'problem solving', reflections on the Prophet's own actions, and persuasion by mediators were topics discussed by the various authors, the outcomes of those in the frame of relational ideology is yet to be seen. The question remains then on whether the 'story' that the Arab and Muslim world follows is one of those discussed by Bush and Folger, namely the Social Justice Story,

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[233] Abu-Nimer, 2003, 49.
[234] Davies & Sardar, 125. Emphasis added.

or whether the Arab and Muslim story has details that require a new narrative.

3.6.5 Informal Justice: *Sulha*, Peacemaking and Reconciliation

"Just as conflict must be examined within the context of the culture in which it occurs, so must any peace process," articulates Elias Jabbour.[235] Indigenous rituals of the Middle East, such as those of settlement and reconciliation, have origins in tribal and village contexts as well as support in *shari'a* law. Legal pluralism, where populations are subject to more than one legal system, exists in the Arab world as it does in any given society. Fares and Khalidi say that these systems are ultimately interrelated, and attempts to understand the legal workings of any system without considering the role of other, related sources of law and justice would prove problematic.[236] Unofficial dispute resolution practices are actively used within "traditional rural, tribal Bedouin and urban Muslim communities."[237] Traditional Arab-Islamic third party intervention has included arbitration (*tahkim*) as well as peacemaking and reconciliation (*sulh*). Although "there is a clear difference between tribal law and mediation or sulh processes, they both incorporate tribal notions of communal responsibility and share similar procedures, and they both often refer to Islam as a motivation."[238] *Tahkim* developed through the "tribal social structure of pre-Islamic Arabia" in order to "cope effectively with conflicts within as well as between social and political groups seeking subsistence in an environment characterized by scarcity and insecurity".[239] Arbitrators (*hakam* or *hakim*) are people of authority who are considered to hold excellent judgment both in the settlement of disputes and in other matters. The prophet Muhammad arbitrated disputes based on the standards and values of the community, resolving disputes within and between tribes, and is still considered the ideal model for arbitration.

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[235] Jabbour, Elias. *Sulha: Palestinian Tradition Peacemaking Process*. Montreat, NC: House of Hope, 1996, 23.
[236] Fares & Khalidi, 509.
[237] Abu-Nimer, 2003, 91.
[238] Fares & Khalidi, 509.
[239] Funk & Said, 153.

In addressing concentrated conflict among individual members of the community and between competing family groups, societies in the Middle East developed local conflict resolution processes. The tribal roots of many Middle Eastern societies have created strong communal bonds and institutions that promote and maintain order and thwart disintegration. In these Arab-Islamic contexts, "*sulh* was traditionally used to foster a sense of moral accountability that transcends tribal loyalty, and to make peacemaking itself an honorable, dignity-granting activity."[240,241] Therefore, "[w]hen conflicts became violent, it was the responsibility of the larger community to initiate a peacemaking process known as *sulh*, and to thereby work toward reconciliation (*musalaha*) if possible."[242] Thomas Cook, Jr. shares that the roots of *sulh*a "can be found partly in early Semitic writings and later in Christian Scriptures dating from around the first century A.D., and, of course, later found in pre-Islamic and Islamic Arab literature."[243]

Bernard Lewis discusses *sulh* as another word for truce, citing examinations of early Arabic historical accounts of settlements under the first *caliphs* (successors or representatives).[244] References of *sulh* occur in the *Qu'ran* when discussing land disputes, and according to Lewis, Islamic law retains this meaning.[245] The use of the word *sulha* "figures prominently in Bedouin customary law … to denote the settlement of a tribal feud. In Ottoman texts, *sulh* was the term commonly used to denote the kind of peace that is concluded between governments."[246] *Sulh* was, and in particular contexts continues to be, the preferred word to mean the ending of war and a sense of safety and security in contrast with the Arabic word commonly associated with peace – *salaam*:

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[240] Ibid, 156.

[241] Note that *sulh* refers to the negotiation and settlement *phase* of the process, whereas *sulha* refers to the *act* of reconciliation, according to Abu-Nimer, 2003, 92. Jabbour, Lang, Rohne and mediators interviewed in field research use the term *sulha* to describe the process and the event of reconciliation. Both terms are used in this chapter when adopted by an author, but this thesis uses the term *sulha* as this was the predominant term in the field research and the literature.

[242] Ibid, 155.

[243] Cook, Thomas, Jr. "Introduction." In Jabbour, 13.

[244] Lewis, Bernard. *The Political Language of Islam*. Chicago, IL: University of Chicago Press, 1988, 78.

[245] Ibid.

[246] Ibid.

In classic usage, *sulh* alone was used for 'peace' as opposed to war. In early modern Arabic, *sulh* was confined increasingly to the sense of 'a transition from war to peace' – i.e., the process or ratification of peacemaking – while the previously nonpolitical *salaam* acquired the broader sense of 'a *state* of peace,' as opposed to a *state* of war. More recently, Arabic usage has begun to approximate more closely to common international practice, with *salaam* as the accepted term for peace between nations.[247]

Sulha in modern day "does not replace the civil or criminal law of the state, but it is employed as an addition to their rulings. However, most *sulh* cases are handled independent of these courts."[248] Fares and Khalidi maintain that though *sulha* processes are "derived from tribal customs and tradition, they are not legally binding, and they are not enforceable by the courts."[249] The agreements made in reconciliation are equal to those established in courts, and violation of agreements made in *sulha* may require consequences such as boycotting the violating person socially and incurring a penalty.

Sulha is a form of conflict resolution used to restore normalization to communities following injury or insult to *sharaf* varying in severity, including murder. If conducted properly, *sulha* restores social harmony by reinforcing personal dignity, and is therefore preferred over court or arbitration.[250] The size of the *jaha* (notable, respected delegates that intervene in conflict) will depend on the difficulty of the case, smaller cases calling for perhaps one member of the *jaha* to address the situation, while complex situations with the collective responsibility of large extended families (*hamula*) may request as many as twenty members of the *jaha* to intervene.

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[247] Ibid, 79.

[248] Jabbour, 26.

[249] Fares & Khalidi, 509. However, mediators interviewed in field research stated that the courts regard these agreements similarly to the rulings of court so there is disagreement or confusion on the authority that the *sulha* agreement has.

[250] Abu-Nimer, 2003, 96.

Laure E. King-Irani describes how *sulha* adheres to a cultural understanding of conflict: "The sulh ritual stresses the close link between the psychological and political dimensions of communal life through its recognition that injuries between individuals and groups will fester and expand if not acknowledged, repaired, forgiven and transcended."[251] Zoughbi Zoughbi, director of the *Wi'am* Palestinian Conflict Resolution Centre, has described the practice of *sulha* as emphasizing the concept of justice. Conflict resolution is a way of "redressing the injustices and correcting the wrongs rather than avenging them or taking revenge."[252]

Justice is a powerful goal to reach in solutions that benefit all parties, including elements of reparation or compensation to mark the resolution and a restoration of *sharaf* and respect in the community. Mediators encourage and promote qualitative improvement in relationships to reach 'justice', a process that can span from days to years. Zoughbi describes the process of *sulha* as a larger societal responsibility than Abu-Nimer suggested in addressing structural issues. Abu-Nimer contends that the objective of *sulha* is not to trace the societal or structural roots of the conflict, but serves as a moral pressure by collective support for those in conflict to resolve their differences. According to Zoughbi, each dispute is given thorough holistic examination by professional consultants in different fields to approach the conflict at its roots, rather than simply to apply pressure to family and community members to ensure follow-through.

Collective responsibility is highlighted as a "constructive approach to create a healthier atmosphere".[253] In Arab society generally, and within Palestinian context particularly, "familial and social bonds impose upon individual within that context a strong commitment and obligation toward his family as a collective whole and to the preservation of its honor and reputation."[254] The community is expected to assist in de-escalating the conflict by using their influence to restrain undesired behaviour of the parties. By not assisting in the resolution of the matter, the community risks

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[251] Irani, 12.
[252] Zoughbi, Zoughbi. "Restorative Justice: The Middle East", 2006, 3. Accessed 19 February 2009. www.alaslah.org.
[253] Ibid.
[254] Jabbour, 70.

harming their own interests and image, and are therefore bound to
supporting the process for themselves as well as the parties.

> *Sulha* is predicated on *sharaf (honor)*. 'In Arab culture . . .
> you must restore *sharaf*. This man has killed your father... it
> would be a dishonor if you did not take revenge, if you
> leave your father's killing to be passed by'...Given these
> basic social norms, powerful pressures push the injured
> family toward murderous action. But in fact, the vast
> majority of killings do not lead to counterkillings . . . Instead,
> most injured families eventually agree to reconcile with the
> killer of their son, father, brother, or cousin. *Sulha* alleviates
> emotional and social pressures and serves as a legitimate
> alternative to retaliation.[255]

3.6.6   The *Sulha* Process

As one of the options within an informal justice continuum, the *sulha* process
takes a predictable number of steps in addressing conflict. In implementing
any process (*sulha* or otherwise), societal norms and custom based on Arab
and religious traditions and culture are commonly reflected upon. This
usually requires an emphasis on relationships of the past, present and future
that underlie the societal aspect of the conflict, and can be used to influence
the resolution by encouraging interdependency. As Lang has stated, the *sulha*
process involves basic mechanisms to restore honour, harmony, and stability
in the community. Abu-Nimer outlined three basic assumptions of *sulha*,
incorporating values of harmony over victory, the importance of third party
intervention, and with a goal of the process as the restoration of social
harmony. According to Holger C. Rohne, the *sulha* process has three main
phases, "an initial phase (*kaddeh*), a settlement phase (*sulh*) and, finally, a

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[255] Lang, Sharon D. "Sulha Peacemaking and the Politics of Persuasion." *Journal of Palestine
Studies* 31, no. 3 (Spring 2002), 54.

reconciliation phase (*musalaha*)."[256] As Ramsbotham, Woodhouse and Miall remark, "[t]hrough sulh and muslaha, conflict management takes place within a communal, not an individualized, framework."[257] Abu-Nimer describes these phases more fully in five steps: (1) the expressed intention of the offending party to reconcile with the injured party, (2) the formulation of a group of mediators (*jaha*) to negotiate a period of cessation of hostilities with the injured party (*hudne*), (3) in the event of murder, the security of an amount of money (*'atwe*) to guarantee a ceasefire, (4) a specified truce period which can be renewed as the mediators work with parties on an acceptable agreement, and the final stage of the process is (5) *sulha*, a public reconciliation ceremony that marks the restoration of normal, peaceful relations with the signing of an agreement witnessed by the community, dignitaries, and (in cases of murder or serious injury) payment of an agreed sum. Ultimately, Rohne says, "The Sulha process is a means of avoiding – or ending – a blood feud."[258]

To initiate *sulha* the party that feels he has injured another shows remorse for the actions that have caused harm. This is done through a representative of the offending party approaching a mediator to request their intervention in order to negotiate a settlement with the injured party. Particularly relevant in cases of murder, the moment that the aggrieving family approaches a third party, negotiations commence in order to secure a ceasefire that will protect the offending family from reprisal arising from the dishonour caused by the offense. This mediator will compose a group of mediators, called a *jaha*, to assist in resolving the dispute.

Once formed, the *jaha* will approach the victim's family in order to persuade them to agree to a *sulha* process. The *jaha* approach the injured party with deep respect and humility usually reserved for the most revered in society. Lang calls this *'reverse musayara'* to mean that these notables show extreme humbleness to the injured party, an ordinary member of society, where this would normally be reserved for most honoured individuals. This

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[256] Rohne, Holger C. "Cultural Aspects of Conflict Resolution - Comparing Sulha and Western Mediation." In *Conflicts and Conflict Resolution in Middle Eastern Societies - between Tradition and Modernity*, edited by H. J. Albrecht et al. Berlin: Dunker & Humblot, 2006, 189.
[257] Ramsbotham, Woodhouse & Miall, 312.
[258] Ibid.

ritual treatment by the *jaha* allays further feelings of humiliation and is intended to give the injured party a partial increase of *sharaf*.

The first meeting by the jaha to the victim's family should take place relatively quickly following a dishonour: "In order to avoid further complications, the *jaha* should make the contact to the victimized family as soon as possible after the incident; delay in this regard is perceived by the victimized as further humiliation which is expressed in the terms: 'They went to sleep while our honor was hurt.'"[259] According to Sharon Lang, this typically occurs within hours of the killing, during a period known as *fawrat al-dam* (the eruption of blood), where the victim's family has a legitimate right to seek vengeance for the dishonour.[260] The offending party establishes the mandate for the third party, the *jaha*. By initiating the process, the offending party is admits fault, and acknowledges that they are willing to accept the punishment necessary to achieve reconciliation. In utilising the *jaha*, they are preventing what might be seen as a further insult and provocation to the victimised party should they approach them directly.[261] Instead, the men of the offending family will remove themselves from their normal home and seek shelter elsewhere; partly out of protection from the victim's family, and partly out of humility and respect for the victim: "By moving away from the (victim's) family, the killers are saying, 'We are not proud of what we did, and we do not want to hurt your feelings further.'"[262] While the offending party may appear to be more powerful immediately following a murder, by entering into *sulha* the family is taking steps to rebalance the honour and restore harmony in the community, at the same time as protecting themselves from future attack by the victim's family.

The purpose of this meeting is for the *jaha* to communicate that the other party has expressed their responsibility for the offense, and wish to establish a ceasefire period, or *hudne*.[263] To accept this, the injured party needs to agree not seek vengeance for the original offense, and will consent to the *jaha* working towards a reconciliation agreement between the two

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[259] Ibid, 190.
[260] Lang, 2002, 56.
[261] Rohne, 190.
[262] As an informant described to Lang, 2002, 56.
[263] This can also be spelled *hudna*.

families. Requesting and accepting the *jaha*'s assistance requires submission by both parties to the *sulha* process and any decisions that the *jaha* make. This conduct at the initial stages of *sulha* sets the stage for the entire process: "These actions are all integral parts and essential preconditions of the *Sulha* process and they are meant to empower the victimized party's side."[264]

When the victimised party accepts the *jaha* committee, it further legitimises the authority of the *jaha* in the situation as well as commits the victimised party to addressing the conflict in this non-violent way. Forsaking the right to retaliate to restore the family honour is a considerable and honourable step, and therefore when this is initially accepted it is described as a ceasefire, or *hudne*, which can be extended if necessary if conditions for settlement are not met in the period allotted in the *hudne* agreement. As Elias Jabbour has remarked, the decision to agree to a ceasefire is most difficult for the victimised family:

> [It] is not easy to get the agreement of the victim because of the hurt, aggrieved, anger, etc. To get the agreement of the victim is the whole wisdom based on the knowledge of human nature and behaviour, of the society and the cultural ethics, rules and codes. So, in fact the killer will beg the jaha to help them to make peace and to end the conflict, so that he can escape [...] from the revenge. But it is the victim who finds it difficult: why would he end it, why would he agree to make peace? Because he does not want to lose another son. So, you talk to his heart, mind and honour as well as his foresight to see the future. When you get the agreement you are almost there.[265]

In order to coax the victimised party to agree to *sulha*, the *jaha* may ask distinguished members of society to call upon the family to request their agreement to the process. The continuous persuasion by so many notables makes it difficult for the victimised family to refuse. While refusing the

[264] Rohne, 190.
[265] Elias Jabbour in an unpublished interview with Rohne, 191. Emphasis in original.

notables would be dishonourable, accepting their request raises the victimised family's honour to commit to peace instead of retaliating for the humiliation they have suffered. Once the *hudne* is accepted, it may be enforced or guaranteed by the offending side through a monetary deposit called *'atwe*. This investment is made to prevent retaliation and further violence. The acceptance of the *'atwe* by the injured party shows temporary acceptance of the truce, and a guarantee that any revenge will be withheld. "Its collective aspect makes it socially binding by crystallizing intratribal alliances and promoting social solidarity. The application of these dispute resolution mechanisms in the Fertile Crescent regions . . . illustrates the strong impact of the tribal factor in both rural and urban Arab settings."[266] When the parties have agreed to enter into a *sulha* process, the *jaha* will shuttle between each party's home to determine the series of events and the effects of these actions upon the parties. While party acceptance and commitment to a *hudne* is not guaranteed, members of the *jaha* show their dedication to the process by lending the conflict their prestige, time, and energy toward the task of reconciling the parties.

In the *sulh* (settlement) phase, the *jaha* visit each party individually in shuttle negotiations in order to find a solution that will satisfactorily restore the honour of the victimised family, as well as the dignity of the offending family:

> *[W]hether victim or victimizer, we take into consideration that we are dealing with human beings. The main point that guides us all in the process is the dignity of both sides. We have to consider that they are human beings and deserve dignity, even if the person is the offender. [...] It means that even in [a] case of punishment, it's a punishment that preserves the human dignity. Without this dignity, I don't think that Sulha can have any importance whatsoever in*

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[266] Abu-Nimer, 2003, 97.

solving problems. The human dignity is in the centre of the procedure. [267]

Mediators will talk with parties separately to learn about the conflict in detail, and may meet the extended family for additional information. This negotiation is enacted primarily through story-telling by both the mediators as well as the parties "to present their positions and interests, and the conditions for a desired settlement."[268] Witnesses to the dispute who volunteer or are asked to contribute by the parties may also be expected to meet with the *jaha*.[269] The *jaha* use this time to describe to the parties the expected stages of the process, especially in terms of avoiding the opposing party and their family, as well as precedents established through previous disputes.[270] In some cases, the mediator or *jaha* acts as an arbitrator by making a decision or ruling that cites religious and cultural values, or supports the notion of justice. In others, a mediated settlement is one that "coaxes concessions from both parties to reach settlement, relying on religious/cultural values to persuade parties to concede and to restore justice/harmony."[271]

Mediators do not bring the parties together to meet face-to-face during this time, but manage communication indirectly through shuttle negotiations in order to expedite the process, engage in fact-finding, and to avoid further conflict. As one Gazan arbitrator remarked, "Anger clouds people's judgment" and he therefore argues that with extensive caucusing he maintains control over the process.[272] Emotional expressions such as anger, hurt, fear, grief, and sadness are expected throughout this time. The humiliation involved with being the family of a victim of a crime such as murder is summarised not only by questions of *why* the event happened, but why the event happened *to them*.[273] The *jaha* may "request that the aggrieved family members agree to a truce for the sake of the

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[267] Ibid, 192. Emphasis in original.
[268] Abu-Nimer, 1996, 46.
[269] Pely, 84.
[270] Ibid.
[271] Abu-Nimer, 2003, 106.
[272] Ibid, 104.
[273] Lang, 89.

community."[274] The *jaha* exhibit *reverse musayara* to demonstrate gratitude toward the victim's family for granting this request "to make peace rather than to avenge themselves. . . Such treatment helps to assuage feelings of humiliation further and to effect a partial restoration of lost sharaf."[275] This is an opportunity to overcome grief caused by the conflict. By approaching each party and their families individually, the *jaha* provides an environment that shields the parties from any additional loss of *sharaf*.

While establishing guilt is not a focus of the *sulh* phase (the offender has already admitted as much in order to initiate the process), discussing terms of settlement is a central element to this phase, albeit very privately. Compensation for murder, called *diya* (or *tawwir* in cases of non-murder), is considered by the jaha through the use of precedents and circumstances.[276,] [277] *Diya* acts as "both a kind of punishment for the offender as well as a reparation for the victimised family."[278] It is both material and immaterial, as Rohne suggests, both compensating the victimised family for any financial hardship while also acknowledging that the money cannot restore the life or honour that was taken away. The *jaha* ensure that the victimised family is told that the "*diya* is not the price of the killed, as the worth of human life is invaluable."[279] The process of acceptance of this amount can take some time and negotiation, though this takes place privately.[280, 281] Elias Jabbour

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[274] Funk & Said, 157.

[275] Lang, 89.

[276] As an example, Lang found that in the Galilee, "The figures reported to me were consistently in the range of NIS 100,000 (at the time approximately $30,000) for a murder." Especially heinous crimes or those involving disfigurement demand additional payment. Lang, 2002, 58.

[277] Pely, Doron. "Resolving Clan-Based Disputes Using the Sulha, the Traditional Dispute Resolution Process of the Middle East." *Dispute Resolution Journal* 63, no. 4 (2009), 84.

[278] Rohne, 193.

[279] Ibid.

[280] Lang, 2002, 58: "Apparently impartial diyyah decision making hides a process of haggling and negotiation between the family of the victim and the family of the attacker, mediated by the jaha, who themselves have personal interests. The latter covertly moderate how much the victims rightfully can demand and how much the aggressors will suffer. Any public discussion concerning the size of the diyyah or other conditions would undercut the jaha's image as a wise and unified body that unilaterally makes its ruling in light of custom and precedent."

[281] Note: In cases where each party is considered both offender and victim, for example in cases where retribution or vengeance was sought and served, the *jaha* will ask the parties to acknowledge the losses incurred on each side and calculate the *diya* accordingly. The *diya* is calculated by associating an amount with physical injury and death, depending on age and gender.

mentions that in one case alone, more than thirty visits were necessary to convince the family that to accept the diya would be an honourable act and would constitute the family's "acceptance of peace."[282]

When the parties agree to the terms of the settlement, they enter the *musalaha* (*sulha*) phase, or reconciliation. This is a public, ritual phase which re-establishes relations between the parties within the community. This public ceremony of reconciliation is witnessed by the entire male population of the village or town, which can amass to hundreds of onlookers. Dignitaries who were not a part of the *jaha* may be present to witness and give greater moral and religious weight, and approval, to the agreement. The jaha and the dignitaries make speeches, which frequently emphasises the necessity of reconciliation (*musalaha*) from a religious perspective quoting references to religious texts. A key aspect of the ceremony is the attendance of a number of notables to witness the reconciliation, as Lang asserts: "It is important that an adequate number of dignitaries attend the ceremony to confer sharaf on the family of the victim and help restore their shattered dignity."[283] There have been cases where a family refused to engage in *sulha* until they were assured that a number of prestigious figures would attend.

There are three elements that make up the final *sulha* phase, including an opening ceremony, peacemaking, and a symbolic closure of the conflict. These rituals serve to publicly the end of the dispute, to return calm to the community, to restore the honour and dignity of the victimised party, as well as to temporarily shame the offending party for their transgression.

At the start of the *sulha* ceremony, the victimised family will stand at the location of the ceremony, usually a podium so that the community can see the event. The *jaha* will tie a white 'peace' flag (*rayah*) to a pole to symbolise "forgiveness by the victim's family and surrender and submission of both families to the authority of the *Sulha* Committee [*jaha*]."[284] The knot in the *rayah* is "a non-verbal promise of honour that the reconciliation which is going to take place applies to all members of the offending side and will not

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[282] Jabbour, 1996, 40 as cited in Rohne, 193.
[283] Lang, 2002, 58.
[284] Pely, 85.

be protested by any of the victimized family."[285] The offending family walks with the *jaha* to the ceremony site to meet the victimised family.

In the peacemaking element, the parties customarily only meet once the process reaches the end stage, for a symbolic handshake (*musafaha*) and to exchange *diya*. This can prove to be a suspenseful moment, especially in cases of murder: the offending party meets the blood relatives of the victim, and is escorted by the *jaha* and his male relatives. The offending party is seen to have their *sharaf* lowered through this temporary public humiliation, and they pay the agreed upon sum, or *diya*, to the injured party. "The representative of the perpetrator's family expresses remorse for what happened and acknowledges the wrongdoing. In turn the victimized family expresses the acceptance of the apology."[286]

At this point, the agreed upon sum of the diya will be exchanged. The injured party may, if financially able and seen as a suitably strong family, return this compensation. Lang, Funk and Said call this 'magnanimity': "the injured family is encouraged to identify the action of reconciling with their attackers as a manifestation of magnanimity – one of the highest expressions of *sharaf* in indigenous Middle Eastern culture."[287,288] "In one not untypical case, the patriarch of the victim's family took the diyyah in his hands during the ceremony, raised it above his head and declared, 'I return this money. I do not need this payment to forgive.'"[289] The injured party, with restored and overwhelming strength over the injuring party whom they chose not to violently retaliate upon, forgives the person who caused him dishonour. "When you have a choice and you forgive, this is the highest rank in *sharaf*," says a leader interviewed by Lang.[290,291]

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[285] Rohne, 194.

[286] Ibid, 195.

[287] Lang, 2002, 55.

[288] Magnanimity as mentioned in Funk & Said, 158.

[289] Lang, 2002, 59. Note, this is a risky move for families that are not sufficiently powerful in the community. If a less powerful family returns the *diya,* this may be construed as a display of weakness, which will lower their honour or *sharaf* in the community: "the stronger the family (measured by the size of the hamula, counting male members only) that has been injured and the weaker their attackers, the more plausible the basis for magnanimity."

[290] Lang, 2002, 55.

[291] Ibid, 95. Not all families are in a position to do this, and "the gesture could be interpreted by the community as weakness." A family that does not have any strength in the community may be seen to forgive because no other option is available to them.

The offending family will make physical contact with the victimised family once this element of the ceremony is completed, and will symbolically shake the hands of the victimised. This can be an apprehensive moment, as this is usually the first contact that the victimised family has had with the offending family since the incident, and tensions can be felt as this happens.

Formal speeches by notables and dignitaries will be made, before the two families, the jaha, and the invited notables present sign a physical document of agreement. The physical *sulha* agreement, signed by both parties and the *jaha*, clarifies who is guilty, of what offense, what amount of *diya* should be paid as a result, in what currency and by what time. In cases where someone has not been murdered or seriously injured, all questions other than guilt are answered in this document. To break this agreement would not only dishonour the family, but also the honour of the prestigious men who co-signed the agreement.

To end, there is the symbolic closure of the ceremony (*mumalaha*). The victimised family will invite the offending family into their home to share a cup of bitter coffee, raising their *sharaf* in the process. The offending family will then provide a meal for the victimised family, the *jaha*, the notable guests at the ceremony, and the public witnesses of the *sulha*. This expensive meal, traditionally lamb, acts to raise the dignity and the honour of the offending family and acts to reintegrate them into the community. "As Jabbour indicates, the ritual of mumalaha remains from the biblical tradition of sharing salt and bread as a sign of covenant and peace."[292] This exchange of symbols and ritual marks the restoration and resumption of normal social relations between the families. In both cases, the benefit of being the host increases *sharaf*. For the offender, the cost associated to providing food to the community would be substantial, yet they are rewarded with a re-entry to the community through this final piece of the *sulha* process.[293,294]

Sulha is about redressing an imbalance through a formalized routine to mark a new state of affairs; it creates and maintains peaceful relations. It is

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[292] Ibid, 196.
[293] Pely, 85.
[294] Lang, 97.

impossible to understand the practice of *sulha* without reference to the complex set of assumptions, rules, and values associated with *sharaf*. *Sulha* is inextricably linked with *sharaf*, and in many ways is about maintaining, restoring, and negotiating respect and reputation. The logic of *sharaf* forms a set of assumptions and rules that are constitutive of the social practice of *sulha*.

> Indeed, it is because sulha redresses the imbalance of sharaf created when one individual attacks another that revenge can be foregone. Sulha provides the injured party with another means to restore the family's reputation through the mediation of local political leaders. Sulha alleviates emotional and social pressures of a damaged reputation and serves as a valid alternative to retaliation.[295]

Rituals and structures of Middle Eastern modes of conflict management and settlement are based in long-standing values of collectivism and honour, reinforced by religious and cultural ties. However, this is not to say that there has not been training sought in alternative methods as used in, for example, North America. As Irani articulates, "Although Western techniques are skills relevant and useful, they ought to be better adapted to indigenous realities."[296]

The organic ideological and cultural needs and expectations of the communities are imperative to understanding using such mediation and conflict rmanagement processes within their regional context. The use of rituals such as settlement and reconciliation serve to ensure reunification following strife, and encourage renewed friendly relations between parties. While the *Qur'an* is now an important source to mediators and arbitrators in talking with the parties, the processes of Middle Eastern mediation pre-date modern religious practices. With a young, professional push for secular society, this emphasis on pure and traditional Islamic modes may change, but

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[295] Lang, 2005, 98-99.
[296] Irani, 10.

the cultural cue is still an overriding factor in how conflict is settled in the Middle East.

Conclusion

In this chapter, a broad spectrum of topics relating to culture and conflict resolution was addressed. Understandings of what culture is, and working definitions of culture came from Avruch and Bauman, where individual experience coupled with social interaction results in creating shared rules and behaviours within member groups. East and West were then discussed in historical terms covering the Western influence in depicting and defining regions and borders. A working definition of the term 'non-Western' was established formed by building upon distinctions from the 'West' in ways such as economy, colonization and insecurity. Reviewed were Avruch's theories on *etic* and *emic* approaches to exploring cultures, as well as the fact that the classic conflict resolution theories had largely discounted culture's importance in researching and applying conflict resolution cross-culturally. Conflict resolution in the Middle East was introduced: topics covered aspects of the individual and community, concepts of conflict, the third party role, the influence of Islam, and the processes used locally within Middle Eastern culture, namely *sulha*.

Culture is too obvious a point not to include when describing, observing, and researching conflict resolution processes from cross-cultural perspectives. Gone is the assumption that practices of conflict resolution are universal and therefore an examination of culture is irrelevant. The tumultuous history between West and East has left the need for humility in approaching research from a Western perspective, and to appreciate the systems in place in non-Western areas as legitimate and functional within that local cultural context. By appreciating culture in local terms, the 'inadequate' ideas on culture that Avruch has articulated can be avoided and instead an analytic discussion on culturally defined aspects of societies can be brought forward. Carefully blending *emic* and *etic* approaches to

understanding culturally defined systems will have the benefit of describing systems in native terms by placing them in a spectrum of existing processes, while avoiding being purely descriptive or reductionist. In addition, addressing local processes of conflict resolution in their own right ensures that in representing that distinct culture, doing so will not be for a politically motivated end as Said feared.

The methods of conflict resolution used within the Middle East are varied, and the description of *sulha* is meant to provide a general overview of one particular process of conflict resolution respected throughout the region, though practised slightly different from location to location. *Sulha*, as an indigenous system of conflict resolution, has outlasted several dynastic, colonial, and globalization changes in the international system, and continues to provide societies on both local and regional levels with the support needed in times of conflict. As a method that continues to be used within Middle Eastern societies, and particularly those with Muslim majorities, understanding *sulha* and local expressions of peacebuilding and peacemaking is a vital element in creating opportunities for cross-cultural communication.

Chapter 4 will introduce the case study of Palestine as well as conflict resolution within this region throughout various ages from ancient to modern. It will consider conflict resolution throughout these periods, and how it was maintained and adapted by the local community. The next chapter will also briefly introduce the organisation *Wi'am* that was used in the field research before discussing the interview summaries in Chapter 5.

4 Chapter 4: Case Study: A Brief History of Palestine and Conflict Resolution

Introduction

The previous chapters provided baseline theories of mediation, culture and conflict resolution. In this chapter, the case study used in this research is explored through understanding the past history of the region, local models for approaching conflict, and identifying modern challenges within this context. First, a basic historical background of Palestine and the use of indigenous conflict resolution processes are outlined from ancient times through to modern day amid various empires, invasions, and occupations. Second, the current demographics and social reality within the geographic region of Bethlehem in the West Bank is presented given this history, and in consideration of contemporary events. In conclusion, this chapter will outline the selection and interview process of mediators at *Wi'am*, the Palestinian Conflict Resolution Center' in Bethlehem, and will place this centre with regard to its function in the community.

4.1 A brief history of Palestine and conflict resolution[297]

As Sharon Lang has explained, "One cannot speak of Palestinian social practice, values, and identity construction without recognizing the history

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297 Geographically the area today is still heavily disputed, but for the purposes of this study, Palestine is used to refer to the area defined by the 1949 Armistice Agreements which left control of the West Bank area to Jordan and the area known as the Gaza Strip to Egypt until the Six Day War of 1967. Palestinians is used to refer to those people living within and beyond territorial boundaries of the 'imagined political community' of the Palestinian nation (See Anderson, Benedict. Imagined Communities: Reflections on the Origin and Spread of Nationalism. London: Verso, 1991.). This is a particularly important issue for many Palestinians whose identity and existence has been questioned during the course of the conflict with Israel. As a result, definitions of what actually constitutes 'Palestine' and the Palestinian nation are significantly contested, thereby situating issues of identity within much political debate. Whilst not all Palestinians would agree on a clear definition of what geographic borders constitute or should constitute Palestine, all of those Palestinians that were encountered utilise the term 'Palestinian' as an identity marker of significance and this thesis shall do likewise. While there is an element of practicality, the author acknowledges that this is a highly contested area geographically, religiously, historically and politically.

and significance of this national conflict because this is the fundamental experience of reality for all Palestinians, including those that never left their land."[298] The history of what are now Israel and the occupied Palestinian territory (oPt) of the West Bank and Gaza is a complex series of ancient and recent empires and kingdoms, religious shifts, elites controlling the masses, warfare, and foreign involvement with the region during trade, pilgrimages, external mandates, immigration and emigration. Modern Palestinian history has seen four stages of political and military occupation: (1) Ottoman, (2) British, (3) Jordanian and Egyptian, and since 1948, (4) Israel. Each of these periods of control has affected the peoples' lives in some way, but clearly, the most recent occupation weighs particularly heavily on the lives of modern day Palestinians. From field research visits to the area in June - August 2008 and March - April 2009, it would appear that it is very difficult to separate the historical, political and geographical dimensions of the conflict with Israel and the military occupation of the area, from everyday experiences of the Palestinians. A greater discussion of the socio-political context in which the population lives will be described in 4.1.12 and 4.2.

History of the region has been accompanied by methods of conflict resolution that the Palestinian and greater Arab population have practised since pre-Islamic times (*Jahiliyah*), namely *sulha*. Birzeit University Institute of Law (BUIL) has researched the 'informal justice' methods used within Palestine throughout the modern occupations, and articulated how the process of *sulha* and the use of trusted local men who work to help people find agreement (referred to in the BUIL study as *islah men*) developed from the Ottoman period through to the modern situation.[299]

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[298] Lang, 2005, 13.

[299] Birzeit University Institute of Law (BUIL). "Informal Justice: Rule of Law and Dispute Resolution in Palestine. National Report on Field Research Results." Birzeit, Palestine: Birzeit University Institute of Law, 2004.

4.1.1 Ancient Canaan, Israel and Palestine

"Before the region was Israel or Palestine, it was known as Canaan."[300] The Canaanites were of Semitic origin and belonged to a people that spanned Mesopotamia and Syria, inhabiting the area for approximately 1,500 years. In this time, the Canaanites developed the linear alphabet, which would later influence Western writing systems, and spoke the Semitic language, of which Arabic and Hebrew are dialects.[301] The Jews of this era believed that God had chosen their people above and distinct from all others. This eventually would evolve into monotheism. Smith has noted that the terms 'Israel' and 'Palestine' originate from two peoples who entered this region around 12th century BCE. While the Jews referred to themselves as *Bnei Israel* or the people of Israel and believed that God had given them the land, Palestine refers to the Philistines, who were of Greek origin and appear to have entered the area at roughly the same time, inhabiting the coastline while *Bnei Israel* maintained the areas inland. The Jews defeated the Philistines and other peoples in the region, including the Canaanites, and established the Kingdom of Israel.[302]

The Kingdom of Israel (*Eretz Israel*) was founded around 1000 BCE, and after a battle over succession *Eretz Israel* was broken into two kingdoms, Israel in the north and Judah to the south. The Assyrians would later take control of the north, and the Babylonians would succeed the Assyrians to control the region in its entirety. As Smith further observes, the boundaries of the frontiers were dependent on the strength of the great powers of Pharaonic Egypt and Mesopotamia. The borders of the region "were not static."[303] Jewish revolts during this time transferred power back to the Jews, and religious zeal saw the Maccabees forcibly convert what were then predominantly non-Jewish populations.

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[300] Smith, Charles. *Palestine and the Arab-Israeli Conflict*. 6th ed. Boston: Bedford/St. Martin's, 2007, 1.
[301] Ibid, 2.
[302] Ibid.
[303] Ibid, 3.

4.1.2 Roman Empire

Jewish independence ended when the Roman Empire incorporated the region. However, the Jews enjoyed religious and political autonomy as long as their rulers acknowledged the Roman Empire. Herod the Great was one such ruler, who built a selection of buildings including rebuilding the Temple in Jerusalem. The Jews felt that, to their detriment, Herod and others collaborated with the Romans, and a rebellion of the Zealots took place between 66 CE until 73 CE, ending when the fortress Masada was taken. In retaliation, the Romans destroyed Jerusalem, and what remained was the Western Wall of the Temple. Revolts continued after this, which resulted in the Romans annihilating whole villages and imprisoning survivors. The Jews lost their autonomy, and the region was renamed *Syria Palestina*.

As further punishment, Jews were forbidden to enter Jerusalem, and the population of Jews outside Palestine greatly outnumbered the number of Jews remaining inside: "By 300 CE, Jews made up one-half of the total population in the Galilee and less than one-fourth in the rest of the region."[304] Christianity became the official religion of the Eastern Roman empire, making Palestine as important to Christians as it was to Jews. It was during this time around the first century CE that the roots of *sulha* were "found partly in early Semitic writings and Christian Scriptures".[305] The Byzantines controlled Palestine through a sustained rivalry with the armies of Persia. Arabs from the East took advantage of the weakening position of the embattled Persians and Byzantines, thereby wresting control of the region.

4.1.3 The Arab invasion, Islam, and the Ottoman Empire

While the Arabs disrupted the balance of Christians and Jews that had survived in the region, they were not entirely dissimilar to the existing population: "The Arabs are Semitic people, ethnically and linguistically related to the northern Semitic tribes from which came the Canaanites and

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[304] Ibid, 5.
[305] Cook in Jabbour, 13.

the Hebrews."[306] In fact, the term 'Arab' comes from the Assyrian mention of the term for 'camel herders of the desert.'"[307]

By the 600s CE, the rise of Muhammad, the messenger of Islam, presented a wave of change to the Middle East's political and social organization. In addition, the sayings of Muhammad (*hadith*) as well as the holy Qur'an provide examples of early Islamic-era methods of conflict resolution, including *sulha*. Although through his preaching, Muhammad found opposition as well, necessitating not only negotiation but also warfare. As Smith remarks, scholars still debate whether Muhammad intended on expanding Islam beyond the locale of Arabian Peninsula.[308] Yet, under the successors of Mohammad (*caliphs*), Islam spread into Europe, Africa, and Asia.

Islam split into two main sects due to a dispute over caliph succession: Sunni and Shi'i. Within Palestine and beyond, Muslims viewed Christians and Jews as "People of the Book of Revelations"; related in belief systems, but ultimately as those who corrupted God's message. Therefore, non-Muslims (*dhimmis*) were treated in a way that distinguished them from Muslims: they could not dress like Muslims, ride animals as large as those ridden by Muslims, nor build temples and churches. However, Jews were allowed to travel and enter Jerusalem where they had not been allowed under the Byzantines. Christians on the other hand were suddenly on equal footing with the Jews, a change from two hundred years of discriminatory practice towards Jews.

The Muslims and then the Turkish Ottoman Empire ruled the area with intervals of European Crusader control. Jerusalem was also important to Muslims, as Muhammad visited the sacred city before ascending to heaven. This spot is located in the Dome of the Rock on the Temple Mount, and called *al-Haram al-Qudsī ash-Sharīf* (the Noble Sanctuary) by Muslims. During this period, pilgrimage was popular among the three faiths and the region prospered. Crusader attacks spared none of the population – Christian, Muslim, and Jewish –all were victims of slaughter in the Crusader attempts to

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[306] Smith, 6.
[307] Ibid.
[308] Ibid.

regain Jerusalem from Muslim control. Crusader rule was short lived, and the Muslims saw a return of control after less than one hundred years.[309]

Yet, like in centuries past, this Muslim occupation would end with a stronger foreign empire facing a weakening ruling authority. The Turkish Ottoman Empire gained territory throughout Asia, the lands surrounding the Mediterranean and Europe. In Palestine, Ottoman rule saw reliance on local Arab leaders to run the Empire's administrative tasks including tax collection and social affairs.[310] Still, like previous rulers, the region retained its pluralistic blend of ethnicities and religious groups that were allowed to work and pray as they saw fit, albeit with some restrictions on *dhimmis*.

Informal or tribal justice (*'urf*) is documented at this time, "particularly regarding land laws and penal codes."[311] Within Palestine, "tension and rebellion against the central authority...led to a weakening of the authority of Ottoman institutions".[312] Local people, therefore, were more open to informal justice as a means to resolve conflicts meaningfully without a need to turn to the central authority. Those sought out for their assistance inherited the profession from their fathers, and they were specialised in particular sections of law or social norms. In one interview done by Birzeit University, an elderly, prominent *islah* man in the West Bank noted that he inherited the role from his father and uncle, who held the position in the Ottoman era.[313]

4.1.4 Ottomans and Europe

The Ottomans were eager to open trading relationships. Whilst at the height of their power, the Ottoman sultans "offered privileges to several European states permitting their agents to trade within the empire."[314] These agreements ultimately strengthened growing European commercial expansion and foreign exploitation, and increased the rights and freedoms of

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[309] Ibid, 9.
[310] Ibid, 11.
[311] BUIL, 30.
[312] Ibid.
[313] Ibid, 31.
[314] Smith, 12.

non-Muslims, including granting "legal immunity and freedom of religious practices while in Ottoman territory" as early as 1535.[315] While Smith comments, "Traditionally, non-Western societies protected themselves and their local industries from European commercial inroads by high tariffs and monopolies," Britain was able to leverage access by providing military might to a weakening giant in order to benefit from a large commercial market.[316] Gradually, the expansion of Europe into the Middle East weakened the Ottoman Empire to a significant juncture where territory was being lost. European powers exploited the needs of the Empire to a point where the standard of living for people within the Middle East dropped drastically.[317]

With European involvement in trade and markets, the Ottoman Empire decided to apply the *Tanzimat* principles in order to "regularize the structure of land ownership and the cultivation of land throughout the empire."[318] *Tanzimat* specifically referred to the Ottoman reforms in the legal, administrative and judicial portions of society during the mid-nineteen century. These reforms ensured that landowners with a title to land were subject to taxes to raise revenue for the Empire, as well as to estimate the number of men available for military conscription.

To calculate these figures, the Ottoman Empire undertook a series of census reports to quantify the number of households in their domain, the first concluded in 1831.[319] This first census attempted to "determine the exact number of Muslim and non-Muslim males within each *sancak* (district), *kaza* (county), and *nahiye* (locality) of the empire."[320] Muslim men were categorised more thoroughly according to age for conscription purposes, while Christian and Jewish males were listed by their wealth for tax purposes.[321] Women and children were initially excluded from the census due to the financial and bureaucratic rationale behind the original census, but

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[315] Ibid, Document 1.1, "A Treaty of Amity and Commerce, The Ottoman Empire and France, February 1535", 19.
[316] Ibid, Document 1.2, "The Balta Liman Commercial Convention, August 1838", 21.
[317] Ibid.
[318] Ibid, 27.
[319] Shaw, Stanford J. "The Ottoman Census System and Population, 1831-1914." *International Journal of Middle East Studies* 9 (1978): 325.
[320] Ibid.
[321] Ibid.

would later be included in subsequent counts. This process initiated a registration system for all births, deaths, marriages, divorces and changes of residence: "By such means the empire was assured of maintaining a permanent and continuous record of the current state of its population long after the initial census surveys were made."[322] Records for Ottoman subjects within the Jerusalem *kaza* show a steady population growth from 81,100 in the mid-1880s, to 110,200 in 1905, to 120,900 in 1914.[323] In the 1914 census, the total population comprised of an estimated 70,300 Muslims, 32,500 Christians, and 18,200 Jews within the Jerusalem *kaza*.[324]

Tourism became another revenue stream for many cities with the increase of pilgrimages to the Holy Land, such as the cities of Jerusalem, Bethlehem, Jaffa, and Haifa. Immigration of Christian as well as newfound Zionist groups from Europe became popular in the nineteenth century, with some cities losing their Muslim majority. "Christians made up the largest single group, many of them Lebanese traders who came to take advantage of the commerce and pilgrim traffic that passed through Haifa."[325] Jerusalem held a Jewish majority, maintained by an increasing number of Jews making religious pilgrimages who travelled to "the land of ancient Israel, many in order to die there."[326] "[B]etween 1895 and 1914, forty thousand Jews entered Palestine, often not for religious reasons [as those who made pilgrimages to Jerusalem] but to colonize it and establish a base for the future restoration of Palestine as Israel. As Zionists they were more interested in establishing agricultural colonies than in settling in the cities."[327]

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[322] Shaw, 331.

[323] Schmelz, U.O. "Population Characteristics of Jerusalem and Hebron Regions According to Ottoman Census of 1905." In *Ottoman Palestine, 1800-1914: Studies in Economic and Social History*, edited by Gad G. Gilbar, Leiden: E. J. Brill, 1990, 22.

[324] Ibid. Schmelz notes: "by the 1880s...Palestine as a whole had barely emerged from a very difficult and prolonged period of neglect, poverty, insecurity and a very high mortality. The time from the 1880s to 1914 was, on the whole, one of improvements in infrastructure, health conditions, and material welfare that were largely due to the increased direct and indirect involvement of European elements – including Jewish immigrants. We can assume that these factors facilitated demographic growth." (21-22).

[325] Smith, 30.

[326] Ibid.

[327] Ibid, 30-31.

Within Palestine, a vast majority of land was state owned (*miri*), with some land lying fallow for decades due to uncertainty in the area, while other properties were taken over privately without Ottoman knowledge, and a large amount of this land was under communal usage and ownership by peasants (*musha'a*).[328] Ottoman response to the peasants' inability to pay taxes was usually heavy handed, unless there was a person who could assume the tax liability and allow the indebted peasants to continue working the land. Within urban areas however, notable Palestinian families (*a'ayan*) adapted to Ottoman *tanzimat*, and the elite had control of the newly established secular court systems, relegating the religious (*shari'a*) courts to hear social matters relating to marriage, divorce and burial.[329] Therefore, there was a shift in judicial power within the region.

4.1.5 Zionism and Ottoman Response

Zionism evolved as a response to discriminatory practices, persecution, and attacks on Jews within Europe and Russia. According to Smith and the Israeli Department of Foreign Affairs, the Zionist movement began with Russian Jews, who had attempted without success to assimilate in Russian society. From the 1850s, a Western modern movement called *haskala* provided an aspiration for the promotion of legal equality between Jews and non-Jews. For a time under the reign of Tsar Alexander II, restrictions for Jews were relaxed and the Jewish population was hopeful for change. However, upon the assassination of the Tsar Alexander II in 1881, a renewed oppressive regime tolerated and perhaps even encouraged attacks (or *pogroms*) upon Jews until 1884.[330, 331]

Emigration occurred between 1882 and 1900, with most Jews taking to the United States. Others, however, travelled to Palestine, making what the modern Israeli state considers the 'First *Aliya*' (ascent), the first wave of

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[328] Ibid, 27.

[329] Pappe, Ilan. *A History of Modern Palestine* 2nd ed. New York: Cambridge University Press, 2006, 31.

[330] Smith, 34.

[331] Israeli Ministry of Foreign Affairs (IMFA). "The Land of Promise: The Journey Home." http://www.mfa.gov.il/MFA/MFAArchive/2000_2009/2003/3/The+Land+of+Promise-+The+Journey+Home.htm, Accessed 16 August 2010.

immigration (between 20,000 - 30,000 Jews) to the land of Israel by the movement that became known as *BILU*.[332] This movement would inspire later generations of Zionists on the importance of a return to Palestine above other suggested areas, and how Jewish agricultural labour (leading to the founding of *kibbutzim*) could embody the principles of Zionism.[333]

A main promulgator of the Zionist movement was Theodor Herzl, an assimilated Viennese Jew, whose work *Der Judenstaat* (The State of the Jews) in 1896 called for the "creation of a Jewish state that would absorb European Jewry and thus end the anti-Semitism that still prevailed even in Western Europe and proved that assimilation was impossible."[334] In *Der Judenstaat,* Herzl outlined the situation facing Jews throughout Europe and encouraged the realization of a Jewish state with European support:

> Palestine is our unforgettable historic homeland. The very
> name would be a marvellously effective rallying cry. If His
> Majesty the Sultan were to give us Palestine, we could in
> return undertake the complete management of the finances
> of Turkey. We should form a part of a wall of defence for
> Europe in Asia, an outpost of civilization against barbarism.
> We should as a neutral state remain in contact with all
> Europe, which would have to guarantee our existence.[335]

Addressing German Jews in 1898, when the imperial colonization of the non-Western world was commonplace, Herzl spoke to those who doubted the success of such a vision: "I think that… Mr. Klausner [a Jewish historian and nationalist]… will find places suited for settlement in the

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[332] BILU is "an acronym taken from the Hebrew initials in Isaiah 2:5, "O House of Jacob, come and let us go." (Smith, 34). According to the IMFA, Yemeni Jews also made *Aliya* at this time, believing that the Messiah's return was imminent.
[333] Smith, 35.
[334] Ibid, 36.
[335] Herzl, Theodor. *Der Judenstaat* as referenced in Smith, Document 2.3, 54.

territory of Palestine—and there *is* a Palestine; it is located on the Mediterranean…"[336]

Herzl worked diplomatically for a Jewish State in Palestine by disseminating information through his publications and the installation of the World Zionist Organization (WZO), a "collective body of Jewish representatives advocating a secure homeland for Jews and presenting the Zionist cause to the rest of the world," formed with Herzl as president at the Basel Congress in Switzerland in 1897.[337] Herzl committed himself to diplomacy, meeting Ottoman leaders to negotiate land agreements that were ultimately refused; foreign consults and Ottoman Jews provided opportunities despite this. Instead, Ottoman officials suggested land for individual purchase in Syria and Iraq and not in Palestine. Herzl also visited the British in 1902, where Joseph Chamberlain suggested areas in British-controlled 'East Africa', now Kenya.[338] Zionists debated the importance of settling in Palestine, and ultimately this debate cemented the need for land in the region instead of offers elsewhere. With the establishment of the WZO bank and the Jewish National Fund in 1901, the purchase and development of land for Jewish settlements in Palestine, "never to be sold to or worked by non-Jews, as part of the program to establish a dominant Jewish presence in the area."[339] Herzl died in 1904, without solidifying international commitment to a Jewish state.

The Second *Aliya* between 1904 and 1914 was committed to a Jewish land through Jewish labour alone, and did not seek the assistance of Arab farmers on Jewish land like the previous *aliya*. "For the Zionists of the second wave, Jewish socialism meant an egalitarian Jewish society from which Arabs were excluded."[340] During this time the Hebrew language was revitalized, bringing Hebrew newspapers and publications. By 1914 in Palestine, there were forty-four Jewish agricultural settlements totalling 100,000 acres,

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[336] Herzl, Theodor. "Who Fears a State?" from *Die Welt*, February 18, 1898, as referenced in Smith, Document 2.4, 57.
[337] Smith, 567.
[338] Ibid, 38.
[339] Ibid.
[340] Ibid, 40.

approximately 85,000 Jews, and 12,000 of those working the land.[341]

"Zionists comprised about 25,000, or 31 percent, of the Jewish population in Palestine in 1914. They planned to reclaim Palestine as Eretz Israel, the land of the Jewish people."[342]

The Ottoman response toward Zionism reflected their fear of nationalization, which had proved problematic in the Balkans. Instead, the Ottoman policy stated, "Jewish immigrants will be able to settle as scattered groups throughout the Ottoman Empire, excluding Palestine. They must submit to the laws of the empire and become Ottoman subjects."[343] In practice, new Jewish immigrants entered Palestine as visitors, and stayed on with the protection of European consulates. While initially not stirred by this influx, the Arab population within Palestine became alarmed when land acquisition saw peasants forcibly and violently removed from their homes. Prophetically, in 1905, Arab nationalist Naguib Azoury of Beirut described the diametrically opposed aspirations of both the "awakening of the Arab nation" and the Jewish vision to "reconstitute on a very large level the ancient kingdom of Israel," articulating that both movements would fight one another until such time as one defeated the other.[344] "The fate of the entire world will depend on the final result of this struggle between these two peoples representing two contrary principles."[345]

4.1.6 World War I and the British Mandate (1914 – 1948)

During the First World War, the Ottoman Empire was obligated to join the German side to maintain the alliance established with the Germans, and to protect itself against "expansionist tsarist tendencies" of the Russians on the

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[341] Ibid.

[342] Ibid, 31.

[343] Mandel, Nevil J. *The Arabs and Zionism before World War I*, 2, as referenced in Smith, 42.

[344] Smith notes that the "idea of nationalism was a European phenomenon, just beginning to be known in the Arab world, that often collided with the family and village loyalties that predominated along with one's religious identity." Also, unlike Zionism, 'nationalism' was understood in secular terms: "[E]ducated Palestinian Arabs considered themselves to live in Palestine, establishing an identity with a region defined by boundaries." (31).

[345] Azoury, Negib. "Le Reveil de la Nation Arabe dans l'Asie Turque." Paris, 1905, as referenced in Smith, Document 2.6, 58.

Allied side.[346,347] However, what would become clear is that the British and French vision of the Middle East was equally part of an imperial plan. Britain, France and Russia became allies in World War I in response to the common German enemy, which was threatening in its aggressive colonial involvement as well as its interference in military and commercial interests. "With the Ottoman Empire officially in the war, the British took swift action to ratify their existing occupation of Ottoman territory."[348]

Because a war with Turkey would risk commercial trade routes like the Suez Canal, British interests included creating instability and tension for the Turks in the form of Arab revolt and separatism.[349] In order to ensure Arab support for the British, promises were made by a British high commissioner named Henry McMahon, to promote freedoms for particular nations with Sharif Husayn of Mecca, among them: the areas of what is now Saudi Arabia; Syrian cities of Aleppo, Damascus, Hama, and Homs; and Northern Iraq. However, the issue of Palestine and other regions west of these districts was notably vague, and the British were careful to detail that autonomy would be limited in regions "where French interests might exist."[350] The Sykes–Picot Agreement of 1916 was the result of secret negotiations between the French and British, with consent of the Russians, to carve up the Middle East according to spheres of influence, which came to fruition throughout and at the end of the war. The British occupied Southern Iraq from Baghdad, with interests across Mesopotamia and Southern Persia, as well as Egypt complete with the Suez Canal to Southern Mesopotamia; the French: Lebanon, coastal Syria, Southern Turkey, and Northern Iraq to the Persian border; the Russians: Constantinople, Armenia as well as a sphere of interest across Northern Persia.

In bringing the United States into the war effort, the British Mandate Palestine, as it became known, could not be seen as an imperialist intention to annex land as 'spoils of war' but rather support for the Zionist aims for a

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[346] Pappe, 65.

[347] Smith, 60.

[348] Ibid, 61.

[349] Ibid, 64.

[350] Kedourie, Elie. *In the Anglo-Arab Labyrinth: The McMahon-Husayn Correspondence and its Interpretations, 1914-1939*, 98-99 as cited in Smith, 68.

nation in Palestine. The Balfour Declaration of 1917 was a letter written by the British Foreign secretary, Lord Arthur Balfour articulating British government's support for the Zionist dream: the establishment of a Jewish state in Palestine.

> His Majesty's Government view with favour the
> establishment in Palestine of a national home for the Jewish
> people, and will use their best endeavours to facilitate the
> achievement of this object, it being clearly understood that
> nothing shall be done which may prejudice the civil and
> religious rights of existing non-Jewish communities in
> Palestine, or the rights and political status enjoyed by Jews
> in any other country.[351]

By the end of World War I, the American addition to the war also brought with it Woodrow Wilson's League of Nations, "to provide a forum for settling international disputes peacefully... and provided a formula whereby former German or Ottoman territories could be taken over temporarily by the world powers. This was the mandate system."[352] The British Mandate in Palestine was, in effect, following the dismantlement of the Ottoman Empire while "legitimizing their control of desired territories".[353] The issue with Palestine was seen as exceptional in comparison to the struggle for control over other territories. Palestine was

> ...'a unique situation' in which 'we are dealing not with the
> wishes of an existing community but are consciously
> seeking to re-constitute a new community and definitely
> building for a numerical majority in the future.' In this light,
> the opinions of the Palestinian Arabs were not important,
> however understandable they might be. The Allies were
> violating the principles of the Covenant [of the League of

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[351] IMFA. "The Balfour Declaration." Accessed 1 June 2009.
http://www.mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process/The+Balfour+Declaration.htm.
[352] Smith 85.
[353] Ibid.

Nations] because the powers (including the United States) were 'committed to Zionism. And Zionism, be it right or wrong, good or bad, is rooted in age-long traditions, in present needs, in future hopes, of far profounder import than the desires and prejudices of the 700,000 Arabs who now inhabit that ancient land.[354]

Therefore, following World War I, British Mandate Palestine included western Palestine that was allotted to the Zionists, and eastern Palestine, which was adopted into the newly founded kingdom of Transjordan. However, "many Ottoman laws remained in force, and the British amended, abrogated, and added legislation as the need arose."[355] During this era, the British ensured a "legal basis for the establishment of tribal courts" and "regulated the work of informal judiciary".[356] These tribal courts were formalised to "adjudicate cases among and between tribes."[357] The legal authority established by the British Mandate may not have been to encourage local capacities for resolution of conflicts but rather to provide ways to control the colony through "indirect rule," by "retaining local laws and local leaders in order to avoid opposition."[358,359] Palestine under the British Mandate also saw borders become more relevant, especially as Russia withdrew claims from the area, and these British-negotiated borders would later form the conceptual geographical basis for the creation of the state of Israel in 1948.[360]

4.1.7 The End of the British Mandate and the Establishment of Israel (1948)

World War II drained the British financially and militarily. Referred to the UN in 1947, the special committee charged with making decisions regarding the Palestine issue recommended partition based on a pattern of land ownership,

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[354] Ibid, 86.
[355] Fares & Khalidi, 512.
[356] BUIL, 32.
[357] Fares & Khalidi, 509.
[358] Ibid, 512.
[359] BUIL, 32.
[360] Pappe, 79.

dividing the land into a Jewish state and a Palestinian state.[361,362,363] In immediate response, Arab and Zionist clashes erupted over control of land to establish their own individual states. This violence would lead to the first *Nakba*, or catastrophe, for the Palestinian people. More than a quarter million (300,000) Arabs fled villages to other Palestinian towns or to neighbouring Arab countries. This forced exodus occurred because people were either driven out or had to escape slaughter by the *Hagana*, one of the Jewish defence forces built up to protect the Jewish communities.[364,365]

In May of 1948, David Ben-Gurion declared the existence of the State of Israel amid unabated conflict and crisis. The fighting continued, with Palestinian civilians suffering a great deal. A Jewish naming committee "granted the new settlements Hebraized versions of the original Arab names" to prevent future claims to the land, but also to assist its resemblance to 'ancient Israel'.[366] Palestine was lost. The remaining regions were annexed to Jordan (the West Bank), Egypt (Gaza) or the new Israeli state.

Informal justice in this age is reported to have been either complementary to the formal courts (*nizami*) or very well supported by the Egyptian or Jordanian authorities, according to *islah* men who recall that period.[367] Jordan occupied the West Bank from 1948, and with this "Jordanian laws became enforceable in the West Bank as well."[368] Instead of implementing tribal courts, Jordan recognised local informal systems of conflict resolution and "Jordanian authorities played a significant role in sanctioning and even organising the work of mediators."[369] In noteworthy cases, the king of Jordan intervened in conflicts concentrating on 'influential families'. Jordanian law indirectly supported the informal justice system in the West Bank:

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[361] Ibid, 125.
[362] Smith, 194.
[363] See United Nations (UN). "181: Resolution Adopted on the Report of the Ad Hoc Committee on the Palestinian Question." 1948. http://www.un.org/Docs/journal/asp/ws.asp?m=181.
[364] Smith, 202, 209.
[365] Pappe, 135-136.
[366] Ibid, 138.
[367] BUIL, 32-33.
[368] Fares & Khalidi, 512.
[369] Ibid, 513.

Legally, the Jordanian Penal Code of 1960 is still in force in the West Bank, despite the fact that it has been amended in Jordan. It contains several articles that allow for a reduction of the sentence or dropping the case based on a number of mitigating excuses, among which is reconciliation between parties to a conflict. The Jordanian period therefore witnessed the virtual formalization of the informal system through the state's unofficial support for tribal and patriarchal social and political organizations and the legal provisions giving incentive to solve cases outside the courts through informal reconciliation procedures. This was in the context of a strong centralized state and a relatively efficient court system.[370]

4.1.8 Partition (1948-1967) and Six Day War

Throughout the time of partition, Palestinians on all sides felt their identities and loyalties being pulled in divergent directions. In the West Bank, "there was a growing realization that they too, were under occupation," despite offers of leadership by the Jordanian state.[371] Within Israel, Palestinians were initially subject to military rule, before the Israeli state attempted methods like the Jordanians to 'co-opt' Palestinian loyalties. Money and prestige were provided to those who would give their communities to the newly formed state.[372]

Following the Six Day War in 1967, Israel gained control of the West Bank and East Jerusalem from Jordan, and the Gaza Strip from Egypt. Fewer Palestinians were made refugees than in 1948, yet the figure in 1972 revealed 1.5 million registered refugees.[373] Refugees were forced into camps in Gaza, the West Bank, East Jerusalem as well as the neighbouring Arab states of Lebanon, Jordan, and Syria.

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[370] Ibid.
[371] Pappe, 153.
[372] Ibid, 155.
[373] Ibid, 187.

Laws that existed prior to partition continued to exist in large part, with Israel "reserving the right to amend or change laws as necessary."[374] However, a central point of change centred on the fact that "the judicial system was now in the hands of an Israeli military officer" and "judges and prosecutors were appointed and paid by Israel".[375] Further, because military officials maintained courts, cases could be interfered with (e.g. by closing a case before it was concluded).[376] The number of courts in the oPt, despite growing populations, remained the same:

> This neglect to establish new courts to keep up with the rise
> of population and commercial life resulted in an
> overburdened court system to the extent that a simple case
> to 3-5 years took reach a verdict. This inefficiency,
> combined with the general mistrust of the Palestinian
> population of the Israeli-controlled judicial system, resulted
> in increased recourse to informal means of resolving
> disputes as an alternative to the Israeli court system.[377]

In this time, informal justice practitioners saw an expansion and extension of their role, due to the *nizami* courts being under the authority of the largely distrusted occupying authorities.[378] Representatives of informal justice verified that, "their role was considered to be a national alternative for the *nizami* courts which were under occupation."[379] Unlike previous periods, there was no established relationship between the occupying forces and the informal justice officials. However, Israel viewed this alternative mode of justice to be an unchecked affront:

> Some representatives of informal justice said that they were
> harassed by the occupation authorities, arguing that the
> latter were not interested in settling discord in Palestinian

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[374] Fares & Khalidi, 513.
[375] Ibid.
[376] Ibid.
[377] Ibid.
[378] BUIL, 35.
[379] Ibid.

community [sic] and preferred that cases and conflicts be
dealt with directly by them rather than by the informal
judiciary, since they viewed *islah* men and tribal judges as a
nationalist 'police' which was not under their control. [380]

If one of the parties in the dispute was an individual who collaborated with
the Israeli authorities, *islah* men reported that there was greater interference
in the case by the occupation authorities. Therefore, *islah* committees would
avoid those *islah* men and tribal judges who collaborated with the Israeli
government, and members of the community would deal solely with those
representatives of informal justice with honourable, nationalist
credentials.[381] Informal justice was used considerably as it was seen to be a
preferable alternative to the Palestinian *nizami* courts, which were Israeli-
controlled, administered, and supervised.

4.1.9 The First Intifada (1987-1994)

The first Intifada erupted in 1987 because of anger at the Israeli occupation
and mounting frustration of the inefficacy of the Palestinian leadership.[382]
While employment in Israel benefitted Palestinians and was an improvement
over Jordanian and Egyptian wages, the reality of the true costs of occupation
became painfully obvious. The construction of Jewish settlements intensified
across the West Bank, and these were built closer to Arab communities than
ever before. Water-use restrictions decreased the amount of agricultural
production within the Palestinian Territory, specifically Gaza, to benefit
settler agricultural programs.[383] The situation for refugees in Gaza was dire;
"refugees from 1948 and 1967 made up about 70 percent of the population
in an area one-fifteenth the size of the West Bank."[384] Youth (*shabab*) born
under Israeli occupation questioned their parents' submission to harassment

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[380] Ibid.
[381] Ibid.
[382] Smith, 412.
[383] Ibid, 417.
[384] Ibid, 416.

and humiliation, whereas the elder generation viewed their steadfastness (*samud*) as one way to carry on without giving in.

Anti-occupation demonstrations, arrests, and increased violence became the norm during this time. Non-violent resistance also occurred, one example being in the town of Beit Sahour, in the Bethlehem governorate. The village people refused to pay taxes to the Israeli state and raised the cry of the Boston Tea Party "No taxation without representation." The Israeli response, not unlike the British response in 1773 America, was to take anything of value from tax resisters' homes.[385] By 1989 alone, it is estimated that 626 Palestinians and 43 Israelis had been killed, with Palestinians accounting for nearly 37,500 wounded, and over 35,000 arrested.[386]

By the time of the first Intifada ('shaking off') from 1987-1994, informal justice was mainstream for those in the occupied Palestinian territory. Due to "the weakness or absence of the occupation's executive authority, and the calls by the Unified National Leadership of the Uprising (UNLU) in their regular circulars, for Palestinians to boycott the agencies and institutions of the occupation," those who practised informal justice during this time felt that this was the 'golden age' for their work.[387] Without police, courts, or administration overseen by the Israeli authorities, the need grew for alternatives to these governing bodies. "[V]arious Palestinian factions united under one leadership formed 'islah' or reconciliation committees to undertake the job of resolving disputes between individuals based on shared customs and traditions and in the interest of the Palestinian people, as a substitute for the Israeli justice system."[388] While *islah* committees were conventionally led by established mediators and heads of families known to function in this role, an innovation occurred where there was the "introduction of new actors, young politically active individuals representing the various political factions, in such work, many of whom continue to carry

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[385] Details of the Beit Sahour protest are listed in local heritage sites, such as Beit Sahour Municipality. "History, Economy, and Tourism." http://www.beitsahourmunicipality.com/english/historic.htm., Bethlehem Municipality. "Bethlehem Municipality: City Districts." http://www.bethlehem-city.org/index-1.php?Mid=OTk=.

[386] Smith, 422.

[387] BUIL, 36.

[388] Fares & Khalidi, 513.

out this function presently."[389] *Islah* committees became a widespread and effective alternative, and rulings and opinions of these committees were enforced by *shabab* of the *tanzim*, (youth of the organization) or 'those who are masked and those who are on the run'.[390] In other words, those who failed to agree with the decisions of the *islah* committees were forced to commit to these opinions, by force if necessary.

Over this period, not only had the number of *islah* men increased, but also the traditional characteristics of those practicing informal justice gave way to a diverse spectrum of socio-political backgrounds. No longer simply inherited the position from their father, new *islah* men were "chosen as a result of their successful relations with the citizens or their position in the political structure."[391] This era proved especially important in grounding the practice of localised informal justice measures with elements of the popular resistance against Israeli occupation while adapting the use of informal methods to the needs of Palestinians during the circumstances of the Intifada. "Rather than being subject to the Israeli court system, Palestinians resorted to a socially sanctioned, community based system of resolving disputes that addressed their concerns and with which they could identify."[392]

4.1.10 Palestinian National Authority (1994-Present)

Following the political Oslo Agreement in 1995, the Palestinian leadership (now called the Palestinian National Authority or PNA) regained some authority over the Palestinian territory, though not autonomy. The region of the West Bank was divided into three administrative zones (A, B, or C) and a large nature preserve, controlled largely by Israel.

> The 1995 Oslo interim agreement split the West Bank into
> three Areas A, B, and C, with different security and
> administrative arrangements and authorities. The land area

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[389] Ibid, 514.
[390] BUIL, 36.
[391] Ibid, 37.
[392] Fares & Khalidi, 514.

controlled by the Palestinians (Area A corresponding to all
major population centers and Area B encompassing most
rural centers) is fragmented into a multitude of enclaves,
with a regime of movement restrictions between them.
These enclaves are surrounded by Area C, which covers the
entire remaining area and is the only contiguous area of the
West Bank. Area C is under full control of the Israeli military
for both security and civilian affairs related to territory,
including land administration and planning. It is sparsely
populated and underutilized (except by Israeli settlements
and reserves), and holds the majority of the land
(approximately 59%). East Jerusalem was not classified as
Area A, B or C in the Oslo interim agreement and its status
was to be resolved in final status negotiations.[393]

Eighteen percent of the land in the West Bank came under the control of the
Palestinian Authority.[394] The land designations in the Oslo Accords were only
intended to be a temporary measure with the purpose of gradually
transitioning land resources of Area C to the PNA. However this process has
"been completely frozen since 2000", and "little territory has been
transferred to the [PNA] since the signing of the Oslo interim agreement".[395]
Further negotiation on the land issue is vital: "As the Palestinian population
grows and its resource and development needs increase, this long-lasting
situation has become an increasingly severe constraint to economic
activity."[396]

The Oslo Agreement transferred control of the Palestinian court
system to the PNA, but the government executive did not consider the

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[393] Information from The Israeli-Palestinian Interim Agreement on the West Bank and Gaza
Strip, Washington, D.C. (September 28, 1995), Article XI incorporated into this summary by
World Bank. "West Bank & Gaza - the Economic Effects of Restricted Access to Land in the
West Bank." World Bank, 2008.
http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/MENAEXT/WESTBANKGAZAEXTN
/0,,contentMDK:21946232~pagePK:141137~piPK:141127~theSitePK:294365,00.html.
[394] Halper, 161.
[395] World Bank, 2008.
[396] Ibid.

development or encouragement of an independent judiciary a priority. Instead informal justice was expanded through "wide-ranging support . . . which ultimately allowed for the involvement of an array of institutions such as the governorate and the various security apparatuses under the executive's control."[397] Those affiliated with the newly formed PNA also acted as mediators or representatives for parties as part of their official and personal capacities.[398] New courts were opened in time and a police force was strengthened, which "briefly revived Palestinian confidence in the formal system and led to increased recourse to the courts, especially in civil and commercial cases."[399]

The PNA saw informal justice as one way to "expand their jurisdiction and authority to areas that were not under its direct control according to the Oslo Agreements, such as Area C and most importantly, Jerusalem."[400] With informal justice, the PNA has "managed to maintain a strong presence in East Jerusalem, as exemplified in one case occurring in a Jerusalem refugee camp in which Palestinian security forces intervened after the Israeli authorities had arrested, interrogated and released the suspected offenders."[401] In this case, the Israeli authorities exonerated the suspect, but the informal justice procedures saw him as responsible and a *sulha* process was undertaken per instruction and supervision of the PNA president and other influential persons. Therefore, even in Jerusalem, where the PNA does not have active administrative control, Palestinians continue to utilise these methods for resolving disputes without referring to the Israeli justice system. This is thought to maintain social order, "a function which the Israeli police often neglect."[402]

For informal justice practitioners, the new PNA "welcomed and encouraged their work," as shown by judiciaries meeting the PNA through their governors, or being issued with papers that officially acknowledged their role. Informal justice workers also were offered access to offices and an

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[397] Fares & Khalidi, 514.
[398] Ibid.
[399] Ibid, 515.
[400] Ibid, 514.
[401] Ibid.
[402] Ibid.

official backing for their decisions (therefore they were less dependent on the *shabab* of the *tanzim* to implement rulings). One *islah* man suggested that the PNA support for their work was due to the fact that the PNA lacked control over the entire West Bank; with it carved into three pieces made it impossible to travel freely from one part to another. Representatives of informal justice, however, were able to move around quickly and freely in particular areas, including Jerusalem.[403] *Islah* men also commented that the PNA was prone to "nepotism, cronyism and interference by the security forces in forcing their solutions on *islah* men.[404] Overall, the PNA took the concept of informal justice seriously, as seen by the creation of Central *Sulh* Committees, or President Arafat financially supporting the rites of *sulhs* or *'atwas*.[405][406]

4.1.11 The Second Intifada 2000-2004[407]

The Second Intifada erupted in 2000 following a combination of factors, including failed continuing political talks and reactions on both Palestinian and Israeli sides as well as Israeli politician Ariel Sharon's visit to the Temple Mount/Al-Haram al-Sharif. Killings by Palestinians and Israelis inflamed the situation further, with the political consequences seeing further polarization

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[403] BUIL, 37.

[404] Ibid.

[405] Ibid, 38.

[406] Asem Khalil also notes the political function of the Central *Sulh* Committees: "On November 9th 1994, the late president Yasser Arafat issued presidential decree no. 161 of 1994. The decree established a Department of Tribal Affairs as part of the President's Office. This department proceeded to draw up internal directives regulating its activities and to prepare internal directives determining the administrative status of its employees and specifying a number of conditions and requirements for *islah* men and tribal judges working in the Palestinian governorates. In 2004, the Department of Tribal Affairs succeeded in establishing central *sulh* committees in several Palestinian governorates." Khalil, Asem. "Formal and Informal Justice in Palestine: Dealing with the Legacy of Tribal Law." *La tribu à l'heure de la globalisation, Revue Etudes Rurales* 184 (2010), 16.

[407] The 'end' of the second intifada is unclear. Some commentators marked the end in 2004 after the death of President Yasser Arafat, infighting occurred between Palestinian political parties, and talks between Israeli and Fatah leaders resumed. See European Institute for Research of the Mediterranean and Euro-Arab Cooperation (MEDEA), "The Second Intifada", online http://www.medea.be/index.html?page=2&lang=en&doc=1713. Accessed 18 June, 2010, or Gilmore, Inigo. "Palestinian ceasefire ends four-year Intifada", The Telegraph. Online http://www.telegraph.co.uk/news/worldnews/middleeast/israel/1482803/Palestinian-ceasefire-ends-four-year-intifada.html. Accessed 18 June 2010.

of each faction.[408] Despite the Israeli government splitting the West Bank and Gaza into manageable, isolated sections with the use of an estimated 680 checkpoints, barriers, roadblocks, and trenches, Palestinian suicide bombings and armed resistance continued in retaliation for humiliation, beatings, and suspected Israeli Defence Forces (IDF) killings of civilians.[409] Israeli response was swift; politically-ordered targeted assassinations of political leaders and full-force military actions that levelled camps and villages.[410] "A total of 297 Palestinians have been killed by assassinations or extra judicial executions, 180 of them intentionally targeted, the rest being 'collateral damage.'"[411]

In addition, construction of the separation wall/security barrier/security fence began in 2002 in earnest to prevent suicide bombers from entering Israel, while also redefining Israel's borders within the West Bank and prevented Palestinians from reaching their land on the opposite side of the wall.[412,413,414,415] By 2003, the second intifada saw standards of living within the West Bank and Gaza plummet with a majority of Palestinians living below the poverty line, and at least 40 percent of children chronically malnourished.[416] Within Israel, fear of bombings created a pervasive sense of disruption in daily life and the state suffered seriously economically. By the

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[408] Two incidents in particular inflamed public and international opinion to the situation: (1) the killing of a 12-year-old boy by the Israeli Defense Forces, or IDF, in Gaza and (2) the public killing of two IDF soldiers in Ramallah. Both incidents were captured by international news media. See Smith, 513.

[409] Smith, 515-516.

[410] Ibid.

[411] Halper, Jeff. *An Israeli in Palestine*. Pluto Press: London, 2008, 173.

[412] Smith, 517-518.

[413] B'TSelem: The Israeli Information Center for Human Rights in the Occupied Palestinian Territories (B'TSelem), "Separation Barrier." http://www.btselem.org/English/Separation_Barrier/.

[414] B'TSelem, "Testimony: Israel Restricts Manal a-Daqa's Access to Her Land on the Other Side of the Separation Barrier, Tulkarm Area, April 2010." http://www.btselem.org/english/testimonies/20100428_manal_a_dakka_land_behind_barri er.asp.

[415] Israeli Ministry of Defense (IMOD). "Israel's Security Fence." The State of Israel, http://www.securityfence.mod.gov.il/Pages/ENG/default.htm. Note: The Israeli Ministry of Defense maintains, "Every effort has been made, to avoid including any Palestinian villages in the area of the Security Fence. The Security Fence does not annex territories to the State of Israel, nor will it change the status of the residents of these areas." It also suggests that access to land will be undisturbed for agricultural purposes, and passage for pedestrians and vehicles will be allowed subject to security checks. Personal Palestinian accounts of this experience, as cited in the above references, differ drastically from the vision that has been outlined in the State of Israel Security Fence website.

[416] Ibid, 518.

end of the second Intifada, "more than 3,330 Palestinians were killed, at least 85 percent of them civilians, including 650 children and youth, half under the age of 15. A vast majority of these children died without having had direct confrontation with the IDF."[417, 418]

Conflict resolution during the Second Intifada was again heavily reliant on informal justice. The effect upon the Palestinian judiciary has been devastating, as it has been upon Palestinian society in general.[419] Consequently, the government of the PNA has been near collapse. Due to security closures and sieges of Palestinian cities, the *nizami* courts were frequently not an option. Palestinian institutions and infrastructure built up in the period before the Second Intifada were destroyed by Israeli offensives, and the release of prisoners during such incursions was common, resulting in an absence or weakening of PNA judicial and executive bodies. Particularly, the security forces were weakened; instability in the region increased, and resulted in "large numbers of weapons in the hands of the people."[420] Informal justice saw negative consequences with armed groups forcibly intervening in disputes among the people. Most interviewees of the Birzeit University study confirmed that the absence of formally recognized executive, judiciary, or security elements contributed to a surge of dependency on *islah* services:

> ...The current situation of instability and an absence of law
> and order that currently dominates Palestinian society

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[417] Halper, 172.

[418] Official figures of fatalities are inconsistent, and the inconclusive end date for the Second Intifada makes the period more difficult to give provide agreeable statistics. As Gadi Wolfsfeld, Paul Frosh and Maurice T. Awabdy discuss in their article "Covering Death in Conflicts: Coverage of the Second Intifada on Israeli and Palestinian Television" in the *Journal of Peace Research*, news reports commonly embody an ethnocentric perspective which emphasises patriotic accounts while demonizing the enemy. Therefore, it is anticipated that reports detailing fatalities during hostilities will differ depending on the source. For example, MEDEA reports differ slightly from Halper's count: "The death toll rose to 4.046 in May 2004, of which 3.057 are Palestinians, and 918 Israelis." Further, Intelligence and Terrorism Information Center at the Israel Intelligence Heritage & Commemoration Center (IICC) reports that in the years between 2000-2004, 1,009 Israelis were killed (including both military and civilian casualties), of which, 502 individuals died as a result of 132 Palestinian suicide attacks. See MEDEA or IIIC reports for more information. (IICC), Intelligence and Terrorism Information Center at the Israel Intelligence Heritage & Commemoration Center. "Anti-Israeli Terrorism in 2007 and Its Trends in 2008." June 2008, 34-51.

[419] Fares & Khalidi, 515.

[420] BUIL, 38.

> brought informal justice and its role to the fore, and ... the
> activities of the islah committees was reconsolidated during
> the second intifada as a result of a desperate need for it.[421]

Informal reconciliatory measures were undoubtedly necessary at this time in order to maintain relative peace and social order in an otherwise unstable society.

4.1.12 Current Palestinian demographics

Where a variety of rulers and empires have had control over the region, the demographics of Palestine have changed dramatically over the course of time. In a recently published census of 2007 (only the second in the PNA's short history), the Palestinian Central Bureau of Statistics has defined population, housing and existing enterprise establishments, as well as provided clear guidelines for the administrative and locality terms used within their study.[422] Since 1967, the Palestinian Territory has been split into two main geographic regions: the West Bank and the Gaza Strip. Jerusalem, a city that was divided under British occupation, was annexed by Israel following the Six Day War and its occupation of the West Bank, though a sizable Palestinian population resides within its ever-expanding city limits.

Within the West Bank, there are eleven governorates, or administrative regions, and five in the Gaza Strip. Within these governorates, there are governing, legislative and policing bodies. Populations reside in one of three localities: urban, rural, or refugee camps. Described generally, an urban locality is any governorate, large or small, having a population of 10,000 or above. It would also refer to "all localities whose populations vary from 4,000 to 9,999 persons provided they have, at least, four of the following elements: public electricity network, public water network, post

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[421] Ibid, 39.
[422] Palestinian Central Bureau of Statistics (PCBS). *"Population, Housing and Establishment Census 2007.* Main Indicators by Locality Type." Ramallah, Palestine, 2009. Accessed 20 May 2009. http://atlas.pcbs.gov.ps/Census_07/Default.asp.

office, health center with a full-time physician and a school offering a general secondary education certificate."[423]

Generally within a rural locality, the population is less than 4,000. However, heavily populated areas under 10,000 persons but without the elements described for an urban locality could be considered rural. Refugee camps, sometimes referred to as simply 'camps', are inhabited by displaced Palestinian people, and are "administered by the United Nations Refugees and Work Agency in the Near East (U.N.R.W.A.)."[424]

Overall, the population is young, with 60% of Palestinians under the age of 24.[425] These young people are recipients of their family history, including the stories of refugees, joblessness, statelessness, and mobility restriction, and have never known a time of peace in the region they call home. The United Nations Development Programme/Programme of Assistance to the Palestinian People (UNDP/PAPP) calculates that as of December 2009, the population of the oPt is 3.9 million, with 2.4 million in the West Bank.[426] Further, statistics from the World Bank indicate "the Palestinian economy remains severely depressed, with estimates indicating that the Palestinian GDP is 23% lower than it was in 1999. Unemployment in the West Bank and Gaza currently stands at over 25%, which is set to increase in the coming years."[427] The level of poverty stands at 35.5% across the oPt.[428] The Human Development Index (HDI), a measurement of overall well being beyond GDP statistics, calculated by the UNDP situates the oPt at a rank of 110th out of 180 countries for which data was available.[429] Among the data captured in the HDI ranking is migration, where the oPt ranks 15th

[423] PCBS, 19.
[424] Ibid.
[425] Ibid.
[426] United Nations Development Programme/Programme of Assistance to the Palestinian People (UNDP/PAPP). "Fast Facts About the oPt - 2009." Accessed 18 September 2010. http://www.undp.ps/en/index.html.
[427] UNDP/PAPP, "Economic Development." December 2009. Accessed 18 September 2010. http://www.papp.undp.org/en/focusareas/economicdev/economicdev.html.
[428] See Appendix 3: Poverty and Employment in the Occupied Palestinian Territory.
[429] United Nations Development Programme/Human Development Index (UNDP/HDI). "Human Development Report 2009 - Occupied Palestinian Territories." http://hdrstats.undp.org/en/countries/country_fact_sheets/cty_fs_PSE.html.

out of 181 countries surveyed, with a 23.9% emigration rate of Palestinians leaving the oPt.[430]

4.2 Bethlehem, a society in context

Located 10km south of Jerusalem, the whole of Bethlehem Governorate is 658km^2 and includes the three largest urban localities of Bethlehem, Beit Jala, and Beit Sahour, several smaller rural communities, and three refugee camps.[431] The Palestinian Central Board of Statistics 2007 census assesses that the population for Bethlehem Governorate comprised of 32,665 households with 176,235 people within them (5.1 persons average per home), a majority of those living within urban areas (70%), while smaller percentages live in rural areas (23%) and camps (7%).[432]

As a significant site for the Christian faith, Bethlehem has faced several changes demographically and politically in recent history. Once a town with an Arab Christian majority, the face of Bethlehem changed towards the end of the Ottoman Empire, and has been affected by a steady emigration of Palestinian Christians. In 1947, the UN Partition Plan envisaged Bethlehem, like Jerusalem, as an international trusteeship and under neither Palestinian nor Jewish control. In the fighting that ensued after this plan was announced, the communities of Bethlehem lost land and yet absorbed refugees in one of three established Palestinian refugee camps. Bethlehem lost more land as a consequence of the war in 1967, which resulted in an Israeli occupation of the West Bank and the annexation of land from Bethlehem to Jerusalem for the purpose of settlement construction. Towards the end of the first Intifada, Bethlehem residents were struck by totalitarian Israeli security measures, including a general closure of the West Bank as a whole. Permits to enter Israel, including Jerusalem were required for those

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[430] Ibid. Most emigrants (84.5%) move to countries on the Asian continent.

[431] United Nations Office for the Coordination of Humanitarian Affairs (OCHA). "Special Focus May 2009: Shrinking Space: Urban Contraction and Rural Fragmentation in the Bethlehem Governorate." 2009, 2. http://www.ochaopt.org/documents/ocha_opt_bethlehem_shrinking_space_may_2009_english.pdf

[432] PCBS, 2009.

with West Bank identity cards. That remained the case once the Palestinian Authority took control and Israeli forces withdrew from all of Bethlehem, with the exception of the holy site of Rachel's Tomb. With the Oslo Agreement, out of the area that is the Bethlehem Governorate,

> ...only 13 percent is under full or partial the Palestinian
> Authority control: Area A (7.5%, 49.1km^2) and Area B (5.5%,
> 36.4km^2). Some 66 percent (434.2 km^2) is designated Area
> C, where Israel retains security control and jurisdiction over
> planning and construction. An additional 19.4 percent
> (127.7km^2) is designated as nature reserves, ostensibly
> handed over to the Palestinian Authority in 1998 but
> remains under the effective control of the Israeli
> Authorities. [433,434]

In the year 2000, Bethlehem made plans for a visit from the Pope, and a large investment programme allowed for the city to prepare for the event. Later that year as the second Intifada started, the Israeli Defence Forces (IDF) returned to Bethlehem, blocking roads leading in and out of the area as a security measure. The IDF would enter Bethlehem in search of anyone they suspected of planning or committing attacks in Israel. With one such search in April 2002, two hundred Palestinians, among them militants and Palestinian Authority policemen, fled from the IDF and ran into the Church of the Nativity for cover with around sixty civilians (monks, nuns, and other civilians). The siege of Bethlehem lasted thirty-nine days.[435] Later, the IDF established a 24-hour curfew for 156 days.[436]

Further to these events, Israel began construction on the separation wall in the northern section of the Bethlehem governorate, sealing the division of Bethlehem from East Jerusalem. This prevented urban growth

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[433] UN OCHA oPt, Special Focus May 2009, 2.
[434] See Appendix 2: Restricting Space in the oPt.
[435] Frontline: PBS. "The Seige of Bethlehem".
http://www.pbs.org/wgbh/pages/frontline/shows/siege/etc/cron.html Accessed 7 June 2009.
[436] United Nations Office for the Coordination of Humanitarian Affairs (OCHA) and Office of the Special Coordinator for the Peace Process in the Middle East (UNESCO). "Costs of Conflict: The Changing Face of Bethlehem". Jerusalem: December 2004, 1.

between the two vicinities, and if completed, will prove devastating for Bethlehem. If this segment of the separation wall is completed, it will affect movement of people and goods, access to fertile land as well as public health and education services available in Bethlehem by isolating the residents at the opposite side of the planned wall:

> Approximately, 64km^2, including some of the most fertile land in the governorate and nine Palestinian communities with approximately 21,000 residents, will be isolated; the latter will face reduced access to Bethlehem City, the major services centre for health, education, markets and trade.[437]

Yet within the Bethlehem society, extended families and neighbours remain close, especially if they share the same faith. Religion within this context is not just a matter of obligation, it also encourages socialization and offers opportunities for the community to meet in times of feasts, fasts, sacraments and worship. Many Christian families especially are becoming fractured due to emigration, with one tenth of the Christian population in Bethlehem, Beit Sahour, and Beit Jala having left the governorate since 2000.[438] Many families depend on money sent from their relatives abroad for subsistence. Within Arab society, collective dependency and responsibility is a highly regarded element of family and community life. Loyalty to one's parents, immediate family, and extended family (*hamula*) is the first layer of Arab society, deeply rooted in the Bedouin collective tradition. Loyalty then extends to tribe, friends, neighbours, town, those seeking refuge, guests, and then greater humanity.[439] These levels of loyalty are an important element of the *jaha* (*islah* delegation) weighing in where apologies or payments are due in *sulha*.

As of 2006, the Jordanian Penal Code of 1960 remains in force across the West Bank, and in Gaza criminal matters rely on the British Mandate Criminal

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[437] UN OCHA oPt, 2009, 5.
[438] UN OCHA & UNESCO, 2004, 18.
[439] Jabbour, 72-73.

Code Ordinance of 1937.[440] However, the legal system at large is an amalgamation of several legal systems, as noted by Khalil:

> The legal system of the [West Bank and Gaza Strip] under the [PNA] is a mixture of Ottoman, British, Jordanian, Egyptian, Israeli, and finally [PNA] laws. Each regime supersedes the previous one without completely abolishing its legal system. The succession of states that governed Palestine was always accompanied by changes in the legislation and in the court system.[441]

Crimes are devised of public and private rights: "The victim owns the personal right while the state owns the public right. Individuals have the right to waive their personal right, but not the public right, which requires that an offender is punished based on the provisions of the criminal code, for the safety and in the interest of the public."[442] Therefore, in informal justice, the mediators focus on the personal rights between the parties, but have no influence over the pubic right directly. Yet, research by Fares and Khalidi has shown that *sulha* processes "influence virtually all criminal cases that go to the courts" through the evidence of an *'atwe* as well as the reduction in offender sentencing upon proven reconciliation:

> First, given the overload of cases in the courts and the absence of a properly functioning prison system, the submission of an 'atwa document showing that the offender has guarantors responsible for ensuring that he will abide by the conditions set upon him allows for the release of the offender until the time of the court hearing, which is often delayed for years. In fact, … it is common for judges to refuse to release the offender unless he shows proof that reconciliation processes are underway. In this way, the courts encourage the continuation of the informal

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[440] Fares & Khalidi, 515.
[441] Khali, 7.
[442] Ibid.

system as a way to relieve pressure on the courts and the

prisons. ...[G]iven the absence of an effective police force

and the weakness of the judiciary, such informal processes

are necessary to keep the peace and prevent retaliation

after a crime Is committed.[443]

The *sulha* processes emphasise the reduction of social tensions, where the court does not. Therefore, many view the informal processes as "complementary to the court system, especially in the present circumstances where the inefficiency and lack of enforcement power on the part of the courts has weakened them to the point of virtual inefficacy."[444]

Second, an offender's sentence in criminal cases is likely to be reduced if reconciliation occurs between parties. This is largely due to the Jordanian Penal Code, which specifies mitigating circumstances that can support a reduction of sentencing. Palestinian case law asserts, "if a claimant waives his personal right in a case, it amounts to a mitigating excuse and must then result in the reduction of the sentence. ... Although there is no specific mention of reconciliation, or *sulha* as an extenuating excuse, it is implied in the terms 'pardon' and the relinquishing of personal right."[445] For these reasons, informal justice procedures are relevant and popular recourses to justice at a time when formal justice options are depleted or unavailable.

4.2.1 *Wi'am*: Palestinian Conflict Resolution Center

Wi'am is a community mediation centre in Bethlehem. Established in 1994 after the first Intifada, staff at *Wi'am* are quick to note that it was a necessary venture so that members of the community had a trustworthy, non-governmental organization to turn to when they had conflict. The main issues affecting communities in the Bethlehem governorate are consistent with the ongoing conflicts of the occupation, but also, not unlike issues that people in

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[443] Ibid.
[444] Fares & Khalidi, 516.
[445] Ibid.

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conflict elsewhere deal with: land, water, housing, work, marriage. However, the context of Bethlehem means that conflicts, and their attempted resolution, are different. *Wi'am* sets out five main elements to the context in which their organization works: (1) lack of land, (2) restricted movement, (3) crumbling economy and infrastructure, (4) instability and uncertainty, and (5) unknown future.[446]

The lack of land that faces Bethlehem is directly caused by the annexation of land to Jerusalem following 1967, construction of Israeli settlements and infrastructure, construction of Israeli roads, designated nature reserve/military area, and construction of the separation wall.[447] The restricted movement of Palestinian inhabitants is visible in the 8m high wall constructed around the northern and western areas of Bethlehem Governorate. Road closures and physical obstacles around Bethlehem numbered 78 in 2004, including concrete roadblocks, checkpoints, and earth mounds.[448] In addition, residents require Israeli-issued, temporary permits to enter Jerusalem and Israel by foot through checkpoints, and only at the discretion of Border Police.[449,450]

The restriction on movement also affects agricultural access in rural areas of the Bethlehem governorate. The construction of the wall as planned "will result in up to 75 percent of [one village's] agricultural land isolated behind the Barrier."[451] In Beit Jala and Beit Sahour, land access is also a serious problem. In Beit Jala, the community lost over 3,000 dunams of land after 1967, and risks a further loss of 3,200 dunams currently used for agricultural purposes for continuing Israeli construction of the separation wall.[452] In Beit Sahour, the separation wall isolates olive groves which landowners have limited access to during harvest periods. Aside from land access and confiscation, loss of land means that the population has a more

[446] Wi'am. "Presentation." 2006. Accessed 6 June 2009. http://alaslah.org/art/.
[447] UN OCHA oPt, 2009, 4-5.
[448] UN OCHA & UNESCO, 2004, 3-4.
[449] UN OCHA oPt, 2009, 4.
[450] UN OCHA & UNESCO, 2004, 4.
[451] UN OCHA oPt, 2009, 6.
[452] 1 dunam = 1,000 m^2

limited area to expand upon, and residential planning takes the form of 'up rather than out' to accommodate a growing population.[453]

The economy of Bethlehem has suffered catastrophically due to of the occupation and waves of violence. One example of this is by Rachel's Tomb, the traditional burial site of the Biblical matriarch located in the north of the Bethlehem governorate. The separation barrier now encircles the area, and cuts off the main road that served Jerusalem and points south. As a result, the overwhelming majority (74 out of 80) of businesses that once thrived in this area were forced to close or relocate.[454] Due in large part to the security measures put into place by the Israeli authorities since the last Intifada, tourism in Bethlehem has also seen a sharp decline. Not only does tourism provide income for the town, but also it provides employment in hotels, restaurants, souvenir shops, and handicraft centres.

Insecurity and instability are ongoing features of life under occupation. If a Palestinian is one of 2,500 Bethlehem residents who has gained permission to work in Israel, he must queue at "Checkpoint 300" (the main checkpoint on the road to Jerusalem) early in the morning in order to get through in time to make it to work in Jerusalem on time. According to the United Nations Relief and Works Agency (UNRWA) and the Ecumenical Accompaniment Programme in Palestine and Israel (EAPPI), "on a normal day it takes about 1.5 hours to pass if one queues at 4:30," and "only two of the three metal detectors and between three and five of the 12 ID booths function."[455] Harassment, abuse, and detainment are all elements that Palestinians endure daily in their journeys across the border. Aside from going into Israel, there is insecurity with the ability for Israeli soldiers to enter homes inside Bethlehem and arrest citizens, without warrant.[456]

Lastly, the unknown future of Bethlehem, of Palestine, and of Palestinians creates an atmosphere that lacks confidence and therefore investment. Uncertainty of whether the people will ever have their own state with autonomy; whether internal political factions, sustained

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[453] UN OCHA oPt, 2009, 6.
[454] UN OCHA & UNESCO, 2004, 11-12.
[455] UN OCHA oPt, 2009, 22.
[456] Wi'am, 2006.

disenfranchisement or conflict with Israel will result in a return to violence, or whether at some point all Palestinians will become refugees adds to the plight, angst and marginalization of the people.

In this context, the conflicts referred to *Wi'am* are inherently more complex. Much of the work that *Wi'am* does in the community is "a response to the effects of the broader political and social issues that impact life" in Bethlehem.[457] In 2007, *Wi'am*'s mediators provided *sulha* to 350 cases, citing that "continued deterioration [of] the socio-economic infrastructure has led to increased tension in our streets, combined with the occupation, which leads to degradation of dignity, and creates displaced anger."[458] With many inhabitants living in the same conditions, the result is a situation where conflict surfaces and escalates swiftly. However, *Wi'am* contends that it is not that there is more conflict, but that it is more severe. A rise in domestic disputes has meant that mediators are not necessarily the last port of call, but social workers and counselors are also brought in to assist in the situation.

Of the 350 cases throughout 2007 in which *Wi'am* intervened, the top five categories included financial disputes (66), youth violence (60), family disputes (52), neighbour disputes (50), and car accidents (44). Other categories include real estate, work, theft, assault, school violence, harassment and attempted murder. [459] These are consistent with the trends available on their website for conflicts mediated in the last four years. Overall, *Wi'am* has mediated more than 1,000 cases in the Bethlehem area.

Arabic tradition holds that, "Nobody can carry blood, it is so heavy. Even the earth cannot absorb [it]... It will remain a stain."[460] *Wi'am* maintains the perspective that severe conflicts such as assault or homicide leave a 'stain' on the community, and so it is understood that no member of the society can take matters into their own hands without the situation being investigated and brought to justice. In order to prevent the conflict spilling

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[457] Wi'am. "Annual Report 2007", 3. Accessed 6 June 2009. www.alaslah.org/art.
[458] Ibid.
[459] Ibid, 4.
[460] Jabbour, 57.

into revenge and feuds, *Wi'am* employs *sulha* as a means of dealing with disputes.

Aside from *sulha* and mediation, *Wi'am* is also a centre for women's development, youth work, citizen diplomacy, and a children's summer camp. The small number of full-time employees at the time of these interviews included: Zoughbi Zoughbi, the director and founder of *Wi'am*; Adnan Talgieh, coordinator of *sulha* projects; Lucy Talgieh, coordinator of women's projects; Imad Nassar, a general programme manager; Usama Rock, the youth coordinator and social worker; Usama Nicola, citizen diplomacy coordinator; Saliba Baddour, a mediator and job creation manager; and Laila Ewaiwi, a new staff member who acts as an interpreter. The organization is a close knit due to its small office size, and frequently co-workers assist one another in projects, grant writing, interpretation, and assistance with showing hospitality to visiting groups from within and outside the West Bank. In the summer months, *Wi'am* regularly has American and European volunteer interns to assist the daily functions of the organisation.

4.2.2 Introduction to Mediator Interviews

There are a great number of mediators within the Bethlehem governorate and most work voluntarily. Many are associated with *Wi'am* due to their influence as businessmen, politicians, clergy, or respected members of society. Mediators are both Christian and Muslim, and come from a variety of geographic and demographic backgrounds of Bethlehem governorate: Bedouin, urban elite, lawyers, refugees, UN employees, *sheikhs*; traditional and modern. All are men, and most are older men.[461]

Traditional mediators are older men who are considered "elders and heads of families and tribes, some of whom

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[461] Fares & Khalidi note that "In many areas, there is a mixture of older and younger mediators, whose involvement can be traced to different time periods and ultimately, different incentives." (516). With the field research, interviews were held with older men, only, with no reference to active, younger mediators except in terms of mediation training provided by Wi'am. Some mediators, as will be discussed in the next chapter, had political affiliations but it is unclear if these mediators were of a 'new' generation of mediators established by the Palestinian Liberation Organization (PLO)/Fatah.

consider themselves tribal judges or arbitrators (*quda'*
'asha'ireen), often represent members of their families or
clans in disputes and are appeals to by others to represent
them or arbitrate between them because of their status in
society. These men tend to inherit such positions from their
fathers and grandfathers before them, and they consider
themselves versed in the customs and traditions of the
society, possessing the requisite knowledge and experience
to perform their function as mediators or arbitrators.[462]

To gain access to these mediators, Zoughbi Zoughbi contacted
mediators directly by phone to arrange meetings for interviews, or provided
contact information to the interviewer. The selection criterion for interview
participants was broad: essentially anyone who could comfortably talk about
their perceptions of their work as a mediator was eligible. A random sampling
would not have been appropriate in this case; as the researcher is an outsider
and a woman, it would have proved difficult to find willing mediators to talk
with someone about whose background they could not be confident. Having
Zoughbi Zoughbi arrange or provide these contacts gave an implicit reference
that the interviewer was trusted. In return for interviews supplied, the
interviewer provided proofreading of grant applications and taught classes
for a group of young adults preparing to attend an international conference
on conflict resolution. Interviewees who consented to recorded interviews
were told a transcript and copy of the recording would be made available to
them, and that they could see a copy of the finished research project.

Over the course of two months, nine mediators were interviewed
about their views on the mediation process and their role as a mediator.
Interviews usually took place within the *Wi'am* centre but were also held in a
participant's home and in two offices. A typical meeting would involve a
greeting, preparing tea and coffee for the guest, where necessary an
introduction of the interviewer and interviewee by a translator, a semi-
structured interview recorded with the participant's consent, and coffee

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[462] Fares & Khalidi, 517.

provided during the interview as a matter of custom. When required, interpretation was normally provided by Laila, a staff member at *Wi'am*. In two cases, assistance from family of the mediator was necessary. Most interviews were between thirty minutes to an hour, with a few going over this time. Participants were not limited by a time set by the interviewer.

Interview questions (IQ) that were asked of all participants included those where answers could be used to understand the working theory of conflict resolution as it is practised specifically in the context of Bethlehem:[463]

1. What do you try to achieve in mediation?
2. Can you describe a situation where there was "success"?
3. Can you describe a situation where there was "failure"?
4. What do you think people want and need?
    a. in conflict?
    b. from mediation
    c. from you?
    d. from each other?
5. What do you think people do not want or need?
6. How do you know you have acted competently in mediation?
7. What do you try to avoid?
8. How do you know if you have made an error in mediation?

After arriving for field research, it became more obvious that elements of the continuing occupation at times affected, or had an effect on, mediation or the mediator. This realization prompted the adding of a question to ask what effects, if any, the occupation has on their practice.

These IQ were asked to inform the theory questions (TQ), which are discussed in Chapter 6. The TQ allowed for the diversity of answers within the interviews to be clustered by theme, which created a working theory of conflict resolution for Bethlehem mediators affiliated with *Wi'am*. Once the working theory was discussed, the central research questions (CRQ) could be approached in Chapter 7. Therefore, the interview questions formed the

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[463] Adapted from Della Noce, 2002.

basis for the field research, and ultimately impacted the development of the TQ and CRQ.

Conclusion

The history of Palestine and its modern incarnations is one that is complex, and more recently, hotly debated. However, there is consistency with which the indigenous population have used *sulha* and other forms of informal justice over an extensive time span that has seen changing occupations, leadership, strife and uncertainty.

Viewing this history of conflict resolution within the context of an ever-changing landscape brings to light the reasons for change or steadfastness, and explains why informal justice has remained a popular option despite a modernizing climate. From the perspective of Bethlehem residents, the everyday situation is stressful and uncertain. An atmosphere of anxiety provides an expectation for intensified conflict situations. Individuals are uncertain about their own life course in the circumstance of greater societal ambiguity. *Wi'am*'s role in the community is to provide mediation or *sulha*, as well as other community projects, to interact with the society and provide a space within the society that is dependable, trustworthy, and comfortable when the formal avenues of justice may not have been or may not continue to be.

Interviews with mediators provided the essential content of the theory and practice of mediation in Bethlehem. Participant observation was done only indirectly, and will not provide any data for analysis. The results of these interviews will be described fully in Chapter 5, and an analysis of these results will be given in Chapter 6 and Chapter 7.

5   Chapter 5: *Wi'am* Field Research

Introduction

Over the course of seven weeks, interviews were held with nine mediators affiliated with *Wi'am*. Two full-time members of staff who function as mediators at *Wi'am* were interviewed and the remaining seven are volunteers who serve the community with mediation. Most interviews were conducted in the *Wi'am* offices, but three were held in the interviewee's home or office. All those interviewed were men, typically older men, and many had businesses or held office for local or national government. Many of these mediators would have been functioning as community mediators long before *Wi'am* was established in 1994. The interviews will be summarized in the order in which they occurred.

5.1   Zoughbi Zoughbi

The first interview was with Zoughbi Zougbhi [ZZ], the founder and director of *Wi'am*. The interview was conducted in English and took place at his office at *Wi'am*. Mediation is a skill introduced to this mediator from a young age, as he indicates his elders were active mediators. ZZ learned from their work, from oral history, and from practice about mediation, and would later attain a Masters degree from Notre Dame in Peace Studies. He viewed mediation in the way that he practiced it as a synergy between the cultural and traditional practice of *sulha*, and the modern techniques learned abroad. When discussing the aims of mediation, ZZ noted that for him, "mediation is not just to resolve conflict, but to invest in the relationships, positive relationships."[464] ZZ sees restorative justice as central to his work: "I'm interested in addressing the wrongs and not avenging them. At the same

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[464] Zoughbi, Zoughbi. Personal interview. 18 March 2009.

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time I like to humanize both sides and invest in the quality of relationships of people."[465]

Successful mediations are commonplace, with ZZ citing that *Wi'am* has a success rate of "85-87%", where mediators "were able to resolve the conflict and respond to the needs of the local community... based on the win-win equation."[466] In describing one story of success, ZZ mentioned a husband and father who was not able to cross the checkpoint in Bethlehem to get to work in Jerusalem one day because his permit to enter Israel was not renewed. The man suffered humiliation and physical abuse from the Israeli soldiers. After this, he went home and projected this anger and frustration on his wife and family. *Wi'am* was called to mediate by his wife, and after lengthy conversations spanning two years, the mediators involved were able to restore the family and marital relationship, engage the husband in local work, and enjoy the entire family's involvement with *Wi'am*'s work in the community as volunteers and participants. This successful conclusion, says ZZ, is the epitome of restorative justice and reconciliation. Mediation has been adapted as an interdisciplinary field, with approaches that are "multi-disciplined, interrelated and correlated."[467]

Mediation practice is a long process, and one that ZZ has indicated does not run on a Western notion of appointments and scheduling. Instead, mediation assumes "compassionate listening; to listen with your heart to them, to have attentive listening, to validate their feelings."[468] At the point where he intervenes, ZZ appreciates that the parties are wounded and torn, and that mediators need to respond to emotions and be open-minded, ultimately resulting in a holistic observation of the parties.

When the topic of failure comes up, ZZ initially did not want to commit to considering the term and suggested that at times this is simply blocking of

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[465] Ibid.
[466] Ibid.
[467] Ibid.
[468] Ibid.

growth. Later, he defines the term: "failure is a challenge that we need to overcome, that means we need to have the perseverance and to overcome it in a positive way to respond to their needs."[469] Unlike the previous example of success, the topic of failure is a difficult one to pin down with an example. Honour killings and murder may still be issues up for discussion ten years after the incident. Power imbalances also cause frustration, and may result in a conflict not being resolved through mediation. Where this is the case, ZZ insists that when a party is not willing to enter into the conversation, they try to maximize their losses and instead focus on the social relationships of the community.

Responding to what parties need and want in conflict, ZZ says that people want to be heard and listened to. Parties might want different things from the mediator, for example, to be a shield, an advocate, a validator, or a fighter. Mediators need connections, resources, power, trust, reliance, and the ability to take on the frustrations of the people who come to them in confidence. At times, this also means being a listening ear to people who suffer from trauma and need to talk about problems that they experience in their lives.

Parties need and want different things from each other based on the nature of their conflict, according to ZZ. If one party was treated negatively, they may have anger to be dealt with, or lack of affirmation, or too much information. The range of cases they deal with means that parties will have different needs in conflict. Similarly, parties will not want or need a range of responses or services from the mediator, depending on the party and the type of conflict. The examples that ZZ provided of parties expressing what they do not want or need were directed at the mediator. These statements were expressions of expectation, and included the desire for the mediator to 'get tough' with the other party, to come to a solution quickly, and even in an attempt to bribe the mediator to favour a particular side (ZZ notes that the mediators do not take bribes or gifts in exchange for their work).

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[469] Ibid.

ZZ knows that he acts competently in mediation by the amount of people who have come to him, continue to come to him for matters small or large, or refer people onto *Wi'am* as a trusted third party, as well as the overall success rates. As a liked and trusted mediator, he knows that he is expected to respond to the needs of his community no matter what the issue. This requires the mediator to be able to forgive people for the things they have done, and be able to talk with those who are not able to express themselves well, young or old.

ZZ wants parties to help themselves and each other by being more compassionate to each other, including working together, cooperating, and focusing on the common good rather than personalities. This also includes the hope that parties could help themselves by mediating and reconciling between themselves rather than coming to a third party.

In mediation, ZZ avoids allowing the parties to demonize one another. Parties come into conflict 'hysterical or historical', meaning they are either not of sound mind or coming into the conflict from a previous one. In this situation, mediators need to remember to reserve all judgement. He recalls a traditional Arab story where someone comes to a mediator and says, "The other took out my eye, what is your verdict?" The wise man says, "Wait, let me see the other guy, maybe his two eyes are taken."[470]

When he has made an error in mediation, ZZ notes that these keep his mind active in regret, either immediately or soon thereafter. Facial expressions, speech, and general reactions from the other party let him know if he has erred. Where dynamics have changed and he has noticed it, he halts the conversation to mark that he had made a mistake and offers to rephrase or explain what he has said.

The impact of the Israeli occupation on ZZ's work is detailed in the conflicts

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[470] Ibid.

caused by the material resources of arable land and accessible water that the community lacks, the employment opportunities that have rapidly been depleted, the inability for people to move freely, international trade that is restricted, and increased anger and frustration among the people. He notes that not every problem is the result of occupation, but the 'lion's share' can be pinned down to the effects of occupation. Of course, "abnormal conditions create abnormal relationships."[471]

> We are a pressure cooker, but we can organize ourselves better. Our struggle is not only against the occupation but it is also the injustices among ourselves, which is impacted by the occupation. ...We can regulate our relationship with the world. We can let the world hear us. ... Of course, we are talking about different approaches, different realities, so, you need to do it in one way or another.[472]

Lastly, ZZ emphasizes that the work he does is part of him being Christian, that "it is part of the ministry of reconciliation, that our Lord Jesus Christ asks us to do it."[473] This does not restrict or imply preference for services to one denomination or religious group over another, but includes the entire community. He hopes that one day, work will also include "our cousins the Jews".[474]

5.2   Audi Bishara Ibrahim

Audi Bishara Ibrahim [AB] is an older man from Beit Jala, and a mediator in Bethlehem. He is a retired school head master, having held that position for eighteen years, a former sport teacher and referee, a Boy Scout leader and training leader, and a volunteer at Wi'am since about 1997. This interview took place at the Wi'am office and was conducted in English.

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[471] Ibid.
[472] Ibid.
[473] Ibid.
[474] Ibid.

As a mediator, AB's aim is to bring people together to solve the issues between them. Knowledge over the reality of the situation and the perspectives of each side is critical. Once the main issues are understood, AB tells how mediators talk with both parties separately and "ask things of each of them" so that the mediators can come to a decision on the solution. If one party is stubborn and unwilling to solve the problem, AB says that they have time to pressure that party toward working for a solution.

However, AB insists that the success "comes from the people themselves [when] they cooperate on the problem".[475] If parties do not cooperate, the mediators work to convince the parties to work toward conclusion. One example of success that AB mentioned was between a quarrelling husband and wife, where the wife had returned home to her parents because of the dispute. When the mediators were called, they visited each party's home and spoke with them at length. The mediators continue to shuttle between the parties to work towards a solution where each party can gain. In this situation, they were successful in getting to agreement, and marked the end of the dispute by sharing Arabic coffee.

In situations that are more challenging or may face failure, AB indicates that the mediators have involved external bodies such as the police or clergy. The police may put suspected dangerous offenders in jail until an agreement may be reached, and clergy provide support and cooperation to the mediators and the parties in a region where the connection between the lives of people and the church is strong. In other cases, such as land disputes, mediators may recommend parties provide documentation in demonstrating their side of the story. Parties not interested in mediating or not cooperating may avoid the mediators when they arrive at the home by not answering the door or telling their families to say that the party is not at home.

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[475] Bishara, Audi. Personal Interview. 25 March 2009.

AB believes that all parties accept that they are right in conflict, and part of the mediator's job is to convince one of them that he is not, or to convince each party to compromise in order to reach agreement. He believes that the ongoing occupation causes much of the day-to-day experiences of conflict. Without an established government authority, some people do not feel threatened by the government, and many people would know police officers if they were in a situation on the road. Otherwise, police would not be called to solve an issue, as many would like conflicts resolved outside of courts in order to avoid publicity, fees, and lengthy delays.

Parties want and need mediators to be available, accessible, and above all working on a decision on their case. From each other, AB believes that parties want and need money, humanity and time. AB believes that parties do not need any monetary gain, though money may be a demand they might make or a right they may have. He feels that parties are leaving God, and money may not be the solution they need: "God is plenty outside."[476]

AB knows that he has acted competently by a feeling of having resolved the conflict. If he had not come to resolution on a dispute, he would have trouble sleeping and would not rest easily. When parties have come to resolution, however, they sit together and drink coffee, marking the finality of the conflict.

In judging what he would avoid in mediation, he has to keep afoot to what the parties are saying and continually alter what he says and what he does to each party. He avoids letting quarrelling get out of control by changing his words or the substance of what he says. When he should err, he reflects back on it and if he feels that he has spoken improperly he takes the time to revisit that person and repair whatever harm may have been done by it. AB suggests that with the Israeli occupation, and earlier the Jordanian and Ottoman occupations, people within Bethlehem prefer seeing a mediator that practices an Arab method rather than going to the courts.

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[476] Ibid.

5.3   Eid Kamal

This interview with Eid Kamal [EK] took place at *Wi'am* in Arabic, and Leila interpreted his answers into English. EK is an experienced politician and mediator, having sat on an elected city council in Bethlehem for 24 years before requested by the Palestinian Authority to resolve disputes. He owns a large factory in Bethlehem, and has a large family. One son is in an Israeli prison, and a second was deported to Ireland in 2002. EK has spent time in jail ("They said we were resistors."), as have his sons. His main concern is amicable relations of the people of Bethlehem: that Christians and Muslims are able to live together peaceably "as a whole family".[477]

In one particular conflict example, EK mentions that there was a dispute over land. One party tried to blackmail a significant amount of money from the other because it was thought that the family was very wealthy, causing tension. EK intervened and resolved it "in a tribal way", ensuring that rumours of wealth were dispelled and that the parties received a reasonable outcome. In this case, the party purchasing the land paid only the amount of money necessary for the land, and did not fall victim to extortion.

The percentage of failure in mediation for EK is low, with most social and economic situations successfully resolved. Issues of citizens not abiding the law are referred to police and not handled directly by the mediator. EK believes that the low failure rate is due to fear of the consequences of breaking the law. In conflict, EK believes that people want an active legal system and should support the government. From mediation, parties need and want safety and security. From him, he believes they only want to reach justice.

EK believes that from each other, parties want to preserve the traditions of the Palestinian people, and for their religious faith to be observed and

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[477] Kamal, Eid. Personal Interview. 25 March 2009.

respected. If there is a religious issue, EK notes that this is considered an urgent issue and resolved in twenty-four hours. To prevent such issues, he says that representatives from the Muslim and Christian faiths meet regularly to ensure problems do not arise between the two Palestinian communities. Occupation, overall, is a universal problem of the Palestinian people, and one that has resulted in what EK terms "forty years of side effects."[478] EK mentions that these effects are ongoing and visible, including mid-night Israeli military incursions and arrests.

EK knows that he has acted competently in mediation by the reaction of the people in conflict. In addition, he says that he is supported by the number of people involved with mediation, such as lawyers and police. He does not tackle family mediation whatsoever. Land disputes, however, he is a very active mediator in that "if someone comes to me and he has a right to this land and he shows his ownership...I'll ask the other side what evidence they have... You can't register two people on the same land."[479] Problems arise when parties do not have documentation to support their claims, so the mediator would engage in fact finding to uncover the true owner of the land.[480] Many people are consulted and the mediator decides who should get the land based on these consultations. So to prevent any error, the mediator would have his decision reviewed by other parties, and perhaps official bodies to confirm it. They would inform him of any mistake in the decision, though EK indicates that these individuals provide him guidance throughout the process. "Through the official sources, I am able to find ownership," and therefore, a decision.

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[478] "Fourty years" refers to the time since the Jordanian occupation ended (following the 1967 war) and the Israeli occupation began until now.
[479] EK.
[480] EK indicates that before the occupation land ownership was vague, and therefore the ambiguity carried to today. "One of the major problems is that when you have a piece of land that belongs to one person and he dies, it is inherited by many people. So one person has a share out of ten shares, and sometimes he sells it and he sells other people's shares with it."

5.4   Hana Manoli

Hana Manoli Musleh [HM] is an older man, whose family owns a souvenir business and small restaurant across from the Shepherds' Fields in Beit Sahour. The interview took place in an office at this business, and his daughter Hunaida interpreted my questions and his answers. He started mediating disputes in 1964.

Initially, HM describes the process of *sulha* in detail. HM listens to both of the parties in the dispute to inquire whether they have the same story or competing versions of events. In his own words, HM wants "to tell which one of them is lying."[481] To get to the bottom of different versions of stories, parties are asked to repeat the story in front of others and include witnesses that the mediator can trust to detail a true account of events. Following this step, the parties are asked to make an agreement that what is decided by the mediator will be abided to, and they will make amends if found guilty.

During this process, the parties must avoid one another so to avoid compounding the problem. Once a conclusion is reached, parties are expected to make good on their earlier agreement. Should the conflict be about money, the party who is considered guilty is expected to pay the other party the sum agreed. The witnesses and the mediator may ask the other party to return the money to the guilty party in good will.

Other topics of conflict include land, assault, murder and relationships, and may involve discussing the matter the police or hospitals. Should there be a situation where a guilty party has been put into prison for his involvement in a conflict, the mediator, on behalf of the family, may go to the police and agree that the party is guilty and are ready to do anything to get him out of jail. Likewise, if someone should have to go to hospital because of injuries sustained in an argument and does not have the necessary insurance to pay for care; the mediator will pay for the party's care. This is only done if the

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[481] Manoli, Hana. Personal Interview. 26 March 2009.

family is very much in need and the party is not guilty. Frequently the party or their family returns this sum to the mediator. To stop the conflict the parties first make *hudne*, and then later *atwe*, "a word that they will not make any problems:"[482]

> After a month or two weeks, the guilty party takes 40 men with them and go to visit the other party, and they have to pay everything. If he was in hospital they have to pay the hospital fee, if he was in the prison he has to pay bail. …When they visit they're trying to make things better, each one kissing the other's hands.

When a conflict should result in death, the mediator among others will approach the murdered individual's family to negotiate a ceasefire and to encourage them to take time to grieve. The mediator discourages revenge by the murdered person's family, and tells them that it will take time to put the anger they have into words. So during this time, many people speak on behalf of the family in a particular way – the mediator takes on responsibility for the family, "insuring" the family against actions of revenge. The bereaved family may take a sum for an accidental death, but may ask for any sum should their family member have been murdered. In addition, the murderer's family may be asked to move away from the community should the two families be neighbours.

After a second ceasefire, the mediator of the murderer will approach the bereaved family and request a meeting with the murderer to come to reconciliation. The bereaved party may ask for anything from the other party and their family, and the guilty party must openly accept wrongdoing, apologize, and accept any request the family may have. Should the bereaved family forgive the guilty party, they will accept this apology and the parties will kiss on the forehead, and drink coffee. Finishing the coffee marks the end of the dispute.

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[482] Ibid.

HM indicates that his goal in mediation is peace between people and good relations. He emphasized that he works voluntarily. A success is measured in how much a mediator is selfless and entering the mediation process out of "love of reconciliation and making things better."[483] A mediator does this by allowing parties to calm down, and not hesitating in doing the work of resolving the dispute, "to control things between them". HM also tries to "make their opinions closed enough so as to help them solve everything."[484]

HM's wife and daughter indicated that he also works with couples, including engaged couples and those on the brink of divorce. HM will meet with engaged couples' families to work out issues such as money or interpersonal relationships so that they are able to marry. HM has been successful in assisting wives who were being pressured by their families to get a divorce to remain married, and in talking with dissatisfied wives who wanted a divorce to remain married.

A problematic case was one of a couple that was engaged, but the bride's family didn't agree to the marriage. The two families were arguing about the issue when the groom's father suffered a heart attack and died. The couple felt guilty that this should have come about because of their engagement and have decided to be apart in this time. The young men of each family cause concern when they should meet the other. At the time of interview, there has not been a resolution, but HM is hopeful: "...even with all these problems, still the bride and the groom still love each other." He sees their continuing efforts as well as those of their parish priests in overcoming a dangerous situation so that the young couple can marry.

In mediation, HM believes that parties need to calm down and simplify and clarify the problem. He believes that parties want material outcomes from mediation, such as land or money. As the mediator, HM believes that parties do not need or want anything from him other than to solve their problem in a

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[483] Ibid.
[484] Ibid.

way that only he may know how. Parties need and want a variety of things from the other party: some just want peace, while others need money, and yet others need revenge. HM believes that parties do not need selfishness in a mediation, and that this is most important in relation to the mediator. Parties want the mediator to solve the issue in a short amount of time and work towards a better life.

HM knows that he has acted competently after a mediation when the two parties solve their conflict and return back to their normal relationship – when he gives each one the rights they deserve. Consistently parties seek his involvement in their conflict, and he believes this is a testament to his success. Mistakes are rare because he does not work entirely alone ("I'm with country leaders."[485]) and he would have consulted this group if he felt he had done something wrong, and then apologise to the party. However this has never happened, "we are leaders with good opinions and thoughts."[486]

5.5   Abu Sultan

Abu Sultan [AS] is a sheikh in a Bedouin community just outside of Bethlehem. He lives in a tent, which operates as his court. He acts as a judge because of the honour that the late King Hussein of Jordan had bestowed upon him. He was educated in Kuwait where he studied Arabic literature, recited poetry on television, and managed the Jordanian Embassy. He judges cases in his community and throughout the oPt, where the honour of being a sheikh has supported his work and given him more authority. He is a supreme judge who makes decisions on honour. He is a very highly regarded figure and staff from the office attended in this interview. Leila interpreted for the length of the interview, and AT (described in 5.6) was present for the interview. It was made clear that this man should be shown extreme respect. This interview was held in the *Wi'am* office.

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[485] Ibid.
[486] Ibid.

AS's work differs from that of a mediator in that a mediator may refer a case to the judge if they are unable to reach a reconciliation between the parties. Once referred onto the judge, the parties must implement any decision that the judge renders. AS contends that his court has more authority than the official courts because he is not restrained to the laws of the country. In addition, he has a large extended family to ensure his decisions have power and protection.

In AS's courtroom, his only aim is to bring justice. AS has a lot of control over the decisions he makes and is not limited to precedent or legal code. His success stems from honesty, integrity and trustworthiness in his decisions. A weak judge who accepts bribes or has a personal interest in a conflict will not have the respect necessary to have decisions adhered to.

A story of success involved couple of men from Beit Jala who convinced a gold dealer in Jerusalem into a business plan to buy gold with small defects for a profit. The man from Jerusalem agreed to supply the men with $30,000 in exchange for this gold, but encountered trouble. Instead of going to Bethlehem, he was led south to Hebron by the two men from Beit Jala. Here he met an armed man who took the money and was clearly not going to give gold in exchange. He had to leave the money behind, and noticed that one of the men from Beit Jala accepted a small package from the armed man. Later, the group approached a checkpoint on their way back to Bethlehem. One of the men hid the small package under the seat, but when the brakes were suddenly hit, the man from Jerusalem could see that it was drugs.

One of the men from Beit Jala felt guilty about what had happened, and sought a mediator to resolve the issue. The mediator had miscalculated the currency exchange between US dollars and new Israeli shekels to about half the dollar's worth. A ruling found that the man from Jerusalem had wanted to take a profit, and he should take a cut of fifty per cent, but that the two men from Beit Jala should return the remaining half to the man. One of the men from Beit Jala immediately returned the sum to the Jerusalemite, while

the other promised to bring it within a few days, but this turned into months. The man from Jerusalem contacted AS about the case. AS phoned the mediator who issued that ruling and they met along with the two men from Beit Jala, who now denied the scenario of baiting the man from Jerusalem purposely. They refused to return any remaining sum owed to the man.

Following this meeting, AS met the man responsible for detentions, and advised him of the situation, and suggested that the two be imprisoned for a few days. Each were in jail for a week until they agreed to pay the sum. This is a success for AS because he brought "total justice to someone."[487] They considered this man weak, and chose to exploit him because he had no protection, whereas they had people to protect them.

When asked what he thought people want and need in conflict, AS remarked that people want someone who will not prejudge them on their religious background: "Muslims and Christians in Bethlehem are considered one."[488] He notes that in Beit Sahour, where the overwhelming majority of the population in Christian, the people continue to request his assistance in matters because he can convey their message of equity between the two religions.

When people turn to him, AS insists that anyone he represents must be honest and righteous. In this process, AS would call on other people to help his client's case, and be willing to speak on their behalf. A person only having five or ten people of questionable background is not considered worthy of defence. A deserving person may be able to get two thousand people to stand up for his client, making his case much stronger. One situation he describes where he might feel that someone was honest and deserving of his help would be an unmarried girl who had slept with her boyfriend willingly and she was guilty of the act. AS says that if this girl came and confessed the act to him, he would judge her as innocent. He would do this for her own

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487 Sultan, Abu. Personal Interview. 7 April 2009.
488 Ibid.

protection from her family, as well as protection in the future. He would do this because he insists: "All the religions in the world would say not to exploit her even more but to cover up the problem."[489]

In conflict, AS contends that there are a myriad of needs and wants that people have of one another. While one case may be about a physical plot of land, another may be about defending one's honour, and yet another may concern misinterpreted messages. In describing a case of a couple where the girl's family disapproves of the marriage, AS expressed how in a suitable case, he may protect this girl in his home until marriage arrangements can be made. One such case was that of a young woman who stayed with his family for nine days, for fear that if she returned home that her family would kill her. In the meantime, AS talked with the family and convinced them that this was her decision and her responsibility. Parties in this case need time and space to cool off from the heat of their conflict, but AS indicates that this separation is also in order to protect the family from destroying itself. Parties overall do not want to further problems, AS suggests, and do not need or want to compound what troubles they already have.

AS knows he has acted competently when he has judged on the facts in front of him with justice. He concedes that the two sides will not completely agree on the decision he makes. He gives an example from the Prophet Mohammed, "When you try to make a decision as a judge and you make a mistake, you gain from God...But if you try and you're right, you get double – either way you'll gain."[490] Given that, he admits he does not know if that has happened, and writes the statement "Only God knows where the right is" at the end of each ruling.

The ongoing occupation does not affect AS's work, though he lives opposite an Israeli military post. The army made AS and his family aware that they

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[489] Ibid.
[490] Ibid.

know what it is that he is doing. He feels that this is not a benefit, but a way of sending the message that they are watching his every move.

5.6   Adnan Thalgieh

Adnan Thalgieh [AT] is a staff member of Wi'am. This interview took place in his office at Wi'am, and Leila assisted in interpreting. AT began his mediation work in 1987, at the start of the first intifada. The lack of authority or government at the time resulted in corruption, internal chaos and distrust in the Israeli government services, including courts. His involvement in mediation initially started when neighbours and friends contacted him to discuss problems, including between families, couples, and involving drug addiction. AT feels that the service that he and others provided at the time were necessary to keep society together and prevent it from fragmenting further. It was around this same time that he met ZZ and realized that they were providing the same service in their communities, at times with the same cases. Their interventions eventually caught the attention of the Israeli authorities, resulting in the imprisonment both AT and ZZ between 1988 and 1989. AT believes that it was not in the Israelis' interest to see local conflicts resolved.

AT's aim in mediation is to follow a case to its completion and have closure for those involved, meaning collaboration and problem-solving between the parties. One successful story of seeing a case to finality involved a father of four who was addicted to drugs. The mediators met with him and asked the man why he took drugs, and then worked with him to find appropriate treatment for the drug addiction itself and its root causes. This treatment was holistic; the man, his wife, his children, his parents, and his friends were all involved in his recuperation. As a result, the man has become a highly respected man in society.

A case of failure involved a young woman who wanted to marry one man, but her family disapproved and coerced her to marry another man. Societal

expectations and tradition caused her great distress, and as a result, that marriage and that family were eventually subject to fragmentation. The woman left her husband and baby son to start a new life with the man she wanted to marry, in another country. AT considers this a failure because society placed undue pressure on her, and the woman was expected to abandon her own wishes for those of her parents'. While the mediators attempted to convince her parents to respect their daughter's wishes, society claims that the parents have the control in the situation and they would not forfeit this right.

In conflict, the social, political, economical, educational dimensions of the scenario combine with the reality of life under occupation. The lack of social activities and the economical situation and high unemployment rate, added to the inability for people to work in Jerusalem, creates situations where even very old grievances involving money or land may appear because of desperation, need, or even boredom.

When parties approach mediators, they want to feel comfortable in talking about their story and want to feel a sense of fairness. One example was between two brothers, whose father had died and left everything to one of the brothers and said he did not want to leave anything to the other. The mediators brought the two brothers together and discussed whether to evenly share the inheritance, because the father may have made his decision to cut one of his sons off in a moment of anger. AT said that by doing this, the parties were more comfortable and happier because they were considered equals.

Related to this, parties want a mediator to give them reasonable solutions. AT says that people approach him because of his positive reputation for being honest and giving. He gave an example of two poor brothers with a sick mother in hospital. Neither was able to afford the medical expenses, and therefore they argued over who was going to be financially responsible for it. One of the brothers' wives contacted Wi'am over the situation, and AT was

able to raise charitable donations from within the community to assist with the medical bills. This eased the stress upon the brothers and their families, ending the conflict between them.

Within conflict, the parties' social and economic situations influence their needs and wants of the other. Money was the main source of stress for the previous example, but neither party was able to take on that burden. They needed that understanding from one another of their equal economic status. In educational issues, parties may be accepted to study at university, but unable to enrol as the fees are too great for the family to take on. In this situation, the party needed assistance from the mediator on scholarships available or cooperation from the university in lowering tuition. Similarly in medical situations, the situation is usually about assistance in paying for the costs of treatment. Problems also arise when there is a death and there are arguments over the allocation of inheritance, or when a couple want to be married but the woman's parents do not approve.

In these situations, AT believes that parties do not need or want him to interfere in the very personal elements of the conflict. Where this line is drawn varies, but could include discussing the inner workings of a mother-daughter relationship, or emphasizing or underlining a mistake that someone made. The issue of shame is an important, but very private, element of this society.

AT knows he acts competently from the repetition and learning from his experiences. Before making decisions, he goes over the finer points of the conflict and ensures it is a good decision. He avoids taking about certain issues that will enflame the conflict further or anger a party. If he does make a mistake, AT realises that this could result in serious consequences such as death. To prevent this, he tries to be as conscientious as possible.

Fortunately for AT, this conscientiousness has not gone unnoticed. He acts the official spokesman for his extended family and he is highly regarded by

the Palestinian Authority as trustworthy individual, so much so that he has a government-issued identity card that puts responsibility on him with providing consultation on social conflicts. His work, therefore, is not limited to Bethlehem, but all over the oPt.

5.7   Rock Rock

Rock Rock [RR] is a lawyer, a member of the Palestinian Bar Association, the president of the Public Liberty and Human Rights within the Palestinian Bar Association, and a member of the board of directors. He is also a social worker and donates considerable time to charitable and cooperative societies, both Christian and secular. This interview was in English and occurred at his law office near the Deheisha Refugee Camp and the local court. A younger lawyer under RR's supervision was also present for the interview.

The nature of RR's work as a lawyer may initially indicate that he should take all of his cases to court. Yet, his involvement with social committees and *Wi'am* creates alternative means of handling particular issues. There are times that he may advise a client not to take the case to court and he may mediate the dispute without charge. Many of these cases involve marriage, divorce, and ecclesiastical issues. Much of what drives RR's work is his Christian faith, and he believes that people need to love each other: "All difficulties... can [be] overcome by our Lord, and He is the solution for everything."[491] He indicates that he uses verses from the Bible to convey this spirit, and uses the current socio-political situation of life under Occupation in his work. He tries to create a sense of peace, goodwill and unity by doing this to tackle the difficulties of life in Bethlehem. There are serious conflicts that involve land and property that are threatened by the Occupation, mainly settlers and settlements. There are matters that are more trivial that surface because the Occupation has created a situation of Palestinians being "nervous, short-tempered" and easy to rise. In these situations, RR aims are

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[491] Rock, Rock. Personal Interview. 17 April 2009.

to calm the parties down.

One example of a successful case may involve a spouse who wants to get a divorce. RR will hear from this party why he or she wants a divorce, but sees that the reasons for wanting the divorce are minor. He would "take the case as I am one of the family."[492] When he gets involved in this way, he may even anger other lawyers who saw this as a profit-making opportunity. He will coordinate meetings, perhaps in their home or involving other family members, to resolve the issues that brought them to him. He devotes personal effort, time and finances in order to see the family reunified.

An example of a failed case might involve parties who refuse to accept interference and would prefer to solve it independently, sometimes violently. Once the party is involved in a criminal matter, RR says that the official procedures with the police and court prevent him from interfering. Other times, a party may go to a tribal chief for representation, and RR details his frustration at a cosmetic resolution to the problem rather than solving the conflict at its roots. This particular way of handling disputes also suggests that this chief will benefit from representing the party, with either money or land in return for their services.

RR outlined five elements needed by all people within the Palestinian society. First, there is no trusted, neutral authority; Palestinians need their own state, without violence. Second, RR believes that Palestinians need an independent, trustworthy, and honest judicial system. Third, he believes that rules and laws need to be respected and applicable. Fourth, an executive authority comprising the police, government, and the governor must be present to apply the laws of the land over the people. Last, the people need to be recognised, respected, given their rights and not neglected, especially if they are poor and weak. With these components missing, people are left to feel insecure. The lack of needed authority means that independence cannot be achieved, because the political and militant factions and in-fighting work

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[492] Ibid.

against "liberation and building institutes of the state."[493] With these needs met, RR feels that the types of conflicts that they encounter will largely resolve themselves and mediation may not be required as much as it is now. Until that level of stability becomes a reality, however, the "work of the mediators are needed."[494]

When people choose to come to mediation, they turn to people they trust. Parties need feel secure knowing that their case is in honest hands that will not take from them financially and socially. Mediation is a low-cost and less time-consuming alternative to the courts. Socially, mediation provides an avenue to consult with a trusted mediator, where the judicial system may not be as dependable.

What parties want from each other varies from each case. While one party may want revenge, another party may want to feel protected, and may go to such lengths as giving up rights to feel secure and safe. Ultimately, each person wants to have "a peaceful life without any kind of headache."[495] However, in avoiding the headache, a party may do wrong. In mediation, there is a sliding scale of responsibility and rights and room for compromise. In the courts, a decision of a judge will have less consideration of areas of agreement or bargaining between the parties, and will issue a verdict based on what evidence is presented.

RR lets consciousness be his guide when he mediates. He feels that he has acted competently based on his consciousness, and so long as he feels no guilt, he knows he has done his job proficiently. Errors are sometimes knowingly made while trying to solve a "critical and difficult conflict." This error usually comes into focus later, when he has time to see the situation with a broader perspective. RR indicates that there are others with experience that may advise mediators who require it, and for that reason mediators rarely work alone but prefer to work with mediation groups. There

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[493] Ibid.
[494] Ibid.
[495] Ibid.

are times that a mediator may require an expert consultant is need, and these groups provide this guidance, whether this involves issues of law or engineering, for example.

There are other cases, for instance marriage, where there is unwanted and unneeded interference from outside parties, such as mothers-in-law or other family members. RR says that he avoids their interferences or minimizes it because while some try to interfere in good will, others want to be involved directly in the case out of bad will. RR also indicates that if there is a crime that affects the general community, he believes that these cases need special attention by the authorities such as the police and the courts.

Most cases, however, RR will hear. Land, marriage, car accidents, and minor crimes in the community are included in the range of possible mediated disputes. In these minor cases, RR says that their role is to solve them before going to their courts in order to ease the burden of the court.

The Occupation does not interfere with his work as much as it would have in the past. RR tells how the leadership of the Intifada had chosen a select number of people who could deal with conflicts on an "on call" basis so that Palestinians did not have to involve the Israeli police. Within the oPt, there was largely an absence of police, police stations, courts. RR's role as a mediator in that time meant that he was heavily relied upon all across the oPt, "from Gaza to Jenin."[496] As legal institutions grow and improve, as policing becomes more professional, and as politically the situation within the oPt becomes more hopeful, the urgent services that RR provided in the past are no longer required. While mediation continues to be a difficult profession, RR considers it a necessary part of the Palestinian fabric while the broader needs of the society remain unmet.

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[496] Ibid.

5.8   Azmi Jado

Azmi Jado [AJ] is a Muslim mediator who worked for the United Nations in Bethlehem for several years. A refugee, AJ worked hard to afford his family a home that had enough land to house a few animals and a back garden filled with fruit trees, just outside of Aida Refugee Camp where he had spent much of his life. His grandfather was a *sheikh*, who helped the community in resolving disputes. His father was a *mukhtar*, or village head, as were both of his brothers. The interview took place at his home and was conducted in English. His son-in-law, an emerging mediator, transported me to the interview and occasionally contributed from his own perspective or to clarify a point that his "uncle" made.[497]

When asked about his aim in mediation, AJ says that solving problems and having parties leave happy gives him great satisfaction. Some cases are easier than others, however. AJ indicated that there is a difference when dealing with distinct personalities. Mediating a case with one or two "good" parties is very easy, as parties are more likely to compromise with the suggestion from the mediator:

> If one of the parties is good and the second is bad, you
> press upon the good man to solve the problem. 'You are [a]
> very good man, you must help. If there is a God... you will
> take [your right] from God. Your right, you will take it from
> God. The cash or the money is no problem, *yanni*.' And they
> shake hands.[498]

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[497] The term "uncle" is used as a mark of respect for male members of the family who may not be an uncle but rather a relative by blood or marriage, or another respected male elder. For more information on terms consult: Davies, Rodger P. "Syrian Arabic Kinship Terms." *Southwestern Journal of Anthropology* 5, No. 3 (Autumn, 1949), 244-252. http://www.jstor.org/stable/3628504
[498] Jado, Azmi. Personal Interview. 20 April 2009. Note: "yanni" is a filler word, similar to "like", "you know", "I mean".

Comparatively, dealing with "bad" parties is becomes more difficult as elements of distrust and inability to compromise making resolution more difficult.

An example of a success in conflict is when parties are disinterested in money, open to dialogue, and are open to forgiveness; such as in an accident where no one is at fault and the act was unintentional. A more difficult scenario is murder with motive, not just because the parties are "bad", but because it becomes much more complex for the community. The entire family of the murderer must leave the village or city as a part of *hudne*, and to avoid revenge. This exile may last decades. AJ shared one example of this situation where a family was allowed to return as part of *sulha* many years later.

About fifteen years ago, a taxi driver murdered a fellow taxi driver by stabbing him to death over a fare. Both were Bedouin, and the outcome was that the murderer and his family had to leave Bethlehem as *hudne* and pay *diya*, or blood money, to the murdered man's family in order to return and engage in the *sulha* process. There is pressure on the parties from several mediators or sheikhs to enter into a resolution process, and agreements are intended to last.

AJ contends that parties want the *mukhtar*, *sheikh*, or mediator to enter into the conflict, listen to both sides equally, and help them solve their problem. The main goal for the parties is that their conflict be solved at the end of the mediation, no matter how difficult this may be. AJ implies that parties are usually cooperative and agree on a decision. The continued Occupation means that the people of the oPt need to resolve their conflicts and have lasting relationships during this difficult era. Referring issues to the Israeli court system carries negative psychological and cultural weight, resulting in parties being more likely to resolve conflicts locally and with their own people. Parties want mediators to be neutral and honest men, who are able and free to speak with two families to uncover the nature of the dispute from

both perspectives and advise accordingly.

Mistakes happen, but it shouldn't impede the mediation process. AJ knows he has acted competently from the feelings he gets from the parties once they have arrived at an agreement. He said, "I should make a good job. I should!" as he feels pressure to reach an agreement. Before there was government in the form of the Palestinian Authority, mediators were central to resolving social and economic issues, and while the PA grows in influence, mediation remains an influential part of Palestinian life.

An important aside involved the relationships between the religious groups in Bethlehem. AJ emphasised: "All of us, we consider the others...the same family," and there is "no difference between Christianity and Islam, especially in Bethlehem, and most of Palestine."[499] As AJ was educated at the Terra Sancta School in Bethlehem, he became familiar and close to the priests there, despite the fact he is Muslim. He recalled a time where one priest told the students, "Jesus is a Palestinian! He is born in Palestine and his is Palestinian!" Because the religious groups have lived together for over a millennia, AJ believes that the commonality between the religions is more important than the differences. The way that a Muslim family holds the keys to the Church of the Holy Sepulchre in Jerusalem was one example of the need for one another, the trust of one another, and the collaboration that the faiths can share.

5.9   Jamal Danouwi

Jamal Danouwi [JD] is a mediator from Bethlehem Governorate. He has worked as a mediator with *Wi'am* since it was founded, and believes that mediation is vital work for the community that requires attention at any time. Because mediation is so time consuming and one has to be "at the ready" for conflict, the work has affected JD's personal and social life. However, he considers mediation a national duty and one he is proud to perform. He

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[499] Ibid.

works with the Palestinian Liberation Organization and therefore understands mediation as a national concept. He works voluntarily, and says that the benefit to such a role is the respect from the community. He spent five years in Israeli prison. The interview was held at Wi'am and Leila interpreted the questions and answers.

The aim of mediation is not simply to resolve one conflict at a time, but to "bring Palestinian people together as one unit" in response to the greater issue of the Occupation.[500] Mediation should serve to bring society closer because the Arab and Palestinian society has a close connection to family and extended family, and this system of relationships should be evident in how they resolve conflicts. Mediation should help in supporting Palestinian society, "preventing it from collapsing and falling into pieces."[501] Time is also an issue with mediation; problems should be solved immediately. A court referral usually translates into a long-term time commitment, which means that for some parties, "the person who has claimed something, he dies before he gets his right."[502]

JD is a busy mediator, successfully resolving five or six conflicts per day.[503] One particular case he was currently working on involved a man seriously in debt and unable to repay the money he owed. Those who were owed money went to the debtor to collect from him, but the man wasn't at home. Physical fighting ensued, and rather than resort to the Israeli police, who could get to the area easier than the Palestinian police could, the parties requested JD and AS to intervene. Using the phone, the two were able to halt the fighting temporarily because JD and AS, respected members of society, took on the responsibility of the conflict. JD notes that parties know that when the mediators agree to step in to a particular conflict to solve it, that the parties with rights will get those rights. 'Atwe was taken during the hudne period, and the mediators took a month to plan possible solutions. This time also

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[500] Danouwi, Jamal. Personal Interview. 21 April 2009.
[501] Ibid.
[502] Ibid.
[503] Ibid.

allowed the parties to cool down from the tense moments of the physical confrontation. After a month had passed, JD and AS met with the two parties to discuss the issues further. The two mediators met later in that day on that day to discuss strategies and steps for resolution in this case, but without the parties present. JD mentioned this story as a success because the parties were perspective-taking: the debtor's family understand that while the other family went against social custom by approaching his house directly, and the debtor appreciated that the family needed their money returned.

In situations of murder, however, success is less likely according to JD. While the steps of *'atwe* and *hudne* are taken, the effected parties do not necessarily honour the mandate to keep a distance from one another. As a result, revenge is common, and the party who lost a family member may kill the original killer or a member of his family. In court, a party may present their case untruthfully; mediation, in contrast, is "built on relations and certain ethical codes."[504] A party that aims to deceive or cheat knows that in the local process of mediation, the community may outcast him. JD contends that some parties may try to avoid this by taking their case to court rather than using the indigenous process.

Parties in conflict have a need and want for the "mediators to get his right back."[505] The emphasis is on the need for the mediator and the immediacy of resolution. Parties expect the mediator to investigate the problem fully and speak with a range of people involved. They want their mediator to be methodological and confident in making their decisions.

Overall, JD remarks that people want relationships in the community to remain positive. People need each other, and yet require a sense of assurance and safety. Trauma from the years of occupation and conflict has taken its toll on the people. However, mediation provides an opportunity to bring relationships to the fore, and restore their connectivity.

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[504] Ibid.
[505] Ibid.

There are times when people get involved in conflict that the parties don't want to see involved in the matter, including a member of large, extended family with authority and power. Their reason for getting involved in questionable, and may not be out of concern for the parties, but out of self-interest or money.

JD knows he has acted competently by the parties' reactions to solutions he has suggested. Facial expressions, expressions between parties, laughter, words or gratitude, or sharing a meal are all ways in which JD understands that the parties have appreciated his work and benefit from it.

Honour and marital conflicts are both topics that JD does not interfere with. JD indicates that experience has been his teacher, rather than universities teaching about strategies and methods of mediation. When returning home, he reviews the day's work and analyses what he did well, what he did wrong, and what he could improve. Mediators are able to meet, discuss their cases, and offer or receive opinions. JD believes this peer criticism is necessary in order to improve the profession.

JD added that he believes that Eastern cultures are more attune to religion, and this encourages and emphasises particular ethics for human relations. Familial relations are valued highly, as is conservatism. He believes that mediation is more successful as a result, because it has become a social norm within society.

Conclusion

The mediators that donated their time to conduct these interviews vary in their religion, education, experience and location. Similarities surrounding their understanding about the purpose of their work, the role of religion in their lives and work, the process they follow, the needs and wants of parties are noted throughout. The analysis of these interviews will be completed in

the next chapter in terms of the theory questions outlined in Chapter 1. Chapter 6 will use the interview material to construct the underlying ideology of conflict resolution practice by distinguishing the views of human nature, conflict, productive conflict, destructive conflict, and the role of social institutions. Further, the societal influences of religion, government and politics on the ideology of conflict resolution will be outlined, in addition to the characteristics of those qualified to mediate disputes. The next chapter will also consider the effects of the Occupation and the ongoing conflict between Israel and the oPt and conflict that occur on the micro-level (within the confines of the oPt) upon each other.

6   Chapter 6: Theory Question Analysis

Introduction

The previous chapter provided summaries of the nine interviews conducted with those who deal with conflict regularly in Bethlehem. In this chapter as well as the next, the focus is on taking the information that these practitioners provided within the interviews to explore their responses and to analyse these in terms of their descriptions, viewpoints, and understandings. This analysis is multifaceted, and in order to present this coherently, the research analysis has been split into two chapters. Chapter 6 and Chapter 7 outline these responses and analyses in three ways. Firstly, Chapter 6 describes the cultural construct of the working theory of conflict resolution in Bethlehem by reviewing how the interview responses relate to the theory questions. Secondly, in Chapter 7 the central research questions will be considered in relation to how *Wi'am* and *sulha* theory and practices compare with the underlying relational ideology of the Transformative framework. The existing literature in both conflict resolution and culture will assist in supporting this analysis. Finally, the analysis will conclude with questions over the relevance of relationality and the Transformative framework in the sociopolitical context of Bethlehem.

6.1   Review of Methodology

The methodology used in analysing this data was described in Chapter 1 as a blend of the Rose-Wengraf Model of the Research Process and Joseph Maxwell's Model of Design Components.[506] Using the conceptual frameworks articulated in Chapter 2 and Chapter 3, the central research questions (CRQ) were developed to support the research purpose of determining how relevant TMF may be to a non-Western cultural context, in what ways theory and practice of mediation is distinctive in a non-Western context, and to

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[506] Wengraf, 54-55.

what extent practice within a politically divided society impacts the mediation process.

The theory questions (TQ) provided the link between the overarching CRQ and what was asked about the particular case study Bethlehem. The TQ ask the general assumptions and expectations of mediators within a particular context, in order to feed into the larger CRQ. These questions surrounded the views of mediators on conflict, how mediation is practised, who mediates disputes and why, and how conflict at the micro and macro levels of society intersect. Interview Questions (IQ) were developed to provide support for literature in answering the TQ. These were adapted from Della Noce's questionnaire for mediators in determining their working theory of conflict resolution. These IQ were asked in nine semi-structured interviews with local mediators in Bethlehem affiliated with *Wi'am*, from a cross section of society that included mediators who were both Christian and Muslim, from a central urban area or Bedouin, business owners and refugees, as well as the well educated and political. The interviews asked personal reflection questions on mediator aims in mediation, concepts of success and failure, thoughts on party needs, and how a mediator knows they have done well or made errors. In addition, the effect of the Israeli occupation on mediation work was asked given the context in which mediators were being interviewed.

These responses were then coded for the mediators' views of human nature, conflict, productive conflict, destructive conflict and the view of social institutions to respond to the TQ. General terms used by the mediators to describe and explain the process of mediation are categorized in order to understand the ideological framework in which they work. Following this, there is a discussion on the aspects of society influencing these perspectives, including family, religion, government and politics. What characteristics make a mediator are examined, and the idea of patriarchy is introduced. The effect of conflict at the micro-level of society upon the macro-level of society are considered, as well as the affect of the larger, protracted conflict on understanding of conflict at the micro-level.

In Chapter 7, the Central Research Question Analysis compares the ideological and practical side of the work of *Wi'am* with that of TMF. In addition, the 'story' of Bethlehem mediation is presented, like other conflict stories were presented in Chapter 2. Lastly, the strategies used by *Wi'am* mediators are compared to those existing within problem solving and transformative mediators.

6.2 The Underlying Ideological Framework of Mediation Practice with *Wi'am*

The interviews held with mediators in Bethlehem provided a door into the ideology from which they work. In this section, the variables to questions posed under Theory Questions (TQ), as detailed in Chapter 1, are be detailed and explained. To review, the Interview Questions (IQ) that were asked of each participant were adapted from Della Noce in developing a working theory of conflict resolution. These questions were posed to each participant to gauge their understanding for how they work in their environment, and why. The questions asked to mediators included the following:

1. What do you try to achieve in mediation?
2. Can you describe a situation that would be a "success" for you?
3. Can you describe a situation that would be considered a "failure"?
4. What do you think people want and need
    a. in conflict?
    b. from mediation?
    c. from you?
    d. from each other?
5. What do you think people don't want or need?
6. How do you know you've acted competently in mediation?
7. What do you try to avoid?

8. How do you know if you have made an error in mediation?

9. How does the Occupation affect your work?

10. Is there anything else you would like to add?

The responses from each participant formed the basis for answering the TQ. These broader questions allowed for an analysis on the underlying ideological framework functioning in the context, and the aspects of society that influence these markers. The third party mandate is discussed in relation to the above discussion. Finally, the effect on the micro-level conflict on the broader political conflict with Israel, and vice versa, are considered to note the effect of a wider political conflict on the ideology and practice of mediation in this setting.

To review, the TQ that are considered in this chapter concern:

1. How do mediators within this society view conflict?

2. What does current conflict resolution or transformation look like in practice?

3. What aspects of society impact this perspective, e.g. family, religion, education, government, history and tradition?

4. Who mediates disputes? Does formal training exist for those who wish to practice? Or is the role of mediator bestowed upon a specific person based on cultural norms or expectations?

5. How does gender, societal class, education, ethnicity play a part in determining active participants in conflict transformation and resolution?

6. How, if at all, does conflict in the micro-level impact greater society?

7. In what ways does a society engaged in a larger, protracted conflict affect the understanding and treatment of conflict at the micro-level?

In the following section, the conflict ideologies of the mediators in Bethlehem will be outlined, including the range of views on human nature, conflict, productive conflict, destructive conflict, and social institutions.

6.2.1   View of Human Nature

Views on human nature were heavily conditional on the current situation of occupation. Many mediators commented that the hardships many suffer as a result of the occupation drives many to respond to conflict in ways that they may not if they were not in this environment. ZZ commented, "Abnormal conditions create abnormal relationships," and goes on to explain, "It's in the hot summer, no water, nowhere to go... You see it in people... When you have a scarcity of things, people fight, because [of] selfishness, personal agenda...these things."[507]

Aside from the hardship of summer, there is also the effect of the long-term condition of occupation and violence: "Let me tell you, we have trauma."[508] EK notes that due to "Israeli occupation, we have forty years of side effects."[509] In conflict, ZZ describes parties as angry, frustrated, unable to express themselves, and reactive.[510] He also defined parties in conflict as "hysterical or historical," meaning they are "half mind."[511] AT agrees that parties, "in a moment of anger...can cause numerous complications. In our society, anger is something that easily arises, especially if the situation is violent then you have a lot more complications."[512] RR added, "...we know that the siege [Israeli occupation] that's put on the Palestinians has led them

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[507] ZZ.
[508] Ibid.
[509] EK.
[510] ZZ.
[511] Ibid.
[512] AT.

to be nervous, short-tempered, and so on. So anything, it will [cause them to] rise. So we try to calm them."[513] The economic situation as a result of the ongoing occupation has resulted in some parties referring to old grievances "because there isn't much to do and people don't have things to do in their lives, they go back to old things and old conflicts to get any kind of money from it."[514] AB mentioned, "If you see that's [the] bad situation [in] which we live, make all this conflict. That's the reality."[515]

Another opinion on human nature concerns adherence to social norms. In one conflict, JD described how one party owed a second party money. The second party that needed the money broke social custom, and went to the home of the first party who was in arrears. As a result, mediators became involved and evoked a method of taking the responsibility of the conflict or 'insuring' the parties in order to solve it, called *wija*.[516] As one mediator indicated, "Usually a lot of mediators may talk on behalf of them, 'I insure, I am responsible, that they will not do anything.'"[517] Part of this insurance is based on the honour and esteem of the mediators intervening in this conflict. To go against their wishes would dishonour the mediators as well as the parties.[518]

Some views of human nature included the assumption of whether people were innately good or bad. A mediator mediating between two 'good' parties or between one 'good' and one 'bad' party were said to provide easy resolution because it is straightforward to pressure the good party or parties into a resolution. Mediating between two 'bad' persons would be far more difficult because of their perceived bad nature. Parties who lie or over-exaggerate their case to make gains (unbeknownst to the mediator or judge) are said to have bought "a plot in Hell."[519]

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[513] RR.
[514] AT.
[515] AB.
[516] JD.
[517] HM.
[518] For more information, see Lang, 2005. The concepts of honour and mediator agency will be discussed further in Chapter 7.
[519] AS.

Lastly, HM suggested that parties in conflict are heated and their views convoluted and made complicated. To address party needs and wants in conflict, there is the "need to simplify the problem and not to enlarge it, to calm them, to make the views more clear."[520]

6.2.2 View of Conflict

The views on conflict were varied; however they centred on the concepts of *problems*, *injustice* and *relationships*. These terms were not mutually exclusive; a discussion on the need for justice to resolve problems could be coupled with the need for investment in relationships or community support. As a result, these subcategories containing the views of 'conflict' may include multiple variables as introduced by the same mediators. In addition, mediators indicated that there a sense of urgency is considered, where critical and dangerous conflicts, such as those surrounding murder, assault, and honour have an imperative for assistance greater than those understood to be less serious or ongoing.

6.2.2.1 Conflict as a problem

Out of nine interviews, seven mediators made explicit reference to conflict as a 'problem to be solved'. In discussing the goals of mediation and elements of a successful mediation, those interviewed highlighted that the mediator 'solving the problem':

> [The goal of mediation is to] bring people together so that we can solve things between them.[521]

> [A success is when] the mediator solves this problem.[522]

> In that way, I was able to solve the problem...[523]

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[520] HM.
[521] AB.
[522] HM.

The main thing that I aim for and I'm happy when it happens is when I have a case and we take the case to the end and solve it and put closure to it, and both sides are able to get what they wanted, and to solve problems between people.[524]

Agreement – we make papers – and [have] witnesses, and I solve their problems and no one can ask the other, forever.[525]

Today, we have a meeting. The meeting will be about what are the strategies and steps to use to solve the problem.[526]

[Success] means we were able to resolve the conflict and respond to the needs of the local community…based on the win-win equation.[527]

Two mediators referenced statistics of success rates: ZZ highlighted that there is "85-87% success"[528] with mediation and JD cited an American academic who studied Palestinian mediation in depth when he mentioned "as Palestinians, we were able to resolve 98% of our conflicts without going to the courts."[529]

6.2.2.2 Conflict as injustice

Themes of justice and one's rights were heavily mentioned throughout the interviews. One term used repeatedly was 'the right' in emphasizing a just or fair entitlement:

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[523] EK.
[524] AT.
[525] AJ.
[526] JD.
[527] ZZ.
[528] Ibid.
[529] JD.

Where is the right?[530]

It may be sometimes two parties, a conflict between them; one has a receipt or document that he has a right from the second party.[531]

Your right, you will take it from God.[532]

But when you have the right and it's with you and you're honest, I can get 2,000 people to stand up for you.[533]

At the end of my decisions, I always write a sentence, 'Only God knows where the right is.'[534]

They should know whenever we say that we're going to interfere in a problem and try to help it or solve it, that anyone who has a right will get it.[535]

The just person in the situation wants the mediators to get his right back.[536]

See, [in] mediation, someone has the right or someone doesn't have the right. Or both of them they have the rights, but this one is 70% he is right and the other he is 30%. So the mediation is coming two steps here and one step from here.[537]

`When two parties solve their problems and they return back as families and friends, that's when I know I'm a good mediator. Like when I give each one his rights.[538]

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[530] AB.
[531] AJ.
[532] Ibid.
[533] AS.
[534] Ibid.
[535] JD.
[536] Ibid.
[537] RR.
[538] HM.

6.2.2.3 Conflict as a crisis in relationships

The emphasis on relationships and maintaining good relationships was a theme heard throughout the interviews. Conflict was seen as a threat to the unity shared between people in society, with a potential to spill over into a greater conflict. As a result, the mediators understand conflict as something that has brought the parties away from each other. Six mediators evoked themes of reconciliation, using phrases to describe what they try to achieve in mediation:

> bring [the] people together[539,540]

> But when you do it in mediation, where you bring the relationships together, you bring people together, you reunite them, and you even take them back to the period before the conflict even happened.[541]

> unite people[542]

> invest in the quality of relationships of people[543]

> love and peace between all the people.[544]

> People want relationships in the community to stay good between each other. There's an Arabic quote that says, 'Heaven without people is not really that nice,' or you don't go to it because that only emphasizes how much people need each other.[545]

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[539] JD.
[540] AB.
[541] JD.
[542] RR.
[543] ZZ.
[544] HM.
[545] JD.

One mediator commented that the goal of mediation has a broader aim to protect the relationships between the religious groups in the society. EK considered the goal of mediation was to "make sure Bethlehem lives in a condition as a whole family that brings Christians and Muslims together, to keep it a friendly environment."[546] The theme of religion and its influence in conflict and resolution is one that was repeated, and that will be discussed in section 6.4.2 covering the influences on mediator perspectives.

6.2.3   View of Productive Conflict

Mediators described productive conflict as including elements of cooperation, participation, understanding the situation, accepting the agency of mediation and the mediator.

6.2.3.1 Cooperation

Cooperation with one another and the process was the first inclination of success:

> The success begins or comes from the people themselves, they cooperate on the problem. And if they cooperate [well], they make it successful.[547]

> To work together, to cooperate, to focus on the common good and not the personalities, to treat each other with more respect, to dignify each other.[548]

6.2.3.2 Participation

Participation of the parties and others affected is an important element of productive conflict. AT described a case of drug addition and the effect on the person's family:

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[546] EK.
[547] AB.
[548] ZZ.

The treatment was with all his family, not only himself, his wife, his children, his parents, and even the people around him not only his family. The reason is behind this is that you can't treat someone away from the rest of his family; if he's going to be bad-tempered, and his wife is going to be bad-tempered, he'll only get up to step zero. So we had to work with the whole family to get success. [549]

6.2.3.3 Understanding the situation

JD mentioned that one of the "main indications of success [are] people's understandings of the situation."[550] For the parties to take into consideration the other person's perspective is a valuable dynamic.

6.2.3.4 Acceptance of mediator agency

Most mediators indicated that parties respected both the mediator's role and the established process of mediation. When they enter a dispute, they expect a set protocol to be followed and in turn devoted considerable amount of personal time to finding solutions:

> When we went, the fighting was over because the people had to respect us as figures in society.[551]

> What he [the mediator] decides they should agree, always.[552]

> When they sign on this paper, they are saying that we have to obey what the mediator judges.[553]

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[549] AT.
[550] JD.
[551] Ibid.
[552] AJ.
[553] HM.

[People need a mediator to] give them reasonable solutions.[554]

First of all, when the two sides, when they do react in a good way to the solutions that I have [suggested]. [Responding to a question on how the mediator knows he has acted competently in a mediation].[555]

To be a mediator, they need to have connections. They need power, and by power I mean non-violent, conflict resolution power. You are talking about resources, able to use resources – human resources and material resources.[556]

"After I make my own decision and am able to prove my own decision, I then consult other sides, official sides sometimes [to confirm my decision]."[557]

Productive conflict is one that moves forward in the established process, even if that takes time. Productive conflict also has active participants who are willing to talk with the mediators and accept the decisions that mediators make in their disputes.

After negotiation and working things out between the two sides and they come together, reconciliation…There are lots of ways [I know I've acted competently]: through laughter, through words, through gratitude. Sometimes they have a small party, or a meal, they eat together. Our society's opinion, that personal gratitude they show…and I became a figure that people do listen to what I say. [558]

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[554] AT.
[555] JD.
[556] ZZ.
[557] EK.
[558] JD.

6.2.4   View of Destructive Conflict

Mediators noted that success was hampered by non-cooperation and non-participation by parties, or the involvement of outside parties for good or ill intentions.

6.2.4.1 Party non-cooperation

Parties that do not follow the mediation process, avoid or disregard mediator engagement contribute to a view of destructive conflict. Among this discussion included frustration over asymmetrical power as well as parties that are considered to be unreasonable, dangerous, dishonourable or 'bad' by the mediators:

> [O]ne of them, they don't care. And when we go to them, he might say, 'Tell them I am not at home.' … When we phone for him, he doesn't answer. So we feel that he is not cooperating. … We see that there isn't any cooperation for it.[559]

> It's a dangerous one because if they get more angry, any of the boys, they could hit or kill each other.[560] [In regard to a conflict that remains unresolved and spilled over to extended family]

> …There was a situation that happened that there was a girl in my protection and around twenty armed men from her family came and they wanted to take her. In these kinds of situations, you have to protect yourself if you're threatened.[561]

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[559] AB.
[560] HM.
[561] AS.

In some cases the perpetrator is so strong, the strong will not come to his or her senses and the other side is weak.[562]

Sometimes the parties don't accept our interference, they refuse and insist that either they'll solve it their own way by their own hands. This will take them to more official procedures with the police and the courts and then we can't do anything. Or sometimes directly they go to the courts or prosecuter, or they go to the chief of an Arab tribe so he can speak on their behalf. And then... I don't like to work with them ...[b]ecause their ways are not solving the issues from the roots, but they will solve it on the surface only. So after a while it goes back. At the same time they [the tribal chief] have their own benefits. They get either money or land, or they get something to be paid to them.[563]

...if someone is very good at cheating and getting money, if he can go to the court he can plead not guilty and sometimes the court will let him off. Or if he has [US] $100,000 he can pay his way but in very small sums of money, like $100 per month. So why should he go to mediation? Mediation to him is not considered something good, so he doesn't like for us to interfere because mediation is built on relations and certain ethical codes. In front of the court he may lie and take the stand and plead not guilty, but if he does that in front of us, we would say, 'No, we know the truth behind it.' Plus, we may outcast him from society, and he might try to avoid that.[564]

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[562] ZZ.
[563] JD.
[564] Ibid.

Sometimes people, when they want something from someone, and it's not right or they do have a right, they try to bribe the mediator to either get more than they deserve or sometimes they don't deserve anything but they want something so they try to deceive the mediator.[565]

It takes time. It takes time. But at last they should arrive at peace, they should arrive. For agreement and peace. If the two parties are two bad, it takes time.[566]

Mediators also discussed what they do to counter this element of destructive conflict:

We ask sometimes that the priests...cooperate with us...because of...life and the connection with the church. And maybe sometimes we are cooperating with the church; the priests help us in solving this problem.[567]

We use only non-violence and we try to be accountable to the people and we cannot really force anyone to go to mediation except through our, the strength of our society and through the communication with the elders.[568]

People, some party is not interested in solving, we try to

[565] JD.
[566] AJ.
[567] AB.
[568] ZZ.

maximize their losses and we talk about social relationships.[569]

To ensure control over the process when parties may lose focus, one mediator discussed his method for keeping parties on track:

> If you're speaking with both of them about their situation and someone goes on and on and on about this situation...so you have to change everything, everywhere, all the time. If you're going to talk you must talk another way, to take the other way and speak to the other. Sometimes they are going to quarrel; you change their words of what you're going to speak to another.[570]

6.2.4.2 Interference by outside parties

Mediators have indicated that in the process, a party involved in a conflict approaches them to intervene, and then the mediators take the case to the second party for discussion. When they encounter those outside of the direct experience of these parties, two mediators indicated that they prefer not to deal with these people and focus just on those involved or invited to be involved in the case:

> Sometimes people don't like it when someone from a huge extended family has authority and power and he interferes, even though no one wants him to interfere, but because it's some kind of ego [boost] to himself, and plus he needs the money, because some people do get money for doing mediation.[571]

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[569] Ibid.
[570] AB.
[571] JD.

...usually we try to avoid the interference of, in every case there are some people who want to interfere when there's no need for their interference. Those people, sometimes they come to intefere with good will. But sometimes there are others that they will come to interfere with bad will. So we try to minimize, as much as we can, the people who are interefering directly in the case.[572]

6.2.5   View of Social Institutions

As explained in Chapter 4, social institutions within a Palestinian context have changed hands considerably over hundreds of years. Recent occupations by the Ottomans, the United Kingdom, the Jordanians in the West Bank, Egypt in Gaza, and then Israel have left their social institutions of schools, courts, government bodies, and churches plagued by the changes of administration by foreign powers. As a result, there has been high mistrust of the effectiveness and trustworthiness of these bodies, and mediation had been extremely popular as a local method of conflict resolution. RR outlined his vision for a sustainable society that would be prepared to handle the community conflicts that mediators encounter: the community needs an authority that is neutral and genuine, an independent judiciary that the people can rely on, laws that are "respected and applicable," an executive authority that includes government and security forces that are present and apply the laws to citizens equally, and finally for these social institutions to recognize and protect the weakest members of society, those who have been consistently denied rights and respect. The work of mediators at the micro level of society will be ever-present without these goals achieved, he maintains.[573]

With the Palestinian National Authority gaining stability and the violence of recent times subsiding, mediators have indicated that their work is supported

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[572] RR.
[573] Ibid.

by the Palestinian government, the Palestinian security services, courts, and religious institutions. In return, mediators ask for help from church leaders and sheikhs where necessary. AT noted that he carries a government-issued card that requires his consultation on social problems of society, throughout the West Bank. Others mention the importance of mediation in courts and police bodies:

> They consider it in the court, the rule of the *mukhtar*, they consider it in the court, they consider it.[574]

> Usually when two parties bring their story to the police, and one of the parties got arrested. So the mediator, on behalf of the party that is in the prison, may go to the police and talk on behalf of the family and say that they are guilty and are ready to do anything to get him out.

> We don't leave them free: we ask the police to cooperate with us, and put them, both of them in the jail...[575]

While education was not always a source of support for mediators or mediation, students now can study mediation at university all the way up through an advanced degree:

> Nowadays, solving conflicts through mediation is something that can be studied through a Ph.D. I am a reference to many students getting their Masters degree in Palestine and outside Palestine, when they are doing a comparison between the courts in Palestine and mediation.

Religious leaders meet with mediators to discuss issues before they become conflicts in the community: as EK notes: "We even meet priests from

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[574] AJ.
[575] AB, when asked about serious challenges.

Jerusalem to make sure there aren't any problems that arise from religious issues."[576]

Mediators provide more than conflict resolution services, but also bring people in their society to other services where necessary as part of their work in the community:

> Sometimes I take people to psychiatric [hospitals] and when
> they put their names, "What is their name?" "George."
> "George Zoughbi", "Mohammed Zoughbi", you know,
> because they think [the patient is] part of the family
> because of the way we deal with people.[577]

There is the criticism, however, that societal structures have not evolved to a point where they could be described as entirely supportive for parties. One mediator commented that traditions have been harmful in cases of parents disapproving of relationships, where conservative measures result in negative or lack of choices for parties.

> Society is the traditions that, inflicted on her, caused her to
> [leave her husband and child for the man she wanted to
> originally marry].[578]

6.3   Theory Question Analysis: Aspects of society influencing perspectives

Behind the perspectives on mediation practice, mediators also provided insight into the aspects of society that influenced their views. These included the social institutions of family, religion, government and politics.

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[576] EK.
[577] ZZ.
[578] AT.

6.2.1 Family

The imperative for the practice of *sulha* has been promoted through family involvement over generations. The position is one of honour, and those who shared this influence suggested that their involvement was desired and expected from their families and society.

> Do you know, why I like this thing? My father was a *mukhtar* to his village. And my grand[father] was a *sheikh*. Not *sheikh* Islam, but *sheikh* to solve problems [for the community]... And my two brothers were *mukhtars....Mukhtar family!*[579]

> Because I'm so trustworthy in society, my extended family told me that I should be considered the official spokesperson of the family.[580]

> Since I'm a Palestinian who believes that it's my duty to do mediation, and I come from a background that allows me to do such a thing because of my family.[581]

> [M]ediation is something that I have grown up with. I belong to a family rooted in this culture for hundreds of years and I used to walk between the legs of my [elders]. I learned a lot from them, from the oral history, from the practice, from the skills and the stories.[582]

One mediator commented that his daughter, while she was not one of his children that he would have taken out as much to observe cases, remains interested in this work. He attributes this to her family environment more than an 'inherited' job from her family:

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[579] AJ.
[580] AT.
[581] JD.
[582] ZZ.

My daughter was the [child that I spent the] least... [amount of] time ... among my children. The other children I might take them to these conflicts. With her, I might have taken her to a family issue but not the others. I see how much the role that parents have in their children. I saw it with my [daughter], when she's living in the States now, and she has the applications to university, she talks about the peace work. You know, it's amazing. So this is in a way this is proof that it's... not what you inherit, but the environment helps you go in the right direction. You might be in another career but you could also be a mediator. It's not a job... You might get a salary, yes, but it's more a commitment, ...not Chronos time [not a job where you keep watch on your appointment book], it's the way you help others without any limits. That's the way I see it.[583]

The role and importance of family in Palestinian society was considered by another mediator in describing the strength of mediation in the 'East':

The Eastern culture has stronger family ties than Western culture, and it's a conservative society.[584]

As established in Chapter 3, *sulha* predates Islam and is known to have been in place since at least 1 CE. The traditions that surround Arab society since that time have influenced the process of mediation as it is practised in Palestine. Many mediators made reference to the types of cases they would avoid in responding to what they avoid in mediation. Mediators in this context, like many in the West, have specialty areas in which they work best

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[583] Ibid.
[584] JD.

(e.g. family, work, community, politics). However, on more than one occasion, a mediator remarked that he would not mediate very 'intimate' conflicts, such as between a mother and daughter. When asked about this, AT replied:

> There are lines that shouldn't be crossed. There could be a problem that was someone made a mistake and they don't want that to be emphasized or spread.[585]

AT added that this is due to the personal nature to the issues, and the impact of shame on the parties.

6.3.1 Religion

The influence of religion upon the work of conflict resolution in this environment is substantial, regardless of the religious background of the mediator. For some, conflict is brought about when there is a loss of connection with God. For others, religious faith is a driving force behind their work. The work of mediation within this society includes consultation with religious leaders, and at times reference to religious texts.

One mediator commented that, in his belief, Palestinian culture as part of 'Eastern' society is more connected to religion:

> One of the things that differentiate us from the West is that we are more related to religion. Religion does emphasize and encourage people, and has certain ethics, that encourages people to treat each other in a certain way.[586]

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[585] AT.
[586] JD.

Another mediator commented that the role of God in society is not adequately considered:

> Everyone needs more than he has. Because...It's a type of feeling...feeling and needing plenty of money, and the money -- and God is never part of it. They want money, not praying to God. They are different together. Now we are following the money, and leaving the God. God is plenty outside.[587]

6.3.2 Christianity

Those who considered their Christianity an influence or reason for their work made this explicit at some point in their interview.

> Personally for me it's different from others. I have a Christian background, and I believe that we have to love each other. I believe that, as I said, all difficulties we can overcome by our Lord and He is the solution for everything. So we use verses from the Bible.[588]

> [F]or me as a Christian, [mediation] is part of the ministry of reconciliation.. that our Lord Jesus Christ asks us to do it. And we do it not for Christians, but we do it for the community in general, for Muslims, for Christians, and probably, if the future will allow us to have a relationship, with our cousins the Jews...So in a way peace work is not locked for one group or another. It is more commitment, it is more value, it is...I believe we have demand.[589]

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[587] AB.
[588] RR.
[589] ZZ.

> And they'll say you're a kind of pilgrimage to Allah. It is a
> kind of pilgrimage, a type of worship, a kind of spirituality
> that you are doing, and not in return for anything.[590]

Priests are asked to participated in mediation where their influence is seen as a positive element for the parties:

> So they are still trying their best to solve this problem, they
> are still waiting on this problem, maybe not with them
> directly but …the priests are trying to solve it. But not
> directly with them but through negotiation, they're trying to
> think what's the better solution.[591]

> Sometimes they want a father, they want a grandfather,
> sometimes they want a counsel, they call for a priest... You
> as a mediator you are playing different roles...[592]

6.3.3   Islam

While mentioned less often, the role of Islam remains important. Islam is the religion of the majority of Palestinians, but many of those Muslim mediators who mentioned their faith did so in a context of inter-religious relations. AS was one mediator who referenced elements of his faith in the form of *Hadith* throughout his interview to explain what the Prophet Muhammed had to say about a range of issues:

> There's an example from the Prophet Mohammed…when
> you try to make a decision as a judge, and you make a
> mistake, you gain from God…But if you try and you're right,

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[590] Ibid.
[591] HM.
[592] ZZ.

you get double, but either way you gain.[593]

At the end of my decisions, I always write a sentence, 'Only God knows where the right is.' There's a saying from the Prophet Mohammed that when people come and get these kinds of judges, maybe … you know how to over exaggerate more than me or have a [better] way of talking than I do, so you present your case in a more convincing way but you were actually lying. So if I do make a decision for you and you win that case, in fact [you're] buying… a plot in Hell. [594]

AT discussed why AS is a success as a *manshad* judge:

He's a good person and does everything by God's law [*Shari'a*].[595]

6.3.4 Interaction between religious groups

The main discussion of the influence of religion came in the form of describing the religious groups living in Bethlehem and how they interact, or how they should interact.

[When] I was a student of Terra Santa College, I was very close to the priests. Every day before we entered the classes, we should enter into the Church of the Nativity for praying, daily. I am Muslim, I don't pray [as a Christian], but I should be with my colleagues. All the class together![596]

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[593] AS.
[594] Ibid.
[595] AT mentioned this while present at interview with AS.
[596] AJ.

This takes a picture of Christianity and Islam here in Bethlehem. All of us, we consider the others, all of us, the same family. As you know. [ZZ] is a Christian, I am a Muslim. No difference between Christianity and Islam – especially in Bethlehem, and most of Palestine. Because we are all living together, Islam and Christianity, together for [hundreds of] years. We said for us, we all of us are Palestinian.[597]

In Bethlehem, Muslims and Christians live as one family. I have a Muslim neighbour and a Christian neighbour and we live next to each other, it's normal. And most of the time we're together and we don't separate from each other.[598]

Dealing with the humanity issues, there are constant meetings between the Muslim and Christian side, parties. We even meet priests from Jerusalem to make sure there aren't any problems that arise from religious issues.[599]

One of the things that I hate people to say, and maybe the Israelis are behind such a thing, is when people emphasize Christians and Muslims...Muslims and Christians in Bethlehem are considered as one. And even if Christians need help with such a thing they do come to me because they know I don't differentiate between any of these two sides. When people ask where you're from, you should say

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[597] Ibid.
[598] EK.
[599] Ibid.

you're from Bethlehem, not that you're Muslim or
Christian.[600]

AS mentioned that he tries to maintain the good relations between the two
religious communities by not taking cases that involve romantic relations
between them:

> I don't accept any cases where it concerns a Muslim girl
> loving a Christian boy, or vice versa, to keep the
> relationships between the two very good.[601]

6.3.5 Government and Politics

Mediation has become popular not only because it allows parties to resolve
their conflicts, but also because it remained stable while the society was in
constant change. As a result, it is a recognized process that parties rely on;
mediators are influential and are trusted, and mediation is considered a form
of voluntary national service, as well as a form of resistance against the
systems established by occupying regimes.

6.3.5.1 Sulha: a recognized process

While courts were not always a reliable source for justice, mediation,
performed by local mediators, was a process that parties could trust and that
mediators felt was necessary to secure society:

> I started off working in 1987, at the beginning of the
> uprising. My work took place because at this time, people
> were resisting against the occupation and there was much

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[600] AS.
[601] Ibid.

chaos in society and there was no official authority to govern people. So corruption started between people because there was no government, there was no authority. So we had to interfere between people to try to solve problems and bring them together instead of bringing more chaos. Since there was no authority or government and there was chaos in society, we had to do such a thing to keep society together, help it from falling apart.[602]

[S]ocially, they go to the people either they think they trust more than the judicial system, because they do not trust the judicial system. The judicial system is getting better and better, time to time, but still it's in the first steps.[603]

[S]ulha is a law here in the Arab [association]. It's much respected here on the other side by the Palestinian Authority, in the courts. So there is a general right and private right. Private right has mediators.[604]

Before we had our own authority, when the Israelis did directly rule us here in Palestine, people didn't go to the Israeli judges and courts to solve their problems, they preferred to solve it within the people instead of taking it to their side.[605]

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[602] AT.

[603] RR.

[604] Comment made by the son-in-law of AJ, also a mediator.

[605] AT speaking during the interview of AS.

6.3.5.2 Politicians as mediators

Mediators are politicians and mediators find their work to be political. Politics in the lives of mediators is common since the work was known to interfere with occupying power, but these mediators shared their political sphere of reference:

EK, a former city councilman, indicated that the Palestinian Authority has asked for his assistance in political matters in Bethlehem, but asked not to speak about those issues in detail.

AT was issued with a governance card, which allows him to be consulted on any social problems across the West Bank.

JD mentions that political theory plays into his decisions:

> As mediators, we then meet together, and we discuss these, and we tell our opinions. And we should accept this kind of criticism because we built something from it. I'm really involved with the Marxist theory, leftist movement. Sometimes I do base my solution on the [political theory].[606]

6.3.5.3 Mediation as national service

Mediation during times of resistance was a show of service to one's nation, and allowed mediators to do something non-violent and supportive during a time of uncertainty:

> I work in the PLO, and my understanding of mediation is a national concept.[607]

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[606] JD.
[607] Ibid

You see our work before it was more difficult, especially in the first intafada. I was kind of a mediator but I was.... The leadership of the Intafada had chosen some people to be... give their names and addresses to the people instead of going to the Israeli police during the first Intafada. Mostly, there was no police, no stations, no courts. So I used to work from Gaza to Jenin. My name, I was one of those people.[608]

6.3.6 Mediation as alternative to official bodies of occupation

Another means of resisting the occupation was avoiding its official modes of judiciary.

The most important thing, the most important thing— we are under occupation. We must be easier together. If we take our minds to the hard thing, we all lose. Because we all, all the Palestinians, are under occupation. They should solve their problems. If the Israelis enter their problem, it'll be very, very [difficult]. They prefer to solve their problems [by Palestinian methods].[609]

First point is that the law should have a more active role. And we should support the [Palestinian] government. [610]

6.3.7 Mediation as an alternative to court

Similar to avoiding official bodies because of the distrust over who is presiding over cases, mediators indicated that cases come to mediation as an

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[608] RR.
[609] AJ.
[610] EK.

alternative to official court proceedings, which saves clients substantial money and time.

> ...we try to solve these difficulties and misunderstandings outside of these official bodies.[611]

> Financially [people choose mediation over the courts], because most of the people cannot afford the fees of the lawyers and the fees of the courts, and the long term of the procedures of the courts. This will take, for a minor thing, 3, 4, 5, 6 years, 10 years. I have some cases from 1985 still arguing in the courts. [612]

6.4 Who mediates disputes?

Further to the foundations of ideological belief and the social institutions maintaining and supporting the ways of practice, understanding what qualifies a person to mediate disputes is also relevant. In this society, gender, age, and societal status were significant factors in the mediator role.

6.4.1 Gender and Age

All of those volunteer mediators interviewed were men older than forty years of age. Reflective of practice in the broader Middle East as described by Abu-Nimer in Chapter 3 where "conflict resolution and mediation are based on hierarchical, authoritarian procedures and structure (older people, males, and powerful officials),"[613] the mediators in Bethlehem embodied these traits identically. However, these traditional norms may be changing. As ZZ commented, he learned the process and traditions of conflict resolution from

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[611] RR.
[612] Ibid.
[613] Abu-Nimer, 2001, 131.

his elders, and has brought his children (though no mention of gender) to cases to observe. He indicated that his daughter, despite only attending cases involving 'family issues', is interested in the field of peace work. JD, following the interview, noted that in Jordan a woman was recently made a *sheikh*. He affirmed that he would adhere to the decisions made by a female *sheikh*, but indicated that many men would not.

The subject of what differentiates a male in this role and a female in this role is embedded in culturally constructed gender norms and expectations. In Cheryl Rubenberg's study *Palestinian women: patriarchy and resistance in the West Bank*, she articulates the social meaning behind gender and expectation: "Gender is a culturally constructed phenomenon—a constellation of signifying practices that the sexed body learns to perform during socialization."[614] Further, Suad Joseph defined patriarchy as "the privileging of male and elder rights and the use of kinship structures, morality, and idioms to legitimate male and elder privilege."[615] Rubenberg further contributes to this discussion by describing how patriarchy and the ideology behind it establishes power for a particular group of people and establishes the social structure for all:

> It gives rise to a group of ideological principles and social relations that privilege the primacy of paternal agnates in all social, economic, and political associations. These principles, in turn, define individual identity, roles (the gendered division of labor), social practices (such as marriage patterns and the preference for sons), and obligations; they also sanction personal connections. Patriarchy is legitimized by the discourse of 'honor and shame.'

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[614] Rubenberg, Cheryl. *Palestinian Women: Patriarchy and Resistance in the West Bank.* Boulder, CO: Lynne Rienner, 2001, 33.
[615] Joseph, Suad. "Civil Society, the Public/Private, and Gender in Lebanon." In *Social Constructions of Nationalism in the Middle East*, edited by Fatma Müge Göçek. New York: State University of New York (SUNY), 2002, 174.

In Chapter 3, an account by Irani detailed the difficulty experienced by female social workers attempting to engage in problematic social situations. The society resisted the change in established cultural social structures that continued to be largely dominated by men. Within *Wi'am*, a women's group exists where types of conflict resolution approaches are discussed and practised among other skills; however, there was no discussion of any application of this training outside of the group. As a conservative society bound by the traditions established by centuries of practice, coupled by a high emphasis on religious custom, the involvement of women as mediators in Bethlehem remains nonexistent.

6.4.2   Societal Status

As put forward by Abu-Nimer, mediators in Bethlehem have an elevated social status and are influential members of the community. Successful and respected, the mediators vary in their paid employment outside of their volunteer mediation service, but include business, politics, law, education and non-governmental work. In addition, religiosity is a factor in the influence of mediators.

Two mediators (HM, EK) indicated that they owned businesses or factories. Three mediators (JD, EK, ZZ) have or continue to be involved with political work both locally and nationally. Law was the profession of two of those interviewed: RR is a lawyer and president of the Public Liberty and Human Rights in the Palestinian Bar Association, and AS is a *manshad* judge from the Bedouin community. One mediator (AB) is a retired school headmaster, who worked with children in associated community capacities such as the scouts. Another mediator (AJ) worked for the UN for many years in Bethlehem while a refugee living in a camp. RR also indicated that he works as a social worker and volunteers in a variety of charitable and co-operative societies.

AT indicated that he and ZZ found that during the first intifada, they were both called upon a great deal to help with the difficulties in their community. RR added that his name was on a list of those able to help at

anytime, anywhere. Before their involvement with their current professions, these men were asked to intervene as trusted members of society. In Rema Hammami's article "From immodesty to collaboration", she notes:

> Because of the lack of independent judiciary or police force, most internal disputes in Gaza were handled through *sulha* (mediation) between families by a respected political or religious figure. With the organization of popular committees during the intifada, much of this work has been done by activist youth (*shabab*).[616]

The significance of this is that the elder-led mediation may have become less significant than maintaining a certain amount of harmony between members of an already politically and deeply affected population.

6.4.3 Religion

As explored earlier in 6.2, religion is important to mediators as a source of inspiration, giving meaning and purpose to their work, providing a point of commonality, as well as opportunities to engage with different religious groups within society. Personally, most mediators expressed their faith in God in some way, regardless of their religious affiliation. As indicated in 6.2, most felt overwhelmingly that inter-faith relationships were vital to the Bethlehem and greater Palestinian community. One third of those interviewed indicated they are Christian, while one third indicated that they were Muslim. The remaining third did not indicate their religion, but of these, two mentioned God or inter-religious relations. The value of religion in mediation is due in part because of the conservative (and religiously influenced) society in which people live and identify with. In stark contrast to the West, Bethlehem is not secular, but multi-denominational in spirit. As a

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[616] Hammami, Rema. "From Immodesty to Collaboration: Hamas, the Women's Movement, and National Identity in the Intifada." In *Political Islam: Essays from Middle East Report*, edited by Joel Beinin and Joe Stork. Berkeley: University of California Press, 1997, 201.

result, religious background tends to be the norm in providing a moral authority as a mediator.

6.5   The effect of micro-level conflict on greater society

6.5.1   Community involvement and escalation

The conflicts experienced in Bethlehem are limited to being between Palestinians rather than between Palestinians and Israelis. Yet, conflict at the interpersonal level of society can easily involve a larger circle of families and extended relations. Many examples provided by those interviewed involved initially two parties, perhaps a married couple. In this example, when there was a conflict and the wife left the husband's home, the parents or families of that couple were immediately a part of the attempts at resolution. In another case involving an engaged couple, the parents of the bride-to-be were reluctant to marry their daughter to the man she wished. The conflict eventually involved the brothers of each family, and then grew to the extended families. The conflict is ongoing and remains unresolved.

As Rubenberg states, "Palestinians live and conceptualize their lives not as individuals but as members of a family group."[617] Additionally, Joseph illustrates two terms: relationality and connectivity, as the connections between patriarchy and kinship. Relationality is a process where socially oriented individuals are produced and "highly valued and institutionally supported."[618] Connectivity is explained as the fluid relationship where one understands his or herself "to be constituted by 'significant others,'" largely paternal relations, as an act to reinforce family solidarity.[619] In the examples provided by mediators, the parties' concern was not only about their individual satisfaction with the outcome, but the effect on their families.

6.4.2 Israeli involvement

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[617] Rubenberg, 32-33.
[618] Joseph as referenced in Rubenberg, 33.
[619] Ibid.

6.5.1.1 Imprisonment

Many mediators indicated that the benefit to mediation meant that Palestinians could avoid using institutions of the occupation: police, courts, or army. Yet the work of mediators did not go unnoticed by those forces that they sought to avoid. Indeed, four of the nine mediators had experienced imprisonment, though only one mediator indicated that he and another mediator were imprisoned as a direct result of their mediation work:[620]

> I was imprisoned for 5 years in Israeli prisons.[621]

> They said we were resistors. I spent about 6 months, but my eldest son was sentenced to eight years, the second four and a half years, and the third three years, and I six months. But believe me we are in a very good situation now.[622]

> Because of the amount of problems we were solving and the amount of people that were coming to us, we were imprisoned by the Israelis from '88-'89.[623]

6.5.1.2 Military involvement

Mediators indicated that the occupation sometimes affects where they are able to travel with their work, but that this is not considered a detriment to their work. While some were once able to travel freely to respond to conflict, in the case of RR during the first intifada, they are hampered from doing this now due to checkpoints, identity card requirements, and movement

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[620] The two remaining mediators, JD and EK, did not elaborate on the reasons given for their imprisonment beyond what was supplied in interview. The interviewer did not follow up on this point out of understanding of the sensitive nature of the subject, but also realising that those subject to detention are not always provided with a charge by the police or army.

[621] JD.

[622] EK.

[623] AT. Note: 'We' refers to AT and ZZ.

restrictions. Others commented that the Israeli authorities notice their work, and that they are made aware that their work is being monitored.

> The occupation doesn't affect my work. My tent is opposite
> a military spot of the Israeli army. A cousin of mine went
> to...get an American ID card. And so the Israelis there told
> him that he should come in to get interviewed, they wanted
> to ask him a couple of questions. They asked, "What's your
> name and where are you from?" and he told them, "You
> have the ID card." When they found out who he is related
> to me, they told him that they highly respected me and that
> I am helping them to solve lots of problems in the C area.[624]

> It just affects us from going, say if there's a problem...with
> transportation. It doesn't affect me...[625]

Further to threats to the mediator, the citizens of Bethlehem also feel this pressure. Aside from the anxiety caused by erratic home demolitions, high unemployment, water shortages, movement restrictions, and building restrictions, the freedom of Israeli military to enter into Bethlehem at any time remains a worrisome fact of life. One mediator described

> As you've noticed, they [the Israeli Defence Forces] tend to
> come into Bethlehem at any time they want, even midnight
> or after midnight. And they arrest people who do not deal
> with anything: no politics, no military, nothing. Only to send

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[624] AS. Note: Area C refers to an element of the Oslo accords that describes a geographic area, which is under Israeli civil and security control. For one map that illustrates this administrative and security division, see Younan, Michael. "Map 3: Defining the Palestinian Bantustan Matrix Element 1 - West Bank Areas A, B and C." PalMap - Good Shepherd Engineering & Computing, April 2005. http://www.icahd.org/?page_id=76.
[625] HM.

the message, 'We are here.' This is troubling to a lot of

people.[626]

6.6   The effect of the larger, protracted conflict on the

understanding and treatment of conflict at the micro-level

The ways in which the society of Bethlehem is affected by the engaged in a
larger, protracted conflict with Israel are numerous. Specifically, how the
society is affected in its understanding and treatment of conflict under these
conditions can be described in broad terms of the goal of bringing unity,
focusing on religion, and being aware of topics that are directly related to the
ongoing conflict.

Firstly, the mediators discussed how mediation brings unity in the face of
the larger conflict. Similar to the points raised in 6.1 (Views of Human Nature,
Conflict as a crisis in relationships), mediation has a special quality in
Bethlehem as being a force for creating stability and unity locally in a region
where many feel that the fragmentation of the community at the micro-level
would benefit the occupation or larger conflict. Conflict is seen as a threat to
the larger unity of Palestinians in the face of occupation, and best dealt with
by referring back to the greater struggle.

Secondly, as described in 6.2.2, religion is a relevant reference point for
many in this region. A unifying factor, a mediator who shares the faith of the
parties can use religious texts and messages to reinforce the shared
understanding behind social and religious expectations in an area where
conservative adherence is the norm. Beyond this, the situation of Christians,
for example, is a case of mass emigration.[627] In 2004, the UN reported, "since
September 2000, 9.3 per cent of Bethlehem's Christian population has
migrated from the city. This wave of migration is altering the demographic
composition of Bethlehem and destroying the cultural, ethnic and religious

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[626] EK.

[627] Reuters."FACTBOX - Christians in Israel, West Bank and Gaza" 10 May 2009, accessed 22
August 2009. http://uk.reuters.com/article/idUKTRE5491FH20090510.

diversity that have traditionally characterized this holy city."[628] While mediators did not comment on this exodus specifically, the situation of emigration presumably affects the way in which conflict is approached as a group because of the unifying minority element.

Lastly, the conflict at the macro-level shapes the reaction to conflicts at the micro-level, especially in issues where the Occupation has a direct effect. Property, land, relations with Israeli settlers and settlements, and interactions with the Israeli military will draw different reactions than issues not related to the conflict. Many mediators, as indicated before, have used the fact that they are under occupation to unify the parties against a common enemy:

> I use the circumstances that we are living in under Occupation. This will unite people more together, and will help to solve certain criteria of difficulties, especially concerning land, property and so on, which is threatened by Occupation, settlers, settlements and so on.[629]

The situation under Occupation is central to the daily lives of those living within this society. A general summary of the number of ways the larger conflict affects the way that people within this society understand and respond to conflict is not possible with the limited information provided. It is understood, however, that the existence of *Wi'am* is a direct result of necessity during a time of recent violence and uncertainty, using a long-established mode of conflict resolution that is engrained in the culture and trusted by the people. Its popularity throughout the current crisis demonstrates the value placed on community, tradition, and trusted members of society.

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[628] United Nations General Assembly, Tenth emergency special session, Agenda item 5: "Illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory". Accessed 22 August 2009.
http://unispal.un.org/UNISPAL.NSF/0/94BC0B85645A6F0885256F800079D9E5.
[629] RR.

Conclusion

This chapter has explored the initial analysis of mediator interview responses on conflict ideology. Through the use of participant responses to the interview questions, the theory questions were addressed. The underlying ideological framework of mediators was based on views of human nature, conflict, productive conflict, destructive conflict and social institutions. The societal influences of religion, government and politics were considered as additional elements of the *sulha* practice. Gender and age, societal status and religion were discussed as elements of deciding who mediates disputes and why. Lastly, the effect of micro-level conflicts within the community upon the larger, protracted conflict with Israel, such as escalation, imprisonment and military involvement, as well as the effect of the Occupation and ongoing conflict with Israel upon micro-level conflicts within the community, such as a focus on unity, the value of religion, and life under Occupation, were detailed. Ultimately, there were a range of answers given to interview questions, and yet responses formed patterns that created an ideological view of conflict resolution practice within this context.

The next chapter will consider the ideology and practice of mediation in Bethlehem, as discussed here, in comparison with the Transformative Mediation Framework to address the central research questions of whether TMF is relevant, and important distinctions between each model's theory and practice.

7 Chapter 7: Central Research Question Analysis: Considering the ideology and practice of mediation in Bethlehem in comparison with the Transformative Mediation Framework

Introduction

In the previous chapter, the responses from mediators in Bethlehem were used to articulate the range of beliefs in the local mediation practice that supported a working theory of their model of conflict resolution. In this chapter, the analysis will be expanded to discuss the impact of this working theory and its relevance to the Transformative model. First, the concept of ideology is revisited with reflection of the key points discussed in Chapter 2, as well as a discussion on the local ideology of mediators in Bethlehem. Second, the third party role as described by both Bethlehem mediators and the literature will be detailed and comparisons will be drawn with the third party role in TMF. Third, the specific intervention practices that are central to mediation work within the Bethlehem context will be explored, and contrasted with those in TMF. Fourth, the Bethlehem Story of mediation is compiled from the research completed as well as the literature previously mentioned in Chapter 2 and Chapter 3. The distinctions between the Bethlehem Story, which is informed by the Stories of Social Justice and Harmony, and the Transformation Story are considered. Finally, features and possibilities between the Bethlehem *sulha* model of mediation and transformative practice will be articulated through the review of the Central Research Questions.

The discussion of mediator ideology, the expectations of the third party role, the local story of mediation and the specific interventions within this context are used to explain the central characteristics of the model adopted by mediators affiliated with *Wi'am*. TMF has identified mediator ideology as a key rationale behind practice. The relevance of TMF within this

context will be discussed by exploring whether the ideologies of mediators affiliated with *Wi'am* align with existing Western mediator ideologies articulated by Bush and Folger, or with a decidedly local worldview. Further, the use of mediation stories assists in distinguishing the values and purposes of mediation as articulated across a range of practitioners. Within the context of Bethlehem, the mediators of *Wi'am* told particular stories about their work, which underlined the reasoning for their roles, the rationale of the model, and the cultural values that it promoted. As articulated in Chapter 1, this structure of argument has been used by Bush and Folger in the past, and has repeatedly provided a clear analysis. For this reason, mediator ideology, the third party role, specific intervention processes and mediation stories are used as a way to explain the characteristics of the model adopted by mediators of *Wi'am*.

7.1 Ideology

The question of whether the Transformative Mediation Framework would provide a useful frame of reference within this Palestinian context is subject to a number of considerations. This section will examine the ideology behind the work that mediators in Bethlehem engage in, and also consider the differences between the ideology of those mediators in Bethlehem with that of the Relational ideology of TMF.

Chapter 2 discussed how worldviews or ideologies are the ways in which human beings interpret and understand human nature and the surrounding world. In relation to mediation, how mediators view, utilize, and interact in conflict is dependent upon how they understand and make sense of the world at large. Therefore, mediator ideology is a natural starting point when discussing the relevance of TMF in a non-Western context. The beliefs that mediators have about conflict, those in conflict, and how best to resolve it are drawn from expectations on how the conflict interaction should occur and why. Ideological perspectives create these expectations, which are informed by deeply held cultural values that are rarely scrutinized. Bush and Folger provide a thorough overview of the ideological foundations of the

Western practices of Problem-Solving and Transformative mediation, as well as the lesser-discussed harmony model, which in turn underscore the rationale and purpose for particular mediation practice. These values of satisfaction, transformation, and harmony formed and supported understanding the world in terms of Individualism, Relational and Organic ideologies, accordingly. Each of these ideologies then informs intervention strategies and overall practice: Problem-Solving, Transformative, and Harmony mediation practices. The continued use of particular models and ideologies are reinforced through the chain of values, ideology and practice. The next section will discuss the underlying values behind the ideology of mediators in Bethlehem based upon the material gained in field research as well as the supporting literature.

7.1.1 The Roots of Organic Ideology within Bethlehem

The Bethlehem mediators described their views about conflict and human nature in ways that were articulated in Chapter 6. The origins of these views come from (a) core values within the collective society in which mediators practice, namely honour, social status, dignity, and religious beliefs. In addition, a central theme that mediators described was the effect that the long-standing occupation has had on the population, and the need for Palestinian communities to remain unified against the threat of fragmentation under occupation. The general influences also include the structure of society as (b) a collectivist community committed to social justice, and particularly one that feels under threat. ZZ captured this sentiment with the simple statement, "Abnormal conditions create abnormal relationships."[630] While mediators described parties who are frustrated and easily angered with the lack of movement, employment, or activities, many mediators also stated that the situation in Bethlehem is made more complex with the trauma within the community from the ongoing conflict.

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[630] ZZ.

7.1.1.1 Societal values

The community of Bethlehem, as well as the broader Palestinian collective, is secured despite this uncertainty through a system of social norms and customs. "These social codes are utilized to evaluate an individual's status, therefore they operate as a pressuring tool to reach and implement an agreement between two families."[631] Palestinian society displays elements of what Lang refers to as *egalitarian discourse* through an understanding that men are equal, though there is the seemingly contradictory reality that *sharaf* also creates a hierarchy or authority among men.[632] While every man has *sharaf* and feels as if he is worthy of such respect, there is the sense that a man can have more or less of *sharaf* depending upon how favourably or unfavourably he is viewed by other men in society.

The values within the society are emphasized throughout the process: "Even if a dispute is over scarce resources (such as money or debts, or land) values such as 'honor,' 'shame,' 'dignity,' 'social status,' and 'religious beliefs' are at stake."[633] In addition to these societal values, Bethlehem mediators also indicated the weight attributed to the stability of social order, as well as the added value of unity in the face of the Occupation particularly between neighbours, political foes, and Christian and Muslim sections of society. Many also articulated the religious basis for their work, citing that this is part of the "ministry of reconciliation."[634] The underlying values of mentioned by Abu-Nimer, including social order, honour, dignity and status were referenced in the interviews and are highlighted in a few examples:

> This treatment was holistic; the man, his wife, his children, his parents, and his friends were all involved in his recuperation. As a result, the man has become a highly respected man in society.[635]

> [The mediator] devotes personal effort, time and finances in order to see the family reunified.[636]

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[631] Abu-Nimer, 1996, 46.
[632] Lang, 2005, 103.
[633] Ibid.
[634] ZZ.
[635] AT.
[636] RR.

> If one of the parties is good and the second is bad, you
> press upon the good man to solve the problem. 'You are [a]
> very good man, you must help. If there is a God... you will
> take [your right] from God. Your right, you will take it from
> God. The cash or the money is no problem, yanni.' And they
> shake hands.[637]

Sulha mediation practice pre-dates Islam and not considered a Christian form of conflict resolution; it is an Arab form of mediation that has been successfully practiced in the area for centuries, despite occupations and conquests. The influence of religious values is an accepted and normal aspect of society. Despite *sulha* not being an explicit religious practice, the use of the process has adapted and evolved to give weight to this element of society. The use of verses of the Bible and the *Qur'an* is a strategy discussed by some mediators, alongside secular traditions that promote reunification and renewed relationships following conflict. Lang confirms through her experience with *jaha* men that religious faith remains a vital element to the *sulha* process, where the men "uniformly expressed a religious sensibility about their role."[638] Lang suggests that the religious nature of the process and the eagerness for *sulha* practitioners to promote their faith as a motivation for involvement is one way in which the highly notable men that make up the *jaha* can demonstrate that their "power is less threatening to others' sense of equality. Their power is founded on a quality in which all men are supposed to aspire."[639]

7.1.1.2 Collectivism and Social Justice

There are characteristics to the ideology of the *sulha* model that are commonly associated with what Bush and Folger describe as Organic ideology. In this section, the roots of this Organic ideology will be considered through the collectivist nature of the society, and the special value placed upon social justice.

In Chapter 3, Triandis described Individualism as a social pattern where individuals see themselves as relatively independent from member

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[637] AJ.
[638] Lang, 2005, 116.
[639] Ibid, 117.

groups, are motivated mainly by their own preferences and interests, place more importance on personal goals over collective ones, and tend to make decisions based on the benefits to the individual. Collectivism, on the other hand, involves closely-knit individuals that perceive themselves as part of a collective in which they are members, adhere to social norms and duties, place importance on collective goals over personal ones, and emphasise their overall connectedness with the group.

Further, as discussed in Chapter 3, Glen's distinction on two types of culture, Associative and Abstractive, gives a strong support for why mediators in Bethlehem have the perspectives that they described about conflict, those involved, and its resolution.[640] Mediators have illustrated that within Bethlehem, there is a tradition of *Associative Culture* rather than *Abstractive Culture* at work in this context. *Associative Culture* includes a reliance on a particular way of thinking, the awareness of obligations to others, the value of collectivism, dependency on others in the immediate situation of conflict, and communication that is layered in contextual clues. Mediators discussed *sulha* as a traditional and distinctive process, where they are obligated to assist, and where parties are urged to participate for the benefit of the community. The use of mediators and the *sulha* process is common, and the mediators take on the case as respected men in the community who work on behalf of the party to resolve the dispute. The process is deeply a part of the Palestinian and wider Arab experience, and while predating Islam, religious and cultural elements (e.g. referring to Scripture, including food and drink into the course of events) are rooted in culture and the meanings of which may require some contextual clues.

Folger connects this collectivism with ideological premises of conflict within an Organic ideology in a harmony approach:

> When conflict occurs among individuals or subgroups within a larger community of social institution, it is viewed as a potential disruption or challenge to the norms, behavioral expectations, or social positions they hold. Conflict inherently threatens the network of relationships that

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[640] Glen, E.S. as cited in Folger, Poole & Stutman, 2009, 53.

constitute the larger community because it raises the
spectre that parties may not be able to work through their
differences to a point where their relationship or their
relationship with the group as a whole remain intact. The
possibility that a relationship will end or the connection to
the group will terminate is inherently threatening to the
strength of the community as a whole... [Conflict] is seen as
a potential threat to social stability and the preservation of
community.[641]

In interviews, mediators also expressed this broader connection to the
community when conflict occurs and the need and purpose of the *sulha*
process to reflect the greater threat of the conflict upon society. There is a
consciousness that their role must be done with great care so as to not
exacerbate the conflict. The community can be affected by the conflict in
situations where injured families decide to restore their *sharaf* through
violent retribution over non-violent reconciliation.

> I try to be as conscious as possible, certainly in these kinds
> of situations because any small mistake could cost even a
> life lost or people killing each other. It would have a huge
> impact.[642]

> Mediators "were able to resolve the conflict and respond to
> the needs of the local community...."[643]

> [W]hen a party is not willing to enter into the conversation,
> [mediators] try to maximize their losses and instead focus
> on the social relationships of the community.[644]

Relating this concept of social order as stability with conflict ideology
in a Bethlehem context, the interviewed mediators described "group norms
that promote social harmony."[645] Indeed, Zoughbi states the following when
referring to the Palestinian culture: "We are a community-based society.
Although there are more trends for individualism, we still believe that the
family is a viable socioeconomic unit."[646] While there may be some
movement toward a Western individualist value, the reality of the majority is

[641] Folger, 2008, 828.
[642] AT.
[643] ZZ.
[644] Ibid.
[645] Hook et al., 827.
[646] Zoughbi, 2002, 156.

a community-based society with great emphasis on history, religion, and tradition.

A reoccurring theme within the interviews is the use of *sulha* and mediation as a method of addressing injustice, and as a means of resisting instruments of the Occupation, such as Israeli bodies, which would serve to undermine Palestinian society as a whole. Mediators described the occupation as an underlying factor in many disputes, and a common threat for all in the community. When conflict arises, some mediators indicated that they reframe conflicts in terms of the Occupation to help parties solve problems amongst themselves rather than using any Israeli supported system. Parties should use mediation because it acts to restore relationships and supports a strong and resilient Palestinian society in the face of threats to divide the community. As a result, social justice matters can be addressed through creative means by local mediators with connections to various bodies in the community to strengthen solutions built upon fairness and restorative justice.

> Occupation, overall, is a universal problem of the Palestinian people, and one that has resulted in…"forty years of side effects."[647]

> The most important thing, the most important thing— we are under occupation. We must be easier together. If we take our minds to the hard thing, we all lose. Because we all, all the Palestinians, are under occupation. [Palestinians in conflict] should solve their problems. If the Israelis enter their problem, it'll be very, very [difficult]. [Palestinians] prefer to solve their problems [through *sulha*].[648]

> [Mediation] should also work in bringing ties together [that] is essential in society. People need to take a stand and [use mediation to strengthen ties]. Since we're occupied, we don't believe that under occupation that there is trust between the people and the courts [which were at that time were connected to the Israeli justice system]. People didn't go to such places because in their mind their mentality tells them that when you go to such courts you're actually going to the occupation for help. That wasn't

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[647] EK.
[648] AJ.

something in the Palestinian mentality. That's why local
characters and people took a step in and people went to
them. As a Palestinian society, we're connected to the Arab
society, and the mentality of this kind of society is
connected to the family and extended family – it's like the
Bedouin type.[649]

Therefore, local, collective culture is undoubtedly a crucial ideological

element to theory and practice of mediation in Bethlehem. The local method

that follows Bauman's human praxis, of 'turning chaos into order,' is more

than a traditional practice passed on for hundreds of years. The *sulha* process

ensures that the cultural identity of the group is preserved through the

practice, in addition to resolving the immediate dispute. Most respondents to

Lang's study on *sulha* "consider this pre-Islamic custom a positive tradition

that bolsters Palestinian identity [within Arab-Israeli communities] in Israel by

unifying and incorporating Arabs of various religious backgrounds and

ethnicities."[650] As stated in Coleman and Lowe, when looking at the collective

identity of a group, it is critical to:

> ...contextualize identity development processes and
> consider how political and social influences shape our sense
> of collective identity... Our collective identities serve many
> important symbolic, practical, affective, and normative
> functions. They can also serve practical concerns, such as
> constituting a justification for group claims to land and
> resources and providing a focus for maintaining a distinctive
> culture and way of life.[651]

The collective memory and experience of several occupations and regime

changes has meant that the social construction of reality in this context will

inevitably differ from constructions of realities elsewhere, and will likely

continue to change in itself. Social conditions such as the state of economy,

history, current relations with occupation and colonization, and instability

continue to drive mediation practice in Bethlehem as a method that

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[649] JD.

[650] Lang, 2002, 53.

[651] Coleman, Peter T. and J. Krister Lowe. "Conflict, Identity, and Resilience: Negotiating
Collective Identities within the Israeli and Palestinian Diasporas." *Conflict Resolution
Quarterly* 24, no. 4 (2007), 380.

counteracts the volatility continually experienced by the community to reinforce smooth relationships.

7.1.2 The differences between Organic and Relational Ideology

In Chapter 2, an overview was provided for two Western mediation practices of Problem-Solving and TMF as well as the Harmony approach. The Individualist, Relational and Organic ideologies as well as the common practices of each of these approaches were presented. Following the illustration of how Organic ideology is rooted in Bethlehem society, this section will outline features that differ between the Organic ideology demonstrated through interviews and literature and the Relational ideology that serves as the foundation for the transformative approach. The key differences relate to the values underlying each ideology as well as the cultural context in which each develops.

7.1.2.1 Underlying values

Values and norms inform and develop the articulation of ideology. In the case of Bethlehem, the mediators associated with *Wi'am* rely upon societal values of honour, shame, dignity, social status, and religious values to shape their perspectives on the world and how they communicate from within it. Within a cultural context of occupied territory, the ideology is influenced by the values of self-preservation as well as steadfastness (*sumud*). Conflict is construed as dangerous, because it can rip the community apart in selfish, violent acts. Peaceful relations are treated as the norm, so small issues are seen as important to act upon before becoming a risk to envelop the larger community.

In contrast, TMF is committed to addressing conflict from the perspective that it is a crisis in human interaction between people who are weaker and more self-absorbed as a result of the negative conflict interaction. The value is transformation through compassionate strength, where individuals can gain a sense of strength for oneself while also building

a capacity for responsiveness toward others.[652] Individuals are simultaneously separate, autonomous, self-interested as well as sensitive, caring, and responsive to others. By balancing these qualities through a mediation process, mediators aim for the transformation of the parties' conflict interaction through greater clarity of one's own positions as well as the perceptions of the other. The transformative values consider the potential to grow with greater clarity and strength for self and other, as well as acknowledging a risk that individuals can retreat. Therefore, the benefit of working in a relational capacity is the promotion of individual capacity for agency and connection to the extent that the goals of individual satisfaction and collective welfare are fulfilled.[653]

7.1.3 Cultural Context

According to Bush and Folger, Coon and Kemmelmeier, and Triandis and Glen, cultural expectations and realities are dependent upon ideologies or ways of interpreting the world to reinforce or support this view. From a particular ideology, the resulting mediation practice reinforces the existing culture. Based on the literature and interview material, the Bethlehem mediators have described collectivist and associative cultural frames, which differ from the cultural references of either the Individualist or Relational ideologies. The process of *sulha* is reflective of the Organic ideology rooted in the culture where the qualities of human nature include "the capacity to be aware of participating in something larger than self, to feel connected to others and to a common entity, and furthermore the capacity for subjugating the needs of self to the needs of the whole, for self-sacrifice and service."[654] As Bush and Folger articulate, the Organic ideology centres on interconnectedness and interdependence. The collectivist nature sees the benefit of interconnectedness as promoting dedication, commitment, and moves parties away from selfishness.[655]

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[652] Bush & Folger, 1994, 242.
[653] Ibid, 247.
[654] Ibid, 240.
[655] Ibid, 245.

In the West, the Abstractive Culture has strongly promoted a similarly guided Individualist ideology. The processes that have stemmed from this culture and its ideology are reflective of the interpretation of the rights of the individual over a group commitment – mediation in the United States for example tends to favour problem-solving practice, where a commitment to individual goals and interests can be openly discussed. Bush and Folger comment that the Individualist ideology promotes the inverse of the Organic, collectivist ideology. While the Organic ideology considers selfishness to be a risk of individuality, the Individualist ideology sees autonomy as expressing individual strength and self-reliance. Focusing on connection can be a risk because it can demonstrate weakness and dependency.[656]

Relational ideology is rooted in an Abstractive culture, promoting both the individual and the connection they share in society. The process that occurs from this reflects the value of the individuals involved and their interaction. Transformative mediation practice evolves from within Abstractive culture with Relational ideology, where there is commitment to the agency of the individual parties in order to obtain greater clarity and potential recognition. Rather than seeing autonomy and connection as diametrically opposed as in Individualism and Organic ideology, Relational ideology considers that there is greater potential strength and a truer picture of human nature when integrating both.

7.2   The Third Party Role

The role of the third party intervening in conflict depends largely on the mandate that the intervener has been given by society and the parties. The third party mandate as described in Chapter 2 articulates that the role and influence of the third party is contingent on three key elements: (1) the relationship that the third party shares with the party or parties (and whether the intervener is an insider to the parties or an outsider), (2) whether the third party has an interest in the outcome of the dispute and what subsequent process and content control the third party has in the resolution

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[656] Ibid.

process, and (3) the size and assumed formality of the third party. This section will examine the nature of the third party role in Bethlehem, and then contrast this with the understanding of the third party role from a TMF perspective.

7.2.1   Expectations of the Third Party in Bethlehem

In the interviews with mediators in Bethlehem, the perspectives on the established expectations and understanding of what the third party can and should provide in a *sulha* process were consistent. Mediators saw their role as central and decisive. In most cases, mediators saw that parties wanted their involvement to result in a fair, just solution that would restore friendly relations. Mediators also have societal expectations that their work is considered legitimate. Because of the danger of escalating conflict, mediators are always 'on call' and are expected to respond to the needs of the community where necessary, for as long as necessary. "This conception of burden and sacrifice is both a statement of fact and an ideological justification for the greater respect and authority these men enjoy in a society with deep egalitarian self-conception," notes Lang.[657] The role is undoubtedly demanding, but Lang asserts that members of *jaha must* discuss their work in this way as a way to maintain that their role is not self-serving and is indeed altruistic. "If their character is viewed as selfless, the possibility that the jaha elders are doing *sulha* for some other, individualistic reasons, such as to advance their own power, remains unapparent and unexpressed."[658]

Therefore, in Bethlehem, the nature of the third party role included (1) the participation of a knowledgeable cultural insider-partial third party, who knows the parties and their context personally, (2) a mediator with a respected voice in the community, (3) some elements of persuasion and influence in reaching settlement.

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[657] Lang, 2005, 118.
[658] Ibid, 119.

7.2.1.1 The 'Insider-Partial' Mediator

The community recognises the level of respect for a mediator by considering him as an intervener and requesting his involvement to resolve the dispute. As previously discussed, religious faith, commercial accomplishment, and political esteem are key attributes to the making of mediators in Bethlehem, and are demonstrative of some of the main community values. Parties request a mediator's involvement in their case because they are aware of the mediator's experience, successes, and personal value in the community. Mediators indicated that they took on a range of cases and rarely refused to assist, except in the situation of parties refusing their services. The belief is that most disputes, if not all, can be resolved through *sulha* – even those involving domestic violence or murder.

Mediators are also requested to intervene because of their knowledge and personal relationships with parties involved. Mediators may know the past history of the parties, as well as current circumstances (for example, instances of debt, ongoing health issues, unemployment, domestic complaints, and addiction). Mediators are trusted with these intimate details because they are notable members of the community. They are not usually members of either party's extended family. Therefore, the mediator is not expected to be neutral, necessarily. In instances of injustice, mediators indicated that the rights of the parties prevailed over a need for impartiality.

7.2.1.2 A Respected Voice

The *jaha* holds an elevated status in society not only in terms of their personal qualities but their standing in the community. "The reputation that they enjoy in the community forms the basic element of their legitimacy to mediate in a case."[659] The act of 'taking on responsibility' requires an understanding between both party and mediator; the mediator agrees to intervene and the party consents to the mediator having substantial process and content control so that the offending party may be protected from retaliation from the victim's family once a *hudne* is secured.

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[659] Rohne, 189-190.

Those who are qualified to become *sulha* men are considered from tradition, notably respected, older men. "Unlike modern mediation," an Arab mediator in a multi-ethnic Israeli city explained, *sulha* "is a complicated process which cannot be performed by just anyone."[660] One facet, as Abu-Nimer explains, is age: "Age is a very important source of respect in traditional Arab society, and provides legitimacy and credibility for intervention in social conflict, regardless of the nature of the dispute."[661]

The topic of patriarchy was explored in Chapter 6, but further to this, Abu-Nimer adds that in a Middle Eastern context, "third parties have high community status and considerable power . . . Since the third party members in the Middle East case are leaders who live in the community and region, they bring a considerable knowledge of events, the character of the dispute, and the disputants, and they are involved in the day-to-day life of the disputants."[662] Further, "The third party's credibility in the Middle Eastern case is based on kinship connections, political position, religious merit, previous experience, and knowledge of customs and community."[663] Lastly, "In order to be effective and accepted by the parties, the process in the Middle Eastern case had to respond to the values and norms of the society, (honor, shame, dignity, religious and patriarchal identity)."[664]

7.2.1.3 Power of Persuasion

Due to their elevated role in society in religious, business, political and civic roles, mediators are understandably influential in conflict and within the community generally. When asked to intervene, the role of the mediator is understood and the parties and families are expected to enter a reconciliatory process. On the part of the parties, "it is embarrassing for the victim's family not to acquiesce to the requests of these prestigious men, and elders, including those of a victim's family, feel that they ought to yield to the jaha's requests out of respect for them. The entire *sulha* system is predicated

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[660] An Arab mediator as cited in Li-On, Lee. "The Politics of Community Mediation " *Conflict Resolution Quarterly* 26, no. 4 (Summer 2009), 467.
[661] Abu-Nimer, 2003, 43.
[662] Ibid, 47.
[663] Ibid, 48
[664] Ibid.

on this hierarchical logic of sharaf."[665] Within a collectivist Palestinian
context, the third party mandate relies on substantial process and content
control; mediators hold considerable power in their interventions and their
considerable involvement is a key expectation of their role.

> It's kind of a social norm between the Palestinian people.
> They say 'wija' – "look at my face". It's like when two
> people have a problem, I'll step in and say, "Ok it's on me,
> I'll solve it" and the two sides should step down because of
> me.[666]

To ensure the success of the process, the involvement of more than
one mediator and the use of a *jaha* is common, especially where the severity
of the case may require either an increased number of mediators or the
involvement of those who are of high political or religious ranking. Mediators
do not work independently. Meetings between practising mediators ensure
that cases are understood thoroughly, all options are explored, and a strong
and fair decision is reached.

Abu-Nimer also maintains that within the context of a Palestinian
conflict, mediators are "often directive, and [advocate] for a settlement that
accords with notions of justice that are accepted in their societies."[667]
Settlement options may be created through cooperation with parties outside
of the immediate *sulha* process in order to find the best options for the
parties. Mediation in Bethlehem is all encompassing and attempts to be
holistic for parties, and not limited to the single issue at hand. As ZZ
explained, parties seek mediators who genuinely listen to their concerns and
who might have the ability to assist in some way. For some, listening is the
only tool necessary, while others may receive collaborative assistance from
mediators alongside drug rehabilitation programmes, mental health facilities,
or employment. In this way, mediators in Bethlehem relate the needs of the
individual with both the effects upon society as well as the ability of the

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[665] Lang, 2005, 93. Note: "Sharaf, in Arab society, is a pervasive code of beliefs and values
manifested throughout interlocking moral, political, economic, and kinship systems of
meanings; it is a total social fact." Lang, 2005, 48, emphasis in original.
[666] JD.
[667] Abu-Nimer, 2003, 48.

community to assist in supporting the individual. This process, as mentioned by the mediators, includes family members, neighbours and friends as they provide both support and perspectives in the issue.

Persuasion is an element in success. The community expects the process to succeed, and the role of honour (*sharaf*) plays an integral part in ensuring party compliance, during and concluding the process. As Lang and Bethlehem third parties have discussed, the mediators do not physically coerce parties or have an authoritative position to impose rulings, and the system is based on the respect held for the mediator's *sharaf* in intervening in the case. In some cases, the strength and number of a third party's family can provide an amount of distinct protection from any opposition.[668] In other cases, the protection comes naturally from the investment of time and effort by prestigious men visiting family homes and working on a solution that creates a weight to agreeing to the terms of a settlement.

A distinction between the culture in Bethlehem and the West is the effect of the social connectivity of the community, as explained in 7.1 Ideology as well as in the Social Justice Story. *Sulha* is one process by which the underlying ideals in Palestinian society, including cooperation, negotiation, honour, and compromise, can be expressed in a non-violent, but perhaps persuasive fashion.[669] The emphasis in this arrangement is the societal pressure placed on the parties by the cultural expectations of the mediators, religious persons, and their extended families. Solutions are not necessarily those that the parties have devised on their own, but usually heavily reliant on mediator interference. Abu-Nimer strongly supports this perspective: "In the Middle Eastern case, immediate intervention takes place even without the request of the parties. The emphasis on social relations requires a quick and spontaneous act of intervention . . . The third party... often goes between the parties . . . If a settlement includes material compensation . . . the third party is responsible for delivering and arranging the payments in a social public ritual. In general, settlements are declared

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[668] As mentioned by AS.
[669] Ideas as suggested by Lang, 2002, 54.

and agreed upon in a public forum."[670,671]

7.2.2   Distinctions Between the Third Party Role in TMF and *Sulha*

The central elements of the third party in a *sulha* process have evident

distinctions from the role of the third party in transformative practice, based

heavily on the underlying ideology of each established practice. The first

distinction relates to the relationship of the third party with the parties.

Secondly, the amplification or the constriction of party 'voice' during the

process is another marked difference between the roles of the third party in

each framework. Lastly, the third party mandate in each approach relating to

the interest of the third party in the outcome and process and content

controls result in either an influence over or facilitation of choice during the

process. Each of these differences relate to the values and ideology informing

practice within the respective society.

7.2.2.1 An Insider or Outsider?

The role of an insider partial or outsider neutral third party is one central

difference in the expectation of the third party role. In Western practice,

whether the transformative or another approach is used, most mediators are

expected to be external to the parties involved. This reassures neutrality,

impartiality and relates to the values of Individualism, including individuality,

rights and equality. Transformative mediation is practised from an

Individualist and Abstractive culture, meaning that there is "no assumption

that the parties have to have common values that need to be preserved for

the good of the community at large."[672] The third party in TMF is not

expected by parties know the history of the dispute or those involved like in

sulha, and the onus is instead on the parties to discuss whatever is

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[670] Abu-Nimer, 2003, 47.

[671] Lang and the mediators that were interviewed would argue that unrequested intervention
is extremely rare, and could risk the *sharaf* of the *jaha* by becoming involved without the
offending party's initiation of the process.

[672] Folger, 2008, 843.

considered the relevant aspects of the dispute, their circumstances, or past history.

In contrast, the use of insider partial third parties in Bethlehem is drawn from the collective nature of society, and the broader risks that interpersonal, local conflict poses to the community. The use of the insider partial third party is seen to support a commitment to justice for parties that choose not to enter into a formal adjudicative process. The insider partial third party relates to the reverence shown to respected elders, the traditional practice based on established historical and cultural norms, and the organic/collective, Associative nature of the societal context.

With this stated, moving from one cultural and ideological framework to another can prove challenging, or at times problematic – especially if an outsider is used in intervention. Regarding outside interveners in the Middle East, Zoughbi asserts: "In any foreign country, you are always an outsider. No matter what your attitude and position regarding this conflict... you are a foreigner. And no matter what you do, no matter what you represent, no matter what your ideology, philosophy, or principles, you can be a part of the struggle, but the struggle is not yours."[673] While an outside 'neutral' third party cannot own the struggle, inside participants can and do own it. On a micro-level, Zoughbi advises that while an outsider, one should be impartial in approaching situations. "Impartiality is not neutrality, however," Zoughbi warns, "impartiality does not turn a blind eye to truth and justice."[674]

Mediators that were interviewed in this study discussed the rights and injustice that mediation is hoping to redress in their responses on what the aim of mediation is. From a Western mediation perspective, neutrality and impartiality remain unresolved theoretically.[675] Yet, most mediators would argue neutrality, describing a mediator's sense of disinterest in the outcome

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[673] Zoughbi, Zoughbi. "A View from the Middle East," in Lederach, John Paul. and Janice Moomaw Jenner (eds). *A Handbook of International Peacebuilding: Into the Eye of the Storm*. San Francisco: Jossey-Bass, 2002, 152.

[674] Ibid, 154.

[675] Authors that have debated the issues of mediator neutrality and impartiality include: (1) Taylor, Alison. "Concepts of Neutrality in Family Mediation: Contexts, Ethics, Influence." *Conflict Resolution Quarterly* 14, no. 3 (1997): 215-36. (2) McCormack, Michael A. "Confronting Social Injustice as a Mediator." *Mediation Quarterly* 14, no. 4 (Summer 1997): 293-307.

of the dispute, differs from impartiality in sense that impartiality refers to 'an even-handedness, objectivity and fairness towards the parties during the mediation process'.[676] Zoughbi's claim, echoed by the Bethlehem mediators, is that mediator impartiality should not impede justice or the rights of parties. While both parties may have been injured in a conflict, the injury each party faced may be disproportionate for the mediator to treat each party equally.

This differs significantly from Western practice and Abstractive Culture, from either an Individualist or Relational ideology. From a Palestinian and Associative Culture, the mediator is highly relied upon in the immediate aftermath of a conflict situation. The collective nature of the society requires that the group is more highly valued than an individual, and therefore the obligations one might have to the community after a conflict situation may require a mediator to ensure justice is served in a way that allows the wider community, more so than the individual, to heal. Hook *et al.* give some rationale for this, citing "collectivist cultures more often endorsed harmony-enhancing procedures, such as negotiating and complying, and less often endorsed confrontational procedures, such as threatening or accusing."[677] Mediation acts to control party behaviour and allows consideration of socially or culturally oriented choices in order to ensure community safety and promote a return to friendly relations, as well as to avoid official authorities where unnecessary.

Further, the distinction between a third party that is considered an insider or outsider brings other expectations of involvement. Third parties in Bethlehem have positions in the community, such as in religious, political, civic and commercial spheres. Their role as third parties is expected of them because of their honourable standing in society and their influence. They work purely on a volunteer basis, and in some cases, the third party can bear the burden for some of the costs for services required by the parties, such as

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[676] Boulle, L. as cited in Field, Rachel. "Neutrality and Power: Myths and Realities," published on Mediate.com, 2002. Accessed 11 January 2010.
http://www.mediate.com/articles/fieldR.cfm#12.
[677] Hook et al., 829.

transport, hospital or bail fees.[678] In addition, their involvement and attention to a case is not limited to designated appointment times, what ZZ refers to as "chronos time".

In TMF and other Western practices, the outsider neutral mediator becomes involved when approached by one or both of the parties and agrees upon appointments, payment, and release forms with all of those involved. Sliding payment scales and voluntary services are provided in some cases. However, this outside neutral status assumes that the mediator is a 'provider' of services, requiring payment. These rates are promoted as substantially less than legal fees, and are a common selling feature for mediation as an "alternative dispute resolution" option outside of the courts. The third party is any member of society who has received relevant training from an accredited body, and does not require any underlying influence or honourable status in the community.

7.2.2.2 Whose Voice is Heard?

In a *sulha* model, the third party is a central role to the process, and as such the mediator is the dominant voice. While third parties in Bethlehem articulated that their involvement begins when requested, the stages of the process – negotiating a truce (*hudne*), then an amount to hold the truce ('*atwe*), meetings with each party before an anticipated public reconciliation (*sulha*) and the restoration of face or honour (*sharaf*) – require considerable involvement and influence of the third party. The *sulha* process, unlike Western practice, is ritual-based and involves community engagement with the process. Honour in conflict is one element that may not be negotiated directly, but supported through the third party's interest and involvement in the *sulha* process.

Transformative practice, however, places the responsibility for decision-making with the parties directly. The role for the third party in a transformative process is to support parties throughout the conflict interaction by fostering each party's voice in becoming clearer about their

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[678] As mentioned in interviews with AT, RR, HM.

goals, options, and interaction with the other party. TMF considers the third party role to support both parties in a facilitative way that encourages party expression of choices "based on the greatest understanding of themselves and each other."[679] Rather than follow a ritual-based pattern, the third party assists in a manner that is party-driven. Parties own and construct the process, content, and outcomes based on the third party's belief that the parties have the capacity to decide the options that are most relevant and productive in their context.

Ultimately, the parties' voice is considered paramount because the conflict is theirs to engage with – inside and outside of the room, as well as before, during and after the mediation process. The third party is not expected to be a member of a community or group that requires their input for the process to have credence or a community-assured resolution. From this perspective, parties have the choice to offer apologies, seek or grant forgiveness if they decide this is appropriate, but unlike *sulha* these are not required as part of a successful mediation effort. In a *sulha* model, forgiveness and apologies are both sought out and expected in restoring the community to what is considered the natural state of cooperation and harmony. The parties, not the *sulha* mediator, offer forgiveness or apologies; the *sulha* process requires these in order for the process to be seen as successful.

7.2.2.3 Mediator Influence or Mediator Facilitation

The expectation of whether a third party should use some element of persuasion or act in a facilitative manner is a clear distinction between the two frameworks. Each approach relates to the values and the underlying goals of each context. The third party in a *sulha* process is inherently influential because of their role as respected members, and likely elders, in their community. The process of the highly respected third party showing the offended parties deep respect (*reverse musayara*, as described by Lang) is one such way of influencing parties in a way intended to encourage

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[679] Folger, 2008, 844.

participation in resolving the conflict. Another is the act of 'taking on responsibility' of the parties is another way that the third party demonstrates their influence; the parties should trust that the third party's involvement is in their best interest once the parties have agreed to take part in the process. The *jaha* may pressurize the parties into particular options, or may enlist the assistance of local authorities such as religious leaders or police to provide either moral guidance to parties or a compelling warning that to not employ *sulha* would be a loss for all involved.[680] In addition, the third party will contain party conflict by encouraging conflict avoidance (including avoiding the other party) and is intended as one way to de-escalate conflict by preventing attempts to 'restore honour' by committing acts of revenge or retaliation upon the other party or their family.

In comparison, the transformative mediator does not have influence to draw from in conflicts, and would not use coercive techniques to bring parties to resolution, or to prevent the parties from ending the process or their relationship:

> The transformative process is facilitative. Within the context of mediation, third parties support the involved parties by allowing their free expression in the interaction, notably through encouraging face-to-face meetings over caucusing. Mediators are able to be 'in the room' with escalating conflict and do not contain parties' conflict interaction by encouraging parties to avoid conflict, save face, offer forgiveness, or move to common ground. Instead, the mediator is comfortable allowing the parties to explore the dimensions of difficult and divisive issues however they want to address them, even if this means that the parties question or end their relationship, fail to reach an agreement, or decide to escalate their conflict by pursing it through an adversarial process outside of mediation.[681]

The third party in the transformative process assists parties in shifts toward empowerment and recognition in order to encourage party-centred decision-making. From a transformative view, parties have the capacity to make the decisions that are meaningful and thought out for their own

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[680] These elements of seeking assistance from notables or authorities outside of the *jaha* were discussed by ZZ, AT, AB, AS.
[681] Folger, 2008, 844.

situation. The third party in TMF does not hold a role in the community that would obligate him or her to participate in such a process, and the transformative model does not quantify 'success' in terms of an agreement. *Sulha* places the onus on the third party to create a settlement that parties can agree to. To not do this may be considered a failure. Keshavjee and Whatling call this the 'historical cultural expectations by the disputants of the mediator': "It was expressed quite simply by a participant who said if having heard all the parties to the dispute, he did not deliver a settlement decisions, there was a real risk that he would be judged to have failed in his dispute resolution role, the process would not be respected."[682] As Keshavjee and Whatling note, the indigenous practice is "rooted in long-standing natural justice systems was much closer to what we would understand as arbitration."[683]

Third party influence or facilitation relates to the expectations on the third party, and perhaps more importantly on the expectations on the parties. Whereas the third party in *sulha* assumes responsibility to promote party compliance to a non-violent and non-judicial model for conflict resolution, the transformative third party is removed from influencing "any substantive or relationship outcome in the dispute."[684] Third parties in a transformative framework support "constructive changes in the quality of the parties' interaction"[685] so that the ultimate responsibility, and any risks and rewards that come with those choices, belong with the parties.

Within the context of Bethlehem, the focus on the community and relations between groups, religions, neighbours, and families shows initial promise for a high concern for self and others. However, the methods that mediators use in mediation place emphasis on process adherence, formal structure, traditions and norms, as well as strong mediator agency – all strategies that work opposite to those of TMF. While not purely

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[682] Keshavjee, Mohamed & Whatling, Tony. "Reflective Learnings from the Training Programmes of the Ismaili Muslim Conciliation and Arbitration Boards, Globally." In *5th International Conference of the World Mediation Forum*. Crans-Montana, Switzerland, 2005. Accessed 9 July 2010. http://www.iis.ac.uk/view_article.asp?ContentID=106246.
[683] Ibid, 8.
[684] Folger, 2008, 843.
[685] Ibid.

Individualistic, mediators in Bethlehem have mentioned their interest in solving a problem and attending to party needs. The assumptions of what parties want and need in conflict were largely indicative of party interests and resolving the dispute. The practice of *sulha* within the Bethlehem context is based on core assumptions that mediators hold that are specific to the culture in which it is based.

7.3 Intervention Practices

The strategies employed by third parties relate to the underlying values that the society subscribes to, as well as the role and expectations surrounding the third party. In Bethlehem, these values include norms that relate to the social and cultural realities, including the preservation of honour, the unity of the community, a sustainable harmony between families, the richness of religious teaching, the consideration of peaceful relations as the normal state of affairs, and a tradition of forgiveness and dignity.[686] Mediators in Bethlehem described a typical process which included being approached and agreeing to intervene, conducting private meetings with each party, securing the *hudne* (and if necessary the *'atwe*), investigating the dispute and negotiating between parties, meeting other mediators and consulting professionals to discuss the case, creating an agreement that is suitable and agreeable for the parties, and ultimately concluding with a public *sulha* process with all involved parties. Additional components to the process discussed in the literature include the selection of a *jaha* committee, the negotiation with parties of *jaha* members, the use of precedents in determining a solution, as well as inviting dignitaries to the *sulha* ceremony to give the agreement weight in terms of moral and religious authority.[687]

Mediators in Bethlehem discussed key actions on how they intervene in the conflict, interact with parties, and support the *sulha* process. These practices include (1) the use of private meetings during the process, (2) an emphasis on unity and commonality, (3) the importance of forgiveness and

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[686] Abu-Nimer, 1996, 44.
[687] See Pely, 2009, 85; Abu-Nimer, 1996; Lang, 90-97; Funk & Said, 2009, 155-160.

apologies, (4) employing a public closing ceremony.

7.3.1   The Use of Private Meetings

When the conflict interaction moves into an attempt to resolve the dispute through *sulha*, the *jaha* employs private meetings with each party to obtain agreements to suspend hostilities, to hear perspectives on the events and their effects, and to allow expression of emotion in a closed setting. Parties may construe face-to-face meetings as "a further antagonistic step; [in] other cases it might be perceived as a humiliating act if taken by the victim's party."[688]

A representative from the offender's family contacts a mediator to initiate the *sulha* process in order to mend community relations and to protect the offending family from retribution from the victim's family. The initiation of the process by the offender indicates their acknowledgement of a fault committed. Following a meeting with the offending family, the *jaha* visits the home of the injured or bereaving family to seek *hudne*. This initial meeting serves as an invitation to the *sulha* process, and where necessary may include notable members of the community outside the *jaha* to persuade the victim's family to enter into a ceasefire agreement, and later to accept compensation from the offending party rather than seek violent revenge.[689] More so, the private meetings used to secure the *hudne* are required to avoid any further loss of face in the efforts to create an atmosphere that parties are willing to work towards reconciliation and restoration of social harmony: "The need for a *hudna* is critical, for without a truce the aggrieved party is entitled to pursue retribution."[690]

Once the *sulha* process begins, the *jaha* shuttle between each party's home to engage in private meetings to describe the expected stages of the process to the parties, outline any expectation for parties to avoid one another, determine the series of events that caused the conflict, and the effects of these actions upon the parties. It serves as a fact-finding stage, a

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[688] Abu-Nimer, 1996, 46.
[689] Lang, 2005, 91.
[690] Funk & Said, 2009, 157.

negotiation stage, as well as a clarification stage: "During these sessions, story-telling was a primary tool used by parties and third party to present their positions and interests, and the conditions for a desired settlement."[691] Witnesses to the dispute who volunteer or are asked to contribute by the parties may also be expected to meet privately with the *jaha*.[692] The *jaha* also use this time to discuss any precedents established through previous disputes.[693]

Emotional expressions are expected throughout this time. The loss of *sharaf* that is associated with being a victim brings humiliation that evokes questions of why the event happened, but more importantly why the event happened *to the family*.[694] By approaching each party and their families individually, the private meetings with the *jaha* provide a protective setting that allows the parties to discuss their cases without the threat of exposure that may result in an additional loss of *sharaf*:

> ...some people would like to tell you, to air out their frustrations, to ventilate. And they find it with us. They want someone to tell a secret. Someone they trust. Someone that can keep their dignity while they are able to break down, to have tears...[695]

The *jaha* show extreme respect to the parties, especially the party seen as the victim, by demonstrating *reverse musayara*. The respected *jaha* members invoke this behaviour of extreme respect and kindness that is usually reserved for the most esteemed members of society to show gratitude for granting this request to engage in a peacemaking process rather than seek vengeance. This allays the humiliation felt by the victim's family, and partially bolsters lost *sharaf*.

[691] Abu-Nimer, 1996, 46.
[692] Pely, 84.
[693] Ibid.
[694] Lang, 2005, 89.
[695] ZZ.

7.3.2 Emphasis on Unity and Commonality

Sulha intervention practices have a goal to redress "an imbalance [of *sharaf*] through a formalized routine to mark a new state of affairs; it creates and maintains peaceful relations."[696] Truly, the mediators that were interviewed reflected this aim to embark on a process that highlights the collective strength of the community when unified and the potential to rally together against a common threat of injustice, instability, or separation. Despite the distinct populations of Christians and Muslims, local inhabitants and long-term refugees, city residents and Bedouin, the mediators indicated that each sub-group identity of those within Bethlehem is equally regarded and valued within a larger Palestinian context. For example, one mediator indicated that members of the representative bodies of the range of religious groups meet to discuss issues in order to prevent conflict:

> Dealing with the humanity issues, there are constant
> meetings between the Muslim and Christian side, parties.
> We even meet priests from Jerusalem to make sure there
> aren't any problems that arise from religious issues.[697]

This meeting, while representing an array of groups, has a purpose of ensuing the broader goal of peaceful relations based on unified and common interests. Conflict intervention in situations of conflict will ensure that mediators represent or are accepted by members of a sub-group, without being too closely related to either of the parties in order to be well received for *sulha* to occur.[698] In general, many of the mediators discussed their commitment to promoting relations between Christians and Muslims, and consider the commitment of each group to a Palestinian identity as paramount for the society:

> I use the circumstances that we are living in under
> Occupation. This will unite people more together, and will
> help to solve certain criteria of difficulties, especially

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[696] Lang, 2005, 98.
[697] EK.
[698] Pely, 84.

concerning land, property and so on, which is threatened by Occupation, settlers, settlements and so on.[699]

One of the things that I hate people to say, and maybe the Israelis are behind such a thing, is when people emphasize Christians and Muslims. We shouldn't say such a thing, and Muslims and Christians in Bethlehem are considered as one. And even if Christians need help with such a thing they do come to me because they know I don't differentiate between any of these two sides. When people ask where you're from, you should say you're from Bethlehem, not that you're Muslim or Christian. People want someone who fights against saying "Christian" or "Muslim."[700]

In these comments, the third party speaks in a way that conveys the need for unity against a perceived threat – division may be a technique of the occupying forces and therefore there is an imperative to combat this collectively.

Within the course of the *sulha* process itself, the *jaha* may use a reframing technique to emphasise the positive statements of parties that might influence approaching the conflict with a common value or conciliatory gesture, while minimising or circumventing negative statements. This is done to work towards an agreement, as well as because conflict itself is seen as negative and the emphasis of the process is the restoration of good relations.

The *Jaha* will reframe aggressive statements made by a disputant and highlight any positive or conciliatory statements to develop a framework within which to resolve the conflict. . . If one disputant says that the disputants formerly enjoyed a good relationship, the *Jaha* will use that positive history to engineer good will that could later be used to reconcile the parties.[701]

Other examples of this were discussed in the interviews. In one case, the mediator said that in order to keep the parties civil, "We try not to let them

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[699] RR.
[700] AS.
[701] Pely, 84.

demonize each other."[702] In another, the mediator is careful to avoid bringing up issues that are divisive: "I avoid talking about certain issues that I know will only strike a larger anger or make the problem even bigger."[703] A different mediator expressed that he would reframe the conversations he has had with one party to discuss with the other party:

> If you're going to talk you must talk another way, to take the other way and speak to the other. Sometimes they are going to quarrel; you change their words of what you're going to speak to another.[704]

The feature of reframing for the "good for the common people" is also expressed which parties do not engage fully with the process and the sulha is at risk of failing. The following statement illustrates the point that Abu-Nimer has made on the negative construct of conflict within this collective society, where the third party's message focuses on "the damage and destruction that a conflict between two brothers, friends, or nations can bring."[705]

> So the failure will be transformed to a challenge, and the challenge that we are taking is to do the good for the common people. People, some party is not interested in solving, we try to maximize their losses and we talk about social relationships. All our mediations are based on relationships and responding to needs.[706]

In many cases, ZZ noted that the parties that come through the *sulha* process then become volunteers who then continually give back to the community through sharing themselves through citizen diplomacy, women's groups, and the children's programmes.[707]

7.3.3   Importance of Forgiveness and Apologies

While the substance of any *sulha* process and agreement is important, the negotiations that lead to the forgiveness and atonement for the parties are

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[702] ZZ.
[703] AT.
[704] AB.
[705] Abu-Nimer, 1996, 46.
[706] ZZ.
[707] Ibid.

crucial for *sulha*. The initiation of the process by the offender's family is the beginning of this reconciliatory practice, where the token payment of an *'atwe* is paid through the *jaha* for the injured party in an expression of remorse, in addition to any compensation that the injured party may receive at the end of the *sulha* process.

One of the assumptions that Abu-Nimer provides of Middle Eastern conflict resolution approaches is the priority "given to people and relationships over task, structure, and tangible resources. . . The focus was on the nature of the relationship between the parties, rather than concrete, substantive compensations involved."[708] Indeed, mediators described their "investment in people" of the community as a central focus of their role and the purpose of *sulha*. Forgiveness and the need for apologies are clear within a context where there is a self-nominated aggressor and victim. Yet, even in cases where there are not distinct parties that are 'offender' and 'victim' and multiple wrongs have been committed, "effort must be made to assess the scope of the harm inflicted and suffered by each party, so as to establish a clear basis for compensation and forgiveness transactions."[709]

One mediator discussed his need to show forgiveness during the process as well: "You need to forgive people, many times . . . because of the anger and the frustration, because of the terrible things they have [experienced], they are not able to express themselves."[710] Parties, however, are the main focus of the reconciliation process, and where possible with interested parties, *Wi'am* will provide the space for the parties to meet and discuss the conflict in person: "We like them to be part of reconciliation themselves. We will help them to get together, to break the ice between them, to stop the enmity, and then do it."[711]

Similarly to other collectivist cultures described in Hook et al., mediators emphasised to the parties the need to forgive and apologise and parties are more likely to do so, possibly because collectivists have been shown to be "less likely to focus on the dispositions and internal attributes of

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[708] Abu-Nimer, 1996, 46.
[709] Funk & Said, 174.
[710] ZZ.
[711] Ibid.

people and more likely to focus on the context of the situation."[712] Within "collectivist cultures, the community, family, or harmony of the group holds high value" and therefore the traditions within this culture "may also employ unique narratives, rituals, or symbols to aid a decision to forgive and promote social harmony and reconciliation."[713] Forgiveness within a collectivist culture may involve what Hook et al. note as a formal ceremony with a detailed procedure to "publicly demonstrate rituals of forgiveness and reconciliation."[714]

In terms of the traditional *sulha* process, forgiveness is sought as part of the end result.[715] The entire process as well as the final ceremony acts as a method of apology by the offending party to the victimised party. Symbolism and ritual play parts in establishing gestures toward reconciliation, including the use of a white flag to communicate a readiness of the victim's family for reconciliation, the public declaration of forgiveness by a male representative of the aggrieved family, as well as gestures of magnanimity to illustrate forgiveness to the offending family, such as a return of the compensation.[716] The use of genuine apologies and forgiveness in the *sulha* process is not necessary, but the formal ritual act of giving them is both necessary for agreement and in preventing provocation by either party. As Lang suggests, parties do not need to be sincere in their messages and gestures of ritual apology and forgiveness in *sulha*, because the extent of complex social relations will bind parties to their agreement.[717]

7.3.4 Employing a Public Ceremony

The end of the *sulha* process is a public ceremony that announces and celebrates the restoration of peaceful relations in the community with the signing of the *sulha* agreement. The public nature of the ceremony combines

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[712] Oysterman et al., 2002 as referenced in Hook et al., 832.
[713] Hook et al., 833.
[714] Ibid.
[715] Lang, 2005, 97.
[716] Ibid.
[717] Ibid, 100.

ritual acts, a physical agreement, and the inclusion of the male members of the community. The reason why this part of the process is done in the public eye whilst the other elements have been largely in the private sphere is to ensure compliance through the social webs that are evident in the agreement and to make a public acknowledgement that the conflict has ended and parties are officially reintegrated into the community.

The rituals performed by the participants in the *sulha* process act as redistribution of lost face or *sharaf*, and therefore are more meaningful when in full public view. The white flag used by the victim's family is an illustration of readiness for reconciliation, a submission to the will of the *jaha*'s decision, and a communication that it is safe for the process to proceed. The parading through the streets with the offending family is done quietly to mark to solemnity of the occasion. In addition, the act of the *sulha* ceremony provides a brief humiliation to the offending family, which lowers their *sharaf*. The families will shake hands (*musafacha*), and the offending family will offer the victim's family the compensation (*diya* for a murdered man, *taawir* in the case of non-murder) in front of the *sulha* witnesses. Some parties will attempt to gain magnanimity by returning the compensation, thereby raising their *sharaf* further.[718]

The signing of the *sulha* agreement is done not only by the parties but the *jaha* committee and the invited notables. The signatures of these key dignitaries are a further weight given to the agreement further than their mere presence.[719] Speeches may also be conducted by the invited notables, and the event may be captured in photographs, video recording, and media.[720]

The *sulha* ceremony concludes with the exchange of coffee (*qahwa*) and a meal (*mumalacha*). The offending family is invited to the home of the victim to share bitter coffee as a gesture of hospitality. In return, the offender's family invites the victim's family as well as the *jaha*, the invited notables, and other witnesses to their home to share a meal. In both cases,

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[718] Ibid, 95.
[719] Pely, 85; Lang, 97.
[720] See Lang's description in Notes, Chapter 4.

the benefit of being the host increases *sharaf.*[721,722]

7.3.5 Differences between Intervention Practices in TMF and *Sulha*

Practices in each of these frameworks are indicative of the values, ideology, and third party role intervening in conflict. Folger names four intervention practices within a transformative framework that exist in comparison to the intervention practices in *sulha* and other harmony-based models. TMF intervention practices (a) give control of the process to the parties in the dispute, (b) maintain non-directiveness, (c) support party-led discussions over differences, (d) support party shifts toward empowerment and recognition.[723]

7.3.5.1 Party Control of the Process

By yielding control of the mediation process, TMF mediators show a commitment to a party-controlled process. The purpose of mediation is to support parties in having a conversation over issues that matter to them, while keeping the structure of that conversation in the control of the parties. Process and content control are kept with the parties, and "transformative mediators encourage parties to address explicitly any differences they may have about how they want to communicate with each other, and to shape expectations about how the process could best evolve from their respective points of view."[724] As a result, mediators would encourage discussions over the structure and implementation of process as much as they would about substantive or content issues. In this way, TMF mediators "do not guide or influence how the parties should talk, or what they should talk about, during mediation."[725]

One example that is discussed by Folger is the request and use of caucus or private meetings. Parties initiate these requests without suggestion

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[721] Pely, 85.
[722] Lang, 97.
[723] Folger, 2008, 845.
[724] Ibid.
[725] Ibid, 846.

from the mediator that these meetings are necessary for success of the process. Rather than negotiating items or allowing for a venting of emotions, the TMF mediator uses caucus to further support party clarity, such as by talking through goals, expectations, or views.

In comparison, the use of private meetings is an exclusive element of the *sulha* process. Because the aim is ultimately for relationship restoration, the *sulha* mediators use private meetings to prevent the conflict from descending into further complexity or harm. These private meetings are also used to gather information, test options, shield negative emotions, and negotiate substantive amounts in compensation.

Parties within *sulha* submit to the decisions of the *jaha* or *sulha* mediator, and this extends to the ending of the process as well. As most Bethlehem third parties indicated that the ceremonial signing of agreements, shaking hands, and exchange of coffee and a meal by each party signified the end of the *sulha* process, and indicated that the conflict that parties had was now finished. Resumption of violent interaction would not only reflect poorly on parties but would be a mark of disrespect toward the *jaha* and invited dignitaries who signed the agreement as well.

7.3.5.2 Non-directiveness

Secondly, the TMF intervention practices include maintaining a non-directive posture throughout the mediation process. By focusing on the ability for parties to make shifts in becoming clearer and stronger through the interaction, the mediators are also confident in the parties' abilities to create and work upon the best decisions for themselves. In TMF, this stance is vital to the process because it supports the core philosophy of the transformative vision of allowing people the capacity to grow and connect when they are working through their conflict. By being non-directive, TMF mediators ask questions about the way in which parties want to approach issues rather than giving an itemised list of issues, asking the parties whether they agree to terms in an agreement, as well as asking whether parties want to continue an

existing relationship.[726] While TMF mediators are not advocates within mediation, they use their role to mirror back questions emerging from the conversation in order to ensure party agency in measuring the safety and workability of those choices from the perspective of the parties, rather than the mediator.

In comparison, the *sulha* process depends on the selection of highly respected members of the community who offer their respected status in society to parties for the purposes of restoring peaceful relations. As mentioned in the expectations of the third party in 7.2, the third party role is filled by a notable and respected public voice for the parties, and part of their role is to persuade parties toward agreement for the good of the common people. The directiveness is a quality of the role; the process entails a traditional flow of discussion and negotiation in private before publically declaring the end of hostilities, while the content is selected to enhance the workable nature of the process. Within *sulha*, the agency is with the third party or the *jaha*, who are asked to intervene because of their esteem from the community. The persuasion of parties to enter into and engage in *sulha* is one aspect of the directiveness that the *jaha* may use, as their primary concern is to convince the parties to "forego vengeance and be reconciled with the group that has attacked them."[727] Parties rely on this third party to promote their best interests, including the presentation of only positive statements to the other party in private and to restore a balance of *sharaf* publically so that normal, peaceful relations can continue. As mentioned in 7.3.1, private meetings suit parties who may view meeting face-to-face as aggravating the wound or further humiliation following the assault upon *sharaf*.

7.3.5.3 Supporting Parties' Exploration of Differences

Supporting the transformative effects of the qualitative changes that can occur in the parties' interaction is to hold up the discussion of deeply divisive issues that parties might have. Unlike settlement-driven models, TMF does

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[726] Ibid, 847.
[727] Lang, 88.

not aim to bring the parties to some common ground to arrive at an agreement. As a result, the parties are freer to discuss issues that might be considered critical differences. Through working through these issues, parties have the opportunity to tackle their feelings of agreement and disagreement as well as judging what responses they want to exchange with the other party: "It is in wrestling with the most divisive issues that parties experience the greatest potential for personal development and change."[728]

TMF mediators are comfortable with parties engaging at this level of discussion, and facilitate the emotional commentary in order to support party growth and connection. In a *sulha* process, an open discussion on the divisive issues was not mentioned within the interviews. The topic of having party-to-party discussions has been referred to as the potential to cause further grievance or humiliation on the party that has been dishonoured. The *jaha*, while expecting emotional outbursts from the parties, control the potential for the conflict to spiral in a destructive path by using their status and interventions to persuade parties to adhere to a *hudne*. This *hudne* implies that parties must stay separated to maintain order and calm while the *jaha* begin their discussions with each family. In addition, the offending party takes part in a ritual act of moving away from the victim's family (*tarhil* – literally "to leave a place") in order to reduce the potential for a *measure-for-measure* retributive justice to occur.

7.3.5.4 Proactively Supporting Parties' Empowerment and Recognition Shifts

Within TMF, mediators work with the expressions of weakness and detachment to assist parties' shifts toward greater clarity and connection. TMF mediators follow the parties by reflecting the comments and questions surrounding issues of both content and process that are expressed in the mediation. This allows for party reflection, consideration, revision, rejection, and further expression toward greater clarity and insight. Mediators use summarisation to capture the range of ideas and issues shared and debated

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[728] Folger, 2008, 847.

during segments of mediation conversation to feed back upon the parties for their insights on how the process should evolve.

In comparison, *sulha* mediators depend on a public display of forgiveness and apology through ritual acts for a successful *sulha* agreement. The *jaha* will investigate the situation with each family as well as witnesses or others with insights, and will deliver a solution that is acceptable for the parties. The *sulha* agreement within a murder context will answer the following questions in a formal document: "Who is guilty? Of what? To what extent? Who pays whom? How much? When? In what currency? In non-murder cases, the same questions are answered except for guilt."[729] The discussion does not occur between the parties, but between the parties and the *jaha*. While the *sulha* ceremony raises and lowers *sharaf* for the respective parties, this is not equitable to parties in a transformative framework engaging with each other for greater clarity of their own perspectives, ideas and goals and compassion for the other. The *sulha* model operates in a collectivist culture that requires the involvement of the community in witnessing, acknowledging, and accepting the *sulha* event, whereas the transformative framework depends on parties gaining a deeper understanding and appreciation through undergoing their own conflict interaction with one another.

7.4 Mediation Story

In Chapter 2, the four dominant stories that mediation practitioners tell when describing their practice, as well as one story that represented opposition to mediation, were outlined. These included: The Satisfaction Story, The Social Justice Story, The Transformation Story, and the Oppression Story. These stories, as described initially in Bush and Folger, describe how mediation is subject to a variety of interpretations due to differing ideological perspectives on conflict, successful and unsuccessful mediation, party participation, third party role, and intervention practices. These four basic stories of mediation articulate the pluralistic ways of viewing conflict, as well as the diverse means

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[729] Pely, 85.

of addressing conflict appropriately depending on the worldview of conflict.[730] In outlining these accounts, the underlying values of each approach are evident, as are the immediate goals of such intervention.

In this section, the perspectives of the mediators in Bethlehem will be described in through the use of the interview data and literature. The Bethlehem Story of Mediation is a Palestinian reflection of social reality, which differs from the stories of Satisfaction, Social Justice, and Transformation as understood in a Western context. The Bethlehem Story of Mediation incorporates a blend of organic ideological values underscored by collectivism in the context of a culture under occupation. The Bethlehem Story of Mediation reflects what goals are considered most important in society. It provides a lens to gauge the ways in which conflict is valued, approached, managed and viewed by mediators through their own words as well as through the literature used to describe conflict resolution and Arab culture. The Bethlehem Story will first be presented as a Palestinian/Arab resolution practice true to the social reality. In the second and third points of this section, influences of both the Social Justice Story and the Harmony approach will be posed. Finally, the Bethlehem Story of mediation will be considered in comparison with the Transformation Story that is told by TMF mediators.

7.4.1 The Bethlehem Story: Palestinian mediation true to social reality

According to this story, the practice of *sulha* is a traditional way to address conflicts in the community in a way that promotes dignity, respect, nonviolence and culture. Because it is responding to the needs of the community, *sulha* ensures that social relations are restored through the insights of well-regarded elders. *Sulha* is a way for parties to respond to conflict non-violently by acknowledging transgressions and committing to the necessary steps that will restore justice to the parties involved.

Sulha acts as an informal justice mechanism to manage conflict in

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[730] Bush & Folger, 1994, 15-38.

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society where formal justice may be expensive, time consuming, or inappropriate. In this way, *sulha* promotes social justice by being accessible and by addressing the issues brought to the attention of the mediators. *Sulha* ensures parties are not exploited through this process through the use of respected elders to serve as third parties, who would be dishonoured by any allegation of unfairness. In addition, *sulha* serves to support the ties between individuals, their families, and community organisations by incorporating solutions that consider a holistic approach to family and community issues. In issues relating to the occupation, such as land, the IDF, settlements and settler relations, *sulha* has the potential to unite parties against a common threat and towards the common pursuit of Palestinian rights.

Sulha also offers to opportunity to engage in a long-standing Arab traditional method for conflict resolution to deal with the complex political and economic scenario that Palestinians live under. Though pre-dating Islam, the use of *sulha* also enables participants' religious beliefs to be observed, promoted and respected through the process, or can serve as a secular process. *Sulha* offers the opportunity to improve relationships with religious groups that have been in place for hundreds of years. More than ever, the need exists to keep the pluralistic community united.

Sulha should act to promote collective responsibility, rather than collective guilt. By addressing the wrongs committed in society, individuals and their families feel heard and compensated without the need to resort to violent means to avenge their anger.

7.4.2   A link to the Social Justice Story

The Bethlehem Story contains some aspects that were evident in the Social Justice Story. In the Social Justice Story, individuals are brought together within communities around common interests to strengthen ties and improve organization. In some instances, the role of mediation is one of non-violent resistance. This was especially true concerning issues that relate directly to the occupation, including the threat or loss of land. Indeed, where the mediators mentioned the ominous situation with Israel, they discussed

the role of the occupation in situations of interpersonal conflict as a means to unify people behind a common cause. Where conflicts deal with topics of land, for example, mediation has the "capacity for reframing issues and focusing on common interests" such as unifying parties as fellow Palestinians, so that the parties "who think they are adversaries perceive a larger context where they face a common enemy."[731] In this situation, parties face the common difficulty with the occupation and its effects on land availability and use. In other situations, this might deal with physical abuse, drug addiction, or poverty. This reframing may result in creative solutions for conflicts that maintain the honour and face of each party.

Supporting this perspective of collaborating in the face of a larger threat are two of the basic assumptions on Arab approaches presented by Abu-Nimer in Chapter 3, including: "group affiliation is the most central and important identity that should be protected and sustained through conflict management processes" and "unity is the ultimate and common goal for groups".[732] The affiliation to clan or family, religious group, regional or ethnic identity is strong on its own, and in conflict this collective identity is one that mediators work with and in competition against.

Historically, the people of Bethlehem have avoided courts that might exploit them given the situation, and mediation allowed for the community to deal with conflict on a local level with traditional methods and bypassing official, but foreign, bodies. Similarly, parties in the Social Justice Story who are weaker individually but gain empowerment through collaborative efforts face this same task. As Zoughbi clarified in Chapter 3 and again in his interview, each conflict brought to him is dealt with individually and holistically, involving the community in a system that values collective responsibility over communal peer pressure. Therefore, the conflict is addressed, but that the root causes to these conflicts, which involve particular social injustices, are also tackled, such as issues concerning poverty, unemployment, addiction and domestic violence. The stories shared discussing how the centre has assisted members of the community in finding

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[731] Bush & Folger, 2005, 12.
[732] Abu-Nimer, 2001, 131.

employment or raising funds from the community to help in paying for health care are examples of what Zoughbi means when he underscores the significance placed upon collective responsibility in society.

Since mediation in Bethlehem concentrates on local, community-level structures, the need to refer to courts as a primary means of handling conflict is minimised. Parties that may have no influence at a larger level due to the cost or time involved can participate more fully in a mediation context, thereby creating greater social justice. Within this collective context, the effect of conflict on individuals spreads to families, religious groups and ethnicity. Those who partake in mediation can avoid the effects of publicity and cost of courts, and may also become strengthened through the participation in a more informal process.

Additionally, the use of mediation to avoid official authorities is another link to the Social Justice Story. Within a society that is engaged in a larger conflict with another state, the role of mediation in this context takes on new meaning. Mediation is a symbol of resistance and an opportunity for unity. By avoiding official systems of the occupying force, those seeking mediation instead give validity and preference to their established traditional methods. In addition, the resistance groups established during the times of the first and second intifadas called for the use of mediation as opposed to giving credence (or information) to the governmental and judicial bodies of Israel.[733] The use of mediation is not only to resolve individual disputes, but also to encourage those in conflict to show unity, despite clan, religion or ethnicity, in the face of larger threats Palestinians must confront as a whole.

This encouragement is for third parties, as well. Mediators volunteered to enter into conflicts as third parties not only because leadership expected it of them, but also because it remains a form of national service. This service, however, is impeded by the restrictions of mobility upon mediators and parties. While the majority of conflicts at the time of interview dealt with issues that took place within Bethlehem Governorate and within

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[733] Collaboration with Israeli institutions is generally a grievous offense to Palestinian resistance movements, and are dealt with rapidly and with force, even after the Intifadas. One such example (of many) was reported in 2007: Haaretz newspaper/The Associated Press. "Fatah kills suspected collaborator with Israel in West Bank hospital." 7 June 2007. Accessed 16 January 2010. http://www.haaretz.com/hasen/spages/871838.html.

the West Bank, mediations may include (Palestinian) parties from outside of Bethlehem. Security measures taken by Israeli Defence Forces may prohibit the movement of mediators to some areas where they are called to intervene, creating another level of complexity, and increased calls for justice, to the conflict realities on the ground.

7.4.3 A link to 'Harmony'

The Harmony Story is not mentioned in the main mediation stories described by Bush and Folger in Chapter 2, though it is the assumed story of the Organic ideology. In many ways it reflects some of the values of the Social Justice Story, however, the intent of the Harmony model does not depend on a larger adversary that unifies parties. Instead, focusing on maintaining peaceful and smooth relationships, protecting the honour of those involved, using third parties from the community, and seeing outcomes in long-term timelines are elements of a Harmony process.[734] Emotionally, the Harmony Story is not expressive, and instead avoids "negative emotional displays" and it tends to "prevent or avoid open expression of conflict", including "self-assertion."[735] Abu-Nimer's assumptions on Arab perspectives that were outlined in Chapter 3, including: "conflict is negative and dangerous", "conflict should be avoided", "conflict brings destruction and disorder", and "processes and outcomes are more relationship-oriented than task-oriented".[736]

Further, Abu-Nimer explains that the values and motivations of harmony, conflict avoidance, and maintaining order leads many interveners to avoidance of the issue or issues in traditional processes.[737] Lang contributes to this perspective with her reflections on the *sulha* process:

> The ruling assumption of sulha is that what is valuable and normal is a state of peace and cooperation rather than a state of violence and conflict. In accordance with this

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[734] Kozan, Kamil. "Cultural Models of Conflict and Their Characteristics" as cited in Folger, Poole & Stutman, 53-54.
[735] Ibid, 54.
[736] Abu-Nimer, 2001, 131.
[737] Abu-Nimer, 1996, 45.

perspective, the jaha espouses a belief in a basic human need to forgive. Informants often expressed the view that conflict is 'exhausting' or 'depleting' (nazif) and cannot be sustained for long. As one sulha leader put it when asked why certain parties wished to make peace, "Nobody can carry blood – it is so heavy." These notions of the weightiness of violence are allied to the sense that peace is natural and orderly and that conflict is unnatural and chaotic. Peace is a state of equilibrium, disrupted on occasion by violence or conflict. According to the social discourse, things cannot remain indefinitely in this state of disequilibrium. Conflict is drawn back toward peace as if by a force of gravitation. The practice of sulha embodies a set of assumptions about the kind of relations that ought to exist between people in village society. These views of the social order are perpetuated with every sulha as they are represented, retold, and reinscribed in the minds of those who participate.[738]

7.4.4 The Bethlehem Story in contrast with the Transformation Story – some clear distinctions

Sulha mediation is seen as a flexible, initially informal process that is useful for both the urgent cases involving death as well as those involving more mundane matters. However, *sulha* is not the only service provided, and resolution of a dispute is not the only goal. Given the situation in Bethlehem with joblessness, lack of resources, and instability, the role of mediators is often wider and more holistic than that in the West. Coaching parties in conflict and non-conflict situations (including education or employment), creating a space for women's projects, providing assistance when counselling or rehabilitation is needed, and a children's programme are elements of *Wi'am* that are unique from a Western perspective, but very necessary from a Palestinian perspective. Including the community is a vital part of the work done by *Wi'am*. As one mediator explained, to treat one person would not resolve the underlying issues existing to cause the difficulty, and the extended family and close neighbours were included to support the individual and ensure his success.

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[738] Lang, 100.

The social pressure used is not simply a controlling mechanism but a rallying point, and an opportunity for empowerment. Showing 'an understanding of the situation', as one mediator phrased it, suggests that mediators value recognition shown by parties. However, this recognition is not based upon the parties' vision of the conflict but that of the mediator's. This is problematic when viewing conflict through a transformative lens, as the transformative understanding of conflict resolution is wholly determined on party capacity, self-determination, and the potential for human connection through dialogue.

Mediation and the pursuit of social justice are not incompatible, say Folger and Bush, but they do require a commitment to the beliefs of mediation when addressing social justice. Lang, as well as the mediators of *Wi'am* detailed in Chapter 6, noted underlying ideals within interaction including cooperation, negotiation, honour, compromise, participation, and the acknowledgement of mediator agency. Therefore, the practice of mediation with social justice in Bethlehem, and across the Middle East, incorporates those values. By contrast, transformative mediation considers two different commitments: (1) party self-determination through a bottom-up approach to conflict intervention and (2) the potential for dialogue to be a powerful means for human connection in conflict.[739]

First, Folger and Bush believe that mediation offers an alternative from other intervention process because it can – and should – support party self-determination:

> At base, mediators need to believe that people have the capacity to make their own decisions about the issues that confront them, that people can and should assess their own risks, abilities, and limitations in making decisions and addressing issues—including issues that involve power imbalances, inequities and unfairness.[740]

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[739] Folger, Joseph P. and Robert A. Baruch Bush. Unpublished article. "Mediation and Social Justice: The Struggle Within," Institute for the Study of Conflict Transformation, March 2008, 1.
[740] Ibid.

In addition, creating social justice from a transformative mediation perspective would rely on the power and potential of the parties' own dialogue:

> Dialogue has a potentially humanizing effect which brings people to new ways of thinking and deciding – ways that can enable them to make decisions that are based in greater clarity about themselves and each other. Dialogue allows people to fully engage each other's humanness – to encounter the intellectual, emotional, symbolic, historical and physical dimensions of one's perceived adversaries and opponents.[741]

This interaction, say Folger and Bush, is a cornerstone to the transformative view of the potential for connectivity through dialogue.

> This premise is key in distinguishing mediation from other available approaches to conflict intervention [such as *sulha*], in which parties' conflict interaction is minimized, controlled, or prevented. When mediation is rooted in the above two premises, people can and do address issues that stem from concerns about social justice.[742]

A mediator from this perspective would support the parties in this dialogue without evaluation. To evaluate or openly analyse the conflict, even in the interest of what the mediator might see as restoring power or fairness, would take away from party self-determination to deliberate issues through dialogue. TMF presupposes that both parties are left feeling weaker and self absorbed in conflict, and therefore both need to become clearer and more confident in their own understandings of their conflict in order to appreciate one another's perspective. Power, therefore, is less of an issue for a mediator than party empowerment and recognition. In some cases, a mediator may negatively influence the process by assuming one party is weaker than another, and may then affect the quality of the content discussed. For example, should a man and a woman enter a mediation due to a sexual harassment case, a mediator could assume that the woman is a victim and

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[741] Ibid.
[742] Ibid.

therefore needs more support and advocacy in the process than the man. The man may actually be the weaker of the two parties in real power terms, perhaps because this accusation has tarnished his image, but the mediator, rather than supporting both parties in clarifying and discussing their conflict openly, more heavily supports the woman because of assumptions of who has power, and who needs power. This advocacy position, say Bush and Folger, can be dangerous and damaging to parties as it ultimately alters the perceived fairness of the process itself.

In contrast, *sulha* mediators respond to the injustices that occur in conflict by supporting the victim, because these roles have been clearly established from the outset. The weight of the *jaha*'s honour in the community is sufficient to suppress any existing power imbalances so that the weaker party is not taken advantage of, and ensures that both parties feel adequately pressured (and simultaneously honoured) by their involvement in the case that they will acquiesce to the process.

Secondly, should mediators contain the parties' conflict by articulating the issues for discussion, there is a loss of empowerment for parties in being able to address or change the systems or situation which appears unfair. Instead, the mediator asserts their ability or responsibility for creating or addressing the need for change, when the parties can and should be enabled to tackle this on their own. Mediation, as Folger and Bush explained, should be an intervention process that supports party determined bottom-up approaches for human dialogue – meaningful change created by the parties themselves through their own interaction.

Ultimately, "it is not just that social justice is fostered but how it is fostered that matters," say Folger and Bush.[743] Top-down measures and decisions made by those in power may impose equity, but at the price of dignity:

> ...the dignity that comes from making and living with one's own choices. People who are forced to do justice are

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[743] Ibid, 3.

deprived of the moral choice to give it of their own accord.
People who are given justice by others are deprived of the
moral choice to demand and sacrifice it for themselves.

Sulha may be a powerful means for resolving conflict within
Bethlehem, but the means for doing so do not resonate with transformative
commitments to party self-determination and the human connectivity within
the conflict intervention itself. The mediator agency in *sulha*'s form of
mediation is high, and mediators in this process are expected to be even-
handed with parties and to create a just solution – not one that is openly
discussed, challenged, argued and earned by the parties themselves. In this
regard, TMF is not an actively used framework in this society; the goal is to
adhere to societal and family norms and to restore normal relations where
possible.

7.5   Central Research Question Analysis and Reflection

In Chapter 6, the Theory Questions (TQ) were used to reflect upon the
primary data collected in the field through semi-structured interviews with
nine mediators who work in affiliation with *Wi'am* to discuss influences that
affect underlying ideology of practitioners in this context. In this chapter thus
far, the literature as well as the primary data was used to explain the
ideology, third party role, intervention processes and the local story of
mediation from what was told by the Bethlehem mediators as well as the
literature. At this point, the Central Research Questions (CRQ) raised in
Chapter 1 will be considered based on the information presented on
ideology, practice, and cultural context.

7.5.1 Would the Transformative approach translate into effective theory and practice in the Palestinian model?

7.5.1.1 "Purpose Drives Practice"

As discussed in 7.1 Ideology and supported by the interview material, the culture in Bethlehem is one that closely resembles a Collectivist and Associative culture. While some elements of Relational and less so of Individualist ideologies exist within the framework of those interviewed, the prevailing ideology values the group over the individual, has high regard for the codes and rules established by a conservative cultural precedent, considers conflict unnatural and destabilising, is concerned primarily with the restoration of social order, acknowledges the role of the third party as originating from patriarchal expectations, and in practice the mediator maintains high process and content control.

   With this said, the qualities that make up the Palestinian *sulha* model are largely counter to those that support TMF. Central to the theoretical framework of TMF are the building blocks of the theory of conflict transformation. This includes the beliefs that "parties can recapture their sense of competence and connection, reverse the negative conflict cycle, re-establish a constructive (or at least neutral) interaction, and move forward on a positive footing, with the mediator's help."[744] A principle that the Transformative framework often refers to in trainings is "purpose drives practice" – simply stated that the goals of the mediation process are what encourages a particular understanding of the mediator's role within that process.[745]

   TMF holds that the goal is to ultimately transform a negative and alienating conflict cycle to a positive and connecting conflict cycle through supporting parties through empowerment and recognition in the process, while responsibility on process and outcome is placed on the parties and the mediator's responsibility is to support the party discussion (rather than control it). The *sulha* model holds that the goal of the process is to maintain social relationships through esteemed mediators negotiating with parties on

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[744] Bush & Folger, 2005, 53.
[745] Ibid, 119.

the conflict, their rights, social supports or pressures, compensation and eventually a public acknowledgement of its end, with mediators holding central responsibility for the process, the outcome and possible liability for the parties.

While parties are face-to-face in a Transformative (and Western) process, mediators within an Arab context go between parties to save face – both to restrain emotions from the parties and to maintain control to ensure parties do not reengage in negative conflict behaviours. The *sulha* process is one that puts a large focus on the mediator: their honour depends on their ability to negotiate a sustainable agreement between the parties. Without a parallel cultural structure in place supporting an alternative goal of mediation that is party-focused, TMF may be understood as a theory of mediation but not one that would be viable within a traditional *sulha* system. As Lang was cited earlier in this chapter, the implementation of *sulha* enacts a series of assumptions on ideal social relationships within society, and through *sulha* these ideals are promoted and reinforced.

However, outside of the *sulha* process and within the broader realm of the Arab egalitarian society, as described by Lang in Chapter 4, there is potential for transformative practice. Older men, whether they are *jaha* men or the mediators, control *sulha*, and in many instances the more formal, public ceremonies surround instances of injured male *sharaf*. In conflicts among youth and women, and in other cases where male *sharaf* is not a focal element of the process, TMF has the potential to address issues of concern in an informal, private space without violating a pre-existing system built on the values of the community. TMF does not violate Islamic teaching, says Keshavjee, and can offer a process that can include women in a co-mediation model, especially in instances where a woman is one of the parties.[746] Therefore, TMF may act as supplemental to the existing *sulha* process without supplanting it. Because *sulha* is predicated on *sharaf*, specifically male *sharaf*, TMF offers the ability to approach conflict in ways that support and engage both parties through shifts in empowerment and recognition.

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[746] Keshavjee, Mohamed. "Mediation in the Middle East." Presentation at the *European Mediation Conference*. Paris, France, May 2010.

Within *Wi'am*, TMF would add a greater ability to support parties in becoming clearer on their goals and perspectives while offering the opportunity to hear and address one another. Unlike *sulha*, TMF depends on parties being present in the same room in order to engage with one another over issues that they have determined with the support of a mediator, in a conversation that they both create and control.

Therefore, mediator training is another area where the existing *sulha* model could be explored through TMF. Where *sulha* mediators and *jaha* men are effectively chosen for their roles, a transformative mediator becomes qualified through extensive training and practice, regardless of age, gender or social status. Those interested in playing an active role in alternative conflict practices including or in addition to the traditional model may benefit from transformative mediation training. These opportunities for this could include peer mediation in schools and universities, as well as within women's groups or in community settings. This is not to say that TMF would not be valuable to existing practitioners; *sulha* and TMF are not mutually exclusive. The suggested use of TMF in this society, on the surface, would not be inconceivable. Contextual cues, however, suggest that an awareness of the local realities, ideologies, and practices are required for meaningful conversation on how TMF might be adopted within this society.

A clear obstacle when considering TMF within the Palestinian culture is patriarchy and how this may limit the areas and participants that would adopt a non-*sulha*, Western-based approach. More complex, *sulha* has value in collective Palestinian identity as a traditional method of conflict resolution. The rituals and symbolism involved with the practice are tied to an age-old process that has its roots in the land and the people, and therefore a political, historical, and social process that has passionate and proud practitioners with good reason.

The broader community can be affected by the polarization created and therefore the community may be included in *sulha*. The mediators that were interviewed are keenly aware of the effects that small conflicts can have if they are not addressed, and so the indigenous model that is undertaken requires motivation and capacity to change the negative

interaction. While parties in conflict must feel motivated to participate in such a process, the view is not that *parties have the capacity* to change the negative interaction but an *expectation that they must* participate in the process that will do so. As a result, while the current ideology of mediation in Bethlehem is one that makes strong links with the community for collaboration, this is done because the interconnectedness of the people in the community is valued more highly than the independent wishes of the individual.

TMF offers the opportunity for parties to raise, discuss and challenge issues that confront them using direct and interactive dialogue with the other party. As social justice is an important, recurring element to mediation within a Palestinian context, TMF is an example of a process that supports the opportunity for mediation to address issues of social justice. As discussed in 7.4.4, TMF does so from a bottom-up, party controlled approach that carries with it the potential for profound, lasting change that is created by the parties themselves.

7.5.2 In what ways are the approaches to conflict within a Palestinian context conducive to the theory and practice of the Transformative framework?

The distinctions between how mediation functions in Bethlehem and the description of TMF have been discussed throughout this chapter in terms of ideology, the third party role, intervention processes and the story of mediation that is told. Throughout these discussions, there are three ways in which the frameworks align in either practical or theoretical ways, including (a) recognition, (b) accessibility and legitimacy of mediation as a conflict resolution strategy, and (c) the theme of social justice.

7.5.2.1 Recognition

Despite conflict resolution in a Palestinian context demonstrating characteristics of Organic ideology, there are ways in which mediators discussed their practice that brought to light some methods that are also respected in TMF. The Collectivist culture in Palestinian society means that there is a high concern for and connectivity between others generally, meaning that social relations matter both in conflict and in times of stability. This creates a noticeable change in the dynamic of mediation, when compared with that which occurs from an Individualist ideology within an Abstractive culture. With the social relations so interconnected in Bethlehem's society, the process of mediation is one that appreciates the complex webs that can make up conflicts, beginning from the individuals and extending to their families.

Sulha mediators are committed to breaking the negative and alienating dimension of conflict. The emphasis on compassion within the *sulha* process is an element that encourages expressions of concern, empathy, and recognition between parties, though this expression is not typically directly articulated face-to-face but through mediators or the *jaha*. Connection, communal unity, and sustainable social relations are part of the fabric of Palestinian and Arab existence, and individuals marginalized through conflict and the lack of services "need to be recognized . . . and not neglected."[747] As Funk and Said assert, "Estrangement among people is itself a moral wrong, and reconciliation can bring a greater moral good than retribution when responding to clear injustice or crime."[748]

At *Wi'am*, ZZ discussed how he sees reconciliation in action and how this helps the larger community. While the public *sulha* ceremony and the exchange of coffee and meals signify the end of the process, it also marks a potential for parties to develop through their experience. The restoration of peaceful relations goes beyond the *sulha* ceremony, where once-conflicting parties (especially those comprised of family members or spouses) are assisted through grassroots organisations. At *Wi'am*, families who have gone

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[747] RR.
[748] Funk & Said, 2009, 150.

through *sulha* processes are reintegrated into society through groups promoting *sulha*, citizen diplomacy, as well as working with other women and children in the community.

This compulsion toward communal unity and reconciliation differs from the sense of TMF value of recognition, in that there is pressure on the parties by society to achieve this level of respect and acknowledgement of the other rather than through a personal shift in connection from one party to the other. However, the need for a passionate commitment to resolution through the shared values of justice, faith and security make an argument for the varying degrees of recognition, and how this might be expressed in a non-Western culture. 'Recognition' as expressed by Bush and Folger include expressions of openness, connection, appreciation, and understanding of the opposing party's perspective. Recognition within a non-Western context may include expressions by parties that evoke a sense of openness and connection in ways that are omitted from the Western Transformative account described in Della Noce's research and emphasised in TMF practice.

7.5.2.2 Accessibility and Legitimacy of Mediation

In practical terms, mediation in Bethlehem is easily accessible and is considered a legitimate recourse for community conflict. Since the history of the region has placed great distrust in official bodies, unofficial justice methods like *sulha* are respected because individuals whom the community consider honourable conduct the process, rather than other processes that were created and maintained by external forces. Statelessness, the lack of a long-standing and reliable judicial system, legal uncertainties, an absence of a strong and democratic leadership and security to protect and recognize the people are among the elements of society that contribute to the need for informal justice such as *sulha*.[749] Therefore, mediation is necessary in this society because it benefits the community where recognised institutions of the state do not exist.[750]

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[749] RR, ZZ.
[750] RR.

Mediation and most social services provided by *Wi'am* and the mediators associated with the organization are provided at no charge. In a mediation context, this allows substantial savings for those with limited income and gives a viable option outside of the courts. In addition, the *sulha* practitioners are trusted and relied upon members of society, and community members repeatedly seek them out to assist in their conflicts. At the end of these processes, local, regional and national leaders attend *sulha* ceremonies, which strengthen their status in the community as well as confirm their recognition of indigenous peacemaking. Supported by political, religious, legal and educational institutions, *sulha* has been given credence and validity by the large social organizations of the region.

Therefore, while *sulha* holds a particular respected and traditional place in Palestinian society, conflict resolution is generally considered acceptable and legitimate at the grassroots level through to the institutional level. The benefit of the acceptance of local models for mediation is that conflict resolution is already in the hands of the people. The broad interest in mediation is a sign of an emergent paradigm shift toward relational social forms, according to the Transformative Story of mediation.[751] In Palestinian and wider Middle Eastern society, the interest in mediation and conflict resolution has been a recognised social form for generations, albeit from an Organic ideology and with collective societal values.

As Keshavjee has concluded, mediation is meant to create a new culture through parties reviewing their relationship in a new light.[752] As a result, any desired change can and should be promoted through the people. One specific manner of doing this, according to Bush and Folger, is through "reconstructing reality in relational [rather than Organic] form by practicing transformative mediation."[753] The context in which the authors suggested this was in describing how to create a transformative model in a decidedly individualist ideological orientation within the United States. The choice to commit to the transformative approach has direct consequences not only in relation to how the process might look, but also in the "construction and

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[751] Bush & Folger, 1994, 258.
[752] Keshavjee, 2010.
[753] Bush & Folger, 1994, 248.

constitution of human nature and society themselves."[754] This reconstruction may be difficult to envisage in a society with a lack of independence, leadership, and security, but "because of its transformative potential, the mediation process offers a very good place to start."[755] In essence, to promote a relational worldview within broader society may be an ambitious (and initially unrealistic) goal, but to embark on this through mediation offers the potential for transformative effects such as greater party clarity (empowerment) and perspective-taking (recognition) on an individual basis.

7.5.2.3 Social Justice

Social justice, as discussed in 7.1, is at the core of the Organic ideology as expressed in a Bethlehem context. The collective welfare of society is important, but so too is the fight against injustice experienced by individuals and groups. From interpersonal conflicts within families and neighbours to larger conflicts involving extended families and groups, mediators in Bethlehem expressed the need to address and confront injustices as part of a mediation process rather than through vengeful acts. A persistent cause of these injustices related directly to the occupation through economic, political, environmental, intercultural, and domestic channels. Mediators described intervention practices such as reframing comments to unify participants behind a common cause, finding solutions through collaborating with social institutions and civil society that treat the causes behind conflicts to prevent re-emergence, working with the effect of trauma when it arises in cases, and reintegrating parties back into the community once the conflict has been resolved. *Wi'am* also attempts to tackle injustices preventatively through the use of women's empowerment programmes as well as engagement with youth. While these practices take on elements of social work, wider community negotiation, as well as commitment from the public, the fundamental value of social justice is the energy behind these interventions.

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[754] Ibid.
[755] Ibid, 259.

Folger and Bush have remarked in 7.4.4 that social justice can be a powerful effect of mediation when performed while honouring party self-determination through humanising dialogue. Therefore, the value of social justice appears in both frameworks, but is addressed differently due to differences in ideological beliefs that inform the third party role and intervention practices. *Wi'am* expresses their dedication to social justice through empowerment practices through their community programmes and outreach material.[756] *Wi'am* has developed programmes for women, children and youth, as well as encouraging engagement of the wider community. Therefore, the conflict resolution practices that they employ are not limited to *sulha,* while all emphasise the need for community-based approaches in the context of Occupation. For example, youth are encouraged to lead and conduct their own workshops with one another covering a variety of topics, and women meet regularly for training and workshops that encourage their natural leadership skills that some put into practice through developing their own civil society programmes.[757]

The importance of social justice is not lost in the TMF approach, but must be done in a way that comes through the individuals who have to give and demand for change. TMF's vision of social justice can be used in Bethlehem to further promote the desire for empowerment of individuals in society as well as the opportunities for members of society to meet and discuss how they might achieve potential goals. The values of dignity and justice can be put into practice through existing programmes through the use of transformative strategies. In doing so, the demands for justice from women, men and youth in the society can be met through a humanising exchange of ideas without violating any of the core values and commitments of Palestinian culture. A frank discussion with the providers, leaders and participants of these programmes would have to be held to consider the potential for TMF's vision of social justice within this context.

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[756] See *Wi'am* Website. www.alaslah.org.
[757] See *Wi'am* Website for more details on programmes offered for the community.

7.5.3 What elements of social interaction are evident within a Palestinian setting that are not touched upon in the Transformative model? What cues exist in the culture that do not exist in a Western frame of reference?

This chapter as well as Chapter 6 have detailed elements of social interaction that feature predominantly in the Palestinian setting but are not qualities of Transformative or Western practice. Among these are: (a) collaboration between mediators and social institutions, (b) the Collectivist culture, and (c) religion.

7.5.3.1 Collaboration between Mediators and Social Institutions

While *sulha* and conflict resolution in a Palestinian context is not unique in the broader Middle East, there are methods of dealing with conflict that do not exist within the Transformative Framework. The extensive partnerships built between *Wi'am*'s mediators and the social sector is notable. Mediators expressed that the breadth of issues brought to their attention could range from marital disputes to clan disputes, to assault and murder, as well as issues with drugs or alcohol, abuse and mental health. Mediators work in conjunction with addiction and trauma counsellors, prison services, police, clergy, lawyers, hospitals and universities in dealing with issues of conflict as well as requests for assistance.

The rationale behind such an integrated approach has much to do with the collective community in which *Wi'am* functions. ZZ asserted "when we talk about mediation [we] are looking at it from an interdisciplinary approach, not from one field. It is multi-disciplined, interrelated and correlated."[758] Consequently, mediators must have qualities such as persuasive power, resources and connections in the community in order to be seen as a promising *sulha* mediator. Bringing about creative and holistic solutions that address all the concerns of the parties sometimes means working beyond the meetings with parties and approaching connections from

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[758] ZZ.

social institutions, especially relating to needs outside the immediate capacity of the mediator (e.g. trauma, crime, domestic violence, substance abuse). This approach works through the conflict, and treats the individual(s) in need while incorporating their families and neighbours to support the assistance that is being provided. The multi-disciplined approach relates to the collectivist culture of Bethlehem, stressing the values of cooperation and unity.

7.5.3.2 Collectivist Culture

This chapter and the previous chapter have detailed the emphasis of collectivism in Bethlehem's culture. This collectivism is demonstrated through different aspects of the *sulha* process, including participation, negotiation, and ceremony. The offending party will initiate participation by approaching a mediator to enter a process to reconcile with the party (and family) that they have injured and to negotiate a ceasefire. This act acknowledges the traditional system, the danger of escalating conflict in the community, and asks the mediator to restore the relationship and the community to peaceful relations.

The mediator, depending on the severity of the conflict, may seek to establish a *jaha* in order to put the weight of noble men into the process, because a resolution will be necessary to restore relations. The power hierarchy in this society is evident in the process, despite the *egalitarian discourse* described by Lang. While there is acceptance that that men are equal, there is the seemingly contradictory reality that *sharaf* also creates a hierarchy or authority among men. Therefore, the establishment of the *jaha* is one expression of this, and is paramount to the success of the *sulha* process. Through negotiations, the *jaha* will convey respect for the parties to enter this peacemaking arrangement, and each visit that they make adds pressure to the party to allow the *sulha* process to take place. The inclusion of family, neighbours, friends and experts assist mediators in the conflict resolution process because of their relationship to the parties and their witness to the process. The mediators seek their input or consultation where

necessary. Even further, these outside parties have contributed to the solutions, such as where conflicts have been the result of ongoing poverty. Mediators indicated that there is a risk of conflicts escalating should their intervention not be successful. While mediators acknowledge that agreements do not come quickly or easily, many indicated that solutions would eventually come, as success rates for *sulha* are high.

The home visits that the *jaha* make are as much for understanding the facts of the dispute as much as they are to communicate with the parties. In some cases, as indicated, unifying comments of a religious or nationalistic nature may be used to emphasise common values, teachings, or threats that parties face together. When parties agree to a resolution, the public *sulha* ceremony communicates this with the community and is supported by distinguished guests to add emphasis to the occasion. The extended family and outside parties to the conflict also contribute to the agreement by witnessing the ceremony and providing a supportive social web to ensure party compliance with any resolution. This pressure upon the parties during the *public* acknowledgement of the reconciliation is indicative of the Collectivist Culture that exists. The honour of the families, the mediators, invited guests, and the community is at stake when this agreement is made so publicly.

7.5.3.3 Religion

In the religiously diverse context of Bethlehem, one's faith could serve to separate distinct religious communities. Yet, the emphasis has been to encourage dialogue among the different religious groups in order to maintain positive relations in the area as well as to promote the varied but cooperative fabric of Palestinian society. Religious diversity is celebrated, and more so in the context of broader unity.

When conflict involves ecclesiastical issues, the opinions of priests, reverends, sheikhs, or other religious figures or texts may be sought by mediators to invoke a shared understanding and common ground for

resolution. Typical of a Harmony approach, the inclusion of clergy and religious texts promote good relations through scripture and prayer, and to ensure that parties maintain positive relations, even if they represent different religious communities. The use of religious texts and input of religious clergy also considers the religious perspectives or concerns that parties might have in acting true to their beliefs. Within the context of Bethlehem, the religious communities strive to preserve peaceful relations within the Palestinian areas during a time of great uncertainty.

Mediators also indicated how their religious beliefs impacted their feelings of purpose and drive in the context of conflict resolution. The work of *sulha* is considered a moral duty, but one with religious inspiration in that it is seen to be a 'pilgrimage' to God. The role of a mediator is akin to the *sulha* process: a journey of moral significance.

7.5.4   What added elements are evident in the practice of mediation in a politically divided society?

Bethlehem faces the challenges of political division in terms of its relationship with the state of Israel and in terms of other Palestinians. Mediation in this context addresses these challenges through unity efforts such as (a) the emphasis on collective Palestinian identity and through (b) acknowledging the ongoing occupation and resisting terms of the occupation wherever possible.

7.5.4.1 Collective Identity as Palestinians

Within this part of a politically divided society, the collective identity is extremely important in a region that faces risks of losing its land to annexation, its people to emigration, its economy and international status due to instability. The roots of the Organic ideology contain elements of both collectivism and social justice, ideals in terms of Palestinian *sulha* peacemaking. When conflict occurs at the local level, the *sulha* process reflects the need for unity and understanding when faced with a greater threat of the occupation upon society. At a larger level, *sulha* serves to calm

the community and prevent the conflict from fragmenting society further. A collective identity is seen as a promotion of cooperation, pluralism, and interdependence. *Sulha* remains a distinctive cultural practice of Palestinians.

Unity with religious diversity is one way in which collective identity in Bethlehem is promoted. Muslims and Christians are equally valued and cared for in society, assert mediators, despite (and because of) the influx of largely refugees from villages that would become Israel. As discussed in one interview, meetings between representatives of the various religious communities occur to air concerns, prevent conflict on the grounds of religious identity, and promote positive inter-religious relations.

While this religious respect and co-existence has existed for some generations, the modern effects of the creation of the Israeli state have brought changes in the demographics of Palestinian areas. In Bethlehem, a sizable Christian minority exists among a Muslim majority. Three refugee camps house over 18,700 registered refugee Palestinians and their descendants displaced since 1949 and 1950.[759] The added aggravations of high unemployment, overcrowding, and damaged infrastructure from military incursions creates another dimension of reality under occupation. Those living inside and living outside of refugee camps experience similar irritations in terms of loss of land, unemployment, lack of movement, and displaced anger. Mediation in this context must consider the ongoing frustration of parties coming from this experience because of the unique needs that might emerge from conflict in this setting.

Ultimately, mediators are representative of the diversity of Palestinian society, and have expressed the need for Palestinians to grow and work together despite the differences that exist between them. Religious values and differences need to be respected. The experiences of refugees as well as the conditions of those living in Palestinian areas generally add insight into how frustrations relate to ongoing, long-standing issues related to the occupation can pervade into the lives of the population.

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[759] UNRWA Website on West Bank Camp Profiles. Accessed 26 July 2010. http://www.unrwa.org/etemplate.php?id=103.

7.5.4.2 Occupation and Resistance

As discussed in 7.1.1b, the effects of the occupation consist of hardships relating to economy, environment, movement, violence, demoralisation and lack of opportunity. While not the source of all conflicts, mediators contend that the repercussions of the occupation serve as an underlying factor in many disputes, and therefore is a threat for the community at large. The themes of collectivism and social justice emerge when dealing with these issues and the topics that concern larger conflict with Israel and ways for the community to confront them. As phrased by one mediator, "Our struggle is not only against the occupation but it's also the injustices among ourselves, which [are] impacted by the occupation."[760]

By orienting parties to a shared common obstacle, mediators depersonalise the conflict and encourage parties to work together or move beyond the conflict so to ensure greater strength when tackling bigger issues facing the community. This has obvious tones with the Social Justice Story and for some conflicts, specifically relating to those dealing with issues relating to ongoing conflict with Israel (e.g. land), the collective experience of living under occupation is a relevant point of common ground.

The elements of Occupation, including the existence of checkpoints, refugee camps, the need for permits to enter Israel, interaction with soldiers, interaction with settlers, water restrictions, restricted movement between Palestinian towns, as well as the separation wall that has divorced residents from their land, are experienced by all Palestinians at some point in their lives, and frequently many points of their lives. Therefore, the occupation is part of the social reality for Palestinians, and cues in mediation within this context exist to acknowledge the hardships that result from it.

In addition to the collective experience of Occupation, mediators mentioned their expected duties during time of conflict between Israel and Palestinian factions, and have said that this is a national service that they were honoured to be a part of. Mediation in a Palestinian context could be seen as a political act of non-violent resistance, where parties have committed to the traditional practice of *sulha* rather than use instruments of

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[760] ZZ.

the occupying forces, such as courts. While Zoughbi mentioned that in an ideal world, mediation would also take place with Bethlehem's Jewish neighbours, most mediators centred on Palestinian concerns. With the Palestinian National Authority executive, judicial and policing arms still in infancy, and political factions centred on infighting rather than a vision for national unity, local mediation remains a reliable method for resolving conflict in a region facing ongoing uncertainty.[761] The macro-level conflict is undoubtedly a factor to the theory and practice of mediation at the micro-level in this context.

Conclusion

The considerations for comparing the theory and practice at *Wi'am* with TMF included an analysis of a variety of themes. First, the ideology expressed by the mediators of Bethlehem was presented in terms of Organic ideology, with roots in the societal values as well as Collectivist, Associative culture and social justice. The distinctions between the values and ideology from an Organic ideology and those of the Relational ideology of TMF were grouped into underlying values and cultural context.

In 7.2, the third party role was discussed through the expectations of the third party. The role included qualities of an insider-partial mediator, a respected voice in the community, and having power of persuasion. Differences between the third party role in a *sulha* context and that in a transformative context were discussed in terms of insider or outsider mediator, the voice of the mediator or parties and mediator influence versus facilitation.

Intervention strategies in a *sulha* approach included private meetings, an emphasis on unity, importance placed on forgiveness, and the use of a public ceremony to mark the end of the dispute. When compared with the transformative intervention practices, the two frameworks differed in terms of party control, non-directiveness, open expression and exploration of

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[761] RR.

differences, as well as supporting party-derived clarity and connection with the other party.

Following this, a 'Bethlehem Story' was developed through the use of the interview material as well as the literature. Two supporting concepts behind the Bethlehem Story included the Social Justice Story and the ideals behind Harmony approaches. This story was compared with the Transformative Story, and key variations were illustrated.

Lastly, the CRQ were discussed through reflection of the previous sections and interview material. The central questions of whether TMF would be relevant in Palestinian society, where points of commonality existed between the frameworks, what unique social interaction cues are evident in a Palestinian context, as well as the added distinctions of mediation as practised from a politically divided context were explored. The themes of collective identity, social justice, religious values, occupation, and recognition were explored in considering these questions, and there is an overall sense that indeed, purpose drives practice.

The ideologies and stories behind *Wi'am*'s practice are based on established heritage, current political complexity, and community values. The types of conflicts within this society seem similar in nature to those experienced in the West: land, marriage and divorce, property, money, and so on. However, conflicts are also due to a perceived attack upon honour, the introduction of shame, and the loss of dignity. *Wi'am*'s approach to resolving conflicts based upon perceived attacks are dealt with in the traditional manner that will restore (or lower) honour for the parties involved through non-violent means. *Sulha* gives the people in the society a means of dealing with conflict that empowers the community rather than disempowering the community by going to the authorities of the occupying power, official bodies thought to collaborate with it, or through costly and lengthy adjudicative bodies run by the local authority.

In addition, the high-stress environment in which people live can create a situation of rapid escalation of conflict where it might not otherwise. Mediators essentially negotiate and provide solutions based on their perceptions of justice and fairness as parties are removed from the process

control. TMF within a Bethlehem context would mean a drastic change in who can be considered a mediator, what assumptions are made about conflict, parties, constructive and destructive conflict. While *Wi'am* may be open to either a change or addition of practice, the broader conflict resolution community may not support a change, including respected elders, *sulha* men, *jaha* men, or those in social institutions. The disconnect between the values of TMF and the long pre-existing values underlying *sulha* may prove a difficult hurdle if introducing a new model.

The relational and community focus of *Wi'am* differs from that of TMF, yet it is the tradition of *sulha* that is a powerful and unifying process for Palestinians. A Western process such as TMF could not replace the existing system given the profound meaning and value placed on *sulha*, and would not need to. *Sulha* exists as one method among others, including tribal resolution, court proceedings, and even the introduction of Western processes. Yet, given the openness of the society to conflict resolution methods that are distinct from the authority of the occupation, *Wi'am* and Bethlehem would likely be open to exploring TMF. The implementation of TMF would require a change in assumptions of conflict and productive conflict as well as the actions taken by mediators. Would it be possible for TMF in a non-Western context to have transformation with different goals? TMF in Palestine would have to be viewed within a frame of justice to be meaningful. Folger and Bush have illustrated how TMF support this. Importantly, any process that is not centred on the belief of the basic human capacity of the parties' ability to gain strength and promote responsiveness through a social course of action cannot be seen as transformative in nature.

As a result, while TMF may be valuable as an alternative practice in some elements of society in Bethlehem, it is largely a method that works from an ideological framework that assumes some level of confidence among the parties. Given the society's weakness and separation from once-connected towns, nation-states and trade, it is to be expected that among citizens, the healthy balance between independence and connection would be somewhat lacking. Dependence on a highly powerful third party to intervene in conflict is influenced by tradition and long-standing cultural

values. Yet, mediators in this context have the ability to encourage vulnerable parties to discover their own strength and clarity in situations of great weakness, as well as to acknowledge the efforts of party connection and recognition of one another. Party empowerment and recognition as elements of justice in interpersonal conflict resolution could be what would make the Transformative Mediation Framework relevant to mediation in Bethlehem.

The last chapter will include final conclusions as well as future work in light of findings.

8 Chapter 8: Conclusions and Suggestions for Further Research

8.1 Goals of the Thesis

Every society has ways to manage conflict. Yet, the practice of mediation is subject to cultural variation and ideological interpretation. The practice of mediation is varied even within the same cultural context. However, Bush and Folger make the argument that theory drives practice. Accordingly, ideology, or the ways of interpreting the world, inevitably affect the way in which practioners approach their work. The Transformative Mediation Framework, developed by Bush and Folger, evolved from a Western reality of individualism and problem-solving. In its thesis, TMF was distinguishable by the focus placed on the existence and impact of mediator ideology on the process. The relational ideology that underlies transformative practice considers both the uniqueness of individual motive and agency as well as the reality of human interconnectedness. When the attention to self and other is disrupted in conflict, a crisis in human interaction can occur and has the potential to create a weakness and unclarity as well as self absorption. To confront this crisis, TMF places paramount importance on the qualitative effects of intervention for the parties involved, namely empowerment and recognition. As a party is clearer and confident in options, goals and interests, he or she is more able to consider alternative perspectives of the other – ultimately promoting empowerment and recognition between the parties. Outside of a 'Western' cultural context, TMF has not been widely adopted. The question remained: is the Transformative Mediation Framework relevant outside of the 'West'?

In this thesis, the general problem to examine was whether non-Western approaches to conflict in a politically divided societal context correlate to the Transformative approach to conflict and its relational ideological underpinnings. There were two main facets to the research problem: (1) the

lack of research of the Transformative framework as applied in non-Western cultures or regions affected by ongoing political conflict; (2) the uncertainty of whether the relational ideology corresponds effectively with components of Middle Eastern culture and belief systems. The primary purpose of this research was to examine whether the relational ideology, which creates the foundation for the Transformative approach, is overwhelmingly Western-based thinking or whether the ideology can be a shared belief despite numerous distinctions in culture and values. The secondary purpose was to examine a Middle Eastern approach to conflict: what influences in society create concepts of conflict, how is conflict analyzed, managed, resolved or transformed, and how these methods are taught within communities.

These goals were translated into Central Research Questions, and asked in relation to the general problem that the thesis aimed to address:

1. Would the Transformative approach translate into effective theory and practice in the Palestinian model?
2. In what ways are the approaches to conflict within a Palestinian context conducive to the theory and practice of the Transformative framework?
3. What elements of social interaction are evident within a Palestinian setting that are not touched upon in the Transformative model? What cues exist in the culture that do not exist in a Western frame of reference?
4. What added elements are evident in the practice of mediation in a politically divided society?

8.2 Review of research process

In broad terms, the steps taken in the research process followed those presented in Chapter 1: Introduction and Methodology. The *interpretive qualitative paradigm* was the foundation for the thesis; it provided an approach to the research and a guide to conducting the interviews in the

field. The researcher considered that there was no one, true reality but "multiple, constructed realities" (relativist ontology); understood that "the researcher and the subject influence each other and create understandings together" (subjectivist epistemologies), and compiled data from the natural world rather than in a laboratory (naturalistic methodological procedures).).[762] The research design model adopted for this thesis was a cross between the Rose-Wengraf Model of the Research process,[763] and Joseph Maxwell's Model of Design Components.[764] On its own, the Rose-Wengraf Model provides a methodological approach that includes five elements (a general theory, theoretical propositions to be investigated, instrumentation or design of data collection, fieldwork to collect the necessary information, and results through analysis and interpretation) that support inquiry into the research following to a central research question for the researcher to answer. The Maxwell Model names five component parts (purpose, conceptual content, research questions, methods and validity) to function together and sequentially to fulfill the research purpose. This thesis outlined the adopted research design model in the first chapter. This included: (1) the purpose of the research, (2) conceptual context and framework, (3) research questions (layered by level of the process, including interview, theory and central research questions), (4) a case study with fieldwork, (5) a general methodology and rationale, and lastly (6) analysis and interpretation of interview material.

The initial steps taken to confront the Central Research Questions included literature reviews in terms of Mediation (Chapter 2) and Culture and Conflict Resolution (Chapter 3). In Chapter 2, the established Western practices of problem-solving mediation and TMF were outlined in relation to the ideologies that each approach is evolved from, where these approaches fit in a spectrum of stories of mediation, and the process that each practice adopts. In Chapter 3, the subject of culture and its relationship in conflict resolution was explored. The working definitions of culture as well as more

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[762] Della Noce, 2002, 81.
[763] Wengraf, 54-55.
[764] Ibid, 56-59.

specific terms such as 'Western' and 'Non-Western' were proposed for the purposes of this thesis. Conflict resolution in the Middle East was explored, and the terms *individualism* and *community* were discussed in terms of the individual or communal nature to specific cultures. Culture and its value in conflict resolution has been established by academics and practitioners such as Avruch and Black, Abu-Nimer, Irani, Funk, Zoughbi and Jabbour. Lastly, the traditional Middle Eastern conflict resolution method of *sulha* was introduced, as it would be a commonly referred upon concept for the remainder of the thesis.

A case study was adopted in the Middle East and was explained in context of the city of Bethlehem and the region of the oPt (Chapter 4). This explanation covered a brief history through the ancient to modern times of what is now the oPt, with specific reference to the history of conflict resolution in a Palestinian context. The selected case study, located in an area of enduring broader regional conflict, held the potential for further distinction in worldviews. In addition, fieldwork was undertaken to collect primary data from the region (Chapter 5). To address the main theory and research questions, the fieldwork explored the modes of communication in the culture and in the analysis chapters, compared the non-Western practice to the foundation to the Transformative approach. Semi-structured interview questions were posed to practicing mediators in Bethlehem that were affiliated with the Palestinian conflict resolution centre '*Wi'am*' in order to understand the established ideology established in the region. These interview questions, adapted from Della Noce's study on mediator ideology, were used in interviews and provided the basis for the theory questions.

These interviews conducted with experienced mediators affiliated with *Wi'am* produced an array of responses that were coded for themes relevant to this study. *Sulha*, the traditional Arab model of conflict resolution, was a model that most Bethlehem mediators referred to in interview, and focuses on mediator influence, the restoration of harmony and honour, and a conclusion with a public acknowledgement of the ending of conflict. Those

interviewed described their views on human nature, conflict generally, what successful and failed conflict resolution might entail, and what role social institutions should have in the process. The primary and secondary foci of the thesis (considering whether the relational ideology behind the Transformative framework is appropriate outside of the Western frame of reference despite considerable cultural, social and political disparities) were the thrust behind interviewing mediators in Bethlehem who are active in conflict processes, and understanding these approaches to conflict in a non-Western setting. Upon later analysis, the responses from the interview and theory questions were considered in a cultural context that differs significantly from the Western basis for the model while deliberating the Central Research Questions in Chapters 6 and 7.

Combining existing literature with the interview data from the case study and fieldwork, analysis was organised in two parts: first, through addressing the underlying Theory Questions (Chapter 6); second, by attending to the overarching Central Research Questions of the thesis (Chapter 7). In Chapter 6, the perspectives on Theory Questions were presented through the views provided by Bethlehem mediators on human nature, conflict, productive and destructive conflict, and the role of social institutions, if any. The importance of family, religion, government and politics in creating these views were considered. The role of the mediator and the factors of age, gender, social status and religion were additional elements of mediation practice within this cultural context and using traditional forms of conflict resolution. The experience of the ongoing conflict with Israel added another layer of complexity and richness when examining the role of mediation and the mediator in this context. The cultural realities specific to the Arab world provided by Abu-Nimer, Irani, and Jabbour in the discussion on culture and conflict resolution proved accurate. Specifically, the concepts surrounding collectivism, equating conflict with negative imagery, established mediator agency, and the significance of the indigenous *sulha* model were strong arguments made by these authors that were evident in the interview material.

In Chapter 7, with the findings of the interviews presented in relation with the Theory Questions, the Central Research Questions were discussed. The topic of ideology was revisited as a first step in establishing any relevance of TMF and Relational ideology in a non-Western context. In this section, ideology behind the work that mediators in Bethlehem adhered to was discussed first within the frame of individualism and relationality as discussed in Chapter 2, and second with the additional culturally-derived ideology that mediators described when discussing their work. While the first part of this section saw some links to individualism and relationality, the interpretation of an individual within a larger group was distinct in this Palestinian context. Associative culture, as addressed by Triandis, served to create a culture and processes within that culture that mediators and parties largely subscribed to. Within the context of Bethlehem, there was a high degree of collectivist, associative culture that promoted a return to group harmony, the need to address injustices, and the agency of a mediator to assist parties in quiet negotiations to come to agreement. These norms are distinctive from the origins of either individualism or relationality.

The second stage of this chapter was to consider the Bethlehem Story of Mediation in light of the other stories that currently dominate the Western understanding of the field as introduced in Chapter 2. The Bethlehem Story included familiar elements of the stories of (1) Satisfaction (2) Social Justice, (3) Harmony, (4) Transformation, and the added understanding of (5) a Palestinian/Arab reflection of social reality. Some clear distinctions of the Bethlehem approach compared with the existing stories included a strong collective identity, the third party mandate that gives authority to the mediators, standing religious values and societal pressure. The Bethlehem Story incorporated a blend of values that underscore the ways of practice within this particular non-Western context. The Bethlehem Story emphasised the ways in which conflict is valued, approached, managed and viewed by mediators through their own words as well as through the literature used to describe conflict resolution and Arab culture.

Lastly, the CRQ were offered with responses based upon the literature and analysis of the fieldwork. The first CRQ asked whether the transformative framework would translate into effective theory and practice in a non-Western context. Taking this case study, the traditional model of *sulha* is one in a list of options for parties in conflict in Bethlehem, across the oPt, and throughout the Arab world. One of the benefits of having an established and indigenous process is that it is a trustworthy means to resolve disputes over courts or bodies that are not relied upon by the public, either by lack of trust or lack of money. However, there are segments of the population who may not be best served by this process because of the patriarchal nature of the society, and women and youth may be left out of the substantive parts of the mediation and resolution. In addition, there may be sections of the society who would like to more fully engage with their conflict resolution process. There is potential in these sections of society for a different model; the remaining question is whether the community would engage with a model that may differ from their ideology or established practice.

A basic agreement between the models was the term *relationality*. There was dissimilarity in the precise understanding of the term: in TMF it is the balance of concern with self and the concern for others, in Bethlehem it is the concern for self and family and the concern for the cohesiveness of the community. Another point where the Bethlehem model may agree with TMF was in the accessibility of mediators and the legitimacy given to them and the conflict resolution process by social institutions. This legitimacy by social institutions goes so far in Palestinian culture that it surpasses the TMF ideal; mediators that were interviewed from Bethlehem discussed their cooperation with politicians, clergy, police, mental health facilities, hospitals and universities. This collaboration is illustrative of the true collectivist nature of the society and its push toward harmony. The role of religion and religious leaders also promotes a harmony ideal, and the common experience of loss and persistent threat of the occupation provides a way of encouraging parties to approach conflicts collaboratively rather than adversely.

8.3 Observations and Reflections

The research into this topic was an exciting and fruitful endevour. There were particular aspects in completing the thesis that proved most helpful, namely: (1) organisation, (2) relevent literature, (3) field research. Other aspects of the research proved challenging, including (1) language, (2) travel restrictions, and (3) outsider/gender implications. This brief section will outline these to summarise the observations made after undertaking this research project.

The first element that proved most supportive throughout the research process was organisation. The researcher's proposal provided structure for the entire thesis, though it was changed accordingly to meet the directions in which the research went while in progress. An example of change that was easily adopted was a change in case study location. While the Middle East was the target region, the oPt was not initially considered. The decision to use the oPt as a case study was a result of the copious amount of literature for the area, especially those that mentioned the Palestinian conflict resolution centre *Wi'am*. The timing of the stages of research, the completion of initial and second fieldwork ventures, and the feedback provided through supervision and through meetings with academics and practitioners worked in tandem with the schedule allotted for the research.

The literature that was considered in Chapters 2 and 3 provided the backbone for the entire thesis, and this literature, especially those with the Middle Eastern focus, were relevant and timely with the research. With guidance from supervision, fieldwork was embarked upon early on in the research, and this oriented the researcher with the region, encouraged language study, established contacts, and further solidified the research methodology. The fieldwork provided a tangible source of inquiry for the theories provided for in the literature, and allowed for investigation into the validity of the claims put forward by those authors discussing Middle Eastern and collectivist culture conflict resolution methods. The interviews gave the most accurate portrayal of how mediation works in a non-Western society, because the mediators were not theorists or academics – they were

practitioners working within a complex context that is distinct from Western society.

There were also challenges that had to be confronted throughout the research, and some of which could not be resolved. First, the issue of language was an obstacle throughout. While the researcher studied Arabic in order to become oriented with the case study location, the level of proficiency was not appropriate for independent interviews where an interviewee was not fluent in English. Therefore, an interpretor was used for a majority of the interviews, and the researcher was conscious that even those interviewed in English were not in the participant's native language. That proved difficult when concepts had to be explained more simply – not because the participant would have had difficulty in understanding the concepts, but because the lack of fluency in the same language prevented a more indepth discussion of the topics.

Second, the risks of travelling to the oPt included the ability to travel through Israel and with Israeli permission to remain. As a result, only brief trips to the oPt could occur, each lasting two months. There was concern of whether the fieldwork could be completed in the time given. In addition, the complexity of the situation between Israel and the oPt added the impetus to keep any Palestinian contacts confidential so as to protect not only the research but also the safety of any of those contacts who assisted in the research.

Third, the cultural context made the reality of being an outsider and a female researcher in this environment minimally problematic. While one mediation was observed despite being an outsider-female, there were fewer opportunities to view *sulha* proceedings mainly due to the researcher's gender. An unknown variable is whether due to my gender or outsider status, certain topics were omitted from discussion. As the researcher was an outsider-female and lacked Arabic language proficiency, the interview material proved the most promising aspect of the fieldwork in relation to the thesis because observations into the practice of *sulha* was not possible in the cultural context.

8.4 Practical Implications and Future Research

The observations made in Section 8.3 allow for reflection on the practical implications of this research and suggestions for future research. Transformative mediation is a new, Western model compared with the long-standing, traditional *sulha* model. However, the goal of this research was not to replace existing systems, especially those that work well in context. Instead, this thesis asked the question of whether the transformative model is relevant outside of the Western confines where it evolved from, and given a particular case study, can conclude that there are possible avenues where the process may be appropriate, but not all. There are several opportunities for what practical implications this research has, and what direction future research can turn to investigate the potential for transformative mediation within a Palestinian context, in an Israeli context, in a Palestinian-Israeli context, and in other non-Western regions of the world.

8.4.1 Practical Implications

- *The possibilities – and the limits – of a transformative model in the Middle East*

Having completed this research project, the next step is to explore those possibilities of whether the transformative model is adaptable to a non-Western setting. In conflicts that do not immediately reflect male *sharaf*, TMF holds potential for creating an environment where parties can discuss the issues that bring them into conflict in a private, informal setting without violating the pre-existing *sulha* system or religious tenants valued in the community. As discussed in Chapter 7.5.1, TMF has the potential to act as a supplemental model to the existing system without removing *sulha*. Specifically, TMF is appropriate for conflicts in which parties want to gain greater understanding and control over their perspectives in a conversation with the other party that the parties themselves own and control.

Women and youth were described as two groups where the model has the possibility to engage with the society. One way to engage with these groups

is through basic training through pre-existing group meeting space, such as in community centres (such as *Wi'am*) or in schools, where mediation training could take place. Peer mediation programmes, while relatively new to the region, have been introduced to at least one school in the Bethlehem area. In addition, mediation training does take place with the women's group at *Wi'am*, but it is unknown whether the women are able to act as mediators outside of this group of women. TMF has the potential to be a valuable addition to grassroots, community methods for approaching topics such as gender because the model assumes in the innate capacity in the parties to discuss, deliberate and make the best decisions for the parties on their conflict issues. Aside from the belief in party capacity, TMF also believes:

> Dialogue has a potentially humanizing effect which brings people to new ways of thinking and deciding – ways that can enable them to make decisions that are based in greater clarity about themselves *and* each other... Interactive engagement carries with it the potential for profound changes in thinking and behavior. This premise is key in distinguishing mediation from other available approaches to conflict intervention, in which parties' conflict interaction is minimized, controlled, or prevented.[765]

Therefore, the possibility for TMF's role in supporting discussions on topics that are controversial and may require a change of thinking and behaviour is promising. Palestinians have the ability to "raise, discuss, and challenge *each other* about perceived inequity, power imbalance, and the unfair distribution of resources, rights, and obligations." In transformative mediation:

> ...people are supported in thinking through the risks they want to take in raising issues of inequity or pushing for structural change. It means that people can hear about the dehumanizing effects and consequences of established social structures, and ask *each other* to respond to these concerns. And it means that parties can consider the resources and personal will they have or do not have to change such structures. All of these social-justice concerns

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[765] Folger & Bush, 2009, 1.

are addressed through a process that is fundamentally defined by a belief in the relational power of self-determined human dialogue.[766]

Therefore the parties are able to discuss these issues in an environment that includes one another and their direct opinions and challenges. In order to initiate this model, local practitioners would need to be identified and trained. Trainers to women and youth should have some connection to the community, and any exploration of this area would require research into whether such training is desired within these groups. Active participation by current mediators into any training and delivery of a transformative model would ensure community support for the model and for those practicing from within the model. Conversely, selection of women and youth as mediators may cause some unease from practicing mediators. For many, being a mediator for *sulha* is an honour, and a Western process that would be willing to teach any person these skills may not be widely accepted. However, should existing mediators be active in supporting an alternative, this may provide a level of reinforcement to a novel TMF practice, and incoming practitioners.

- *Appreciation of indigenous processes*

The practice of *sulha* has lasted throughout millennia of turmoil, and though a traditional method it is used regularly despite the availability of formal justice arenas such as courts or arbitrators. *Sulha*, in a Palestinian context, has a rationale for its practice as described by the mediators in Bethlehem. The collectivist, associative culture provides the foundation for the ideologies that mediators shared in their interviews, just as the individualist, abstractive culture of the West has produced ideologies that underline the problem-solving model and a reactionary transformative model. Any introduction of the transformative model would not replace any existing Palestinian model, and it would not need to; the practice of *sulha* is a traditional form of non-violent conflict resolution that the community and surrounding communities

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[766] Ibid, 1-2.

have used since before the dawn of Islam with great success. TMF has the potential to support parties in conflict alongside *sulha* when mediators want to approach conflict resolution in party-centred terms. In practice, this need not replace existing *sulha* processes, but may promote the addressing of conflict and its progression by way of supporting the voice and agency of each party in the process to foster party empowerment.

In addition, mediators may highlight perspective-taking as it occurs by parties to facilitate recognition by one party toward another. These transformative elements of party empowerment and recognition are not in opposition to the existing model. Indeed, the concept behind *sulha* is to redress public dishonour and disempowerment, and by incorporating empowerment and recognition parties can regain clarity from disempowerment and request recognition from the other while still adhering to the tenants of the *sulha* process. *Sulha* is a passionate, historical element to Palestinian livelihood, and the *sulha* mediators are highly regarded for their contributions. A transformative *sulha* model has the potential to strengthen the Palestinian community further by encouraging parties to be responsible for any outcomes, supporting the concept of social justice from the grassroots, and maintaining a traditional model for conflict resolution that moves forward while respecting the past.

8.4.2   Suggestions for Future Research

- *More Interviews with Palestinian mediators based in Bethlehem*

This research project depended on the assistance of the *Wi'am* Centre for interviews with nine mediators. If more time or funding was available, longer or more frequent fieldwork visits to Bethlehem would have been arranged in order to interview more mediators affiliated with *Wi'am*, affiliated with other conflict resolution centres, or working independent of a larger organization. This could also be approached by using more than one researcher to interview mediators, who would be trained on the interview questions, goals of the research, transcription responsibilities, and would assist in coding of results.

- *Interviews with Palestinian mediators outside of Bethlehem*

Having only interviewed mediators in Bethlehem affiliated with *Wi'am*, there is the possibility of interviewing mediators not associated with *Wi'am* or outside of Bethlehem. While Sharon Lang studied the *sulha* mediators of the Galilee in depth, this is one community within the Israeli borders. Bir Zeit University has interviewed mediators in relation to the history of *sulha* throughout the land of Palestine from ancient times to modern times. Bethlehem is one area of the oPt, but it would not typify the experience of all of those regions of the oPt. Having a translator or language skills, a longer time commitment, and possible funding would be necessary to embark on this work.

- *Interview Israeli mediators*

One potential avenue is to interview Israeli mediators in the same manner as the Palestinian mediators to source the underlying ideology that drives their practice. While one of the authors of the Promise of Mediation, R.A.B. Bush, has spoken at an Israeli university in the past, the goal of this research would be to discern the rationale behind the practice of mediation in Israel, which is largely Western in philosophy but distinct in the nation's youth, ongoing conflict within the Middle East, and conflicts within its borders that mediation is used to address. These tensions may include areas with intra-Israeli communities that are comprised of multiple ethnic groups, areas of Palestinian citizens of Israel, and Jewish communities that have conflicts relating to substantial political or religious differences.[767]

- *Discourse Analysis of Indigenous Process*

A discourse analysis would require a recording of the mediation sessions, transcription of the recordings, and a thorough analysis of the strategies that mediators use within those sessions. To provide a discourse analysis with the assistance with local research assistants, the researcher would have a clearer

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[767] Li-On, Lee. "The Politics of Community Mediation." *Conflict Resolution Quarterly* 26, no. 4 (Summer 2009).
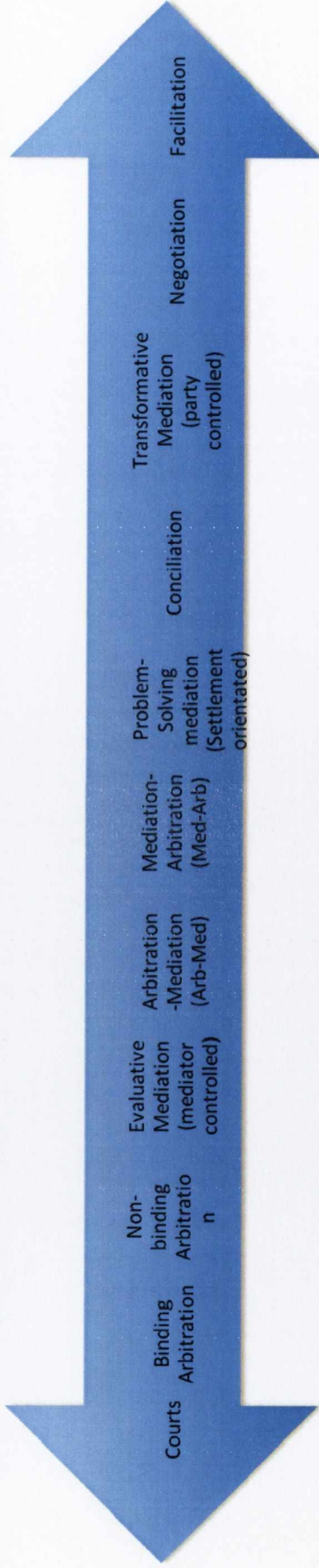
understanding of the strategic movements that mediators make and, with an interview, would provide a richer picture of the practices in non-Western societies. This form of action would require substantial language skills or a trained interpreter, a long-term time commitment, the approval of the community for the researcher to be involved, and possible funding for the length of the research period.

Conclusion

Mediation is a valuable resource for those in conflict in areas throughout the world. This thesis sought to address a question relating to the applicability of one model, the Transformative Mediation Framework, outside of the confines of 'West' where it is used, using a case study in the Middle East. Framing the question in terms of the literature in mediation as well as conflict and communication, this research project was situated in an emerging field, at a crossroads of traditional practice and transformative ideas. From this project, final questions can be drawn on the ideologies of mediators outside of a Western context; in what ways can these ideologies and practices be understood from a Western perspective, and what implications can be drawn in terms of future work for transformative mediation research? Only continued further research and action will solidify the potential for TMF outside of the West, yet the results of this research project suggest a promising, if challenging, initial exploration.

9 Appendix 1: Third Party Mandate Continuum

Dispute Resolution processes based on intensity or reduction of third party process and content controls

Courts — Binding Arbitration — Non-binding Arbitration — Evaluative Mediation (mediator controlled) — Arbitration-Mediation (Arb-Med) — Mediation-Arbitration (Med-Arb) — Problem-Solving mediation (Settlement orientated) — Conciliation — Transformative Mediation (party controlled) — Negotiation — Facilitation
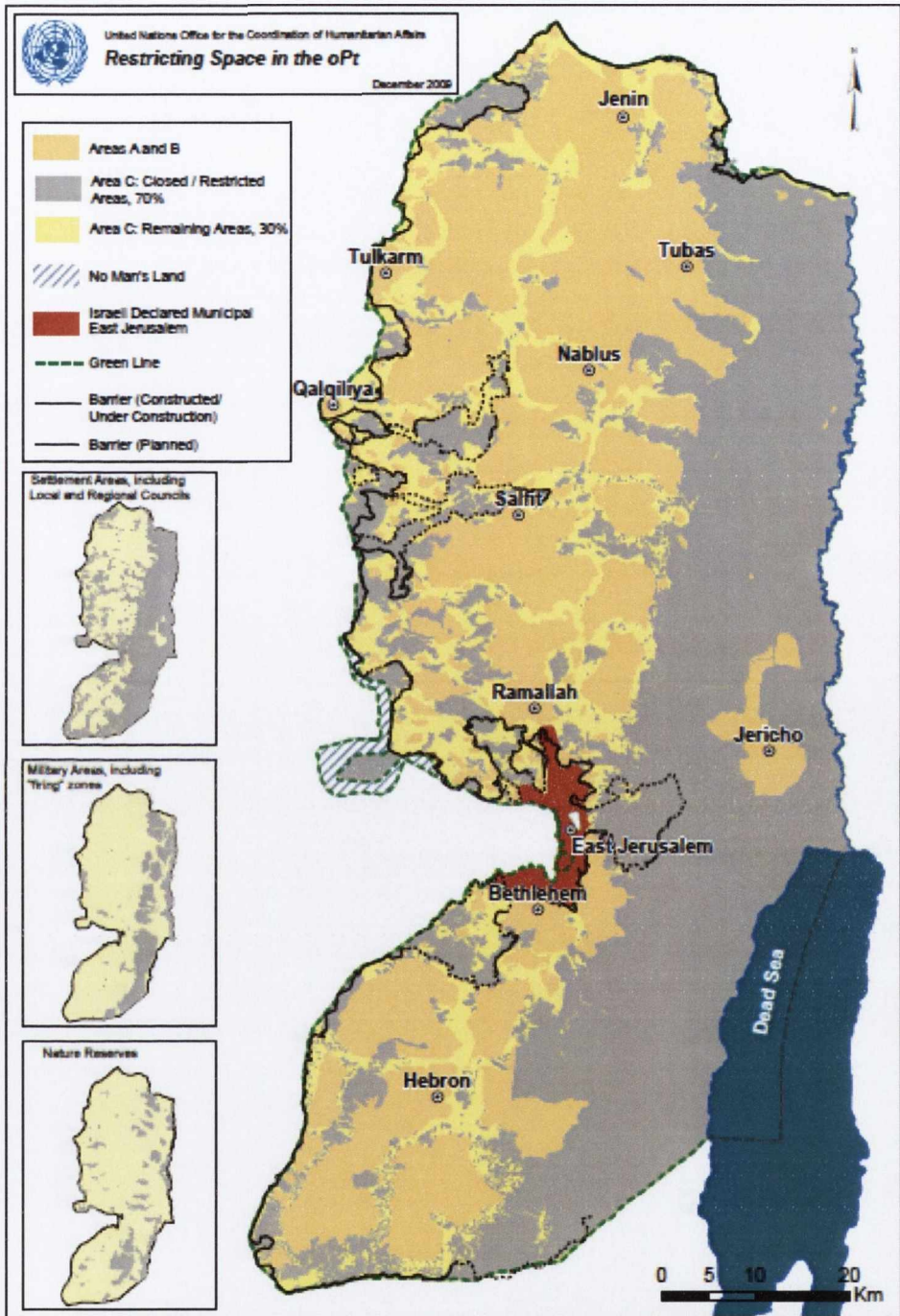
Notes:

At the far left of the continuum, the increased content and process control leads to processes that require the third party to fill a role that is dominant of the process. Judicial roles, such as a judge, have high control of the procedural expectations and what topics can be discussed. On the far right of the spectrum, the mandate for the third party leaves an expectation that that they will have little to no power in controlling the process or content discussed between parties. Instead, the process is entirely party-led on topics decided by the parties. In the centre of the continuum are processes that range in the third party controls over process and content, including mediation. Depending on the ideological orientation of the mediator and the process that the mediator follows, the mediation process can range from high mediator content and process controls, such as with evaluative mediation, to low mediator content and process controls, such as Transformative mediation.

From Dyer, Erin. "How does the ideology of a mediator affect the mediation process?" Masters dissertation, Trinity College Dublin, 2004. Adapted from Folger, Joseph P. "Mediation: Principles and Practice", course in Adult and Organizational Development, Temple University, Lecture 21 January 2003.

10   Appendix 2: Restricting Space in the oPt

United Nations Office for the Coordination of Humanitarian Affairs

Restricting Space in the oPt

December 2009

Legend:
- Areas A and B
- Area C: Closed / Restricted Areas, 70%
- Area C: Remaining Areas, 30%
- No Man's Land
- Israel Declared Municipal East Jerusalem
- Green Line
- Barrier (Constructed/Under Construction)
- Barrier (Planned)

Settlement Areas, including Local and Regional Councils

Military Areas, including "firing" zones

Nature Reserves

Notes:
Map provided courtesy of the UN Office for the Coordination of Humanitarian Affairs.
The boundaries and names shown and the designations used on this map do not imply
official endorsement or acceptance by the United Nations.
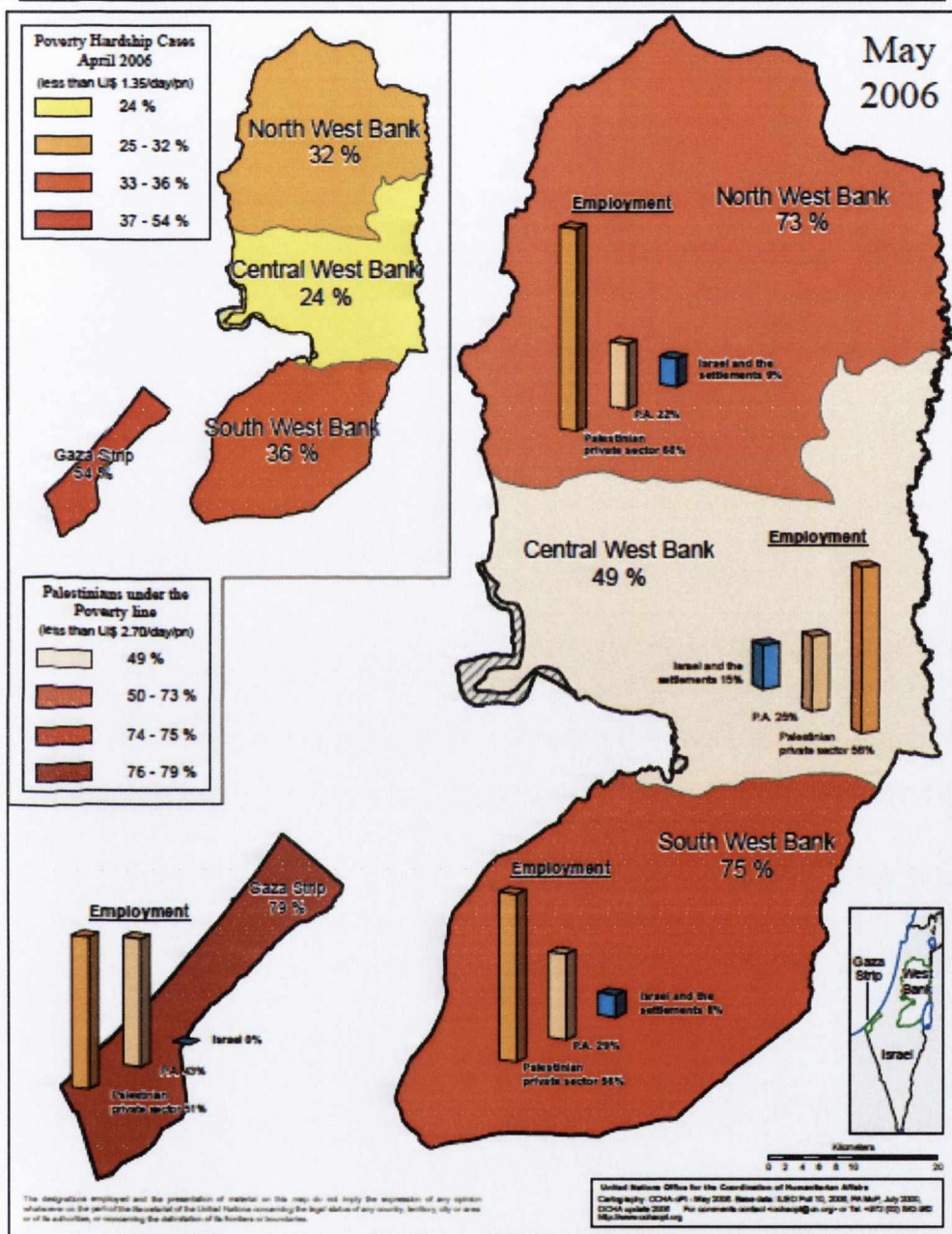
11 Appendix 3: Poverty and Employment in the oPt

Poverty and Employment in the occupied Palestinian territory
CAP 2006 - Revised Emergency Appeal   May 2006

Poverty Hardship Cases April 2006 (less than US$ 1.35/day/pn)
- 24 %
- 25 - 32 %
- 33 - 36 %
- 37 - 54 %

Palestinians under the Poverty line (less than US$ 2.70/day/pn)
- 49 %
- 50 - 73 %
- 74 - 75 %
- 76 - 79 %

May 2006

North West Bank 32 %
Central West Bank 24 %
South West Bank 36 %
Gaza Strip 54 %

North West Bank 73 %
Central West Bank 49 %
South West Bank 75 %
Gaza Strip 79 %

Employment

Israel and the settlements
P.A.
Palestinian private sector

Notes:

Map provided courtesy of the UN Office for the Coordination of Humanitarian Affairs.
The boundaries and names shown and the designations used on this map do not imply
official endorsement or acceptance by the United Nations.

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