

The London School of Economics and Political Science

Mediation in a Conflict Society

An Ethnographic View on Mediation Processes in Israel

Edite Ronnen

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For Inbar, Ori and Eran

לצנבה, לאורי - שבלצדיהט אין

לצרון - שבלללו

DECLARATION

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Abstract

This thesis addresses the question: how do individuals in a conflict society engage in peaceful dispute resolution through mediation? It provides a close look at Israeli society, in which people face daily conflicts. These include confrontations on many levels: the national, such as wars and terror attacks; the social, such as ethnic, religious and economic tensions; and the personal level, whereby the number of lawyers and legal claims per capita are among the highest in the world. The magnitude, pervasiveness, and often existential nature of these conflicts have led sociologists to label Israel a 'conflict society'.

Mediation practice came into this society and challenged the existing ethos and norms by proposing a discourse of dialogue and cooperation. The thesis focuses on the meeting point that mediation engenders between narratives of conflict, which have developed in this environment, and the mediation processes, which set out to achieve a collaborative discourse and mutual recognition.

The fieldwork, forming the core of the thesis, consists of the observation of supervised mediation processes of civil disputes in two leading mediation centres, and interviews with professionals and key figures in the discipline. The wide variety of voices of a broad range of interviewees and many different parties provide for rich, qualitative data. The use of the narrative-ethnographic approach in observing mediation processes helps identify key themes in participants' narratives. The subsequent analysis leads to the insight that these mediation processes reflect, in a subtle way, the narratives, beliefs and needs of individuals in a conflict society.

The findings from this study indicate that perceptions of life in a conflict society are clearly manifested through mediation processes. These place obstacles and inhibit the attainment of agreements. Yet, surprisingly, some of the findings also demonstrate an aversion to conflict and a well-expressed desire to maintain communication and to achieve peaceful resolution.

Acknowledgements

Whoever reads this work knows the list of thanks that is appropriate here. No one can invest such efforts for years, without the support and trust of her loved ones – family, friends and colleagues.

This thesis is the fruit not of the last years only, but of my journey in life. My professional and personal past, as a daughter, woman, student, lawyer, mother, partner, writer, made up of good days and bad days, times of happiness and times of crisis, are all evident in the thinking behind this thesis. All of the many people who had accompanied me for such a long time towards the completion of this work deserve and will receive my thanks, but only a few will be mentioned here by name.

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A Clarifying Note to the Reader

1. In order not to disrupt the flow of the text, I use 'he' and 'his' throughout, with no intended gender bias.
2. My own remarks are in square brackets.
3. Words and phrases in **bold** indicate my emphasis.
4. Quotations without a reference are from the interviews.
5. I have alternatively used the following pairs or triads of concepts with no specific preference (unless otherwise stated):
 - a. Conflict – dispute
 - b. Teller – narrator
 - c. Party – litigant – disputant
 - d. Caucus - separate meeting - private meeting
 - e. Emotions- feelings
 - f. Sephardim – Mizrachim
6. Regarding quotations from the interviewees: if one is cited by his last name, it is his true name; when a first name is used, it is a pseudonym.
7. The names of the interviewees and the details of the interview appear in Appendix A. The reader is invited to refer to this Appendix. If two of the interviewees have the same last name, and appear in the same chapter, an initial is added to one of them. If they appear in different chapters, the context makes their identity clear.
8. Unless otherwise noted, the translation from Hebrew is mine.
9. Regarding references: in an attempt to be clear and consistent, so the reader can find the material with ease, and because the names are sometimes strange to a non-Hebrew speaker, the last name of the author/editor always comes before the first name. Books in Hebrew are marked (Hebrew), but not articles. The names of the books and articles are translated into English, but not the names of the journals, the publishers etc.

All references to web sites end with the date on which they were last accessed.

E.R.

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Introduction

This thesis studies how people who live in a conflict environment, pursue the option to resolve their private disputes in a peaceful manner through mediation. Using an ethnographic approach, the thesis focuses on mediation processes in one society, the Israeli society, which sociologists define as 'a conflict society'. After demonstrating the variety and nature of the conflicts in question, the thesis concentrates on specific mediation processes.

The study follows the route of mediation to focus on processes in advanced mediation courses, the so-called 'Practicum', undertaken in two mediation centres. It aims to provide a detailed account of what happens in mediation rooms, which are not usually open to the public or to researchers.

The last part of the thesis brings the findings from the field, demonstrating the strong narratives brought from the outside conflict environment into mediation rooms. The analysis connects narratives prevalent in this society, to the voices of the parties and the mediators, as expressed in the sessions. The thesis proves that living in a conflict society does not diminish the hope and will to find resolution, but the narratives and the ethos it creates put up massive obstacles to open communication, empathy and understanding of the other's views. The special character of individuals, who grow up in this society, is also clearly manifested when they function as mediators.

This socio-legal ethnographic study uses narrative tools, which are appropriate when discussing identity issues, but are also challenging, because they are not commonly used in this context. Therefore, its contributions relate to existing theories of narratives and conflicts. They pertain to the literature on mediation and on conflict societies.

It also supplies direct observational data from mediations which could serve future research.

The thesis divides into three main parts, starting with four background chapters describing the special society under study, going on to a central part about the specific 'village' of the field research, and ending with the findings from the field.

Part 1 consists of four chapters. Chapter 1 attempts to portray Israeli society by focusing on the different aspects of conflict which affect this community. It discusses the history, the myths, the values and the narratives of Israel, culminating in a discussion of current problems, such as political issues and the different minorities. The description of the many types and shapes of internal and external conflicts that Israelis face, as individuals and as a community, leads to the conclusion of the first chapter, namely the definition of Israeli society as a 'conflict society'. The chapter ends with analysis of the unique narratives of militarism that emerge from the preceding discussion.

Chapter 2 discusses the narrative methodology used and how its special tools beautifully fit the needs of this particular project. This methodology investigates questions of identity and thereby can link the characteristics of individuals and those of the society in which they live. Subsequently, it provides the data on the field work undertaken.

Chapter 3 aims to acquaint the reader with the world of mediation in Israel. It describes the three main models of mediation which are taught in courses and applied in practice. The chapter proceeds to portray mediation in the Israeli context, and through the interviewees' eyes.

Chapter 4 examines the first ten years of mediation in Israel, leading to the creation of the Practicum, where the field research was undertaken. Growing from three main sources – family disputes, civil-labour disputes and the

academic world – mediation rapidly spread during a few years of intense development. The phenomenon of gathering in centres to cope with rapid changes in the field is explained. Reviewing the legislation, the different committees and institutions that have shaped the functioning of mediation, and the big involvement of legal entities, aims to prove the claim that the mediation world in Israel is tightly connected to the legal system.

Chapter 5, which is the single constituent of Part 2, describes in detail the framework of the Practicum courses, which were the object of the field work. These advanced courses are usually run in mediation centres for graduates of basic courses, who choose to deepen their knowledge and experience. The courses include a theoretical section and a practical one. In the latter, the students mediate real cases, transferred from the Small Claims Courts, under the supervision of experienced mediators (group leaders). The courses took place in two mediation centres, which are described at the beginning of this chapter. Subsequently, the courses and the mediation processes are discussed; first, the variety of participants and their roles, and then the process itself, its structure in theory and practice, and its function as a source for narratives.

Part 3 includes the last two chapters, 6 and 7, which concentrate on the voices of the participants in the mediation processes, those of the mediators and of the parties, respectively. Confronting what the participants narrated during the Practicum processes with the literature on the conflict society and its narratives generates the conclusions. Narratives of life in a conflict society are clearly manifested through the mediation process and they place obstacles along the path towards agreement. Yet, surprisingly, there are also findings that demonstrate an aversion to conflict and a well-expressed desire for harmony and conciliation.

An insight which emerges from the above descriptions and analyses is that the observed mediation processes are, in fact, liminal rituals, as theorised in the work of Van Gennep and Turner. Placing mediation processes in their proper position within Ethnography theory facilitates a deeper understanding of them. This insight is the subject of another paper, engendered by the current thesis.

PART 1

This part consists of four chapters which together give the necessary background to understand and appreciate the findings of the field observations. Before diving into the observations, the researcher must invest in learning about the society under study, to examine its various components and its different phases. Only a comprehensive picture of the society in question would provide a deep understanding of the specific parts that are observed. Therefore the four chapters that enable a holistic view of the scene are: Israeli society and its multi-conflict-culture, explanations of the chosen narrative methodology and its benefits to the exploration of the research questions; a discussion of mediation in the Israeli context; and the history of mediation in Israel which led to the creation of advanced mediation courses where the fieldwork was undertaken. These data together with the second part of the thesis give the reader the thick knowledge needed to apprehend the findings in the third part.

CHAPTER 1

Israeli Society

This thesis is interested in the question of how people in a conflict society meet the option of peaceful resolution. This first chapter proves that the society under study is indeed 'a conflict society', and explains the meaning of the term. The chapter gives an ethnographic description of Israeli society to shed light on the elements that relate to the issues of conflict within it. Doing so will provide the necessary background to the voices from the field, which are understood and analysed considering those conflicts.

The main thread going through the thesis is the effects of the environment of conflicts on processes of peacemaking in private disputes. Thus, this chapter aims to provide the relevant information to which the final findings are related. Israeli society is a kaleidoscope of people and groups, like colourful shapes in constant movement within a small confined space. This chapter looks at the following pieces of the Israeli social kaleidoscope: history, language, religion, economics, politics, law, ethnicity and minorities. A special section is devoted to aspects of militarism, a phenomenon that reflects the above conflicts. The different aspects of conflicts which have led to the creation of '*an ideology of conflict*'¹ and which have shaped the narratives of the society and the narratives of individuals will also be examined.

Internal and external conflicts may lead a society to a feeling of isolation, as expressed in the following poem written by a wonderful Israeli poetess:²

*"My homeland
Beautiful, poor country
The king has no crown
The queen has no home*

*Only one in the world has sung your praise
And all the rest – your denunciation and shame..."*

The Population

The population of 7.4 million people, packed into 22,145 square km, lives in a very crowded environment. Israel is ranked 18th in the world for population density. In the Tel-Aviv district, which is located in the centre of the country,

¹ Bar-Tal, Daniel (1993) 'Societal Beliefs in Times of Intractable Conflict: The Israeli Case', *International Journal of Conflict Management*, vol. 9, is: 1, pp. 22-50.

² Leah Goldberg (1911-1970) was a leading poetess in Israel. This quotation is taken from the poem 'Songs of a Beloved Country', in: Goldberg, Leah (1959) *Early and Late - Poems* (Bnei-Brak: Sifriat Poalim)(2003 edition)(Hebrew), p. 222.

there are around 7,425 people per square km; by comparison, the Brussels region of Belgium, which is considered one of the most populated in the Western world, has 6,238 people per square km (Belgium has a similar territorial size to Israel).³

Crowded towns can easily become sources of conflict. Moreover, this population lives in a state that has no clear borders with its neighbours, since Israel has no agreed borders with Lebanon, Syria, and the Palestinian Authority. This absence of borders is the result of the ongoing conflicts between Israel and its neighbours. This lack of distinct borders has a substantial effect on Israeli identity. People need borders, both for physical separation and for demarcation lines between cultures and civilizations.⁴

Israelis are used to conflict, have a particular way of dealing with them, and sometimes even look to create them. The following is but one example from daily life: according to Organisation for Economic Cooperation and Development (henceforth OECD) data, Israel ranks 14th in the world for road fatalities with 18 deaths per 100,000 motor vehicles, in comparison to 7 in the UK.⁵

There is a widespread view that Israelis do not like to follow rules,⁶ preferring to do things their own way and not according to norms.⁷ They get parking

³ The data in this section, unless otherwise stated, are taken from publications of the Israeli Central Bureau of Statistics (CBS) and the Bank of Israel.

⁴ Rabinowitz, Dan (2003) 'Borders and Their Discontents: Israel's Green Line, Arabness and Unilateral Separation', *European Studies*, vol. 19, pp. 217-231.

⁵ In 2007, there were 33,776 casualties (including 430 deaths) in 16,476 reported accidents. Road accidents and violence while driving are major problems in Israel, see: <http://www.police.gov.il> (20.11.2010).

⁶ For example, Israel is on the US government list of 14 countries which constantly breach intellectual property right: <http://www.ynet.co.il>(29.4.2005).

⁷ In the course of 2004, the Ministry of Communication closed down 265 pirate radio stations, mostly operated by religious people: <http://www.tipo.co.il/zone/index.asp?zone=8744014222038> (30.11.2010); *Oron v. The Speaker of the Knesset* 46 (iii) P.D. (2002) 640.

tickets, which they do not pay,⁸ they hate to stand in queues, they do not register their real estate properties properly,⁹ they are noisy, and they bargain about the price of goods, even in the best of shops. Malinowski, long before the establishment of Israel, had a clear idea about such a situation:¹⁰

"The fact is that no society can work in an efficient manner unless laws are obeyed 'willingly' and 'spontaneously'."

This leads to an understanding of how Israelis cope with the stress, expenses, hardships, and losses generated by a continuous situation of conflict. It also allows one to see what supports and maintains so many conflicts in a society.¹¹

Historical Background

How the Distant Past Affects the Present

Jewish history goes back more than five thousand years. This long history affected the lives of the Jews throughout the centuries and still does today. Israeli history is very much based on the idea of 'us' versus 'them', a strong foundation for the creation of conflicts. The most famous of the myths supporting this idea is the battle between David and Goliath, when small but smart and decisive David won what looked like a lost battle against the giant Goliath.¹² The idea that a fight is inevitable, and that to win is essential,

⁸ In the city of Tel Aviv, around 30% of drivers pay parking tickets after receiving the ticket and another 30% pay after receiving notice that the fine is doubled and a warning of the collection process. Source: Moshe Yochay of the Parking Department in the Tel Aviv Municipality in a telephone conversation on 13.1.2011.

⁹ [http://www.doingbusiness.org/data/exploreconomies/israel\(9.3.2011\)](http://www.doingbusiness.org/data/exploreconomies/israel(9.3.2011)).

¹⁰ Malinowski, Bronislaw (1926) *Crime and Custom in Savage Society* (London: Routledge)(2002 edition), p. 13.

¹¹ Ibid.

¹² Old Testament, Samuel 1, Chapter 17.

regardless of weakness, inferiority and possible risks, goes back to ancient times; giving up or compromising was not to be considered.

Another essential myth supporting the ideology that it is better to fight to the end than to concede is the story of Masada.¹³ After the Romans captured Jerusalem in 70 AD, Masada remained the only point of Jewish resistance. Two years later, the Roman governor, Flavius Silva, resolved to suppress this outpost of resistance. He marched against Masada at the head of the Tenth Legion and its auxiliary troops, with a total of between ten to fifteen thousand men. The troops prepared for a long siege. They established eight camps in the desert, at the base of the Masada rock mountain, surrounded it with a high wall, and added an assault ramp at the top, leaving no escape route for the rebels. Following several months of siege, the Romans were ready to attack and capture the outpost.

After a long period of isolation in the hot desert with little food and water, the besieged Jewish people decided together at two communal meetings to kill themselves rather than to fall into the hands of the Romans. Ten men, chosen by a lottery, killed their friends, burnt their houses and committed suicide. The next day the Romans entered Masada to find destruction and dead bodies. Only two women and five children survived to tell what had happened. The historical facts may have been different, but the myth that developed from this episode has been adopted by modern Israelis, intentionally establishing the ethos of the heroic fight to victory or to the bitter end.¹⁴ This story is been told and praised again and again, in schools, youth movements and army camps.

¹³ <http://www.mosaic.lk.net/g-masada.html>(30.11.2010).

¹⁴ Ben-Yehuda, Nachman (1995) *The Masada Myth Collective Memory and Mythmaking in Israel* (Madison: University of Wisconsin Press); Ben-Yehuda, Nachman (1998) 'Where Masada's

Many Jewish holidays, which are official state holidays in Israel, are very much concerned with fighting and winning battles. Hanukkah,¹⁵ for example, usually celebrated in December around Christmas time,¹⁶ commemorates the wars against the Greeks.¹⁷ Purim, celebrated three months later, is the victory over another ancient king, Xerxes,¹⁸ and Passover commemorates the struggle for freedom against the ancient Egyptians. These ancient holidays, still celebrated very vividly today, their symbols learned from kindergarten to high school, value the idea that fighting (always for the 'right' cause, 'our' cause) is to be remembered and admired. At the same time, these battles were so insignificant to the opponents of Israel that they are not even mentioned in their history books.

Winning these battles did not mean that the wars were won; on the contrary, the Jews lost and at a high cost: death, slavery, loss of sovereignty, and exile ensued. These facts are not mentioned in the celebrations, and little sympathy is expressed for the suffering of enemies.

To sum up: Israel derives the justification for its existence from Jewish history and from the historic fact that Jews have lived since ancient times in the small part of the Mediterranean region where Israel is today. This history is based on

Defenders Fell', *Biblical Archeology Review*, vol. 24, is: 6, pp. 30-39; Ben-Yehuda, Nachman (1999) 'The Masada Mythical Narrative and the Israeli Army', in: Lomsky-Feder, Edna and Ben-Ari, Eyal (eds.) *The Military and Militarism in Israeli Society* (Albany: University of New York Press), pp. 57-88.

¹⁵ Based on the story told in *The Book of the Maccabees* (Hebrew).

¹⁶ The Jewish calendar, which determines the holidays in Israel, is based on a lunar calendar (with corrections), and not on a solar calendar such as the Gregorian calendar.

¹⁷ Historians note that Greek history does not mention this battle against the Jews, therefore the validity of its historical background is not clear.

¹⁸ Apocrypha, Esther 1: "This is what happened during the time of Xerxes, the Xerxes who ruled over 127 provinces stretching from India to Kush."

many conflicts between the Israelites and the 'others'.¹⁹ These conflicts have worsened in recent history, as will be discussed in the following section.

The 20th Century

Seen through Jewish eyes, two prominent events dominated the 20th century: the rise of the Zionist movement and the Holocaust (1941-1945). Zionism is the Jewish national movement, which began in the late 19th century as an answer to the many pogroms against Jewish communities in Eastern Europe, as well as the nationalist revival in these areas.²⁰ But the most dramatic and traumatic event, which tremendously influenced Jewish history, was the attempt by the Nazis to exterminate the Jewish people. During the Second World War (1929-1945) six million Jews perished in what is now called the Holocaust. The mass, organised killing by the German regime during the Second World War was a defining event that many believe is the direct reason and key justification for the establishment of the State of Israel as a Jewish state.

The Holocaust is remembered in Israel on a special day of mourning, on the date of the beginning of the Warsaw Ghetto revolt.²¹ Moreover, it is widely taught in schools and universities, and is often discussed in newspapers, political forums, in literary works etc., even on a daily basis. This may be one explanation as to why the second generation, the children of Holocaust survivors, are so aggressive and have little empathy for weakness and for those

¹⁹ The interested reader can look also at: Aberbach, Moshe and Aberbach, David (2000) *The Roman-Jewish wars and Hebrew Cultural Nationalism* (New York: St. Martin's Press); Pardes, Ilana (2000) *The Biography of Ancient Israel: National Narratives in the Bible* (Berkeley: University of California Press).

²⁰ Discussion of Zionism is far beyond the scope of this work; interested readers may want to consult texts like: Goodblatt, David (2006) *Elements of Ancient Jewish Nationalism* (New York: Cambridge University Press); Rubinstein, Amnon (1997a) *From Herzl to Rabin: A Hundred Years of Zionism* (Jerusalem: Schocken)(Hebrew).

²¹ This Memorial Day is commemorated according to a special law: The Law of the Memorial Day for the Holocaust and Heroism 5719 – 1959, Sefer Ha-chukkim 280, p. 112.

who suffer. Studies have shown that when an oppressive situation is over, the victim may acquire his oppressors' habits.²²

The typical Israeli still feels as if a catastrophe might happen at any moment, to him or to his country, and therefore he is on a mission to survive.²³ He looks and sounds optimistic, but, paradoxically, he is also very pessimistic.²⁴

Myths about heroism and wars are still being created and admired. For example, the stories of Joseph Trumpeldor and Uri Ilan keep these ideas alive. Trumpeldor, wounded in a battle to defend a village in the Galilee against an Arab attack in 1920, supposedly said as his dying words, now known to all: "*It is good to die for our country.*"²⁵ Uri Ilan, a soldier in an elite commando unit, was captured in 1950 during a mission inside Syrian territory. After thirty-five days of torture in a Syrian prison cell, he committed suicide, leaving small notes between his toes saying: "*Revenge*" and: "*I did not betray*".²⁶ The long chain of

²² Vardi, Dina (1990) *A Dialogue with the Second Generation of Holocaust Jews* (Jerusalem: Keter) (Hebrew).

²³ At the time of writing, early 2011, the latest existential threat is the Iranian atomic bomb which is under development. Like in any other threat, this is partially a realistic rational fear and partially an exaggerated threat for political and other reasons.

²⁴ Rubinstein, Amnon (1977b) *To be a Free Nation* (Tel-Aviv: Schocken)(Hebrew); Kamir, Orit (1999) 'Smoch Mentality (rely on me) in Israeli Culture and Law', *Tarbut Democratit*, vol. 1, pp. 137-179.

²⁵ Laskov, Shulamit (1995) *The Story of Trumpeldor* (Jerusalem: Keter)(Hebrew). This lost battle was considered heroic, and a memorial day to commemorate it is fixed in the calendar. In recent years it was suggested, that his death was in vain, and even morbid jokes about his cited last words have started circulating. Touvia Rivner (1924), an Israeli poet, gave Trumpeldor's famous sentence as an example of the worship of death in Israel, and Sand called it 'a fake slogan' see: Haaretz Supplement 29 April 2005, (Hebrew). In an ethnographic paper, a thirty year old Israeli student said: "*We were brainwashed with this Trumpeldor and 'It is good to die for our country'*", see: Shokeid, Moshe (1998) 'The Singing People: Israeli Immigrants in New York', in: Deshen, Shlomo and Shokeid, Moshe (eds.) *The Intercultural Experience* (Tel-Aviv: Schocken)(Hebrew), pp. 50-65.

²⁶ <http://www.ganshmucl.org.il/info/history/ilan1.htm>(30.11.2010). The myth of Uri Ilan was cracked recently when, fifty years later, documents regarding the event were released to the public. There is an ongoing debate whether, under prison torture, one should be expected to reveal military secrets and stay alive rather than die, Shalit, David (2005) '*Revenge: Why and What For*', in: Haaretz, 21 January 2005.

heroic legends on the battlefield does not end there. A recent case was that of Roi Klein, who was a commander in the Second Lebanon War (2006). Klein threw himself on a live grenade, was killed, and thereby saved his soldiers.²⁷

Prolonged Warfare

Since 1947, when the War of Independence began, the people of Israel have seen themselves as a miniature nation continuing the fight for survival against the strong and the mighty. The history of Israel is one long war with small breaks, a war which does not separate soldiers from civilians, in High Court Judge Landau's words:²⁸

"In matters of war and peace, the unexpected is forever expected for the people of Israel."

The list of episodes of hostilities includes:²⁹

- The War of Independence – 1947-1949
- Terrorism and reprisals – 1953-1956
- The Sinai War – October-November 1956
- The Six Day War – June 1967
- The War of Attrition – 1969-1970
- The Yom Kippur War – October 1973
- The Litany Operation – March 1978
- The First Lebanon War – 1982 -1985
- The First Intifada – 1988-1991
- The Gulf War with missiles landing on Israel – 1991
- The Second (Al Aksa) Intifada – 2000-2003
- Operation Iraqi Freedom with threatened use of chemical weapons against Israel – 2003
- The Second Lebanon War – 2006
- Operation Cast Lead in Gaza – 2008-2009

²⁷ http://www.en.wikipedia.org/wiki/Roi_Klein(30.11.2010).

²⁸ *Katz v. Nitzchoni Mizrachi Ltd. et al.* 33 (3) P.D. (1978) 639, 643.

²⁹ <http://www.dover.idf.il/IDF/About/history/2000s/2004/default.htm>(20.11.2010).

During the 1967 War, Israel occupied the Golan Heights, Sinai, the Gaza Strip, and the West Bank. In the 1979 peace agreement with Egypt, Israel gave back the Sinai Peninsula. A peace treaty with Jordan was signed in 1994. Since that time, however, although talks took place between leaders, with and without mediators, no real progress has been achieved towards peace with other Arab entities. With respect to Syria, Lebanon and the Palestinian Authority, the situation is one of tense relationships, with periodic acts of violence. Israelis cannot visit these neighbouring countries and regions, the borders between them are volatile and unsafe. Moreover, Israel feels constantly threatened by other Arab or Islamic countries, such as Iran and Iraq.

Writers agree that the ongoing occupation of the West Bank has changed Israeli society.³⁰ One can see the fear of being hurt and the means taken to avoid casualties everywhere: in security checks before entering public places or car parks, the charging of extra fees for security in restaurants and airports, and so on. Soldiers and armed civilians are a common sight in the streets. Israelis are familiar with the imposition of border closures, violence against demonstrators, house demolitions and blocking roads in adjacent Palestinian areas. These form the basis for all kinds of mental and physical problems. It is claimed that the arrogance of the ruler, the impatience, and the 'trigger-happy' mentality, combined with the situation of no clear borders, have also affected relationships between Israelis. The ongoing conflict between Israelis and Palestinians demonstrates the extent to which both sides have lost faith in the peace process.³¹ Loss of faith in a better future, despair, disillusionment, uncertainty about the present and the days to come, and changes of policy due to

³⁰ Grossman, David (1987) *The Yellow Wind* (Tel-Aviv: Hakibbutz Hameuchad)(Hebrew); Grossman, David (1992) *Present Absentees* (Tel-Aviv: Hakibbutz Hameuchad)(Hebrew); Samet, Gideon (2003) *Israel: Where Things Stand Now* (Or-Yehuda: Kinneret, Zmora-Bitan)(Hebrew).

³¹ Shafir, Gershon and Peled, Yoav (2002) *Being Israeli: The Dynamic of Multiple Citizenship* (Cambridge: Cambridge University Press).

international pressure are all factors shaping the atmosphere in Israel today, but not necessarily for the better.

The Language

Language could be a unifying or a separating tool:³²

"Language is meant to connect people. But language is also culture, history, ways of thinking; it is the soul, it is man. And without language a people will fade away and the kingdom will be lost."

The official and most widely-used language in Israel is Hebrew. Its status as such was set in 1922 at the time of the British Mandate, in Article 82 of The Order in Council which is still valid.³³ The priority of Hebrew over Arabic and English is established in many laws in Israel, which require its use and declare its precedence over the others.³⁴

The following statement by the President of the High Court, Justice Aharon Barak, expresses both the importance and the fragility of the status of Hebrew, which still needs the defence of the state authorities:³⁵

"Language is not only a personal tool of expression. It is a national tool of expression. It is a cultural asset. It is the asset of the entire nation. Language expresses national unity. It is the glue that bonds members of a society to a people, to

³² Supreme Court Judge Mishael Cheshin at: *Ganimat v. The State of Israel* 49 (iv) P.D (1995) 589, 640.

³³ Article 82 of the Order in Council declares:

"All Ordinances, official notices and official forms of the Government and all official notices by local authorities and municipalities in areas to be prescribed by order of the High Commissioner, shall be published in English, Arabic and Hebrew. The three languages may be used, subject to any regulations to be made by the High Commissioner, in the government offices and the Law Courts. In the case of any discrepancy between the English text of the Ordinance, official notice or official form and the Arabic or Hebrew text thereof, the English text shall prevail."

³⁴ See section 15(b) of Administration of Rule and Justice Ordinance, 5708-1948 – according to which "All instruction of law that require the use of the English language is cancelled." Thus the order was changed with regard to the contradiction between the English version of any legislative documents and its new version in Hebrew (Article 24 of the Law of Interpretation 5741-1981, Sefer Ha-chukkim 1030, p. 302).

³⁵ *Ram Engineering Ltd. v. The Nazareth-Illit Municipality* 47 (v) P.D. (1992) 189.

a nation, to a state. It is a symbol... the existence and the development of the Hebrew language is in the public interest."

Hebrew is an ancient language known for more than 3,000 years. It was spoken by the Israelites in Canaan, but then for centuries was used only for literature and religious practices.³⁶ It became a liturgical language for writing and reading, but not for secular, everyday life. It was only towards the end of the 19th century that Zionist Jews who came to Palestine started to use the neglected Hebrew as their primary language.³⁷

These days most Israelis now speak, read and write Hebrew, which may be the most uniting element in society.³⁸ In addition there are also many dialects and group-specific words and expressions. Therefore, while being a universal language, it is also a powerful tool of division, differentiating between groups.³⁹ For example, secular Israelis do not understand the traditional phrases used by the Orthodox, and new immigrants understand few of the idioms and abbreviations used by young soldiers.

The language is vivid,⁴⁰ creating a rich culture of slang which is almost impossible to translate into other languages.⁴¹ Yesterday's words may be

³⁶ Kam, Matiya, *The Revival of the Hebrew Language in Israel*, <http://www.lib.cet.ac.il/pages/item.asp?item=4443>(20.11.2010).

³⁷ Ibid.

³⁸ Horowitz, Dan and Kimmerling, Baruch (1974) 'Some Social Implications of Military Service and the Reserve System in Israel', *European Journal of Sociology*, vol. 15, is: 2, pp. 262-276; Cooper, Robert (1985) 'Language and Stratification among the Jewish Population of Israel', in: Fishman, Joshua (ed.) *Readings in the Sociology of Jewish Languages* (Leiden: Brill), pp. 65-81.

³⁹ Nir, Refael (1998) 'The Role of the Institutions in the Revival of the Language', in: Shavit, Zohar (ed.) *The History of the Jewish Settlements in Israel: Building a Culture* (Jerusalem: The Bialik Institute)(Hebrew), pp. 31-42; Harshav, Benjamin (1993) *Language in Time of Revolution* (Stanford: Stanford University Press), p. 183 onwards.

⁴⁰ Agassi, Joseph (1984) *Between Religion and Nation: Towards Israeli Identity* (Tel-Aviv: Papyrus) (Hebrew); Gavison, Ruth (1999) *A Jewish and Democratic State* (Jerusalem: Van- Leer)(Hebrew).

⁴¹ Almog, Oz (1996) *The Portrait of the Sabra* (Tel-Aviv: Am- Oved)(Hebrew); Katriel, Tamar (1986) *Talking Straight: 'Dugri' Speech in Israeli Sabra Culture* (Cambridge: Cambridge University Press).

outdated today or change their meaning. It is very important to understand words in context, as they may mean something totally different from their definition in the dictionary. In this situation it is an advantage to be a researcher whose mother tongue is Hebrew.

Arabic, too, is an official language of the state.⁴² This means that all official state documents should be written in the two languages. Arabic appears on bank notes and on official public signs in Arab communities.⁴³ Most Israeli Arabs speak Hebrew and learn Hebrew literature as well as Arab literature in school, but most Israelis, on the other hand, do not speak Arabic.

English is spoken widely and taught to all school children. Other languages, such as Russian, Amharic, French, and Spanish are spoken among specific groups, and by many who learned them in school, from the media, while travelling, from tourists etc.

Because words shape ideas, the Hebrew language has great importance to Israeli culture functioning as a connecting tool and at the same time as a distinguishing apparatus between people. Catching military and confrontational jargon alongside quotations from the bible were spotted in the mediation processes, as will be demonstrated in later chapters.

Generally, the use of a particular language and a particular jargon, maps the speaker to a specific group, and indicates a difference with (and, sometimes, contradiction to) other groups in society.

⁴² Many important official documents do not appear in Arabic. Ironically, even the Or Committee report about Israeli Arabs was not translated to Arabic; see: Rubinstein, Dani, Haaretz, 22.4.2005.

⁴³ *Adalah the Legal Centre for Arab Minority Rights in Israel and et al. v. The Tel-Aviv Municipality et al.* 56 (5) P.D. (1999) 393.

Religion

Out of about 7.5 million citizens of Israel, there are more than 5.7 million Jews (75.4%), 1.3 million Muslims (17%), around 140,000 Christians (1.6%), around 120,000 Druze (1.6%), and 320,000 (4.3%) are unclassified, including Bahai faith, which has around 6 million believers, and is centred in Israel.⁴⁴

Unlike other countries, Israel declares itself a Jewish state,⁴⁵ placing religion matters as most important to its identity. Identifying ones' agenda regarding faith is highly important in the society.

Jews are divided into many different strands, some more tolerant than others: Orthodox Jews (Zionist and non-Zionist), Nationalists (Gush Emunim), Conservatives, Reformists, Shas (Mizrachi), and others.⁴⁶ Every strand has its own synagogues, rabbis, dress codes and customs. Alongside these, secular Israelis try to find a place for their unstructured ideas, values and practices. Many disputes are the result of the conflicting customs of the different believers. There is constant tension between them over access to and control over holy places.⁴⁷ Conflicts involve the education systems of the different religious groups,⁴⁸ the right to pray according to their own creed,⁴⁹ control over

⁴⁴ http://www.tourism.gov.il/tourism_heb2/Tourist+Information/Practical+Information/State+of+Israel.htm (30.11.2010).

⁴⁵ See more in the Law section below.

⁴⁶ Supra note 31; Sheleg, Yair (2000) *The New Religious People: An Update Look on Religious Society in Israel* (Jerusalem: Keter)(Hebrew).

⁴⁷ Just a few examples of subjects of disputes between communities: a dispute over driving cars on Saturday through Orthodox neighbourhoods in Jerusalem, the trade in pork and ham by Russian Jews in Beit Shemesh, and the building of a mosque near a church in Nazareth.

⁴⁸ *No-ar Kahalacha et al. v. The Ministry of Education and et al.* 72 P.D. (2009) 939.

⁴⁹ *Anat Hoffman et al. v. The Head of the Prime Minister's Office et al.* 44 (ii) P.D. (1995) 345.

power intersections such as who can define conversion to Judaism;⁵⁰ all these issues are high on the legal and political agendas.

The great importance and power of religious beliefs are well acknowledged. "Religious affiliation is the most important, and at the same time, the most characteristic example of individualization," states Simmel.⁵¹ Durkheim proposed the idea that religious interests are the symbolic structures of social and moral interests, the object of which is to explain the world.⁵² There is a claim that religious communities in general, and monotheists in particular, need social conflicts because they gain their identity through tension with other groups.⁵³ The Jewish tradition also supports the ethos of 'us versus others', and emphasises the idea that the Jews are the chosen people. A well-known prayer from the book every Jew reads on Passover night, the Haggadah, quoting Psalms proves that point:⁵⁴

"Pour out Your wrath upon the nations that do not know You, upon the kingdoms which have not called upon Your name. For they have devoured Jacob and desolated his home."

This plea to demolish other nations is transmitted across the generations. One of the most well-known Jewish jokes concludes this anthropological description: What kind of synagogue will a Jew build if he is left alone on a desert island? He will build three synagogues – one according to the

⁵⁰ *Tebka – Advocacy for Equality and Justice for Ethiopian Israelis v. The Attorney General et al.* 50 D.E. (2006) 1292.

⁵¹ Simmel, Georg (1922) *Conflict and the Web of Group-Affiliations* (New York: The Free Press of Glencoe) (Wolff, Kurt and Rendix, Reinhard trans.)(1964 edition), p. 157.

⁵² Durkheim, Emile (1915) *The Elementary Forms of Religious Life: A Study in Religious Sociology* (New York: Free Press)(Swain, Joseph trans.)(1965 edition); Roberts, Simon (2005) 'After Governments? On Representing Law Without the State', *The Modern Law Review*, vol. 68, is: 1, pp. 1-24.

⁵³ Wellman, James and Tokuno, Kyoko (2004) 'Is Religious Violence Inevitable', *Journal for the Scientific Study of Religion*, vol. 43 is: 3, pp. 291-296.

⁵⁴ *The Schechter Haggadah* (2009) (Jerusalem: The Schechter Institute of Jewish Studies)(Kulp, Joshua, trans.), p. 77; Psalms, 79: 6-7.

Ashkenazi⁵⁵ tradition, one to suit the Sephardic-Mizrachi⁵⁶ tradition, and a third in which he will never set foot!

Economics

The growing gap in Israel between the rich and the poor is a source of potential conflicts and threatens the stability of society. The risks for such conflicts are exacerbated by the stratification into ethnic groups, some of which are chronically disadvantaged.

GDP⁵⁷ per capita in Israel is currently around \$ 28,000. This is similar to Southern European economies such as Greece, Spain and Portugal. It places Israel at the bottom of the top 20 economies in the OECD, to which it was admitted in May 2010. Israel is thus no longer the developing economy it was at its inception in 1948. Rather, it is a modern economy that has a well-developed hi-tech sector and a high proportion of skilled, well-educated workers (29% of Israelis aged 25-64 have an academic education relative to the OECD average of 21%).⁵⁸

However, in the context of the issue of a society in conflict, a key emerging problem is high and rising economic inequality.⁵⁹ Currently, over 20% of families are below the poverty line; by comparison, this share was closer to

⁵⁵ Ashkenazim are Jews born in Europe or in North-America and their children. Ashkenaz is an ancient Jewish word for Germany and the surrounding countries.

⁵⁶ Sephardim are Jews who came from North Africa (mostly from Morocco), and from Asia (mostly from Iraq) and their children: Kimmerling, Baruch (2004) *Immigrants, Settlers, Natives, the Israeli State and Society between Cultural Pluralism and Cultural Wars* (Tel-Aviv: Am-Oved) (Hebrew); As a whole, it is a stigmatic name for all non-Ashkenazim, associated with the prejudice that these are less cultured people with poor human capital. It is a dangerous generalization to name a group of people like that, but these are the definitions known and widely used in the observed society.

⁵⁷ GDP, Gross Domestic Product per capita, is a standard measure of economic development.

⁵⁸ Data refer to 2008. The source is OECD: Education at a Glance, 2010, (9.3.2011) http://www.oecd.org/document/52/0,3746,en_2649_39263238_45897844_1_1_1_1,00.html.

⁵⁹ The following data are taken from the Bank of Israel Annual Report for 2009, published in April 2010.

11%-12% in the early 1980s, and is around 10% for Western European countries (and for some countries is much lower).⁶⁰ The Gini⁶¹ coefficient for inequality is 0.389, up from around 0.30 in the early 1980s; for comparison, the last computed average Gini coefficient for OECD economies was 0.31 in 2005.

The socio-economic hierarchy is clear and has been quite consistent over the past fifty years: Ashkenazim are at the top of the socio-economic ladder, the Sephardim are in the middle, and the Arabs at the bottom. Within each group, men are above women in economic terms.⁶² Thus, for example, average monthly income for workers aged 25-54 was in 2002 as follows: NIS 13,000 (£ 1,800) for Ashkenazi men, NIS 9,000 for Sephardic men, and NIS 6,000 for Arab men; Ashkenazi women were at NIS 7,000 and Sephardic women slightly below at NIS 6,000. More recent data (the CBS Income Survey of 2008) indicate the same differences. Similar gaps exist in education; to give one extreme example, when looking at the number of university graduates in the Natural Sciences, 1,022 graduates in 2007 were Ashkenazim, and only 396 Sephardim, i.e. 2.6 times more Ashkenazim than Sephardim.⁶³ Economic inequality clearly reflects the discrimination between the groups identified above, and is a source to many personal and political conflicts.

The Arab minority suffers from ongoing discrimination which puts them at the bottom of the ladder in terms of government budget priorities. The Arabs are the only group that suffers from such discrimination, which accounts for their

⁶⁰ See the Bank of Israel Annual Report, various years and in particular 2009, Chapter 8.

⁶¹ The Gini Index measures inequality in income distribution. The values range from 0, indicating absolute equality, to 1, indicating absolute inequality. Data for Israel are available from the 2009 Income Survey of the CBS; for the OECD, from the OECD Factbook 2010.

⁶² Habermeld, Yitchak and Cohen, Yinon (2007) 'Gender, Ethnic, and National Earnings Gaps in Israel: The Role of Rising Inequality', *Social Science Research*, vol. 36, is: 2, pp. 654-672.

⁶³ CBS data on higher education; numbers refer to graduates whose fathers were not born in Israel.

low economic status.⁶⁴ To list just some of the features of their predicament: Arabs are employed less than Jews and earn lower wages; for example, Arab men earned 58% of Jewish men's salaries in terms of wages per hour in 2008. Arab men have high concentrations in low skill occupations and retire relatively early from the labour market, while Arab women have low participation rates (around 20%). Arabs constitute a substantial proportion of Israel's poor, including the working poor. They are less likely to graduate from high school or to study at university. Their schooling system is under-funded and has low quality physical and human infrastructure; drop-out rates are relatively high. The physical infrastructure (roads, water and electricity systems, sewage facilities, etc.) in Arab towns and villages is poor. Public transportation is lacking and sometimes non-existent, and the list goes on in the same vein in other domains.⁶⁵

The Law

This section provides a glimpse into the uniqueness of Israeli law, a law that forbids discrimination and at the same time allows it in much exclusion.

At first, Israeli legislation was based on Ottoman and British Mandate laws. These were rapidly replaced by laws of the newly independent state. There is no constitution in Israel, but a series of 14 Basic Laws are considered to form the foundations of the yet unwritten constitution.⁶⁶ They define the two beacons which guide the Israeli legal system: its being a **Jewish** and at the same time

⁶⁴ Kretzmer, David (1990) *The Legal Status of the Arabs in Israel* (Boulder: Westview Press); Peled, Yoav (1992) 'Democracy and the Legal Construction of Citizenship: Arab Citizens of the Jewish State', *The American Political Science Review*, vol. 86 (2), pp. 432-443; Lewin-Epstein, Noach and Semyonov, Moshe (1993) *Arabs in Israel's Economy: Patterns of Ethnic Inequality* (Colorado: Westview Press); Lewin-Epstein, Noach et al. (1997) 'Ethnic Inequality in Home-Ownership and the Value of Housing: The Case of Immigrants to Israel', *Social Forces*, vol. 75 (4), pp. 1439-1462.

⁶⁵ Yashiv, Eran and Kasir, Nitsa (2010) 'Labour Market Participation Patterns of Arab Israelis,' *The Bank of Israel Review*, vol. 84, pp. 39-86.

⁶⁶ knesset.gov.il/description/eng/eng_mimshal_yesod1.htm(12.12.2010).

democratic state. These principles are framed in Article 1 of Basic Law: Human Dignity and Liberty, which inspired other laws, many judgements and numerous articles:⁶⁷

"The purpose of this Basic Law is to protect human dignity and liberty, in order to establish in a Basic Law the values of the State of Israel as a Jewish and democratic state."

As have been said, this combination, in the above order of words, signifies the two poles that shape Israeli Law.⁶⁸ These two demands, which often contradict each other, force the authorities and the courts to look for a way to relate to both. It is not always possible to implement these two and a gap between the written law and reality is created.

Jewish Law

The two main pieces of legislation described in this section are The Law of Return from 1950 and The Law of Jewish Courts (Marriage and Divorce) of 1953. The first article of The Law of Return says:⁶⁹ *"Every Jew has the right to immigrate to the country."* The result is that a Jew can become an Israeli citizen on the day he enters the country. Besides the obvious discrimination regarding non-Jews (towards which Israel does not have a proper, official immigration policy), other collective identities, Arabs, for example, are not recognised in such terms.⁷⁰ The unclear wording also raises difficult questions of status, because the definition of who is Jewish and entitled to rights under that law is not explicitly stated. As discussed in a previous section, there are many

⁶⁷ Basic Law: Human Dignity and Liberty 5752-1992, Sefer Ha-chukkim 1391, p. 150.

⁶⁸ Agassi, Yossef (1984) *Between Religion and Nation: Israeli Identity* (Tel-Aviv: Papyrus)(Hebrew); Gavison, Ruth (1999) *A Jewish and Democratic State* (Jerusalem: Van-Leer and Hakibbutz Hameuchad) (Hebrew). It also means that Israel feels responsible for Jews around the world and values their opinions and contributions to the state.

⁶⁹ The Law of Return 5710-1950, Sefer Ha-chukkim 51, p. 159.

⁷⁰ Shamir, Ronen (2001) 'Power and Identity in the Legal Field: Palestinian-Arabs Citizens in Israel and Identity in the Legal Field', *Geneses*, vol. 45, pp. 27-43 (French).

currents within Judaism which define Jewish status differently; this means that being a Jew, a religious matter, affects one's rights in broad civil legal issues.

The second important set of legislation determines that, in personal matters such as marriage and divorce, religious rules will apply. Thus changing personal status is subordinated to old, inadequate and discriminating principles, which are administered and decided upon by the various religious court systems. The latter are loosely connected to the civil legislation system.⁷¹

The inevitable consequence is tremendous obstacles for non-religious or mixed marriages and for women. In 1995, when family courts were established with the authority to deal with property matters within families and with the custody of children, the power of the religious courts was reduced, causing tension between the two legal systems.

The mixture of liberal, modern, advanced laws and religious ones⁷² has given rise to many legal petitions⁷³ which have enriched Israeli adjudication.⁷⁴ The same problems also apply to other religions, since all marital, divorce and burial matters are dealt with according to religious rules and are subject to religious courts.

Law of War

The situation of Israel as a country in a permanent state of war has affected the law in two major ways:

⁷¹ The hierarchy of civil courts and religious courts is too complicated to be explained here. The High Court of Justice is authorised to overrule judgments of the religious courts, but in practice it is not at all simple.

⁷² There are more laws that import Jewish norms into the civil system, like rest-days, food regulations, burial procedures, exemption from military service for orthodox scholars etc.

⁷³ Barak-Erez, Daphne (2003a) 'The Transformation of the Pig Laws: From a National Symbol to a Religious Interest?', *Mishpatim*, vol. 33, is: 2, pp. 403-475.

⁷⁴ *The League Against Religious Coercion v. The Jerusalem Municipality* 16 P. D. (1962) 2665; *Chorev v. The Ministry of Transport* 41 (4) P.D. (1996) 1; *Resler v. The Minister of Defense* 42 (2) P.D. (1986) 441.

- Inside Israel, legislation dating back to the British Mandate relating to defence against terrorism is still in effect; for example, this allows the state to arrest suspects and keep them in custody without trial. The ongoing need to fight terrorism also influences the balance of legal powers and court decisions.⁷⁵
- Many Israeli laws are in effect only with respect to Israeli citizens, and do not apply in the Occupied Territories. The Supreme Court's doors are open to Palestinians when they claim breaches of human rights; however, in reality they lose the majority of their cases, because the court usually does not interfere when security arguments are involved. Nevertheless, some think that the existence of this legal option does affect the army's decisions and actions.⁷⁶ This complicated ongoing situation gives rise to many difficulties, including painful questions of moral and human rights issues,⁷⁷ which are beyond the scope of this thesis. It affects the way that Israelis look at their own rights and those of others, at racism, and at discrimination in everyday life.

The High Court of Justice

In the absence of a constitution, the acting space of the courts is not well-defined. The courts took advantage of two important laws in 1992 to expand their influence: Basic Law: Human Dignity and Liberty,⁷⁸ and Basic Law:

⁷⁵ Lahav, Pnina (1988) 'A Barrel without Hoops: The Impact of Counterterrorism on Israel Legal Culture', *Cardozo Law Review*, vol. 10 (3), pp. 529-560.

⁷⁶ Kretzmer, David (2002) *The Occupation of Justice: The Supreme Court of Israel and the Occupied Territories* (Albany: State University of New York Press).

⁷⁷ Grossman, Supra note 30; Oz, Amos (2002) *But These Are Two Different Wars* (Tel-Aviv: Keter) (Hebrew); Swirsky, Shlomo (2005) *The Price of Pride: Occupation - The Price That Israel Pays* (Tel-Aviv: Mapa)(Hebrew).

⁷⁸ Supra note 67:

"3. There shall be no violation of the property of a person.

4. All persons are entitled to protection of their life, body and dignity."

Freedom of Occupation.⁷⁹ This started what is now called 'the constitutional revolution,' which changed the relationship between the courts and the other authorities, and the status of court petitioners.⁸⁰ The courts have used these laws to enlarge their territory from strict decision-making in cases brought before them to moral leadership.⁸¹ The powerful head of this revolution was Justice Aharon Barak,⁸² the former President of the Supreme Court.⁸³ President Barak coined the essence of that revolution in a famous phrase: "*Hakol shafit*" roughly translated as: "*everything is justiciable*."⁸⁴

⁷⁹ The following relevant Articles from Basic Law: Freedom of Occupation 5754-1994, Sefer Ha-chukkim 1454, p. 90.

3. Every Israeli national or resident has the right to engage in any occupation, profession or trade.

4. There shall be no violation of freedom of occupation except by a law befitting the values of the State of Israel, enacted for a proper purpose, and to an extent no greater than is required..."

See also: Barak, Aharon (1994) 'Basic Law: Freedom of Occupation', *Mishpat U-mimshal*, vol. 2 (1), pp. 195-217.

⁸⁰ Kretzmer, David (1992) 'The New Basic Laws on Human Rights: A Mini Revolution in Israeli Constitutional Law?', *Israel Law Review* 26(2), pp. 238–249; Gotel, Ehud and Avni, Doron (eds.) (1997) 'The Constitutional Revolution', A special volume of *Mishpatim*, vol. 28, is: 1-2; Gavison, Ruth (1998) *The Constitutional Revolution: A Reality or a Self Fulfilling Prophecy?* (Jerusalem: The Israel Democracy Institute) (Hebrew); Gross, Aeyal (1988) 'Property as a Constitutional Right and Basic Law: Human Dignity and Liberty', *TAU Law Review*, vol. 21, pp. 405-447; Almog, Oz (1999) 'The Legal Revolution and its Cultural Meaning', *Alpayim*, vol. 18, pp. 77-132; Shafir, Gershon, and Peled, Yoav (2002), supra note 31; and note, that all court instances are authorise to rule out a law that contradicts a basic law, for example voiding article 236B1 of Income Tax Law, *The State of Israel v. Handlman*, 17 D. S. (2003) 1037.

⁸¹ Gavison, Ruth et al. (2000) *Judicial Activism: For and Against: The Role of the High Court of Justice in Israeli Society* (Jerusalem: Magnes)(Hebrew); Hirschl, Ran (2000) 'The Political Origins of Judicial Empowerment through Constitutional Revolution: Lessons from Four Constitutional Revolutions', *Law and Social Enquiry*, vol. 25, pp. 91-149.

⁸² President Barak is also a strong believer in mediation; see Chapter 4.

⁸³ Barak, Aharon (1992) 'The Constitutional Revolution: Protected Fundamental Rights', *Mishpat U-mimshal*, vol. 1 (1), pp. 9-35; Barak, Aharon (1993a) 'Judicial Philosophy and Judicial Activism', *TAU Law Review*, vol. 17, pp. 475-501; Barak, Aharon (1993b) 'Balancing Rights: Principles and Perspectives', *Mishpat U-mimshal*, vol. 1 (2), pp. 253-273.

⁸⁴ Later President Barak voiced reservations about this statement and agreed that not everything can be subject to a judicial process. The question of the borders of the judiciary is left open to debate between the Supreme Court judges.

The High Court has used the Basic Laws boldly to make far-reaching decisions. It has expanded the implementation of civil and human rights by applying the Basic Laws to many different issues. One famous example of a leading decision concerned the right of an Arab family to buy a house in a Jewish village where the court ruled in favour of the Arab petitioner, on the grounds of equality and non-discrimination.⁸⁵ So far, the High Court has used the Basic Laws to overrule less than 10 articles of legislation.⁸⁶

The court's liberal activism has its costs in terms of public legitimacy, especially among Orthodox Jews⁸⁷ and among legal scholars, who think that it has exceeded its democratic boundary in relation to other authorities.⁸⁸ That attitude, which irritated many, caused mass demonstrations of Jewish orthodox against the high court, forcing its president to use a body guard.

Lawyers and Litigation

In 2008, there were around 41,000 lawyers in Israel (more than 3,100 joined the Bar that year); 38% were women. This is the highest proportion of lawyers per capita in the world. Out of every 100,000 adults in Israel, 763 are lawyers;

⁸⁵ *Kadan v. Minhale Mekarkeey Israel* [Israel Land Administration] 54 (1) P.D. (1995) 258; discussion in: Ziv, Neta, and Shamir, Ronen (2001) 'Built Your Own Home: Macro Politics and Micro Politics in the Struggle Against Land Discrimination', *Teoria U-bikoret*, vol. 16, pp. 45-66.

⁸⁶ *Israeli Bureau of Investment Managers v. Minister of Finance* 51 (4) P.D. (1997) 367; *Tzemach v. Minister of Defence* 53 (5) P.D. (1995) 241; *Oron v. The Speaker of the Knesset* *Supra* note 7; See also the very important case: *The United Mizrahi Bank Ltd. v. Kefar Shitufti Migdal* 49 (4) P.D. (1993) 221.

⁸⁷ Shafir (2002), *Supra* note 31, p. 277; Barak-Erez, Daphne (2003b) *Milestone Judgments of the Israeli Supreme Court* (Tel-Aviv: Ministry of Defence)(Hebrew), p. 37; also: *Ganzo v. Yeshayahu* 55 (3) P.D. (1998) 360; *Si-ach Cha-dash for Democratic Discourse v. Ministry of National Infrastructures* 56 (vi) P.D. (2000) 25.

⁸⁸ Landau, Moshe (1996) 'Thoughts on the Constitutional Revolution', *Mishpatim*, vol. 26 (3), p. 419-423; Gavison, *supra* note 81.

that means an average of one lawyer to 130 people, with a ratio of 1 to 35 in Tel-Aviv.⁸⁹ For comparison, in 1980, 349 new lawyers joined the existing roll of 7,254. The main reasons for the growth in the number of lawyers are the high social status of this occupation, and the opening of many new colleges of law (responsible for the education of 55% of the new lawyers), where the academic requirements are usually much less stringent than those of the universities.

The graph below implies that the population of lawyers grew faster than the adult population, and thus increased disproportionately.⁹⁰ The bottom line in the figure indicates a particularly fast increase in this share during the 1990s, as the new lawyers group was growing larger. These trends have intensified recently; by the end of the last decade the percentage of lawyers was over 1% of the adult population, as compared with 0.2% in 1960. These huge numbers have engendered a decline in the status of the profession and its quality, and have increased conflicts between the lawyers themselves, and between lawyers and judges.⁹¹ The same phenomenon of excess supply is true also for mediators, as demonstrated in chapter 4 below. Many lawyers, the estimate is around 8,000, cannot find work, or work for very low fees.⁹²

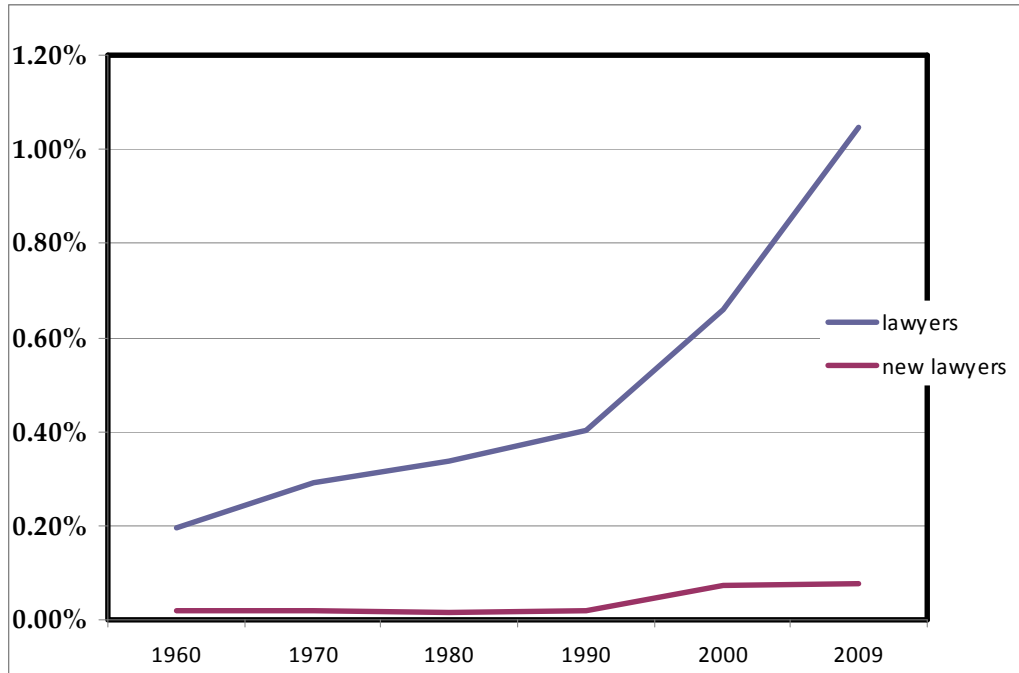
⁸⁹ To compare the numbers of lawyers per 100,000 adults, there are 343 in the US, 337 in Spain, 240 in Italy, 140 in Germany, 63 in Turkey, and 50 in Austria, see: <http://www.calcalist.co.il/Ext/Comp/ArticleLayout/CdaArticlePrintPreview/1,2506,L-3288122,00.html#> (12.12.2010).

⁹⁰ In Israel there are 4,227,000 adults over the age of 25, data from CBS.

⁹¹ Zalsberger, Ali (2002) 'The Israeli Lawyers Connections: On the Israeli Bar and its Aliens', *Mishpatim*, vol. 32, pp.43-93.

⁹² Data from D&B, [http://www.ynet.co.il\(7.2.2005\)](http://www.ynet.co.il(7.2.2005)).

Lawyers in Israel as Percentage of the Adult Population



The gross flow of claims opened has been approximately 1.2 million in each of the past four years. This represents one case for every three adults. Evidently, a case may involve a number of people, or one person may be involved in a number of cases. While this is a rough measure, it gives a sense of the tremendous quantity of litigation taking place in Israel. A judge in a District Court in Tel-Aviv deals with 700 civil cases a year. In Magistrate's Courts, there are around 1,500 civil cases per judge per year. 50% of the claims are settled between the parties before the first hearing; another 40% are settled after the first hearing and before the trial starts, and 7% will get a ruling, compared with around 2% in the US⁹³ and 1.5% in the UK.⁹⁴ An average case takes between

⁹³ In the US The portion of federal civil cases resolved by trial fell from 11.5% in 1962 to 1.8% in 2002, Galanter, Marc (2004) 'The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts', *Journal of Empirical Legal Studies*, vol. 1, is: 3, pp. 459-570.

⁹⁴ Civil cases resolved by trial in the UK is also minimal, around 1.5%, see: Roberts, Simon (2002) 'Institutionalised Settlement in England: A Contemporary Panorama', *Willamette Journal of International Law and Dispute Resolution*, vol. 10, pp.17-35.

two to four years to reach a judgement, and appeals are rare, since they take a similar amount of time.⁹⁵

These data draw a clear picture of culture of litigation, pointing on the strong connection between too many lawyers that create too much litigation and in a way initiate new disputes. Translating conflicts into law-suits is one way of dealing with them, an option that Israelis are used to choosing. As the next chapters show, it is one of the reasons for the development of the Practicum, the particular arena of this research.

Political Issues

Israel has a very unstable political system. It has had 18 parliamentary elections in 62 years. The electoral system for the 120 members of the Knesset (parliament) is a proportional representation system. The head of the biggest party is usually nominated Prime Minister by the President, which gives him a mandate to form a government via a coalition of parties. However, this did not happen in the last elections, held on February 2009, when the head of the biggest party, *Kadima*, with 28 (23.3%) seats in the Knesset did not succeed in forming a coalition. The second biggest party, *Likud*, with 27 seats succeeded in getting the support of 74 members of the Knesset (62%) which enabled it to create Israel's 32nd government. This current government, which is the biggest ever, consists of 30 ministers, 7 of whom are deputies to the Prime Minister, and 9 more are deputy ministers. Out of the 30 ministers, only two are women (6.6%).⁹⁶

⁹⁵ Data from a telephone conversation with Arik Sion, head of Information in the Management of the Courts, on 23 May 2005 (ariks@court.gov.il). Note that judges in Israeli courts deal with civil and criminal cases alike. Only data about civil cases were presented here, but the numbers would double if criminal cases were included.

⁹⁶ <http://www.knesset.gov.il>(12.12.2010).

Over the past two decades, there have been many unstable governments relying on small majorities with complex coalitions. This is partly because the political system is very fragmented: in the current Knesset there are no less than 12 parties, with further splits having taken place since the election. There has also been a drop in voter participation rates (from 86% who participated in the first elections to 65% in the last). There is a repeated phenomenon of parties being created, attracting voters with promises of major changes on the issues at stake and proposing impressive targets, and then fading away without any real achievements. For example: *Dash*, which stood only once for election, received 12% of the vote in May 1977, changed the political scene totally at that time, but did not exist by the next election; *Tzomet* which had over 6% of the votes in the June 1992 election, dissolved into another party by the following election; *Shinui* got over 12% of the votes in the election before last, but did not survive as a separate party.

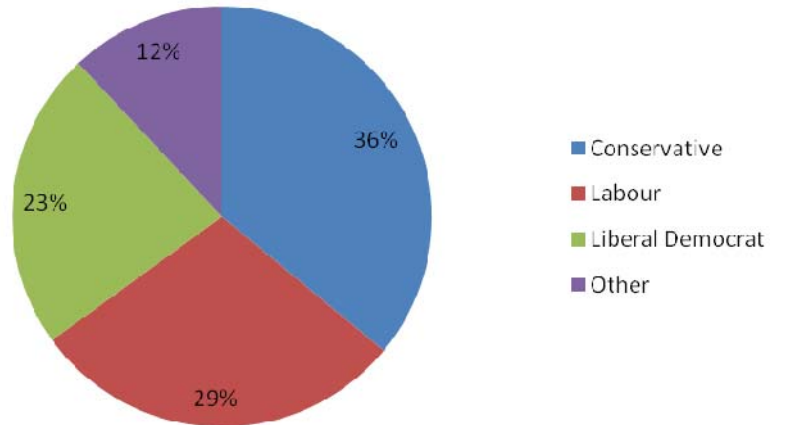
In recent years there have been indications of increases in the number of corruption cases among politicians in Israel. Thus, Transparency International reports a decline in the relative global standing of Israel in terms of corruption.⁹⁷ The disillusionment with existing politicians, their lack of integrity and corruption, has discouraged young, capable people from entering the field. The following figures illustrate this political fragmentation by comparing the 2009 elections results to the 2010 UK elections results in terms of voter share. It relates to parties that actually got parliamentary representation.⁹⁸

⁹⁷ Navot, Doron (2008) *Political Corruption* (Jerusalem: The Democratic Library)(Hebrew).

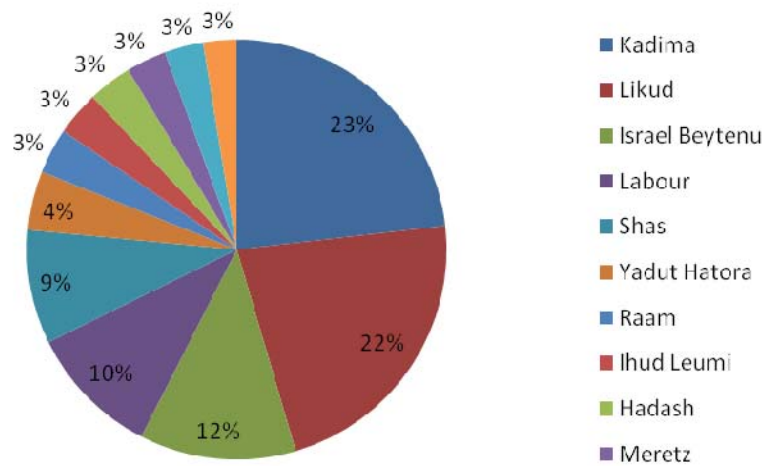
⁹⁸ UK data from: http://www.knesset.gov.il/description/heb/heb_mimshal_res18.htm; Israel data from: [http://news.bbc.co.uk/2/shared/election2010/results/\(Both on 28.3.2011\)](http://news.bbc.co.uk/2/shared/election2010/results/(Both on 28.3.2011)).

Election Results

UK 2010
(29.6 m votes)



Israel 2009
(3.4 m votes)



Ethnic Heterogeneity

The Israeli population is made up of 70% immigrants or second-generation immigrants.⁹⁹ This is both a source of strength (being composed of different sources of talent) and problems.

Only 650,000 Jews, most of them Ashkenazim, lived in Israel in May 1948 when the state was established. Ashkenazim, as defined by the Israeli sociologist Kimmerling, are secular, socialist Zionists who tried to build up an Israeli identity in line with their ideology.¹⁰⁰ For almost 30 years they won election after election, occupied key government positions, and amassed wealth. They got the best education for their children, who therefore had access to better jobs. They created the modern Israeli culture, with its music, literature, and science.¹⁰¹ In recent years, with the Israeli-born second generation of immigrants voicing demands for acknowledgement of their original cultures, the Ashkenazi hegemony had slowly started to fade. Kimmerling suggests that this hegemony is now completely eliminated and will not return to rule.¹⁰²

Most of the Sephardim (around 742,500 people) came from Arab states between 1948 and 1955, constituting 82.3% of all immigrants in that period.¹⁰³ In later

⁹⁹ Cohen, Yinon (2002) 'From Haven to Heaven; Changing Patterns of Immigration to Israel', in: Levi, Daniel and Weiss, Yfaat (eds.) *Challenging Ethnic Citizenship: Germany and Israel in Comparative Perspectives on Immigration*, (New York: Berghahn Books), pp. 36-58.

¹⁰⁰ Kimmerling, Baruch (1998) 'The New Israelis: Many Cultures without Pluralism', *Alpayim* vol. 16, pp. 264-308; Kimmerling, Baruch (2001a) *The End of Ashkenazic Hegemony* (Jerusalem: Keter)(Hebrew).

¹⁰¹ Oz, Amos (1998) *All Our Hopes* (Jerusalem: Keter)(Hebrew). A few examples are Daniel Barenboim, Isaac Perlman and Daniel Oren in music, S.Y. Agnon (the 1966 Nobel Literature Prize laureate), David Shachar, Amos Oz, and David Grossman in literature, Daniel Kahneman (2002 Nobel Economics Prize laureate), Aharon Herschko and Aharon Chechanover (2004 Nobel Chemistry Prize laureates), and Ada Yonat (2009 Nobel Chemistry Prize laureate).

¹⁰² Kimmerling (2001), supra note 100.

¹⁰³ Sikron, Moshe (1957) *Immigration to Israel 1948-1953* (Jerusalem: Falk Institute and CSI) (Hebrew); Smooha, Sammy and Peres, Yochanan (1975) 'The Dynamics of Ethnic Inequalities: The Case of Israel', *Social Dynamics*, vol. 1 (1), pp. 63-79; Tzur, Yaron (1997) 'The First Decade

years, they formed their own support groups, political parties and cultural organisations. The most prominent formation is the religious party, *Shas*, which grew from 4 Knesset seats (out of 120) in the 1984 election (3% of the vote) to reach a high of 17 seats in the 1999 election (13%) declining somewhat to 11 seats (8.5%) in the 2009 election, making it an important political partner on all issues.¹⁰⁴ Ethnic organisations like *Hakeshet Hademocratit Hamizrachit* (The Mizrahi Democratic Rainbow - New Discourse) assembled intellectuals to promote their community-related agenda,¹⁰⁵ with the intention of giving value to their origins and empowering their group members. Ethnic music has become popular and Mizrahi singers have now moved to centre stage and are heard all over the country by many communities.

In some areas of life, the differences between the groups are quietly diminishing over the years, especially with the help of inter-group marriages.¹⁰⁶ In other areas, the gaps between the groups have never closed. For example, in 1975, 34% of Ashkenazi males had high levels of education, compared to only 8% of Sephardic men; by 2001 the numbers were 42% and 19% respectively. The gap in education, though still in existence, has narrowed, while the gap in income between these two groups has widened. In 1975 the average income of Sephardic men was 78% of the average of the Ashkenazi men, and in 2001 it

of Immigration from Muslim Countries', in: Tzameret, Tzvi (ed.) *Idan 20* (Jerusalem: Yad Ben-Tzvi)(Hebrew), pp. 57-82.

¹⁰⁴ Peled, Yoav (ed.) (2001) *Shas: The Challenge of Israeliness* (Tel-Aviv: Yediot Achronot)(Hebrew).

¹⁰⁵ This social organisation was established in 1996 to promote a pluralistic multicultural society based on democracy, human rights, justice, solidarity and peace. See: <http://www.hakeshet.org.il> (28.3.2011). The organisation became famous when it won a very important case in the High Court concerning the allocation of land by the state's authorities, and challenging the Ashkenazi hegemony: *Si-ach Cha-dash* case, Supra note 87.

¹⁰⁶ In the 1990s, the population comprised around 30% Ashkenazim, 50% Mizrachim and 20% mixed, see: Okun, Barbara (2001) 'The Effects of Ethnicity and Educational Attainment on Jewish Marriage Patterns: Changes in Israel, 1957-1995' *Population Studies*, vol. 55, pp. 49-64.

went down to 69%.¹⁰⁷ It is not clear whether the gap between the groups will decrease, but research shows that it constantly does for children from inter-group marriages.¹⁰⁸

Two big waves of immigrants from the former Soviet Union brought visible cultural change to Israel. The first wave flooded the country in the 1970s, the second in the 1990s (continuing into the first decade of this century). The latter changed the social landscape due its massive size: almost one million people, 16% of the baseline native population.¹⁰⁹ Many of the immigrants have a 'Russian look' and still retain their original language, food, literature, songs etc., sometimes seeing themselves as an elite, having moved from a richer culture to a young, immature one.¹¹⁰

Jewish immigrants from Ethiopia, the Falash Mura (around 84,000 people) are a unique group. They are dark-skinned, a stigmatised colour in Israel, have their own language, customs, clothes, religious ceremonies and authorities.¹¹¹ Coming from rural sites in Africa, often after spending years in transit camps, they needed special help to adjust to modern Israeli life. Upon entering Israel they were taken to absorption centres where they stayed together under

¹⁰⁷ Cohen, Yinon (2005) 'Earnings and Educational Gaps between Groups in Israel', in: Ram, Uri and Berkovitz, Nitza (eds.) *Inequality in Israel* (Beer-Sheva: Ben-Gurion University Press)(Hebrew).

¹⁰⁸ Friedlander, Dov et al. (2002) 'Immigration, Social Change, and Assimilation: Education Attainment among Birth Cohorts of Jewish Ethnic Groups in Israel', *Population Studies*, vol. 56, pp.135-150; Dahan, Momi, et al. (2003) 'Have the Gaps in Education Narrowed?', *Israel Economic Review*, vol. 1(2), pp. 37-69; Cohen, Yinon, et al. (2007) 'Ethnicity and Mixed Ethnicity: Educational Gaps among Israeli-born Jews', *Ethnic and Racial Studies*, vol. 30, pp. 896-917.

¹⁰⁹ Kimmerling, Baruch (2001b) *The Invention and Decline of Israeliness: State, Culture and Military in Israel* (Los Angeles: University of California Press).

¹¹⁰ Lisak, Moshe (1995) *Russian Immigrants: Between Separation and Integration* (Jerusalem: The Centre for Research of Social Policy in Israel)(Hebrew).

¹¹¹ Kaplan, Steven (1998) 'Ethiopian Immigrants in Israel :Between Preservation of Culture and Invention of Tradition', in: Leshem, Elazar and Shuval, Judith (eds.) *Studies of Israeli Society* (New Jersey: Transaction Publishers), vol. 8, pp. 357-370; Siegel, Dina (1998) *The Great Immigration: Russian Jews in Israel* (New York: Berghahn Books); Hertzog, Esther (1999) *Immigrants and Bureaucrats: Ethiopians In An Israeli Absorption Center* (Oxford: Berghahn Books).

guidance. In fact, the outcome of this controversial procedure was not a healthy assimilation process, and some argue that it contributed to the isolation of this group.¹¹² Actually, many Israelis do not regard the Falashas as 'proper Jews'; their poor education and limited knowledge of the Western world place the Falashas on a low socio-economic level. Their integration is difficult; violence and feelings of alienation among them are rising.¹¹³ Out of 81 women who were murdered by their partners in Israel during 2004-2010, 25 (30%) were new immigrants, including 18 Falashas (20 times their proportion in society).¹¹⁴ Although the Falashas are a small group (1.4% of the population in 2009), they are noticeable, a living evidence of racism, intolerance and discrimination.

Last, but not least, are the Israeli Arabs, who are the largest minority (20% of the population). Most Arabs villages and towns are concentrated in two areas – the triangle between Haifa and Tel-Aviv, and the Galilee region. No new Arab town has been authorised since the establishment of the state in 1948. Most Arabs are not obligated to serve in the army, making for a big difference with respect to the other groups.

This minority has complicated relations with Jewish society. Israeli Jews usually look down on Israeli Arabs, have negative feelings towards them, are frightened by their presence, and have suspicions as to their possible conduct and loyalty in the case of full-blown conflict.¹¹⁵ Some see Arabs as the

¹¹² Hertzog, *Ibid.*

¹¹³ Kimmerling, *supra* note 56, p. 453.

¹¹⁴ New immigrants - people who came before 1990. Almagor-Lotan, Orly (2010) *Violence against Women in the Falasha Community, A Report to the Knesset Committee*, <http://www.news1.co.il/uploadFiles/460277736186982.doc>(2.12.2010).

¹¹⁵ Smootha, Sammy (1987) 'Jewish and Arab Ethnocentrism in Israel', *Ethnic and Racial Studies*, vol. 10 (1), pp. 1-26; Trope, Yaakov (1989) 'Stereotypes and Dispositional Judgment' in: Bar-Tal, Daniel et al. (eds.) *Stereotypes and Prejudice: Changing Conceptions* (New York: Springer-Verlag).

stereotype of people who are primitive, ignorant, unreliable, and lazy.¹¹⁶ From their side, most Arabs see Israel as an inevitable evil.¹¹⁷ Many identify with the Palestinians (rousing anger from the Jews for encouraging the so-called 'enemy within') but do not want to leave the country and move to the Palestinian Authority, because the standard of living is much higher in Israel, where their economic prospects are better despite the discrimination. On the other hand, the stereotypical Israeli Jew, as some Arabs perceive it, is an arrogant, exploiting, discriminating, aggressive and selfish person. The result is mutual avoidance, reciprocal fear and lack of basic trust, with deteriorating connections over the years.

In October 2000, violent clashes between Arab demonstrators and the police resulted in the death of 13 Arabs and 1 Jew. An official committee named after its chairman, the Judge Or Committee, appointed to investigate these events, acknowledged the ongoing discrimination towards the Arabs, which exploded in the riots. The committee stated that the authorities have to act to 'erase the stain of Arab discrimination'.¹¹⁸ The issue of discrimination against this group is at the heart of public policy discussions, which are trying to involve this sector more in education, economics, culture etc.¹¹⁹

¹¹⁶ These are long running stigmas. In 1980 a survey by Mina Zemach found that 32.5% of young Jewish people feel fear, hate and suspicion towards Arabs. More than thinking that Arabs have bad character, they think they have bad intentions towards them [cited in Rabinowitz, Dan (1997) *Overlooking Nazareth: The Ethnography of Exclusion in Galile* (Cambridge: Cambridge University Press); In September 2010, a survey of 500 youth aged 15 to 18.5 undertaken by Camil Fuchs from TAU found that 50% of respondents do not want to study with Arabs and 59% of them think Arabs do not deserve equal rights in Israel [<http://www.haaretz.co.il/hasite/spages/1188268.html>](15.12.2010).

¹¹⁷ Rabinowitz, Ibid.

¹¹⁸ http://www.or.barak.net.il/inside_index.htm(2.9.2009).

¹¹⁹ See the Bank of Israel Annual Report 2010.

A minority within this minority are the Druze, a group of non-Muslims of Arab origin, who are Arabic speaking and similar looking. Most of the Druze people live in Syria (around 865,000 out of a total population of about 1 million), while some (around 125,000) live in Israel.¹²⁰ Although they serve in Israeli army combat units and feel they contribute a lot to the country, they still suffer from discrimination such as lack of resources for education and from low incomes.¹²¹

Other Issues of Discrimination

Israel is no different from other modern countries, in which groups which declare themselves as defined communities try to get recognition from the law and from government agencies and acquire special rights. Discrimination is another source of hard feelings which lead to internal and external conflicts.

Women

Women are not really a minority, but as a group they do suffer from discrimination with respect to income and jobs.¹²² Israel has had to overcome the built-in discrimination against women caused by religious tradition and laws, prejudice and the difference in opportunities during military service and its aftermath. It does so using legislation,¹²³ adjudication¹²⁴ and education. Specific laws protect women against sexual harassment and discrimination on a

¹²⁰ Population data taken from the CBS at <http://www.cbs.gov.il>(10.3.2011).

¹²¹ Kimmerling, supra note 56, p. 378; Firro, Kais (1999) *The Druze in the Jewish State: A Brief History* (Leiden: Brill).

¹²² Semyonov, Moshe and Kraus, Vered (1983) 'Gender, Ethnicity and Income Inequality: The Israeli Experience', *International Journal of Comparative Sociology*, vol. 24 (3-4), pp. 258-272.

¹²³ The Law of Equal Opportunities at Work, 5748-1988, Sefer Ha-chukkim 1240, p. 38; The Law Against Sexual Harassment, 5758-1998, Sefer Ha-chukkim 1661, p. 166.

¹²⁴ Some examples: A petition to let women become pilots in the IDF: *Miller v. The Ministry of Defense et al.*, 49 (4) P.D. 1995 94; a petition asking to compare the retirement age and conditions of women and men: *Niv v. The Ministry of Defense et al.*, 56 (6) P.D. 2002 663; more about women in Israel see: Atzmon, Yael (ed.)(2001) *Can you Hear My Voice? – Representation of Women in Israeli Culture* (Jerusalem: Van Leer Institute)(Hebrew).

gender basis. The Law for Equality of Women Rights determines that there should be proper representation of women in public bodies (government ministries, municipal authorities, public sector companies, etc.) and on the appointments committees of such bodies.¹²⁵ Women have occupied high positions such as Prime Minister, State Controller, President of the High Court, and Speaker of the Knesset.¹²⁶

Although in many fields women in Israel do indeed enjoy freedom and equality, in some communities they are still treated as inferior to men. Single parent families, which constitute 12% of all families, are headed mostly by women (93% in 2008), who try to get improved socio-economic rights.¹²⁷ The state gives priority to these families, but not all relevant issues are addressed.¹²⁸

Homosexuals

Discrimination against the homosexual-lesbian-transgender community in Israel has local aspects. While in the Tel-Aviv area they feel free to express their sexual preferences, in the periphery they might be intimidated. Famous figures still prefer to stay 'in the closet', afraid to lose the public's affection if they declare openly that they are homosexuals. In the Jewish religion homosexuality is a sin, but the state law is heading towards equality and recognition of those individuals and families. The homo-lesbian community has a loud voice, using

¹²⁵ Women's Equal Rights Law 5711- 1951, Sefer Ha-chukkim 82, p. 248, Article 6C.

¹²⁶ On the representation of woman in different sectors see:
<http://www.lib.cet.ac.il/pages/item.asp?item=18860> (15.12.2010).

¹²⁷ Swirski, Shlomo and Konor-Atias, Etti (2006) *A Picture of Cultural Situation* (Tel-Aviv: Adva Centre)(Hebrew).

¹²⁸ Single-Parent-Family Law 5752-1992, Sefer Ha-chukkim 1390, p. 147, gave single parents the rights for government housing, employment and income support. While there are credits for them in the Income Tax Law, expenses for childcare are not recognised as deductible, so many women find it hard to go out to work, see: Swirski, Shlomo et al. (2001) *Women in the Labour Force of the Israeli Welfare State* (Tel-Aviv: Adva Centre).

its representatives in the Knesset and in the media to try to increase its share of social recognition.¹²⁹ In this context, the murder by an unknown person of two young people in a homo-lesbian bar in Tel-Aviv in August 2009 caused a considerable stir. Although in secular communities being gay is not stigmatic, among many other groups it is still frowned upon and remains hidden.

Migrant Workers and Asylum Seekers

The presence of migrant workers is an increasing problem in Israel. Since 1990, their numbers have grown and the latest estimates indicate that there are around 260,000 legal and illegal migrant workers (over 10% of private sector employment).¹³⁰ Recently, asylum seekers from Africa have joined their ranks, with hundreds crossing the Egyptian border into Israel each month. This situation brings with it a host of social problems, discrimination, working issues, etc. Typically these foreigners (and their Israeli-born children) do not have official social or citizen rights, but many make use of the welfare and educational systems. The migrant workers and asylum seekers issue adds another source of conflict to a society which already comprises many disadvantaged groups. It may become the biggest problem of the future.

¹²⁹ Some famous disputes that ended in court decisions: a homosexual trying to get rights for his same sex partner: *El-Al Airlines Ltd. v. Danilowitz et al.* 48 (5) P.D. (1994) 749; a lesbian couple trying to adopt each other's children: *Yaross-Hakak et al. v. The Attorney General* 64 P. D. (2005) 59; a homosexual demanding inheritance rights as the deceased's partner: *Steiner v. The Ministry of Defense* 2 D.E. (1997) 95; there is also much writing on the subject; see: Yonay, Yuval and Spivak, Dori (1989) 'Between Silence and Condemnation: The Construction of Homosexual Identity in the Israeli Legal Discourse – 1948-1988', *Israeli Sociology*, vol. 1 (2), pp. 257 – 293; Alon, Harel (1996) 'Gay Rights in Israel: A New Era?', *International Journal of Discrimination and the Law*, vol. 1, pp. 261-278; Gross, Aeyal (2001) 'Danilowitz, Steiner and the Queer Theory', *Mishpat Nosaf*, vol. 1, pp. 47-54.

¹³⁰ According to the 2010 Bank of Israel Annual Report, at the end of 2009 there were about 209,000 migrant workers and 56,000 Palestinian workers. Out of the former number, 133,000 were illegal migrants.

In Conclusion

This section aims to introduce the reader to the wide context in which the field research took place. The pieces in the Israeli kaleidoscope move all the time, turning in a small confined space. Any deflection or shock rapidly changes the whole picture. All the above issues are interwoven: history and political decisions about internal and external religious disputes, terrorist attacks, wars, and economic crises.

In the years spent writing this thesis, the external and internal situations have changed significantly, as have Israel's atmosphere and morale. During the process of writing, Israeli society changed so quickly, that this research only managed to 'freeze' a small 'slice of time', before it had melted away. Recognizing the many groups that make up Israeli society does not mean that there is no 'Israeliness'. Excepting a few extremists, Israelis identify themselves as such and can see many commonalities that connect them together.¹³¹ Some aspects of this concept, which are crucial for this work, are examined next.

Narratives of Living in a Conflict Environment

The many aspects of Israeli life explored in the preceding sections, which include conflicts or the potential for conflicts, lead one to wonder about the effects on individuals and on society of living in such circumstances. One such effect is the creation of an '*ethos of conflict*', which leads to the affirmation of conflict situations and to people seeing conflict as positive or acceptable rather

¹³¹ Sela-Shefi, Rakefet (2004) 'What Makes One an Israeli? Negotiating Identities in Everyday Representations of Israeliness', *Nations and Nationalism*, vol. 10 (4), pp. 479-497.

than something to be avoided. Another effect is the creation of the cultural phenomenon of '*Israeli Militarism*.'

As described in the previous sections, Israel's past and present feature many conflicts. Sociologists claim that the long history of engagement in conflicts, especially in the hostilities and violence related to outside enemies, have left deposits of fear, hatred, and the brutalization of values. It also engendered a dichotomous world view, a militant tribalism, psychological fixations and irrational approaches.¹³²

People who are involved in intractable conflicts tend to adopt stiff views on conflicts, which distract them from seeing options of concession and conciliation. The message that conflicts are permanent is delivered by politicians, artists, and education professionals alike. These agents preserve the '*ethos of conflict*' which is one product of a '*conflict society*'.¹³³ Another product is the creation of militarism, which in Israel has a special character, as will soon be demonstrated.

Continuous contact with conflict, derived from living in '*a conflict society*', creates this militaristic attitude, in which the line between military and civilian is relatively porous, with implications for all citizens.¹³⁴ Classic militarism means that the army and army values are appreciated and fostered, as a way to solve political problems. When a big army is maintained, it is assumed that at one time it should act. The next section discusses the different aspects of militarism which have a close connection with situations of personal conflict.

¹³² Benvenisti, Meron (1992) *The Dance of Fear* (Jerusalem: Keter)(Hebrew), pp. 144-145.

¹³³ Bar-Tal, Daniel (2007) *Living with the Conflict: A Socio Psychology Analysis of the Jewish Society in Israel*, (Jerusalem: Carmel).

¹³⁴ Sered, Susan (2000) *What Makes Women Sick? Maternity, Modesty, and Militarism in Israeli Society* (Hanover: University Press).

Israeli Militarism

Militarism in the Israeli context does not mean praetorianism, whereby the army is in control of the state, but rather that society has a preference for violent acts, threats and war rather than negotiations, concessions and placation. This militarism can be found in all layers of Israeli society and it actually blurs the borders between civilian and army rules, since it is a combination of both.¹³⁵

Ben-Eliezer suggests that militarism could be a:¹³⁶

"Cultural phenomenon that indicates the existence and sometimes also the imposition of a perception of reality whereby war or organised violence is a suitable solution to political problems."

Ben-Eliezer also finds that militarism exists in Israel in both political and personal spheres, and that Israel may therefore be defined as '*a nation in arms*'.¹³⁷

Israeli militarism as a cultural phenomenon is related to its people's reality of living a life unlike a normal western country, with a mixture of soldiers and civilians, of war and economic prosperity. '*Cultural militarism*' identified by Kimmerling, can be found in states that see internal and external battles as necessary and dominant processes and an essential element in cultural norms. It becomes a cardinal part of the collective identity.¹³⁸

All Jewish Israeli men and women are obliged to do military service at the age of eighteen for a minimum of three years and two years respectively (there are

¹³⁵ Ben-Eliezer, Uri (1995) *The Emergence of Israeli Militarism 1936-1956* (Tel-Aviv: Dvir)(Hebrew), pp. 313-314.

¹³⁶ Ibid, p. 20.

¹³⁷ Ibid, p. 283, 312. The term was introduced by Van Der Goltz, Colmar (1913) *The Nation in Arms* (London: Hugh Rees).

¹³⁸ Kimmerling, Baruch (2008) *Clash of Identities: Explorations in Israeli and Palestinian Societies* (New York: Columbia University Press), p. 127.

some exceptions, but the majority do serve). The obligation to do reserve duty is in force until the age of 40 or 50 for men (depending upon their role in military service).¹³⁹

Every Israeli is exposed to the reality of war from a very early age. The 'Israeli experience' includes war, or at least the expectation that war is about to take place.¹⁴⁰ The result is that Israelis see war as a normal part of their lives, which builds the '*ethos of conflict*', a phenomenon of '*Israeli militarism*' discussed later in this chapter.

Wars in Israel do not discriminate between soldiers and civilians. The Palestinian suicide bombers of recent years, or the missiles launched from Iraq in 1991, and the Qassam rockets fired from Gaza during the eight years preceding Operation Cast Lead, are examples of everyday threats, demonstrating that civilians are always at risk, or have the feeling that they are exposed to such possibilities. Israelis do not feel safe even outside their country. Aside from anti-Semitic hostility, both physical and verbal, Israelis may be the target of threats to their lives.

Besides, frequent attempts to boycott Israelis in certain countries in different domains (academia, consumers, tourism, and so on) – are sufficient to support the claim that Israelis live under permanent threats of various kinds. This causes them to be always alert, aware of danger, trying to identify the enemy, and, often, attempting to take pre-emptive measures.

¹³⁹ Another important aspect of military service, besides the personal exposure to violent situations, is that young Israelis experience massive gender inequality very early in their adult life, as the army is a very male-dominated organisation. But this thesis does not deal with gender issues.

¹⁴⁰ Lomsky-Feder, Edna (1996) 'The Personal Meaning of War Experience', *Megamot*, vol. 38 (1), pp. 48-73; about the impact of '*a nation in arms*' on Israelis see also: Horowitz, Dan and Kimmerling, Baruch (1974) 'Some Social Implications of Military Service and the Reserve System in Israel', *European Journal of Sociology*, vol. 15, is: 2, pp. 262-276.

Living in Israel means that everyone, or at least one member of one's family or a friend, are a soldier, a soldier's parent or sibling, or have some close contact with army life.¹⁴¹ The armed forces have become integral to the Israeli social experience and to the collective identity.¹⁴² All civilians, even when they do not have someone close on duty, live on the boundaries of war. Since the country is small and its towns and villages are close to its borders, soldiers mix with the population. Experiencing being a civilian and a soldier at the same time has an effect on the way people view the world and influences their political opinions. The result is the phenomenon called '*civil militarism*', a term expressing the collective state of mind that sees war as the basic state of life.¹⁴³ A '*military mindset*' could be one result of constant exposure to such a turbulent environment. Lomsky-Feder finds that even the prevalent experience of being at war affects people differently; most Israeli soldiers see it in retrospect as part of normal life.¹⁴⁴

The other side of this phenomenon is that the army sometimes deals with civil issues, such as undertaking education projects, helping new immigrants, or providing some aid in poor neighbourhoods and hospitals.¹⁴⁵ The army is also involved in Israeli propaganda, activities of young Jewish people interested in coming to Israel, etc.

Kimmerling identifies '*cognitive militarism*' as happening when civilians' views are based on military models.¹⁴⁶ For example, looking at war as a natural, common situation, and believing that power is the only or the best answer to

¹⁴¹ Supra note 135, pp. 280-308.

¹⁴² Supra note 135, p. 138.

¹⁴³ Supra note 135, p. 184; Ben-Eliezer also mentioned the ethos like Masada as building the '*civil militarism*', supra note 137.

¹⁴⁴ Lomsky-Feder, Edna (1998) *As if there was no War: Life Stories of Israeli Men* (Jerusalem: Magnes) (Hebrew), p. 196.

¹⁴⁵ Supra note 135, p. 286.

¹⁴⁶ Kimmerling, Baruch (1993) '*Militarism in Israeli Society*', *Teoria U-bikoret*, vol. 4, pp. 123-151, pp. 129-130.

conflicts. Ben-Eliezer adds that militarism is not only a case of political-military control, when the army dominates political and cultural life in a country, but has wider aspects, like the influence of military views on everyday civilian life. He also suggests that Israeli society adopted militarism as a world view.¹⁴⁷ When someone has a '*military mindset*' it means that they are used to solving problems in a forcible way. '*Civil militarism*' also means that defence considerations will always come before political, economical or ideological ones.¹⁴⁸ Militarism does not necessarily mean the joy of fighting, nor running into battles; neither does it include imaginary fears and inventions of enemies. It is a social process that leads to the legitimization of violent solutions to all kind of problems. The option of a violent solution becomes:¹⁴⁹ "*evident, necessary, desired and a reasonable reaction to a no-choice situation.*"

The '*military mindset*' also has an effect on business and on everyday life. Firms and institutions are oriented to always be prepared for the next battle, as if this is how nature works.¹⁵⁰ Another aspect of the '*military mindset*' is the status that society gives to military service, rank and role in the army.¹⁵¹ Following their services, Chiefs of Staff and high-ranking commanders find their way into prominent positions in companies and in political parties. There they continue to apply the specific way they used to think and analyse situations during their long army service.

One relevant example of the Israeli '*military mindset*' in action could be seen in the attitude towards suing. As discussed above, Israel leads the world in the number of lawsuits per capita and has more lawyers per (adult) population

¹⁴⁷ Supra note 135.

¹⁴⁸ Supra note 146, p. 129.

¹⁴⁹ Supra note 135, p. 312.

¹⁵⁰ Supra note 146, p. 129.

¹⁵¹ Supra note 146, p. 130.

than any other country.¹⁵² The fact that law schools are flooded with new students shows that the status of lawyers is not going to change in the near future. This could be seen as transforming the need to fight from the real battlefield to the rhetorical arena, which gives good opportunities for confrontation, causing harm and even casualties (although mostly 'only' financial and psychological casualties).

Living in a Conflict Environment and Mediation

This section demonstrates the concerns of the interviewees regarding the issues in this chapter, and the way they relate to these issues. It concludes with a few quotations from the observed mediation processes that demonstrate the clear lines of 'Israeli Militarism' in peace-making situations, as a basis for revealing these lines in a more sophisticated way in the last chapters.

Although it was clearly stated to the interviewees that the subject is mediation in Israel, many of them chose to mention violence and other aspects of the 'military mindset' that they have encountered. It is interesting to see if the above phenomenon affects the mediation process, and if it does, in what way. In the interviews, the mediators were aware and really concerned about this issue. Amira Dotan, who has held the highest rank a woman has at that time in the IDF, and became a devoted mediator (after a short break as a MK) states:

"Look what is happening on the roads and see what is going on! There is a lot of violence, lots of violence. Violence, because I am vulnerable. I am vulnerable so I will first show you that I am strong so that you will not hurt me."

Like Dotan, Naomi Dattner, a mediator and therapist, expresses a great deal of anxiety by repeating her thoughts again and again throughout the interview:

¹⁵² Israel – 1:163; US – 1:272; GB – 1: 400; Franc – 1:1,200;
<http://www.ynet.co.il/articles/0,7340,L-3893213,00.html>(15.12.2010); see also supra note 94.

*"I think we live here in a state of great irritability. And I think there is a very big feeling of **chase-action**¹⁵³ here in Israeli society. You need to be a little of the 'chase-action' type to enter conflict over any little thing. We live in a very chase-action atmosphere. There is a feeling recently of chase-action from the authorities of people.... people that do not trust the authorities...We live in one big chase in a terrible existential state of war."*

Yona Shamir, a former head master of a most important mediation school, after giving shocking examples of recent domestic violence cases from the newspapers, says:

"We are an awfully violent society and one that very, very much does not resolve conflicts. We are right! We know! We are strong! And we treat the Arabs amongst us and the Palestinians this way. In the end there will be peace. A significant question is how many will die until we get there?"

Zorik Rotlevi, a significant mediator, states sharply in the interview:

"Look at the big picture - this pattern really exists. I really think we are fed by persecution, by force. Regrettably, we are fed by these things."

And he concludes sardonically:

"But I really think that after the day the external wars end, we shall invent them from within... if we are not threatened, if we are not fighting, we do not relax, we do not even live. It is true at the political level and it is true at the social level."

Observations in the mediation room show that the participants do not leave this dual personality of soldiers-civilians outside the meeting room. It was fascinating to see that 'military mindset' goes hand-in-hand with 'military features'. In one mediation session, the mediator, who was in the middle of his military reserve duty, conducted the process wearing his military uniforms. In another case, one party entered the room with a revolver stuck in his back

¹⁵³ She uses an original expression to convey the feeling of chasing and being chased at the same time.

pocket. An armed man is not a rare sight in Israel but the fact that this man decided to show that he was armed so openly was somewhat blunt.¹⁵⁴

Another phenomenon that supports the claim that the Israeli '*military mindset*' is present in the mediation room is the constant use of military jargon, jokes, and military references. A few citations will demonstrate the fact that, even when they enter the mediation room, the parties bring with them their military background.

Quotations from Mediation no. 11 demonstrate the use of military jargon as a way of regular talking:

Mediator: *"Do you want to advance?"*

Claimant: *"I am ready to close ranks [soldiers' slang]."*

And later on:

Claimant: *"I want to get what I want. The worst that can happen is that I will not get it. I will not be court-martialled and shot in the head."*

And an example from mediation no. 6:

Mediator: *"You said again and again that you will fight to the end."*

People from other societies may also use the term 'fight', but in Israel it has an almost visual meaning, which is connected to real war.

The above serve to show how the military aspect is fundamental to and inherent in the lives of Israelis. Spector-Mersel suggests that leaning on military symbols strengthens the identity of the speaker as a native Israeli who belongs to the mainstream, core, deep-rooted sector of society;¹⁵⁵ in the current context it

¹⁵⁴ Mediation no. 2. I would like to point out that maybe only I, the stranger in the mediation room, was impressed by the uniforms and the revolver. In fact, no other participant commented on it.

¹⁵⁵ Spector-Mersel finds that Israeli born men (Sabras) who served in the army enjoy high prosperity: Spector-Mersel, Gabriela (2003) *An Old Man in Uniform is Like a Torn Israeli Flag: The Narrative Identities of Senior Sabra Officers*, PhD Thesis in Social Work, (Jerusalem: Hebrew University in Jerusalem)(Hebrew), pp. 236-237.

might signal his status in the process. Sometimes the parties find that mentioning their military past will support their claims or strengthen their position. It may give them more confidence as they face the new process, or they may want to impress others. Mentioning military connections is striking because it had nothing to do with the actual problem at stake. For example, the claimant in Mediation no. 11 decided to introduce himself in the first meeting with two facts that reinforced his Israeli status:¹⁵⁶

"I was born in Hadera and I am a military veteran!"

That led to the following response:

Respondent [a little later]: *"I am a Lieutenant Colonel in the army and I do not use this fact here. You use the fact that you are a person disabled through military duty and it disturbs me that you use it."*

Ben-Ari, a mediator and a group leader, recounts one of her experiences:

"Once in a mediation there was a reserve general or something - I am not sure, a high rank in the army. He mentioned this and the other side felt very bad... there were differences in power."

It is obvious that military service gives one status in the community, so it is therefore worth mentioning. In mediation no. 4 the plaintiff's husband was a very religious person, from a sector that usually does not serve in the army. He looked middle aged, past the age of military service. Surprisingly, he stated the following:

"I said that the couch is very important to my wife. I can sit on a wooden chair. On reserve duty I sleep on a simple chair."

This man, whose appearance was very different from that of a typical soldier, slim, with a white beard and dressed in the traditional costume of a particular

¹⁵⁶ According to Spector-Mersel, Israelis start to get their national identity from their birth place and even the kindergarten, see Spector-Mersel, Gabriela (2008) *Sabras Don't Age: Life Stories of Senior Officers from 1948's Israeli Generation* (Jerusalem: Magnes)(Hebrew), p. 52.

religious group, thought it was important to mention that also completes his civil duties in the army, so he found an original way to integrate that fact into his speech.

In Conclusion

The amount and density of conflicts which Israelis face on a daily basis, as demonstrated above, shape the narratives that this society develops and believes in.

Most social scientists resist classifying Israel as a military society; yet, it is reasonable to claim, as Kimmerling and Ben-Eliezer do, that lines of militarism have developed into a significant phenomenon, which varies over time in character and potency.¹⁵⁷ The boundaries between military and civilian society are fragmented and not always clear.¹⁵⁸ Some aspects of 'cultural militarism' and the 'militaristic mindset' are socially significant. They characterise the 'new Israeli' as the opposite of the 'old Jew' from the communities in Europe centuries ago. This new Israeli, the Sabra, sees himself as proud, strong, independent, sure of himself and of his abilities to solve all problems. He is a fearless [male], decisive, powerful, straightforward and non-compromising.¹⁵⁹ Israelis enter the mediation room with those labels 'on their shoulders'. Later on in the thesis, 'militarism' refers to the definitions of this section.

¹⁵⁷ Supra note 135, p. 135.

¹⁵⁸ Supra note 135, p. 140.

¹⁵⁹ Rubinstein, supra note 20; Kamir, supra note 24, Almog, Supra note 41.

CHAPTER 2

Data and Methodology

Qualitative research, as undertaken in this thesis, includes different post-positivist methodologies. Out of them I chose the narrative methodology, which is well-suited for this work. Narratives enable understanding the identity of both individuals and societies; when examining a conflict society they are the right tool to use. The narratives which will be brought up during mediation meetings will be analysed in the last chapters, to open new understandings on the society under study and its members.

This chapter starts with a review about the narrative mythology to demonstrate its adequacy to the current research. After the general theoretical section the necessary data about the conduction of the research will be given.

This is not a comparative study. It would be a nice project to see this work in the light of other similar works in different societies, when they will be done. But a comparative project as such does not usually in keeping with the rational and tools of Anthropology and Narrative methodologies, which are situated interpretations. Integrating narrative evidence is not an easy task, and the way to do it right is not clear, the problem lay in trying to find communality without sacrificing context.¹ Geertz argues that local knowledge is the essence of

¹ Josselson, Ruthellen (2006) 'Narrative Research and the Challenge of Accumulating Knowledge', *Narrative Inquiry*, vol. 16, iss: 1, pp. 3–10, on the difficulties in comparing narrative studies.

Anthropology, and therefore there is no need for commonalities; the transcendental contradict that essence.²

The Narrative Methodology

The poem by Amichay, one of Israel's most important poets, gives the narrative methodology in a nutshell and accurately demonstrates its power and delicacy:³

*"Once I sat on the steps by a gate at David's Tower.
I placed my two heavy baskets at my side.
A group of tourists was standing around their guide, and they used me as a target
marker:
'You see that man with the baskets? A little to the right of his head there is an arch
from the Roman period. A little to the right of his head.' But he is moving, he is
moving!
I said to myself: redemption will come only if they tell them: You see that arch from
the Roman period? Never mind. But next to it, a bit left and down, there sits a man
who has bought fruit and vegetables to bring home."*

Narrative Ethnography

Narrative study is a means of understanding personal identity, lifestyle and the cultural and historical world of the narrator. It is often used in the fields of Psychology, Anthropology, Education etc.,⁴ but its use in Law is relatively new and not yet widespread.

² Shweder, Richard (1991) *Thinking through Cultures: Expeditions in Cultural Psychology* (Cambridge: Harvard University Press).

³ Yehuda Amichay (1924-2000), lived in Jerusalem. Amichay, Yehuda (1980) 'Tourists', *In a Great Serenity* (Jerusalem: Schocken)(Hebrew), p. 82. David's Tower is in the Old City of Jerusalem.

⁴ Lieblich, Amia et al. (1998) *Narrative Research: Reading, Analysis and Interpretation* (Thousand Oaks: Sage), p. 3.

Stories are very powerful in conveying ideas, sometimes more than the actual articulation of them.⁵ Bringing the narratives precisely as they were told as in this thesis, rather than reformulating them, is necessary in order to preserve their unique power.

The literature clearly shows that the stories people tell are what they are:⁶

“Narratives in both facets of content and form, are people’s identity ... stories imitate life and present an inner reality to the outside world. At the same time, however, they shape and construct the narrator’s personality and reality.”

The life story itself, seen as social construct in its own right, has increasingly become the focus of social scientific research.⁷

A narrative is not a story as it is commonly understood in literature; rather it is the narrator’s individual view of the world, interpretation of reality or of a piece of it, or a set of values and beliefs shaped in the form of a story. This interpretation aims to put order, meaning, values and interest into the facts of the story, as the teller recalls or chooses to pass on.

Modern researchers support the opinion that the narrative not only expresses one's identity but actually establishes it.⁸ Besides reflecting reality, the narrator creates reality through his understanding of the world.

The final story coalesces from past interactional episodes and future expectations.⁹ The narrator makes a selection of events and facts which he finds important and contributing most to the story.¹⁰ By choosing the order of the

⁵ Lave, Jean and Wenger, Etienne (1991) *Situated Learning: Legitimate Peripheral Participation* (Cambridge: Cambridge University Press).

⁶ Lieblich, Amia et al. (1998) *Narrative Research: Reading, Analysis, and Interpretation* (Thousand Oaks: Sage), p. 7.

⁷ Rosenthal, Gabriele (1993) 'Reconstruction of Life Stories: Principles of Selection in Generating Stories for Narrative Biographical Interviews', in: Lieblich, Amia and Josselson, Ruthellen (eds.) *The Narrative Study of Lives* (Newbury Park: Sage), vol. 1, pp. 59-91.

⁸ Bruner, Jerome (1986) *Acts of Meaning* (Cambridge: Harvard University Press).

⁹ Supra note 7, p. 65.

¹⁰ Supra note 8.

events and their content, and by deciding where to begin and where to stop, the narrator gives his story impact and meaning.¹¹ Gergen and Gergen suggest that this deliberate selection of facts, feelings, involvements, expectations, people etc, to include in the story, is defined by a conscious mechanism that is meant to lead to the 'end point' of the narrative.¹² Once the imaginary 'end point' has been determined, the sorting of information to advance the story towards that objective begins. Then comes the decision of how to arrange them, whether in chronological, consequential or some other order, so that the listener will understand the specific points that the teller wants him to see in the story. Narrative intelligence enables the creation and the telling of a story from a particular angle, and to infuse it with chosen feelings, acts, decisions and experiences.¹³

Narratives are always connected to a specific location, the surrounding society and the actual situation.¹⁴ Bruner explains that every culture suggests a few possible plots from which the narrator may choose what best fits his aims.¹⁵ Identifying the actual choice from all other options and explaining it is the core of narrative research. Narratives and culture are therefore interwoven, since one can choose only from the given menu of behaviour, myths and values that the surroundings offer.¹⁶ The circle of individual narratives together forms

¹¹ Bruner, Jerome (1991) 'The Narrative Construction of Reality', *Critical Inquiry*, vol. 18, pp. 1-21.

¹² Gergen, Kenneth and Gergen, Mary (1988) 'Narratives and the Self as Relationship', in: Berkowitz, Leonard (ed.) *Advances in Experimental Social Psychology* (San-Diego: Academic Press), vol. 21, pp. 17-56; also see: Sarbin, Theodore (1986) 'The Narrative as a Root Metaphor for Psychology', in: Sarbin, Theodore (ed.) *Narrative Psychology: The Storied Nature of Human Conduct* (New York: Praeger), pp. 3-21.

¹³ Randall, William (1999) 'Narrative Intelligence and the Novelty of Our Lives', *Journal of Aging Studies*, vol. 13, is: 1, pp. 11-28.

¹⁴ Alassutari, Pertti (1997) 'The Discursive Construction of Personality' in: Lieblich, Amia and Josselson, Ruthellen (eds.) *The Narrative Study of Lives* (Thousand Oaks: Sage), vol. 5, pp. 1-20.

¹⁵ Supra note 11.

¹⁶ Howard, George (1991) 'Culture Tales: A Narrative Approach to Thinking, Cross-Cultural Psychology, and Psychotherapy', *American Psychologist*, vol. 46, is: 3, pp. 187-197.

society's mutual narratives, which then nourish the individual's new narratives.

The way the story is told is not as simple as it may look:¹⁷

"The culturally shaped cognitive and linguistic processes that guide the self telling of life narratives achieve the power to structure perceptual experience, to organise memory, to segment and purpose-build the very 'events' of a life."

Therefore, it is necessary to find out which of the possible plotlines one chooses.

The final story becomes a combination of the society's canons and private understandings.¹⁸ Culture shapes the bricks of the building which make up the individual story.¹⁹ The labour of creating the narrative is selecting which bricks to use, how many of them, and what is their right order. Identifying these bricks and describing their shapes reveals clues about the motives and goals of the informant:²⁰

"We situate the agent behaviour with reference to its place in their life history. And we situate that behaviour also with reference to its place in the history of the social settings to which they belong. The narrative of one's life is part of an interconnecting set of narratives; it is embedded in the story of those groups from which individuals derive their identity."

Expressing the narrative has another dual effect — on the inner cognition of the individual, and at the same time on the social fabric to which one belongs.

Within Anthropology, what binds together the diversity of analytic approaches

¹⁷ Connerton, Paul (1989) *How Societies Remember* (Cambridge: Cambridge University Press) (2003 edition), p. 21; see also: Carrithers, Michael (1990) 'Why Humans Have Cultures', *Men New Series*, vol. 25 (2), pp. 189-206.

¹⁸ Patterson, Molly and Renwick, Kristen (1998) 'Narratives in Political Science', *Annual Review of Political Science*, vol. 1, pp. 315-331.

¹⁹ Polkinghorne, Donald (1991) 'Narrative and Self Concept', *Journal of Narrative and Life History*, vol. 1 (2-3), pp. 135-154; Spector-Mersel, Gabriela (2003) *An Old Man in Uniform is Like a Torn Israeli Flag: The Narrative Identities of Senior Sabra Officers*, PhD Thesis in Social Work to the Hebrew University in Jerusalem (Hebrew).

²⁰ Connerton, supra note 17, p. 104;

to particular narratives is an appreciation of the intertwining of the personal and the cultural.²¹

The strength of narratives lies in the fact that they relate to a few dimensions. Structuring the past experience into a narrative not only guides one's life up to the present, but also directs it into the future, to alter prospect actions.²² Moreover, because the comprehension of one's self changes at times,²³ and so does one's picture of the world, the narrative changes accordingly.²⁴ Therefore every narrative is centred in a specific moment, and by shedding light on it also reveals developments and evolutions.

Kirmayer notes that narrators might follow cultural norms and say what they think they are expected to say.²⁵ They can be manipulative in their choices to please their communities (or the researcher). Memory can be reshaped to fit conventions, rather than the individual's view. In the attempt to reach a coherent story, life might be rearranged.²⁶ In this research, however, even if the narrative is changed to fit conventions, it does not reduce its relevance, since the focus is on the culture within which the informants live, including its conventions.

²¹See also: Good, Byron and Del Vecchio-Good, Mary-Jo (2000) 'Fiction' and 'Historicity' in Doctors' Stories: Social and Narrative Dimensions of Learning Medicine', in: Mattingly, Cheryl and Garro, Linda (eds.) *Narrative and the Culture Construction of Illness and Healing* (Berkeley: University of California Press), pp. 50-69; Bruner, Jerome (2004) 'Fiction and 'Historicity' in Doctors' Stories', *An International Quarterly*, vol. 71 (3) pp. 691-710.

²² Bruner, Jerome (2004) 'Life as Narrative Social Research', *An International Quarterly*, vol. 71 (3) pp. 691-710, p. 708; as was also clearly seen in the interviews, see chapter 4.

²³ Alassutari, Pertti (1997) 'The Discursive Construction of Personality', in: Lieblich, Amia and Josselson, Ruthellen (eds.) *The Narrative Study of Lives* (Thousand Oaks: Sage), vol. 5, pp. 1-20.

²⁴ Ruth, Jan-Erik and Oberg, P. (1996) 'Ways of Life: Old Age in a Life History Perspective', in: Birren, James et al. (eds.) *Aging and Biography: Explorations in Adult Development* (New York: Springer), pp. 167-186.

²⁵ Kirmayer, Laurence (2000) 'Broken Narratives: Clinical Encounters and the Poetics of Illness Experience', in: Mattingly, Cheryl and Garro, Linda (eds.) *Narrative and the Cultural Construction of Illness* (Berkeley: University of California Press), pp. 153-180.

²⁶ Kirmayer has related to narratives in mental illness, but the critic is valid to other narratives.

Bakhtin argues that narratives are the co-production of tellers and listeners/readers.²⁷ The co-authoring, adds Ochs, changes the way people see themselves and others, and establishes their relationships.²⁸ As McAdams notes, the narrator depends on the listeners, who are usually members of his community; by a process of checking their reactions (reassuring, rejecting and so on) he keeps changing his story.²⁹ Narratives are told in many situations, to all kinds of listeners, usually not for the sake of researchers; but a free decision to share the story with others gives the story and its teller new power, importance and strength.³⁰

The narrative data for this work were collected from two sources – those told in the mediation processes that were personally observed, and those recounted in specially scheduled interviews. Immediately after dealing with the particular aspects of the ethnographer and informants in their common society, the chapter goes on to explain those interviews and observations.

The Ethnographer and the Narrators

The ethnographer has two tasks – observing (sometimes quietly, sometimes actively) and writing. He faces difficult decisions: what to include in the writing and how, and what is the right interpretation. Thus, additional issues have to be discussed – the influence of the particular observers on the narrative recounted, and the differences between the researcher's understanding of the

²⁷ Bakhtin, Mikhail (1981) *The Dialogic Imagination: Four Essays* (Emerson, Caryl and Holquist, Micahel trans.)(Austin: University of Texas Press)(2004 edition).

²⁸ Ochs, Elinor (1997) 'Narratives', in: Van Dijk (ed.) *Discourse as Structure and Process* (London: Sage)(1998 edition), pp. 185-207, p. 185.

²⁹ McAdams, Dan (1987) 'A Life Story Model of Identity', <http://www.psychology.sunysb.edu/ewaters/345/narrative%20self%20theory/Narrative%20Theory%20class%20notes.pdf>(21.12.2010).

³⁰ Omer argues that giving up discretion and breaking the taboo of privacy is empowering: Omer, Haim (2002) *Non-Violent Resistance: A New Approach to Violent and Self-destructive Children* (Ben-Shemen: Modan)(Hebrew), p. 199.

narrative and that of the narrator and of the reader. The question arises: what is the validity of the ethnographer's interpretation after giving the observed description? Understanding the relationships between the researcher and the subjects of the research, especially when the narrative approach is used and all those involved are from the same culture, helps in providing answers.

The Ethnographer's Presence

The usual criticism leveled against the participant-observer is that his presence contaminates the pure social environment in which he is interested.³¹ The ethnographer is accused that his presence changes the behaviour and the reports of the informants. He causes them to modify their stories to suit his expectations, like making them more politically correct. Ethnographers struggle against claims that their findings are less valid and less reliable since they are tainted by the observation. In methodological chapters, ethnographers explain what actions they have taken to minimise the impact of their presence.³² Awareness of the influence of the problem and documenting it seems an acceptable way to handle it.³³

However, narrative attitudes which see the outcome as a collaborative creation of the narrator and the writer do not see that as a problem at all.³⁴ On the

³¹ Hunt, Morton (1985) *Profiles of Social Research: The Scientific Study of Human Interactions* (New York: Russell Sage Foundation).

³² Agar, Michael (1980) 'Getting Better Qualitative Stuff: Methodological Competition in an Interdisciplinary Niche', *Journal of Contemporary Ethnography*, vol. 9 (1), pp. 34-50.

³³ Patton, Michael (2002) *Qualitative Research and Evaluative Methods* (Thousand Oaks: Sage)(third edition).

³⁴ Feminists, as opposed to classical researchers, believe that a research is a collaborative work: Zellermyer, Michal (2010) 'On Narrative Research, Feminism and in Between', in: Tuval-Mashiach, Rivka and Spector-Mersel, Gabriela (eds.) *Narrative Research: Theory, Creation and Interpretation* (Jerusalem: Mofet and Magnes)(Hebrew), pp. 106-132.

contrary, when it is agreed that the researcher has to be present to document the story and that his character is a component of the findings, there is nothing to apologise for.

Acknowledgement that the story changes according to the observer is crucial for understanding the essence of any research, since they are all researcher-dependent. New discoveries in Physics have found almost unbelievable evidence that the observer and his measurement methods have the power to change the results of a scientific experiment.³⁵ There is no point in ignoring the fact that the researcher is part of the investigated scene. In narrative methods, this is an advantage; the relationships between the narrator and the writer, especially in the case of the 'native ethnographer', are a source of the power of the description.

Although studying one's own culture is common in modern science and is well accepted, and although distance as demanded by traditional anthropologists is no longer a must,³⁶ the situation is nevertheless complicated and needs delicate attention. Since Israel is a relatively small society and the mediation community is by definition smaller, familiarity is strong and, as a result, there are advantages and disadvantages to being a local researcher, as explained in the following section.

The Ethnographer in Her Own Society

The first advantage of the situation is that the 'home ethnographer' physically looks very similar to the 'natives'. This is quite different from the tall white man who visits a small village of black people. This ethnographer will not face the

³⁵ Una, Issachar (1993) *Quantum Physics* (Tel-Aviv: Open University Press)(Hebrew), and see later in the chapter about the subjectivity of the interpretation.

³⁶ See the discussion in Cownie, Fiona (2004) *Legal Academics: Cultures and Identities* (US: Hart Publishing), pp. 1-14; also: Casper, Jensen and Lauritsen, Peter (2005) 'Qualitative Research as Partial Connection: Bypassing the Power-Knowledge Nexus', *Qualitative Research*, vol. 5 (1), pp. 59-77.

accusations aimed at the classical anthropologists, whom the natives sometimes saw as representatives of the colonial authorities which thought of them as inferior savages. As a silent participant-observer, it is good to blend in with the subjects of the research. Furthermore, when the researcher looks like the informants they tend to be more open and are freer to talk, because they do not feel under observation. The integration between the informants and the researcher could also affect the recounted narrative. In narrative methodology there is no need to keep a distance from the informants; these relationships are essential for obtaining good data.³⁷ If, as Fox claims, the key to obtaining a rich description is gaining access to the unique field sites, developing rapport with informants, and achieving a recognised status, then the home ethnographer is in a good position to achieve that.³⁸ He already knows the field quite well, and enjoys a good and natural command of the local language and habits.

Besides saving time in learning a new language, deep knowledge of the written and spoken language is important to any ethnographic study, and is particularly crucial to this one which deals with words. Studying verbal negotiations necessitates knowledge of all the layers of the language, including popular language, which is very much alive in Israel. Moreover, mediators, like lawyers and other professionals whose tools are word-based, use a specialised language. Knowing the language well makes one sensitive to idioms and metaphors. Identifying the exact application of a word, its place in the sentence, its intonation and the way it is expressed in the context of conducting mediation, is a delicate task. While a foreign researcher may be under pressure for not accurately understanding the discussions, the local one should avoid the

³⁷ Clandinin, Jean and Connelly, Michael (2000) *Narrative Inquiry: Experience and Story in Qualitative Research* (San-Francisco: Jossey Bass).

³⁸ Fox, Renee (2004) 'Observations and Reflections of a Perpetual Fieldworker', in: *The ANNALS of the American Academy of Political and Social Science*, vol. 595 (1), pp. 309-326.

risk of being too 'comfortable' when listening, and remain alert even when it seems he has heard all before.

Affection between two people from similar backgrounds, or the opposite emotion if they come from alienated communities, may lead to different outcomes.³⁹ The situation is complex and relatively new, so the lines of ethics are not yet clear.⁴⁰ One may claim that a researcher, who has an interest in his home-society, may be more dedicated and eager to understand it. He will take extra care to avoid mistakes, which can influence his environment as well, and will be more sensitive to the subjects of his research, which are his 'neighbours'. The partnership between the researcher and the research subjects in sharing the community creates deeper dimensions and responsibilities. Ben-Ari, for example, when studying the behaviour of Israeli soldiers during the Intifada, notes that the special combination of a *'troubled citizen and anthropologist'* made him question what the situation "did to us."⁴¹ This is an example of the possible results of mixing the researcher and his subjects.

The situation of a researcher interviewing informants may bring up ethical questions.⁴² However, Messerschmidt's argument that most researchers are from a higher social level and education compared to the subjects of their work

³⁹ Barzilay, Sarit (2010) 'Prospects and Risks in the Interactive Encounter during the Narrative Interview', in: Tuval-Mashiach, supra note 34, pp. 133-154.

⁴⁰ Bilu discusses his personal story about an informant who used him very successfully to promote his own interests, until the borders between the researcher and the research subjects blurred: Bilu, Yoram (1998) 'Popular Culture in Post-Modernism Times: A Personal Story', in: Abuhav, Orit et al. (eds.) *Israel: a Local Anthropology - Studies in the Anthropology of Israel* (Tel-Aviv: Cherikover)(Hebrew), pp. 655-680.

⁴¹ Ben-Ari, Eyal (1998a) 'Masks and Soldiering: The Israeli Army and the Palestinian Uprising', in: Abuhav, ibid, pp. 305-320, p. 305.

⁴² Bar-On, Dan (1996) 'Ethical Issues in Biographical Interviews and Analysis', in: Josselson, Ruthellen (ed.), *Ethics and Process in the Narrative Study of Lives* (Thousand Oaks, California: Sage), pp. 9-21.

is less relevant in the current work.⁴³ In this study the research subjects and the researcher were similar in terms of social status. Differences in education, age or economic status were not significant.

Being close and so involved in the field masks the dangers of losing sensitivity to the peculiarities of the studied environment. The researcher might miss noticing what looks familiar and ordinary, but could be a treasure to a foreign eye. Therefore, he needs to ensure awareness to the uniqueness of daily acts, and to make this interaction deliver more open and deeper insights.⁴⁴

To sum up, the 'home ethnographer' may face the criticism of suffering from a lack of objectivity, lack of sensitivity, and too much involvement in the researched society. It should be noted here that classical ethnographic research too, with a foreigner studying an unknown society, suffers from similar problems to those mentioned above, in addition to other problems involved with anthropology work.⁴⁵

The Ethnographer's Interpretation

This subsection discusses briefly the issue of the validity of the ethnographer's writing as academic work, firstly by dealing with it with respect to the narrator's views, and secondly by referring to its objectivity, focusing on the researcher's view.

⁴³ Messerschmidt, Donald (1981) *Anthropologist at Home in North America: Methods and Issues in the Study of One's Own Society* (Cambridge: Cambridge University Press).

⁴⁴ Abu-Rebia-Qwidar, Sarrab (2010) 'Subjectivity in Narrative Research', in: Tuval-Mashiach, supra note 34, pp. 155-176.

⁴⁵ See, for example, the criticism of Crapanzano on Geertz, whose research is totally within the boundaries of classic Ethnography: Crapanzano, Vincent (1986) 'Hermes' Dilemma: The Masking of Subversion in Ethnographic Description', in: Clifford, James and Marcus, George (eds.) *Writing Cultures: The Poetic and Politics of Ethnography*, (Berkeley: University of California Press).

The problem of what constitutes a good ethnographic report is discussed by many. Geertz writes:⁴⁶

"The problem, to rephrase it in as prosaic terms as I can manage, is to represent the research process in the research product; to write ethnography in such a way as to bring one's interpretations of some society, culture, way of life, or whatever and one's encounters with some of its members, carriers, representatives, or whomever into an intelligible relationship. Or, quickly to refigure it again, before psychologism can set in, it is how to get an eye-witnessing author into a they-picturing story. To commit oneself to an essentially biographical conception of Being There ..."

The power of the ethnographer's report derives, therefore, from his presence at the scene, and the combination he has to create between the intellectual scholarship of his writing and his sensitivity, feelings and personality. There is a gap between '**reality**', the '**researcher's text**' and the '**informant's interpretation**'. Geertz emphasises these three sources as collaborative sources to acquire anthropological knowledge.⁴⁷ The fact that they all change with time makes ethnographic work more complicated. The literature addresses extensively the ethical and scientific dilemmas concerning the relationships and the mutual influence between the three.⁴⁸

In Anthropology in general, and in narrative methodology in particular, the old question arises: Whose story is it? Is the researcher independently entitled to bring up his own analysis, or does the narrator have a right to amend it according to his understanding? Lieblich, although admitting her own full

⁴⁶ Geertz, Clifford (1988) *Works and Lives: The Anthropologist as an Author* (Stanford: Stanford University Press), p 84.

⁴⁷ Geertz, Clifford (1983) *Local Knowledge* (New York: New York Basic Books).

⁴⁸ For a detailed discussions see: Josselson, Ruthellen (2007) 'The Ethical Attitude in Narrative Research: Principles and Practice', in: Clandinin, Jean (ed.) *Handbook of Narrative Inquiry: Mapping a Methodology* (Thousand Oaks: Sage), pp. 537-566; Brettel, Caroline (ed.) (1993) *When They Read What We Write: The Politics of Ethnography* (Westport: Bergin and Garvey); Crapanzano, Vincent (1980) *Tuhami: Portrait of a Moroccan* (Chicago: University of Chicago Press).

responsibility for the story and the interpretation, involves the informants with the whole process of transferring the story into a written paper. She gets the informants' comments and consent before any publication, which turns the outcome into a co-production.⁴⁹ Bilu describes the consequences of this sharing attitude by using an extreme case of an informant who kept correcting the writing, and therefore saw himself as having ownership of the articles about his stories, and even forced the ethnographer to pay back the favour.⁵⁰ The question of whether the researcher is a vessel that has to contain the story⁵¹ or, given his background, ideas and values, has to voice these too, remains unanswered.⁵² In this research the comments of the owners of the mediation centres to the description when given, were added in their names.

The interpretations are many, and the researcher can only offer one coherent description of the culture examined.⁵³ At the end of the day, there will still be two entities: the 'text' and the 'real world', which will never match and will never be completely understood.⁵⁴ Modernism and post-modernism found the scientific demand to look for the one and only 'truth' in human sciences as an impossible and even unnecessary goal. Making a totally objective and accurate account of a situation is impossible, in both human and in exact sciences; it

⁴⁹ Lieblich, Amia (2006) 'Vicissitudes: A Study, A Book, A Play: Lessons from the Work of a Narrative Scholar', *Qualitative Inquiry*, vol. 12, pp. 60-80.

⁵⁰ Supra note 40.

⁵¹ As says Mishler, Elliot (1986) 'The Analysis of Interview Narratives', in: Sabrin, Theodore (ed.) *Narrative Psychology: The Storied Nature of Human Conduct* (New York: Praeger), pp. 223-255.

⁵² Supra note 39, p. 145.

⁵³ Geertz, Clifford (1990) *The Interpretation of Cultures* (Mayzler, Yoash, trans.)(Jerusalem: Keter) (Hebrew), p. 17.

⁵⁴ Levi, Andre (2005) 'To be Geertz: The Anthropologist and the Writing', in: Geertz, Clifford (1988) *Works and Lives: The Anthropologist as an Author* (Zehavi, Ahad, trans.)(2005 edition)(Tel-Aviv: Resling)(Hebrew), pp. 7-20, p. 17.

always depends on the eye and the mind of the agent.⁵⁵ Waizbort uses a cosmological metaphor when he notes that:⁵⁶

"Human actions, intentions, feelings, and gestures are not comprehended in the same way that we can mathematically and mechanistically explain the motion of the stars and the planets."

Even mathematics and physics, which use numbers and unified measurements, are socially connected and biased accordingly.⁵⁷ Scholars now agree that quantitative and positivist methods also are not objective; numbers can be manipulated to give a desired outcome etc. Objectivity requirements have been replaced with acknowledgments of the importance and value of subjective insights. The most careful and cautious researcher shapes his theory according to chosen perceptions and a given personality.⁵⁸ Accepting this assumption would lead to wider ways of reading and a more flexible attitude towards the final text, which is only one option out of many.

The Narrative Interview

The situation where two people meet together, one as a researcher, and the other as an informant, is not enough to produce 'a narrative', unless the dialogue between the two follows the rules of the narrative interview.⁵⁹ Chase

⁵⁵ Wilson, Stephen (1977) 'The Use of Ethnographic Techniques in Educational Research', *Review of Educational Research*, vol. 47 (2), pp. 245-265.

⁵⁶ Waizbort, Ricardo (2004) 'Objectivity in Social Science: Toward a Hermeneutical Evolutionary Theory', *Philosophy of the Social Sciences*, vol. 34 (1), pp. 151-162, p. 152; also see: Habermas, Jürgen (1988) *On the Logic of the Social Science* (Nicholsen, Shierry and Stark, Jerry, trans.)(Cambridge: MIT Press).

⁵⁷ Restivo, Sal (1985) *The Social Relations of Physics, Mysticism, and Mathematics: Studies in Social Structure, Interests and Ideas* (New York: Springer).

⁵⁸ Denzin, Norman (2001) *Interpretive Interactionism* (London: Sage).

⁵⁹ Shorr, Pnina and Tzabar-Ben-Yehoshua, Naama (2010) 'From a Report to a Story', in: Tuval-Mashiach, supra note 34, pp. 197-220.

sees the use of questions as the key means for achieving a narrative.⁶⁰ As this section shows, specific questions asked in a way that invites openness and breadth, accompanied by attentiveness, pave the way for the data that the narrative researcher is looking for.

The narrative interview is an essential and highly appropriate tool in social research studies which aim to obtain authentic information representing the informant's world. An open-ended narrative interview usually consists of two parts.⁶¹ Firstly, the interviewee is asked an initial open question which facilitates a full *ex tempore* narration of his life experiences. If the research is dealing with a specific subject, rather than interest in a life-story, the interviewee is asked to relate the story in light of the research questions. During this part, which produces the 'basic narrative', the interviewee should not be interrupted at all, neither by the researcher nor by outside interventions, so that he can speak for as long as he wishes and say whatever he wants in full. The interviewer listens carefully, and encourages the speaker by using mainly paraverbal or non-verbal means (such as 'aha', head nodding, smiling).

The second part starts only when the interviewee indicates that his story is finished. Now the interviewer may initiate remarks and questions, and asks the interviewee respond accordingly. The questions may emerge from the narrative text, what was said and what was missed, the researcher's knowledge of the events, or they may aim to connect to the research questions. There are no restrictions to the second part since the main story has already been told and heard. Here interruptions are allowed, such as breaks, eating or talking to

⁶⁰ Chase, Susan (2003) 'Taking Narrative Seriously: Consequences for Method and Theory in Interview Studies', in: Lincoln, Yvonna and Denzin, Norman *Turning Points in Qualitative Research: Tying Knots in a Handkerchief* (Walnut Creek CA: Alrtamira Press), pp. 273-296.

⁶¹ *Supra* note 11, p. 60; Kvale, Steinar (1996) *Interviews: An Introduction to Qualitative Research Interviewing* (Thousand Oaks: Sage).

others who may give further information. Oral interviews should be properly written down or recorded.

The interviews conducted in this thesis followed the above structure. Because narrative research interviewing is a dialogue, the connections between the two discussants are crucial:⁶²

“Narrator and researcher establish an interpersonal relationship made up of institutional, imaginative, socio-categorical and other communicative frames which are enacted by both partners during the interview. This pragmatic constitution of the interview as an interactive process calls for a communicative and constructivist approach to oral narratives which reveals different levels of the listener’s conceptions of himself or herself and the research situation in the narrator’s story.”

The above quotation complicates the situation of a researcher meeting an informant in one special episode which will produce the narrative. The next paragraph deals with that interaction in the context of this work.

In Conclusion

An anthropologist doing research in her native environment cannot sail back home at the end of the study. In that respect she is different from Amichay's tourists in the poem. She has to stay and deal with the possibility that the subjects might disagree with the published analysis, or that she will run into some of the people who had been observed in fieldwork in uncomfortable circumstances, and so forth. The researcher has to consider the potential effects on the informants when writing. Therefore, the researcher has to find the balance between getting the informants' cooperation and trust, being fair, respectful and sensitive, fulfilling their reasonable expectations, and at the same

⁶² Lucius-Hoene, Gabriele and Deppermann, Arnulf (2000) 'Narrative Identity Empiricized: A Dialogical and Positioning Approach to Autobiographical Research Interviews', *Narrative Inquiry*, vol. 10 (1), pp. 199-224, p. 199.

time giving an accurate description whilst maintaining academic integrity. Lieblisch sums up the complicated situation of the relationships between the scholar and the informants in a series of questions from her own rich experience:⁶³

“As a researcher I had to deal with many dilemmas: who am I in this relationship that is about to begin?... how do I present myself to the participant in an honest yet inviting manner?; and why should I be trusted with her life story? Am I here to ‘take’ or ‘steal’ her story and turn it into a chapter in my book?... How do I make... (her) understand that both of us might profit from the interaction? I imagine that the participant to be had a parallel series of thoughts... Can the two parties bridge the gap between their opposite positions and reach a fair agreement?... The research-participant relationship is an ongoing process, and agreements are negotiated repeatedly throughout it.”

Field Research – The Data

The Time Frame

Experimental observations as pre-field research were performed in 2003. The field research was conducted mainly between December 2006 and June 2008. During this period, the observation of mediation sessions and most of the interviews were undertaken. Although the writing was completed in 2011, the data and analysis relate to the field research period.

The Locations

The observations were undertaken in the mediation rooms at Practicum mediation processes of two mediation centres, Gevim and Gome. The courses and the centres are described in chapter 5, in which a full description of the locations is given. The interviews were undertaken at the place the interviewee chose, a list of which is provided in Appendix A.

⁶³ Supra note 49, p. 64.

The Interviews

This sub-section gives the numbers and explanations about the interviews.

The Interviews in Numbers

Fifty people were interviewed, twenty eight men and twenty two women. Twenty were mediators who have been active since structured mediation first began in Israel. Thirty-one introduced themselves as practicing professional mediators. The other interviewees were significant workers in centres, mediation entities, or were active in the field of mediation. Half of the interviewees came from the legal sphere and the others mostly from therapy or education backgrounds.

Most of the interviews lasted between 60-90 minutes. The shortest took 35 minutes as the interviewee forgot about the meeting and it was done in between. The longest lasted 4 hours over two meetings. Some of the interviewees were very busy professionals, so it was important to respect the previously agreed upon time- frame of one hour.

All the interviews were audio-taped and then transcribed.⁶⁴ A list of interviewees, time and places of the interview is included in Appendix A. The interviewees were asked for permission to quote their full names. Most of them were proud of their thoughts and had no problem with that. One even urged specifically not to forget to cite his ideas and to mention him. Since they were professionals, risk of misunderstanding the nature of a research or the purpose of the meeting was small. Only four interviewees asked to read the transcript, but never responded when they got it. In a few cases, either following a specific

⁶⁴ For the hard work of transcription I warmly thank Ms. Inbar Ronnen.

request or because of significant quotations, the interviewee received the final text to obtain definitive consent.

Interviews in Content

The following alternative criteria were used to select the sample of the interviewees:

- a. People who were involved in the creation of the mediation discourse in Israel; most of them are still active in the field. They nickname themselves 'the generation of the wilderness', after the Israelites who went out of Egypt, but did not manage to enter the Promised Land.
- b. People who had leading roles in the mediation centres where the observations were undertaken. Mediators or parties were not interviewed due to the centres' instructions, and the thesis methodology, which emphasizes what was said in the processes, and not explanations thereafter.

After a number of trial interviews, a format was developed which fitted the demands of narrative research, of the research questions and of the time constraints. When coordinating the meeting the interviewees were told that they are being questioned by a PhD student, interested in writing about mediation in Israel. Usually this was enough to arouse their curiosity and get their agreement to participate. The interviews began with an introduction, whenever necessary, and an additional explanation about the thesis. Then, immediately, the question was asked: *"Tell me about yourself, as far back as you choose. Tell me how you got to know about mediation and please continue from there."* This is compatible with the holistic view of narrative methodology, which is not concerned with one piece but with the complete puzzle.

The interviewees although not always understanding how a professional could be interested in details which seemed far from the core, usually responded well. Many built their story so that it would lead to the subject of mediation. Interviewees' initial answers ranged from three sentences to long speeches. Some were more interested in telling their stories; other went straight to where they thought would best contribute to the research. Their different attitudes towards spending time on research were shown in the length of their answers. This is also the stage when the interviewee examines the researcher and tries to understand his interests. A supportive and nonjudgmental reaction may help to get the interviewee's cooperation.⁶⁵

In the second part, the interviewee was asked to develop points that were missing. Asking questions seeks to uncover mechanisms of omission, silencing and flattening,⁶⁶ and to enable the development of pertinent subjects that the narrator either chose not to relate to or mentioned only vaguely. This stage allows questioning based on previous knowledge of the informant and the society.

The qualitative interviews ended with two questions; the first was about mediation and Israeli culture: whether in their experience in the mediation field they saw anything that could be identified as specifically 'Israeli'. Their answers opened up more options to add to the insights. The second question was about vision for the future of mediation: whether the interviewee had a personal dream, or had hopes on a larger scale.⁶⁷ This part let the interview end with a type of broader understanding of how future hopes enlighten the present, and

⁶⁵ Omer, Haim and Alon, Nahi (1997) *Constructing Therapeutic Narratives* (Tel-Aviv: Modan)(Hebrew).

⁶⁶ For a detailed discussion on that mechanism see: Spector-Mersel, Gabriela (2010a) 'Mechanisms of Choice on the Grounds of Narrative Identity: A Model for Analyzing Narratives', in: Kassin, Lea and Kromer-Nevo, Michal *Methods for Qualitative Analysis* (Beer-Sheva: Ben-Gurion University Press), pp. 63-96.

⁶⁷ The analysis of the answers which was made, is beyond the scope of this thesis.

allowed the conversation to rise above the factual issues of history, and the gravity of the past, as Price suggests:⁶⁸

“Interviewing is also a social relationship that must be nurtured, sustained, and then ended gracefully.”

The Observations of the Mediation Processes

This sub-section gives the numbers and explanations about the observations.

The Observations in Numbers

A total of nineteen mediation processes were observed (six in Gome, thirteen in Gevim). There were two cancellations of scheduled processes (in Gevim), one due to the absence of both parties and one due to the absence of the respondent. Final agreements were signed in eight processes (three in Gome, five in Gevim), and one temporary agreement (in Gome). The differences in achieving agreements, if any, are not significant for meaningful statistical analysis.

In two cases (in Gome) the respondents came with a decision to reach an agreement and were ready to settle the matter before the processes began. In two cases (one in each centre), the respondents came to the mediation with a decision not to compromise, and an agreement was not reached, nor was a proper process undertaken.

Taping was not allowed by the centres; therefore the observation was recorded by quick writing, including notes on hand movements, ways of sitting, non-verbal signs etc., besides researcher's notes. Since the names of the centres and

⁶⁸ Price, June (1999) 'In Acknowledgement: A Review and Critique of Qualitative Research Texts', in: Lieblich, Amia and Josselson, Ruthellen (eds.) *Making Meaning of Lives - The Narrative Study of Lives*, (Thousand Oaks: Sage) vol. 6, pp. 1-24; her citation of Seidman, Irving (1991) *Interviewing as Qualitative Research: A Guide for Researchers in Education and the Social Sciences* (New York: Teachers College Press), p. 72.

the time period are known, a list of cases and exact dates is not attached, to ensure the confidentiality of all participants.

The Analysis of the Observations

The choice to analyse the stories as a whole, rather than as a combination of segments was made according to narrative rules.⁶⁹ The analysis was performed on a few levels – the main narrative, the following narratives, the life experience and cultural history, and the connection to the research questions.⁷⁰

The analysis also relates to the three components of the situation; the micro – the inner circle in the narrator's life, the macro – the environment (social, political, economic etc.), and the setting in which the story was told – the audience, the connections, the special encounter.⁷¹ The macro situation is discussed in chapter 1. The meaning of the audience and the influence of the observer is discussed in the sections above. The connections between the micro, and the macro through the eyes of the observer are studied in chapters 7 and 8. The analysis seeks to elicit themes that are evident in the text, as well as those which are absent from it. In order to understand the choices the narrator has made in embroidering the story, other alternatives such as history, previous information, social norms etc. should be addressed. It is the researcher's task to understand the meaning of the story, its end-point, the secrets the narrator kept away, and what the narrator insists the listener will absorb.⁷²

⁶⁹ Supra note 2.

⁷⁰ Supra note 11, p. 60.

⁷¹ Spector-Mersel, Gabriela (2010b) 'From Narrative Approach to Narrative Paradigm', in: Tuval-Mashiach, supra note. 34, pp. 45-80, p. 57.

⁷² Kirmayer remarks, that narratives have an end-point not a beginning: Kirmayer, Laurence (1993) 'Healing and the Interpretation of Metaphor', *Culture, Medicine and Psychiatry*, vol. 17 (2), pp. 161-195.

As explained, advanced approaches to narratives see the narrative not only as a reflection of reality but as a means of creating reality. The narratives (as demonstrated in the chapters below) establish individual separation and identity in the given situation.⁷³

Language Issues

The essence of this research is to bring to the fore the authentic voices of the people interviewed and observed. Therefore at the core of the research are words. The study is preoccupied with their beauty and danger. For the overwhelming majority of the interviews and in all the mediation processes, the language used was Hebrew. The rules of Hebrew are totally different from those of English. Being a Semitic rather than a Germanic or a Romance language, Hebrew is not a picturesque, highly ornate language.⁷⁴ On the contrary, it is very condensed and parsimonious, with both words and expressions. Simplicity, straightforwardness and directness characterise Israeli discourse. Almog notes that:⁷⁵

“There is an elitist tone to the Sabra’s everyday speech...it is an insolent, cocky, arrogant, all-knowing response and it expresses itself in prevalent words that are difficult or impossible to translate exactly.”

As Wittgenstein rightly pointed out, a word means different things in different connotations. The use of words is one side of the coin; the other side is the intention of the speaker. The translator has to understand the intention when transferring the sentences: Was it a statement? An order? A question? And

⁷³ Supra note 71, p. 47.

⁷⁴ Weinbach, Liora and Brosh, Shoshana (1986) *The Art of Discourse: Interpersonal Communication and Speech Acts* (Tel-Aviv: University Publishing Projects)(Hebrew).

⁷⁵ Almog, Oz (1997) *The Sabra: The Creation of the New Jew* (Tel-Aviv: Am- Oved,)(Hebrew), p. 178; Almog adds examples to show how difficult translation from Hebrew is; also: Kamir, Orit (1999) 'Smoch Mentality ('rely on me') in Israeli Culture and Law' *Tarbut Demokratit*, vol. 1, pp. 137 – 179, p. 137, p. 145.

there are many other possibilities— appraising, joking, criticizing etc.⁷⁶ The wish for authenticity was somewhat damaged when words were translated from the original Hebrew into English. The level of language used by the informants varied, ranging from the academic language of university professors and professional terms used by lawyers, to street and military jargon used by all. The differences in the use of the language in the mediation sessions made translation extremely difficult. It is problematic to transmit words that are stripped of intonation, gestures, and facial expressions. Translation also takes away some of the subtlety of idioms, clichés, proverbs, and jargon. In a society known for the extensive use of hand gestures, facial expressions, and intonation, as well as a whole range of possible and impossible tones, translations loses a lot on the way. Shouting, stammering, quiet pauses, and embarrassed pauses are also difficult to convey.⁷⁷

Three phenomena in mediation processes, which aggravated the work of translation, are the following:

1. The interweaving of citations from the Bible or fables inside simple and ordinary sentences. This was surprising and took place on numerous occasions. It was hard to find parallel citations in English. Sometimes, understanding the special use of irony is not possible. Explaining the undercurrent meaning could in some cases encumber fluent reading.
2. Use of jargon, especially military terms, acronyms and political innuendo. In Israel, street jargon changes a lot. Using the right word at the right time may show whether the speaker is 'cool' or 'out of date'. For example, the expression 'end of the road' used to signify the end of the physical route,

⁷⁶ Grayling, Anthony (1988) *Wittgenstein* (New York: New York University Press)(1996 edition) pp. 113-114.

⁷⁷ Josselson, Ruthellen (1993) 'Narrative Introduction' in: Lieblich, Amia and Josselson, Ruthellen (eds.) *The Narrative Study of Lives* (Newbury Park: Sage), vol. 1, pp. ix-xv.

but subsequently came to signify 'the best'. Soon after, it became 'old-fashioned' and young people started using only 'the end', as in 'I bought a bag – the end!' meaning 'I bought a stunning bag'. Decisions whether to translate the words literally or to focus on the meaning were done accordingly, trying to keep the rhythm and innovation of the original expressions.

3. The occasional creation by mediators of a kind of 'mediation jargon'. This jargon may lose its uniqueness in translation. Inspired by the team leaders, who do it when giving feedback and when teaching, students sometimes make up specific word combinations which are not used elsewhere. This aims to create a special atmosphere and occasionally engender a certain vagueness or softness that the mediator thinks might help reach the mediation goals.

A good example is the use of the phrase 'the room'. 'The room' as a personification of the mediation room, made the essence of 'mediation' vivid, and attributed interests and demands to that innovated persona. By adding a new identity to the meeting called 'the room', the mediators can differentiate it from 'the people'. By doing so they managed to impose responsibility and feelings on 'the room', a move that helps to soften criticism. That is what happened when a crisis emerged after the claimant revealed a new fact (mediation no. 4). The group leader said:

*“I sense that there is in a lack of trust in **the room**”; he turned to the claimant asking: “Do you understand the disappointment created in **the room**?” Finally, he stated: “There is a gap in facts in **the room**.”*

Passive tense is regularly used in Hebrew. In the above example it was used to create a distance from the actual parties, and the consequences of what they did.

Therefore, analysing the use of language after translation is a complex task. The discussion above is intended to point out the problems that might occur. Inaccuracy in translation is therefore, sometimes, inevitable.

Ethical Issues

This section deals briefly with ethical problems that the researcher faced during the work, not with the possible ethical problems in narrative research.⁷⁸ Ethical problems of the mediation process are beyond the scope of this thesis.

During the interviews there were no direct ethical problems. Being a researcher in her own small village could, however raise some ethical questions, which did not rise along the work. To avoid possible misunderstandings in a few cases I sent the quotations to the interviewee asking for specific consent to that publication.

Ethical issues were more acute during the observations. The fact that there are many written papers on interviewing, and that people have more experience in interviewing than in observing mediation sessions caused the need to creating ethical rules ad hoc, according to the demand of the peculiar circumstances. For example, one leader once asked me why I wanted to participate in the group meetings if I do not speak there. That comment made me share occasionally my understandings with the group. That demand raised awareness of my own criticism on the one hand side, and worries about the position in the group on the other.⁷⁹

These rules were tested as the observation continued, and were changed if needed. I had to get the trust of the group leaders, the students, the parties and the centres' owners, all have different interests. In order to be respectful to those interests while being faithful to the demands of the research there was great need of thinking and attention. The hard task was to find the right line that

⁷⁸ A good resource for papers on ethical problems in narrative research is: Josselson, Ruthellen (1996) *Ethics and Process in The Narrative Study of Lives* (London: Sage).

⁷⁹ Bakhtin discusses the narrative tool as a mean to self awareness: Bakhtin, Mikhail (1984) *Rebrelais and his World* (Bloomington: Indiana University Press).

combines both contributing as a payback for letting me participate in the processes and not interfering to or affecting the process.

At the beginning of the mediation when the researcher is briefly presented, the mediators note that she is there only to observe, not to speak. This is not as easy as it sounds: both being physically present and at the same time transparent is a contradiction. Sometimes a fly on the wall is very noticeable, even when it does not buzz. This was true, for example, in cases when a party tries to communicate with the observers, attempting to elicit support, encouragement, or just waits for a reaction to a joke or a comment. The parties always look for a human response, not a blank stare; thus, trying to fill a silent role may give the wrong impression of lack of caring. Successful juggling of all of these components in the right proportions according to the specific process may turn the observation into a contributory ingredient of the process.

Events in mediation no. 20 demonstrate the difficulties of being a quiet observer. The claim was against a building company that did not register a flat in the Land Registry office, as written in the purchase agreement. It was obvious that the claimants knew very little about their legal rights and enforcement options, and neither did the mediators. It is important to note that in Israel, as in many other places, buying a flat involves substantial financial and psychological pressures because is likely to be the largest transaction that people make. The couple suing was part of a building development, so the ruling in court could be relevant to other buyers as well.

During the process, the unfair advantage – brought about by the company's and its lawyer's knowledge and experience as opposed to the plaintiffs' and mediators' lack thereof – grew. Although it became clear that the seller had not met his contractual obligations, his lawyer misled the parties with vague information about legal and physical facts, adding promises with no securities to enforce them. The final mediation agreement included only empty

declarations on behalf of the respondent regarding future attempts to register the flat. Watching the gap in power and the abuse of legal knowledge was difficult. Since one of the mediators was the team leader and a lawyer himself, interference in the middle of the process, one long joint meeting, was avoided. After the process ended, thoughts about what happened were expressed noting that, in their eagerness to reach an agreement, the mediators did nothing to help the weaker side and ignored legal rights. Therefore, the opinion was given, that the final agreement was extremely unfair, not to mention legally void. Three (out of four) observers shared this exceptional criticism. The role of a participant-observer was not designed to be a criticizing one. But this unacceptable outcome was troubling; demanding a difficult personal decision taken on the spot, preferring to try and correct radical wrongdoing rather than maintaining the observation strict rules. The result was that the mediators tried to renege on the agreement reached, by asking the court not to accept it. The end of this story is not known. This episode may serve as a lesson about the confusion that is involved in a research work, and its boundaries.⁸⁰

In Conclusion

Narrative research is becoming more appreciated in many disciplines; modern theorists suggest that it has now become a new post-positivism paradigm.⁸¹ The literature challenges the classic theories about the understanding of objectivity, the influence of the observer, and the superiority of quantitative methods and

⁸⁰ It is interesting to compare to the discussion about whether the researcher has to contain insults towards her during the interview, in: Barzilay, Sarit (2010) 'Prospects and Risks in the Interactive Encounter during the Narrative Interview', in: Tuval-Mashiach, Rivka, supra note 34, pp. 133-154.

⁸¹ See the definition 'paradigm' as a basic belief system based on ontological, epistemological and methodological assumptions in: Guba, Egon and Lincoln, Yvonna (1994) *Handbook of Qualitative Research* (Newbury Park: Sage), p. 107. The authors mentioned the critical theory and constructivism as post-modern paradigms; also: supra note 71.

statistics. The legitimacy of a close interaction between the researcher and the research subjects, and recognition of the contribution of the latter to the outcome, allow scholars to be more daring, while maintaining the requisite intellectual and ethical demands. In these terms, this thesis, bridging the two disciplines of Anthropology and Law by using the methodological tools of narrative analysis, seeks to break new ground.

Choosing to explore narratives suits this study for several reasons. This methodology is, in a sense, a mutual effort of the informants and the researcher. Therefore it suits a researcher observing her own culture. Anchored in a broad vision of Sociology, the narrative approach is interested in the multiple relationships between the object of the research, the informants (the people observed or interviewed), and the researcher. While doing so it examines their identities to be anchored in their environment, looking at the specific connections between them. It is an appropriate tool to understand conflict management, as in many cases narratives are about meaningful moments of change and transformation.

Delicate ethical and methodological aspects should be considered with greater care when the narrative topic is conflict. The researcher works in the meeting between opponents, and has to contain and convey contradicting stories. Moreover, she also needs to be loyal to the mediators and honour their role in the process. Careful attention to the above subjects is the way to stay loyal to academic rules and to the informants, while trying to avoid mistakes which, as in any other activity, may, and did, happen.

It is also interesting to note that most narrative researchers are females; there is a connection between this methodology and the way women think and perceive the world.⁸² Narrative methods allow a feminine (but, notably, not

⁸² Supra note 49, p. 74.

necessarily feminist) attitude, which may be an advantage when looking at conflict situations. The holistic approach of the methodology also fits this research, which examines stories in context and individuals in their environment. Therefore all the different chapters form parts of one single thick picture of the studied issues.

CHAPTER 3

On Mediation

On the surface everyone knows what mediation is, and the word is widely used. Intuitively people would probably say that it means ‘some kind of intervention to help people find their way out of a conflict’. Libraries are full of books on the theory and practice, with explanations about the nature of mediation for both scholars and laymen.¹ This chapter aims to give the necessary professional knowledge on mediation processes relevant for this thesis.

Mediation is involved when a conflict develops into a dispute, which is created when someone does not leave the disagreement in the private domain but chooses to execute it publicly. Gulliver offers this definition:²

“In short, the obvious point is that disagreements, large or small, are commonly resolved within a relationship (sometimes by terminating it) by dyadic and private problem solving between the parties themselves... a dispute becomes imminent only when the two parties are unable and/or unwilling to resolve their disagreement; that is, when one or both are not prepared to accept the status quo... or to accede to the demand or denial of demand by the other.”

Earlier, in 1903, Simmel, the great sociologist, wrote about legal disputes which are the subject of this research:³

“With respect to the form off the struggle itself, however, judicial conflict is, to be sure, of an absolute sort; that is, the reciprocal claims are asserted with a relentless objectivity and with employment of all available means, without being diverted or modified by personal or other extraneous considerations. The judicial conflict is,

¹ A comprehensive broad review on mediation can be found in: Roberts, Simon and Palmer, Michael (2005) *Dispute Processes: ADR and the Primary Forms of Decision-Making* (Cambridge: Cambridge University Press)(Second edition); Goldberg, Stephen et al. (1999) *Dispute Resolution: Negotiation, Mediation and Other Processes* (Austin: Aspen Publishers)(Fifth edition); Menkel-Meadow, Carrie et al. (eds.)(2005) *Dispute Resolution: Beyond the Adversarial Model* (New York: Aspen).

² Gulliver, Philip (1921) *Disputes and Negotiations: A Cross-Cultural Perspective* (New York: Academic Press)(1979 edition), p. 75.

³ Simmel, Georg (1903) 'The Sociology of Conflict', *American Journal of Sociology*, vol. 9, pp. 490-525, pp. 508-509.

therefore, absolute conflict, is no far as nothing enters the whole action which does not properly belong in the conflict and which does not serve the ends of conflict; whereas, otherwise, even in the most savage struggles, something subjective, some pure freak of fortune, some sort of interposition from a third side, is at least possible."

M. Roberts finds that a dispute involves also a sense of grievance mixed with accusations against the disputant, who is regarded as responsible or blameworthy.⁴ The decision to deal with the disagreement rather than leave it to solve itself or to fade away is not an obvious one. It is a significant and demanding step with unpredictable consequences.⁵

Conflicts occur all around the globe; Law is only one of the main fields which deal with them. It means imposing authority, strict rules and tough sanctions.⁶ This caused people in ancient and in modern societies to seek gentler, more flexible solutions for their conflicts. Legal centralism was always surrounded by legal pluralism, "*the presence in the social field of more than one legal order*",⁷ and by circles of alternative dispute resolution. In different environments, various forms of mediation have developed.⁸ Conflicts and how to deal with them are certainly culture-related,⁹ but in all societies conciliation options have existed

⁴ Roberts, Marian (1988) *Mediation in Family Disputes: Principles of Practice* (2008 edition) (Hampshire: Ashgate Publishing), p. 108.

⁵ More on the way from a disagreement to a dispute: Felstiner, William et al. (1980) 'The Emergence and Transformation of Disputes: Naming ,Blaming ,Claiming...', *Law and Society Review*, vol. 15 (3-4), pp. 631-654.

⁶ Roberts, Simon (1998) 'Against Legal Pluralism-Some Reflections on the Contemporary Enlargement of the Legal Domain', *Journal of Legal Pluralism and Unofficial Law*, vol. 42, pp. 95-106.

⁷ Griffiths, John (1986) 'What is legal pluralism?', *Journal of Legal Pluralism and Unofficial Law*, vol. 24, pp. 1-55, p. 2.

⁸ Roberts, Simon (1979) *Order and Dispute: An Introduction to Legal Anthropology* (Harmondsworth: Penguin Books); Palmer, Michael (1988) 'The Revival of Mediation in the People's Republic of China: (2) Judicial Mediation', in: Butler, William (ed.) *Year Book of Socialist Legal Systems* 1988 (New York: Transnational Books); Nader, Laura (ed.)(1969) *Law in Culture and Society* (Berkeley: University of California Press); Al-Ramahi, Aseel (2009) *Competing Rationales: Evolution of Arbitration in Commercial Disputes in Modern Jordan*, An LSE PhD Thesis.

⁹ *Supra* note 3.

besides formal adjudication.¹⁰ Pre-modern societies inspired modern thinkers to widen the possibilities of conflict resolution beyond legal rules and procedures.¹¹

This thesis recognizes the culture-related character of mediation, and therefore focuses on the three types of mediation streams that are taught in Israel. Later it will concentrate on the specific 'Practicum mediation' which was observed in the field work, and will be described in chapter 5.

The Nature of Mediation

Mediation is part of the field of Alternative Dispute Resolution (ADR), which reaches far beyond adversarial court proceedings. It creates an alternate route to adjudication as the main road of structured conflict resolution. ADR includes many different conflict resolution options, such as arbitration, conciliation, tribunals and more. These various methodologies are not explained in depth here, but it is important to note that mediation is just one of these options. Moreover, since this work concentrates on disputes brought before Small Claims Courts, other areas, like international, family and community mediation, are left out of the discussion. ADR developed when, as Sander notes:¹² "*At one time perhaps the courts were principal public dispute processors. But that time is long gone*". The court, it seems, does not give quality answers to the problems that conflicts create for individuals and within the community, if personal and social harmony and order are to be maintained.¹³ Menkel-Meadow mentions the limited sanctions available in the courts as one reason

¹⁰ Auerbach, Jerold (1983) *Justice without Law* (New York: Oxford University Press).

¹¹ Alberstein, Michal (2007) *Jurisprudence of Mediation*, (Jerusalem: Magnes)(Hebrew), p. 75; Menkel-Meadow, Carrie (2000) 'Mothers and Fathers of Invention: The Intellectual Founders of ADR', *Ohio State Journal on Dispute Resolutions*, vol. 16, pp. 1-37.

¹² Sander, Frank (1976) 'Varieties of Dispute Processing', *Federal Rules Decisions*, vol. 79, pp. 113-134.

¹³ Supra notes 1 and 10.

for its bounded power.¹⁴ Strict procedures, severe costs, time constraints and the stress which are part of adjudication can result in its failure as a conflict-solving method in general and for individual cases in particular.¹⁵

The alternative methods were designed to amend the constraints of the formality and the restraint of procedures.¹⁶ Modern researchers investigated primitive processes and tried to theorise about them in order to understand the human needs they answer and how they do it.¹⁷ Sarat sought solutions that would enable free access to justice for all parts of the community.¹⁸ Responding to these problems within the judicial system was not sufficient, and in a way increased the difficulties, since it kept the status of the law as 'the be all and end all'.¹⁹ Fuller, one of the founding fathers of ADR to litigation,²⁰ was interested in creating theories of mediation also in the private domain. He saw adjudication as the rational decision of an authority which deals with rational parties.²¹ This authority, adds Raz, creates a new order that is not bound to the original rationale of the parties.²² Mediation is breaking the rational frames by supplying private ordering to regulate the relationship between disputants according to the rules they agreed to follow, not according to any authority's decisions.²³

¹⁴ Menkel-Meadow, Carrie (1991) 'Pursuing Settlement in an Adversary Culture: A Tale of Innovation Co-Opted or 'The Law of ADR', *Florida State University Law Review*, vol. 19, pp. 1-46.

¹⁵ Sarat, Austin and Silbey, Suzan (1989) 'Dispute Processing in Law and Legal Scholarship: from Institutional Critique to the Reconstitution of the Judicial Subject', *Denver University Law Review*, vol. 66, pp. 437-498.

¹⁶ Supra note 10; Alberstein, supra note 11.

¹⁷ Merry, Sally (1987) 'Disputing Without Culture', (Book Review) *Harvard Law Review*, vol. 100, pp. 2057-2073.

¹⁸ Sarat, Austin (1984) 'Access to Justice: Citizen Participation and the American Legal Order', *Rutgers Law Review*, vol. 37, pp. 319-336.

¹⁹ Galanter, Marc (1986) 'The Day after the Litigation Explosion', *Maryland Law Review*, vol. 46, pp. 3-39.

²⁰ According to Menkel-Meadow, supra note 15, p. 22.

²¹ Alberstein, supra note 11, p. 45, p. 28.

²² Raz, Joseph (1986) *The Morality of Freedom* (New York: Oxford University Press).

²³ Alberstein, supra note 11, p. 69.

Following the analytic reasoning of the social sciences, Fuller listed the characteristics of mediation to generalise cases into theory.²⁴ The Standards of Conduct for Mediators of the Supreme Courts in the US (hereinafter SCM) gives the following definition:²⁵

"Mediation is a process in which an impartial third party neutral (mediator) facilitates communication between disputing parties for the purpose of assisting them in reaching a mutually acceptable agreement."

Alberstein, a leading mediation theorist in Israel, gives her perspective:²⁶

"Mediation is a process through which conflicted parties try to reach agreement with the assistance of a third aligned neutral body, called a 'mediator'."

In different order both definitions and many others list five elements that seem to embrace what mediation includes:

- a process
- a dispute
- parties
- a search for agreement
- a third party – the mediator

The two afore-cited definitions suggest different emphases on the components of mediation. While the SCM starts with the involvement of the third party, Alberstein places the process first. These variations in priorities are just one example of the many views regarding the essence of mediation; the components are similar, but their importance, meaning and implementations differ. It is therefore important to clarify that all agree that mediation is a **process**.²⁷

²⁴ Fuller, Lon (1971) 'Mediation: Its Form and Functions', *Southern California Law Review*, vol. 44, pp. 305-339, counted the dyadic nature of the conflict, the need to resolve the conflict, the pay-off etc. Fuller uses as a test case a conflict between a workers union and the management.

²⁵ <http://www.judiciary.state.nj.us/notices/reports/MediatorStandards.pdf>(19.12.201).

²⁶ Alberstein, supra note 11, p. 13.

²⁷ Fuller claims that even adjudication is a process. He sees the claims, evidence and participation of the parties as making the judicial process: Fuller, Lon (1978) 'The Forms and Limits of Adjudication', *Harvard Law Review*, vol. 92, pp. 353- 409, p. 365.

Unlike other methods of conflict resolution that might be interested in documents, data, legal rules and orders etc., mediation tends to deal with people and the relationships between them regarding the conflict; it provides a platform on which people and conflicts perform. Exposing the conflict, even just in front of the other party is a meaningful moment. Cormick puts the emphasis on the interaction, the negotiation. He claimed that "*mediation can never occur in the absence of negotiation*".²⁸ Although all mediations include negotiations, not all negotiations are mediation.

Three Models

Alberstein identifies three main branches of mediation, which have emerged over three decades.²⁹ The three models are discussed shortly, emphasizing their relevance to Israeli society followed by a table which provides a summary of how each of them deals with the components of mediation.

The Pragmatic Model

This model was formulated by Fisher and Ury in their groundbreaking book '*Getting to Yes*', representing the first years of structured mediation of the 1980s.³⁰ Fisher and Ury wanted to change the conventional approach to negotiation as a clash of opposing fixed interests, a zero sum game.³¹ They

²⁸ Cormick, Gerald (1981) 'Environmental Mediation in the US Experience and Future Directions I', as cited in supra note 4, p. 8.

²⁹ This thesis focuses on civil conflicts only; therefore many important branches of mediation, such as family, community and international mediation are far beyond its boundaries.

³⁰ Fisher, Roger and Ury, William (1981) *Getting to Yes: Negotiating Agreement without Giving In* (New York: Penguin Books)(1991 edition).

³¹ A game is called '*a zero sum game*' when the interests of the players are in strict conflict, meaning one person's gain is always another's loss. This is a term from Game Theory, see: Dixit, Avinash and Nalebuff, Burry (1993) *The Art of Strategy: A Game Theorist's Guide to Success in Business and Life* (New York: Norton and Company)(2008 edition), p. 137.

argued that the best way to get the problem solved is not by conventional competitive bargaining, but through collaborative negotiations. This would create more options, some of which would supply additional profits.

For collaborative negotiations they recommended the following: separate people from the problem, focus on interests rather than on positions, create options to make the pie bigger to the parties' mutual benefit, and use objective criteria. All of this can help to achieve a satisfactory agreement between disputants. The theoretical move from seeing bargaining as a competitive engagement of contradicting powers to seeing it as a mutual problem with mutual interests to solve it was Fisher and Ury's contribution to theory of conflict management. 'The Pragmatic Model' which they created became a very popular stream in ADR, inspired their followers.

Alroi, as a leading mediator and teacher, brings the Israeli exception by noting:

"I had hundreds of cases, and only in 5 or 10 of them the parties and their lawyers had genuine interest and good faith to start from the first minute to look for a settlement in collaboration. It is very rare here to see the conflict as a mutual problem."

This model is the one most used and taught in Israel. It gives the mediator a central part in conducting the process. This leadership role suits the character of the Israeli (discussed in chapter 1) and answers the need to assist the parties when they are not familiar with conflict resolutions options.

The Transformative Model

Bush and Folger took the above ideas steps forward in two different editions of 'The Promise of Mediation', also combining theory and its practical

implementation.³² In 'The Transformative Model' they offered an answer to their critique of existing models. They challenged Fisher and Ury's model by stating:³³

"Weaker parties are unable to make common cause and the public interest is ignored and undermined."

Because mediation is conducted privately and the mediators have a free hand in controlling it, there are worries that it could³⁴ "produce outcomes that are unjust – that is, disproportionately and unjustifiably favourable to the state and to the stronger party." Their fresh, perhaps even ambitious or grandiose view of what a conflict means, led them to suggest that a conflict may create fertile soil for growth.³⁵ Since the main cause lies in the connection with others and with oneself, conflicts are an opportunity for change. The task of the mediator is therefore to facilitate the flow of communication and enable understanding between disputants, not to control the process. By enabling communication, recognition grows (not by solving the problem) and empowerment is achieved. When reached, these two goals of transformative mediation will further contribute to social change.

The Narrative Model

In Hegelian dialectic spirit, a further development which began by criticizing the above options, crystallised. 'Narrative Mediation' by Winslade and Monk

³² Bush, Baruch and Folger, Joseph (1994) and (2005 edition) *The Promise of Mediation: Responding to Conflict through Empowerment and Recognition* (San Francisco: Jossey-Bass).

³³ Ibid (2005 edition), p. 16.

³⁴ Ibid.

³⁵ Quoting Roberts and Palmer, supra note. 1, p. 178.

was published in 2000.³⁶ They argued that the cause of conflict was not contradicting interests or miscommunication, but rather the difference in the personal perception of reality. They focused on cultural views based on understanding what rights are, saying:³⁷

"People tend to organise their experiences in story form... mediators who use a narrative orientation are interested in constitutive properties of conflict stories."

Conflicts occur between people's contradicting stories, which represent 'reality' to them. It is therefore important to look at the history and development of the dispute. The mediator and the parties jointly aim to create a new, consistent story which will reflect a new understanding and will enable discourse based on rights. This model is embedded within a cultural concept and has an educational message to enable individuals to control their stories/lives within the demands of law and society. Being as such, it connects conflicts to history and norms of different groups, capacitating space of different understanding, and therefore theoretically could nicely corresponds with the demands of the society on stake.

Summary Table of the Three Models of Mediation

	PRAGMATIC	TRANSFORMATIVE	NARRATIVE
The Process	Moving the parties from holding positions to looking at interests and new options.	Moving the parties from weakness and victimization to strength and empathy.	An educative process in which the parties replace stereotypes and 'truth' with cultural discourse.

³⁶ Winslade, John and Monk, Gerald (2000) *Narrative Mediation: A New Approach to Conflict Resolution* (San Francisco: Jossey-Bass).

³⁷ http://media.wiley.com/product_data/excerpt/21/07879419/0787941921.pdf (19.12.2010).

The Dispute	Contradiction of interests; makes people weak and sometimes rigid, going around in circles with no visible exit.	A problem in communication, makes people lose confidence but gives them an opportunity to grow, learn and change.	Different narratives. People are stuck with their stories, which are treated as facts, and cannot see the other side's articulation.
The Parties	Individuals who want to maximise their profits and see negotiations as a win-lose game. They can use representatives, evaluators and professionals.	Have a mutual problem and therefore need to be open and be attentive to each other. Must participate personally, but can bring others to assist them. Transformation demands active disputants.	People are social creatures and see themselves acting in their community and share culture and narratives. Disputants and others may participate when the dispute is a community problem.
Seeking Agreement	After enlarging the pie, a win-win agreement is the aim of the process, leaving both sides with maximum gain at the end of conflict.	Personal transformation (recognizing the other and empowering the self) improves communication. An agreement is a secondary goal.	Creating an alternative story which belongs to all participants enables them to arrange the past and the future according to a mutually acceptable understanding.
The Mediator	An objective impartial professional who helps the parties cooperate, exposing interests and needs; may bring hidden knowledge, evaluation and may suggest options.	Passive figure expressing empathy whose role is to create a safe environment for the parties to express themselves freely and communicate directly with each other.	Has to shift the parties from their dominant story to an alternative mutual future narrative. Very involved using knowledge of the stories' background to suggest interpretations and to be one of the authors of the new narrative.

ADR in Israel

This section aims to situate mediation in the context of other available ADRs.

The obvious and accessible choice when one is in dispute in Israel is going to court, like thousands of others who file court cases each year.³⁸ In 2001, the Court Law was amended to establish special units to sort cases inside the courts, the Manat, to make adjudication more efficient. Appointed lawyers sorted the court files to refer the suitable ones to different types of ADR.³⁹ In some Manats these lawyers conduct mediations on the court premises. After several years, the Manat units lost their power due to poor functioning, and most of them were dismantled. Judges also have the authority to refer cases to ADR.⁴⁰

The significant difference between arbitration and mediation as the main ADR systems is the authority of the third party. The power given to the arbitrator to settle the dispute is the main reason for choosing arbitration over mediation. In both options the explicit consent of all parties is needed.

In 2009, around 320 arbitration files were opened in the four main arbitration centres. Litigants sometimes confuse this referral with a court decision and the role of the mediator with the role of a judge.⁴¹

There are no data on dispute resolution procedures conducted by leading lawyers, retired judges, religious authorities, laymen and other non-

³⁸ 697,232 files were opened in the civil courts on 2010, <http://www.court.gov.il/heb/home.htm> (16.3.2011), in addition to other tribunals, such as Family Courts, Administrative Courts, Labour Courts etc.

³⁹ Courts Regulations (Unit of Case Sorting in the Courts) 5762-2002, Kovetz Takanot 6189, p. 1198, Rule 3.

⁴⁰ This blurs the difference between adjudication and mediation; as when a respondent that was sent to mediation by the judge said, when describing the process, that he would do what the mediator decided. When corrected about the mediator's authority he changed to willingness to do whatever the mediator suggested.

⁴¹ http://www.themarket.com/tmc/article.jhtml?ElementId=skira20100225_1152090(19.12.2010). There are four main institutes and three of them were established in 2008-2009.

institutional bodies. There is no information about how many mediation cases are conducted annually. The centres, the independent mediators and the teaching centres do not provide much data. Mediation is mostly found in family disputes handled in Family Courts (dealing with divorce agreements, child custody and inheritance disputes). Some disputes within the community are dealt with in community centres. Mediations are also conducted in a few labour courts, either by internal professionals inside the court or external mediators.

In the context of Israeli culture, it is interesting to add that besides state courts there are also religious tribunals, which have no official recognition but act as special courts inside and beyond the religious community. The disputants agree to their authority prior to the trial. These tribunals create a unique combination of mediation, arbitration and adjudication by applying 'the law of the Torah' (Jewish religious law).⁴² Although their decisions cannot be enforced through the state's institutions, the prior agreement to their authority and the power of the community and publication of the judgement are strong. Publication often occurs in cases when one party disobeys the ruling, as an enforcing threat.

A crucial question is how a disputant who decides to try mediation in a civil dispute implements his decision. The absence of a known ranking list of quality mediators and mediation centres, the opacity of the process to the public — all lead to a reality in which if one decides to go to mediation he does not clearly know what to do. This is one of the reasons why mediations usually start in the court, which chooses the mediator and/or the centre. This is potentially problematic regarding the willingness of the parties to forego their autonomy in

⁴² 'Planet Justice', Ha'aretz newspaper supplement (Hebrew), February 26, 2010, pp. 31-34. Strangely enough, these religious tribunals even open their doors to Palestinians who sue there because they are reluctant from using Israeli authorities.

controlling the process, and the importance of deciding upon a specific mediator.

It is quite certain that the parties are not aware and do not choose what kind of model of mediation they would prefer. This is another testimony that, although mediation is spoken about widely, people lack adequate knowledge of how and when to use it.

The Interviewees' Understandings

The interviewees, as experienced mediators, bring the Israeli angle to the known models. Many interviewees saw conflict somewhere on a long continuum between being a source of grievance, contested claims and blames, up to seeing it as an opportunity for improvement. Berdichev-Lev, an expert in transformative mediation notes:

"We [the mediators] meet people in a difficult situation. They are sued or they sued, they had been insulted, they are insecure... it is not reasonable to think they are happy that the conflict is revealed."

Kovarsky, an expert in the pragmatic model, mentions one episode in which he, the mediator, found that the disputants, who were three old men, hung to the energy the conflict brought to their lives and could not let go:

"They have been dealing with the dispute for over 20 years, and no matter how we progressed, one saw the other side as a cheat and a crook, and wanted him to pay for what he did... it was a very difficult case. I felt that the moment the dispute was resolved he would have nothing to care about."

Golan is an interventionist mediator, also from the pragmatic school:

"I read all the written material. I do not have a position or an opinion, but I prepare myself and come ready to the meeting. I am very purposeful. In business cases I do not do reflection or summation."

Dr. Deutsch, a mediator and a mediation teacher, completes this section with her strict ideas that good mediation does not require a mediator in the classic sense:

"You as a mediator have to give the parties the tools for them to use. You have to explain to them how not to fight but to manage the conflict, and there is a big difference between the two. If you are successful this person will not return to get your help again, because he knows how to handle his conflicts himself."

Gat is a family dispute mediator. She adds an observation about the amount of obvious and non obvious participants in the process. She remembers a case in which surprising new parties had to be added:

"The parties had already reached an agreement. It was over. But then I had to arrange it with their lawyers. So I conducted another mediation with the parties' lawyers."

When there is a culture of conflict, the circles may include more disputants that are expected. The parties are the legal entities who sign the final agreement. Leaving a relevant entity out, or including an 'outsider,' could have an impact on the outcome and on the ability to implement it.

Mnookin mentions several strategic or cognitive barriers that might hold mediation back,⁴³ like being stuck with 'principles', and old positions.⁴⁴ Abu-Rash sums up in the interview:

"If each party is fortified in his position and won't move to understand his needs and the other side's needs, there is nothing to talk about."

⁴³ Mnookin, Robert (1993) 'Why Negotiations Fail: An Exploration of Barriers to the Resolution of Conflict', *Ohio State Journal on Dispute Resolution*, vol. 8, is: 2, pp. 235-250.

⁴⁴ Relis, Tamara (2009) *Perceptions in Litigation and Mediation* (Cambridge: Cambridge University Press).

Goldberg gives ten more reasons for not reaching an agreement, such as failure to establish communication, emotionalism, pressures and different attitudes towards risks and settlements.⁴⁵

The final agreement, the last element of mediation, is a goal which is not always achieved. The agreement has to be written in clear words, and includes all the issues at stake to avoid a new conflict.⁴⁶ Many experienced mediators (Miller, Gat, Tsur, Golan and others) mention that in a large portion of their mediations they reach a settlement, Tsur:

"When you reach their [the parties'] human sides, if you really make them understand that there were no bad intentions, it's done. If not – it's a little too late."

The unwritten arrangement between the courts and the independent mediators (not the Practicum courses) is that a new case is provided when an agreement in an old case is reached. This puts a lot of pressure to settle cases, Kovarsky:

"My secretary is always concerned, for years she has been bothered, urging me to get agreements. I am not worried; maybe it is some kind of denial."

Many mediators are keen to settle, agrees Golan, and Gat highlights this point:

"A success, unlike what we were told, is an agreement. When working with the courts one must understand that this is their need. A good atmosphere is not enough. They need the case to end. The mediator has to respond to the courts' needs as well as those of the parties. When you go to a doctor you expect him to cure you, when you go to a lawyer you expect him to win the case for you, and when you go to a mediator you want to reach an agreement. It is not possible to say to a party: 'We did not reach an agreement but you are empowered.' Who am I to tell him that he is empowered? He is empowered, but with a dispute."

⁴⁵ Goldberg, supra note 1, p. 86-87.

⁴⁶ Haynes, John (1993) *The Fundamentals of Family Mediation* (London: Old Bailey Press).

She represents the main stream of independent mediators (not in centres) who see reaching an agreement as an objective criterion to success. Dotan (like Kovarsky), on the other hand, signs an agreement only if the process is right according to her transformative ideology:

"The settlement has to have added value. Not an ad-hoc solution to a specific dispute but a long-term deep solution, after the parties have looked into their own activities, not into the other party's behaviour."

T. Barak, who was one of Gome's main actors, agrees:

"Successful mediation does not necessarily end with an agreement. Sometimes the parties need something else, like a trigger to sit and talk. The process could give them new tools, especially the option for creative thinking so they can find their own way out of the mess."

In Conclusion

This chapter examines the three options of mediation streams, which are regularly open before the Israeli mediator: the pragmatic, the transformative and the narrative. Combining knowledge of Israeli society (as presented in chapter 1) and the descriptions here, leads to the natural conclusion that most mediators will adopt the pragmatic stream. This branch fits better the characteristic of the 'Israeli', as an individual, being an initiator and 'to the point.' It is also rational to expect the mediator to acquire some knowledge derived from personal involvement in conflicts, with caution and wariness when dealing with the conflicts of others, based on suspicions regarding fruitful communication. The next chapters about the development of the subject of mediation in Israel and the special phenomenon of the Practicum deal with the realism of these predictions.

CHAPTER 4

Mediation in Israel 1980-2008

This chapter presents a short description of the development of mediation in Israel, during the 23 year period from its introduction until the time of the field research, i.e., between 1985 and 2008. Exploring local history through the eyes of its makers supplies not only the framework for this study but also data for future research. The chapter investigates the development, the structure, the people and work carried out in the field of mediation during this period. The data are based mostly on narrative interviews, as explained in chapter 2, and on published material. The data offer albeit in a very short exposition, a nice portrait of the influence of the studied society. The three origins of mediation, starting independently, demonstrate how occupied people of different professional sectors were in the destructive effects of conflicts. The initiative, daring, full of energy to act and to actualize ideas person, which characterises that society, were expressed in the thinking and doing of many, as will be described. The difficulty to work together, even in small groups, and to plan for the long run resulted in the mediation wave growing quickly and abating quickly.

This descriptive chapter paves the way to the main issues of the thesis, and enables the understanding of the observations in the right context.

The Beginning

Origins of Family Mediation

Family mediation is an important and widespread branch of ADR in Israel. Civil mediation was initially inspired by family mediation, which was the reason to include this branch in this chapter; ignoring this branch would

exclude many mediators with a background in therapy, education and similar professions. Family mediation is an important branch, much work is done in it, and it deserves a place in the history summary, even though it is not included in this field research.

The first pioneer, who is credited for introducing the idea of mediation in family disputes, is Sylvia Mandelbaum. The interview took place in an old age home when she was 92 years old; she passed away four months later. One feels fortunate to have met this special person and her daughters, who remember her activities and assisted with her story, and also for being able to tape her spoken thoughts.¹

Mandelbaum was a real estate agent in the US before she followed her daughters and moved to Israel in 1971, at the age of 54. She came to the idea of mediation, of which she had some knowledge from her previous work in the US, when her daughter was facing great obstacles trying to get a divorce ('get') in the religious courts, as Israeli law and her faith require. That difficult situation made her an autodidact who used wisdom, optimism, caring, communication skills, a unique sense of humour and life experience to help other people out of painful family disputes. She was the link between popular mediation and the modern structured profession. She explained, smiling, how she learnt to mediate:

“Common sense...there was no mediation programme that I knew of. My father taught me how to talk to people. In mediation you have to know how to talk, to use the right words. I have learned that from my parents, they just had common sense. It's just a matter of logic.”

About the qualities that mediators need she said:

¹ Mandelbaum published books are: (1985) *Divorce Your Lawyer* and: (1996) *Marriage Duet or Duel* (Jerusalem: Gefen Pub. House).

"...They have to be able to see everyone's point of view. They can't be narrow-minded. They can't take one person's word against the other. They have to have a sense of humour, to be able to laugh. Don't you think they should be able to laugh at each other? It is a good thing when they start laughing. ... They have to see the whole picture."

When arguing about the role of courses and formal teaching, Mandelbaum with her subversive, independent methods come to mind as in the words of Mauer:²

"It was Sylvia Mandelbaum who brought the system of divorce mediation to Israel, and it was she who began to train women in that skill. She taught us how to get the husband and the wife to compromise and work out a solution to their divorce litigation. People discharged their lawyers and came to Sylvia and 'her women'. No one got everything they wanted but many, many people were able to end their marriages in peace, whereas before they had been battling for years."

Dr. Zaidel, later a leading mediator in family disputes, recalls a case that demonstrates Mandelbaum's special skills and unique understanding of human concerns that led to a creative solution:

"There was an interesting case. A couple had separated many years ago. She was left with the children and she didn't accept the divorce. So I went with her [Mandelbaum] to mediation and I saw... Her [the woman's] father said 'Why on earth should you accept a divorce?' ... So first of all, she [Mandelbaum] persuaded the husband to keep paying her alimony even after the divorce. And that money was important to her. The best was that she sat with the father, who was crying, saying 'why should he [the ex-husband] get a new life and build a new family while my poor daughter has two children with her?' She said: 'Your poor daughter? She is a lovely woman, good, intelligent; if she is available I will find her a partner. She will get married.' But she didn't only make a promise, she actually kept it. She found a match... As soon as the father realised that his daughter could rebuild her life if she just got the divorce, he gave his consent and they got divorced."

This is an authentic example of an original, courageous way, full of profound insights about people's needs and actions, including all those who are involved

² Naomi Klass Mauer at <http://www.jewishpress.com/pageroute.do/36348> (21.12.2010). This thesis does not deal with feminist aspects, but one cannot ignore the term "her women" and the fact that many women were attracted to peaceful resolution methods.

in the dispute and may be affected in the search for the solution, together with a good dose of optimism.

Another family mediator who mentioned Mandelbaum was Naomi Dattner.

She recalls:

“She truly came from a place that offers an alternative to the legal system. She taught us how to write an agreement, she taught us how to work with couples and it was only after learning with her we decided that we were going to do something with this... and we said we would do something new. That was at the end of 1986 or thereabouts.”

Mandelbaum may have affected mediation in Israel in a few areas that she might not have intended to. Perhaps unwittingly she has defined the image of the mediator as 'a mitzvah maker' - a person who, like herself, does good deeds without charging fees for so doing. In Jewish tradition a good deed is considered its own reward. She simply did not see her actions as a paying job. She was also the one who started the combination of mediating real cases and teaching at the same time. Without naming it as such, she might have also been the first Practicum teacher.

The knowledge had to be gathered, articulated, organised and printed, so it could later be distributed and taught in Hebrew in a serious, responsible manner. Dr. Zaidel:

“Galit [Sne-Lurye, her mediation centre partner] and I developed something different, something of our own, based on manuals I had, and I have gathered a lot of material from the States from those years and until now. The first course was very experimental and afterwards we made changes and improvements, and then for 13 years we've been giving this course all over the country, mainly in Haifa and the north, but also in the centre and for all kinds of organizations, very, very successfully.”

Zaidel who was one of the first to do family mediation still teaches special advanced courses. She established the Mediators Group of The Israel Association for Marital and Family Therapy. This is the only forum with a

binding ethics code which gives a mediation certificate to its members.³ Many family mediation processes are also conducted in the Family Courts by its employees. Family mediation is credited with a relatively high percentage of final agreements. Hamutal Gat explains that the reason for such good results is that parties are in a place where they must reach an agreement:

"In divorce cases the situation demands a solution. People cannot go on without arrangements about where will the kids live and how to pay the bills. In other family disputes, like arguments about estates and inheritance, the percentage of agreements is lower."

What is common to the women cited above is that their drive to search for alternatives to court trials in family disputes sprouted from their personal knowledge of long and painful suffering in divorce cases. Zaidel:

"I was involved in a divorce case of a colleague, and I witnessed the insanity of this couple, whom I knew as two intelligent, civilised people. For me, mediation was a means to help couples separate without destroying each other."

Naomi Dattner was a social worker at that time. She experienced the agony of divorce procedures on a daily basis in her professional life:

"I saw how the double conflict of the couple was escalating more and more when they went into the legal system. And I felt that I absolutely must, I really must find a solution for these couples, for their children. I could not sleep at night."

New ways to deal with conflicts emerged both from the needs in the field and from knowledge that originated in the US. The mediators had to fit those rules or to create a new methodology themselves to fit the local system. As explained in chapter 1, the Jewish law is biased against women, therefore no accident that the bearers of change were women. In a system where the judges are only male and only one third of the rabbinical pleaders (who may represent clients at the

³ <http://www.mishpaha.org.il/?CategoryID=183> (1.3.2011).

court) are women,⁴ the climate is not in their favour. The most effective way to improve women's rights lies in taking the divorce agreement out of the court's hands before the decision about the divorce itself, and that is exactly what they tried to do using mediation.

Origins of Civil and Labour Mediation (plus a little about Education)

At the same time, for different reasons, more people started to discover the potential of mediation. Unlike family mediation, the civil branch grew mostly out of intellectual curiosity and academic interest. Respected lawyers and scholars had been exposed to writing and courses about it (especially in the US), and appreciated its advantages.

Advocate Yoram Alroi, no doubt one of the pioneers of mediation in Israel⁵ and today an expert in the field, remembered that long ago he used to get mail from Harvard, where he once studied, until one day:

"In the second half of the 1980, I think it was 1986, I received a booklet that particularly attracted my attention. It offered courses in conflict resolution and negotiation. That caught my attention and I went there and took a course. Since then I have taken two more courses at Harvard and one course for professionals in Washington."

Professor Moti Mironi was staying in the US when mediation was introduced to him:

"I studied for my MA and PhD degrees in the States and that is where I learned about mediation in labour relations, particularly in collective bargaining... and I began to teach the subject and study it in greater depth and that is how I got to know it. When I came back to Israel in 1978, I was very surprised to see that here there were so many labour disputes but there was no use of mediation like in other countries."

⁴ <http://www.toanim.org.il/yp.asp?ExpertTypeID=102> (21.12.2010).

⁵ In the interview Barak named him "the guiding father" of Israeli mediation.

Until 1990 one had to fly abroad to learn mediation properly at a high level, because there were no organised, structured courses on civil mediation in Israel. Usually people chose to study in the US (Harvard courses were popular), or they searched for books and other written material to learn from independently. Shamir was the first initiator to open an organised practical mediation course. For a few years her institute trained the leading future mediators, besides many others, as will be described in the next section. Amira Dotan, the head of one of the first mediation centres in Tel-Aviv, took a course in the US in 1998, and at the end of that year established her centre. She recalls that period:

“I said to Hannah [Kotzer Sapir her mediation centre partner] – listen, we are going to America to study because we don’t know anything. What we learned here is nothing.... In short – we packed our bags.... It was an outstanding course.....That’s why we are in the field of mediation, why we have developed and came this far with it, so for me it is like a second language. As far as I am concerned, it is already a way of life, it’s no longer a profession.”

At the same time, in another field – education – what might appear to be a coincidental meeting between the needs of teachers and pedagogic advisers and mediation professionals produced a new branch. Naomi Miller was concerned about violence in the elementary schools she worked in as a counsellor. Unexpectedly, she came across the possibility of mediation through her other job at the Ministry of Education, where she met American mediators who were in touch with a colleague of hers:

“In fact, I encountered mediation quite spontaneously. I was in Jerusalem, and one day a couple arrived from Hawaii who were friends of the director of psychological services in the Ministry of Education in Jerusalem (Shef”i). They were people who never stopped talking about the new option in the world. I thought they were a bit ‘New Age’ when they talked about mediation as if it was the promise of another life.”

This couple, John and Jane Shapiro, organised two mediation seminars of 15 people each, as their contribution to Israel as active Zionists. Miller:

"I was turned on by the feeling that we could do something new. And the fact that this couple arrived fell like ripe fruit into my lap... I arranged a second workshop with 15 people. The second group of the mediation seminar was a kind of founding nucleus of what goes on in mediation in this country. Everyone was at the beginning of their paths in mediation, and I understood that there was a great potential in the field. Not an economic potential [she adds with a laugh] but a social process potential. That's why it was what one could call a historic moment!"

When the Hawaiians left, the activity continued with enthusiasm. Miller:

"And later I wrote the first manual to get mediation into schools and to build the necessary mechanisms, and we trained consultants in schools all around the country, really an intensive activity!"

Miller, Dattner and Gefen (who later established Gevim) were among the participants in the second workshop at a hotel in Zichron-Yaakov,⁶ which gave them a basic understanding of mediation.

In retrospect, this may look like people gathering bits and pieces of information, but that is how it started. Miller's words explain what was exciting about this era: *"The feeling that we can do something new"*, she said. The first mediation messengers put economic strategies aside, and dived into an ideology of creation and change. Mediation in civil conflicts rapidly became structured and organised. As in other fields in Israel, the American influence was substantial, but adaptation to the local system and to native characteristics was also essential. This was achieved with a combination of optimism, naïveté, hard work and some bitter clashes with reality.

⁶ A small picturesque town in the north of Israel.

Mediation in Academia

After some people had studied in the US and some had studied with US scholars who came to teach in Israel, it was time to upgrade the subject to an academic level. It is interesting to note that mediation did not spill over from the universities into the field but the other way round; it started as a demand from the field and then made the connection to academic and theoretical exploration. The first academic course opened at the beginning of the 1990s. Alroi:⁷

"Professor Friedman set up the Law School at the College of Management. And he asked me to teach there. I told him that I would be ready to teach, if he agreed to let me teach a subject he had never heard of [broad smile]."

Indeed, the subject had just come into being, and some found the teaching vague, immature and not applicable. Daphna, then a student, recalls:

"I understood that the mediator helps people. But the course did not offer a profession or expertise. It sounded good - to help with creative solutions... it was not practical."

Others, though, like Michael Tsur,⁸ were inspired. Tsur took one of those experimental mediation courses and expressed his reaction:

"I don't know, I don't want to use fancy words, but suddenly here is something that undoubtedly makes things clearer to me and feels right when people are in the middle of a dispute."

Experts from the US who came to Israel raised the level of teaching and encouraged other universities to open academic courses in conflict management and ADR. Matz became an influential person in the mediation field in Israel,

⁷ Alroi's groundbreaking article put the subject onto the legal agenda: Alroi, Yoram (1992) 'Conflict Resolution - There is Another Way', *Hamishpat, A Journal for Legal Studies*, vol. (1), pp. 311-388.

⁸ Tsur opened his mediation centre in Jerusalem in 1992. This centre is no longer active, and Tsur is busy with other businesses.

also introducing the Practicum system, as will be shown later. He started by teaching at TAU for one year. He had a significant impact on attitudes towards mediation and its place within academia:

"My own favourite project was to get the universities to do more, and so I went and did workshops with faculty in five universities. That was very interesting, bringing them together, and I think that was one of the best things I did – bringing them together. The rest would have happened anyway, with or without me."

Matz expected that the universities will take the lead in the future and contribute to the spread and development of the subject:

"It's around in the universities. I hope that the universities will take it seriously, partly because it's a conflict society... And my aim, in the long term, would be that the universities would be a base."

The growth of mediation was not driven by academia but by the mediation centres. This fact is critical in shaping the development of mediation in Israel and its current status and characteristics.

Dattner, using her experience in therapy, was next to offer a mediation course in academia. After gathering enough teaching materials, she and her partners opened mediation courses in the Social Work Department at Bar-Ilan University in 1991. The third course, as Tsur describes, was the one he designed at the Law Faculty at the Hebrew University in Jerusalem in 1992, also based on American sources:

"Danny⁹ and I made it [the teaching material] friendly; very, very Israeli... You could say that we sat night and day for three months... I knew the Israeli student's way of thinking pretty well. It was clear to us where the American jargon would not catch on and what we should not do; and already in the first semester when we gave the course at the Hebrew University it became a hit."

⁹ Dan Ebenstein, a scholar from Harvard, came to Israel to teach in the Hebrew University Faculty of Law.

After a few years of offering courses sporadically, the universities opened schools for inter-disciplinary teaching in conflict management. At the Hebrew University in Jerusalem, the Swiss Centre for Conflict Research for graduate students was opened in 2000.¹⁰ TAU opened the Evens Programme in Mediation and Conflict Resolution at the Faculty of Social Sciences in 2004. It offers Masters and PhD degrees to students from all departments. Beyond these courses, the universities also have active mediation centres.

Gathering in Centres

The mediators, young in the profession and in need to start from scratch, felt more comfortable to gather in groups. What one usually gets from older and more experienced professionals, they needed to get from each other – encouragement, good advice, assistance and knowledge. There was no tradition of mediating civil cases to follow; there were no veteran mediators to learn from and get support. Establishing mediation centres seemed to be the right way to execute team work. It answered their needs by enabling them to share the financial risks, get and give advice in situations of success and failure, distribute the knowledge among themselves, and work together to promote the new profession. During 1995-2000 most of the leading mediators worked within the framework of such centres. T. Barak, a leading mediator then in Gome, explains:

"Mediation in the beginning was based mainly on mediation centres, so the mediators would have a home and some power to promote the subject."

¹⁰ <http://crmr.huji.ac.il/english/theswisscenter.htm> (21.12.2010).

Dr. Segal, from the Ministry of Justice, notes, that even the government saw the mediation institutions as a good way to handle the new subject, and encouraged this cooperative structure.

Besides the large centres, there were dozens of small ones, some with impressive titles, but less impressive track records and bodies of work. Not many centres saw the need to be concerned with the development of mediation in order that they could become meaningful players and receive wide acknowledgment. Many just treated the centre as a way to earn their living with fewer financial and professional risks. When these goals proved unrealistic and difficulties arose, the centres fell apart, causing disappointment and frustration. But the system did not last, as Golan, an independent mediator, demonstrates using his personal experience:

*“One mediator [naming him] suggested a partnership – let’s open up a mediation centre. We opened up a mediation centre just like that, with all the surrounding dreams, until it became a mediation centre with ten mediators and so on... One day I came to the conclusion that mediation is a service given on an **individual** basis. People were referring cases to me, not to the centre, they wanted **me**.”*

Potential clients also supported this change, preferring close relations rather than working through a centre, T. Barak:

“In the beginning no one had any reputation. People felt at ease to go to a centre which would choose the right mediator for them... what happened is that mediation went to the place it should have gone... people choose their mediator based on what they have heard and what they know.”

Another catalyst working against the centre system was the clash of interests between the partners. The more experienced mediators did not want to support the newcomers for long; even if they had enough work for themselves, it was not enough for sharing. Dr. Segal sums up with a generalization based on a situation he had witnessed:

“Unfortunately this did not work so well and the main reason was that the mediators did not manage to settle the differences amongst themselves using

mediation tools! I remember that in one of the first centres in the country, two mediators who are still excellent mediators and do only this for a living, immediately started fighting and split up."

The outcome was that many centres closed down, and those that struggled to carry on as centres needed constantly to find new sources of income.

In 2008, when this fieldwork began, there were around 73 institutions that advertised themselves as private mediation centres,¹¹ and around 33 community mediation centres. Among the relevant 73 centres, 35 are centres *that have one mediator each, 12 have two mediators, and 3 have three mediators.* There was no information of the remaining 23 centres. Although many places called themselves 'centres', it does not necessarily mean a mediation institute. Most 'centres' are individuals who mediate according to their special field, and ability to get cases. Others turned into teaching centres, which main activity is giving mediation courses, basic and Practicum. These centres employ mediators as freelancers when they need them for teaching.

Mediation centres in the original meaning of the term can also be found in the community field. They are trying to be homes to mediators, and also give community mediation services, courses, continuation programs and workshops. The two sites of the field research are trying to preserve the essence of 'a centre'.

Institutions

The following sub-sections briefly describe the main institutions that are important when reviewing mediation in Israel.

¹¹ There is no official body that holds data on that subject, so the numbers are only estimations. The information from the mediation organisations is incomplete. Some mediators work both in their own centre and in others. The data are taken from www.sulcha.co.il, which is different from the data I got from the NCMCR. Besides, there are no official data on other mediation bodies, such as units within organisations or in law offices.

The National Centre for Mediation and Conflict Resolution

Segal, one of the most knowledgeable people in the field of mediation in Israel, was the first and only director of the NCMCR. He heard about mediation while serving as head of the team that prepared the regulations about conciliation in 1984. He says:

"I saw ADR as a real answer for the people, as it examined them and their problems on an individual basis rather than applying some rules that are not always in their best interest, but might be in the best interest of the system or other interests... I concluded that adjudication is very far from meeting its goals. At the end of the day, the court serves the state – I mean the political and economic powers – and the citizen is just an appendix."

Barak was also interested in the existence of a central institution to lead the subject officially and with broad responsibilities:

"There was a consensus that such a unit should be established, but a disagreement on where to locate it... all kinds of suggestions that blocked the move. So I agreed that it would be part of the Ministry of Justice for a trial period and, if this didn't work, it would be moved to the court system."

In 1999, although it was the result of a compromise, the NCMCR was opened with much enthusiasm, and everything looked very promising. Segal sums up the activities of the NCMCR which he led over the years:

"What the NCMCR did primarily was to develop the theory of mediation in Israel. This was done in various aspects regarding the courts, whether it was through written publications about mediation in the courts, or through the development of programmes like the Practicum, in my opinion the best programme in the world for mediation... Another area in which mediation advanced was in the community... An attempt to actively promote mediation in academia – to get academia involved and then it would present mediation like any other subject that is studied... Another area we developed was restorative justice... The field of family mediation, as expressed particularly in a law memo that has been held up for about five years, which would obligate every procedure in family court to go Mahut."

To make a long sad story short, the NCMCR did not fulfil the hopes that were heaped upon it, its work load has decreased, and it faces the risk of being closed down.

One of the reasons for the failure of the NCMCR was the instability of the governments over the years. Ministers of Justice changed frequently and their support loosened. During the ten years between 1999 and 2009 there were 11 (!) ministers in office. As a young entity, the NCMCR was tossed between different agendas. Being a long-term project, it could not cater to the expectations of people who were in office only for a short term. The existence of a separate, independent unit, which tasks went beyond the responsibility of the Justice Ministry, was another source of tension.¹² Two major points that contributed to paralysing the institute were expectations to show quick results and the difficulty to measure its performance.

Many think that one main reason for the current status of mediation lies in the fact that its main institution, the NCMCR, was set up as part of the Ministry of Justice, and that after the first buzz of notable progress, the unit stopped functioning. Mediation became too connected with hectic politics on the one hand, and with the legal system on the other.

The National Bar Association

The data that the Institute supplies reflect the development of mediation in Israel. In 1999, before the Bar gave any training courses, 800 lawyers were registered as mediators. From 2006 onwards the number did not change much - around 1,000 mediators at the end of that year. The number of cases is of interest as well: between 1.7.2007-31.7.2008 (13 months) the Institute received

¹² The NCMCR was also responsible for community centres, mediation in education, mediation in industry and commercial institutions, and other fields, which belong to other Ministries in terms of liability and budget.

392 cases from the Small Claims Courts. 145 cases (37%) did not begin mediation due to the refusal of a party. 110 mediation cases (45%) ended with an agreement. It is a good demonstration of the high wave that rose in a short time and stop growing.

The Bar conducts Practicum courses for lawyers. The Bar has also been trying to find a meaningful mediation body to fill the existing void created by the non-activity of the NCMCR and the Association. While the Bar as a body is not an active player in the mediation field, individual lawyers certainly are.

The Israeli Mediators Association

The branches of mediation grew almost entirely independently of each other until they met in 2000 to form the Israeli Mediators Association (hereafter "the Association"). For one special moment all the branches, their leaders and members were united. It lasted for a short time, and then they separated again. All participants in the event remember the night of the declaration of the Association. Michael Tsur, who organized the association:

"The big moment, the moment of grace, was at the Herzliya Studios where the founding assembly of the Association for Israeli Mediators was held, the only time in the world, I think, that the Minister of Justice, chairperson of the Bar Association, the director of the courts, Peretz Segal, then as the head of legislation department in the Ministry of Justice, the President of the High Court, a very, very impressive panel sitting there, giving its blessing by being there. At the end of this great moment of grace there were around seven hundred people who came to greet me as 'the groom' of that event."

The Association started functioning and committees were set up. The founders were relatively united, both as to their vision and as to the means to get there. But immediately after the happy start an opposition began to voice its objections. The main disagreements were between those few experienced

mediators, who controlled the executive committees and the younger mediators, who were anxiously looking for jobs and influence,¹³ as Tsur puts it:

*“They thought that the Association was a labour union and at no time did they understand that this was a body that was supposed to ensure the **quality** of the product.”*

Many are disturbed by the mistakes that were the reasons for the malfunctioning of the Association. The suggestions range from the lack of restrictions of newcomers, over-welcoming and sharing too easily (Kovarsky), to not allowing enough diversity and variance for different personalities and agendas (Dotan). Some think it was unavoidable and that the over-optimism had to meet reality in an unpleasant clash (Gat). Prof. Mironi sums up:¹⁴

“Useless arguments; too much democracy destroyed it.”

Mediation and the Law

In what follows the evolution of legislation with respect to mediation and the dynamics of the relationship between the legal system and mediation processes are discussed.

Legislation

In the absence of a 'Mediation Act' and comprehensive legislation, the mediation process and its participants were and are subject to generally

¹³ The young mediators accused the experienced ones of wanting to keep the profession out of reach and therefore creating tough criteria for becoming a mediator. These accusations were noted by a few interviewees, but the research population did not include those young mediators who supposedly made them.

¹⁴ It is interesting to discuss the lines of *Israeli militarism* which are revealed here, but it is beyond the scope of this thesis.

relevant rules and laws, such as the laws of torts,¹⁵ contracts,¹⁶ advocates,¹⁷ and others.

A substantial change took place in 1992 when the Amendment to the Courts Law, which added Article 79 about alternative dispute resolution, was enacted.¹⁸

Article 79A is about compromise in civil cases. Article 79A.a authorises the court to rule by compromise when the parties agree to do so. Article 79A.b authorises the court to suggest or validate a compromise agreement as a court ruling.

Article 79B is about arbitration. Article 79B.a authorises the court to refer civil cases to arbitration upon the parties' agreement. Article 79B.b explains how to appoint the arbitrator, and article 79B.c applies the Arbitration Act¹⁹ to these procedures.

Article 79C deals with mediation. Article 79C.a is about conciliation (the word mediation was introduced later) as a process in which a third person who has no ruling authority meets with litigants in order to settle their dispute. The mediation agreement is identified as the agreement reached at the end of the process which ends the dispute. A 'mediator' is the one who helps the litigants to reach agreement in a free negotiation. Article 79C.b authorises the court to refer civil actions to mediation. Article 79C.c determines the ability of the mediator to meet whoever he thinks relevant, especially a party alone, without lawyers or the other side. Article 79C.d states that things said in mediation would not be admissible as trial evidence. Article 79C.e suspends the litigation process while the mediation continues, or for a period fixed by the court.

¹⁵ Civil Wrongs Ordinance (New Version), 5328-1968, Israel Laws 10, p. 266.

¹⁶ Act of Contracts (General Part), 5333-1973, Sefer Ha-chukkim 694, p. 118; Act of Contracts (Remedies for Breach of Contracts), 5331-1970, Sefer Ha-chukkim 610, p. 16.

¹⁷ Bar Association Act 5321-1961, Sefer Ha-chukkim 347, p. 178.

¹⁸ Courts Law (Amendment no. 15), 5752-1992-, Sefer Ha-chukkim 1383, p. 68, pp. 69-70.

¹⁹ Arbitration Act 5728-1968, Sefer Ha-chukkim 535, p. 184.

Article 79C.f deals with renewing the legal procedure if the parties do not reach an agreement during conciliation. Article 79C.g states the possibility of validating the mediation agreement as a court ruling.

Article 79D authorises the Ministry of Justice to issue regulations concerning the qualifications and training of mediators, to establish a list of mediators for the use of the courts, and to fix fees for the service. The regulations dealing with expenses, fees, quality and training needs affirmation by the relevant Knesset Committee.

In 1993 Regulations derived from Article 79C were legislated, aiming to clarify the Article in detail and enable its implementation.²⁰

The Gadot Committee – Work and Outcome

The legislation was not implemented by the judges, who refrained from transferring cases to mediation. The reason given was that they did not know how to choose an appropriate professional to whom they could refer cases. This is why, in 1996, the Director of Courts, Issak Revivi, appointed a committee chaired by Judge Sara Gadot,²¹ with the following objectives:²²

"To advise in determining standards regarding the skills and experience required of a mediator and the requirements to prove them."

The Bar position was that lawyers, who by virtue of their profession are also negotiators and subject to ethical rules, could mediate without further training. Contrary views held that mediators and lawyers have opposite qualifications, since the former are trained to collaborate with both parties, whereas the latter are trained to fight for one side, and make sure the other loses.²³ The outcome

²⁰ Courts Regulations (Conciliation) 5753-1993, Kovetz Takanot 5539, p. 1042.

²¹ Sara Gadot was a judge from the Tel-Aviv Magistrates Court; the other members of the committee were: Segal, Zaidel, Alroi.

²² <http://www.sulcha.co.il/Content/Gadot01.asp>(1.3.2011).

²³ Supra note 9.

was a compromise between very different opinions. The Committee published its report in mid-1998, determined the following minimal qualifications for joining the Courts' List of Mediators:²⁴

1. Completion of a mediation course of at least 40 hours (60 hours to mediate in family disputes).²⁵ The contents of the course will be decided by the NCMCR.
2. A college degree in any subject (a law degree or a Masters degree in one of the auxiliary professions, for dealing with family disputes).
3. At least 5 years of professional work experience.
4. An unblemished criminal record.

These recommendations were implemented in Regulations.²⁶ To ensure the quality of the courses, the NCMCR was authorised to give them accreditation. Micky Lichtenstein from the NCMCR says that, soon after the report was published, around 50 centres were accredited to give basic courses according to the requirements of the Gadot Committee. The ease of getting a title of 'a mediator'²⁷ had enormous effect on the field. Mediation became a trend, which

²⁴ Supra note 9.

²⁵ Dotan recounted an anecdote about the requirement for basic mediation course of 40 hours only. She remembers:

"... We asked [Professor] Jack [Himmelstein] where the 40 hours came from. So he told us that when they started the first course, they scheduled it at one of the New York hotels, either the Hilton or the Sheraton, I can't remember which, for a certain week. Suddenly it emerged that there had been a misunderstanding between them and the hotel as to the week, and the hotel could give them only 40 hours. And that's how it became 40 hours, that is, not from any forethought. And we always laugh at these 40 hours, that the notion came from America... It's plain nonsense!"

²⁶ Courts Regulations (The Mediators List) 5766-1996, Kovetz Takanot 5766, p. 1325; Courts Regulations (Appointing a Conciliator)(An Amendment) 5769-1999, Kovetz Takanot 5947, p. 281.

²⁷ Despite these easy demands, the Kama Committee that followed the Gadot Committee made the demands even more flexible, by allowing people who do not meet the criteria to get onto the list through an exemptions procedure.

flooded the field with graduates of basic mediation courses, causing a devaluation of that occupation.

The outcome of the Regulations implementing the Gadot Report was that, although judges had a list of mediators to use, being on that list did not guarantee that one could really conduct mediations. As a result, cases found their ways to ex-judges or to others whom the judges knew and trusted, without any connection to the broad list. There was no real opportunity for the thousands of newcomers on the list to get cases and work.

Ronit Zamir, the ex-legal advisor to the NCMCR, explains the situation:

“Today there are thousands who have passed these courses and appear on the courts’ list - for nothing – nobody ever refers any cases to them. So they understood that it wasn’t exactly working and that the court wasn’t using the courts’ list. It’s impossible to use a list of 5,000 people. So each court has its own shortlist.”

In 1999, a petition was submitted to the Supreme Court, sitting as the High Court of Justice, asking to declare the Regulations which implemented the Gadot Committee Recommendations void.²⁸ This petition argued that the Regulations had been issued *ultra vires*, violating article 4 of the Basic Law: Freedom of Occupation. On April 6th, 2008, the Minister signed the order invalidating the List of Mediators Regulations.²⁹

The Gadot Committee had a big impact on the mediation field by establishing minimal skills requirement and training for new mediators. The big gap between expectations of the course graduates for work, and the reality of

²⁸ *Shafran v. The Minister of Justice* 2002 (7) D.E. 1002.

²⁹ The Court Regulations (The List of Mediators) (Annulment) 5768-2008, Kovetz Takanot 6665, p. 838.

unused and, in retrospect, invalid Mediators List is an ongoing problem that is creating confusion and uncertainty.³⁰

Further Legislation

The following years brought more examples of disorder in legislation. In 2001 the terms used in legislation were changed. 'Conciliation' became 'mediation' and 'conciliator' was replaced by 'mediator', in order to distinguish the process from other forms of ADR. Firstly the Law was amended³¹ and then the regulations.³² This change implies that the difference between conciliation and mediation is not totally clear. It is suggested that the main distinction is that conciliation is a win-lose situation that can be forced upon the participants by an active third party. The explanation to the Bill³³ also mentioned that the word for 'mediation' was by that time well known and could be used.

This Amendment also adds Article 79C.h to the Court Law, which gives an option for a non-court mediation agreement to get validation as a court ruling, if the agreement falls within the court's jurisdiction.³⁴ This is the one law which recognizes the practice of mediation which is not court-related. Considering that the whole attitude to mediation is tightly bound to the courts, this final provision opens the window a little. In her comprehensive paper on mediation legislation in Israel, Professor Smadar Ottolenghi mentions that this amendment covertly assumes that agreements are not usually executed, so parties need the help of the sanctions that accompany a court decision. This

³⁰ As the annulment happened during the time of the research observation, the concern of the participants in the Practicum was witnessed, since they wanted to be registered in the List as a way to get court cases, but it was too early to understand its full impact.

³¹ Courts Law (Amendment no. 30) 5761-2001, Sefer Ha-chukkim 1804, p. 498, on 7.8.2001.

³² Courts Regulations (Appointing a Conciliator)(an amendment), and: Courts Regulations (Conciliation)(an amendment) 5762-2001, both in: Kovetz Takanot 6129, p. 50, on 25.10.2001.

³³ Courts Law Bill (21.7.2001).

³⁴ Supra note 19 Amendment no. 30.

contradicts the common assumption that agreements reached through mediation will usually be executed willingly and may be another aspect of 'conflict society'.³⁵

The cost of the procedure is always a component in considering which process to use. Courts Regulations (Fees) addresses this subject.³⁶ Fees to the court (usually 2.5% of the sum of the claim) are paid in two instalments - half when submitting the claim and half before the hearing. Rule 6 details situations in which the case is settled before the hearing is completed. In those cases the court might order part of the fees to be reimbursed.

The Rubinstein Committee – Work and Outcome

The difficult outcome of the Gadot Report, and the fact that the Mediators List was not in use by the courts, led to the need for change and to the appointment of a new committee. On May 2003, the Rubinstein Committee named after its Chair, Judge Michal Rubinstein,³⁷ began its work on finding new ways to increase the use of mediation within the court system. The Committee discussed the fact that litigants do not choose mediation as a way to solve their disputes; among the reasons were the trust people feel towards the court, the wish to achieve 'justice', the wish to get the help of lawyers and the low standards of the mediators.³⁸

The Committee's report proposed a two-year trial period for a mandatory pre-mediation meeting in all civil cases over NIS 50,000 (around £ 8,800). The Committee emphasised that the only obligation of the parties would be to

³⁵ Ottolenghi, Smadar (2002) 'Thoughts on Mediation', *Shaarey Mishpat*, vol. 3 (1), pp. 25-35.

³⁶ Courts Regulations (Fees), 5767-2007, Kovetz Takanot 6579, p. 720

³⁷ The members of the committee were: Hannan Goldshmidt, Gat, Elisheva Cohen, Zamir, Sahul Shochat. Michal Rubinstein was a judge from the Tel-Aviv Magistrates Court.

³⁸ The Rubenstein Committee's Report on Increasing the Use of Mediation in the Courts, <http://www.justice.gov.il/NR/rdonlyres/EAF4DDF7-18B3-48B1-8C66-FD35B44863CF/5627/dinveheshbon.pdf> (25.3.2011), p. 24.

attend one meeting lasting 60-90 minutes free of charge, through which they would hear about mediation to then decide whether it suited them. The meeting is called 'Mahut', which is a Hebrew acronym for 'Information, Introduction and Coordination', referring to the contents of that meeting. The letters of the acronym form a word that means 'essence'. Mahut is also the name of the whole project (also called the '*pilot*'). The pilot had its supporters and objectors, but this discussion is beyond the scope of the thesis.

The Courts

At one point, an institutional power entered the scene with a systemic overview that subsequently had greatly influenced it. Interviewees agree that the wave of mediation reached its highest point when it received a great tailwind from the legal system. The most important personality involved in the implementation of mediation was Aharon Barak, the President of the Supreme Court (1995-2006). Barak was (and still is) a highly influential figure in the legal system, and beyond. He has international renown as a genius scholar and is highly esteemed as a powerful player in Israeli politics.³⁹ Barak:

"I came across the subject when I was the President of the Supreme Court. I dealt with all subjects regarding efficiency of the courts, how to ease the burden on the judges. This was the starting point – to reduce the overload."

He continues in his recollections:

"I understood very quickly that mediation has a social concept. It does not apply only to court files, but the essence of mediation is that the community would avoid the need to go to court. The rationale of mediation is much stronger than the technical one of helping the courts with the workload. Adjudication is also a violent decision... I saw the importance of mediation as part of the communal discourse, as the ability of the society to solve its problems not by rulings and violence but by consent. And I assembled all the responsible bodies to deal with the subject from the different aspects."

³⁹ See about Barak: Lewitzky, Naomi (2005) *Kvodo* [His Honour] (Tel-Aviv: Keter)(Hebrew).

Barak used his political power to garner support for his vision. He expressed his belief in mediation in every relevant forum. For example, when signing the business mediation treaty he said:⁴⁰

"Mediation is not just a technique. It's a culture of common society... Mediation is better than adjudication because the decision is reached by agreement and not by wielding power. The goal of mediation is not to help with the courts' problems but to solve the problems of the society. Nonetheless, it has a great importance in easing the backlog in the courts. It is not mediation's goal but it should be its result."

It is obvious that Barak saw mediation as a potential tool to handle the culture of litigation which is rooted in Israel.

Barak found an active partner to execute his plans in Dan Arbel, at that time Director of the Courts. Arbel remembers how he first heard of mediation and his understanding of it:

"In early 1998, I was at an international conference... I was very excited to learn about mediation - the new concept that you do not have to start a battle and win, but can settle the conflict in a way the two parties accept, not that one side wins and the other loses. The second thing that excited me was that for the first time I understood that when the court finishes with a conflict the conflict is not finished. I did not think about that before... I understood that when we write the judgement, not always but in many cases, we create a new conflict and increase the number of cases."

Arbel spotted the main two players who might and did objection towards mediation: the lawyers, that were keen to keep their clients for themselves, and the judges, also worried for their roles. Barak and Arbel arranged mediation courses for the judges to make them aware of that option:

"All the judges went to mediation courses. The problem was that a judge thought that if he could rule he could also mediate, and there is no greater mistake. Therefore we conducted one course after the other, dozens of them."

⁴⁰ Barak's speech at the President's house on 14.1.2003.

In his dilemma as to start with creating supply or with demand for mediation, Barak decided in favour of using his position to supply cases:

"The only part I could somehow control was the supply, I could instruct the judges and the presidents of the courts to transfer cases to mediation and that is what I really did."

To sum up: Barak created a positive attitude towards mediation among the judges, but problems of whom to refer cases to, low qualifications of mediators and poor outcomes prevented a wide use of this tool. When he left office the collective enthusiasm abated, leaving it to each judge's personal preferences.

In Conclusion

This chapter has traced the development of mediation since the mid-1980s, when structured civil mediation processes began in Israel. As described, the main players were initiators, daring and fast runners. They also show the ability to hope for better days, which lies in part in the ability to process the difficult present in a way that will not dominate the future, but will offer a chance for change.⁴¹ Not being stuck in memories enables positive actions, even when the present is not so bright.⁴²

The mediation field turns out that on the one hand there are many mediators who do not have any legal background; on the other hand there are strong ties between the mediation and the legal systems. This is an unbalanced situation, which almost blocks the road to independent mediation processes. The several committees that worked in the area, the different institutions that are tightly connected to the legal authorities and the fact that the court is the main source of supply of mediation cases strengthen these connections. The lack of

⁴¹ Bar-Tal, Daniel (2007) *Living with the Conflict* (Jerusalem: Carmel)(Hebrew), p. 297, p. 288.

⁴² Ibid, p. 288.

professionalization, and the absence of a strong unifying mediation authority opened the way to disappointment from clients and mediators alike. On this platform the Practicum began.

PART 2

Chapter 5

The Practicum

The core of the fieldwork was observations undertaken in mediation processes conducting in the Practicum courses. This chapter, which is the single constituent of Part 2, describes in detail the framework of the Practicum courses, which were the object of the field work. The courses took place in two mediation centres, which are described at the beginning of this chapter. Subsequently, the courses and the mediation processes are discussed; first, the variety of participants and their roles, and then the process itself, its structure in theory and practice, and its function as a source for narratives.

The Two Centres

The decision to concentrate on two centres derives from the demands of the methodology in anthropological research. Two centres give a sufficient range of data but within the framework of a defined 'village', as the discipline requires. The decision to choose Gevim and Gome was taken because both are key players in the mediation field in Israel. Their long-term involvement, the volume of their work, and the variety of the staff and the initiators behind them indicated that the observation would be fruitful.

There are similarities and differences between the two sites. Both centres enjoy good relations with the courts, which supply them cases for the Practicum courses. They both managed to survive economically, and are run as profitable business enterprises. Unlike other centres, finance and marketing have always been part of their planning, and therefore they still operate. On the theoretical level, Gome developed the 'problem solving' stream, while Gevim specialised in the transformative model; the courses and the conferences they hold are

based on their particular stream, especially as stated by Bush and Folger. At the practical level, Gome turned to the business arena, running mass advertising campaigns to reach as many potential clients as possible. Gevim has concentrated on mediation in education and in agricultural communities. When Gome saw limited options for expansion in the mediation field, it turned to other specialities such as personal training, coaching, etc.

The outer appearance of men and places is part of their essence. Whereas identification is the basis for man's sense of belonging, orientation is the function which enables him to be that *homo viator* which is part of his nature.¹ The two centres present themselves in different ways, which leads one to find different essence, as discussed next.

The Gome Israeli Institute for Mediation and Coaching

Gome is certainly one of the largest, if not the largest, mediation centre in Israel in terms of activity time, employee numbers, variety of services and financial turnover. It is well-known and enjoys a steady intake of court cases and of students. For full disclosure, let me note that I took an advanced mediation course there and it was through them that I mediated my first cases in 1998. This contact, and the fact that I knew and appreciate Gome, made it the obvious first choice for a research site. But, at the relevant time, Gome did not have anyone in charge of the mediation department with whom arrangements could be made. After receiving the consent of the centre's general manager, obtaining the consent of individuals was also needed. Once they had all agreed, the observations began and proceeded smoothly. See Appendix C for the format of the letter of consent.

¹ Norberg-Schulz, Christian (1980) *Genius Loci: Towards a Phenomenology of Architecture* (London: Academy Editions), p. 22.

The History of Gome

Gome was not created as a mediation centre, but as a business company in 1986 by Yossi Tzur. Tzur is a self-made businessman, born in a suburb of Haifa. He spent most of his youth on the shores of the Mediterranean, skipping formal education. He notes that his endless energy and decisiveness began in those early days:

"I was not born with a silver spoon in my mouth. I did not learn marketing, I did not learn mediation... my textbook in coping with the market was the street."

The company that Tzur established supplied all kinds of services that the court needed: typists, computerization, secretaries etc. The name Gome (Papyrus) was born then. The closeness to the court and its personnel made it possible for the Director of the Courts at that time, Dan Arbel, to approach Tzur directly about:

"...a new field that has appeared in Israel. They brought it from the US, where it has existed for many years as a way to ease the backlog on the courts."

Tzur continued to recollect what Arbel had told him:

"The problem of the Israeli system is that if private bodies do not take it up and train people, the government system will rush in there. That's nice, but if there are no people from the private sector it will not work."

The idea came just in time for this ambitious entrepreneur who, after being involved with the adversarial system, was looking for a system that would approach the many ways of conflict resolution in one enterprise. This way he could merge ideology and business, a combination which is found in other Israeli enterprises, both in rhetoric and in action. Tzur recalls his thoughts at that time:

"Mediation seemed like a good start. I understood business, but I knew nothing about mediation. The market at that time consisted of three or four 'super-mediators,' who thought that everything in the field should go through them."

When he spotted the business potential of the new field, he decided to embark upon it, or as he phrased it:

"I did not want to catch fish, I wanted to conquer the ocean."

Tzur asked Bini Bar-Lev, an advocate and mediator who worked at another centre at that time, to join him. Bar-Lev worked a year in the institute and later, in 1998, Tamar Barak replaced him as Gome's manager. She recalls those years:

"It was a place to teach mediation and promote it in many areas. We had mediation processes, mediation in education, and later mediation in organisations. Every field that mediation could be relevant for... We were also very busy in positioning mediation as a profession."

T. Barak worked in Gome for five years. Sharon Rendlich, the current owner and general manager:

"Tamar [Barak] did it! She turned Gome into what it is. She managed to get the place into mass production, and, in parallel to the mass production, created something of quality with qualified teachers."

Naomi Miller, who came from the Ministry of Education where she had developed mediation in schools, worked alongside T. Barak. She recognized the benefits of the structure of Gome:

"It was really very convenient that we could invest everything in the professional aspects. Gome took care of management and finance... Really, we had no limitations; we worked in an extraordinary way – in education, in organisations, in teaching..."

Yoni Naftali, worked alongside T. Barak as general managers from 2000, then for one year 2004-2005 it was Tzur. In 2005, Tzur sold half of his shares to Rendlich, who became the manager and later the sole owner.

Bar-Lev, T. Barak and Naftali are lawyers who discovered that mediation suited them much better than advocacy. T. Barak is the daughter of two judges and the younger sister of two lawyers. She was brought up in a household that lived and breathed the law, but said that she went to law school thinking that it would give her good training, not because she wanted to become a solicitor. She never worked as a lawyer and found that mediation suited her much better:

“I studied law knowing that I was not going to practice law. In college I chose a mediation course and then, in 1998, right after I finished my internship duties, I attended another mediation course, and I have been doing mediation ever since.”

Naftali recalls his way to the field:

“I was a lawyer for a few good years and did not like it at all. And then, in 1998 or so, I represented clients in mediation meetings, became very enthusiastic about it, and got rid of the practice without a second thought.”

The Gome website frames its vision:²

“At Gome, we believe that each of us has the right and the potential to play a larger role in managing his life, as he moves towards the encounter with those things he finds truly important for him.”

Naftali formulated the vision of the centre at his period as:

“The initial idea was to conduct mediation processes and to be a home for mediation, in the sense that people could learn together and support each other, supervise each other, and teach together.”

From the beginning, Gome dealt with three aspects of mediation: teaching, conducting processes and promoting mediation in education. Later the field of education was abandoned,³ and since there were almost no processes to

² [http://www.facebook.com/group.php?gid=16860387729\(27.12.2007\)](http://www.facebook.com/group.php?gid=16860387729(27.12.2007)).

³ Tzur said that all of Gome’s activity in the area of education from 2007 were done on as charity work and as a contribution to the community.

mediate, they developed also the field of training as much as they could. Tzur said with pride:

"This is what separates Gome from the others... We are not a 'one man show': we have many tutors and salespersons and people who are responsible for the logistics. I do not interfere in the professional aspects and they do not interfere in sales. We have probably been the biggest mediation centre in Israel with the largest number of courses for a very long time now."

Miller sees eye to eye with Tzur when commenting on the strength of Gome:

"All the others worked solo, and we never worked like that. This is really the characteristic of Gome. We all had big egos and we were all significant professionals, but being together created something very strong. The students felt it, and the groups felt it, and all the voluntary work we had done... It was very strong."

Naftali, a kibbutz-member in his past, articulates his recollections:

"I can say that my personal experience of building up Gome was like my experience of building up the new kibbutz in the desert. It had the same intensity and power, the same feeling that you are really doing something good and valuable, something you believe in, and you are doing good things for other people. It was really powerful."

Evidently, the fact that Gome has functioned as collaboration between a capable businessman and dedicated professional mediators, and has persisted with this method of divided responsibilities, has had an impact on the outcome. Tzur is a proud manager who is very fond of his employees. He answered the request to explain his success as follows:

"The first element is the quality of the people around me... good people that did it out of faith and also for the money. I spent a lot of money over the years... I decided that if I did not pay the best salaries I would not get the best staff..."

Tzur invested a lot of money in the business, creating complete learning programs to attract the clients. He placed full-page advertisements in newspapers to draw the public's attention to the new subject of mediation, and later opened an active website that sends regular updates and information. The

wish to make profits and contribute to the cultivation of the new 'mediation plant' together changed Gome's activities. Naftali explains:

"Economic reality turned things upside-down. In order to make a living we had to market more and more courses. The volume of the courses grew and the volume of the mediation processes became smaller. It became unprofitable to pay so many employees when they had no work to do. The centre became less focused. People could not get experience in practicing mediation. And at that time the main resource for cases, the courts, stopped referring them to the centre. They preferred to refer files to specific mediators whom they knew, rather than to a centre that would choose the mediator for them."

This development which is described in chapter 4, has also affected the development of Gome. Another important change was that mediation lost its high status as the hottest trend when a new fashion appeared in Israel — coaching. Naftali's function was changed to become the academic coordinator, a job he maintains as a freelancer besides his other occupations. Naftali summed up his views on what had happened:

"Gome did not succeed in becoming a body where mediators could work together, consult with each other and supervise young mediators. It just didn't happen. I wouldn't pretend to know all the reasons why. It just didn't catch on."

There is no doubt that Gome was and still is a key player in the Israeli mediation field, and a meaningful centre for its size and stability. Many of the interviewees started out in one of Gome's courses. While critics praised its idealism and naïve views of mediation, Tzur, who is not a professional mediator, and is not interested in doing mediation, sticks to the methods and practices of the business world. This fact raises reservations about looking at mediation as a profit-making enterprise and not as a social ideology. A senior mediator, Noam, phrased the criticism as such:

"What did Gome contribute to the field of mediation? They are a business firm. They did not do mediation; they just taught and taught, they did not develop the field."

By that he meant that Gome found a way to make money out of courses neither by widening the subject nor by deepening it. They ran as many courses as they could and did not stop to think of the possible consequences, and of the price in terms of quality. But the many mediators who are graduates of Gome appreciate the knowledge and the opportunity they acquired there. One of them, Shira, recounted:

"In the end Gome is a place of study that gave birth to many other places of study, but it is one of the most important."

Tzur is very much aware of the objections his centre faces, but does not take it too much to heart:

"I was considered the 'bad guy' — the one who made mediation cheap and opened the field to everyone who wished to study. But in my perception I still think that everyone deserves to study mediation. There were people with a lot of ideology but where does one go with it? Nowhere."

Indeed, during months of field research, almost no independent mediation was being done in Gome. When on rare occasions they did get a request to conduct a mediation case, the man who did the job on a freelance basis was likely to be Yehuda Levi, who stated:

"Mediation-wise, there is a pause now [March 2008]. The courts do not refer cases because of the new pilot plan [Mahut]. I am hoping that in two months I will have work, and you will come to observe mediation processes. Then there will be plenty of work, but I am not sure it will take only two months. I am afraid it will take much longer."

Rendlich, who has led the institute since Tzur departed, is a coach, who views mediation as a mission, dear to her no less than coaching. She sums up this section by expressing her difficult task in the management of Gome as a combination of the wish to run a successful institute and the need to fulfil her ideological beliefs:

“Such a centre cannot operate just from the business aspect. One needs a lot of faith that such a place will survive. From mediation courses one can survive, not get rich. What fills the soul is the delicate balance between the need to have Gome continue to work and be economically viable, and the belief that the field of mediation is important and significant, particularly now and particularly in Israel. Therefore the next step will be social activity, including volunteering, also as a contribution to the community in the domain of the multi-cultural society.”

By the time this part of the research was concluded [end of 2008] the Mahut had not yet started, and hardly any independent mediation processes were being conducted either in Gome or by Levi. The only option for observing mediation processes in Gome was in the Practicum courses. At the relevant time there were two courses – one of them on its premises. The mediator in charge of that course was not happy to let the observations proceed. She explained that it might disturb the group because the room was small and could become cramped. The room was indeed small. But Naftali, the leader of the other course, had no hesitations and agreed to the observation immediately; Arbel Ben-Ari, the co-leader, was also very welcoming.

The Physical Environment

Since 1997, Gome has changed its managers, its main business, and its location several times. In 1998 they had an office in the centre of Tel-Aviv in an expensive business and entertainment street. In 2003 they moved to Herzliya Pituach, a home to hi-tech offices, restaurants, commercial emporia and, on the other side of the area, a luxurious high-class residential neighbourhood. When the field research was undertaken, Gome had just finished renovating their new offices in a cosy two-floor building in the enclave of Hakfar Hayarok (The Green Village), a 20-minute drive north-west of Tel-Aviv's centre. Tzur stated that he had been waiting for many years to move there. As a man who came

“from the beach, from the street,” he found that the small house suited his character and temperament, and reflected his love of earth and nature.

The Green Village is a quiet and calm place in rural surroundings, between a horse farm and seedbeds.⁴ What is impressive about the premises is that it is an island of calm adjacent to crowded neighbourhoods and main roads. The entrance to Gome’s small reception room goes through a nice untidy garden, strewn with large clay pots holding big plastic plants. There are chairs and a bench for the use of the staff and students, an open space to refresh oneself, to smoke and to have a chat. Since Israel is a hot country, and it is rare that rain lasts more than a few days in a row, the use of an outdoor space can be lovely.⁵ The small cottage had just been renovated and much thought seems to have been invested in the design. The rooms are gaily painted. Each wall is in a different colour and all together they form a bright spectacle. The floor is made of cork, which gives a modern, 'green' look and is soft and comfortable underfoot. The rooms are designed in pleasant mixture of old and new furniture. There is a small vestibule where a secretary sits behind her desk. There are a few teaching rooms and a narrow, steep flight of stairs to the upper floor where the employees work. This attic is bright and roomy with many windows overlooking the view. Real thought had been put into the environment to create the atmosphere of the place; it gives a feeling of a space that is cared for. The fact that the mediation rooms might not be big enough at times, may hint that it is not completely functional. Needless to say, since renovation work never ends, there is more to be done. The backyard is still neglected, with discarded furniture lying around. Tzur joked that this half-

⁴ <http://www.kfaryarok.org.il/Apps/WW/Page.aspx?ws=45169fe4-2ee8-4b34-9c4f-37be3fbd6c44&page=8de2c924-17b4-49bd-8b62-1e70b20795a1>(27.12.2010).

⁵ There are only 45 rainy days in an average year in Tel-Aviv, mainly between September-May.

finished condition is the joy of the place, and from time to time, like Tom Sewyer, he allows friends to come and improve the unfinished job.

This is the site for private mediations when they happen, some Practicum courses, basic mediation courses and other activities of the centre. The observations, however, took place elsewhere, at the Magistrate's Court in Hadera, where the course Naftali was leading took place.

Hadera, a city of 77,500 people, is the second biggest in the Northern region of Israel.⁶ The population is mostly Jewish and is of middle socio-economic status. The place was settled by Jewish immigrants in 1891 and grew enough to be called a 'city' since 1952. Founded in 1960, the Magistrate's Court⁷ includes a traffic court and a Small Claims Court.⁸ Fourteen judges sit on the bench there, of whom half are women and three are of Arab origin. The court provides services to all the settlements in the region, many of which are villages, including Arab villages.

The court building is located on a main road, is well signposted and very easy to find. There is a big paved piazza in front of it. Parking is not a problem, but it is not free. In the entrance, a security checkpoint with guards welcomes all comers.⁹ After showing IDs and having their bags searched (a procedure from which lawyers are exempt), visitors proceed up a wide staircase leading to the courtrooms. The courthouse itself looks like a regular office building from the 1960s – rather old, shabby and grey, not a memorable edifice. The staircase reaches from the entrance to a lobby off which a corridor leads in two directions. If there is no room ready in time for mediation, the Practicum group gathers in the corridor, and waits in the sitting area there. It could happen for a

⁶ <http://www.hadera.muni.il/>(27.12.2010).

⁷ http://www.nevo.co.il/Law_word/law01/055_017.doc#Seif1(27.12.2010).

⁸ http://elyon1.court.gov.il/heb/cv/fe_html_out/courts/details/203.htm(14.3.2011).

⁹ This is standard in busy public places in Israel, like malls, museums, theatres etc. In government buildings security is very tight.

number of reasons – the mediation room might be closed, or occupied with an unfinished hearing, or being used by court staff. The courtrooms, the judges' rooms and the secretariat are on both sides of the long corridor. The meetings of the Practicum group and the mediation meetings alike take place mostly in two rooms. There are no signs on the doors, so people have to find the mediation meeting room by trial and error.

The mediation/courtroom is in rectangular shape, with the judge's bench on one side, separated from the room by a low bar. On the wall behind the judge's chair hangs a picture of the Israeli president and the state insignia. The national flag is on a pole in the corner. When there is a trial, the typist sits near the judge. It has happened that a typist stayed behind to finish her work during a mediation process. The portion behind the bar is not in use in mediation. The room has a wide window on one side. When setting, the sun reflects into the parties' eyes and the shades are drawn. Near the bar there are two plain brown wooden desks for the parties' lawyers, two chairs near each desk. Behind them there are three rows of grey metal benches for the litigants and others. One door allows the litigants into the room, while the judges use a door behind the bench. Before the mediation process begins, one of the two desks is turned to one side of the room, and the other is removed to the far end; refreshments are laid out on that desk for those attending the process. The four chairs are arranged on both long sides of the other desk for the mediators and the parties. If there is more than one claimant and one respondent, the mediators bring chairs from other rooms. The space in use is between the benches and the bar, and it is relatively narrow and compact. It may be significant that the parties see the judge's bench and all the symbols of authority above it during the process. Without delving into subconscious influences, it is a constant reminder of the

alternative system. In the mediation meeting, however, all participants sit on one level around one table; no one is more elevated than anyone else.

The Practicum group leaders, the members and I, the observer, sit on the metal benches. We can see the front or the back of the parties, depending on where we sit. During private and mediators' meetings, the parties wait outside in the corridor, which is neither attractive nor welcoming. If there are two sessions scheduled at the same time, the group uses another court room at the far end of the corridor, which is smaller and less comfortable. In this room, on one occasion, two typists sat once through a mediation session, carrying an interesting conversation between them. They were talking up behind the bar, and the parties were talking down on the floor, and it looked as if nobody was really bothered or minded what the others were doing. As a rule, although the group prefers a specific room that is well located in the middle of the corridor and is relatively big, any empty room could be used for the meetings. There were no signs that the judges were concerned about this additional use of the premises.

Although the group leaders try to make the ambience in the mediation room a little warmer by arranging the furniture differently and by bringing coffee and cookies, and the group members contribute to that with their unofficial clothing and friendly behaviour, the ultimate result of the physical look is still formal, dull, tattered and uninviting. The feeling is very much that of a provincial courtroom – no more no less than functional, and rather poor.

The Practicum is conducted in the afternoons from around 16:00 onwards, when there are no trials, but small claims cases which are also heard at that time. When the meetings are over, the building is usually almost empty, except for the guards, who meet the group when they come in and wish them good night on the way out.

The Gevim Group

The field research actually began when Omri Gefen, the manager of Gevim, agreed to participate. He was generous in sharing his views on the situation of mediation in Israel and explained the role his institution plays in this area and in society at large. His insights of the problematic aspects of the research, including those of the presence of a stranger in an intimate space, highlighted both the complexity of the mediation field and the delicacy of this research. Gefen with his strong personality and a unique combination of a successful initiator and an experienced professional was a significant informant and source for data and ideas.

A good introduction to the Gevim centre is the vision stated on its website:¹⁰

"The Gevim group constitutes a unique professional platform providing learning and growth processes in managing interpersonal space with the aim of providing a world view of dialogue as a core value. The expertise of Gevim lies in carrying out transformative processes, in consulting and in training, and in executive education, on the basis of new methods and perceptions developed in the world and by Gevim experts. Over and above quality and professionalism, the Gevim group sees its work as an important social mission."

Gevim also declares its assignments as a group on its website. The use of rich texts and ambitious views is a characteristic of Gevim and the justification for quoting the paragraph in full. Gevim articulates its mission as follows:¹¹

"To encourage transformative processes through consulting, training and designated education programs in organisations and communities based on the belief that in every interface there is the potential for change and growth that helps the realization of clients' goals.

To act within a value-based perspective to strengthen Israeli society through the principles of dialogue as a basis for learning and change processes at the individual, social, organisational, national and multinational levels.

¹⁰ <http://www.gevim.co.il/89301/וקורסים#סדנאות-וקורסים/89301>(14.3.2011)

¹¹ <http://www.gevim.co.il/89301/אודות/89301>(14.3.2011).

To enhance the understanding that the capacity for dialogue and the cultural and social world view that is at the base of the encompassing dialogue starts at a young age and to invest resources and high quality manpower in educational and communal frameworks.

To continue to base the strength of the Gevim group on a world view, a value-based platform, professionalism and management principles that rely on cooperative, long term relationships with the clients of the firm and its staff."

With this in mind, the description of the centre offers more dimensions than those one can see physically on site.

Gefen and Gevim

Israel is a small country and any professional sector within it is like a tight society. Therefore personal contact and mutual acquaintances are inevitable, sometimes even required, and are always a good start for a conversation or working relations. This is why the fact that although I had heard about Gevim, I had no previous connections with them is noteworthy.

This institution is well entrenched in the Israeli mediation field. Many experienced mediators among the interviewees advised speaking to Gefen. Some noted that although they had different opinions on the nature of mediation and its methods, they still respected his. For example, Daliah, who said:

"I do suggest you talk with Omri from Gevim because he has a totally different view. I think that financially his way has justified itself more than the other ways, and I have to say that as a person who is looking in from the outside they really have very interesting projects."

Rotlevi noted: *"Omri lives mediation, very much so."*

Gefen, in his mid-forties when interviewed, spent his youth in Jerusalem, where he enjoyed an informal education:

"I grew up going to the Experimental School in Jerusalem and I think it had a great effect on me. I think I was lucky not to get into conventional modes of thinking. There is something very strong when I make my own choices what to do and in my feeling of competence, the feeling that I can do what I need to do and what I think is right."

A few years after Gefen completed his military service, which is not something to be taken for granted, considering the political stance of other graduates of the open schools, he first heard about mediation while working at a democratic school:¹²

"I heard about mediation by chance. In 1992, someone who studied with me in the US came back and told me about it, got me stoked up about it, and then he taught me in an informal way for the first time. I saw that it was relevant and interesting."

The motive of informality and initiation which keeps appearing in this thesis gets in this case another strong support. Gefen described how he found his way into the mediation field when an historic event, which shocked many in Israel, moved him deeply and led to insight and action:

"It was at the time Rabin was assassinated¹³ that I understood that mediation provides an answer to something our community is thirsting for, something it needs badly. And not just a technique for getting rid of conflicts, but something more general, a worldview with more attentiveness, more sensitivity towards others, an approach of greater tolerance and more dialogue. And I also saw the advantage in it as something that not only has to do with understanding and listening and talking, but that is concerned also with the practical."

¹² As in Israel schools are part of the state system. As a result of dissatisfaction from poor performance, and as a consequence of the desire to get to special niches, different schools are trying to get approval from the Ministry of Education to be recognised as special schools, such as democratic schools where parents take part:
<http://cms.education.gov.il/educationcms/units/metzuyanut/forum/shnatpehiluttashsa/nitochouim.htm> and also <http://www.democratics.org.il/bg11.htm>(14.3.2011).

¹³ Prime Minister Rabin was assassinated on the 4th of November 1995 in Tel-Aviv by a religious Jew.

That traumatic event was a major impetus for action, the ultimate result of which was the centre. Today, Gevim is one of the oldest, most stable institutions, and a highly respected player in the mediation field in Israel.

Although the centre never characterised itself as dealing solely with mediation, at first this was its main interest and major activity.

Since 1996, Gefen has continued to build up the institute and to gather people to work with him in accordance with his ideas on management and teamwork. The institute has a relatively small permanent staff: a director, a deputy director, project coordinators and secretaries. The mediators and seminar leaders work on a freelance basis. The staff comes from varied backgrounds and, unlike in other centres, most them are not lawyers.¹⁴ A full list of the professionals with names, a short description of their qualifications and their photos can be found on the centre's website.¹⁵

In Gevim nothing important is done without Gefen's consent, which was needed not only for the observations but also for interviews with employees. As Gefen values teamwork, obtaining the consent of the people involved, leaders and mediators, and of Gevim's manager, with whom he works closely, was also needed. The importance of teamwork to Gefen, and of Gefen to the team surfaced when one jobholder at Gevim informed Gefen that he did not like the interview and felt that the research might interfere with the centre's work. Gefen put the observations on hold, and only after he had talked to that person, and after some clarifying e-mails had been sent back and forth, he allowed the continuation of observations. A new understandings was framed, such as what will be included in the

¹⁴ Besides those that focus on family mediation, there are a few centres that are not controlled by lawyers; among them are Kotzer-Sapir and Dotan's *Gishur Neve Tzedek* and Silvera's *Derachim*.

¹⁵ <http://www.gevim.co.il/89301/אודות-הצוות>(27.12.2010).

observations (and especially what will not be included in them), visiting hours, subjects of the interviews etc. Another result of this agreement was that interviewees that are connected to Gevim are quoted anonymously.

Although there is no doubt that Gefen controls everything that goes on at the centre, he finds it necessary to emphasise that Gevim, as its name suggests (Gevim Group), prefers cooperative work, and other people's ideas and suggestions are most important:

"From the very first I understood that if I want to make a significant impact I need to build a team. You can't do anything by yourself. The team is a meaningful part to this day. It requires huge inputs. It costs a lot. I could have earned more and would have slept better at nights if I had worked alone or with a small team. But the same social insights drove me to produce something which is big and has an impact."

As in other organisations, there is sometimes tension between cooperation and hierarchy, so Gefen notes:

"At the end of the day, I make the decisions. The institute is not a democratic body. Of course I share my thinking with others. I believe this is the way to get better results."

About the staff and everyday assignments he says:

"We have staff from She'ar Yashuv in the north of the country to Eilat in the far south... Most of our activity is not done here [the Herzliya office], but on the ground and in all sorts of fields. At this moment [February 2008], according to the operating program, there are dozens of activities being conducted on this very day all over the country."

Given the fact that visits to the premises were limited, the impression was of a calm and quiet atmosphere in the office, with people who were mostly focused on their own tasks. It seems that everyone was busy doing his job, with no time for idle chat. The permanent staff has a great deal of responsibility, coordinating with the freelancers (around 100

people), seeing to it that they get some attention even when there is no tasks to give them, and also having to take care of potential and current clients. The big pool of freelancers is needed in order to provide good, timely mediation services, so that the best mediator for a particular case is available when needed. Employing freelancers gives the centre the financial space it needs, but it has its price. Here is Itamar's view:

"You see, the people in mediation are among those who do not need this job to make a living. When the centre approaches me with work I say, my financial reasoning is opposite to yours. Because you pay so little¹⁶ I want to work little. The reasoning of the centre's employees is the opposite — because the payment is minimal, they need to work a lot [laughs, happy]... the mediation profession is filled with people who do not necessarily want or need to do mediation as a full-time paying job."

The word 'gevim' in Hebrew means: 'hollows in a rock where water collects'.¹⁷ One has to read the explanation with the image of the Israeli desert in mind, a place where water is the essence of life. Gevim explains the chosen name and its meaning on its website:¹⁸

"Gevim [in Hebrew] are formations in the rock containing water, mostly found in the desert. Some cultures see water as a symbol of emotions. Our experience shows that the mediation process enables the containment of the parties' emotions, mostly in a 'desert' of anger and distrust."

The team's good spirits and loyalty to each other and to the centre were very noticeable during the observations. For example, a supervisor, smiling, remarked to Dov, a young mediator in a feedback session after a mediation meeting: *"It was mediation in Dov's style, not Gevim's."* This sentence shows the commitment he feels towards the place and the ideas that have been integrated there, and he was proud to teach what he named as 'Gevim-style mediation'.

¹⁶ Gefen noted that this was true for the education section where there were few resources but that in other sections pay was much higher, conforming existing practice.

¹⁷ Sivan, Reuben (1982) *The Megiddo Modern Dictionary*, (Tel-Aviv: Megiddo Publishing).

¹⁸ <http://www.gevim.co.il/about.asp>(27.12.2010).

Like many other centres, Gevim enjoyed the wave of a rise in mediation in the late 1990s, which allowed the opening of many basic courses. But at Gevim, unlike other centres, Gefen diligently continued to invest in developing other aspects of the field, and keeping up its high standards; thus building Gevim into a professional body with an emphasis on excellence, as he and the team understand it:

“We don't make compromises in the professional area. Well, sometimes we do for lack of choice, but it's contrary to our basic conception. The quality of our counsellors is the highest in the country; we've brought in people of international calibre. And this professional diligence, with lots of respect for and sensitivity towards the field, which appears unprofitable and lacking in business sense in the short term, eventually proves itself in the long term. We are perceived as the most professional centre there is.”

Besides mediation, which is no longer its main interest, activity at Gevim includes interactions inside organisations, teaching, coaching, organisational counselling, interface management between organisations, and more. One could spot a possible connection between Gefen's educational background and the orientation of the centre, which has developed a special niche of mediation in education. Mediation processes are a relatively minor component, from the point of view of both income and the allocation of time. On top, Gefen has ambitious thoughts about its task in changing the individual, social, organisational and national culture in the country.

Gevim sees mediation as a broad, holistic and flexible language, a useful tool for individuals and corporations, a way of living and handling conflicts, and a factor in moving towards a better society. The centre is involved in many different areas, such as family, education, community, organisations, and even in multicultural conflicts, including the Israeli-Palestinian conflict.

One can easily hear the passion with which Gefen talks about mediation, the place it occupies in his life and the importance that he ascribes to it in Israeli

society. He believes that implementing tools for peaceful conflict resolution will bring about a significant change locally as well as globally.¹⁹ His holistic view, which sees mediation as an option for real meaningful change in individuals' lives and in society, is touching. He once studied alternative medicine and he sees an analogy between the two methods:

“Modern society put everything out of mind and created the organised, formal apparatuses. The individual lost responsibility. And, in the post-modern era, the individual is looking for more control over his life. And this is manifested very powerfully in conflicts and in medicine. It's the same experience of alienation in the hospital and in the court. You're a file, not a human being, not [someone] with needs.”

Gefen and the team are strong believers in transformative mediation. They act enthusiastically to develop and adapt its special ideas to the Israeli environment and culture of negotiations. The courses and the conferences they hold are based on that stream, especially as theorised by Bush and Folger.²⁰ The institute is a base of knowledge on transformative methods, while continuing to work on developing and adapting them to Israel's needs.

Furthermore, Gevim cooperates with other bodies connected to mediation, such as the NCMCR, the courts administration, community centres and academia. Obviously Gefen and Gevim being profoundly committed to the idea of mediation, are taking into consideration the changes and developments in the field, while keen to continue along their special path. In practice, most of the mediations they conduct come from private individuals or institutions that know someone personally in Gevim, or have had a good experience with them in the past. Besides the Practicum, very few cases are court referrals.

It is easy to see that Gevim is Gefen and Gefen is Gevim. The institute moves in response to Gefen's insights; for instance, when his vision changed from

¹⁹ [http://www.gevim.co.il/89301/English\(27.12.2010\)](http://www.gevim.co.il/89301/English(27.12.2010)).

²⁰ Supra note 35, and the discussion in Chapter 2.

focusing mainly on mediation, as in the early years, to focusing on interactions in recent years, it was led by Gefen. Moreover, as the organisation has grown over the years, Gefen understood that he could not closely control all the activities anymore, and started to delegate authority especially to the chief executive manager. He looks like a captain dealing with overall goals and visions for the future, signalling the route towards the horizon, while the crew safely navigates the ship on its daily way along the right course.

The Physical Environment

Gevim's offices are located in Herzliya Pituach, about 20 minutes drive from the centre of Tel-Aviv, which is the business and cultural heart of Israel. Its location in the middle of the country enables easy visiting from the north and south, and therefore it is often crowded with parking shortage. In the past Gevim had branches, but later Gefen felt that it was easier to work from one office and travel to other places when needed.

The entrance to the lift leading to the second floor, where the office is situated, is hidden between a wine shop, a real estate agent, and a trendy restaurant. Since the centre does not own the building, it is fully responsible only for the interior design of its own premises. There is a sign with the name 'Gevim' in the entrance hall. The small lift sometimes gets stuck in-between floors and then the staircase at the rear of the building becomes useful. A glass door on the left of the lift leads to the offices, where a waiting room with sofas and a coffee table welcomes arrivals. On the table are some files containing copies of papers on mediation and on Gevim. There are books on shelves, but they are locked, so the visitors cannot browse them. A secretary sits in the front behind a high desk, while a compact kitchenette and rest rooms are located on the left. A

corridor leads from the waiting room to the mediation and staff rooms. All rooms have windows facing inside, so the people working in their offices are visible to anyone walking along the corridor. During mediation meetings shutters are pulled down to ensure privacy.

Although Gefen pays a great deal of attention to content, not much care has been devoted to the appearance of their offices. While simple and functional, they have no special design and lack any personal or noteworthy touch. There are a few black-and-white photos and posters on the walls showing wood fences in the open countryside, elephants walking, and landscapes, and a framed, artistic Gevim logo. There are no plants, interesting furniture or bright colours. Gefen noted that although they had tried to give a professional and homely environment, they suffered from a lack of resources. The absence of outward-facing windows, for fresh air and open views, is somehow oppressive. *"Beware of the thin walls"*, one of the mediators once warned an excited respondent who raised his voice a little too much at a private meeting. And indeed, in mediation sessions sometimes loud voices from other rooms, such as clapping, the moving of chairs and shouting were heard.

The observation took place in two rooms. The room near the entrance, quite large and spacious, was referred to by the group as 'the good room'. A rectangular wooden desk surrounded by chairs stands in the middle of a rectangular room, which is used for group and mediation meetings alike. The 'bad room' is located further down the corridor, towards the end of the offices; it is much smaller and feels rather crowded when there are parties and observers present.

Before the start of a meeting and during breaks, the parties gather in the waiting room and around the coffee corner. Sharing the use of this area, whether as a result of limited space or to serve a purpose, gives the participants a chance to talk, clarify things or ignore each other, as they wish.

A mediation room in Gevim²¹



What is the Practicum

The Gadot Committee report (see Chapter 4) and the regulations issued according to its indications created a situation whereby a large number of people finished the basic course but had no training in mediating or deep knowledge of the subject.

The idea of the Practicum mediation course is to provide further training to those who completed the basic mediator's courses and let them try to conduct mediations under supervision, so they can gain experience and test themselves in the real world. This would filter out the poor performers while giving the better ones confidence and further tools to become good professionals.

Lichtenstein, the head of the Practicum department at the NCMCR explains:

"If there is a difficulty, it lies in the basic training required of mediators, that's all. Simply enough, a mistake was made there. It was a mistake in retrospect, but not in terms of the time in which it was made. In what sense? The Gadot Reports were very

²¹ <http://www.gevim.co.il/89301גישור/27.12.2010>

relevant to their time. It was a period when it was necessary to produce a large list of mediators quickly. Now that the list exists, there isn't much need for it. In effect, no use is made of it. And conditions have ripened for the reformulation of the skills and training standards required for appearing on such a list."

Prof. Matz, an American mediator and teacher, observed this problem, and was concerned with the possibility of throwing the young mediators into the water, with expectations that after a while they would learn by themselves how to function. He thought that trying to mediate after the basic course was irresponsible:

"I said it wouldn't work ... Even after thirty or forty hours of training, there is no way they will be ready to handle cases in court. And he [Barak] said, like others, we have to push, we can't stop. I said it wouldn't work, they [the mediators] wouldn't settle cases."

The vicious cycle was that students could not become experienced professionals without working, and no-one was ready to give cases to inexperienced mediators. Matz came up with a solution he knew and had tried in the US:

"I take credit for bringing the Practicum here... In 1999 I worked partly with Peretz [Segal, head of the NCMCR] partly with other people in Peretz's office. I worked very hard on first, the structure, and then, how it was going to be evaluated... it came from the same thing I said before — that you cannot learn to be a mediator in a classroom. I thought so then, I think so now."

His idea was to let the young mediators work under the close supervision of experienced professionals. It was an ambitious plan, he explains:

"I try to remember better what the opposition was. One was cost, it was just too expensive... It is an expensive model because it takes a lot of supervision... There was the problem that there weren't many mediators. How do we get mediators to supervise mediators if we don't have mediators in the first place? One of the answers was to bring over foreigners, bring over Americans."

Matz was standing at a crucial crossroads: he knew mediation students from TAU, he was a consultant at NCMCR, and he was also advising President Barak. His connections with all these entities enabled him to execute the plan:

"There was a serious question of who was qualified to supervise. So that's where Aharon [Barak, President of the High Court] and Naomi [Dattner, from the NCMCR] and Orna [Cohen, a mediator] played a major role, because the last two were not the only mediators but were among the very few. We used this 'small claims model' as an example and I had run the clinic here. That was a good model for training mediators, and its basic structure has not changed."

After a trial period of practising their mediation skills on small claims cases with TAU students, the NCMCR came up with a structured plan for organising supervised mediators' training. It was in 2001 that the NCMCR articulated the framework of the Practicum. In the booklet 'The Practicum Standards',²² the writers articulated the objectives of the Practicum as: to develop the mediators' skills and knowledge, to enable the mediators to formulate their professional views and to check their suitability to mediate. The Practicum was designed as an advanced course which integrates further theoretical learning with supervised practical mediating. Foux-Levi, a mediator at the NCMCR:

"The Practicum came in answer to the incompatibility between the training requirements of the regulations, and the real training that a serious mediator really needs."

Melamed, a leading mediator, describes the idea, and its basic structure:

"The Practicum is a guided experiential programme that the Ministry of Justice launched at the time, a very structured programme so it's got small claims in it. Two counsellors, eight students; they split up into two small groups and work on real cases for three months, which in effect is the internship."

²² Dattner, Naomi and Foux-Levi, Yael (June, 2001) *The Practicum Standards* (Jerusalem: NCMCR, internal print of the Ministry of Justice); also: Lieberman, Etti et al. (2005) 'Beyond Basic Training: A Model for Developing Mediator Competence', *Conflict Resolution Quarterly*, vol. 25 (2) pp. 237-256.

The programme became a success because it addressed three different interests: that of the courts, which were drowning under the backlog of cases but could not make any use of the inexperienced mediators on the mediators' list; that of the new graduates from the mediation courses, who were frustrated and resentful at being unable to get cases to start practicing; and that of the mediation centres, which wanted to go on teaching, since it was their main source of income.

It took another five years until the plan was ready to be offered to the public.

Two more goals were added:

- To raise the professional standard of mediators for the development of mediation as an occupation.
- To promote the use of mediation in Small Claims Courts.

The NCMCR took responsibility to approve both the contents and the mediator guides of the Practicum, and to award certificates to the graduates.

The Practicum was first launched in January 2007. The course framework was: six to eight participants meeting together with two guides, one of whom must be a lawyer, for 15-17 weekly sessions accumulating to 100 hours. At these meetings the students learn more on the theoretical concepts of mediation, how to approach the litigants, and how to coordinate the mediation sessions. The guides have to teach and to supervise the sessions and also to give feedback on the students' work, personally and within the group. The students, who mediate in pairs, the way they were taught in the basic course, are inspected mediating 6-8 cases each. This enables them to experience different partners, as well as to try more cases within the time limit. The supervision is tight and the participants need to document their reading and observations so that the guides can appreciate their insights. The courts in the few cities which were part of the plan were asked to refer small claims cases to the programme and, if

they could, to allow the training sessions to be conducted on their premises. Finance would come from tuition fees and not from the courts or the parties. Foux-Levi remembers those days:

"I was the manager of the Practicum plan... for two years I wandered around the country to look after it, until it settled down, and I had had enough. Then we supervised the plan using questionnaires and phone calls, and then it kept on going and that was it."

The consequence of the tight accompaniment of the NCMCR was that it could only handle a certain number of courses. The centres felt that they could deliver more, to respond to the demand and to increase their profits, and there would be no difference if the NCMCR supervised them or not, since the content and the guides would stay the same. Melamed explains what happened after the Practicum became popular:

"Now, because it became a bottleneck and everybody wanted it, and the Ministry of Justice was holding the rein, the other bodies went and said, anyway we've got the cases [from the courts], let's do a private Practicum. We'll design exactly the same programme. So what if it isn't approved by the Ministry of Justice, it's exactly the same programme. And working on the assumption that someday they'll approve it retroactively, because there's no point, the guides are the same, it's the same thing. They just wanted to open it a little, make space, and for its own reasons the Ministry of Justice was keeping things tight. It was pretty stupid, because ultimately a lot of private courses did open which were unsupervised."

The head of the training department of the NCMCR in 2008, Lichtenstein, further explains the other side of the argument:

"There are Practicum classes and there are Practicum classes. There are those that are certified, and those that aren't. There are those that aren't in the sphere of the certification, so they aren't. The courses are regulated less and less by the Ministry of Justice, mainly because there is hardly any need any more for such supervision. It's become the de facto standard in the advanced training of mediators. In large measure, the standards are maintained in the field, and from that aspect, whereas once you could talk about up to four rounds of courses a year, tender rounds, today there are years in which we don't put out even one tender, but dozens of programmes at least that I know about are operated each year. And these aren't rounds of operation, but sporadic ventures that I know about... The field can do

anything, and if they've got sources for case referral, they've got sources for case referral. And we can't oversee the courts system, we aren't the courts administration, and even the courts administration cannot oversee the allocation of cases to mediation in general, and to mediation for training purposes in particular; the various courts enjoy autonomy."

He did not have data on numbers of Practicum courses, since he no longer supervises them; official data are therefore not available. The Bar and a few centres are the main Practicum courses providers. The current policy of the NCMCR, in Lichtenstein's words, is:

"After ten years of the Practicum, it is time to let go and to free it to the field. It was not supposed to be a mechanism to integrate the mediators into working places. It was meant to help them develop their skills so they could find their own place, or decide that the profession is not for them."

Foux-Levi, who left the NCMCR later, notes:

"We constructed the Practicum thinking that a responsible centre together with a responsible mediator would not allow themselves to let anyone deal with a case without doing the Practicum first. But because it was not mandatory, many bypassed it."

As of 2008, courses are conducted, but neither the Ministry of Justice nor any other objective body supervises them. The cost of a course is around NIS 6,000 (£ 1,000), which allows keeping the system in motion. The fieldwork was undertaken in non-accredited Practicum courses.

The Observed Practicum Courses

This sub-section first describes the people taking part in the Practicum and then turn to the mediation process itself.

The People

This section provides a short description of the people who fill these processes with meaning: the members of the Practicum group (leaders and mediators) and the parties. The character and nature of the participants is however revealed and expanded on in the next chapters dealing with the process.

The Practicum courses are the main source of mediators to be; therefore their tone reflects the look of the profession. Scrutiny of the participants may give an important glimpse of the future of the mediation field.

The Mediators

The students in the course are the graduates of basic mediation courses, not necessarily from the same centre where the Practicum is given. Beyond the mediation sessions themselves, I saw them before the starting time, and according to the groups' democratic decisions, during the meetings after the sessions, and once in a dinner when the first observed course ended. The description was also enriched by interviews with teachers and spontaneous talks with the mediators in recesses.

Mediations in three courses were observed; each was composed of a group of eight members, with a total of twenty-one women and three men, ranging from 28 to 60+ years old.

Besides finishing a basic mediation course, there are no real prerequisites for the Practicum courses. Only one interviewee, an experienced teacher, mentioned that once she refused to accept a candidate to a course, and as a result had to confront the centre about it.

ER: "So everyone who wants to take the course is accepted?"

Maya: "Absolutely. Anyone who wants to. Perhaps marginally there was one we didn't accept because he was a therapist who had been in prison for abusing his patients. And I even had a big argument about refusing to accept him."

My impression of the participants following the findings of the interviews, can be summed up in Danny's words, which were said not to criticise the participants but rather to help understand the facts:

"See who goes to courses - either retirees like myself... or housewives, that means people who are not planning it as the main source of the family's income, and indeed, it really works for them!" [laughs].

Usually the main interests of the participants lay outside mediation. They were lawyers, an accountant, a travel agent, a teacher, an engineer, secretaries, and self-employed people, alongside a few housewives. It seems that some were looking for an additional profession, the older ones for a post-retirement occupation, and the younger ones to increase their range of activity. All were looking to increase their income. Given the location of the courses, they live mainly in the Tel-Aviv area, although a few had to commute from more distant locations. In each course there were people who came as a couple – two married lawyers who wanted to find a new area to develop their practice (they worked together), and two girlfriends from the same small town, who stayed close and supported each other throughout the course.

The connection of living in a conflict society and being busy with mediation is very clear; many are busy with conflicts and bothered by them. In fact, stories about personal experience in disputes were told often. The popular reason for choosing the course was phrased as: 'in my everyday work (life) I mediate all the time, so I thought of improving my natural skills.' Another common reason was a wish to change occupation and to get additional income. This confirms the findings from the interviews and the job market data. Many of the participants had thought seriously of expanding their activity by including

mediation in the services they offer. They were aware of the difficulty of finding work in the field, with so much competition planted in an adversarial culture, but were optimistic. Some had creative ideas of how to start mediating, like volunteering in a community centre or spending time at the courts, trying to persuade litigants to try it on the spot.

The course is designed so that participants can explore their suitability for this profession on their own. The other participants and the leaders are there to comment on those abilities through the actual experience of mediating. So the students have multiple tasks to fulfil: to study and deepen their theoretical knowledge of mediation, to gain experience conducting real cases, to observe their colleagues mediating, to learn from it and to comment on their performances.

The style taught is co-mediation; other models such as the 'shuttle mediator' are not applied in the Practicum. Besides the support the two mediators are supposed to give to each other and the comfort of sharing their tasks, sometimes the mediators need to implement mediation skills also between themselves.

The relationships between the participants in the groups seemed to be good and supportive. It looks as if the leaders did succeed in creating a feeling of togetherness, but there was no evidence of friendship or the establishment of future cooperation. The diversity of characters and styles were seen as a challenge for the participants and as an opportunity to mediate between themselves when the differences surfaced. A few intentionally asked to mediate together with a member with whom they had previously argued.

Regarding the parties, the Practicum manuals of both centres mention that the mediators will not propose solutions or make any decisions on behalf of the

litigants. In practice, they are very active in asking, pushing and arguing, sometimes expressing their views, as demonstrated in chapter 6.

The attitude towards me in the two groups was warm and welcoming. They were interested in my work and shared their views with me during the breaks. No-one mentioned any concern about my presence or future publication. Maybe it was the least of their problems in a situation of learning new skills.

The Leaders

The groups are structured according to the instructions of the NCMCR: each group should be led by two knowledgeable mediators who have prior experience in conducting at least thirty mediation cases, are graduates of advanced mediation courses, and have qualifications in teaching and facilitating groups, and one must be a lawyer. The NCMCR planned to open a leaders' training centre but this did not materialise, so they learn how to teach on the job.²³

In fact, each group was led by a man and a woman, one of whom (once a man once a woman) was a lawyer who could facilitate the final agreement. Usually the other one is from the field of education or therapy, which was also the case in the observed groups. Since one cannot make a living out of teaching sporadic Practicum courses, the leaders continue with their other jobs. Having said that, in the field of mediation, teaching is the main (and sometimes the only) source of income. The supervisors were very experienced both in conducting mediation processes and in leading groups. They were around forty years old, one was a little older. They expressed continuous committed to the centre they worked for, to the course and its participants, and to the mediation ideology.

²³ Dattner, Naomi and Foux-Levi, Yael, Ibid, p. 11.

The task of leading a group over many meetings requires a great deal of patience and attention, which they all have in abundance. When the mediation was supervised by a new younger leader as a replacement the difference was clearly evident. That is not to say that the group members have no criticism of the leadership, which is not in the scope of this research. The participants are supposed to put their comments in writing at the end of the course for the leaders to read and improve in the future.

The leaders do not give grades or evaluations other than the feedback during the course. In practice, whoever starts the course and does the tasks of reading, participating in classes and mediating gets a certificate that indicates completion of the course. It does not say how well the participant did. The leaders explained that it is not up to them to evaluate the participants and that there are no criteria to check whether someone is likely to become a good mediator later on. They see as their task to teach and open up options, not to give grades.

Conducting a group in which all participants are observed frequently and assessed session after session while doing new tasks is not easy for the leaders. The quality of the group and its performances depend greatly on them. Besides responsibility towards the participants, they hold responsibility to the centre and to the court which sent the cases. It seems that they did succeed in their multiple tasks of maintaining the groups in good spirit and accompanying them to the end of the course, and to ensure that they gained a certain amount of knowledge, experience and confidence in mediating.

Within the Practicum framework, the leaders were available for a conversation only here and there, when time allowed. All were interviewed as influential mediators, but not necessarily about the groups. Two observed courses were lead by the same team. One leader was interviewed before the observation

started, and the other three after it ended. All were happy to be interviewed about their thoughts on mediation, except for one who said:

“I have changed in the past five years. At first when I went into mediation, being a lawyer, I would devote all my time to it. But this is not a profession that gives suitable recompense. Many researchers come to me and I don’t want to spend my time without any compensation.”

The group leaders in both centres are freelancers, but Gevim has a much more centralised concept. Both leaders at Gevim felt uneasy about being interviewed or commenting on the Practicum, whereas in Gome they were very easy-going and happy to provide information. It might be mere chance related to the specific personas, it is certainly not definite evidence, but it might reflect the effect of the difference in management. Gevim also controls the content; in Gome this is left to the professionals in charge.

The Parties

The litigants in the Small Claims Courts are usually middle-class people for whom the amount of money in dispute makes a difference, and they have the time and knowledge to sue.

Long-term relations were put on the table by both sides in two cases of neighbours and two cases of unsatisfied customers (7, 17, and 4, 14 respectively).

As for lawyers, other than in two cases when one party was a lawyer (mediation nos. 14, 20), no party was represented, probably because it is not usually allowed in the Small Claims Court and lawyers are costly.²⁴ The reader is reminded that this was the main reason for choosing the Small Claims Court as the arena in order to observe the disputants and not their advocates. Lawyers

²⁴ Article 63 of the Courts Law (Consolidated Version), 5744-1984, Sefer Ha-chukkim 1123, p. 198.

are allowed in the room, but are not really welcome. It suits the rules of the Practicum that whoever comes has the right to stay in the room and participate in the discussion, with the consent of the other participants.

Fourteen cases were against legal entities; the respondents were usually represented by the relevant persona who dealt with the problem in the past, or someone from the customer service department.

Detailed data on the parties were not available due to the centres' limitations regarding privacy, and the decision to focus on their performances in the processes, not on interviews.

Overall, the parties are divided into claimants and respondents. The claimants are mainly middle-class people who care about the relatively small amount of money they are suing for. They also have the time and skills to go to court and represent themselves. The respondents are mainly representatives of companies that give services or sell products to the public. As mentioned earlier, some of the companies have a more pro-mediation policy than others. Small businesses tend to decide on each case according to its circumstances. The only connecting thread, and a superficial one, is that they are people who have encountered a disagreement and have decided to sue, or who have met opponents who initially prefer to solve disputes in court. All agreed to try mediation when the judge offered it.

The manuals advise the mediators to encourage the parties to talk to each other directly, even during the breaks when the mediators do not attend, emphasising the need to address each other during the process to convince the other party, not the mediator.

The observers

Unlike other mediation processes in the Practicum there are observers and they are part of the play: the members of the group and the researcher. The group

members are there to study and support the mediators. The researcher's task in the sessions is to witness it. The assumption is that they all would sit quietly throughout, neither interfering nor contributing to the process. The second assumption is that under these conditions the observers would have minimal affect on the process.

This is not as simple as it sounds: both being physically present and at the same time transparent is a contradiction. This was true, for example, in cases when a party tries to communicate with the observers, attempting to elicit support, encouragement, or just waits for a reaction to a joke or a comment. The parties always look for a human response, not a blank stare; thus, trying to fill a silent role may give the wrong impression of lack of caring.

The most obvious exception to the 'no interference' rule is the group leader observer, who, when the process has reached a dead-end or is heading in a dangerous direction, may write a note to the mediators, make a statement, or even join the process as a third mediator. When he feels it is necessary, he introduces himself from his seat on the side, and becomes involved in the process for a limited time or until the end. In one instance, for example, the group leader passed a note to the mediator directing him to pay attention to both claimants and not only to the louder one (Mediation no. 9). Another intervention happened during Mediation no. 4 when the leader tried to help the mediators find a way out of a crisis situation, by joining them in conducting the process.

The essence of involving of a third party is that the participation itself is important and meaningful. In narrative terminology, the third party becomes part of the story. The actual decision to transfer a conflict from the private to the public sphere is a major one, as is the consent to mediation, following the

implied consent to being observed. It is the large number of observers in the Practicum which is noticeable and significant.

Does the presence of observers in the room during mediation affect the process? In particular, do the parties behave differently when there are additional people in the room? Do the mediators behave differently? Since the observer cannot know what is going on when he is absent, a reasonable assumption is needed here. Many mediators think that if there is any impact of the observers it is negligible; they explained that after the first few minutes the parties became accustomed to their presence and even forget them. The actual listeners to whom the parties turn are the opponent and the mediators, as they would do anyway. This supports Geertz's claim that informants quickly get used to observers and behave naturally.²⁵

The observations seem to support this claim somewhat, but not fully, as the previous quotations show. They indicate that the parties are aware that since the process is expropriated from the private sphere, their particular interest is now serving other purposes, such as learning. For the most part, the parties turn towards the observers at the beginning and subsequently they are seemingly forgotten. Even in private meetings the parties never ask them to leave. Because, in the majority of cases the observers are apparently ignored, and their presence is never refused, it looks as if it does not bother the parties. But the findings are not fully consistent. Even when the observers make an effort to remain in the background, some parties attempt to gain their support and the benefit of additional human contact by deliberately addressing them. So it seems that some type of interaction between the 'silent audience' and the main players does exist.

²⁵ Geertz, Clifford (1990) *The Interpretation of Cultures* (Mayzler, Yoash, trans.)(Jerusalem: Keter) (Hebrew).

One result of public hearing is damage to confidentiality and to intimacy, both of which are elements of a good, creative mediation process. This disadvantage is especially true of mediation conducted in the courtroom where other people may be in attendance, secretaries or other court workers. The term 'observer' in this section does not include these court employees, because they were not there in that capacity. Sometimes they were noticeable, especially when they talk among themselves or make noises. While the participants in the mediation process seemed to ignore them, their presence can be seen to be disturbing and contradictory to confidentiality because it breached the privacy of the process.

On the other hand there is strength in numbers. The presence of many people in the mediation room may give it a sense of importance and extra validity. It gives the process the value of a public hearing, which a confidential process lacks, especially when the observers are professionals and act with appropriate decorum. It places the case on a higher stage, empowering the people and the process, i.e., it must be important, if other people want to participate and learn from it.

The presence of the observers can be examined from other angles. Omer found that when there is a stranger-witness, people tend to be less violent and more cooperative.²⁶

Besides, the observers provide an additional level of validity to the process, by preventing it from becoming a secret affair. Empowerment processes need air, light and echo, and the observers bring all the above into the mediation room.

Finally, the presence of the observers in the educational process pays for the mediation, and thus the parties are being compensated. The parties understand this transaction and accept it.

²⁶ Omer, Haim (2002) *Non-Violent Resistance: A New Approach to Violent and Self-destructive Children* (Ben-Shemen: Modan)(Hebrew), p. 199.

Regarding the mediators, while the observers' presence might place extra pressure upon the younger and less experienced ones, they can be helpful in the mediators' meetings, when confused mediators ask for assistance and further ideas. The support from their colleagues could help in difficult moments. There were no complaints from the mediators of interference by the observers during the meetings, but there were reservations about the comments the observers made later in the feedback meetings.

Other Participants

It is interesting to note, that besides the groups that were mentioned above (mediators, leaders, student, researcher) there are others who may attend the Practicum processes.

The observation shows that Israelis like to bring family members to mediation meetings. In mediation no. 8, for example, the disputant, in his late fifties, brought his daughter and baby granddaughter. In mediation no. 9, the two claimant families brought their children with them; one 10-year-old boy even spoke a few times. Women claimants are usually escorted by a male family member – a husband or a son. In mediation no. 13, although the claimant was accompanied by her husband, she kept telling him that she was the sole claimant and he had better not interfere. The fact that he did come shows family support, but she wanted the focus to be on her, even when the mediator insisted on involving him too. In one case, the respondent brought his new girlfriend to the meeting. The claimant who was the previous girlfriend refused to sit in the same room with the new one; the ex-boyfriend did not give in, and the mediation case was cancelled.

Bringing another person to the mediation meeting is akin to making a statement. Some choose to come with a large group; some choose to send a family member in their name which, unlike in the court room, is readily

accepted. In mediation no. 14 the respondent, and in no. 16 the claimant, decided to send their sons, who were not disputants, in their place, and no objection was raised. Coming solo has meaning also, which differs from case to case. In mediation no. 12 it signalled confidence in ability to resolve a business problem, while in other cases it may be a request for help, since the mediators have a responsibility towards weak parties (as in mediation no. 17), or a matter of who can attend (mediation no. 19).

The attitude towards additional participants is loose and open. No one asked for documents to prove permission from the litigant, or other ways of verifying the authority of the representative or his role in the firm.

When the session takes place in a court some workers can still stay in the room to do their job or to chat. The mediation group and the court group was dealing each in their own business with no involvement.

To sum up, neither centre has strict rules about who can attend the meetings; they discuss it if a question arises. While in the room, everyone has a right to speak up. A group leader explained that if someone bothers to come he must have something to contribute. So the aspect of 'participants' with its diffuse identity is, in a way, a unique characteristic of the Practicum model.²⁷ It could be another aspect of a conflict society, when conflicts are sometimes interwoven the mediator cannot tell where does a specific dispute ends and who are the connected entities.

The Dress Code

*"The change of clothes had, some philosophers will say, much to do with it. Vain trifles as they seem, clothes have, they say, more important offices than merely to keep us warm. They change our view of the world and the world's view of us."*²⁸

²⁷ This characteristic differentiates this model from other options such as adjudication and arbitration, which have strict rules about parties and their representatives.

²⁸ Woolf, Virginia (1928) *Orlando*, Chapter 4, <http://ebooks.adelaide.edu.au/w/woolf/virginia/w91o/chapter4.html>(21.12.2010).

The first impression of an interaction derives from both the setting of the place, as was already discussed above, and the impression that the people give. Dress serves as an effective means of communication during social interaction. It is a way of establishing people's perception of themselves and their status, taste and abilities, and what assumptions they would like others to make about them. The encounter between the participants in a mediation process is relatively brief and therefore appearance is important.

The military aspects that were discussed in chapter 1 did not include a preference for uniforms. It is interesting to note the duality of preferences; while Israelis do not like formal clothing, they usually choose simple outfits without a personal touch. In the meetings there were no suits, jackets or ties. No one, including the mediators, was dressed especially for the occasion. The mediators in general are young, and dress accordingly, usually in jeans and a t-shirt for both sexes. Thus it is not only the physical situation that conveys a sense of equality between the participants but also the mediators' everyday clothing. Indeed, people tend to dress so homogeneously that in one process (mediation no. 2) the claimant and the defendant wore exactly the same jumper, a fact that opened a conversation of how and where their wives bought them the same outfit. One also cannot differentiate the leaders from the group members in terms of dress code. Like the coffee ritual exemplified in the next chapter, the shared simple clothing style may contribute to the sense of togetherness and the subsequent relaxed atmosphere. One could spot clothes that hint at the character of the wearer, like a longer jeans-skirt and hair covering for a religious woman, or the all-black style of a middle-aged urban lady. To sum up, clothing was not an issue either in the process or in the learning procedure. The absence of any formal dress code means that a mediator could wear almost anything; nothing was said on that topic.

Observations drew my attention to a few exceptions which, I must admit, had no impact on other participants besides me. In mediation no. 20, the mediator was a lawyer and he mediated in the accepted attire for court – a white shirt and black trousers. He did not wear a tie or a jacket, but one could easily identify the typical legal outfit. In one process which was observed before the actual field research began, the mediator who had come straight from military duty, was wearing his officer's uniform while conducting the process. The impact of this fact was not recognised, it did not elicit any comment, from the leaders or the participants. In the same process one participant carried a pistol in a visible place on his belt all through the meetings, and yet again it did not bother the others, but the stranger-observer who was concerned interested in the issue of militarism.

The Process

This section will give a description of the Practicum process, its structure and flow. This is to give a complete knowledge of the source of the data. As in ethnographic work a full description of the background is a condition to the understanding of the researcher and the readers.

The Structure of the Practicum Mediation

This section is devoted to the theory and practice of mediation processes undertaken in the Practicum. The 'Practicum Model' which is described here derives from the observations in the two centres; one is committed to the pragmatic model (Gome), while the other (Gevim) is a great believer in the transformative methods. The results in the mediation rooms, however, are very similar. There may be differences in vocabulary, in emphasis, but the conduct and trajectory are very similar, in fact so similar that it justifies discussing one

'Practicum model'. One may assume, after being introduced to the many groups in Israeli society, that a few defined collectives will be created also regarding mediation styles. It happened, for example, among the mediators, who could not agree on collaborative work to promote the subject (see section on the Association in chapter 4). Therefore it was surprising to find out how similar the process was in all courses, as is described and analysed later in this chapter.

A possible explanation to that phenomenon is that mediation in Israel is still relatively new and has not yet crystallized in the coordination of the theory and the practice. The inexperience of the Practicum participants is probably also a major factor in explaining why the mediation processes are so similar and do not correspond to specific models. Between articulation and doing there is a gap, which is shown in the mediators' actions: they take the theory to the places they are used to.

The analysis of Israeli society and the special character of the persona that this society has created, with its typical narratives, lead to expect that many will follow the pragmatic stream. Under this approach, the mediator plays a dominant, leading role and sometimes the parties even do not meet each other much. It could be expected that powerful types of mediation (like in CEDR in London) that of the shuttle mediator, will be prevalent in a society which is very stratified, contains a large number of often hostile collectives, and where its members are used to be in a state of conflict and are not attuned to conflict prevention or to active spontaneous dispute resolution.

The observations yielded surprising findings in this context. First, the type of mediation taught in Israel is always and predominantly co-mediation. The two mediators, who are also the product of the conflict society, are required to cooperate in supervising the mediation process. Second, though the pragmatic

stream is widespread, many attach great importance to the transformative stream, at least theoretically.

Another important finding about the practicum model is that the centre, the leaders and the mediators have little effect on the outcome, compare to the parties, which tended to be the same in the two centres. Moreover, the finding that although it is a clear fact that the 'Practicum model' deals in practice with narratives, this fact has no influence on the teaching in the courses and there is no significant specialization in the learning of the narrative stream. So it seems that learning bottom up is somehow missing.

The Attitude towards a Dispute

The manuals of both centres define 'dispute' by quoting dictionaries and encyclopaedias. They relate to the classic definition of conflict: a clash between two parties which have contradictory goals, values or claims on positions or on assets, which are unacceptable to the other side.²⁹ Both centres use the above definition as a benchmark for alternative views. Since disputes are part of human history and human nature, they might have a positive side too, which is an opportunity to learn about oneself and about others, create change and enable growth and development.³⁰ Since all cases come from the Small Claims Court they are limited to disputes below a certain sum of money, replacement of a product or annulment of a transaction.³¹ Because judges do not look at the cases before transferring them to mediation, mistakes in understanding the court's authority may occur. Although this is precisely the case where

²⁹ Gome (undated) *Basic Mediation Course* (Hebrew), p. 19; Gevim (undated) *Integrative Mediation and Negotiation Management Course* (Hebrew), p. 15.

³⁰ Gome Ibid, p. 20; Gevim, Ibid, p. 16.

³¹ Article 60 of the Courts Law (Consolidated Version) 5744-1984, Sefer Ha-chukkim 1123, p. 198. The sum is updated automatically on the first day of each new year according to the CPI; in 2010 it was NIS 31,200 (around £ 5,300).

mediation could help when the court cannot, a problem might appear when the court is unable to validate the agreement. Strangely enough, in the two cases in which this happened no one was aware of this issue, and there was no discussion about the advantages and difficulties of the situation (mediation nos. 15, 20). Out of 21 cases there were 13 disputes involving displeased customers, 4 dealing with debts for unpaid work, unpaid merchandise etc. (11, 12, 16, 18), 2 concerned neighbours' disputes (7, 17), and 3 were about compensation sought for breach of contract (not over unpaid work or a sale: 6, 7, 19). In one case the two parties did not show up, and in one case there was no process because only the claimant came.

The Need to get an Agreement

In theory, both centres emphasise that a final agreement is a very desirable result but is not always the best option, and the quality of the process is not tested only by it. In practice, the students judge their own success as mediators according to the achievement of a final agreement. An extreme example is the mediator who declared in a mediators' meeting (mediation no. 15): "*they* [the disputants] *are not going to leave before reaching an agreement!*" Although the mediators sometimes state that it is not their problem if the disputants do not sign an agreement, they clearly focus on reaching one. The use of the statement 'problem' reveals the importance they attribute to settlements, as they see a process without a settlement as a 'problem' which they want to detach themselves from. Many mentioned in the opening ceremony that the aim of the process is to reach an agreement (mediation nos. 2, 4, 6), which also suits the expectations of the legal system, as explained above.

Both centres prefer agreements that go beyond the specific conflict, for example, an agreement that involves an apology or a decision about future relations (mediation no. 20).

Given the fact that the cases are small claims disputes, reaching an agreement in three hours is a reasonable, logical and efficient result. This attitude could be problematic in cases where mediation is not the parties' best option. As explained, it looks as if it is always the best option for the mediator and the court, in regards to self-esteem and being able to close the case. There are cases where a court decision (as in mediation no. 20, when a court decision could affect the whole neighbourhood) or living with the unresolved matter (as in mediation no. 13, the possibility of leaving a small defect on the bathroom door instead of renovating again) may be worthy options for the parties to consider. The mediators' overt or hidden desire to reach a settlement is transferred to the parties, as the following examples show. In mediation no. 8 the mediator noted:

Mediator: *"It is always nice to reach an agreement."*

The respondent replied smiling: *"That's what **you** want."*

And in mediation no. 3:

Respondent to mediators: *"I am happy for **you** that **you** reached an agreement."*

Mediator: *"Nicely said."*

And then added: *"The agreement is not the most important thing."*

Another finding with respect to leaders compared to students is that the leaders, while also concentrating on reaching a final agreement, were less insistent on that goal, and tended less to measure success accordingly. As to the content of the agreement, the leaders tried harder to include 'good faith' clauses than the students, who found difficulties in doing so. In conclusion, reaching an agreement is desired in the Practicum, since it serves as the meeting point between the best interests of the parties, the mediators, the group leaders, the centre and the court. The quality of the agreement is less discussed.

Time Frame

It is hard to decide when a mediation process begins. In Mediation no. 15, which was about a poorly-fitting door, the claimant described how she tried to solve the problem: *"I tried to mediate in so many phone calls that cost me half the price of a new door."* Did the process start with her first phone call? In other words, does the mediation start when negotiations begin? Is the starting point marked by the disputant or by the mediator? In this work, the letter from the court suggesting the option of mediation arbitrarily assigns the starting point, which also fits with the common view, as it is an inseparable part of the process. Golan explains:

"I told you that mediation is a personal service. When I coordinate the first meeting on the phone I start the mediation. It's only me! I must not give it to anyone else. This is part of the mediator's service...so in the first meeting the parties feel as if they already know me."

The arbitrary end of the process in this thesis is the conclusion of the mediators' involvement. The process may, and possibly even should, be continued without the mediator's involvement, but the starting and end points are needed to frame the process rationally for the discussion.

The Time Line of the Practicum Model

Stage One – Coordinating the Mediation

According to the time frame that I had set, the mediation starts when the centre gets a copy of the court's letter referring the litigants to it for mediation.

Three hours of observation produced the data for this part.³²

Both centres have a position entitled 'Mediation Coordinator'. This coordinator receives the details of the cases from the court with a note that the parties were referred to the centre to mediate there. Each court has its own version of that letter, and some attaches the court's file. In order to give the mediation a chance, the coordinator arranges the files according to the fixed dates of the forthcoming court hearing. The parties have to attend at that date, unless they have resolved the dispute, or want to dismiss the claim.

Then the coordinator looks into the details of the case to decide whether it is suitable for mediation.

According to the coordinator's experience there are companies which, as a rule, object to mediation, one of those ordered her to note automatic 'refusal' on any mediation referral. Other companies which are subject to many lawsuits have a different policy, some agree to try mediation comprehensively, some decide upon the case. After the initial filter, she has to decide whom to contact first. As the claimant is the one who submitted, she usually contacts him first. She begins the phone conversation by introducing herself (first name) and the centre, and immediately mentions that she is following the court's decision to transfer the case to mediation. Then she briefly explains about mediation and tries to convince the party to try it, emphasising its advantages, especially the opportunity to resolve the case without taking the risk of a judge's decision. If the first party refuses to mediation her job is finished; if the second party refuses to mediate, she then has to inform the first party. She also has to send the file back to the court noting 'refusal', since she is not allowed to specify which party refused. If all parties agree to attend, she sends them letters with

³²This was the one exception to Gevim's decision to restrict observation to the mediation meetings only. Besides, the centres were unwilling to give data, such as the percentage of refusals (one number overheard was 50%), the division between the parties, cancellations etc. It is unclear whether they actually have these data.

the date, a map, and her own contact details for further communication. Although there is no sanction for non-appearance, the letter advises calling the centre at least 48 hours before the meeting, if one wishes to cancel.

The centres view the coordinator's job as having to supply enough cases for the Practicum courses. This puts her under pressure to try hard, with much patience, to convince the disputants to give mediation a chance. Because all the cases come as lawsuits, she sometimes presents the court as a bad alternative in order to persuade a stubborn party. She uses arguments such as 'you think you are right but you cannot anticipate what the court will say' or 'if you come to mediation we would send the court a message that you have honoured its referral, even if you end up without an agreement.' Conversely, parties frequently try to persuade the coordinator to tell them what information she got from the other party. Confidentiality rules do not allow her to reveal that, but the pressure can be strong and unpleasant.

As part of a later stage of their training, the mediators have to coordinate one meeting. From their experience and the coordinator's, they report that during that first phone call the parties immediately treat them as part of the conflict. They need to hear the party's story, no matter their explanations that they are only trying to set a date. Sometimes they are treated as if they represent the opponent, and they have to listen to harsh words. It seems that a lot of work and phone calls are needed to coordinate one mediation meeting. Since it involves dealing with people in a conflict situation, coordinating the first meeting which demands their good will is an essential task that is both delicate and difficult.

Stage Two -- The Meetings

Preparations before Assembling

The group gathers a few minutes before the first meeting start to do some preparations. The room is set to welcome the parties, as was described above when dealing with the mediation rooms. In Gevim, the coordinator updates with information about the parties – how many people will participate, what they said the main problems were, etc.

The mediators hardly ever read the court papers: *"We did not read any papers so we can hear your stories,"* explained a mediator (Mediation no. 13). The usual reason given is that they want to start the process without any preconceived ideas.³³ In the field outside the Practicum, this practice is not common. On the contrary, Rotlevi was one of a number of interviewees who heightened the need to come prepared:

"You [the mediator] cannot let yourself not be prepared. With all the ideology that one could invent of coming 'tabula rasa', it does not work. You have to be prepared and that means you have to read the papers and the new judgments, and know about the issues in dispute. This is part of the effort needed when you mediate... and it would be a good idea for you to understand what the parties are talking about, if they use abbreviations for example, you have to stop them and make sure you understand."

³³ More reasons for not reading might be: logistic problems in seeing the court files before the meeting, aversion to the use of legal language, absence of legal knowledge that most Practicum mediators demonstrate, or even some laziness and shallowness, as it is a short-term unpaid task. But this is not the situation in business mediation. In this field the mediators spend time on preparation, even if these hours are not always paid for. For example, Golan noted :

"I prepare every case. I invest in every case. People see that I come prepared to the meeting, they see that I invest a lot beforehand, and they prefer this kind of mediator."

People who pay for mediation, including for preparation hours, expect the mediator to know about the conflict before the process begins. Maybe they expect the same in the Practicum, but the mediators point out immediately that this is not happening.

Levi, the leading mediator in Gome, sums up the two sides of the debate and his preferences:

"Look, in principle my view is that you are not supposed to prepare... however neutral you want to be, reading creates some possibility of bias. But, out of respect for those who gave me written claims, I read them and try to see the questions that emerge. But in mediation while I always display familiarity with the material, I usually like to hear the parties rather than the language of the written papers."

The First Meeting – A Joint Meeting

The first meeting, attended by the two mediators, the parties and their accompaniers, the group leader/s and the observers, gives the process its atmosphere and sense. It is the most important meeting and the one that always exists, and the one that, like other rituals, has a dictated pace. It starts with 'The Opening Ceremony,' which contains the ritual of the 'Mediators' Show' and the 'Parties' Show,' which makes the first meeting an integration of a ceremony within a ceremony. As a ritual is a series of repetitive ceremonies,³⁴ naming mediation a 'ritual' requires identification of those ceremonies. The opening ceremony, which involves all the participants, takes place when awareness, readiness, excitement and attentiveness are still high. This is often the first time a party encounters the option of mediation, therefore the initial impression may become fixated and affect the whole process.

The opening ceremony inspires the process to come, so it is extremely important. A team leader once reflected on one such meeting by saying: *"a bad opening ceremony is unforgivable"* (mediation no. 8).³⁵

³⁴ Schechner, Richard (1977) *Ritual, Play and Performance* (New York: Seabury). The ritual nature of mediation is discussed in my other paper, not yet published.

³⁵ One mediator explained the rules of the process, when the other, wishing to help a Russian immigrant claimant mentioned that he could speak Russian if needed. From this moment on everything went wrong, as the respondents saw that attempt to help as hurting them, and the impartiality of the mediators was destroyed.

Controlled by the mediators, this part is structured as follows: the mediators introduce themselves and ask the parties to do the same; the mediators then explain the rules of the process, the time frame, meeting types, confidentiality, voluntary aspects³⁶ and the relationship with the court, and the desired outcome (an agreement, further communication etc.). The mediator leading the ceremony usually sums up with a request to respect the attendees and the process, not to use mobile phones,³⁷ to speak appropriately, not to forget one's manners and so on.³⁸ Preliminary questions are discussed in this part, such as whether one has full authority to represent a company-party, or whether people who are not involved in the pleadings may sit in the room or participate in other ways.

One task of the mediators in the opening ceremony is to introduce the observers. In Gevim there are some versions of the following (Mediation no. 8):

"There are observers in the room to learn and research."

Sometimes the mediator adds a remark about the immediate benefit of their presence: (mediation no. 1):

"People are sitting here to observe, so they can learn and research. This is the reason why the mediation is given free of charge."

And about the observers affect, here is one straightforward statement (mediation no. 13):

³⁶ A group leader demonstrated one version by saying to the parties: 'You may leave the process at any time, but if you decide to do so, please tell me why.' He explained that when a party leaves it is an awful experience for him, so he would like to have a chance to change that decision.

³⁷ Constant use of mobile phones is a widespread phenomenon in Israel; despite the request there was no process without at least one phone ringing, belonging either to a mediator, an observer or one of the parties; when that happens the call is usually answered, or a text message is sent. See about the "*unique mobile phone-calling culture*" in the final conclusions section.

³⁸ Gome, supra note 103, p. 42.

"There are observers. Ignore them."

And another version (mediation no. 19):

"Professionals are observing for the sake of learning. They are not supposed to interfere or interrupt."

The parties are not asked for their explicit consent to allow the observation. As emerges from the parties' reactions, it seems that the observers bring benefits, which may be the reason why there were no refusals.³⁹ It is unlikely that the parties, looking for the mediators' sympathy, would reject the observers, who are the mediators' colleagues. The result was that when the first party reacted positively to the announcement of the observers, the others were in a situation that they better approve too, for example mediation no. 8:

Mediator: *"There are observers in the room to research and learn. The process is free of charge. Do you know about that?"*

Respondent: *"No, but we do not care. Let them enjoy their learning."*

When entering the room the parties immediately face the observers. This alone can bring about interaction between the two groups. In Mediation no. 10, the respondent's reaction towards the observers warmed the atmosphere up:

Respondent: *"Who are they?"*

Mediator: *"They are people who mediate. They are here to observe and do research."*

Respondent: *"Are they going to interrupt? Is it going to be in the research?"*

Mediator: *"No, it is not going to happen."*

Respondent: *"Let them introduce themselves too."*

Mediator: *"We can do that but they are not part of the process."*

After saying that, the mediator continued with the opening ceremony as he had planned.

³⁹ Only one interviewee informed me of an incident in which the parties refused to allow professional observers to be present (not in a Practicum). The dispute concerned a well-known celebrity couple who were uncomfortable about airing their problems in front of others.

The opening ceremony tends to be conducted in a relatively calm and peaceful atmosphere. The mediators' show is planned to end in a symbolic act of commitment to the process and its rules: signing the mediation agreement together. The law does not require a signed agreement. Rule 3(6) of the Courts Regulations states:⁴⁰

"If the court approves the transfer of this matter to mediation, it will consider the agreement in the appendix (hereafter the standard agreement) as an agreement between the parties and between them and the mediator, unless they have agreed among themselves otherwise in writing."

The law suggests a standard agreement (Appendix B) which the Practicum's agreements follow. In the absence of a legal reasoning the signing is used as an act of expressing commitment to the process. Visual illustrations like a written document could empower the ritual, not in this case. The observations show that the demand to sign usually increases confusion and disorder.

The mediators present each participant with a copy of the agreement that the centre has prepared. Some read every word no matter how long it takes them, some do not care. In Gome, one mediator usually reads out loud the main articles and then distributes the copies. This cannot prevent a party from re-reading with greater scrutiny. Occasionally someone has a question about the legal meaning of a sentence, or someone wants further explanation. A change in the agreement was never spotted. At this point the ceremony starts to lose its focus. The confusion doubles when the parties are actually asked to sign one copy only. The mediators collect the extra copies while the parties try to agree which one is the right one for signing and wonder who has a pen. The following quotation from mediation no. 5 is a typical illustration of this:

Plaintiff 1: *"Do we [he and his wife, plaintiff 2] sign together? I will sign for her."*

⁴⁰ Courts Regulations (Conciliation) 5753-1993, Kovetz Takanot 5539, p. 1042.

Mediator: "No. No. Everyone has to sign."
Plaintiff 1: "So I need another copy."
Mediator: "No. No. We all sign on the same one."

This repeated "no, no" stands in contrast with the positive atmosphere which the mediators wanted to build. Occasionally the confusion leads to independent interaction between the parties, like lending a pen or discussing a difficult word, but the signing pause always creates a bit of a mess around the table, which brings up the necessity of strict action by the mediators to regain control in order to move on to the second part.

The Second Part: the 'Parties' Show'

This part is dedicated to revealing the problems by using the parties' stories. It is their chance to talk about the conflict, to present their views on the issues at stake, and as important to hear the other side.

The goals of 'the Parties' Show' are listed in Gome's manual as:⁴¹

- " 1. To let all attendees express their views freely.
2. To let the other party listen to the story and not to interrupt it.
3. To let the mediator understand the framework of the conflict."

In order to reach the above goals, the mediator has to allow "a free and undisturbed presentation of the conflict from each party's point of view".⁴² As the manual requires, the mediator should not lead or criticise the speaker. Gevim calls this 'the listening stage', emphasising the need to hear everything a party has to say, even if its connection to the dispute seems vague. The mediator has to listen silently and express interest through body language, eye contact and

⁴¹ Gome, supra note 29, p. 44.

⁴² Ibid.

positive vague words if appropriate.⁴³ After the party finishes speaking, the mediator may ask relevant clarification questions. The best way is through open questions which do not define specific answers.⁴⁴

The centres' manuals indicate that all stories should be reflected by a mediator.⁴⁵ The reflection is a repetition of the speaker's thoughts and feelings, as the mediator phrases them. It is done to show the party that the mediator had listened, understood, seen the important issues, and has empathised with him. Reflection is an important tool in creating an effective process, and a way to demonstrate meaningful communication.⁴⁶ The mediators try to follow the reflection routine, and in most processes succeed in doing so. When a party is impatient and starts talking immediately after the other terminates, the mediators usually stop him. After the reflection of the entire story, the stage is set for the next speaker, and the same structure is applied. If the mediator is not only a facilitator but an intervener, this is where he can leave his first mark.

The 'Parties' Show' ends either with a declaration by the mediators that they are going to take a break, or when the parties start talking freely (spontaneously or with mediators' guidance) and the joint meeting continues. This happened in four cases.

After the most important first meeting, other joint meetings could be announced. It happened that the first meeting turned smoothly into a regular joint meeting, or another joint meeting is set after a break or after separate meetings.

⁴³ Gevim, *supra* note 29, pp. 72-73.

⁴⁴ *Ibid*, p. 76.

⁴⁵ Gome, *supra* note 29, p. 44, Gevim, *supra* note 29, p. 77.

⁴⁶ Gevim, *supra* note 29, p. 77.

In the Practicum model this kind of meeting is the preferred type, since it takes the maximum out of the process by allowing the parties to advance towards agreement through direct communication.

Mediators' Meetings

This type of meeting is particular to co-mediation, which is the case in the Practicum model. Following the course, the mediators usually start practicing in co-mediation. Where both mediators are responsible for the process, but they are not used to each other, dual talking is a necessity. The young mediators like these chances because it gives them time to relax, to think calmly, and to enjoy guidance. It is also an opportunity to discuss their own feelings and clear up disagreements. Just like the caucuses, the length is not announced in advance; the meetings are very time consuming, lasting between three to fifteen minutes.

Mediators' meetings can be a double-edged sword for the process, because they leave the parties alone. The parties might use them for unsupervised negotiation, which they sometimes do. They can also be used for communications with lawyers, other workers in the company and so on. Otherwise the parties try to make use of that time for their personal matters. This is not an easy situation being left for an unknown period of time, close to people one is not really fond of.

In four cases there were no mediators' meetings, since the process was handled in one long joint meeting. In three cases there was one mediator's meeting, in two cases there were two, in nine cases there were three or more.

Separate Meetings

The mediators discuss whether to announce private meetings at the end of the first joint meeting or after the mediators' meeting, or in a later stage, and then

notify the parties. The procedure is that one party is called to the mediation room while the other stays in the public area of the building.

As described above, the private meetings have the power of intimate contact, which may expose deeper, even risky and extreme thoughts and feelings. The participants are reminded of their right to confidentiality in order to encourage openness. Confidentiality guards all participants, including the mediators, who allow themselves to express thoughts about delicate issues. Alongside the benefits, seeing one side involves the danger of hurting the mediators' neutrality and impartiality.⁴⁷ An additional problem is that these meetings are time-consuming, considering that a mediators meeting is required after each caucus, the time it takes to call a party back from a break, explaining the character of the meeting again etc., all while one party may be just waiting. Another problem, as a group leader warned the students, is that in caucuses parties tend to abuse the forum by repeating over and over what they have already said. Therefore his advice was to frame the first question as: *'Do you have anything new to add?'*

In private meetings the parties have another chance to present their stories, although from a researcher's point of view they do not have the power of the first narrative. Observations did reveal that parties tend to go over the same issues as in the joint meetings, but maybe in a harsher way. The mediators, who want to make good use of the allocated time, usually get straight to the point they are interested in, pushing harder towards an agreement.

Here are some statistics: private meetings last anywhere between ten and forty minutes. Out of the nineteen observed mediations, twelve had private meetings. On two of them there was just one private meeting, because the other

⁴⁷ As in mediation no. 1, when a mediator said that he had the same problem as the claimant's with the same respondent. Such a statement is a cause for an unfitness claim of a judge or an arbitrator.

party managed to come up with a solution while waiting outside, and in all others there was one meeting with each party. On one occasion the respondent used the claimant's private meeting, which came after he had his own, to leave the premises for good (mediation no. 17). One leader told the group as a guideline to have the first private meeting with the party that would need to pay. In practice, seven out of twelve private meetings started with the claimant. In nine sessions the private meetings were held right after the first joint meeting; five of these started with the respondent.

These figures are not enough to draw statistical conclusions, and the data does not show a rule as to which of the disputants should be the first in the caucus.

Only twice did people say that they kept back some information intentionally for a private meeting. In both cases it was the respondent with prior experience as a party to mediation (mediation nos. 1, 6). In one case the respondent admitted that the behaviour of his employee was inappropriate, as the claimants had described. In the other, the respondent said specifically that he did not want to offend the claimant and therefore kept his opinion for a caucus. He then noted that people who choose the tours like the claimant did belong to a low class, and they are trouble-makers who try to hurt the company's reputation by threatening claims about minor problems in order to get compensation. Problems that could be solved between the members of certain groups are intensified in others, he said. In both cases the remarks did not contribute to a settlement.

Outside the meeting room, in the court and in the Gevim offices, there is a public space allocated for the use of the participants (with other users) when they have to wait. There are no private rooms to give the parties any personal space during the breaks. The mediators considered how to create communication and togetherness, but not how to allow some quiet zones where the parties can relax and enjoy privacy. This fact reflects the limited facilities

that the centres have, but it serves the idea behind the Practicum model, which is to give the disputants opportunities to negotiate, and even to create pressure to conclude the conflict.

The custom of asking one party to invite the opponent to a caucus is another aspect of the attempt to create direct communication, and mixture between the sides.

The observations show, that the mediators never ask the parties how they would like to proceed and whether they might find private meetings useful.⁴⁸

The option to meet privately before or after the main process starts is never actualised.

Closing the Process

To complete the process, a proper mediation session should end up with some closing ceremony.⁴⁹ This ceremony should invite all participants to evaluate the path they have travelled together, to significantly conclude the ritual. The proper ending aims to give the process a framework, to sum up what the parties did, and what tools they can take with them for future interactions. The closing might consist of a few sentences, and could be really short, but it should be done nevertheless. Roberts and Palmer claim:⁵⁰

"A further opportunity arises for an active role on the part of the mediator in formulating and arranging ritual affirmation of the outcome reached by the parties. In many instances a central element in this phase will be the skilled achievement of reducing the agreement reached to written form."

⁴⁹ Gulliver, Philip (1921) *Disputes and Negotiations: A Cross-Cultural Perspective* (New York: Academic Press)(1979 edition), pp. 168-170.

⁵⁰ Roberts, Simon and Palmer, Michael (2005) *Dispute Processes: ADR and the Primary Forms of Decision-Making* (Cambridge: Cambridge University Press)(Second edition), p. 176.

With or without an agreement, the closing ceremony should transfer the participants smoothly back to the outside world. Hopes which have sunk into difficult recollections and possibly bitter arguments should be dealt with before departure. There is no guidance of this kind in the centres' manuals. They deal at length with how to reach an agreement and somewhat ignore other ending possibilities; Gulliver emphasises the need for a symbolic act which gives the ritual affirmation. He mentions the simplest ones as:⁵¹ "*hand-shaking, embracing, kissing and the like.*"

The act of signing an agreement could function as the closing ceremony. In the Practicum practice in these last exhausting moments, the mediators, who are keen to have the process finished, do not always summarise the whole process, in which the agreement forms only one aspect.

Departure marks the end of the process. Parties usually just say goodbye and leave, there were no gestures like shaking hands with the mediators. In some cases the parties shook each other's hands. In Mediation no. 11 the respondent stated that in a previous mediation he invited the claimant to a restaurant after the process, as part of his apology. But in the actual process he totally ignored the claimant's offer: "*Let's have coffee together and then I will drive you home.*" In fact, they parted quietly, saying with no anger: "*We will meet in court.*"

In mediation no. 17, the respondents entered the room in the middle of the private meeting with the claimant and declared that they were leaving the process, and they did. In mediation no. 13, after a tiring, useless exchange of arguments, both sides announced: "*We are done*" and the process ended.

Quotations from four processes demonstrate the final exchanges in the mediation. The first two reached a dead end. In Mediation no. 19 the last exchange was:

⁵¹ Supra note 49, p. 169.

Mediator: *"You didn't make life easy for us."*

Claimant: *"What can we do? Mediation doesn't always work."*

The role reversal between party and mediator is sharp and surprising. The mediator was not aware of the need for a positive closing ceremony. When they could not reach an agreement, Mediation no. 9 ended with the following words:

Mediator: *"We wish you, although with regret, the best of luck."*

Respondent: *"Thank you very much, and the best of luck to you too."*

This process ended with a feeling of familiarity, but without analysing and understanding what has happened and why.

When a final agreement is signed there is a sense of a happy ending. The closing words of Mediation no. 18 reflect the friendly atmosphere at the end of the mediation, with a tone of satisfaction and humour:

Mediator: *"You were excellent mediation partners."*

Claimant: *"You were also good mediators."*

The last example is the nice separation moment in Mediation no. 15. This has a hint of a ceremonial situation demonstrated by choosing the following poetic phrasing, again with a pinch of humour:

Respondent: *"Very pleasant hast thou been unto us."*

Mediator: *"Thou hast been very pleasant unto us too" [All laugh].*

The last quotation is an example of the parties' need for a proper closing. Since the mediators did not initiate it, the party created a fancy ending moment by using elaborate, Biblical words.

At the conclusion of the meetings, the parties have an additional chance to interact with the observers. Most of the parties say one goodbye to everyone in the room, but some dedicate special words to the observers. For example, mediation no. 12 was a dispute between an electricity contractor and his subcontractor which ended with an agreement between the parties. Upon leaving the room, the plaintiff related to the process and noted towards the observers:

"You got a bonus - learning some mathematics and engineering!"

After reaching an agreement in mediation no. 14, the claimant said to the observers:

"I hope you have enjoyed the process!"

The claimant in mediation no. 11 apologised to the observers in the following fashion:

"Thank you very much. I am so sorry it ended up like this."

The following exchange concluded mediation no. 10:

Mediator: *"This is your chance..."*

Respondent 2: *"This is my chance to leave and go, but we would like..."*

Respondent 1 [his wife, facing the observers]: *"Let them go to sleep."*

Respondent 2: *"It is boring here, isn't it?"* [Everybody laughs and goes out. End of process].

The exchanges demonstrate the need for a proper completion of the process for all the participants.

Stage Three – After Departure

The Practicum mediation process could end in many ways. The three most common ones are: by signing a final (or a temporary) agreement, no consensus whatsoever, or no agreement but leaving a gateway for future communications. If the parties reach an agreement, the centre sends it to the court, where it receives the judge's approval as a court decision, stamped, and sent to the parties. When there is no consent, the centre returns the case file to the court with no comments regarding the process, but with a note that an agreement was not reached, and the case is heard on the scheduled date.

When the mediators think that the problems which were not solved in the mediation could be solved later on, they may try to talk to the parties after the last meeting. The mediators might give the parties their mobile phone numbers,

and ask for their permission for a later contact. The experience with such cases is that if a dispute does not end during the meeting it usually ends in court. The mediators have almost no incentive to devote time and effort to post-mediation negotiations, so if the parties do not proceed independently nothing happens. In three cases (mediation nos. 10, 13, 15) the mediators promised to follow up. In one case it was to implicate the third party that was needed for completion of the settlement. In the second it was to find needed information about prices, and in the third to allow the claimant time to look for a substitute for her broken sofa. However, the temporary consent did not mature into a final agreement. This confirms Kovarsky's insights:

"If you [the mediator] do not activate the people, if you do not call them, check upon them, push them, the whole process will fade away. If you do not let it dissipate it is usually closed. I cannot understand it, but this is the parties' needs. A mediator should be very decisive. Decisiveness is a very important component to close things."

After the parties leave, the group with the leaders is assembled to discuss the process, learn from it and give the mediators feedback. The mediation notes are then destroyed.

The following table aims to illustrate the timeline and contents of the mediation process in the Practicum, in practice and then in theory.

The Practicum Model – Comparison of Theory and Practice

Time	Gome	Gevim	Both Centres in Practice
			A court referral to the mediation centre

Days to weeks			A phone call from the centre coordinator or a mediator explaining about mediation and fixing dates
Average time: (mins)	Preparations	Preparations	Preparations — mediators arrange the room, split the roles of opening ceremony (seldom) read the court papers
15	Opening	Opening	Opening ceremony Introduction of attendees, presenting the process Conducted by mediator A
3			Signing the mediation agreement
15	Parties freely present conflict	Listening to the parties	Presentation of the conflict by party A, usually the claimant
5			Questions by mediators
9			Questions and Reflection by mediator A
15			Presentation of conflict by party B
3	Reflection by mediator	Reflection by mediator	Reflection by mediator B
10 10	Explore subjects and interests; setting strategy, support, processing information	Identify subjects and interests	Mediators' meeting Supporting each other, getting leader's advice, deciding upon caucuses and what's next
20	Exploring delicate information, venting emotions, reality tests, raising options	Use for venting emotions, clarifying positions and new options	Separate meeting with party A Venting emotions, trying to find a possible settlement

8			Mediators' meeting: Suggesting ways to solution. Identifying what could be passed to party B	
20			Separate meeting with party B Venting emotions, trying to find a possible settlement according to the information from party A	
10			Mediators' meeting: processing the information towards agreement, preparing the reframing and reality checks, how to enable direct communication	
60	Creating options for settlement Finding the best option Direct negotiations	Reframing from positions to interests, from perplexity to order, from past to future	Joint meeting Direct negotiations between the parties with supervision of the mediators	
20	Writing the agreement		Writing the final agreement	
			Signing the final agreement	
	End of mediation		Dispersal	
40			Group meeting for analysis and feedback	
		Submission to get the court's approval	Returning the file to court; Sometimes: follow up to get consent for further meetings or an agreement	

My claim is that the 'opening ceremony' resembles a narrative interview, and therefore fits narrative research and narrative analysis, as the methodology chapter demonstrates. This part of the ceremony is the main source of the data and the narrative analysis in Chapters 6 and 7.

Although neither centre teaches the narrative mediation model, nevertheless, the opening ceremony is conducted according to the rules of a narrative interview. The result in both cases is that the outcome is a narrative. Identifying the parties discourse in the opening ceremony as 'narratives' give them all the strength and the meaning of narratives, and allow narrative analysis. The parties have already articulated their views in the legal papers, but in the process they produce narratives.

A breakdown of the second part of the opening ceremony reveals its resemblance to the two levels of the narrative interview. The 'Parties' Show' consists of two stages: the interviewee/party first tells his story with as few interruptions as possible; then the interviewer/mediator asks questions to develop the story, to explain neglected points, etc (see Chapter 6). The respondent's narrative is not as strong as the claimant's, since he has heard the latter's story, and may be affected by it. As narratives are often told in groups it does not weaken the second one too much.⁵²

The following citations will demonstrate that claim. For example, the invitation of the mediator to the claimant to present his side in mediation no. 6:

*"We usually start with the claimant, who tells **his story** first."*

⁵² Gidron, Ariela (2002) 'On Three Circles of Analyzing Narratives', in: Monk, Miri et al. *Revealed and Hidden Messages in the Narrative Text* (Tel-Aviv: Mofet)(Hebrew), pp. 10-44.

Another version that mediators use is saying to one party, usually the plaintiff (mediation no. 3):

"We will start with you. We will be happy to hear whatever you have to tell us."

In the second part of the opening ceremony in Mediation no. 9 the ultimate question that gives the parties a free hand: *"Who wants to start?"*

One should notice. The following example from Mediation no. 19 is more detailed than the former open invitation:

"At this stage I offer to hear the two sides, so to speak. It is very important to us that when one speaks the other listens. If there is something urgent you can write it down. There will be time to respond. It is very important for us to listen to the story as each side sees it. I invite you to tell the story not in legal terms, but as a story."

With that introduction, the mediator explained the two sections (listening and then asking), declared that he was interested in 'a story', rather than objective facts or legal statements, and emphasised that in that phase there is one main player, the speaking party. In mediation no. 10, at the end of this stage, the mediator made a beautiful connection between satisfaction and the chance to speak freely:

"...the most important thing is that we are here to finish in a good mood. When someone is talking try to listen and not to interrupt his words."

In eighteen cases the claimant was the one who spoke first. In one case only (mediation no. 8) the respondent took over and started, but usually they waited for their turn. The time factor also plays a role. Attentive listening to others is not at all an easy task. As the meeting goes on and on, the participants get tired and have less patience. The following quotation, from mediation no. 14, after the respondent said his first few words, shows a mediator who has to defend the party's rights of speech:

Claimant [to the respondent]: *"May I answer?"*

Mediator: *"Just a minute."*

Claimant: *"But I have an answer."*

Mediator: *"I am sure. I am sure. Just wait a little while, although it is hard."*

And a few minutes later:

Claimant: *"I just want to say that..."*

Mediator: *"Just a minute, it is important for us to know what Noam [the respondent] is saying, just a minute."*

Claimant: *"I am listening very carefully."*

Mediator: *"Thank you."*

Another example is from mediation no. 12, where a party protected his speaking rights by himself:

Respondent [to claimant]: *"One minute. I will finish and then I will be happy to know what you have to say."*

Often people use the typical comment: *"I did not interrupt you, do not interrupt me,"* which became almost a cliché. Here is the version that the respondent chose in Mediation no. 2 to defend his right of speech:

"Please, I will talk now; I did not interrupt you, please."

After letting the parties speak freely, the mediators allow themselves and the other party to pose questions. They may relate to points they did not understand or that even contradict the story. For example, here is a collection of one mediator's questions after the claimant's story in mediation no. 6:⁵³

"What happened on previous trips?"

"How often and how did you let the trip organiser know about your hearing impairment?"

"Were you in touch with the tour guide?"

"Did she [the tour guide] explain to you why she was angry?"

"Did the company [the defendant] ask you to cancel the trip?"

⁵³ The observations notes include a few 'could not follow the question' or 'an endless question, cannot get it' during this part.

The fact that the mediators ask only after a party's statements in the shape of a story is finished, emphasises the desire to get a narrative.

The conclusion is therefore that the parties express their own narrative in the meetings, especially during the opening ceremony but also in other meetings, since they are connected to the first one.

In Conclusion

The Practicum courses are like a micro cosmos of people who believe in peaceful resolutions inside an environment of conflicts. The way the processes are carrying on could be inductive to how people can internalize the theoretical mediation option and tools to real life.

This chapter tries to paint a full circle around these courses, to include in it the two significant centres in which the processes were conducted, the variety of people who are involved in the centres, in the courses and in the mediations. The finding that after observing more than 20 processes a 'Practicum model' of mediation emerges. It reveals that although there are differences in the theory, in practice the Practicum mediation looks the same in those two places; given the fact that the society itself is much divided, that fact raises a question. It could be that students, who are inexperienced mediators, produce an average result. The time constraints and the similarity of the disputes and the disputants could also lead to uniformity. Another explanation may be that, due to the brevity of the course, the students had not assimilated the theory fully.

The importance of the opening ceremony was then discussed. It is the main structured ritual in the process and it can be viewed as a liminal phase, to be analysed in another paper, since it is beyond the theme of this thesis. The lack of a closing ritual to balance it gives the first one extra strength. As explained,

the ritual and the narratives are at their best at the start of the process. The reality that the process fades away and the participants return to normal life is not an exception to rituals, but may raise thoughts about changing the ending to achieve a better impact of the process. Another thought is to understand the narratives that are told using narrative tools, which should be taught and experimented to enlarge the professional abilities of the mediators.

Relatively to intensive learning procedure with load of different demands, the groups were conducted calmly, using moderate criticism when members though necessary, and a large amount of acceptance. There is mobility among students, meaning that one can take the basic course in one centre and the Practicum course in the other, but not among the leaders. Under the above reservations, the easy going way of the groups inside the confused surrounding is an interesting point. Saying that, the insight of Greek philosophy, suggesting that a person of practical wisdom inhabits the human world, and does not attempt to rise above it, seals this descriptive chapter.⁵⁴

⁵⁴ Nussbaum, Martha (1986) *The Fragility of Goodness: Luck and Ethics in Greek Tragedy and Philosophy* (Cambridge: Cambridge University Press)(2001 edition), p. 314.

PART 3

This part (chapters 6 and 7, and the Conclusions) forms the core of the field research and of the whole thesis. After describing the background, and having established the narrative approach, the observations could be understood in the right context. These chapters uncover the narratives in the mediation sessions in order to give an ethnographic picture of the Practicum mediation process. The two sections of chapter 6 and the themes identified in the parties' narrative description in chapter 7 should be read in the light of the description of how the meetings serve the process and the description of the places in chapter 5, the ideology and the background of the mediators in chapter 4, and the ethos of conflict as in chapter 1. These chapters offer a holistic view of the mediation processes as conducted in the Practicum framework. The conclusions section of the whole thesis at the end summarises the whole study and offers ideas for further research.

CHAPTER 6

The Mediators' Voices

As the facilitators of the process, mediators are responsible for applying the theory of mediation to real cases. Although the process depends on all of the participants, the mediators possess the knowledge and skills to lead it, and therefore have a special responsibility for its outcome. After describing how mediators function in the opening ceremony and the task of the different meetings (chapter 2), this chapter examines their activities, focusing on the ways in which they voice their views when they conduct the process.

Two main cultural phenomena were identified as tools used by the Practicum mediators. These tools are the main findings of the observations. They were interesting because they did not follow the theory rules, were not essential to the process and were not at all obvious. These special tools are: the use of

questions drinking coffee. The fact that both tools were extensively used in both centres suggests they are brought 'from home' rather than from 'the theory', i.e., they are based on intuitions and culture.

This chapter is divided into two main sections accordingly. Concentrating on these two issues will provide a picture of how the mediators understand and execute their role in the process, and what cultural phenomena they express while fulfilling that role.

Section 1 – Questions

The main tool which the mediators use to conduct the process is the asking of questions. Mediators usually use questions to advance communication between the parties and to clarify difficult issues, as a way to offer new ideas about the dispute and optional solutions, and also to escape difficult moments. Observations also show what an extremely powerful, significant and enabling tool questions are; they can further or impede the discussion, open up new thoughts, suggest different views, heal or deepen sensitive spots, strengthen or weaken one party, and more. Questions delineate the pathway and the boundaries of the process, defining what subjects interest the mediators and what they consider to be the issues at stake.

Concentrating on the questions posed by the mediators demonstrates how they navigate the process and in which direction. The massive use of questioning calls for attention as a sociological phenomenon. This section therefore places particular focus on those questions, which reflect the narratives of the mediators.

The questions that mediators ask could be classified in various different acceptable and sensible categories. The most important category is straightforward necessary questions which relate to the subject. The latter

contains those trivial but relevant questions which are essential to the process and not interesting for the purposes of this research. What is interesting is the enormous body of questions that seem to be entirely irrelevant to the flow of the process. As such, they bring out the unique voice of the specific mediator, expressing what he is interested in and his special contribution to the discussion, and reveal a great deal about his attitudes towards the parties and the issues.

This last set of questions may be classified in two sub-categories: the first includes questions about feelings; the second includes questions that are so far away from the disputed issues that they lead the researcher to wonder why they were asked. The last part of this section deals with the understandings that emerge from the mass of 'off-track' questions.

Before describing the questions in the mediation processes observed, there is a discussion of the theory of questioning within the learning procedure of the students.

The parties also use questions but, unlike the mediators, they do not tend to ask questions which belong to these special groups. They prefer other means to communicate with each other, such as speaking freely and directly about what is on their minds, sometimes adding bold body language, as well as introducing documents and pictures, while mediators mostly ask questions.

The following poem, written by a young Israeli poetess, illustrates a situation well known to those who fly into or out of Israel, and demonstrates that what starts with a simple banal question by a security person, can end in tears:¹

*"Out of all the
But it is questions
To ask: did you pack alone?"*

¹ Gidali, Orit (2003) *Twenty Girls to Envy Me* (Bnei-Brak: Sifriyat Poalim)(Hebrew), p. 10.

Yes, alone.
It was difficult, I said
more difficult to fear that it
Will never come.
I am not pretty, you see,
And the heart is big as a fist.”

Learning How to Ask

The first basic theory book that the centres use is '*Getting to Yes*', modelling the pragmatic stream.² The pragmatists present an active mediator, equipped with questions and ready to use them in order to move the process forward towards a settlement. '*The Promise of Mediation*,' theorising on the transformative methodology, has a different attitude, stating that mediators' interventions should be limited to supporting the parties when needed.³ The legitimacy of asking questions is minimized, and if questions are asked they should be open-ended; the mediator should be less active and listen more.

Gome's manual, in line with the pragmatic stream, states that in the first stages of the mediation, the mediators should ask only open questions that do not suggest one 'correct' answer.⁴ These questions aim to widen the debate and obtain new information about the conflict. The manual warns that the purpose of the questions is not to convey the mediator's opinions, but to enable free thinking by the parties involved.⁵ It also relates to the use of questions as a tool to let the parties air their views, as part of a good mediation process.⁶ Later on, when trust and cooperation have been established, direct questions (requiring a

² See chapter 3; Fisher, Roger and Ury, William (1981) *Getting to Yes: Negotiating Agreement without Giving In* (New York: Penguin Books)(1991 edition).

³ Bush, Baruch and Folger, Joseph (1994) and (2005 edition) *The Promise of Mediation: Responding to Conflict through Empowerment and Recognition* (San Francisco: Jossey-Bass)(2005 edition), p. 117.

⁴ Gome (undated) *Basic mediation course* (Hebrew), p. 74.

⁵ Ibid, p. 75.

⁶ Ibid, p. 37.

'yes or no' answer, or a question that assumes a limited number of options), are allowed.⁷

In line with the transformative rules, Gevim's manual places questioning as part of the section entitled: 'Effective Listening':⁸

*“Ask questions that are **relevant** to the issue. Questions serve to obtain information, understand a point of view, identify needs from the viewpoints of both parties, for clarification, checking meaning, encouraging openness, **enabling expression and clarification of feelings**, choosing between options and directions of thinking and creating indirect communication between the parties.”*

The manual then provides illustrative examples and further instructions, such as: use open questions, refrain from judgement or leading questions, and ask about one subject at a time. Its statement that questions about feelings are relevant leads to the next section that demonstrates how they are used.

The manuals show that the leaders are aware of the positive and negative power of the questioning mechanism. They aim to teach the students how to frame questions effectively and how to avoid the pitfalls of unsuitable ones. But, when mediation is strained and tense, and hours go by, phrasing the questions correctly becomes harder.

Mediators in the Practicum pay little attention to building up the line of questioning, usually even in the first stage; questions are thought of and asked on the spot. Sometimes in a mediators' meeting they decide on questions they think will be important later to clarify specific issues, but questions are commonly formulated on the spur of the moment. Questioning is no less critical than reframing or phrasing the final agreement, both of which are explicitly taught in the course, but the art of questioning is not addressed adequately.

⁷ Ibid, p. 52.

⁸ Gevim (undated) Integrative Mediation and Negotiation Management Course (Hebrew), p. 76.

One wonders why, if questioning is such an important tool to create progress and overcome obstacles, no greater effort is devoted to studying and improving the way mediators understand and use it.

Group One - Questions about Feelings

On the Nature of Feelings

The human race developed feelings as one of the means to help people cope with the challenges posed by the outside world.⁹ Emotions are the in-between stage where sights and events are translated into action. Psychologists defined almost two hundred utterances that express a very wide gamut of emotions, from love to hate, ranging through longing, disgust, disappointment, anger, hope and even humour.¹⁰ Emotions have been defined as being composed of three sources: physiology, a cognitive process that adapts the experience, and a communicative process.¹¹ The latter includes both verbal and non-verbal expressions. Emotions are an important component in explaining human behaviour; they function as triggers – the causes and the results of actions. Conflicts are thought of as situations where emotions are tense and sometime explode.¹²

⁹ Damasio, Antonio (1994) *Descartes' Error: Emotion, Reason and the Human Brain* (New York: G.P. Putnam's Sons); Smith, Craig and Lazarus, Richard (1990) 'Emotion and Adaptation', in: Pervin, Lawrence and John, Oliver (eds.) *Handbook of Personality: Theory and Research* (New York: Guilford), pp. 609-637.

¹⁰ Cowie, Roddy and Cornelius, Randolph (2002) 'Describing the Emotional States Expressed in Speech', *Speech Communication*, vol. 40, is: 1-2, April 2003, pp. 5-32.

¹¹ Jones, Tricia (2006) 'Emotions in Mediation: Implications, Applications, Opportunities, and Challenges', in: Herman, Margaret (ed.) *Blackwell Handbook of Mediation: Theory, Research, and Practice* (Malden: Blackwell), pp. 277-305.

¹² Schreier, Lori (2002) 'Emotional Intelligence and Mediation Training', *Conflict Resolution Quarterly*, vol. 20, is: 1, pp. 99 – 119.

Emotions are also an important factor in rituals, as Cassirer notes:¹³ "to share in a ritual performance means to live a life of emotions, not of thoughts." Since mediation involves both conflicts and rituals, it is no wonder that emotions play such a substantive role in the process, whether expressed or hidden.

Feelings are a Cultural Phenomenon

In all cultures, feelings are highly important for understanding how people function.¹⁴ The range of popular-regular feelings on one extreme and bizarre ones on the other, where and how they are expressed, vary from one society to another.¹⁵ Working through the information that we receive from the world around us and translating outside events into suitable emotions, is a culture-related process. The result is that in different societies people may assign different interpretations and importance to external events, ranking them in a specific order of priorities.¹⁶ Collective emotional orientation is a result of shared experiences or ongoing messages.¹⁷ Emotions are not only phenomena at the individual level, but also reflect common beliefs and cultural structures.¹⁸ The assumption is that within the same culture people share similar emotions in similar situations.¹⁹ Emotions, and especially the expressions thereof in a closed environment, are shaped socially.²⁰ This is the result of joint experiences shared by members of a society through socialisation processes. Exposure to the

¹³ Cassirer, Ernst (1946) *The Myth of the State* (New Haven: Yale University Press)(1974 edition), p. 24, as quoted in Kertzer, David (1988) *Ritual, Politics, and Power* (New Haven: Yale University Press), p. 67,

http://assets.cambridge.org/97805218/41535/excerpt/9780521841535_excerpt.pdf(1.12.2010).

¹⁴ Bar-Tal, Daniel (2007) *Living with the Conflict* (Jerusalem: Carmel)(Hebrew), p. 278.

¹⁵ Markus, Hazel and Kitayama, Shinobu (1994) 'A Collective Fear of the Collective: Implications for Selves and Theories', *Personality and Social Psychology Bulletin*, vol. 20 (5), pp. 568-579.

¹⁶ Supra note 15, p. 279.

¹⁷ Ibid, p. 283.

¹⁸ Ibid. p. 279.

¹⁹ Ibid.

²⁰ Ibid. p. 103.

same narratives, information, symbols, norms and values contributes to the creation of a communal expression of emotions.²¹ For an amusing example, according to Fox,²² Englishmen are permitted three emotions only: surprise, anger and elation/triumph; whereas Englishwomen seem to have more freedom, and may express a slightly "*wider range of acceptable emotions.*"

Feelings in Mediation

The legal discourse is about documents, rights and obligations according to laws and precedents. The mediation discourse has an option to branch out and allow more personalisation by letting in feelings, but their place is subject to debate in the mediation literature.²³ How the parties view emotions, theirs and the other parties', and how they choose to approach them is an important component in understanding the parties' needs and the nature of the conflict.²⁴

'Getting to Yes' advises making emotions explicit and acknowledging them as legitimate.²⁵ It encourages talking about emotions, even about the mediator's emotions, explaining that recognising feelings eases the grievances, which are inevitable in a conflict situation.²⁶ Bush and Folger, in their implementation of the principle to let the parties do the talking between themselves with little interruption, state:²⁷

²¹ Ibid. p. 282; Stephan, Walter and Stephan, Cookie (2000) 'An Integrate Threat Theory of Prejudice', in: Oskamp, Stuart, (ed.) *Reducing Prejudice and Discrimination* (New Jersey: Lawrence Publishers), pp. 225-246.

²² Fox, Kate (2004) *Watching the English: The Hidden Rules of English Behaviour* (London: Hodder and Stoughton Ltd), p. 243.

²³ A good literature review on the subject can be found in supra note 12, p. 100; Jameson, Jessica et al. (2010) 'Exploring the Role of Emotion in Conflict Transformation', *Conflict Resolution Quarterly*, vol. 27, is: 2, pp. 167-192.

²⁴ Supra note 12.

²⁵ Supra note 2, p. 31.

²⁶ Ibid.

²⁷ Supra note 3, (2005 edition), p. 153.

"Despite the parties' angry, emotional exchange, the mediator does not intervene to defuse or contain the emotion. This is intentional, and it is a clear reflection of his commitment to party choice and control."

The mediators' role is to support the party's choices, including those of sharing or not sharing emotions.²⁸ could also interpret 'empowerment and recognition', the basic building blocks of transformative theory, as dealing with feelings, and understand 'transformative mediation' as achieved hand-in-hand with a change of feelings, and 'empowerment' as a way to control feelings rather than being controlled by them. Tsur's explanation is relevant here:

"When talking about transformative mediation, it is a process of transformation of emotions. It is not a transformation of what actually happened. It is not that I was convinced 'Oh, now I know what really happened...' It is not the facts that change. It is the emotional experience that changes."

Attitudes in the literature towards feelings vary. Some espouse the view that disclosure of emotions is fundamental²⁹ and positively impacts the outcome of the mediation, especially when long-term relations are concerned,³⁰ so that mediators should explore the parties' feelings as an important step on the way to agreement.³¹ Others support leaving feelings aside and concentrating on maximizing the material benefits for the parties.³² Dattner is aware of the problem:

"We live in a complex world. Nobel prizes in economics are focusing on the emotional side of economic decisions. So we [mediators] cannot ignore the place of feelings; we cannot say we will not speak about feelings, about the unconscious, about irrational decisions; mediators sometimes take this position."

²⁸ Ibid.

²⁹ Jones, Tricia and Bodtger, Andrea (2001) 'Mediation with Heart in Mind: Addressing Emotion in Mediation Practice', *Negotiation Journal*, vol. 17, is: 3, pp. 207-244, p. 221.

³⁰ Gayle, Barbara and Preiss, Raymond (1998) 'Assessing Emotionality in Organizational Conflicts', *Management Communication Quarterly*, vol. 12 (2), pp. 280-302.

³¹ Supra note 29.

³² Della Noce, Dorothy (2009) 'Evaluative Mediation: in Search of Practice Competencies', *Conflict Resolution Quarterly*, vol. 27, is: 2, pp. 193-214.

Gat presents the realistic side, as she articulates with a little laugh:

"Of course people need 'empowerment and recognition' but they do not come to mediation for that. That will not satisfy them. They need a solution for their conflict."

And Shimon, relating to the habit of discussing emotions adds:

"I am not the type to do psychology on the spot, because really, this isn't the place... business people don't like it, business people want goal attainment. And since I come from the world of business, I know how to be goal-oriented."

Where are the Practicum's mediators on the scale between those who claim that emotions should be put aside as much as possible, and those who give them plenty of room, believing they are essential to the attainment of a fair agreement? On the one hand, civil conflicts tend to involve fewer emotions than personal long-term conflicts such as divorce cases. On the other hand, Israelis are inclined to be emotional and sensitive about their values, principles and rights, and disputes. Observations show that the mediators actively kept trying to open discussions about feelings using their own questions, which often did not derive from the parties' expressed needs. These kinds of questions consumed a disproportionate amount of time in the meetings, and therefore deserve particular attention. It was clear that mediators in the Practicum think that feelings are certainly worth dealing with. Evidence supporting that claim was found in the mediators' meetings and feedback sessions. The next section will start with a demonstration of the use of feelings in the processes, and end with an understanding of their context.

Questions about Feelings

Usually the mediators simply ask the participants direct questions about their feelings, and they do so throughout the process. Sometimes they address feelings at the first joint meeting, as in the following statement, which was not a question but received affirmation (Mediation no. 12, first joint meeting):

Mediator: "*You tell us and we strongly feel in the room that you do not feel he is your enemy.*"

Claimant: "*You are right.*"

This statement which was part of the mediator's reflection shows how the mediator treated feelings: he touched on them but with concern, from afar, wanting to explore them, but not knowing how to deal with the outcome. The mediator could have reflected the party's words ('*we are not enemies*') differently – '*you said*', or '*you believe*' – but he translated the message as if in the realm of his own emotions. Yet, a close look at the phrase reveals that he was not totally confident in the transfer to the area of emotions; instead of saying '*I feel*' he used '*we*' and '*the room*' as a safety net, or maybe a safety screen, to separate what he was saying from his own feelings. Another explanation could be that the mediator wanted to create a sense of solidarity in the meeting, which can help when feelings are involved. This is done by changing what the claimant said – '*we are not enemies*' – to the area of feelings that supposedly all participants share. This example, with its exceptional choice of words, also demonstrates that dealing with pleasant feelings such as friendship is as difficult as dealing with difficult emotions.

The next opportunity to relate to feelings is when a party returns from a break for a caucus. This is a common way to start a discussion (Mediation no. 3, Mediation no. 10):

Mediator [to party]: "*How was it in the break?*"

The mediator presented an open question. How it related to the problems at stake is unclear, its purpose was to begin a dialogue, to show caring and create a softer atmosphere. But the invitation to share the experiences during the break is not always accepted well, as in this claimant's reply (Mediation no. 3):

Claimant: "*This is not a matter of feelings.*"

The first break usually happens after the parties have told their narratives and the mediators have reflected them (around 30 minutes into the process). The parties cannot, at this early stage, absorb what mediation can suggest, let alone apply it. They are not confident enough of the process and of the mediators, and soon they find themselves alone in a break. During that time they can connect with each other, with outsiders or stay by themselves, an alternative that allows feelings to emerge. But often when a party returns inside, he is anxious to achieve some kind of actual progress, and mediators therefore need to be practical and use the break to contribute to promoting the process.

Later on in the meetings, the mediators are willing to bring up the subject of feelings again. The next example from a caucus in Mediation no. 4 is another demonstration of the way that mediators treat feelings:

Mediator: "*The fact that you purchased a new sofa created **disappointment**. Are you ready to take responsibility for that?*"

Claimant: "*I will **apologize**.*"

Her Husband: "*We are willing to be **ingratiating**.*"

Mediator: "*We do not want either of these. **We want** you to offer a convincing sum.*"

The mediator used a passive voice mentioning '*disappointment*' and '*we*' when reacting to the claimant's offer, and made a beautiful connection between hurt feelings (his?) and the need to compensate (who?). The blending of feelings and matters of fact creates confusion in the goals and means of the process, and it is astonishing when it comes from the mediators, who are supposed to separate

the two. Discussing bad feelings, as Fisher and Ury note, starts a chain reaction and even the mediators, especially inexperienced ones, might be damaged.³³

The continuation of the discussion in Mediation no. 4 above proves this claim:

Mediator: *"We do not want either of these. We want you to offer a convincing sum."*

Claimant to Mediator: *"You will name the sum"* [And after a little thinking he continued] *"But mediators cannot say..."*

To that comment the Mediator replied: *"So what, did you want to trick us?"*

That process did not get stuck immediately after the above exchange, but the understanding and trust could not be restored until the end.

Mediators, especially the younger ones, introduce their own feelings into a specific process. They talk about it in the mediators' meetings and after the meeting ends. They reveal their thoughts to the other participants and to their colleagues. The quotation above shows a defensive, even offended, response from the mediator. When a mediator is involved so deeply in the process, and he makes his feelings the issue, he might find that being neutral later is not really possible.

Mediation no. 20 demonstrates that the connection with emotions continues throughout the process. During the stage of seeking a legal arrangement at the end of one long joint meeting, the mediator posed a question:

Mediator: *"But how do you give him the **feeling**? He does not know..."*

Respondent: *"Legally speaking, he [the claimant] signed an agreement that legally enables him to..."*

Mediator: *"Here we are discussing **emotions and feelings** that he might share with us. Let's build up a mechanism. What would have given you **the feeling that you can see the facts in a different way?**"*

Was the unfinished question, changing the discussion towards feelings, a hint that the mediator felt safer in that field than in the legal one? Did he think that

³³ Supra note 2, 30-35

there were still problems about feelings that should be discussed? The later discourse contributes to the understanding:

Mediator: *"What will help you **calm** down? Is there something that could help you to bear your **frustration**?"*

Claimant: *"**Frustration**???"*[giggles in embarrassment].

The man did not mix his feelings with what he was looking to get, but the mediator did, trying to impose a certain kind of feeling on him. It seems to the observer that the focus was on the mediator's need to soothe the atmosphere rather than the claimant's needs.

Obviously, parties varied in their willingness to talk about their feelings; some were more pleased to share what they felt, but many tried to avoid entering this zone. Some are more closed and protective of their privacy, while others are more emotional and sharing; in meetings, businesspeople usually want to get straight to the point of solutions. But, by and large, the attitudes of the mediators towards different personalities were not flexible; they liked to discuss feelings. Examine what happened in Mediation no. 15 in the second joint meeting:

Mediator: *"So your lawyer said that you would look good in court?"*

Respondent: *"It is not a matter of looking good, I gave him the data"* [repeats his story].

Mediator: *"In your **feelings**, what do you **feel** about the story?"*

Respondent: *"If I had had a solution I would have said so."*

The mediator and the respondent carried on this back and forth between feelings and legal analysis, with the mediator trying to direct again towards feelings:

Mediator: *"When you were thinking about the mediation, what did you **expect**?"*

Respondent: *"What kind of a question is that?? My lawyer said I would win."*

The mediator meant to ask about hopes and wishes; it was clear to him and to the observer, but not to the respondent, who focused on the practical aspects of the conflict. The mediator was aiming in one direction while the participant insisted on going in another.

Mediators even ask the parties about their feelings towards the process, a step that looks as if they need emotional reinforcement; as in Mediation no. 18:

Claimant [answers a question]: *"I was in mediation before."*

Mediator: *"And did you **enjoy** the process?"*

Claimant: *"It is always good to try. One can always go to court."*

And in Mediation no. 2:

Mediator: *"And how do you **feel** in mediation?"*

Claimant: *"Good, although I would prefer not to be here."*

A participant in a middle of a dispute is asked a straightforward question - whether he is enjoying the process. The claimant in his answer shows the complexity of the situation, but his answer was not developed by the mediator. This small example demonstrates again how difficult it is to deal with emotions; having mixed feelings is common, but when, like in the above case, there is no reflection of the confusion in the conversation, the revelation of contradictory emotions contributes to the confusion.

The following exchange is not a question but nevertheless the phrase required an answer. In Mediation no. 1, the mediator inserted his own feelings because he was involved in a conflict like the one at stake. He told the respondent, the postal service representative, in a private meeting:

Mediator: *"I had the same thing happen to me [as the claimants] with the postal service [the respondent]. I am so upset with them."*

Respondent: *"I try to deal with each case as needed."*

The mediator expressed his own feelings even more strongly than the claimants. This example shows another danger in dealing with emotions – they

are contagious. It also shows the space that mediators give to their own position within the conflict.

The extensive use that mediators make of questions about feelings proves that they are allowed and that expressing them is welcome. The problems with this attitude are mainly the irrational allocation of time and the lack of experience and knowledge of the mediators as how to channel the existence of feelings when they are revealed into a positive mechanism that contributes to the process. Therefore, on many occasions when feelings are brought to the surface and possibly reflected, they are not dealt with around the table. To do this right, one needs maturity, experience, gentleness and professionalism, together with the ability to refer flexibly to the different reactions towards the emotions of participants. Nevertheless, dealing with conflicts might also bring up good memories or optimistic hopes. Strangely, these types of feelings are not dealt with often.

To sum up: the findings of this subsection are that the mediators are keen to involve feelings in the process, even when they are not mentioned by the parties. When the parties do express emotions, the mediators find it hard to use them positively in the process. The next subsection sheds cultural light on the above findings.

Questions about Feelings and Israeli Culture

In the early years of the new state, cool, rational thought characterized the ideal image of the young Israeli, who could face all difficulties head on.³⁴ The Israeli narrative demanded heroes to control and even hide their emotions, and

³⁴ Spector-Mersel, Gabriela (2008) *Sabras Don't Age: Life Stories of Senior Officers from 1948's Israeli Generation* (Jerusalem: Magnes)(Hebrew), p. 244.

concentrate on building the country and keeping it safe.³⁵ This image of the 'perfect Israeli' ruled for many years. In 1971, Elon wrote:³⁶

"The young Israeli cautiously blocks his feelings like a rider reins in wild horses for fear of a stampede. In a discussion that requires the expression of feelings, the young Israelis will maintain a rugged kind of speech that has become second nature, as if even the very mention of an emotion they might have could violate a prohibition or expose a secret or display a softness they would consider a luxury... feelings are good, but should be expressed in deeds, not words. The tendency to be reluctant to express feelings as if it were enemy territory requiring radio silence is a fundamental trait of the new Israeli."

Masculinity and the expression of emotions used to be contradictory in Israeli culture (as in other cultures).³⁷ Being 'cool' and 'one of the guys', which was considered to be important, demanded strict control over one's emotions.³⁸ Men were supposed to stay calm and avoid anger, even during acts of aggression.³⁹ In a country where a large proportion of the population has army experience, through which they were trained to keep their feelings in check, especially in combat situations,⁴⁰ this habit becomes second nature.⁴¹

Katriel finds similar ideas about emotions in the ethos of the Israeli middle-classes. She suggested that this class views emotions as dangerous, as if they

³⁵ Ibid, p. 245.

³⁶ Elon, Amos (1971) *The Israelis* (Jerusalem: Shoken)(Hebrew), pp. 240-241.

³⁷ This thesis does not get into gender issues, although sometimes the text cries out for gender treatment. In fact, for a long time women were almost excluded from Israeli history-writing, as if they absorbed all the male codes, as is the case here; see: Atzmon, Yael (2001) *Can you Hear My Voice? – Representation of Women in Israeli Culture* (Jerusalem: Van Leer Institute)(Hebrew).

³⁸ Kaplan, Danny (2007) 'What Can the Concept of Friendship Contribute to the Study of National Identity?', *Nations and nationalism*, vol. 13 (2), pp. 225-244; 'Being cool' is connected to being a good soldier, but the demand goes beyond military connotations, as a sociological phenomenon. As being a 'good' soldier is highly appreciated in Israel, his characteristics are reflected, admired and emulated in civil life, and applies to women too.

³⁹ Ibid.

⁴⁰ Ben-Ari, Eyal (1998b) *Mastering Soldiers: Conflict, Emotions, and the Enemy in an Israeli Military Unit* (New York: Bergham Books), p. 85.

⁴¹ Ibid, p. 47. Ben-Ari also notes the great need to control emotions when dealing with civilians, 82; also see: ; Liebllich, Amia (1989) *The Transition to Adulthood During Military Service: The Israeli Case* (Albany: State University of New York Press).

might cause one's behaviour to get out of hand. Emotions pose a threat to rationality and may thus invite chaos into the order of the structured world.⁴² It is interesting to see the similarity between soldiers and the middle-class, two large sectors that are expected to perform according to strict rules.

These behavioural codes have changed over the years. Since 1970, the 'new Israeli' has come a long way in legitimizing the public expression of feelings both through words and actions.⁴³ This development has kept on moving in the same direction – from keeping all feelings under wraps, to showing them openly, and even extravagantly. At the time of the research, friends of both sexes hug each other and frequently add kisses when meeting and separating, a behaviour that was unheard of 30 years ago. Displaying sadness at traumatic events is not only accepted, but expected; it is common to see soldiers crying at a fellow soldier's funeral, or teenagers crying at memorial ceremonies.⁴⁴

Legitimizing the public expression of feelings, together with theories that allow using them in mediation processes, have combined together to manifest in the mediators' questions. Tsur explained his thoughts on the matter:

"We have developed a species here called the 'Israeli Sabra'. Among other traits, this Sabra is opinionated. He is also emotional, with a two-way emotionality, and he also has a very big heart...The level of tolerance I notice among Israelis, and I also know about mediations elsewhere in the world, is much greater here...We really have the notion that if someone says 'sorry' or 'I didn't mean to', or 'I really didn't mean it to happen', or 'I didn't think that's what it would do to you', when it is said authentically, then it works. And then it is 'He that covereth his transgressions shall not prosper; but whosoever confesseth and forsaketh them shall obtain mercy.'⁴⁵ It really works like that. Now it is also connected to the job of the lawyers

⁴² Katriel, Tamar (2004) *Dialogic Moments: From Soul Talks to Talk Radio in Israeli Culture* (Detroit: Wayne State University Press), p. 246; she sees similar attitude to emotions in the US middle class.

⁴³ Katriel attributed the trigger for the change to the popular fashion of intimate radio programs which enabled anonymous talks about feelings, *ibid*, p. 313

⁴⁴ Levy, Yagil et al. (2007) 'From 'Obligatory Militarism' to 'Contractual Militarism' - Competing Models of Citizenship', *Israel Studies*, vol. 1, pp. 89-116.

⁴⁵ Proverbs 28:13.

in the mediation process, but it is mainly connected to who is Israeli, if you ask me... It is part of this place. When someone says 'I didn't ask, I am asking now' – I have not come across anyone who replies 'No'!.. They understand that there is a very strong culture here that is connected to the process."

Kovarsky agrees, while picturing a different 'Israeli' from Elon's 1970s depiction:

"I often see the extremism in people who hate each other, who can't stand each other. It is very Israeli, after shouting for an hour and a half (not in the room), but to the same extent they love each other as much as they hate each other. So there is something, a great emotional fluctuation. What you see in other places is that the fluctuations are very, very small. So there is something that on the one hand is a bit exhausting. The ups and downs are relatively great in a short time."

To sum up: Israeli culture has come a long way in its attitudes towards revealing emotions – from a culture that strove to hide any expressions of emotion, leaving them to the private sphere, to a culture that is very open to their public expression. Today, Israelis feel free to vent their emotions in public using hand gestures and loud voices. The mass use of cellular phones has intensified the legitimacy of speaking about intimate subjects in public. This openness applies to almost any emotion – love, anger, disappointment, concern etc.

Sharing the same culture makes mediators and litigants use a similar arsenal of feelings and externalization of emotions, so the mediators assume that they can predict the parties' feelings. Although it is impossible to totally control 'social emotions',⁴⁶ observations reveal that the mediators voice their understandings about the parties' feelings enough to enhance them, to aid communication and resolutions. There was a great deal of encouragement to speak about feelings, but little attention was dedicated to treating the feelings exposed. Through their

⁴⁶ Katriel, Tamar (1991) *Communal Webs: Communication and Culture in Contemporary Israel* (Albany: State University of New York), p. 28.

intense use of questions, the mediators determine that today's Israeli is an emotional person who also tends to share his feelings with others, a distinction that is relevant not only to the parties but to the mediators themselves.

Group Two – Off-Track Questions

The mediators work in two spaces: the space of the formal dispute, which is defined by the law, the court's instructions and the legal documents, and the space of the mediation, where each side adds more views, needs and interests. The task of the mediator is to help the parties unravel the dispute threads from both spaces and pull them together, one by one, into a resolution that suits both spaces. This sub-section deals with issues that lie beyond the above spaces. These are the questions that awaken the researcher's interest; they are non-trivial and unexpected, begging for explanations as to why they exist in large numbers. The two sub-sections sometimes overlap, which happens when categorizing.

Bush and Folger describe the spiral shape (rather than a straight line) that mediation processes tend to adopt:⁴⁷

"In transformative mediation, conversation tends to cycle in nonlinear fashion up and down, forward and back — but nevertheless leads to interactional gains as well as transactional resolutions."

In his interview, Naftali drew the spiral line that represents the pace of the process, going towards a solution and away from it, forward and backwards. Matz points out the one area in which he has found that mediation in Israel differs from small claims mediation in the US (he has experience of both):⁴⁸

"The settlements were the same, the satisfaction rates were the same. The nature of the mediation, the techniques and the forms were all the same. The one thing that was different was that mediation here took twice as long!"

⁴⁷ Supra note 3 (2005 edition), p.180.

⁴⁸ Also in: Matz, David (1991) 'ADR and Life in Israel', *Negotiation Journal*, vol. 7, is: 1, pp. 11-16.

Many times the direct route to resolution is identified only in retrospect; this is especially true when the range of possible solutions is not defined. But the process cannot behave like an octopus reaching in all directions. The intentional thought of the mediators should be concentrated on the conflict, unfolding the parties' needs and interests. Unnecessary and pointless questions (frequently articulated in long complicated sentences) created irrelevant discussions which contribute to the spiral pattern and the length of the process. As is demonstrated in this sub-section, 'off-track' questions appear a lot in the Practicum, even though they are risky, since, in addition to wasting time and energy, they may actually aggravate the process. This may mean, given the time constraints, that fewer settlements are reached.

Chit-Chatting

The same question that one party in the above subsection understood as belonging to the area of feelings, another saw as an unnecessary invitation to prattle. The fact that two unconnected parties understood differently but resisted the same question strengthens the understanding that these questions do not necessarily serve the due process of mediation.

A common question that mediators use to open a private meeting was (Mediation no. 10):

Mediator: *"How was it in the break?"*

Respondent: *"Much too long... I did not know it would take so much time."*

And same situation in Mediation no. 20:

Mediator: *"How was sitting outside?"*

Respondent: *"Let's move on."*

One can see repeated questions about the break as demonstrating the use of questioning as a simple, non-committal way to open a dialogue. These are the ordinary questions that people ask at any casual encounter to get a superficial conversation started. By reopening with this type of question, the mediator expresses interest in the party somewhat nonchalantly, as one would in a casual conversation. This part also demonstrates attempts to establish a '*communitas*' as part of the rituals, as will be explained later.

Invasive, Personal Questions

The group leaders are aware of dangerous questions that may worsen the interaction, so they try to warn the younger mediators to be careful. Hurting a party or breaching neutrality with an invasive question is one way to harm the process. However, a significant body of questions that could be seen as breaching privacy or invading personal matters was observed. Here are few examples from Mediation no. 19, at the start of the joint meeting:

Mediator: *"I see that you sit here behalf of yourselves and your wives?"*

Claimant: *"I have a sick child at home and she stayed with him."*

Mediator: *"And what about you?"*

Respondent [confused]: *"I also have a sick one and she stayed with him, I am not good at this stuff."*

[and only now comes the relevant question]:

Mediator: *"Are you authorized to sign for them?"*

Later on the claimant started to tell his narrative, when the mediator interrupted:

Mediator: *"Can you tell me what do you do?"*

Claimant: *"I am a freelancer."*

Mediator: *"And where do you work?"*

Claimant: *"In Netanya, and there is something else, [trying to return to the matter] the timetable, we had to leave our flat."*

Mediator: *"And where do you live?"*

Towards the end of the claimant's story at same meeting:

Mediator: *"Is there anything else?"*

Claimant: *"It's all right."*

Mediator: *"And what did your wife send you here with?"*

Claimant: *"An apple."*

Mediator: *"Is she waiting for you to call in the break?"*

Claimant: *"No; it's all right."*

This is not an extraordinary exchange, but a normal interaction between mediators and participants. Asking the type of personal questions which belong in a friendly meeting happens frequently. Notice how the mediator introduces a personal remark, and the surprising reply:

Mediator: *"Here the important things are the dialogue **between you and us**, it is essential. If we keep on digging up the facts of the dispute we will not be able to talk. I am not talking about the facts. By the way [to the claimant] do you know that **your family name is the same as that of my grandparents?**"*

Claimant: *"I never knew my grandparents."*

The claimant did not know that fact, of course, but he answered with a personal comment to the personal question, but the reply was rather sad. Invasive questions can easily slide into personal matters which a party is not keen to discuss. In Mediation no. 6, after the claimant finished telling his story again in a private meeting, the mediator addressed her adult son who had escorted her:

Mediator: *"What is your job?"*

Respondent: *"I am in finance."*

Mediator: *"Now you have really aroused my curiosity."*

Respondent: *"If you want I can tell you about it later. It has nothing to do with this mediation."*

This pattern of questioning – trying to start a conversation using personal questions – happens frequently; for example, in Mediation no. 2 during a private meeting:

Mediator: *"Where do you live?"*

[Claimant answers shortly].

Mediator: *"Do you have a family? Any children?"*

Claimant: "Yes."

A similar but more intense inquiry occurred with different mediators and different parties in Mediation no. 18:

Mediator [to claimant's husband]: "What do you do in life?"

Claimant: "I am a pensioner. She [his wife, the Claimant] is also a pensioner."

Mediator: "Pensioner of what?"

[Claimant answers]

Mediator: "You do not look like a husband of a pensioner. You get up in the morning and then what?"

Claimant: "There is nothing to do....."

Mediator: "So **you let her invest in renovations?**"

Leaving aside the sexist, paternalist view that the mediator shared with the husband, by placing the claimant in an embarrassing situation, the exchange leaves the listener with a strong taste that it was an invasive question. The mediator made a connection to the dispute which was about the renovation, but not to the solution. Personal remarks which enter delicate areas might unintentionally turn into possible insults, like the one in the following citation. A question from Mediation no. 1, which again was not relevant to the conflict, but seemed important to the mediator, who could not believe what the respondent had just said:

Mediator: "You have been **a salaried employee for the postal service for 14 years???**"

When the mediator suspected the good intentions of a party, and phrased it as a question, the outcome was an insult, which certainly did not help moving towards an agreement (Mediation no. 10):

Mediator: "Are you interested in ending this here?"

Respondent: "You know what; you surprised me, after everything I said here."

Mediator: "I did not mean to sound disrespectful."

Sometimes the mediators are not aware of how their question may be received by the parties who are in the middle of a painful dispute which makes them sensitive and vulnerable. For example, in Mediation no. 11:

Mediator: *"Do you have any experience in working with suppliers?"*

Respondent: *"Where do you want to get to? What's the bottom line? Ask me about advertising companies. Ask me and you will get a precise answer. We do not pay without invoices and authorizations. I have no proof and no judge will buy it."*

Provocative Questions

Provocative questions can receive unexpected answers. For example, this direct question offering the respondent two options, that on the face of it looked legitimate but in context were irritating yielded a straight, provocative answer (private meeting Mediation no. 8):

Mediator: *"I am only asking if you want to discuss this in court or reach an agreement here."*

Respondent: *"I am going to run rings around him."*

When a question has or may have an aspect of declaration, a hint that the mediator has made his decision or has a view with respect to the case, it might lead to a slippery slope, such as in Mediation no. 6:

Mediator: *"But you had decided to go on that trip without receiving an adequate answer about your seat?"⁴⁹*

Claimant: *"This question is really upsetting."*

Mediator: *"The reason for asking is to show you how the court might look at the situation."*

Claimant: *"But **I did not** go to court because I thought it might be unpleasant."*

⁴⁹ Sitting at the front seat on the organized tour bus would have enabled the hearing-impaired claimant to read the guide's lips. The mediator pointed out (accepting one side's version) that the seat was never promised to her by the respondent.

The above example shows how susceptible the party was, and how she hoped to feel secure in the mediation room and not to face provocations. When the mediator gave his own explanation of the irritating question, he was undertaking a reality check. There are some failures in this delicate juggling between the two domains of mediation and law. As the process progressed, he did not ask his confusing questions of the claimant only; in a private meeting with the respondent he asked:

Mediator: *"You go on trips don't you? That is your thing. People with disabilities certainly travel with you. And there are those that you rule out. Tell me what is possible and what isn't?"*

Respondent: *"What do you mean???"*

As an exception, the comment that the group leader made in the mediators' meeting with respect to the above question is quoted. Sarcastically he suggested asking directly: *"Except for Jews and blacks, who else don't you take on your trips?"* Sharpening his point to the extreme serves his intention to teach how careful the mediators should be in posing questions, and how the questions reflect their hidden thoughts and sometimes their prejudices.

One of the definitions I heard for a poor quality process was that it made the parties leave the mediation room in a worse condition than when they first came in. Questions have the potential to cause exactly that, as Mediation no. 17 demonstrates. The mediator's questions led first to acceleration and then to a dead end. The claimant in this case was busy telling his story at the first joint meeting. It was about difficult relationships between neighbouring farmers, and he accused one of the respondents of causing damage to his animals. The mediator brought about an escalation by using confrontational questions to rephrase what he heard:

Claimant: *"The only thing he [the respondent] didn't say was 'Go to hell'; and that is what I understood without him saying it."*

Mediator: *"From your point of view he showed you complete lack of respect, that's what you understood?"*

Claimant: *"That's exactly what I understood."*

The mediator generalized from the sentence to the totality of the relationship. This view led him to comment later on, when the claimant continued his story stating that he was willing to go for a polygraph test to prove that he was right:

Claimant: *"...if I am sitting here in front of a liar and a crook..."*

Mediator [interrupting]: *"Are you referring **to both** of them?"* [There were two respondents in the room, a father and son]

Claimant: *"Yes, to both of them."*

Investigative Questions

Another type of question that fails to remain in the relevant area of mediation is the type which slides into the pure legal sphere. For example, the hidden attempt to impose liability, when the issue is overtaken by the parties for their own good reasons. Sometime the mediators declare that 'they are not seeking the truth', and, on the other hand, there are occasions when they implicitly want to find 'where the guilt lies'.

In Mediation no. 12, the mediator criticized the way that the respondent had decided to act at a communal meeting, as follows:

Mediator: *"Why did you not pay the sum that was not in dispute?"*

Respondent: *"It is around 200 shekels"* [in the final agreement he paid NIS 11,000].

Mediator: *"And why didn't you pay? He thinks he deserves this amount so why didn't you pay him? You could have sent him a cheque in the post and then in court you could have said 'I paid what I owed him. I was O.K.'"*

A moment in Mediation no. 18 supplies another example of the above claim. It was a story about hitting a communication cable while digging a new road. After disconnecting a whole area from telephone communications for a period of time, the claimant was punished by his employer by not being paid for that day's work. The problem that the mediator was not aware of was that hitting

such a cable is a criminal act. Both parties – the one who ordered the digging and did not pay for it, and the one who carried it out – might be at risk, so they wanted to get around this issue.

Mediator: *"From your point of view, the responsibility lies with the digger?"*

Respondent: *"We will talk about responsibility at the end. Hitting a communication cable is a criminal offence. If you want I can tell you about it later. It has nothing to do with this mediation."*

The party tried to gently evade any incriminating accusations. If it were to be raised in the mediation it might have a significant outcome later, also confronting the mediator with a problem of how to react towards such an offence. But since he could not know what the mediators' reaction would be, he continued to make light of the deed:

Respondent: *"It can happen."*

Mediator: *"And if it does happen who is responsible?"*

Respondent: *"I do not understand the question. But if you insist, I think the responsibility lies with the digger."*

Once he has received a direct answer, the mediator may find he has a problem concerning the limits of his responsibility when the mediation has revealed an offence (but that is beyond the scope of this discussion). Mediators' questions may intrude into areas that the parties want to leave vague.

The attempt to ascertain responsibility may resemble a cross examination, as in Mediation no. 19:

Mediator: *"What was the date?"*

Claimant: *"I don't remember."*

Mediator: *"Not the exact date, was it a year ago? Two years ago?"*

Claimant: *"I don't remember."*

Mediator: *"Before the summer?"*

Claimant: *"Yes."*

Mediator: *"When did you sign?"*

Claimant: *"I don't remember. It is in the papers. You can read it yourself."*

As often happens in confrontational conversations, the claimant's reaction was to throw the ball back to the mediator's court with the accusation that he had not read the written material. The ongoing questioning put the claimant on the defensive in an uneasy position, which forced him to look for a way out. The last sentence challenges the mediator's control over the process. This was as a result of asking too many confusing questions that the party wanted to move away from. Another result could be the pollution of the mediator's impartiality, another important subject which is beyond the scope of this thesis.⁵⁰

Serving the Mediators' Interests

In the last citation, the mediator confessed to asking a question only because he was curious about the subject. Sometimes in the course of the process a mediator diverts the discussion to his own concerns. The following conversation from a joint meeting, assembled to write the final agreement in Mediation no. 20, illustrates occasions on which mediators try to change the final results upon which the parties have agreed, to meet their own interests. After all, they sign the agreement too. This is a continuation of the quotation in the previous sub-section where the mediator pursued talking about feelings:

⁵⁰ Kydd, Andrew (2006) 'When can Mediators Build Trust', *American Political Science Review*, vol. 100, pp. 449-462, gives a definition of 'impartial', saying that "*a mediation is biased if it shares one side's preference ordering over the issue space, and unbiased if it is indifferent over the various issue resolutions.*" p. 451. Some writers argue that a mediator is allowed to be biased, especially if he is a strong mediator, see: Touval, Saadia, (1975) 'Biased Intermediaries: Theoretical and Historical Considerations', *Jerusalem Journal of International Relations*, vol. 1 (Fall), pp. 51-69; Princen, Thomas (1992) *Intermediaries in International Conflict* (Princeton: Princeton University Press), and bear in mind that the above theories concentrate on international conflicts, not civil law cases.

Mediator: "*About the relationship – I must have that*" [meaning: 'I have to relate to the relationship between the parties in the final agreement,' although the claimant had already refused to do so].

Claimant: "*Why is that important for you?*"

Mediator: "*It is very, **very important to me** because you are good people.*"

Claimant [looks troubled]: "*Again I say, and it is my opinion I suppose.....*"

Mediator: "*You are very cautious. Let it go, let it go...*"

Claimant: "*My degree of trust is not so great vis-à-vis the management of the defendant.*"

There were a few more exchanges and then:

Mediator: "*So I can write [in the agreement] that if all that is written comes to pass, you will write a thank you letter [to the respondent].*"

Claimant: "*With the greatest of pleasure.*"

After much pressure on behalf of the mediator, the parties signed the agreement and seemed to be relieved.

Here is the exchange that took place towards the final calculation of the compensation payment during the writing of the agreement (Mediation no. 14):

Mediator 1: "*Is there any good restaurant in your village?*"

Respondent [who came from an Arab village]: "*No. it is a small village, there are some in the area.*"

Mediator 2: "*Just a minute, please come back to the issue...*"

[After the process was over, mediator 1 and the respondent stayed in the room to discuss the latter's business.]

Irrelevant questions are identified as such not only in retrospect. They are usually hypothetical and target areas that the parties do not want to discuss. But sometimes, out of his determination to advance towards a solution, a mediator asks questions which are too straightforward and reveal the mediator's own view of the matter. The issue of whether the mediator is permitted to speak his mind depends on the specific mediation stream. In the theory of the Practicum model the mediators can use reality checks, but they cannot shape the outcome.

Cultural Elements in the Mediator's Discourse

Observing the mediation processes in the Practicum courses led to the conclusion that the mediators mainly voice their views using questions. Categorising the 'off-track' questions allowed connecting them to themes in the Israeli discourse, showing that those questions include references from both the past and the present of Israeli culture. The next paragraphs will describe the different types of Israeli discourse that are reflected in the mediators' questions.

Asking Questions – Background

The culture of questioning is a very well-known phenomenon in Jewish tradition. From the Biblical canons and throughout the development of Jewish law, religious literature consists of a series of questions and answers discussed throughout history and refined to develop rules and guidelines.⁵¹ Thus there are cultural roots to the mediators' tendency towards a rather intensive use of questions. Besides that, elements of typical Israeli discourse are evidenced in the observed mediation processes in different ways. Because of Israel's adversarial legal system, lawyers-mediators are trained to ask questions. As mediation is tightly connected to the legal system (chapter 4), mediation discourse features combination of the mediation professional terminology, the legal terminology, Jewish terminology and the local contemporary discourse. After describing the different layers of Israeli discourse in historical order, its relevance to the mediation room will become clear.

⁵¹ This started in the biblical communication between God and Man, for example, "Who told you that you were naked? Have you eaten of the tree of which I commanded you not to eat?" (Genesis 3: 11); "Where is Abel your brother?" (Genesis 4:9) and went through the entire Talmudic literature, including the way it is taught in some schools in Israel today.

While soldiers in the early years of the state were expected to hide their feelings, as described above, during the pre-state pioneering period there was an ethos of 'soul talk', which had a deep impact on Israeli discourse in its early years and later. The young pioneers used to gather at night to share their doubts, conflicts, desires and other inner thoughts in the presence of the other members of the group. These gatherings offered the intimacy of a spiritual form of conversation. It presented an alternative to the more popular 'action filled' streams.⁵² Those pioneers, most of them in their twenties and detached from their families, connected the development of the country with the development of their spirits and minds. The closeness of living together blurred private and public areas.⁵³ The institution that they established to resolve their dilemmas and problems was daily meetings, believing that talking about private affairs in public fitted with their values of equality.⁵⁴ The 'soul talk' format became common in many settlers' groups, reaching its extreme in the Hashomer Hatza'ir (Young Guard)⁵⁵ movement.⁵⁶ Some of those talks were published years later, bringing back into the public domain this special form of private-public conversation.⁵⁷ The culture of 'soul talk' has declined, mainly because of the consequences of the enormous pressure of talking honestly and openly in front of a group, being under the tyranny of the groups' powerful leaders, and being criticized by others. But it is still etched in the collective memory, has had

⁵²Supra note 42, p. 40.

⁵³ The next chapter refers to the affect of blurring private and business places.

⁵⁴ Katriel, Tamar (1999a) 'Soul Talks in Israeli Ethos', in: Katriel, Tamar, *Key Words: Patterns of Culture and Communication in Israel* (Israel: Haifa University Press)(Hebrew), pp. 171-190, p. 176.

⁵⁵ For information about this movement, see: www.hashomer-hatzair.org(13.12.2010).

⁵⁶ Supra note 42, p. 41.

⁵⁷ Katriel, Tamar(1999b) *Key Words: Patterns of Culture and Communication in Israel* (Israel: Haifa University Press)(Hebrew), p. 184.

a legendary impact on research, drama and literature, and has had some effect on Israeli discourse.

An echo of the pioneers' soul-searching discussions can be found about 50 years later in the collection of thoughts in 'Soldiers Soul Talk', published in 1967 right after the Six Day War.⁵⁸ The book was edited by writers and scholars (somewhat resembling the domination of the pioneer group leaders) and had great resonance at the time. It was unusual to expose deep feelings, such as doubts about the ethics of the war, or sorrow and regret about violence, death and destruction. Besides the public shock that the collection caused, it drew criticism of the softness and vulnerability that the soldiers (who were supposed to be some sort of supermen in view of the results of the war) revealed.⁵⁹ It also challenged the customary ethos of the new Israeli, as described above. This ground-breaking book changed political views about war, and about the characterisation of the Arabs as a dangerous forceful enemy whose only aim is to destroy Israel. It also brought about a huge change in the legitimacy and ability to articulate feelings, even in public, even by male soldiers. Following the pioneers' 'soul talk', conducted under strict rules of 'right' and 'wrong', 'proper' and 'improper', the later book was also a victim of editorial censorship; thoughts that were not in line with the editors' views were excluded.⁶⁰ The book itself is nearly forgotten, but the idiom 'soldiers' talk', used in parallel with 'soul talk', is still meaningful.

⁵⁸ The English version: Shapira, Avraham (ed.)(1971) *The Seventh Day: Soldiers' Talk about the Six-Day War* (Harmondsworth: Penguin Books).

⁵⁹ http://he.wikipedia.org/wiki/שיח_לוחמים (13.12.2010).

⁶⁰ haaretz.co.il/hasite/pages/ShArt.jhtml?itemNo=176890(13.12.2010).

The interviews with the six soldiers who were students of 'Merkaz-Ha-rav' Yeshiva [an important yeshiva in Jerusalem] did not appear in the book. Shapira, the editor, informed them that the material arrived late. Later Shapira admitted that the reason for not including them in the publication was: "I felt that morally I cannot allow that publication in Soul Talk."

Dugri (Straight) Talk

The opposite of 'soul talk' in ways of speaking is 'dugri talk' — speaking straight. The Israeli expression 'dugri' is an adaptation from Arabic and means speaking straight to the point, exposing the facts in brief, honestly and roughly, without pretence or refinement.⁶¹

Katriel defines 'dugri talk' as:⁶²

"an idiom of participation in a social world in which disagreements can be aired, information is shared openly, and a basic sense of mutuality and trust prevails... Confrontation in this scheme of things does not signal a disruption of social relations but rather the ultimate test of a community of purpose and action, whose members are not threatened by the openly expressed opinions of others, even when these contradict their own."

This pattern is very much alive in daily conversation when expressing closeness and openness.

Kiturim (Complaining)

Kiturim is another Israeli slang word that has so many connotations that it is hardly translatable. Its meaning is somewhere between 'venting' and 'gripping'. It has become ever-present in encounters among Israelis.⁶³ Gathering to gripe together became popular as a way for friends to spend time together, known as 'kiturim (gripping) parties'.⁶⁴ Unlike other types of discourse, *kiturim* is done when there is no expectation of a solution. It is a way to air frustrations which

⁶¹ Katriel, Tamar (1986) *Talking Straight — Dugri Speech in Israeli Sabra Culture* (Cambridge: Cambridge University Press), p. 31.

⁶² Supra note 42, p. 165.

⁶³ Supra note 42, p. 35.

⁶⁴ Ibid.

one does not intend to solve in any practical way.⁶⁵ People who engage in this activity know that the problem they raise could be solved, but they do not think it is up to them to solve it. Instead of focusing on solutions, the venting of feelings aims to create a sense of solidarity and friendship.⁶⁶ *Kiturim* expresses frustration but with no expectations that solutions will be proposed; rather the right response is expressions of sympathy, while expecting someone 'up there' to somehow solve the problems. Katriel describes the *kiturim* ceremony as having developed in a spiral shape, from one round to another.⁶⁷ Repetition of subjects and comments is welcome in that ceremony.⁶⁸ When the sense of solidarity in society weakened and the belief that the people in charge of the country's institutions were trustworthy was eroded, the pleasure of *kiturim* declined.

Summary

The mediators, located in a special discourse culture, reflect the entire phenomenon discussed above. Each category of the quotations above is rooted in Israeli speech culture. Mediators reflect the Jewish culture of using questions as a way to build discussions drawn to conclusions. They imitate the adversarial questioning from the legal system. Their off-track questions reflect the culture of '*kiturim*,' talking about the problems without promoting solutions. Their attitudes towards feelings and personal matters (including their own) reflect the culture of '*soul talk*'. The mediation discourse also resembles the

⁶⁵ Katriel, Tamar (1999c) 'Kiturim Parties' as Language Rituals', in: Katriel, Tamar *Key Words: Patterns of Culture and Communication in Israel* (Israel: Haifa University Press)(Hebrew), pp. 191-205, p. 196.

⁶⁶ *Ibid*, p. 199.

⁶⁷ *Supra* note 65, p. 201.

⁶⁸ This is another factor that separates the *kiturim* ceremony from other communication ceremony in other cultures. In other ceremonies repetitions might face a reaction of rejection, as the subject was already dealt with; *ibid*, p. 202.

culture of equality and openness and the mixture between private and public, which is very characteristic of Israeli conversations. All the above enables the creation of 'communitas', a specific fixture of the liminal ritual, as analysed in the last section of the thesis.

Section 2 - Coffee Breaks

Besides the tool of questioning, the observations revealed another unique practice that is widely used by the Practicum mediators: coffee drinking and coffee breaks. This tool is not discussed in theory books or in training sessions, but there was not one process during which coffee was not mentioned. This section gives a description of this phenomenon and discusses the function it fills, and how it serves the mediators needs. It starts with a description of the extensive use of drinking coffee in the mediation meetings in both centres, refers to the role of drinking coffee in modern societies, and ends with an analysis of the use that the mediators make of this tool.

Drinking Coffee in Mediation Meetings – A Description

The observations revealed many 'coffee stains' during the mediation processes, from start to finish. When the parties come into the Gevim office, they are immediately offered coffee. For example, Mediation no. 9:

Party to the Secretary: *"We are here for mediation."*

Secretary: *"You are most welcome. Please wait, they will call you. There is a coffee corner over there. Help yourselves."*

The litigants in this case were two couples and two children and they did indeed help themselves. They all went to the coffee corner, made hot drinks with much noise, and took them with a plate full of cookies to the waiting room, which soon looked like a picnic area. A few minutes later, when the

defendant came in, he could not ignore what he saw. The claimants had appropriated the reception room of Gevim for themselves by consuming the food and drinks offered, and by doing so left no doubt as to the statement they were making – we are at home here, things are under control.

Mediation no. 6 was scheduled for 17:45. It was 18:00 and one party was missing. A mediator went to the waiting room to update the waiting party:

Mediator: *"Why don't you help yourself to some coffee while waiting?"*

Claimant: *"We had enough coffee. We came right on time, and we want to start!"*

The following is an example from the very beginning of a process. It is interesting to see the hospitality competition between the two mediators, and the explanation given to that (Mediation no. 15):

Mediator A: *"May I invite you in?"*

Mediator B: *"There are also some cookies."*

Mediator A: *"There is also tea if you prefer tea. We want to make it relaxed. "*

When the mediation takes place in a courtroom, special attention has to be paid to enable the coffee ceremony. So, one of the leaders arrives 15-20 minutes beforehand to arrange the room. Gome keeps a cupboard for that purpose, in which the kettle, the cutlery and ingredients are kept.

In the mediation room, the leader pushes one desk to the wall near the door, puts a plain tablecloth over it and arranges a kettle, a bottle of mineral water, sugar, coffee, a variety of teabags, pretzels, and cookies, as well as paper cups and plates. When the parties arrive, they are offered cold water and hot drinks. The setting enables shuttling from the mediation desk to the 'drinks table' during sessions, as will be demonstrated later.

In Gevim there is a separation between the coffee corner and the mediation room, but on the mediation desk there are always cups and a jug of water. The

'drinks corner' at the entrance to Gevim contains a machine for cold and hot drinks and some refreshments like cookies or small pretzels. Whereas in Gome the main occupation with the drinks is during the meetings, in Gevim it is mostly during the breaks, and participants bring their refreshments into the room. In both centres, drinking coffee during the sessions is common. The following examples will demonstrate the use of coffee in the middle of the mediation process.

In Mediation no. 13 the claimant, a woman of over 60 who came with her husband, had a dispute over an imperfect door she had purchased. In the opening ceremony she explained very vividly what a wonderful housewife she was, and how perfect her house looked, clean and shining, all in shades of white, and that therefore the little scratch on the new door she had just bought was unbearable for her. When she came into the caucus she immediately went to the coffee table and asked out loud: *"Who wants coffee?"* By that question she managed to make it clear that her intention was to make coffee for all present, eight observers and two mediators, which embarrassed everyone. The mediators hesitated for a second and then one of them answered: *"I want coffee, thank you."* This was followed, naturally, by a discussion about milk and sugar. The mediators used the coffee drinking as a way to delay the start of the formal discussion about the dispute. That shows that the parties understand well that coffee serving is not part of the process, but has other functions, which they could benefit from, as the next example will show (Mediation no. 8):

Mediator: *"You do not want to continue, actually to start..."*

Respondent: *"If you want you may start, although there is no point..."*

[The dialogue continued and then]:

Mediator: *"I asked you a practical question"*

Respondent: *"No problem, you can read it all in the lawsuit papers. If you want just to talk – no problem. We will make coffee. We will talk. No problem. As for the claim – he needs to sue the landlord, not me."*

The respondent presented himself as a civilized person who is ready to drink coffee, but at the same time emphasized that drinking coffee together has nothing to do with the dispute. The mediators, especially in Gevim, tried to use the breaks for relaxation over a cup of coffee (Mediation no. 18):

Mediator 1: *"I am in favour of a break. You are welcome to think it through..."*

Claimant: *"We do not need ten minutes."*

Mediator 1: *"We need the break"* [calm atmosphere].

Mediator 2: *"Please use the coffee corner, But smoking is allowed only outside."*

It is clear that all the participants distinguish between chatting over coffee and talking about the dispute, and they choose whether or not to accept the offer of a drink accordingly. To strengthen the claim, here is a citation from the end of the above mediators' break when an offer was made to fill the water jug.

The leader: *"No, do not do that, they will drink when they finish!"*

This remark placed the refreshment as a prize, and indeed it was not part of the written process, but an extra which does not always suit the circumstances, as the leader declared at the end of Mediation no. 15:

"Now we deserve a cup of coffee!"

Earlier in this section, the common questions used when starting a caucus were cited: *"How was the break?"* and *"How was the coffee?"* Here the answers varied, also reflecting expressions of acceptance or rejection. For example, in Mediation no. 15 (a separate meeting, where the party seemed to be still as upset as he was when the first meeting ended):

Mediator: *"Did you have some coffee? There are people who come to mediation here and go away with caffeine poisoning! Would you like some more coffee?"*

Claimant: *"I drink only water, a lot of water."*

Mediator: *"That is good, but today many people are against drinking mineral water, they say it is spending money for nothing"* [the conversation about water goes on].

Similarly, the dialogue in Mediation no. 12 at the separate meeting:

Mediator: *"Do you want some tea? Coffee? Whisky? Cookies?"*

Claimant: *"No."*

Mediator: *"We will write down that you did not have coffee or tea."*

Claimant: *"I have drunk enough."*

Mediation no. 3 is another example of how the suggestion of a coffee break is not just a question of polite hospitality, but rather conceals some other need, such as an attempt to ease the atmosphere, the mediator's desire for a break, or the fear of recognising the fact that they are at an impasse (end of the caucus):

Mediator: *"We will have a little break now. There is a coffee corner outside, you will have coffee, and we will hold a discussion between ourselves. There is a coffee corner outside"* [repeats himself twice]

Fifteen minutes later when they returned to the room:

Mediator: *"Did you manage to have coffee?"*

Claimant [with some pride]: *"I do not drink coffee! I have this!"* [he took out a bottle of lemonade from his bag and showed it to the mediators].

Here is one example from a conversation between two mediators which demonstrates how they see the role of coffee (Mediation no. 15, first mediators break):

Mediator A: *"Shall we go for a break? Shall we have some coffee or tea?"*

Mediator B [the leader]: *"Shall we discuss how to make the parties negotiate and what the issues in this dispute are?"*

The above quotation is important to demonstrate once again that there is a separation between work and coffee, but the younger mediators seem to prefer the familiar activity of having coffee together to the more demanding task of conducting a process.

The last example is from the end of the process, to demonstrate again how the relationships between the participants assimilated the coffee ritual. At the end of Mediation no. 11, which was a very hard and emotionally loaded process, there were differences of power between the claimant, who said that many

years ago he printed some advertisements for the company of the defendant, and the latter, a representative of a major electronics company. The claim was that they had not paid him for that work. When the mediation was over, without any agreement or rapprochement, the claimant said to the respondent before separating:

"You cannot buy me with money. I will not accept your offer to pay me NIS 4000Let's go and have coffee together."

The respondent refused, making it clear that not having coffee together indicates that he did not want any friendly relations with his opponent.⁶⁹

The centres invest much effort in both providing the parties with coffee and refreshments and in making that act noticeable. During the process coffee is offered many times. Given the fact that the litigants pay for neither the mediation nor the drinks and food, and offering refreshments is not part of the mediation manuals or theory books, this act must have some meaning and serve some purpose. In a few cases, the mediators stated directly what the purpose of drinking together was, such as in Mediation no. 15 when the mediator said that coffee was served to lighten the atmosphere and to make the time more enjoyable. When Mediation no. 13 was over, the mediator explained his reaction to the claimant's suggestion to make him coffee. He accepted because he wanted her to feel in control in the room, as she felt at home. That was his way to achieve recognition of her abilities. He also wanted to take advantage of the preparation time to have a chat with her, somehow leaving out her husband, to whom she did not serve coffee. And in Mediation no. 11, the mediator said to the party before the break: *"Talk amongst yourselves, have coffee."* Drinking coffee is a tool to help ease the conversation and help hearts and minds come closer.

⁶⁹ This dialogue is also connected to the next chapter about the relationships between the parties.

The mediators make use of the cultural background that underlies drinking coffee. The next subsection will demonstrate this background and explain the phenomenon.

Cultural Background

All over the world people drink coffee, and everywhere the act has ceremonial aspects. Whether one drinks it at home, at work or in a coffee bar, alone, with a partner (human or maybe a newspaper or a laptop) or in a group (mixed or single sex), drinking coffee comes with a world of ritual symbols. It obviously answers hidden needs, other than thirst. Oldenburg found that cafés are informal places, something between a home and an office, available for anyone to use for work and for leisure, and that therefore they are not a strictly defined area.⁷⁰ That places cafés at the meeting point between business and pleasure, a spot in which the differences between the two are blurred.

Preparing coffee is a well known ritual in many cultures. The Arab method of preparation is described in the following poem by Darwish, who plants the daily ritual in the situation of the Palestinian-Israeli conflict, and spins threads between the familiar act of coffee making and war:⁷¹

"I want the aroma of coffee. I want nothing more than the aroma of coffee. And I want nothing more from the passing days than the aroma of coffee. The aroma of coffee so I can hold myself together, stand on my feet, and be transformed from something that crawls, into a human being..."

⁷⁰ Oldenburg, Ray (1989) *The Great Good Place: Cafes, Coffee Shops, Community Centers, Beauty Parlors, General Stores, Bars, Hangouts, and How They Get You Through the Day* (New York: Paragon House).

⁷¹ Mahmoud Darwish (1941-2008) was a Palestinian writer, the segments were taken from his prose-poem: Darwish, Mahmoud (1995) *Memory for Forgetfulness: August, Beirut, 1982* (Berkeley: University of California Press)(Muhawi, Ibrahim trans.) p. 6, 8, 19.

Because coffee, the first cup of coffee, is the mirror of the hand. And the hand that makes the coffee reveals the person that stirs it. Therefore, coffee is the public reading of the open book of the soul...

...dip the spoon in the melting powder, fill and raise it a little over the pot, then let it drop back. Repeat this several times until the water boils again and a small mass of the blond coffee remains on the surface, rippling and ready to sink. Don't let it sink. Turn off the heat, and pay no heed to the rockets."

Having coffee with friends, at home or outside, is a very common practice in Israel. An invitation for coffee is an invitation to meet and have a chat.

The coffee drinking market in Israel is dynamic, growing in the home, in cafés and in restaurants. Coffee consumption increases with socio-economic growth.

In 2008, 40% of the 1,300 Israeli cafés were located in the Tel-Aviv area. The average customer of Israeli cafés is a Jewish Sabra who lives in the central cities and prefers places with full service to self-service or drinking at the counter.⁷²

The character of the coffee bars has changed over time, and so have the characters of the customers. While in the first years of the state, mostly older, upper class people and the bohemians filled the cafes, nowadays it is more middle class people. Instead of being a place for couples to spend time together, it has become a place to spend time alone or with a group.⁷³ Israelis like to spend time in cafés, rather than stand by the bar or grab a take-away. Almog found that women are fond of meeting their friends in cafés as a time-out from partners and children.⁷⁴ He also mentioned that the menus and the lack of gender preference among waiters (men and women alike serve in cafés)

⁷² All data in this paragraph are from: Bar-Tzuri, Roni, (2009) *Cafés in Israel: Market Segment, Consumption and Employment* at:

http://www.upsite.co.il/uploaded/files/430_86a7359087a2d9d01021fda89a3c3e58.pdf (4.1.2011).

⁷³ Almog, Oz (2010) *Coffee Consumption in Israel*, preprint:

<http://132.68.238.25/details.aspx?itemID=30081&nosearch=true&searchMode=1&sLanguage=he-IL>(7.12.2010), p. 3.

⁷⁴ Ibid.

contribute to the modern, feminist atmosphere at these places.⁷⁵ Although this thesis avoids gender issues, feminist aspects of serving coffee are relevant, since there are aspects of feminism in mediation and among the Practicum mediators, where there is a greater percentage of women.

To paraphrase Tene's words:⁷⁶ "*as much as the family dinner defines the family...*" the coffee one drinks defines his personality. From stewed black coffee to coffee streaming from an elegant machine, there are dozens of options to suit each taste. From my own experience, I am constantly surprised when I invite guests for coffee to see how much thought people put into explaining exactly how their cup should be made – the label, the right quantity of beans, how much and what kind of milk, what shape the cup should be and what it should be made of, and even where I should put the spoon for later use. Preparing coffee, like cooking, may be creative, meaningful and gives everyday activity added value.⁷⁷ People consume coffee as a way to manifest their autonomy, their right to choose and their personality, just as they use narratives, clothes and the design of their immediate environment.

In Israeli culture whenever people gather offering coffee is a must, whether it is to visit friends or co-workers or in business meetings. But the differences between the circumstances of drinking are shown in the different coffee rituals. When entertaining, coffee is offered many times, accompanied by all kinds of refreshments, while in business meetings coffee is usually offered once, and it is only coffee.

⁷⁵ Supra note 73, p. 11.

⁷⁶ Tene, Ofra (2005) 'Reading Cook Books from the 1980s', in: Kleinberg, Aviad (ed.) *A Full Belly: Rethinking Food and Society in Israel* (Tel-Aviv: Keter)(Hebrew), pp. 92-130.

⁷⁷ Ibid, p. 123; Fiske, John (1989) *Understanding Popular Culture* (London: Routledge), p. 25.

In the mediation meetings the word 'coffee' appeared many times, enough to draw attention and raise a question about the function that the 'coffee phenomenon' plays in the processes, which will be discussed next.

The Place of Coffee in the Practicum Mediation

The centres have identified the purposes and symbols associated with coffee in society and brought them into the mediation room. They imported a specific style of drinking which serves their needs. Firstly the set-up: a self-service style (or an adaptation of it) with a few choices of coffees and teas, disposable cups and spoons, cookies and pretzels. This practice matches those of the workplace and simple entertainment gatherings of the hegemonic young Ashkenazi middle class:⁷⁸

“The Ashkenazi culture, the features of which have never been defined in the national consciousness, was identified as ‘Israeli’ and set up the codes that brought prestige, thereby marginalizing the other.”

This type of hospitality easily separates the ones who are used to it and feel comfortable in it, from the others. This is another hidden way to indicate who the parties were and what image they chose to project. Rejection of the coffee ritual, criticizing it or even just not following it 'correctly' is part of shaping the relationships between the parties and the mediators. It creates understanding or sometimes a mini cultural clash, which Alberstein explains as:⁷⁹

“An intercultural conflict depends on the situation. The situation shapes the roles, the expectations, the norms, the rules, and the scenarios of the conflict. The interpretations we give to these different elements of the situation, and their

⁷⁸ Gvion, Liora (2005) 'Humus, Couscous, Sushi: Food and Ethnicity in the Israeli Society', in: Kleinberg, Aviad (ed.) *A Full Belly: Rethinking Food and Society in Israel* (Tel-Aviv: Keter) (Hebrew), pp. 32-78, p. 32.

⁷⁹ Alberstein, Michal (2007) *Jurisprudence of Mediation* (Jerusalem: Magnes)(Hebrew), p. 233.

relative standing, are shaped by their significance, which we have acquired in various socialization processes in our ethnic and cultural society."

Therefore, the mediators can use the reactions towards the 'coffee ritual' as a seismograph indicating how the parties see themselves in the process. On the other hand, the coffee ritual also represents how the mediators feel – comfortable, secure, tense, lost etc. Offering coffee could be used as a way to divert the discussion from awkward issues, allowing for a moment of respite. Serving coffee is also associated with hospitality. By introducing hospitality gestures into the process the mediators try to achieve several things. Firstly, they distance the situation from the courtroom and position the mediation room in a sphere between business, home and pleasure.⁸⁰ They create a scenario with borders and functions that are not strictly defined. This environment is not completely home-like, nor is it a business place; a perfect arena for a liminal ritual. Then, by offering coffee, the mediators declare their status: they are the hosts and therefore the cultural relationships between hosts and guests should apply. The hosts set the rules of the encounter, the guests accept those rules and, if they do not, as the examples above demonstrate, they have to explain their rejection. Being 'the hosts' fits the function of the mediators as the controllers of the process.

Serving refreshments also tells the parties that they are welcome and honoured. This is in spite of the fact that the cookies are really simple and are served in their original boxes, and the coffee is self-service and offered in disposable cups. The examples strongly support Kleinberg's argument that people do not drink coffee because they are thirsty, and do not eat cookies because they are hungry: *"We eat to impress, to belong to the right people"* he claims.⁸¹ Having coffee together in

⁸⁰ Supra note 70.

⁸¹ Kleinberg, Aviad (2005) 'Out of the Eater Came Forth Food', in: Kleinberg, Aviad (ed.) *A Full Belly: Rethinking Food and Society in Israel* (Tel-Aviv: Keter)(Hebrew), pp. 7-15, p. 11.

mediation symbolizes sharing the same problem, and being on the same level. Van Gennep noted that:⁸²

"The rite of eating and drinking together is clearly a rite of incorporation of physical union."

Therefore, when the claimant offered to make coffee for the attendees, the balance of the process was shaken. She upgraded herself to the position of hostess, taking the mediator's place. Through this small change in roles, she made herself eligible for a preferred attitude from the other participants. This act of preparing coffee for the mediator might influence the power relationships in the room later. This was a blurring of the status of the mediator and of the party. The mediator is supposed to be in control of the process and to be neutral at the same time. This can happen in the form of 'communitas', as described in the concluding section of the thesis.

Moreover, one of the ways known in the literature for the mediator to impose his power on the parties is to make them identify with him. He can choose to achieve this by exhibiting friendship and intimacy. Amongst messages of 'closeness', there are small conversations about sport, the weather, and politics.⁸³ Perhaps a recurring offer of coffee is a very simple yet effective way of creating closeness. Shapira, on the other hand, warns mediators against exercising illegitimate force by making use of identification and relationship.⁸⁴ Similar to this technique is the technique of ingratiation, by which the mediator makes a party feel important and flattered before being requested to do something or to give up something.⁸⁵ The

⁸² Van Gennep, Arnold (1960) *The Rites of Passage* (Vizedom, Monika, trans)(London: Routledge) (1965 edition), p. 29.

⁸³ Kolb, Deborah (1985) 'To Be a Mediator: Expressive Tactics in Mediation', *Journal of Social Issues*, vol. 41, is: 2, pp. 11–26.

⁸⁴ Shapira, Omer (2007) *The Use of Power and Influence in Mediation: Practice and Applied Ethics* (Jerusalem: Grafit)(Hebrew).

⁸⁵ Kipnis, David et al. (1980) 'Intraorganizational Influence Tactics: Explorations in Getting One's Way', *Journal of Applied Psychology*, vol 65 (4), 440-452; *ibid*, p. 52.

implications of giving someone drinks and refreshments on a constant basis throughout the mediation meetings may bring in its wake expectations of expressions of gratitude, which include giving something in return.

Observations revealed that the mediators profit in another direction by serving coffee. They use it when they want to calm the atmosphere, creating moments of relaxation between issues, and as an excuse to divert the conversation to safer places when the dialogue is stuck. This diversion is more important than the other methods of chit-chat and personal questioning described above.

In Conclusion

This chapter, citing observations from the field research, contains two sections dealing with typical tools that the Practicum mediators use extensively while conducting the processes. The first one was massive questioning and the second was offering coffee. Both caught the eye of an outside observer as unique mechanisms that are culturally based and could be understood in relation to the cultural environment in which they are practiced. Because the mediators are new to the profession and lack experience, it seems that they cover their lack of knowledge with methods that they are more familiar with. These two tools are there to help to promote the mediation process and achieve its goals, but it seems that the mediators sometimes used these tools for other reasons and for goals other than those written in mediation books. The result was an imbalance between these two tools and the other tools in the mediation basket. Their extreme use, as demonstrated in this chapter, despite placing the mediators in their comfort zone, which perhaps was the reason they chose to stay there, does

not always guarantee a due process of mediation. These two tools coloured the Practicum process in ways that differentiate it from other known mediation processes.

Emotions stemming from being in conflict and drinking coffee together have a double status as they both make use of two spheres – one on the individual plane and one on the social plane. Both have a personal aspect and also a common public aspect. A state of conflict is a catalyst for creating emotions among most people, but the type of emotion and its intensity are individual. Likewise when drinking coffee together, most people experience this as an event that brings people together and indicates friendship. However, this is only true if the type of coffee and manner of drinking conforms to their specific personality. This connection between the personal and the public, on which the two subjects, emotions and coffee, come to bear, and which sometimes creates empowerment and sometimes generates a collision, is the basis for the liminal ritual in mediation processes.

CHAPTER 7

The Parties' Voices

*"Every problem in the world has a solution in the form of a story."*¹

This chapter examines the narratives that parties tell after they choose to try mediation. The fundamental focus of this chapter is on the description of the three main themes that parties emphasise in their narratives. Then a mini – theme and an absent theme will conclude the categorisation of the narratives. All of these categories illustrate a different understanding and new insights on the researched 'conflict society.'

Methodological Notes

Based upon the parties' prose, the narrative methodology attempts to decipher the core of the narratives and to discover the concealed themes that the narratives bring out. According to this methodology, the categorisation emerges after refining the themes which have been the most emphasized and most frequent in the parties' narratives. The importance of the themes derives from their repetition, their volume, and especially the meaning they convey in the mediation process. Their position in the narratives, right at the beginning or at the end, gives them extra strength. Viewing the stories that the parties present as narratives, as explained in chapter 3, leads to this chapter's findings.

The last sub-section deals with a powerful narrative mechanism, the silencing/flattening. This sub-section is devoted to the decision of many claimants

¹ Said by the witch doctor to the leader of the tribe in: Brink, Andre (2008) *The First Life of Adamastor* (Sitriya: Yanshuf)(Kochai, Hana trans.)(Hebrew), p. 3.

and respondents alike to almost ignore talking about the requested remedy in their narratives.

In between, a surprising element of this chapter is the discovery of a mini-narrative that appeared in many processes, namely the illusion that in other places and with other people or other companies involved, things would have been different. In other words, other people, not “us,” the litigants, are worse, and other people, not the opponents, are better. The claimants’ use of the wish to be in a different story is discussed briefly in this short sub-section. According to narrative methodology, these two sections support the main themes found.

Analyzing the findings, which were collected fresh from the field while observing real mediation processes, gives new views on the 'conflict society' in question. The chapter ends with these understandings. The summary compares the main themes in the narratives recounted in the observed mediation processes with the narratives known to society and reaches the conclusion that the participants in this research were profoundly looking for a peaceful resolution of their disputes at the rhetorical level, but lacked the tools to do so at the practical level.

Three Themes

The claimant's narrative in Mediation no. 12 was the inspiration for the following discussion of themes in the parties' narratives. It contained the shortest and most condensed narrative. In a few powerful, short sentences the claimant managed to include all the information he thought was important, and successfully stated information that other claimants tried to say but were not able to do as succinctly. These sentences included in a nutshell the main themes that appeared again and again in most opening narratives. This narrative is the basis of the categorization below, because, in spite of its brevity, it includes the important themes identified in many other narratives.

When the mediator asked the claimant in the said case to open the 'parties' show' by telling his complete story, the claimant said straightforwardly:

"I and the respondent [says his name] — we are not enemies. We even sit together. After endless phone calls without any response I had to turn to the court. This is the story, short and to the point."

End of speech.

The above statement can be divided into three categories,² as follows (with no indication of names, yet):

A.

*I and the respondent
we work together
we are not enemies.
We even sit together.*

B.

*After endless phone calls
without any response*

C.

I had to turn to the court.

The very first four words that the claimant chose to begin his narrative: *"I and the respondent,"* are a powerful opening, a centred statement that binds the two parties together. This is a tactic used by the claimant to express: 'we are all in the same boat, we have a mutual responsibility!' Many claimants, as demonstrated below, began with warm words about the respondents, and many respondents began their narratives with respect and appreciation towards the claimants. The mediators often wrote down similar expressions and used them as building blocks to construct the expected agreement between the sides. By using the sharpening

² Lieblich, Amia et al. (1998) *Narrative Research: Reading, Analysis and Interpretation* (Thousand Oaks: Sage), p. 13.

mechanism³ the narrator devoted ten words out of twenty (half of the narrative, in Hebrew) to describing the relationship between the two parties. He tried to attribute an appropriate meaning to that point, and to achieve a desired effect on the outcome.⁴ The first theme therefore deals with how the parties portray their connections.

The second theme, which encompasses much drama, is the unfulfilled 'need to be heard'. It appears in many cases where, in their narratives, parties do not present the nature of the conflict, nor the preferred solution, but the prolonged experience of not being able to talk to the other party. The speaker devotes six words to this message (more than a third) which is a relatively high proportion. While the legal issue of the claim at this point is still undisclosed, the route that determined the decision to turn to court is paved with "*endless phone calls without any response.*" The 'legal' issue is secondary to the main necessity: to get a response. This may be the most profound issue arising from the claimants' narratives during mediation. The finding is that the feeling of having been ignored rather than the unsolved matter leads claimants to the courtroom.

The third resounding theme that materialised from the observations is the description of the court as a 'battlefield', a place which one avoids visiting since it is an arena for fights between enemies: "*I had to turn to the court*", summed up the claimant. As he presented the matter, his first choice was not to solve the problem through litigation, but he was forced to choose it. By mentioning that he filed a claim but giving it a 'proper' excuse the speaker uses the 'flattening' mechanism to minimise the common meaning of that deed.⁵ Many claimants explained that they

³ Spector-Mersel, Gabriela (2010a) 'Mechanisms of Choice on the Grounds of Narrative Identity: A Model for Analyzing Narratives', in: Kassan, Lea and Kromer-Nevo, Michal *Methods for Qualitative Analysis* (Beer-Sheva: Ben-Gurion University Press), pp. 63-96.

⁴ Cortazzi, Martin (1994) 'Narrative Analysis', *Language Teaching*, vol. 27, is: 3, pp. 157-170.

⁵ Supra note 3.

had sued unwillingly, only when they understood that no other alternative was left. This attitude towards the courts, which contradicts the frequent use that Israelis make of legal institutions, is discussed in the subsection 'Perceptions of the Court' below.

Between the Parties

"I and the respondent – we are not enemies"

*"It is not the ocean between the two of us,
It is not the ditch between the two of us,
It is not the time between the two of us,
It is us between the two of us."⁶*

The first theme revealed that the parties are preoccupied with their relationship as well as the issue in dispute. Many wanted to emphasize the good connections between them and their positive attitude. They felt it was important to mention it in front of the mediators and the opponents, and many devoted words in the beginning of their story to establish their perception of those relationships. The examples vary from acceptance through affection to symbols of love.

The claimant in mediation no. 4 was a religious Jewish housewife in her late 50s who was upset by the stains on her two-year-old leather sofa, and sued the retailer. She was accompanied by her husband, a teacher at a religious middle school, who arrived with a prayer book and sat reading it from time to time throughout the meetings. The claimant began her narrative by stating:

*"I can't believe that I find myself in such a situation, since I just wanted to buy a sofa. I went to **a good place with a good reputation; a place I trust** [names the respondents]. Most of the pieces of furniture in my house are from there. I even took my daughter there and she also bought from them. **There is a feeling of friendship and full confidence.**"*

⁶ Goldberg, Leah (1973) 'It is not the Ocean', in: *Poems* (Tel-Aviv: Poalim Library)(Hebrew) vol. 3.

She talks in the present tense, explicitly mentioning the existing friendly relationships between the two sides. It is noteworthy that the concept of 'trust' she expressed received an ironic twist later on in the mediation, when she revealed that she had concealed essential information. However, at the beginning she was very complimentary towards the respondents, and dedicated many words to saying so. She continued:

"In the factory they showed me everything and I was satisfied and I relied on them completely. As I said, the sofa arrived as expected and I was satisfied."

When questions arose regarding the cleaning of the sofa so important to her, she repeatedly returned to the store and received the merchant's assistance. She went on:

*"I went to the senior saleslady who is **also a darling** and with whom I am on **good terms** [present tense]."*

Then she described what happened:

*"I told Avi [one of the sales staff] that some stains had appeared on the sofa. Avi said: '**don't worry**, I'll send someone to you.' Then came Eli, who was **also so cute**. He gave a look, tried to clean it, and did not succeed much." [After '**so cute**', she laughed and added "**really cute**".]*

The woman's tone throughout her narrative was calm and composed. She kept mentioning first names as a sign of close connections. The respondent in his turn did not forget to mention that:

*"Within the **framework of the praises**, it should be mentioned that they are **excellent** customers."*

He then stated that he spent a great deal of his time discussing problems with many clients, and explained how he assisted his clients with their different concerns:

"We sell dozens of sets ... and the service is excellent; not only good, but excellent."

To end with the following statement:

*"I want her to go on buying from us and I want her children to continue buying from us. I don't want to **beat** them. I looked for a solution, not to **blame** anyone."*

This episode and the trajectory of the above process completely contrasts with the other 'sofa tale' in Mediation no. 10, in which the process began with harsh accusations about the respondent's employee rudely hanging up the telephone on the claimant. In this instance, the respondent apologised for his employee's behaviour, which brought about the turning point in the mediation and led to the signing of an agreement between the two sides. Although the relations were different, in both cases they are the core of the discussion. The need for good relations is shown in the following dialogue during the second joint meeting:

Respondent: *"At the end you will be **my friend**."*

Claimant: *"But even now I am **your friend**."*

The claimant's wife added: *"From the beginning I knew I **could count** on you."*

This was in contrast with what they said in the opening ceremony, when they felt that the attitude of the respondent's employee was harsh and that his salesperson tried to brush them away. Facing a different attitude in mediation changed their words accordingly, not only in the present but also regarding the past; modifying their narrative, thereby creating a new story. This behaviour fits the role of narratives as reflecting and transforming reality.

The claimant's narrative in mediation no. 13 began with expressions of affection to the respondent's employees:

*"Then Cobi came. He was a **charming** salesman. With him I saw what I wanted... He asked me 'are you sure?' I just saw it and right away I bought it."*

She went on with her narrative saying:

*"I was **extremely happy** with everything. I **liked everything** a lot."*

However, she then found a problem with the doorpost. Addressing the respondent she continued:

*"Immediately I called the secretary at your office. She answered that this can happen and said: 'I will send someone'. A **very nice** man came over ... He tried to fix the problem ... a **charming** person indeed."*

Sometimes during the mediations the simple reality, reflected in polite words and civilized manners, seems too pale and lacks vigor; thus a party might feel the need to exaggerate his claims vis-à-vis the other party. The respondent in mediation no. 19 knew that he was at fault for breaking the rental agreement with the accusing party, who was hurt both financially and mentally. He began his narrative with:

*"First of all and before I start, I must say that from the moment we met Danny and Sarah [the claimants] we were **impressed by the good qualities** of these people ... A couple with whom we **immediately had a special contact**. It is really difficult not to **fall in love** with them."*

A look at Mediation no. 16 adds a chuckle to this discussion. Only three minutes after the mediator started with the classic opening ceremony, the following dialogue ensued:

Mediator: *"We will help you resolve the conflict."*

Claimant: *"We do not have a conflict. We solved it on our way up here."*

The mediator was surprised, and convinced the parties to continue the mediation process a little longer, speeding it up. After signing the mediation agreement, the claimant described the 'interim agreement' between the parties, adding:

*"Moses [the respondent] is O.K. I **believe** him [addresses the mediators] Do you have any problem with that?"*

After two sentences the conversation continued to the following:

Mediator: *"Why do you give up charging him the interest?"*

Respondent: *"**I love him**, I know him from childhood."*

Mediator: *"**Love is a good reason**. Have some water."*

And their dispute over a debt to a local convenience store owner was resolved.

The previous examples are of relationships in which the parties pretended to be closer than the normal customer-merchant relationship. There are other examples, on a lesser level, exemplifying good contact between the parties. The claimant's narrative in mediation no. 14 opened with him saying to the respondent:

"I have been your customer for the last ten years."

In this case, the claimant had purchased four tires from the respondent, a car mechanic. The tires were especially selected for his unusual automobile, and were therefore rather expensive. Following a few months of use, the claimant heard strange noises coming from the car and discovered that the tires were uneven. During the mediation process, there was a debate as to whether the reason for the problem was a defect in the tires, the poor quality of roads, or another part of the car. However, defining their positive customer-merchant relationship enabled the parties to overcome these issues and solve the dispute on the basis of trust. When the claimant stated that he had been a client of the respondent for ten years, the respondent answered with:

*"We **thank him** for buying from us. We are **delighted** to have had him as a customer for the last ten years, and we **hope** he will stay our customer."*

This illustrates how two people with different interests as well as mutual interests are able to bridge those interests within their narratives. Unlike the claimant, the respondent spoke to the mediators, addressing the opponent in the third person. This may show distance, respect or an attempt to get help in keeping the client. The positive attributes of the claimant created conditions conducive to the discussion. In a caucus, the respondent shared with the mediators the effect of the aforementioned statement:

*"I made a very generous offer. I did not want to propose anything, but **he spoke so nicely** and **I felt for him**, so I made the offer straight away."*

This mediation concluded in a unique agreement – the respondent accepted the tires back and paid the claimant half of their original price. This solution is uncommon because companies do not usually pay money 'out-of-pocket'. Maybe the claimant's positive and reasonable attitude towards the respondent and the option of a continuing relationship led to this solution.

Placing the dispute within the framework of a good customer-merchant relationship is a tool which parties often use. The claimant in Mediation no. 3 began with:

"I have long standing ties with the company [the respondent]."

His remarks were immediately returned when the respondent started his speech with the following:

"Mr. Shmueli [the claimant's last name, honourary form of address] is a customer..."

This mediation also ended in an agreement. In general, in the instances where the parties begin with acknowledgment of each other, this affects the entire process. Even when no agreement is reached, the atmosphere is indicative of cooperation and understanding, even forgiveness. In particular, a reasonable attitude, treating the opponent with respect and not exaggerating – as noted previously – is conducive to problem-solving. Conversely, exaggeration to any extreme, tends to hide reality and does not contribute to a visible resolution. Using extreme descriptions – bad and good alike – moves the parties away from the facts and from each other.

The next example from Mediation no. 18 is an exchange that took place between the mediator and the parties after the claimant had stated his story. These were the mediator's attempts to emphasize and highlight the good relations:

Mediator: *"From a personal point of view, is this the first time that you two have met?"*

Respondent: *"We do not have any personal issues."*

Mediator: *"So the connection between you is nice and pleasant..."*

Claimant: *"We do not have any personal problems."*

The above quotation demonstrates a few points: the importance of relationships between the participants themselves and between them and the mediators and the importance of articulating these relationships. The mediator's need to portray an artificial picture of good relations was unsuccessful. The parties see the relationships seriously and stick to their own description. Establishing good human connections is important for a dialogue to happen, although it is not enough to attain a settlement. The quotation from the respondent's statement in mediation no. 6 (first joint meeting) demonstrates how he creates the balance he chooses:

*"From the **bottom of my heart** I support you [the claimant]. **But this is on a personal level.**"*

The last comment *"on a personal level"* could have led to a possible confrontation, since it restricted the possible implementation of the statement before it, so the mediator immediately began reading back his notes concerning the above sentence:

*"OK. I will try to see if I understood what you have just said. You said that personally **you feel sympathy** towards the claimant."*

He was quickly interrupted when the respondent promised that he was:

"Sure, that is why I came here."

In mediation no. 9 the mediator reflected the claimant's story in the opening ceremony:

*"I will tell what you just said. In your introduction you said that you found a store that you **relied on completely**" [the respondent and the claimant nodded in agreement].*

The establishment of good connections between the parties went on from the beginning of the process to its end. The extremely pleasant words of the woman

who purchased the leather sofa (mediation no. 4) about the respondent and his employees were inconsistent with the dispute. There were no private meetings after the opening ceremony, but approximately two hours into the mediation, during which the respondents tried to offer to fix the furniture to her satisfaction, the claimant's husband stated:

Claimant's husband: *"I said that the sofa was really important for my wife. I can sit on a wooden chair; when I do my military service I sleep on a wooden chair. But my wife could not wait. She bought a new sofa..."*

Mediator 1: *"What?? You bought a new sofa?"*

Claimant's husband: *"Your wife would agree to have a sofa like that? What kind of a woman would agree to have such a sofa??"*

Mediator 1: *"Oh... well... so..."*

Mediator 2: [giggling]

Respondent 1 [looked shocked]: *"If you had told us that before we would not have come to mediation."*

This fact made all the discussions before irrelevant, and the mediators requested a break. Upon returning they began once again:

Mediator 1: *"When you entered the mediation room I did not understand what you were doing here with such **friendship, affection, trust...**"*

Mediator 2: *"**Fairness...**"*

Mediator 1 [continues]: *"All the above was **in the room**, and suddenly something else entered. What was it? Avi, [one of the respondents] you are **a real friend of the family, a good friend** who comes and gives good advice. You must feel terribly disappointed that she bought a new sofa..."*

Respondent 1: *"No, no, no..."*

The mediators tried to keep some of the imaginary picture that the claimant had portrayed, though her fantastic descriptions of their relationship should have served as a warning sign when dealing with a dispute. The mediators used the favourite concept of 'the room' to explain what happened more objectively. The claimant, who had almost fooled all the participants with her kind words towards the respondents, changed her tone completely, and after having broken the confidence necessary for commercial relationships as well as for mediation,

blamed the respondents for causing the loss of trust. Before departing the claimant's kind words from the beginning of the process were reversed:

"There is no trust. We will meet in court. They are laughing at us. They are big and they laugh at the small ones."

This example demonstrates that sometimes the nicest words are only window-dressing for the problematic issues, while moderate, realistic expressions, like *"we even sit together,"* serve the discussion better and in a more constructive way.

As demonstrated, the determination to present a picture of good relationships between the parties is not missed by the mediators. Another good example that combines the perspectives of the mediators and the parties on the relationship is from the last stage of mediation no. 20. While formulating the final agreement, the mediator asked the claimants:

Mediator 1: *"May I write that you are aware of the company's efforts towards you?"*

Claimant: *"No, no! It would be lip service and would not reflect our feelings."*

Mediator 1: *"But I feel their willingness now..."*

Claimant's wife: *"What I feel is..."*

Mediator 1 [does not give up]: *"You are a **group of good people**. It is so nice to see that you behave like human beings and you end up with an agreement..."*

They signed the final agreement but the mediator was not satisfied, so he added:

Mediator 1: *"About the **relationship** – I **have** to write something about that"*

Claimant: *"Why is it so important to you?"*

Mediator 1: *"It is most important, because **you are all good people**"*

This may be an extreme example, but it shows that all participants view the relationship between the parties as crucial to the process. The mediators see the relationship as part of the solution, not only because it is mentioned in the literature, but also (as they say themselves) because they deeply believe in the necessity for a good, long-lasting resolution. They give the impression that the relationship between the parties is a key component among the disputed issues.

In the social sciences findings of a 100% are not possible; a good established theme is balanced by contradictory episodes that prove that, although a theme covers most of the cases, there are other options as well. Therefore, concluding with the exceptional exchange from Mediation no. 8 will strengthen this section's findings. The claimant in this case was an immigrant from the FSU having come ten years earlier and the respondent an Ashkenazi Israeli couple. The claimant attempted to disrupt and block all fruitful discussion by insisting that he did not understand Hebrew, a fact that the respondents contradicted. The claim was for damages to furniture caused by a leak, which the claimant attributed to respondents' flat above his. The respondents alleged that they were not the owners of that flat and therefore had no obligations regarding the leak. This issue was not resolved in the mediation process. Before the structured mediation process even began, a discussion of who was the correct respondent took place. The mediator attempted to clarify the situation and said:

"This flat has someone who owns it. So maybe..."

This half suggestion was immediately rejected by the respondent calling:

*"No! I am not going to help him. **He** has to find the owner and to sue him..."*

In this process there were no freely spoken narratives. Throughout the opening ceremony the claimant spoke in Russian, but the mediator who knew the language did not translate all, partly because the claimant used particularly foul language. However, the mediator mentioned that the claimant was nasty towards the other party. The respondent addressed the mediators in Hebrew:

*"You see who are you dealing with? He is a **criminal!!**"*

Later on, during in the private meeting, the respondent answered the mediator's question of how much was he willing to concede in order to meet the claimant in these words:

*"To a criminal - no way; if he was **someone like us...**"*

Without a common language and without elements to make relations possible, a dialogue and a solution are harder to come by.

The Need to be Heard

"endless phone calls without any response"

This section deals with the second theme that arose out of the parties' articulations throughout the mediation processes: the claimants' perception that the respondents at first blatantly disregarded their complaints and eventually ignored the claimants themselves. The repeated wish to achieve some reaction, to be noticed and get a feedback, will be discussed next.

Mediation no. 1 revolved around a couple and the post office. While travelling in India on their honeymoon, the claimants sent a package home. Upon their return they received a message from the post office that the package had arrived in Israel. However, when they came to collect it, they were informed that it was lost. Claiming the package contained valuable possessions, they sued the postal service for their loss and compensation. At the beginning of his speech, the claimant repeatedly expressed his frustration:

*"I was harassed on the phone – **a whole series of phone calls**. At the same time I also moved to a new house and was dealing with new electrical appliances. I was harassed. They said that they **would call me back and didn't**. I received a phone call from the manager ... She promised to check the matter and **get back to me**. She didn't."*

After a few moments he returned to the same problem:

“Furthermore, there was no one to talk to. They did not answer my letter. Simultaneously, I was taking care of the new house and did not have time. At a certain point I gave up.”

The claimant emphasized that it was not compensation that was guiding his actions, but the demand that the Postal Service acknowledge their responsibility for not finding their package. Following his monologue, the mediator expressed his confusion and asked:

“Actually, what did you sue for?”

The claimant replied:

*“What happened to this package? I want an **answer!**”*

Another example of a situation in which a claimant expressed frustration at being ignored was Mediation no. 6, in which the claimant stated her anger in the following bitter words:

*“It was possible to solve this problem. She [the respondent's employee] **was not ready to listen**. It was insulting. It was unprofessional.”*

The claimant cleverly combined her legal claim and her demand, potentially addressed by mediation, by calling the behaviour as both *“insulting and unprofessional”*. She illustrated how acute is the need to be answered in both spheres.

After at least one hour without any progress, the mediator in mediation no. 17 inserted his view in order to add a reality check:

Mediator: *“But the judge will say you cannot prove your claims.”*

Claimant: *“Not a problem. The mere fact that I brought him to court, that he could feel the mistake he made, his behaviour throughout, is enough.”*

The claimant in mediation no. 13 expressed the same feelings of being disregarded. The retired sixty-year old woman came to the mediation accompanied by her

husband, also retired. Upon the completion of a tiring renovation of her home in a small town near Hadera, she realized that one of the doorposts was uneven. During the mediation, she made it evident that she was a very aesthetic individual who is bothered by such a defect. She requested that the company from which she bought the door either replace or fix it. She stated:

*"I called for hours. One secretary passed me on to another. I got back to Shira [the respondent's worker] and said: 'I give up. **There is no one to talk to. Why?'** She said – 'I will speak with the manager. Let's wait and see. Call him'... and once again there was **a series of phone calls** and it has been going on and on for two or three months. I am exhausted. I wrote a letter and explained. **I did not receive any answer.** I said to Rami [the respondent's worker] 'I shall sue you both. Then someone will **answer me**'".*

A careful reading of the last sentence reveals how deeply hurt the claimant was being left without a response. It is evident that she wanted to fix the doorpost, but she emphasized that she went to court in order to force the respondent to listen to her complaint and to respond to it. She stressed in her narrative that all her attempts to get attention had failed. As a result, the small bubbles in the doorpost became important, but the major issue turned out to be the unsuccessful discourse. The narratives reveal that claimants do not give up easily. Many mentioned the continuous trials to get a response. They demonstrate its importance by their investment of time and efforts in this need.

The claimant in mediation no. 3 also expressed the frustration he suffered when he could not speak to a person who would listen and respond when he complained about an oven of twelve years that did not heat properly. The claimant wished to discuss the problem with the manger of the oven maintenance company, who refused to answer his calls. In the opening ceremony the claimant stated:

*"I wanted **very, very much to speak** to the gentleman [the respondent] and I shouted a little bit more than necessary, I am sorry. I usually solve my problems in a friendly manner."*

The next example is taken from the main narratives of mediation no. 15. The claimants, a couple who had recently completed an extensive strenuous home renovation, were unsatisfied with an inside door they had ordered. They claimed that the manufacturer had not used the right colour. As in the other case of a door (mediation no. 13, with no connection between the participants), they too did not reach an agreement. Similarly, they felt aggrieved that, while they were interested in working with the manufacturer to find a solution, the company had ignored their complaints:

*Claimant: "Then I gave a sample of wood. They took the wood and since then, there has been **no one to talk to.**"*

An underlying theme that seems to run through all the examples above is the claimant's attempts to generate a dialogue prior to legal action.

As these examples show, many mentioned the unsuccessful attempts to talk with the other side during their opening speeches, in clear, comprehensible sentences. They returned to those efforts throughout the private meetings and again in the joint sessions; after answering questions and after hearing the respondents' narratives, the claimants restated that if they had been able to establish communication, they would not have turned to the court. What apparently emerges from the narratives is that the request to be heard is much stronger than the request for compensation. As was generalised by the claimant in mediation no. 6 facing the respondent (before leaving the mediation room to give the mediators a break):

*"Please understand, we did not sue you about this specific event. This is a **symptom of the lack of listening.**"*

Mediation no. 11 was over the payment of advertising services performed by the claimant for the respondent. The respondent argued that the company did not request the advertisement and did not authorize the work, therefore did not have to pay for it. The claimant tried multiple ways to gain sympathy from the

respondent, who was represented by a new senior employee. The latter was not aware that six years ago the claimant had worked closely with his company and had previously enjoyed positive daily contact. The respondent declared that the claimant had fabricated the company's authorisation for the advertising. He offered to wrap up the incident by paying a fixed sum, approximately 20-25% percent of the claimed sum, only to save time and money by avoiding litigation.

He stated that anything above 25% was unthinkable and, if his offer were refused, he would willingly return to court. The many attempts on behalf of the claimant to make the respondent understand were in vain, and could not change the proud, confident, alienated attitude. The claimant's apparent pain over the respondent's lack of concern and his attempts to do away with his claims were visible when he said:

*"I am infuriated by the disrespect and the way they dealt with it. They gave me the feeling that I am of no importance at all, both by their manner and their behaviour. **Someone could have called** and said: 'You did not work according to our procedures.' I would have thought it over. But **they promised to call me back and did not**. I understood they were trying to get rid of me."*

And after a few minutes, when the mediator tried to move forward and said:

"I want to propose something to you. You don't have to accept, but just concentrate. If you want to move ahead from a good point, tell us so that we can understand, what is it that you would you like to happen here?"

The claimant replied:

"You decide what I should do."

And then he immediately added, with frustration and confusion:

*"I wrote and I called more than once. I don't know if you have his statement of defence [quoting dates] and I asked and she promised me: 'I will call you back.' And **she did not call me back even once**. I told her: 'You could at least call to say: I don't want to pay you.'"*

Usually those claims are not left without an answer; most respondents emphasized the good service they provided. Some apologized and others disagreed with the description the other party had offered, usually respectfully and with a degree of consideration. From their apology, it appeared that they recognized the emotions expressed by claimants, either from their own experiences as customers or by pure empathy. For instance, the respondent from mediation no. 1 (the lost package) commented at the beginning of his speech:

"Do not be offended. I do not want to say that he was harassed and so on. I am sorry for all that. As a post office employee and as a person I know that this stuff can be very annoying."

The respondent in mediation no. 2 tried to share with those present his appreciation of the company he represented:

"It's a great company. We did not ignore you, we answered the letters."

Whereas the manager of the furniture company in Mediation no. 10 did not agree with all complaints stated by the claimant, nonetheless he showed respect:

"We did not invent the wheel. There are failures. There is a service department. You must know, Motti [claimant's name], with all due respect, a mobile phone is something personal and usually you don't give out the number. It is possible that in the process there was something ugly. I apologise. Maybe she did not speak so nicely."

This attitude was similar to the respondent's in mediation no. 3, who said that the service was good and the complaints were answered:

"We have many workers who deal with service to the public, but I don't. [Claimant interrupts, respondent keeps on speaking] In any case, the technician came to see the problem again. All in all we visited him [claimant] four times."

The respondent in mediation no. 11 took the claimant's accusation of not being answered very seriously, referring to it at the beginning of his narrative. As the relationship between the parties in this case was tense during the session, it was

important for him to respond to all accusations. He began with the issue of the non-response to the claimant:

"As to the letter, I did not receive it."

A few sentences later he reiterated this idea that it is not possible that the company ignored an application:

"As to the proceedings that he had been coming and going for seven years, this sounds strange to me. I am well acquainted with Shula, the accountant. An amazing woman! In my opinion, she never said 'get rid of him.' Otherwise this would be a libel against the person."

An exchange by the parties towards the end of the first meeting in mediation no. 20 demonstrates that the need to be heard continues throughout the process:

Claimant: *"This is what is difficult for me, that all the time you interrupt my speech."*

Respondent [goes on speaking]

Claimant: *"You are not listening to me and this is part of the problem of confidence that I am having."*

Respondent: *"I will listen"* [making a face of a listener].

The respondent in mediation no. 11 demanded from the claimant:

"If you are patient then you will hear me. Let me speak half the time of your lecture."

Careful listening seems to be a skill that is difficult to acquire: both sides are often impatient and sometimes continuously interrupt each other. This immediately draws the response of 'don't barge into my thoughts', and the sentence which was used often: 'I didn't interrupt you, don't interrupt me.' mediation no. 10 is an example of this, when the claimant complained in the joint meeting:

"You [mediator] talked about a culture of speech; I did not interrupt his speech."

The mediators play a critical role in fulfilling the listening task. The most straightforward manner was used by the mediator in mediation no. 18. in the opening ceremony where he specified the mediators' role as:

*"We will help you; we will mainly **listen** to you."*

The final sentence of the mediator following his explanations of the mediation process in the opening ceremony was (mediation no. 10):

"The last and most important thing is that we came here to terminate in a good spirit. When one is speaking, try to listen and not to interrupt while he is speaking."

Unfortunately, listening is difficult also for mediators to fully implement. Mediation no. 20 showed this:

Mediator: *"If I understand correctly..."*

Respondent: *"Just a minute, let me finish..."*

The mediators are not indifferent to the claimants' feelings of having been ignored; they often attempt to soften the caustic that is present in the room. During the opening meeting in mediation no. 11, the mediator began to reflect the claimant's statement and was interrupted by him, an act that made him strengthen the reflection:

Mediator: *"If I understand properly [name of respondent]..."*

Claimant: *"Just a minute, let me finish."*

Mediator [continues]: *"You got to the manager. Even this did not help you."*

Claimant: *"I called his **secretary** and even this did not help."*

Mediator: *"That is to say, you called **everybody** and not many people were left that you did not call."*

The issue of listening and responding is so acute that it appears even in the mediation agreement, which often delineates steps to prevent communication problems in the future and includes avenues for future interaction. Two examples that demonstrate this well are mediations nos. 10 and 20. In a private meeting during mediation no. 10:

Mediator: *"I would like you to include the subject of confidence in your talks."*

Respondent: *"I would give her my mobile phone [makes a gesture as if he wants to give her the appliance, not the number]."*

At the completion of mediation no. 20, during the signing of the agreement:

Claimant: *"One of the problems was that we had nobody to talk to. Who should I talk to in the company?"*

Respondent: *"Talk to me! Send me a fax and I will get back to you."*

Not only is this theme repeated throughout, but each participant (i.e., the claimants, respondents, and mediators) adds his own understanding and experience to it.

This section concludes with the claimant in mediation no. 12 who opened the discussion. After a short opening, he continued to describe his attempts to communicate with the respondent. The following is a collection of his sentences during the process:

"I have been pursuing him for a long time..."

"I started six month ago when I was really fed up..."

"There was an exchange of letters. All the time I requested...[shows documents]"

"This payment is like chewing gum ..."

"Three years I have been running after them ..."

"I paid for small claims, and all this, just in order to meet with you."⁷

Throughout the process, at least ten sentences were dedicated to this theme and he stayed with the subject until the mediator lightly nudged him to let go saying:

"I think we'd better look forward."

The Parties' Perception of Court

"I had to turn to the court."

"Your honour, I kindly ask that we will not have lawyers' said Ramah in a language she thought the judge might like. 'We have a human issue here, not a legal one.'

His majesty Yehuda Chay Poraz said: 'The issue is legal and not emotional. The lawyers will stay.' Did I speak in a low voice or is the judge hard of hearing? wondered Ramah."⁸

⁷ This theme is also often heard in courtrooms. A Small Claims judge recounted that once, after a claimant presented his case, he wanted to leave. Under threat that the suit would be dismissed, he said he did not care,- he just wanted to force the other side to listen once to what he had to say.

The third theme is concerned with the question of how the parties comprehend the act of 'going to court.' The common image of the courts which emerges from the interviews is to associate them with battlefields, with justice; and with unfathomable labyrinths.

The Haiku-style narrative expressed in mediation no. 12 which inspires this chapter juxtaposes "*I had to go to court*" with the first sentence: "*We are not enemies.*" There is an underlying connection between the two sentences: those who go to court are enemies, and if they are not before reaching court, they soon will be. The perception of court as a battlefield was common to many parties and mediators alike. Parties expressed concern about appearing in court for a variety of reasons; most prevalent was the idea that the court was a battlefield. The claimant in mediation no. 4 began her narrative with the following:

"I do not believe I have reached this situation."

She mentioned that being involved in a lawsuit did not fit her perception of herself. As the mediation process progressed, it was important for her to note that the people involved in the conflict, on both sides, were honest people who just happened to meet in the courtroom. Her husband said towards the end of the mediation process, when they did not reach an agreement and the atmosphere was very unpleasant:

"My wife always says: we spoke kindly, it is the circumstances, not the people, that caused it."

⁸ Poetess Dalia Rabikowitz (1936-2005) wrote this novel about a trial over the custody of a child, probably echoing her own experience: Rabikowitz, Dalia (1977) *The Football Team of Winnie Mandela* (Tel-Aviv: Hakibutz Hameuchad)(Hebrew), p.23.

Until the very end she detached herself from the fact that she had actually submitted a claim against someone else and, by doing so, had publicly declared herself involved in a dispute and acting in an assertive manner.

The claimant in mediation no. 2 finished his story with:

"I am not the type to go to court and I did not want to go. I approached consumer organisations and they said they could not help me to resolve this dispute."

The respondent in mediation no. 11 described his decision to go to court thus:

"At one point I gave up. I said I would go to the court; at most I donated 150 Shekels as a fee to the State of Israel. I am not the aggressive type."

Here again, the legal process is associated with malicious power which claimants wish to avoid. A person who sues is aggressive, vindictive, someone who cannot solve problems in a civilized way. The claimants all stressed that they were not the typical claimant; they went to court only because they had no other choice, as if they were forced to. The perception that someone who regularly goes to court has a poor reputation is also common. In mediation no. 4 the respondent, a furniture seller, began his narrative saying:

"This is a business that has existed for 60 years and this is the first time that we find ourselves involved in Small Claims, and we don't sell for just 1000 Shekels ... Please understand, this is the first time in 60 years!"

The claimant in mediation no. 17 phrased it simply:

"He [the respondent] has had a few trials. He is always like this. There are other people with whom he is involved in trials."

The fact that a party is familiar with the court is perceived negatively. From the mediators' comments amongst themselves and during meetings it is possible to deduce that they also viewed taking the case to court as a bad option. They continuously express their view, that mediation is a good alternative in

comparison with adjudication. In the opening ceremony of mediation no. 15, the mediator stated:

*"If you have a date for a hearing, the option of the court is kept open and available; we are **hoping** that we will **not need** to get there."*

In a mediators' meeting, and without any sugar-coating, the same mediator said:

*"I can see several possibilities... **God forbid** that we send them to a judge! I would **not like** to do this. I want them to be satisfied at the end."*

This was a rather strong statement, which was made with no prior weighing of the options, since he could not see any possibility of the parties being satisfied with the court system. In mediation no. 13, when the mediator concluded the discussion, he informed the parties as follows:

*"I propose this – let us stop now. We know what you are asking [to the claimants] and what [the respondents] are proposing. It appears that there is a solution for the door post, but there is none for the compensation. There is plenty of time until November [the court hearing date]. We will contact [name of third party]. If they are ready to pay the compensation – OK. If they don't, then you will **fight** in November!"*

All parties share the metaphor of litigation as a battlefield. The respondent in mediation no. 4, for example, said:

*"There is no need for Small Claims Court; there is no need for mediation, this never happened to anybody else...I wanted the best for her...for them. I want her to continue to purchase from us and her children to continue to purchase from us. I do not want to **defeat** them."*

Like claimants' narratives, respondents' narratives also manifest symptoms of court aversion. In a private meeting during mediation no. 6, the respondent spoke about the company he represented:

"I have been with [name of respondent, a travel company] for six years, six years in the customer service department. We have tried not to involve the courts ... every customer application is checked by means of questioning. We don't want to be involved in the courts. We have been trying to prevent this from the point of view of our

reputation. This file contains a minor problem of prestige, maybe more than that. But I think that we acted as we should."

The respondent kept explaining that going to court contradicts a good reputation. Reliable companies and good people do not meet in a court room; consequently when they do meet there, one must be the villain. Courts are not seen as part of normal life; one is either a client or a litigant; parties either talk to each other or sue. After the mediation was concluded, the representative of the retail company (the respondent) mentioned the reason why he tried to avoid court cases. He reiterated the notion that people who are too familiar with the courts get a bad stigma:

"Here, as a person who is representing a company, I can see several reasons for not going to court. For example, I am not interested to appear on the internet under my name as a trouble maker, so that people will not come to me with claims. And sometimes it is worthwhile for me from the point of view of prestige – maybe not prestige, let's call it business, this is the right word; from the point of view of business, I prefer to keep this person as one of my clients."

This understanding is similar to that of the respondent in mediation no. 10 who said:

"If I defend a claim, I win. The clients are important to us. We want them as clients. We don't want to go to court."

Law courts are depicted as places that cause sorrow and anguish, as the respondent in mediation no. 8 stated:

"But we consulted with a lawyer; there is no doubt that he will need to find who owns the flat, and this will bother him [the claimant]."

Going to court usually excludes other options for communication and other ways to solve the conflict. Courts were not viewed as places to clarify legal issues or to gain/regain rights and correct evils, but as a hostile arena in which nothing is certain. Apprehension of the courts and the feeling that going there is the less

preferred option was evident in many of the respondents' statements. An example of this was heard in mediation no. 11:

Respondent: *"You are **dragging** me to court and I don't want to go there."*

Claimant: *"No, no. I am not saying what I will do."*

In mediation no. 15 the respondent used different words to state the same idea:

Respondent: *"The simplest thing is to 'go for broke' here, and to meet at the court. Do you agree with me?"*

Claimant: *"I agree."*

Parties view mediation as a way to escape the litigious situation in which they both find themselves, sometimes it looked as if by accident. In Mediation no. 18, the claimant told the mediator in a private meeting:

*"Don't worry, I will not sue him personally ... No doubt this is a good thing [mediation]. It saves **fight**s in court."*

In mediation no. 9 the following idea was emphasized again; the claimant said:

*"We are not interested in **wars**, we want a compromise."*

The parties associated the court with images related to war, such as fear and loss.

This was the exchange in mediation no. 9:

Respondent: *"In court, if the judge decides that I am right, I will demand the expenses from you. I will claim expenses and I will bring the testimony of clients who bought the same sofa, who will testify that they are using it to their satisfaction."*

Claimant: *"You aren't trying to intimidate me, are you?"*

Respondent: *"Never mind, it's OK."*

Claimant: *"There is no trust between us, as you said – we will meet in court."*

While the mediators keep telling the parties that the results of law suits cannot be anticipated, sometime the parties express faith in the courts. These findings concur with research about public trust in the courts. A survey in 2008 has found that 32% of the Jewish population trusted the courts. Although this proportion has been

slightly declining over the years, the rate is still high, especially in comparison to trust in other state authorities.⁹ The respondent in mediation no. 9 illustrated this point explicitly. While he refused to pay the claimant in the mediation process, he was willing to accept any court's decision and stating:

"If it is a question of money, I am not willing to consider giving even 100 Shekels. If a judge will rule so, then there is no problem. This is extortion, full stop!"

The last finding is that a trial is portrayed as a labyrinth – one knows how he gets in but does not know when and how he will get out. The decision to go to court is the claimant's at first, then the respondent decides to reply rather than to try and solve the dispute. This is when they lose their autonomy in controlling the process. The cliché frequently used by mediators is: 'you do not know what the judge will decide.' This comment is often used as an excuse not to try and understand legal procedures and legal rules which are the basis for courts' decisions. This fatalistic attitude towards the courts, combined with doubts in their ability to enact justice, leads many people to both seek legal redress and fear it at the same time. The mediators encourage the hesitation towards the court, since mediation and adjudication are two players in the same arena.

The mediator in mediation no. 11 spoke of this 'common knowledge' in a private meeting:

"You also know what I know, that is, we have no idea what the court will rule."

The following dialogue in a separate meeting of mediation no. 8 repeats this well-known cliché:

Mediator: *"You think about how to give the minimum and he thinks about how to get the maximum."*

⁹ Rattner, Arye 'Israeli Legal Culture 2000-2010':
<http://actveng.haifa.ac.il/PDF/tehuda/%EE%E3%E3%20%F8%E8%F0%F8.pdf> (20.1.2011)

Respondent: *"But you understand and you know that the court will reject his claim outright."*

Mediator: *"If I knew what the court was going to rule, I could make a lot of money."*

Respondent: *"Yes, yes."*

Freely revealing her calculated risk assessment during a private mediation meeting, the claimant in mediation no. 9 said:

"We thought that if we went to court the judge would say – you asked for 10,000 Shekels, you will make do with 5,000."

In this short statement she mentions neither justification for the remedy, nor legal rights or precedents. Rather she is fixated on luck and chance without any logical support. It is evidenced that those Small Claims Court claimants sometimes relied on their intuition rather than on legal advice. If they feel that they are 'right', they are satisfied with that and do not take the trouble to determine whether they have a strong legal case or not.

The respondents are sometimes better prepared to face the 'legal labyrinth'; some are experienced professionals who are familiar with going to court, and often they can get legal advice before coming into the mediation room. As respondents might be cooperative, they can spend the money on legal consultation. In mediation no. 1, for example, the respondent cited two legal arguments, both based on specific laws dealing with mail services; one concerned prescription of the action and the other concerned the maximum payment for lost packages. Neither the mediators nor the parties knew about these regulations and whether they applied to this particular case. The combination of the participants' perceptions and those of mediators who lack a legal education can cause disturbing results.¹⁰ In that case their arguments were based on emotions rather than on sound legal grounds. This reinforces what

¹⁰ Miller stated that during the first years of Gome, in every process, one mediator had to have legal education and one had to have a background in social behaviour; these were expensive demands.

is described above in chapter 7 about the role of emotions. For example, here are the claimant's words (in the opening ceremony, mediation no. 1):

"I want to add something – I did not know that it would come here at the end, and it is good that it is so. When I read the statement of defence I was not feeling revolt but I was very much hurt. It was written there that we were unlawfully enriched. This is impertinent because they were the ones who did harm. As if we wanted to profit! Besides, one should not write such a sentence, because this is an ugly sentence. Also, to ask to charge the claimant for the expenses of the suit as well! I want to have the package. It is not nice to write like that."

In mediation no. 6 the respondent, who represented an international travel agency, chose to say (in a caucus):

Respondent: *"When I received the claim I felt insulted."*

Mediator: *"Why so?"*

Respondent: *"It is unpleasant to receive such a thing. Even if she is not right, it is still unpleasant."*

Mediator: *"Why so?"*

Respondent: *"Emotionally speaking."*

This respondent was a representative of a corporation, not personally sued, and yet reacted emotionally.

Another method used by the parties to divert the discussion from the unclear legal issues is raising questions of 'principles' and 'justice.' The claimant in mediation no. 13 declared her narrative in connection with the respondent's deeds:

*"I don't like this kind of thing. I am not built for this. I am not a ball in your game. **Justice must be done** ... I reached the conclusion that I have no choice. Justice will be done here. This is what a **court of justice** is meant for and I believe in it."*

A few minutes later he stated another well-known cliché:

*"It is a question of **principle** that I cannot go back on my claim."*

The same is true of the claimant in mediation no. 14:

*"It is a question of **principle**; otherwise I would not have come here."*

The rather amusing and somewhat absurd exchange took place in mediation no. 3, in which the claimant stated that on some kind of principle he would go to court:

Claimant: *"We are dealing here with a matter of **principle** and not a matter of payment. I don't care about going to court."*

[All speak together].

Claimant: *"I want to tell you that the situation now is worse. I cannot use the oven at all."*

Mediator: *"What is important to you, the principle or an oven that works?"*

Claimant: *"**The principle.**"*

Mini-Narrative: Another Place – Other People

This short sub-section is dedicated to unique points that arose during the observed mediation processes. Together they compose a mini-narrative, a small story inside the larger ones, which were discussed above. The mini-narrative zooms in on a part of the narrator's description in order to widen or develop it further.¹¹ The mini-narrative augments the power of the narrator's main message.¹² The mini-narrative is used to upgrade the impact of the story by adding a different perspective. This new angle may reinforce the validity and acceptance of the main impact of the narrative.

The observations reveal the existence of a tiny repetitive narrative, which gives a participant an additional source of reinforcement for his main story. Parties chose to divert the focus from the particular situation they describe in the main narrative to other regions or other people. This is not meant to be compared to

¹¹ Rosenthal, Gabriele (1993) 'Reconstruction of Life Stories: Principles of Selection in Generating Stories for Narrative Biographical Interviews', in: Lieblich, Amia and Josselson, Ruthellen (eds.) *The Narrative Study of Lives* (Newbury Park: Sage), vol. 1, pp. 59-91.

¹² Specator-Mersel, Gabriela (2010) 'Mechanisms of Choice on the Grounds of Narrative Identity: A Model for Analyzing Narratives', in: Kassan, Lea and Kromer-Nevo, Michal *Methods for Qualitative Analysis* (Beer-Sheva: Ben-Gurion University Press), pp. 63-96.

reality tests, in which one checks oneself, but a departure into imaginary scenes in which contrasting circumstances can be used to strengthen claims or feelings. The comparison they make to other possibilities serves the goal of the mini-narrative: to focus on a part of the story and to use this part to understand better how the narrator perceives the situation.

The mini-narrative describes the claimant's conduct as one with a noble nature and conveys a type of behaviour worthy of credit and approval from the mediator. While a mini-narrative is often used to strengthen and support a positive quality of a party, it can also be used to negate and slander the opponent. Given the perception of the courts, as discussed in the last section, the mini-narrative is strong and useful.

A good example of the use of a mini-narrative can be found in mediation no. 11. In order to explain why he waited for so many years without doing anything to claim his rights, the claimant said:

*"I am not an **aggressive** person."*

Sensing that his statement needed further reinforcement, he developed a mini-narrative:

*"If I were an **aggressive** person, I would have come to the shop, taken some products and gone home. I would have taken a washing machine, an oven, **and then they might have come looking for me, or would go to the police.**"*

Then he made sure again to differentiate the mini-narrative from the main one:

"I am not this kind of person."

He laid out imaginary options in order to shed a positive light on what he actually did and expressed in his main narrative.

Mediation no. 6 involved a woman who was hearing-impaired. On an organized trip to Ireland, the tour guide prevented her from sitting in the front seat by

placing her own bag on that seat and stating that the seat belonged to her. However, the claimant needed to sit in that special seat so she could read the guide's lips. The respondent claimed that the front seat was most desirable, and blocking it meant to prevent any antagonism and possible arguments among the tour participants. The claimant attended the mediation with assistance of her thirty-year-old son. In his turn, the son added his mini-narrative to his mother's main story and stated:

"I would have thrown the guide's bag aside and sat there."

This subject was also brought up again during the private meeting, when he repeated saying:

"I told my mother, why did you not take the guide's bag and throw it aside? They belittled my mother, not that bag."

The main narrative strengthened how rightful his mother was; the mini-narrative emphasises it by comparing her restraint with the son's potential action.

Mediation no. 10 involved a woman who purchased a sofa from the respondent.

During her narrative she felt the need to add a mini-narrative:

Claimant: *"When he [the respondent] said that we enjoyed the sofa, I wanted to say that before that I had an amazing sofa that cost me a lot of money and I am sorry that I gave it away. There is no comparison between that sofa and the previous sofa I had from Rahiti [a competing company]."*

Respondent: *"Is this is relevant?"*

Claimant: *"Very much so. Because you said that I enjoyed the sofa and I would have enjoyed the Rahiti sofa more."*

The same adversity was seen in the mini-narrative of the respondent in mediation no. 10, where the respondent mentioned that he used the same procedure to paint the claimant's door as he did when working on the doors of the home of a very well-known Israeli millionaire. The claimant immediately jumped on the analogy:

"I want the same as you did to [a millionaire's name]!"

The respondent repeated that the service he gave to both customers was the same. This did not appease the claimant, who burst out with:

“You prepare a sample for other clients. You did not prepare one for me. This is the same case. Your claim collapsed [pointing with his finger at the respondent]. You gave [the millionaire’s name], you did not give me.”

While he did not support this accusation with any facts or proof, he used the comparison to the world of the 'rich and famous' as a means of upgrading his position. His statement that he received unequal treatment was used to accuse the respondent of improper, discriminatory behaviour. The comparison to 'other, better worlds' continued when his wife contributed her mini-narrative about the good service she got from other suppliers:

“I also ordered spotlights the colour of the wall. It came out exactly the same colour, as did the bells I ordered... [looks very angry] It is all a matter of goodwill, only goodwill. I ordered by phone bells in the same colour as the walls and everything worked out well.”

This is a type of mini-narrative: if only the respondents were different people, like those of the company who made the bells, everything would be fine.

In conclusion, the mini-narrative adds a new layer to the existing layers of the story. The narrator offers the main story through the principal lens. When he feels that this lens does not provide a picture which is precise enough, he intensifies it with another, smaller lens. This new lens serves to magnify a particular part of the picture to contribute to the end-point. In this section, looking through this smaller lens makes it possible to see other scenarios with different people. This pertains to imaginary alternatives, which the narrator assumes that had they occurred, the situation would be better for him. This mini-narrative contributes to the understanding of the main narrative by showing that parties are longing for a solution, even by using imaginary means to create it. In reality observation showed that it hardly contributes to the final agreement.

The Missing Remedy

Another important finding is that the remedy is not the main issue that the narrators mention. In mediation no. 12, the claimant did not relate to the remedy he was seeking at all. This fact is incomprehensible, since the mediation is a result of a court claim in which the claimant is supposed to quote the sum he was demanding.

Another issue is the lack of correlation between the remedies demanded by the parties and the realistic final outcome of the case. The following provides a good example of this: the claimant in mediation no. 3 complained about the heating system in his oven of twelve years and demanded NIS 7,500 in damages, an amount almost as high as the price of a new oven. He paid the court fee according to that amount. A final agreement was signed with the claimant agreeing to accept the replacement of the rubber seal around the oven's door as compensation (estimated cost: NIS 20, plus minor labour costs).

The following exchange (mediation no. 15) is an extreme example of the distance from asking for concrete compensation. It shows how obscure the claimant's ideas were of the workings of the court and what remedies are available there. Here is the rather exceptional conversation between an experienced mediator and the claimant (a joint meeting):

Mediator: *"I understand what you are saying and assume that the judge was convinced. Write down the court's ruling for me."*

Claimant: *"That I be satisfied."*

Mediator: *"A judge will not write that you should be satisfied."*

The last quotation, to come full circle, is again from mediation no. 12. The mediator tried to find out what the claimant had demanded in court and asked:

Mediator: *"When you came to the mediation what did you expect?"*

Claimant: *"I was so relieved when he agreed to mediation. I did not want the trial. But I have been pursuing him for a long time... it is a little debt he owes me, half a year ago, I am in deep waters where the floods overwhelm me, I could not suffer anymore."*

There is a basic assumption that a lawsuit is filed in order to obtain a legal right. One of the findings of the research is that claimants' narratives in mediation do not highlight the remedy they are looking for. This reinforces the validity of the three themes which the parties reiterated. In narrative analysis, the narrative has to bring the story to an end-point which is the speaker's main message.¹³ On their way to the end-point, speakers also use mechanisms of silencing and flattening, so that the narrative will serve its purpose while irrelevant or inconvenient facts are skipped over.¹⁴ Leaving out facts that damage the essence of the narrative is done either by ignoring them (silencing) or by allocating a few insignificant words, as if they are not important (flattening). This allows the narrator to tell and not to tell at the same time, by belittling the subject.¹⁵ The researcher has to fish out these mechanisms and understand the reasons for their use.¹⁶ Since things that are not mentioned are often just as important and are part of the message, they must be spotted and analysed too. When there is a narrative difficulty, for example when the theme of the story contradicts cultural themes, the two mechanisms of flattening and its more serious companion, silencing, are used.¹⁷

In this study, the pervasive tool of 'not mentioning subjects that do not serve the narrative's end-point' was discovered in the massive omission of the remedy from the opening ceremony. The narratives' themes were, as shown above, 'the need to talk', 'we are not enemies', and the perception of the court as a battlefield. The

¹³ See chapter 3.

¹⁴ Supra note 12.

¹⁵ Ibid.

¹⁶ Rogers, Annie et al. (1999) 'An Interpretive Poetics of Languages of the Unsayable: Making Meaning of Narratives', in: Josselson, Ruthellen and Lieblich, Amia (ed.) *Making Meaning of Narratives, The Narrative Study of Lives* (Thousand Oaks, CA: Sage), vol. 6, pp. 77-106; Alexander, Irving (1988) 'Personality, Psychological Assessment, and Psychobiography', *Journal of Personality*, vol. 56 (1), pp. 565-595.

¹⁷ Chase, Susan (1995) 'Taking Narrative Seriously: Consequences for Method and Theory in Interview Studies', *Narrative Study of Lives*, vol. 3, pp. 1-26.

remedy has to stay out of the story because it puts the legal issue at stake; mentioning it opens up an argument which will contradict the other themes. The mediators frequently had to ask what the claimant actually wanted.

Out of eleven processes which had a very clear 'main narrative' there was not a single case in which the claimant said from the start or even at the end of the story what he was suing for.

The distribution of the cases regarding the remedy is as follows:

In three cases the claimant came to mediation with a sum of money that he was ready to compromise on, so he could answer when asked what he wanted. He did not necessarily quote an exact sum, but said it was the money he was looking to get in the lawsuit or mediation: "*I want what is customary*" (mediation no. 14), "*I want him to pay the little debt he owes me*" (mediation no. 12), "*I am not thirsty for money, I want only my costs and expenses*" (mediation no. 11).

In four cases the claimants asked for remedies that were not in the law books, and neither were they specified or tangible. The examples are: "*Someone has to take responsibility*" (mediation no. 15), "*I want a sofa like the one I dreamed of buying with this money*" (mediation no. 4), "*I am suing for the insult I have endured*" (mediation no. 6), "*I want to know where the package is*" (mediation no. 1).

In four cases (nos. 2, 3, 8 and, in the end, 6), the claimants asked for an unreasonable remedy, for the most part, to get all their money back for a product they had used, and to a point, enjoyed. Sometimes they even wanted to add compensation.

Furthermore, in two cases (nos. 15 and 20) the claimants asked for remedies which are not available in a Small Claims Court. In both of these cases the mediators ignored this fact. While mediation allows for the enhancing of remedies, if the requested remedies are incongruent with the court's authority this is problematic, particularly in cases that begin in court and are likely to return there.

The remedy is sometimes so far removed from the focus of the meetings that often the mediators forget to ask about it. For example in mediation no. 3 in the first mediators' meeting after the opening ceremony, the mediators were surprised to discover in the papers that the claimant, in his claim, was demanding a totally unjustified sum with no reasonable explanation. Neither the mediators nor the respondent bothered to ask about that in the meeting. The significance of ignoring the remedy (silencing) and hiding it with brief words (flattening) proves that the three cited themes are at the core of the mediation processes, not the sum of money.

In Conclusion

The three themes which emerged from the analysis of the processes —we are not enemies, the need to talk, and perceptions of the courts — are the key ones in the narratives of the Practicum meditation. They provide insights on narratives in Israeli culture.

These themes support the conjectures discussed in chapter 1 regarding the specific forms of behaviour which result from living in a conflict society. For example, living in a complex environment, the home ground of many conflicts, leads the individual to absorb aspects of militarism. These lead to extreme and contradictory feelings, such as moving towards the other and away from him within a short period of time. Members of such society develop fraternal manners as part of military behavior.¹⁸ It was interesting to discover that while using militaristic narratives, which are typical to this conflict society, the parties also show a great desire and readiness to tackle disputes using peaceful methods.

¹⁸ Kaplan, Danny (2007) 'What Can the Concept of Friendship Contribute to the Study of National Identity?' *Nations and nationalism*, vol. 13 (2), pp. 225-244.

The themes of 'we are not enemies' and 'perceptions of the courts' show that the parties see the world in 'black and white.' The claimants' decisions to initiate lawsuits and the respondents' replies, both choosing litigation as a way of dealing with disputes, support the data on the proliferation of litigation and lawyers (chapter 1), and the widespread faith in the courts,¹⁹ as discussed above. But the observation of mediation sessions provided a new dimension to the parties' narratives: when the option of peaceful resolution is offered, litigants seem to take it positively and show a great deal of willingness to try it. Then the 'perceptions of the courts' turns the courtroom into an undesirable place. This phenomenon supports Simmel's insights:²⁰

"...conflict is thus designed to resolve divergent dualisms; it is a way of achieving some kind of unity ,even if it be through the annihilation of one of the conflicting parties. This is roughly parallel to the fact that it is the most violent symptom of disease which represent the effort of the organism to free itself of disturbances and damages caused by them... conflict contains something positive. Its positive and negative aspects, however, are integrated; they can be separated conceptually but not empirically."

By placing the differentiation between 'us' and 'them' in a wider context and placing their opponents amongst 'them' when suing, and 'us' when mediating, the parties are able to leap from adversarial discussions to friendly ones, within the same meeting.

The initiation of lawsuits, which demonstrate the parties' belligerent and confrontational attitudes, contradict their wish to talk and the expressions of friendship and togetherness that are heard in mediation. Even when the parties see parallels between going to court and going to war, as evidenced by their use of familiar terminology when phrasing their claims, like 'fight' and 'win', they also voice affection, concern and even love for one another.

¹⁹ Supra note 7.

²⁰ Simmel, Georg (1922) *Conflict and the Web of Group-Affiliations* (New York: The Free Press of Glencoe)(Wolff, Kurt and Rendix, Reinhard trans.)(1964 edition), p. 13, 14.

During the mediation process, the parties know that they are also involved in a court trial which has been placed on hold. Nevertheless, many of them act and speak in non-aggressive and non-adversarial manners and appear to flatten (or minimise) their requests for remedies and compensation. The parties often try, at least in the early stage of the mediation, to declare their friendship and good connections. Cohesion in such a stressed environment is a value; it is in contrast to the notion of 'fight till the end,' which is reflected in going to court. The two contradicted values are both expressed in the mediation room. Living in a conflict society leads to these conflicting results, on the one hand adopting combative standards, while on the other hand seeking internal cohesion.

In between the two themes of militaristic contradiction, lies the theme of the 'need to talk.' Israeli culture is based on the articulate and loquacious Jewish culture described in chapter 1. Lemish adds to this classic characterisation of a tradition of talking, a description of how intensively Israelis use mobile phones. Israel has the second highest ratio of mobile phone users to inhabitants in the world (95.45%).²¹ She designates this phenomenon as:²² "*quite a unique mobile phone-calling culture.*"

The theme was named the 'need to talk' following the repetitive narratives of the parties. But Israeli culture, as demonstrated above, has no shortage in opportunities to talk. The real need, as understood from the observations, is the need to be heard. The weakness of the mediation discourse lies not in the speaking but rather in that the participants do not have the capacity to listen. These findings are consistent with the characterization of militarism, whereby one has to defend his rights and finds it hard to be open to other opinions. While the Israeli talking culture is vivid, the culture of listening has not developed as much. This creates disharmony, because most of the weight is placed on the side of talking. The

²¹ Lemish, Dafna and Cohen, Akiba A. (2005) 'On the Gendered Nature of Mobile Phone Culture in Israel', *Sex Roles*, vol. 52, (7, 8), pp. 511-525, p. 512.

²² *Ibid*, p. 513.

inequality between speakers and listeners has therefore given rise to a yet another conflict, which becomes important when identifying it in the context of a conflict society.

A proper mediation process, using the right tools and encouraging the 'ability to listen', has the potential to answer this need. On the national level, as expressed in the dreams of some of the interviewees in chapter 4, the extensive need to be heard could also be evidence of Israeli willingness to drop military solutions and seek peaceful coexistence. Those interviewees who were seeking social change could find it in changing the balance between talking and listening, which was clearly observed in the processes.

One could argue that the research population is biased, since the two parties have agreed to go to mediation; but one has to keep in mind that at an earlier stage they both chose to go to court, and they later accepted the judge's offer to try mediation. Therefore I would not suspect that a different sample would yield different perceptions (possibly towards mediation, but not regarding other issues).

The afore-going discussion deals with the dualistic contents of the participants' voices in the mediation processes, explaining the contradictory elements demonstrated in the narratives. The framework that enables them to express these contradictions will be described in the next, concluding part of the thesis, which deals with the ritual aspects of the mediation process.

Conclusions

This thesis began with the study of the society, in which the fieldwork was conducted, leading to identifying it as 'a conflict society'. Subsequently, it focused on the development of mediation, on mediators, and on processes. The descriptive chapters provided data as to how the process works, how it moves through different stages, and what are the narratives of the participants. All were linked to the overarching theme of a conflict society, showing its diverse manifestations and modes. Observing the mediation processes undertaken in this conflict society, within the Practicum courses and using the narrative methodology, enabled the presentation of the voices of mediators and litigants. This brought up interesting findings, which could be the basis for future research.

Observing the processes revealed that participants, mediators and parties alike expressed a yearning for a solution, accompanied with an aversion of the court system. Given the random sample of the observed mediations and its size, this generalization seems justified. In these circumstances, the finding of an imbalance between the wish to end the dispute peacefully and the lack of sufficient tools to do so is important. The narratives of living in a conflict society, expressed during the processes, gain the upper hand, overshadowing the mediation process. Hence there is room for further research on the adaptation of mediation theory to these conditions.

Living in an environment rife with conflicts, some of which are massive and life-threatening, and many of which are intractable, with a long history behind them, creates certain narratives. These narratives engender feelings of togetherness within society, alongside a lack of empathy and understanding towards the 'other'. Mediation deals exactly with these issues. But dealing with conflicts within a conflict society is a delicate endeavour, which provides a challenge of a different scale. Moreover, since the mediators themselves have the same narratives as the parties, the task to reach a solution looks even harder. The result, as is demonstrated in the observed processes, is that people do not know how to deal with conflicts, as though they are hiding from them or waiting for them to disappear. The expressions of friendship are deceiving; what is dominant is the cry of a need to be heard. Both sides, the one who begs the other to answer and the one who ignores this cry, fail to establish useful communication. More research is needed on the right tools to foster good communication between members of a conflict society and on what could be applicable tools. The tools needed are those that could turn an amorphous desire to make peace into an effective peace-making process. One needs models of mediation that would explain in depth the role of narratives in the mediation process and propose a systematic treatment of the mediators' task, given that in practice they are dealing with narratives of conflicts. There is also a case to broaden the study of other, specific conflict societies. Through the discussion on differences and similarities, one could potentially greatly enrich the knowledge of the world of conflicts and mediation.

Another way whereby Israeli conflict society is reflected in mediation is the fact that mediation in the country is very connected to the legal system. The processes observed were all court-related, starting and ending as suits and judgements, some of them were actually conducted in a court room, many of the mediators were lawyers,

and the language of 'rights and obligations' is dominant. Where there is a culture of litigation, peacemaking processes need to understand that and deal with it.

In modern research, the researcher is not separate from the society under study, but is engaged and cares about the subjects of the observation. The researcher does not pretend to be an impartial stranger and is constantly conscious of the advantages and disadvantages of this situation. Therefore, a research thesis which derives from society is obliged to pay back at least a small part of the wealth bestowed upon it. It is hoped that this research will serve other researchers, as well as mediators and mediation participants. It may create an opportunity — through the replication inherent in the act of writing — to better understand the way that dispute processes are dealt with in the conflict society which frames this endeavour.

The conclusion in this section is thus consistent with that of Simmel, who implored:

*"It is not our task to accuse and even not to forgive, but just to understand."*¹

¹ Simmel, Georg (1903) *Die Grosstädte und das Geistesleben*, (Dresden: Petermann)(2004 edition) *The Metropolis and Mental Life* (Tel-Aviv: Resling)(Kraus, Miriam, trans.)(Hebrew), pp. 23-40, p. 40.

Appendix A

List of Interviewees

Name	Title	Place of Interview	Date
Abdessalam, Najjar	TM	His office, Neve Shalom	15.05.2008
Abu-Rash, Salach	A, M	His home, Ramla	4.04.2008
Alroi, Yoram	A, M, TM	His office, Ramat-Gan	23.04.2008
Arbel, Dan	Arbitrator, M, <i>Director of the Courts</i>	His home and office, Kiryat Ono	27.08.2009
Aviad, Yissachar	M, TM, GV	Café, Herzliya	21.10.2007
Barak, Aharon	<i>President of the Supreme Court</i>	His office, IDC, Herzliya	30.07.2009
Barak, Tamar	A, M, TM, OMC, GM	Her office in TA	3.12.2008
Bar-Lev, Bini	A, M, TM, OMC, GM	His office in Jm	10.12.2008
Beker, Hanan	<i>M in Labour Courts</i>	Café, Haifa	10.03.2008
Ben-Ari, Arbel	Philosophy, M, TM, GM	Café, Hadera	26.03.2008
Berdichev-Lev, Orna	A, M, TM, GV	Café, Herzliya	14.01.2008
Dattner, Naomi	Therapist, M, TM, NCMCR OMC	Her office, TA	4.04.2008
Deutsch, Orna	A, M,	Café, TAU	19.05.2008
Dotan, Amira	<i>Chief Women's Officer in the Army</i> , M, TM, OMC, MK	Her office, TA	5.05.2008
Erez, Noy	A, M, OMC	His office, TA	14.02.2008
Eshel, Anat	Director of Community MC	Community MC, Ramla	31.10.2007
Foux-Levi, Yael	A, M, NCMCR	Café, Beer Sheba	26.11.2008
Gat, Hamutal	A, M, OMC	Her office, Ramat-Hasharon	11.05.2008
Gefen, Omri	Chairman GV	GV offices	6.02.2008
Gil, Yuval	M, TM	His home and office, Hod Hasharon	18.10.2007

Golan, Ari	A, M,	His office in TA	4.03.2008
Hefetz, Ruth	M, TM	Café in TA	30.01.2008
Kovarsky, Jonathan	M, TM	Café in TAU	25.05.2008
Kronenberg, Idit	A M	The Bar Offices, Haifa	10.02.2008
Levi, Mimi	M	Café in Petach Tikva	1.07.2008
Levi, Yehuda	Psychologist M, GM	Café in Shoham	19.03.2008
Lichtenstein, Miki	NCMCR Practicum Dept.	NCMCR offices in TA	25.03.2008
Lieberman, Etti	NCMCR, Evaluation Dept.	NCMCR offices in TA	4.02.2008
Mandelbaum, Sylvia	M, TM	Elderly home in Jm	29.04.2008
Matz, David	M, TM at Boston University	Café in TA	28.03.2008
Melamed, Nir	A, M, TM	Café, TA	30.04.2008
Miller, Naomi	<i>Education, M, TM GM</i>	Her home, Jm	29.03.2009
Mironi, Moti	A, M, TM	His office, TA	23.04.2008
Naftali, Yoni	A, M, TM, GM	His home and office, Hod Hasharon	6.04.2008
Okun, Boaz	' Arbitrator, M, <i>Judge</i>	Café, TA	20.03.2008
Rendleich, Sharon	Director General of GM	GM offices	3.03.2008
RotLevi, Zorik	M, Business man	Café, TA	13.05.2008
Sapir, Adi	Secretary, GV	GV offices	15.01.2008
Segal, Peretz	A, Ministry of Justice, <i>Head of NCMCR</i>	NCMCR offices, TA	4.05.2009
Shabtai, Samina	A,M, NCMCR	His law office, TA	13.01.2008
Shamir, Yona	<i>Chair, Neaman Institute, Haifa Technion,</i>	Her home and office, Hifa	10.04.2008
Shimoni, David	<i>Army Officer, High School Principal, coach, M, TM</i>	Café, Raanana	6.03.2008
Shmueli, Hagai	A	His office, Jm	6.01.2008
Silvera, David	M, TM, Businessman, <i>Director of the Mediators</i>	His home and office, TA	12.05.2008

	<i>Association</i>		
Tsur, Michael	A, M, TM, OMC	His secretary's home, Mevaseret Jm	9.06.2008
Tzur, Yossi	Director General of GM	GM offices	5.03.2009
Yoeli, Raya	Therapist, M	Café, Harel	18.02.2008
Zaidel, Susan	Psychologist, M, TM	Her home and office, Haifa	10.04.2008
Zamir, Ronit	<i>A, Legal adviser to NCMCR</i>	Office, Jm	2.07.2008
Zemet, Ahuva	Ministry of Education, M, TM	Café, Ramat-Hasharon	24.02.2008

KEY:

A	Advocate
GM	Gome
GV	Gevim
italic	Held this job before the time of the interview
Jm	Jerusalem
M	Mediator
MC	Mediation Centre
MK	Member of the Knesset (Israeli Parliament)
NCMCR	The National Centre for Mediation and Conflict Resolution
OMC	Has his own mediation centre
TA	Tel-Aviv
TAU	Tel-Aviv University
TM	Teaching Mediation

Appendix B

Mediation Agreement

(גישור) התשנ"ג-1993 תקנות בתי המשפט

תוספת

(תקנה 3(ו))

ההסכם המצוי בין בעלי דין ומגשר

1. בעלי הדין מתחייבים לשתף פעולה עם המגשר, לקיים את הליך הגישור בהגינות ובתום לב ולגלות מידע הדרוש כדי ליישב את הסכסוך ביניהם בדרך של הסכמה מרצון.
 2. בעלי הדין מתחייבים לא להזמין את המגשר למסור עדות, בין בכתב בין בעל-פה, או להציג מסמכים בכל ענין שהועלה, במישרין או בעקיפין, בהליך הגישור.
 - 2א. בעלי הדין מתחייבים לא למסור לבית המשפט דברים שנאמרו בהליך הגישור ולא להציג מסמכים בכל ענין שהועלה, במישרין או בעקיפין, בהליך הגישור.
 3. בעלי הדין זכאים להיוועץ עם עורכי הדין שלהם ועם כל מי שימצאו לנכון בכל שלב של הגישור.
 4. בעלי הדין מתחייבים לחתום על הסדר הגישור שהגיעו אליו, ומצהירים כי הם מבינים שדינו כדין חוזה שבית המשפט רשאי לתת לו תוקף של פסק-דין.
 5. בעלי הדין מסכימים כי העובדה שהם לא הגיעו להסדר גישור או שאינם שבעי רצון מההסדר שהגיעו אליו, לא תשמש עילת תביעה נגד המגשר, וכי בכפוף לסעיף 6 להסכם זה אין המגשר אחראי לתוצאת הגישור.
 6. המגשר מתחייב לנהוג בתום לב כדי לסייע לבעלי הדין להגיע ליישוב הסכסוך מתוך משא ומתן חופשי.
 7. המגשר מצהיר כי הוא אינו תלוי בבעל דין ואינו בעל ענין, במישרין או בעקיפין, בנושאי הגישור, וכי לא היה בינו לבין מי מבעלי הדין קשר מקצועי או אישי קודם.
 8. המגשר לא יהיה מוסמך להכריע או לתת החלטה מחייבת כלשהי בנושאים שבסכסוך בין בעלי הדין.
 9. הודעת המגשר על שכר טרחתו ועל ההוצאות בעין במהלך הגישור מחייבת את בעלי הדין.
 10. המגשר מתחייב שהוא לא יתן בעתיד שירותים מקצועיים לבעלי דין בכל ענין הקשור לסכסוך נושא הגישור ללא הסכמת כל בעלי הדין האחרים.
 11. הליך הגישור יתנהל לפי נהלים אלה:
 - (א) המגשר יקבע את המקום והמועד לכל ישיבה;
 - (ב) המגשר יקבע את סדרי הגישור, ככל שלא נקבעו על פי דין;
 - (ג) המגשר רשאי לנהל תיק מסמכים ולרשום פרוטוקול של ישיבות הגישור; מסמכים ורשימות כאמור ישמשו את המגשר בלבד, ולא יהיו פתוחים לעיון בעלי הדין;
 - (ד) המגשר יהיה רשאי להתייעץ עם מומחה ולקבל חוות דעת של מומחה. 12. המגשר רשאי להציע לבעלי הדין פתרונות לסכסוך ולהביא בפניהם הצעות להסדר גישור.
- ט' בתמוז התשנ"ג (28 ביוני 1993)
דוד ליבאי
שר המשפטים

ק"ת 5539, התשנ"ג (10.8.1993), עמ' 1042

Appendix C
Letter of Consent

Ms. Edite Ronnen

Tel Aviv

Dear Ms. Ronnen,

**Re: Permission to Include my Name and the Name of the Institute in
Research on Mediation in Israel**

I, _____, have been interviewed by you, and permission to observe mediations undertaken in _____ was given to you. I hereby confirm that you can include my full name and the name of _____ in the research work you are writing, and to quote my full name.

I state that I have the right to give you this accord in the name of _____.

I am aware of the fact that all copyrights as to this research belong to you, and I relinquish any claim or argument against you and/or London University and/or the London School of Economics and/or the publisher of this work.

Sincerely,

Full Name _____

Signature _____

Date _____

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Translation of Hebrew Terms and List of Acronyms

Hebrew term	English translation
Sefer Ha-chukkim	The book of Laws
Kovetz-Takanot	The book of Regulations
Gishur	Mediation
Me-gasher	Mediator
MK - Member of Knesset	Member of Parliament
Knesset	The Israeli Parliament
Bagatz - Beit Din Gavoha Le-tzedek	High Court of Justice
Mahut -- meyda, hekerut ve-te -um	Information, introduction, coordination
Manat	Department for case allocation in the court
Sabra	Nickname for a person born in Israel
Dugri	Straight talk
Kiturim	Airing complaints
Intifada	Uprising
Gush Emunim	Bloc of the faithful (political movement)
Shas	Six orders (political party)
Mizrachi	Eastern, of Arab country origin
Ashkenazi	Western, of a European country origin
Sephradi	Eastern, of Arab country origin
Kadima	Forward (political party)
Shinui	Change (political party)
Tsomet	Crossroads (political party)
Hashomer Hatsair	The Young Guardian (youth movement)
Hakeshet Hademocratit	The Mizrahi Democratic Rainbow -
Hamizrachit	New Discourse (political-social movement)

Acronym	Full Name
ADR	Alternative Dispute Resolution
ADRA	Alternative Dispute Resolution Act
CBS	Central Bureau of Statistics
CEDR	Centre for Dispute Resolutions
CPI	Consumer Price Index
CPR	Civil Procedure Regulations
FRCP	Federal Rule of Civil Procedure
IDF	Israel Defense Forces
LC	Law of Courts
NCMCR	National Centre for Mediation and Conflict Resolutions
SCM	Standards of Conduct for Mediators (of the Supreme Courts USA)
TAU	Tel Aviv University

Tables of Statutes

Basic Laws

Freedom of Occupation 5754-1994, Sefer Ha-chukkim 1454, p. 90

Human Dignity and Liberty 5752-1992, Sefer Ha-chukkim 1391, p. 150

Laws, Ordinances and Bills

Act of Contracts (General Part) 5333-1973, Sefer Ha-chukkim 694, p. 118

Act of Contracts (Remedies for Breach of Contracts), 5331-1970, Sefer Ha-chukkim 610, p. 16

Administration of Rule and Justice Ordinance, 5708-1948

Arbitration Act 5728-1968, Sefer Ha-chukkim 535, p. 184

Arbitration Act (Second Amendment) 5759-2008, Sefer Ha-chukkim 2186, p. 22

Bar Association Act 5321-1961 Sefer Ha-chukkim 347, p. 178

Civil Wrongs Ordinance (New Version) 5328-1968, Israel Laws 10, p. 266

Courts Law (Consolidated Version) 5744-1984, Sefer Ha-chukkim 1123, p. 198

Courts Law (Amendment no. 15) 5752-1992-, Sefer Ha-chukkim 1383, p. 68, pp.69-70

Courts Law (Amendment no. 30) 5761-2001, Sefer Ha-chukkim 1804, p. 498

Courts Law Bill (21.7.2001)

Law of Interpretation 5741-1981, Sefer Ha-chukkim 1030, p. 302

The Law against Sexual Harassment 5758-1998, Sefer Ha-Chukkim 1661, p. 166

The Law of Equal Opportunities at Work 5748-1988, Sefer Ha-chukkim 1240, p. 38

The Law of the Memorial Day for the Holocaust and Heroism 5719 – 1959, Sefer Ha-chukkim 280, p. 112

The Law of Return 5710-1950 Sefer Ha-Chukkim 51, p. 159

The Law on Protection of Holy Places 5741-1981, Sefer Ha-chukkim 499, p. 75

Women's Equal Rights Law 5711- 1951 Sefer Ha-chukkim 82, p. 248

Regulations

Courts Regulations (Appointing a Conciliator) (An Amendment) 5769-1999, Kovetz Takanot 5947, p. 281

Courts Regulations (Appointing a Conciliator)(An Amendment) 5769-1999, Kovetz Takanot 5947, p. 281

Courts Regulations (Appointing a Conciliator)(an amendment) 5762-2001, Kovetz Takanot 6129, p. 50

Courts Regulations (Unit of Case Sorting in the Courts) 5762-2002, Kovetz Takanot 6189, p. 1198

Courts Regulations (Conciliation) 5753-1993, Kovetz Takanot 5539, p. 1042

Courts Regulations (Conciliation)(an amendment) 5762-2001, Kovetz Takanot 6129, p. 50

Courts Regulations (The Mediators List) 5766-1966, Kovetz Takanot 5766, p. 1325

Courts Regulations (Fees) 5767-2007, Kovetz Takanot 6579, p. 720

Rules of Civil Procedure (Temporary Order) 5768-2007, Kovetz Takanot 6620, p. 86

Rules of Civil Procedure (Temporary Order)(amendment) 5768-2008, Kovetz Takanot 6620, p. 86

Rules of Civil Procedure 5744-1984, Sefer Ha-Chukim 5744, p. 198

Single-Parent-Family Law 5752-1992, Sefer Ha-Chukkim 1390, p. 147

The Court Regulations (The List of Mediators)(Annulment) 5768-2008, Kovetz Takanot 6665, p. 838

Foreign statutes

The Dispute Resolution Act, 28 U. S. C. (1998) § 652.

Civil Justice Reform Act of 1990 , 28 U. S. C. § 82-471

Translation:

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- Resler v. The Minister of Defense* 42 (2) P.D. (1986) 441
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The League Against Religious Coercion v. The Jerusalem Municipality 16 P. D. (1962) 2665

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10160/09 *Plony v. The Ministry of Education*; unpublished

Bibliography

- Aberbach, Moshe and Aberbach, David (2000) *The Roman-Jewish wars and Hebrew Cultural Nationalism* (New York: St. Martin's Press).
- Abuhav, Orit; Hertzog, Esther; Goldberg, Harvey; Marx, Emanuel (eds.)(1998) *Israel: a Local Anthropology – Studies in the Anthropology of Israel* (Tel-Aviv: Cherikover)(Hebrew).
- Abu–Rebia-Qwidar, Sarrab (2010) 'Subjectivity in Narrative Research', in: Tuval-Mashiach, Rivka and Spector-Mersel, Gabriela (eds.) *Narrative Research: Theory, Creation and Interpretation*, pp. 155-176.
- Adler, Peter; Lovaas, Karen; Milner, Neal (1988) 'The Ideologies of Mediation: The Movement's Own Story', *Law and Policy*, vol. 10, is: 4, pp. 317–339.
- Agar, Michael (1980) 'Getting Better Qualitative Stuff: Methodological Competition in an Interdisciplinary Niche', *Journal of Contemporary Ethnography*, vol. 9 (1), pp. 34-50.
- Agassi, Joseph (1984) *Between Religion and Nation: Towards Israeli Identity* (Tel-Aviv: Papyrus)(Hebrew).
- Alassutari, Pertti (1997) 'The Discursive Construction of Personality', in: Lieblich, Amia and Josselson, Ruthellen (eds.) *The Narrative Study of Lives* (Thousand Oaks: Sage), vol. 5, pp. 1-20.
- Alberstein, Michal (2007) *Jurisprudence of Mediation* (Jerusalem: Magnes) (Hebrew).
- Alexander, Irving (1988) 'Personality, Psychological Assessment, and Psychobiography', *Journal of Personality*, vol. 56 (1), pp. 565-595.
- Almog, Oz (1997) *The Sabra: The Creation of the New Jew* (Tel-Aviv: Am Oved,)(Hebrew).
- Almog, Oz (1999) 'The Legal Revolution and its Cultural Meaning', *Alpayim*, vol. 18, pp. 77-132.
- Al-Ramahi, Aseel (2008) 'Wasta in Jordan: A Distinct Feature of (and Benefit for) Middle Eastern Society', *Arab Law Quarterly*, 22, pp. 35-62.
- Al-Ramahi, Aseel (2009) *Competing Rationales: Evolution of Arbitration in Commercial Disputes in Modern Jordan*, LSE PhD thesis.
- Alroi, Yoram (1992) 'Conflict Resolution: There is Another Way', *Hamishpat, A Journal for Legal Studies*, vol. (1), pp.311-388.
- Amichay, Yehuda (1980) 'Tourists', in: *In a Great Serenity* (Jerusalem: Schocken)(Hebrew).

- Atzmon, Yael (ed.)(2001) *Can you Hear My Voice? – Representation of Women in Israeli Culture* (Jerusalem: Van Leer Institute)(Hebrew).
- Atzmon, Yael and Izraeli, Dafna (eds.)(1993) *Women in Israel, Studies of Israeli Society* (New Jersey: Transaction Publishers), vol. 6.
- Auerbach, Jerold (1983) *Justice without Law* (New York: Oxford University Press).
- Bahat, Shoshana and Mishor, Michael (1995) *Hebrew at Present* (Dictionary) (Tel-Aviv: Sifriat Ma-ariv)(Hebrew).
- Baird, Douglas; Gertner, Robert; Picker, Randal (1994) *Game Theory and the Law* (US: Harvard University Press)(2003 edition).
- Bakhtin Mikhail (1981) *The Dialogic Imagination: Four Essays* (Emerson, Caryl and Holquist, Micahel trans.)(Austin: University of Texas Press)(2004 edition).
- Bakhtin, Mikhail (1984) *Rebrolais and his World* (Bloomington: Indiana University Press).
- Bar-Gal, Yoram (1992) *Moledet [Home Land] and Geography in Hundred Years of Zionist Education* (Tel-Aviv: Am-Oved)(Hebrew).
- Bar-Hillel, Maya (1980) 'The Base-Rate Fallacy in Probability Judgments', *Acta Psychologica*, vol. 44, is: 3, pp. 211-233.
- Bar-Hillel, Maya and Yaari, Menachem (1993) 'Judgments on Distributive Justice', in: Mellers, Barbara and Baron, Jonathan (eds.) *Psychological Perspectives on Justice: Theory and Applications* (Cambridge: Cambridge University Press), pp. 55-84.
- Bar-On, Dan (1996) 'Ethical Issues in Biographical Interviews and Analysis', in: Josselson, Ruthellen (ed.), *Ethics and Process in the Narrative Study of Lives* (Thousand Oaks, California: Sage), pp. 9-21.
- Bar-Tal, Daniel (1993) 'Societal Beliefs in Times of Intractable Conflict: The Israeli Case', *International Journal of Conflict Management*, vol. 9, is: 1, pp. 22-50.
- Bar-Tal, Daniel (2007) *Living with the Conflict: A Socio Psychology Analysis of the Jewish Society in Israel*, (Jerusalem: Carmel).
- Bar-Tal, Daniel and Teichman, Yona (2005) *Stereotypes and Prejudice in Conflict: Representations of Arabs in Israeli Jewish Society* (US: Cambridge University Press).
- Barak, Aharon (1992) 'The Constitutional Revolution: Protected Fundamental Rights', *Mishpat U-mimshal*, vol. 1 (1), pp. 9-35.
- Barak, Aharon (1993a) 'Judicial Philosophy and Judicial Activism', *TAU Law Review*, vol. 17, pp. 475-501.
- Barak, Aharon (1993b) 'Balancing Rights: Principles and Perspectives', *Mishpat U-mimshal*, vol. 1 (2), pp. 253-273.
- Barak, Aharon (1994) 'Basic Law: Freedom of Occupation', *Mishpat U-mimshal*, vol. 2 (1), pp. 195-217.

- Barak-Erez, Daphne (2003a) 'The Transformation of the Pig Laws: From a National Symbol to a Religious Interest?', *Mishpatim*, vol. 33, is: 2, pp. 403-475.
- Barak-Erez, Daphne (2003b) *Milestone Judgments of the Israeli Supreme Court* (Tel-Aviv: Ministry of Defence)(Hebrew).
- Barzilay, Sarit (2010) 'Prospects and Risks in the Interactive Encounter during the Narrative Interview', in: Tuval-Mashiach, Rivka and Spector-Mersel, Gabriela (eds.) *Narrative Research: Theory, Creation and Interpretation*, pp. 133-154.
- Ben-Ari, Eyal (1998a) 'Masks and Soldiering: The Israeli Army and the Palestinian Uprising', in: Abuhav, Orit et al. (eds.) *Israel: a Local Anthropology - Studies in the Anthropology of Israel*, pp. 305-320.
- Ben-Ari, Eyal (1998b) *Mastering Soldiers: Conflict, Emotions, and the Enemy in an Israeli Military Unit* (New York: Bergham Books).
- Ben-David, Aba (1967) *The Language of the Bible and the Language of the Scholars* (Tel-Aviv: Dvir)(Hebrew).
- Ben-Eliezer, Uri (1995) *The Emergence of Israeli Militarism 1936-1956* (Tel-Aviv: Dvir) (Hebrew), pp. 313-314.
- Ben-Yehuda, Nachman (1995) *The Masada Myth Collective Memory and Mythmaking in Israel* (Madison: University of Wisconsin Press).
- Ben-Yehuda, Nachman (1998) 'Where Masada's Defenders Fell', *Biblical Archeology Review*, vol. 24, is: 6, pp. 30-39.
- Ben-Yehuda, Nachman (1999) 'The Masada Mythical Narrative and the Israeli Army', in: Lomsky-Feder, Edna and Ben-Ari, Eyal (eds.) *The Military and Militarism in Israeli Society* (Albany: University of New-York Press), pp. 57-88.
- Benvenisti, Meron (1992) *The Dance of Fear* (Jerusalem: Keter)(Hebrew).
- Bercovitch, Jacob and Houston, Allison (1993) 'Influence of Mediator Characteristics and Behavior on the Success of Mediation in International Relations', *International Journal of Conflict Management*, vol. 4, pp. 297-321.
- Bilu, Yoram (1998) 'Popular Culture in Post-Modernism Times: A Personal Story', in: Abuhav, Orit et al. (eds.) *Israel: a Local Anthropology - Studies in the Anthropology of Israel* (Tel-Aviv: Cherikover)(Hebrew), pp. 655-680.
- Binmore, Ken; Kirman, Alan; Tani Piero (eds.)(1993) *Frontiers of Game Theory* (Cambridge: MIT Press).
- Brettel, Caroline (ed.)(1993) *When They Read What We Write: The Politics of Ethnography* (Westport: Bergin and Garvey).
- Brink, Andre (2008) *The First Life of Adamastor* (Sitriya: Yanshuf)(Kochai, Hana trans.)(Hebrew).

- Bruner, Jerome (1986) *Acts of Meaning* (Cambridge: Harvard University Press).
- Bruner, Jerome (1991) 'The Narrative Construction of Reality', *Critical Inquiry*, vol. 18, pp. 1-21.
- Bruner, Jerome (2004) 'Fiction and 'Historicity' in Doctors' Stories', *An International Quarterly*, vol. 71 (3) pp. 691-710.
- Bush, Baruch and Folger, Joseph (1994) and (2005 edition) *The Promise of Mediation: Responding to Conflict through Empowerment and Recognition* (San Francisco: Jossey-Bass).
- Carrithers, Michael (1990) 'Why Humans Have Cultures', *Men New Series*, vol. 25 (2), pp. 189-206.
- Carter, James (2006) *Palestine: Peace Not Apartheid* (New York: Simon and Schuster).
- Casper, Jensen and Lauritsen, Peter (2005) 'Qualitative Research as Partial Connection: Bypassing the Power-Knowledge Nexus', *Qualitative Research*, vol. 5 (1), pp. 59-77.
- Cassirer, Ernst (1946) *The Myth of the State* (New Haven: Yale University Press)(1974 edition).
- Chase, Susan (2003) 'Taking Narrative Seriously: Consequences for Method and Theory in Interview Studies', in: Lincoln, Yvonna and Denzin, Norman *Turning Points in Qualitative Research: Tying Knots in a Handkerchief* (Walnut Creek CA: Alrtamira Press), pp. 273-296.
- Clandinin, Jean and Connelly, Michael (2000) *Narrative Inquiry: Experience and Story in Qualitative Research* (San Francisco: Jossey Bass).
- Cobb, Sara and Rifkin, Janet (1991) 'Practice and Paradox: Deconstructing Neutrality in Mediation', *Law and Social Inquiry*, vol. 16, is:1, pp. 35-62.
- Cohen, Yinon (2002) 'From Haven to Heaven; Changing Patterns of Immigration to Israel', in: Levi, Daniel and Weiss, Yfaat (eds.) *Challenging Ethnic Citizenship: Germany and Israel in Comparative Perspectives on Immigration* (New York: Berghahn Books), pp. 36-58.
- Cohen, Yinon (2005) 'Earnings and Educational Gaps between Groups in Israel', in: Ram, Uri and Berkovitz, Nitza (eds.) *Inequality in Israel* (Beer-Sheva: Ben-Gurion University Press)(Hebrew).
- Cohen, Yinon; Haberfeld, Yitchak; Kristal Tali (2007) 'Ethnicity and Mixed Ethnicity: Educational Gaps among Israeli-born Jews', *Ethnic and Racial Studies*, vol. 30, pp. 896-917.
- Connerton, Paul (1989) *How Societies Remember* (Cambridge: Cambridge University Press)(2003 edition).

- Cooper, Robert (1985) 'Language and Stratification among the Jewish Population of Israel', in: Fishman, Joshua (ed.) *Readings in the Sociology of Jewish Languages* (Leiden: Brill), pp. 65-81.
- Cormick, Gerald (1981) 'Environmental Mediation in the U.S. Experience and Future Directions I', unpublished.
- Cortazzi, Martin (1994) 'Narrative Analysis', *Language Teaching*, vol. 27, is: 3, pp. 157-170.
- Cowie, Roddy and Cornelius, Randolph (2002) 'Describing the Emotional States Expressed in Speech', *Speech Communication*, Vol. 40, is: 1-2, April 2003, pp. 5-32.
- Crapanzano, Vincent (1980) *Tuhami: Portrait of a Moroccan* (Chicago: University of Chicago Press).
- Crapanzano, Vincent (1986) 'Hermes' Dilemma: The Masking of Subversion in Ethnographic Description', in: Clifford, James and Marcus, George (eds.) *Writing Cultures: The Poetic and Politics of Ethnography* (Berkeley: University of California Press).
- Dahan, Momi; Dvir Eyal; Mironichev, Natalie; Shye, Samuel (2003) 'Have the Gaps in Education Narrowed?', *Israel Economic Review*, vol. 1(2), pp. 37-69.
- Damasio, Antonio (1994) *Descartes' Error: Emotion, Reason and the Human Brain* (New York: G.P. Putnam's Sons).
- Darwish, Mahmoud (1995) *Memory for Forgetfulness: August, Beirut, 1982* (Berkeley: University of California Press)(Muhawi, Ibrahim trans.).
- Dattner, Naomi and Foux-Levi, Yael (2001) *The Practicum Standards* (Jerusalem: NCMCR, internal print of the Ministry of Justice).
- Della Noce, Dorothy (2009) 'Evaluative Mediation: in Search of Practice Competencies', *Conflict Resolution Quarterly*, vol. 27, is: 2, pp. 193-214.
- Denzin, Norman (2001) *Interpretive Interactionism* (London: Sage).
- Dixit, Avinash and Nalebuff, Barry (1993) *The Art of Strategy: A Game Theorist's Guide to Success in Business and Life* (New York: Norton and Company)(2008 edition).
- Durkheim, Emile (1915) *The Elementary Forms of Religious Life: A Study in Religious Sociology* (New York: Free Press)(Swain, Joseph trans.)(1965 edition).
- Elon, Amos (1971) *The Israelis* (Jerusalem: Schocken)(Hebrew).
- Felstiner, William; Abel, Richard; Sarat, Austin (1980) 'The Emergence and Transformation of Disputes: Naming ,Blaming ,Claiming...', *Law and Society Review*, vol. 15 (3-4), pp. 631-654.
- Firro, Kais (1999) *The Druze in the Jewish State: A Brief History* (Leiden: Brill).

- Fisher, Roger and Ury, William (1981) *Getting to Yes: Negotiating Agreement without Giving In* (New York: Penguin Books)(1991 edition).
- Fiske, John (1989) *Understanding Popular Culture* (London: Routledge).
- Follett, Marry (1940) 'Constructive Conflict', in: *Dynamic Administration: The Collected Papers of Mary Parker Follett* (New York: Harper and Row)(1982 edition).
- Fox, Kate (2004) *Watching the English: The Hidden Rules of English Behaviour* (London: Hodder and Stoughton Ltd).
- Fox, Renee (2004) 'Observations and Reflections of a Perpetual Fieldworker', in: *The ANNALS of the American Academy of Political and Social Science*, vol. 595 (1), pp. 309-326.
- Friedlander, Dov; Okun, Barbara; Eisenbach, Zvi; Lion-Elmkias, Lilach (2002) 'Immigration, Social Change, and Assimilation: Education Attainment among Birth Cohorts of Jewish Ethnic Groups in Israel', *Population Studies*, vol. 56, pp.135-150.
- Fudenberg, Drew and Tirole, Jean (1991) *Game Theory* (Cambridge: MIT Press).
- Fuller, Lon (1971) 'Mediation: Its Form and Functions', *Southern California Law Review*, vol. 44, pp. 305-339.
- Fuller, Lon (1978) 'The Forms and Limits of Adjudication', *Harvard Law Review*, vol. 92, pp. 353- 409.
- Galanter, Marc (1986) 'The Day after the Litigation Explosion', *Maryland Law Review*, vol. 46, pp. 3-39.
- Galanter, Marc (2004) 'The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts', *Journal of Empirical Legal Studies*, vol. 1, is: 3, pp. 459-570.
- Malach-Pines, Ayala; Gat Hamutal; Tal, Yael (2002) 'Gender Differences in Content and Style of Argument between Couples During Divorce Mediation', *Conflict Resolution Quarterly*, vol. 20 is: 1, pp. 23-50.
- Gavison, Ruth (1997) 'The Constitutional Revolution: Not A Reality but an Attempt At Self-Fulfilling Prophecy', *Mishpatim*, vol. 28, pp. 23-147.
- Gavison, Ruth (1998) *The Constitutional Revolution: A Reality or a Self Fulfilling Prophecy?* (Jerusalem: The Israel Democracy Institute)(Hebrew).
- Gavison, Ruth (1999) *A Jewish and Democratic State* (Jerusalem: Van- Leer)(Hebrew).
- Gavison, Ruth; Kremnitzer, Mordechai; Dotan, Yoav (2000) *Judicial Activism: For and Against: The Role of the High Court of Justice in Israeli Society* (Jerusalem: Magnes)(Hebrew).

- Gayle, Barbara and Preiss, Raymond (1998) 'Assessing Emotionality in Organizational Conflicts', *Management Communication Quarterly*, vol. 12 (2), pp. 280-302.
- Geertz, Clifford (1983) *Local Knowledge* (New York: New York Basic Books).
- Geertz, Clifford (1988) *Works and Lives: The Anthropologist as an Author* (Stanford: Stanford University Press).
- Geertz, Clifford (1990) *The Interpretation of Cultures* (Mayzler, Yoash, trans.)(Jerusalem: Keter)(Hebrew).
- Gergen, Kenneth and Gergen, Mary (1988) 'Narratives and the Self as Relationship', in: Berkowitz, Leonard (ed.) *Advances in Experimental Social Psychology* (San Diego: Academic Press), vol. 21, pp. 17-56.
- Gevim (undated) *Integrative Mediation and Negotiation Management Course* (Hebrew).
- Gidali, Orit (2003) *Twenty Girls to Envy Me* (Bnei –Brak: Sifriyat Poalim) (Hebrew).
- Gidron, Ariela (2002) 'On Three Circles of Analyzing Narratives', in: Monk, Miri; Gidron Ariela; Keinan, Anat, Bar-Zohar Yaakov; Schochat, Nita *Revealed and Hidden Messages in the Narrative Text* (Tel-Aviv: Mofet)(Hebrew), pp. 10-44.
- Goldberg, Leah (1959) *Early and Late – Poems* (Bnei-Brak: Sifriat Poalim)(2003 edition)(Hebrew).
- Goldberg, Leah (1973) 'It is not the Ocean', in: *Poems* (Tel-Aviv: Sifriyat Poalim)(Hebrew) vol. 3.
- Goldberg, Stephen; Sander, Frank; Rogers, Nancy; Rudolph Cole, Sarah (1999) *Dispute Resolution Negotiation, Mediation and Other Processes* (Austin: Aspen Publishers)(Fifth edition).
- Gome (undated) *Basic mediation course* (Hebrew).
- Good, Byron and Del Vecchio-Good, Mary-Jo (2000) 'Fiction' and 'Historicity' in Doctors' Stories: Social and Narrative Dimensions of Learning Medicine', in: Mattingly, Cheryl and Garro, Linda (eds.) *Narrative and the Culture Construction of Illness and Healing* (Berkeley: University of California Press), pp. 50-69.
- Goodblatt, David (2006) *Elements of Ancient Jewish Nationalism* (New York: Cambridge University Press).
- Gotel, Ehud and Avni, Doron (eds.) (1997) 'The Constitutional Revolution', A special volume of *Mishpatim*, vol. 28, is: 1-2.
- Grayling, Anthony (1988) *Wittgenstein* (New York: New York University Press)(1996 edition).
- Griffiths, John (1986) 'What is legal pluralism?', *Journal of Legal Pluralism and Unofficial Law*, vol. 24, pp. 1-55.

- Gross, Ayal (1988) 'Property as a Constitutional Right and Basic Law: Human Dignity and Liberty', *TAU Law Review*, vol. 21, pp. 405-447.
- Gross, Ayal (2001) 'Danilowitz, Steiner and the Queer Theory', *Mishpat Nosaf*, vol. 1, pp. 47-54.
- Grossman, David (1987) *The Yellow Wind* (Tel-Aviv: Hakibbutz Hameuchad) (Hebrew).
- Grossman, David (1992) *Present Absentees* (Tel-Aviv: Hakibbutz Hameuchad) (Hebrew).
- Guba, Egon and Lincoln, Yvonna (1994) *Handbook of Qualitative Research* (Newbury Park: Sage).
- Gulliver, Philip (1921) *Disputes and Negotiations: A Cross-Cultural Perspective* (New York: Academic Press)(1979 edition).
- Gvion, Liora (2005) 'Humus, Couscous, Sushi: Food and Ethnicity in the Israeli Society', in: Kleinberg, Aviad (ed.) *A Full Belly: Rethinking Food and Society in Israel*, (Tel-Aviv: Keter)(Hebrew), pp. 32-78.
- Haberfeld, Yitchak and Cohen, Yinon (2007) 'Gender, Ethnic, and National Earnings Gaps in Israel: The Role of Rising Inequality', *Social Science Research*, vol. 36, is: 2, pp. 654-672.
- Habermas, Jürgen (1988) *On the Logic of the Social Science* (Nicholsen, Shierry and Stark, Jerry, trans.)(Cambridge: MIT Press).
- Harel, Alon (1996) 'Gay Rights in Israel: A New Era?', *International Journal of Discrimination and the Law*, vol. 1, pp. 261-278.
- Harshav, Benjamin (1993) *Language in Time of Revolution* (Stanford: Stanford University Press).
- Haynes, John (1980) 'Managing Conflict: The Role of the Mediator', *Family Court Review*, vol. 18, is: 2, pp. 9-13.
- Haynes, John (1993) *The Fundamentals of Family Mediation* (London: Old Bailey Press).
- Hazan, Haim (1999) 'Between Times: To the Crux of Israeliness', *Zmanim, History Quarterly*, vol. 68-69, pp. 146-154.
- Hertzog, Esther (1999) *Immigrants and Bureaucrats: Ethiopians In An Israeli Absorption Center* (Oxford: Berghahn Books).
- Hine, Christine (2000) *Virtual Ethnography* (London: Sage).
- Hirchl, Ran (2000) 'The Political Origins of Judicial Empowerment through Constitutional Revolution: Lessons from Four Constitutional Revolutions', *Law and Social Enquiry*, vol. 25, pp. 91-149.

- Horowitz, Dan and Kimmerling, Baruch (1974) 'Some Social Implications of Military Service and the Reserve System in Israel', *European Journal of Sociology*, vol. 15, is: 2, pp. 262-276.
- Howard, George (1991) 'Culture Tales: A Narrative Approach to Thinking, Cross-Cultural Psychology, and Psychotherapy', *American Psychologist*, vol. 46, is: 3, pp. 187-197.
- Hunt, Morton (1985) *Profiles of Social Research: The Scientific Study of Human Interactions* (New York: Russell Sage Foundation).
- Jones, Tricia (2006) 'Emotions in Mediation: Implications, Applications, Opportunities, and Challenges', in: Herman, Margaret (ed.) *Blackwell Handbook of Mediation: Theory, Research, and Practice* (Malden: Blackwell), pp. 277-305.
- Jones, Tricia and Bodtker, Andrea (2001) 'Mediating with Heart in Mind: Addressing Emotion in Mediation Practice', *Negotiation Journal*, vol. 17, is: 3, pp. 207-244.
- Josselson, Ruthellen (1998) 'Narrative Introduction', in: Lieblich, Amia and Josselson, Ruthellen (eds.) *The Narrative Study of Lives* (Newbury Park: Sage), vol. 1, pp. ix-xv.
- Josselson, Ruthellen (2006) 'Narrative Research and the Challenge of Accumulating Knowledge', *Narrative Inquiry*, vol. 16, is: 1, pp. 3-10.
- Josselson, Ruthellen (2007) 'The Ethical Attitude in Narrative Research: Principles and Practice', in: Clandinin, Jean (ed.) *Handbook of Narrative Inquiry: Mapping a Methodology* (Thousand Oaks: Sage), pp. 537-566.
- Kahneman, Daniel and Tversky, Amos (1979) 'Prospect Theory: An Analysis of Decision under Risk', *Econometrica*, vol. 47 (2), pp. 263-292.
- Kamir, Orit (1999) 'Smoch Mentality (rely on me) in Israeli Culture and Law', *Tarbut Democratit*, vol. 1, pp. 137-179.
- Kaplan, Danny (2007) 'What Can the Concept of Friendship Contribute to the Study of National Identity?', *Nations and nationalism*, vol. 13 (2), pp. 225-244.
- Kaplan, Steven (1998) 'Ethiopian Immigrants in Israel :Between Preservation of Culture and Invention of Tradition', in: Leshem, Elazar and Shuval, Judith (eds.) *Studies of Israeli Society* (New-Jersey: Transaction Publishers), vol. 8, pp. 357-370.
- Katriel, Tamar (1986) *Talking Straight – Dugri Speech in Israeli Sabra Culture* (Cambridge: Cambridge University Press).
- Katriel, Tamar (1991) *Communal Webs: Communication and Culture in Contemporary Israel* (Albany: State University of New York).
- Katriel, Tamar (1999a) 'Soul Talks in Israeli Ethos', in: Katriel, Tamar *Key Words: Patterns of Culture and Communication in Israel*, pp. 171-190.

- Katriel, Tamar (1999b) *Key Words: Patterns of Culture and Communication in Israel* (Haifa: Haifa University Press)(Hebrew).
- Katriel, Tamar (1999c) 'Kiturim Parties' as Language Rituals', in: Katriel, Tamar *Key Words: Patterns of Culture and Communication in Israel*, pp. 191-205.
- Katriel, Tamar (2004) *Dialogic Moments: From Soul Talks to Talk Radio in Israeli Culture* (Detroit: Wayne State University Press).
- Jameson, Jessica; Bodtker, Andrea; Porch, Dennis; Jordan, William (2010) 'Exploring the Role of Emotion in Conflict Transformation', *Conflict Resolution Quarterly*, vol. 27, is: 2, pp. 167-192.
- Kertzer, David (1988) *Ritual, Politics, and Power* (New Haven: Yale University Press).
- Kimmerling, Baruch (1993) 'Militarism in Israeli Society', *Teoria U-bikoret*, vol. 4, pp. 123-151.
- Kimmerling, Baruch (1998) 'The New Israelis: Many Cultures without Pluralism', *Alpayim* vol. 16, pp. 264-308.
- Kimmerling, Baruch (2001a) *The End of Ashkenazic Hegemony* (Jerusalem: Keter) (Hebrew).
- Kimmerling, Baruch (2001b) *The Invention and Decline of Israeliness: State, Culture and Military in Israel* (Los Angeles: University of California Press).
- Kimmerling, Baruch (2004) *Immigrants, Settlers, Natives, the Israeli State and Society between Cultural Pluralism and Cultural Wars* (Tel-Aviv: Am-Oved)(Hebrew).
- Kimmerling, Baruch (2008) *Clash of Identities: Explorations in Israeli and Palestinian Societies* (New York: Columbia University Press).
- Kipnis, David; Schmidt, Stuart; Wilkinson, Ian (1980) 'Intraorganizational Influence Tactics: Explorations in Getting One's Way', *Journal of Applied Psychology*, vol. 65 (4), 440-452.
- Kirmayer, Laurence (1993) 'Healing and the Interpretation of Metaphor', *Culture, Medicine and Psychiatry*, vol. 17 (2) pp. 161-195.
- Kirmayer, Laurence (2000) 'Broken Narratives: Clinical Encounters and the Poetics of Illness Experience', in: Mattingly, Cheryl and Garro, Linda (eds.) *Narrative and the Cultural Construction of Illness* (Berkeley: University of California Press), pp. 153-180.
- Kleinberg, Aviad (2005) 'Out of the Eater Came Forth Food', in: Kleinberg, Aviad (ed.) *A Full Belly: Rethinking Food and Society in Israel* (Tel-Aviv: Keter)(Hebrew), pp. 7-15.
- Kolb, Deborah (1985) 'To Be a Mediator: Expressive Tactics in Mediation', *Journal of Social Issues*, vol. 41, is: 2, pp. 11-26.

- Kreps, David (1990) *Game Theory and Economic Modeling* (Oxford: Oxford University Press).
- Kretzmer, David (1990) *The Legal Status of the Arabs in Israel* (Boulder: Westview Press).
- Kretzmer, David (1992) 'The New Basic Laws on Human Rights: A Mini Revolution in Israeli Constitutional Law?', *Israel Law Review*, 26(2), pp. 238–249.
- Kretzmer, David (2002) *The Occupation of Justice: The Supreme Court of Israel and the Occupied Territories* (Albany: State University of New York Press).
- Kvale, Steinar (1996) *Interviews: An Introduction to Qualitative Research Interviewing* (Thousand Oaks: Sage).
- Kydd, Andrew (2006) 'When can Mediators Build Trust', *American Political Science Review*, vol. 100, pp. 449-462.
- Lahav, Pnina (1988) 'A Barrel without Hoops: The Impact of Counterterrorism on Israel Legal Culture', *Cardozo Law Review*, vol. 10 (3), pp. 529-560.
- Landau, Moshe (1996) 'Thoughts on the Constitutional Revolution', *Mishpatim*, vol. 26 (3), p. 419-423.
- Lang, Josef (2008) *Speak Hebrew: the Life of Eliezer Ben-Yehuda* (Jerusalem: Yad Ben Tzvi Press).
- Laskov, Shulamit (1995) *The Story of Trumpeldor* (Jerusalem: Keter)(Hebrew).
- Lave, Jean and Wegner, Etienne (1991) *Situated Learning: Legitimate Peripheral Participation* (Cambridge: Cambridge University Press).
- Lemish, Dafna and Cohen, Akiba A. (2005) 'On the Gendered Nature of Mobile Phone Culture in Israel', *Sex Roles*, vol. 52, (7,8), pp. 511-525.
- Levi, Andre (2005) 'To be Geertz: The Anthropologist and the Writing', in: Geertz, Clifford (1988) *Works and Lives: The Anthropologist as an Author* (Tel-Aviv: Resling)(Zehavi, Ahad, trans.)(2005 edition)(Hebrew), pp. 7-20.
- Levy, Yagil; Lomsky-Feder, Edna; Harel, Noa (2007) 'From 'Obligatory Militarism' to 'Contractual Militarism' – Competing Models of Citizenship', *Israel Studies*, vol. 12, pp. 127-148.
- Lewin-Epstein, Noah and Semyonov, Moshe (1993) *Arabs in Israel's Economy: Patterns of Ethnic Inequality* (Colorado: Westview Press).
- Lewin-Epstein, Noah; Elmelech, Yuval; Semyonov, Moshe (1997) 'Ethnic Inequality in Home-Ownership and the Value of Housing: The Case of Immigrants to Israel', *Social Forces*, vol. 75 (4), pp.1439-1462.
- Lewitzky, Naomi (2005) *Kvodo [His Honour]* (Tel-Aviv: Keter)(Hebrew).

- Lieberman, Etti; Foux-Levi, Yael; Segal, Peretz (2005) 'Beyond Basic Training: A Model for Developing Mediator Competence', *Conflict Resolution Quarterly*, vol. 25 (2) pp. 237-256.
- Lieblich, Amia (1989) *The Transition to Adulthood During Military Service: The Israeli Case* (Albany: State University of New York Press).
- Lieblich, Amia (2006) 'Vicissitudes: A Study, A Book, A Play: Lessons from the Work of a Narrative Scholar', *Qualitative Inquiry*, vol. 12, pp. 60-80.
- Lieblich, Amia; Tuval-Mashiach, Rivka; Zilber, Tamar (1998) *Narrative Research: Reading, Analysis, and Interpretation* (Thousand Oaks: Sage).
- Lieblich, Amia and Josselson, Ruthellen (eds.) *The Narrative Study of Lives* (Newbury Park: Sage), vol. 1
- Lisak, Moshe (1995) *Russian Immigrants: Between Separation and Integration* (Jerusalem: The Centre for Research of Social Policy in Israel)(Hebrew).
- Lomsky-Feder, Edna (1996) 'The Personal Meaning of War Experience', *Megamot*, vol. 38 (1), pp. 48-73.
- Lomsky-Feder, Edna (1998) *As if there was no War: Life Stories of Israeli Men* (Jerusalem: Magnes)(Hebrew).
- Lucius-Hoene, Gabriele and Deppermann, Arnulf (2000) 'Narrative Identity Empiricized: A Dialogical and Positioning Approach to Autobiographical Research Interviews', *Narrative Inquiry*, vol. 10 (1), pp. 199-224.
- Malinowski, Bronislaw (1926) *Crime and Custom in Savage Society* (London: Routledge)(2002 edition).
- Mandelbaum, Sylvia (1985) *Divorce Your Lawyer* (Jerusalem: Gefen Pub. House)
- Mandelbaum, Sylvia (1996) *Marriage Duet or Duel*, (Jerusalem: Gefen Pub. House).
- Markus, Hazel and Kitayama, Shinobu (1994) 'A Collective Fear of the Collective: Implications for Selves and Theories', *Personality and Social Psychology Bulletin*, vol. 20 (5), pp. 568-579.
- Matz, David (1991) 'ADR and Life in Israel', *Negotiation Journal*, vol. 7, is: 1, pp. 11-16.
- Mautner, Menachem (1995) 'Legal Activism', *Aley Mishpat*, vol. 4, pp. 7-16.
- Menkel-Meadow, Carrie (1991) 'Pursuing Settlement in an Adversary Culture: A Tale of Innovation Co-Opted or "The Law of ADR"', *Florida State University Law Review*, vol. 19, pp. 1-46.
- Menkel-Meadow, Carrie (1995) 'The Many Ways of Mediation: The Transformation of Traditions, Ideologies, Paradigms and Practices', *Negotiation Journal*, vol. 11, pp. 217-242.

- Menkel-Meadow, Carrie (2000) 'Mothers and Fathers of Invention: The Intellectual Founders of ADR', *Ohio State Journal on Dispute Resolutions*, vol. 16, pp. 1-37.
- Menkel-Meadow, Carrie; Porter Love, Lela; Kupfer Schneider, Andrea; Sternlight, Jean (eds.)(2005) *Dispute Resolution: Beyond the Adversarial Model* (New York: Aspen).
- Merry, Sally (1987) 'Disputing Without Culture', (Book Review) *Harvard Law Review*, vol. 100, pp. 2057-2073.
- Messerschmidt, Donald (1981) *Anthropologist at Home in North America: Methods and Issues in the Study of One's Own Society* (Cambridge: Cambridge University Press).
- Mishler, Elliot (1986) 'The Analysis of Interview Narratives' in: Sabrin, Theodore (ed.) *Narrative Psychology: The Storied Nature of Human Conduct* (New York: Praeger), pp. 223-255.
- Mnookin, Robert (1993) 'Why Negotiations Fail: An Exploration of Barriers to the Resolution of Conflict', *Ohio State Journal on Dispute Resolution*, vol. 8, is: 2, pp. 235-250.
- Monahan, Torin and Fisher, Jill (2010) 'Benefits of 'Observer Effects': Lessons from the Field', *Qualitative Research*, vol. 10 (3), pp. 357-376.
- Moore, Christopher (1986) *The Mediation Process: Practical Strategies for Resolving Conflict* (San Francisco: Jossey-Bass).
- Mulcahy, Linda (2008) 'Architectural Precedent: the Manchester Assize Courts and Monuments to Law in the Mid-Victorian Era', *King's Law Journal*, vol. 19 (3), pp. 525-550.
- Nader, Laura (ed.) (1969) *Law in Culture and Society* (Berkeley: University of California Press).
- Navot, Doron (2008) *Political Corruption* (Jerusalem: The Democratic Library) (Hebrew).
- Nir, Refael (1998) 'The Role of the Institutions in the Revival of the Language', in: Shavit, Zohar (ed.) *The History of the Jewish Settlements in Israel: Building a Culture* (Jerusalem: The Bialik Institute)(Hebrew), pp. 31-42.
- Norberg-Schulz, Christian (1975) *Meaning in Western Architecture* (London: Academy Editions).
- Norberg-Schulz, Christian (1980) *Genius Loci: Towards a Phenomenology of Architecture* (London: Academy Editions).
- Nussbaum, Martha (1986) *The Fragility of Goodness: Luck and Ethics in Greek Tragedy and Philosophy* (Cambridge: Cambridge University Press)(2001 edition).

- Ochs, Elinor (1997) 'Narratives', in: Van Dijk (ed.) *Discourse as Structure and Process* (London: Sage)(1998 edition), pp. 185-207.
- Okun, Barbara (2001) 'The Effects of Ethnicity and Educational Attainment on Jewish Marriage Patterns: Changes in Israel, 1957-1995', *Population Studies*, vol. 55, pp. 49-64.
- Oldenburg, Ray (1989) *The Great Good Place: Cafes, Coffee Shops, Community Centers, Beauty Parlors, General Stores, Bars, Hangouts, and How They Get You Through the Day* (New York: Paragon House).
- Omer, Haim (2002) *Non-Violent Resistance: A New Approach to Violent and Self-destructive Children* (Ben-Shemen: Modan)(Hebrew).
- Omer, Haim and Alon, Nahi (1997) *Constructing Therapeutic Narratives* (Tel-Aviv: Modan)(Hebrew).
- Osborne, Martin and Rubinstein, Ariel (1994) *A Course in Game Theory* (Cambridge: MIT Press).
- Ottolenghi, Smadar (2002) 'Thoughts on Mediation', *Shaarey Mishpat*, vol. 3 (1), pp. 25-35.
- Oz, Amos (1998) *All Our Hopes* (Jerusalem: Keter)(Hebrew).
- Oz, Amos (2002) *But These Are Two Different Wars* (Tel-Aviv: Keter) (Hebrew).
- Palmer, Michael (1988) 'The Revival of Mediation in the People's Republic of China: (2) Judicial Mediation', in: Butler, William (ed.) *Year Book of Socialist Legal Systems 1988* (New York: Transnational Books).
- Pardes, Ilana (2000) *The Biography of Ancient Israel: National Narratives in the Bible* (Berkeley: University of California Press).
- Patterson, Molly and Renwick, Kristen (1998) 'Narratives in Political Science', *Annual Review of Political Science*, vol. 1, pp. 315-331.
- Patton, Michael (2002) *Qualitative Research and Evaluative Methods* (Thousand Oaks: Sage)(third edition).
- Peled, Yoav (1992) 'Democracy and the Legal Construction of Citizenship: Arab Citizens of the Jewish State', *The American Political Science Review*, vol. 86 (2), pp. 432-443.
- Peled, Yoav (ed.)(2001) *Shas: The Challenge of Israeliness* (Tel-Aviv: Yediot Achronot) (Hebrew).
- Polkinghorne, Donald (1991) 'Narrative and Self Concept', *Journal of Narrative and Life History*, vol. 1 (2-3), pp. 135-154.
- Pound, Roscoe (1906) 'The Causes of Popular Dissatisfaction with the Administration of Justice', *Annual American Bar Association Report*, vol. 29, pp. 395-417.

- Price, June (1999) 'In Acknowledgement: A Review and Critique of Qualitative Research Texts', in: Lieblich, Amia and Josselson, Ruthellen (eds.) *Making Meaning of Lives – The Narrative Study of Lives* (Thousand Oaks: Sage) vol. 6, pp. 1-24.
- Princen, Thomas (1992) *Intermediaries in International Conflict* (Princeton: Princeton University Press).
- Rabikowitz, Dalia (1977) *The Football Team of Winnie Mandela* (Tel-Aviv: Hakibutz Hameuchad)(Hebrew).
- Rabinowitz, Dan (2003) 'Borders and Their Discontents: Israel's Green Line, Arabness and Unilateral Separation', *European Studies*, vol. 19, pp. 217-231.
- Randall, William (1999) 'Narrative Intelligence and the Novelty of Our Lives', *Journal of Aging Studies*, vol. 13, is: 1, pp. 11-28.
- Rasmusen, Eric (2007) *Games and Information: An Introduction to Game Theory* (Malden: Blackwell).
- Raz, Joseph (1986) *The Morality of Freedom* (New York: Oxford University Press).
- Relis, Tamara (2009) *Perceptions in Litigation and Mediation* (Cambridge: Cambridge University Press).
- Restivo, Sal (1985) *The Social Relations of Physics, Mysticism, and Mathematics: Studies in Social Structure, Interests and Ideas* (New York: Springer).
- Rifkin, Janet; Millen, Jonathan; Cobb, Sara (1991) 'Toward a New Discourse for Mediation: A Critique of Neutrality', *Conflict Resolution Quarterly*, vol. 9, is: 2, pp. 151-164.
- Riskin, Leonard (1982) 'Mediation and Lawyers', *Ohio State Law Journal*, vol. 43, pp. 29-60.
- Riskin, Leonard (1994) 'Mediator Orientations, Strategies and Techniques', *Alternatives to the High Cost of Litigation*, vol. 12, is: 9, pp. 111-114.
- Riskin, Leonard (1996) 'Understanding Mediators' Orientations, Strategies, and Techniques: A Grid for the Perplexed', *Harvard Negotiation Law Review*, vol. 7, pp. 7-51.
- Roberts, Marian (1988) *Mediation in Family Disputes: Principles of Practice* (2008 edition)(Hampshire: Ashgate Publishing).
- Roberts, Simon (1979) *Order and Dispute: An Introduction to Legal Anthropology* (Harmondsworth: Penguin Books).
- Roberts, Simon (1998) 'Against Legal Pluralism – Some Reflections on the Contemporary Enlargement of the Legal Domain', *Journal of Legal Pluralism and Unofficial Law*, vol. 42, pp. 95-106.

- Roberts, Simon (2002) 'Institutionalised Settlement in England: A Contemporary Panorama', *Willamette Journal of International Law and Dispute Resolution*, vol. 10, pp.17-35.
- Roberts, Simon (2005) 'After Governments? On Representing Law without the State', *The Modern Law Review*, vol. 68, is: 1, pp. 1-24.
- Roberts, Simon and Palmer, Michael (2005) *Dispute Processes: ADR and the Primary Forms of Decision-Making* (Cambridge: Cambridge University Press)(Second edition).
- Rogers, Annie; Casey, Mary; Ekert, Jennifer; Holland, James; Nakkula, Victoria; Sheinberg, Nurit (1999) 'An Interpretive Poetics of Languages of the Unsayable. Making Meaning of Narratives', in: Josselson, Ruthellen and Lieblich, Amia (ed.), *Making Meaning of Narratives, The Narrative Study of Lives* (Thousand Oaks, CA: Sage), vol. 6, pp. 77-106.
- Rosenthal, Gabriele (1993) 'Reconstruction of Life Stories: Principles of Selection in Generating Stories for Narrative Biographical Interviews', in: Lieblich, Amia and Josselson, Ruthellen (eds.) *The Narrative Study of Lives*, (Newbury Park: Sage) vol. 1, pp. 59-91.
- Rubinstein, Amnon (1997a) *From Herzl to Rabin – A Hundred Years of Zionism* (Jerusalem: Schocken)(Hebrew).
- Rubinstein, Amnon (1977b) *To be a Free Nation* (Tel-Aviv: Schocken)(Hebrew).
- Rubinstein, Ariel (2006) 'Introduction', in: Dixit, Avinash and Nalebuff, Barry *The Art of Strategy: A Game Theorist's Guide to Success in Business and Life* (Tel-Aviv: Yediot Achronot)(Hebrew), pp. 13-14.
- Rubinstein, Ariel (2009) *The Legends of Economics* (Tel-Aviv: Kinneret Press)(Hebrew).
- Rubinstein, Eliezer (1980) *Contemporary Hebrew and Ancient Hebrew* (Tel-Aviv: Ministry of Defense)(Hebrew).
- Ruth, Jan-Erik and Oberg, P. (1996) 'Ways of Life: Old Age in a Life History Perspective', in: Birren, James; Kenyon, Gary; Ruth, Jan-Eric; Schroots, Johannes; Svensson, Torbjorn (eds.) *Aging and Biography: Explorations in Adult Development* (New York: Springer), pp.167-186.
- Saenz-Badillos, Angle (1988) *The History of the Hebrew Language* (Elwolde, John trans.) (Cambridge: Cambridge University Press).
- Samet, Gideon (2003) *Israel: Where Things Stand Now* (Or-Yehuda: Kinneret, Zmora-Bitan)(Hebrew).
- Sander, Frank (1976) 'Varieties of Dispute Processing', *Federal Rules Decisions*, vol. 79, pp. 113-134.

- Sander, Frank and Goldberg, Stephan (1994) 'Fitting the Forum to the Fuss : A User-Friendly Guide to Selecting an ADR', *Negotiation Journal*, vol. 10, pp. 49-68.
- Sarat, Austin (1984) 'Access to Justice: Citizen Participation and the American Legal Order', *Rutgers Law Review*, vol. 37, pp. 319-336.
- Sarat, Austin and Silbey, Suzan (1989) 'Dispute Processing in Law and Legal Scholarship: from Institutional Critique to the Reconstitution of the Judicial Subject', *Denver University Law Review*, vol. 66, pp. 437-498.
- Sarbin, Theodore (1986) 'The Narrative as a Root Metaphor for Psychology', in: Sarbin, Theodore (ed.) *Narrative Psychology: The Storied Nature of Human Conduct* (New York: Praeger), pp. 3-21.
- Savun, Burcu (2008) 'Information, Bias, and Mediation Success', *International Studies Quarterly*, vol. 52, is: 1, pp. 25-47.
- Schechner, Richard (1977) *Ritual, Play and Performance* (New York: Seabury).
- Schelling, Thomas (1960) *The Strategy of Conflict* (U.S.: Harvard College)(1980 edition).
- Schreier, Lori (2002) 'Emotional Intelligence and Mediation Training', *Conflict Resolution Quarterly*, vol. 20, is: 1, pp. 99 – 119.
- Seidman, Irving (1991) *Interviewing as Qualitative Research: A Guide for Researchers in Education and the Social Sciences* (New York: Teachers College Press).
- Sela-Shefi, Rakefet (2004) 'What Makes One an Israeli? Negotiating Identities in Everyday Representations of Israeliness', *Nations and Nationalism*, vol. 10 (4), pp. 479-497.
- Semyonov, Moshe and Kraus, Vered (1983) 'Gender, Ethnicity and Income Inequality: The Israeli Experience', *International Journal of Comparative Sociology*, vol. 24 (3-4), pp. 258-272.
- Sered, Susan (2000) *What Makes Women Sick? Maternity, Modesty, and Militarism in Israeli Society* (Hanover: University Press).
- Shafir, Gershon and Peled, Yoav (2002) *Being Israeli: The Dynamic of Multiple Citizenship* (Cambridge: Cambridge University Press).
- Shamir, Ronen (2001) 'Power and Identity in the Legal Field: Palestinian-Arabs Citizens in Israel and Identity in the Legal Field', *Geneses*, vol. 45, pp. 27-43 (French).
- Shapira, Avraham (ed.)(1971) *The Seventh Day: Soldiers' Talk about the Six-Day War* (Harmondsworth: Penguin Books).
- Shapira, Omer (2007) *The Use of Power and Influence in Mediation: Practice and Applied Ethics* (Jerusalem: Grafit)(Hebrew).

- Sheleg, Yair (2000) *The New Religious People: An Update Look on Religious Society in Israel* (Jerusalem: Keter)(Hebrew).
- Shokeid, Moshe (1998) 'The Singing People: Israeli Immigrants in New York', in: Deshen, Shlomo and Shokeid, Moshe (eds.) *The Intercultural Experience* (Tel-Aviv: Schocken)(Hebrew), pp. 50-65.
- Shorr, Pnina and Tzabar-Ben-Yehoshua, Naama (2010) 'From a Report to a Story', in: Tuval-Mashiach, Rivka and Spector-Mersel, Gabriela (eds.) *Narrative Research: Theory, Creation and Interpretation*, pp. 197-220.
- Shweder, Richard (1991) *Thinking through Cultures: Expeditions in Cultural Psychology* (Cambridge: Harvard University Press).
- Siegel, Dina (1998) *The Great Immigration: Russian Jews in Israel* (New York: Berghahn Books).
- Sikron, Moshe (1957) *Immigration to Israel 1948-1953* (Jerusalem: Falk Institute and CSI) (Hebrew).
- Silbey, Susan and Merry, Sally (1986) 'Mediator Settlement Strategies', *Law and Policy*, vol. 8, is: 1, pp. 7-32.
- Simmel, Georg (1903) 'The Sociology of Conflict', *American Journal of Sociology*, vol. 9, pp. 490-525.
- Simmel, Georg (1922) *Conflict and the Web of Group-Affiliations* (New York: The Free Press of Glencoe)(Wolff, Kurt and Rendix, Reinhard trans.)(1964 edition).
- Sivan, Reuben (1982) *The Megiddo Modern Dictionary* (Tel-Aviv: Megiddo Publishing).
- Smith, Craig and Lazarus, Richard (1990) 'Emotion and Adaptation', in: Pervin, Lawrence and John, Oliver (eds.) *Handbook of Personality: Theory and Research* (New York: Guilford), pp. 609-637.
- Smootha, Sammy (1987) 'Jewish and Arab Ethnocentrism in Israel', *Ethnic and Racial Studies*, vol. 10 (1), pp. 1-26.
- Smootha, Sammy and Peres, Yochanan (1975) 'The Dynamics of Ethnic Inequalities: The Case of Israel', *Social Dynamics*, vol. 1 (1), pp. 63-79.
- Spector-Mersel, Gabriela (2003) *An Old Man in Uniform is Like a Torn Israeli Flag: The Narrative Identities of Senior Sabra Officers*, PhD Thesis in Social Work, the Hebrew University in Jerusalem (Hebrew).
- Spector-Mersel, Gabriela (2008) *Sabras Don't Age: Life Stories of Senior Officers from 1948's Israeli Generation* (Jerusalem: Magnes)(Hebrew).
- Spector-Mersel, Gabriela (2010a) 'Mechanisms of Choice on the Grounds of Narrative Identity: A Model for Analyzing Narratives', in: Kassan, Lea and

- Kromer-Nevo, Michal *Methods for Qualitative Analysis* (Beer-Sheva: Ben-Gurion University Press), pp. 63-96.
- Spector-Mersel, Gabriela (2010b) 'From Narrative Approach to Narrative Paradigm', in: in: Tuval-Mashiach, Rivka and Spector-Mersel, Gabriela (eds.) *Narrative Research: Theory, Creation and Interpretation*, pp. 45-80.
- Stephan, Walter and Stephan, Cookie (2000) 'An Integrate Threat Theory of Prejudice', in: Oskamp, Stuart, (ed.) *Reducing Prejudice and Discrimination* (New Jersey: Lawrence Publishers), pp. 225-246.
- Swirsky, Shlomo (2005) *The Price of Pride: Occupation - The Price That Israel Pays* (Tel-Aviv: Mapa)(Hebrew).
- Swirski, Shlomo and Konor-Atias, Etti (2006) *A Picture of Cultural Situation* (Tel-Aviv: Adva Centre)(Hebrew).
- Swirsky, Shlomo; Konor-Atias, Etti; Swirsky, Barbara; Yecheskel, Yaron (2001) *Women in the Labour Force of the Israeli Welfare State* (Tel-Aviv: Adva Centre).
- Taylor, Alison (1997) 'Concepts of Neutrality in Family Mediation: Contexts, Ethics, Influence, and Transformative Process', *Conflict Resolution Quarterly*, vol. 14, is: 3, pp. 215–236.
- Tene, Ofra (2005) 'Reading Cook Books from the 1980s.', in: Kleinberg, Aviad (ed.) *A Full Belly: Rethinking Food and Society in Israel*, (Tel-Aviv: Keter)(Hebrew), pp. 92-130.
- Monahan, Torin and Fisher, Jill (2010) 'Benefits of 'Observer Effects': Lessons from the Field', *Qualitative Research*, vol. 10 (3), pp. 357-376.
- Touval, Saadia, (1975) 'Biased Intermediaries: Theoretical and Historical Considerations', *Jerusalem Journal of International Relations*, vol. 1 (Fall), pp. 51-69.
- Trope, Yaakov (1989) 'Stereotypes and Dispositional Judgment' in: Bar-Tal, Daniel; Graumann, Carl; Kruglanski, Arie; Stroebe, Wolfgang (eds.) *Stereotypes and prejudice: Changing conceptions*, (New York: Springer-Verlag).
- Turner, Victor (1969) *The Ritual Process* (Chicago: Aldine Publishing)(1970 edition).
- Turner, Victor (1977) 'Variations on the Theme of Liminality', in: Moor, Sally and Myerhoff Barbara, (eds.) *Secular Rituals* (Assen: Van Gorcum), pp. 36-52.
- Tuval-Mashiach, Rivka and Spector-Mersel, Gabriela (eds.)(2010) *Narrative Research: Theory, Creation and Interpretation* (Jerusalem: Mofet and Magnes)(Hebrew).
- Tzur, Yaron (1997) 'The First Decade of Immigration from Muslim Countries', in: Tzameret, Tzvi (ed.) *Idan 20* (Jerusalem: Yad Ben-Tzvi)(Hebrew), pp. 57-82.
- Una, Issachar (1993) *Quantum Physics* (Tel-Aviv: Open University Press) (Hebrew).

- Van Der Goltz, Colmar (1913) *The Nation in Arms* (London: Hugh Rees).
- Van Gennep, Arnold (1960) *The Rites of Passage* (Vizedom, Monika, trans)(London: Routledge)(1965 edition).
- Vardi, Dina (1990) *A Dialogue with the Second Generation of Holocaust Jews* (Jerusalem: Keter)(Hebrew).
- Von Neumann, John and Morgenstern, Oskar (1944) *Theory of Games and Economic Behaviour* (Princeton: Princeton University Press)(1990 edition).
- Waizbord, Ricardo (2004) 'Objectivity in Social Science: Toward a Hermeneutical Evolutionary Theory', *Philosophy of the Social Sciences*, vol. 34 (1), pp. 151-162.
- Weinbach, Liora and Brosh, Shoshana (1986) *The Art of Discourse: Interpersonal Communication and Speech Acts* (Tel-Aviv: University Publishing Projects) (Hebrew).
- Wellman, James and Tokuno, Kyoko (2004) 'Is Religious Violence Inevitable', *Journal for the Scientific Study of Religion*, vol. 43 is: 3, pp. 291-296.
- Wilson, Stephen (1977) 'The Use of Ethnographic Techniques in Educational Research', *Review of Educational Research*, vol. 47 (2), pp. 245-265.
- Winslade, John and Monk, Gerald (2000) *Narrative Mediation: A New Approach to Conflict Resolution* (San Francisco: Jossey-Bass).
- Woolf, Lord (1995) *Access to Justice: Interim Report to the Lord Chancellor on the Civil Justice System of England and Wales* (London: HMSO).
- Yashiv, Eran and Kasir, Nitsa (2010) 'Labour Market Participation Patterns of Arab Israelis', *The Bank of Israel Review*, vol. 84, pp. 39-86.
- Yonay, Yuval and Spivak, Dori (1989) 'Between Silence and Condemnation: The Construction of Homosexual Identity in the Israeli Legal Discourse – 1948-1988', *Israeli Sociology*, vol. 1 (2), pp. 257– 293.
- Zalsberger, Ali (2002) 'The Israeli Lawyers Connections: On the Israeli Bar and its Aliens', *Mishpatim*, vol. 32, pp.43-93.
- Zellermayer, Michal (2010) 'On Narrative Research, Feminism and in Between', in: Tuval-Mashiach, Rivka and Spector-Mersel, Gabriela (eds.) *Narrative Research: Theory, Creation and Interpretation*, pp. 106-132.
- Ziv, Neta, and Shamir, Ronen (2001) 'Built Your Own Home: Macro Politics and Micro Politics in the Struggle Against Land Discrimination', *Teoria U-bikoret*, vol. 16, pp. 45-66.