COMMUNITY MEDIATION ACROSS ETHNICITIES: BUILDING FOR CONFLICT RESOLUTION IN DIVERSE SOCIETIES

By

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Abstract

The central purpose of this thesis is to explore how academics and dispute resolution centres discuss inter-ethnic dispute resolution. The study begins by reviewing the literature on this topic but quickly discerns that little research exists analysing the interactions between parties from different ethnic backgrounds (i.e. interethnic disputes). The study then turns its lens to look at how dispute resolution centres themselves are discussing these interactions—specifically, community mediation centres across both California and the United Kingdom. Community mediation centres are ideal subjects for the study of interethnic disputes because of their location in urban, multi-ethnic communities and their focus on interpersonal dynamics. As the focus narrows to community mediation, the information found on the websites of community mediation centres becomes highly valuable. This research collects data from the websites of 42 mediation centres across California and the United Kingdom—while some of these discuss ethnicity, they tend not to address inter-ethnic disputes. The final substantive chapter presents a more in-depth analysis of materials related to two community mediation centres, the San Francisco Community Boards in California and the Southwark Mediation Centre in the United Kingdom. Utilising data from social media, newsletters, training materials, and one exploratory interview, it examines the resources these two mediation centres provide to disputants in inter-ethnic conflicts.

Overall, this study suggests that, while there has been little emphasis on inter-ethnic disputes in scholarship and the websites of community mediation centres, these interactions are occurring and resources are available to navigate them. Future studies must continue to fill this missing gap in the literature as the study of inter-ethnic interactions grows in importance.

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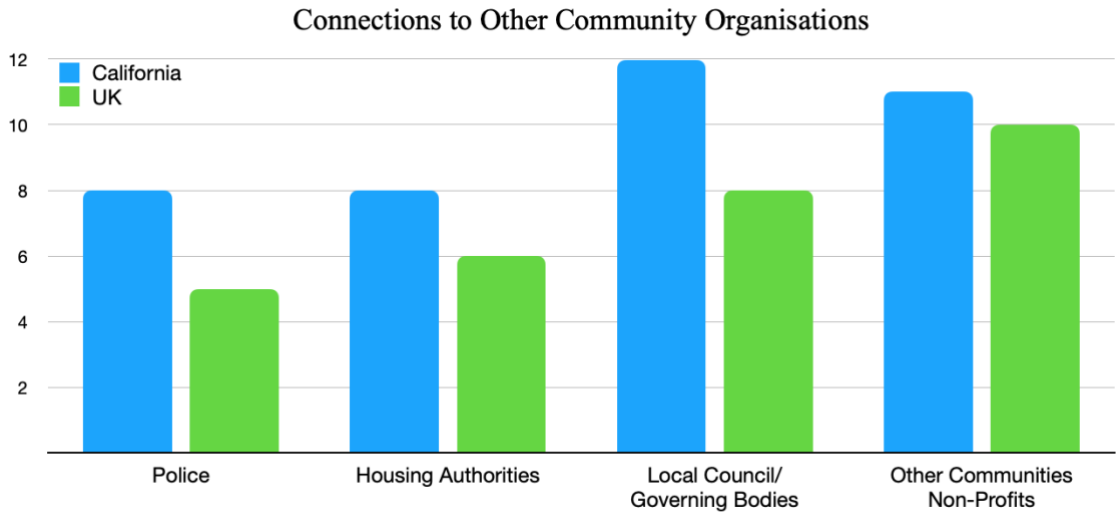
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Abbreviation	Term
ADR	Alternative Dispute Resolution
SFCB	San Francisco Community Boards
SMC	Southwark Mediation Centre
MCS	Mennonite Conciliation Services
MCMC	London Community Mediation Council
CMC	Civil Mediation Council
UK	United Kingdom
US	United States

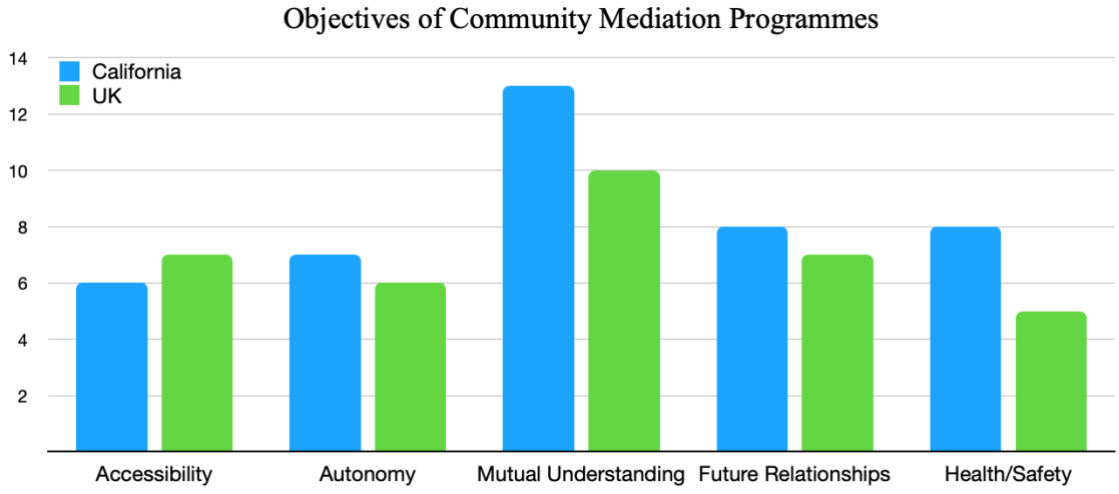
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Graph 1: This graph depicts how community mediation centres are connected to other organisations in the same community as described by the websites of the community mediation centres in Appendix A. **(On page 55 of thesis.)**



Graph 2: This graph depicts the range of objectives community mediation centres in both California and the UK list on their websites. These community mediation centres can be found in Appendix A. **(On page 69 of thesis.)**

Introduction

The Purpose of this Study:

Why isn't anyone talking about inter-ethnic disputes? In a world where the topic of ethnicity has taken hold of the public consciousness, one would expect conversation on inter-ethnic interactions to be prevalent; however, this study finds that such conversations are missing both within scholarship and dispute resolution centres' websites, despite the fact that resources for inter-ethnic disputes can be found in community mediation programmes across the world.

The inception of this study occurred long before my research at the University of Oxford. As a citizen of the Choctaw Nation of Oklahoma, a Native American tribe, I have researched, taught, and practised indigenous dispute resolution for years. These experiences helped me learn two critical lessons. First, the ethnic identity of disputants, in this case, as indigenous people, was critical and often inseparable from the ways in which they navigated the pathway from conflict to resolution. Second, even when disputes occurred between different ethnic groups, ethnic identity remained an important factor in the resolution process.

As I began my research at Oxford, I was surprised to find that the inter-ethnic interactions in dispute resolution were often left undiscussed in literature, and, where these conversations did arise, there was no analysis of how disputants from different ethnic backgrounds interacted with each other. Discovering this gap in scholarship, I started searching for how those 'on the ground' were discussing inter-ethnic disputes. While there are multiple dispute resolution processes, I chose to focus on the work of community mediation centres. Due to their emphasis on interpersonal dynamics and

frequent locations in urban, multi-ethnic communities,[1] I expected to find them engaging in significant conversations on inter-ethnic disputes. However, an analysis of these centres' websites, specifically across California and the United Kingdom (UK), also produced little information on this topic. This negative result led me to conduct an in-depth analysis of two community mediation centres, the San Francisco Community Boards (SFCB) in California and the Southwark Mediation Centre (SMC) in the UK. Eventually, through a deep dive into these two programmes, I found that each provides resources for disputants navigating inter-ethnic disputes. Therefore, despite the lack of discussion in both scholarship and community mediation websites on this topic, inter-ethnic disputes are indeed occurring and being carefully navigated by centres 'on the ground'.

An Overview of Chapters:

Although I have already provided an outline of my thesis and its purpose above, the following section offers a more substantial overview of each chapter.

This study begins by looking at how the literature discusses interactions between different ethnic groups in dispute resolution (i.e. inter-ethnic dispute resolution).[2] Essentially, as will be outlined in Chapter One, the scholarship talks about inter-ethnic interactions in a variety of ways. This chapter is broken down into four sections. First, I

[1] Many of the prominent community mediation centres in the literature, such as the San Francisco Community Boards and Southwark Mediation Centre, are in urban communities, However, I also show that a significant portion of community mediation centres are located in such communities in my second chapter.

[2] Throughout this thesis, I use the terms 'inter-ethnic dispute resolution' and 'inter-ethnic disputes' differently. 'Inter-ethnic dispute resolution' is used to describe the range of topics I engaged with in my literature review, which are works which, in some way, analyse the intersection of two or more ethnic groups in the study of dispute resolution. On the other hand, 'inter-ethnic disputes' specifically refers to when a particular conflict involves a set of disputants from different ethnic backgrounds (e.g. a conflict between an ethnically Jewish disputant and an ethnically Native American disputant). Therefore, the study of 'inter-ethnic disputes' would be encapsulated within the larger study of 'inter-ethnic dispute resolution'. This thesis claims that while there is literature on 'inter-ethnic dispute resolution', such as through the cross-cultural theories of Gulliver (1979) and Black & Baumgartner (1982), the study of legal pluralism, etc., there is a lack of information on a specific subcategory of this literature. This subcategory is 'inter-ethnic disputes' (i.e. conflicts with a set of disputants from different ethnic backgrounds).

discuss a body of scholarship which develops patterns of dispute resolution processes by analysing examples across different ethnicities. The second section of Chapter One focuses on the literature around legal pluralism which allows for multiple dispute resolution mechanisms to co-exist within the same community, such as state dispute resolution mechanisms and those of different ethnic communities. The third section focuses on the subordination of minority ethnic groups by the state and third-party mediators. Finally, section four of Chapter One looks at the work that has been written on regarding the interactions of disputants from different ethnic groups (i.e. inter-ethnic disputes). This fourth section is relatively scarce. Such a gap in information leads me into my second chapter, where I continue to search for how these inter-ethnic disputes are discussed.

Chapter Two continues the exploration of inter-ethnic disputes while analysing the discourse of community mediation centres in California and the UK.[3] As previously mentioned, community mediation centres provide an optimal setting to understand inter-ethnic interactions due to its often multi-ethnic, urban setting. So, while Chapter One discusses dispute resolution processes generally, Chapter Two narrows its scope to community mediation. There is a dual purpose to this chapter. First, it provides an overview of how community mediation centres function. More precisely, this chapter answers the following questions: 'Where are community mediation programmes located?', 'Who participates in the community mediation process?', 'What is the mediator's role?', 'What types of cases are handled in community mediation?', and

[3] While I refer to this study as a comparison between community mediation in California and the United Kingdom, the latter is specifically more representative of England and Wales. In my initial draft of this thesis, I included mediation centres from Scotland as well. However, after careful consideration, I have removed these centres because the legal system of England and Wales is distinct from that of Scotland. Similar issues relate to Northern Ireland, and I believe such concerns make it inappropriate to include either Scottish or Northern Irish community mediation centres within this study.

'What are the objectives of community mediation programmes?'. However, this chapter is more than a survey of community mediation's basic structure and tenets. Its second and more critical purpose is to understand how community mediation centres discuss ethnicity and inter-ethnic disputes. Chapter Two's conclusions mirror those of Chapter One. There is little information on how these community mediation centres conceptualise ethnicity or manage inter-ethnic disputes.

Chapter Three continues to challenge the lack of information on inter-ethnic interactions and probes deeper into the services of community mediation centres. I specifically focus on two community mediation centres, the San Francisco Community Boards (SFCB) in California and the Southwark Mediation Centre (SMC) in the UK. This chapter utilises the websites, training materials, centre newsletters, and social media of these centres as well as one exploratory interview to better understand the resources made available to individuals in inter-ethnic disputes.

Concepts of Ethnicity:

The definition of ethnicity is highly contested, and both British and American governments have grappled with ascribing a comprehensive meaning to the term. For example, section 3(1) of the *Race Relations Act 1976* (United Kingdom) defined a 'racial group' as 'a group of persons defined by reference to colour, race, nationality or ethnic or national origin' without defining the term ethnicity in more detail. Historically, this can be seen in a variety of court cases like *Takao Ozawa v. United States* (1922) 260 U.S. 178. and *United States v. Bhagat Singh Thind* (1923) 261 U.S. 204., which repeatedly redefined ethnicity and the requirements to be considered a part of the 'Caucasian' ethnic group (Snipp, 2010).[4]

[4] It is debatable if a 'Caucasian' ethnic group even exists. For example, while multiple people may identify as white, each individual may still have a different ethnic background, such as Irish, European American, etc. In addition, while ethnicity is often conflated with nation or origin, the scholarship of Calhoun (1983) clarifies that the two are not synonymous. While ethnicity can sometimes be understood as one's

It has been suggested that one reason why the term ‘ethnicity’ is so difficult to concretely define is because this term can have multiple interpretations, including both internal and external definitions (Barth, 1969). Internal definitions of ethnicity include what an individual believes their ethnicity to be and how they present themselves to others (Barth, 1969; Jenkins, 1994; Okamura, 1981). However, ethnic identity can also be created, imposed, confirmed, or denied by external sources, such as individuals or institutions (Barth, 1969). External interactions which help define ethnicity can range from informal ‘routine public interactions’ such as conversations incorporating humour, verbal abuse, or violence, to formalised government interventions such as through the ‘official classification’ of individuals as a specific ethnicity (Jenkins, 1994, p. 210). This process of defining ethnicity is fluid and constantly fluctuating as internal definitions of ethnicity are influenced by the external and vice versa (Jenkins, 1994; Okamura, 1981).

With ethnicity being such a highly contested term and dependent upon both internal and external sources, it is particularly important yet challenging to define it for this paper. With this in mind, I believe both the opinion of Lord Fraser in *Mandla v. Dowell-Lee* (1983) 2 AC 548. and the scholarship of Snipp provide comprehensive definitions of ethnicity. In the United Kingdom, the case of *Mandla v. Dowell-Lee* specifically navigated the challenge of defining ‘ethnicity’ in the courts’ to decide if Sikhs could be considered an ethnic group. The court determined, as can be seen in the judgement of Lord Fraser (para. 10), that in order for a group to be characterised as having a distinctive ethnicity, it must exhibit ‘a long shared history’ and ‘a cultural tradition of its own’. However, in addition to these traits, an ethnic group may also exhibit ‘a common geographical [or ancestral] origin’, ‘a common language’, ‘a common

connection to nationality, this is not always the case (Calhoun, 1983). Instead, “ethnic […] identities are claimed most often where groups [seek] a recognition internal to or cross-cutting national or state boundaries” (Calhoun, 1983, p. 235).

literature peculiar to the group', 'a common religion different from that of neighbouring groups', and/or 'being a minority or oppressed group'. Academics, such as Snipp, have defined ethnicity with similar characteristics such as a group sharing a 'common language, religion, family structure, diet and lifestyle' (2010, p. 108). Therefore, while the definition of ethnicity is frequently being adapted, for the purposes of this thesis, the common term 'ethnicity' will be defined by a group's shared history, lifestyle, and culture, as is described by Lord Fraser in *Mandla v Dowell-Lee* and the scholarship of Snipp (2010).[5] According to this definition, the term 'ethnic groups' can refer to a wide-range of peoples, including indigenous communities (e.g. the Sami, various Native American tribal communities, etc.), diasporic religious communities (the Jewish people), or people with a particular set of shared norms from a distinct region, just to name a few.

Overall, ethnicity is a complicated concept and often multifaceted. For example, an individual can identify as both ethnically Black and Jewish, Native American and Asian American, etc. There are endless combinations of ethnic identities which a single individual can hold, and in some cases, an individual may choose to acknowledge some of their identities and reject others. Despite that, according to Jenkins (1994), the influence of others (i.e. external parties) helps to define our ethnicity, for the purposes of this thesis, where possible, I will refer to ethnicity as the way in which one identifies oneself. Especially because I am interested in ethnicity within the context of disputes, how disputants identify themselves is the most accurate reflection of the norms, experiences, and identities they bring into the conflict.

[5] In practice, the terms 'race' and 'ethnicity' are often used interchangeably (Snipp, 2010); however, while race is often associated specifically with phenotypical characteristics, ethnicity is much broader. It accounts for the lifestyle, culture, and the history of a community as well these racial characteristics. Therefore, for the purposes of this thesis, race will be accounted for as one of the characteristics which contributes to the formation of an ethnic group.

Choosing Locations:

My thesis uses Chapters Two and Three to create a comparative analysis between community mediation centres in California and the United Kingdom. Initially, I anticipated my thesis would only focus on the United Kingdom. At the beginning of my academic programme, I had made this decision because of the potential access I would have to community mediation centres in London, thereby making it possible to interview with these centres in person. Additionally, my advisor has previously completed research on the Southwark Mediation Centre in London, which made this location more attractive because of her expertise in this setting.

After serious consideration, I decided to reshape my thesis to analyse community mediation centres in both the UK and California. There were a few significant reasons for this development. Most importantly, one community mediation centre in California, the San Francisco Community Boards, had been extensively written on in the past, which would provide me with ample information on the structure of this centre. As the COVID19 lockdown began in March, it seemed especially critical to choose community mediation centres which had already been written on as the pandemic would make interviews or in-person visits more difficult to complete in the UK, thereby leading me to choose the San Francisco Community Boards and Southwark Mediation Centre as my centres of focus. This then led me to using California and the UK as my main areas of focus throughout Chapters Two and Three.

The study of these two mediation centres lends itself to a comparative model not only due to the swathes of available information available, but also a multitude of other factors. Primarily, while each location is incredibly ethnically diverse, the ethnic groups from each location are quite different. Maybe most notably, the white population is larger in the UK at 86.0% (United Kingdom. Population of England and Wales, 2011) than

California at 36.5% (United States. Census Bureau, 2019) or even the United States (US) more generally at 60.1% (United States. Census Bureau, 2019).While the major non-white ethnic groups in California are Latine,[6] Asian/Asian-American, and Black (United States. Census Bureau, 2019), those in the UK are Asian, Black, and non-British white ethnic groups (United Kingdom. Population of England and Wales, 2011).[7] In summary, these two locations make for useful subjects of this analysis because they are two incredibly diverse areas which are each home to a prominent and established community mediation centre.

Methods:

This thesis mainly relies upon research collected from three main sources. Although I will describe these in depth as they become relevant in the succeeding chapters, I hope to briefly use this section to describe my methods. As can be seen in Chapter One, I have completed a substantive literature review with scholarship across the dispute resolution field. While my literature was accumulated from multiple different locations, I intentionally sorted through the databases of two leading journals, the *Ohio State Journal on Dispute Resolution* and the *Law & Society Review*, because of their critical and prominent pieces on dispute resolution. Additionally, my literature review was formed by suggestions from my advisor and other professors, searching through Google Scholar and Bodleian databases, and surveying the bibliographies of prominent works on dispute resolution. In Chapter Two, I analyse information gathered from 42 community mediation centre websites. Out of these 42 community mediation centres, 24 are located in California and 18 are located in the United Kingdom. In Chapter Three, I incorporate data from multiple different resources regarding both the San Francisco

[6] Please note the term ‘Latine’ is used as the gender neutral form of ‘Latino’ or ‘Latina’.

[7] It is worth noting that the US Census does not account for populations who might identify as white immigrants.

Community Boards and Southwark Mediation Centre. As I will later discuss in Chapter Three, the information on these two community mediation centres is largely gathered from their websites and social media pages, including YouTube, Facebook, Twitter, and Yelp. However, I have also conducted a single exploratory interview with a mediator who has previously worked in two jurisdictions. While I conducted a preliminary conversation with another mediator and had reached out to other contacts, ultimately there was not enough time for more interviews.

Implications:

The major implication of this research is that it identifies a quite barren area of literature while showing that further literature on this topic is necessary. It shines a light on a discussion which is not happening, either in academia or, at face value, in community mediation centres. However, in my third chapter, a more in-depth analysis of these centres reveals that they are in fact providing resources to navigate these inter-ethnic interactions, and, therefore, the academic analysis of this topic is incomplete.

Chapter One: What do we know about inter-ethnic dispute resolution?

Introduction:

This chapter considers how the existing academic literature engages with inter-ethnic dispute resolution. While some areas in this literature are well-defined, others, specifically disputes between individuals of different ethnic backgrounds, are not. By outlining the body of scholarship on inter-ethnic dispute resolution, this chapter introduces the relevant body of dispute resolution literature and categorises it in a useful and logical way.

Essentially, I have discovered four separate patterns in the literature on inter-ethnic dispute resolution. The first body of literature I consider looks at dispute resolution across different ethnic groups. Here, authors compare the dispute resolution mechanisms of different societies to each other while maintaining the 'integrity' of individual ethnic groups. I call refer to this as 'sameness across ethnicities'. The second type of analysis describes structures of legal pluralism in which dispute resolution mechanisms for ethnic communities can co-exist with those of the state and other ethnic communities. However, as can be seen in the third area of analysis, in our multi-ethnic societies the interests of some ethnic groups are often subsumed by those of another, otherwise referred to as 'ethnic interactions via power structures'. Finally, the fourth type of analysis concerns conflicts between individuals from different ethnic backgrounds (i.e. interethnic disputes). Interestingly, there is a significant shortage of information on this final category. While some scholars briefly mention the role of the mediator in facilitating relationships between disputants, there is little written on how disputants understand and directly interact with individuals from different ethnic backgrounds during conflict. In the sections which follow I discuss each of these bodies of literature in turn.

Sameness Across Ethnicities:

At the most fundamental level, scholars have described patterns in dispute resolution which exist across different ethnic groups. These works develop universal models of dispute resolution by revealing patterns common to the conflict resolution processes of multiple, disparate and distinctive communities. Such models signify that parallels exist between the dispute resolution process of these communities regardless of their ethnic backgrounds.

This body of literature which collates examples of dispute resolution across ethnicities has been critical to the dispute resolution field. Many of these works are regarded as seminal pieces of scholarship. Arguably, the works of Gulliver (1979) and Black & Baumgartner (1983) present the best representation of this category of inter-ethnic analysis and have been heavily cited throughout dispute resolution literature (Nader, 1990; Roberts and Palmer, 2012; Mulcahy, 2001; De Girolamo, 2013; Shah-Kazemi, 2000; Black and Baumgartner, 1983; Felstiner, Abel, and Sarat, 1980-81; Roberts, 1992; Roberts 1994). The typologies presented in these works reimagine their field, specifically through their capacity to develop universal models of dispute resolution. Gulliver writes, 'What I intend and hope for is that they may prove useful in directing inquiry and in developing understanding in the study and explanation of negotiations' (1979, p. xvii).

Gulliver's work has contributed a considerable amount to our understanding of how negotiation and mediation processes develop (1979). While his model sometimes resembles those of his predecessors,[8] Gulliver offers a unique perspective through proposing the existence of a two-process model which he applies to dispute resolution

[8] Most notably, Gulliver openly references the similarity of his model to that of Douglas (1957).

across cultures. The model comprises a ‘cyclical’ process of information exchange and a ‘developmental’ process in which the parties narrow the scope of the dispute. Together, these two processes bring the disputants from multiple points of conflict to finally reaching some sort of resolution.[9] Black & Baumgartner’s work (1983) aspires to identify and define every type of third-party role which exists in the conflict resolution process across societies. Third-parties are primarily categorised as either supporting or neutral actors, depending on their connection and dedication to the disputants. Actors in each group are then ranked by their level of involvement in the negotiation process. Support roles include informers, advisers, advocates, allies, and surrogates. Neutral actors include friendly peacemakers, mediators, arbitrators, judges, and repressive peacemakers. While Black & Baumgartner develop well-organised groupings, some third-party actors still fall outside of these categories. Therefore, Black & Baumgartner include two additional roles, negotiators and healers, which are excluded from the binary partisan/non-partisan classes they have defined.

[9] It is important to mention that Gulliver recognises that not all parties will find resolution. In fact, Gulliver mentions three different kinds of negotiation outcomes which are possible. The first is a joint agreement on the issue at hand, which is the type that will reach resolution. The second, however, is resolution by the way of ignoring or forgetting about the issue. These issues have lost their importance and so they no longer are featured by the end of the negotiation process. Finally, there are the conflicts which end in stalemate because of intense disagreement amongst the parties. These issues will not reach resolution because an agreement simply cannot be decided upon (Gulliver, 1979, p. 77);

More comprehensively, Gulliver’s model portrays negotiation as a ‘process of discovery’ of information from one’s opposition (1979, p. 70). His first cycle, which models information exchange throughout the negotiation process, relies upon one party providing information in some capacity, the next party processing that information, and then finally responding to that information, which then renews the cycle (Gulliver, 1979, p. 84). Gulliver’s model of development in negotiations has eight phases which eventually lead the parties to an outcome (see footnote 9). As these eight stages are occurring, the cyclical phase of information exchange continuously occurs in repetition, thereby prodding the parties from stage to stage. Phase one navigates ‘the search for an arena’ as the parties decide where they will continue their negotiation process. The second phase allows the disputants to define the content of the conflict which will then be navigated in following phases. Phase three allows disputants to widely and intensely share their side of the argument. Phase four begins to settle upon some of the less contentious issues, and phase five continues this simplification process by creating ranges and formulas for the final bargaining process. Phase six describes the different strategies used by parties to navigate the few remaining points of contention. Finally, phases seven and eight are concerned with recognising and executing the agreed upon outcome.

In order to create their models of dispute resolution, the scholarship of each of these academics relies upon case studies from across the globe, and, more precisely, across a wide range of ethnic groups. Interestingly, neither the works of Gulliver nor Black & Baumgartner claim to focus on ethnic groups. Instead, Gulliver refers to his work as being 'deliberately cross-cultural' (1979, p. xv) and Black & Baumgartner use 'examples from diverse settings across time and space' (1983, p. 88). So, while a direct comparison between different *ethnic* groups is not necessarily the intended goal of the works of Gulliver or Black & Baumgartner, their analyses across cultures, settings and societies allow for an in-depth look at dispute resolution across ethnicities. For example, Gulliver's piece is based largely on his own ethnographic, anthropological work in East Africa with the Arusha and Ndendeuli communities along with examples from 'empirical materials' in American 'industrial negotiations' collected by other academics (Gulliver, 1979, p. xv). Similarly, Black & Baumgartner gather most of their examples from their own works and and the anthropological, empirical and historical data collected by an array of other academics. The settings of their examples include: tribal communities of the Americas, Sudan, and Zambia; the modern court and police systems of the United States; and even social relations in multiple nations during Medieval and Renaissance Europe (Black and Baumgartner, 1983).

Though it may not have been their intention, throughout these case studies, the authors discuss a variety of ethnic backgrounds. The lifestyles, histories and cultural experiences of the blue-collar American[10] will ultimately vary from that of the East African tribal member showcased in the work of Gulliver. Similarly, the work of Black & Baumgartner includes case studies from across ethnic groups with different histories,

[10] I would like to add a caveat here that the experiences of the blue-collar American are diverse within themselves just as the population of the United States is diverse. This aspect of diversity, specifically ethnic diversity, within a single community will be discussed later in the chapter.

lifestyles, and cultural traditions. Therefore, even if these pieces of scholarship do not always address these different societies in terms of ethnicity, they still showcase and compare a broad range of ethnic groups in their analyses.

Through completing a wide analysis of data across various ethnic groups, academics like Gulliver and Black & Baumgartner are able to demonstrate sameness in dispute resolution processes across ethnicities.[11] To illustrate these patterns, each of these works compares the dispute resolution processes of different ethnic groups side-by-side. At times, the authors (particularly Gulliver) provide ample context and analysis on the dispute resolution practices in each society before drawing comparisons. Alternatively, in some circumstances, they merely enumerate their examples without delving into contextual details. Each technique is useful in demonstrating the multiple similarities which exist throughout the dispute resolution process across ethnicities.

In a prominent instance of the former technique, Gulliver assesses four different negotiation scenarios—two are industrial disputes in the United States, and two are tribal communities in East Africa (1979, pp. 127-135). His analysis reveals how the second phase of his model, defining the terms of the conflict and the agenda, manifests itself in different ethnic communities. In the industrial cases, the conflict occurs between employees, employers, and unions. On both occasions, the employees are unable to *define* (or identify) their main concerns, which leaves them unprepared for negotiations and eventually leads to a suboptimal outcome. In the East African cases, Gulliver explores two bridewealth conflicts between fathers-in-law and sons-in-law in the East African tribal communities of the Ndendeuli and Arusha. These two tribal examples share

[11] This feature of analysing across *multiple ethnic communities* to find patterns of dispute resolution is critical to this type of cross-cultural analysis. There are multiple works which seek to create overarching models for the dispute resolution process; however, they do not derive their theories through cross-cultural examples. For example, while Felstiner, Abel, and Sarat (1980-81) developed a theory for the transformation of informal disputes, they did not situate their work across multiple ethnic communities. Therefore, I have not included a review of these works in this section.

multiple similarities, including a focus on familial relationships as well as a struggle to *define* if the son-in-law had or had not made a bridewealth payment.

Initially, these two sets of disputes seem to be quite different from each other. In the case of the American industrial workers, the dispute pertained to many employees, centring on their rights and the culturally-specific obligation between employer and employee. On the other hand, the bridewealth cases appear to be personal, bound within the confines of the family, and established upon a culturally-specific obligation between fathers-in-law and sons-in-law. Not only is the content of each dispute different, but Gulliver (1979) compares two exceptionally different ethnic groups (see footnote 10). As previously mentioned, the lifestyle, culture, experiences, and norms of these tribal communities are significantly different from those of blue-collar American industrial workers. Even within Gulliver's explanation, we can observe these differences, such as the aforementioned cultural obligations between sons-in-law and fathers-in-law in the former and employers and employees in the latter. Despite the dissimilarities between the disputes, the societies, and their ethnic contexts, Gulliver claims that a similar resolution pattern persists in each setting. For instance, in each of the above case studies, the disputants navigate the process of defining their dispute, one of Gulliver's proposed patterns within the negotiation process. This is a phase in which the disputants clarify and agree upon the content of the conflict. Gulliver clearly outlines how each case study navigates the process of definition and the importance of these 'definitions' in determining the final outcome of the conflict. For example, in one of the bridewealth cases, a son-in-law and father-in-law struggle to *define* if the payment that a father-in-law has received should be considered as part of an incomplete bridewealth payment or as an additional gift to a fulfilled bridewealth payment. In the other, both the son-in-law and father-in-law recognise that the bridewealth payment had not been completed. The task of

definition arose when the son-in-law sought to define which obligation was central to the case: a son-in-law's obligation to provide bridewealth payments to his father-in-law or a father's obligation to care for the well-being of his daughter. Similarly, Gulliver explains the phase of definition in the case studies regarding American industrial workers. The first case study is characterised by the employees' inability to *define* their grievances and leaders, leaving them unprepared for negotiations and eventually leading to an outcome which meets few of their original expectations. The second case study follows the failure of employees to negotiate a more favourable outcome because of their inability to *define* the issues for themselves. Instead, the unions and employers decide upon the issues they are willing to negotiate and remove any opportunity for the employee to voice other grievances/resentments or bargain further. Therefore, despite appreciable differences in the content of the dispute and the ethnicity of the disputants, each case study showcases similarity in their dispute resolution processes.

As seen in the examples above, some comparisons across different societies and ethnic backgrounds are accompanied by a great deal of context; however, it is often missing in other instances. In the model of Black & Baumgartner, which explains the different types of third-party interveners in dispute resolution processes, the authors list the different categories of third-party interveners and outline how each materialises in a variety of societies without providing significant context (1983). They propose a third-party category of 'the mediator' and define it as a party that 'seek[s] to facilitate a solution of the problem by encouraging the parties to reach a mutually agreeable settlement' (Black and Baumgartner, 1983, p. 101). In an effort to prove that the role of the mediator exists across societies, Black & Baumgartner catalogue examples of the mediator in a range of communities, including indigenous societies and the American judicial system. Some examples of these mediators include police officers who passively

use their presence to calm arguments or, debatably, the *monkalun*, a sort of diplomat who works between disputants in the Ifugao community of the Philippines[12] (Black and Baumgartner, 1983, p. 102).

Although such comparisons provide less context, they still highlight where similarities exist in the dispute resolution process across different ethnic groups. For example, as reported in the previous paragraph, Black & Baumgartner illustrate how multiple communities use the role of the mediator while maintaining a diverse array of examples across ethnicities and societies. By providing only minimal details, Black & Baumgartner can compare, contrast and easily bring into conversation a broader range of ethnicities.

The scholarship of Gulliver and Black & Baumgartner develops clear and straightforward theories of dispute resolution. To construct these theories, they sometimes rely on idealised examples and case studies. The use of idealised and simple examples to create idealised and simple theories is critical and frequently employed throughout socio-legal scholarship. Weber's theory on the 'ideal type' helps to explain the need for such simplified models (Weber, 2019; Swedberg, 2018; Delanty, 2000, pp. 75-78). Weber claims that the academic must postulate an ideal, and likely unrealistic, example in order to develop a theory which can then be checked against reality (Weber, 2019, pp. 97-99; Swedberg, 2018, p. 184). Such ideal models remove what we cannot truly understand, such as the meaning behind actions, and construct an explanation of people primarily through our 'intellectual' knowledge (Weber, 2019, p. 80-81). Thus,

[12] Other third-party roles presented by Black & Baumgartner include an even wider-range of inter-ethnic examples. For instance, for the role of the arbitrator, Black & Baumgartner provide examples such as the Pope advising rivalling national leaders during the Renaissance, professional arbitrators in northern Somalia and American courts, and the Brehon of Celtic Ireland (1983, p. 103). Some other examples of inter-ethinic third-party actors include paid police informants in the United States and a witch doctor in Sudan (1983, pp. 88-89), character witnesses in court or designated people in the tribe who 'publicize the complaint for all to hear' among the Hopi tribal community (1983, pp. 91-92), and kin members of the Cherokee tribe or a knight of feudal Europe (1983, p. 91).

while unfinished and rudimentary, these ideal types still provide a framework for future analysis and complexity.

Because the development of an idealised theory requires uncomplicated case studies, Gulliver and Black & Baumgartner necessarily omit many finer details concerning their subjects of investigation. If these scholars were to create overly nuanced examples for their models, they could never recognise the underlying patterns. For instance, in Gulliver's explanation of the blue-collar American workers in an industrial dispute, there is never a discussion of the potentially varying characteristics of the workers, such as their ethnicities. Instead, they are treated as a uniform group. However, the aim of these models is not to discuss such details—their objective is to show that similar patterns of dispute resolution exist across the globe, regardless of population. Even Gulliver explicitly acknowledges that his 'data are neither plentiful enough nor altogether complete' (1979, p. xvi) but that his 'aim is to propose generalisations' (1979, p. 64) in order to make sense of dispute resolution processes. Black & Baumgartner also note the unfinished nature of their model (1983, p. 84) and even briefly question the future impact of 'social heterogeneity' on their proposed theory of dispute resolution (1983, pp.114).

Nonetheless, some academics have criticised these works for their standardisation of communities (Shah-Kazemi, 2000; Merry, 2014). For example, Fitzpatrick comments that some writers from the Western tradition view informal justice as being located in a community that is homogenous and ignores diversity (1993, p. 467). Such criticisms seem to recognise the need for a full analysis of the diversity within societies, such as the varying ethnicities, histories, lifestyles, and cultural traditions of the community, especially in a world where social mobility, migration and globalisation have made this a particularly critical discussion. Merry (2014), Abel (1982b), and Shah-Kazemi (2000)

also argue that seemingly homogenous community structures, such as the small-scale societies located in East Africa throughout Gulliver's work, may have been inappropriately used to build models for dispute resolution procedures in quite diverse societies. Shah-Kazemi additionally elaborates upon how ethnic diversity can have a significant impact on Gulliver's theories of dispute resolution processes. She analyses Gulliver's theory piece by piece exploring where additional opportunities for the inclusion of ethnic norms can occur within the framework. Examples of this development include reconsidering how power exists within various ethnic communities and specifically disadvantages women, the ways a community understands and identifies behaviours of aggression, the importance of a mediator who understands the cultural context of the parties, and the available courses of action during the execution of the resolution (Shah-Kazemi, 2000, pp. 301-318).

Legal Pluralism:

While academics like Gulliver and Black & Baumgartner have compared dispute resolution processes from different ethnic groups across societies, others have analysed how the dispute resolution practices of different ethnic groups exist within the same society. More precisely, the term 'legal pluralism' can be used to describe societies with co-existing processes of normative control (Griffiths, 1986; Merry, 1988; Tamanaha, 2008).

Within this body of literature, there has been a substantive conversation around 'defining "law" for the purposes of legal pluralism' (Tamanaha, 2008, p. 376).[13]

[13] Recognising the breadth of the term 'law' and the lack of scholarship which has sought to concretely define this term, some scholars have instead utilised the term 'legalism' to compare between the different forms of 'social phenomena we call "law"' (Pirie, 2019, para. 4). According to Pirie, ' Legalism refers to the use of generalizing rules and abstract categories to describe the world and to order community and social life' (2019, para. 12). It allows for academics to discuss law in a broader sense than the rules and order associated with a 'centralised government', without including social phenomena such as 'negotiated orders' (Pirie, 2019, para. 12).

Griffiths' (1986) work leads this conversation as he seeks to move away from defining law as solely that of the state and eventually agrees with Moore's (1973) interpretation of the law as a 'semi-autonomous social field'. Tamanaha seeks to look beyond the constructs of law and instead argues that concepts of pluralism can be found any time there are multiple normative systems in a society (2008).[14] Therefore, legal pluralism can refer to any combination of co-existing 'processes of normative control' within a society. For example, a society which upholds multiple processes of formal control (i.e. courts, constitutions, etc.), various methods of informal control (i.e. community norms), or some mixture of both could be considered legally pluralistic (Merry, 1988; Tamanaha, 2008).

These types of interactions exist across *all* societies from indigenous tribal communities to 'urban industrial societies' (Merry, 1988, p. 869). Included within these co-existing normative systems are contemporaneous dispute resolution mechanisms, such as different courts, alternative dispute resolution (ADR) processes, tribunals, etc. (Merry, 1988, p. 870 & 881-882). For example, in medieval Europe, this manifested itself as the concision of multiple normative systems and both secular and religious-based courts or dispute resolution mechanisms (Tamanaha, 2008, p. 377). Additionally, throughout colonisation, indigenous communities experienced a further development of legal pluralism, maintaining customary mechanisms, norms, and courts while the colonising power imposed their own justice system (Tamanaha, 2008, p. 384).

Today, legal pluralism is an important concept, especially in the context of ethnic diversity[15] arising from globalisation and immigration (Tamanaha, 2008, p. 403). As described in the work of Tamanaha (2008), there are often 'group-based' and 'individual-

[14] Pirie also recognises that while anthropologists like Gulliver and Tamanaha have developed their position over time as to which 'processes of normative control' can be considered in the scholarship of 'legal pluralism', anthropologists have still failed to define 'law' (2019, para. 9).

[15] Ethnic heterogeneity is not a prerequisite to have legal pluralism within a society. Instead, legal pluralism can exist wherever there is more than one form of normative control within a society.

based' types of heterogeneity 'which usually accompan[y] legal pluralism' (2008, p. 402). 'Group-based heterogeneity' exists when multiple 'groups, often differentiated by language, religion, ethnicity, and culture' live within a single society (Tamanaha, 2008, p. 402). On the other hand, 'individual-based heterogeneity' is the interaction of individuals from different ethnic backgrounds or ways of life (Tamanaha, 2008, p. 402). In both typologies, a single society experiences the addition of new 'cultural and religious norms' (Tamanaha, 2008, p. 388) as individuals and groups of different ethnicities are introduced.

Ethnic groups will often then maintain their previous norms after immigrating (Tamanaha, 2008, p. 403) and may even build more formalised mechanisms for maintaining these norms. A prime example of this can be seen within a Kurdish dispute resolution mechanism, otherwise known as the Kurdish Peace Committee (KPC), found within the UK (Tas, 2016). According to Tas, after immigrating 'Kurds in London have remained true to many of their traditional norms and values' (2016, p. 1). Rather than fully utilising the British legal system, which may be suboptimal for the community because of the community's closed-off nature and distrust of formal state mechanisms, they often rely upon the KPC for a variety of conflicts such as marital/family disputes and criminal matters (Tas, 2014, p. 3-5).

In addition to immigrating populations, multiple 'normative control' systems may exist because of preexisting indigenous populations in that area which have upheld their own norms or dispute resolution mechanisms. For example, in the United States, Native American tribal communities continue to have their own governing and dispute resolution mechanisms (Newton, Cohen, and Anderson, 2012). While the United States federal government recognises many tribal courts, they may not recognise other informal, cultural dispute resolution mechanisms. For example, many Native American

communities use Peacemaking Circles, which rely on tribal teachings and values to resolve community conflicts but are often informal mechanisms disconnected from the court system (Connors, 2016; Pranis, 2012). Regardless, both informal and formal mechanisms can act as a way for Native American people to navigate disputes without using state or federal justice mechanisms in the United States.

These types of ethnic dispute resolution mechanisms, seen both in the Kurdish population in the UK and the Native American population in the US, would add complexity to the settings presented in the works of Gulliver and Black & Baumgartner. Though these works create comprehensive models for dispute resolution, they do not regard the communities under comparison as being ethnically diverse within themselves. The scholarship on legal pluralism adds nuance to the typologies provided by these works by appreciating the diversity of a single community and its dispute resolution mechanisms. It suggests that when multiple ethnic groups exist within the same community, various, intricate pathways for dispute resolution may be available or preferable because of one's ethnic identity.

Ethnic Interactions via Power Structures:

The third form of inter-ethnic analysis captured in the dispute resolution literature is related to power structures. As discussed in the previous section, ethnic groups can have their own methods of dispute resolution. Frequently, in a community with multiple forms of dispute resolution, these mechanisms will interact and impact each other (Merry 1988, p. 881). Power inequalities can lead to the domination of one form by another, often with this domination happening across ethnic groups.[16] In this section, I discuss the

[16] While disputants often find themselves beholden to the power of the state or third-party intervener, many academics believe dispute resolution can be used as a platform to uplift the voices of the people. It seems this resistance is born out of genuinely anchoring informal dispute resolution mechanisms in the will of the people thereby weakening the hold of the state. This type of transformation is made by establishing dispute resolution processes as grassroots, opposed to state-centred, structures. For example, Mirchandani recognises that informal processes may be useful if they are able to respond to the needs of the people

literature that has deliberated these interactions. I separate the analysis of these processes into two subcategories: the state's sway over various aspects of dispute resolution processes, and the interpersonal influence of the mediator over disputants.

The State:

The first area I will discuss is the subordination of non-state dispute resolution processes, specifically those which service minority and marginalised ethnic communities, by the state.[17] As mentioned in the previous section on legal pluralism, a society can hold co-existing dispute resolution processes. While some of these are formal processes, often associated with the state, others are 'informal' mechanisms[18] (e.g. community mediation, arbitration, conciliation, ombudsmen, etc.) (Hofrichter, 1982, p. 208-209).[19]

Many of these informal dispute resolution mechanisms are grassroots-based and serve minority or marginalised ethnic communities (Wahrhaftig, 1982, p. 93). Some may be established for specific ethnic groups, others for geographic communities such as

(2005, p. 409). These needs may include more equitable systems of justice. In empowering the voices of the people, successful informal dispute resolution mechanisms must protect even the weakest disputants so they can possess an 'equal bargaining strength' as the other parties in times of conflict (Nader, 1993b, p. 449). In a similar vein, some academics suggest informal dispute resolution mechanisms are truly successful when they lead to political reform. For example, de Sousa Santos comments that these mechanisms can include a 'potentially liberating element' that can be 'made effective only through an autonomous political movement of the dominated classes' (1982, p. 264). In fact, historically, some of these processes have been weaponised as a tool of opposition against the state (Merry, 1993, p. 47). Therefore, while scholarship warns of oppression by the state through informal dispute resolution, these mechanisms may also be used to represent the will of the people and even radically reorganise governing structures for equity.

[17] Especially when referencing the United States and United Kingdom, the state represents the ethnically white majority. The disproportionate amount of white legislators and judges in both countries support this assertion that the state represents white interests (Federal Judicial Center; Pew Research Center, 2019; Uberoi, 2020).

[18] According to Abel, informal justice mechanisms lack a concrete definition, but may include processes with are 'nonbureacratic', 'undifferentiated from the larger society', unconcerned with official law,and free of professionalisation, among other things (Abel, 1982a, p. 2).

[19] Please note that while I am discussing informal dispute resolution procedures generally, I will pay specific attention to community mediation practices because my central research question is concerned with community mediation.

boroughs, neighbourhoods or entire cities as we will see in the following chapter on community mediation. However, even those serving an entire geographic community may routinely be interacting with minority or marginalised ethnic groups. According to Abel, these informal mechanisms frequently target the 'economically, socially and politically oppressed', including ethnic minorities (Abel, 1982b, p. 274) and often serve 'neighborhoods that contain disproportionate numbers of the oppressed' (Abel, 1982b, p. 274).

These types of informal dispute resolution mechanisms are conceptualised as alternatives to formal justice structures (Abel, 1982a, p. 2-3) and the 'violence and coercion of the state' (Merry and Milner, 1993, p. 3), even being characterised as 'cultural[ly] oppos[ed] to state law' (Merry, 1993, p. 60). While the origin of different informal dispute resolution mechanisms may differ, many are developed as grassroots forms of conflict resolution for communities, whether those be specific ethnic groups or geographically-based communities (Wahrhaftig, 1982). Often these mechanisms are conceptualised as a way to mitigate state control (Hofrichter, 1982, p. 212) or as a means of providing resources where formal state mechanisms have proven to be inefficient or incapable, such as in the case of overcrowded courts (Wahrhaftig, 1982).

Despite these efforts, many academics have voiced concerns over the state's potential to control informal dispute resolution mechanisms (de Sousa Santos, 1982; Abel, 1982a; Abel, 1982b; Mirchandani, 2005; Merry, 2014; Merry and Milner, 1993). Many of these academics portray informal dispute resolution mechanisms as functionally acting as an arm of the state and, thereby, extending state control past the confines of formal institutions (Abel, 1982b, p. 270).[20] And, while not all informal dispute resolution

[20] Mirchandani highlights his concerns about the state's 'coloniz[ation]' of 'movement(s) devoted to substantive change' through the development of technocratic informality within informal justice (2005, p. 387), and de Sousa Santos regards mediation as simply the newest way for governments to expand their control although it appears to be a delegalisation process (1982, p. 262). Similar concerns are also brought

mechanisms have been dominated by the state (Wahrhaftig, 1982), the 'state actively seeks to undermine, displace, and co-opt other forms of social control' and power so it can effectively develop a monopoly over justice (1982b, p. 275).

The state can begin to control informal dispute resolution mechanisms through funding and then, subsequently, imposing their desired regulations on these mechanisms. For example, according to Wahrhaftig (1982), one mediation centre in Manhattan was created to provide an alternative to the 'chaos' of the state justice system. However, the mediation centre had to align its mission with that of the US Department of Justice in order to receive funding. Though the project began as a way to serve the community, more specifically the Black population in that area, they were immediately forced to focus on the state's mission of 'court reform' rather than their initial ambition of 'community development' (Wahrhaftig, 1982, p. 80-81). As is standard for funding any project, there are frequently guidelines or regulations that must be adhered to by the recipient. So, if a dispute resolution programme receives funding from the state, it must expect that the government will revise the programme's objectives and requirements. Wahrhaftig confirms these informal dispute resolution programmes 'tend to serve the ends of, and benefit, their sponsors'(1982, p. 95). This is one way in which the state can subject informal dispute resolution processes to their will, thereby expanding the state's power.

Even in cases where the state does not provide funding, it can shape the structure and function of informal dispute resolution processes because of its considerable role in developing the informal justice movement and the rhetoric behind it. For example, Nader cites the Roscoe Pound conference lead by American lawyers and judges, namely the

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up by Merry as she hypothesises there will be an extension of state control if mediation 'relies more heavily on the powers of the court...'(2014, p. 37); however, she also suggests that mediation spaces have sought to counter this by seeking to enforce their decisions without court powers. (Merry, 2014, p. 37)

Chief Supreme Court Justice Warren Burger, as being one of the major influences on the Alternative Dispute Resolution (ADR) movement in the United States (1993, p. 6). Judges argued that ADR was the future (Nader, 1993, p. 6). Their language focussed on seeking harmony over justice. According to Nader, 'alternative dispute agencies were portrayed as agencies of settlement or reconciliation, peace rather than war' (1993, p. 6). This harmony-based and almost therapeutic understanding of conflict resolution spread and began to define the informal justice movement. Despite the approximately fifty years that have passed since the Roscoe Pound Conference, this type of rhetoric is still discernible throughout different dispute resolution centres across the world.[21]

The state's influence impacts not only these informal dispute resolution mechanisms but also the communities and disputants who use them. Specifically, it can extend into the personal, neighbourly and familial affairs of its citizens. Abel notes that through informal justice mechanisms, the state can involve itself in the conflicts of individuals even before they have violated the law, unlike the formal state (1982b, p. 273). This extension of the state into informal justice forums allows it to additionally intervene in cases relating to neighbourhood relationships or family disputes (Merry and Milner, 1993, p. 12). By having increased access to personal relationships, the state can then further manage the personal behaviours and norms of these citizens.[22]

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[21] For example, the community mediation mechanisms that I discuss in Chapter Three each use harmony-centred language to describe their services. On the San Francisco Community Boards' webpage, they emphasise finding a *peaceful* resolution as a central objective. More fully, their mission statement mentions their goal to 'empower communities and individuals with the strength, skills, and resources needed to express and resolve conflicts peacefully and appropriately' and 'provide and promote peaceful, collaborative conflict resolution'. Similar language is reflected on the webpage of Southwark Mediation Centre which promotes mediation as a process that 'help[s] both parties to move past the point of conflict in a peaceful and cooperative manner'.

[22] Another example of how the state can take advantage of personal relationships in informal justice is through 'mobilizing….[the] coercive power' found in personal relationships to further the states own coercive control (de Sousa Santos, 1982, p. 259).

In addition to extending into the personal lives and affairs of disputants, the state is also able to impact the norms of these communities by imposing their own norms upon disputants. These informal justice mechanisms act as a tool to 'replicat[e] and strengthe[n] [the state's] own language and cultural forms' such as compliance with authority thereby allowing the dominant state to wield its power over minority ethnic communities (Merry, 1993, pg. 60). Such intentions may be well hidden as informal justice mechanisms often claim to be tools of community empowerment (Merry and Milner, 1993, p. 11; Bush 1996, pp.26-36), an extension of the people's will (Mirchandani, 2005), or in the best interest of the citizenry (Burger, 1976). Ultimately though, it seems that changes in norms initiated by the state tend to benefit those already in power. Frequently, they protect the status quo of society by favouring big business (Abel, 1982b, pp. 295-301) and institutions which are already 'advantaged'(Abel, 1982b, p. 299). The state preserves these institutions by imposing norms which discourage the people from seeking substantive justice (Nader, 1993a). For example, because many grassroots and informal processes, such as community mediation, often frame conflicts as misunderstandings between parties, they sometimes seek resolution by urging the parties to speak about their disagreement and individual perspective (Rothschild 1993, p. 314). The state can take advantage of this to protect itself from parties seeking restitution (Rothschild, 1993, p. 314; Yngvesson 1993, p. 391). The state can also preserve itself by using informal justice mechanisms to separate citizens who have similar complaints or even promoting norms of avoidance between those with similar issues so that they are unable to organise and demand structural change (Abel, 1982b, pp. 290-291).

Nader's works on 'harmony ideology' provides a prime example of how the state can instil norms upon communities through informal justice mechanisms (1990; 1993a;

1993b). Through 'harmony ideology', the state[23] dissuades conflict within the community (Nader, 1990, pp.73-91). Just as was seen in the Roscoe Pound Conference and rhetoric of Supreme Court Justice Warren Burger, the state utilises the processes of informal justice to encourage harmony over justice (Nader, 1993a; Nader, 1993b). Through these mechanisms, disputants are encouraged to talk out their problems, rather than maintain conflict or seek structural restitution from the state. The 'harmony ideology' dissuades conflict, negativity, dissent, or contentiousness, and instead promotes silence in conflict within communities. Nader goes as far as to label this 'harmony ideology' as a form of 'cultural imperialism' instigated by the state over the people as the informal justice mechanism is used as a tool to restructure the personal lives and everyday behaviours of citizens (1993a, p. 9). So, as previously seen, harmony ideology from the state can influence the structure of community mediation centres. However, this ideology can also affect the communities using these informal dispute resolution processes.

In this way, the state is able to subsume ethnically marginalised or minority groups. As previously mentioned, many of these informal dispute resolution processes are developed by and for ethnically marginalised communities or serving these communities. Through funding requirements and the state's longstanding influence over the informal dispute resolution movement, it can control and shape these mechanisms. Often this appears as influencing norms, such as through centring harmony over justice, or objectives, as seen in a previous example by prioritising 'court reform' over 'community development'. These changes to informal dispute resolution mechanisms impact the communities and disputants they serve, affording the state further power over the

[23] Nader also shows how, more generally, those in power can use informal mechanisms to culturally change those who are less powerful. One of these examples relates to a corporate law firm and its lawyers (Nader, 1993a).

personal lives of these disputants and continuing to administer a philosophy of complacency in these communities.

Sometimes, the state goes further than applying norms upon the people and additionally co-opts and repurposes the informal justice models of other ethnic communities, often involving marginalised groups.[24] The ethnic practices, which are often idealised in dispute resolution programmes, can be from a range of settings but are frequently associated with a variety of tribal societies (Merry, 2014; Abel, 1982, p. 285). For example, multiple mediation/restorative justice centres identify Native American conflict resolution principles, or Peacemaking, as the guiding format for their mechanisms. Both the Redhook Peacemaking Project in New York City and the Near Westside Peacemaking Project in Syracuse[25] rely on Native American teachings and structures to organise their programme despite servicing primarily non-Native American community members. These programmes endorse indigenous Peacemaking values of 'problem solving and an emphasis on future relations'[26] as well as 'restor[ing] harmony to [one's] community' (Cissner, 2019, p. vi), and openly cite Native American practices as the origin for their brand of informal justice (Cissner, 2019, p. 1). Additionally, these groups structure their dispute resolution sessions to model tribal Peacemaking practices, such as using respected leaders or community members as Peacemakers and asking 'participants [to] sit in a circle' throughout the Peacemaking process (Cissner, 2019, p. 1). Whether this type of co-option of indigenous tribal practices in dispute resolution is

[24] Some academics reject these small community models and point to their ineffectiveness in highly populated, urban environments (Merry, 2014).

[25] To further accentuate that these informal justice mechanisms are an arm of the state, please see the funding sources of these programmes. The Center for Court Innovation, which administers each of these programmes, relies principally upon US Department of Justice Funding (Cissner, 2019, p. iii) and other federal and state government sources (Center for Court Innovation Annual Report, 2019, p. 21).

[26] The report cited here derives these Native American Peacemaking values from the work of Costello (1999) and Wolf (2012).

problematic or not, this practice shows how the state borrows practices and norms from minority ethnic groups to develop their own mechanisms of dispute resolution.

Other academics have hypothesised about how the practices of minority ethnic populations can be further built into state informal justice mechanisms in the future. Such proposals are wide-ranging and include the adoption of Native American norms in mediation to resolve federal-tribal conflicts on the Native American Graves Protection and Repatriation Act (Bartman-Watson, 2017) and the development of Native American norms for mediation around family law cases (Arsenault, 2000). Each of these examples encourages the integration of practices, which originally belonged to indigenous communities, into the American state. In some cases, such as the work of Bartman-Watson (2017), the inclusion of indigenous mechanisms seems fitting, considering that indigenous peoples are active participants within these disputes. In contrast, Arsenault's (2000) proposal seeks to transplant Native American techniques and values into a predominately non-Native American setting, thereby co-opting their practices for the use of the state. While both Arsenault's and Bartman-Watson's works are merely suggestions, there are a variety of other programmes, in addition to those of the Center for Court Innovation, that actively use these Native American techniques to serve the dispute resolution mechanisms of the state.[27]

The Mediator and the Disputants:

The literature on informal dispute resolution also discusses the dynamics between the third-party intervener (i.e. mediator, facilitator, adjudicator, etc.) and the disputants. As can be seen in the work of Black & Baumgartner, there can be a variety of third-party interveners. However, here, I deliberately refer to mediators, a third-party which focuses

[27] For example, it could be noted that programmes similar to those recommended by Arsenault have been taken up in some courts throughout the United States (Connors, 2016) and have been practised in restorative justice settings outside of tribal communities (Pranis, 2012).

on the development of a resolution and claims to be impartial to either party (Black and Baumgartner, 1983). This is because the majority of my work in Chapters Two and Three will focus on mediation and, by extension, mediators. Recall, in some circumstances, there may be a disparity in power between the state and the people, where the state is able to impose the norms of the majority upon ethnic minority communities or borrow norms from ethnic minority communities within the process of dispute resolution. Just as is apparent in the complicated relationship between the state and the people, a disparity in power may arise favouring the third-party intervener over the disputants. Although these third-parties might share a genuine desire to aid the disputants, they still retain influence over these parties as they drive the resolution process (Fitzpatrick, 1993, pp. 461-462). Stated succinctly by Abel, the process of 'helping is inherently unequal' because 'help is always extended downwards' often to those of a lower status (1982a, p. 6). Just as with the state, this power dynamic then leads to the dispersal of norms and values from the top-down. This occurs in two ways. First, the third-party intervener can operate as an extension of the state by enacting the state's goals during the dispute resolution process. Secondly, the third-party intervener can act upon their personal biases, be they conscious or unconscious, which may then influence how disputants of different ethnicities are treated or accepted within the dispute resolution process. Finally, at the end of this section, I will also discuss ways that, despite these power imbalances, mediators can also act as allies for their disputants by seeking substantive justice.

The third-party intervener has the capacity to impose the institutional force of the state through their personal interactions with disputants. While the state may ultimately design normative reforms, like 'harmony ideology', the third-party interveners actively introduce these notions to the people. Essentially, a third-party intervener is the arm of the state as they carry out these reforms.

The third-party intervener can help enact normative reforms as desired by the state through the way in which they format the conflict and the path to resolution. As referenced by Dubow, mediators, a type of third-party intervener, can place themselves as moral leaders 'capable of coercing the disputants with what is true and right in the community'(1987, cited in Fitzpatrick, 1993, p. 461). Because they take this role of aiding disputants through the resolution process, the third-party intervener often designates certain concepts, values, or ways of thinking as critical to the resolution process. Often the third-party will encourage the preservation of the state by discouraging resolutions which require structural change and instead opting for more navigable solutions. For example, Rothschild notes that mediators have the power to reframe systemic issues as misunderstandings and may even deter parties from seeking aid through formal channels of justice, which aligns with the state's objective of seeking harmony over justice (1993, pp. 274, 318-320). [28]

Just as outlined in the previous section, because these informal dispute resolution processes often service minority or marginalised ethnic groups, the actions of the state can heavily impact these populations through impacting dispute resolution centres or programmes. Consequently, mediators who act as tools of the state influence these populations as well.

Furthermore, mediators can also impact their disputants through personal biases. The literature outlines how mediators can disadvantage marginalised parties during mediation and facilitation processes (Greatbatch and Dingwall, 1989; Grillo, 1991). Other academics share concerns that third-party interveners can also perpetuate these biases against those from marginalised *ethnic* backgrounds, especially if the third-party

[28] Similarly, the Center for Court Innovation includes rhetoric which focuses on healing relationships, 'restoring harmony', etc. as earlier discussed. (Cissner, 2019, p. vi) These values can reinforce a focus on calming dispute between those in conflict without seeking for reform at the level of the state.

intervener does not understand the culture or background of these disputants. Shah-Kazemi (2000) calls attention to the risk of silencing those from minority ethnicities during the mediation process. Her piece examines the role of ethnicity in mediation by analysing Gulliver's model piece by piece and exploring where additional opportunities for culturally-competent growth can occur within his framework. Examples of this development include: reconsidering how power exists within different ethnic communities and particularly disadvantages women, how a community understands and identifies behaviours of aggression, the different steps that might be taken at the point of resolution, and the importance of a mediator who understands the cultural context of the parties. Most of her piece hones in on this final point as she reveals the problematic nature of using a mediator whose own ethnic background does not match that of the disputants. She is primarily concerned with the mediator's capacity to understand the cultural norms of the disputants. Without this background, Shah-Kazemi claims that mediators may be incapable of leading the parties through the negotiation process.

Other academics raise concerns regarding potential differences in ethnicities between mediators and disputants, most commonly when the former is white, and the latter is from a minority group.[29] For example, Wong writes about his concerns regarding a non-Asian American mediator's capacity to navigate an Asian American dispute and the normative understandings often interwoven into this ethnic group. Wong appreciates that Asian American norms include a non-linear sense of time, a focus on familial honour, and an indirect nature of addressing conflict (1995). Because American society upholds the linear notion of time, a focus on the individual, and a direct style of confronting the conflict, this gap in understanding could lead to severe

[29] I do not wish to stereotype white or minority Americans or their cultures here. Rather, I am trying to build off the dichotomies provided by authors like Wong, Mabry, and Taylor and Sanchez.

miscommunication between mediator and disputants (1995). Mabry lists similar issues that might arise between African American disputants and white mediators, including the inability of white mediators to understand African American family dynamics, priorities, or even the central role of the church in their lives (1998). Finally, Taylor & Sanchez provide an overview of how mediation centres in California are ill-suited to handle the conflicts of Latine disputants because of both structural and cultural faults (1991). Taylor & Sanchez suggest that a leader from inside the community may be a better fit than an outside mediator because of their understanding of common Latine cultural norms, such as respect to the person at the top of the family hierarchy, mutual aid between family and close friends, an indirect approach to confrontation or aggression, designated male and female roles, and exaggerated self-ridicule and light-heartedness (1991).

These differences in ethnicity and, consequently, understanding potentially disadvantage those disputants with a different ethnic background than the third-party intervener. Academics such as Greatbatch & Dingwall (1989) and Grillo (1991) have already explained how a mediator can steer resolution towards certain mediator-preferred outcomes. Greatbatch & Dingwall's work on 'selective facilitation' supports the hypothesis that third-party interveners, specifically mediators, commonly redirect the mediation process towards their preferred resolution (1989, p. 636). [30] In the case study described in Greatbatch & Dingwall's work, the mediator's partiality to a particular resolution disadvantages one of the parties. Here, mediators can induce their favoured resolution by using societal expectations, such as what defines good parenting, to pressure one party towards a preferred resolution. Alternatively, a mediator may simply ignore conversation relating to the non-preferential resolution.

[30] Worth noting is that in Greatbatch & Dingwall's work on 'selective facilitation', the central featured case study includes a mediator who supports the woman rather than the man in the dispute (1989). While Grillo's work displays the dangers which can lead to further disadvantaging the marginalised party, sometimes the mediator can also support the more marginalised party despite their claims of neutrality.

These third-party interveners may use this power to the detriment of minority[31] disputants. As showcased in Grillo's work (1991), mediators can and do actively marginalise women, and women of colour even more so, within the mediation process.[32] Mediators are inevitably partial and can be driven by 'personal disposition to favour certain outcomes' or even by prejudice to a specific group of people (1991, p. 1587). Here, the mediator's expectations for how women, especially Black women/women of colour, should act, especially as informed by societal stereotypes, determine which behaviours are viewed as acceptable and validated by the mediator; this may then influences the final resolution.[33]

Because many of these prejudices are born out of stereotypes or ignorance, there may be opportunities to sensitise third-parties to these ethnic differences. For example, Mabry (1998, p. 460), Taylor & Sanchez (1991, p. 126), and Shah-Kazemi (2000, p. 320) all suggest that mediators can provide the necessary care for their disputants if they are educated on these differences. These methods of intervention may include 'training into the dynamics of culture' (Shah-Kazemi, 2000, p. 320) or 'multicultural training from various "experts" out in the community' (Taylor and Sanchez, 1991, p. 125).[34] By having opportunities to learn about other ethnic groups, third-parties may confront their prejudices, stereotypes or cultural expectations. In turn, this can lead to resolutions which are more equitable and respectful of the realities of disputants from other ethnicities.

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[31] To clarify, 'minority' refers to individuals from a disadvantaged racial, ethnic or social group.

[32] Because of an increased sense of 'intimacy' and lack of guidelines on what is considered as relevant information in the mediation process, mediators seem more prone to partiality in comparison to judges in the formal justice system (Grillo, 1991, p. 1589).

[33] Even when the mediator is a woman, as they often are, they may still favour male disputants over their fellow women (Grillo, 1991, p. 1586).

[34] There may also be opportunities to choose mediators who hail from the same ethnic group as the disputants (Taylor and Sanchez, 1991, p. 126). However, this suggestion leads one to wonder how disputants from different ethnic communities can choose a proper mediator. Wong suggests a potential panel of mediators which could be useful for such cases (1995, p. 124).

While mediators are often framed as individuals who can negatively impact marginalised disputants, they may also act as allies for these disputants. Mulcahy's (2001) work on the Southwark Mediation Centre describes how mediators can reframe a case between individuals as one that hinges upon a systemic issue which must be resolved by the state. Specifically, many of the cases in Mulcahy's study focus on social housing disputes, where instead of seeking to resolve the immediate conflict between disputants, the mediator recommended and supported disputants in placing pressure on housing officers, the local council, and even MPs in order to find an adequate resolution (2001, p. 520). Here, rather than acting as a tool for the state to impose 'harmony ideology' upon disputants, mediators reject these norms and apply pressure on the state to provide necessary reforms. In addition to approaching the state about this issue, mediators in Mulcahy's study were able to format the concerns as 'collective grievances' rather than individual concerns (2001, p. 520). Recall, the state has the power to erase opportunities for substantive justice by isolating individuals with similar grievances and preventing them from collaborating to seek restitution. However, here mediators use their roles to unify and 'channel' these grievances to the necessary state parties (2000, p. 520). Therefore, while mediators can actively harm marginalised ethnic groups, they can also act in the interest of these same groups.

Interactions between Disputants or Inter-Ethnic Disputes:

The final inter-ethnic relationship covered in the literature centres on interactions between *disputants* of different ethnic backgrounds within the same society. A major finding of my work has been that the literature around this type of relationship is underdeveloped. The majority of the works which mention disputants from different ethnicities only briefly reference this interaction and do not analyse it deeply. In addition, works that discuss disputants from different ethnic backgrounds primarily focus on the

capacity of the *mediator* to navigate these interactions rather than focusing on the relationships between the *disputants* themselves.

In our increasingly diverse societies, an analysis of the interactions between disputants of different ethnic backgrounds is surely of growing importance. As Shah-Kazemi states, 'The perceptions that parties have of the dispute, and the choices open for the way forward, are to a high degree delineated by the ethical and normative framework within which the parties operate' (2000, p. 318). If this is true and parties come in with different 'ethical and normative frameworks', we might anticipate that each party may expect the conflict resolution process to be more aligned towards their own background and norms. According to Merry, 'mediation depends on a community fabric that […] provides a shared set of values within which the dispute can be discussed' (Merry, 2014, p. 36). Just as the mediator's capacity to understand the disputants can impact communication and the resolution, one might imagine that differing ethnic backgrounds between the disputants may have a similar impact.

For example, let us take the concerns raised by Wong relating to mediators and disputants and reapply them to the case of diverse disputing parties. Imagine one party from an Asian American background (family-centred/familial honour, non-linear notion of time, indirect approach to conflict) and the other from the more traditional American ideology (individualistic, linear notion of time, direct approach to conflict) as described by Wong (1995). With such diverse understandings, disputants may find themselves structuring the resolution process differently or concerned with completely dissimilar issues. While someone subscribing to a traditional American ideology may immediately delve into the conflict and focus on how the conflict has impacted them and their need for justice, someone from an Asian American background may feel uncomfortable talking about the conflict immediately and may focus on maintaining the honour and status of

their family rather than considering how the issue impacts them personally. This type of inter-ethnic analysis would be critical for many reasons, including the potential power dynamics between disputants of minority and majority cultures. Additionally, as seen in the work of Baumgartner (1998), minorities from different ethnic backgrounds may actively oppress one another. Therefore, such scholarship would also be useful to better understand how different minority groups interact with each other during informal justice processes.

Some academics have highlighted the tension between disputants of differing backgrounds; however, while these works are useful, their analyses on these inter-ethnic interactions are often brief and provide minimal analysis. For example, Shah-Kazemi notes the importance in a mediator asserting cultural knowledge and norms when working with disputants from 'minority cultural background, (or even more complicatedly where there are differing minority and majority cultural identities amongst the parties)' (2000, p. 319). Some of the scholarship concerning the San Francisco Community Boards, which I will more thoroughly analyse in Chapter Three, recognise the ethnic backgrounds of their disputants (Yngvesson, 1993; Dubow &McEwen, 1993; Rothschild, 1993; Shonholtz, 1993). For example, both Rothschild (1995, p. 314) and Yngvesson (1995, p. 391) mention how the mediators mishandle the social and ethnic matters fuelling the dispute of a Black family and a white family, opting to focus on interpersonal communication as the main concern; however, even in these works, there is little conversation on the interactions between the disputants as most of the analysis focuses on the roles of the mediators.[35]

[35] Yngvesson and Rothschild use the same case study, titled 'The Promised Land', in their works. The case study was originally collected by Rothschild. However, I have cited both academics here because each provides their own analysis of the case study.

Overall, while there has been some conversation on disputant-to-disputant inter-ethnic interactions, this literature is still lacking. The existing literature mainly focuses how *mediators* can aid in the development of these disputant-disputant relationships. There is less literature dedicated to how the different ethnic backgrounds of disputants impact the ways in which they interact with one another. However, the scholarship of academics like Wong, Mabry, and Taylor & Sanchez, although mostly focussed on the role of the mediator, suggest that individuals from different ethnic backgrounds would struggle to understand each other in the dispute resolution process.

Conclusion:

Having described the three types of literature on inter-ethnic dispute resolution, I end this first chapter by elaborating upon the settings in which these analyses occur and how communities are defined within each.

Recall from the beginning of the chapter that, in the first type of inter-ethnic analysis regarding sameness across ethnic groups, individual communities are homogenised. Because there is only a single ethnicity analysed within a single community, the parallels drawn by Gulliver and Black & Baumgartner must occur *across* several communities rather than *within* communities.[36] However, in the second, third, and fourth types of inter-ethnic analyses in the literature, specifically regarding interactions through legal pluralism, power structures, and amongst disputants respectively, comparisons are made between multiple ethnic groups within a single community. For example, a mediator and disputant from different ethnic backgrounds navigating a conflict together shows inter-ethnic interaction within a single community. This is

[36] As an MPhil student with minimal time to complete this thesis, I was not poised to conduct a deeper analysis on what the implications of disputants from different ethnic groups would be on models like those of Gulliver or Black & Baumgartner. It is certainly a captivating question. Such an analysis may be able to find missing steps in the dispute resolution process or other differences which appear in an ethnically heterogenous but not homogenous set of disputants.

meaningfully different from the inter-ethnic analysis of Gulliver or Black & Baumgartner, which develops a comparison across ethnic groups rather than explaining how ethnic groups interact with each other. Instead, these latter types of inter-ethnic analysis focus on actual relationships between parties (i.e. mediators and disputants) and/or institutions (i.e. the state). Therefore, unlike the models of Gulliver and Black & Baumgartner, which depict sameness across ethnic groups, these second, third, and fourth forms of analysis examine the inter-ethnic interactions which occur in the same community.

Furthermore, the capacity to analyse *across* communities or *within* a single community alters the relationship between the terms 'ethnicity' and 'community'. In the inter-ethnic analysis which focuses on sameness *across* ethnic groups, there is no differentiation between the community and the respective ethnic group in the literature—a community is *defined* by its ethnicity. By contrast, the second, third, and fourth types of inter-ethnic analysis envision multiple ethnicities within a community. Thus, ethnicity is not defined by its community. Instead, a community is typically determined by a geographic location (such as a city, town, or neighbourhood) where multiple cultural backgrounds co-exist (Silbey and Merry, 1986, p. 10; Lederach and Kraybill, 1993, p. 376).

This chapter has sought to analyse and categorise the relevant literature on inter-ethnic dispute resolution. Essentially, as I have shown, there are three bodies of scholarship. The first pertains to models which draw similarities across different ethnic groups using dispute resolution processes. The second focuses on the multiple forms of dispute resolution that can exist within a single community, i.e. legal pluralism. However, often these mechanisms interact as can be seen in the third type of analysis. Here, marginalised ethnic groups can be subordinated by the more powerful. Finally, there is

little scholarship discussing the interactions between disputants of different ethnicities. The missing scholarship on inter-ethnic disputes means that we do fully understand how ethnic groups interact *within* a single community. Here, community mediation becomes useful as this mechanism's focus on interpersonal dynamics and typical placement in urban, multi-ethnic communities makes it a particularly suitable environment to explore inter-ethnic disputes. The following chapter analyses this topic through the discourse on community mediation centres' websites. Such an analysis will provide a clearer picture of how ethnicity and inter-ethnic interactions are conceptualised 'on the ground'.

Chapter Two: Defining Community Mediation

Introduction:

This chapter adds another discourse to my study. While the previous chapter depicted a gap in the literature around inter-ethnic disputes, this chapter analyses what dispute resolution centres are saying on this topic. While there are multiple types of dispute resolution, throughout the remaining chapters, I intentionally narrow my scope to community mediation. Community mediation provides a particularly interesting and useful lens through which to analyse inter-ethnic disputes because of their inter-personal nature and their locations in diverse, often urban communities, as I will show in this chapter.

According to Walters & Hoyle, 'community mediation is a restorative process aimed at bringing together those in conflict in order to find a resolution' (2011, p. 10). Community mediation programmes often specialise in multiple types of disputes, such as neighbour disputes, family disputes, and small claims in court (Gray, 2002; Walters, 2014). While much of the information I present is applicable for all types of community mediation programmes, I have chosen to centre my research on neighbour disputes. I've made this decision because most community mediation centres deal with this kind of dispute, making it easier to draw comparisons between them. Additionally, I believe this type of conflict will be most susceptible to meaningful inter-ethnic interactions as opposed to conflicts which may be impersonal or familial disputes, which might be more likely to include individuals of the same ethnicity.

This chapter serves two purposes. First, it gives an overview of community mediation by answering a few quintessential questions about this process including: 'Where are community mediation centres located?', 'Who participates in the community mediation process?', 'What is the mediator's role?', 'What types of cases are handled in

community mediation?', and 'What are the objectives of community mediation centres?'. Through these questions, this chapter develops an outline of the inter-personal connections, participants, community interactions, and expectations associated with community mediation, all of which are useful in better understanding inter-ethnic interactions in these process. Secondly, this chapter considers how community mediation centres interact with different ethnic groups and what they do (and do not) say on inter-ethnic disputes.

The information within this chapter draws on scholarly works and my own data collection. Between March and June of 2020, I identified and collected data on 42 community mediation websites. This is discussed further within the 'Methods' section below.

Methods:

In addition to published sources, this chapter heavily relies on an analysis of 42 community mediation centres' websites across California and the United Kingdom. As mentioned in my introductory chapter, both this chapter and Chapter Three will specifically focus on community mediation programmes in California and the UK. Out of the 42 centres identified, 18 are within the United Kingdom and 24 in the state of California.

My primary goal was to consider the characteristics of mediation centres in these two jurisdictions in order to discover whether they spoke about inter-ethnic disputes. While the literature on the subject is sparse, I was curious to find out whether the significance of ethnicity in dispute resolution was more widely recognised in practice. In order to find these community mediation centres, I used multiple sources. In the UK, I relied upon the databases of the London Community Meditation Council (LCMC) and the Civil Mediation Council (CMC), both of which bring together mediation

centres/mediators in the UK. According to the UK government's website (*Resolving Neighbour Disputes*), individuals seeking mediation services in England and Wales should use CMC if they are hoping to resolve neighbourhood disputes through mediation. While the LCMC list only included eight mediation centres, the CMC included over 600 mediation centres or individual mediators in the UK. For California, I relied upon a list of local mediation programmes provided by the California Department of Consumer Affairs as well as the National Association for Community Mediation, which provides information on community mediation centres across the US. When combined, these lists included over 50 different mediation centres. Finally, in order to find community mediation centres which I might be missing, I did a final Google search on community mediation centres in both the UK and California.

While there were many mediation centres provided throughout these sources, I deemed that only 42 could be called community mediation centres. My main criterion for these centres was their focus on community-based conflicts. Initially, I placed an additional restriction on these centres—that each community mediation centre must serve a geographic community. I did not want to include centres in my analysis that solely served a single ethnic or religious community because this factor might make inter-ethnic disputes unlikely or impossible. However, this was not true of any of the mediation centres I encountered, rendering this requirement unnecessary. Each of the 42 centres in California and the United Kingdom served a geographically defined community such as a county, neighbourhood, borough or city.[37] For example, according to their website

[37] It's worth noting that many of the mediation programmes take on the name of the geographic community they serve, such as Southwark Mediation Services, the San Francisco Community Boards, Croydon Community Mediation, Palo Alto Mediation Program, and countless others;
Some community mediation programmes may service a particular community but are also contracted out by a larger organisation. For example, Project Sentinel, a community mediation organisation which services multiple counties in the San Francisco Bay Area, partners with individual counties or cities to develop and provide mediation for their community. These mediation programmes are still staffed by volunteers from each individual community; however, the organisation providing the overall structure and service is a much larger organisation which runs multiple programmes across different counties. This type of project may not

'Croydon Community Mediation…is a community-based, voluntary charity that has been helping people in Croydon for over 20 years' (*Croydon Community Mediation*). Additionally, I did not accept mediation programmes based within law firms or run by individual mediators. Instead, I only selected centres which were staffed by multiple individuals and focussed primarily on mediation.[38] This restriction is simply based on the fact that these would not be classified as community mediation centres (Hedeen, 2004). Instead, while these types of mediation organisations may aid in neighbour-to-neighbour mediation cases, they would be recognised as law firms or professional mediation firms.

When exploring the websites of the qualifying community mediation pages, I searched for the number of mediators at each centre, the annual number of cases and types of cases they handled, their mission or reasons for providing their services, the style of mediation they provided (facilitative vs evaluative), if they defined themselves as 'neutral' or 'impartial' third-parties, the role of non-disputant participants (i.e. other community members, family/friends of disputants, religious leaders, etc.), the mediation centres' connections to other community organisations, and, finally, how they discussed ethnicity.

As will be seen in the following sections, I do not discuss all of the information I collected, for a few reasons. First, not all mediation centres presented this information on their webpages. For example, while I initially presumed that mediation centres would regularly publish the number of cases they processed in a year, most of them did not. Also, much of the information I did collect was not useful in creating this chapter.

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seem to have the same grassroots establishment as other community mediation programmes. However, because this programme partners with each individual town/county and develops pathways for community residents to actively contribute, I also considered this a community mediation programme.

[38] Some of the community mediation centres I have included also provided other programmes rather than mediation, such as restorative justice or other ADR services.

Therefore, while I collected information on multiple aspects of these community mediation centres, it is not all showcased here.

Overall, I have used information from these community mediation centres' websites in order to provide a better understanding of what community mediation programmes are and how they define themselves. Additionally, where possible I have intertwined discussion on how these characteristics impact their capacity to interact with multiple ethnic groups and inter-ethnic disputes.

Where are community mediation programmes located?:

As its name suggests, the defining feature of community mediation is its location within a community. While other mediation organisations are based in courts, law firms, or professional mediation firms,[39] community mediation organisations are based in community-located charity organisations or local agencies (Gray 2002, p. 14-15). However, the term 'community' can have more than one meaning. It can signify both a geographic location (i.e. city, neighbourhood, borough, town) or a network of people who are grouped together (i.e. church, congregation, social group).

Many community mediation programmes find their roots in these types of 'network' based definitions of community. For example, the Mennonite Conciliation Services (MCS) in the US originated as a tool to navigate their church's own congregational disputes (Shook and Milner, 1993, p. 245). While it has since been expanded to serve those outside of their religious sect, its original function was to navigate conflicts between groups of people who already had strong pre-existing relationships because of their common faith (Ledrach and Kraybill, 1993, p. 363).

[39] Each of these types of organisation may handle neighbour or community-based conflicts; however, they lack the community-based connection seen in community mediation organisations.

Similarly, a group could be deemed as a community through their shared interests, beliefs, or ethnicity.

On the other hand, a community can also be defined through a geographic connection. Because my research is interested in inter-ethnic interactions, which may be more likely to occur in heterogenous, multi-ethnic communities, I focus on this type of community mediation programme.[40] According to Gray, 'Neighbour mediation is … loosely characterised by the fact that the parties ... live in reasonably close proximity and are facing conflicts that arise by virtue of living within that residential area' (2002, p. x). The geographic area connecting the community can be quite expansive. For example, in her analysis of an unnamed community mediation organisation, Silbey writes, 'Although the original intention was [for the community mediation centre] to serve a neighbourhood of only 15,000 people, the need to generate cases quickly lead to an expansion to the entire city of 95,000…' (1986, p. 10). The two mediation centres, which I more thoroughly analyse in Chapter Three, each serve a wide-spread, geographic community as well. For example, according to Dubow and McEwen, SFCB was founded to serve the San Franciscan neighbourhood of Visitacion Valley but then eventually expanded out to serve approximately 'one-third the city of San Francisco' (1993, pp. 128-129). Similarly, SMC services the people around the borough of Southwark, London (Mulcahy and Summerfield, 2002).This suggests that the notion of 'community' can be artificial.

There are also some community mediation programmes which serve a geographic community but might be targeting their services at a particular demographic or subgroup. For example, the Korean American Coalition has developed a community mediation service which 'place[s a special focus] on working with the diverse ethnic populations of

[40] It is worth noting that a community mediation centre which specifically serves a 'network' type community can still work on inter-ethnic disputes. Identity is multifaceted, and even if the disputants are from the same religious or social group, they may still be from different ethnic groups.

Los Angeles County…' (*Korean American Coalition*) Despite the organisation's attention on issues regarding Asian Americans and other 'diverse ethnic populations' the organisation still serves a large geographic community. Because the service is still offered to the wider Los Angeles area rather than a particular network, as was initially the case with MCS, I have included it as a community mediation centre.

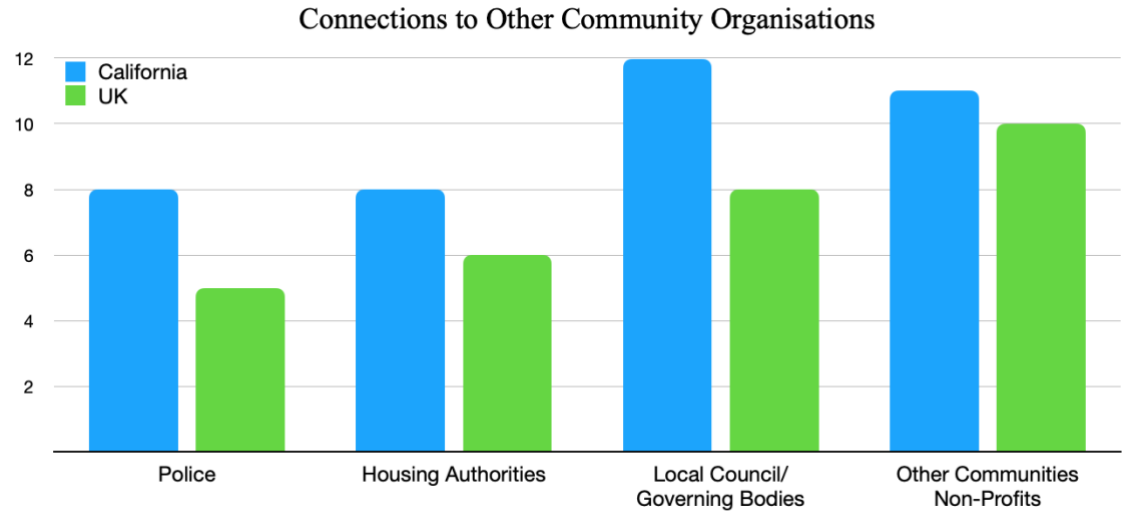
Moreover, many of the community mediation centres I analysed were in urban locations. More specifically, 11 of the 18 mediation centres in the UK and 20 of the 24 centres in California were located in cities.[41] Additionally, as mentioned in my introduction chapter, both the UK and California are home to multiple ethnic populations. Therefore, the geographic communities being served by these centres may frequently be city-based and incredibly diverse.

Community mediation programmes often strengthen their connection and usefulness to the community by partnering with other community organisations. The groups which community mediation programmes seem to most frequently connect with include housing authorities, the local police, the local councils/governing bodies, and other non-profit organisations. The relationships with these organisations can be useful in a myriad of ways. For example, SFCB reached out to 'to over fifty community and legal groups in San Francisco' when planning their community mediation programme, which subsequently allowed these other organisations to contribute to the centre's design (Shonholtz, 1993, p. 209). Additionally, some community mediation centres use community contacts, such as the police, housing agencies and other community organisations, in order to generate referrals (*Waymakers*; Dubow and McEwen, 1993, p. 135-136). For example, SFCB provides the police with information on their programme so these officers can suggest it to disputants they meet on their calls (Dubow and

[41] The remaining centres were locates in towns/villages or were unclear.

McEwen, 1993). Finally, some groups, including but not limited to city councils, 'housing associations, police, …health authorities', 'housing departments, social services and environmental health departments', may help provide necessary funding or other resources for the community mediation programme (Gray, 2002, p. 44). Ultimately, each of these connections more securely cements the community mediation centre's connection to the people in and structure of the community in which it operates.

In some cases, community mediation centres had connections to community organisations designed for specific ethnic communities. While there was not a significant amount of information on the centres' websites about this, SFCB's website included a list of their 'Public Partners', a few of which are non-profit organisations which serve specific ethnic groups. These include the Asian Law Caucus, Chinese for Affirmative Action, Centro de Recursos Centroamericanos, and the Mission Cultural Center for Latino Art. As will be discussed later in Chapter Three, California's minority ethnic communities are principally Latine and Asian American. Therefore, partnerships with non-profits that specifically cater to these ethnic groups could be useful in connecting with a larger swath of the community.



Graph 1: This graph depicts how community mediation centres are connected to other organisations in the same community as described by the websites of the community mediation centres in Appendix A.

Using data collected from the 18 community mediation centres in the UK and the 24 in California, Graph 1 illustrates the types of community organisations with which community mediation programmes collaborate. Above all, the graph shows that community mediation centres tend to interact with multiple different organisations in their community. From this straightforward analysis, this connection seems to most frequently be with local councils/governing bodies we can understand that mediation centres in both the UK and California seem to most typically forge connections with local councils/governing bodies and other community non-profits.

Who participates in the community mediation process?:

Community mediation is composed of two *main* groups of actors: third-party interveners (i.e. the mediator) and the parties in conflict (i.e. the disputants). There is also the possibility of involvement from a third group who are connected to the disputants in some way.

The Mediator:

This third-party is a necessary component of any mediation program, including community mediation. The role of the mediator, according to Gulliver, is to 'act in some way to assist in the endeavour to reach an agreed outcome' (1979, p. 209). While there are different styles and tactics which a mediator can use to reach this outcome, overall, their main role is to work with the disputants to find some sort of agreement.

Most commonly, '[community] mediation is … provided by members of that community…'(Gray, 2002, p. 1). For example, at the Southwark Mediation Centre '…all the paid mediators in the study came from the borough…'(Mulcahy, 2002, p. 518). SFCB specifically recruits 'neighbourhood residents' from around San Francisco to provide

their volunteer mediation services (Dubow and McEwen, 1993, p. 127). The incorporation of these community members as mediators is a core principle for many community mediation centres. According to Mulcahy, 'Community mediators are selected because of their partisanship with local residents, and their ability to make connections with disputants' (2002, p. 518). Therefore, these mediators may have a deeper understanding of the community and, consequently, the context in which these disputes occur. However, the mediators are not always from the same community in which they provide their mediation services. As can be seen at SMC, 'volunteers from outside the borough' were brought in as community mediators (Mulcahy, 2002, p. 518). However, it is significant that these mediators were labelled as outsiders (Mulcahy, 2002, p. 518), as it depicts the importance of the mediator's connection to and understanding of the community.

Additionally, mediators can be either volunteers or paid staff (Gray, 2002, p. 17). Overall, volunteers seem to make up a large part of the mediator workforce. These individuals may have previous professional backgrounds in related fields such as mediation, law, or therapy; however, often these positions are subject to the completion of the community mediation centre's training course or meeting 'external mediation qualifications' (Gray, 2002, p. 70-72). The number of volunteers for a particular mediation centre varies widely. While SFCB had over 350 people on reserve at a time (*Powerful Story of Conflict Resolution),* other mediations centres seem to range from 20 (*London Community Mediation Council*) to 125 individuals (Recourse Mediation). However, despite the wide use of volunteer mediators, some community mediation organisations also use paid mediators (Mulcahy, 2002, p. 518; Gray, 2002, p. 17). Paid mediators aid in navigating common problems for these organisations such as a 'shortage

of volunteers, or excessive workload, or to ensure daytime mediator availability' and may help provide stability and continuity for their centres (Gray, 2002, p. 17).

In Chapter Three, I'll continue to discuss the ethnic backgrounds of mediators and how this impacts disputants. Nonetheless, it may be worth noting that there was little to no information on mediator diversity directly on the centres' webpages.

The Disputants:

Disputants constitute the second group of actors in community mediation. Negotiations cannot begin without the participation of each disputant (Gulliver, 1973, p. 123). Disputants can take the form of individuals, 'groups of people', and community organisations or businesses, to name a few (Gray, 2002, p. 34). Typically, just as mediators often come from the community, those they serve are also connected to the community in some way, although not necessarily as residents. For example, the Palo Alto Mediation Program offers their services to not only those who live in the community but those who work there.

The terms 'community mediation' and 'neighbourhood disputes' imply that the disputants have some prior relationship with each other. In many cases, disputants will have a connection with each other before the dispute begins. For example, in one mediation case handled by SFCB, three housemates, comprised of one married couple and a single friend, argued over who should move out of the apartment (Rothschild, 1993, p. 322-323). Between their previous friendship and time as roommates, the disputing parties shared a significant previous relationship. However, in many cases, even if disputants are from the same community, they may have never interacted previously. For example, as can be seen in 'The Promised Land' case study analysed by Rothschild and Yngvesson, the disputing parties, while neighbours, had never met each other before the case was brought to community mediation (Rothschild, 1993; Yngvesson, 1993). In fact,

neither side knew each other's names at the onset of the conflict. Rothschild shares an additional case study regarding a neighbour who was upset about 'about the location of a clothesline that was fastened to [the neighbour's] adjacent hous[e]' (Rothschild, 1993, p. 326). Similarly, despite living next door to each other, the parties had no prior relationship. Rothschild mentions that the party who brought the case forward 'had never spoken to her neighbours' (Rothschild, 1993, p. 326). In each of these cases, the parties were neighbours, and it is possible that the disputing parties shared similar characteristics, such as being of the same socio-economic background. However, despite these connections and their shared status as members of the same geographic community, in many cases, we see that the disputing parties have no other prior connection or relationship with each other.

Other Community Members:

Sometimes disputes may include the involvement of other community members. These individuals can be from a variety of positions within the community but often include individuals within the social network of the disputants, such as family members, friends, religious leaders. These individuals may simply be observers or they may provide support for one of the disputants. Calm Mediation in London, for instance, allows for multiple types of community members to join the dispute resolution process. Their website states, 'As well as the clients, there have been interpreters, social workers, client supporters, [and] observers' who attend the mediation hearing. SFCB also allows members of the community to attend the mediation process, and, in fact, all of their mediation sessions are open to the public (Wahrhaftig, 1982, p. 91). While some community members may simply choose to observe, individuals, such as social workers, religious leaders, and interpreters may actively contribute to the dispute resolution process. In one case at SFCB, one disputant's pastor was invited to attend in order to

persuade the disputant to change his behaviour and agree to a resolution (Wahrhaftig, 1982, p. 91). Therefore, as seen in this example, the addition of other community members may act as an opportunity to incorporate additional religious, cultural, or social aspects into the resolution process.

What is the mediator's role?:

Mediation can be categorised into two main styles: evaluative and facilitative. In each, the mediator has a slightly different role. Evaluative mediation is typically defined by the assertive role of its mediator, who ultimately provides a recommended settlement. Facilitative mediation, on the other hand, allows for the disputants to determine their own solution and their path to a settlement with the support of the mediator. In this case, the facilitative mediator provides aid in managing the dispute resolution process but does not assert the overt decision-making powers of the evaluative mediator. Either of these styles can be used by a mediator to aid the disputants through the mediation process; however, facilitative mediation seems to be the more popular approach in community mediation. Throughout this section, I discuss each style of mediation in an effort to explain the roles a mediator can take in their pursuit of resolution. I then connect this back to my analysis of community mediation centres to discuss if and how each style is utilised there.

<u>Facilitative Mediation:</u>

Facilitative mediation is the most widely accepted style of mediation. Many authors will use the term 'mediation' to exclusively refer to facilitative models (Roberts and Palmer, 2005). As previously mentioned, facilitative mediation aims to support the resolution process so that the parties may navigate the conflict themselves. In these cases, the mediator will 'assist disputing parties in making their own decisions and evaluating their own situations' (Love, 1997, p. 939). According to Riskin, a mediator may practise this facilitative style by helping the disputing parties understand their underlying

interests, developing proposals for settlement, and evaluating these proposals (Riskin, 1996, pp. 32-34). Ultimately, it is assumed that facilitative mediation allows for the parties to identify and create a settlement focussed on their own interests, rather than being subjected to the recommendations of the mediator.

Transformative mediation,[42] although sometimes classified as its own type of mediation by academics such as Bush and Folger (1994), has very similar attributes to facilitative mediation, such as a mediator who fulfils a supportive role. The most significant difference between the two is transformative mediation's distinct focus on the personal development of the disputants. It claims to do this through both *empowering*[43] the disputing parties and developing their capacity for *recognition* (Bush and Folger, 1994, p. 84). Overall, *empowerment* is defined as strengthening the parties' capacities to rely upon themselves and have confidence in their decisions. One can achieve this by realising one's interests, recognising the range of options and resources available to oneself in a dispute, gaining skills for communication/conflict resolution, and reflecting upon and making one's own decisions related to settlement (Bush and Folger, 1994, pp. 85-88). Additionally, transformative meditation encourages recognition between the disputing parties. Bush and Folger describe what this recognition constitutes, inclulding:

[42] There are other styles of mediation which seem to largely resemble transformative mediation and would likely fall underneath the category of facilitative mediation as well. For instance, narrative mediation relies upon unpacking the sociocultural narratives of the conflict along with narratives that place undue blame upon the parties (Paquin, 2002, p. 177). Subsequently, after these original narratives have been discarded, this form of mediation helps to rebuild the narrative around a relationship between the parties (Paquin, 2002, p. 178). This style of mediation never claims to be synonymous with or a sub-classification of the transformative model. Instead, Paquin suggests that both transformative mediation and narrative mediation may be considered as examples of therapeutic justice, which he labels as 'an attempt to find ways in which the legal system can have a positive emotional impact on people' (2002, pp.167). Certainly, narrative and transformative styles of mediation share this desire for a positive emotional impact on their participants as they redirect one's notion of both their own and the other party's role in the conflict. Additionally, they each claim to be less orientated towards settlement and more concentrated on reframing mindsets (Paquin, 2002).

[43] While I prefer not to use the word empowerment, as can be seen in one of the following sections titled 'What are the objectives of community mediation programmes?', I deliberately use it here because it is a term employed throughout the work of Bush & Folger (1994) who penned and defined the transformative style of mediation.

reflecting upon the circumstances of the other party; desiring to better understand the reality of that party; reimagining the conflict through their viewpoint; acknowledging this change in perspective; and seeking to accommodate the other party's circumstances (1994, pp. 89-92). Therefore, the concept of recognition essentially requires each party to reframe their understanding of the dispute to include the perspective of the other party.

Evaluative Mediation:

Evaluative mediation relies upon the expertise of the mediator to assess the conflict and lead the parties to a settlement. Many scholars have questioned if evaluative mediation deserves to hold a place within the broader mediation framework (Stulberg, 1997, p. 985), or if it is a distinct style of conflict resolution, more closely related to arbitration and adjudication (Love, 1997, p. 940). On the other hand, many others still firmly position evaluation within their framework of mediation (Riskin, 1996; Brown and Marriot, 2011, pp.171). Just like facilitation, the objective of evaluation is to help the disputants develop a resolution; however, in this style of mediation, the mediator will 'evaluate evidence and arguments presented by adverse parties' and then eventually 'render an opinion' (Love, 1997, p. 938). Rather than supporting the disputants in finding their own resolution as is true in facilitative mediation, the mediator's role is to provide their opinion and potentially to recommend a settlement. In addition, evaluative mediators may rely upon their expertise as a tool for the assessment and recommendation of a resolution. Often, according to Riskin (1996, p. 46), evaluative mediators are chosen for their background in the areas surrounding the conflict, such as law or technical disciplines. They may draw upon these experiences to assert their 'education over that of the parties', enabling them to persuade the disputing parties of their recommended resolution (Riskin, 1996, p. 31).

While evaluative mediation may be especially prevalent in some types of mediation (Riskin, 1996), it is infrequently reported as being used in community mediation centres. This apparent preference will be discussed in the following section.

Facilitative and Evaluative Mediation in Community Mediation Centres:

According to Hedeen, 'most community mediators have been trained in a facilitative' style (Hedeen, 2004, p. 113). Aligned with Hedeen's scholarship, community mediation centres across both the UK and California typically claim to use a facilitative style of conflict resolution.[44] Out of the 42 programmes, 8 in the UK and 9 in California utilise language referring to a facilitative style. However, while some did not explicitly state their use of facilitative mediation styles, they did employ language that alluded to it. Examples of this kind of language included, 'The mediators will help you and guide you' (*Lambeth Mediation Service*); '…mediators will not make any judgements'(*SEEDS*); 'The mediators will help you assess the different options' (*SEEDS*); 'Unlike an arbitrator, a mediator has no power to 'decide' anything' (*The Congress of Neutrals);* and 'We do not recommend solutions' (*Humboldt Mediation Services*). All of these examples of language used on community mediation centre webpages indicate that their mediators provide guidance but allow participants to find their own pathways. The mediator's central purpose is to offer support, not to give expert advice or decide upon a resolution for the disputants. Additionally, many of the community mediation centres I evaluated references 'empowerment' and 'recognition', which is indicative of a facilitative/transformative mediation style. For example, language referring to empowerment includes: 'empowers disputants to make their own decisions' or provides disputants with 'skill building' opportunities (*Ealing Mediation Service*). Similarly,

[44] Some community mediation programmes may also offer services called 'facilitation' which are distinct from their mediation service. However, from the descriptions on the websites, these seem to be separate from their community mediation services.

language regarding recognition includes: ‘understand [the dispute] from your neighbour’s point of view’ (*Croydon Community Mediation*) or develop ‘mutual respect’ between disputants (*The Asian Pacific American Dispute Resolution Center*).

None of the community mediation centres I analysed published any use of evaluative styles of mediation. Although these centres may use evaluative mediation without reporting it, I think it more likely that community mediation is not well suited to this style. As previously mentioned, community mediation often relies upon mediators who are from the community to aid in the resolution of disputes between community members. Rather than bringing in experts in law, policy, housing, policing, etc., these community mediation centres simply look for mediators who can relate to the disputing parties through their shared community. For example, SFCB has previously made their mediator training courses widely available to anyone in the community as can be seen on their webpage. In community mediation, mediator status is not determined by expertise, which potentially renders evaluative mediation an impractical fit.

While I’ve tried to create distinct categories between different styles of mediation, community mediation centres may not readily identify their organisation by any particular style. Moreover, it is also possible that mediators are blending together principles from different styles to resolve disputes. According to Riskin, mediators may exhibit flexibility in their mediation style from case to case (1996, p. 35-36). In fact, most mediation centres did not directly attribute a style of mediation to themselves and, instead, only loosely used language which alluded to a facilitative style. Overall, these styles should be understood as guiding, as opposed to rigid, categories in order to better understand the ways mediators interact with disputants.

Overall, understanding mediation styles provides a better look at the role of the mediator, how they interact with disputants, and ultimately, how they allow the disputants to interact with each other whether in inter-ethnic disputes or not.

What types of cases are handled in community mediation?:

Community mediation mechanisms can be applied to a variety of problems, such as family disputes and small claims in court (*Southwark Mediation Centre*; Gray 2002; Walters 2014). Recall that I am strictly looking at neighbourhood mediation cases within community mediation programmes; however, even in this constrained subset of disputes, community mediation programmes still handle multiple types of cases. Under this narrow lens, I have highlighted some of the conflicts that are cited most frequently in mediation programmes both in the United Kingdom and California. These are disputes related to (1) personal space (2) other antisocial behaviours and (3) housing.

Conflicts regarding 'personal space' are wide-ranging. They encompass issues such as privacy, noise disturbances, and property disputes.[45] Especially in urban environments where space is a highly-valued commodity, the infringement upon any type of space can lead to disputes between neighbours. Noise disturbances are often listed as the first type of conflict that community mediation programmes handle within the category of neighbour disputes. According to Gary, five per cent of neighbourhood, community mediation cases in the UK include some sort of noise dispute (2002, p. 22-23), and according to Mulcahy, seventy-five per cent of the cases in a single year at the SMC involved noise-related complaints (Mulcahy, 2001, p. 518). Some examples of noise-based complaints are the 'neighbours who wanted to talk about a noise problem that had escalated into intimidation and fear' (*Loyola Center for Conflict Resolution*) or

[45] Here, space can be defined broadly as the setting one inhabits. Therefore, not only is the infringement upon one's property included in this definition, but so is disruption via noise.

the ‘complaint by a man who lived in a second-story apartment next to a grocery store and was bothered by noise from the refrigeration fans on the store's roof’ (Rothschild, 1993, p. 321).

While noise-related disputes constitute a significant portion of neighbourhood cases, there are other ‘personal space’ disputes as well. Community mediation programmes cite ‘boundary disputes’(*Concord Conflict Solutions*), ‘the use of common space’ (*Concord Conflict Solutions*), and the occasional ‘broken fence’ (*Mediation Hertfordshire*) all as different types of cases which might arise. Rothschild describes one such dispute of ‘an elderly Hispanic woman [who] called SFCB to complain that her Chinese neighbor had splattered paint on her house while painting the exterior of his house’ (993, p. 321). This inter-ethnic dispute was eventually reconciled when the neighbour repainted the woman’s house.[46]

Issues regarding space may be particularly related to ethnicity. For example, as I will briefly discuss in Chapter Three, ethnic minorities may be more likely to live in suboptimal housing (New Policy Institute, 2016). Often, such living arrangements can exacerbate conflicts around space, such as when living accommodations are overcrowded or the walls are thin (Mulcahy, 2001). These various environmental factors can lead to heated conflicts when individuals take out these frustrations on their neighbours instead (e.g. thin walls leading to neighbour noise complaints).

The second subgroup of conflicts is connected to other antisocial behaviours, such as harassment, discrimination, conflicts over social media and other problematic behaviour.[47] Each of these behaviours impacts the ways that disputants interact with each

[46] It should be noted that, while the disputants in this case found a formal resolution, the elderly Hispanic woman felt that the agreement had not been met by her neighbour. The two disputants did not maintain a relationship after mediation (Rothschild, 1993, p. 321-322)

[47] As I will discuss later, many of these categories are overlapping. For example, both noise complaints and property damage can also be considered anti-social behaviour. I have decided to place both of these within

other. In 2001, these cases made up approximately fifteen per cent of all neighbourhood, community mediation cases in the UK[48] (Gray, 2002, p. 22). These types of conflicts are particularly hurtful as they can often be anchored in prejudices. For example, in the case of two neighbours, a conflict, which began as a noise complaint, grew into homophobic attacks against one of the disputants (Walters, 2014, p. 107). Hate crimes are also frequently related to one's ethnicity, which can also be seen throughout the work of Walters (2014). While not all conflicts, especially severe hate crimes, may be suitable for community mediation, this forum can provide an avenue for conversation between both parties and a way for each to explain their grievances or better understand the harm of their behaviour as it did in the above case.

Finally, we have conflicts related to housing.[49] These types of cases can include conflicts related to social housing (Mulcahy, 2001, pp. 515), tenant-tenant conflicts[50] (Mulcahy, 2001, p. 515), and landlord-tenant conflicts (Hedeen, 2004, p. 108). Housing agencies are a significant source of referrals and constituted approximately fifty-one per cent of referrals to community mediation programmes throughout the UK in 2001[51] (Gray, 2002, p. 40). Additionally, these types of cases frequently involve those from lower socio-economic backgrounds, as they are more likely to live in this social housing (Gray, 2002, p. 40-41). For example, a case involving a landlord and tenant might entail

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the personal space category; however, the categories I have created are overlapping and artificial. They simply exist to outline the different types of conflicts handled within community mediation.

[48] Please note that this survey created separate categories for 'anti-social behaviour' and 'abusive behaviour and threats'. Because each conflict was allowed to be categorised as more than one type of dispute, it's impossible to tell how great of an overlap there is between the two categories.

[49] Landlord-tenant conflicts would not be considered neighbour disputes.

[50] Once again, these different categories of conflict are not mutually exclusive. For example, tenant-tenant conflicts are frequently related to noise complaints between residents.

[51] While this survey by Gray (2002) focussed on community mediation centres throughout the United Kingdom, the geographic location of the community mediation centre is also important in determining how cases are referred. For example, one might expect referrals from housing agencies to be more common in urban environments where social housing is more prevalent.

finding a more optimal resolution between a struggling family and landlord who had initially been ‘evicting [the] family [for] not paying rent’ (*Loyola Center for Conflict Resolution*).

While I have created these three categories, often a single dispute may incorporate multiple types of conflicts. Conflicts related to antisocial behaviours may be connected to issues with one’s housing (Mulcahy, 2001, p. 519), or a dispute around noise disturbances may lead to other antisocial behaviours between neighbours (Walters, 2004, p. 96). Therefore, the three categories presented here are not meant to be isolated from each other; however, they should provide a general outline to the types of cases that may commonly emerge in neighbourhood disputes within community mediation centres.

What are the objectives of community mediation programmes?:

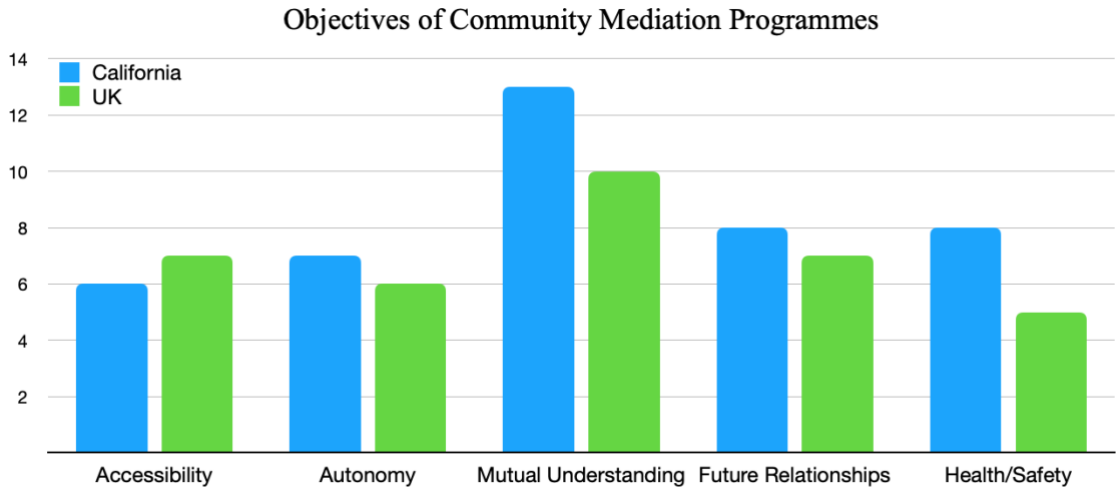
Community mediation centres cite numerous objectives in explaining the development of their services. These can be distilled to the following categories: accessibility, autonomy, mutual understanding, future relationships, and health/safety. While these categories cannot include every single objective of community mediation centres, they provide an overview of the missions of these organisations.

The goal of accessibility concentrates on providing more efficient services through community mediation than could be accessed via court. Since the founding of the mediation movement, the low fees and minimal time-commitments required by these services have contributed to their popularity and subsequent development (Burger, 1976). Such goals are necessary in providing more accessible conflict resolution services to those with financial or time restraints (Burger, 1976). As can be seen in the graph below, 6 out of the 18 community mediation programmes in the UK and 7 out of the 24 community mediation programmes in California identified accessibility as one of their primary objectives.

Regarding time, a whole mediation case can often be processed in 10-18 days, significantly shorter than most court cases (Hedeen, 2004, p. 124), and a mediation session can be concluded in 3 hours (Dubow and McEwen, 1993, p. 151). Therefore, community mediation can act as a resource for those with immediate conflicts or not enough time available to spend resolving their conflict in court.

Furthermore, according to Hedeen, an essential feature of community mediation is its low cost to disputants (2004, p. 123), and, as shown in a study by Palihapitiya & Eisenkraft, 'community mediation programmes can provide disputants from a variety of income levels with access to mediation services' (2014, pp. 6-7). Minimising the cost to disputants is a primary focus for community mediation programmes in both the UK and California. While each organisation may vary, many programmes will charge nothing for their services (Gray, 2002, p. 2), or alternatively calculate a fee according to what the disputants can reasonably afford (*Center for Community Dispute Settlement*).

While these community mediation centres do not expressly refer to ethnicity in their accessibility objectives, it is important to note that their low fees and the minimal time-commitment of mediation may be particularly impactful for people of minority ethnicities. These populations are disproportionately disadvantaged by the time and costs required by the traditional court system because of their overrepresentation in the criminal justice system in the United States (The Sentencing Project, 2018) and the United Kingdom (Ministry of Justice, 2019). Thus, even though these centres may not explicitly mention their support of ethnic minorities, by offering more accessible pathways to resolution, they may be providing services to these populations as well.



Graph 2: This graph depicts the range of objectives community mediation centres in both California and the UK list on their websites. These community mediation centres can be found in Appendix A.

Autonomy refers to developing the independence of either the individual disputant or the community. Often within the literature, this is referred to as 'empowerment'; however, as the term frequently changes from one piece of mediation scholarship to the next, I have decided to rename this objective. The development of *individual* autonomy in mediation can appear as 'realizing one's interests', and knowing how to utilise one's resources, among other things (Bush and Folger, 1994, p. 85-88). However, just as the individual can develop autonomy through learning to depend upon themselves, the *community* can begin to care for itself without the support of outside resources. Just as the individual can gain new skills in conflict resolution, through community mediation, the community can learn to manage conflict without state intervention. While some organisations, only aim to support the development of individual autonomy (Shonholtz, 1993, p. 196), others intentionally advance community autonomy through the 'decentralization of [the] control of decision making', 'development of indigenous community leadership', and 'reducing community tension' (Hedeen, 2004, p. 103).

The objective of autonomy, more specifically *community* autonomy, may be particularly salient in community mediation centres which are intentionally developed by and for communities with large minority ethnic populations. For example, according to Wahrhaftig (1982), the Community Association for Mediation (CAM), located in Pittsburgh, Pennsylvania, was founded as a means to promote 'community growth … directly into the fabric of a black neighborhood' (Wahrhaftig, 1982, p. 93). To attain this growth, CAM supported the development of dispute resolution 'skills of indigenous mediators' in the community and built a structure to realise the community's needs which had been unmet by the formal justice system (p. 94). While Wahrhaftig does not further expand upon the role of ethnicity as it is related to the objectives of CAM, community autonomy can be particularly useful for minority ethnic groups. Because these populations are often marginalised in society and disproportionately, negatively impacted by the justice system in both the US (NAACP: Criminal Justice Fact Sheet) and the UK (Sturgs, 2020, p. 11), community mediation centres may be interested in strengthening pre-existing, internal pathways for resolution in these communities. By relying on their own methods of conflict resolution, communities with ethnic minority populations could, potentially, assert some independence from the formal justice system.[52]

The development of mutual understanding is the most common goal amongst the community mediation programmes I analysed. Community mediation programmes, such as Yorkshire Mediation, prioritise 'help[ing] disputants and [their] neighbours understand each other's concerns'. This objective is commonly cited throughout the mediation

[52] It should be noted that this assumption is not supported by any information found on the community mediation websites. This is because, as will be discussed later in this chapter, few community mediation centres include any information about ethnicity on their websites.

literature,[53] and, as previously discussed, it may be considered as a part of a facilitative, more precisely transformative, style of mediation (Bush and Folger, 1994; Silbey and Merry, 1986, p. 10). Community mediation programmes like SFCB aim to help their disputants 'come to a new understanding of the dispute' (Rothschild, 1993, p. 292). However, while mutual understanding is a common objective across community mediation structures, mediators sometimes become so overtaken with an agenda of developing understanding between disputants that they may misunderstand the needs of these participants. In one case, the mediators repeatedly asked the disputants to consider each other's perspectives; even when disputants directly stated that they believed understanding the perspective of their opposing disputant was impossible or even inconsequential, the mediators continued to force the question upon the disputants (Rothschild, 1993). Therefore, while mutual understanding may be an admirable objective, it can also lead to a breakdown in the resolution process.

Some of these mediation centres may find developing understanding between individuals of different ethnic backgrounds particularly difficult. In the aforementioned example at SFCB, the differing ethnic backgrounds of the disputants acted as one of the main barriers in developing a common understanding. In analysing the example provided by Rothschild (1993), it appears that parties were unable to develop a common understanding at least partially because they could not comprehend each other's lived experiences. One of the parties, an older Black couple, had lived in the neighbourhood for decades and seemed concerned about the potential for gentrification if white families and businesses were to move into the neighbourhood. Systemic racism has and continues to exist in the United States around housing (e.g. racial segregation, redlining, sundown

[53] Developing 'mutual understanding' might be understood as similar to Bush and Folger's concept of recognition. Therefore, community mediation programmes with objective related to mutual understanding may use some transformative mechanisms.

towns, gentrification, etc.) and particularly impacts people of colour. In this case, the white disputants were unlikely to have experienced the same types of housing concerns as the Black family. While the mediators at SFCB briefly tried to discuss ethnicity (Rothschild, 1993, p. 306-307), they failed to develop a shared understanding between the parties. Therefore, trying to build mutual understanding may prove challenging when disputants come from different ethnic backgrounds which inform their lived experiences.

Despite these difficulties, a few mediation centres, particularly in California, consider the development of mutual understanding between different ethnic populations as one of their main objectives. For example, the Korean American Coalition (KAC) was structured around the Los Angeles riots of 1992. According to KAC's website, they were created 'in response to the ethnic upheaval' from the riots, which were largely centred around conflicts between the Black and Korean American community in Los Angeles. This founding appears to still inform KAC's practices as they aim to provide 'culturally appropriate means of resolving disputes', according to their webpage. Therefore, while some community mediation centres may struggle to build a mutual understanding between individuals of different ethnic backgrounds, other centres have made this one of their main objectives.

Additionally, community mediation centres tend to highlight the importance of developing future relationships between participants. As parties exist in the same community, the future development of their relationship may be particularly important, especially when contact between the parties continues. For example, in one case, the relationship between a gay man and his neighbours descended into verbal abuse on each side (Walters, 2014, pp.110). The man suspected that these attacks were directly connected to his sexuality. After attending community mediation, the parties were able to explain their miscommunications and promised to work towards a healthier relationship

and ‘the next time they saw each other on the street they should say hello’ (Walters, 2014, pp.110). Especially because of their connection as neighbours, the future of the relationship was essential to the wellbeing of each participant. On the other hand, there are some cases in which parties will never interact again. Often, this seems to be true for participants who lacked a significant connection to each other before the dispute. For example, in a case handled by SFCB, a man living next to a corner shop was upset about the sound produced by the shop’s fans because it was audible within his home (Rothschild, 1993, p. 321). After attending community mediation to resolve their conflict, the shop owner and the homeowner found a reasonable solution, never had another conflict, and, subsequently, never communicated again. Therefore, while developing the future relationships of parties are an important objective, it is particularly important when parties already have a significant connection to each other.

Finally, community mediation programmes may seek to deliver conflict resolution services which provide healthy and safe ways of managing conflict. Often these goals, as provided on the websites of community mediation centres, are excessively vague. However, in some cases, more details, such as providing preventative services (i.e. preventing violence, heightened conflict, etc.) are mentioned. For example, SFCB actively sought to collaborate with local police departments so they could reach out to those in highly ‘explosive’ conflicts and intervene in such cases as a means of preventing violence in the future (Dubow and Currie, 1993, p. 333).

Overall, community mediation centres do not have one central objective. Instead, they uphold a wide range of goals, which they seek to provide with their services. As illustrated above, whether intentional or not, these objectives often impact minority ethnic communities in some way.

How do community mediation centres discuss ethnicity and inter-ethnic disputes?:

While I have woven in conversation on ethnicity throughout this chapter, interestingly, the 42 community mediation centres I evaluated mentioned it relatively infrequently. By far, the Californian mediation centres included rhetoric relating to ethnicity far more regularly than those in the United Kingdom.

Most commonly, ethnicity was referred to in connection with language services. At least seven community mediation centres in California offered their services in multiple languages, including Spanish, Cantonese, Mandarin, Korean, Vietnamese and Arabic, signifying their intentional outreach to multiple ethnic communities. On the other hand, only one community mediation centre in the UK advertised language services. Specifically, this was SMC, which had a mediator fluent in French.

A few of these centres, chiefly those within California, channelled some of their resources towards disputants within the Asian/Asian American community, such as the Korean American Coalition and the Asian Pacific American Dispute Resolution Center. However, they also serve anyone within their geographic area. Project Sentinel in California had an outreach programme focussed on serving immigrant communities more generally. There was also one other centre, SEEDS, in California which appeared to be initiating an outreach programme to Hispanic/Latine community members, although this was only one small part of their mediation centre. I found no mediation centres with specific ethnic outreach programmes in the UK.

Even when ethnicity was mentioned, it often was not related to resolving inter-ethnic disputes. Moreover, while language services and outreach programmes can be useful for initiating these interactions, as will be outlined in Chapter Three, only in three cases were inter-ethnic disputes discussed. Both related to hate crimes, where someone was persecuted because of their ethnicity. Two of these, OC Human Relations and the

California Conference for Equality and Justice, were in California, unsurprisingly. The third of these was SMC, thereby making SMC the only community mediation centre in the UK which discussed either ethnicity or inter-ethnic disputes on its website.

While these websites occasionally mention ethnicity and inter-ethnic disputes, these comments were few and far between. At the beginning of this research project, I had anticipated that many more websites would mention inter-ethnic disputes or that at least it would be more prominent on some of these websites. Despite this general lack of information, the presence of outreach, language, hate crime services, and critical objectives, such as accessibility, signals that inter-ethnic interactions are likely taking place at these centres.

Conclusion:

Chapter Two serves two purposes. First, it lays out the main features of community mediation. In summary, it answers the following questions: 'Where are community mediation programmes located?', 'Who participates in the community mediation process?', 'How are mediators bringing disputants to resolution?', 'What types of cases are handled in community mediation?', and 'What are the objectives of community mediation programmes?'. While each community mediation centre is unique, these questions provide an idea of the inter-personal connections, participants, community interactions, and expectations associated with community mediation. Such characteristics are useful in understanding how community mediation centres engage with the community and facilitate inter-personal conflict resolution services.

In addition, this chapter intertwines information on how community mediation centres interact with different ethnic groups in their communities, culminating in an analysis of how these centres discuss ethnicity and inter-ethnic disputes. Overall, while there were select programmes which included language or outreach services to specific

ethnic groups, only three unreservedly discussed inter-ethnic interactions. This always took the form of mediation services specifically aimed at resolving hate crimes based on ethnic differences. However, most community centres (24 in California and 18 in the UK) did not discuss ethnicity at all.

The following chapter builds off of this shallow understanding of inter-ethnic disputes in community mediation and attempts to excavate more information on the services and resources available for inter-ethnic disputes at these centres.

Chapter Three: Community Mediation as a Mechanism for Inter-ethnic Interactions

Introduction:

The discourses on inter-ethnic disputes both in the academic literature and community mediation websites is relatively bare. However, despite the lack of information on these interactions, the information found in Chapter Two signifies that community mediation centres have some resources which may specifically serve minority ethnic groups, and potentially, even facilitate inter-ethnic interactions. This chapter delves deeply into the dynamics of two community mediation centres, the San Francisco Community Boards (SFCB) and the Southwark Mediation Centre (SMC), to better understand the resources available at these centres. The analysis in this chapter relies upon websites, social media accounts, newsletters, training materials, and a single exploratory interview.

I start this chapter with a description of my methods. From there, I begin analysing the resources at SFCB and SMC that may foster inter-ethnic interactions. These resources include language/translation services, a diverse pool of mediators, connections with social housing organisations and hate crime services. A more extensive discussion of how each of these resources contributes to inter-ethnic interactions is incorporated into the end of each individual section.

Overall, this chapter finds that while community mediation centres' websites, as seen in Chapter Two, provide little to no information on inter-ethnic disputes, mediation centres are in fact prepared to navigate these types of interactions through the resources they provide.

Methods:

In order to collect data for this chapter, I relied upon the websites and social media outlets for each community mediation centre. Specifically, I analysed sources for references to ethnicity or inter-ethnic interactions. I began by visiting the website of each centre and analysing each individual webpage, including their programme description, their staff/mediators, reviews, and different types of programming (i.e. neighbourhood disputes, restorative justice, etc.). SFCB published more information on its webpage, including a saved collection of its previous newsletters. While the frequency of these newsletters varied, they seemed to be either quarterly or bi-annually from 2013 to 2019.

Along with the webpages of each centre, I also went through their other social media , including Facebook, Twitter, Yelp and YouTube. Each centre frequently used Twitter. However, SFCB also used Yelp, Facebook and had published multiple YouTube videos over the past six years. These videos incorporated a wide range of topics but mostly showcased different volunteer mediators at SFCB. While the information on the general community mediation websites was useful, the social media pages were particularly valuable because they showed how community mediation centres were connecting to the general public and responding to major and relevant events, such as the Black Lives Matter movement.

When reading through these sources, I analysed for references to ethnicity or inter-ethnic interactions. SFCB had the most information regarding ethnicity. For example, as I will explain later, they referenced their diverse mediation pool; ability to perform their services in Mandarin, Cantonese, and Spanish; and their support for the Black community during the Black Lives Matter protests. SMC referred to ethnicity less, which was unsurprising considering that this was similar to what I had observed with most UK community mediation centres in Chapter Two. SMC also has less of a social

media presence than SFCB which may explain why it was more challenging to find information of this topic, especially concerning current political events, like Black Lives Matter, which may have otherwise provoked comments on ethnicity.

Despite the generally sparse information on these webpages, I knew that each of these community mediation centre had experienced some inter-ethnic disputes in their programme before because of the academic texts I had read on each centre, which had briefly alluded to case studies with diverse sets of disputants. In particular, I relied on the book *The Possibility of Popular Justice* (Merry and Milner, 1993), a collection of essays related to SFCB, and the works of both Mulcahy (2001), Mulcahy & Summer (2002), and Walters & Hoyle (2011) focus on the inner workings of the SMC. The books of Merry & Milner and Walters & Hoyle each mention examples of mediation cases at their respective centres with involve inter-ethnic disputants. These works indicate that while there may be minimal information on the webpages of these community mediation centres regarding ethnicity or inter-ethnic disputes, these are certainly cases which happen at each mediation centre.

In addition, I conducted a single exploratory interview with a mediator who had experience in multiple jurisdictions. The questions I designed for this interview directly built off my findings from the other materials. They specifically asked more about the resources (i.e. translation/language services, hate crime services, etc.) available at different community mediation centres and their role in facilitating inter-ethnic interactions. Although I had been hoping to interview with a few more practitioners and had even engaged in one introductory phone call with another, the time available for an MPhil programme made it difficult to arrange more interviews. Nonetheless, this single exploratory interview was useful in providing additional context on my initial theories.

The San Francisco Community Boards:

SFCB is a non-profit organisation based in San Francisco, California. This community mediation programme began in 1977 (Merry and Milner, 1993, p. 12) and serves the entirety of the city (*San Francisco Community Boards*). According to data from the Census Bureau, while approximately 52.8% of San Francisco County's population is solely white, 36.0% is solely Asian, and another 15.2% is Hispanic or Latine (United States. Census Bureau, 2019). These are the three most common ethnicities with solely Black following behind at 5.6% of the population. Overall, the city of San Francisco is incredibly diverse with inhabitants from multiple different ethnic backgrounds.

There are two resources provided by SFCB that stand out as ways in which the programme fosters inter-ethnic interactions. First. SFCB has diversified its mediator pool in order to bring in a wider range of community participants from different ethnicities. Second, in addition to diversifying their staff, SFCB has also furthered the scope of its community interactions by providing multilingual services in Spanish, Mandarin, and Cantonese.

Southwark Mediation Centre:

The Southwark Mediation Centre (SMC) was established in the borough of Southwark, London, in 1986.[54] While most UK community mediation programmes have a pool of 25-125 mediators in a single year, SMC only seems to have about 20 individual mediators per year (*London Community Mediation Council*); however, their small group of mediators may be unrepresentative of the centre's caseload. Regarding the goals of

[54] As of August 2020, Southwark Mediation Centre merged with another London community mediation centre, Calm Mediation. Because SMC was still an independent organisation when I completed most of my data collection, I treat SMC as independent throughout my thesis. Additionally, as can be seen in Appendix B, Calm Mediation is one of the centres I analyse in Chapter Two. It is also treated as independent from SMC in this analysis.

their programme, the actions of the mediators, and the types of cases managed, all materials on SMC suggest that the organisation is relatively similar to its peer institutions. However, what makes Southwark particularly interesting is their close relationship with housing agencies and housing authorities in the surrounding area.

Just as in San Francisco, race and ethnicity are critical to the dynamics of everyday life in Southwark. According to New Policy Institute, 'A third of Southwark's adult population is BME. This is slightly less than the average for Inner London, but significantly more than the average for the UK.' (2016, p. 3).

While SMC provides a range of diverse services, its community mediation programme connects individuals of differing ethnicities in three main ways. First, SMC provides some language/translation service. Secondly, it actively partners with housing organisations in the area to provide services to those in the area. Finally, SMC uses its services to navigate hate crimes and the restoration of relationships in the community.

Inclusion of Languages:

One of the main ways in which SFCB seeks to include disputants from different ethnicities is through their inclusion of mediators and translators who speak different languages, particularly Spanish, Mandarin, and Cantonese.[55] Because of San Francisco's diverse population, these three languages are especially prevalent. According to data from the United States Census Bureau, after English, Chinese (both Mandarin and Cantonese) is the most spoken languages in San Francisco, spoken by 18.1 per cent of the population, followed by Spanish at 10.1 per cent. The prevalence of these languages directly correlates to the ethnic background of San Francisco. By providing services in Chinese

[55] While it's unclear if these mediators and translators are additionally from these ethnic backgrounds, according to one interviewee, other mediation centres in California routinely hire mediators for not only their language services but also their cultural understanding, as will be discussed later. Therefore, translators may also have some cultural understanding.

and Spanish, they make their mediation more accessible to individuals of multiple ethnicities.

Not only does SFCB provide services in different languages, but it also *actively* reaches out to those who speak languages other than English. In order to encourage people from different backgrounds to use SFCB, the centre advertises its services in different languages. On their webpage, SFCB dedicates a whole section to sharing content for Chinese and Spanish speakers. As can be seen on their webpage, they have created one-page informational sheets explaining what mediation is and the types of disputes SFCB helps manage. As previously mentioned, these were then sent to the San Francisco police so they could also be distributed via the police newsletter, thereby hopefully reaching a larger audience (Spring 2019 Newsletter).

Overall, it seems that the efforts of SFCB are successful in attracting people from different ethnic backgrounds. From the newsletters on SFCB's website, this appears to have been a successful measure. According to one of their volunteers, through utilising mediators with expertise in Chinese, they have also been able to 'increase the number of mediations with Chinese residents' (Spring 2016 Newsletter). This success shows that these language services are being well received by the larger community.

Similarly to SFCB, SMC also provides some language services. Namely, one of the professional mediators on the team can speak French. The availability of this skillset will improve the mediation experience not only for French-Europeans utilising the service but also for immigrants from Francophone Africa. In addition, while they do not advertise mediators who speak any other languages, in some of SMC's training materials, they mention that a translator can attend mediation sessions if necessary.

While it does not appear that language services are as widely available at SMC as SFCB, this is not atypical for their locations. In fact, in my review of community

mediation programmes in California, approximately seven noted that they used multilingual services with the most common language offered being Spanish, followed by Mandarin and Cantonese. On the other hand, in my review of mediation programmes within the UK, language translation services or multilingual mediators were never advertised as an available resource at any other centre. Therefore, while it is possible that other UK community mediation centres had translation services and did not advertise them, SMC appears to be exceptional in this regard.

Language services can be a necessary component of community mediation in order to bring in non-English speakers from various ethnic backgrounds. According to an interviewee, translation services were a critical resource they provided, which allowed them to serve the immigrant communities in their area. Similarly, SFCB's and SMC's multilingual services may be attracting more disputants from diverse backgrounds and allowing disputants from different ethnicities to participate in mediation together if they are not English speakers. Before offering language services, SFCB and SMC may have been unable to provide mediation for all disputes in their community, especially those involving non-English speaking immigrants. Because of the unique diversity of San Francisco and London, many neighbourhood disputes would have been excluded. Therefore, this resource is critical in allowing those from different ethnicities to interact and ultimately find resolution.

Representative Mediators:

Appointing ethnically-diverse mediators is critical to providing services for people from an array of ethnic backgrounds.[56] This concept has already been discussed in the work of several academics. For example, Sharaby (2015) examines the importance of

[56] No information on SMC's website or social media suggested that they had a particularly ethnically diverse set of mediators.

having Jewish Ethiopian mediators available to Ethiopian immigrants in Israel. As individuals who are outside of the culture of the larger community, having a mediator who understands their cultural background and norms can often be useful for finding a resolution. While having ethnically representative mediators is cited as a critical element of mediation, a large proportion of community mediation programmes are run primarily by white individuals (Press, 2013, p. 36). However, over time community mediation organisations have refocussed on 'reflect[ing] the racial and ethnic diversity of the people they served' (Press, 2013, p. 36).[57] According to Charkoudian & Wayne, 'a diverse mediator pool both connects the concepts of collaborative conflict resolution to a range of communities and brings the diverse perspectives of these communities to community mediation' (2009, p. 22). Overall, mediators of the same ethnic background as the disputants can provide cultural competency and a sense of security or satisfaction to the disputants.

SFCB has recognised this need to provide mediators of various ethnic and cultural backgrounds on their website and available online materials. For example, in one of their quarterly newsletters, they mention their 'diverse group of peacemakers' (Newsletter Spring 2014). This is reinforced in one of their YouTube videos, titled Powerful Story of Conflict Resolution (2014), where they mention their 'diverse pool of over 350 mediators'. These statements are supported through periodic newsletter segments highlighting the Volunteer of the Quarter. These segments feature mediators from a wide array of ethnic backgrounds.[58]

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[57] Press's work specifically relates to the development of community mediation centres in the United States.

[58] However, while ethnic background may be briefly mentioned, it is not always discussed in depth. For example, in the summer of 2014, the volunteer mediator Sing Chin was interviewed for the newsletter. While his ethnic identity as a Malaysian immigrant was mentioned in the newsletter (Newsletter Summer 2014), he did not discuss his ethnicity at all within his four-minute interview (Community Boards Mediator Interview—Summer 2014).

SFCB uses their diverse group of mediators to consciously match up disputants with mediators who may better understand their identity. As can be seen in the work of Rothschild, SFCB would match up disputants with a mediator of the same demographic background (1993). For example, in the case of the Promised Land, two neighbouring families argued over the appropriateness of one family's attempt to run a business from their home. One set of disputants was white, and the other was a Black family, and mediators were chosen to help match the ethnic demographics of the disputants. In this case, the dispute was managed by two white mediators and one Black mediator (Rothschild, 1993, p. 293).[59]

In cases, like that of the Promised Land, where disputants are from different ethnic backgrounds, the inclusion of multiple mediators to help reflect the ethnicities of all the disputants may be useful. While not all community mediation programmes will include multiple mediators, it is not uncommon. In fact, one of the community mediation organisations I reviewed in California and three of the community mediation organisations I reviewed in the UK mentioned on their website that they mandatorily included more than one mediator for each case.

This practice of 'co-mediation' or 'mediator panels' can be especially useful in cases where the disputants have different ethnicities. As stated by many academics, having a mediator who understands the background of the disputant can help ensure the values and practices of disputants, especially those from minority ethnic groups, are recognised. Thus, in situations where multiple ethnicities are represented, it would make sense that multiple mediators who can understand the ethnic identities of all disputants could be beneficial. In a study by Weinstein, 'Blending an African American mediator

[59] It is important to recognise that this set-up, where there were still more white mediators than mediators of colour or Black mediators, could still create power discrepancies during the mediation process.

with a Caucasian mediator as the co-mediation team modelled cross-cultural harmony rather than a cross-cultural clash of values' (2001, p. 225). This seems to suggest that by including mediators of different ethnicities, disputants themselves can learn to better collaborate with one another. Overall, SFCB's use of mediators of different ethnic backgrounds can provide a space where disputants feel that their identity is seen and understood. It can also model an example of inter-ethnic collaboration. This element of SFCB's programme can therefore be useful in allowing those from different ethnicities to interact via community mediation.

In addition, even if a community mediation centre is able to recruit a diverse pool of mediators, they may not always be able to utilise them. For example, an interviewee informed me that one of the centre's which they had previously worked with had an intentional process of hiring mediators with a cultural understanding of the different ethnic groups their centre serviced. However, in practice, they were not always able to match up mediators with disputants of the corresponding ethnicity. Instead, they would match up mediators with disputants as based on who was available on the given day; only in cases where language translation services were needed, were strict accommodations made. Therefore, even while community mediation centres may try to provide mediators of the corresponding ethnicity, it may not always be possible.

As previously mentioned, having mediators from the same ethnic background can be particularly useful as the mediator may be able to understand the disputants' cultural backgrounds. An interviewee mentioned the importance of this in mediating divorce cases between partners of different ethnic backgrounds, who often had different cultural understandings of divorce. Because these cases were so typical, a dedicated programme was designed for these instances, where a mediator who understood each ethnic background could aid the disputants through the process. While this is not directly related

to the neighbour-to-neighbour services discussed throughout this chapter and Chapter Two, it does provide an interesting perspective on the importance of mediators who understand the background of their disputants. Such services can bridge the cultural divides between ethnically dissimilar disputants, thereby making inter-ethnic disputes simpler to manage.

While having mediators who are ethnically similar to the disputants may be useful in helping the disputants understand each other's cultural differences, there are still many other aspects of identity that can impact the dispute resolution process. As coined by Crenshaw (1989), 'intersectionality' describes the multiple overlapping identities which a single individual has. While ethnically representative mediators may be able to help disputants from different ethnic backgrounds better understand each other, can these mediators also help represent the multitude of other identities that intersect with those disputants' ethnicities? For example, as Crenshaw (1989) reminds us, the experiences of a Black woman can often be unique and quite different from those of a Black man or a white woman. However, ethnicity and gender are still only two facets of identity. Identity can also include skin colour, sexuality, disability to only name a few categories. Therefore, while mediators may be able to help provide cultural understanding and support to their disputants from different ethnic identities, there may be other, equally important aspects of identity which are not represented or supported throughout the mediation process.

Social Housing:

Much of the work done by SMC occurs via their partnerships with housing organisations in the area. According to their website, SMC partners with housing centres and have received a great deal of positive feedback both from individuals and landlords about their services. Housing in Southwark is particularly critical because of the

disproportionate fraction of the community living in social housing. In fact, according to the UK Annual Population Survey of 2014 as cited in the New Policy Institute's report, 'While 37% of Southwark borough lives in social housing, only '32% [of households] across the whole of Inner London and 18% across the UK' live in social housing (2016, p. 13-14). With this being such a central issue for the community, SMC has used its positioning to help navigate issues related to housing in their community. However, not only is housing an issue relating to economic concerns but also race and ethnicity. For example, according to the UK 2011 Census, within Southwark approximately '70% of Black households were in social rented accommodation, compared to 46% of Asian households and 32% of White households' (New Policy Institute, 2016, p. 15). Therefore, those in social housing within the borough are disproportionately ethnic minority households. This is significant because by dedicating resources to partnering with social housing organisations, SMC uses their resources to service an area where ethnic minority communities are disproportionately impacted.

According to their website, SMC 'currently work[s] with a number of social landlords in London to provide mediation services for their residents'. Through these types of community partnerships, SMC will receive referrals for conflicts between neighbours in social housing and has designed their mechanisms to navigate issues related to social housing. They will also manage conflicts between residents and landlords (*Southwark Mediation Centre*).

More specifically, SMC has used its resources to not only navigate disputes but protect the rights of those in social housing. According to Mulcahy, mediators at SMC sometimes use their position to help advocate for the rights or needs of the tenants in dispute against the housing officers (2001, p. 520). Frequently, these cases will occur when two disputants bring a typical neighbourhood dispute to SMC for mediation.

However, often the mediator will recognise that the root of the conflict is actually connected to inadequate housing provided to the families. For example, many conflicts may be related to noise complaints between different tenants; however, the mediator may realise that the complaint is actually the result of thin walls, or perhaps overcrowded accommodations. Rather than merely helping the parties find a resolution between themselves, the mediator may aid the parties in demanding better living conditions from the housing associations (Mulcahy, 2001). Therefore, the issue becomes one of injustice happening at the hands of the housing association, rather than just a dispute between two individuals.

By focusing on social housing concerns, SMC provides resources to a type of conflict which disproportionately relates to ethnic minorities. At the very least, SMC is caring for diverse and marginalised ethnic populations in its community through these services. However, because of the diversity of the population living in social housing, it may also be an area where people of different ethnicities actively participate in mediation together. Because cases of social housing have the potential to be so diverse, SMC's attention to housing cases may actively support more interactions between disputants of different ethnicities.

More than just aiding these inter-ethnic populations in finding resolution together, by bringing attention to the needs and rights of tenants against housing officers and councils, SMC allows the disputants to bond over their mutual struggles. As mentioned in Mulcahy's piece, mediators 'in this way … acted as a conduit through which *collective* grievances could be channelled.' (2001, p. 520). In these cases, mediation reframes the disputants as collaborators, such that disputants from different ethnicities may overcome their personal disputes and instead prioritise their shared needs.

According to the data I collected for Chapter Two, many other community mediation centres develop programmes to handle housing conflicts and even build connections with housing organisations or landlords in the area. However, SMC is apparently unique in its emphasis on aiding in cases regarding social housing. Because of the ethnic demographics of social housing, SMC may be uniquely positioned to use its resources to navigate cross-ethnic disputes.

Ethnically-Based Hate Crimes:

SMC also provides its services to help navigate hate crimes within the community. According to their webpage, this project has been effectively used to 'tackl[e] racial harassment and homophobia in the community' (*Southwark Mediation Centre*). Examples of the types of cases they have previously handled regarding hate crime include 'spitting, egg throwing, name calling, violence etc.' (*Southwark Mediation Centre*). I had access to a document used for training mediators on hate crime cases at SMC. In this document, race-based conflicts were cited as some of the most common hate crimes. Furthermore, of the eight hate crime cases cited on the document, seven were specifically related to disputes between individuals of different ethnicities with the final being case being related to homophobia. Therefore, it seems that the hate crime cases handled at SMC are frequently between disputants of different ethnic backgrounds.

According to Walters, SMC cases usually start as small issues between neighbours and eventually grow into hate crimes (2014, p. 95). Some of these types of cases are recommended by housing officers, police, other organisations or the disputants themselves (2014, p. 93). Mostly, these processes aim to heal the relationships between the parties (Walters, 2014, p. 93). According to Walters, many of these cases resulted in positive feelings in the survivors, such as reduced anxiety and improved emotional wellbeing (2014, p. 96).

This is maybe the most straightforward way in which community mediation programmes tackle issues related to conflicts founded upon ethnic prejudices. According to Walters, within hate crime cases navigated at SMC and other programmes, a crucial factor allowing for an end to the conflict and the building of positive relationships was the each disputant's ability to 'tal[k] about harm' they had experienced—more fully, their willingness to 'talk to the other party about how they felt and how the incident affected their life' (2014, p. 97). For example, in a case recorded by Walters, 'Mr V, a black and gay man with HIV, is harassed and physically assaulted by either Mr X or his friends. They go to mediation and Mr V reports that he feels it is a success because he was able to share his side, see that Mr X better understood Mr V's life and felt taken care of because the mediators stayed connected.' (2014, p. 101). In this example of a case in which Mr V experiences both racial and homophobic attacks, he is finally able to share his account of what happened and describe his pain in a safe place. Therefore, by providing the necessary space for participants to share their experiences and develop a rapport with the other individual, survivors of hate crime can find healing and, ultimately, those from different ethnic backgrounds have a way to communicate.

Discussion:

While, both SFCB and SMC provide meaningful resources to their communities for navigating inter-ethnic interactions, each mentions ethnicity fairly infrequently within their websites or social media pages. Rather than providing brief comments about their resources, there is little other information on their page regarding ethnicity or inter.[60] Such a lack of conversation on these topics seems strange considering the demographics

[60] This lack of meaningful conversation on ethnicity, especially inter-ethnic interactions, could be a main reason for the lack of academic material on the subject as well.

of both San Francisco and Southwark and the obvious efforts made to make each programme more inclusive and open to those from multiple ethnicities.

Initially, I also assumed that community mediation centres would provide ethnic minority communities with resources to navigate conflicts with local police. In theory, this area of shared grievances could have brought citizens from different ethnic backgrounds together as they navigated a common conflict. This speculation was initially supported by the centres' 'critique[s] of the formal justice system', such as the police and the court system (*San Francisco Community Boards*, post on 16/06/2020) as well as partnerships and training sessions that each centre had with the local police force. While I found no conclusive evidence that shows these community mediation centres are providing support for communities of colour with conflicts against the local police force, this may be an area to further evaluate in the future. In the wake of the murder of George Floyd and international protests in support of Black Lives Matter, SFCB directly stated that they would continue to navigate conversations related to racism which would 'facilitate difficult and challenging dialogue' and 'continue to foster community healing and community driven resolutions' (*San Francisco Community Boards*, post on 15/06/2020). As demands for justice and the protection of ethnic minority communities are amplified, we may see community mediation centres stepping up to help lead these conversations on ethnicity.

Conclusion:

Overall, this chapter sought to better understand how SFCB and SMC provide resources to navigate inter-ethnic disputes in their respective communities. Between the two centres, multilingual services, a diverse pool of mediators, connections with social housing organisations and hate crime services allowed them to navigate and provide support for inter-ethnic interactions in the community. Despite only finding four

resources for managing inter-ethnic disputes, there may be more. Therefore, despite the lack of information presented in the literature and mediation websites on inter-ethnic interactions, we find that community mediation centres are navigating, or at least preparing for such disputes.

Conclusion

The intention of this thesis is to better understand the discourse on inter-ethnic disputes. Chapter One provides a survey of the literature written on inter-ethnic *dispute resolution*, and while much has been said on this area as a whole, little has been written on inter-ethnic *disputes*. Realising this gap in scholarship, I redirect my gaze to community mediation centres in Chapter Two in search of how inter-ethnic disputes are discussed 'on the ground'. Along with an overview of the characteristics of community mediation, this chapter examines the ways in which these centres mention both ethnicity and inter-ethnic disputes. Once again finding limited information on this topic, my third chapter delves deeply into two community mediation centres, finally confirming that community mediation centres do, in fact, have multiple resources which serve inter-ethnic interactions.

This study combines a range of materials to reach this final conclusion. For example, the first chapter develops a wide-spanning literature review to map out what has previously been written on inter-ethnic dispute resolution, including patterns of dispute resolution which depict 'sameness across ethnicities', complex systems of legal pluralism, and the subordination of minority ethnic groups. Additionally, Chapter Two utilises information from 42 community mediation centres' websites (18 from the UK and 24 from California). This chapter explains the defining characteristics of community mediation while also analysing how these centres discuss ethnicity and inter-ethnic

disputes. Finally, Chapter Three deeply evaluates two community mediation centres, the San Francisco Community Boards (SFCB) and Southwark Mediation Centre (SMC), through their websites, social media pages, newsletters, training materials and an exploratory interview. This third chapter outlines the resources made available at these two community mediation centres to aid disputants navigating inter-ethnic disputes.

The main implication of my research is the unveiling of a significant hole in the discourse on inter-ethnic disputes. It seems that neither academia nor community mediation centres are discussing these interactions. However, despite this finding, my third chapter shows that community mediation centres are providing the resources necessary to facilitate these interactions. This third chapter highlights at least four of these resources, including access to language/translation services, ethnically representative mediators, support in conflicts around social housing and services to manage ethnically-based hate crimes. Each of these resources make community mediation more accessible for ethnic minorities and make it more likely that individuals from different ethnic backgrounds could use and would benefit from community mediation services. For example, the inclusion of a diverse set of mediators can be useful in addressing normative differences between disputants. Additionally, the availability of hate crime services can help minimise further ethnic prejudices in a community.

Additionally, while both SFCB and SMC have a wide range of resources related to inter-ethnic disputes, overall, it seems that Californian community mediation centres may be better prepared. For example, in my analysis, which can be seen in Chapter Two, the mediation centres that spoke about ethnicity on their websites the most were Californian. In addition these centres also mentioned inter-ethnic interactions *slightly* more than their UK counterparts.

Future Research:

My research sets the stage for additional, future scholarship on inter-ethnic disputes. In the following paragraphs I propose potential pathways for future research, which could build off my work.

The exploratory interview conducted for this study was useful in providing me a more nuanced understanding of how community mediation centres think about ethnicity and engage with their communities. Ultimately, this conversation was pivotal in explaining how some centres handle inter-ethnic disputes. Due to the impact of this interview and this thesis's ultimate conclusion that the literature and mediation websites do not thoroughly discuss inter-ethnic disputes, I'd suggest that future scholars largely rely on interviews for data. While it may seem like a fairly basic recommendation, I believe the most useful information in subsequent studies will be gleaned from such interviews.

Additionally, this research provides an interesting analysis of the resources available to community mediation centres navigating inter-ethnic disputes; however, there are other forms of dispute resolution mechanisms which likely engage with inter-ethnic disputes as well. For example, during the early stages of analysing community mediation centres, I explored the work of a community group called Days of Dialogue. Rather than hosting conversations about interpersonal conflicts, this organisation hosts events where small to medium sized groups meet across Los Angeles to discuss issues concerning the entire city or even the whole country. Examples of these conflicts include, police violence, gun violence, suicide prevention, race relations, and community relations in the wake of the terrorism of 9/11. As can be seen, many of these issues are directly related to ethnic relations throughout the city, and the mission of these events is often to bring people of different ethnic backgrounds together to discuss these issues. Clearly, this

format is markedly different from the structure of community mediation described in Chapter Two; however, in continuing to understand the resources available to navigate inter-ethnic disputes, researchers may find it worthwhile to expand their studies into these kinds of dispute resolution mechanisms, which specifically focus on inter-ethnic, community-wide problems.

Inter-ethnic disputes will continue to be an area of increasing importance in the near future. As I write this thesis, protests continue around the United States demanding the defunding of the police and the protection of Black lives. In the past few months, statues have been torn down which many believe represent the brutality of colonialism and the continuation of racism in our societies. While many mechanisms will be necessary to promote long lasting reforms, community mediation may be a useful tool to encourage structural change, aid in communication between individuals from different ethnic backgrounds, and overall, develop a more equitable society.

Appendix A: Community Mediation Centres

AmB Mediation. Available at: https://ambmediation.com/ [Accessed: May 2020].

Asian Pacific American Dispute Resolution Center: APADRC. Available at: https://apadrc.org/ [Accessed: May 2020].

California Conference for Equality and Justice. Available at: https://www.cacej.org/ [Accessed: May 2020].

Calm Mediation. Available at: https://www.calmmediation.org/ [Accessed: May 2020].

Center for Community Dispute Settlement. Available at: http://www.trivalleymediation.com/ [Accessed: May 2020].

Center for Human Development. Available at: https://chd-prevention.org/ [Accessed: May 2020].

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Appendix B: Original Resources Related to the San Francisco Community Boards (SFCB) and Southwark Mediation Centre (SMC)

Materials from SFCB's…

- Website, available at: https://communityboards.org/
- Facebook page, available at:https://www.facebook.com/CommunityBoards/
- Twitter page, available at: https://twitter.com/communityboards
- Yelp, available at: https://www.yelp.com/biz/community-boards-san-francisco-2
- YouTube channel:
  - *Community Boards 2019 Annual Fund: We Give,* (Nov 18, 2019). Available at: https://www.youtube.com/watch?v=6qNjp_4N784
  - *Community Boards Mediator Interview - Winter 2015,* (Mar 18, 2015). Available at: https://www.youtube.com/watch?v=gyzwGm5FG50
  - *Powerful Story of Conflict Resolution,* (Dec 1, 2014). Available at: https://www.youtube.com/watch?v=eapoO7AW6Fo.
  - *Community Boards Mediator Interview - Summer 2014,* (Sep 4, 2014). Available at: https://www.youtube.com/watch?v=gYCeIG7RKhk
  - *Community Boards Mediator Interview - Spring 2014,* (May 20, 2014). Available at: https://www.youtube.com/watch?v=2sLdMehBgzY
  - *Training "Take Aways" from the Basics of Mediation,* (May 20, 2014). Available at: https://www.youtube.com/watch?v=TDmoM5u6-0Y
  - *Trusting Your Gut: Using Intuition to Resolve Conflict,* (Mar 10, 2014). Available at: https://www.youtube.com/watch?v=ysJTa2nEilw

- *Community Boards Mediator Interview,* (Feb 10, 2014). Available at: https://www.youtube.com/watch?v=JkoOTPZeCWI
- *"Because I Said So!" Mediating Power Imbalances in the Workplace,* (Jan 28, 2014). Available at: https://www.youtube.com/watch?v=NU3qKVQ5fJo
- *Pre-Mediation Preparation: Key Steps to a Successful Mediation,* (Dec 11, 2013). Available at: https://www.youtube.com/watch?v=DI8h5aLHPVk
- *Community Boards Meeting Facilitator Interview,* (Sep 25, 2013). Available at: https://www.youtube.com/watch?v=LWGTMepOQ9o
- *Living Room Conversations Teleconference,* (Aug 20, 2013). Available at: https://www.youtube.com/watch?v=MR50uBT5fg8

• Newsletter, *The High-Five News Bulletin*, from Summer 2013 to Summer 2019—

- *Spring-Summer 2019*. Available at: https://myemail.constantcontact.com/Spring-2019-High-Five-News-Bulletin.html?soid=1011266320026&aid=jm0cfMWI2aM,
- *Fall 2018*. Available at: https://myemail.constantcontact.com/The-High-Five-News-Bulletin----Fall-2018.html?soid=1011266320026&aid=r9WHZM0NJ4k,
- *Summer 2018*. Available at: https://myemail.constantcontact.com/The-High-Five-News-Bulletin---Summer-2018.html?soid=1011266320026&aid=iZVamKx76Zk,
- *Summer-Fall 2017*. Available at: https://myemail.constantcontact.com/The-High-Five--Summer-Fall-2017-News-Bulletin.html?soid=1011266320026&aid=Wxx5BaXOmO8,

- *Winter-Spring 2017*. Available at: https://myemail.constantcontact.com/The-High-Five-News-Bulletin---Winter-Spring-2017-.html?soid=1011266320026&aid=RhJ7JBuinRU,
- *Summer-Fall 2016*. Available at: https://myemail.constantcontact.com/Community-Boards--The-High-Five.html?soid=1011266320026&aid=V2pfeTiCXzQ,
- *Spring 2016*. Available at: https://myemail.constantcontact.com/The-High-Five--Spring-2016-News-Bulletin.html?soid=1011266320026&aid=8yRx0OLZvHY,
- *Winter 2016*. Available at: http://archive.constantcontact.com/fs166/1011266320026/archive/1123753618684.html,
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