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# MEDIATION IN POLITICAL CONFLICTS: SOFT POWER OR COUNTER CULTURE?

Michelle Polato\*

## I. INTRODUCTION

In a world where traditional diplomacy often comes up short in ensuring stable inter- and intra-state relations, the use of mediation in managing political disputes is on the rise.<sup>1</sup> *Mediation in Political Conflicts: Soft Power or Counter Culture?*<sup>2</sup> brings to light the global role played by mediation in political peacemaking. The value of the volume is in its approach. As stated by Jacques Faget, editor of and contributor to *Mediation in Political Conflicts*, the overarching goal of the book is to analyze the “recent rise in mediation strategies and the emergence of new players in the peace building process—NGOs [non-governmental organizations] with various legal statuses, charismatic personalities, private groups, academics and religious networks.”<sup>3</sup> To this end, essays and case studies from eleven authors are offered to add to the reader's understanding of the variety of mediation processes and to suggest approaches for the further development of political mediation as an increasingly important peacemaking process.

*Mediation in Political Conflicts* is a generally accessible and informative assessment of the modern use of political mediation. The book, however, is not without its flaws. For one thing, its title is deceiving. Although written primarily for political mediators, policy advisors and legal scholars, *Mediation in Political Conflicts* might also appeal to a larger audience, as some discussions tend to serve as a general introduction into the larger field of mediation. This seeming lack of a single audience can be both good and bad. On the one hand, *Mediation in Political Conflicts* truly has something for everyone. On the other, the anthology's broad appeal seems to come at the cost of its not being directly pertinent to anyone in particular. Between these extremes, however, *Mediation in Political Conflicts* speaks mainly to an audience of political mediators, policy advisors to programs developing and implementing political mediation, and to legal scholars.

The second shortcoming of *Mediation in Political Conflicts* is that its overall approach is disjointed. Besides the overarching theme of political mediation, there seems to be very little cohesiveness to the book. From one chapter to the next, an inconsistency in vocabulary leaves the reader wondering whether the authors are on the same page, or whether they are writing on different concepts entirely. Although this criticism was predicted by Faget, he believes that this multiplicity allows the chapters to “enrich each other and show how difficult it is to apprehend the concept of mediation.”<sup>4</sup> While this may be true, the divergence from one chapter to the next proved distracting.

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<sup>1</sup> Jacques Faget, *The Metamorphosis of Peacemaking*, in *MEDIATION IN POLITICAL CONFLICTS: SOFT POWER OR COUNTER CULTURE?* 1, 1 (Jaques Faget ed., 2011).

<sup>2</sup> *MEDIATION IN POLITICAL CONFLICTS: SOFT POWER OR COUNTER CULTURE?* (Jaques Faget ed., 2011).

<sup>3</sup> Faget, *supra* note 1, at 2.

<sup>4</sup> *Id.* at 21.

Lastly, although *Mediation in Political Conflicts* offers an analysis of the rise of political mediation strategies, its analysis is incomplete. This criticism was also recognized by Faget who notes that the book “reflects a European approach, which is admittedly limited, developed by the French, Spanish, Swiss and German specialists . . . .”<sup>5</sup> Despite these flaws, however, the value of the volume far surpasses any criticisms which may be leveled at it, and *Mediation in Political Conflicts* rises to the level of an important new development in the field of alternative dispute resolution.

The following review summarizes and evaluates the book. In Part II, the foundation-laying first chapter is explored. Part III addresses the ethical requirements of political mediation. In Part IV, selected case studies are summarized. Finally, in Part V, the concluding chapter of the book is evaluated and a final analysis of the book is given.

## II. TOWARDS TRANSFORMATIVE MEDIATION

Although tending towards the theoretical, the first chapter, authored by Jacques Faget, is not only accessible but it is also indispensable in understanding the ultimate practical value of *Mediation in Political Conflicts*. The first part of this section summarizes some fundamental principles and definitions as elucidated by Faget. The second part of this section will describe the approach adopted by Faget in analyzing mediation efforts deployed in connection with political conflicts.

### A. Basic Principles

#### 1. *Mediation in Political Conflicts: A Historical Perspective*

Although Faget identifies the 1907 Hague Conference as the historical event from which political mediation emerged, he is quick to note that the use of political mediation has changed over the past century in at least two ways.<sup>6</sup> First, mediation efforts have changed in tandem with the underlying nature of the political conflicts; due to the decline in inter-state conflicts over the past century, mediation is now most often utilized in intra-state conflicts.<sup>7</sup>

The second way in which the use of mediation in political conflicts has changed is the frequency with which it is implemented.<sup>8</sup> Between 1990 and 1996, sixty-four percent of political conflicts were mediated, compared with twenty percent between the end of the Second World War and 1962.<sup>9</sup> That a majority of political conflicts are mediated certainly speaks to the acceptance of the method, the need for the process, and calls for more legal attention to this matter.

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 1.

<sup>7</sup> *Id.* at 1-2.

<sup>8</sup> Faget, *supra* note 1, at 1.

<sup>9</sup> *Id.*

## 2. *Political v. Social Conflicts*

In addition to giving the reader an historical perspective on the use of mediation in political conflicts, Faget also distinguishes between social and political conflicts. Without saying much about the former, Faget defines a political conflict as a “territorial, identity based, economic, or ethnic”<sup>10</sup> competition for political power which takes on a “violent and non-regulated dimension . . . .”<sup>11</sup> To illustrate this definition, Faget points to the struggles in the Basque country, Northern Ireland, Cyprus, Timor, and Sudan.<sup>12</sup> These disputes, although mainly intra-state in nature, often taken on international dimensions.<sup>13</sup>

## 3. *Mediation Defined and Differentiated*

Because “[o]ne of the innovative objectives of the present volume is to focus exclusively on mediation,”<sup>14</sup> Faget defines mediation and distinguishes it from negotiation and conciliation. Faget's definition depicts “mediation as a consensual process of conflict regulation in which an impartial, independent third party without any decision-making power helps people or institutions to improve or set up relations through exchanges and, as far as possible, to solve their conflicts.”<sup>15</sup>

This proposed definition sets mediation apart from negotiation in a few ways. First, mediation requires intervention by a third party whereas negotiation can be conducted without intervention.<sup>16</sup> Second, negotiation is about quick fixes whereas mediation is about finding a long-term solution with a view towards restoration.<sup>17</sup> Third, while the goal of negotiation is compromise, mediation seeks a win-win result.<sup>18</sup>

As for the distinction between conciliation and mediation, Faget turns to etymology: “[C]onciliation is etymologically defined by its objective (*conciliare* means 'to unite') whereas mediation is defined by its methodology (*mediare* means 'to be in the middle').”<sup>19</sup>

It must be mentioned, however, that *Mediation in Political Conflicts* falls short of Faget's vision of a book which is focused solely on mediation as distinct from other non-litigious processes of dispute resolution. Of the eight substantive chapters which follow his introductory chapter, only two explicitly treat mediation as defined by Faget.<sup>20</sup> The other six chapters either

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<sup>10</sup> *Id.* at 3.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Faget, *supra* note 1, at 3.

<sup>14</sup> *Id.* at 2 (“I adopt here a most uncommon position, insofar as the word 'mediation' is often synonymous with 'negotiation' in international relations. Such an undifferentiated usage is conspicuously visible in many scholarly works . . . .”).

<sup>15</sup> *Id.* at 3.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Faget, *supra* note 1, at 3.

<sup>19</sup> *Id.*

<sup>20</sup> Manel Canarymeres & Anne Catherine Salberg, *Historical Contribution to the Ethical and Methodological Principles of Mediation*, in *MEDIATION IN POLITICAL CONFLICTS: SOFT POWER OR COUNTER CULTURE?*, *supra* note 2, at 31-44; Xabier Itçaina, *The Power of Powerlessness: Religious Actors' Peaceful Mediation in the Basque Conflict*, in *MEDIATION IN POLITICAL CONFLICTS: SOFT POWER OR COUNTER CULTURE?*, *supra* note 2, at 65-88.

give mediation a different definition,<sup>21</sup> are ambiguous as to the subject they treat,<sup>22</sup> or barely treat mediation at all.<sup>23</sup> While this divergence does not detract from the ultimate value of these chapters, it does work to negate the cohesion and uniformity of approach that Faget holds *Mediation in Political Conflicts* out as having.

#### 4. *Modes of Mediating and the Power Debate*

A mediator can assume several positions in relation to a political conflict. Mediators may be facilitators, formulators or manipulators.<sup>24</sup> These different roles represent the different degrees of involvement that a mediator can have in the process. As a facilitator, the mediator exerts the least control with the result that the parties to the mediation end up shaping the process and giving it content.<sup>25</sup> The role played by the facilitator is illustrated by the approach of the Norwegian mediators in the Israeli-Palestinian conflict of 1993.<sup>26</sup> The emergent “Norwegian model” is characterized by “joint action from both state actors and NGO representatives, secrecy and a conception of mediation based on mutual trust and not on power.”<sup>27</sup>

As a formulator, the mediator assumes more control over the peacemaking process. The formulator sets both the procedural and the substantive agenda by, for example, establishing how many and what types of sessions to have, and by proposing solutions to the parties.<sup>28</sup> Lastly, as a manipulator, the mediator uses power, persuasion and resources to “present ultimatums—what Jimmy Carter did for the successful conclusion of the Camp David agreement in 1979.”<sup>29</sup> Although it is a commonly held view that mediators should not limit themselves to one specific role but should adapt their approach according to the needs of the specific situation, Faget notes

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<sup>21</sup> Viola Boelscher, *Human Rights and Mediation—A Much Discussed but not Resolved Relationship: Views on International Cooperation*, in *MEDIATION IN POLITICAL CONFLICTS: SOFT POWER OR COUNTER CULTURE?*, *supra* note 2, at 45 (“[T]he term ‘mediation’ will be used in a broad sense, based on conflict transformation including pre-conciliation, conciliation and reconciliation phases and the whole area of peace building.”).

<sup>22</sup> Pierre Anouilh, *From ‘Charity’ to ‘Mediation’, From the Roman Suburbs to UNESCO: The Rise of the ‘Peace Brokers’ of the Community of Sant’Egidio*, in *MEDIATION IN POLITICAL CONFLICTS: SOFT POWER OR COUNTER CULTURE?*, *supra* note 2, at 89-114 (using “negotiators,” “mediators” and “peace brokers” interchangeably); Aurélien Colson & Alain Pekar Lempereur, *A Bridge to Lasting Peace: Post-Conflict Reconciliation and Mediation in Burundi and the Democratic Republic of Congo*, in *MEDIATION IN POLITICAL CONFLICTS: SOFT POWER OR COUNTER CULTURE?*, *supra* note 2, at 153-169 (treating “negotiation,” “mediation” and “reconciliation”).

<sup>23</sup> Pilar Gil Tébar, *The Catholic Church as Mediator in the Chiapas Conflict*, in *MEDIATION IN POLITICAL CONFLICTS: SOFT POWER OR COUNTER CULTURE?*, *supra* note 2, at 115-134 (outlining the Church’s historical role as an “advocate” for the indigenous people in the Chiapas Conflict); Elise Féron, *Management of Violence and Mediation Practices at Urban Interfaces in Northern Ireland*, in *MEDIATION IN POLITICAL CONFLICTS: SOFT POWER OR COUNTER CULTURE?*, *supra* note 2, at 137-152 (exploring community response efforts to local ethnic violence); Monika M. Sommer, *Traditional Approaches and their Relevance to Coping with Contemporary Conflicts: Experiences from a Border Region in Africa*, in *MEDIATION IN POLITICAL CONFLICTS: SOFT POWER OR COUNTER CULTURE?*, *supra* note 2, at 171-196 (treating traditional African conflict resolution ceremonies).

<sup>24</sup> Faget, *supra* note 1, at 8.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 19 n.16.

<sup>28</sup> *Id.* at 8.

<sup>29</sup> Faget, *supra* note 1, at 8.

that in order to wear the manipulator's hat, a mediator must command the type of international influence that is wielded by, say, the President of the United States.<sup>30</sup>

Closely related to the discussion of the different roles of the mediator is the power debate. Faget identifies seven forms of power that a mediator may have: The power to reward; the power to sanction; the power of expertise; the power of legitimate authority; the power of pre-existing relations; the power of the messenger to “go-between” and inform the parties; and the “power of powerlessness.”<sup>31</sup> The issue of power divides the field with some believing that warring parties will only listen to a mediator who can hold something over their heads. Others believe that the only true mediator is the one with no power. Still others believe that a mix of the two approaches is best, with the mediator initially extolling no power but then later switching to a power-based approach.<sup>32</sup>

## B. Disparate Approaches: Realism v. Pluralism

After an accessible introduction into the basic principles of political mediation, Faget launches into the pith of his argument. As mentioned above, the objective of *Mediation in Political Conflicts* is to analyze various mediation strategies in the realm of political peacemaking.<sup>33</sup> This analysis can be approached from one of two theoretical perspectives: The realist paradigm and the pluralist paradigm.<sup>34</sup> Faget is a proponent of the latter, believing that the pluralist approach lends itself to a more dynamic understanding and adaptable application of mediation as a tool for political peacemaking, and therefore, that it is the proper framework through which to further develop political mediation strategies.<sup>35</sup>

Faget rejects the realist paradigm as unworkably Western. He notes that the realist paradigm is “clearly based on an ethnocentric Western vision of the world” and is accordingly not sensitive to cultural variations that bear on the ultimate efficacy of political mediation globally.<sup>36</sup> For example, realists treat peace as the ultimate goal of mediation.<sup>37</sup> The only goal of mediation, however, should be to place the mediator “in the middle” in the hopes that communications between the parties will be established.<sup>38</sup> By placing peace on a pedestal, realists ignore “the potential positive dimension of conflict for countries or peoples under domination.”<sup>39</sup> Treating peace as the ultimate goal can be to the detriment of the parties if the complex underlying causes which sparked the conflict are not fully addressed. Indeed, in “preaching peace,” political mediators bear a close resemblance to religious missionaries: “[T]he old missionaries preached God and salvation, the new missionaries preach peace and democracy. . . . Both have a gospel, even if they do not like to admit it, that someone from the West will save the Rest of the planet.”<sup>40</sup>

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<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 9.

<sup>32</sup> *Id.* at 9-10.

<sup>33</sup> *Id.* at 2.

<sup>34</sup> Faget, *supra* note 1, at 2.

<sup>35</sup> *Id.* at 5-20.

<sup>36</sup> *Id.* at 5.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 3.

<sup>39</sup> Faget, *supra* note 1, at 5.

<sup>40</sup> *Id.* at 19-20.

Because the realist paradigm treats peace as the ultimate goal of mediation, it follows that the realist literature is geared towards finding “the golden formula that would bring peace to the world.”<sup>41</sup> In the process of trying to divine this formula, realists assign values to different outcomes so as to tell which mediations are “successful.” According to Faget, although this approach is certainly helpful in some regards, it is ultimately biased because it “gives more importance to the short to midterm objective result—signing a treaty, a ceasefire, an arrangement, opening talks, curbing violence—than to the . . . mid to long-term subjective consequences [such as] the quality of communication, a change in the populations’ attitude, [or] the building of common projects.”<sup>42</sup>

In contrast to the realist’s quantitative approach to political mediation, the pluralist approach, championed by Faget, is sufficiently flexible to acknowledge the variety of mediation processes and the diversity of their results. The pluralist paradigm embodies a more comprehensive approach to assessing political mediation; one that is capacious enough to encompass the “transformative model” of mediation. The transformative model is largely concerned with party empowerment and recognition of the “Other.”<sup>43</sup> “According to this model, conflicts [are] crises in human interaction.”<sup>44</sup> The goal of the mediator is thus to get the parties talking: “Reaching an agreement [is] not the ultimate goal; what matter[s] [is] the quality of communication between the players.”<sup>45</sup>

As is illustrated throughout the rest of the book, a qualitative approach to analyzing mediation strategies which encompasses the transformative model is indeed better suited in dealing with the complexities of modern political conflicts. This position is not only beneficial in a purely academic sense, but it is also practically significant. In light of the reality that the field of political mediation lacks standardized concepts and practices,<sup>46</sup> the pluralist paradigm is an important guiding principle going forward.

### C. Conclusion and Analysis

The first chapter by Jacques Faget is a good illustration of how *Mediation in Political Conflicts* can sometimes have a broad appeal at the expense of not being immediately relevant to anyone in particular. Certain material in this chapter was generally informative and would prove useful as an introduction to mediation in general, and to political mediation in particular. This general introductory material, which might be redundant to a seasoned practitioner, was enmeshed in a larger discussion of theoretical paradigms that would be inaccessible to the average reader and might only serve to inform a policy advisor, legal scholar, or political mediator. That being said, however, the first chapter by Faget is one of the most informative and comprehensive chapters of the whole book. It truly provides something for everyone and its content and tone effectively sets the stage for the chapters which follow.

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<sup>41</sup> *Id.* at 5.

<sup>42</sup> *Id.* at 10.

<sup>43</sup> *Id.* at 15.

<sup>44</sup> Faget, *supra* note 1, at 15.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 14.

### III. THE ETHICAL STAKES OF MEDIATION PRACTICES

#### A. Essential Rules

As has been shown, the political mediator can wear many hats. But does that mean there can be no universal set of ethics to govern his or her behavior? Manel Canarymeres and Anne Catherine Salberg, in chapter two of *Mediation in Political Conflicts*, answer this question in the negative.<sup>47</sup> These authors look to the history of political mediation—specifically at the Treaty of Westphalia of 1648, which was mediated by Alvisio Contarini and Fabio Chigi, and which put an end to the Thirty Years' War—and gather core ethical standards that, although central to the “successful development of a mediation process, are weak in many political 'mediation' processes” of modern times.<sup>48</sup> This chapter presents a pertinent, practical, and accessible analysis of the ethical role of the political mediator.

#### 1. Independence

The question of mediator independence goes to the issue of trust and acceptance by the parties.<sup>49</sup> As such, independence of the mediator is one of the most fundamental aspects to mediating political conflicts – conflicts that are more often than not rife with mistrust. The more a mediator can maintain a disinterested posture towards the underlying controversy, the more efficacy the process will have.<sup>50</sup> This makes sense in the light of human nature: If one party believes that the mediator is acting on behalf of the other party, that party will become hostile to the mediation process itself.

The mediation efforts in connection with the Treaty of Westphalia lasted five years.<sup>51</sup> This protracted duration was mainly due to the parties' suspicions and distrust of the mediators.<sup>52</sup> And even though Contarini and Chigi were instructed to “overcome difficulties with patience and forbearance,”<sup>53</sup> the records indicate that Contarini nearly abandoned his role because he was tired of the bribery on the one hand, and the incessant finger-pointing on the other.<sup>54</sup> To their great acclaim, however, Contarini and Chigi eventually won the trust of the warring elites, putting an end to the Thirty Years' War and bringing attention to the central import and power of mediator independence.<sup>55</sup>

The idea of mediator independence is just as central to the efficacy of political mediation today.<sup>56</sup> But can there be such a thing as a truly independent mediator in today's world? After all, as Faget notes, modern political mediation is “often elaborated 'from the top' . . . carried out by NGOs financially dependent on governments.”<sup>57</sup> So does this mean that modern political

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<sup>47</sup> Canarymeres & Salberg, *supra* note 20, at 36, 39-44.

<sup>48</sup> *Id.* at 43.

<sup>49</sup> *Id.* at 40.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at 34.

<sup>52</sup> Canarymeres & Salberg, *supra* note 20, at 33-35.

<sup>53</sup> *Id.* at 34.

<sup>54</sup> *Id.* at 35.

<sup>55</sup> *Id.* at 35-36.

<sup>56</sup> *Id.* at 40.

<sup>57</sup> Faget, *supra* note 1, at 20.

mediation is doomed to be ineffective? Not necessarily. Canyameres and Salberg indicate that Chigi and Contarini were themselves closely linked to the Roman Catholic Church, which was a party to the conflict.<sup>58</sup> Therefore, absolute independence is not necessary. Rather, “[t]he independence of the mediator means that . . . the financing for his activity should respect his autonomy of action.”<sup>59</sup>

## 2. *Impartiality*

Closely related to the issue of independence is that of impartiality. Mediator impartiality is geared toward winning the confidences of the disputing parties.<sup>60</sup> A mediator achieves this by not judging the conflict, that is, by remaining indifferent.<sup>61</sup> Once a mediator wins a party's confidence, he or she must keep it or risk endangering the process. A key concept to mediator impartiality is therefore confidentiality.<sup>62</sup>

Mediator impartiality—re-enforced by the mediator's strict adherence to confidentiality—is indisputably every bit as important today to the efficacy of political mediation as it was in the days of the Treaty of Westphalia. But does this mean that modern political mediation must be conducted outside the purview of the media?<sup>63</sup> This is a difficult question in light of the public's thirst for transparency. Surely a compromise can be struck wherein general information about the process can be publicized, while the work of the mediator remains secret.<sup>64</sup> At the end of the day, however, the political parties will have to trust the mediator to resist the claim to TV fame.<sup>65</sup>

## 3. *Lack of Decision-Making Power*

The model of mediation which emerged from the practice of Contarini and Chigi was one of “letting common interests prosper,”<sup>66</sup> a model based on the belief that “an agreement can only be reached as a result of the ‘willingness of the parties.’”<sup>67</sup> Again, this ethical command makes sense in the light of human nature: The more responsibility the mediator shoulders for the resolution of the conflict, less responsibility will be assumed by the parties, who might then consider a final agreement as externally imposed, and who consequently, might be less likely to abide by the resolution. In this way, “[a]n excess of support has a negative effect on . . .”<sup>68</sup> the process. So as to maintain a lack of decision-making power, Contarini and Chigi were instructed “to avoid proposing solutions to the parties,” and “not to agree to arbitrate.”<sup>69</sup>

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<sup>58</sup> Canyameres & Salberg, *supra* note 20, at 40.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at 40-41.

<sup>61</sup> *Id.* at 37, 41.

<sup>62</sup> *Id.*

<sup>63</sup> Canyameres & Salberg, *supra* note 20, at 41.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* at 41-42.

<sup>66</sup> *Id.* at 38.

<sup>67</sup> *Id.* at 43.

<sup>68</sup> Canyameres & Salberg, *supra* note 20, at 42.

<sup>69</sup> *Id.* at 34.

Canyameres and Salberg argue that the proscription against mediator decision-making power is just as feasible and relevant today.<sup>70</sup> This does not mean, however, that the proscription is a command that mediators extol the power of powerlessness; rather, the mediator remains free to assume various degrees of control over the process.<sup>71</sup> The mandate that the mediator be without decision-making power is simply a command—no matter how much power the mediator assumes—that the mediator always considers whether to “persist or desist with regard to the feasibility of the mediation, if his intervention may also be counterproductive.”<sup>72</sup>

## **B. Human Rights Approach**

The ethical responsibilities of the political mediator take on a new dimension in conflicts involving human rights violations. In chapter three, Viola Boelscher argues that, in the face of human rights violations, political mediation efforts risk being unethical and ineffectual if the rights of the victims are not given due weight: First, mediation efforts risk being unethical in political conflicts involving human rights violations because, if a mediator were impartial—that is, nonjudgmental—the mediator would actually appear partial towards the violators.<sup>73</sup> Second, political mediation efforts risks being ineffectual in conflicts in which there have been human rights violations if the rights of the victims are not given due weight because it is not “possible to build a lasting peace if none of the economic, social, political and civil human rights [issues] are addressed.”<sup>74</sup> Human rights violations are often at the core of political conflicts and if the underlying issues are not resolved—or even addressed in the mediation process—conflict is sure to erupt again.<sup>75</sup>

After analyzing the “complex relationship between human rights and mediation”<sup>76</sup> in Guatemala, Uganda, Afghanistan, the Philippines and Colombia, Boelscher proposes a human rights based approach to mediating political conflicts involving human rights violations.<sup>77</sup> Although there is “no common formula,”<sup>78</sup> the main characteristic of such a mediation effort is its integration of all affected groups into the mediation process.<sup>79</sup>

## **C. Conclusion and Analysis**

Unlike the first chapter by Faget, which is at times only useful to the beginner as an introduction, and at other times only useful to the practitioner, legal scholar or policy advisor, chapter two by Canyameres and Salberg is relevant to the full spectrum of potential readers. First, the basic ethical principles which can be drawn from the experiences of Contarini and Chigi are useful to introduce the unseasoned but curious beginner. Second, because these basic ethical

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<sup>70</sup> *Id.* at 42.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> Boelscher, *supra* note 21, at 60.

<sup>74</sup> *Id.* at 57.

<sup>75</sup> *Id.* at 59.

<sup>76</sup> *Id.* at 45.

<sup>77</sup> *Id.* at 59.

<sup>78</sup> Boelscher, *supra* note 21, at 59.

<sup>79</sup> *Id.* at 60.

principles are shared across specialities within the larger field of mediation,<sup>80</sup> chapter two of *Mediation in Political Conflicts* serves as a beneficial reminder to the mediator practicing in other fields of the importance of these ethical precepts. Finally, because chapter two outlines one of the first successfully mediated political disputes, and draws comparisons with modern political mediation, it is a useful contribution to the political mediator, policy advisor and legal scholar dealing with the issue of ethics in modern political mediation.

Chapter three by Viola Boelscher is admittedly more limited in appeal and might only be relevant to political mediators practicing internationally, policy advisors and academics. That is not to say, however, that the layman or the mediator practicing in other fields will not find this chapter to be an accessible thought experiment: By highlighting the tension between the ethical duties of a mediator, the cultural context of any given political dispute, and the jus cogens norm against human rights violations, chapter three of *Mediation in Political Conflicts* is an important contribution to any reader's understanding of the ethical stakes of political mediation in the modern world.

#### IV. SELECTED CASE STUDIES

Although *Mediation in Political Conflicts* presents the reader with six chapters providing just as many case studies, only three chapters will be explored here. While the other three case studies also offer beneficial perspectives, they were ultimately not selected for review because their contributions are either redundant with other chapters, or of limited relevance to the practical task of analyzing political mediation strategies.

##### A. The Catholic Church in the Basque Conflict

Chapter four, by Xabier Itçaina, presents the reader with an analysis of the mediation efforts of the Roman Catholic Church in the Basque country conflict. Though “religious actors have long represented the second largest group of political mediators in the world,”<sup>81</sup> it does not follow that the mediation efforts of religious actors are effortless. Rather, the mediation efforts of the Catholic Church in the Basque country seem to be complicated *because* they are made by the Church. Putting it mildly, Itçaina observes that “the Church's commitment to mediation in the Basque conflict has not gone smoothly.”<sup>82</sup> The shortcoming of the Church is seen as an effect of “the controversy over its supposed impartiality, independence and absence of decision-making power.”<sup>83</sup>

First, the independence of the Church is greatly debated due to its historical involvement in the conflict.<sup>84</sup> Indeed, the Church's mediation efforts in the Basque conflict are deployed by the “Basque clergy” seated in the “Basque Catholic Church”—the very nomenclature tends to

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<sup>80</sup> Canarymeres & Salberg, *supra* note 20, at 39 (“Other fields of mediation such as family, commercial or civil mediation, which have consolidated over the past decades, are supported by ethical principles that are not much different from those described above.”).

<sup>81</sup> Itçaina, *supra* note 20, at 67.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

suggest a stake in the underlying conflict.<sup>85</sup> This perceived insider status engenders mistrust.<sup>86</sup> Second, the Church's impartiality is also questioned.<sup>87</sup> However, unlike the Church's perceived lack of independence, the lack of impartiality might not be so detrimental, as partial mediators are not categorically precluded from winning the confidences of the parties: “[S]uccessful mediators need not systematically be impartial, and the game theory model reveals that bias, to a certain extent, notably through sharing information, is not only acceptable but sometimes necessary.”<sup>88</sup> However, it remains an open question whether the Church's perceived partiality is workable in the Basque conflict. Lastly, the Church is seen as wielding significant influence over political decision-making which seems to undercut their ability to allow the conflicting parties to come to a voluntary agreement.<sup>89</sup>

## B. The Private Community as Mediator

In chapter five, Pierre Anouilh analyzes the rise of Sant'Egidio—a private Italian community—as an internationally accepted political mediator. Although “Sant'Egidio is, above all, a Catholic organisation,”<sup>90</sup> it is not a branch of the Church in the way that the Basque Church is. Rather, the community is a private one which originated as a charitable organization that has since come to be seen as a legitimate political mediator.<sup>91</sup>

Sant'Egidio emerged on the international stage with the successful mediation of the political conflict in Mozambique in 1992.<sup>92</sup> The “Mozambican success,” however, has yet to be duplicated.<sup>93</sup> Even so, Sant'Egidio remains a highly acclaimed player in the field of political mediation.<sup>94</sup> Anouilh explains this curious phenomenon by reference to Sant'Egidio's “symbolic capital.”<sup>95</sup> Anouilh defines symbolic capital as a “cultural form of *credit* .... It is not a universal form of capital; it is highly historical and deeply entrenched in socio-cultural practices .... One of the main aspects of symbolic capital is that it is largely unrecognised as *capital* and recognised as *legitimate competence*.”<sup>96</sup>

Anouilh identifies several “symbolic goods” possessed by Sant'Egidio. First, from the beginning, the community has displayed economically disinterested behavior which gives the community independence.<sup>97</sup> Second, the community's founders come from wealthy families and are well-educated and well-known intellectual and religious figures in Italy and worldwide.<sup>98</sup> Third, and related to the second point, the community's founders belong to very powerful social networks.<sup>99</sup> Fourth, by virtue of their strong background in charitable work, Sant'Egidio is seen

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<sup>85</sup> *Id.* at 75.

<sup>86</sup> Itçaina, *supra* note 20, at 80.

<sup>87</sup> *Id.* at 75.

<sup>88</sup> *Id.* at 77.

<sup>89</sup> *Id.* at 80-82.

<sup>90</sup> Anouilh, *supra* note 22, at 91.

<sup>91</sup> *Id.* at 112.

<sup>92</sup> *Id.* at 90.

<sup>93</sup> *Id.* at 112.

<sup>94</sup> *Id.* at 111.

<sup>95</sup> Anouilh, *supra* note 22, at 104-11.

<sup>96</sup> *Id.* at 104 (citing PIERRE BOURDIEU, *THE LOGIC OF PRACTICE* (1990)).

<sup>97</sup> *Id.* at 105-06.

<sup>98</sup> *Id.* at 107.

<sup>99</sup> *Id.* at 107-09.

as honest and virtuous.<sup>100</sup> These “symbolic goods” identified by Anouilh lend Sant'Egidio an aura of competence despite its not having successfully mediated a political dispute in nearly two decades.

### C. NGO Mediation in Burundi and the Democratic Republic of Congo

Chapter eight, by Aurélien Colson and Alain Pekar Lempereur, explores the impact of the work of ESSEC IRÉNÉ, a non-governmental organization, on two recent political conflicts in Africa. This NGO has developed a mediation mechanism which has been implemented in Burundi since 2003 and in the Democratic Republic of Congo since 2006.<sup>101</sup> The mechanism begins as a workshop that includes not only political representatives from every level—including officials and non-officials such as rebels—“but also representatives from the civilian, economic and media worlds.”<sup>102</sup> The framework is a five day retreat.<sup>103</sup> For the first three days, issues relating to the conflict are not discussed; rather the focus is on building relationships.<sup>104</sup> It is only in the last two days that the participants begin to identify issues and consider solutions.<sup>105</sup> At the end of the five days, the process is not over; the initial workshop merely marks the beginning and follow-up workshops are held every three months with the result that, over time, essential networks are developed.<sup>106</sup>

Colson and Lempereur explore three distinctive marks of this mechanism: First, this mediation mechanism focuses on the parties and “necessitates the appropriation or ownership of the mechanism by local actors.”<sup>107</sup> Second, this process takes a long-term view as evidenced by the holding of follow-up workshops.<sup>108</sup> Third, this form of mediation “demands the integration of the most radical actors” into the process.<sup>109</sup>

### D. Conclusion and Analysis

The case studies reviewed above were selected because they each illustrate a different aspect of the “recent rise in mediation strategies and the emergence of new players in the peace building process”<sup>110</sup> which *Mediation in Political Conflicts* analyzes. Chapter four, by Xabier Itçaina, was selected for review primarily because “religious actors have long represented the second largest group of political mediators in the world,”<sup>111</sup> and Itçaina effectively outlines the dimensions of the role of the Catholic Church as mediator in the Basque county conflict. By illustrating the tension that exists in the mediation role of the Church, and by providing a pertinent example of how critical mediator independence, impartiality and lack of decision-

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<sup>100</sup> Anouilh, *supra* note 22, at 111.

<sup>101</sup> Colson & Lempereur, *supra* note 22, at 158.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.* at 159.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> Colson & Lempereur, *supra* note 22, at 161.

<sup>107</sup> *Id.* at 160.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> Faget, *supra* note 1, at 2.

<sup>111</sup> Itçaina, *supra* note 20, at 67.

making power can be to political mediation—even where the mediator is as prominent as the Catholic Church—chapter four has significant value and is worth exploring independently.

Chapter five, by Pierre Anouilh, was selected because the case of the community of Sant'Egidio demonstrates how private citizens and communities can become dominant players in the global political mediation market. Because the use of the private community as a legitimate political mediator is currently on the rise,<sup>112</sup> Anouilh's inquiry into the status of Sant'Egidio is pertinent to the overarching analysis of rising mediation strategies and, as such, is a practical contribution to any reader's understanding of modern political mediation.

Chapter eight, authored by Aurélien Colson and Alain Pekar Lempereur, illustrates an innovative mediation mechanism which has been implemented in two violent political conflicts to date. This case study was selected for review because “mediation is often carried out by NGOs”<sup>113</sup> and Colson and Lempereur provide the reader with a fascinating glimpse at the work of one non-governmental organization, ESSEC IRÉNÉ, and the impact that the strategies employed by this NGO have had in both Burundi and the Democratic Republic of Congo.

Each of these three chapters would prove useful to political mediators, policy advisors to programs developing and implementing political mediation, and to legal scholars involved with political mediation. Because the case studies reviewed above were accessible and informative, they would also prove generally useful to the novice and to mediators in other fields whose curiosities are piqued by political mediation. The case studies that were not selected for review are still informative and interesting in their own right and might find appropriate audiences in legal scholars, anthropologists or historians. In the end, however, the three chapters which were not selected had too remote a connection to the overall inquiry into the rise of mediation strategies.<sup>114</sup>

## V. CONCLUSION

In the final chapter of *Mediation in Political Conflicts*, Jacques Faget attempts to answer the question posed by the book's subtitle: Is political mediation an exercise of soft power complimenting traditional diplomacy; or, is political mediation a counter culture movement initiated “from below?”<sup>115</sup> Faget believes there is more support for a finding that modern political mediation is an exercise of soft power, formulated “from above.”<sup>116</sup> Although the significance of the “from above” versus “from below” taxonomy is not immediately clear, the reader is led to believe that the division is pertinent to a workable understanding of political mediation going forward.

With his eye to future research, Faget suggests two variables for further study: The independence of the political mediator; “and the methodology of the mediation process.”<sup>117</sup> These two variables are significant because “[t]he neotenic potentialities of mediation—in the sense of a metamorphosis of political conflict regulation—are all the stronger if mediators are

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<sup>112</sup> Anouilh, *supra* note 22, at 103.

<sup>113</sup> Faget, *supra* note 1, at 20.

<sup>114</sup> See *supra* note 23 and accompanying text.

<sup>115</sup> Faget, *supra* note 1, at 2.

<sup>116</sup> Jacques Faget, *Conclusion, in* MEDIATION IN POLITICAL CONFLICTS: SOFT POWER OR COUNTER CULTURE?, *supra* note 2, at 198.

<sup>117</sup> *Id.* at 199.

independent from the powers that be and if they adopt a non-directive and transformative methodology.”<sup>118</sup>

In conclusion, *Mediation in Political Conflicts* is an indispensable contribution to the field of political mediation. The book, however, is not beyond criticism. One glaring problem the reader cannot help but notice is that *Mediation in Political Conflicts* seems to lack a specific audience. While the title of the book indicates that its content might only be relevant to political mediators and other practitioners or scholars directly involved with political mediation, some chapters would be accessible and informative to a broader audience of mediators in other fields, while other chapters would only be of interest to a more specialized group of readers, such as legal anthropologists or historians.

A second issue with the book is that it lacks a uniform approach. While this is partly due to the fact that *Mediation in Political Conflicts* is authored by eleven different individuals with various backgrounds, it is also due to a lack of consistency in vocabulary used and topics treated from chapter to chapter. Despite Faget's strong characterizations of the book in his introductory chapter—holding *Mediation in Political Conflicts* out as a pluralist analysis of the rise of mediation strategies focusing solely on mediation as distinct from other non-litigious dispute resolution processes<sup>119</sup>—the reality of the matter is that *Mediation in Political Conflicts* falls short of this vision. Maybe if the book were formatted so that the authors were in dialogue with one another—with one author responding to the last, and so on—the book would have presented a more cohesive approach to political mediation while still maintaining its multiplicity of views.

Notwithstanding the criticisms which might be leveled at the book, *Mediation in Political Conflicts* rises to the level of a noteworthy work. Its significance is due primarily to two facts: First, a majority of modern political conflicts are mediated.<sup>120</sup> Second, as of yet, there are no standardized concepts or practices in the field of political mediation.<sup>121</sup> Because *Mediation in Political Conflicts* furthers a flexible approach to the understanding and development of modern political mediation strategies, this book represents an indispensable step in the movement towards developing mediation practices that respond to the reality of political conflicts today.

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<sup>118</sup> *Id.*

<sup>119</sup> Faget, *supra* note 1, at 2.

<sup>120</sup> *Id.* at 1.

<sup>121</sup> *Id.* at 14.