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MEDIATION: A PROMISE UNFULFILLED?

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Almost half a century after the seminal Pound Conference of 1976, which can be considered as the launching pad of the ADR movement in the US and, later on, in the entire world, reports and anecdotic evidence cited by academics and practitioners point to the fact that mediation has not taken off as a mainstream method of conflict resolution. But is it really true? This paper asks two questions—first, how do we know mediation is still a laggard and, second, do we search in the right places when we look for how people and organizations use mediation—and then endeavors to find a number of plausible answers to both of them. It points to the fact that there are very few systematic databases containing reliable statistics regarding the use of mediation; it also sheds a light on community-based and organization-based use of ADR methods, that are completely disregarded by researchers and promoters of mediation, in Europe and elsewhere.

Keywords: alternative dispute resolution, mediation, community-based conflict resolution, databases, conflict, conflict resolution, conflict management, justice, courts of law, multi-door courthouse, legal systems, lawyers, mediators.

Starting line: Roscoe Pound and the Pound Conference

It all started on August 29th, 1906. At the annual ABA meeting in St. Paul, Minnesota, judge Roscoe Pound, a 36-years old Nebraska law professor, spoke to a group of lawyers, judges, and academics about "The Causes of Popular Dissatisfaction with the Administration of Justice" (Pound, 1906). That speech can be considered the launching moment of the ADR movement in the US, which were followed by the rest of the world. It wasn't a specific plea for the introduction of this alternative methods of dispute resolution, but rather a sharp critique of the American justice system. As a matter of fact, his ABA address consisted of 18 separate critiques at the American system of civil justice, which he broke these down into four primary categories: (1) causes for dissatisfaction with all legal systems; (2) causes for dissatisfaction with the "peculiarities" of the Anglo-American legal system specifically; (3) causes for dissatisfaction with American judicial organization and procedure; and (4) causes for dissatisfaction with the environment of American judicial

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administration (Traum and Farkas, 2017). Even if today, these might sound common place, at that moment they were perceived as a shock, even a blasphemy—the ABA initially refused to publish the address, and many participants refuted Pound's statements regarding what they perceived as "the most refined and scientific system ever devised by the wit of man." (Lee, 1981, cited by Traum and Farkas, op.cit.). Nonetheless, his critiques have since become an integral part of the ADR advocates' discourse.

In 1976, a conference convened by Warren E. Burger, the Chief Justice of the United States, formally entitled the "National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice" and known ever since as "The Pound Conference", took the ball even farther. If the ABA event in 1906 was only about the critiques launched against the system of civil justice, the new one moved into the field of specific policy proposals. Burger, whose views regarding the American justice system coincided with Pound's, took the initiative of organizing the conference with the official purpose of assessing if and how were the Pound critiques addressed and if more can be done. In his 1976 Annual Report on the State of the Judiciary, Chief Justice Warren, who will become a leading advocate of ADR methods, presented the conference as "an effort to peer into the future, to see where we ought to go, and to develop a roadmap to show us how to get there" (Warren, 1976).

In his efforts to reform the justice system and introduce out-of-court ways of addressing conflicts, Chief Justice Warren was seconded by another rising star of the ADR movement, Frank Sander. In his keynote address at the Pound Conference, Sander, a Harvard Law School faculty since 1959, detailed his vision of a courthouse of the future, where disputes were to be sorted in different categories, some of them going to litigation, but others deferred to other processes, like facilitation, mediation and arbitration. It was his idea that disputes should be sorted and addressed differently, using a multitude of methods beyond the classic trial in the court of law, that constituted the launching pad for the ADR movement of the late 1970s, the 1980s and 1990s that would see the adoption and multiplication of ADR programs all across the United States—some tens of them in the 1970s, more than 200 in the 1980s and double that number in the 1990s.

In the aftermath of the Pound Conference, there have been tremendous progress regarding the implementation, acceptance and encouragement of ADR. The US Congress has acknowledged the importance and relevance of ADR and adopted legislation such as the Judicial Improvements and Access to Justice Act in 1993 and the Alternative Dispute Resolution Act in 1998. The movement crossed the Atlantic and many EU countries followed the US by implementing justice reforms that made provisions for the use of ADR methods, mainly mediation and arbitration. The EU itself took the torch further by enacting the Directive 2008/52/EC of the European Parliament and of the Council on Certain Aspects of Mediation in Civil and Commercial Matters", dating from 21 May 2008, being in force since 13 June 2008 and requiring the European Member States (except Denmark) to implement the necessary laws, regulations and administrative provisions by 20 May 2011 at the latest. Many EU member states, although some quite reluctantly, followed the lead and adopted the laws permitting and encouraging the use of mediation prior to or during the trial in the court of law. In 2014, the European Parliament assessed the results

of the initial mediation directive and decided to adopt a new recommendation, favoring mandatory measures to support the use of mediation by EU litigants be mandated, citing the benefits to those engaging in mediation processes. Mediation and other ADR methods were riding high on the tide of justice reform, promising to overtake litigation in the courts of law as the main process of dispute resolution.

The implementation of ADR programs and their apparent results

That path proved to be one full of obstacles. If many in the legal profession seemed enthusiastic in the aftermath of Pound Conference about the opportunities presented by the ADR methods, even more were skeptical or downright opposed. While in the US and other English-speaking countries, significant progress has been made, and in some areas, like commercial disputes, mediation is widely used, that is not true about many countries across Europe or other parts of the world. Presenting the results of the study on '*Rebooting*' the Mediation Directive, Giuseppe De Palo talked about the "European Union mediation paradox"—the existence of a "highly acclaimed, efficient, effective process that very few people use", in his own words—and the need of "*rebooting*" the implementation of mediation process in the EU in the light of the limited effects of current legislation upon the number of civil cases mediated (De Palo, 2013). The report follows a series of papers authored by De Palo and his collaborators, all of them highlighting, on one side, the benefits of using mediation and the costs of not using it, and on the other side, the very limited use of mediation in the EU member states, the very "mediation paradox" mentioned above (De Palo, 2010; De Palo, 2011).

A brief look at the numbers might be useful. The estimated number of mediations in the EU member states shows that there were more than 10,000 cases in Germany, Italy, Netherlands and UK, between 5,000 and 10,000 in Hungary and Poland, between 2 000 and 5000 in Belgium, France and Slovenia, between 500 and 2,000 in Austria, Denmark, Ireland, Romania, Slovakia and Spain, and less than 500 in Bulgaria, Croatia, Cyprus, Czech Rep., Estonia, Finland, Greece, Latvia, Lithuania, Luxembourg, Malta, Portugal and Sweden (De Palo, 2013). If we compare the 1,500 cases registered in Romania in 2011, for example, with the number of cases in courts—more than 4 million for a country of 19 million—it is clear that mediation is far from fulfilling its initial promises.

In England and Wales, the 2021 CEDR's Annual Mediation Audit (CEDR, 2021) reported an estimated 16,500 cases per annum for the year to 31 March 2020 (before the COVID-19 pandemic), representing a 38% increase on the 2018 figure, which was 12,000 per annum. By way of comparison, in 2003, the first audit reported just under 2,000 mediation cases. This, of course, illustrates how much commercial mediation has progressed in 17 years. Nonetheless, while the numbers look positive, especially compared to other European countries, they are still small for a population of (roughly) 59 million.

Even in Italy, where, following the complicated and fraught history of the Legislative Decree Nr. 28 of 2010, reformed in 2013, mediation is mandated as a procedure to be attended by the conflicting parties prior to registering a lawsuit in court, with a possibility of op-out, the number of mediations evolved from 60,810 mediation proceedings in 2011,

with 9,912 agreements, (a 16% success rate) to 151,923 mediation proceedings in 2018, with 20,965 agreements, representing a 14% success rate. Again, while the number is large, both on absolute terms and in comparison to other EU member states, it should be noted that 3,220,928 new proceedings were filed in courts in 2018 (Staechele, 2019). Also, a clear effect of mandating people to use mediation instead of letting them voluntarily accede to the process is the dismal rate of success (14-16% compared to the 93% reported by CEDR's Audit), which makes on wonder if the benefits of such a heavy-handed approach are really worth the investment.

The situation in the Netherlands looks a bit more encouraging. In 2019, Professor Jan van Zwieten, the chairman of the board of the Register of Mediators (Mediation Federation Netherlands) and a mediator since 2002, made a presentation of the Dutch mediation system at a conference in Craiova, Romania (van Zwieten, 2019). He estimated the number of official mediation cases (i.e., mediation cases in relationship with the courts and registered by them) at 200,000+, with the number of informal mediation cases several times more, for a number of certified mediators around 3,000 in 2015 (with a peak of 4,900 in 2005). These numbers look great, even compared to the Italian situation, especially given the fact that mediation in the Netherlands doesn't benefit from having a statutory law and being completely voluntary based. But the mediation system, which encompasses the multi-door courthouse concept, is extremely well organized, with maximum of attention given to quality of services and common values uniting the entire community of mediators, making mediation more predictable both in terms of procedures and of results.

All of these seem to point to the fact that, despite a half a century of efforts made by lawmakers, judges, lawyers, mediators and mediation advocates to rid people of the habit of settling their disputes in court, success is still far from being achieved, with very few exceptions. Although in all countries that have endeavored to reform their justice systems and make place for ADR methods progress can be discerned, the pace is still too slow to let us foresee the moment in the future where these methods will overtake litigation in courts as the main venue for settling disputes.

Core questions to help assess the present stage of mediation

But is this discouraging vision really true? Does it genuinely reflect the reality of conflict resolution in our days, or it is merely a distorted perception resulting from the ways various researchers collect and interpret the available data? And, moreover, are we looking at the entire field of conflict resolution, or are we the prisoners of a legalistic, court-connected vision, that only takes in consideration the disputes recorded by courts and disregard all other conflicts within the society at large, conflicts that do not appear on the judicial radar?

Data collection and statistics regarding the use of mediation

Let's start with the data available. If we look carefully at the numbers above, we will see that most of them are estimations. For example, the ample study of De Palo and collaborators, 'Rebooting' the Mediation Directive: Assessing the Limited Impact of its Implementation

and Proposing Measures to Increase the Number of Mediations in the EU, cited above, estimates the number of mediation cases in EU member states by asking the respondents to assess and report the number of cases in their respective countries. Beside the fact that there is significant unbalance of respondents by country—Romania, a country of 19 million, had 210 respondents out of a total of 810, whether the UK, with a population of 67 million, had just 68, and Germany, the giant of the EU, with 87 million, only 23 respondents—the entire study is based on the answers given by these respondents, who are supposed to be mediators registered in the respective member states. One question arises: how it is possible that mediators in any given country could correctly evaluate the number of mediation cases happening in any given year? At best, the result is an educated guess, an estimation that can vary widely across the group of respondents. I am a mediator in Romania and I don't have any solid idea how many mediation cases are in the country, for the simple reason that there are no official recordings, no official statistics, because neither the Ministry of Justice, nor the Mediation Council (the body tasked by law to regulate mediation and the mediation profession in Romania) keep records or systematically collects data regarding mediation cases. So, what we are having here is not hard evidence, the kind we are used to take in consideration when doing social studies; so, the results cannot be counted as solid, reliable and relevant for the situation of mediation in the EU member states.

The lack of systematic collection of data concerning mediation in most countries, not only in the EU, but all over the world, is one of the major problems we encounter when assessing the situation of mediation and its progress. Some, very few, like the Netherlands or Italy, have solid data collection and complete, reliable databases, with central bodies mandated to systematically collect and structure data, so that a clear image of the state of mediation can emerge. Others have only partial data—in England and Wales, there are service providers, like CEDR, that collect data annually and issue reports, as the one already mentioned here. But the data covers only commercial mediation, leaving outside all other areas of application. There are different bodies collecting data in other fields, like family mediation, but there is no aggregate database putting together all these disparate reports and giving a complete picture of mediation, countrywide. And there are still others, who have central bodies mandated by law to supervise and regulate mediation and the mediation profession, like the one in Romania, already cited, who are in charge of keeping up to date a national registry of accredited mediators but go no further than that. No record of mediation cases, no record of types of mediation cases (voluntary use, referred by courts, referred by other third parties), no record of types of cases (commercial, family, business to community, environmental, public projects disputes, etc). Even the national registry of accredited mediators cannot be entirely relied upon, as the updating is not done regularly and there is no way of knowing how many of the mediators on the register actually practice and how many are, in fact, completely inactive. One way of gathering this information would be to look into the annual tax records of the accredited mediators—no tax paid means no activity—but the Mediation Council seems to have no interest in doing such research.

All in all, it is impossible today to know exactly how many mediators are in Europe; how many of them are active; how many of them are paid for their services and how much; what types of cases do they have (voluntary, court-referred?); what fields of activity are more lucrative (commercial, family?) and where mediation is stalling or not working at all (public disputes, criminal cases?); how are the mediation cases distributed among mediators—the CEDR report shows, for example, that for commercial mediation, 85% of the cases are done by an elite group of 200 mediators, with 120 of the busiest of them handling 73% of cases in 2019, up from 69% a year before, which means that business is consolidating at the top.

Even worse, the Council of Europe/CEPEJ (the European Commission for the Efficiency of Justice) has already designed and adopted a document called "Baseline Grid for Mediation Key Performance Indicators. Baseline Mediation Statistics" (CEPEJ, 2018), which could solve the mediation data problem, but it seems that nobody in the EU is in any kind of hurry to implement it.

If we don't have the complete data regarding mediation in Europe and across the world, how can we be so certain that mediation is in a dire situation, that it has not fulfilled the original promises? No other field of social research has ever come up with so definitive statements based on so incomplete and unreliable evidence. All across the world, advocates and opponents of mediation, paint a dark picture of this service—not enough cases, not enough users, users not trusting the process, lawyers opposing it, judges not recommending it, lawmakers washing their hands after the adoption of a law which, by itself alone, cannot change people's habit of solving their disputes in courts, etc. Advocates of mediation use this bleak picture to promote regulation that will make mediation mandatory for at least certain types of cases, if not for all; opponents use the same arguments to block that regulation. And both of them use the same incomplete, unreliable data as the foundation of their arguments.

Therefore, if we were to be honest, we would admit that the correct answer to the question what is the stage of mediation today is: we don't know. I'm not arguing here that mediation is in a better or worse shape than advocates and opponents say it is. I'm just saying that, given the lack of hard data and the fact that all the argumentation pro- and against is based mostly on anecdotic evidence, educated guess and estimations, we should accept that we don't know, with a comfortable degree of precision, what the state of mediation actually is, and we should start correcting this situation.

Community-based conflict management systems: a brief history

The second major question regarding the state of mediation today is: are we looking in the right places when we talk about how extensively mediation is used? Or are we prisoners of a court-annexed vision of mediation, a service bound to the legal profession, that takes into consideration only those mediation cases that have a connection whatsoever with the courts and with the lawyers? In his presentation, Professor van Zwieten talked about 200,000+ official mediations, i.e., mediation connected to the courts in one way or another, and a multiple of this number of "informal" mediations. He also said that, in the Netherlands,

only 2% of the disputes registered in courts are mediated, but only 2% of all disputes are solved by courts. Meaning that 98% of disputes in the wider society are resolved in ways that do not have any connection with the courts of justice. And this is a very interesting point, worth exploring further.

Look no further than our daily lives—we are everyday experiencing all sorts of conflicts, at home, at workplace, in the community where we live, not to mention the wider society; yet most or all of them do not end up in courts. We deal with them, for better or worse, by ourselves or with the help of others around us—relatives, friends, colleagues, neighbors, leaders, etc. As we live concomitantly in different communities, that might overlap or not, given our social and professional activities, our conflicts are managed within those communities, based on norms, customs, written and not-written rules, using procedures, tactics and tools proven over times as being effective. And this is not only us, today—it has been happening since the dawn of humanity, as archeological and anthropological research shows it aplenty.

The presence of conflict management mechanisms is critical for the survival of a community, any community. This was true before the advent of modern states, with their complex, hierarchical justice systems; it remains true even today. A community marred by un-solved conflicts among its members was prone to dismemberment from within and to assault from outside, not matter that it was a Scottish clan in the 13th century or a post-modern high tech corporation of the 21st century; that is why we have a mountain of anthropological proof of the emphasis put by all communities—old or modern—on harmony between members, on reconciliation and reintegration, on negotiation and mediation rituals leading to a permanent resolution of conflicts and restoration of peace (Zartman, 1999; Augsburger, 1992).

Before the emergence of the modern state, first in Europe, then all over the world, solving conflicts was in the hands of the local communities. The king's justice reached as far as his military control—which, most of time, meant the capital city or fortress and its hinterland. Beyond that, the law was in the hands of people living in the remote parts of the polity and their local leaders. The recurrent efforts of monarchs across ages and continents, from the Babylonian Hammurabi to the Visigoth Alaric II or the Chinese Sui dynasty, to codify the laws of their realms in order to impose a unified practice, only serve as evidence of how diverse the practice of justice and conflict resolution was at the time. It is no coincidence that the centralization of medieval kingdoms like France started with the monarchs wrestling the judicial power from the hands of lords and local communities, through the imposition of the king's justice by his wandering judges, sent to all corners of the realm to hear complaints and deliver judgments in the name of the king as the sole keeper and enforcer of a unified law across the entire country. This was a process that took centuries and succeeded only recently, in the modern times, and not equally across lands and cultures.

In Western Europe and in North America, unified, centralized, hierarchical national justice systems triumphed and managed to push into oblivion local, community-based practices and rituals. In other places of the world, soon to be conquered and colonized

by Europeans, local communities remained autonomous, order and justice being left by the colonial power into the hands of traditional leaders, and just the relations with the white settlers and the colonial administration being managed by European-modelled local courts of justice. These arrangements, similar to those made by the imperial governments of the Ottomans in the Balkans, the Habsburgs in Central Europe and by the Russian Tsars in Eastern Europe and Central Asia, guaranteed the survival of indigenous conflict management mechanisms.

Acting mediators: solving conflicts outside courts

Today, we find the land manager officer in Gulu, Uganda, mediating an inheritance dispute involving a plot of land in a small village in Acholiland; we find the police officer in a remote community in the Apuseni mountains of Romania mediating a dispute between neighboring families concerning animals trespassing land limits; we find experienced senior community members engaging in *Sasmos*, a traditional mediation process in the island of Crete, for the purpose of stopping a dispute between two members of the community escalating into a full blown blood feud between their respective families; we find Chechen community leaders in the Kazakh city of Karaganda mediating disputes between rival business factions within the community; we find religious leaders, Christian and Muslim alike, mediating disputes between herders and farmers in Northern Nigeria; we find managers in IT companies mediating workplace disputes between their engineers in India; we find International Organization for Migration internally trained and certified mediators helping staff across the world dealing with their disputes at the office; we find people from all walks of life helping their family members, neighbors or co-workers deal with conflicts in an amiable, constructive, peaceful fashion by the use of mediation techniques. All of these mediation cases are off the courts' radars and they don't go into any court or ministry statistics, where these statistics exist. It seems that, in many places, mediation is widely practiced but, apparently, not by the "professional" mediators, those trained through expensive programs, authorized, certified or accredited. They are not lawyers, they don't have (necessarily) a legal background; their practice is based on experience, common sense, a knowledge of local customs and norms, of community or organizational culture, or simply because they happen to be in the proximity and there is nobody else around to take charge and assist the conflicting parties.

The way we assess the state of mediation today is kept prisoner by a juridical angle of approach, where mediation cases only count if they are, in way or another, connected to courts, the legal profession and the professional mediators (which, in a majority of cases, are lawyers or have a legal background). It is a restrictive way of appraising mediation in its entire plenitude, which is the source of so much pessimism about its current state. Seen from this judicial bureaucratic point of view, the mediation state might indeed look bleak—we constantly hear the complaint of these professional mediators that there is currently not enough work in mediation to make a decent living. But we constantly, systematically, ideologically I might even say, overlook the huge number of mediation cases run by people

who do not hold official certification or accreditation as mediators, who did not become mediators by attending a sometimes obscenely expensive basic mediation training program, but by having the trust of their peers that they can deliver an honest service to those in need.

Therefore, the picture of mediation that we are having today seems to be even more incomplete than the lack of serious databases conveys. When we assess the state of mediation, we only take in consideration the mediation cases handled by professional mediators, those accredited by professional bodies or by law, and only those mediation cases that are connected to the process of justice—they are either mandated by law (as in Italy), referred by courts or voluntarily engaged by parties prior or after recording their case in court. The vast majority of mediation cases, handled daily by a myriad of acting mediators, being them civil servants, managers, police officers, community or religious leaders or just regular citizens that have the trust of their peers, are off the radar and are not taken in consideration. These are the 98% that Professor van Zwieten was talking about.

But by overlooking all these acting mediators, the governments and mediation supporters across the world commit a double mistake. First, they operate with a perception of the state of mediation that is terribly incomplete and, therefore, leads to misguided policies and legislation. Secondly, because most of these acting mediators would clearly benefit from systematic training, to polish their skills and upgrade their practice of the best standards of the profession, and support from both governments and professional bodies. Wherever my research interests have carried me, from the arid mountains of Crete to the lush plains of Uganda, from the green pastures of the Apuseni Mountains of Romania to the vast steppes of Kazakhstan, people acting as day-to-day mediators in their communities expressed tremendous interest for formal training and specialized assistance, as means of making their service delivery more effective and more inclusive. But, for a reason or another, it seems that governments of all colors prefer to train lawyers as mediators and then complain that mediation is not working, than find who are the people actually doing mediation and giving them the training and the support they need.

Conclusions

All these mean that, on one side, there is no enough solid evidence of how mediation presently performs, as very few governments and professional bodies keep up to date, complete and systematic statistics regarding the number and work of professional mediators; on the other side, the work of acting mediators, regular people of various professional backgrounds that help peers solve their disputes, is totally overlooked and therefore their contribution to the field of mediation is not accounted for in any kind of governmental statistics. In brief, we don't know with the necessary degree of precision how mediation fares these days, as we don't have the systematic data collection of professional mediators' work and we completely neglect the contribution of acting mediators in all sectors of activity, at community and organizational level.

What has to be done?

First, governments should mandate the systematic data collection concerning all aspects of professional mediation, that done by officially certified or accredited mediators. This shouldn't be so difficult, especially with the technologies of the present. Where there are national bodies tasked with supervising and regulating the profession, they can with relative ease set up methods of collecting all types of information regarding mediators' activity and assemble them in clearly structured databases, with open access to all, practitioners and academics alike. Bodies like the Romanian Mediation Council should use their resources and prerogatives to collect data from professional mediators and make it widely accessible.

Where mediation regulation and management are left to professional bodies, like in the UK, the government can set up a unit, most likely inside the Ministry of Justice, to aggregate all data collected by these organizations and associations, and also mandate them to do the job of data collection in a systematic and comprehensive fashion. All these efforts will give us a far more accurate idea of how professional mediation is working, almost 50 years after the start at the Pound Conference of 1976. This kind of information will tell us how many professional mediators really are and really work, how many cases they have, what types of cases there are, what are the sectors of activity that are more feasible for mediation and which are more impenetrable, what are the reasons why some sectors easily accept mediation and others don't, what is the real size of the market for mediation, and so on. Only then we will have the solid bases for sound public policies and legislation aiming to make mediation more mainstream and achieve a balanced relationship between mediation and the courts.

As for the acting mediators, those members of communities and organizations that mediate because they happened to be trusted by their peers or have the authority to do it, governments should strive to support them. Support should come mainly in the form of professional education, made accessible to all who want to take advantage of it. One way of doing it would be to include ADR classes in schools, in the general education of the people, alongside grammar, math, sciences and arts. As a matter of fact, it has long puzzled me why, with conflict so pervasive in our daily lives, so preeminent as a cause for organizational strife and private and public projects failure, so strong an inducer of individual unhappiness and stress, governments all over the world omit to include conflict resolution—especially ADR methods—in the curriculum of general education and leave it only for specialized post- graduate programs or narrow professional training. Anyone of us can be, every now and then, called upon to act as a negotiator, a facilitator, a mediator or an arbiter—so why, then, we do not benefit from at least a basic education in these methods, starting early at school? If governments are really serious about decreasing the backlog of courts (the main reason offered for introducing the ADR methods), they should start educating their citizens, when they are still young and prone to take this lesson eagerly, that there is more to conflict resolution than the courts and judges and lawyers. Mass education in negotiation, facilitation, mediation, group decision-making, effective and non-violent communication, to name but a few topics, would endow the mass of citizens with the necessary tools to deal with their own conflicts in an amiable, peaceful and effective manner

and assist others in doing so. Instead of relying on a few members of the community that have a natural inclination or inborn abilities to help others solve their conflicts, we can have an entire population educated to approach conflicts in a constructive manner, contributing to the general harmony and the effectiveness of our common projects.

A word of caution, at the end. The above should not be understood as an advocacy in favor of acting mediators over professional mediators. It is not an either-or argument, but an and-and argument. Our society needs both. There is a range of conflicts that have a legal or technical component that requires a professional mediator with solid experience in that respective field. But there is also the enormous mass of everyday disputes, less technical, less legal, but with a significant impact on individuals, communities and organizations, disputes that can be much more easily, cheaply and effectively resolved by those close to them. Acting and professional mediators both have their equally important roles in keeping people out of court and making our societies less adversarial, more peaceful and more harmonious. This way, the original promise of mediation will truly be fulfilled.

References

Augsburger, David. (1995). *Conflict Mediation Across Cultures*, Louisville, Kentucky: Westminster John Knox Press.

Burger, Warren. (1976). "The 1976 Annual Report on the State of the Judiciary", 62 A.B.A. J. 443.

CEDR. (2021). "The Ninth Mediation Audit", https://indd.adobe.com/view/5aab3e14-65b1-44f3-9dd8-e5be97137cf7

Council of Europe/CEPEJ. (2018). "Baseline Grid for Mediation Key Performance Indicators", https://rm.coe.int/cepej-2018-23-en-mediation-development-toolkit-baseline-grid-for-media/1680901dc8

De Palo, Giuseppe et al. (2014). "'Rebooting' the Mediation Directive: Assessing the Limited Impact of its Implementation and Proposing Measures to Increase the Number of Mediations in the EU", https://www.europarl.europa.eu/thinktank/en/document/IPOL-JURI_ET(2014)493042

De Palo, Giuseppe et al. (2011). "Quantifying the cost of not using mediation—a data analysis", https://www.adrcenterfordevelopment.com/wp-content/uploads/2018/06/Paper-EU-Parliament-Giuseppe-De-Palo-.dox_.pdf

De Palo, Giuseppe et al. (2010). "The Cost of Non ADR—Surveying and Showing the Actual Costs of Intra-Community Commercial Litigation", https://www.adrcenterfordevelopment.com/wp-content/uploads/2018/06/Survey-Data-Report.pdf

Lee, Rex E. (1981). "The Profession Looks at Itself: The Pound Conference of 1976" BYU Law Review. 737, 738.

Pound, Roscoe. (1906). "The Causes of Popular Dissatisfaction with the Administration of Justice", https://law.unl.edu/RoscoePound.pdf

Staechelle, Francois. (2019). "Mediation and judiciary in Italy 2019", https://www.gemme-mediation.eu/2019/10/22/mediation-and-judiciary-in-italy-2019/

Traum, Liza and Farkas, Brian. (2017). "The History and Legacy of the Pound Conference", Cardozo Journal of Conflict Resolution, vol. 18.3.

van Zwieten, Jan. (2019). "How to make it work?" Paper presented the international conference Designing Mediation Public Policies, Craiova, Romania.

Zartman, I. William. (1999). Traditional Cures for Modern Conflicts: African Conflict "Medicine", UK: Lynne Rienner Publishers.