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# Minorities in European Cities

The Dynamics of Social Integration and  
Social Exclusion at the Neighbourhood  
Level

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# 16 Mediation: From Dispute Resolution to Social Integration<sup>1</sup>

Jean-Pierre Bonafe-Schmitt

Since the late 1970s, mediation has been developing in all fields of social life, including the professional and familial areas and in neighbourhood and government services (Bonafe-Schmitt, 1992). What are the reasons for this renewal of mediation? It is true that mediation has always existed as a way of resolving disputes. But the context has changed. Nowadays, mediation is a response to an unprecedented crisis in the judicial system.

Mediation is often presented as an alternative to the judiciary and as an answer to the crisis in the judicial system, of which the most visible causes are overworked courts, long delays before cases come to court, complexity, formalities and the high cost of procedures. But, the crisis of the judiciary is just one facet of a generalized crisis in our system of social regulation. We too often forget that, in the past, most disputes were resolved within the family, neighbourhood or school. However, those traditional places of regulation are also going through a crisis, which is why the judiciary and, above all, the police are more and more being called upon to resolve minor disputes.

To address the crisis in the mechanisms of social regulation, the authorities in various countries, especially the USA, have sought to develop alternatives to the judiciary model, such as mediation, conciliation and arbitration. Since forms of legal mediation like victim-offender or family mediation have gone through their most important development in the past few years, I would like to devote special attention to social or community mediation programmes, for they conform to another logic of mediation. These experiments reveal the emergence of a new mode of social regulation (or model of action) that rules relations between individuals and, more broadly, between the state and civil society.

## REGULATION AND SOCIALIZATION AT THE NEIGHBOURHOOD LEVEL

Over the last few years, events at Vénissieux and Vaulx-en-Velin in France and at Los Angeles in the USA have highlighted the deficiencies of social regulations in the neighbourhoods of big cities and showed how the slightest dispute can degenerate into a riot.

### The Crisis in the System of Social Regulation

Though we cannot claim that the nature of disputes has changed, the multiplication of quasi riots over the past two decades reveals a new form of dispute. In our societies, conflicts linked with material reproduction, such as labour disputes, appear to have lost their centrality. Whereas new conflicts have appeared 'in the fields of cultural reproduction' (Habermas, 1981: 390), social integration and socialization, they create new problems for quality of life, equal rights, the individual, personal achievement and social identity (Habermas, 1981: 432). These types of dispute suggest some form of resistance both to attempts to colonize everyday life (Habermas, 1981) and to the consequences of a way of life that is getting more collective and more complex (in the realms of neighbourhood, family, intercommunity, consumer and environmental disputes). Their regulation requires new modes of conflict resolution that are more consensual, for they are based on conciliation and communication rather than on sanction or compensation. The point is no longer to settle a problem by proclaiming who is right and who is wrong, 'but to resolve a problem that is raised among the persons who are to carry on living side by side' (Vescovi, 1983: 17).

It is in the underprivileged suburbs of the big cities that we can best evaluate the failure of the welfare state's continuing rationalization of conflict regulation procedures. This is done through the proliferation of specialists like social workers, special education workers and youth leaders in social centres, the police and the judiciary (Bonafe-Schmitt et al., 1992: 72). Superimposing institutions that worked in the same district for most of the time without any coordination did not prevent social explosions. This leads us to understand that social disorganization is not resolved efficiently by increasing the strength of social workers, magistrates and policemen.

To remedy this situation in France, the state, in collaboration with local

communities, launched various urban policies (*politiques de la ville*) through successive neighbourhood social development procedures (*développement social des quartiers*) and city contracts (*contrats villes*). But, in practice, these procedures did not lead to any fundamental change in the action logic of the different institutions. Partnership remains marginal and is usually more idle talk than actual application. In the social sphere, it is necessary to put an end to 'social Taylorism' and to rethink modes of social regulation in neighbourhoods. Indeed, it is important to remember that family, church, school or neighbourhood resolved most disputes in the past. But, the infiltration of the welfare state through all the pores of social life has led to a questioning of these intermediary structures between state and civil society. This explains why the police, judiciary and social workers are now the only interlocutors in most of the disputes that used to be resolved within the family or neighbourhood.

### The Creation of Proximity Structures

Social mediation is based on the idea that the neighbourhood needs to be recognized as a relevant place of conflict institutionalization, which implies the creation of proximity structures. This is why special attention has been paid to the localization of mediation places in social mediation programmes. Mostly they take place in first-floor apartment blocks in the heart of the neighbourhood so that they are easily noticeable and accessible to residents.

The specificity of social mediation programmes is that they are based on the implication that the residents are the mediators. This distinguishes mediation from some other experiments such as the *Maison de Justice* (House of Justice) in France (Cf. Dourlens and Vidal-Naquet 1993 and Wyvekens 1995). Advocates of mediation aim not only to resolve disputes, but also to encourage communication and create socialization places. For this reason, special attention is paid to the choice of mediators, who are selected to accord with the socio-demographic composition of the neighbourhood. The reason for the great diversity of this representation is that the mediators are considered less as the defenders of their communities than as a link between them. On this issue, French social mediation programmes differ from US community mediation programmes. They reflect the differences in integration patterns based on the French 'republican or universalistic' model as against the Anglo-Saxon 'community or differential' model.

### A Socialization Place

Social mediation programmes are not restricted to the mere institutionalization of modes of dispute resolution in the neighbourhoods; their point is also to encourage socialization by sending for some residents to be mediators. The point of the structure is not to do justice, but to give rise to actions that aim to rebuild some forms of sociability from the dispute regulation and at reconstituting socialization places. The affirmation of this principle implies that mediators need to be residents in the neighbourhood and that any potential psychological or legal qualification must not be a primary criterion in the selection of mediators. This absence of professional references does not mean that mediators have not been trained in mediation, for the process of mediation cannot be improvised and requires the attainment of some skills.

By appealing to the active participation of the disputants, persons in charge of social mediation programmes pursue the objective of creating a place of dispute institutionalization and regulation calling for legitimacy that may be termed 'social legitimacy'. This legitimacy is based on the ability of mediation structures to be recognized by the residents of these neighbourhoods as relevant places of dispute resolution, thus contributing to the reconstitution of social relations in these degraded neighbourhoods. This form of legitimacy cannot be enacted; it is rather gained through practical experience, the passing months and the trust the disputants have put in them when they referred directly to the neighbourhood mediation instance before any preliminary referral to the judiciary.

### THE DIFFERENT KINDS OF LOGIC OF SOCIAL MEDIATION

Social mediation is a plural phenomenon because, as a mode of social regulation, it is underlain by different kinds of logic that have led us to distinguish forms of mediation linked with dispute resolution from those linked with communication.

#### Mediation Activities Linked with Dispute Resolution Activities

Social mediation experiments adhere to a logic that is different from the logic of judiciary mediation. Their purpose is to create new regulation places in the neighbourhood by sending for the residents to take part in

the resolution of disputes. The aim is not the creation of a parallel judiciary system, but rather to settle socialization places.

#### Paralegal Neighbourhood Mediation: A Logic of Integration

The archetype of this mediation programme was given to us by the Valence experiment in 1985, followed by the one in Ullis in 1989. These generated a model of neighbourhood dispute resolution in which municipalities and public prosecutors' offices joined forces to combat feelings of insecurity and to rebuild social relations in the wider neighbourhood. A particular feature of these experiments is that they were set up jointly by municipalities and public prosecutors' offices and that neighbourhood residents were asked to perform the role of mediators.

The programme in Valence was an excellent illustration of the logic of social integration, for its aim was to re-establish 'social peace' in degraded neighbourhoods by trying, through mediation, to resolve those everyday family, neighbour or ethnic disputes that undermine social relations.

To bring this mediation programme into operation, magistrates used the structures of the Communal Council for the Prevention of Delinquency (*Conseil communal de Prévention de la Délinquance* or CCPD) to mobilize all the institutions that had been selected to intervene in the neighbourhood. Another manifestation of the logic of social integration was in the choice of criteria for selecting the mediators, who were recruited from among the neighbourhood's residents. However, the decision to use non-professionals did not mean that the mediators were left to themselves. On the contrary, a tight link was forged between the mediation service and the judiciary. The mediators received their cases from public prosecutors' offices and the results of their mediations were checked, but not controlled, by magistrates.

This type of mediation has limited application, for now, more than ten years after the Valence experiment began, it has been adopted in only a limited number of cities. Some of the earliest programmes were carried out in the Essonne district (*département*), as in Ullis and Gif sur Yvette.

#### Social or Neighbourhood Mediation: A Logic of Reappropriation

As far as we know, the first neighbourhood mediation took place in the

'Themis/Boutique de Droit' (law shop) experiment in Lyons. It brought lawyers and neighbourhood residents together at the very first referral by the disputants, who lived or worked in the same neighbourhood, in this case Perrache/Lyon (Bonafe-Schmitt et al., 1992: 145). For many years, this programme served as an example for similar mediation structures in other cities such as Nantes, Vénissieux, Décines, Saint Priest and Villefontaine.

These neighbourhood mediation programmes are distinguishable from the Valence one in that they try to develop an element of voluntarism in the residents' direct referral to these structures. It is usually on the CCPD's initiative that mediation programmes centred on direct referral by residents are set up for cases that have not arisen through a complaint to the police, as in the Saint Priest CCPD programme. Most cases, however, are tinged with both civil and penal aspects, such as neighbourhood disputes linked with noise nuisance, different lifestyles and conflicts between youths and adults.

Such mediation programmes not only establish mediation structures in the neighbourhood but they recruit mediators who live in the neighbourhood and who are trained in this type of intervention. The success of this kind of mediation structure depends on the residents recognizing the legitimacy of their interventions, which in turn implies being well integrated into the neighbourhood. Training neighbourhood mediators also has a socializing function in that it encourages the community to favour this form of dispute resolution and creates new solidarities.

Despite the support of the *Délégation interministérielle à la Ville* (urban ministry), neighbourhood mediation programmes did not develop to the same extent as community mediation programmes did in the USA. There are fewer than 15 of them in France, whereas there are more than 400 in the USA. The USA's faster pace of community mediation development compared with France can partly be explained by the different principles that give rise to the mediation programmes in these two countries.

### Mediations Linked to Communication Activities

Mediation cannot be restricted to dispute resolution; it also extends to so-called 'communication activities'. This category includes all forms of intervention by a third party that has a lot to do with mediation but are not primarily dedicated to dispute resolution.

### Public Interventions

The development of mediation techniques to improve communications between communities and public utilities is usually at the city's initiative. Some municipalities engage 'intercultural mediators', recruited from the foreign-origin communities, to improve modes of communication and promote better integration. The terminological choice is not neutral, for the designation 'intercultural mediator' actually hides the existence of real 'community mediators'. Indeed, they are mostly recruited from their community of origin and given the role of intermediary precisely to promote better integration in these populations.

Many of the mediators trying to improve communications between communities and the public utilities are recruited from among so-called *personnes-relais* (relay people), or more often *femmes-relais* (relay women). A recent survey underlined the ambiguity of their function – they have no clearly defined role and do not have the advantage of any particular status, yet are given the title of mediator and allowed to follow a proper training (Delcroix et al., 1995).

In the field of education, some people who are not on the Ministry of Education staff intervene as mediators. Depending on the programme, they are called either *parents-relais* or intercommunity mediators. Their functions are established by city initiatives or by organizations that are associated with or work in the field of immigration. The mission assigned to these mediators is to facilitate communication between schools and families of foreign origin and to help teachers organize extra-curricular activities. This strand of mediation is close to that of the school mediators set up by the Ministry of Education on 25 April 1996 to facilitate a dialogue between teachers and parents of children from another culture and speaking a foreign language.

Over the past three or four years, on the initiative of either the state or individual cities, 'cultural' or 'library' mediators have been introduced alongside the intercultural ones. There is an instrumental logic to the creation of these new functions, for, in the case of the Lyons municipal library, they both help libraries handle 'difficult publics' and direct them towards participating in the fight against social exclusion.

### Community Interventions

In the cultural field, some non-profit-making organizations have become

involved in a number of initiatives to fight social exclusion. One such example is ATD Quart Monde, which set up book mediators (*mediateurs du livres*) in underprivileged neighbourhoods by using residents to fulfil the functions of cultural activity leaders (Kupier, 1996). The logic behind these experiments is that excluded people should reappropriate their own cultural activities.

On the legal level, non-profit-making organizations such as law shops (*boutiques de droit*) give legal advice and serve as 'legal mediation places'. Unlike other professional lawyers, those in the *boutiques de droit* merely give legal advice and leave it up to the users to decide whether or not to proceed. They also fulfil a mediation role by giving the user's enquiry a legal interpretation, or by decoding complex language used by public or private organizations to make the communication easier.

### MEDIATION: A NEW PATTERN OF SOCIAL REGULATION

Mediation is not limited to mere communication or methods of dispute resolution; it carries a new regulation pattern and a new mode of action that promise to restore relations between the state and civil society.

#### Mediation: A New Pattern of Action

An analysis of the mediation phenomenon cannot be restricted to mere methods of dispute resolution used by welfare states to spread their social control, or to the new appearance of participants on the dispute resolution market. Mediation is also a new social movement, a new form of common action, implying a restoration of relations between the state and civil society through the creation of 'intermediary places of social regulation' (Laville, 1994: 46). To this extent, the process of mediation carries another conception of the actor and the action in the sense that the mediators are 'meaning actors' (*acteur de sens*) (Laville, 1994: 47), willing to participate in the reconstitution of new 'intermediary structures' between the state and citizens. The point is to create new socialization and regulation places, new 'existential communities' (*communautés existentielles*) (White, 1994: 46) that would be founded on forms of solidarity that would appeal to a communicational rather than an instrumental rationality.

We are prudent in our use of the notion of community, especially

nowadays that traditional communities have been 'dismantled, disrupted and disorganized by the consequences of the modern rationality', and when others are rising from 'religious fundamentalism, ethnic chauvinism, cults or other non rational phenomenon' (White, 1994: 47). However, we hypothesize that the mediation process is likely to produce a new form of common action (Giraud, 1993) that would allow the constitution of new forms of solidarity, a new common identity through the existence of these existential communities.

Even if social mediation programmes rest on new forms of actions and activities that are not directed by interests or power relations, this has not stopped the authorities considering these new functions as opportunities to create new jobs. Thus, mediation creates proximity jobs, sometimes called *petits boulots* (low-income jobs), which should be useful in the fight against the rise in unemployment.

#### Mediation: A New Pattern of Social Regulation

Social mediation programmes rest on the idea that an approach in term of conflict is ill adapted to the resolution of certain types of conflicts, such as neighbourhood disputes. For this type of case, it is advisable to privilege a mode of dispute resolution that uses a 'negociatory' or 'therapeutic' approach (Silbey and Sarat, 1989: 479). Mediation is the only type of intervention that is able to rebuilt future relations between the parties by considering their problems as primary rather than abstract notions.

But, the development of mediation comes up against a tendency towards the judicialization of social relations or 'colonization of everyday life', to quote Habermas. According to him, for some disputes it would be proper to adopt procedures that aim to achieve a consensus, namely procedures that consider the parties as major participants able to represent their own interests and manage their affairs by themselves. The elaboration of a rationale built on consensus should not be confused with the search for a 'lax consensus', but rather for a 'dissensus' in order to reach an agreement (Debarbieux, 1995: 142). In constructing this agreement, it is necessary to look for points of disagreement as well as of agreement, for the problem is not to reduce disagreements but to be able to live with them, to find a *modus vivendi*. By implicating the parties more in the dispute resolution, mediation allows them not only to overcome their disagreements, but also to build new relations, thus further reinforcing the

normative character of the decisions made. This quest for a new consensus built on negotiated rules often, especially in big cities, makes the reconstruction of torn social relations possible. In large cities, where former community pressures no longer function, the negotiations or mediation favour the reconstitution of new socialization and regulation places.

### SOCIAL MEDIATION: A COUNTERCULTURE

Nowadays, the changes should not be overestimated, for the emergence of this alternative pattern of dispute regulation has its own difficulties. This should lead us to interpret the changes, not in terms of rupture, but in terms of transformation and adaptation to the present system.

#### The Culture of 'Resorting to Force' Relations

If it is impossible to negate the importance of force, violence and power in social relations, it is, however, fitting to question the theories that 'end up analysing all social relations as resorting to force relations' (Boltanski, 1990). In the light of these ideas, it is fitting to re-examine the notions of compromise and agreement, which result not from a conflict logic but from a logic of cooperation, in which the mutual interests of the parties involved in the negotiation process are respected.

The culture of 'resorting to force' relations is one reason why only 50 to 70 per cent of disputants, depending on the mediation office, agree to engage in mediation at all (Bonafe-Schmitt et al., 1992: 145). Of these parties, despite the mediators' efforts, only between 70 and 90 per cent reach agreement. All this tends to show the strength of resistance to the development of a consensual mode of dispute resolution.

The analysis in terms of an evolution from a model of dispute to a more consensual one has been sharply criticized by numerous US authors. They denounce the 'ideology of harmony' on the grounds that it does not consider the inequality of power in US society. According to them, the ideology of harmony rests on dispute denial, for its subject is not to prevent the causes of the disputes but to prevent their expression (Abel, 1981; Nader, n.d.). They emphasize that the followers of this ideology encourage the parties to see only alienation, hostility and excessive cost in judicial proceedings, and a process that encourages civic and community responsibility in mediation. They reject the view that mediation trans-

forms conflicts into communication problems and disputes about rights into relational or affective differences. Speaking more broadly, the ideology of harmony seems to carry a particular model of society that is based on the belief that everyone shares the same goals and values, which as a consequence would favour better pacification of populations through the extension of social control.

#### The Lack of Cases

All things considered, quantitatively speaking social mediation is a marginal phenomenon given that the number of recorded cases dealt with by the different mediation offices varies between 30 and 100 a year. This number is very low compared with the number of cases registered for the different jurisdictions' proceedings.

Qualitatively speaking, disputes dealt with by social mediators usually have something to do with neighbourhood troubles. The great majority of these troubles are over noise nuisance, relationship problems and conflicts related to ownership. Without drawing up a dispute typology, under noise nuisances are household appliances such as washing machines, drills, stereos and lawn mowers; under relationship problems are conjugal quarrels, repeated parties, discussions late at night and disturbances by animals (dogs barking or roosters crowing). Relationship troubles can sometimes degenerate into insults between neighbours, menaces and racist remarks or 'rumours'. Under conflicts related to ownership are boundary disputes (overhanging tree branches, objections about property limits), as well as questions of rights, such as car parking rights.

The disputes are often of an everyday kind and do not usually warrant police intervention, still less judicial proceedings. Yet, these are precisely the types of issues which, because they are subject to repetition – neighbourhood disputes; minor damage to goods, altercations with gangs of youths – create a feeling of insecurity.

### CONCLUSION

Mediation is a complex and highly diverse phenomenon. Mediation programmes are not intended to solve judiciary dysfunction but to propose another model of dispute resolution based on decentralization, deprofessionalization and delegatization. For the next few years we cannot expect

a fast development of social mediation, for, with the predominance of the all-powerful conflictive mode and the tendency to judicialize conflict, this mode of dispute resolution belongs to a 'counte' culture'.

Despite these difficulties, the development of mediation still reveals an evolution in our societies towards more pluralism in systems of social regulation. This is especially true of social mediation, which raises questions about everything automatically being done through the state (*tout par l'état*). Indeed, it is designed less to introduce new professional regulations than to build new mediation places, new intermediary structures between the state and citizens. From a wider point of view, this pattern of mediation should allow the reconstitution of socialization places. This would foreshadow new modes of regulation that reveal not only changes in the distribution and organization of power, but also a redefinition of relations between so-called civil society and the state, and more particularly, a redefinition of the legitimacy of the power of dispute resolution.

#### Notes

This chapter is extracted from several pieces of research engaged in over the past few years, namely Bonafe-Schmitt, 1992; Bonafe-Schmitt, et al., 1992; and Bonafe-Schmitt, et al., 1995.

## References

- Abel, R. (1981) 'Conservative Conflict and the Reproduction of Capitalism: The Role of Informal Justice', *International Journal of the Sociology of Law*, 9 (September) 245-67.
- Agosino, B. (1997) 'Changes in the Social Construct of Criminality among Immigrants in the United Kingdom', in S. Palidda (ed.) *Délict d'Immigration: Immigrant Delinquency* (Commission Européenne, COST A2).
- Amsterdam in Cijfers (1996) *Amsterdam in Cijfers: Jaarboek 1996* (Amsterdam: Amsterdam Municipal Council Bureau for Research and Statistics).
- Amsterdam Municipal Council (1996) *De Economie in de Regio Amsterdam 1996* (Amsterdam: Amsterdam Municipal Council, Department of Economic Affairs/Research).
- Amsterdam Work Monitor (1996) *Amsterdamse Werkmonitor: De Stand van Zaken van het Werkgelegenheidsbeleid* (Amsterdam: Amsterdam Municipal Council, Department of Social and Cultural Affairs/Department of Economic Affairs) fourth quarter.
- Anderson, B. (1983) *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London: Verso).
- Anthias, F. and N. Yuval-Davis, (1992) *Racialized Boundaries* (London: Routledge).
- Anwar, M. (1994) *Race and Elections: The Participation of Ethnic Minorities in Politics* (Coventry: University of Warwick, Monographs in Ethnic Relations) 9.
- Asad, T. (1990) 'Multiculturalism and British Identity in the Wake of the Rushdie Affair', *Politics and Society*, 18 (4) 455-80.
- ASLK (1997) *Waarden van de Onroerende Goederen* (Brussels: ASLK).
- ATIAD (1996) *Türkisches Unternehmertum in Deutschland: Die unsichtbare Kraft, Bestandsaufnahme 1996 und Perspektiven für das Jahr 2010* (Düsseldorf: ATIAD).
- Atkinson, J. M. (1978) *Discovering Suicide: Studies in the Social Organization of Sudden Death* (London: Macmillan Press).
- Ausländerbeauftragte des Landes Bremen (1995) *Vor allem zuständig für deutsche Sauberkeit: Ausländische Beschäftigte im Öffentlichen Dienst* (Bremen: Ausländerbeauftragte des Landes).