

**THE MEDIATION OF DAVID AND GOLIATH:**  
*A Detailed Account of How the Historic and Biblical Battle  
Between David and Goliath Could Have Been if Mediated*

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**PART I – Historical Background**

**A) Historical Context**

During the late 11<sup>th</sup> century Before the Common Era (BCE), a superpower had yet to rise in the Ancient Near East (now similar to the Middle East).<sup>1</sup> Egypt, the last major superpower in the region, had fallen into a state of weakness. The Neo-Assyrian and Neo-Babylon Empires had both yet to gain strength. In this down period, many smaller nation-states began to emerge and organize around kings in hopes to become the next major superpower.<sup>2</sup> Two of the mentioned nation-states that were striving to gain power were Israel and the Philistine.

**B) David and the Israelites**

The Israelites were a Hebrew-speaking people who inhabited the Land of Canaan (the modern day Israel, western Jordan, southern Lebanon, and Palestinian Territories), during the Monarchic Period (11<sup>th</sup> to 7<sup>th</sup> centuries BCE). The name “Israelites” has many meanings including; descendants of the patriarch Jacob/Israel, a member of the Twelve Tribes, Children of Israel, and a follower of the God of Israel.<sup>3</sup>

During the time of the famous battle between the Israelites and Philistines, but, the Israelite tribes were not united. Together,

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<sup>1</sup> EIKON Ministries, Inc. 2010. “David and Goliath: The Background Story.”  
web.me.com/eikonministries/.../David%20vs.%20Goliath%201.pdf

<sup>2</sup> Id at 1.

<sup>3</sup> “Israelites.” Wikipedia: The Free Encyclopedia.  
<http://en.wikipedia.org/wiki/Israelites>

they occupied the Central Hill Country, and periodically worked together under the leadership of a Judge. The southern tribe of Judah was essentially independent of all other tribes. The tribes of Galilee were isolated from the Tribes of Manasseh, Ephraim, and Benjamin, and the tribes of Trans-Jordan were also disconnected from their western brothers.<sup>4</sup>

David was born in 1040 BCE in Bethlehem, a major city in the Judah territory.<sup>5</sup> David was a shepherd boy who spent most of his time in the fields with the lambs and sheep. David was also a very talented harp player and would frequently play the harp to King Saul who would become comforted by the music.<sup>6</sup> Early on in his life, Prophet Samuel had sent for David and anointed his head with oil. This was a sign that God had chosen David to be the future king of Israel.<sup>7</sup>

David was the son of a shepherd named Jesse. Jesse had eight sons, and, at the time of the battle, was very old. David was the youngest of Jesse's eight sons, but David was also the most brave and fearless.<sup>8</sup> When a lion or bear would come and carry off a sheep from the flock, David would go after it, strike it dead, and rescued the sheep from its mouth.<sup>9</sup> Prior to fighting Goliath, David gained confidence from and referenced these achievements. He said, "Your servant has killed both the lion and the bear; this uncircumcised Philistine will be like one of them because he has defied the armies of the living God. The Lord who rescued me from the paw of the lion and the paw of the bear will rescue me from the had of this Philistine."<sup>10</sup>

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<sup>4</sup> EIKON 2010, at 2.

<sup>5</sup> "David." Wikipedia: The Free Encyclopedia.

<http://en.wikipedia.org/wiki/David>

<sup>6</sup> The Bible. The Bible. Book of Samuel. 1 Samuel 17:1

<sup>7</sup> "David." Wikipedia.

<sup>8</sup> 1 Samuel 12-19.

<sup>9</sup> Id. at 34-35.

<sup>10</sup> Id. at 36-37.

### **C) Goliath and the Philistines**

The Philistines were a people who occupied the southern coast of Canaan at the beginning of the Iron Age (1175 BCE). They ruled the five city-states of Gaza, Askelon, Ashdod, Ekron, and Gath from the Wadi Gaza in the south to the Yarqon River in the north, but with no fixed border to the East. This land, together, was known as the “Philistine Pentapolis.” The total population peaked in the 11<sup>th</sup> century at 30,000.<sup>11</sup>

Goliath was from the Philistine territory of Gath. Goliath was trained to be a warrior from his youth. This extensive training, combined with his gigantic figure, made Goliath out to be one of the most feared warriors of his time. At the time of the famous battle, he stood approximately 8 feet 11 inches tall, weighed an estimated 439 pounds, and was around the age of 50 years old.<sup>12</sup>

Goliath was known as a champion of war. He wore a bronze helmet, a coat of scale armor of bronze weighing five thousand shekels, bronze greaves on his legs, and a bronze javelin slung over his back. His spear shaft was like a weaver’s rod, and its iron point weighed six hundred shekels.<sup>13</sup> He was the most imposing figure of his time.

### **D) The Dispute and Events Leading up to the Battle**

The Philistines and Israelites alike were both working to become the main superpower of the Ancient Near East. Both tribes had expanded as far as they could when they finally met in the Valley of Elah in the Central Hill Country. The Philistines were interested in expanding to the East, while the Israelites wanted to expand to the West. The Philistines also wanted to conquer this Israelite tribe in order to keep the Israelite tribe, in total, small, weak, isolated, and subservient.<sup>14</sup>

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<sup>11</sup> “Philistines.” Wikipedia: The Free Encyclopedia.

<http://en.wikipedia.org/wiki/Philistines>

<sup>12</sup> 1 Samuel 4;33

<sup>13</sup> Id. at 5-7

<sup>14</sup> EIKON at 3.

Twice a day for forty days, Goliath stood and shouted to the ranks of Israel, “Why do you come out and line up for battle? Am I not a Philistine, and are you not the servants of Saul? Choose a man and have him come down to me. If he is able to fight and kill me, we will become you subjects; but if I overcome him and kill him, you will become our subjects and serve us.”<sup>15</sup>

David, who was tending sheep at the time of the war, was asked by his father Jesse to deliver grains, bread, and cheese to his brothers and the commanders of their units in the Valley of Elah. Goliath sounded his battle cry while David was delivering the food to his brothers. David heard the cry and saw all the men flee from Goliath in great fear.<sup>16</sup> David was shocked by their reactions. He asked, “what will be done for the man who kills this Philistine and removes this disgrace from Israel? Who is this uncircumcised Philistine that he should defy the armies of the living God?”<sup>17</sup> They informed him that the king would give great wealth to the man who kills him. He will also give him his daughter in marriage and will exempt his family from taxes.<sup>18</sup>

Saul sent for David. David said to Saul, “Let no one lose heart on account of this Philistine; your servant will go and fight him.”<sup>19</sup> Saul replied, “You are not able to go out... you are only a young man, and he has been a warrior from his youth.”<sup>20</sup> David then convinced Saul that he was up to the task as he had killed a lion and bear, and that the Lord’s strength was with him. Saul then dressed David in his own tunic, but David refused as he was not used to the heavy equipment and it limited his movement. David took a staff in his hand, chose five smooth stones from the stream which he put in his pouch, and grabbed a sling in his other hand. He then approached the Philistine.<sup>21</sup>

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<sup>15</sup> 1 Samuel 8-9.

<sup>16</sup> Id. at 17-18;23

<sup>17</sup> Id. at 26

<sup>18</sup> Id. at 25;27

<sup>19</sup> Id. at 32

<sup>20</sup> Id. at 33

<sup>21</sup> Id. at 34-40

## E) The Battle Leading up to Mediation

Goliath saw a young shepherd approaching with no armor and only a sling and stones. Goliath approached the boy and said, “Am I a dog that you come at me with these sticks? Come here and I’ll give your flesh to the birds and the wild animals.”<sup>22</sup>

David replied, “You come against me with sword and spear and javelin, but I come against you in the name of the Lord Almighty, the God of the armies of Israel, whom you defied. This day the Lord will deliver you down and cut off your head. This very day I will give the carcasses of the Philistine army to the birds and the wild animals, and the whole world will know that there is a God of Israel.”<sup>23</sup>

*(At this point in the paper, the story changes from non-fiction to fiction. Up to this point, the paper was based on biblical references and historical events. The remainder of the paper is a fictitious account of what could have happened, rather than the events that actually took place.)*

David then went on to say, “on the grave of my Great Grandmother Ruth, I will strike you down, and the Israelites will conquer the Philistines.”

Goliath went on, “on the grave of my Great Grandmother Orpah I will squash you like an insect, and then the Israelites will be the Philistines servants for the rest of time.”<sup>24</sup>

David and Goliath then thought about their last few statements. They were shocked, confused, and overwhelmed. David broke the silence and stated, “If your Great Grandmother is Orpah, and Ruth is my own, then we are cousins of the same family and the same blood. You and your brothers, father, and

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<sup>22</sup> Id. at 42-44

<sup>23</sup> Id. at 45-56

<sup>24</sup> In the Jewish version of David and Goliath, the Torah makes reference to David’s great grandmother, Ruth and Goliath’s great grandmother Orpah as sisters. They were not privy to this information at the time, however.

grandfather and my brothers, father, and grandfather are all related. I cannot fight my own flesh and blood.”

To this Goliath, now surprisingly at peace with the moment, replied, “you are right boy. This fight cannot be. If we are flesh, and our families are flesh, than many Philistines and many Israelites must be flesh as well. We must find another way to resolve our dispute. The people of Israel and the people of Philistine cannot fight and make the other their servants. We must decide this in peace, with reason, rational judgment, and come to a fair conclusion for both sides.”

David agreed. They both went back to their tribes and explained their compromise. The armies dispersed and went back to their respective lands and homes. The fighting was over before it started, and a peaceful resolution was now underway. They then met again back at the top of the valley and decided to mediate their dispute. They were to select a neutral mediator, a neutral territory, and come to a fair conclusion.

## **PART II – Mediation**

### **A) Mediator Selection**

The hardest task in selecting a mediator of this dispute was picking someone who had knowledge of the situation<sup>25</sup>, but could also remain neutral.<sup>26</sup> This was very difficult because both sides felt that anyone who knew about the situation already made up their mind about what side they preferred, or would have something to gain from the mediation. Ultimately, the sides

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<sup>25</sup> Rules for Certified and Court-Appointed Mediators. Rule 10.640: Skill and Experience. “A mediator shall decline an appointment, withdraw, or request appropriate assistance when the facts and circumstances of the case are beyond the mediator’s skill or experience.”

<sup>26</sup> Id. at Rule 10.330: Impartiality. “A mediator shall maintain impartiality throughout the mediation process. Impartiality means freedom from favoritism or bias in word, action, or appearance, and includes a commitment to assist all parties, as opposed to any one individual.”

decided that knowledge of the exact situation would be harmful, but overall knowledge of territorial disputes between hated rivals would be ideal. Therefore, they decided to choose a just and righteous man who had knowledge of social relationships, government morality, and territorial disputes, but no knowledge of this particular matter.

The sides chose a thinker, philosopher and leader from China named Confucius. Confucius's philosophy emphasized personal and governmental morality, correctness of social relationships, justice, and sincerity. Confucius also created the philosophy of Confucianism. Confucianism focuses on the cultivation of virtue and maintenance of ethics through *ren*, *yi*, and *li*. *Ren* is an obligation of altruism and humaneness for other individuals; *yi* is the upholding of righteousness and the moral disposition to do good; and *li* is a system of norms and propriety that determines how a person should properly act within a community. This philosophy and Confucius's moral character seemed like a perfect fit in this dispute.<sup>27</sup>

Additionally, he championed strong familial loyalty, and created the well-known Golden Rule; "Do not do to others what you do not want done to yourself." This is important as there is a family tie between David and Goliath, and when they get off track, Confucius would be able to push the family loyalty on them, and also make mention of the Golden Rule when dealing with this matter.<sup>28</sup>

Additionally, Confucius was from a warrior family as his father had military exploits in two battles. This military background could prove helpful, as both David and Goliath understood and had experience in and around the military. He also led in times of division, chaos and endless wars between the feudal Chinese states. Instead of resorting to violence himself, however, Confucius wanted to restore the Mandate of Heaven and bestow

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<sup>27</sup> Riegel, Jeffrey, "Confucius", *The Stanford Encyclopedia of Philosophy* (Spring 2011 Edition), Edward N. Zalta (ed.).

<http://plato.stanford.edu/archives/spr2011/entries/confucius/>

<sup>28</sup> Id.

peace and prosperity on the people.<sup>29</sup> Preferring to solve a near violent dispute peacefully is exactly what David and Goliath seek to do.

Lastly, at the age of 53, Confucius had risen to the position of Justice Minister of Lu, a Chinese territory. At the time, Qi, a neighboring state of Lu, was worried that Lu was becoming too powerful. Qi decided to sabotage Lu's reforms.<sup>30</sup> This is nearly identical to the situation we have at hand, and his experience dealing with another like situation could prove to be invaluable.

## **B) Start of Mediation**

Confucius informed the sides that they were to come to China for the mediation. This served two main purposes; 1) to separate them from people and places that may be distracting, and 2) so that they could conduct the mediation under the laws that Confucius is familiar with.

Upon their arrival, Confucius met with both David and Goliath together to let them know that he would be conducting pre-mediation caucuses with both of them for three main reasons; 1) to get to know them better, 2) to give them a chance to vent their stories before getting in a room together, and 3) to get them to start thinking about the matter at hand and possible solutions.

### **i) Pre-Mediation Caucus with Goliath**

**Confucius:** Mr. Goliath, it is a pleasure to meet you. Thank you for coming all the way from Gath to China in order to conduct this mediation. My name is Confucius. I am a philosopher, and creator of an early version of the Golden Rule. I was Emperor of China for some time, but have since retired. I am here today to get your thoughts on the Philistine and Israelite dispute. You are here representing the Philistines and David will be representing the Israelites. First, please tell me a little bit about yourself, and then we will proceed to talk about the dispute in a few minutes.

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<sup>29</sup> Id.

<sup>30</sup> Id.



**Goliath:** My name is Goliath of Gath. I am one of the strongest, most courageous, and most successful warriors of my time. I was just about to squash David like a bug, like I have done to so many other feeble warriors over the years, but it seems we are blood relations. My grandmother and his grandmother are sisters. Therefore, I spared his life and we decided to mediate here, in peace. But clearly my generosity and self-control in not killing David right then and there will be advantageous to me here, now, in mediation.

**Confucius:** It is noble indeed that you did not fight your cousin. But why were you going to fight him in the first place?

**Goliath:** His despicable people, the Israelites, were in my way. The Philistines want to grow and expand to gain power. The Israelites are a small tribe who need to make way for the powerful Philistines.

**Confucius:** I am a strong believer in the Golden Rule that I mentioned earlier; “Do not do to other what you do not want done to yourself.”

**Goliath:** Yes, but our people are strong and growing. Their people are weak and small. They need to make way for the mighty Philistines who need more room for our successful people. I have killed tribes twice as smart, strong, and successful as the Israelites. I could have killed them off when I had the chance. They should feel lucky to not be in the ground right now.

**Confucius:** That may be true, but again, how would you feel if someone called your people weak, stupid, and a failure? In the days between now and mediation try to put yourself in your cousin and his people’s shoes. You are living a simple life with a small tribe, and then a large tribe comes to take over your land, people, and homes. How would that make you feel? Is there a solution that could accommodate both sides? You are both trying to live in peace with your people. There must be a way this can happen. Thanks for meeting with me today. I will see you in a week.

## ii) Pre-Mediation Caucus with David

**Confucius:** Mr. David, it is a pleasure to meet you. Thank you for coming all the way from Bethlehem to China in order to conduct this mediation. My name is Confucius. I am a philosopher, and creator of an early version of the Golden Rule. I was Emperor of China for some time, but have since retired. I am here today to get your thoughts on the Philistine and Israelite dispute. You are here representing the Philistines and David will be representing the Israelites. First, please tell me a little bit about yourself, and then we will proceed to talk about the dispute in a few minutes.

**David:** I am David of Bethlehem, son of Jesse and brother of many Israelite warriors. I am a shepherd, but also play Harp for King Saul.

**Confucius:** What brought you to the battlefield that day if you are not a warrior yourself?

**David:** I was to deliver bread and cheese to the soldiers.

**Confucius:** And how did you end up in a fight against Goliath?

**David:** The ugly, uncircumcised beast was standing there, at the top of the hill, yelling at my people. Making fun of my people and my God. My people who are strong and mighty, smart and noble. I felt a calling that I was to fight and defeat him. He is lucky that our grandmothers are sisters and that we are cousins, otherwise I would have defeated him like the lion and the bear. The almighty God was with me, I would have struck him down with a single stone. Then my people would have gone on to defeat the rest of the weak Philistines. They are lucky that the events of that day did not unfold and that we are here now, mediating the dispute.

**Confucius:** That all may have happened, or it may have ended differently. Either way, I would like to refer to the Golden Rule, "Do not do to other what you do not want done to yourself." Think, over the next few days between now and mediation, how you would feel if you were in his and the Philistines shoes? You and the Philistines are bordering territories that both want to live in peace. Think about a way in which this can happen. I am sure that

there is a way. Thank you for meeting with me today. I will see in a week for mediation.

### **iii) First Joint-Session**

**Confucius:** Hello. I have met with both of you previously, but I wanted to reintroduce myself. My name is Confucius. I am a philosopher, former Emperor of China, and created an early version of the Golden Rule. I will be your mediator. Mediation is a process whereby a neutral and impartial third party, the mediator, acts to encourage and facilitate the resolution of a dispute without prescribing what it should be.<sup>31</sup> As mediator I will help assist you both in negotiating your dispute to a settlement. You will both have plenty opportunity to talk and express your concerns. This mediation will be kept confidential.<sup>32</sup> I may, at times, speak with one of you individually just to get a perspective without the other member in the room, but I will remain neutral at all times and will never lean towards one side of another. This is your dispute and you will come up with your own settlement. I am just here to help make sure that happens.<sup>33</sup> Before we go further, I want to make sure that you both understand the fees and expenses that will be incurred throughout this process. I will be paid by time spent, charges incurred, and paid evenly by both parties. A written explanation has been provided as well.<sup>34</sup>

**David and Goliath:** Yes, I understand the fees and expenses.

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<sup>31</sup> Rule 10.210: Mediation Defined: “Mediation is a process whereby a neutral and impartial third person acts to encourage and facilitate the resolution of a dispute without prescribing what it should be...”

<sup>32</sup> Id. at Rule 10.360: Confidentiality: “A mediator shall maintain confidentiality of all information revealed during mediation...”

<sup>33</sup> Id. at Rule 10.220: Mediator’s Role: “The role of the mediator is to reduce obstacles... the ultimate decision-making authority, however, rests solely with the parties.”

<sup>34</sup> Id. at Rule 10.380: Fees and Expenses: “Fees charged during mediation shall be reasonable and consistent with the nature of the case.”

**Confucius:** Ok great. Please feel free to stop me at any time if you have a question. I am glad that you decided to settle your dispute in a peaceful manner. I am also glad that you agreed to proceed without attorneys present as I feel they just cause more problems than they solve.<sup>35</sup> Hopefully you both can find a solution that will meet the needs of both sides. David, you will speak first and then Goliath will follow.<sup>36</sup> This will be a balanced, even-handed process where we will have mutual respect for each other.<sup>37</sup> Do you both agree to conduct this meeting in good faith until we come to a suitable solution?

**Goliath:** Why doth this Israelite speak first and I, the powerful Goliath second?<sup>38</sup>

**David:** Typical of the uncircumcised Philistine. Always think they are the most important and everyone else is there to serve them.

**Confucius:** Please. Let me continue. Someone has to speak first. David can state his side and then you will be next. It was not meant of any offense. Later on different matters you will get to speak first. This is just the introduction. Good faith?

**David and Goliath:** I agree.

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<sup>35</sup> Class Lecture, October 19, 2011, Professor/Mediator Mel Rubin: This is a personal preference of some mediators.

<sup>36</sup> Alfani, Press, Sternlight, and Stulberg. "Mediation Theory and Practice." 2<sup>nd</sup> Edition. Charlottesville, VA. 2006. Page 113. Mediator's Opening Statements. "A mediation will typically begin with a mediator providing an opening statement... providing... an introduction...credibility and impartiality... explaining the process... explaining the procedures... confidentiality."

<sup>37</sup> Rule 10.410: Balanced Process: "A mediator shall conduct mediation sessions in an even-handed, balanced manner... promote mutual respect among... participants... and encourage the participants to conduct themselves in a collaborative, non-coercive, and non-adversarial manner."

<sup>38</sup> "Mediation Theory and Practice" at Page 114. "The second person to speak often feels defensive."

**Confucius:** Thank you. Now, please take just 1 minute to introduce yourself to each other, and briefly state your side of the dispute. David...

**David:** My name is David, son of Jesse from Bethlehem. I am a shepherd and an Israelite. I was born the youngest of nine sons in Bethlehem. When I came to provide cheese and bread for my brother and the generals, I heard this oversized ogre yelling profanities and challenging my people. He has no right on our land or to speak that way of my people. Something had to be done and I was the one to stand up to him.

**Confucius:** Thank you David, but please refrain from refereeing to Goliath as an ogre. You are cousins remember? Let's conduct this mediation in a civil manner. Goliath, please introduce yourself and your side of the dispute as well.

**Goliath:** My name is Goliath, the champion of war. I am from Gath and I am a proud Philistine. This Israelite and the rest of those fools would not clear way for my people. We are strong and growing. We are surrounded on all borders and need to expand. If they don't agree to make room for us, we will have to make room ourselves.

**Confucius:** Thank you Goliath, but the same goes for you. Please no rude words. Moving on, it seems we are at odds. One wants to go into another's land and one does not want to move from his own.<sup>39</sup> Surely there must be a way to solve this problem. Goliath is it completely necessary that the Philistines get more land and does it have to be that of the Israelites?

**Goliath:** Yes, we are surrounded on all side and only that of the Israelites is on our border. Without more land, we will be over crowded and that would lead to more and more problems. We must have their land.

**David:** Be overcrowded. Why do I care? I have a home and a family. Why do I have to leave just because you need more land?

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<sup>39</sup> Id. at 119. "The mediator could then identify and summarize the issues as the parties have put them forth."

**Goliath:** It is the only way. We cannot live in the sea and we cannot live if we do not have more land!

**Confucius:** Ok. We can all see the issue. Goliath and the Philistines want more land, but David and the Israelites don't want to give up theirs. Are there any other issues?

**David:** Yes. In addition to people trying to take our land, the people are also our hated enemies. We do not want to even share a common border with them. Why should we give them our land when we don't even like them or want them close to us? If we give them this, what next? Our homes, our women?

**Goliath:** Ha. Your homes and your women are not fit for a Philistine.

**Confucius:** Gentlemen. Please refrain from rude remarks. We are here to solve a problem not to create more. We can't change the past so let's work together to find an equitable solution.<sup>40</sup> It is clear that neither side likes the other, but that is common in mediations and most other disputes. Let's put our differences aside and start coming up with a fair and equitable solution that both parties can agree to. Now, Goliath, please, is there any way you would agree to giving some type of compensation for the land?

**Goliath:** I would rather fight the Israelites to the death than give them anything for that land. That is my land for the taking. I am Goliath, I could have just squashed David when I had the chance and taken this land without having to come to China in the first place.

**David:** You squash me. I have killed beasts bigger and more ferocious. I have the Almighty God with me. I wouldn't have had to waste two stones in defeating you. I would have had you on the ground defeated faster than I can finish this sentence. You do not scare me.

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<sup>40</sup> "Id. at Page 128. "Focus on the future... Be positive."

**Confucius:** Gentlemen, please refocus. You decided not to fight. That's why you are here. This doesn't seem to be moving along as I have expected. The lines are drawn and we have not moved since the beginning of the negotiations. Goliath, I would like to have a private caucus with you at this time. David, we will only be 5 minutes. Do you mind going outside and I will let you know when we are ready for you to come back in. You will have a private caucus after this one as well.<sup>41</sup>

**David:** Sure, let the big strong uncircumcised buffoon caucus first. Maybe you will talk some sense into the fool.

**Confucius:** David, please. Before you leave, we must decide here and now that we will not speak poorly of the other party anymore, or I will cease this mediation. Agreed?

**Goliath:** I can agree to that.

**David:** I as well.

**Confucius:** Now David, please excuse us. While you are out please make a list of the top issues that you think we have talked about, and the top issues that we have not discussed.<sup>42</sup> We will only be a few minutes.

**David:** Fine.

#### iv) Private Caucus – Goliath

**Confucius:** Goliath, I know what you are asking for, but you must realize how difficult this is for David and the Israelites to accept. You are asking to take their land and homes for nothing in return. What if they were trying to take your land? Wouldn't you be upset as well?

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<sup>41</sup> Id. at 131. "At some point during the mediation session, the mediator, a party, or an attorney may decide that it would be useful for the mediator to meet separately with each of the parties."

<sup>42</sup> Class lecture, November 9, 2011, Professor/Mediator Mel Rubin: "During a caucus session, assign the other person 'homework' so they don't feel like they are doing nothing."

**Goliath:** Well of course. But we are a strong people and they are weak. They would never need our land and they would never defeat us.

**Confucius:** You need to stop thinking about other scenarios and putting down the Israelites. Let's try to find a solution. They have land. That is of value. Do you have anything of value to offer? You could pay them for their land. It happens all the time. It was going to cost you lives, but something else would be a much better price to pay, wouldn't you agree?<sup>43</sup>

**Goliath:** Well of course. Lives are terrible to waste. My family and friends, and the rest of the Philistines are very important to me. Well, we have food and animals. Maybe that would interest the Israelites?

**Confucius:** Good. There you go. Value for value. That is better than value for nothing. Are you willing to give up these things for the Israelite land? This is land. There are plenty of food and animals, but only one land. This will be expensive, you must realize.

**Goliath:** I realize this, but we need the land and we do not necessarily need the food and animals.

**Confucius:** Ok good. Thank you for your cooperation. Let's invite David back into the room, and you may wait out in the hallway. While you are out, make a list of what you are willing to offer for the land.

#### v) **Private Caucus – David**

**Confucius:** David, it seems that Goliath and the Philistines want your land. Is there any way you would give your land to them?

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<sup>43</sup> Fisher, Patton, and Ury. "Getting To Yes." 1991. Penguin Books. New York. "Brainstorm... Broaden your base... Expand the pie."



**David:** No. This land is too important to us. Not only is it home to me and my family, but also to our Four Fathers and the history of the Israelite people. This land has been with us for generations. It's not just land; it's the holy land.

**Confucius:** I see. So this land is extremely important to you. Well is any portion of the land less important than the others?<sup>44</sup>

**David:** Well, it is all very important, but Bethlehem, Jerusalem, and the capital, Gibeah are clearly the most important. They are located in the upper and middle regions.<sup>45</sup>

**Confucius:** I see. So then the lower region is not as important as the upper and middle. Could the Philistines potentially buy that region from you for some type of value compensation? This would have cost both sides many lives no matter who won the battle. Compensation is much better than lives.

**David:** That does seem accurate. Compensation is better than losing my family and Israelite friends. Although the lower land it is not as important, it is still our land and our people do live there. But I suppose if the price were right we could accept an offer. An offer of some of their land perhaps, or an offer of food and animals. An offer of both would be the most ideal.

**Confucius:** Yes, but Goliath has already said that they are over capacity. They have no more land to give. Would food and animals suffice?

**David:** Well yes, a lot of food, and a lot of animals. Maybe even new supply every year. And they must also give a guarantee that they will not seek any more land from us ever again.

**Confucius:** Good. It seems we are making progress. You could potentially give Goliath and the Philistine the least significant portion of your land, in exchange for food, animals, and a guarantee to never seek any more land. Is this correct?

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<sup>44</sup> Id. at Page 42. "Focus on interests, not positions."

<sup>45</sup> EIKON at 2.

**David:** Yes, if it must be done then so be it.

**Confucius:** Ok. Let's invite Goliath back in for another joint-session.

**vi) Second Joint-Session**

**Confucius:** Welcome back. We both had joint sessions. I will let Goliath speak first and then David will reply.

**Goliath:** David, I had discussed the potential of purchasing your land. Would you agree to a purchase?

**David:** Yes, if I must give up land, then a purchase would be the only way. However, I must warn you, Bethlehem, Jerusalem, and, our capital, Gibeah will not be taken. These cities are in the middle and north of our territory. The southern region is the only one up for discussion. Is that satisfactory?

**Goliath:** Well, if it must be, then it must be, but you will received less in return for this undesirable territory.

**David:** Less in return, indeed, but still a king's ransom. You are the one who needs more land, not I. You will need to pay handsomely for the land.

**Goliath:** What type of compensation did you have in mind?

**David:** Well first, you must guarantee to never attack the Israelites again, or ask for more land in the future. Will this do?

**Goliath:** Attacking is out of the question. That is why we are here. However, if we need more land then I cannot make any guarantees about asking for more.

**David:** But you must. This is all we can give and we will not give any more unless in return for more land. You are lucky to be getting this amount

**Goliath:** Fine. I agree to those terms.

**David:** Next, we will need 2,000 sheep, 1,000 oxen, 1,000 horses, and 1,000 camels upfront. Then 500 sheep, 200 oxen, 200 horses, and 200 camels every year for the next 10 years.

**Goliath:** That I can simply not agree to. That is too much. You are asking for over 7,000 sheep, and 3,000 oxen, horses, and camels. There are simply not enough.

**David:** You are asking for land that you desperately need. There will be more sheep, more oxen, more horses, and more camels. There will not be more land.

**Goliath:** I realize that but that is simply too much. Would 1,000 sheep, 500 oxen, 500 horses, and 500 camels suffice? With 250 sheep per year, 100 oxen, 100 horses, and 100 camels for the next 4 years?

**David:** No I said my price. You heard it and that's what it will be.

**Confucius:** It seems Goliath does not believe he has enough animals for you. Is something else you could offer as well? Perhaps food or something else of value. As for the animals. Maybe we could split the difference? David asked for a high number. Goliath asked for a low number. Can we agree to an average? 1,500 sheep, 750 oxen, horses, and camels, with 375 sheep per year, and 150 oxen, horses, and camel for the next 7 years? Goliath?

**Goliath:** If I must in order to gain this land then yes. Food is much easier to provide than more animals.

**David:** That will be fine. But we would need a lot of food to make up for the difference. We will need 10,000 wheels of cheese, 10,000 loaves of bread, and 5,000 barrels of wine upfront. With 2,500 of cheese and bread every year for the next 10, and 1,500 of the wine as well.

**Goliath:** The bread I can accept. As for the cheese and wine, I am not sure we will be able to even provide enough for ourselves let alone the Israelite's demand. Half the bread and wine is all we can give. For the next 4 years as well.

**David:** Half is fine, but for the next 10 years or else we cannot have a deal. We just cut the animal size in half. Now we will cut the food size as well? This cannot be. Half, but for 10 years or we do not have a settlement.

**Goliath:** Fine, it seems that will have to do.

**Confucius:** So the guarantee not to attack or ask for more land is settled. As is the food and animals. Is there anything else?

**David:** No, I think we have a fair deal.

**Goliath:** I agree as well.

**Confucius:** Then it is settled. Thank you both for your participation. Please sign this agreement and we will be on our way. Are you both sure you are satisfied with this agreement?

**David and Goliath:** Yes.

### **PART III – AFTERMATH AND CONCLUSION**

#### **A) Mediation Analysis**

##### **i) Pre-Mediation Issues: Mediator, Location, and Pre-Caucus**

The mediation was very fair and balanced. Confucius was a neutral mediator. He did not favor one side or the other at all and had no preconceived notions.<sup>46</sup> He was also experienced in the area of solving territorial disputes, peacefulness, and solving problems.<sup>47</sup> Conducting the mediation in China separated both David and Goliath from their tribes and the media, which may have played a role in why the mediation was so peaceful. It also

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<sup>46</sup> “Mediation Theory and Practice” at 115; Discusses the importance of impartiality.

<sup>47</sup> Id; It is important to establish credibility based on experience.

helped the mediation, as Confucius, the mediator, was familiar with all the local mediation rules and laws.<sup>48</sup>

Confucius elected to pre-caucus both David and Goliath a week before the trial. Confucius knew there would be a lot of hostility and wanted to get both sides vent their frustrations well before the mediation and marinate in the thought of coming up with a solution. Confucius also elected to conduct the mediation without lawyers, as he felt lawyers create more issues than they solve.<sup>49</sup> Lawyers have a stereotype of tending to want to win rather than solve the problem. Confucius did not want to find out if this rumor was true or not, so he decided to proceed without lawyers, and the parties agreed to this.<sup>50 51</sup>

## **ii) Mediation Issues and Techniques: Controlling the Parties and Caucus Strategy**

As the mediation began, Confucius noticed, as he expected, that both sides were being rude and hostile to each other. At every opportunity he attempted to diffuse the situation by citing good faith, solving problems rather than creating them, and a balanced process.<sup>52</sup> Eventually both sides calmed and the mediation went along swimmingly.

Confucius made good use of caucusing. In addition to the pre-caucuses, Confucius used private session caucuses during the mediation with both sides as well. When things came to a standstill or the parties seem to be getting overly aggressive, a caucus is a good way to keep things moving in a healthy and productive manner. Confucius kept them short and to the point. He gave the

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<sup>48</sup> Class Lecture. October 5, 2011. Professor Rubin; It is important to pick a suitable and agreeable location based on the parties, the mediator, and other external factors such as media.

<sup>49</sup> Id.; Pre-Caucusing serves an important function and mediators should take advantage of pre-caucuses when appropriate.

<sup>50</sup> Id. at November 2, 2011; Judging stereotypes and people plays a critical role in meditating, even before the process begins.

<sup>51</sup> “Mediation Theory and Practice” at 475; Discusses whether or not lawyers participation benefits or harms the mediation process.

<sup>52</sup> Id. at 121; Taking charge/managing conflict.

other side something to do and think about while waiting, which makes them feel like they are still part of the mediation and gets their mind off of what the mediator and other party may or may not be discussing. This is where the problem solving really began. This is where the parties could speak frankly and honestly without the fear of the other side gaining insight or an upper hand.<sup>53</sup>

Confucius used many subtle mediation techniques that helped resolve the dispute. He laid out a clear agenda to start, which put to rest any uncertainty of the procedure. He repeated and summarized key points and ideas to emphasize them and remind the parties of them. He settled the parties down and refocused them when they got out of hand, rude, off track, or spoke out of turn. He controlled the parties and mediation well throughout the entire process.

### **iii) Finding a Solution**

The solution finally came when the parties realized that in order to get something of value, you need to give something of value.<sup>54</sup> Goliath and the Philistines wanted land for free, but the Israelites were willing to fight for it. Lives are extremely valuable. Both sides realized that lives were too valuable for land, and that is why they decided to mediate, but they did not know the price the land required. In the private caucuses, David began to think about the land, the important cities, what part of the land he could afford to give up, and what they wanted for the land. Goliath began to think about what he had to offer for the land, how much the land was worth to him, and how drinks, food, and animals were a good trade for the land which the Philistines sought.

Both sides then negotiated amongst themselves in the joint-session and eventually came to a solution. They negotiated the types and number of food, drinks, and animals, the exact amount of land, and certain other terms and conditions that were necessary for the deal to get done. In the end, they came up with the right

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<sup>53</sup> Class Lecture, October 5, 2011; The importance of caucuses and private sessions during mediation.

<sup>54</sup> “Getting to Yes.” Negotiation tactic of exchanging value for value.

price and conditions and the mediation came to a peaceful and productive conclusion.

## **B) Conclusion**

In the biblical story of David and Goliath, the Philistines and Israelites waged war. Goliath fought on behalf of the entire Philistine tribe and David on behalf of the Israelites. They both meet on top of the hill. David pulled one stone from his pouch and slung it at Goliath. David smote the Philistine in the forehead, the stone sunk in, and Goliath fell to the Earth.<sup>55</sup> David then, seeing as he had no sword, took the sword of Goliath and cut his throat.<sup>56</sup> The Philistines all ran after they saw their champion of war had been defeated, and the children of Israel ran after in chase.<sup>57</sup> The Israelites killed many Philistine and a few Israelites were killed as well. Then the Israelites returned to the field, ransacked the Philistines tents, and all was over.<sup>58</sup> David eventually became the King of the Israelites after his courageous battle.<sup>59</sup>

In this mediation, the Philistines received a portion of the Israelite land in exchanged for 1,500 sheep, 750 oxen, 750 horses, and 750 camels upfront, with 375 sheep, 150 oxen, 150 horses, and 150 camel for the next 7 years, as well as 10,000 loaves of bread, 5,000 wheels of cheese, and 2,500 barrels of wine upfront, with 1,250 wheels of cheese, 1,250 loaves of bread, and 7,500 barrels of win each year for 10 years.

It seems like mediation was a much more equal and just solution. Instead of war, where lives would have been exchanged and hostility remained, they traded food, drinks, and animals, and squashed much animosity. This peaceful mediation was a much better route to take than a violent war. In the Torah and Bible, the story of David and Goliath teaches a lesson of a small underdog defeating a giant. While this is a very entertaining story and

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<sup>55</sup> 1 Samuel 49

<sup>56</sup> Id. at 50-51

<sup>57</sup> Id. at 52-53

<sup>58</sup> Id. at 54-55

<sup>59</sup> "David." Wikipedia.

important lesson, fighting is never the answer, and negotiating your differences with a mediator yields a much better outcome.



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