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Alexandra Crampton

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Troubling Solutions Through Anthropological Fieldwork: Mediation Research in Ghana, Australia, and the United States

Alexandra Crampton

Social and Cultural Sciences, Marquette University, Milwaukee, WI

Abstract

Social workers and anthropologists encounter different representations of mediation as a professional practice: On the one hand, Social Work is grounded in mediation as expert knowledge that helps others to resolve interpersonal disputes. For example, mediation as Alternative Dispute Resolution (ADR) can enable court cases to resolve without formal trials. On the other hand, Anthropology is grounded in mediation as a research field site and by past intervention experience of anthropologists. As mediation professionalized and became mandated across public institutions, anthropologists became strong ADR critics. Academic debate between mediation proponents and critics ended as critics abandoned research in the 1990s and 2000s. My initial research goal was to pick up from past empirical study. Research was conducted in Australia, Ghana, and the United States in two areas of mediation practice; resolving parenting disputes between adults who are

separating or not married, and “elder mediation” cases involving older adults. Initial findings reified past debate through data that supported proponents and critics. Further insight was gained through return to fieldwork using an expanded, ethnographic case study design. This article provides a journey through a seemingly intractable divide that was ultimately resolved through prolonged time in fieldwork focused on understanding client perspectives. I show how social work and anthropology scholars of professional mediation have been positioned on opposite sides of an expert knowledge/fieldwork research boundary. This boundary can be made productive through open exchange about mediation as a practice that evolves through an interplay of expert knowledge, intervention practice, and client engagement.

Keywords

Interdisciplinarity, intervention, law, epistemology, family caregiving

Introduction

Social workers and anthropologists encounter different ideas about mediation as a professional practice. As a former mediation practitioner, qualitative social work researcher, and cultural anthropologist, I encounter different narratives about mediation when circulating through professional conferences and when reading scholarship. Social work offers a positive history that defines mediation as a way to help others in resolving interpersonal disputes (Craig, 1998; Kruk, 1997; Munro, 1997). Another positive application is when mediation enables court cases to be resolved without resorting to trial, and thus offers a form of Alternative Dispute Resolution (ADR) (Gibson, 2000; Wahrhaftig, 2004). Anthropology scholarship, however, explains how professional mediation came (in part) from anthropological fieldwork that was then translated into professional interventions (Crampton, 2006; Gulliver, 1979; Merry, 1982). As this happened, fieldwork revealed trouble; voluntary use of services became rare, and professionals and policymakers had to mandate services (Harrington and Merry, 1988). An intervention constructed as an alternative became integral to laws and legal processes that empowered professionals and the state more than clients (as court litigants and as mediation “disputants”) (Nader, 1995; Silbey and Merry, 1986). Over time, ADR critics largely left the field (Yamamoto, 1995). The proponents who remained continued to refine professional intervention (e.g. Charkoudian et al., 2018). In my observations and literature review, it seems that neither critics nor proponents spend much time in field research any more. Part of the problem lies in difficulty of data collection (Emery, 2019; Welsh, 2019).

A few decades later, my research goal was to replicate past mediation studies as an empirical update to expert knowledge. Within the broad ADR field, I have two main research areas: The first is mediation as used to resolve parenting disputes that might otherwise have been filed in court, such as during a divorce. Over time, this intervention has expanded from divorcing couples to those already divorced or who never married (Murphy and Singer, 2015). My research studies began in the United States, and continued to Australia. My second research area is in mediation as an intervention to help older adults and mediation as intervention in family law (Gibson, 2000; Wood and Bowman-Kestner, 1990). Within one research study of “elder mediation,” (see Barry, 2015) the project took place in Ghana and the United States. Each study began as a replication of previous studies; focusing on collecting mediation cases for file review, case session observation, and follow-up interviews. They were qualitative program evaluation studies. Each project also included a broader ethnographic fieldwork component. Across studies, initial results simply reinforced past debate. On the one hand, there were mediation cases that supported general mediation expert claims. However, much of the data also supported arguments raised by critics. Who was right? I realized that I might not have all the data needed to address the problem this question raised; focusing on case files and mediation sessions represented professional concerns at the expense of greater representation of client perspectives. To better understand client perspectives, I needed more time in the field and more engagement with clients. I expanded data collection using an extended case study approach similar to that used by anthropologists in the early days of mediation study in non-Western contexts (Nader,

2002). The result was a better informed understanding of mediation from client perspectives as they engaged with mediation services.

This article addresses boundaries between social work and anthropology through the example of mediation scholarship and my research studies. This journey is divided into three sections. In the first section is a literature review bifurcated into mediation from a social work perspective and mediation from an anthropological perspective. The second section presents my research. It starts with the general problem of troubling boundaries between professionals seeking to help others and anthropologists who study their professional work. It then continues with explaining how the initial program evaluation research design simply reified past trouble. From trouble, the research section continues to an expanded design as I returned to the field for more open-ended inquiry. At this point in the article, the research studies are harder to generalize. Therefore, results are divided into four sub-sections; family court mediation in the U.S., mediation as family dispute resolution in Australia, elder mediation in Ghana, and elder mediation in the U.S. The third section is for discussion, and provides comparison of lessons learned through the initial research design with those learned through more ethnographic and reflexive extensions. In the conclusion, I explain how both social work and anthropology seek to “do good” but through different commitments in the boundary between expert knowledge and field research. I argue that the ideal use of such boundaries is not to transcend as much as to dialogue through them, in a flexible exchange of insights and information.

Literature review

Mediation in ADR scholarship from a social work perspective

In social work, mediation is theorized to help empower clients, called “disputants,” to better articulate their needs and mutually problem-solve in a way that helps resolve conflict and strengthen relationships (Kandel, 1995; Kruk, 1997; Roberts, 2014). In essence, mediation is a conversation structured by the mediator in order to move parties from competition to collaboration. As a process, mediation is a series of steps; introduction and ground rules, opening statements by each disputant (mediation participants), shared identification of issues to problem-solve, exploration of each issue, and then resolution of each issue (Munro, 1997). Each disputant is to have an equal voice and to work collaboratively to reach mutually acceptable solutions. While the mediation itself is kept confidential, agreements may be reduced to writing, signed, and kept as a record of agreement (Gibson, 2000; Kruk, 1997). In this way, mediation becomes a form of Alternative Dispute Resolution (ADR), in which a dispute that may have been brought (or potentially brought) to a court for resolution can be diverted to mediation. A resulting agreement can be submitted in the process of a court case. Judges will commonly accept such agreements and convert them into legally binding court orders (Murphy and Singer, 2015). These settlements have become the most common measure of success in part because they imply that further court action is not needed (Roberts, 2014).

How do professionals know that mediation works as intended? How do they know they will be helpful? Social work texts may note that mediation as a general practice precedes professional attention, and was “discovered” through field research on dispute resolution across cultures (Crampton, 2006; Gulliver, 1979). However, the scientific evidence given weight as a “gold standard” is the randomized control trial (RCT) rather than field-based study (Crampton, 2016; Emery, 2011). Positive results from these experiments are then used to support expansion and institutionalization. One example is in divorce cases and family court. At the time mediation was introduced in family court, it was proposed as an alternative to court trials for resolving disputes over property and children (the latter are called “parenting disputes” today). Small pilot studies during the 1980s and 1990s included random assignment to mediation or to court process (Emery et al., 2005). These results are still cited as evidence that mediation provides better outcomes, and to argue for use of mediation beyond divorce settlement (e.g. Shaw, 2010). In family law, mediation was expanded from use with divorcing parents to those

who had already divorced and those who never married. Hence, divorce mediation and child custody dispute cases today are more broadly referred to as family mediation and family dispute resolution (FDR) cases of parenting disputes within “separating families” (or “separated families”). In the U.S., Australia, and other family law systems today, separated parents who wish to file parenting disputes must first consider mediation before resorting to court process. In this way, mediation as an experiment has become a mandated public service (Murphy and Singer, 2015; Parkinson, 2011).

In the early policy reform days of mandating mediation, qualitative social science and anthropological fieldwork studies were conducted to test how well this worked in practice. The results raised questions about how power dynamics and cultural differences caused unintended consequences. Critics argued that mediation at best could be alienating for those from diverse backgrounds and at worst could become a “controlling process” (Nader, 1997) imposing court interest in settlement and professional opinions on best outcomes (Silbey and Merry, 1986). A key concern was use of mediation in family cases involving domestic violence such that mediators would not be able to facilitate a fair and equal exchange of interests, perspectives and options in resolving disputes (Landrum, 2010). In response, standard modifications have been made to mediation practice. For example, courts will screen family cases for domestic violence before mandating mediation, and mediators are trained in how to be more culturally sensitive in working with “diverse” clients (Barsky et al., 1996; Taylor, 2002). Through advanced practice, mediators (in theory) can address power dynamics and cultural differences as micro level challenges.

Today, ongoing research in these areas is conducted within basic mediation model parameters. For example, randomized control trials have been used to modify mediation for domestic violence cases (Holtzworth-Munroe et al., 2021). Scholarship tends to focus on developing or testing new techniques in how mediators can achieve desired outcomes. However, basic field-testing of how professionals and clients engage in mediation are rare (Charkoudian et al., 2018). As one mediation professional explained during field research, the basic model has been proven and thus current research is only needed for advancing practice. Advancing practice can mean adding techniques or expanding into application with new populations. My research has grown out of developments expanding from family mediation. As previously explained, the first is an expansion of family court mediation from divorce cases to all parenting dispute cases potentially filed in family court (or falling under family law). Whether using a more legal term, such as child custody mediation, or a broader term, such as family dispute resolution, the purpose is to resolve parenting disputes between “separating” and “separated” parents. The second is an expansion of family mediation from concern for the welfare of children to concern for the welfare of older adults. In the 1980s and 1990s, elder advocates proposed that most guardianship cases filed on behalf of older adults were not about adult incapacity (as required by law) as much as underlying family conflict over “What to do with Dad” (or Mom) (Craig, 1997; Parsons and Cox, 1997; Wood and Bowman-Kestner, 1990;). Promising projects became the basis for what is now called “elder mediation” (Barry, 2015). In family law and elder law, advocates built from small projects to first establish mediation as a court alternative, and then to try to shift case referral and mediation practices from court-based to community-based services. In mediation generally, and family/elder mediation as well, two key measures used in mediation evaluation are settlement rates and reported client satisfaction (Munro, 1997). While this can help identify cases that might have gone to court without mediation intervention, past concern that mediation imposes settlement suggests an ongoing need to study when cases settle in ways that help clients and when they settle (or cannot be settled) in ways that are not helpful. Past field research underscores the importance of continually raising this question, as presented in the next section.

Mediation in ADR scholarship from an anthropological perspective

In anthropology, mediation is primarily known as an area of research within legal anthropology (Pirie, 2013). Extensive study of mediation grew out of disciplinary questions about how people resolve disputes apart from

formal legal systems (Greenhouse, 1985; Nader and Todd, 1978). They might do so in preference for informal dispute resolution or because their lived experience (within their culture) is outside of such systems. In anthropological scholarship, this was framed as studies of dispute resolution in “non-state societies,” which meant going to field sites that seemed remote from the imposition of social control by modern state policies and court systems (Merry and Milner, 2010). For example, James Gibbs published an article on dispute resolution among the Kpelle people in West Africa (Gibbs, 1963). He uses a case example of how a local chief mediated a spousal dispute, which the entire village attended. The chief lacked the formal powers of a modern state but nevertheless exerted influence in bringing parties together and talking through problems and solutions. This ability to resolve disputes without resorting to court inspired marital therapists in the United States working with divorcing couples (Folberg, 1983). Mediation as practiced cross-culturally was brought into professional helping practice through adaptation by mental health professionals.

Another way that field-based research from “non-state societies” was brought into the United States and other “modern” contexts was through anthropologists themselves (Lowy, 1973). That is, mediation was “pioneered” in the United States during civil rights social movements (Wahrhaftig, 2004). As a social movement (the “ADR movement”) that developed into a profession, ADR interventions were intended to help people to find better ways to resolve conflict than resorting to court contexts. Legal anthropologist Laura Nader and her graduate students had developed research evidence from how disputes are resolved outside of formal, state-controlled contexts (Nader and Todd, 1978). One of her students, Michael Lowy, studied in Ghana and returned to North America. He participated in early efforts to bring dispute resolution from West African practices to the U.S. and Canada (Wahrhaftig, 2004). This included collaboration with Richard Danzig, a Stanford law professor whose proposal contributed to federal funding for several “Neighborhood Justice Centers” around the U.S. (Danzig, 1973).

Over time, Lowy became a vocal ADR critic as mediation experiments were integrated into formal institutions, such as courts. For example, Lowy worked with a Rental Housing Mediation Task Force in California. His efforts to address landlord–tenant problems as “social structural” were continually resisted by program staff (Lowy, 1983). His request to collect and summarize data from disputes to identify common problems and “forge the links between their individual problem and the social and economic forces and conflicts in which it was embedded” were denied. According to Lowy, the fear was that landlords would refuse voluntary participation and that the program would no longer offer neutrality. He concluded that mediation, “has fallen victim to a professional ideology- legalism – which views the functions and potentials of mediation as essentially the same as adjudication- the efficient, one on one settlement of disputes” (Lowy, 1983).

Michael Lowy argues that the legal profession “perverted” what the ADR movement, as a “citizen dispute resolution movement” ought to have offered (Lowy, 1983). While the ADR movement was supposed to “derive its legitimacy from the neighborhood,” the power was seized by professionals. As he writes,

Judges, lawyers and professional arbitrators have been consulted by foundations on the issue of desirability of funding new projects. Many of them have designed, evaluated, or served on the staffs of such projects while still others are members of the board of directors. The major pieces of legislation concerning this area were written and promoted by attorneys (Lowy, 1983).

He argues the result is that mediation is not an *alternative to* formal law as much as an option *within* a system upheld by legal professionals. The development of family court mediation from early experiments to mandatory court service provides an example. Lowy argues that this approach leads to, a “reliance on legislative solutions to social problems” rather than working directly with people in problem and solution identification.

Lowy's argument is detailed here because it reflects common concerns with the professionalization of mediation and a related question of who is being served (Hedeem, 2003). His story shows how an intervention intended to empower can be overturned by those with greater power. Other anthropologists agree. Nader uses strong terms to criticize the co-optation of mediation by legal professionals and in court systems. Nader refers to court-connected forms of mediation as imposing "harmony ideology" and "coercive consensus" (Nader, 1997). For her, the positive outcomes of mediation agreement are most likely signs of pressuring weaker parties into compliance. She is especially concerned about state-sponsored mediation through court services. She sees this intervention as a way of preventing people from exercising their legal rights.

Findings by other anthropologists and qualitative sociologists support Nader and Lowy's assertions. Sally Engle Merry and Christine Harrington, for example, argue that mediation became an intervention sustained through professional ideologies more than disputant needs and interests (Harrington and Merry, 1988). Since most mediators were from white, middle class backgrounds, they also unconsciously imposed their cultural norms of family and dispute resolution. In studies of divorce mediation, Susan Silbey and Sally Engle Merry found that mediators resorted to manipulation to achieve desired ends. They deployed "bargaining" and "therapeutic" strategies to realize their ideas of success (Silbey and Merry, 1986). In the micro level of mediation sessions, mediators were insufficiently aware of how they used the power of their expertise to impose rather than facilitate outcomes. They also unconsciously imposed the cultural norms of their background as if universally applicable to all clients.

The political and culture critique detailed here has focused on mediation as applied in U.S. contexts. The U.S. has also "exported" professional mediation through USAID funded projects and through global "leadership" in professional intervention work (Coben, 2005). Anthropologist Kevin Avruch has closely examined the cultural assumptions that infuse professional models. Of course, mediation practitioners are sensitive to such critique (Avruch, 2015). However, most professional mediation literature addresses culture as an "advanced" move that simply requires modification for use across cultural contexts. An implication in this approach is that cultural sensitivity is about how to take a generally good model and then adapt it to local populations. There is insufficient study of how the local population may already have their own ideas and agencies, and that the challenge may be more in how to integrate rather than how to offer (or impose) something new.

Overall, the anthropological critique of mediation has not been about the model in theory as much as the model in practice. There are three reasons that offer explanation: First, anthropologists were among those who helped create the basic mediation model through their research and training. Second, an ideal of using expertise to help others to more amicably resolve disputes is not challenged. In fact, the very benign and ideal goals of mediation may make it seem hard to criticize. The offer to help resolve conflict may seem uncontroversial. Third, anthropologists were among early ADR proponents. However, support for mediation shifted as field-based learning and intervention experiments were formalized into professional models and mandated services. In other words, anthropologists argue that the problems associated with mediation in practice come from contextual factors of power and culture that are minimized or ignored by proponents. A key criticism centers on shifts from voluntary to mandatory mediation, and how more powerful players and larger political forces impinge on what this intervention can be. Mediators who address power and culture through either a meso level of case assessment procedures or a micro level of mediator techniques and strategies may not fully investigate how to evaluate the consequences of their practice. In particular, standardized measures such as settlement rate itself may not be an effective measure of whether clients have been empowered. For example, if clients sense few alternatives, then "satisfaction" responses on a post-mediation survey may be more of a measure of perceived lack of options rather than evidence of a best practice.

Field-testing in three countries

A call to trouble?

Does mediation really help others given potential gaps between the mediation model in theory and practice? For those trained in social work *and* anthropology, professional mediation as ADR practice may bring trouble. On the one hand, social workers eager to gain mediation experience may become part of such mandated programs, and thus soon entangled in questions of whom is really helped and why. Meanwhile, anthropologists today seem to play one of two roles; as culture experts advocating for model modifications (e.g. Avruch, 2015) or as critics of public and professional power (e.g. Nader, 1997). Today, neither established social work nor anthropology roles may bring sufficient change given how well established the basic mediation model has become. This is because it is difficult for fieldwork to make a difference in models once they are codified (and commodified) through professional circulation and attached to powerful players, such as standardized court services. For example, in my experience presenting field-based mediation research for professional mediation audiences, I have found that study implications that suggest more than need for minor modification are soon challenged. Feedback from my study presentations have included dismissing the mediation programs as poor examples and/or the mediation services as “not mediation.” As one expert explained, “I’ve always said that you can train a monkey to mediate but that does not make them a mediator.” This response suggests that some professionals resist research results that might undermine confidence in basic mediation model claims. In this resistance, they uphold a presumption that the precipitating factors driving the development of mediation still provide the best understanding of how it works today. In family law, for example, mediation continues to be promoted to parents as a litigation alternative (as Alternative Dispute Resolution). In elder law, mediation is still framed in relation to court—as a litigation alternative within adult guardianship cases. Yet, the larger contexts in which people might file today or seek help related to divorce (or family separation) and aging, as well as available interventions, are both continuing and expanding. Ongoing research is needed to help understand changing needs and uses of mediation in the context of those who live with the outcomes.

These insights were learned as I conducted field research. My initial research goal was to simply update empirical literature and perhaps resolve past debate. I therefore began with a study replication of past program evaluation studies. When this brought trouble, I turned to more anthropological fieldwork. This shifted the projects from the deductive approach of a program evaluation to a more inductive and reflexive approach. The contrast between these research approaches is presented next to help highlight differences in what social work and anthropological research might yield in testing established models of expert practice.

Initial mediation research design: Program evaluation replication

My initial ADR research design used a program evaluation approach commonly found in social work (Crampton, 2016). The goal was to test the basic mediation model as applied to two areas of social work practice using field-based research. The two areas are that of family dispute resolution (as an outgrowth of divorce mediation), and that of elder mediation (as an outgrowth of adult guardianship mediation). Research sites were in Australia, Ghana, and the United States. The type of program evaluation research design used was a replication of past research evaluating the benefits of mediation as an ADR intervention. In this case study model, research tests a direction of change from expert knowledge to the field of client lived experience. Data are collected to examine any gap between how mediation models work in theory and how cases play out in practice. If mediation worked, then disputants would not only reach settlement but would also find improvement in their daily lives as a result. That is, I traveled to places where the intervention model was applied, and sought to collect data that would help compare intervention process and results with those established in professional literature. At the same time, I knew from past critique that settlement rate and even reported client satisfaction might not indicate ideal outcomes. Thus, I intended to sample mediation cases from available projects and to add field-based observations and informal interviewing to better assess how to interpret settlement and client responses.

While there were positive results that seemed to uphold mediation in theory, there were also many ways in which results did not match the model. Across the research sites, when mediation was truly voluntary, there were few to no clients. Thus, most data collection from mediation cases came through court referral and led back to past debate over mandatory mediation. Another commonality across research sites was that mediation services were typically limited to one or two sessions of two hours in length. In this short time frame, it was unlikely that disputants, especially those long engaged in conflict with family, would feel truly heard. It was also unlikely that each person would feel empowered to listen deeply to the needs of others so that they could find mutually beneficial solutions. Most disputants observed and interviewed were not acting as the autonomous person constructed in mediation models. At the very least, they were in mediation due to conflicts over which they felt little control and much resentment. When asked more specifically about empowerment in post-mediation interviews across projects, a common response was that this was irrelevant. This perhaps reflects how most cases came through court referral. Thus, most people were less interested in mediation empowerment than in how mediation was part of a larger court context and personal circumstances experienced as largely out of their control.

More concerning were cases of “coercive consensus,” as anticipated through anthropological critique. During mediation, many were compliant out of politeness or fear that mediation referral was really a court order. Even in Australia, where mediation has to precede court filing, it was family law rather than personal preference that caused most people to “request” services. Furthermore, a “dirty little secret” (Coben, 2000) amongst mediation professionals is how they are often more directive – and manipulative – than facilitative. This professionally public secret was observed during mediation sessions. It seemed upheld by responses from disputants who felt pressured to treat others fairly within what they perceived as an unfair situation. Another problem were cases of power imbalance that were insufficiently addressed by the mediator. In some cases, mediators were new and eager to “get” cases, and thus less likely to screen cases as inappropriate. In others, they felt pressure to reach settlement as a way to show that they were a good mediator who got desired results. Mediation settlement rates and statement of client satisfaction could be misleading when clients did not sense power to voice their experience. For example, in mediation between people in an abusive relationship, disputants may agree as a survival habit in how to deal with the abusive partner. Or, they may simply feel resigned to agree and never express dissatisfaction to the mediator. This became clear through post-mediation interviews and mediation case follow up.

Summary of preliminary results: Reification of trouble

Replicating a program evaluation approach meant using field data to test expert claims made about the mediation model. Replication was enabled by the stability of the professional model as upheld by professionals in trainings and mediation practices. Through sampling mediation cases for observation, recording, and post-mediation interviews, the model was tested as applied to current fields of lived experience and practice. Results upheld past findings and thus replicated past trouble. Once again, failure could be assessed through lack of voluntary cases and through observing mandated cases. This meant that the critics appeared to win. Yet, this story is limited to testing if the model works as experts intend, which potentially leaves out more to learn about what it actually *does*, especially from a client perspective. For this data, I extended time in the field using a more open-ended and inductive anthropological approach.

Back into the field for more Open-Ended inquiry

A difference between social work and anthropology is in the direction of intended change. Social work research and practice starts with established need for expert knowledge, and will use the field as a proving ground for professional intervention. For anthropologists, however, evidence is found in the field and then applied to expert and established knowledge. The field is a living laboratory in which the researcher is more of a student in relation to clients who are local experts of their experience. The researcher becomes a “vulnerable observer”

(Behar, 1996). Initial research questions might be reformulated through ongoing exchange with “interlocutors.” A measure of research success is when the expert outsider is taken by surprise (Shweder, 1997). The willingness to be surprised shows that the researcher is open to challenge and to revising expectations.

There was much room for surprise during my research. I had brought with me professional expectations as a mediator and mediation trainer, which meant that I presumed mediation was best found within established programs with steady caseloads. Second, I had read available empirical research on divorce mediation, and presumed that the benefit of family dispute resolution was in keeping cases out of court and in empowering adults to make more private decisions regarding how to raise children. Third, I was also trained in gerontology, and presumed that the intersection of mediation and aging would lie in how mediators could help older adults. For each expectation, there was a ready citation to show this was not just my idea but well-established through peer-review. However, these expectations did not answer a key question in helping others; how do these expectations compare with the lived experience and perspectives of these others? For example, why presume that any intervention is needed, and why presume that professional parameters fit local expectations? The next sub-sections briefly introduce each field project and key insights learned by reversing direction of intervention; that is, immersing first within the fields where clients live and then bringing in mediation as an intervention research question.

Family court mediation in the U.S

My family court mediation study in the U.S. was conducted over several years between 2011 and 2020. The research site was one family court mediation program within a large county with a very high family law caseload. Each year, several hundred cases are referred to mediation in order to resolve parenting disputes. The settlement rate calculated by the court program each year hovered around 55%. 42 mediation cases were studied through case file review, interviews with mediators and parents, and court-based observation of hearings. Cases were followed between a few months and several years from the initial mediation date (depending upon whether cases came back to court). One major surprise was the relationship between mediation and court actions. In theory, mediation developed and continues as a means of keeping cases out of court. However, a court file review showed a strong correlation between mediation and court action (such as court ordered assessments and hearings); that is, mandatory mediation was associated with *more* court actions. Another surprise was differences between anthropological concerns on behalf of clients and what clients themselves had to say. That is, ADR critics (and proponents) have presumed that empowerment goals are thwarted by programs embedded within court services. However, in this project, court involvement was often not the identified problem. In fact, some complained that the problem of mediation was in the *lack* of coercive power by the state, such as the power to truly enforce court orders. Others wanted direction rather than facilitation from the mediator. Overall, mediation was ultimately evaluated by disputants less for an ability to remain “pure” to model ideals than how it impacted *their* case. This became more evident through following cases beyond mediation sessions. Following cases showed how the impact of mediation sometimes ebbed and flowed within larger dynamics, such as a divorce process or the impact of a drunk driving or domestic violence incident. As in family systems interventions, individual problems were often problems of interdependent ties (Wall and Spira, 2012). As in anthropological critique, larger forces of economy (by way of family finances) and politics (as in how social norms are enforced through law and legal process) were also important (Abel, 1982). It was easier as a researcher to see these larger dynamics when the case study was extended to follow cases past final mediation sessions. Within this bigger picture, there were cases that had seemed to succeed due to case resolution only to later show how temporary the resolution was to be. There were others that ended in mediation termination and yet the terms discussed during the session resurfaced in a final court order. A research insight was how concern over separating mediation and court may be more of a relic to past professional debate than a salient factor in understanding how mediation works in more contemporary contexts.

Family dispute resolution in Australia

Australia has become a global leader in use of mediation as an alternative to litigation in family law cases. In 2006, national legislation moved mandatory mediation from court services to community-based Family Relationship Centres (FRC) (Parkinson, 2011). Prior to filing in family court, parents must first try mediation as family dispute resolution (FDR) or obtain a certificate from an FRC identifying mediation as inappropriate (usually due to family violence). It is therefore more difficult to compare mediation and court outcomes than in the U.S. project. Instead, my study in 2018 and 2019 focused on two FRCs, following cases from case management to mediation sessions with post-mediation interviews. The main surprise was in how similar FDR sessions were to family court mediation sessions given professional emphasis on differences. That is, the shift from court-based to community-based services, coupled with a name change from family court mediation to family dispute resolution, is intended to signal a greater shift in purpose and outcome than was observed during this study. As in the U.S. study, some disputants preferred a court-based solution. Another potential problem was imposition of expert opinion. While mediation in theory allowed disputants to identify best outcomes, the practice was to address interpersonal conflict as an obstacle to the need for children to have active relationships with each parent. Parents were continually called, even urged, to put their needs aside for the sake of their children. This meant that claims they felt were important might be tabled by the mediator. In post-mediation interviews, disputants who agreed with these values, also codified through family law, were more positive about FDR as an intervention. In other words, Merry and Silbey's past observations that mandatory mediation enabled policymakers and professionals to impose their standards are relevant today. However, their observations do not reflect the variable interest that disputants had in *supporting* these efforts. Past critique implies that disputants would prefer more individually derived and privately based solutions but this finding obscures how overwhelmed most disputants already felt about their own cases, and why one or both had felt the need to seek intervention. A resulting question that emerged through research was how to evaluate the role of the state (through mandatory FDR) and professional mediators as variably welcomed and resisted by parents. This research question reflects the predominant perspective of disputants in this study, in which family law was usually treated as integral to (rather than an alternative to) FDR cases.

Although "family" mediation cases intended to benefit children are studied and practiced as separate from "elder" mediation cases intended to benefit older adults, there were comparable troubles and solutions in field study of practices, as presented next through a project that began in Ghana and then moved to the U.S.

Elder mediation in Ghana

My elder mediation study project grew out of a confluence of factors during 2004 and 2005. At that time, both professional mediation and elder mediation were "imports" associated with the United States that were being "exported" across the globe (Craig, 1997; Fox, 2006). In Ghana, there was a newly formed professional association for Ghanaians trained in mediation, as well as a USAID pilot project to promote mediation as part of court reform. The study project was an exploratory project to test the feasibility of bringing professional mediation into the elder advocacy work of a nonprofit organization. The organization's director hoped to include mediation in a rights project because it would have been more culturally appropriate than taking cases to court on behalf of older adults.

Data collection included following the work of the legal rights program, engagement with volunteers trained in mediation through the elder advocacy organization, comparing these practices with two other organizations offering mediation services, and interviewing academics with expertise in aging and mediation in Ghana. It also included what Ann-Elise Riles calls "inside-out" research (Riles, 2001), which is an attempt to move in and out of intervention contexts. For example, I lived in the four areas identified by the legal rights project as program partners. This allowed me to be living in the larger context in which professionals later arrived to implement their program. I also engaged people informally for local interviews about mediation as cultural practice and

aging as lived experience. This enabled me to effectively “de-operationalize” variables that had been established in elder mediation literature, such as what is mediation, how does it work effectively, who is “old,” and why might intervention be helpful to older adults. In other words, how did local field data compare with assumptions embedded within elder mediation models? The main surprising experience was when I became a disputant because I needed local intervention to resolve a conflict impacting a working relationship. The intervention became part of my lived (and personal) experience (Crampton, 2007).

The elder mediation project never yielded cases, and yet there were many informal opportunities to pursue each research question, often in an open-ended and unplanned way. As happens through reflexive research, lessons learned came through ongoing dialogues with those in the field, in consideration of larger, contextual factors, and in returning to disciplinary literature (Burawoy, 2003). In addition, I could not have organized my own need for mediation intervention. However, what I could do was to be in the field where surprises can happen. During this time, I continued to take notes and reflect on experiences while engaging people locally to constantly test my interpretations and emergent analysis. The main lessons learned were to question the narrow definition of aging found in gerontology, to recognize the ways that older adults identify their own interventions outside of professional intervention, and the greater importance of what happens before and after mediation sessions in determining how well it works to resolve conflict (Crampton, 2007). In other words, academic scholarship has implied that the work of mediation happens at the negotiation table, through direct conversation. However, that is not always the case.

Elder mediation in the United States

The elder mediation demonstration project that served as the research site for my U.S. study was a partnership between elder advocates and mediation professionals in three locations. My data collection focused on immersion within one of the project sites. In this project site, there had been past successes in which adult guardianship cases of older adults were diverted to and resolved by mediation. A goal of this project was to shift mediation services from court to community. This was accomplished through sending court case referrals to a local community-based center, and outreach efforts to encourage voluntary case referrals. In order to expand from adult guardianship to more general cases of family conflict involving older adults, the project reframed adult guardianship mediation as elder caregiving mediation. As in previous mediation studies, however, there were very few voluntary cases. This required agreement by all parties, and it was frequently the older adult who rejected intervention. As the program coordinator explained, mediation seemed invasive for private family matters – until and unless a court case was initiated. Once there was the public setting of probate court, *then* mediation became a more private option. In addition, immersion within the U.S. context and reflection on gerontological services provided insight into how gerontology is a well-established profession and yet there is a common rejection of services by people avoiding association with being “old.” Meanwhile, elder mediation proponents were turning to caregivers in order to get cases, especially adult children in conflict with family members other than older adults. There are examples of success in such caregiver mediation; in one case, the more senior women of an African-American family negotiated how they would respectfully shift decision-making power such that a relative who was taking advantage of an older family member could be asked to leave. This case did not directly involve the older family member, and thus did not fit professional descriptions of elder mediation as empowering older adults through direct participation.

Discussion

A program evaluation approach to model testing enabled replication of past research studies and therefore comparison to past evaluation of mediation as ADR. Findings show that much of what concerned critics is still relevant even as proponents can still find examples of success. However, this offers a partial picture in which proponents offer too narrow a view and critics focus on what the model is not doing (as a failure of theory to be

realized in practice). There is a much richer and larger understanding that can be pursued through extending time in the field. A more client-oriented perspective expands data collection from the time and spaces of intervention services to the daily contexts of life experiences that bring them into professional services. If the intervention goal is an impact on lived experience, then field research can provide a way to learn more about this impact. An important difference between the program evaluation approach and reflexive field research is that the intervention is no longer the star of the show, constructed as the main means through which change happens. Instead, change is more appropriately constructed as an interplay of models, professionals and clients. When possible, researchers seek to follow intervention outcomes into the larger field of how individuals and communities are impacted. This means that professionals and clients are engaged not only as respondents to model testing but as active creators of what intervention becomes and can mean over time. This more reflexive approach in my research studies provided valuable insights. In family dispute resolution, one such insight is how an intervention intended to provide private means of adult decision-making has become a public intervention on behalf of children. In elder mediation, fieldwork revealed that an intervention intended to empower older adults is becoming a means of resolving caregiving disputes without their direct participation. By field testing rather than (program evaluation) model testing, there was more for me to see— and a greater ability to see through the eyes of clients. In this way, field-based data achieves what social work claims to seek; how to be where the client is and to best offer help.

Conclusion

In mediation scholarship, social work and anthropology seem to engage through different sides of a boundary between expert knowledge and lived experience. Social work intervention begins with expert knowledge, which is then taken into fields of practice to impact clients' lives. Anthropological intervention brings data from field research to inform (and disrupt) expert knowledge. Each may intend to "do good" but intervention happens through a different direction of change, such as the difference between Jane Addams developing settlement house through work in local communities and Franz Boas developing anthropological fieldwork to challenge scientific racism within such academic fields as Eugenics.¹ This difference in direction of intended change can promote a productive relationship between social work and anthropology. However, this difference can also spell trouble. The history (and past debate) of professional mediation provides examples of both productive exchange and professional conflict. In the early days of an "ADR movement," anthropologists contributed to early mediation intervention projects but they later became vocal critics. The shift coincided with professionalization and the implementation of mandated services. Field studies and other qualitative research produced insights that threatened to disrupt rather than inform (or reform) expert knowledge and well-established constructs. Academic debate was followed by anthropologists and other field researchers largely moving onto other projects (personal communication, 2012). Thus, potential benefit of critique was largely lost as mediation proponents continued to refine best practice models while neither critics nor proponents continued fieldwork research. In conducting new field research decades after debate, I at first rediscovered support for proponents *and* critics. By shifting to fieldwork that is also client-focused, the scope of my inquiry expanded. With this expansion came new insights. Research results from Ghana, the U.S., and Australia suggest the need to revise the basic mediation model in its role, purpose and importance to better reflect current uses and experience. In family law, divorce mediation has become a child welfare intervention that is variably embraced and resisted by parents. In elder law, elder mediation has shifted in purpose from focus on empowering older adults to supporting caregivers. These changes are examples of how interventions continually change as they are brought into the lived experience of family, parenting, and aging. Integrating social work and anthropology can mean enabling a more flexible boundary of exchange between expert knowledge and fieldwork research, which means that "best practices" will evolve as an interplay of expertise, intervention, and client engagement.

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Notes

¹This generalization is about the predominant practices in each discipline. There are, of course, critical theorists in social work whose work aligns better with my description of cultural anthropology than of professional social work. And, there are applied anthropologists whose work aligns better with my description of professional social work than with cultural anthropology.

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