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Diversity, Equality and Inclusion in Mediation for Family Relations

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Abstract

In this article, I discuss how diversity shapes mediation when the latter is adopted for the purpose of resolving quarrels between family members, and I explore how mediation can become more inclusive to accommodate diversity and enhance equality. Diversity permeates how families are created, their structures and the relations within them. Similarly, diversity involves the roles that family members play within the family unit. There is also the diversity brought by the various social identities of the family members who are in dispute, and those identities in turn intersect with the family members' identity as disputants. All these manifestations of diversity have an impact on the nature of family disputes and their resolution. However, the current institutional and professional approaches to mediation practice seem to oversimplify the nature of family, family relations, family disputes and family disputants, especially in terms of diversity. Thus, research and improvements in understanding and practice are needed to ensure that resolutions are reached respecting diversity and enhancing equality and inclusion. Here, I propose a contextualized and integrated approach that shapes mediation interventions in accordance with family diversity. Reflecting on diversity as it manifests in family relations and mediation will foster a renewed understanding of access to justice that builds upon kinship studies and intersectionality, whereby diversity, in all its manifestations, is a value.

Keywords: family relations; diversity; inclusion; mediation.

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[A] INTRODUCTION

"La diversità che mi fece stupendo …" (Pasolini 1950)[1]

Diversity and inclusion initiatives are on the agenda of mediation providers and organizations.[2] Research has addressed some aspects of mediation and diversity within the mediation sector (Shimada & Stephens 2017), for example: how to measure diversity; how to identify the perils that mediation might present to some social groups (Delgado 1985; Grillo 1991; Gunning 1995); and how to accommodate cultural diversity in family mediation (Irving & Ors 1999). However, data and reflections are needed on how the various social identities of family disputants intersect during mediation and how inclusion can be achieved. This article aims to start a conversation on how best to fill this gap and address the question: how does diversity manifest itself in mediation involving family relations?

An immediate answer to this question might be that, in family disputes, the diversity of family relations and structures intersect with the variety of social identities of the parties involved in the dispute (including but not limited to gender identity, sexual orientation, race, socioeconomic status, religion, disability, health, language and age) and influence, to different extents, the resolution of the dispute. At the same time, parties' diversity interacts with the diversity brought by the mediator.

Related to the previous question is a concern as to how to ensure that legislative developments concerning family mediation and mediation practices embed equality and inclusion. Putting it bluntly, the premise here is that policy and practice should *see and learn from families*, as I shall explain.

Families are sites where knowledge is created-knowledge for the surrounding society as well as the individuals that compose the family unit (Carsten 2003). However, the multiplicity of family forms in society makes it clear that the current mediation practice, the legal framework concerning mediation, and the legislative proposals to introduce compulsory mediation, do not truly reflect diversity in all its manifestations within family relations. Consequently, initiatives for diversity and equality may appear to be anachronistic, not contextualized and have limited impact.

1 My translation: "The diversity that made me wonderful."

2 See further in this paper the policy of the College of Mediators on Diversity and Inclusion, or the category of the National Mediation Awards on Diversity and Inclusion.

To overcome this limitation, acknowledging the existence of various family forms and relations first and then shaping mediation accordingly, will foster a renewed understanding of diversity, equality and access to justice. This renewed understanding will also bring about a broader conceptualization of family disputes which in turn will widen the scope of mediatory intervention. Learning from such variety means also to adapt the language used in family mediation theory and practice. A more befitting terminology would be family relations and mediation for family relations. Using the term *relations* encapsulates the heterogeneity of family ties and dynamics, how they constantly change, how disputes transform them, the "everyday sense of (kin-focused) relationality" (Strathern 2020: 128), and how interpersonal relations within the family are influenced by external relations.

Why does discussing diversity in mediation for family relations matter?

One might wonder why talking about diversity in mediation for family relations matters. In discussing diversity in alternative dispute resolution and focusing on mediation, Volpe points out that paying attention to and fostering diversity is important for building trust in the process, nurturing unbiased settings and mediators' personal preferences, and putting the parties at ease (2019).

I would add that discussing diversity is important to improve access to justice. Although the aim of mediation is to resolve disputes, its key quality is "its capacity to reorient the parties towards each other … by helping them to achieve a new and shared perception of their relationship" (Fuller 1971: 325). At the same time, mediation processes, as every other type of dispute resolution, are permeated by social and personal factors, and those involved in family disputes perform different roles—as disputants but also as individuals and members of a family. Thus, looking at the personal, social and political functions that family relations have and appreciating their innate characteristics of being changeable and creating changes, the reasons that justify talking about diversity are both procedural and personal—to reach a fair and equal resolution of the dispute; to support the well-being and mental health of family disputants that enable their agency during mediation; to educate family members to perceive wrongdoing within the family and not be limited by family relations in putting forward their claim—in short, access to justice.

Enhancing access to justice is, of course, a good reason to address the issue of diversity in mediation. Academic literature has suggested that

access to justice has political, theoretical and practical dimensions that aim to transcend inequalities of substantive and procedural instruments in resolving disputes. Its understanding has been broadened to include informal dispute resolution mechanisms like mediation (Cappelletti 1993). There is also a subjective dimension of access to justice that must be considered—how disputants perform and function during the process, their perception of the process and their consciousness about the dispute (Moscati 2017). Access to justice also means giving an opportunity to the parties in a dispute to express themselves and put forward a claim. However, personal and contextual factors limit access to justice. These include limited legal knowledge, court delays, high costs, complicated rules, limited availability of dispute resolution mechanisms, the location of courts, the structure of the courtrooms, a limited number of interpreters, difficulties in accessing files and a shortage of staff. There are, however, additional limitations that specific groups of people might face depending on diversity. And I would suggest that unique barriers exist for family disputants—barriers that are rooted in the very nature of family relations, and on the way these relations are negotiated with the personal characteristics of the members of the family.

Using families as interpretative lenses will contribute to developing further the meaning of access to justice in mediation. Mediation and access to justice share the same aim of reaching a fair resolution of disputes. But, for both, the fairness principle runs the risk of being taken away by state (direct and indirect) control. One could argue that one of the principles of mediation is party control and that this filters state control. However, parties cannot fully control their dispute if their intersecting identities are not acknowledged and protected during mediation. Thus, the value of access to justice in mediation is infringed upon. Mediation, access to justice and, likewise, the family, have political dimensions. And so does diversity. A broader understanding of family relations will shape access to justice in mediation in a way that transgresses the normative model of family portrayed in official policies.

The discussion that follows first portrays diversity within families. Then the article moves on to set up some practical steps on how to shape inclusive mediation practices for family relations. To assist this research, I draw upon dispute resolution discourse and studies about kinship and family.

To show some of the broader and various scenarios of diversity within family relations, I will use four vignettes and will draw in part upon auto-

ethnographic notes of my personal experience in co-drafting a diversity and inclusion policy for the College of Mediators.

Positioning myself

Before continuing, I wish to position myself in relation to the issues discussed in the article. I am a white woman, born in Italy, trained as a lawyer, and a former dancer, who moved to the UK in my thirties and started a new career. Thus, I am aware of my privileges, and I have been always conscious of how to use my privileges to negotiate (ethically) when in a dispute.

However, cognitive limitations following Covid (including at times being unable to spell my own name) have forced me to rearrange the ways in which I learn, communicate, prepare for negotiations, and then negotiate. At the same time, as a researcher and activist, I have always been interested in diversity and equality. So, what is the connection between my cognitive issues and my work with diversity and equality, the reader might ask? The answer is that, after initial feelings of desperation and drama, I have decided to use those cognitive limitations to develop my reflections on diversity and equality on mediation.

[B] THE LIVED EXPERIENCES OF FAMILY MEMBERS AND FAMILY DISPUTES

How I approach diversity as a concept

To prepare for this article, I have analysed the websites of mediation providers and family mediation organizations in England and Wales and have looked for policies concerning diversity, equality and inclusion. Undoubtedly, the need to ensure that diversity, equality and inclusion are embedded into mediation practices is a recurrent theme. My analysis also shows that policies and initiatives generated to promote equality draw mainly upon the Equality Act 2010.[3] But diversity and inclusion policies provided for mediation are not always specific to family relations—when in my view they should be.

Although a full discussion of the limits of the Equality Act 2010 is beyond the scope of this article, by observing the multiplicity of family relations, roles within the family, parenting arrangements, and the

[3] It protects from direct and indirect discrimination. Section 4 of the Act lists eight characteristics that are protected: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

impact of assisted reproduction technologies, I would advocate for an understanding of diversity and equality that is more nuanced and broader than the legal one.

In approaching diversity by building upon what families are today, there are several theoretical issues to consider. These include: the social construction of diversity; the relation between the private and public spheres concerning the regulation of family; the impact of culture on how to handle family disputes; and the intersection between individual identities, internal family dynamics, the roles that individuals have within the family and whether those roles are legally protected or not. Attempts are not made here to achieve a deep investigation of the manner in which identity can be shaped, but it is relevant to highlight the fact that the Equality Act, and diversity and inclusion policies, do not seem to consider the whole range of families and family relations that exist and are perceived as such (for instance polyamorous families, or friendship).

The Equality Act, protecting marriage and civil partnership, leaves out all those relations and parenting roles that do not fall into the legal model of adult relations and legal parenthood. There is an evident discrepancy between what happens in society and what is legally acknowledged and protected. However, disputes and conflicts occur in every type of family arrangement and mediation practice should be ready to be effectively inclusive for legally unrepresented families too.

Diversity, family relations, disputes and mediation

A limited understanding of the nature of family disputes and family mediation continues to infuse legal developments concerning mediation. For instance, the definition of family mediation available on the website of the Ministry of Justice reads as follows: "Family mediation is a process where a trained independent mediator helps you work out arrangements with another participant (e.g. an ex-partner) concerning children, finance or property."[4] This appears to be a rather partial and limited definition of family disputes, and one that moulds the scope of mediatory intervention upon litigation—the parties are two in number, they are former partners, and the range of disputes is restricted to finance, property and children.

[4] Available at: Guidance: Family Mediation Scheme.

The reality is different though![5]

The four vignettes below (drawn mainly from my empirical research, autoethnography and conversations with mediators since 2014) reveal some of the scenarios in which diversity manifests itself during disputes concerning family members and their resolution through mediation.

Vignette 1

> Luke, Amanda, and George are in non-monogamous relation. Amanda is from Italy, and Luke and George from the UK, and they live together in London. They started dating four years ago and are now planning to have a child. They have asked their friend Joanna, who is from France, to carry their child. Amanda, George and Luke have been planning to have children for a while and have decided that George and Amanda will donate the sperm and the egg, respectively, and Joanna will carry the baby. This seemed to be a perfect plan until the four of them had a huge argument on the role that each of them would play in the life of the child. Furthermore, Amanda plans to move to Barcelona and wants to take the child with her. They argued for days until they decided to attempt mediation to prevent future conflicts.

Vignette 2

> Peter and Jane are half-siblings on their father's side. Their father passed away, and they received a wealthy inheritance. They were not aware that their father had another son, Craig, who has now contacted them reclaiming his portion of the inheritance. Jane has suggested attempting mediation, and her brothers have agreed. The mediator will soon discover that Jane and Craig are deaf.

Vignette 3

> Rose is 60, non-married, has dedicated her life to looking after her mother. After the mother passed away, Rose, upon the express request of her late mother, moved in with her sister, Mary, and her family. Rose and Mary have two brothers and another sister. They all live in different cities. Mary has financial troubles, and Rose provides, with her disability pension, for all the main expenses of the family.

[5] For instance, in the Code of Practice for Family Mediators, the Family Mediation Council suggests a more nuanced definition (para 1.3): "Mediation is a process in which those involved in family relationship breakdown, change, transitions or disputes, whether or not they are a couple or other family members, appoint an impartial third person, a Mediator, to assist them to communicate better with one another and reach their own agreed and informed decisions typically relating to some, or all, of the issues relating to separation, divorce, children, finance or property by negotiation."

> Unfortunately, the relation between Mary and Rose deteriorated so badly that Mary decided to invite the other siblings to meet and tell them that Rose should now move in with one of them. The siblings did not take the news well and started to argue with Mary, accusing her of taking advantage of Rose and now dropping her.

Vignette 4

> Aran is in his twenties and has started a business with his uncle Mark who is 60 years old and is considered the leader of the family. It was Aran's idea to develop a business together, and he has looked after everything to start it. Aran has also invested more money that his uncle in their project. After a couple of months during which the business flourished, it started to lose money because of a wrong investment that Mark made. Aran was the most affected by Mark's decision. He was furious. However, he was raised to pay respect to the elderly in his family, and, so, he didn't complain.

The vignettes show that during mediation diversity concerns the types of family, the members of the family, the number of parties in mediation, and the types of quarrels. Moreover, the vignettes emphasize the intersecting identities of family members and that, once in dispute, those identities intersect with family members becoming disputants.

Vignette 1, for instance, confirms the long-established existence of a variety of ways individuals employ to create, perform, and perceive kinship and family relations. Broadly speaking, we may say—as Bradway and Freeman put it—that "we understand kinship as a way of *doing relationality* that is always a way of *thinking relationality*—kinship as embodied, aesthetic, and erotic *theory*" (2022: original emphasis). Practices of kinship are various and so are practices of families (Morgan 2011).

Luke, Amanda, Joanna and George (vignette 1) have created a modern family! "Modern Families" come in different forms (Golombok 2015). Families exist beyond marriage, sexual relations, and blood and genetic ties, and parenthood is not universally connected to procreation. Family members include those legally recognized as such, or linked by blood or genetics, but also those who, by choice or circumstances, play roles within the family.

Emotional bonds between children and parents, and between partners, exist independently of biological ties. Some families are chosen (Donovan & Ors 2001); others are made invisible by the law (Danisi & Ferreira 2022); some families share the same household; others are transnational; some

are in motion (Murray & Ors 2019); in others there are elders (Clough & Herring 2018); while in others there is a father who has given birth. Our perception and feelings regarding who is part of our family can change over time. Some families are legally protected while others are not. In some families, more than two adults, who do not live together or who are not in a couple, decide to co-parent the same child (Bremner 2017); in others there are more than two parents living together. In some families, biological parents do not have parental responsibility. In others, only grandparents have parental responsibility. In some families, children decide not to have contact with their parents, in others they are forced to. In some families, children are under the care of local authorities. Some families are displayed, and others are not. According to Finch, "display" is the "process by which individuals, and groups of individuals, convey to each other and to relevant others that certain of their actions do constitute 'doing family things' and thereby confirm that these relationships are 'family relationships'" (2007: 73).

Disputes happen in all types of modern families and their heterogeneity is brought into mediation—for instance, the number of family disputants can be more than two or three; and individuals may speak different languages and be based in different countries, and so time for mediation sessions could be difficult to combine; some of the disputants have legal parental rights while others do not.

Families have several functions, and human reproduction is just one such function. More generally, families are important in the political economy (Bradley 1996); they are a site of power (Foucault 1990); their autonomy is often mediated by policy that the state uses to exercise control (Donzelot 1979) or to perpetuate specific values; families can be the key unit of social welfare; and the target of consumerism. For instance, in vignette 3, for Mary and Rose, family has been the main source of financial and emotional support for both, and this is likely to intrude during the mediation process.

Family relations do not exist in a vacuum—structural inequalities, stratified reproduction, stigma and structural violence impact on the family and can be replicated in mediation, by, for instance, exacerbating power imbalances or deterring disputants from putting forward their claim.

The diversity concerning the relations that create a family, the form of the family unit, the creation of the bonds between family members, the ways in which adults *become and are* parents, interweaves with the specific diverse identities of the parties involved—there is the group, and

there is the person. The social identities of the parties are made up of characteristics that include those protected by the Equality Act 2010 and more. In addition to the eight characteristics protected under the Equality Act, the diversity of the parties encompasses their role within the family unit; whether they have parental responsibility; their past experiences; their knowledge about the dispute; their financial situation; how they deal with emotions; their ability to articulate their ideas; the impact that, for instance, long Covid might have on their cognitive functions; changes in hormone levels; and knowledge of technology during online mediation.

In turn, intersecting various identities and experiences have an impact on family members being in disputes—on their identity to become disputants and to communicate during mediation.

Drawing upon the paradigm of Felstiner, Abel and Sarat, I believe that becoming a disputant happens through a process of naming, blaming, and claiming (1980). First, the person acknowledges the wrong, then places blame upon the other party/parties, then claims redress, and finally acts during the resolution. However, moving from one stage to another is not straightforward, given personal and social circumstances. For example, respect for family ties might refrain a family member from blaming and/or claiming, as shown in vignette 4.

Being a disputant in mediation brings different degrees of embodiment. It involves interaction—verbal and non-verbal communication. Communication, as the exchange of information and learning is of key importance during negotiation and mediation (Gulliver 1979). Such exchange can be hindered or enhanced depending on how diversity is handled. If diversity, in all its manifestations, is respectfully acknowledged and considered as an added value, then communication is enhanced. However, more research should be carried out on how specifically the intersecting identities influence the mediation process.

Another layer of diversity is created by the culture of mediation itself. The handling of disputes—in particular, family disputes—is itself a part of a society's culture. Among other definitions of culture, the one which can help here is "culture is the capacity for creating the categories of our experience" (Rosen 2006: 4). It could be contended that different cultures of family mediation can emerge from the different ways in which family relations are perceived, created, understood, and displayed. The risk is that a pre-defined process of family mediation that looks "overly Westernised" (Menkel-Meadow 2023: 33) or too binary might also deter the recourse to mediation. The power implication of diversity cross-culturally as well the impact of diversity in relation to multiple identities of each

individual—personal, familial, social, professional, cultural—need to be addressed during mediation.

In addition to the diversity of the parties, it is important to also acknowledge that mediators bring their own intersecting diversities during mediation. Although mediation is in effect negotiation with a third party, overall, it is well known that the mere presence of the mediator influences the parties and how they perform during mediation (Palmer & Roberts 2020). Further, mediators bring their own life experience to the mediation processes. For instance, as a mediator who prefers to stay anonymous told me:

> My own family trajectory would be one of many aspects that could influence mediatory approaches, e.g., a mediator's own experience of divorce, past experience and attitude to conflict. I know my role as a mediator has been influenced by the stage of my own family trajectory – mediating as a young mother with parties my own age compared to mediating now as a grandmother with parties the age of my eldest grandchild!

However, research has yet to assess the impact that the diverse identities of the mediator have on the parties and the mediation process. Thus, this article calls for further research.

As a consequence of a broader approach to family relations and diversity in mediation, a wider definition of family disputes has to be posited. The vignettes and other research (Moscati 2020; Sims 2020) show that family quarrels are not limited to legal disputes concerning divorce/dissolution, finance, and arrangements regarding children. Matters in dispute can include, for instance: inheritance, as for Peter, Jane and Craig (vignette 2); reproductive choices (including whether and how to have children); contact between grandparents and parents and their children; who has to look after a relative, as for Mary, Rose and their siblings (vignette 3); disagreements about pets; and decisions concerning health issues. Further, a broader, contextualized, approach to mediation intervention is needed, as suggested in the next section.

[C] ADAPTING FAMILY MEDIATION

If, on the one hand, embracing diversity is significant, on the other, Ahmed cautions the adoption of diversity as a term de-coupled from equality and justice. Ahmed points out:

> Diversity appeals are often made because diversity seems appealing: it is more consistent with a collaborative style. If the word "diversity" is understood as less confronting, then using the language of diversity can be a way of avoiding confrontation. Diversity is more easily

> incorporated by the institution than other words such as "equality", which seem to evoke some sort of politics of critique or complaint about institutions and those who are already employed by them. Diversity becomes identified as a more inclusive language because it does not have a necessary relation to changing organizational values. The neutrality of diversity and its detachment from power and inequality makes it difficult for diversity to effect change (Ahmed 2012: 65).

Thus, this article, although mindful of the debate on whether equality can ever really be achieved, reflects on how equality could be enhanced within mediation. Here, equality is linked to access to justice—equality in having the opportunity to choose mediation, and for participants to express themselves in mediation. Being aware of the need to address these issues on both theoretical and practical levels, it is argued here that it is important to broaden the intervention of mediation by drawing upon a wider and contemporary concept of family relations, family members and family quarrels. An additional, although simple and somewhat obvious step, is to consider diversity as a value—as suggested in the quote from Pasolini that opens this article! Looking at families naturally leads to the use of intersectionality (Crenshaw 1989) as a general principle but also as a practical tool for mediation practice.

For instance, the College of Mediators—in its Diversity and Inclusive Practice in Mediation Policy and Guidelines—has included the following:

> Diversity is intersectional; multiple dimensions of diversity will overlap and influence, to different extents, the life of the parties involved in mediation. The intersection of multiple characteristics will influence how parties communicate, behave and contribute to the mediation process. To the extent possible, mediators should pay attention and consider the different and overlapping aspects of diversity.[6]

Translated into daily practice, using intersectionality as a principle and as a working tool that can enhance inclusion and equality requires preparation and the creation of a space where disputants have the opportunity to express themselves according to their diversity. This also requires mediators to deal with their own biases; be cognizant of the several ways diversity presents itself; learn to use appropriate language; dedicate more time to these issues during the pre-mediation meeting; and allow more time for joint sessions if needed to make parties at ease.

However, one might add that although—as argued in this article—intersectionality is extremely important and somewhat apparent within family relations, the wide variety of family relations suggests that

[6] Diversity and Inclusive Practice in Mediation: Policy and Guidelines (2022: 4.2).

further steps are required. To start with, further research is needed on intersectionality in mediation. Here, I mean participatory research and inclusive knowledge-exchange initiatives that involve researchers and mediators.

Then, drawing upon the concept of merographic connections, that Strathern explains as "a phrase that formalises what is commonplace in English usage: the fact that nothing is simply part of a whole insofar as another view or perspective may redescribe it as part of something else" (2018), assumptions about family, its members and their autonomy and power should be avoided. Further, as suggested by Prilleltensky with reference to psychology, "values, assumptions and practice are closely connected. The assumptions we make about people are influenced by our values … these ideas in turn influence practice" (1997: 519). This is true for mediation practice too. I would add that assumptions are shaped by culture and traditions too. When reflected in mediation practice, those assumptions shaped by culture, risk to limit inclusion and equality during the resolution. For instance, the debate and practice concerning child-inclusive mediation, at least at the moment, neglect different cultural approaches to childhood. Notwithstanding the 1989 United Nations Convention on the Rights of the Child, in some cultures children are still considered unable to act without their parents' guidance, independently of their individual maturity or circumstances. Without falling into the trap of cultural relativism, child-inclusive mediation practice should develop in a way that addresses such cultural differences and the variety of family forms children are raised in.

Furthermore, because of the complexity of family relations and quarrels, some changes to the way in which people can become mediators are needed. I suggest here the development of an academic degree in mediation for family relations that is grounded in dispute resolution discourse and provides an interdisciplinary preparation on kinship/family in legal, procedural, sociological and psychological terms. Such a degree should also provide modules on race, gender, disability and class. Following successful completion of a degree, future mediators should attend further professional training, pass an exam, and then be regulated by professional rules.

In addition, to champion inclusive informality of mediation process, reflections are needed among family mediators on how to structure mediation sessions/process in a way that accommodates diversity while respecting the principles of voluntariness, impartiality, party control and confidentiality, but without modelling it upon family litigation. At the

same time, to ensure full engagement, policies on diversity, inclusion and equality should be developed with the participation of the public—namely, the family disputants themselves.

Finally, legislative developments should avoid compulsory mediation and draw upon the key principle of access to justice—the right to choose among a variety of fully accessible dispute resolution mechanisms—and the idea that quarrels, disputes, and conflicts, including those among family members, do not necessarily represent something negative—they have the power to unveil injustices and show how kinship and families are changing.

[D] CONCLUSION

In this article, I have tried to analyse the ways in which diversity is manifested in mediation used to resolve disputes between family members, and how mediation can become more inclusive so as to accommodate diversity and enhance inclusion and equality. I have discussed the challenges that diversity poses to mediation practice and some changes that are important to address those challenges. The argument developed here suggests expanding the mediatory and institutional interventions according to various family relations. A more nuanced understanding of diversity of family relations, family disputants and family disputes is needed. Studies on kinship, inclusion, race, gender, disability and class should begin to feed back into mediation (and more generally into dispute resolution), encouraging a revision of family mediation intervention, because diversity relates not only to family structures, but also to the intersecting social identities of the parties involved in a dispute.

The diversity of family structures, individual roles and displaying expand the notion of family disputes beyond divorce/dissolution, finance and child arrangements. This article has outlined some of the various forms of disagreements that should be included under the umbrella term of family dispute.

To address diversity in a meaningful way that enhances inclusive agency of the parties involved in family disputes and make mediation accessible, these reflections have suggested that a broader understanding of family relations requires a broader approach to mediation.

Family mediation cannot be *divorced* from the family/families! Litigation tends to extract the dispute from its social dimension and attempts to reduce its resolution to the application of legal rules, whereas mediation is heavily involved in social norms and that means that strategies to

resolve disputes through litigation and mediation should be inherently different.

Mediation offers the parties involved greater leeway to manoeuvre in the search for an appropriate outcome of their dispute. But this flexibility exists within a normative framework and with a mediator present who transforms in various ways the dispute by that very presence. An important question is to what extent and in what ways such transformation occurs and takes into account the greater structural diversity that families present without the risk of attempting to reconnect such families to the (hetero)normative, binary, mono-cultural model that limits the agency of those parties in dispute who do not fit into that model. I have pointed out that, drawing upon access to justice, equality can be achieved if disputants have the opportunity to access mediation if and whenever they wish. If, on the one hand, fairness and impartiality of mediators can assist in ensuring equality between the parties, on the other, excessive formalization in the process, compulsory mediation and a lack of in-depth knowledge might reduce the opportunities for the parties to express themselves. Looking at families—queer, transnational, polyamorous, reconstituted, adoptive, of choice—it is apparent that the Equality Act 2010 is outdated, and diversity policies and mediation practices shaped on that Act run the risk of being unhelpful. The diversity of family forms and relations functions as a proactive engine to modify mediation practice—the method should be fashioned around the families and not the other way around.

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