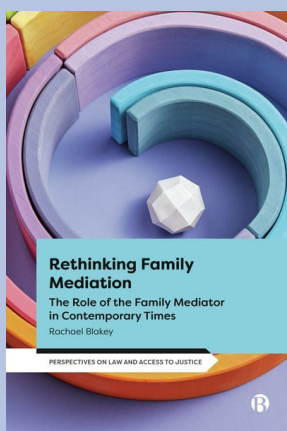


---

# **RETHINKING FAMILY MEDIATION: THE ROLE OF THE FAMILY MEDIATOR IN CONTEMPORARY TIMES BY RACHAEL BLAKEY**

MARIAN ROBERTS

---



Rachael Blakey (2025) *Rethinking Family Mediation: The Role of the Family Mediator in Contemporary Times*, published by Bristol University Press, ISBN 978-1529232967

## **[A] INTRODUCTION**

The emergence of mediation in the West in the late 20th century exemplifies the radical and remarkable rediscovery of an ancient process of dispute resolution. A large, cross-disciplinary body of dispute resolution literature now valuably informs understandings about the nature of mediation, its conceptualization confirmed by scholars across a variety of disciplines and across fields of practice (Douglas 1957; 1962; Stevens 1963; Stenelo 1972; Gulliver 1979; Menkel-Meadow 2012; Palmer & Roberts 2020; Moscati & Ors 2020; Menkel-Meadow 2022). These accounts link mediation definitively to a decision-making process with negotiation at its core, where the parties are themselves engaged as negotiators and as decision-makers. Cross-cultural empirically based research delineates the universal features of the negotiation process which mediation serves—the interlocking cyclical process of communication exchanges that drive the linear process of information exchange, learning, option consideration and evaluation leading to joint party decision-

making (Gulliver 1979).<sup>1</sup> An outcome may well flow from the process itself with improved understanding of the relative positions of the parties as a result of information exchange and learning—transpiring, in fact, there could be no issue in dispute, or in the creation of a fresh option rather than from any modification of either party’s perceived interests or need to compromise. The defining characteristic of the mediator in fulfilling the role of a non-aligned facilitator of other people’s negotiations is the recognition that s/he is not partisan, acting neither as partisan supporter nor in exercising determinative authority (Simmel 1950 [1908]). Simmel’s primary analytic distinction clarifies the structurally intermediate position that the mediator occupies, whatever their style, range or strength of intervention, from the minimally unobtrusive to the more directive.

Recent ethnographic research highlights the radical transformation that has occurred in the formal civil justice system in this country where the primary responsibility of the court is now explicitly identified as one of sponsoring settlement (S Roberts 2013). Consequently, judicially endorsed negotiation leading to the settlement of the justiciable issue increasingly supersedes the historic primary adjudicative role of the court acting as the agency of rule-based trial and judgment. Official endorsement of what is termed non-court dispute resolution (NCDR) relegates access to court to a last resort (S Roberts 2009; 2013; Family Procedure (Amendment No 2) Rules (FPR) 2024).<sup>2</sup> This transformation highlights the importance of distinguishing judicially imposed settlement processes from independent and voluntary out-of-court dispute resolution processes such as mediation, and, in particular, of clarifying their respective institutional locations. As a relatively newly emergent dispute resolution process, family mediation has had a struggle to establish its identity as a discrete and autonomous dispute resolution process, distinct from the formal justice system as well as from other professional interventions (legal, judicial, welfare, advisory or therapeutic) (M Roberts 2014a). The Family Mediation Council (FMC) *Code of Practice and Guidance* (2025), which governs the accreditation requirements for family mediators, embodies the professional and ethical

---

<sup>1</sup> Negotiation is not to be confused with or conceptualized as bargaining in accordance with North American understandings and Harvard Negotiation Programme in particular. Gulliver’s processual understanding of negotiation locates bargaining in a proper context, as a particular, mostly late phase in some negotiations (Gulliver 1979).

<sup>2</sup> The FPR 2024 (part 3) require the court to consider, at every stage of proceedings, whether non-court dispute resolution is appropriate and, if so, the court will adjourn proceedings or a hearing in proceedings. See also the Civil Procedure Rules 1998 which enacted the procedural framework of the Pre-Action Protocols (promoting settlement through negotiation) and the later phase of case management involving the direct judicial sponsorship of settlement along the litigation track.

principles and delineates the boundaries of practice in place to protect the integrity of the family mediation process and to safeguard the public.<sup>3</sup>

The largest body of empirical mediation research has been focused on family mediation, encompassing a range of perspectives and conclusions which throw light on theoretical and practice issues.<sup>4</sup> Early research conducted in the West largely focused on settlement rates, cost-effectiveness, process benefits and client satisfaction.<sup>5</sup> Acknowledged methodological and other difficulties (for example, variations in research populations, measures and dispute settings and the proliferation of practice models and styles) have made generalized findings or reliance on single studies problematic (see Dingwall & Greatbatch 1993; 1995). Notwithstanding, convergence has emerged on many questions over the decades that indicate the robustness of some major findings in the field of mediation practice. Such findings show, for example, the complex interaction of different factors such as the pre-existing characteristics of the dispute, the disputants, and the qualities of the mediator, as well as those pressures such as power imbalances that negatively affect the experience of mediation and the quality of outcomes.<sup>6</sup> Research has shown that addressing underlying tensions and obstacles to agreement in high-conflict family disputes is more likely to achieve improved co-operation between parents and better outcomes for children and that what is essential for success above all is the skill, knowledge, empathy and experience of the mediator (Thoennes & Pearson 1985; Kelly 2004; Trinder & Ors 2006; Kressel & Ors 2012; Walker 2012).

In the past, the relationship between the theory and the practice of mediation has been portrayed as a problematic one, characterized by a theory/practice divide (Rifkin 1994). However, nowadays, an alternative narrative posits a less oppositional experience of the interaction between theory and practice in respect of mediation. This is a field acknowledged

<sup>3</sup> The four fundamental principles of mediation have been identified as the voluntariness of the process, the confidentiality of the relationship between the mediator and the parties, the impartial role of the mediator and the procedural flexibility of the process (McCrary 1981). McCrary goes so far as to say that, if these principles are altered or if one or more is absent, then the process cannot be characterized legitimately as mediation.

<sup>4</sup> See, most recently, for example, Barlow & Ors (2017); Moscati & Ors (2020); Roberts & Moscati (2020); Busch (2023); Barlow & Ewing (2024).

<sup>5</sup> For example, Thoennes & Pearson (1985); Walker & Ors (1994); Kelly (2004); Emery & Ors (2005).

<sup>6</sup> Power in negotiations, defined as the capability of one human actor, or group of actors, to make others do things they would not otherwise have done, has long been recognized to have always been “there” structurally and systemically, with studies identifying the many sources of complex power dynamics (such as money, love, truth, personal qualities) that complicate all negotiations including mediation (Palmer & Roberts 2020).

to be “experiential”, one that exemplifies the concepts and practices of the “theories-in-use” school in the development of professional education (for example, Schön 1983; Menkel-Meadow & Ors 2005). The importance of “grounded theory” also highlights the recognition that good practice and the reflections of experienced practitioners constitute a rich resource for the development of the best models and theories (Jones 2001). Family mediation in this country has been the beneficiary of close collaboration between researchers and practitioners, leading to the construction of a range of policies and practice guidelines on domestic abuse, the role of children in mediation, and cross-culture, gender and communication strategies (see, for example, Garwood 1989; Astor 1994; Keshavjee 2013; Stokoe 2013; Allport 2020; Moscati 2020). Far from theory posing problems for practice, new intellectual and experiential insights generate, on the contrary, fresh and imaginative directions for thinking about the field. Research and theory, taking many forms, can interweave constructively with practice in a recursive relationship of mutual influence and significance, informing understanding and therefore practice experience. While the interests of researchers and practitioners do not necessarily coincide, common understanding and the co-operation, trust and confidence of practitioners is essential for research to be informed by practice and for practice to be informed by research.

## [B] RECENT FAMILY MEDIATION RESEARCH

This review focuses on Rachael Blakey’s monograph, *Rethinking Family Mediation: The Role of the Family Mediator in Contemporary Times*, which, while posing “a simple question—what is family mediation?”, has an ambitious aim, namely, to investigate the development of family mediation in the United Kingdom over the last 5 decades (3). Its overarching focus is on both the role of legal norms and expectations in the mediation process and on the role which family mediation plays within the contemporary family justice system (3). Within this legal framework, the monograph sets out to explore mediation as a form of “non adversarial justice” in the context of the English and Welsh family law systems (13).

The monograph posits two opposing propositions: first, that of a “dominant” understanding of the mediator as promoting a “restricted and facilitative role” in comparison with that of the judge or the evaluative advisory role of the lawyer: and, second, that this “limited role” now fits poorly into the current vastly different contemporary family justice landscape, unable to address both family law matters and a new and varied client base (4-5). The defining landmark of change is said to be marked by the implementation of the Legal Aid, Sentencing and

Punishment of Offenders Act 2012 (LASPO) which removed legal-aid funding in various areas and, in particular, access to legal aid for private family law proceedings (other than in exceptional circumstances such as domestic abuse). In denying legal aid for legal advice and representation, LASPO removed what had been the primary legal route for settling family disputes, namely, by the bilateral negotiation of lawyers.<sup>7</sup> In tracing the changes that have occurred, the monograph draws a distinction between what it terms “informal mediation” and “formal mediation”, the latter a process described as still in its infancy and which the monograph seeks to uncover (5).

As its “key driving force”, the monograph aims to provide a “richer, multifaceted and nuanced understanding of justice that takes into account the contemporary family law landscape” (12). While mediation has “the potential to become a family justice apparatus”, it is, “put simply, an unfair process” because of the inability of “the limited mediator archetype” to address issues of power imbalances and domestic abuse (12). Here, the monograph introduces two mediator archetypes, a “limited mediator” archetype and a “flexible” mediator archetype.<sup>8</sup> The former is confined by “facilitative” constraints in adopting a “circumscribed set of practices, such as information provision” to ensure that “decision-making power rests with the parties at all times” (69). This “limitation” is attributed to a strict view of mediator neutrality” (90). The “flexible mediator” archetype, on the other hand, “openly evaluates” as an “authentic” part of her practice (90). The fundamental premise of the monograph and what it considers to be the main problem is that, since LASPO, there has been a change from a facilitative to an evaluative mediator role, now embodied in the flexible mediator type, which has not been openly acknowledged. One of the central arguments of the monograph is that this transition, characterized by a fundamental lack of transparency, has been “covered up” by the family mediation profession and its regulatory bodies (108, 110, 114, 181). Child welfare excepted, it is stated that evaluation has been historically concealed under the guise of facilitation by a “facilitative proxy” (108). Based on this premise, the monograph argues that family mediation should now acknowledge this “cover up” (90, 108, 202). The intention of the monograph is to expose, as “the real issue”, this unacknowledged and unregulated transformation of practice in family mediation (139).

<sup>7</sup> Most family disputes were settled in the recent past by bilateral negotiations between lawyers with relatively few cases having to resort to court. With that negotiation option now denied for many post-LASPO, mediation is promoted, misleadingly, as the alternative to court rather than, more accurately, as the alternative to lawyer negotiation.

<sup>8</sup> See below for examples of the way the abstract archetype will transition into an actual practice intervention.

While the monograph states that it is “more concerned with invigorating the debate on family mediation and family justice than pushing a particular agenda” (212), its concluding recommendation is that the family mediator now needs to be recognized as a legal professional, to be regulated like other legal professionals in providing a legal service. This is necessary in order for the family mediation profession to better support “contemporary family justice” (212).

The monograph is divided into two parts. Part 1 describes government policy concerns and how access to justice has changed from its traditional understanding of access to the court to a different contemporary conceptualization of justice alongside which family mediation has evolved and become aligned as a “family justice apparatus”. The approach to the data is considered in three sections: first, on screening by family mediators for suitability for mediation by means of the mediation information and assessment meeting (MIAM), attendance at which is now a court requirement for making a family proceedings application; second, on neutrality and how it is perceived as “unconditional” by the regulatory bodies and by its members; and, third, on how those conceptions and practices support family justice in respect of the quality of mediated outcomes in the light of the impact of “the shadow of the law” on mediation practice (153; see Mnookin & Kornhauser 1979).<sup>9</sup>

Part 2 covers an empirical study of the flexible mediator archetype in relation both to what are described as the four mediator functions—helper, referrer, assessor and intervenor—and to understandings of family justice. Its concluding section makes recommendations for family mediation to be recognized as a legal service, highlights barriers to the reform of family mediation and its regulation in the light of the impact of LASPO, and identifies important areas for further research.

The policy-driven and socio-legal method adopted by the monograph is based on the recognition that the law and family mediation, which, while the latter is stated as having “no single meaning”, are both legal and social phenomena (16). Two core theories underpin this study: first, a critique of mediator neutrality; and, second, a theory of mediator roles

---

<sup>9</sup> Mnookin and Kornhauser recognized that the shadow of the law was only one factor that had an impact on settlement outcomes, with other factors such as uncertainty in the law, parental preferences, transaction costs and strategic decisions playing their part. Notwithstanding the ideal of equality of formal justice before the law, exploitation of the weaker party by the stronger party is recognized to be endemic in the civil justice system and also where new inequalities can be created depending on a party’s wealth, status, legal endowments, etc (Auerbach 1983; Ingleby 1994; Mather & Ors 1995; Woolf 1996). Concerns about equality and fairness apply particularly for those financially disadvantaged in divorce proceedings, such as vulnerable mothers and older women (see, for example, Hitchings & Ors 2023).



along a facilitative–evaluative continuum based on the Riskin grid (73). The central claim of the monograph is that its empirical data demonstrate that a fundamental transition in the practice of family mediation has occurred, and that what is termed the “contemporary family mediator”, now acts in a “quasi legal role” and in “an ever-increasing space for legal norms”(14). Empirical data are also drawn on to substantiate the argument that the current regulation of family mediation is insufficient to meet these new demands.

The empirical method is based on a two-stage study: first, of the perspectives of the regulatory bodies overseeing the practice of family mediation; and, second, of the perspectives of family mediators themselves. A critical question the monograph asks is whether the views of the practitioners had changed over the years (22). The study of the regulatory bodies consists of a content analysis of family mediation codes of practice. The thematic analysis adopted is qualitative and subjective.<sup>10</sup> Six codes of practice are examined in two groups: a) between 1985 and 1998; and b) between 2018 and 2019. Stage 2 of the study consists of semi-structured qualitative interviews, taking place in 2019, of 17 family mediators lasting on average just under an hour (59 minutes). The interviewees were identified by their different professional backgrounds, described as “legal”, “therapeutic” and “hybrid”. No gender differences were noticeable and the interviewees represented different regions in the country. More than half (59%) had over 20 years of experience of family mediation practice, 12% had 10 to 19 years of practice and 29% had under 10 years of practice in the field.

The findings from Stage 2 were subsequently analysed “in light of a particular hypothesis rather than a wholly objective standpoint” (24-25). The particular hypothesis is not elaborated but it is acknowledged that “[T]hese limitations do not negate findings but rather demonstrate the effects of one’s lived experience upon the interpretation of data” (25). While Blakey’s footnote 29 cites how “incredibly difficult” it is for mediators to maintain neutrality in the light of power imbalances:

[S]imilarly, it is difficult for a researcher to remain completely objective as they become acquainted with their research participants ... and will have subconscious views about a participant, the purpose of the data as well as the participant’s responses (25; see also footnote 26 below).

<sup>10</sup> The problematic nature of an objective and quantitative content analysis is acknowledged.

## [C] COMMENTARY

The overarching legal theoretical framework this monograph adopts, with its exclusively family law and justice focus, may be contrasted with the broader interdisciplinary, cross-cultural dispute resolution paradigm which frames all major scholarly studies of negotiation and mediation.<sup>11</sup> Notwithstanding, the monograph provides a valuable exploration of important developments in the family justice system: first, by foregrounding for debate the significant question about the proper institutional location of family mediation in relation to the formal justice system; and, second, by seeking to track developments in family mediation practice in the context of the damaging changes imposed by LASPO with its removal of legal aid for family proceedings.

In viewing mediation through the lens of family law and not through the lens of the dispute resolution discourse, it is not surprising that questions of ambiguity arise, as exemplified in the fundamental question the monograph aims to investigate: “What is family mediation?” (3). Alongside early attempts of professional groups such as lawyers, family therapists and probation officers to lay claim to family mediation as part of their existing practice, some academic studies also struggled to get to grips with the nature and purpose of family mediation (see, for example, Murch & Hooper 1992; Walker & Robinson 1992).<sup>12</sup> Simon Roberts addressed prevailing misunderstandings as follows:

[The] difficulty in locating family mediation seems to lie in the fact that ... [Murch & Hooper] inhabit a mental universe dominated by the now aging dyad of “justice” and “welfare” so they find it difficult to conceive of a form of intervention which is neither part of “the family justice system” nor part of the “auxiliary support services”. Their proposed institutional destination for mediation seeks to continue “the dynamic synthesis of justice and welfare which is fundamental to a modern family justice system” (Murch & Hooper p129). While there is obviously nothing wrong with either justice or welfare, mediation is about something else. It is primarily directed towards the support of private ordering in seeking to facilitate joint decision-making through party negotiations; so we should not be surprised that Murch and Hooper experience difficulty in fitting it into either of the principal boxes they have in mind. ... While vigorous efforts are being made ... to establish mediation as an autonomous form

<sup>11</sup> See Simmel (1908); Douglas (1957); Stevens (1963); Gulliver (1979); Abel 1982; Felstiner & Ors (1980-1981); S Roberts (1993); Gulliver (1997); Menkel-Meadow (2005; 2012; 2020); Moscati & Ors (2020); Palmer & Roberts (2020); Busch (2023).

<sup>12</sup> See also Marian Roberts (2014b; 2016) for an analysis of the evolutionary phases, characterized by importations from different professional groups and by governmental pressures, that have shaped the development of family mediation.



of professional intervention with carefully circumscribed boundaries, parallel attempts are being made ... to co-opt mediation and absorb it into existing practice (S Roberts 1993: 6).

More specifically, the referential and methodological framework of this monograph is informed, first, by the assumption of an “absolute vision of mediator neutrality” (69) and, second, by a theory of mediator orientations along a facilitative–evaluative continuum based on one of the two dimensions of the 1996 Riskin grid. The two mediator archetypes are devised to align both with the Riskin grid continuum and in relation to LASPO—the facilitative “limited mediator” (pre-LASPO) and the evaluative “flexible mediator” (post-LASPO), the former characterized by “her absolute commitment to neutrality”(108). The integration of these two theories—of mediator neutrality and of the facilitative–evaluative mediator role continuum—underpins the core hypothesis of the monograph and its interpretation of third-party involvement in family mediation: “[P]rimary attention is placed on the idea of mediator neutrality, which is then situated on a continuum of facilitative to evaluative mediator *practices*” (69, emphasis added—note how language here transforms an archetype into a practice; see also footnote 8 above).

This methodology, the conceptualizations and the empirical data relating to family mediation raise three main concerns. First, the reliance on a methodology, the 1996 Riskin grid, which was discredited by Riskin himself and others, because of the false dichotomy it created between facilitation and evaluation. This false polarity informs the binary archetypes adopted by the monograph to describe mediator roles, despite the monograph’s own acknowledgment both of this fundamental flaw and of the way it has been misapplied in other research studies (see 74 and 75, footnote 6 in Blakey). Second, analytic categories and abstract concepts are conflated with skills and practices, for example, in conceptualizations of “neutrality” and of “facilitation” and where abstract archetypes transition into actual practice skills (69: see above for examples of such critical terminological confusion). Third, assertions about family mediators’ changing understandings and practices are unsubstantiated by the empirical findings.

## [D] THE RISKIN GRID

This grid, devised by Leonard Riskin in 1996 in North America, aimed to make sense of the “chaotic reality” in respect of the enormous range of diverse processes all being called mediation at that time. The grid consisted of two intersecting continuums, anchored at each end, one by facilitation

and evaluation and the other by a problem definition continuum, ranging from narrow to broad. Where these two dimensions intersect, a quadrant is produced representing, overall, a mediator's "orientation" (Riskin 1996).

The Riskin grid very soon faced serious and widespread criticism which pointed to its several weaknesses and limitations, in particular, that the facilitative–evaluative continuum structure created a false dichotomy. Leonard Riskin, invited in 2003 to revisit the grid by Yale Law School, admitted that he was himself troubled by several aspects of the grid *and* the way it was being used and that "15 minutes later it began to dissolve" (Riskin 2003: 7, 8). Riskin acknowledged that what had occurred was the conflation of ideal types with actual practices, with concepts treated as real, actual orientations in practice—"I am sure that my contribution contributed to the reification and dualistic thinking" that resulted (Riskin 2003: 7, 14). The main criticisms of the 1996 grid, identified three key deficiencies: 1) the failure to distinguish different kinds of decisions in and about mediation; 2) its limited focus and static quality; and 3) the fundamental idea that the grid can depict overall mediator orientations as it takes account of only two dimensions of mediator behaviour (ibid: 10). A narrow construction of evaluation (ie evaluation of the legal position, its strengths and weaknesses with a prediction of the likely court outcome) omitted any reference to disputants' own evaluating role. An equally narrow construction of facilitation (assisting with negotiations without evaluation) omitted the essential evaluation of options phase inherent in all mediated negotiations. Thus, a false binary resulted in a "limited, dualistic and formalistic reading of the facilitative and evaluative role of the mediator dimension of the grid ...":

an unrealistic notion that excludes attention to many other issues in mediator behaviour, obscures much about what mediators do, and ignores the role and influence of the parties ... Mediators engage in behaviours that fit both categories all within the same time block and decide on the moves at least partially in response to the personalities and conduct of the parties. ... and the interactive and dynamic process through which most thoughtful mediators tend to decide what to do in mediation. ... a particular move can have both facilitative and evaluative aspects or objectives or effects ... *It seems clear that labelling a mediator's approach to the role of mediator as either facilitative or evaluative which offers convenience and perhaps a comforting belief that we understand what's going on – may obscure what is really going on* (Riskin 2003: 14, 30, 17, 15, emphasis added).

In 2003 Riskin devised a new grid (refined in 2005), intended to facilitate good mediation decision-making and to bring two matters to attention—the huge range of potential decisions in and about mediation and the extent to which various participants could affect those decisions (Riskin

2003). This new grid, rather than focusing exclusively on the mediator, gave equal attention to all other participants, particularly the parties, as well as to their lawyers, taking account of time and the dynamic nature of decision-making (ibid: 34).<sup>13</sup>

Other critics highlighted the additional factors that the old Riskin grid had failed to take into account, for example, differences between the facilitative focus on *process* and the process benefits of mediation such as improved mutual understanding, communication and co-operation; and the narrower goal focused on substantive *outcomes* and a purely settlement approach to the legal issues.<sup>14</sup> Furthermore, the old grid failed to distinguish between the *nature* of the mediator's intervention and the *level* of intervention in which the mediator engages. As noted, this is not the same thing and a mediator "who is facilitative in style can be either active (interventionist) or passive (non-interventionist) while an evaluative mediator can vary equally in her respective style" (Gewurz 2001: 143). This active/passive distinction is an important consideration in assessing how a mediator addresses power imbalances. Riskin himself conceded that the terms "directive" and "elicitive" better described the impact of the mediator on party determination than those of "evaluative" and "facilitative". Even so the complexities and ambiguities of actual practice continue to complicate the change of terminology—"nearly any move by a mediator can have both directive and elicitive aspects, intents or effects" (Riskin 2003: 32). Critics noted too the crucial impact on their intervention of the very identity of the mediator and the manner through which they enter the process in addition to their style or level of

<sup>13</sup> Gulliver's empirically based cross-cultural processual model of mediation as serving a negotiation process makes clear that an evaluation phase is inherent in any negotiation process as essential for the parties to be able to assess the pros and cons of available options in order to be able to make informed decisions (Gulliver 1979). Gulliver also describes the range of strengths of intervention of the mediator as "useful indices" on a continuum, from virtual passivity to "chairman" to "enunciator" to "prompter" to "leader" to "virtual arbitrator": "This, of course, says nothing about the effectiveness of the strategies" (ibid: 220).

<sup>14</sup> Lon Fuller's definition of mediation is of a process whose core quality is the "capacity to reorient the parties toward one another, not by imposing rules on them but by helping them achieve a new and shared perception of their relationship, a perception that will redirect their attitudes and dispositions towards one another" (Fuller 1971: 325).

intervention (Gewurz 2001: 144).<sup>15</sup> The old grid also took no account of the relevance of voluntariness of participation of the parties, a cornerstone principle of mediation and a critical safeguard against mediator pressure or coercion. Voluntariness applies too to the participation of the mediator whose ethical duty it is to withdraw from the process where there are serious concerns about imbalances of power and other inequalities.

In adopting the discarded old Riskin grid, the methodology of this monograph is problematic not only because it lacks the grid's second dimension, the narrow-broad problem definition, both dimensions of which informed a mediator's "orientation", but also because it perpetuates the false facilitation-evaluation dichotomy.

## [E] NEUTRALITY AND FACILITATION

The alternative dispute resolution (ADR) literature adopts the term "neutrality" as an umbrella concept where the terms "third party neutral" or "professional neutral" refer to the general, non-aligned, non-partisan stance of the mediator or arbitrator. Scholars have long recognized that maintaining an intermediate position between the disputants is one of the most essential attributes of the effective mediator (see Simmel 1950 [1908]; Gulliver 1979; Fuller 1971; McCrory 1981; 1985; Cobb & Rifkin 1991; Menkel-Meadow & Ors 2005; Palmer & Roberts 2020). As mentioned, Simmel contrasts the non-aligned role of the mediator with that of the partisan because the mediator stands either outside the interests of the parties or because, although engaged, they stand in a structurally intermediate position between the parties (1950 [1908]: 49-50). "A mediator has no ability to give a judgement or to make a decision binding on the disputing parties; that is, he is a facilitator but not an adjudicator" (Gulliver 1979: 209).

Complex applications of neutrality also emerge in the cross-cultural literature that reveal a more nuanced and explicit understanding of

---

<sup>15</sup> Kressel & Ors' study, exploring mediator stylistic variations in a sample of professional and novice mediators, used observational data and multidimensional scaling to identify two dimensions underlying mediator performance: a) stylistic orientation (relational versus settlement-oriented); and b) level of empathic "attunement" (Kressel & Ors 2012). Qualitative analysis identified facilitative and evaluative variants of the settlement orientation and transformative and diagnostic variants of the relational orientation. The facilitative and diagnostic mediators performed more skilfully than their evaluative and transformative counterparts (ibid: 135). While this finding is consistent with several prior investigations in which disputing parties were found to be more satisfied with the facilitative approach than a more evaluative one, another interpretation highlights that the results are best explained not by particular stylistic approaches but by the characteristics of competent mediator performance distributed across orientations (ibid: 160). These include mediator energy, warmth and optimism, a nonjudgmental stance and a willingness to adapt to the needs of the parties.

neutrality (Busch 2023). In the West, for example, neutrality is generally distinguished from impartiality where the intervener is carefully distanced from the dispute and from the interests of either party (Gulliver 1979: 212). The United States Model Standards of Conduct for Mediators (published by the American Bar Association, the American Arbitration Association and the Association for Conflict Resolution) require the mediator to conduct mediation in an impartial manner, free “from favoritism [sic], bias or prejudice” (Model Standards 11, A, 2005). In this country the FMC *Code of Practice and Guidance* (2025) (adopted by the Law Society) distinguishes between neutrality as to outcome (including guidance on how to protect fairness where such an outcome might be in breach of the judicial framework) and impartiality in respect of the fair and even-handed management of the process (sections 6.2 and 6.3.1; see also the Family Justice Council and FMC 2024, court guidance for judges). The FMC Code (section 9.18) also incorporates an explicit expectation to ensure that outcome decisions have to be fully informed and freely made.<sup>16</sup> For final outcome decisions to be fully informed and fair therefore, there needs to be an accurate appreciation by parties of the implications of those decisions, impossible without an evaluation of their relative merits. Where those issues have legal consequences (not always relevant to the subject matter of the mediated negotiations), access to separate, independent legal advice is recognized to be necessary before final agreement is reached.<sup>17 18</sup>

As Palmer and Roberts highlight, the image of the “neutral” third party intervening in the affairs of others—“whether out of altruistic goodwill, social responsibility or professional calling—is a very powerful one” (2020: 154). Furthermore, analytically distinct roles are not to be confused with the strategies and techniques of actual practice. As Gulliver highlights, “[I]t should be emphasised that these different strategies are sometimes

<sup>16</sup> See FMC Code of Practice and Guidance (2025), “Conduct of Mediation”, sections 9.11-9.14 in particular.

<sup>17</sup> The gap that LASPO opened with its removal of publicly funded access to legal advice and representation has been filled by other sources of legal support, eg RCJ Advice Bureau, Children’s Legal Centre, the Family Law Hub (South Bank University), Advice Now, National Family Mediation’s LegalEyes resource, etc. Local solicitors also offer free consultations in some areas. Help with Mediation can provide legal aid during mediation for legal advice but this is severely restricted largely because so few solicitors are now willing to provide legal aid services. Resort to a variety of other sources of legal information and advice such as government websites has become common for most people although recent research shows that the majority of divorcing couples (52%) reach financial arrangements themselves anyway, while 17% reach agreements with lawyers (ie resort to “expensive” lawyers being rare) and only 13% reach agreement through mediation (see Hitchings & Ors 2023).

<sup>18</sup> Codes of practice, by definition, set out ideal aims, professional and ethical principles, standards of conduct and guidelines of practice. They do not detail the kinds of processes, practice models or skills necessary to realize those objectives in practice.

less clearly and easily distinguishable in practice than an analytic exposition might suggest” (1979: 227; see also M Roberts 2020). Not only are there a range of mediator interventions and strategies but in any particular case a mediator may and frequently does vary their strategies in response to the dynamics and the stage of negotiations.<sup>19 20</sup>

Family mediators have long distinguished neutrality from impartiality, both in principle and in practice (Haynes 1993; M Roberts 2014; Parkinson 2016). Impartiality in terms of the even-handed management of exchanges is, combined with voluntary participation and structural and procedural requirements, an essential means of safeguarding a fair process. Being explicitly even-handed throughout, by not taking sides and by treating all parties fairly, enables support to be given to each party (invariably bringing different strengths and vulnerabilities) whenever needed in the process. Even-handed interventions are intended to ensure equal participation in the communication exchanges and in the decisions that are made. Impartiality is also acknowledged to be one of the principal sources of inherent tension in the mediator role derived from interrelated sources: the “lofty” and at times contradictory and ambiguous demands of the role itself; the lack of power of the mediator to impose an outcome; the intermediate position the mediator occupies between the parties; and the objectively difficult circumstances in which negotiations typically occur (Kressel 1985). Thus, impartiality can be seen to constitute a principle of practice, an essential attribute, a duty and a skill (M Roberts 2014a). The credibility of the mediator, essential for achieving the trust of all parties, depends not only on being impartial but on being perceived to be so.

This is not just a terminological issue. Assertions of neutrality by the mediator can bring their own problems for two main reasons: first, accuracy—a mediator cannot claim neutrality as inevitably they have their own values, prejudices and views; and, second, fairness and safety. Claims to neutrality lay the mediator open to legitimate challenge and can be dangerous in situations of serious inequality. Cultural sensitivity notwithstanding, it would be unethical for a mediator to tolerate behaviour that is clearly unacceptable to one or other parties or that breaches their human rights or those of persons affected by the outcome (see National

---

<sup>19</sup> Practitioners, mediating in a variety of contexts, confirm the range of styles and strengths of interventions that they might deploy within and throughout a single mediation session (M Roberts 2007).

<sup>20</sup> It is well recognized in the literature that untested theories, themselves dependent intrinsically on limiting and simplifying conceptual assumptions, cannot apply to real-life situations, characterized as they are by the complexity and multiplicity of variables and uncertainties. “The proper study of joint decision-making must, however, take full account of multiple criteria and of the ways by which actual negotiators attempt to cope with them” (Gulliver 1979: xviii).



Family Mediation, *Cross-Cultural Mediation Policy and Practice Guidelines* 1998: section 2).

Neutrality can be claimed by the mediator only in affirming no vested interest in any particular outcome, in having no personal or financial connection with any of the parties nor with any government or other relevant institution. Neutrality can be claimed too in respect of the independent location of the provision of mediation, one free from stigma (eg social services), free from coercion (eg court premises) and free from confusion with other forms of intervention (eg legal practice, welfare investigation or therapy).

In its belated recommendation “that it may be preferable to replace ‘neutrality’ with the concept of ‘impartiality’”, the monograph fails to acknowledge that the importance of this distinction, in theory and in practice, has long been recognized by family mediators (her own sample included) over decades (206).

One critical question raised in the monograph is whether the views of practitioners have changed over the years (22). The monograph claims its findings substantiate two hypotheses: first, that family mediators practising in the 1970s and 1980s (pre-LASPO) were bound by orthodox approaches to practice underpinned by an absolute, inflexible, unrealistic, binding and restrictive exercise of neutrality; and, second, that family mediators had a “limited conceptualization” of their role—“If a mediator exhausts all facilitative techniques at her disposal, she is, under *her limited conceptualization*, prohibited from moving into evaluation” (107, 126, emphasis added).<sup>21</sup> One of the chief advantages of the mediator

<sup>21</sup> In the early 1990s this reviewer oversaw the development of the first national training programme for family mediators under National Family Mediation (NFM) whose then 60 services were the main providers of family mediation in the country. This training programme, based on Gulliver’s processual model of mediation, explicitly distinguished neutrality in principle from the exercise of impartiality in practice (Gulliver 1979). Embodied in the training programme was the understanding that the primary function of the mediator was to facilitate constructive and accurate communication exchanges between the parties that would lead to learning, improved understanding and an informed decision-making process which necessarily involved the evaluation by the parties of the feasibilities, practicalities and the possible consequences of competing options and proposals. Before agreeing to any joint decisions, the taking of legal advice was considered necessary where legal issues were at stake (for a full account of the Gulliver model in relation to family mediation, see M Roberts 2020).

This monograph creates four functions—helper, referrer, assessor and intervenor—of mediation practice without clarifying what precise process these functions serve. These functions are analytically and practically unrecognizable as functions of a mediator orchestrating a negotiation process. The helper and intervenor functions are generic, applicable in relation to any professional intervention, while the assessor function could apply only to the conduct of the MIAM where suitability for mediation is assessed not only by the mediator but by the participating party as well. While mediators may well signpost parties to support, advice or legal services, they do not make referrals.

sample was the length of practice of the majority of its mediators (up to 20 years of practice pre- and post-LASPO). The findings demonstrate, on the contrary, their capacity and skill both in addressing difficult or unequal party dynamics and in not hesitating to be direct, even “blunt” where a proposed agreement might be unfair or unjust (205, 207).

It is not surprising that change may be perceived to have taken place if the original hypothesis of the monograph, in failing to include its evaluation phase, consists of a limited and therefore inaccurate conceptualization of the mediation process. The monograph’s “discovery” of evaluation appears to have been mistaken for a change in practice. Nor is evidence evinced to demonstrate either that the practice attributed to the post-LASPO “flexible mediator” is different from that of pre-LASPO practice, or that family mediators now exceed their mediatory role by providing expert legal oversight, namely consultancy or advice. The empirical findings, with one exception,<sup>22</sup> do not demonstrate therefore that there has been any fundamental change in practice post-LASPO or that this had been concealed (91; 182).

## [F] CONCLUSION

The underpinning argument of this monograph is that the dominant traditional understanding and practice of family mediation has changed and that the now extended practice of contemporary family mediators, in providing “legal oversight”, should be classified as an “apparatus” of the family justice system. The recommendation of the monograph is therefore that this change needs to be acknowledged and that family mediation be regulated as a legal service (200-201). This is a recommendation that does not address the fact that it contradicts existing government and professional policy guidance as well as the statutory requirements under the Legal Services Act 2007, all of which refute unequivocally that mediators provide legal services.<sup>23</sup>

In asking its first critical question—What is mediation?—the monograph creates the very problem of ambiguity and “cover-up” about

---

<sup>22</sup> Only one of the interviewees openly claimed to give legal advice to parties when acting as a mediator. The problems of conflicts of interest or that his practice breached the FMC Code of Practice were not addressed.

<sup>23</sup> The question of whether or not mediation constitutes a legal service, triggered originally by the advent of legal aid for family mediation in the 1990s, was addressed and resolved by government guidance. This was issued specifically in the light of the implications for mediators under the Proceeds of Crime Act 2002. Government guidance clarified unequivocally that mediators do *not* provide legal services, a view supported by all the mediation bodies across fields of practice, the Bar Council and the Law Society (Home Office 2004). The Legal Services Act 2007, part 3, section 12(4) now explicitly embodies the provision that mediators do *not* carry out legal activity.

which it complains. The key to an analytical understanding of what is or is not mediation lies in the purpose for which an intervenor activates the flow of information (Palmer & Roberts 2020). Where information is elicited for the purpose of establishing communication between the parties, ensuring that the issues are identified and communicated, ensuring that all the options are identified and evaluated, and helping with clarifying and formulating any ensuing agreement, that is mediation. On the other hand, where information is primarily elicited as the basis for evaluating that information in order to reach a diagnosis, issuing advice on the basis of that diagnosis and persuading the parties to accept that solution, then that is no longer mediation (*ibid* 162).

In asking its second critical question—Has family mediation practice changed fundamentally since LASPO?—no evidence emerges to suggest that the evaluation of options as part of mediation practice is newly introduced or that it has been transformed into the provision of legal oversight, whether expert consultancy or advice. The major concerns that this review highlights relate to the validity of the theoretical and methodological framework of the monograph—in particular, its adoption of a false dichotomy between facilitation and evaluation; its conflation of ideal types with actual practice; its restricted conceptualizations of “neutrality”<sup>24</sup> and “facilitation”, plus the unsubstantiated allegation of a professional cover-up over evaluation.<sup>25</sup> Another concern relates to the attitude expressed about the views of some interviewees where those views do not corroborate the hypotheses of the research.<sup>26</sup> A dismissive or patronizing approach does serious disservice not only to those interviewees but also to expectations for mutual trust and respect necessary for future constructive collaboration between researchers and practitioners.

As the formal justice system now officially sponsors settlement and actively promotes out-of-court dispute resolution processes (NCDR), and

<sup>24</sup> As Palmer and Roberts note: “Such a claim [to neutrality] is rarely advanced without qualification by mediators themselves and in some contexts appears as a construct by researchers intent on knocking it down” (2020: 178).

<sup>25</sup> The monograph acknowledges that its data “does not comprehensively capture the practices of the flexible mediator type and that observational data is required to make an even more substance contributions [sic] to ongoing discussions” (see 87, footnote 19 in Blakey).

<sup>26</sup> See, for example, these comments about the responses from the interview sample: “The mediator sample regularly spoke about how they would intervene, though many of their responses were underdeveloped ...” (149); the mediator sample “did not seem to grasp how their evaluative actions implicated their neutrality” (213); the interviewees might not themselves realize that “reality testing could be incredibly evaluative” (138); “The study indicates that ... family mediators struggle to recognize the intricacies of their role” (151); and a reference to “the significant shortcomings” of one interviewee’s view of justice which in fact corresponds accurately with the Western common law conceptualization of justice as state-sponsored judicial authority (171).

if access to justice, in its widest sense, means the right of disputants to have access to a range of dispute resolution processes, then the unequivocal delineation of the nature and purpose of those different processes becomes imperative.<sup>27</sup> Clarity and rigour in respecting their distinctive professional and ethical boundaries are essential to protect the integrity and benefits of each dispute resolution process.

Recent developments in the family justice system confirm the growing challenges to the distinctive status of family mediation as an independent, informal and discrete dispute resolution process that provides a genuine alternative to litigation and to formal judicial determination (see Ministry of Justice, *Family Justice Review* 2011; FPR 2024). These developments risk distorting family mediation into becoming a form of legal process rather than an alternative to legal process, damaging both judicial authority and party control (Effron 1989). The recommendation of this monograph that mediation be recognized as a legal service adds to the current dangers to family mediation of co-option and domination by the family justice system.<sup>28</sup>

Research, framed by a theoretical paradigm informed by the rich body of scholarly literature on ADR and mediation, which includes observational studies of mediation practice, the experiential input of practitioners, as well as the consumer perspective, will all contribute to mediation practice becoming better understood and advanced.

### About the author

**Marian Roberts** qualified as a social worker and as a barrister and has over 40 years' continuous practice experience as a family mediator focusing on high-conflict disputes over children. During the 1990s she was responsible for overseeing the creation and development of National Family Mediation's national training and professional practice framework. She is a former Governor and Chair of the Professional Standards Committee and is now a Fellow of the College of Mediators. She is an accredited mediator, trained in child inclusive mediation, and a professional practice consultant with the FMC.

<sup>27</sup> A two-tier system is already manifest when the court adjourns for NCDR under the FPR 2024. For the majority of disputants, access to most NCDR processes such as collaborative law, arbitration and early neutral evaluation is unaffordable. Mediation with its unique availability of legal aid becomes the only possible NCDR option, one which may already have been deemed unsuitable at the original MIAM.

<sup>28</sup> Unprofessional demands, thankfully resisted, are already being made by courts on family mediators, for example, to report on children's views. In addition, the lack of provision of services for children (such as counselling, therapy, guidance and advice) results in inappropriate expectations being imposed on family mediation to meet children's needs under the label of child inclusive mediation (known as CIM).

*As a former Visiting Fellow and Guest Teacher at the London School of Economics and Political Science (LSE), she taught mediation modules on the London University Master's in Law (LLM) ADR course (since 1989), and on the LSE ADR LLM. She was Professorial Research Associate in the Department of Law at the School of Oriental and African Studies, teaching on its ADR LLM until 2015. Marian Roberts has published several books and many articles on the subject of mediation.*

Email: [robertsmarian1@gmail.com](mailto:robertsmarian1@gmail.com).

## References

- Abel, Richard L. "The Contradictions of Informal Justice." In *The Politics of Informal Justice*, edited by Richard L Abel, chapter 1. New York: Academic Press, 1982.
- Allport, Lesley A. "The Voice of the Child in Family Mediation." In *Family Mediation: Contemporary Issues*, edited by Marian Roberts & Maria F Moscati, chapter 10. London: Bloomsbury Professional, 2020.
- Astor, Hilary. "Violence and Family Mediation Policy." *Australian Journal of Family Law* 18(1) (1994): 3-21.
- Auerbach, Jerold S. *Justice without Law? Resolving Disputes without Lawyers*. Oxford: Oxford University Press, 1983.
- Barlow, Ann & Jan Ewing. *Children's Voices, Family Disputes and Child-Inclusive Mediation: The Right to be Heard*. Bristol: Bristol University Press, 2024.
- Barlow, Ann & Ors. *Mapping Paths to Family Justice: Resolving Family Justice in Neoliberal Times*. London: Palgrave Macmillan, 2017.
- Busch, Dominic, ed. *The Routledge Handbook of Intercultural Mediation*. New York & London: Routledge, 2023.
- Cobb, Sarah & Janet Rifkin. "Practice and Paradox: Reconstructing Neutrality in Mediation." *Law and Social Inquiry* 16(1) (1991): 35-62.
- Dingwall, Robert & David Greatbatch. "Who is in Charge? Rhetoric and Evidence in the Study of Mediation." *Journal of Social Welfare and Family Law* 15 (1993): 367-385.
- Dingwall, Robert & David Greatbatch. "Family Mediation Researchers and Practitioners in the Shadow of the Green Paper: A Rejoinder to Marian Roberts." *Journal of Social Welfare and Family Law* 17(2) (1995): 199-206.

- Douglas, Ann. *Industrial Peacemaking*. New York: Columbia University Press, 1962.
- Effron, Jack. "Alternatives to Litigation: Factors in Choosing." *Modern Law Review* 52 (4) (1989): 480-497.
- Emery, Richard E & Ors. "Divorce Mediation: Research and Reflections". *Mediation in Practice* (May 2005): 7-18.
- Family Justice Council & Family Mediation Council. "Family Mediation in England and Wales: Guide for Judges, Magistrate, Legal Advisors and Court Staff." 2024.
- Family Mediation Council (FMC). *Code of Practice and Guidance*. London: FMC, 2025.
- Felstiner, William L F & Ors. "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming." *Law and Society Review* 15(3) (1980-1981): 631-654.
- Fuller, Lon L. "Mediation – Its Forms and Function." *Southern Californian Law Review* 44 (1971): 305-339.
- Garwood, Fiona. "Children in Conciliation: A Study of the Involvement of Children in Conciliation by the Lothian Family Conciliation Service." Edinburgh: Scottish Association of Family Conciliation Services, 1989.
- Gewurz, Ilan G. "(Re)designing Mediation to Address the Nuances of Power Imbalances." *Conflict Resolution Quarterly* 19(2) (Winter 2001): 135-162.
- Gulliver, Philip H. *Disputes and Negotiations: A Cross-Cultural Perspective*. New York and London: Academic Press, 1979.
- Haynes, John M. *The Fundamentals of Family Mediation*. London: Old Bailey Press, 1993.
- Hitchings, Emma & Ors. *Fair Shares? Sorting Out Money and Property on Divorce: Final Report*. Bristol: University of Bristol, 2023.
- Ingleby, Richard. "The Legal Process in Family Disputes and the Alternatives." In *A Reader on Family Law*, edited by John Eekelaar & Mavis Maclean. Oxford: Oxford University Press, 1994.
- Jones, Tricia S. "Editor's Introduction." *Conflict Resolution Quarterly* 19(2) (2001): 131-134.
- Kelly, Joan B. "Family Mediation Research: Is There Empirical Support for the Field?" *Conflict Resolution Quarterly* 22(1-2) (2004): 3-35.



- Keshavjee, Mohamed M. *Islam, Sharia and Alternative Dispute Resolution Mechanisms for Legal Redress in the Muslim Community*. London: I B Tauris, 2013.
- Kressel, Kenneth. *The Process of Divorce*. New York: Basic Books, 1985.
- Kressel, Kenneth & Ors. "Multi-Dimensional Analysis of Conflict Mediator Style." *Conflict Resolution Quarterly* 30(2) (December 2012): 135-171.
- Mather, Lynn & Ors. "The Passenger Decides on the Destination and I Decide on the Route: Are Divorce Lawyers Expensive Cab Drivers?" *International Journal of Law and the Family* 9 (1995): 286-310.
- McCrary, John P. "Environmental Mediation – Another Piece for the Puzzle." *Vermont Law Review* 6(1) (1981): 49-84.
- McCrary, John P. "The Mediation Process", paper delivered at the Bromley Conference on Family Mediation, Bromley, South East London Family Mediation Bureau, April 1985.
- Menkel-Meadow, Carrie J. *Dispute Processing and Conflict Resolution: Collected Essays*. Aldershot: Ashgate, 2003.
- Menkel-Meadow, Carrie J. *Complex Dispute Resolution* 3 volumes. Farnham: Ashgate, 2012.
- Menkel-Meadow, Carrie J. "Hybrid and Mixed Dispute Resolution Processes: Integrity of Process Pluralism." In *Comparative Dispute Resolution*, edited by Maria Federica Moscati & Ors. Cheltenham & Northampton MA: Edward Elgar, 2020.
- Menkel-Meadow, Carrie J & Ors. *Dispute Resolution: Beyond the Adversarial Model*. New York: Aspen Publishers, 2005.
- Ministry of Justice. *Family Justice Review: Final Report*. London: Ministry of Justice, November 2011.
- Mnookin, Robert H & Lewis Kornhauser. "Bargaining in the Shadow of the Law: The Case of Divorce." *Yale Law Journal* 88 (1979): 950-997.
- Moscatti, Maria Federica. "We Have the Method but still There Is so Much to Do: Mediation for Gender and Sexually Diverse Relationships." In *Family Mediation: Contemporary Issues*, edited by Marian Roberts & Maria Federica Moscati. London: Bloomsbury, 2020.
- Moscatti, Maria Federica & Ors, eds. *Comparative Dispute Resolution*. Cheltenham & Northampton MA: Edward Elgar, 2020.

- Murch, Mervyn & Douglas Hooper. *The Family Justice System*. Bristol: Family Law, 1992.
- National Family Mediation (NFM). *Cross-Cultural Mediation Policy and Practice Guidelines*. Exeter: NFM, 1998.
- Palmer, Michael & Simon Roberts. *Dispute Processes: ADR and the Primary Forms of Decision-Making* 3rd edn. Cambridge: Cambridge University Press, 2020.
- Parkinson, Lisa. "Expanding the Model without Breaking the Mould: Developing Practice and Theory in Family Mediation." *Family Law* 46(1) (2016): 110-115.
- Rifkin, Janet. "The Practitioner's Dilemma." In *New Directions in Mediation*, edited by Joseph P Folger & Tricia S Jones. London: Sage, 1994.
- Riskin, Leonard L. "Understanding Mediators' Orientations, Strategies and Techniques: A Grid for the Perplexed." *Harvard Negotiation Law Review* 1 (Spring 1996): 7-51.
- Riskin, Leonard L. "Decision Making in Mediation: The New Old Grid and the New New Grid System." *Notre Dame Law Review* 79 (1) (2003): 1-54.
- Riskin, Leonard L. "Replacing the Mediator Orientation Grids Again: Proposing a 'New New Grid System'." *Alternatives to the High Cost of Litigation* 23(8) (2005): 127-132.
- Roberts, Marian. *Developing the Craft of Mediation: Reflections on Theory and Practice*. London & Philadelphia: Jessica Kingsley, 2007.
- Roberts, Marian. *Mediation in Family Disputes: Principles of Practice* 4th edn (5th edn forthcoming). Aldershot: Ashgate, 2014a.
- Roberts, Marian. "A View from the Coal Face: Interdisciplinary Influences on Family Mediation in the United Kingdom." *Journal of Comparative Law* 9(2) (2014b): 108-118.
- Roberts, Marian. "Interdisciplinary Influences on Family Mediation: A Chronical of Colonisation Foretold?" *Mediation Theory and Practice* 1(2) (2016).
- Roberts, Marian. "Gulliver's Cross Cultural Processual Model of Mediation and Family Mediation: The Harmonious Integration of Theory and Practice." In *Comparative Dispute Resolution*, edited by Maria Federica Moscati, Michael Palmer & Marian Roberts, chapter 17. Cheltenham & Northampton MA: Edward Elgar, 2020.

- Roberts, Marian & Maria Federica Moscati, eds. *Family Mediation: Contemporary Issues*. London: Bloomsbury Professional, 2020.
- Roberts, Simon. "The Family Justice System." *Family Mediation* 3(1) 1993.
- Roberts, Simon. "'Listing Concentrates the Mind': The English Civil Courts as an Arena of Structured Negotiation." *Oxford Journal of Legal Studies* 29(3) (2009): 457-479.
- Roberts, Simon. *A Court in the City: Civil and Commercial Litigation in London in the Beginning of the 21st Century*. London: Wildy, Simmonds & Hill, 2013.
- Schön, Donald A. *The Reflective Practitioner: How Professionals Think in Action*. New York: Basic Books, 1983.
- Simmel, Georg. *The Sociology of Georg Simmel*, translated by K H Wolf. New York: Free Press, 1950 [1908].
- Stenelo, Lars-Göran. *Mediation in International Negotiations*. Malmö: Nordens Boktryckeri, 1972.
- Stevens, Carl M. *Strategy and Collective Bargaining Negotiation*. New York: McGraw Hill, 1963.
- Stokoe, Elizabeth. "Overcoming Barriers to Mediation in Intake Calls to Services: Research-based Strategies for Mediators." *Negotiation Journal* 29(3) (July 2013): 289-314.
- Thoennes, Nancy A & Jessica Pearson. "Predicting Outcomes in Divorce Mediation: The Influence of People and Process." *Journal of Social Issues* 41(2) (1985): 115-226.
- Trinder, Liz & Ors. *Making Contact Happen or Making Contact Work? The Process and Outcomes of In-court Conciliation*, DCA Research Series 3/06 March. London: DCA, 2006.
- Walker, Janet A. *What Does Research Tell Us? Presentation to Family Mediation Symposium: Improving the Client Experience of Mediation*. London: Law Society, 2012.
- Walker, Janet A & Margaret Robinson. "Conciliation and Family Therapy." In *Family Conciliation within the UK: Policy and Practice*, edited by Thelma Fisher. Bristol: Jordan & Sons, 1992.
- Walker, Janet A & Ors. *Mediation: The Making and Remaking of Cooperative Relationships – An Evaluation of the Effectiveness of*

*Comprehensive Mediation*. Newcastle upon Tyne: Relate Centre for Family Studies, 1994.

Woolf, Lord. *Access to Justice: Final Report to the Lord Chancellor on the Civil Justice System of England and Wales*. London: HMSO, 1996.

## Legislation, Regulations and Rules

Civil Procedure Rules 1998.

Family Procedure (Amendment No 2) Rules 2024

Legal Aid, Sentencing and Punishment of Offenders Act 2012

Legal Services Act 2007

Proceeds of Crime Act 2002

National Family Mediation, Cross-Cultural Mediation Policy and Practice Guidelines 1998

Model Standards of Conduct for Mediators. Joint Standards published with the American Bar Association (ABA), American Arbitration Association (AAA) & the Association for Conflict Resolution, 2005.