

'The Teaching of Diverse Models of Mediation in Australian Law Schools'

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Mediation Practice

- Mediation practice in Australia and internationally is evolving.
- Key players in mediation include lawyers.
- Lawyers attitudes, practices and “voice” in accreditation and standards is significant in the development of mediation.

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Lawyer's Approach to Conflict

- If lawyers are significant in the development of mediation what is their influence?
- Does the trend towards evaluative mediation owe anything to the legal culture? Are there limitations to the evaluative model?
- How does that legal culture evolve?
- How does legal education evolve? Can be affected by profession but also higher education policy and trends in society (Thornton 2001; 2006).

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Educating Lawyers

- Lawyers' approach to mediation affected by their legal education (Riskin and Westbrook 1999).
- For example La Trobe study explores attitude changes in students of Dispute Resolution (Gutman, Fisher & Martens 2006).
- Also affected by courts, government policy, firm that they are a part of or the bar, their own personal history, gender, ethnicity etc
- Becomes important to find out how they are taught with a focus upon teachers.

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Why education is important

- Education is a key site for the production of the legal culture and the approach lawyers bring to mediation.
- Legal education in the subject mediation/ADR (or various other similar curriculum) may affect the way that lawyers practice when

representing clients. (Some lawyers may not study mediation/ADR at law school as it is frequently an elective in law courses).

- Also may affect those lawyers who become mediators.

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Need for Diversity

- Education in the subject mediation/ADR, and in other law subjects that teach of mediation (such as Family Law), affect “Lawyers’ Standard Philosophical Map” (Riskin Westbrook 1999). Already mediation as a practice in courts seems to have changed the culture of the law (Mcfarlane 2002). In this research I query whether new models of mediation/ADR may assist in further modifying lawyer’s traditional adversarial culture. Research confined to the subject mediation/ADR or similar due resource constraints.

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Diverse Models Include:

- Facilitative
- Evaluative
- Narrative
- Transformative and Therapeutic
- Restorative Justice/ Victim Offender
- Understanding Model
- Peacemaking
- Public Policy Mediation
- Collaborative Law
- Online Dispute Resolution

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Interdisciplinary

- Many of these new models are interdisciplinary in focus
- Draw upon social science theory
- Additionally, diverse areas of influence (such as meditation and improvisation) also may be taught.

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Research: How is Mediation/ADR taught in Law Schools

- Argument regarding value of diversity in models to law program/students, the legal profession, the mediation community
- Need to establish whether diverse models and practices are taught

- Need to gather the stories of teachers of mediation/ADR in law schools
- Rich source of pedagogy both in teaching practice and content. For instance how are communication skills taught; what of emotion; what of ethics and neutrality?

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Methodology

- Survey all teachers of mediation/ADR or similar subjects in Australian Law Schools
- Interview teachers of mediation/ADR in law schools in Victoria
- Mix of quantitative and qualitative data
- Two parts to survey: (i) Background detail from teachers and (ii) content and practices
- Semi structured interviews dealing with issues arising out of survey

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DATA

- Data analysis to establish issues regarding diverse models of mediation/ADR
- Ideas about teaching
- Future directions
- Effect of accreditation initiatives on teaching.