

# **Mediator Neutrality: themes in the construction of meaningful practice**

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## Slide 1

### Outline

- Research context
- Research question
- Methodology
- Results
- Revised research questions
- Looking further...

## Slide 2

### Research Context

- Neutrality as a core concept
  - A practical illusion?
  - A hindrance to the development of theory?
- Are mediators neutral – or not?

Astor, H. (2000) Rethinking Neutrality: A Theory to Inform Practice- Parts 1 and 2, *Australasian Dispute Resolution Journal*. 11: 73-83; 145-154.

## Slide 3

### *Literature Review*

- Astor, H. (2007) Mediator Neutrality: Making Sense of Theory and Practice, *Social & Legal Studies*. 16: 221-239.
- Astor, H. (2000) Rethinking Neutrality: A Theory to Inform Practice - Parts 1 and 2, *Australasian Dispute Resolution Journal*. 11: 73-83; 145-154.
- Douglas, K and Field, R (2006) Looking for Answers to the Mediator Neutrality Dilemma in Therapeutic Jurisprudence *E Law-Murdoch University Electronic Journal of Law* 13 (2) 177.

## Slide 4

### *Core understandings and dilemmas:*

- *Neutral as to content but in control of the process*
  - The fact of mediator influence on content and outcome

- *Neutrality as impartiality*
  - The fact of mediator preferences, personal and professional, and impact of these on the process.
- *Neutrality as even handedness*
  - Whether and how to address power imbalances between the parties

## Slide 5

### *Research Contribution*

- Empirical study in the Australian context
- International studies include:
  - Cobb, S. and Rifkin, J. (1991a) Practice and Paradox: Deconstructing Neutrality in Mediation. *Law and Social Inquiry* 16(1): 35-62.
  - Cobb, S. and Rifkin, J. (1991b) Neutrality as a Discursive Practice: The Construction and Transformation of Narratives in Community Mediation. *Studies in Law, Politics and Society*. 11: 69-91.
  - Mulcahy, L. 2001. The possibilities and Desirability of Mediator Neutrality – Towards an Ethic of Partiality? *Social and Legal Studies*. 10(4): 505-527.

## Slide 6

### Research Questions

- How do mediators make sense of neutrality in practice?
  - What range of meaning do mediators associate with the concept of neutrality?
  - How do mediators translate the meaning they ascribe to neutrality into practice?

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### Methodology

- Parallel questions:
  - Mediator neutrality
  - Researcher neutrality/ objectivity
- Interpretivist perspective:
  - Social constructionism
- Exploratory aim:
  - Theory building
  - Qualitative method

## Slide 8

### *Data Selection and Collection*

- Case studies
  - Dispute Resolution Centre, Department of Justice, Brisbane
  - Family Mediation Service, Lifeline Community Care, Maroochydore, Qld.
- Face to face interviews with mediators

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### *Data Analysis*

- Thematic examination
- A search for similarities and differences
- Grounded theory...

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### Results

#### *Two significant findings*

1. Emphasis placed on the concept of party self determination in making sense of neutrality in practice
2. Extrapolation of the meaning of neutrality according to both legal and community/therapeutic themes

## Slide 11

### Results (1)

- Emphasis placed on the concept of party *self determination* in making sense of neutrality in practice

#### *Significance:*

- Reframing the concept of neutrality *in relation to* that of party self determination and incorporating a post modern idea of power

## Slide 12

### *Evidence*

#### *Neutrality means:*

- Parties' ownership of the dispute
  - "it's really important not to take ownership. It's the client's problem. It's not your problem."
  - "[My] role as a mediator is to try and help them to take ownership and resolve it for themselves."
- Client-centered practice

- “a process to enable people to make their own decisions.”
- The parties needs as paramount
  - “Am I meeting the parties’ needs or is this about meeting my own needs?”
- (Of power imbalances) Enabling both parties
  - “It’s giving both parties the chance to hear what each other has to say.”

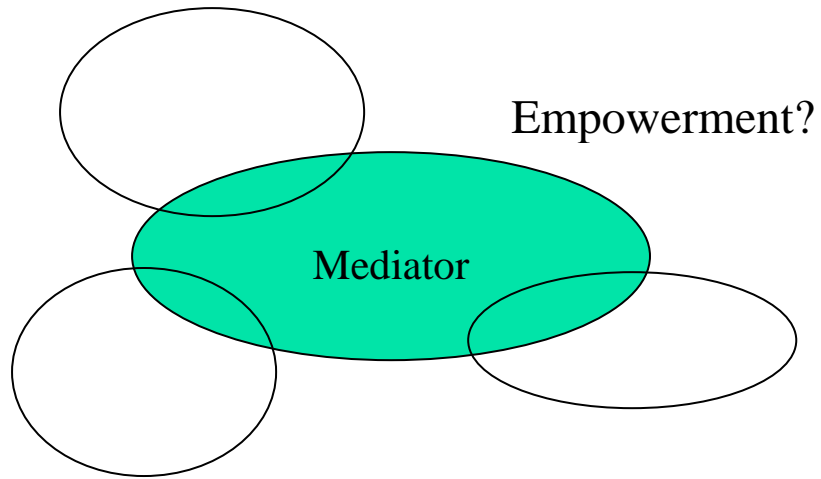
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Neutrality

Power

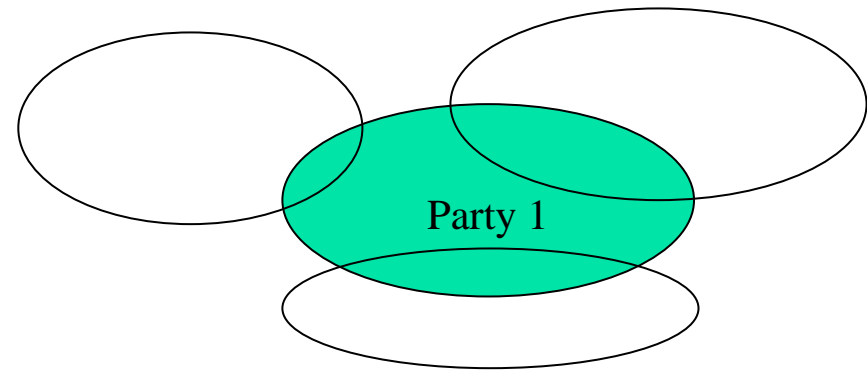
Self-determination

*Value dimension*

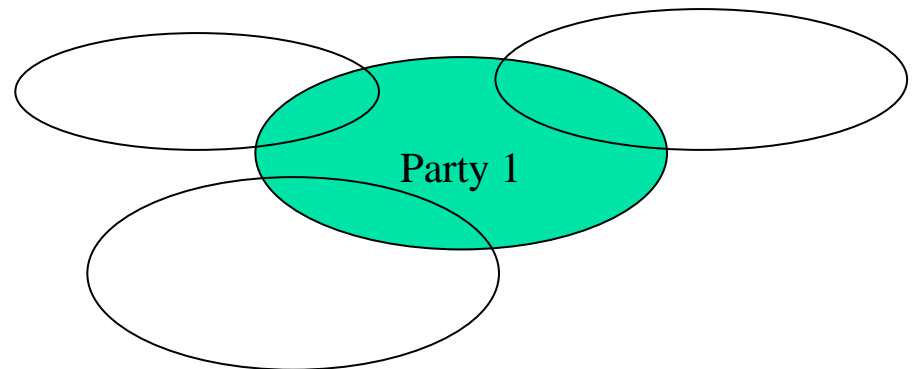


Empowerment?

Abuses of Power?



Imbalances of Power?



## Slide 14

### *Neutrality reframed*

- Of neutrality, power and self-determination
- Neutrality constructed to depict the acceptable limits of the mediator's exercise of power
- Self-determination constructed to depict optimal exercise of the parties' power, individually and collectively

## Slide 15

### Results (2)

- Extrapolation of the meaning of neutrality according to legal and community/therapeutic themes

### *Significance:*

- Expanding the field in looking for answers – incorporating more

## Slide 16

### Evidence

#### *Neutrality as:*

- Wisdom, **detachment**, balance
- Not taking sides, sitting on the fence, listening, soft
- Even handed, **non judgmental**
- **Fairness**, reasonableness
- **Equitable**, balanced treatment
- Not putting own thoughts, views onto the parties
- Directing traffic- the communication
- Being open

## Slide 17

### Extended meaning

#### *Placing meaning in a relational context of decision making:*

- Professional relationships
  - Professional objectivity/ detachment
- Therapeutic relationships
  - The neutral position
- Fiduciary relationships
  - Acting in the best interests of another
  - Avoiding conflicts of interest
  - Acting for a proper purpose
- Processes of decision-making

- Procedural fairness
- Abuses of power

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### Revised Research Questions

Acknowledging the fact of mediator power and influence:

- What is the acceptable/ legitimate scope of that power and influence?, or
- What are the boundaries of acceptable/ legitimate mediator intervention?

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Looking forward...

- Placing the questions in:
  - A theoretical framework which can take account of:
    - An interdisciplinary context
    - Micro and macro contexts
- Grounding varying themes and contexts with a concept of 'relationship'
- Developing a model for practice
  - Taking account of the diversity of practice

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### *A theoretical framework*

- Foucault
  - Knowledge-power
  - Improvement?
- Habermas
  - Theory of knowledge-constitutive interests
  - Power
  - Ideal speech situation
- Systems theory/ analysis: Flood
  - Making critical boundary judgments

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- The exercise of power can prevent the open and free discussion necessary for mutual understanding. Exercise directly via coercion or indirectly by unquestioning assumption.

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*A model for practice.....*

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