

Gender and Interaction in Divorce Mediation

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This article describes the findings from a study of 150 hours of audiotaped mediation work in England as they relate to the question of whether women are advantaged or disadvantaged by this mode of dispute resolution in divorce. It focuses on three questions: Are there gender-related patterns of interactional dominance? Is the ability of men and women to deal with issues in divorce mediation affected by traditional sex-linkages attached to those issues? Do mediators and parties categorize themselves in gendered terms? The study found that the interactional organization of mediation sessions inhibited gendered patterns of interactional dominance, men and women focused on expressive and instrumental issues in similar ways, and fathers were more likely to refer to abstract rather than experiential knowledge about children. The appearance of gender differences tended to reflect the fact that men and women tend differentially to find themselves in particular structural positions.

There is a well-established debate about whether women are advantaged or disadvantaged by mediation in divorce cases. Some claim that the informality of mediation makes it less intimidating for women and encourages forms of argument and moral reasoning in which women feel more secure. The influence of Carol Gilligan's (1982) work is often seen here. Men, it is suggested, tend to adopt rights-oriented arguments, which are less favored in mediation than are interest-oriented arguments. Against this, particularly in the work of Martha Fineman (1991), we find an argument that mediation is a way to keep the gains that women have made outside formality and due process. The law has been made to give women entitlements and rights that evaporate in the

Note: The program of work on divorce mediation has been supported by grants from the United States Information Agency, the Wates Foundation, the Nuffield Foundation, and the Economic and Social Research Council. An earlier version of this article was presented at the joint conference of the Law and Society Association and the International Sociology Association Research Committee on the Sociology of Law in Glasgow, Scotland, in 1996.

private settings of mediation. While there is some evidence to support this position (Davis, Cretney, and Collins, 1994), it is not clear cut. In any case, the arguments here are essentially arguments about *process* as much as about outcome. It is not clear why an adjudicated outcome should be taken as a gold standard if the result is to leave a sense of grievance and an unstable situation likely to generate future conflict or further litigation.

If we seek to understand process, we must study it directly. There are various ways in which this may be done, but self-reports, consumer surveys, and practitioner war stories will not give us the valid and reliable data we need. Our team has been using the methodology of conversation analysis to examine about 150 hours of tape recordings collected between 1983 and 1993 from a mixture of statutory and voluntary mediation agencies in England. This covers about 100 sessions with about 30 mediators using various models of practice in both solo and comediation. All the mediators have some kind of psychosocial background: there are no lawyer-mediators in our sample.

We have defined issues relating to gender in the form of three questions:

1. To what extent are mediation encounters characterized by gender-related patterns of interactional dominance?
2. To what extent does the ability of women and men to deal with the issues that come up in mediation reflect the traditional sex-linkage of these issues?
3. To what extent and in what manner do mediators and parents categorize themselves and others in gender-related terms?

To what extent are mediation encounters characterized by gender-related patterns of interactional dominance?

Research on gender and language suggests that men talk more than women, interrupt women more than vice versa, control topical development, withhold feedback when women are speaking, and are more direct. Women adopt a more cooperative style, which involves attentive listening and collaborative story telling. These practices lead to interactional dominance by men: they get to talk more and to talk to their topics.¹

Two alternative explanations have been put forward for these differences. One sees gender differences in interaction as a product of socialization. This *subcultural* or *socialization* approach suggests that men and women learn to speak in different ways when they are children and carry these styles into adulthood. The *structural* or *situational* approach sees differences in the verbal behavior of men and women as a manifestation of power relations in the wider society; different language styles are used by those who have and those who lack power in particular situations. The language styles of the powerless are disproportionately used by and identified with women because of their gen-

eral lack of power. When women are powerful actors, they use more assertive styles (Conley and O'Barr, 1990). Men's interactional dominance is not a product of differences in socialization but of women's lack of power.

We found that the way in which mediation participants constructed their identities as parents and mediators inhibited the asymmetries of power and participation that have been reported in other interactions between men and women. Although asymmetries did occur in the mediation sessions we examined, these did not center on gender, but on the identities associated with institutionalized divorce mediation, that is to say mediation carried out by people for whom this is a formal and publicly recognized activity as opposed to informal mediation by friends or kin or mediation that is incidental to the other professional work of, for example, a minister of religion.

Interaction Between Disputants. Mediation sometimes involves strict turn-preallocation, with every other turn restricted to mediators (Garcia 1991).² The sessions in our data were not managed in this way and it seems to be uncommon in divorce mediation. Nonetheless, the parties' talk was often solicited by or addressed to the mediators (Greatbatch and Dingwall, 1997). Even in the context of disagreement, parties often waited until they were allocated opportunities to speak by mediators before responding to what each other had said.

In so far as this format is collaboratively sustained, control of interaction is largely in the hands of mediators. The parties will not interrupt one another or respond directly to what each other is saying. In addition, mediators will be in a position to exert a substantial degree of control over the way topics develop in the session (Greatbatch and Dingwall, 1989). The expectations of appropriate behavior associated with the role or identity of mediator and disputant tend to blur gender differences.

In some sessions, though, sequences of direct interaction between the parties did occur. These often involved disagreement, with both parents adopting competitive styles of interaction. The distinction between lecturing and attentive listening, which has been said to characterize the respective styles of men and women in cross-sex conversations, did not apply here.

Irrespective of whether the parties' talk passed through the mediator or not, there was little if any difference in directness between male and female disputants (although fathers did use aggressive styles of speech more often). Their choice of direct and indirect forms seems more dependent on the immediate situation than on underlying gender-related considerations. For example, both parties may adopt direct forms in the context of an argument, but then shift to more indirect forms after a mediator has negatively sanctioned them for arguing rather than negotiating.

Interaction Between Disputants and Mediators. In our data, the extent to which mediators interrupted parents (or each other), initiated abrupt topical shifts, withheld feedback, and so on, did not vary in terms of gender. Their interactional conduct was less sensitive to their gendered identities than to

their role as facilitators of communication between the disputants. They were doing mediation as a gender-neutral activity.

The same applies to the relative directness of male and female mediators. Again, gender was overwhelmed by the mediators' professional identity, and the choice between direct and indirect forms seemed more dependent on the immediate situation than on gender-related considerations. For example, mediators tended to be more indirect in making assertions that could compromise their professed neutrality. There appeared to be no link between the sex of the mediators and disputants and the likelihood of the former sanctioning the latter.

In turn, there were no systematic gender-related differences in the ways in which male and female parties interacted with male and female mediators. Male and female disputants were equally likely to challenge or accept sanctions, topical shifts, or proposals by mediators irrespective of the mediator's sex. Thus parents appeared, at least in this respect, to define mediators in gender-neutral terms and to orient to their professional identity rather than to their gender.

Mediation does not systematically reproduce gender differences in interactional style, although these may sometimes coincide with the expectations of the participants as 'people doing mediation' rather than performing some other kind of interactional activity.

To what extent does the ability of women and men to deal with the issues that come up in mediation reflect the traditional sex-linkage of these issues?

A number of popular studies (for example, Gray, 1992; Tannen, 1990) have suggested that men and women may talk about specific topics in distinctive ways, although again there are competing explanations in terms of *socialization* or *structures*. Gender-related differences in the ways that parties and mediators talk about the problems in need of resolution may be explored by considering how instrumental as opposed to expressive aspects of disputes are dealt with. Instrumental issues are the practical matters of finance, property, and child care, while expressive issues are those of emotions and relationships. Since the disputes in our data center largely on issues concerning contact (visitation) and residence (custody), we will also examine the types of knowledge about the children that mediators and disputants introduce.

References to Expressive and Instrumental Issues. Male and female parties focused on expressive and instrumental issues in equal measure. However, fathers were more likely to link the emotional dimensions of events and experiences to specific outcomes (for example, claiming that children would be happier if they had additional contact) whereas mothers were more likely to be nonspecific about future arrangements (for example, asserting that something needs to be done to avoid children becoming upset in the future). This

gender-linked difference is related to the bargaining positions of male and female disputants. In most cases, women were defending the status quo, resisting requests for increased contact, or, less commonly, resisting demands that the children be removed from their day-to-day care. Men were usually in the position of seeking changes to the current situation and increasing their contact with children at the mother's expense. When women were actively seeking changes to current arrangements, their conduct resembled that of men in similar circumstances.

Both male and female mediators tended to focus more on instrumental than expressive issues. In the majority of the sessions the mediators tried to discourage consideration of the relationship between the disputants and to focus on the formulation of proposals for contact and residence. In so doing, mediators did facilitate discussion of children's feelings or emotions. However, this often occurred after parents had declined to compromise during discussions focused on their own perspectives. There were no noticeable differences in the extent to which male and female mediators focused on instrumental and expressive issues. Their conduct seemed to be tied to their institutional role. Mediators were usually more cautious than parents about linking the emotional dimensions of disputes to specific options for settlement.

References to the Children. Fathers were more likely than mothers to refer to abstract as opposed to experiential knowledge about children and their needs. Mothers and fathers often talked about the needs, feelings, and wishes of their children. In so doing, they reported what children had said to them as well as what they as parents had observed. However, fathers were more likely to discuss children's needs in terms of what children in general require than to their specific children.

Both male and female mediators tended to refer mainly to abstract knowledge about children and their needs. This is not surprising given that the children were not usually present and the mediators had had no prior contact with them. Given this, mediators could only legitimate comments about the needs and feelings of particular children by references to children in general. This *could* lead to both male and female mediators formulating issues concerning the children in ways more similar to those of fathers than of mothers. However, it was balanced by the active solicitation of experiential knowledge from *both* parents. Indeed, it was noticeable that if fathers did not produce such knowledge, this might undermine their position.

The mediators' use of abstract knowledge also sustains other features of mediation. For example, both parents and mediators commonly explained disagreements between the parents as the result of children playing parents off against one another. Unlike parents, mediators avoided ascribing these characteristics to particular children. By attributing them to children in general, they neutralized the possible negative implications about the children's moral character. Since parents often disagreed about what the children felt or wanted, mediators may also need to avoid deriving comments on the children's perspectives

from the parents' versions in order to protect their neutrality. Similarly, mediators displayed caution about confirming abstract knowledge produced by parents since this was often configured to support a parent's preferred outcome.

To what extent and in what manner do mediators and parents categorize themselves and others in gender-related terms?

Although the impact of gender on mediation is secondary to the way in which the parties treat each other as mediators and disputants, they do acknowledge their gendered nature in the course of the unfolding interaction. We deal in turn with the categorization of mediators, disputants, and children.

Categorization of Mediators. The mediators rarely referred to themselves in terms of gender-related identities such as woman-man, husband-wife, mother-father, son-daughter, nor did the disputants normally categorize them in these terms. As a result, the mediators' gender was rarely invoked by the participants either to characterize the relationship between mediators and disputants or to explain, justify, or discount the mediators' behavior, expertise, experiences, insights, actions, or views. Instead, all the participants worked together to treat the mediators as gender-neutral. When mediators were addressed or referred to in gender-related terms, this was often associated with hostile interactional moves by a mediator or disputant and was normally followed immediately by the reinstatement of their gender-neutrality.

This behavior reflects the orientation of all the participants to the expectations of institutionalized mediation. The avoidance of gender-related categorization of mediators is part of a wider process in which mediators and parents refrained from citing a range of social identities that could be applied to them. Apart from gender, these might include social class, age, marital status, and ethnicity. By doing this, they not only give priority to the mediators' locally institutionalized identity, but also dissociate this from the forms of behavior or thinking that might be assumed to go with these other identities. This contributes to the maintenance of professional neutrality. The use of these identities, and their supposedly associated traits and preferences, could cast doubt on the mediators' ability to be neutral, since it would justify disputants seeing the mediators' conduct and actions as being shaped by such external features. It would also allow them to see mediators as aligned with particular parties, better able to understand them and, perhaps, biased in their favor according to their gender, status, age, and so on. The absence of gender-related attribution means that what the mediators know, what they do, and the like is attributed, at least officially, to their professional and gender-neutral everyday expertise and competencies.

Categorization of Disputants. While mediators often used masculine and feminine terms when talking to or referring to parents, there were no examples of them directly attributing gender-related traits to the parties. Instead, the mediators use gender-related modes of address and referral to do things that were not necessarily linked to gender-related identities. For example, while

the mediators' conduct may be informed by assumptions that children should normally reside with their mothers, these are not expressed in terms of gender-related definitions of the roles of male and female parents: for example, "mothers usually look after the children." This is one way in which mediators display their neutrality.

When referring to themselves or each other, the parents commonly referenced gender, proposing differences between the ways in which men and women speak, think, or behave: for example, "men don't do their fair share of the housework." These attributions of distinctive gender-related traits were generally part of moves designed to justify or enhance the credibility of the parent's own position or to undermine the other parent. When a parent made such references, the other parent sometimes accepted them, sometimes contested their validity or relevance to the current situation, and sometimes allowed them to pass without comment. Regardless of the parent's response, however, the mediators rarely expressed a view on the relevance or the validity of the reference. They remained silent, shifted topic, or reframed the parents without reference to gender.

Gender-related references by parents usually occurred in a context of disagreement or argument. If mediators were to challenge such stereotypes, they would risk being heard to take sides. For example, to confirm the proposition that men should take more responsibility for domestic duties could be heard as siding with the person who made the statement. The absence of challenges might be thought to conflict with the ethical commitments common in United Kingdom psychosocial work to the confrontation of stereotypes. However, it is bound into the structural realities of neutrality within mediation and the differences between mediation and counseling, therapy, or social work. We may also note that parents do not ask mediators to express a view on the gender-related propositions and that, by doing this, they collaborate in the definition of mediators as neutrals.

Categorization of Children. Similar patterns occur in relation to the categorization of the children. While the mediators sometimes employ the masculine or female gender in third-person references to children, they do not attribute (either openly or by implication) distinctive gender-related traits to them. Instances of this are restricted to parents and also occur in the context of disagreements or arguments. When parents refer to gender-related traits in children, the mediators do not comment on their validity or relevance.

Conclusions

These findings have a number of possible implications for policy and practice development:

1. The interactional organization of these divorce mediation sessions inhibits differences in participation or process related to gender. Although such differences do occur, these are not based on gender, but on the roles or identities associated with institutionalized divorce mediation as defined earlier. Our

data do not support a claim that there are systematic gender biases inherent in divorce mediation, although these may, of course, occur under environmental conditions outside the range of our data. This work, for example, leaves open research questions about interaction in mediation when conducted by lawyer-mediators or in court-annexed sessions.

2. Male and female disputants focus on expressive and instrumental issues in equal measure. However, fathers are more likely than mothers to link the emotional dimensions of events and experiences to specific options for settlement as a result of their frequent structural position as the party seeking change. Mothers in the same position behave in a similar way.

3. Fathers are more likely than mothers to refer to abstract as opposed to experiential knowledge about children and their needs. Both male and female mediators tend to introduce abstract-expert knowledge about children in general, a practice that stems from their lack of direct knowledge about the specific children in any case. This can lead to both male and female mediators formulating issues concerning the children in ways more similar to those of fathers than those of mothers. However, this can be balanced by an active solicitation of experiential knowledge from both parents. Further research might look at the conditions under which such active solicitation occurs: it does not seem to be systematically related to the impact of professional codes of practice, for example.

Our overall conclusion is that women are neither generically advantaged nor disadvantaged by the *process* of mediation, although certain aspects of it may seem to have a more masculine character, particularly in the mediators' use of abstract-expert knowledge about children, which can make them seem more aligned with fathers than mothers.

Notes

1. There is a large literature and active debate about these findings and their interpretation. Details can be found in the reviews by Haas (1979), Cameron (1985), and Graddol and Swan (1989).
2. Turn pre-allocation means that the order in which people speak is prescribed by a set of rules known to all the parties prior to the start of the interaction rather than following the more flexible conventions of ordinary conversation. Courtrooms are a classic example, where much of the interaction is subject to fairly explicit turntaking rules—prosecutor examines witness with a series of questions and answers, defense counsel cross-examines witness in the same way, prosecutor reexamines, and so on. This turntaking system can only be interrupted by special interactional procedures like counsel's objections, which are themselves strongly rule-governed. In ordinary conversations, typically either the current speaker selects a next speaker from those involved or next speakers self-select when the current speaker finishes a turn.

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Commentary by Christine A. Coates

Opponents of divorce and child custody mediation often state that women are inherently disadvantaged in mediation. Cited as reasons for this view are a perceived lack of power of women, caused by a deficiency of information and disparity of financial resources, and the willingness of women to seek collaborative solutions to conflict or, given a negative spin, to give in and compromise. Much of the criticism of mediation has been anecdotal and has submitted the aberrant horror story as the so-called norm. This research study is a breath of fresh air and confirms and articulates my observations that process is more important than gender in the outcome of mediation.

The authors' discussion of turn allocation in speaking in the mediation sessions was very interesting. I have observed that when the mediator establishes the expectation that each person gets to talk in turn (and not at the same time) and that the mediator also gets to talk, most parties will respect that pattern of communication. If a client, male or female, does not take turns talking or becomes overly defensive or offensive in his or her communications, he or she tends to revert to the communication style that was used in the couple's marital conflicts. I have found that more predictive than gender of the effectiveness of a party's ability to negotiate in mediation is the process of decision making that was used by the couple in their marriage.

A question I often ask each party in initial separate sessions is, "How were decisions made in your marriage?" If both independently of the other answer that decisions were made collaboratively, the parties usually take turns in speaking and negotiate respectfully and evenhandedly in the mediation session. If both attribute decision making to one of the spouses, either by default or by design, then communication usually will not flow easily between them in mediation. The decision maker is used to that role and will be more likely to disregard process expectations set by the mediator and may attempt to steamroller his or her spouse into agreeing with him or her. The mediator then must intervene in the negotiations to uphold the right of the heretofore disenfranchised spouse to negotiate, reject proposals, and to offer counterproposals that meet his or her interests. If a client is afraid of giving in when he or she does not want to, I will insist that the spouse take the opportunity to think about the issue until the next session. I actively intervene to prevent coercion by one spouse over the other. I also must empathize with the decision maker's frustration over his spouse's newfound independence of thought. In addition, I attempt to ensure that both parties have the information and documentation available to make informed decisions, and, of course, to have legal advice and advocacy available to them.

I believe that the mediator's responsibility is not to obtain a settlement at any cost, but to ensure that the process used to arrive at the settlement is fair, balanced, and principled. Both men and women are empowered by mediation because of the mediator's belief in and commitment to the inherent power of the mediation process itself.

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