Regulation of Child Custody Mediation: A Patchwork Quilt

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In this article, we empirically model the antecedents of two decisions states have made regarding child custody mediation: 1) Are divorcing parents required to attempt mediation before their child custody cases can go to court? and 2) Are child custody mediators required to meet certain educational standards before they can mediate? Logistic regression analyses suggest that states with larger populations are more likely to establish minimum qualifications for child custody mediators. States in which a higher percentage of citizens are lawyers are less likely either to mandate child custody mediation or to establish minimum qualifications for child custody mediators. A less robust result was that states with moralistic and traditionalistic political cultures are more likely to mandate child custody mediation.

The subject of mediation and other forms of alternative dispute resolution (ADR) have "largely been ignored in mainstream public administration" (Bingham, Nabatchi, and O'Leary 2005, 550). According to Bingham et al. (2005), ADR is at the cornerstone of the "new governance," which enacts quasi-legislative and quasi-judicial processes to permit stakeholders to have a greater say in government decisions, and more research is needed about these new government practices that are spreading at the state and local levels.

In this article, we analyze a snapshot of the process of professionalization as it has played out for child custody mediators in the United States. Mediation is "the intervention in a negotiation or conflict of an acceptable third party who has limited or no authoritative decision-making power but who assists the involved parties in voluntarily reaching a mutually acceptable settlement of issues in dispute" (Moore 1996, 15). Some scholars have dubbed mediation "the second-oldest profession" (Kolb 1983, 1).

Furthermore, we analyze child custody mediation as it has been practiced in the United States. First, we outline the evolutionary history of child custody mediation. Then, we empirically examine the antecedents of the following two decisions as states have made them: 1) Is mediation required before child custody disputes can be argued in court? 2) Are child custody mediators required to meet certain educational standards before they can practice their craft?

Child Custody Mediation

Before the Victorian era, divorce courts treated children as property belonging to the father, but by the beginning of the twentieth century evolving gender mores had led judges to almost always award custody of children to the mother (Coltrane and Adams 2003). The concept of joint custody, where divorced fathers and mothers share parenting duties, began to spread through the American family court system only thirty years ago (Schepard 2000). The logic of using mediation in this context is compelling. Beck, Sales, and Emery (2004) allege that mediation is faster, less expensive, and more acceptable to the disputants, as well as enabling of healthier relationships between divorcing parents and their children.

Child custody mediation is not without its critics. Ezzell (2001) described the Anglo-American legal system as "the world's best fact-finder" and suggested that this system empowers judges to make better child custody decisions than parents (125). Furthermore, the parent who is more attached to the child may agree during mediation to accept an inadequate share of joint property to maintain primary custody, which unfairly enriches the less-interested parent (Ezzell 2001). Freeman (2000) noted a number of ethical issues associated with child custody mediation. For example, a mediator will typically hold separate, confidential caucuses with each parent, but the parents are legally required to share all pertinent information with each other. This could therefore put mediators in the position of facilitating settlements even though they are aware that one parent is evading his or her legal obligation of full disclosure.

Is child custody mediation an effective alternative to the traditional family court system? Research often supports the claims of mediation's advocates, but is equally likely to find no significant differences between approaches in resolving child custody disputes (Beck et al. 2004). For example, lawyers may charge the same amount whether or not cases settle in mediation, and mediation is sometimes slower than litigation (Beck and Sales 2000). A substantial problem in studying this issue is that divorcing parents are generally not randomly assigned to mediation versus litigation, so the conditions for a comparative experimental research design are usually not available (Beck and Sales 2001).

Emery, Sbarra, and Grover (2005) offer an important exception to this rule, as they examined a program which randomly assigned divorcing parents either to mediation or litigation; they then conducted follow-up surveys twelve years later. They found that fathers were much more satisfied and much more likely to maintain strong family ties to their children when mediation helped resolve their child custody disputes. Mothers, on the other hand, tended to express greater satisfaction with litigation, perhaps because litigation tended to decrease the number of days per year courts awarded fathers custody. Interestingly, they found no effect of mediation versus litigation on the psychological well-being of the children.

Emery et al. (2005) interpreted their results as strongly supportive of using mediation in child custody disputes. Kelly (2004) reviewed several studies comparing mediation and litigation, almost all of which did not allow random assignment of divorcing parents to each approach. Kelly (2004) acknowledged that "mediation does not improve psychological adjustment in measurable ways" (29), but forcefully argued that evidence clearly shows the superiority of mediation as a dispute resolution mechanism for child custody disputes.

Who Should Mediate Child Custody Disputes?

Professionals strive to control access to their unique knowledge base. Professionalization is supposed to simultaneously serve the interests of consumers, who can trust the competence of accredited service providers, and the interests of professionals, who can count on well-paying job opportunities (Evetts and Buchner-Jeziorska 2001). Professionals place great emphasis on legal issues, attempting to interpret and enact legislation that supports their goals and reinforces their value systems (Edelman and Suchman 1997). This struggle can pit professionals such as physicians and chiropractors against one another in competing attempts to establish jurisdictional legitimacy (Brown 2001).

In the United States, the practice of mediation has spread widely from its roots in resolving labor-management disputes. Bar associations used to characterize the mediation of legal disputes as inherently inappropriate and unethical (Milne, Folberg, and Salem 2004). Nonetheless, judicial system administrators have been particularly attracted to mediation because it offers the promise of controlling costs and improving quality (Della Noce, Bush, and Folger 2002). Additionally, the legal profession has been increasingly unable to monopolize the market for all legal services (Kritzer 1999). As a result of these trends, law schools have recently developed a great interest in teaching mediation skills to students, lawyers, and other professionals (Love 2002).

The process of mediation's professionalization manifests itself in the debate over the qualifications necessary to serve as a mediator in legal disputes. Should non-lawyers be allowed to mediate in this context? If so, does mediation require certain levels of education and training, without which an individual should not be certified to practice mediation?

The legal profession's campaign to preserve its monopoly over the mediation of legal disputes has been described as a turf war in which "non-attorney" mediators have made some inroads but remain at a disadvantage compared to lawyers (Hoffman 1999). There are numerous arguments on both sides of this issue. Henning (1999) summarized debate: Proponents of restricting mediation to lawyers argue that: a) lawyers' on-the-job experiences develop their conflict resolution skills; b) legal knowledge is essential to the mediation of legal disputes; c) mediation would carry greater status and be more acceptable to judges if all mediators were lawyers; and d) successful lawyers and successful mediators share certain desirable personal characteristics such as intelligence and organizational skills; opponents of restricting mediation to lawyers allege that: a) lawyers' on-the-job experiences may leave them lacking in certain important conflict resolution skills such as inventiveness; b) legal training predisposes lawyers against collaborative problem-solving; c) familiarity with the law could reduce a mediator's creativity and neutrality; d) it is possible to craft mediation standards that are acceptable

to judges without requiring that all mediators be lawyers; and e) mediation will cease to be an alternative dispute resolution technique if the field is restricted to lawyers. Henning (1999) concluded that a "non-attorney" mediator should qualify to work on a narrow range of legal disputes by becoming sufficiently well-versed in a subset of the law.

Daiker (2005) considered the same issue: Non-lawyer mediators may be: a) incapable of or forbidden from informing the parties of their legal rights; b) easy to manipulate by lawyers representing the parties; and c) intimidated by one of the parties; on the positive side, non-lawyer mediators can: a) create an informal environment in which discussions can take place; b) engage in interest-based bargaining rather than the traditional distributive "win-lose" bargaining; and c) communicate directly with the parties rather than through their lawyers. Daiker (2005) concluded that "[n]on-lawyer mediators make the mediation process better. Studies and writings overwhelmingly demonstrate that possession of a law degree does not improve the effectiveness of a mediator and may actually hinder mediators who have had legal training" (525).

If a law degree is not an absolute prerequisite to the mediation of legal disputes, is there an alternative educational background that would be advantageous? An early attempt by the Society of Professionals in Dispute Resolution to develop mediator qualifications rejected the notion that any particular educational achievement should be a prerequisite to mediate. This group's first report asserted that there is "no evidence that formal degrees are necessary to competent performance" (Society of Professionals in Dispute Resolution 1989, 15). Their final report cautioned that "use of a degree as a main criteria for credentialing dispute resolution professionals deprives parties of access to practitioners with different ranges of skills and works against increasing diversity within the field" (Society of Professionals in Dispute Resolution 1995, 3).

More recently, the American Bar Association, the American Arbitration Association, and the Association for Conflict Resolution collaborated on a document entitled *Model Standards of Conflict for Mediators (*American Bar Association 2005). It states that "any person may be selected as a mediator, provided that the parties are satisfied with the mediator's competence and qualifications" (American Bar Association 2005, 6). The document's authors wished to reject explicitly the notion that "possessing particular educational degrees is an absolute requirement to establish mediator competency" (Stulberg 2005, 14).

Henning (1999) summarized the arguments favoring educational credentials for mediators, as follows: a) a degree in a subject such as counseling or psychology could provide excellent academic preparation for a mediator; b) a degree requirement would legitimize mediation by elevating the field to professional status; and c) a degree requirement would improve mediation quality because it would require recruitment from a more qualified applicant pool. Those who oppose educational credentials in this context contend that: a) credentialing would limit the diversity and growth of mediation by restricting and homogenizing the mediator applicant pool; b) mediators who are trained in any single academic discipline will be no less biased than mediators who are lawyers; and c) possessing an academic degree is insufficiently predictive of competence as a mediator. Henning (1999) urged the mediation community to "fight to avoid the use of professional or college degrees as a criterion for qualification" (214).

Cole (2005) considered the same issue and fount that there is no professional consensus as to the characteristics of "good" mediators; the preferences of mediation clients have not been ascertained through surveys; there is scant evidence linking education to mediator quality; and educational standards restrict opportunities for poor and elderly people to enter this field. As a result, Cole (2005) argued that mediator certification programs fail in their goals of protecting consumers and promoting mediation. Nonetheless, governments often establish educational credentials for mediators based on academic achievements in fields other than mediation (Wessner 2002).

Hypotheses

What drives states' varied responses to the issues of mandating child custody mediation and establishing minimum qualifications for mediators? According to Sapat (2004), four factors that influence the likelihood that a state will adopt a policy innovation are problem severity, institutional factors, interest groups, and political climate. Our independent variables correspond closely to these four factors.

As our measure of problem severity, we use each state's divorce rate per 1,000 state residents. All else being equal, a state with a high divorce rate should experience greater stress in its family court system, which should motivate it to consider more cost-effective alternatives. We would therefore expect divorce rates to be these states' primary determinant of child custody mediation decisions.

Hypothesis 1(a): A state's divorce rate will be positively related to the likelihood that it mandates the use of mediation in child custody disputes.

Hypothesis 1(b): A state's divorce rate will be positively related to the likelihood that it establishes minimum education or training requirements for mediators.

Our first measure of institutional factors is size, which we define as the natural logarithm of a state's adult population. Larger states should employ larger bureaucracies. Niskanen (1971) suggested that bureaucracies have the goal of budget maximization, so that they will grow excessively in response to increases in demand (Niskanen 1971). While this viewpoint is not without its critics (e.g., Peters 1989), it retains a great deal of influence, as shown by the movement to privatize government services.

Hypothesis 2(a): A state's size will be positively related to the likelihood that it mandates mediation in child custody disputes.

Hypothesis 2(b): A state's size will be positively related to the likelihood that it establishes minimum education or training requirements for mediators.

Our second measure of institutional factors is wealth, which we define as the natural logarithm of the median household income for a family of four in each state. Wealth is a key indicator of a state's economic circumstances, and wealthy states tend to be more inventive because they can afford it (Kellough and Selden 2003).

Hypothesis 3(a): A state's wealth will be positively related to the likelihood that it mandates mediation in child custody disputes.

Hypothesis 3(b): A state's wealth will be positively related to the likelihood that it establishes minimum education or training requirements for mediators.

Our measure of political climate is political culture. This refers to shared attitudes and assumptions within a state's political elite. The best-known typology of political culture in the United States is by Elazar (1994), and over one hundred previous empirical studies have used it (Carman and Barker 2005). It classifies state political cultures as individualistic, moralistic, and traditionalistic. The individualistic political culture places a premium on limiting government intervention in private affairs (Elazar 1984). Given that child custody mediation is a government-sponsored attempt to influence its citizens decision-making, it seems reasonable to expect that individualistic states will oppose it.

Conversely, the moralistic political culture views society as more important than individuals. Government is a positive force and social regulation is one of its legitimate functions (Elazar 1984). Thus, we expect states with moralistic political cultures will be more likely to promote mediation and establish standards for practicing mediators.

The traditionalistic political culture is rooted in a paternalistic conception of the commonwealth. It places great emphasis on social and family ties. The traditionalistic political culture perceives government as an actor with a positive role in the community; however, that role is primarily limited to preserving the existing social order (Elazar 1984). Since the constructive resolution of custody disputes is essential to maintaining family ties, we expect that traditionalistic political cultures will be more likely to promote the use of mediation. Likewise, establishing minimum educational or training standards for mediators is likely to preserve the existing hierarchy by placing restrictions on who can practice mediation. Thus, states with traditionalistic political cultures are more apt to institute minimum requirements for mediators.

Hypothesis 4(a): States with moralistic and traditionalistic political cultures will be more likely than states with individualistic political cultures to mandate mediation in child custody disputes.

Hypothesis 4(b): States with moralistic and traditionalistic political cultures will be more likely than states with individualistic political cultures to establish minimum education or training requirements for mediators.

The interest group that bears most directly on child custody mediation issues is the legal profession. Thus, our measure of interest groups is concentration of lawyers, which we measured as the percentage of each state's adults who work as lawyers. Sapat (2004) measured another interest group measure, reflecting the concentration of pro-environment organizations in each state, similarly. Given that no state except Montana explicitly restricts legal dispute mediation to attorneys, we assume that lawyers disfavor mandatory mediation. Since many lawyers practice mediation, we assume that lawyers favor restrictions on mediator qualifications that restrict mediator supply.

Hypothesis 5(a): A state's concentration of lawyers will be negatively related to the likelihood that it makes mediation mandatory in child custody disputes.

Hypothesis 5(b): A state's concentration of lawyers will be positively related to the likelihood that it establishes minimum education or training requirements for mediators.

Methods

We examined two aspects of state regulation of child custody mediation. First, do states mandate that child custody disputants use mediation before they can enter a courtroom? California became the first to do so in 1980, but this policy is far from universally accepted in the other states (Ricci 2004), perhaps because mediation is most effective when the disputing parties voluntarily choose this process (Hedeen 2005). Second, do states establish minimum education or training requirements for child custody mediators?

Every state makes its legal code available on its website in a searchable format. Accordingly, we searched the laws and administrative rules of all fifty states to determine if they could order divorcing couples to mediate their custody disputes and if custody mediators needed minimum levels of education and experience. (A list of all the websites from which we obtained the data is available from us upon request.) The states displayed an interesting distribution of answers to our two central research questions, as Table 1 shows. We would have expected states to converge on two possible decision sets: a) mandating mediation of child custody disputes and requiring minimum qualifications for mediators; or b) choosing neither to mandate mediation nor establish mediator qualification standards. In fact, nine states chose other options, either requiring mediation but not establishing mediator standards or establishing mediator standards but not requiring mediation.

TABLE 1. Number of states regulating child custody mediation.

	Minimum Education/Training?	
Mandatory Mediation?	Yes	No
Yes	32 [a]	6 [b]
No	3 [c]	9 [d]

[a] Alabama, Arizona, Arkansas, California, Colorado, Delaware, Florida, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Minnesota, Missouri, Montana, Nevada, New Hampshire, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Virginia, West Virginia, Wisconsin

[b] Iowa, Maine, New Mexico, Rhode Island, Utah, Washington

[c] Michigan, Nebraska, Pennsylvania

[d] Alaska, Connecticut, Georgia, Hawaii, Massachusetts, Mississippi, New York, Vermont, Wyoming

TABLE 2. Independent variables by state.

State	Divorce Rate	Adult Population	% of Lawyers	Political Culture	Household Income
AK	4.8	475337	.48	Individualistic	56234
AL	4.7	3468055	.35	Traditionalistic	36879
AR	6.3	2103532	.24	Traditionalistic	34999
AZ	4.2	4358856	.28	Traditionalistic	44282
CA	n/a	26430285	.52	Moralistic	53629
CO	4.8	475337	.48	Moralistic	56234
CT	2.9	2675291	.68	Individualistic	60941
DE	3.7	647645	.34	Individualistic	52499
FL	4.8	13724987	.40	Traditionalistic	42433
GA	n/a	6709854	.36	Traditionalistic	45604
HI	n/a	975342	.40	Individualistic	58112
IA	2.8	2295533	.29	Moralistic	43609
ID	5.1	1054916	.29	Moralistic	41443
IL	2.6	9522332	.60	Individualistic	50260
IN	n/a	4669126	.29	Individualistic	43393
KS	3.3	2070402	.36	Moralistic	42920
KY	4.9	3193245	.34	Traditionalistic	37369
LA	n/a	3375977	.49	Traditionalistic	36729
MA	2.2	4940707	.98	Individualistic	57184
MD	3.1	4197427	.49	Individualistic	61592
ME	3.6	1044169	.32	Moralistic	42801
MI	3.5	7596586	.40	Moralistic	4603
MN	2.8	3903221	.51	Moralistic	52024
MO	3.8	4422078	.46	Individualistic	41974
MS	4.5	2172544	.29	Traditionalistic	32938
MT	3.8	730676	.37	Moralistic	39301
NC	4.4	6542201	.26	Traditionalistic	40729
ND	2.8	500159	.26	Moralistic	41030
NE	3.6	1327158	.37	Individualistic	43841
NH	3.9	1006789	.31	Moralistic	56768
NJ	3.0	6556124	.57	Individualistic	61672
NM	4.6	1438902	.34	Traditionalistic	37492
NV	6.4	1793627	.28	Individualistic	49169
NY	3.0	14708746	.96	Individualistic	49480
OH	3.7	8704930	.40	Individualistic	43493
OK	n/a	2694548	.40	Traditionalistic	37063
OR	4.1	2791112	.38	Moralistic	42944
PA	2.5	9612877	.43	Individualistic	44537
RI	3.0	830835	.57	Individualistic	51458
SC	3.2	3227881	.23	Traditionalistic	39316

TABLE 2. Independent variables by state *(continued).*

State	Divorce Rate	Adult Population	% of Lawyers	Political Culture	Household Income
SD	3.2	587663	.28	Moralistic	40310
TN	5.0	4572437	.30	Traditionalistic	38874
TX	3.6	16533683	.40	Traditionalistic	42139
UT	3.9	1727029	.34	Moralistic	47934
VA	4.0	5742897	.35	Traditionalistic	54240
VT	3.9	490431	.44	Moralistic	45686
WA	4.1	4803394	.44	Moralistic	49262
WI	3.1	4840206	.33	Moralistic	47105
WV	4.7	1434359	.30	Traditionalistic	33452
WY	5.3	394973	.34	Individualistic	46202

It is somewhat counterintuitive that a state would establish minimum standards for mediators without requiring litigants to use mediation. Given the tremendous number of issues facing state governments today, why would a state consider it worthwhile to establish standards for mediators who may never be called upon to settle disputes? It also seems odd to mandate mediation without setting guidelines for who can mediate. As a final comment, legal pressures are often assumed to induce organizational homogeneity (Edelman and Suchman 1997), but Table 1 indicates different states' heterogeneous responses to the administration of similar laws.

Table 2 shows the values of the independent variables for each state. Table 3 shows the bivariate correlations of the variables in our analyses. Some of the smallest correlations involve the divorce rate and the two dependent variables, indicating unlikely support for Hypotheses 1(a) and 1(b).

TABLE 3. Bivariate correlations.

	Variable number							
Variable name and number	1	2	3	4	5	6	7	8
1. Mandatory mediation	1.00							
2. Mediator qualifications	.55***	1.00						
3. Concentration of lawyers-	.39***	-.32**	1.00					
4. Wealth -.22	-.18	.53***	1.00					
5. Adult Population .07	.22	.30**	.03	1.00				
6. Divorce rate	.16	.13	-.49***	-.39**	-.25	1.00		
7. Moralistic culture	.21	.10	-.16	.08	-.27*	-.18	1.00	
8. Traditionalistic culture	.19	.17	-.33**	-.60***	26*	.41***	-.49***	1.00

* significant, p < .10; ** significant, p < .05; *** significant, p < .01

Note: Number of states = 44 for correlations with divorce rate, 50 for all other correlations.

Since our dependent variables are dichotomous, logistic regression was most appropriate (DeMaris 1995). For each dependent variable, we conducted three regressions. We entered groups of independent variables in blocks so that each regression added a new set of independent variables to those used in the previous regressions. Recent examples of this data analysis technique, typically referred to as hierarchical logistic regression, are in Lamb (2007); Manning, Stewart, and Smock (2003); and Fox et al. (2002).

In the first analysis we used only the two political culture dummy variables. These reflect enduring characteristics of each state, as their measurements do not change over time. The other regressions included the remaining independent variables, which reflect more dynamic characteristics of each state. We reserved divorce rate for the final analysis because this information is missing for six states: California, Georgia, Hawaii, Indiana, Louisiana, and Oklahoma (Bureau of the Census 2006).

Results

In reporting statistical significance, we utilized the $p < .10$ standard as our minimum, rather than the more common $p < .05$ standard. Cheng and Powell (2005) noted that this approach is common when sample sizes are small and argued that it still tends to underestimate meaningful statistical effects. Table 4 displays the logistic regression results for the dependent variable of mandatory mediation. The first model contains only two dummy variables, representing moralistic and traditionalistic political cultures. Both coefficients are positive and significant at $p < .05$, supporting Hypothesis 4(a). In the other models, the coefficient for concentration of lawyers is negative and significant at $p < .10$, supporting Hypothesis 5(a). The other coefficients failed to achieve statistical significance in any model, and so did not support Hypotheses 1(a), 2(a), and 3(a).

TABLE 4. Determinants of mandatory child custody mediation.

		Model	
Independent variable	I	II	III
Moralistic Culture	1.90**	1.60	1.63
Traditionalistic Culture	1.83**	1.10	2.55
Adult Population		.57	.63
Wealth		1.66	7.28
Concentration of lawyers		-626.55*	-1063.14*
Divorce Rate			-.19
Model Chi-Square	7.23**	11.85**	14.33**
N	50	50	44

* significant, $p < .10$; ** significant, $p < .05$; *** significant, $p < .01$

Table 5 shows the logistic regression results for the dependent variable of minimum mediator requirements. The first model contains only two dummy variables, representing moralistic and traditionalistic political cultures. This model failed to achieve

statistical significance, and did not support Hypothesis 4(b). In the other models, the coefficient for concentration of lawyers is negative and significant at $p < .05$, which is the opposite of the predicted direction in Hypothesis 5(b). The coefficient for size is positive and significant at $p < .05$, supporting Hypothesis 2(b). The other coefficients failed to achieve statistical significance in any model, thereby not supporting Hypotheses 1(b) and 3(b).

TABLE 5. Determinants of minimum mediator requirements.

		Model	
Independent variable	I	II	III
Moralistic Culture	1.06	0.80	0.80
Traditionalistic Culture	1.35*	0.21	0.67
Adult Population		.97**	1.13**
Wealth		1.20	5.33
Concentration of lawyers		-714.00**	-1040.12**
Divorce Rate			.14
Model Chi-Square	3.59	12.30**	14.29**
N	50	50	44

* significant, $p < .10$; ** significant, $p < .05$; *** significant, $p < .01$

Discussion

Existing research does not unequivocally support the argument that mediation is less expensive, less time-consuming, and less emotionally damaging than litigation in child custody disputes. Therefore, a state's decision makers could reasonably conclude either that mediation should be mandated for these matters, or that divorcing parents should proceed directly to litigation. From a rational/technical standpoint, one would expect that states would choose either to avoid this issue entirely or mandate mediation while creating minimum standards for mediators. Instead, nine of the fifty states have adopted a patchwork approach, either mandating mediation or creating minimum standards, but not both. We also expected to see a larger impact of the divorce rate on our dependent variables. If child custody mediation is demand-driven, fueled by unhappiness with the current system, then states with higher divorce rates should have a greater impetus to reform. Our analysis uncovered no such pattern.

The influence of concentration of lawyers is striking. Concentration of lawyers correlated very highly with wealth, not surprisingly. However, Table 3 shows that concentration of lawyers significantly correlated with both dependent variables while wealth had no similar relationship. Table 4 underscores this conclusion. Table 5 shows a more significant effect of concentration of lawyers on the other dependent variable, minimum mediator requirements.

Thus, there appears to a relationship between the percentage of a state's citizens who work as lawyers and the state's child custody dispute resolution procedures. States with more lawyers are less likely to mandate mediation and to establish minimum

educational credentials for non-lawyer mediators. This may reflect antipathy within the legal profession to the practice of child custody mediation. There are greater restrictions on the practice of law than on the practice of mediation, and limits on labor supply tend to be economically beneficial to professionals. However, it would be overly simplistic to attribute selfish motives to lawyers' negative attitudes towards ADR. Lawyers are more keenly aware than the average citizen of the damage that improper legal advice can cause, and they have legitimate ethical concerns about non-lawyers' involvement in matters of the law.

The influence of state size on minimum mediator requirements is also notable. Given that size and divorce rate correlated negatively, and that divorce rate should be the primary driver of demand for divorce-related services, we would have expected size to play a less prominent role than divorce rate in the regressions. One explanation for this counterintuitive finding is related to a description of bureaucracies as solutions in search of problems (Cohen, March, and Olsen 1972). In Cohen et al.'s (1972) "garbage can" model, bureaucracies are equipped with a certain set of policies that they attempt to use to resolve all issues, rather than trying to craft the best solution to a particular policy problem or use their scarce resources in the most efficient and effective manner. The crafting of mediator standards, absent a mandate that mediators be used at all, appears consistent with that view of bureaucracy.

Finally, it is noteworthy that political culture appeared to influence child custody mediation decisions. This result was less robust than the others, in that culture's effects lost their significance in the second and third models due to the entry of additional independent variables. It appears that states with individualistic political cultures may be reluctant to require their citizens to use government provided services. Thus, our analysis of child custody mediation regulation underscores the political nature of this process.

Conclusions

Our research has various limitations. First, we used a cross-sectional research design to examine professional and legal struggles that may take decades to play themselves out. Second, our small sample size of fifty states precluded the use of a large number of independent variables.

From a technical perspective, child custody mediation may provide an efficacious alternative to courtroom wrangling. This appears to be the belief of the majority of divorce lawyers, and of society in general (Williams 2005). However, several components of our analysis suggest that political and bureaucratic factors have played the greatest role in shaping each state's responses to child custody dispute resolution issues. For example, there is no consistency across states' approach to this issue. Given that the nature of the dispute, devising an equitable visitation schedule for children of divorce, is identical in each state, it would seem rational to expect less variegated responses. It would also be pragmatic, since many children must cross state lines to engage in visitation.

Second, the institutional arrangements in each state appeared to be unrelated to divorce rates. Since child custody disputes can only arise in the context of a divorce, there should be a direct relationship between the divorce rate and the number of custody-related legal actions. Divorce rates per 1,000 state residents ranged from just over two in Massachusetts to over six in Nevada; yet even the bivariate correlations failed to uncover

a relationship between divorce rates, mandatory use of custody mediators, and minimum standards for custody mediators. It is hard to make the case that custody mediation arrangements are driven by consumer demand if they are unrelated to divorce rates, because consumers in high-divorce states should have common concerns about the adequacy of their custody-related legal systems.

This research could be extended in several different directions. A promising research line concerns the consequences of state-level child custody mediation arrangements. While our study tracked the antecedents of these decisions, it does not address the question of the effectiveness of one of these approaches over the other three possibilities, as measured in terms such as parental satisfaction and compliance rates with child support orders.

Finally, additional countries could be examined. Many nations have followed the lead of the United States in encouraging child custody mediation, but their motivations have differed. For example, mediators in Ireland and England attempt to discourage the parents from divorcing at all (Subourne 2003).

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