
Kluwer Mediation Blog

Book Review - Mediation Ethics by Ellen Waldman

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Always on the lookout for new books on mediation, for myself and my students of conflict and mediation, every now and then I come across one which is not actually new and I wonder how I missed it and what I ever did without it. One such book is Ellen Waldman's 2011 gem on the vexing subject of mediation ethics. Billed as "a much-needed resource for traversing the often disorienting landscape of ethical decision making", this book brings together the insight and wisdom of an enormously learned and experienced group of mediators, under the editorship of Ellen Waldman, a professor of law who works in the area of mediation and health care ethics.

The book begins with an overview of the basic values which underpin mediation ethics, and a discussion of some of the models and codes of practice in the United States. An arguably easy approach might have involved just framing the whole book around theories of ethical practice, with some law and lots of model clauses and codes but Waldman, recognising the complexity and case-specific nature of ethical dilemmas takes a different approach. In twelve chapters each addressing a different area of ethics, such as Confidentiality, Disputant Autonomy and Power Imbalance and Diminished Capacity, as examples, she features a series of case studies, all illustrating examples of the ethical dilemmas addressed. The expert contributors then comment on these cases, bringing their own experience, wisdom and, sometimes, area of expertise to the dilemma.

In the chapter on Autonomy and the Emotions, for example, readers are presented with a dilemma arising in the context of a divorce mediation. John Winslade provides a fascinating commentary on the case from the perspective of the work he has done on narrative mediation, and suggests a variety of strategies based on exploring party narratives. Waldman, in each chapter, moderates and summarises the various commentators' input, in her Editor's Thoughts, pointing out, among other things, how different approaches may lead to different outcomes in the various case scenarios.

Those of us based on this side of the Atlantic will not be able to connect with all the issues discussed in the book, particularly since the law which forms the backdrop to some of the dilemmas is different as, in some cases, is the role of the attorney and relationship between them and the mediator. That is not to say however that those sections are not valuable for European readers. Waldman manages to keep the relevant ethical challenge at the heart of each chapter and each case, resisting the temptation

to get tied up in law and codes of conduct.

It is therefore a valuable work for practitioners, no matter how seasoned, as well as for those new to mediation. Even if the book is read only for the relief there is in recognising that all mediators encounter such challenges, at every stage of their career, and that the most experienced and learned among us differ on how to address such challenges, it is well worth it. For students of mediation, the connection of theory and practice, so often lacking in textbooks, to see what ethical crises look like in practice and how they can be dealt with, is invaluable.

To write a book about something as “woolly” as ethics for mediators is ambitious as, in so many cases, there is no right or wrong answer to these complex questions, if there is an answer at all. Many writers would shy away from this topic for this reason, recognising the risk that a book on mediation ethics could either end up oversimplifying a complex area and offering solutions that may often be inappropriate in some circumstances, or ending up so complex as to be unsatisfactory and frustrating for readers.

By taking the approach of identifying an issue, illustrating it by case examples and inviting practitioners to comment, before synthesising those comments, Waldman has met the aims of clarifying this area without oversimplifying it, and showing that there are many ways to skin the proverbial cat when it comes to ethical dilemmas. This strategy also makes for very engaging reading, avoiding much of the dryness that comes with academic textbooks. Finally, as an educator always on the hunt for case studies for students to get their teeth into, this has been a wonderful resource.

So whether you are new to mediation, or a seasoned peacemaker who recognised that the more you know, the less you know, this is a great read.

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