

Book Review — Alternative Dispute Resolution and Domestic Violence: Women, Divorce and Alternative Justice

Dafna Lavi

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Dafna Lavi's *Alternative Dispute Resolution and Domestic Violence: Women, Divorce and Alternative Justice* takes an unconventional yet convincing approach to tackling the complex problem of domestic violence. Lavi, perhaps controversially, suggests that disputes between intimate partners involving violence should be resolved through alternatives to the judicial process. As identified by Lavi herself, this book is unique in that it provides a theoretical framework for understanding the differences between traditional and alternative justice in the area of domestic violence.¹ Alternative Dispute Resolution ('ADR') is becoming increasingly common in ordinary divorces and is even mandated in divorce disputes in Australia.² However, ADR is rarely explored or argued for in family violence cases. The failings of the traditional adversarial system to address family violence are well documented in the expansive literature on ADR and weight is given to how these failings are particularly problematic in domestic violence cases.³

Whilst principally focussing on the US, Lavi also examines other jurisdictions' approaches to both domestic violence and ADR generally. This book may be particularly relevant in Australia, as Lavi identifies this jurisdiction as the most progressive of those discussed in this area. The *Family Law Act* currently mandates ADR before going to court in all family law proceedings involving the custody of children, except in cases of family violence.⁴ The recommendations that Lavi proposed could be implemented into the Family Court to offer more alternatives to the current processes, either before or instead of traditional litigation.

Lavi's argument for ADR in domestic violence disputes is strengthened by the book's logical two-part structure. Part I starts by educating the reader on the basics of ADR and the changing phenomenon of domestic violence. By outlining the values and strengths of alternative justice, Lavi convincingly demonstrates how ADR could solve the disadvantages of traditional litigation. Lavi argues that traditional litigation fails to address the pain and harm caused by domestic violence and does not provide solutions to address the individual parties' needs. Instead, alternative justice may provide for the parties' needs through interest-based

¹ Dafna Lavi, *Alternative Dispute Resolution and Domestic Violence* (Routledge, 2018) xi.

² *Family Law Act 1975* (Cth) ('Family Law Act') s 60I(7).

³ Harry Edwards, 'Edwards, Alternative Dispute Resolution: Panacea or Anathema' (1986) 99 *Harvard Law Review* 668, 669.

⁴ *Family Law Act* (n 1) ss 60I–60J.

negotiation. The parties are given a framework in which they can work out their personal disputes as partners. The relationships and emotions of the parties are more highly valued in ADR, which addresses traditional justice's 'limitations of decisive justice', the tendency 'to empower the strong and disadvantage the weak' and the 'limitations of truth-seeking justice.'⁵

Perhaps *Alternative Dispute Resolution's and Domestic Violence's* greatest strength is its complex intersectional feminist voice, which addresses real issues faced by female survivors of family violence situations. Lavi's analysis does not assume, as most literature in the area does, that the ultimate goal of the survivor in family violence disputes is dissolution of the relationship. Instead, Lavi recognises that this is not the most appropriate remedy in all cases. Despite being intended for readers from countries of the Anglo-American tradition,⁶ the text avoids an ethnocentric view of domestic violence. Rather, Lavi acknowledges the particular difficulties experienced by women of different cultures and proposes thoughtful and sensitive solutions.

Empowerment and autonomy are central themes, with a passage dedicated to shifting the language from 'victims' to 'survivors', which highlights the respectful tone throughout. Lavi thoroughly engages with feminist critiques of the male constructed legal system.⁷ Lavi argues that adversarial justice disempowers the mostly female survivors of domestic violence by replacing their previous violent relationship of power with 'another form of control and coercion'.⁸ ADR, on the other hand, is based and grounded in feminist values,⁹ which might provide empowerment and control to the women involved.

Part II of the book engages in a broad analysis of the critiques of using ADR and alternative justice for family violence purposes, particularly the criticisms of mediations. Whilst some criticisms are only superficially analysed, the analysis nonetheless provides an introductory understanding of the potential pitfalls. Importantly, Lavi's analysis lacks thorough engagement with criticisms that ADR does not adequately denounce domestic violence and the concern that this approach trivialises a serious issue.

The book's highlight is Chapter 5, which combats criticisms of ADR by proposing two methods, mediation-arbitration (med-arb) and online

⁵ Lavi (n 1) 128.

⁶ Ibid xii.

⁷ Carrie Menkel-Meadow, 'Feminist Legal Theory, Critical Legal Studies, and Legal Education or the Fem-Crits Go to Law School' (1988) 38 *Journal of Legal Education* 61, 61.

⁸ Lavi (n 1) 78–9.

⁹ Marsha Lichtenstein, 'Mediation and Feminism: Common Values and Challenges' (2000) 18(1) *Mediation Quarterly* 19, 19.

mediation, which may address these criticisms. Med-arb is suggested as a method that would prevent the mediator from trying to protect the battered woman, therefore compromising their neutrality, which is suggested to be a disadvantage of traditional mediation. In Lavi's version of med-arb, the mediation would cease if there was a risk that an agreement between the parties was unfair to the battered woman. The mediator-arbitrator could then use their discretion to decide a fair agreement.¹⁰ The depth of Lavi's analysis is strengthened by anticipating the likely criticisms to her model and suggesting variations in response. For example, Lavi suggests that the parties could elect to have one mediator and then a different arbitrator to address the criticism that the mediator-arbitrator may become biased after hearing the emotional and sensitive information discussed by the parties.¹¹

Lavi's online mediation model addresses the 'danger element' of traditional mediation by eliminating face-to-face contact and provides for efficiency and convenience through its online platform. The main criticisms and possible disadvantages of this model relate to resistance to using new technologies. These potential disadvantages are addressed by suggesting either safeguard measures or hybrid methods which also involve face-to-face mediation.

Overall, *Alternative Dispute Resolution and Domestic Violence* is a thoroughly insightful and thought-provoking book which is a pleasure to read. Lavi takes seriously the gravity of the topic she is writing about, yet still manages an optimistic and hopeful approach to the study of both ADR and domestic violence. The book achieves its goal of providing a theoretical framework that integrates the values of alternative justice to practically suggest alternatives to traditional dispute resolution.

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¹⁰ Lavi (n 1) 174.

¹¹ Ibid 176–7.

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