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REVIEW ARTICLE

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# Neutrality in Spain and Chile from the perspective of mediators: A literature review

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**Abstract**

This paper is based on the analysis of the importance given to neutrality in the intervention of mediators, with special emphasis on the legislation and codes of conduct followed by mediators in Spain and Chile. For this purpose, a review of the literature on neutrality has been carried out using various scientific databases and an analysis of the legislation in these countries. The aim of this analysis was to highlight the research carried out by mediation professionals on this issue and to propose possible solutions. Among the results achieved is the affirmation that neutrality is in the mediation process and not in the mediator. This reality is not reflected in ethical codes of conduct or in legislation. Therefore, it is proposed the need to elaborate a universal and accredited code of ethics, which would help to consolidate the current polyphony of voices on mediator neutrality in the countries where mediation is used. As mediation as a profession becomes more and more established, it is essential that the principle of neutrality be understood unambiguously. In contrast to the rules that appear in current legislation and in certain codes of conduct, mediators should not be subject to the constraints of achieving personal neutrality.

## 1 | INTRODUCTION

In a highly demanding scenario, mediation provides an alternative to the judicial route for resolving conflicts while helping to create a dialogue-based form of resolution. It provides the parties in conflict with opportunities to reach cooperative solutions through privileged direct participation, mitigated confrontation levels, and improved social welfare levels (Vargas, 2008: 184). In parallel, the courts are unburdened of cases in all areas in which an agreement through alternative means of conflict resolution is possible, this being the primary objective (Lopez, 2012).

Mediation as a profession is becoming increasingly more consolidated and needs to move forward with a cohesive and transparent code of ethics. Hortal (2002) argues that without the ethical perspective, deontology is left without its frame of reference. Codes of conduct for mediators have been proposed by various entities. Such guidelines are intended to regulate and direct the ethical conduct of mediation professionals. However, the suggested codes have not been accredited and in most situations are not recognized in mediation legislation. Consequently, there is a need for a unified, univocal and rigorous ethical policy that could be similar to the code used in the United Kingdom (Parkinson, 2013), which has contributed to the homologation of professional activity in special situations.

The absence of international chartered associations is a dilemma for most countries, except in the United Kingdom, which has a professional association for mediators (Parkinson, 2013). Spain and Chile are extending the legislation on the application of mediation to different areas. This has been done in other countries. In the United States, there is no federal legal framework for mediation, although there are numerous legal provisions at a state level that refer to mediation. To address this issue, in 2001 the National Conference of Commissioners on Uniform State Laws (NCCUSL), together with the American Bar Association, drafted and enacted the Uniform Mediation Act (UMA), which is a proposed law applicable to the generality of the mediation process (with a few very specific exceptions). This is also the situation in countries such as Chile and Spain.

An essential component of mediator training is for professionals to acquire competencies relating to a code of ethics to shape their profile. Mediators must respond to the challenges they face as professionals by complying with the deontological rules established in the context of their mandatory responsibilities.

## 2 | TRAINING AND PROFESSIONAL ETHICS

Training is needed to understand and exercise ethical principles. Professional ethics establish the guidelines for a code of conduct that mediators must follow when developing interventions in order to implement correct procedures (Oyarzún, 2013).

Codes of conduct determine the behavior of professionals and differentiate their profile, which helps to consolidate the profession. The European Commission set the standard by publishing the European Code of Conduct for Mediators in July 2004. This Code states that it is the responsibility of individual mediators to voluntarily comply with the criteria of independence, neutrality and impartiality as well as the confidentiality of the process under their commission (European Commission: 3–4). The Code states that adhering to its principles does not prejudice national or regional legislation or specific professional standards. This reinforces the notion of personal discretion as to how and under what circumstances professionals should assess the

ethical focus and weighting to be considered in situations of conflict. Family relationship conflicts have become more complex while the object of prosecution has changed notably, which has considerably increased the claims of citizens demanding justice, far exceeding existing expectations (Vaquero, 2013: 9).

This study considers two models in the approach to mediator neutrality, Spain—a European country—where mediation is expanding and Chile—a Latin American country—where mediation in a family as well as in a health and education context is more consolidated, as both present two different legislative and procedural referents. Between 2009 and 2020, 84,874 cases were heard in the Spanish courts of first instance and courts of first instance and instruction, of which 51,979 were referred, and 5739 cases[1] ended with a settlement, according to statistical data from the Spanish General Council of the Judiciary. In Chile, 7,117,535 cases were heard in the family courts between 2006 and 2019, of which 5,855,278 cases[2] were closed in the same period. Between 2009 and 2014,[3] 1,136,379 cases entered the family mediation tender system, of which 456,163 cases ended in settlement.

In the case of Spain, it should be noted that the Public Prosecutor's Office has recently approved a report on the preliminary draft bill on Procedural Efficiency Measures for the Public Justice Service, aimed at promoting mediation to reduce litigation. The Spanish Council of Ministers approved the draft bill on Procedural Efficiency Measures on December 15, 2020 to promote mediation and other alternative means of conflict resolution to motivate parties to try this route before going to court. This regulation, together with those on organizational and digital efficiency of the Spanish judicial system, is part of the Justice 2030 Plan.

Mediation under Spanish law is an activity that entails certain responsibilities and ethical duties for its participants. Law 5/2012, of July 6, on mediation in civil and commercial matters, lists the guiding principles of mediation in Article 6, which are inspired by the European Code of Conduct for Mediators and includes: participation on a voluntary and free basis, and mediator impartiality, neutrality, confidentiality and equal treatment of all parties. Simultaneously, it differentiates the principles listed above from the rules or guidelines that all parties must adhere to during the mediation process, such as good faith and mutual respect, a duty of collaboration, and support for the mediator. Article 8 states that the neutrality of mediation actions should be developed in such a way as to enable the parties in conflict to reach a mediation agreement by themselves, while the mediator must adhere to the provisions under Article 13. However, the separation of principles and rules made in Spanish state law on mediation in civil and commercial matters is not considered in family mediation laws in Spain's Autonomous Regions.

The ethics of a profession are strongly associated with the behavior of its professionals. In this regard, in the Autonomous Region of Galicia, Law 5/2012, of July 6, on mediation in civil and commercial matters and Law 4/2001, of 31 May, regulating family mediation necessarily clarify the regulatory principles of family mediation, which helps to determine the principles that relate to professional activity.

According to the Chilean legislative model, the National Mediation System (SNM) provides free nationwide mediation services for alimony, direct and established relationships, and health and personal care arrangements through mediation centers, which cover over 95% of demand from the general population. The system also provides its professional teams with a series of administrative, management, and performance regulations with the idea of providing a quality service substantiated by the probability of the public administrative authorities; the body which establishes the system of rules and sanctions in force for each contract period that must be entirely consistent with the principles expressed in Law 19,968 Article 105. All the laws mentioned above highlight that individuals participating in mediation processes must do so on a

voluntary and free will basis. These principles are part of the essence of the mediation procedure and give meaning to its spirit of respecting those who choose to freely and voluntarily decide to resolve their conflicts in a context of dialogue (Valdebenito, 2017: 92). These principles are also highlighted in the works of classic authors on mediation, who consider that they are an essential component of its essence, and relate to the high level of satisfaction and number of agreements reached in comparison to court proceedings.

In Chile, there is a dual situation depending on the type of mediation. In private mediation, there are no specific regulations beyond what is determined in the specific norm that deals with each type of mediation. This leaves a broad spectrum for professional performance, as is the case in other free-market professions. Consequently, each individual mediator is free to impose their personal perspective to define, value and qualify the ethical tensions and conflicts that may arise with and between parties, without the benefit of a system to support and control their performance. In contrast, mediation using public funding through tenders to purchase services and pay professionals accredited in the authorized registers of mediators is governed by the principles pertaining to each legal regulation, which constitutes a polyphony of voices (Salerno, 2010). This myriad of professional ethical mandates can sometimes lead to different ethical assessments on the same value scale, or focus on different guiding principles, as seen above. In certain professions, particularly mediation, the legitimacy of ethical principles is significantly more critical than in others. The mediator executes functions of a highly personal nature that must be performed with sensitivity and a high sense of morality (Astor, 2007; Cobb & Rifkin, 1991; Cora et al., 2003; Garrido & Munuera, 2014; Lederach, 1995; McCorkle, 2005; Mulcahy, 2001; Rifkin et al., 1991). Hence, the importance of providing techno-scientific and ethical training (Munuera & Silva, 2020).

The mediator must therefore obtain ethical training and technical knowledge (Cohen et al., 1999; Wall et al., 2011). The justification of any moral principles and norms can be derived from adherence to specific procedural rules, which, in turn, derive from the understanding that participants are independent moral agents (Hierro, 2007: 39).

The code of ethics of any profession regulates the "human" aspect of behavior and attitudes that, in terms of morality, derive from the interpersonal relationship between the professional and the parties who participate in the mediation process. In turn, various authors highlight that codes of ethics should be updated in line with theoretical and practical advances and certain principles should be reconsidered given that practical experience has shown that it is impossible for them to be fulfilled. Changes and updates should be included in the provisions and legislation that determine professional activity in order for professionals to comply with them coherently between the individual and institutional actors (Aguayo & Salas, 2010) who constitute the welfare system.

A professional code does not in itself create a professional rule, just as writing does not create thought. Professional standards do not arise just from a code and if rules are to be respected, it is not because they are codified. If they are codified, it is because they are considered respectable and necessary, they are relevant and can be complied with by those in the profession. The rules laid down in the professional code of ethics derive from basic principles which, according to Cloupet (1973), are based on the following:

1. Every human has a unique value, irrespective of origin, age, beliefs, ethnicity, socio-economic status, or social contribution.
2. Every person has the right to fulfill their potential, providing this does not harm the rights of others.

3. Every society, whatever it may be, should commit to providing maximum benefit to all its members.
4. Professionals are responsible for channeling their knowledge and skills towards assisting individuals, groups, communities, and societies in fulfilling their potential and resolving human-social conflicts and their consequences.
5. Professionals have the utmost responsibility to serve others, which must take precedence over any other particular interest or ideology.

This code can be applied to any mediation process in civil and commercial matters. Mediators are professionals who follow a methodological process marked by the school/model they adhere to. This is combined with technical strategies and executed using their acquired skills, while following professional ethics, especially in interventions involving people with disabilities. Effective and conciliatory resolution implies, among other demands, the promotion and development of alternative methods (Vaquero, 2013: 12). Neutrality can be easily assessed in the process, as opposed to the neutrality of the mediator. Neutrality can be objectified in the way the process is conducted, but it is difficult to demonstrate the neutrality felt by the mediator.

According to García (2009), mediators should be linked to their professional association at a state level to defend the discipline's professional interests, and promote its code of ethics uniformly. Our object of study is the analysis of the neutrality of the scientific publications provided.

## 3 | METHODOLOGY

Based on the experiences found in countries such as the United States, the United Kingdom, Spain, and Chile, a review was performed, from an international perspective, of the literature on neutrality in the practice of interpersonal mediation, as well as related legislation and codes of ethics in the mediation profession.

A literature review was performed using the science databases ProQuest Central, SCOPUS and Journal Citation Reports (JCR) to search for publications containing the keywords: mediation, mediator, and neutrality. To this end, the PRISMA protocol for reporting was also used (Urrútia & Bonfill, 2010). The search considered the methodological criteria established by Arksey and O'malley (2005) to perform a scoping review. From 1997 to July 2022, once the publications not evaluated by experts had been rejected, 139 results were obtained in ProQuest and 571 in SCOPUS and JCR. The inclusion criteria were: (1) studies published between 1980 and June 2022; (2) articles in journals indexed in SCOPUS and WOS (Web of Science); (3) publications containing the search keywords mediation, neutrality, and mediator; (4) articles written in English or Spanish; and (5) peer-reviewed publications. The exclusion criteria were: (1) lacking the search keywords; (2) not relating to the object of study and (3) outside the publication date range. The Boolean operators used were ("and" and ","). Publications that did not meet the search criteria were discarded. The final result gave a total of 21 publications to support the study. Data extraction was performed by two researchers and then checked by a third one. This research was carried out following the ethical principles of research set out in the Declaration of Helsinki. These contributions were implemented with conclusions or contributions in scientific meetings on mediation (Figure 1).

It should be noted that in the screening selection process, publications outside our object of study and those that did not answer our research question were eliminated, after

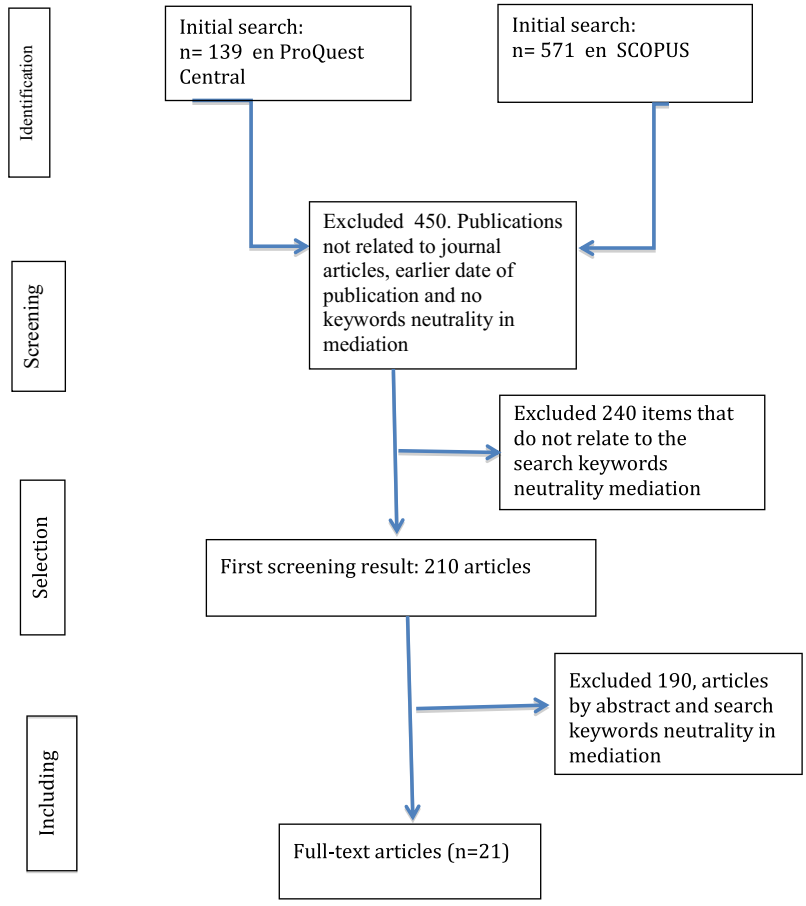


**FIGURE 1** Procedure for the selection of articles according to the PRISMA protocol. *Source*: The Authors.

analysis of its content. The verification system was based on PRISMA guidelines (Moher et al., 2015), and Cochrane Handbook for Systematic Reviews of Interventions to ensure transparent and complete reporting in our study (Higgins et al., 2019). Data extraction was performed by two researchers and then checked by a third one. Screening of abstracts was performed by two independent reviewers. In the SCOPUS and JCR databases, of the 571 articles obtained in the first search, only the publications shown in Table 1 met the inclusion criteria.

As can be observed, the publication by Cobb and Rifkin et al. (1991), with 413 citations, is the most prominent. Followed by Forester and Stitzel (1989) who also began to reflect on the meaning of neutrality in mediation. A further 16 articles (see Table 2) citing our object of study were found in journals with varying degrees of bibliometric impact.

The most influential article among the publications found in this study is Empowerment and Mediation: A Narrative Perspective by Cobb (1993). Cobb is considered to have had the greatest impact on the approach to neutrality in the mediation process, analysis of European treaties, mediator codes of conduct and legislation on mediation.

**TABLE 1** SCOPUS publications meeting the search criteria.

| | Article title | Author | Year | Journal | Citations | Index 2021 |
|---|---|---|---|---|---|---|
| 1 | Beyond neutrality | Forester, J. & Stitzel, D. | 1989 | *Negotiation Journal* | 92 | SCOPUS Q4 |
| 2 | Practice and Paradox: Deconstructing neutrality in mediation | Cobb, S. & Rifkin J. | 1991 | *Law & Social Inquiry* | 413 | SCOPUS Q1 JCR Q2 |
| 3 | The Possibilities and Desirability of Mediator Neutrality-Towards an ethic of partiality? | Mulcahy, L. | 2001 | *Social & Legal Studies* | 78 | SCOPUS Q1 JCR Q3 |
| 4 | Mediator neutrality: Making sense of theory and practice | Astor, H. | 2007 | *Social & Legal Studies* | 141 | SCOPUS Q1 JCR Q3 |
| 5 | The mediation process: challenges to neutrality and the delivery of procedural justice. | De Girolamo, D. | 2019 | *Oxford Journal of Legal Studies* | 4 | SCOPUS Q2 |

*Source*: The Authors.

## 4 | DISCUSSION

Mediation practitioners need to be aware of their own personal and cultural values and able to relate to people from different cultural backgrounds in order to maintain the level of neutrality required. Neutrality implies that mediators must not impose agreements or guide the parties to reach solutions more in line with their value scale. The experience of the difficulty of maintaining neutrality can be extrapolated to all mediators, regardless of where they live. Mediation as a technique and profession requires neutrality within an ethical framework of intervention in order to resolve a conflict. This statement is found in most of the definitions established in the family mediation laws analyzed above. Neutrality contains different elements, "structure, behaviour, emotion, perception and intention" (Mayer, 2011: 860–861), that are not in the impartiality understood as equidistance between the parties. Brandoni (1997) highlights that in daily mediation practice, we are constantly questioned about how to maintain a neutral position when we inevitably feel an internal resonance with the stories and opinions of the disputants we work with (Brandoni, 1997: 1), and stresses the importance of maintaining hypotheses, circularity and neutrality in questioning (Cecchin, 1989).

Although many authors write about the principle of neutrality in the figure of the mediator, there is a line of thought that publicly considers the concept to be impossible. Such authors include: Rifkin et al. (1991); Rifkin et al. (1991); Lederach (1995); Taylor (1997); Mulcahy (2001); Core García, Vise and Whitaker (2003); McCorkle (2005); Astor (2007); Garrido and Munuera (2014), and Cobb and Rifkin (2017), among many more. A statement that has not reached the different codes of conduct and legislation in force in the countries analyzed (Spain and Chile). Circumstances that generate an added difficulty between professional practice and the guidelines of codes and current legislation. Other authors define it as a process characteristic (Salazar & Vinet, 2011; Solstad, 1999; Wiseman & Poitras, 2002). Other authors such as Bercovitch and Schneider (2000) show that neutrality is not as important as other elements in mediation

**TABLE 2** Other publications that meet the search criteria.

| | Article title | Author | Year | Journal | Citations |
|---|---|---|---|---|---|
| 1 | Empowerment and Mediation: A Narrative Perspective | Cobb. S | 1993 | *Negotiation Journal* | 297 |
| 2 | The Construction of Ethics in Mediation. | Cooks, L. M., & Hale, C. L. | 1994 | *Mediation Quarterly* | 51 |
| 3 | A Study of Ethical Dilemmas and Policy Implications. | Bush, R. A. B. | 1994 | *Journal of Dispute Resolution* | 122 |
| 4 | Remodeling the Model Standards of Conduct for Mediators. | Henikoff, J., & Moffitt, M. | 1997 | *Harvard Negotiation Law Review* | 58 |
| 5 | Concepts of Neutrality in Family Mediation: Contexts, Ethics, Influence, and Transformative Process. | Taylor, A. | 1997 | *Mediation Quarterly* | 85 |
| 6 | The Limits of the Mediator's Neutrality. | Cohen, O., Dattner, N., & Luxenburg, A. | 1999 | *Mediation Quarterly* | 49 |
| 7 | Concepts of Neutrality in Family Mediation: Contexts, Ethics, Influence, and Transformative Process. | Taylor, A. | 1997 | *Mediation Quarterly* | 85 |
| 8 | The Mediator as Nonviolent Advocate: Revisiting the Question of Mediator Neutrality. | Dyck, D. | 2000 | *Mediation Quarterly* | 21 |
| 9 | Disputing Neutrality: A Case Study of a Bias Complaint During Mediation. | Cora García, A., Vise, K., & Whitaker, S. P. | 2003 | *Conflict Resolution Quarterly* | 52 |
| 10 | Conversational Displays of Mediator Neutrality in a Court-Based Program. | Heisterkamp, B. L. | 2006 | *Journal of Pragmatics* | 78 |
| 11 | Impartiality v. Substantive Neutrality: Is the Mediator Authorized to Provide Legal Advice? | da Silveira, M. A. | 2007 | *Dispute Resolution Journal* | 8 |
| 12 | Neutrality in Mediation: A Study of Mediator Perceptions. | Douglas, S. | 2008 | *Law and Justice Journal* | 72 |
| 13 | The Disempowering Relationship between Mediator Neutrality and Judicial Impartiality: Toward a New Mediation Ethic | Zamir, R. | 2010 | *Pepperdine. Dispute. Resolution. L.J.* | 27 |
| 14 | Beyond the Paradox of Neutral Intervention: Towards a Situated Theory of Mediator Neutrality. | Bogdanoski, T. | 2010 | *Australasian Dispute Resolution Journal* | 1 |
| 15 | The Power of an Impartial Mediator | Awada, M. A. | 2013 | *Dispute Resolution Journal* | 2 |

TABLE 2 (Continued)

| | Article title | Author | Year | Journal | Citations |
|---|---|---|---|---|---|
| 16 | Neutrality in Conflict Mediation Process | Anam, S. | 2020 | *Dauliyah Journal of Islamic and International Affairs* | 0 |

*Source*: The Authors.

processes. However, it is an exception and most authors consider its existence. Moreover, others continue to contemplate the feasibility of neutrality.

The importance of neutrality has been treated differently by different schools of mediation. The principle of neutrality needs to be analyzed considering the prospect of aesthetic ethics that presumes that the parties in conflict are at the center of an aesthetic of narrative (Cobb & Rifkin, 1991), which is conceived as a discourse space or moral order within which the parties involved deploy their narrative. Such narratives are not based on ethical judgments but on aesthetic appreciation of the presence or absence of the other within a particular discourse space. Narrative spaces reflect a power dynamic (Valdebenito, 2020) that often leads to marginalized or excluded parties losing their voice in a conflict. This implies that one party lacks the space to express themselves and are unaware of how to or unable to secure a space in the discourse and process. This becomes especially important when considering modern concepts of family, sexuality, and interculturality as critical points of reading that intersect the precepts under analysis. It is important to highlight the importance of maintaining neutrality on the part of mediators in international negotiations between countries (Arielli et al., 2016; Svensson & Höglund, 2008).

Aguayo and Salas (2010) highlight this when they state that applied ethics descends from principles to situations, and that the responsibility for the practical application lies with the professional.

Aesthetic ethics promotes a new form of narrative practice that enables the implicated parties to recover their moral capacity to perceive their own subjectivity and that of the other, which consists of speaking and being heard, thus favoring a new distribution of receptivity in the discourse space. This materialization of subjectivity or neutrality reduces marginalization and lays the foundations (Arcos, 2009; Bernabéu, 2013; Eagleton, 2006) for a new, more complex narrative (a better-constructed narrative) that enables the parties to be fully aware of themselves, the presence of the other, the good that the evolution of the narrative entails, and, in short, to appreciate people and their resulting narratives as "works of art."

Paradoxically, the principle of neutrality is not neutral as it focuses on the mediation process as a presupposition for its rationality (McCorkle, 2005). From the perspective of narrative mediation, neutrality as discourse includes three aspects that hinder conflict resolution: a representational view of language in which "truth" is the goal, a focus (exclusively) on the future, and the banishment of the parties' emotions and values from the process (Winslade & Monk, 2000). This criticism of the principle of neutrality is shared by many researchers and mediators committed to a conception of mediation that moves away from the prevailing traditional view.

In some laws, the principles of neutrality and impartiality are combined, a fact that could confuse professionals, given that they are two concepts that are closely related but with very diffuse parameters in their definitions, as in Law 15/2009, of July 22, on mediation in the field of

private law in the Autonomous Region of Catalonia. The language of neutrality creates the expectation that mediators will act impartially once they erase their past experiences when real impartiality implies using the past to achieve an open, honest, and humble perspective of the present.

In this regard, many mediators, who claim to be impartial but recognize that they cannot be neutral (Solstad, 1999; Winslade & Monk, 2000) warn that ethical aspects such as impartiality, neutrality, and objectivity, dimensions considered essential for the mediator by other mediation models, cannot be achieved in practice. Such requirements respond to the mediator model as a scientific practitioner, the neutral, and detached observer who applies knowledge generated within a modern scientific tradition, in which the concept of problem-solving is well protected.

Exploring the limits of neutrality inevitably requires the formulation of alternatives, which cannot be limited to merely proposing a different way of understanding the role of mediators or the objectives that can be achieved in a mediation process. They must also be consistent with the narrative dynamics of the conflict. Cobb (2004), and other authors who subscribe to her model, considers that achieving this is a highly complex endeavor, even by her standards.

A possible alternative could be to eliminate the principle of neutrality in regulations and employ the mediator's impartiality in creating a neutral space. The critique of neutrality reveals the limitations and stagnation of the model proposed by the critical theory ascribed to post-structuralism, from which both Cobb and Rifkin, and Winslade and Monk draw their inspiration. There comes a time when it is no longer possible to delve further into individual reflection on personal identity and the nature of human subjectivity when the limit is precisely others. In addition to this approach, Eagleton (2006) sharply criticizes the aesthetic conception of post-modernism. Especially in the case of Foucault, subjectivity becomes "self-imprisonment" in the face of which rebellion is a useless passion.

In order to respond to criticisms on the concept of neutrality and distance themselves from the transformative conflict model, Cobb and Rifkin restructured the process. They believe that empathy acts as an evaluation criterion of the process and does not enable the parties' narrative, produced during the process, to transform. They also state that there are no ethical guidelines on the evolution or transformation of narratives.

Highlighting or emphasizing the impartiality/neutrality of the mediator is a mistake; parties accept mediators not so much for their impartiality as for their professional ability to influence, protect, or extend the interests of the parties involved. Neutrality can be easily achieved in the process and is difficult to achieve as a professional.

The report, *Strengthening the role of mediation in the peaceful settlement of disputes, conflict prevention and resolution* submitted to the United Nations General Assembly on June 25, 2012,[4] resolution 65/283, describes the progress made in its own implementation within the context of the principal trends in the field of mediation. The appendices to the resolution present guidelines for effective mediation and include the views of Member States. The Report notes that impartiality is not synonymous with neutrality, given that mediators, particularly United Nations' mediators, are generally required to uphold and guarantee respect for certain universal principles and values and may need to make these explicitly known to the parties to achieve impartiality. In particular, they must:

- Ensure that the process and treatment of all parties is fair and balanced and strive to demonstrate this through an effective communication strategy.

- Be transparent with the disputing parties about the laws and rules governing their participation in the process.
- Refuse conditions for support from external factors that could affect the fairness of the process.
- Avoid association with the imposition of punitive measures against the parties in conflict by other actors and minimize public criticism of the parties as much as possible while maintaining frank discussions in private.
- Transfer the process to another mediator or mediating entity if they feel unable to maintain a balanced and impartial approach.

The Council of Europe has been devising different measures to be implemented in family mediation. In Spain and Latin American countries such as Chile, specific models of mediation are being developed under legal norms that highlight neutrality in professional practice. Spanish and Chilean legislation on family mediation includes the central precepts that determine mediators' actions. However, they do not unify the deontological behavior of this relatively new profession. The regulation of family mediation in Chile explicitly mentions the principle of impartiality. In contrast, the practice of mediation also adds neutrality, confidentiality, and impartiality as constituent elements of professional work, which must be at the service of people involved in family conflict and follow a narrative and hermeneutic approach, typical of collaborative law. When reviewing the principles in deontological texts as part of the literature review, we observed that various principles form part of the Ibero-American Model Code of Judicial Ethics[5] that refer to independence, impartiality, motivation, knowledge and training, justice and equity, institutional responsibility, courtesy, integrity, transparency, professional secrecy, prudence, diligence, and professional honesty. Argentina's law[6] on mediation and conflict resolution mentions neutrality, equality, impartiality, orality, confidentiality of the proceedings, direct communication between the parties, celerity, economy, and the satisfactory composition of all the parties' interests. In turn, Uruguay's[7] regulation is outlined within the framework of access to justice without detailing ethical content.

In Chile, the legal norms in force that regulate mediation are:

- -Law 19968, title V, Article 105, states that the regulating principles of family mediation are: equality, voluntary nature, confidentiality, best interest of children, third party opinion, and impartiality, the latter understood as the abstention of behavior that might affect the relationship with the participants involved in the mediation process.
- Law 19966, on health mediation, in paragraph II, Article 49 makes the following explicit: the principles of equality, celerity, voluntary nature, confidentiality and impartiality, and is complemented in Article 50 with the notion of administrative probity as a supplementary criterion to impartiality.
- Exempt Resolution 490, (2020), which approves online mediation in educational contexts and modifies Exempt Resolution 266 (2018) by adding to the existing requirements such as modifications to safeguard the principles of confidentiality and privacy in the use of information, as well as the willingness to participate with the use of digital and/or electronic signature systems.

In these provisions, various disciplines are intermingled. Given that such principles are contemplated in current legislation, and after implementing and disseminating them for a number

of years, they need to be analyzed in order to determine the probability of their compliance. This would avoid possible sanctions for non-compliance and outline the principles of a future code of conduct that determines the ethical behavior of the mediation profession in Spain as opposed to the characteristics of the mediation procedure.

## 5 | CONCLUSIONS

Neutrality should be eliminated from the legislation in force in Spain and Chile, and in the respective mediation codes. This elimination would remove the pressure that the mediator feels to remain neutral. The mediator must use empathy and perceive the feelings of the parties to reach their understanding. Neutrality is in the space of dialogue that is generated by the mediation process based on impartiality and fairness.

Currently, there are various codes of ethics in mediation that different entities have devised to regulate and direct the moral conduct of those who practice the profession. However, they have never been consolidated. The difficulty in Spain lies in the lack of a collegiate body. Consequently, the need to develop a consolidated code would seem essential.

The resulting code must establish the priority and beneficence of ethical principles. Perhaps it could take inspiration from various codes already developed in mediation, such as the Code of Practice created by the Family Mediation Council in the United Kingdom; the Code used by the Union of Family Mediation Associations (UNAF), Spain; the Code of the Madrid Mediators' Association (AMM) published in Spain in 2010, and the Code of Ethics of the Chilean Association of Mediators, among many others. All attempt to take into account the requirements for the practice of mediation, without imposing their mandatory compliance through legislation.

It is essential to work with the different professional institutions and associations as well as training centers to elaborate a code of ethics aligned with existing legislation on family mediation in both countries. In parallel, existing legislation should be aligned with the code in order to promote greater transparency and probity in the actions of mediators, who, in themselves, represent the professional, ethical principles consistent with working with families.

In summary, our proposal suggests the need to elaborate an international code in line with the analysis carried out that eliminates the need for neutrality in the mediator and places it in the process.

## 6 | LIMITATIONS

The main limitation of this study is the absence of previous studies and publications on mediator neutrality, which has made it difficult to collect information and perform a comparative analysis of data. However, this study provides a line of work and research that strengthens the concept of neutrality in the mediation process and not in the person of the mediator. The conclusions drawn could help to strengthen the ethical code of mediation and promote quality in mediation results.

### AUTHOR CONTRIBUTIONS

*Conceptualization*: Pilar Munuera Gómez, Caterine Valdebenito Larenas, and Carmen Alemán Bracho. *Methodology*: Pilar Munuera Gómez, Caterine Valdebenito Larenas, and Carmen Alemán Bracho. *Formal analysis*: Pilar Munuera Gómez, Caterine Valdebenito Larenas, and

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The authors declare no conflict of interest.

## DATA AVAILABILITY STATEMENT

The data that support the findings of this study are openly available in Google Scholar at https://scholar.google.es/.

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## ENDNOTES

[1] Statistics from the Spanish General Council of the Judiciary, 2021.

[2] Judiciary of the Republic of Chile, 2021.

[3] Mediation and Alternative Methods Unit, Chile, 2021.

[4] Resolution 65/283 on Strengthening the role of mediation in the peaceful settlement of disputes, conflict prevention and resolution, 2012.

[5] Código Iberoamericano de Ética Judicial reformado el 2 de abril de 2014 en la XVII Reunión Plenaria de la Cumbre Judicial Iberoamericana, Santiago, Chile (Ibero-American Code of Judicial Ethics amended on April 2, 2014 at the XVII Plenary Meeting of the Ibero-American Judicial Summit, Santiago, Chile).

[6] LEY N° 26589 de 2010 of the Government of Argentina.

[7] LEY N° 16995 de 1998 of the Government of Uruguay.

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