
Book Review

Activist Mediators, Mediator Activists: *The Neutrality Trap*

Bernard S. Mayer and Jacqueline N. Font-Guzmán. *The Neutrality Trap: Disrupting and Connecting for Social Change*. Wiley, 2022. 272 pages. \$25.00 (hardcover), ISBN: [978-1119793243](#).

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Mediators are supposed to be neutral. They should not be biased toward a particular party, and they should not advocate for a particular outcome. Instead, mediators should guide disputants through a rich discussion that surfaces issues, resolves differences, and makes possible sensible agreements. Whether mediators perform these functions through a facilitative or evaluative approach does not change the basic idea that mediators assume their role as process guide in a relatively disinterested manner, as a “third-party neutral.”

But can mediators become too neutral, thus losing their distinctive ability to empower parties and promote transformative, holistic results and a more just society? That is the question posed by Bernie Mayer and Jackie Font-Guzmán in *The Neutrality Trap: Disrupting and Connecting for Social Change*. The book—part autobiography, part memoir, part think piece, part manifesto, part call-to-action—explores the familiar and intractable problem of neutrality in mediation through an unambiguously political lens, reflecting the current heightened anxiety around political and social polarization in the United States and elsewhere. The dynamics surrounding the ascendance of Donald Trump and Trumpism in the United States figure prominently in the authors’ analysis, and the book explicitly strives to marshal the energies and expertise of conflict resolution professionals to resist repression and regressive, reactionary

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regimes. Indeed, on the last page of the book, the authors observe that, while the ideas contained in the book had been percolating in their minds for a long time, it was the murder of George Floyd by Minneapolis police officers on May 25, 2020, that spurred them to act and write this book.

Mediators, the authors argue, “must be genuinely committed to system change efforts” and “confront the power dynamics embedded in all dialogues (really in all human interactions)” (93). This is a far cry from the vision of the detached arbiter assisting parties in dialogue. *The Neutrality Trap* peels back the label of “neutrality” and gives important texture to what it means to attempt to be neutral in the present moment. While the authors do not answer what precisely it looks like to serve as a third-party neutral in the face of systemic racism and structural inequities, the book adds value by helping readers interrogate their own assumptions and choices around intervening in conflict and consider the roles we want to play, personally and professionally, when confronting conflicts big and small.

The Critique of Neutrality

It is well established that neutrality (along with objectivity and impartiality) cannot, and probably should not, be fully realized. Each person’s perspective is necessarily subjective and circumscribed by their own experiences, thus making impossible any kind of omniscient understanding or transcendent standpoint. Moreover, a neutral approach does not necessarily lead to results that everyone would consider to be desirable or fair. Neutral approaches that treat all disputants as equally situated and empowered, for example, may fail to account for power disparities between the parties that can suppress participation and lead to results that are patently unjust, thereby “surrendering conflict to existing power constellations” (Teubner 1987: 8).

Mediation theorists and practitioners have long been aware of the tension between idealized and practical neutrality. Indeed, part of the impetus toward mediation in the modern ADR movement was to complicate and enrich dispute processing so that alternative processes could, among other things, blunt the injustices of state power delivered by supposedly neutral judges presiding over supposedly neutral litigation (Harrington and Merry 1988; Duffy and Thomson 1992). This objective was related to the idea that, by returning power over dispute resolution back to communities, mediation could potentially serve as a “disruptive practice” enabling people “to resist and change the dominant system” (Cohen 2022: 197, 211).

For many practicing mediators, the upsides of neutrality (or at least striving for neutrality) often outweigh the risks. They argue that mediators

who “chide” or “side with” parties run the risk of stifling participation and delegitimizing not only the mediator, but also the process of mediation itself. In this view, the mediator’s neutral forbearance makes possible party agency and self-determination, which is important given that parties in mediation are not compelled to come to an agreement. If parties think their mediator is biased, they may lose faith in the mediator and in the process and, even worse, end up with an outcome they never sought. With this in mind, many mediation practitioners aspire to remain as neutral as possible while affording parties the opportunity to express fully their concerns and work together to achieve agreement.

Although Mayer and Font-Guzmán do not wholly dismiss the importance of these aspirations, they are nonetheless concerned that mediators are not adequately appreciating the downsides of neutrality. They argue that striving for neutrality too often eclipses the expression of other values—including democracy, equality, engaging in causes, dismantling of structural exploitation, and advancing justice—which can in turn alienate mediators from the subject matter of the dispute in ways that lead to sterile, pro forma engagements with the disputants. For example, mediators who are overly focused on neutrality may suggest “[d]ialogue for the sake of dialogue” or “collaboration for the sake of collaboration” (x), reflexive and thoughtless process choices that leave the status quo unchanged while failing to grapple with the larger social realities and oppressions that undergird disputes (20).

Put another way, the mediation field’s established and widely accepted notions of neutrality are a “trap”: a trick, an ambush, a deception, an artifice, and, not least of all, a comfortable, professionally defensible way for mediators to sidestep the system-level inequities that lie at the root of many conflicts.

Mayer and Font-Guzmán unpack this critique in familiar ways. First, neutrality in conflict resolution plays a trick on the parties. Given what we know about human nature, it simply is not accurate to say that a mediator can be utterly neutral (Izumi 2017). Second, the notion of neutrality surprises and deceives participants because it can lead to things like false equivalency, avoidance, reinforcement of existing power dynamics, and exploitation. “Any time we enter a dispute with a commitment to being neutral, impartial, and objective,” the authors argue, “we are offering something that is not credible and promoting an existing power differential” (34). Third, neutrality imposes limits on mediators (who Mayer and Font-Guzmán call “conflict specialists”) by muzzling their viewpoints and restricting their ability to express themselves authentically (40). Finally, by asserting neutrality as a professional expectation of, and limitation upon, mediator behavior, mediators make a “devil’s bargain” to “maintain [their] privileged position in exchange for supporting the status quo” (30).

Yet even while Mayer and Font-Guzmán critique mediator neutrality for being bourgeois and evincing an unwillingness to advance disruptive social forces against “entrenched systems of power” (215), the authors celebrate conflict resolution work for its incrementalism and its methods for providing voice, avenues for negotiation, and improved problem-solving capabilities (215). They see ways in which “social activists” and “conflict specialists” each have specialized skill sets that, if used in concert, can accomplish more:

Activists need to develop their skills as negotiators and problem solvers and conflict specialists need to heighten their awareness of the dangers of a preoccupation with what can be resolved rather than what must be challenged. The worlds of conflict engagement and social change are much more powerful, sustainable, and effective when they overlap, reinforce and learn from each other, especially in the face of system resistance (215).

Ultimately, this passage describes what the authors are trying to achieve: an alliance between professions and identities that come to conflict from different vantage points, with different methods, and yet (should) have shared objectives.

The effort to achieve this complementarity gets snagged, however, when it bumps up against “neutrality,” a notion central to the professional posture of conflict specialists such as mediators. For Mayer and Font-Guzmán, escaping the neutrality trap requires mediators to reimagine themselves as “conflict engagers” who focus less on maintaining a gleaming veneer of neutrality and more on self-knowledge, humility, transparency, authenticity, integrity, expertise, respect, courage, commitment to communication, attention to power dynamics, and independence (35–37). In other words, mediators should place less importance on the trappings of professionalism (i.e., neutrality) and more on social justice and other animating values of the ADR field.

Conflict Engagement as Social Activism

To make the case that conflict specialists can and should engage in conflict with the intention of dismantling social inequalities, the book unfolds in three parts. In Part I, “Engaging Conflict,” the authors examine the relationship between engaging in conflict and disrupting systems. As discussed above, Mayer and Font-Guzmán begin by examining the multiple meanings of “neutrality” and the ways in which neutrality can become a trap for parties and mediators in disputes. The authors draw on their own identities and personal histories to

further examine the ways in which—based on race, gender, and other factors—groups are marginalized through systems of oppression and how each of these different identities intersects and shapes individuals' experience of conflict. Finally, the authors bring each of these threads together to examine what constructive engagement in conflict can look like and how it can be deployed effectively for systems change. They caution readers that the desire to “solve problems” and have a “laser-like focus on potential areas of agreement” can distract parties and conflict specialists from the deeper conflict and undermine efforts toward lasting social change (98).

In Part II, “Deepening Conflict,” the authors discuss some characteristics of long-term conflicts for which resolution is neither productive nor reasonable. Mayer and Font-Guzmán analyze these conflicts to extract larger lessons about how conflict specialists and social activists can engage systemic problems strategically by, for example, “confronting avoidance” (112), making “use of representative conflict” (119) to advance a reform agenda, and building “durable communication” and “sustainable power” for advocacy groups (125). Mayer and Font-Guzmán also explain why taking the time to understand the larger systemic backdrop of disputes rather than focusing on individual characteristics or behaviors leads to a richer understanding of what drives disputes and what needs to change. The authors suggest that the United States may be at the beginning of a “paradigm shift” in our “foundational social systems” (160), which requires new thinking about conflict and conflict resolution, among other things, “to make room for new paradigms to emerge” (161).

In Part III, “Strategic Disruption,” the authors tell stories from their own experiences to highlight the relationship between systemic and chaotic disruption and the role of nonviolent approaches to change. Disrupting systems means doing something that “*forces them* [systems of power and privilege] *to change how they operate*” (4, emphasis in original). Mayer and Font-Guzmán propose that strategic alliances and leadership can help create these disruptions and drive social change, stating that “[w]e all need to be allies, leaders, followers, advocates, mediators, and facilitators” who “do the hard work involved in constructive engagement and strategic disruption” (209). This work is actually very hard, and the authors admit that it is difficult to take a “coordinated approach” to both engagement and disruption:

Engagement efforts almost inevitably promote norms about civility, communication, respect, and finding common ground that are very different (although not necessarily contradictory) from those of determination, courage, confrontation, and clarity of purpose that underlie disruption (223).

The authors leave this tension in place, concluding with their personal reflections and recommendations on how to disrupt and connect for social change in the future.

Toward a Disruptive/Disrupted Profession

Central to the authors' critique of neutrality and their endorsement of engagement and disruption is the notion that mediation requires an authentic, personal, and value-driven approach. From the authors' perspective, to intervene as a third party to a conflict is, itself, an act of disruption that introduces the third party's own values and agenda. (To claim otherwise is one of the "traps" that neutrality creates.) Conflict specialists should take ownership of this disruptive posture while also scrutinizing how they can engage in conflict effectively, a process that requires constant introspection and dialogue.

Indeed, the book itself is an exercise in reflection and conversation. Throughout *The Neutrality Trap*, Mayer and Font-Guzmán adopt a trifurcated perspective, moving between traditional co-authored (first-person plural) writing and individual personal takes (first-person singular). They share personal perspectives on how they conceive of the issues as they set forth a generalized vision for how a more "disruptive" and socially conscious approach to mediation might work.

For both authors, mediation theory and practice are intensely personal and grounded in their backgrounds and experiences. The authors are especially interested in how their social activism is at times at odds with their professional identities as mediators and academics (and, in the case of Font-Guzmán, her identity as a lawyer). Most traditional "conflict intervenors," such as mediators, embrace professional distance and forbearance when it comes to judgments about right and wrong. But, according to the authors, such professional distancing can lead to false moral equivalences and reinforce—rather than challenge—exploitative power dynamics. In contrast, the "social movement activist" is motivated by substantive values but may not see their work to achieve systemic change as work that is inherently about conflict (105). Furthermore, social movement activists may tend toward convenient and simplistic labels for opponents and adversaries (e.g., "evil, stupid, crazy") that ultimately may prove unhelpful in disrupting oppressive systems (106–119). Given these various professional limitations, the authors embrace an alternative professional label, that of "conflict specialist," which can perhaps make space for a third-party conflict intervenor, such as a mediator, who concurrently works as a social movement activist.

Developing a professional identity that encompasses both conflict intervention and social activism is challenging. As a mediator for the EEOC, for example, Font-Guzmán recalls feeling "trapped by the notion

of remaining neutral” when she realized that one party in a mediation she was conducting was receiving “incompetent” counsel from their lawyer. Striving to remain neutral, Font-Guzmán “tried just about everything short of providing legal advice” and afterward decided she “would never let neutrality cause a travesty of justice” (48):

As a Puerto Rican woman who has worked in professions traditionally reserved for White men, I have often experienced the injustices of neutrality. Being neutral becomes an excuse for ensuring that an individual conflict is addressed (sometimes), but not the system and the structures that caused the conflict in the first place (50).

Indeed, focusing on the minutiae of a particular dispute can distract or divert us from tackling the weightier, more challenging and stubborn problems facing our society. And carrying the weight of helping people manage disputes while simultaneously attempting to work toward a more just and peaceful society is not easy. “When I think of the years I have spent trying to build conflict intervention services and at the same time sustain my commitment to social change,” notes Mayer, “I realize how often the major obstacle has been personal stress” (134). In previous work, Mayer has explored in depth the tension between neutrality and advocacy, naming the tension as one of the seven dilemmas of conflict that conflict specialists face (Mayer 2015).

Font-Guzmán and Mayer are not the only ones who are feeling anxious. Many conflict resolution scholars have stepped up their efforts to reexamine the impacts of alternative practices on parties from historically marginalized communities and on larger-scale concerns around equity and social change. Mediation has always been somewhat fraught as a practice, especially when it comes to determining the status of the mediator and the purposes mediators serve, intentionally and otherwise (Delgado et al. 1985). Neutral stances, empathetic approaches, and “separating the people from the problem” are commonly considered to be foundational to mediation—and yet, as described above, these same fundamental imperatives may implicate mediators in patterns of historical oppression (Press and Deason 2021; Bowland et al. 2022). Moreover, mediation’s traditional focus on individuals and cases may limit the mediator’s ability to address aggregate or systemic harms. For example, when jurisdictions around the United States quickly deployed mediation to respond to the foreclosure crisis and then the eviction crisis during the pandemic, these programs were focused largely on using mediation to avoid the pain of foreclosure or eviction on individuals, one home at a time (Parrish 2022). These programs were not equipped to address the

upstream causes of these socioeconomic crises, such as deregulation of securities markets, risky mortgage instruments, income inequality, housing shortages, and so on.

Additionally, some practitioners have started experimenting with new notions of what it means to be a conflict specialist with an explicit agenda of dismantling structural inequality. Restorative Response Baltimore, formerly the Community Conferencing Center, offers a range of restorative practices and training to local communities, schools, and courts in and around Baltimore, Maryland. In 2021, Restorative Response Baltimore replaced “neutral facilitation” with an “invested facilitator” model of community conferencing (see Restorative Response 2023). The modifier “invested” refers to the fact that the third party to the conflict is not detached from the community or the harms experienced by participants in a restorative process but instead is proactively anti-racist and committed to addressing (and redressing) racism and inequality through the restorative process.

As another example, Resolutions Northwest, a community dispute resolution center in Portland, Oregon, has attempted to reorient its mission “to incorporate an intentional racial and social justice lens to all services” after merging with another nonprofit, Uniting to Understand Racism (Resolutions Northwest, History [Undated](#)). Resolutions Northwest launched training in “equity-informed basic mediation,” an approach to mediation by which the mediators apply an “equity framework to offer support to all parties” and “engage in discussion of race and social justice” (Resolutions Northwest, Events 2023). In theory, by the end of a training in equity-informed mediation, trainees would have the potential not only to facilitate a mediation process using empathic, active listening skills but also to diagnose oppressive exchanges and handle racial microaggressions constructively. This reorienting of the mediator’s approach—to embolden mediators to take direct responsibility for “diagnosing” exchanges they perceive as oppressive—is not without controversy.

Conclusion

These recent developments in scholarship and practice suggest that Font-Guzmán and Mayer are not alone in their dissatisfaction with the way in which “neutrality” has been interpreted and has become a dominant norm for professional conflict specialists. Indeed, the desire to incorporate awareness of power, structural inequality, oppression, and racism is not unique to dispute resolution but is growing across professions, in law schools, medical schools, and nursing schools (ABA Standard 303c; Lawrence 2020; Lewis et al. 2023). Font-Guzmán and Mayer’s efforts to address urgent social and political concerns within the greater context of ADR theories and practices help bring more focus to the need for greater disruption and remind readers that

“[i]f we act with compassion, determination, wisdom, and courage, we can change the world” (231).

The question, of course, is how to recenter mediation and facilitation around equity and justice without losing other important elements of the third-party conflict specialist role, such as listening for understanding and refraining from advancing the mediator’s personal preferences. The authors agree that at times “the most important task for conflict interveners is to remain focused on process and to retain credibility with parties from across a spectrum of viewpoints” (40)—in other words, to remain neutral in the face of multiple perspectives and heated disagreement. However, the authors worry that at other times, prioritizing process and neutrality may lead to the perpetuation of false equivalences and the reification of oppressive hierarchies (42–45). The authors do not explain how mediators might know the difference between these situations, acknowledging that “[t]here is no easy way through this dilemma” (44).

But for the mediator who must decide whether and how to depart from professional norms of neutrality in the context of a particular real-life conflict, it would be helpful to have more practical, specific guidance. When should a mediator’s judgment or opinion supersede that of the parties? Even the most authentic and conscientious mediator, after all, may not be able to figure out how to address all (or any) of the historical, systemic, and structural dimensions of conflict in a mediation session focused on the details of a particular dispute and the people involved. Furthermore, if a mediator concludes that a particular process either is not serving the parties fairly or fails to advance greater social justice objectives to such an extent that the mediator can no longer participate in an impartial manner, mediators not only have the authority, but also may have the ethical obligation, to withdraw and terminate the process (ABA Model Standards II.C, III.E, VI.A.5 2005).

Beyond these practical concerns, it is worth remembering that neutrality has professional and ethical value for many mediators. A principled commitment to neutrality is rooted in the understanding that a mediator enjoys a privileged position vis-a-vis the disputants. Even though a dispute may involve concerns about broader societal inequities, it is the disputants ultimately who determine the content, contours, and conclusion of their dispute, not the mediators. With the mediator’s privilege comes both responsibility and humility. Font-Guzmán and Mayer focus on the opportunities that the mediator’s privileged position affords around disrupting oppression and effectuating much-needed systemic changes. Other mediators, by contrast, may focus on the responsibility to create a psychologically safe space for all disputants and

to avoid making the conflict and its resolution about the mediator's values. Different people will make different choices about which role they want to fill.

When representatives from the American Bar Association, the American Arbitration Association, and the Association for Conflict Resolution—among other organizations—together took steps to professionalize the practice, they adopted principles of impartiality and neutrality among the model standards of conduct for mediators. Almost 30 years later, much has changed in mediation, its functions, and its approaches, as well as in our wider society. *The Neutrality Trap* provides an important and timely reminder for those who work in conflict resolution to continue wrestling with the enduring and existential questions of the field, particularly the deliberate, self-limiting choice of neutrality.

REFERENCES

- ABA Model Standards of Conduct for Mediators. 2005. Available from https://www.adr.org/sites/default/files/document_repository/AAA-Mediators-Model-Standards-of-Conduct-10-14-2010.pdf.
- Bowland, S. Y., H. Batts, B. Roy, and M. A. Trujillo (eds). 2022. *Beyond equity and inclusion in conflict resolution: Recentering the profession*. Lanham, MD: Rowman & Littlefield.
- Cohen, A. J. 2022. The rise and fall and rise again of informal justice and the death of ADR. *Connecticut Law Review* 54(1): 197–241.
- Delgado, R., C. Dunn, P. Brown, and H. Lee. 1985. Fairness and formality: Minimizing the risk of prejudice in alternative dispute resolution. *Wisconsin Law Review* 1985: 1359–1404.
- Duffy, K. G., and J. Thomson. 1992. Community mediation centers: Humanistic alternatives to the court system: A pilot study. *Journal of Humanistic Psychology* 32(2): 101–114.
- Harrington, C. B., and S. E. Merry. 1988. Ideological production: The making of community mediation. *Law & Society Review* 22(4): 709–736.
- Izumi, C. 2017. Implicit bias and prejudice in mediation. *SMU Law Review* 70: 681–693.
- Lawrence, E. 2020. In medical schools, students seek robust and mandatory anti-racist training. *Washington Post*. November 8. Available from https://www.washingtonpost.com/health/racism-medical-school-health-disparity/2020/11/06/6608aa7c-1d1f-11eb-90dd-abd0f7086a91_story.html.
- Lewis, L., C. C. Fabersunne, C. L. Iacopetti, G. Negussie-Retta, D. McBride, P. Irving, and J. Marbin. 2023. Racial affinity group caucusing in medical education—A key supplement to antiracism curricula. *New England Journal of Medicine* 388: 1542–1545. <https://doi.org/10.1056/NEJMp2212866>.
- Mayer, B. S. 2015. *The conflict paradox: Seven dilemmas at the core of disputes*. Hoboken, NJ: Jossey-Bass.
- Parrish, D. P. 2022. Just diversion: Designing eviction mediation to address incentives and inequities. *Washington University Journal of Law and Policy* 68(1): 63–94.
- Press, S., and E. Deason. 2021. Mediation: Embedded assumptions of whiteness? *Cardozo Journal of Conflict Resolution* 22: 453–498.
- Resolutions Northwest, Events. 2023. Available from <https://resolutionsnorthwest.org/upcoming-events/>.
- Resolutions Northwest, History. Undated. Available from <https://resolutionsnorthwest.org/movement/#section-MISSION>.
- Restorative Response Baltimore. 2023. Available from <https://www.upproject.uk/news/introduction-to-systemic-racism-and-invested-restorative-facilitation-8sb3t>.
- Teubner, G. 1987. *Juridification of social spheres: A comparative analysis in the areas of labor, corporate, antitrust and social welfare law*. Berlin: De Gruyter.