

# CONFLICT TRANSFORMATION THROUGH DIGITAL MEDIATION: A STUDY OF BRAZIL'S JUDICIARY COURTS

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## Résumé de l'article

Cette étude vise à examiner les caractéristiques de la médiation en ligne au sein des systèmes publics, en se concentrant sur deux éléments essentiels : la progression technologique provoquée par la pandémie de Covid-19 qui a conduit à une numérisation presque complète du système judiciaire brésilien et les implications ultérieures d'une politique d'émancipation. transformation des conflits. La recherche engage l'ontologie et l'épistémologie socioconstructivistes du sud comme perspectives, menant ainsi une enquête empirique sur les modifications, les aspects et l'efficacité de la médiation dans deux districts judiciaires de São Paulo, au Brésil, en particulier les villes de Piracicaba et Campinas. Le document souligne le rôle de la médiation dans le domaine du règlement des litiges en ligne (ODR) dans le système juridique brésilien, servant à améliorer l'accès à la justice, à accélérer les changements de communication et à remédier aux limites de la médiation numérique tout en garantissant l'implication active de toutes les parties dans le processus. procédure.

En outre, l'étude évalue de manière critique l'utilisation de la médiation en tant qu'outil essentiel dans les systèmes juridiques nationaux et internationaux à l'ère du système judiciaire numérique. Pour y parvenir, une réévaluation complète des principes fondamentaux de la médiation est entreprise et juxtaposée aux défis observés dans ces contextes régionaux, mettant ainsi au jour divers sujets qui nécessitent une exploration plus approfondie. En résumé, cette étude offre une compréhension approfondie des modalités et des pratiques régionales de la communication numérique dans la médiation, la posant comme une approche pionnière pour améliorer l'efficacité des pratiques de résolution des conflits et favoriser la transformation sociale, culturelle et académique.

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# CONFLICT TRANSFORMATION THROUGH DIGITAL MEDIATION: A STUDY OF BRAZIL'S JUDICIARY COURTS

**Fernanda Alves CURBAGE<sup>6</sup>**

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*Conflict transformation through digital mediation : a study of Brazil's judiciary courts*

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## RÉSUMÉ

Cette étude vise à examiner les caractéristiques de la médiation en ligne au sein des systèmes publics, en se concentrant sur deux éléments essentiels : la progression technologique provoquée par la pandémie de Covid-19 qui a conduit à une numérisation presque complète du système judiciaire brésilien et les implications ultérieures d'une politique d'émancipation. transformation des conflits. La recherche engage l'ontologie et l'épistémologie socioconstructivistes du sud comme perspectives, menant ainsi une enquête empirique sur les modifications, les aspects et l'efficacité de la médiation dans deux districts judiciaires de São Paulo, au Brésil, en particulier les villes de Piracicaba et Campinas. Le document souligne le rôle de la médiation dans le domaine du règlement des litiges en ligne (ODR) dans le système juridique brésilien, servant à améliorer l'accès à la justice, à accélérer les changements de communication et à remédier aux limites de la médiation numérique tout en garantissant l'implication active de toutes les parties dans le processus. procédure.

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## MOTS-CLÉS

Médiation numérique; Judiciaire; Émancipateur; Communication

## ABSTRACT

This study aims to examine the characteristics of online mediation within public systems, focusing on two pivotal elements: the technological progression instigated by the Covid-19 pandemic that led to an almost full digitalisation of Brazil's judicial system and the subsequent implications of an emancipatory conflict transformation. The research engages social constructivist ontological and epistemology of the south as perspectives, thereby conducting an empirical inquiry into the modifications, aspects, and efficacy of mediation across two judicial districts in São Paulo, Brazil, specifically the cities of Piracicaba and Campinas. The paper underscores the role of mediation within the sphere of online dispute resolution (ODR) in Brazil's legal system, serving to enhance access to justice, expedite communicational changes, and address the limitations of digital mediation while ensuring the active involvement of all parties in the proceedings.

Furthermore, the study critically assesses and evaluates the use of mediation as a vital tool in national and international legal systems during the digital judiciary age. To

achieve this, a comprehensive re-evaluation of the core principles of mediation is undertaken and juxtaposed with the challenges observed in these regional settings, thus unearthing various topics that necessitate further exploration. In summation, this study offers an insightful understanding of the modalities and regional practices of digital communication in mediation, positing it as a trailblazing approach to enhancing the efficacy of conflict resolution practices and furthering social, cultural, and academic transformation.

## KEYWORDS

Digital mediation; Judicial; Emancipatory; Communication.

## 1. ONTOLOGICAL, EPISTEMOLOGICAL AND METHODOLOGICAL VIEW

**[12]** The core of this research is conflict resolution, emphasizing the application of conflict transformation through digital mediation in Brazil's judiciary Courts of Justice. The invitation question addresses how the principles of conflict transformation can be effectively implemented within an institutionalized entity as a State. One way to assess the effectiveness of this approach is to determine if it can facilitate accurate and independent decision-making through digital legal interventions. This would position it as a modern method for incorporating the Epistemology of the South developed for Boaventura Sousa Santos, with the main idea of "construction and validation of knowledge born in struggle, of ways of knowing developed by social groups as part of their resistance against the systematic injustices and oppressions caused by capitalism, colonialism, and patriarchy". (SANTOS, 2016, p.11). Instead of solely prioritizing the resolution aspect, comprehensive conflict transformation must investigate the structural and root causes of conflict, such as the modern domination of capitalism, colonialism, and patriarchy.

**[13]** The ontological perspective in peace studies refers to philosophical perspectives on the nature of reality, particularly in relation to conflict and peace. These perspectives provide insight into what exists in the world and what we should focus of our studies.

**[14]** From an ontological perspective, this article adopts a social constructivist ontology, aspiring to propose a conflict resolution system rooted in an emancipatory perspective. This perspective fosters individual consciousness through a bottom-up view of actions and advocates for "an intercultural understanding of the law" (SANTOS, 2020, p.588).

**[15]** Social constructivism as a theoretical framework facilitates understanding peace and conflict as social constructs are moulded by the norms, beliefs, and practices of actors within the global system (GUZZINI, 2013, p.59). Hence, this implies that the manner in which actors comprehend peace and conflict, as well as their motivations for resolving disputes, are shaped by their interactions and encounters with one another. Consequently, the question arises: What is dealing with conflict in the Brazilian judiciary court? And how does the Brazilian judiciary system manage conflicts?

**[16]** To address these questions, a qualitative content analysis methodology using statistical and legal content analysis (analysis of legal communication and ordinances of regulatory bodies National Council of Justice - CNJ and its members, the Courts of Justice - TJSP) is employed. The aim is to validate the Public Policy for Appropriate Handling of Conflicts and its impact on digital mediation.

**[17]** The data analysis will be carried out by investigating the statistical data published by the regulated body CNJ, focusing on the search for technical and practical information on how the different locations produced accommodations in the face of the transition process to digital mediation. Further, the effectiveness of digital mediation as a tool that promotes equality and social justice in conflict situations, fostering the transformation of conflict into social peace, will be assessed.

[18] If the data corroborate expectations, it will be possible to validate the hypothesis that the Public Policy for the Appropriate Handling of Conflicts contributes to the perception of social justice, through the digital empowerment of citizens, guaranteeing the potential transformation of the judicial system at national and international level. At the end of this process, the claim is to structure the implantation of an internal populational transformation, and with this, it could achieve some sustainable and qualitative local peace.

## 2. UNRAVELING INDIVIDUAL AND STRUCTURAL CONFLICTS: A PATH TOWARDS EMANCIPATION

[19] Throughout history, humans have gained experience and wisdom in navigating conflicts within their relationships, creating a amount of knowledge that is woven into our daily lives. In line with, the conflicts can be understood as the behavioural situation between actors with incompatible goals (BARTOS & WEHR, 2002, p. 28-29). Corroborating this, *David P. Barash* posits that the objectives of conflicts remain consistent across any stage of human development., as said “in the common needs and habits of men who live in fellowship under the same sky favor a speedy issue of such conflicts and, this being so, the possibilities of peaceful solutions make steady progress” (BARASH, 2018, p.11). In such scenarios, one party inevitably imposes constraints on the other through expressions of complaint and refusal.

[20] Approaching from a pragmatic viewpoint, asserts that since all actors and organisations are embroiled in conflicts, however, what varies in the analysis/perception is the unique role an individual plays within differing conflict types (KRIESBERG, 2021, p.34).

[21] For instance, the vital aspect of the ethnology of conflict remains the codependence of individuals and structures. Nevertheless, the assumption of an intricate relationship between individuals and structures is the fundamental element of conflict ethnology. This article primarily embraces an individualist ontology of conflicts, as well explained by *Jonathan Mercer* as a “Culture, norms, and group emotion can be causally but not ontologically reduced to individuals. These structures are neither identical to nor wholly autonomous from the individuals who constitute them.” (MERCER, 2014, p.521)

[22] In essence, the cornerstone of progressive social change rests on modulating the dynamics of human interaction, social conflicts, and destructive cycles of violence. As already proposed before, we must foster cycles of relational dignity and respectful engagement to break cycles of destructive violence.

[23] The main idea proposed is that implementing cycles of relational dignity and respectful engagement can lead to positive outcomes and foster healthy relationships; as *Lederach* insightfully states, “The flows of fear destroy. Those of love edify. That is the challenge: how to move from that which destroys toward that which builds. I call this constructive social change.” (LEDERACH, 2005, p.43).

[24] Such transformation necessitates more than just suffering the adverse effects of conflict; it requires individuals to engage in it as participants and creators actively; as *Simmel* suggests, the aim is to transition the subject from being a passive recipient of a culture steeped in conflict, into an active contributor and cultivator (SIMMEL, 1904). To move forward, a constructive attribution must be assigned to the conflict. This active participation in the conflict opens the door to an emancipatory process, which is at the heart of constructive social change.

### 3. DECIPHERING THE MEDIATION PROCESS: A BRAZILIAN PERSPECTIVE

[25] Examining the intricacies of conflict dynamics and resolution strategies requires an in-depth understanding that encapsulates the socio-cultural, political, and economic landscapes shaping conflict and peace. In the broad spectrum of social constructivism and the Epistemologies of the South, Brazilian judicial mediation presents a rich, context-specific approach to conflict resolution.

[26] Moving beyond the access to justice or the implementation of procedural justice (EBNER & ZELEZNIKOW, 2015, p. 152), conflict management within the Brazilian judiciary must incorporate a broader range of considerations. In fact, the resolution of conflicts encompasses a broader range of considerations beyond just these factors.

[27] It necessitates both principled advocacy and effective measures for conflict resolution, which are fundamental responsibilities of the Judiciary State System, as said by the Brazilian Constitution in the preamble, as said:

“We, the representatives of the Brazilian people, gathered in the National Constituent Assembly to establish a Democratic State, aimed at ensuring the exercise of social and individual rights, freedom, security, well-being, development, equality, and justice as supreme values of a fraternal, pluralistic, and prejudice-free society, founded on social harmony and committed, in the internal and international order, **to the peaceful resolution of disputes**, we promulgate, under the protection of God, the following CONSTITUTION OF THE FEDERATIVE REPUBLIC OF BRAZIL.” (BRAZIL, 1988, p.01)

[28] This is because conflict, by its dualistic nature, can both construct and destroy, thereby necessitating skilled and judicious resolution. Furthermore, sustainable peace (Ramsbotham et al., 2007, p.206) should not be considered a destination or an end but rather an opportunity for individuals and communities to engage in an interconnected and holistic worldview and work towards a planetary vision of peace (MORIN, 2003, p.175).

[29] For that, the transformative concept of 'everyday peace' (MAC GINTY, 2014) offers the view of peace not as an abstract, distant ideal, but as a lived, daily experience that intertwines with people's routine activities, social interactions, and understanding of justice (Sharp, 2012).



“Everyday peace involves a series of social practices such as avoidance, a system of manners, telling and blame deferring that, taken together, constitute a survival strategy that individuals and groups use to avoid difficult situations. It involves a fleetness of foot, quick calculations, and a good deal of dissembling. That is, people might believe one thing but say another simply to avoid or defuse a tense situation. This indicates insincerity, but if the insincerity is for socially good purposes, then it can be justified. Indeed, all societies have scripted social interchanges (just think of interactions with the waitstaff in a restaurant). In a deeply divided society, however, the script becomes important as individuals pursuing everyday peace strategies will avoid contentious topics in conversation and rely on the script of manners and civility to chart a way through interchanges.” (MAC GINTY, 2021, p. 9-10)

**[30]** Embracing this perspective helps to instrumentalise and constructing peace narratives that resonate with the lived realities of individuals and communities, offering a broad and human perspective and recognizing the significant role that ordinary citizens play in promoting peace and sustainable development. This view underscores the importance of using “Freirian listening”<sup>7</sup> as a basis for communication in the process of conflict resolution.

**[31]** Hence, highlighting the importance of conflict transformation from a systemic perspective emphasises that everyday peace is a key component of peace processes, focusing on the promotion of social justice, equity, and inclusion as fundamental elements of peacebuilding (KÖRPPEN, ROPERS, & GIESSMANN, 2011). In this regard, Brazilian judicial mediation, a dialogue-based conflict resolution mechanism, mirrors the principles of everyday peace in several ways, especially aligns through active participation, mutual respect, and negotiation.

**[32]** In this context, the concept of mediation, as per Bercovitch, refers to the process of resolving disputes between conflicting parties through the intervention of a neutral third party; he posits that:

“mediation is an aspect of the broader process of conflict management, in which all parties have interests and are prepared to expend resources to achieve these, and that mediation involves the intertwining of interests, resources, and positions in an attempt to influence outcomes. This relationship is critical for analysing the dynamics of conflict and assessing the prospects of successful mediation.” (BERCOVITCH, 2009, p.353)

**[33]** In this context, the mediator helps to facilitate communication and negotiation between the parties, enabling them to reach a mutually acceptable solution to their conflict. This form of alternative dispute resolution (ADR) emphasises improving relationships and resolving disputes in a peaceful e cooperative manner.

<sup>7</sup> The term “Freirian listening” was not coined by Paulo Freire himself, yet Freire’s emphasis on dialogue, respect, and mutual understanding in educational relations is well-known. This positions the concept of “listening” as being intrinsic to a significant portion of his works, as referred by Freire: “Dialogue is the meeting of men, mediated by the world, to pronounce it, thus not being exhausted in the I-you relationship.” (FREIRE, 1967, our translation).



[34] Simultaneously, for *Lederach*, the view of conflict mediation as a means of fostering cooperation and collaboration, emphasises the active participation of the parties and the importance of finding a solution acceptable to all. (LEDERACH, 2014, p.12). A social constructivist approach to mediation emphasises the relational subjectivity, reflexivity, and contextual understanding of which reality is socially constructed.

[35] It aligns well with Santos's concept of the 'epistemology of the South', which challenges the hegemony of Western knowledge systems and advocates for an appreciation of diverse, localised knowledge systems. It paves the way for a more inclusive, participatory, and grounded understanding of conflicts and their resolution.

[36] This robust foundation facilitates effective conflict resolution, these definitions furnish a robust foundation for applying social constructivism and epistemology of the South to uncover conflict root causes and understanding the involved parties, motivations and perspectives, thereby facilitating effective and qualitative conflict resolution, as Santos posits:

Only mediation can subvert the separation between the processed conflict and the real conflict, a separation that dominates the procedural structure of the capitalist State's law and that is mainly responsible for the superficialization of social conflict in legal expression (SANTOS, 1998, p. 23).

[37] Further, these definitions admitted that the influence of society made the meanings and definitions flexible, and also the definition can evolve. The Brazilian judicial mediation is proposed as a communicational, emancipatory and informative methodology. It encourages the resolution by self-compositional conflicts with the assistance of an impartial and independent mediator, who helps understand the positions, the interests and explore feasible solutions. This approach reassigns responsibility for decision-making to the involved parties and aims to the restoration of communication.

[38] In conclusion, to apply efficiently the approach proposed, it is necessary to shift the perspective of conflict, from focus to how we manage it. For example, this perspective might examine how actors in a particular conflict understand the root causes of the conflict and the potential resolutions. It would also examine how these understandings evolve as actors interact with one another and experience the consequences of their actions. This ontological view assists us in understanding the currently underway accommodations in the Brazilian Judiciary and what lies in the future.

### 3.1. ACTORS AND THE “FOURTH PART”

[39] However, the reality of the Brazilian judicial system is made by a positivist and analytical understanding of conflict and conflict resolution. Consequently, public policies are primarily data-driven, focusing on numbers, statistics, and probabilities<sup>8</sup>. These procedural mechanisms created a pessimistic view of the judicial procedural

<sup>8</sup> The data of the report "Justice in Numbers 2021" of the CNJ (National Council of Justice), base year 2020, the Judiciary ended the year with 75.4 million cases in progress (also called pending cases), waiting for some definitive solution. (Brasil, 2021).

engagement, with ripple effects across different spheres: the general population who demands from the Judiciary, state agents and lawyers.

**[40]** The general population, the primary consumers of the judiciary, play a vital role in shaping demand and expectations from the mediation process. However, often fails to find fulfilment of their social justice needs, instead encountering a system characterised by codes and numerical identifiers (For example, free justice, public defender, unaccompanied by a lawyer, priority procedure, urgency, secrecy of justice).

**[41]** The continuation of this perception of the efficiency of justice not only reduces their conflicts to mere data points but also produces violence for their individuality based on their legal predicaments. At the end of this process, the general population's perspectives are shaped by socio-cultural norms, past experiences with the judiciary, and their understanding of justice and fairness. This perspective has increasing with datas from Centro de Inovação, Administração e Pesquisa do Judiciário, da FGV Conhecimento, inform that machine learning is presente in 77% dos sistemas (CIAPJ/ FGV, 2022, p. 256), for tarefas descritivas and de preditivas.

**[42]** The state agents, such as the judges, are overwhelmed with an unlimited demand for treatment and achieve new cases, straining their capacity to handle and process them with the correct possible treatment effectively. Similarly, the judicial servants do their best to manage cases in the face of excessive caseloads. Furthermore, finally, attorneys and public defenders struggle to provide justice for their clients while being caught in a competitive legal marketplace.

**[43]** The result is the fluent cycle in which population conflicts, the object of lawsuits, are reduced to numbers of a conflictive and chaotic society. So, using the word Fabiana Marion Spengler:

The jurist's task, therefore, is to look into the conflicting reality of society and find institutional formulas created to enable the treatment of the conflict without the pretence of resolving it (which is known and practically happens) but of treating it, mainly concerned with offering viable means to do so. (SPENGLER, 2007, p.396, our translation)

**[44]** The realist perspective is based on a failed system that, despite our collective creation and maintenance, has proven to be unsatisfactory, blaming each other for our unsuccessful lives. So, with the aim of do not contribute to this failed system, I posit that mediation offers a beacon of hope - a chance to salvage the judicial system through a holistic and local approach. Holistic mediation considers all situation aspects, including the mind, body, spirit, context, impact, and consequences. Readiness for holistic decision-making has three criteria: perception, cognition, and personal development. The holistic approach could move society towards limiting harm and promoting happiness, well-being, and justice. (LEWIS & UMBREIT, 2015, p.15)

**[45]** Further, knowing the fundamental role of which part is the beginning of some explanations about why the Judiciary has a central role in dealing with social conflicts, and the proposal here is mapping these actors in these processes. For example, if a

state perceives itself as a defender of human rights and democracy, it will likely intervene in a conflict to protect these values, regardless of its material interests.

**[46]** Similarly, the norms and identity of actors involved in a conflict can shape the outcome of peace negotiations, as they will negotiate based on their beliefs about what is acceptable and what is not. This view holds that actors construct and reconstruct their understandings of peace and conflict through their interactions and experiences.

**[47]** Overall, studies of peace and conflict resolution from an ontological constructivist perspective emphasise the importance of understanding actors' subjective experiences and perspectives to comprehend the complex dynamics of peace and conflict fully. However, from the digital perspective, the received for a "fouthy part" on this relationship, which is a technological part, generates a consequence of bringing a new mindset; they need a new process for resolving conflicts, which means not only new tools but also different principles and values.

**[48]** Further, Rabinovich-Einy (2006) and Rainey (2014) considered it necessary to adapt the conceptions and principles of mediation to a digital environment so that the mediator can conduct the process with this new element. (RABINOVICH-EINY, 2006; RAINEY, 2014). The digitisation of the legal system and these present development opportunities for the creation of innovative management strategies and a possible reorientation of the political choices made by the Brazilian State concerning access to justice to restore its redistributive and transforming role. It is important to note that the technological transformation in procedural law goes beyond the mere instrumental use of technology and automation of existing processes. Instead, it has the potential to create new, tailored approaches that better provide adequate, fair and appropriate solutions (NUNES & PAOLINELLI, 2021, p.155).

### 3.2. DIGITAL COMMUNICATION AND RETHINKING MEDIATION PROCESS IN THE DIGITAL AGE

**[49]** Over the past several years, the internet has transformed from merely being a tool for various professions to significantly altering the dynamics of our interpersonal relationships. As such, it is prudent to engage in a discourse surrounding this "digital turn" era since it is a central subject to our everyday relations.

**[50]** The traditional mode of analogical communication typically occurs in a context where the speaker knows the audience, the location, and the purpose of the conversation, characterised by a clear understanding of the parts of communication. However, digital communication often lacks these defining characteristics and is often more interpersonal in nature. If we consider someone's post on social media platforms (Instagram, Twitter or LinkedIn) raises the question of the existence of a definite recipient for the message. In most cases, the answer would likely be negative. The conclusion is that this leads to an increased sharing of personal emotions and feelings on the internet. The internet has become a ubiquitous aspect of our lives, influencing how we consume, share, work, live and feel.

**[51]** As a result, interpersonal communication has been greatly facilitated, leading to a reinforcement of emotions and affections. However, this development is not without

challenges. Knowing all this, using the traditional mediation definitions as a method of resolving disputes outside of the conventional judgment system, using a third-party mediator to help parties come to a mutual agreement became a problematic definition when we brought the “digital turn” to the lens of this analysis.

**[52]** The traditional concept of mediation must be reimagined to encompass the changing landscape of communication and conflict resolution. Digitization has not only changed how we communicate, but it has also influenced our modes of expressing and handling conflicts. As such, there is a need to reassess the process and principles of mediation, bearing in mind the reality of our highly digitalized and interconnected world.

**[53]** The digitization of mediation, often referred to as Online Dispute Resolution (ODR), introduces several new elements to the mediation process. Firstly, it enables geographical flexibility, allowing parties from different regions or countries to participate in mediation without the necessity for physical presence. Secondly, it provides time flexibility, making the process more convenient for all parties involved.

**[54]** However, digital mediation also brings about new challenges. One such challenge is the potential loss of non-verbal communication, which can be a crucial aspect in understanding the sentiments and intentions of the disputants. Mediators will need to adapt to these conditions and develop new skills to manage online communication effectively.

**[55]** Additionally, the issue of digital divide poses another challenge. Not everyone has equal access to technology or the internet. Therefore, it is crucial to ensure that digital mediation does not exclude those who lack the necessary resources to participate in an online environment.

**[56]** Moreover, the digital age presents a shift in the understanding of privacy and confidentiality. As the internet blurs boundaries, issues around data security and protection come to the fore. It is crucial to ensure that digital mediation respects the privacy rights of the parties and protects their information.

**[57]** Moreover, the rise of social media platforms and the increased sharing of personal feelings and emotions online, brings in another layer of complexity. The increased public nature of disputes, particularly those occurring on social media, can escalate conflicts and complicate their resolution. Mediators, therefore, need to be equipped to handle these dynamics and guide parties towards constructive dialogue and resolution.

**[58]** Furthermore, as our online and offline lives increasingly intertwine, there is a need to explore the intersections between them in the context of conflict resolution. The emotional impacts of online conflicts can spill over into offline spaces, and vice versa, creating complex layers of disputes that mediators need to navigate.

**[59]** In conclusion, the digital turn necessitates a transformation of mediation to accommodate the realities of our digital world. This process will involve updating the definitions, principles, and techniques of mediation, enhancing digital literacy and competency among mediators, and ensuring the inclusivity, fairness, and effectiveness

of the digital mediation process. Moreover, it requires ongoing research and discourse to understand the continually evolving digital landscape and its impacts on conflict resolution.

## 4. DIGITAL TURN IN BRAZIL

**[60]** The changes in the judiciary system in Brazil started with the introduction of the electronic judicial process (PJe<sup>9</sup>) in 2006, which enabled the courts to replace physical, paper-based processes with electronic ones and become increasingly pronounced in recent years. Some transformations have been making revolutions as digital mediation, in 2016, the creation of the “100% Digital Court” in 2020 and Resolution 358/2020 from CNJ, which regulated the creation of technological solutions for resolving conflicts through the Judiciary via conciliation and mediation, are just some of the many measures aimed at de-judicialization that make use of internet technologies and digital platforms.

**[61]** These changes could be divided into three stages: first, the digitization of procedures; second, the automation of tasks; and third, the transformation of methods of operation and work (NUNES, 2021, p.57). Otherwise, the “digital turn” in conflict resolution refers to the increasing use of technology in the administration of justice and the judicial process, helping advanced tools such as online dispute resolution platforms, virtual courts, and electronic case management systems to lead to more efficient and accessible justice for citizens. It is a real technological change in the law and procedural law, inducing an instrumental transformation and changing the rationality of the justice system, its institutions, and the performance of its agents and intervenient.

**[62]** However, envisions a future where the Judiciary operates with incredible speed and transparency, and this led to the broader conversation around the role of technology in the modernization of the judiciary Court and the potential benefits it can bring. The “digital turn” can change from analogue to digital communication materialises the integration of technology in all aspects of society, Julia Hoffmann (2014) highlights privacy concerns and the potential for the rapid spread of misinformation.

**[63]** However, despite these challenges, digital technology still has untapped potential and can revolutionize how people communicate, connect, and create more meaningful and impactful connections (between individuals, organizations and communities). In the long term, the digital turn could also facilitate more participatory justice. Technology can enable greater public involvement in judicial processes, for example, through public consultations on legal reforms or policy changes. This can promote a more democratic and inclusive judiciary.

**[64]** Further, communication should be seen as an interactive process that could lead to emancipation, and the judiciary system should develop strategies based on sustainable

<sup>9</sup> Modality of procedural processing, created by Law 11.419/2006, in which acts are performed exclusively by electronic and remote means. As this is an innovative experience, there will be permanent exchange and feedback between the Council and the courts as soon as they adopt and implement the system. (FUX, 2021, p. 24).

forms of peace, a general ability to bring people together and drive positive change in the world that we must focus on for fundamental conflict transformation to occur.

**[65]** In conclusion, while the digital turn in Brazil's judiciary presents both challenges and opportunities, it can transform the justice system into a more efficient, accessible, and transparent institution.

#### 4.1. BRAZILIAN JUDICIAL PUBLIC SYSTEM OF MEDIATION

**[66]** The Brazilian Federal Justice system has been designing and studying online mediation procedures since the creation of mediation law in 2015, and the National Council of Justice (Resolution n. 270 de 2018) authorized digital platforms to resolve disputes. In this context, they gained full strength from the forced “virtual scenario” caused by the COVID-19 situation.

**[67]** The outbreak of the pandemic in 2021 and the adverse health situation in Brazil caused strict health protocols to be established, leading to a reality of social distancing. In response, the National Council of Justice (CNJ) introduced a range of measures aimed at promoting access to digital justice and embodied in a series of Resolutions<sup>10</sup> 331, 332, 334, 335, 345, 354, 358, and 372, which seek to promote access to digital justice, published by the CNJ in 2020.

**[68]** The integration of these factors results in the conclusion that digital mediation has gained significant momentum due to the COVID-19 pandemic, becoming a highly appealing option for the judicial system as it provides convenient, effective, and practical solutions.

**[69]** Further, from a mediation perspective, should this new relational dynamic between human and digital conflict resolution be studied from the perspective of “digital turns” or from the user’s view?

**[70]** The Epistemology of the South (SANTOS, 2016), advocates for recognizing the knowledge and experiences of the Global South, often marginalized or rendered invisible by dominant Western-centric perspectives. It calls for equal recognition of other forms of knowledge that can provide different ways of understanding and interpreting the world.

**[71]** Applied to digital mediation in Brazil, this framework prompts a shift away from merely focusing on implementing digital tools based on Western models. Instead, it emphasizes understanding and integrating the unique socio-cultural context, local knowledge, and experiences of Brazil, into the design and implementation of digital mediation platforms.

**[72]** For that, we aim to apply the Epistemology of the South to point out some problematics as access to digital communication and vulnerabilities from a Brazilian perspective. Knowing these discrepancies explains the approach of “digital turn” in the

<sup>10</sup> All the CNJ Resolution could be found on: <https://atos.cnj.jus.br/atos>



field of mediation, and your direct impact on all the actors is notable but has not had the same intensity.

**[73]** To understand these perspectives, a simple analysis of the mediator's field of work propose in this article helps to explain. In other words, a mediator must understand all the digital aspects and bases to after could work with it. Although the digital communication that we have today (until now) in digital mediation is not designed for promoting dialogues, we must change it first, if we want, to do a real digital mediation.

**[74]** For instance, addressing the digital divide is an essential factor in ensuring equal access to justice. By incorporating the Epistemology of the South, the digital mediation process could be adapted to local contexts, considering factors like the level of digital literacy, availability of stable internet connections, or alternative offline methods of communication that might be more accessible in rural areas.

**[75]** Further, we need to change how digital communications are made if we insist on using digital mediation in public systems. Moreover, believe that some accommodations already exist in Brazil as the hybrid form and the local platforms. The realistic truth is that digital communications (until now) are not designed to promote full and complete dialogues. The transition to digital mediation should not ignore the potential vulnerabilities of users. The increased reliance on digital platforms may expose users to new types of vulnerabilities, such as data privacy breaches, misinformation, and online harassment. Digital mediation platforms must be designed with robust security measures and processes to mitigate these risks and ensure that users feel safe and secure while using these platforms.

**[76]** Paulo Freire said, "In the absence of basic knowledge, it is impossible to 'interpret the world'; therefore, there is no basis for exercising citizenship" (FREIRE, 1974), underlines the importance of providing education and training to empower individuals, so ensuring a basic understanding of digital tools and their implications, users will be better equipped to navigate the digital mediation process and engage in meaningful dialogues.

**[77]** In summary, the Epistemology of the South provides a guiding framework for implementing digital mediation in Brazil that is inclusive, respectful, and responsive to local conditions and realities. It emphasizes the need for digital mediation to be more than just a translation of face-to-face mediation into a digital format, but rather an evolution that considers the unique characteristics of the digital environment and its impact on communication and human relationships.

#### **4.2. EMANCIPATION, CONFLICT TRANSFORMATION AND TRANSFORMATIVE JUSTICE**

**[78]** Notwithstanding, conflict transformation is codependent on social and political shifts with one common aspect: the moment of action of decision-making. Thus, explore conflict mediation in a judiciary field as a means to promote a concept of "sociology of absences", drawing on Boaventura Sousa Santos's model as the way of: "turning absent subjects into present subjects as the foremost condition for identifying and



validating knowledges that may reinvent social emancipation and liberation.” (SANTOS, 2019, p.19).

**[79]** In the proposed judicial mediation, we understand there is an “ecology of learning” (Santos, 2014) where decision-making is directed to the agent who has an emancipated position. Thus, using mediation as a citizen tool promotes the union of knowledge and, simultaneously, the interrelationships with individual and collective life cycles.

**[80]** Therefore, assuming that conflict mediation focuses on local needs, perceptions, and people, we can promote sustainable peace, starting with individual citizenship, where individual transformation (the individual himself and his conflicts) and evolving planetary citizenship, where inter-transformation individuals exist in society (MORIN, 2003).

**[81]** The planetary peace approach proposed by Edgar Morin focused on the development of communication as a primary theoretical element. In addition, the current digitalized reality, where information and data become the new currency exchange, and this communicative view as a capacity and ability highlights the shrinking of the world per se, according to Morin: “the world becomes more and more a whole. Each part of the world is, more and more, part of the world and the world, as a whole, is more and more present in each of its parts. This happens not only for nations and peoples but for individuals.” (MORIN, 2000, p.67, our translation).

**[82]** Adding to these foreign notions, the technology of information is becoming a vital assessment, so a further question is maintaining this basis of applicability, especially natural consciousness (SANTOS, 2020, p.18), in the sense of becoming a way of expressing transformative justice (MORRIS, 2000) as healing humanity, safety, and wellness at local and plural levels. Ruth Morris conceptualized transformative justice as:

an open door to the community, to the past, and to a happier future for all concerned by a problem. Transformative justice recognizes the wrongs of all victims and recognizes also that sooner or later, we are all both victims and offenders. But it doesn't use that truth to excuse the harm to any current victims (MORRIS, 2000, p.3).

**[83]** It focuses on addressing the underlying causes of harm and seeks to create possibilities for healing, growth, and positive change, for everyone involved. Incorporating the digital turn in the justice system, particularly in judicial mediation, can greatly amplify the potential of transformative justice, allows for the exploration and resolution of conflicts at a personal and community level, contributing to a culture of peace and collective belonging.

	Piracicaba/SP	Campinas/SP
Triage Case	By e-mail or <b>WhatsApp</b>	By e-mail
Contact Information	by E-mail, <b>WhatsApp</b> (written or audio), in last a pre-session on <b>Microsoft Teams</b> .	By e-mail
Send Documentation + Schedule a Mediation + Invitation letter	E-mail (with link) and <b>WhatsApp</b> (with link)	By e-mail (with link)
Mediation	Microsoft Teams*	Microsoft Teams*
Reschedule	Possible, in session for a mediator by a <b>phone call</b> with the leader of Sector	Not possible
Limitation on Time	60 min. Could be rescheduled for another date.	45min. Closed agenda. Determined for the judge or Chief of Cejusc
Edition of Agreements terms	By the mediator (implemented <b>One Drive</b> to share docs with CEJUSC Court)	<b>By the clerk court</b>
Payment for Mediator	<b>Voluntary</b> actuation. There is regulamentation for payment but isn't implemented.	<b>Voluntary</b> actuation. There is regulamentation for payment but isn't implemented.
Supervision and feedback	Isn't send.	It's sent <b>by e-mail</b> after the mediation. Closed questions, if it was a deal or not.
Internship and training for new mediators	Internship, with big number of participants. Training and educative integrations are incentivized after the mediations.	Internship with a smaller number of participants

Table1 – Practices on Mediations. Developed by the author.

[84] Through this process, individuals become not only active participants in resolving their own disputes but also agents of change in their communities and society at large.

[85] However, because we can see that the levels of communitarian violence are increasing, this article intends to expand the scope of transformative justice to include structural violence and emphasize family conflict. Even though justice is not inflexible, it adapts to the times. It promotes listening to reality and individual conflicts; the individual becomes a member of the society he inhabits.

[86] For this purpose, we managed to emancipate the individual and make him produce free decisions. The proposal is to integrate this transformative aspect at the State level, changing the system from punitive logic and control to a love, plural and retributive system. Furthermore, through conflict resolution through mediation, mundane, everyday affairs can promote the culture of planetary and collective belonging.

#### 4.3. COMPARATIVE ANALYSIS: TWO DIFFERENT JUDICIAL PUBLIC SYSTEMS OF ONLINE MEDIATION

[87] Being part of a mediation process could also be understood as a political statement, the space where “I” and “other” are confronted and heard. In this sense, bringing the mediation institute into the digital sphere requires rethinking the way communication happens (in this private environment).

**[88]** While considering the transition to digital mediation, it's essential to account for cultural differences and access to technology. For instance, we can observe a wide range of diverse experiences in implementing online mediation within the judicial system. We can contrast two of Brazil's cities with a similar socio-economic and cultural context.

**[89]** Further, the goal of digital mediation is not just to adapt the relationship but to promote connections, exchanges, and discussions. So, bring these public numbers of judicial cases and the CEJUSC (Judicial Center for Conflict Resolution and Citizenship). To show that there is massive work to be done.

**[90]** The process of online mediation in Brazilian courts is relatively straightforward. The parties involved in judicial disputes are invited to participate in an online mediation session by the judge, and the court schedule is appointed with a mediator and provides a platform. The mediator guides parties through the process, including opening statements, negotiation, and reaching a final agreement (or not).

**[91]** Brazil's decentralised approach allows for a higher degree of customisation according to the specific characteristics and requirements of each region. This can be particularly beneficial in a country with significant regional diversity like Brazil. The online platform used for the mediation is variable according to each State in Brazil because the States have autonomy for regulating their own procedures. The security and confidentiality in the meetings are contested as everyday life in an online methodology, but since 2018, Resolution n.270 from CNJ ty improved this security and also guaranteed, by force of law, the impossibility of record and the further use as evidence in

**[92]** The main benefit of online mediation in Brazilian courts is the increased mobility it provides; parties are no longer limited by geographic barriers and can participate in mediation from anywhere with internet access. This has made the conflict resolution process faster and more convenient, especially for those living in remote areas or with mobility issues. Another advantage of online mediation is the reduced costs involved. Traditional in-person mediations often require the parties to travel and incur additional expenses; in online mediation, these costs are eliminated, making it a more cost-effective alternative.

**[93]** The critical until now remains in a structural aspect of conflict transformation, which means the implementation of online mediation in Brazil has been a positive development for the legal system; however, the number of CNJ show that “local digital improvement” works better in a small population than in a large one in the public mediation system. Proving that different characteristics of online mediation in public systems exist and should be studied profoundly.

**[94]** In conclusion, online mediation in Brazilian courts has been a valuable tool for conflict resolution and offers increased mobility and reduced costs; nevertheless, real conflict transformation depends on a plural alternative to in-person mediation. Knowing that we should priorities and understand what is normal, usual, current for the local population and after implementation!

## 5. CONCLUSION

[95] Realize that we must go beyond, not just understanding the object of mediation, but also be involved with it on a deep and inner level. The Brazilian judicial system, with the introduction of digital mediation platforms, represents a significant shift towards making justice more accessible and efficient. While the benefits are numerous, there are also challenges to overcome, such as issues related to access, digital literacy, and the need for digital platforms that are designed to facilitate genuine dialogue and mutual understanding.

[96] The analysis suggests that adopting a socio-constructivist and emancipatory approach to conflict resolution can contribute to a more effective and transformative mediation process. However, it is crucial to recognise that mediation is relational and therefore, no single approach can claim to be fully emancipatory. The specific cultural and socio-political context must be taken into account and acknowledged.

[97] In this newly developed model of the digital Judiciary, the insertion of mediation as an essential instrument in the national and international legal culture was remarkable. However, mediation is a relational process; therefore, no mediation is fully emancipatory or responsible by itself, especially in the case of Brazil, which demands a de-colonial approach.

[98] Looking ahead, the task for the Brazilian Judiciary is to continue advancing their digital mediation systems while also addressing the disparities in access and capabilities. It is a delicate balance to maintain between leveraging the advantages of technology and acknowledging the limitations that it can impose.

[99] Therefore, understanding that the problem is not the conflict but how we deal with it, must be seen as an ongoing journey towards a justice system responsive to changing societal needs and contexts. In this journey, it is important not only to recall and recognize our ancestral culture of peace but also to construct or reconstruct it in a way attuned to our contemporary realities and challenges. This is the path towards a justice system that not only resolves conflicts but also transforms them into opportunities for learning, growth, and reconciliation.

[100] In conclusion, before proposing our own methodology or school of mediation, we must understand that there is a need for cultural awareness first, so what then be able to construct or reconstruct our culture of peace (remember our ancestrally, our own culture of peace). In an emerging aspect, we must promote in countries of the South Principle of Emancipation to up front to the coloniality of power.

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