

# Kluwer Mediation Blog

## Is Mediator Neutrality Holding Us Back in Conflict Resolution?

Emad Hussein (Independent Arbitrator) · Tuesday, March 11th, 2025

Neutrality is often held up as the cornerstone of mediation, a beacon of fairness ensuring balanced outcomes. Yet, this hallowed principle might not be as straightforward or as beneficial as it seems. When we peel back the layers, neutrality reveals itself as a nebulous ideal—challenging to define, difficult to achieve, and questionable in its desirability. In the context of mediation, especially, it is time we reconsider what neutrality truly means and whether we need it at all.

### The Trouble with Defining Neutrality

Neutrality in mediation demands a mediator's absence of bias or partiality requiring vigilance against both explicit bias towards a specific party as well as unconscious bias. It encompasses treating parties equally, having no personal stake in the outcome, and avoiding any influence from financial interests or external pressures like the government. Yet, as scholars like [Astor](#) and [Mayer](#) point out, these definitions are neither comprehensive nor universally accepted. For instance, [Mayer](#) dissects neutrality into structural, behavioural, emotional, perceptual, and aspirational dimensions, each with its own complexities.

The confusion further extends to neutrality's overlap with impartiality. Some argue neutrality means the absence of pre-existing relationships, while impartiality refers to being unbiased in the mediator's conduct. Others use the terms interchangeably, further muddying the waters. This lack of clarity makes neutrality a challenging concept to pin down and apply consistently in practice.

Moreover, the very idea of being entirely neutral is contradictory, and in reality, challenging, owing to the very nature of the concept, which is evident from its definition as discussed, thus leaving it more as a theoretical aspiration. If neutrality requires mediators to have no personal perspective or influence, can such a role ever truly be fulfilled? [Astor](#) notes that mediators often bring their experiences, perspectives, and values into the process, consciously or unconsciously. Thus, even if one were to strive for perfect neutrality, human nature itself might render this impossible.

### Can Neutrality Truly Be Achieved?

If defining neutrality is hard, attaining it is even harder. Mediators are human, shaped by their own experiences, cultural contexts, and subconscious biases. [Becker's](#) critique emphasises that even seemingly innocuous actions—a slight nod, a word choice—can betray a mediator's influence. Empirical studies show that mediators often guide conversations, steer outcomes, or unwittingly favour one party over the other, even when striving for neutrality.

Power imbalances further, exacerbate this issue. In cases where one party holds more sway—economically, socially, or otherwise—strict neutrality might in fact, perpetuate injustices rather than resolve them. Feminist and critical legal scholars highlight how an insistence on neutrality often disadvantages marginalised groups, unintentionally aligning mediators with the more powerful party. In such scenarios, neutrality becomes a paradox: treating parties equally can entrench inequalities, while addressing these disparities violates the principle of neutrality. It is of course debatable whether rectifying any systemic power imbalances is in the first place within or outside the mediator's purview. Nonetheless these considerations further question the attainability of neutrality.

Neutrality also falters in high-conflict or emotionally charged disputes. Mediators tasked with keeping the peace might naturally favour approaches that calm tensions, inadvertently sidelining parties who are more confrontational but equally valid in their grievances. This inclination further reveals how neutrality may skew the mediation process without the mediator's conscious awareness.

Despite these challenges, some argue for the possibility of “external neutrality,” where mediators consciously separate their biases from their actions. This approach however relies on self-awareness and self-regulation—skills that are often easier said than done. Ultimately, as [Boulle](#) succinctly puts it, neutrality remains “*the most pervasive and misleading myth about mediation.*”

### **Is Neutrality Even Desirable?**

The discussions above, forces one to question that even if one could both define and attain neutrality in certain circumstances, is it actually desirable? Scholars like [Mayer](#) argue otherwise, suggesting that disputants often seek more than a neutral facilitator. Parties in mediation frequently need guidance, advocacy, and support—roles that a strictly neutral mediator cannot fulfil. By clinging to the neutrality ideal, mediators might miss opportunities to build trust, foster open dialogue, and address power imbalances effectively.

Research supports this shift. Studies reveal a positive correlation between mediator assertiveness and successful settlements. Active involvement, rather than detached neutrality, often leads to more equitable outcomes. Furthermore, aspirational neutrality can constrain mediators, forcing them to navigate between opposing demands: detachment and proactive intervention. This tension hampers their ability to address the real needs of the parties involved.

In some situations, neutrality might even harm the mediation process. For instance, in cases involving domestic abuse or extreme power imbalances, a neutral stance risks legitimising the status quo, leaving the disadvantaged party without meaningful recourse. There is of course, the ethical dilemma regarding whether such extreme cases should be mediated at all, but then at least mediators who adopt a more active role can challenge these dynamics and create space for equitable solutions.

### **Alternatives to Neutrality**

So, if neutrality falls short, what should replace it? Scholars like [Mulcahy](#) and [Astor](#) propose more practical, nuanced approaches.

## Transparency and Bias Acknowledgment

[Mulcahy](#) advocates for transparency. Rather than feigning impartiality, mediators should openly acknowledge their biases and values. This approach shifts the focus from the mediator to the parties, empowering them to make informed decisions about the process and its outcomes. Transparency fosters trust and encourages an honest, collaborative environment.

Transparency also promotes accountability. When mediators openly disclose their potential biases, they invite scrutiny and dialogue, creating a more balanced power dynamic. For example, a mediator handling a corporate dispute might reveal a prior background in corporate law. This disclosure allows parties to weigh the mediator's perspective and adjust their expectations accordingly.

## Reflexivity and Inclusivity

[Astor](#) emphasizes the importance of self-awareness in mediation, urging mediators to recognize how their cultural, political, and personal experiences shape their perspectives. [Rothman](#) extends this idea with a reflexive approach, arguing that true neutrality is unattainable. Instead of striving for detachment, mediators should engage in disciplined self-reflection—becoming aware of their biases and assessing how these influence their interactions with parties. Reflexivity allows mediators to consciously navigate their own perspectives while ensuring they do not unconsciously reinforce power imbalances.

Inclusivity is a natural extension of this reflexive practice. By acknowledging their own positionality, mediators can better engage with underrepresented voices and marginalized perspectives, ensuring that all parties feel heard. This does not mean imposing an external sense of fairness but rather fostering an environment where diverse viewpoints shape the mediation process. In doing so, mediators enhance not only the perceived fairness of the process but also the durability of its outcomes.

At its core, reflexivity does not undermine party autonomy but strengthens it. By being attuned to their own influence on the process, mediators can more effectively empower parties to take ownership of their disputes and solutions. This shift from an illusion of neutrality to an engaged, self-aware practice ultimately leads to a more inclusive and equitable mediation experience.

## Advocacy and Empowerment

[Mayer](#) and others suggest moving beyond neutrality toward advocacy. Mediators can play an active role in levelling the playing field, ensuring that disadvantaged parties have a voice. This doesn't mean taking sides but rather facilitating a process where fairness prevails over rigid adherence to neutrality. In doing so, mediators must however ensure that their efforts to promote fairness are truly shaped by the parties' circumstances and the mediation process itself rather than their own sense of justice.

Further, advocacy doesn't necessarily compromise the mediator's role. Instead, it redefines it. By advocating for equitable participation and ensuring that power imbalances are addressed, mediators can enhance the integrity of the process. This is, however, only attainable if done with restraint. A mediator must intervene enough to prevent exploitation or coercion while avoiding actions that could be perceived as favouring one side. The challenge lies in distinguishing between necessary

intervention and undue influence. In cases where one party lacks resources or knowledge, a mediator's guidance can bridge these gaps without undermining the overall fairness of the proceedings. Having said that, the line between guidance and advocacy is thin, and crossing it risks shifting from facilitation to partiality. Mediators must always consider that their role does not involve championing an outcome but creating conditions where parties can negotiate on more equal footing without distorting the process in favour of one side.

### **A New Vision for Mediation**

In conclusion, one may argue that the time to reassess the significance of the pursuit of 'neutrality' in mediation is now upon us. Instead of neutrality, embracing approaches that prioritise fairness, transparency, and empowerment can help mediation evolve into a more effective, inclusive, and just method of dispute resolution.

Further, while neutrality might be overrated, the potential of mediation is not. Let's reimagine the mediator's role—not as a passive observer but as an active facilitator of equitable outcomes. The result? A mediation process that truly serves its purpose: resolving conflicts in a way that is fair, balanced, and transformative.

By replacing neutrality with more practical principles, mediators can help parties navigate disputes with greater clarity and purpose. Transparency fosters trust, self-awareness, reflexivity, and inclusivity enhance fairness, and advocacy empowers the vulnerable. Together, these elements form the foundation of a new mediation paradigm—one that aligns with the realities of human interaction and the complexities of conflict.

Ultimately, this shift isn't just about redefining mediation; it's about improving it. When mediators move beyond neutrality, they unlock the full potential of their role, enabling outcomes that are not only just but also transformative for all involved.

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