

# THE MEDIATION OF INFORMATION AND COMMUNICATION TECHNOLOGIES IN ADVOCACY

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## **Abstract**

*This article aims to study mediation and its various approaches and forms of action, to identify its applicability in the professional legal arena. It has been with the assumption the existence of an apparent conflict that permeates this profession whose human actions already are established, but that have been impacted by the actions not human (technology) based on the economics of information and knowledge. It is questionable if mediation can act in the transformations suffered by law in face of the changes that the Information and Communication Technologies-ICT have caused in society. We opted for research of an applied nature, contemplating intervention in social reality, with a qualitative approach, with an exploratory objective, whose method is the inductive one, as the general conclusion is based on a set of particular observations from the literature. As a result, important theoretical elements were identified for the debate on mediation and its ability to lead in the transformation processes of advocacy.*

**Keywords:** Mediation; Information Science; Right; Advocacy; technology.

## **1. Introduction**

Data science, which a decade ago was unknown by most legal professionals, has even affected the regulation of law that for a long time was, or why not say, is still distant from the technological environment. In this scenario, the most futurists point out that many of the current occupations will be extinct in the coming decades and law has often figured among those that will undergo major transformations, creating an environment of emergency change.

The Information and Communication Technology (ICT) has gained ground in the legal work discussion and with that comes, including placing the lawyers to the test in studies that claim to compare their performances with the technological resources.

As an example, we can mention the “AI vs. lawyers : the ultimate showdown [\[1\]](#)”, in which, twenty lawyers trained in the United States, with decades of legal experience ranging from law firms to corporations were asked to issue legal issues contract in competition with I intelligence The artificial (IA) developed by three years and trained from the analysis of various contracts.

Notwithstanding the results, which, it must be said, were quite favorable to the human element in terms of assertiveness, such questions point to the inexorable fact that lawyers need to extend their competences beyond law, capitalizing on the advantages of technology in your favor par r that can thrive in the decades without worrying about long and exhausting working hours, especially work routine.

Is the proclaimed change in the performance of implies lawyers' model in the establishment / implementation of a mediator system capable of relating human actions established by professional advocacy with that nonhuman dictated by the Information Communication Technologies (ICTs). In this sense, Deponti (2008, p. 3) highlights that "Mediation is the institutionalization of a system of rules that mobilize behavior change and that aim to reduce disharmony between worldviews and promote dialogue between them".

Therefore, it is urgent to establish a discussion of mediation as an element necessary the for a link between the individual dimension of the lawyers and their particularities and singularities and non - human aspects represented today by ICT. So, would mediation be the appropriate way to balance the interests involved in this field that has been highly influenced by ICT?

Taking into account the diversity of approaches around the mediation and their ways of doing business, the objective is, look at it as a theory and understand its importance to equate the interests involved in advocacy considering the assumption guiding this study to be an apparent conflict between actions human beings already established and non-human as to the model of exercise of this professional activity.

## **2. Method**

In order to carry out this article, applied research was chosen, contemplating intervention in a certain social reality. The approach used was qualitative, and exploratory, theoretical, made possible through a narrative review of literature to provide a theoretical basis for future empirical research study of various profiles of lawyers, developers, users, teachers, working in the public sphere and private, as to the influence of ICT on professional practice. The n addition addition, this narrative review is to base substantiate the problem researched and contribute something new to the accumulated knowledge (Paré, 2015). The method is inductive because the general conclusion is based on a set of particular observations from the literature (Creswell, 2007).

In this sense, it is clarified that, in order to prepare the research reported herein, in addition to the classic literature, articles published in journals were mapped, raised by structured search procedures in the Capes Journal Portal, in the Academic SearchPremier and Business Source Elite databases (both available from Ebsco), Scientific Electronic Library Online (SciELO) and Research Gate. The investigation, in the referred indexers, took place from the keyword's mediation, information science, law, advocacy, combined with the use of logical operators, in the title and abstract fields. Dissertations, theses, duplicate texts were

excluded from the product, videos, images or articles that, after reading the abstracts, did not present concepts related to the theme of this investigation.

There was no temporal delimitation, but only essays in Portuguese, English and Spanish were selected, as well as those whose full texts were available. The research also made it possible to establish a conceptual basis needed to understand the different approaches to mediation and the main influences of Information and Communication Technologies on advocacy. The results found show that specific studies on the topic and especially its combination are still incipient, revealing the innovative and unique character of the research, constituting a call for future studies.

It is noteworthy that this writing is part of a broader study aimed at deepening the theme, while the results and possible debates arising from the current narrative literature review are shown in the next section.

### **3. Literature review**

#### **3.1. Mediation as an instrument of social transformation**

This study allowed us to identify that mediation has different approaches. It is a concept used both from an informational and cultural perspective, as well as an educational and pedagogical one (Da Silva, 2018). According to Deponti (2008, p. 2), it is the mediation of a “set of knowledge, ideas, values, beliefs, knowledge, ways of behavior and worldviews that are transmitted with the aim of building new positions and identities.”

For legal professionals, mediation is generally related to an extrajudicial and alternative way of resolving conflicts (Almeida, 2016), where “access to justice, the guarantee of the effectiveness of rights and participation in the shaping of the own right, which must be achieved not only by the Judiciary, but by all instances of society” (Orsini, et al, 2017). It is an approach aimed at a merely curative perspective in relation to disputes (Carrasco, 2005).

Almeida (2016) mentions that, in addition to being understood as a mode of social regulation, it has two other distinct conceptions that are linked to American and European cultures, the first being related to an alternative means of conflict resolution, and the second which has its origins in the Declaration of the Rights of Man and of the Citizen of 1789.

In relation to Information and Communication Sciences, Marteleto (2013, p. 6) highlights the presence of the concept in three ways:

“a) incidentally, in which the most common use refers to the action of serving as an intermediary to facilitate communication; b) with operational use to designate, describe or analyze a specific process in media, pedagogical, cultural, institutional mediation or in the use of technologies; c) with the objective of obtaining a theoretical definition for mediation, as a philosophical object and as a scientific object.”

The mediation, according Jeanneret (2005 p.105), has the ability to translate one culture to another and make the mediation between the same men who through "magical devices." Thus, it is understood that this is a necessary instrument to promote the correct insertion in the digital market in a balanced way, respecting the real interests of its professionals, promoting the social pacification of the legal work.

As highlighted by Silva (2015, p. 102), mediation allows the individual to reconstruct knowledge by questioning certain certainties or uncertainties in certain social contexts, such as what happens in relation to the law, which is permeated with doubts in relation to the present and to the future, considering the transformations that the legal sector has been undergoing due to technological influences.

The uncertainties that permeate the use of technology in the legal field constitute great dilemmas for lawyers, and in this scenario, there are those who intend, such as the Luddites of the 19th century<sup>[2]</sup>, fight against this reality and, also, those who intend to appropriate it in favor of a better, more agile, safe and economical law.

In this sense, we see mediation as an important element of social change, considering the possibility of agents located in different social positions to interact in the perspective of building a new reality, as mediation is constitutive of human beings and their social experience (Rech, 2017). It is a theory that allows bringing to the social field an appropriate reflection to understand the informational identity of the lawyer and his practices, meanings, contents and traditions (Almeida, 2008).

As it is a "process of dialogue or interaction between members of a given community" (Rodrigues, 2000, p. 84) it is possible to see mediation as an adequate support for the establishment, or reestablishment and cementing of bonds between legal professionals which, on the one hand, resist change and, on the other, approach it, since, in Gomes' view (2014, p. 7), mediation allows "intersections between the "old" and the "new" from the point of view of sharing, cooperation and openness to dialogue between subjects.

Marteletto (2013, p. 3) highlights that:

"In the social sciences, sociologists of culture and institutions, such as P. Bourdieu (1983), began to approach mediations not as a voluntary transmission of ideas, but as a process of internalization of norms and behavior acting through a « system of appointments and social positions », leading subjects to adopt certain practices as if they were natural."

For Davallon (2007), common sense attributes two meanings to the mediation of information. The first presupposes a conflict between parties and involves an idea of agreement or reconciliation, as in the law. The second, and most recurrent for the author, would be the action of serving as an intermediary or being what serves as an intermediary. In this sense, there would not be just an interaction or a simple relationship, but the passage to a more satisfactory state. In other words, mediation would produce something more.

Davallon (2007) exemplifies, based on the work *L'Utopie de la communication* (BRETON, 1997, p. 137-139), that mediation has the function of helping people to communicate better because they are a response “to acute awareness that we have a social separation, a distance from each other, accompanied by a need for approximation.” In this way, it plays the role of intermediary in facilitating communication, favoring the transition to a more appropriate state.

From a sociological point of view, the same author (Davallon, 2007, p. 7) emphasizes that mediation is a means to address the “effect” of new technologies in the social environment.

“ In this case, the term mediation serves to escape the double social and technical determinism: mediation is technical "because the instrument used structures the practice"; and social "because the mobiles, the forms of use and the sense awake to practice are regenerated in the social body" – needs , for example , Josiane Jouët [\[31\]](#) ” .

For law practice and its traditions, changes between previously established human actions for non-human ones are especially conflicting, given the reasons already explained regarding the traditionalism of the profession, which leads us to a coherent synthesis of the issue presented by Kerr Pinheiro (2012, p. 3) where he asserts that “mediation is not a natural process among humans, especially today, due to the non-human aspects strongly represented by information and communication technologies.”

Thus, in view of the multiplicity of approaches to mediation, without a perspective that exhausts the topic, the use of such approaches in a complementary way allows the construction of a theoretical framework that can coherently and logically transmit the professional transition of the lawyer, in view of the presupposition of the need for an articulation between subjects and technology.

### **3.2. Influences exercised by information and communication technologies in advocacy**

People and companies, in their turn, differ as information and communication technologies take ownership and are able to break paradigms and break markets in a new logic dictated by what Christensen (2012, p. 328) called “breakthrough innovation”.

ICT as Pinochet (2014) are based on the study, development and practice of computer systems, the union software, hardware and peopleware, supported by communication networks. These technologies are responsible for the beginning of a new social dynamic, the information society, which represents a response to the traditional capitalist system (LASTRES E FERRAZ, 1999), dependent on major disruptions.

The emergence and development of ICT has significantly transformed the way people interact, also modifying production processes, work, the way of doing business, educational processes, public services, entertainment habits and, in this context, Law did not escape unscathed from changes, as its various areas (Jiménez and Quintana, 2017), such as law, began to discuss the subject from the second decade of this century.

Experiences such as the use of artificial intelligence, blockchain, smart contracts, legal design, mentioned in Maldonado et al. (2019), demonstrate that technologies have been rationalizing complex or repetitive tasks, with better performance and assertiveness in a shorter period of time, allowing human professionals to devote more time to strategic work of greater value.

Lawyers play a vital role in legal work, but without the use of technology they are not able to make it more competitive or impactful (Vieira and Fonseca, 2019). The precision of the man-machine union is henceforth necessary for the legal reality, which guarantees more consistency and precision than what is done only in a human or non-human way in isolation (Maldonado et al., 2019).

Susskind (1998) was one of those responsible for starting debates about the future of the legal market and its professionals, especially lawyers. The author exposed the shocking reality and challenging the established crisis in the sector, with the advent of ICT, entails a change to the future the profession. The practice of law began to demand new skills from workers to deal with a new social scenario and with unprecedented work tools. Galvão (2019, p. 19) does not exempt lawyers from taking a leading role in the changes needed for the career, because “although the law itself takes longer to update, the technologies that serve as platforms for the law are much faster, exponential, and it is the lawyer's duty to anticipate this technological change”.

Harari (2018, s/ p) also shares the evidence that points to the extinction of jobs (with specific mention to lawyers<sup>[4]</sup>), in a real perspective of unemployment, which “does not leave anyone indifferent.”

Schwab (2019) highlights the drastic transformation that technologies bring about in the nature of work and its sectors of occupation, noting that:

“First, there is a destructive effect that occurs when disruptions fueled by technology and automation replace labor with capital, forcing workers to become unemployed or relocate their skills elsewhere. Second, the destructive effect is accompanied by a capitalizing effect, in which the demand for new goods and services increases and leads to the creation of new professions, businesses and even industries.” (SCHWAB, 2019, p. 675).

Advocacy is a very traditional professional activity, whose practices have undergone rare changes over time. Even today, despite all the informational advances in society, few people recognize the law as a business, as is the case with the legislation that regulates the profession, which is quite restrictive and conservative.

In Brazil, as mentioned by Vieira and Fonseca (2019), a large part of the services provided by lawyers or law firms is artisanal, which means that they perform tasks that do not necessarily depend on such a specific qualification, with severe implications both from the point of view of view of the professional, how much of his client, who ends up paying more than the service should cost. In addition, the authors mention



that computerized systems, in most cases, are limited to editing documents and organizing files, always with a high level of human interaction.

Susskind (1998) reports that the future of information technology (IT), in the practice of lawyers, is based on the provision of facilitating resources and the availability of legal information to clients without the mediation of professionals. Basically, Susskind (2017) discusses the challenge of “more for less”, the liberalization of legal practice and the manipulation of technology, both for its social propagation and for its ability to deal with it. Surveys conducted by the author show that lawyers must be aware and understand the changes that surround them and that are necessary for the performance of their activities.

In the preface to the book *Between Data and Robots* (MAGRANI, 2019) Sérgio Branco (2019), Director of the Institute of Technology and Society of Rio de Janeiro (ITS Rio), highlights that one of the greatest contemporary challenges of Law is the speed with which the technology develops and the consequences of that progress. According to Branco, the Law seeks to understand the world in order to organize the potential chaos of all things and, despite all its delay, it always brings a balance between action and regulation.

According to data from the CNJ Justice Report (2019), the Judiciary Branch of Brazil ended the year 2018 with 78.7 million cases in progress, awaiting some definitive solution, that is, the country demonstrates a high degree of litigation that implies the constant search for technological solutions and mechanisms that guarantee more speed in judicial activities, with less use of time by law operators, less expenditure of financial resources and greater assertiveness.

But the lawyer does not only live with huge volumes of lawsuits. It is necessary to highlight the even greater, because not to say countless, number of court decisions, laws, regulations, standards that are part of the daily routine of this professional, which reinforces the importance of the search for technological support.

It is clear, therefore, that these data point to the tendency for this sector to be influenced by ICTs as it needs to become more effective. With this, the lawyer is being launched in a new scenario that calls for changes in the professional profile, new institutional arrangements, training methods and a system that can mediate human actions that are already established, with the non-actions resulting from ICTs that are yet to be established.

In this sense, we highlight, among others, a particularly disturbing aspect for the future of law, which is artificial intelligence, due to its use as a substitute for the work carried out by lawyers. Felipe and Perrota (2018) rightly state that: “The application of artificial intelligence to the Law certainly touches the pride of some professionals, who opt for a luddism position of denying the evolution of language and the advancement of the means of legal work.”

Anyway, we see in mediation an integrative perspective, which allows the transition from the old to the new professional with a reduction of negative social impacts resulting from such change.

#### **4. Conclusion**

Initially this research sought to find in referenced in scientific data bases authors, evidence about the influence of technology in law and its establishment as actions non-human, as well conceptual aspects that the mediation system as an element capable of intermediating the changes that the law has been undergoing.

The harbinger of a possible change in job right of action requires a deepening in the discussion about adapting to these new conditions influenced the market for ICT, given two positions trim n t and mind antagonistic to the traditional lawyer, single, liberal, classic, in organization, clientele and tacit knowledge, exclusive support in the traditional sources of law - law, doctrine and jurisprudence, for its exercise. (ARNAULT, 2002) and the Global lawyer, with new skills and competences to implement legal solutions of global reach, with mobility and connectivity (WHELAN, 2008), bringing, consequently, a new definition of the social role of law (GHIRARDI, 2014).

In this context, generating disruptive innovation represents a challenge for advocacy in a society in which information governs the world through an economic bias. The disruptive revolution, necessary to promote a radical transformation in the area, still seems to be an excessively drastic change in the legal environment, a fact that encourages reflection, as warned by Susskind (1998, p. 19), on the survival of these professionals. The challenge, for Galvão (2019, p. 19), should not center on the automation of already established legal practices, but on the creation of “new practices, never considered possible until then”. And this reflection presents us with other challenges: how?

Considering the existence of globalized movements for the transformation of Law, typical of the new society based on the fourth industrial revolution, whose characteristics are speed, breadth and depth, complete transformations of systems, disruptions fueled by technology, replacement of labor by capital, creation of demands for new goods, services, professionals and companies (BAUMAN, 1999) it was found that the present review presented theoretical elements that allow demonstrating that mediation can act in the “operative” sense cited by Marteleto (2013), translating as “magic devices” a culture already established in another, as presented by JEANNERET (2005), to lead the law practice to a “more satisfactory state”, as mentioned by Davallon (2007), in view of the scenario of transformations caused by ICT.

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[2] The name "movement Luddite, which began in the seventeenth century with acts of destruction of machines powered by water or wind and peaked at in e -nineteenth century heat in the English industrial districts was characterized by channeling the anger of workers against the machinery that, instead of capitalist logic, creates the fundamental tool for its exploitation." (OAK, 2018)

[3] JOUËT, Josiane (1993b) " Usages et pratiques de nouveaux outils de la communication", Dictionnaire critique de la communication / sous la dir. from Lucien Sfez, Paris, Presses Universitaires de France ( coll ." Grands dictionnaires ").

[4] "The more we understand the biochemical mechanisms that underpin human emotions, desires, and choices, the better computers can become at analyzing human behavior, predicting human decisions, and replacing drivers, finance professionals, and human lawyers."