Debreceni Jogi Műhely 2024. (XXI.) 3-4.
Debreceni Egyetem, Állam- és Jogtudományi Kar, Debrecen
(University of Debrecen, Faculty of Law, Debrecen)
DOI 10.24169/DJM/2024/3-4/6

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MEDIATION'S POSSIBLE INFLUENCE ON LEGAL RESEARCH METHODOLOGY: A WINDOW ON NON-DOCTRINAL LEGAL APPROACHES?

Debreceni Jogi Műhely, 2024. évi (XXI. évfolyam) 3-4. szám (2025. február 15.)

DOI 10.24169/DJM/2024/3-4/6

Abstract: Doctrinalism's dominance in legal scholarship, particularly in the traditional civil law European countries, has become an accepted truth. Nevertheless, new methodologies for legal research started to emerge and take different approaches to how studying law should be. This is the situation with the multidisciplinary and interdisciplinary methodologies, which present external methods that are open to various disciplines. Thus, they contradict doctrinalism's internal logic which is based essentially on the 'black-letter reasoning'. Mediation is a process of a mixed sociolegal nature that we believe might boost the interest in a multidisciplinary approach, especially under the current context of the increasing regulatory tendencies encouraging recourse to this process and the failure of traditional and more formal procedures such as litigation to provide litigants with cost and time-efficient solutions. Nonetheless, it is reasonable to mention that several hurdles exist, including resistance to mediation to make this contribution. This paper aims to provide an overview of this methodological debate and the potential influence of Mediation as an Alternative Dispute Resolution (ADR) mechanism in this context.

Keywords: Mediation, Methodology, Influence, Multidisciplinary, Interdisciplinary

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A mediáció lehetséges hatása a jogi kutatás módszertanára: egy ablak a nem dogmatikus jogi megközelítésekre?

Absztrakt: A doktrinalizmus dominanciája a jogtudományban, különösen a hagyományos kontinentális jogrendszerrel rendelkező európai országokban, elfogadott igazsággá vált. Mindazonáltal új jogi kutatási módszerek is jelen vannak, amelyek eltérő megközelítéseket alkalmaznak a jog tanulmányozásának módjára vonatkozóan. Ilyenek a multidiszciplináris és interdiszciplináris módszerek, amelyek külső, különböző tudományterületekre nyitott megközelítést kínálnak. Ezáltal ellentmondanak a doktrinalizmus belső logikájának, amely lényegében a "black-letter" érvelésen alapul.

A mediáció olyan vegyes szociáljogi természetű folyamat, amelyről úgy gondoljuk, hogy elősegítheti a multidiszciplináris megközelítés iránti érdeklődést, különösen az egyre növekvő szabályozási tendenciák mellett, amelyek ösztönzik ennek az eljárásnak az igénybevételét, szemben a hagyományosabb és formálisabb eljárásokkal szemben, mint amilyen a bírósági igényérvényesítés, hogy költség- és időhatékony megoldást kínáljanak a jogvitában érdekelt felek számára. Mindazonáltal érdemes megemlíteni, hogy számos akadály létezik, beleértve a mediációval szembeni ellenállást is, amelyek gátolhatják ezt a folyamatot.

A tanulmány célja, hogy áttekintést nyújtson erről a módszertani vitáról, valamint a mediációnak, mint alternatív vitarendezési mechanizmusnak a lehetséges hatásairól ebben az összefüggésben.

Kulcsszavak: mediáció, módszertan, befolyásolás, multidiszciplináris, interdiszciplináris

Möglicher Einfluss der Mediation auf die Methodologie der Rechtsforschung: ein Fenster zu nicht-doktrinären Rechtsansätzen?

Abstrakt: Die Dominanz des Doktrinalismus in der Rechtswissenschaft, insbesondere in den traditionellen europäischen Ländern mit Zivilrecht, ist zu einer akzeptierten Wahrheit geworden. Dennoch begannen neue Methoden für die Rechtsforschung aufzutauchen, die unterschiedliche Ansätze für das Studium des Rechts verfolgen. Dies ist der Fall bei den multidisziplinären und interdisziplinären Methoden, die externe Methoden präsentieren, die

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verschiedenen Disziplinen offen stehen. Sie widersprechen somit der internen Logik des Doktrinalismus, die im Wesentlichen auf der "Black-Letter-Argumentation" basiert. Mediation ist ein Prozess gemischter sozio-rechtlicher Natur, der unserer Meinung nach das Interesse an einem multidisziplinären Ansatz steigern könnte, insbesondere im gegenwärtigen Kontext der zunehmenden Regulierungstendenzen, die den Rückgriff auf diesen Prozess fördern, und des Versagens traditioneller und formellerer Verfahren wie Gerichtsverfahren, den Prozessbeteiligten kosten- und zeiteffiziente Lösungen zu bieten. Dennoch ist es sinnvoll zu erwähnen, dass es mehrere Hürden gibt, darunter den Widerstand gegen die Mediation, diesen Beitrag zu leisten. Ziel dieses Dokuments ist es, einen Überblick über diese methodologische Debatte und den potenziellen Einfluss der Mediation als Mechanismus zur alternativen Streitbeilegung (ADR) in diesem Zusammenhang zu geben.

Schlagworte: Mediation, Methodik, Einfluss, multidisziplinär, interdisziplinär

Introduction

Mediation is an alternative dispute resolution mechanism consisting of appointing a neutral third party called a mediator, whose role is to approach the positions and resolve a conflict between two parties. Even if only recently this process started to get the attention of lawmakers, its history seems to be very old and estimated by some scholars to be rooted in human practice thousands of years ago (Folberg, 1983; Miranda, 2014; Vinther & Reynolds, 2021). Mediation in our current era might be considered a part of most legal systems as an alternative to litigation, at least theoretically and on paper. This historical evolution of mediation from a simple social practice used to resolve community conflicts to a mechanism that is getting more and more surrounded by formal regulatory instruments we believe it might have an impact on legal scholarship methodologies. In general, we can say that legal research consists of efforts made by researchers and other legal actors who aim to find answers to issues from a legal perspective and thus contribute to advancing the science of law (Khushal & Filipos, 2009, pp. 2-4). However, legal studies approaches are diverse and could be classified into many different methods according to the criterion used. The specific nature of mediation might lead us to adopt a study centered on the classification which is based on the level of interaction of legal studies with other disciplines. Therefore, when examining the approaches used in legal research no

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one could deny the famous division between doctrinal and non-doctrinal approaches. The element or the line between the two methods is the level of connection to the statutory provisions and cases (Khushal & Filipos, 2009, pp. 70-71). Put simply, if the doctrinal method primarily focuses on the analysis of the rule of law and thus called the internal approach, the non-doctrinal method tries to base its solutions on a logic that goes beyond the "black-letter" one so that it embraces other extra-legal disciplines, which could explain why they call it also the external approach in legal studies. Multidisciplinary approaches are a concrete example of this division because of the interactions with other fields they use when conducting research.

The idea that we are trying to explain in this study consists of the possible impact of mediation on the approaches used in legal research, especially considering the increasing attention it is getting from lawmakers and scholars in the last decades.

In other words, the compound nature of this mechanism seems to require an approach that is open to many other disciplines such as psychology, economy, and sociology to achieve research of quality in the field (Douglas, 2008, pp. 134-135).

Nevertheless, even if mediation might pave the way or at least strengthen the existence of multidisciplinary approaches in legal research, it seems worth mentioning that this mission or influence could face significant challenges and resistance from doctrinal approaches.

Therefore, the following questions might be posed: Could the unique mixed nature of mediation affect the methodology used in legal research? And what are the factors that might support or hinder this influence?

This paper will use a socio-legal qualitative methodology while examining how mediation could open the door to other disciplines. This is justified by two simple reasons: the first is the heterogeneous and mixed nature of the mediation process as a non-purely legal one, and the second is the orientation of this topic itself which is not tackling a technical legal issue but focuses on the question of research methodology which is by definition open to other fields. It is equally essential to note that, despite providing a basic overview of some legal texts regulating mediation and their scope, this study does not take a doctrinal approach in the strictest sense of the word.

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1. The framework of the study

1.1. Theoretical context

This paper might take its place in a larger debate on the methodology used to conduct research in the legal field. A strong discourse over the interaction between law as a discipline and society, and whether legal scholarship could use and benefit from techniques and knowledge that are derived from other disciplines that are not purely legal. The division among scholars between doctrinalism and multidisciplinary approaches is concrete proof of this hot theoretical context (Vick, 2004; Van Gestel & Micklitz, 2011; Roux, 2015; Nkansah & Chimbwanda, 2016). Legal research was consistently heavily influenced by the dominance of doctrinalism and the increasing attempts to introduce multidisciplinary methods; even with a difference in the development of this discussion between regions. The nature of ADRs in general and the increased interest in these alternatives from lawmakers is pushing more scholars to study their contribution or influence in developing the mentioned debate (Rifkin et al, 1980; Douglas, 2008). Many issues might be posed here such as the place that ADR might take in legal education or the suitable approaches to do legal research in this field. Our paper builds on the previous contributions, to see whether a mixed nature process such as mediation which is open to many disciplines other than law might influence this debate in favor of the multidisciplinary approach. During this work, we will analyze and present the possible factors that may assist this influence and the challenges that might make it difficult for mediation to make such a contribution to the legal methodology discourse.

1.2. Legal context

This paper is more about the methodology used in legal research rather than a pure description of a legal framework of an institution or a mechanism. In other words, even with the increase in regulations linked to mediation, our approach will not dive deep into analyzing legal norms or rules. However, what is interesting in these legal developments, is the scope of legal texts that are surrounding mediation. Unlike other procedures such as litigation, not every aspect of mediation is regulated, this mechanism is partly regulated in most cases,

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which we believe will create a gap that facilitates the interaction with other disciplines. Additionally, this paper also while trying to examine the influence that might be made by mediation on the legal research approaches, seeks to understand how an increase in regulations could be interpreted in connection to this role of ADR mechanisms in two different ways; assisting factor and obstacle at the same time. It is possible to mention international, regional, and national legal texts in this situation, with a concentration on the European setting in particular due to the predominance of doctrinal methods in this region.

1.3. Social context

Regarding the social context, we could think about the situation of justice nowadays which is suffering from many issues related to funding and lack of resources. As we will explain later in detail there is a crisis in the traditional judicial system that is becoming less and less adequate to satisfy the minimum requirements of the right of access to justice as an essential human right. This situation of long and inefficient procedures we believe will challenge the role and dominance of courts in the future. In relation to our paper, it is fair to mention that we expect this social context to produce a shift in legal research and the solutions suggested by scholars and jurists. In other words, Courts and ADRs including mediation present the other side of a long historical debate of which methodologies are seen as most adequate for legal studies. Many contradictions between the formal justice of courts and less formal or informal justice of mediation, between the authority of the rigid rule of law and the flexibility of mediation, and between applying the law or focusing on resolving the dispute even outside the logic and solutions provided by legislative norms. All of those contradictions and the issues facing courts, we believe might boost the debate between doctrinalism and the multidisciplinary approach, we expect that this discourse will be in favor of the second methodology as doctrinalism dominance in legal research might be seen as an era of "failure" in serving justice.

2. Doctrinalism influence on legal studies: EU/ US comparison

Doctrinalism as we previously mentioned is a method of legal research that is focusing on the rule of law and cases as a subject while excluding other disciplines. This approach's influence on legal studies in many countries is

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significant but to different degrees due to various factors and contexts. A comparison of this influence in two different legal systems like the US and EU countries that belongs to another legal culture might be beneficial as a preliminary step for our paper. Even if we agree that doctrinalism exists in both regions and sometimes it dominates the legal research field, we still might differentiate some characteristics. In the US, legal education is still dominated by doctrinal approaches, however, there is a tendency in research, especially in elite law schools to use multidisciplinary methods (VanGestel & Micklitz, 2011, p. 2). This tendency of using multidisciplinary legal approaches might be explained by the American legal realism that existed in the US in the twenties and thirties of the last century (Tumonis, 2012, p. 1362). Legal realism was centered around the idea that law should be applied and interpreted in a creative way that serves public policy and social interests, just the opposite of legal formalism where the law is seen as a set of rules that are isolated from social purposes and thus the role of judges is limited to applying the rule of law as it is ("Legal formalism vs. legal realism"). Even if doctrinalism still plays a major role in the United States, we believe that the tendency to use multidisciplinary methods might be logical continuity to legal realism that started to question legal formalism. Consequently, the debate between doctrinalists and multidisciplinarians is the other side of the clash between formalism and legal realism.

On the contrary doctrinalism's influence in the EU countries seems to be stronger as an approach that only recently started to face competition with multidisciplinary methodology, this is what was expressed by some scholars as the emerging debate of the nature of legal studies in the EU (VanGestel & Micklitz, 2011, p. 2; Van Gestel & Micklitz, 2014, pp. 294-297). This clear influence of doctrinal methodology on European countries may perhaps be a result of the roman law heritage's impact on civil law systems which is the case here, as experts assert that the logic of scholars who belong to legal systems influenced by the Roman law, is centered on the analysis of legal rules in codes or principles derived from these instruments (Vick, 2004, pp. 190-191) which fits perfectly with the main features of doctrinal methodology.

Therefore, we might say that doctrinalism is still present in both regions, however, current tendencies are diverse; in the US even if the experience with a interdisciplinary approach is more notable than the emerging one in the EU there is criticism of the accuracy of empirical studies conducted under this type of methodology and thus maybe it could reinforce or make a return to doctrinalism

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again as a safer option (Van Gestel & Micklitz, 2011, pp. 23-24). In the EU the dominance of the doctrinal approach is clear, however, the influence of the trends in the US is undeniable in a way that empiricism which is developing in the US might be considered a source of inspiration for European scholars to move toward what is described by "the Americanization of legal thinking" (Van Gestel & Micklitz, 2011, p. 23; Van Gestel & Micklitz, 2014, p. 310).

This diversity and intersections of doctrinal and multidisciplinary methods could lead us to think about what could foster the growth or enhance the existence of one approach more than the other.

We believe mediation due to its unique nature, could have an impact on the methods used in legal studies.

3. Mediation a window on the multidisciplinary approach in legal studies

Mediation is a process that developed from a social practice used in a traditional way to solve disputes among community members to a mechanism that is surrounded by a legal framework with a scope that varies from country to country. The integration projects in some regions helped to boost the process of regulation, the EU Mediation Directive 2008 might be a perfect example especially since it has been followed by a high number of new legal texts or amendments on previous ones in most member states (De Palo et al., 2014, p. 6). This transformation or at least movement from a purely social to a mixed mechanism of sociolegal nature we believe it will compel legal scholarship to do two things. The first one is to start doing legal research about mediation as now it is a matter of fact that this process is a part of most legal systems or under consideration in others and doctrinalists can no longer consider it as an external field that does not belong to codes or case law. The second influence will be the methods used to study this mechanism. In other words, is a purely normative or doctrinal approach able to analyze and conduct legal research linked to mediation which has a complex structure that is a mix of both legal and social elements? Does the logic of black-letter interpretation inside the box of codification and formalism have the capacity to develop mediation even with its less formal features?

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To answer this question, we might recall a remark made by Professor Stacie Strong about the general orientation of research linked to mediation. She concluded that existing studies in the field are tackling different topics such as empirical studies on domestic mediation, the legal analysis of the increasing international legal instruments related to mediation, and the way the mediation process itself is conducted (Strong, 2016, pp. 2006-2016).

This point could be relevant to our context as if the topics that have a legal orientation might be processed and analyzed, at least theoretically, with a simple doctrinal approach, we believe that the other type of research linked to the process of mediation could be skeptical and raise problems in connection to the best methodology.

Many scholars now while trying to make their contribution to legal research related to the mediation process, are borrowing concepts and studies from other disciplines, like history, philosophy, psychology, or even anthropology to explain how this mechanism is functioning and what are the prerequisites for a fruitful outcome (Barkai, 2008; Lee & The, 2009; Miranda, 2014; Lee, 2016).

Scholarship consideration of neighboring fields other than legal dogmatics could be justified by many factors such as the characteristics of international conflicts that introduced cultural diversity between disputants (Barkai, 2008, p. 43; Strong, 2016, pp. 2008-2009), and thus made of the logic that was valid for a certain type of dispute not necessarily valid for the other ones with different features.

Experts explained that cultural differences might have a huge impact on the way the process of mediation is done or the communication styles used and how a good mediator should consider this when trying to approach the positions of parties (Barkai, 2008; Lee, 2016).

It is fair to add that domestic mediations are no exception as even if they might seem less vulnerable to cultural diversity, they still necessitate recalling other fields than law and anthropology.

In other words, psychology also is imposed by the unique nature of mediation as a process based on communication and interaction, thus mediation functioning seems to be in crucial need of the minimum understanding of psychological influence as usually, emotions, feelings, beliefs, body language, personality styles… plays a significant role in achieving a successful mediation (Hoffman & Wolman, 2012, p. 759). Even if we believe that psychological elements should be

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considered in different types of mediation, the intensity might vary depending on the field of the dispute as it is logical to think that family mediation probably is more vulnerable to tensions linked to emotions than a dispute related to a business transaction.

This interaction of mediation studies with other disciplines might be justified by the characteristics of the process itself. A process on one side is based on communication, and on the other side, it is usually not regulated by a set of strict and detailed procedural steps, such as in litigation or arbitration.

Put simply, while trying to develop a legal framework for mediation, lawmakers usually focus on some issues that require a minimum level of legal certainty such as the confidentiality of the process, limitations or the enforcement techniques of settlements resulting from mediation and they avoid regulating the way the process of mediation is conducted, at least with mandatory rules, to ensure a space for innovation in this mechanism (Alexander, 2008, pp. 20-23).

This does not, however, imply that the process is totally unregulated; rather, it indicates that the State recognizes the importance of other players, such as service providers and parties, and their potential for more innovative and flexible regulatory approaches (Alexander, 2008, pp. 21-23).

This less-regulated process, or to be more precise differently regulated one, we believe is behind this multidisciplinary approach in mediation studies as the process of mediation with its heterogenic features from the role of communication to legal institutions such as contracts might open the door to approaches that go beyond the doctrinal methodology.

As previously mentioned even with increasing legal texts regulating some issues linked to mediation, it is hard to say that we could limit our study to a doctrinal approach when dealing with a mechanism that has a nature that is influenced by many other disciplines than law.

Interestingly, the same increase in regulations may also be viewed as an incentive for academics (especially doctrinalists) to carry out additional research on this mechanism, which would support the development of interdisciplinary approaches in legal scholarship through mediation as a window.

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4. Context assisting this influence

4.1. A crisis in litigation

The context here is the reality of the classic structures which are delivering justice namely courts, a situation of failure to respond to the prerequisites of reasonable time in ensuring the right of access to justice as mentioned in article 6 of the European Convention on Human Rights. The average estimated time for litigation in the European Union is 697 days (ADR Center, 2010, pp. 48-49), which is a long period that probably will raise questions about the effectiveness and efficiency of those procedures in delivering justice.

These doubts are strengthened by other elements that will make access to justice even harder, as adjudicative methods in general require high financial resources to cover the process from the moment the case is initiated till rendering the final decision. For instance, for a commercial dispute valued at 200.000 Euros, litigation costs in the EU are estimated to reach 13% of the dispute value (25.337 Euros), compared to only 4.7% if mediating (ADR Center, 2010, pp. 48-49).

This context of slow and expensive justice might be considered a failure that is not limited to the judicial system and its classic authority paradigms but covers the doctrinal approach to legal studies in general. A methodology that even with its focus on ensuring certainty and consistency, neglected the need for creativity and interaction with the changing external environment. The reaction from lawmakers is in most cases either absent or too late compared to the emergence of issues in society. The authority of the rule of law as it exists and the exclusion of other disciplines, made some doctrinalists believe that judges by their interpretation powers could substitute this lack of creativity. This option was criticized by Professor John Hamilton Baker through a funny description that compares the litigation's role to playing chess and expecting that new rules of chess will appear while playing (Baker, 2003 cited in Samuel, 2009, p. 453).

A lack of creative and innovative legal logic and a crisis in the judicial system, we believe might pave the way to think about mediation and as a result, use its methodology. This mechanism at least at the moment is a process that is partially regulated and uses techniques that are rooted and explained by disciplines other than law, this context seems to go beyond the doctrinal logic.

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The growing body of research on this alternative dispute resolution instrument that began in the 1990s might be a sign of this influence on methodology, particularly considering the fact that the interest of scholars is from various fields and disciplines.

4.2. Academic favorable context

Even in the context of a continuous debate between doctrinalists and multidisciplinarians over the most suitable methodologies for legal research, no one could deny at least in recent decades the growing interest in multidisciplinary methods. Eric Posner in a conference, organized by the Research Group for Methodology of Lawmaking and Legal Research of Tilburg University, on June 10th, 2008, stated that 'legal doctrinal research is dead' (VanGestel & Micklitz, 2011, p. 1). This statement, according to scholars, might be interpreted as connected to the situation in the US but they believe that Posner's point includes also the scenario in Europe which he assumes will follow the movement towards multidisciplinary methods in the US (VanGestel & Micklitz, 2011, p. 1). In the same context, a survey made by Fiona Cownie in the UK showed that half of the academics confirms that they used a socio-legal approach in their work, and the other half even if they expressed their preference for the 'black-letter' approach still recognize the necessity of social context in legal research (Cownie, 2004 cited in Nkansah & Chimbwanda, 2016, p. 56).

Researchers' and students' shift to multidisciplinary approaches might be explained by pragmatic motivations, as the dominance of doctrinal approach on legal research for a long period has made it difficult for scholars using this internal methodology to bring something different or innovative, and thus many of them started to use multidisciplinary methods to reach a certain level able to qualify them to the requirements of academic journals or research funding opportunities that are in most of the cases looking for something more than purely legal work (Vick, 2004, p. 171).

This situation might go in the same way as the possible influence of mediation on legal research methodology. In other words, the mixed nature of mediation might present a ground from which researchers could use a sociolegal approach and thus, get access to more publication and funding opportunities.

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In contrast to other ADR mechanisms such as arbitration which is well surrounded by a rigid legal framework in most countries, mediation at least in our day is a less regulated process, this feature could be seen as a window for scholars who want to do research that goes beyond the doctrinal methodology.

This might be confirmed by, the explanation of Nadja Alexander of the German example during the emergence of mediation in this European country; as the education and accreditation of mediators was done on an inter-disciplinary basis where the certification programs at universities were conducted by interdisciplinary instructors and participants (Alexander, 2001, p. 16).

The development of the German model of certifying mediators outside law schools and in other faculties mixing different disciplines such as law, communication, and psychology (Alexander, 2001, p. 16) might assist the relationship between mediation from one side and recourse to interdisciplinarity, as an approach in legal studies, from the other side.

5. Challenges that are facing mediation to make this influence

5.1. Skeptical scholarship of mediation's potential

It is reasonable to imagine resistance from scholars who have been working under a specific methodology for a long period, as they will probably oppose the idea that a mechanism such as mediation might redirect the orientation of legal scholarship toward using new approaches like multidisciplinary ones.

Doctrinalism as previously mentioned in section 2 even with the expanding multidisciplinary movements still dominating the legal studies in the EU and at least legal education in the US (VanGestel & Micklitz, 2011, p. 2), this strength might see in mediation influence as a potential threat to the existence or the dominance of doctrinal methodology.

When analyzing previous literature, we might conclude that our assumptions find concrete consolidation by a skeptical scholarship related to mediation.

Many scholars accused mediation of the inability to deliver justice, based on the reasoning that denies the possibility of guaranteeing justice outside the logic of legal norms and positivism (Menkel-Meadow, 2006, cited in Irvine, 2020, p. 147).

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Mediation is a problem-solving-oriented process that gives disputants a key role in determining not only the outcome but also the method used to evaluate this outcome and its accordance with the understanding of justice (Irvine, 2020, p. 147). These characteristics of mediation could be in a direct clash with the formal and regulatory safeguards that distinguish classic judicial mechanisms like courts.

Such a mechanism which, in a big part of its functioning, is informal was seen by many as a "poor justice to the poor" (Abel, 1982, cited in Irvine, 2020, p. 147), and they accused mediation of focusing only on the logic of settlement rather than the just and fair settlements as it is served in classic trials (Genn, 2012, cited in Irvine, 2020, p. 147). The raw material for the doctrinal approach which is the rule of law and judicial decisions seems to be threatened with loss if allowing mediation to grow as an alternative mechanism, as some scholars mentioned the social role of judicial decisions that go beyond a simple solution for a private dispute (Fiss,1984, cited in Irvine, 2020, pp. 148-149).

In other words, mediation and ADRs, in general, are seen as an "ugly" replication of the classic judicial system or a "litigation lite" that is causing the loss of the guiding legal principles through the replacement of courts by ADRs (Sabatino, 1998).

Sabatino also mentioned points related to the benchmarking of the privatization of public functions and its possible drawbacks such as the lack of accountability for quality in the privatized sectors which applies also to the implementation of ADRs (Sabatino, 1998).

A quality of justice that was evaluated with a hierarchical logic that is based on the authority of courts and legal professionals while considering others such as disputants as "lay people" who are incapable of reaching fair outcomes (Irvine, 2020, p. 150).

In most civil law countries, especially France, the potential of mediation to open the door to multidisciplinary methodology could be considered a threat to the academic-legal career that seems hostile to external approaches (Samuel, 2009, p. 435). Experts confirm this restrictive approach to legal studies when limiting its scope only to commenting on positive law as it is in its formal sources (Jestaz & Jamin, 2004, cited in Samuel, 2009, p. 435).

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This hostile or restrictive methodology goes perfectly in accordance with the doctrinal logic that studies law from the interior while excluding non-legal disciplines (Samuel, 2009, p. 435).

Therefore, we believe mediation's way to strengthen sociolegal approaches in legal studies may face strong resistance from doctrinalists' skepticism toward external legal research methods and their capacities (Samuel, 2009, pp. 439-440).

5.2. Law schools as a stepping stone to the professional world: is it a challenge?

Even if we previously mentioned that many researchers are changing their direction toward the socio-legal methodology for many reasons, it is fair to clarify that the claims of Professors Jestaz & Jamin about the threat to the legal career might also be justified and recalled.

Eric Posner's statement about the death of the doctrinal approach could be seen as a little bit exaggerated, especially when examining the role of most law schools and institutions and the composition of their programs. Even if there are many scholars and elite institutions who tend to orientate their research and work to the sociolegal approach, it is far from being true to assert that the majority of legal education goes in the same direction. The introduction of multidisciplinary research approaches in the last century and the linked debate was never closed, even in the leading countries in the multidisciplinary field such as the US there are recent calls to return to a focus on legal practice requirements (Douglas, 2008, p. 124).

In other words, the law as taught in most universities in the world might be seen as a professional discipline where the teachers used to serve their students how to "think like lawyers" and where the law (as presented by the doctrinal approach) resists "colonization" from other fields (Kroeze, 2013, pp. 49-53).

Balkin confirms this when he claims that "The study of law is part of a professional practice, a set of professional skills that are taught to new professionals in professional schools" (Balkin, 1996 cited in Kroeze, 2013, p. 53).

ADR generally and mediation specifically, even if taking into account the increasing regulations, might still be considered less important in the curriculum of many law schools. This might be explained by the belief that ADR does not reflect enough "doctrinal content" or simply they are considered a skill rather

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than a part of the legal profession and practice that could be educated (Douglas, 2008, pp. 137-138).

Mediation also might require expensive training, including simulations and role-play methods, which will probably cost more than a simple public lecture on classic doctrinal knowledge (Douglas, 2008, pp. 133-134). These extra prerequisites could make mediation less attractive in law schools that prioritize the marketability and efficiency of their programs (Douglas, 2008, pp. 133-134).

Therefore, law schools are facing this dilemma between their research agendas and legal practice requirements (Douglas, 2008, p. 124), a dilemma that can probably limit the non-doctrinal approaches that a unique process such as mediation might bring to the legal education curriculum.

Mediation might be seen as a non-part of the classic more formal legal profession such as litigation, also due to the low rates of using this tool to settle disputes in practice, universities may limit the intensity of research done in this field. As a result, even if mediation exists in the curriculum of some institutions the content and the method used will be superficial and will not go deep to a certain level that allows this mechanism to influence the approaches used in law school's research projects.

5.3. The complexity of non-doctrinal methods

This point is linked to the introduction of the non-doctrinal methodology in legal studies in general, however, its consequences might contribute to a block or resistance of approaches that could be facilitated or assisted by mixed-nature mechanisms such as mediation. In other words, it is fair to highlight the already existing debate between doctrinalists and non-doctrinalists over the most practical approach in the field of law.

We should clarify first that many legal researchers make confusion between interdisciplinarity and multidisciplinarity. Since the understanding of the two methods frequently overlap, it would be unfair to place the blame on them. Put simply, experts believe that the multidisciplinary approach includes also the socio-legal (interdisciplinary) approach where legal researchers benefit from other disciplines' contributions such as the works of sociologists, psychologists, or anthropologists… (Roux, 2015, p. 55). When it comes to interdisciplinary research probably it is the most complicated and debatable. It was described by

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Kroeze as a 'dream in legal research' and also as a method that jurists are unequipped for (Kroeze, 2013, pp. 54-55). The complexity of this method comes from the fact that it requires the researcher to use techniques, methods, and knowledge belonging to different disciplines to reach a coordinated outcome. Unlike the multidisciplinary approach, there is no core discipline or boundaries between fields. Thus, the researcher is expected to be both a social scientist and a lawyer at the same thing (Kroeze, 2013, pp. 50-51). However, recalling this debate might be justified by the fact that the multidisciplinary approach in legal research according to some experts presents a large category that includes; "a core discipline – doctrinal research – and two other main types of research: (i) interdisciplinary research that combines doctrinal research and the conceptual frameworks and methods of one or more other disciplines and (ii) research about law and legal institutions that has no doctrinal component" (Roux, 2015, p. 55).

In this context, an interdisciplinary approach to legal research becomes a part of a general category called multidisciplinary legal research and thus it is vital to mention fears from jurists linked to this interdisciplinary method.

Reasons behind these worries could be explained by the capacities of legal scholars in the field, as many jurists especially in civil law countries are showing fears of the unrealistic and complex features of interdisciplinary methodology that according to their opinion will discourage scholars from doing studies in the field (Fauvarque-Cosson, 2006 cited in Samuel, 2009, p. 436). Fauvarque-Cosson believes that requesting scholars in, the example of comparative studies, to 'be interdisciplinary specialists or social scientists' might lead to non-desirable results that will deter them from conducting research and thus, a lack of improvements in legal studies will occur (Samuel, 2009, p. 436).

These technical fears are centered around the capacities of legal scholars who are seen as unable to adapt to the prerequisites of empirical or sociolegal methods that go beyond the logic of norms or the 'black-letter' reasoning and needs sophisticated skills of analysis and interpretation. The methodological challenge may stem from the nature of the training that the majority of jurists receive under the dominance of doctrinalism where the focus is on normative approaches and little space is given to multidisciplinarity.

In this context, a study of 350 articles that used empirical methodology and that were published in American law journals in the period between 1990 and 2000, was made in 2002 by Lee Epstein and Gary King, specialists in methodology,

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who concluded that the quality of empirical legal research is "deeply flawed" and that every article at least did not respect one of the mandatory rules of inference in empirical research methodology (VanGestel & Micklitz, 2011, pp. 23-24).

Professor Geoffrey Samuel also mentioned the issue of uncertainty that might be generated by the use of interdisciplinary approaches, especially in the existence of a leading political motivation that insists on the clear and uncomplicated aspect of the rule of law (Samuel, 2009, p. 437). Mediation due to its unique nature which is not purely legal might be seen as a manifestation of uncertainty in the legal field and thus, it is challenging the mentioned political will that influenced methods used to study law for decades now.

In conclusion, understanding multidisciplinarity as a broad category that includes interdisciplinarity, which appears to be a complex methodology that necessitates sophisticated skills from researchers, and considering the level of uncertainty that characterizes a less regulated process such as mediation may lead us to consider how difficult this influence on the way legal research is carried out could be.

5.4. The impact of the increasing regulations

The question of regulating mediation seems to be a priority now for the majority of lawmakers in the world. National, regional, and international efforts are being made to surround this mechanism with legal safeguards.

From an international perspective, we can notice many developments like the recent United Nations Convention on International Settlement Agreements Resulting from mediation, which was open for signatures in August 2019, and which provides a legal framework for the enforcement of international commercial settlements resulting from a mediation process and (Alexander & Tunkel, 2021, p. 32). This legal instrument is seen as another New York Convention, which is about the Recognition and Enforcement of Foreign Arbitral Awards, but this time the subject is mediation instead of arbitration. There is a will to strengthen the role of mediation in international trade dispute resolution by surrounding it with more legal safeguards (Alexander & Tunkel, 2021, p. 3).

From a regional perspective, we might take the example of the EU Directive (2008/52/EC) on certain aspects of mediation in civil and commercial matters that aims to harmonize and encourage Member States to adopt legislation linked

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to mediation and thus promote the culture of amicable settlement in the EU (Alexander, 2008, p. 22). This legal text was followed by a wave of new legislations or amendments of previous ones inside the Member States to meet the requirements set in this instrument, in a way that even when considering the diversity of the approaches used, all EU countries except Denmark implemented this directive (De Palo et al, 2014). It is fair to mention that EU efforts to regulate mediation and ADR, in general, were not limited to the mediation Directive, as in 2013 it introduced other legal texts such as the ADR directive and the ODR regulation that are oriented only to business to consumer contracts (Senftl, 2021).

At a national level, many countries in the world either adopted their legislation linked to mediation or are in the process of preparing it, as we can notice a remarkable tendency to regulate this instrument with different approaches that range from voluntary to mandatory mediation.

According to experts, this wave of regulatory tendencies is facing the dilemma of diversity/ consistency, and thus, lawmakers must respond to two goals that often seem contradictory, making their task more challenging (Alexander, 2008, p. 23). On one side they should keep the capacities of mediation as a flexible process that is open to innovation and on the other side they should respond to consistency concerns that need a certain level of provisions to ensure the quality of the process (Alexander, 2008, pp. 20-23).

This developing legal framework might lead to different results; from one side it could be seen from an optimistic angle as regulation of this tool will reduce its informal characteristics and thus even doctrinalists will have no reason now to underestimate a mechanism that is now part of the legal texts which are the raw material for doctrinal research, this may result also and due to the compound nature of mediation to conciliation with multidisciplinary approaches. However, from the other side, we can also imagine a negative scenario; as in the lack of a strategy of regulation that considers the unique features of mediation, lawmakers can go beyond what is necessary and overregulate this mechanism even in the process of mediation itself. Consequently, this could change the nature of this ADR method to another type of litigation with complex procedures that give no place for flexibility and creativity. The outcome of this second scenario is probably able to disconnect mediation from its historical interaction with other disciplines and to make it subject to the exclusive doctrinal logic.

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6. Results and discussion

To conclude, we might say yes mediation due to its compound nature has the potential to make the influence we mentioned at the beginning of this paper. However, this capacity is not an unchallenging one, as the strong existence of doctrinalism especially in some regions like Europe might present a real obstacle to any attempt to change or to introduce new competing approaches to legal research. This paper might be a starting point for more research in the field, as probably the contribution of mediation to legal methodology needs to be tested by additional empirical studies. We suggest a study of a number of articles linked to mediation in the future to see whether this ADR tool is bringing something new to methodological discourse or not and whether the increase in regulations is changing the way research related to mediation is done.

It should be clarified also that by saying that mediation could influence the methodology used in legal research we are not claiming that mediation is playing the main or central role in this context. As the developments and debate of methodological approaches were there even before that ADR in general and mediation, in particular, reached the stage of today in both legal texts and research linked to alternative methods of dispute settlement. Hence, it is fair to state and remind that the influence we are trying to explain is a part of a larger debate between doctrinalism and multidisciplinary methodologies, in a way that mediation might contribute to or boost this discourse but this should not be interpreted as considering this process as an exclusive or a main factor.

Conclusion

Doctrinalism created a rigid and inflexible logic that prioritizes adhering to formalism and norms' authority, over responding to issues and requirements of a changing and interconnected society.

This has resulted in manifestations of the inadequacy of the classic structures such as courts with the increasing need for fast and efficient justice. Therefore, it seems reasonable to imagine a shift and innovation in legal scholarship to find methods to overcome these problems.

A shift that probably, will go beyond the authority of norms to embrace other disciplines and fields that might be a remedy for the mentioned issues. Even if the multidisciplinary studies go back to American realism in the 1930s and 1940s, the growing interest in ADR mechanisms such as mediation with its compound nature we believe will foster or at least contribute to facilitating this shift. However, the dominance of doctrinalism especially in some regions like Europe might constitute a heavy heritage that will be echoed in the form of resistance to any attempts to change the way legal research is done. Fears might also originate from the increase of regulations itself, as mentioned this element is a two-face coin. If not used wisely and strategically, it could suffocate mediation capacities and change it to another type of litigation with the same complexity concerns, thus creating no place for innovation or flexibility.

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