

Kluwer Mediation Blog

Multiculturalism in Practice

Ian Macduff (NZ Centre for ICT Law & School of Law, Auckland University) · Monday, July 27th, 2015

Kua hinga te totara i te wao nui a Tane

I had expected that this blog would be a report on the annual conference of the Arbitrators' and Mediators' (AMINZ) held in Wellington last week. This would have been a great chance to catch up with colleagues from New Zealand and elsewhere (including this Kluwer blog's own John Sturrock, who was a bit of a star turn on the schedule). However, the best laid plans of mice and men etc. As we (my wife, Suzanne, and I) were driving to Wellington we received a not-unexpected phone call to tell us of the passing of a dear member of the extended family. As Suzanne had been asked by the man himself to conduct his funeral, wearing her celebrant's hat, this meant abandoning the original plans and returning to Auckland.

This, too, became a time to reflect on the passing of other tall trees, as Colin Wall – so well known to many in the mediation and arbitration world – had also just passed away after a long “engagement” with cancer. I avoid the usual term “struggle” as Colin seemed to have a wholly different perspective on his impending demise than that of a “struggle”, and those who have seen him in the last year will know of the strength and equanimity with which he seemed to face this next phase.

One thought that emerged from this passing of a giant in our mediation field and in our wider family concerned the kind of legacy that we have been left by those of influence, sagacity, warmth, wit, humility and strength. As the Maori proverb at the beginning of this blog says, “a mighty Totara has fallen” – with reference to the majestic native tree, the Totara, and said when someone of significance has passed away. This is not necessarily a reference to someone of conventional commercial, political or “celebrity” importance, but rather to someone whose inner strength – their “mana” – has touched others.

But, while the person passes, what matters is what remains – in Maori terms, it is the land; in other contexts it might be a different form of legacy: “Whatungarongaro te tangata toit? te whenua” – the person passes but the land (whenua) remains. And what seems important here is not just what that legacy might be – of those who, in our mediation, professional, or personal lives have shuffled off – but also what the obligation is of those who pick up that legacy to continue to honour it.

While listening to the eulogies for our departed family member this last weekend – and thinking about the distinction that David Brooks [*The Road to Character*] draws between our résumé virtues

and our eulogy virtues – what specifically struck me was the perfectly normal multiculturalism of this event. This might be what, at a higher level of abstraction and political philosophy, John Rawls refers to as the “reasonable pluralism” of accommodation between reasonable and strongly held convictions, in order to achieve and promote an “overlapping consensus” of predictable differences. But, without the slightest nod in the direction of such theory, an unintentional yet normal multiculturalism was reflected in this funeral, reminding me of the ways in which we can and do weave our nets of different fabrics.

Specifically, the overlapping threads were:

- **Military (naval) and civilian:** our Uncle Rob was a lifelong Navy man, retiring as Commodore of the Royal New Zealand Navy. One measure of his military life was the sprinkling of Admirals attending the funeral, including a former Chief of Defence Forces. His grandchildren were also asked to place his military regalia – sword, cap and medals – on the coffin, which was draped in the ensign of the Navy. Yet this strong thread of the Navy send-off – at the Naval Base in Auckland – was woven through with the normal rites of civilian passage, and old salts wearing their medals sat alongside family, friends and neighbours, uniforms alongside casual clothes.
- **Sacred and secular:** in the same vein, the service at the Navy chapel, with memorabilia of notable maritime engagements of the RNZN, was conducted jointly by the Navy chaplain and – on the secular side – by Suzanne, thanks in no small part to the ease with which each accommodated the other and, though working together for the first time, were able to weave their respective roles and words together – a parallel, perhaps, to a co-mediation conducted by mediators with very different styles and a shared purpose. It may have helped that the chapel, a wonderful wooden building, used to be the navy gymnasium, so it has both secular and sacred “bones”.
- **Formal and informal:** the naval part of the event required a few – and only a few – conventions, including a specific Navy prayer and, to close, the Last Post; the poem by Laurence Binyon, “For the Fallen” [“They shall grow not old, as we that are left grow old . . . We will remember them.”] adopted as the Ode for the fallen at military funerals; and Reveille – both pieces played pitch-perfectly by the bugler, leaving not a dry eye in the house. And by contrast in tone and style, we had Bert Bacharach’s theme song from *Butch Cassidy and the Sundance Kid*, “Raindrops are Falling on my Head”.
- **European and Maori:** both the secular and religious parts of the ceremony followed a form that would be familiar to many in the Western and post-colonial world, from the padre’s welcome to the committal of the deceased. But, as is so often and so easily a part of such events here, there was an indigenous and Maori touch, starting with the padre’s words of welcome in Maori, through to the stirring haka, a farewell to a fallen warrior, performed by Uncle’s grandson in law, just as the coffin was placed in the hearse. For a larger version of this, see <https://www.youtube.com/watch?v=B5js6wPXec4>. The young man who did this haka said that he hadn’t decided till the last minute whether or not he’d do so, which made this all the more stirring, emotional, and spine-tingling. In keeping with the pluralism of styles, Uncle Rob was then saluted by an Admiral and then by two navy ratings as the hearse departed.

I know that at conferences such as the AMINZ one there will have been the familiar discussion of different cultural styles of mediation, or of experiences in cross-cultural practice. But it’s interesting – and moving – to be part of an event in which the practice is present and familiar; yet I

imagine that few of those attending, especially the old Navy hands, would have given much thought and theory to this practice. It can be done.

John Paul Lederach, the widely experienced and respected mediator, has referred to the Pacific metaphor of “nets” in thinking about the “untangling” that dispute resolution can involve. See, for example <http://www.beyondintractability.org/audioplayer/lederach-j>. We may also think of that metaphor as describing the kind of nets we can weave from the various, and sometimes very different, strands of what brings us to conflict and brings us together.

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