

WordSwords

Kluwer Mediation Blog

July 7, 2018

Ian Macduff (NZ Centre for ICT Law & School of Law, Auckland University)

Please refer to this post as: Ian Macduff, 'WordSwords', Kluwer Mediation Blog, July 7 2018, <http://mediationblog.kluwerarbitration.com/2018/07/07/wordswords/>

(This post is being republished because of technical problems when it was first published).

I want to use this month's blog to riff off Greg Bond's recent insightful [blog](#), because he's touched on core issues of language, making sense and personal reflection. That post arrived almost in the wake of an email quoting jazz pianist Vijay Iyer commenting on the word "hexis": "your disposition, posture, stance, character or attitude; the energy radiating from you as you do your work; the visible or audible spark of intent that precedes the act...". Look how many possibilities are captured in that one word. [Thank you, Howard Gadlin, for that insight.]

On reading Greg's blog, I was immediately reminded of several connections: First, a public exchange in national newspapers some years ago (was it the Guardian?) asking people what their favourite German word was, knowing - as Greg suggests - that not all would be readily translatable (mine was, and is, "Sehnsucht", which could mean yearning, longing, or more). It was a delightful exchange as it revealed both the power of words to touch people in such varied ways, and the often incommensurability of meaning the same words have for different people.

Second, Greg's post reminded me of the work of Brazilian educator and activist, [Dr Paulo Freire](#) who said - and I paraphrase here - that to be unable to speak a second language might be an inconvenience; but not to be able to speak one's own was a tragedy. That second point carries double freight: not only is there the critical issue of impoverished education and literacy for so many (the focus of Freire's work); but also there is the historical and contemporary issue of the loss of one's language, through colonialism, globalisation, neglect, government policy or a

dramatic decline in the numbers of native speakers of the language.

Third, there is the obvious point that mediators are in the business of assisting in conveying meaning, understanding, intention and so on through language; and depending on the local norms relating to levels of mediator intervention, there may be degrees to which mediators are the bearers of norms determining the meaning of words. Consider, for example, the point [Dr Fernanda Pirie](#) makes in her excellent book on *The Anthropology of Law* [p.174], that mediators in earlier – and in non-Western – societies typically began with a “recitation” reminding parties of norms, valued texts, core teachings. Modern mediators, by contrast, will typically begin with a recitation that relies on process norms rather than substantive or moral norms, removing the mediator from any adjudicative role about the meaning of words and texts. The “Halting” of mediators in relation to the mediation of “meaning” in each case is – to return to Greg’s blog – normatively distinct.

Fourth, there is in New Zealand an ongoing programme and project of ensuring the strength of the Maori language (Te Reo Maori), to the extent that the capital city – Wellington – has announced a plan to be the “Te Reo Capital”; there have been, for some years, elementary schools in which kids have total immersion education in Te Reo; there has been a recent upsurge of public interest in the non-Maori population in learning the language; announcers and reporters on public radio regularly use the language to sign off broadcasts, to announce the weather and so on (not, it must be said, without some backlash via Twitter, texts and emails from those who insist on hearing only English, but they are a minority). Te Reo Maori is in a special position as an official language of New Zealand, and can be used in the courts, Parliament or other public domains. The language is also in widespread use to the extent that many New Zealanders use Maori words in everyday life – many of which don’t readily bear word for word translations into English. But the language is not without risk: Te Reo Maori is one of 592 “vulnerable” languages on UNESCO’s endangered languages list.

Why does this matter? Does it matter that, on varying counts, one language disappears every 14 days (other counts suggests shorter intervals: see the [National Geographic’s disappearing languages project](#))? Only this: if, as Greg’s blog indicates, language both matters and mediates; and if, as we’ve seen regularly on this collective blog, at the heart of the game is people’s power to tell their stories, that power is lost when the language in which it might best be told is lost. Of course, things also get lost in translation and one only needs to be the recipient of

an 8-year old French-Kiwi granddaughter's rolled eyes and Gallic shrug to realise that something wasn't up to scratch in attempting to use a language other than one's own.

It matters too as words have meaning: not only the translated dictionary meaning but also - more so - the moral and cultural weight they carry. This may remain our unique capacity, in the face of the increasing competence of artificial intelligence in emulating human abilities such as debating (see reports on the [Project Debater](#)): as Professor Hammond at Northwestern University notes, as clever as Debater might seem, it doesn't actually know what it's talking about. It can attach no existential meaning to its words.

Again, why does it matter? Because, I suspect, some of the disarmingly or apparently simple questions raised by my fellow bloggers - whether about fairness, culture, compulsion, the 'soul' of mediation and more - conceal some of the richer questions that inform practice. Think of the volumes written about fairness; or the fact that British philosopher Raymond Williams referred to "culture" as one of the two or three most difficult words in the English language.

And at the heart of it: words . . . which, as my title suggests, can also be swords.

To make sure you don't miss out on regular updates from the [Kluwer Mediation Blog](#), please subscribe [here](#).