

# Kluwer Mediation Blog

## Space, Pace, Grace and Face: Steps to an Ecology of Mediation

Ian Macduff (NZ Centre for ICT Law & School of Law, Auckland University) · Wednesday, November 27th, 2013

The title of this blog stems from an exercise I engaged in with my Negotiation and Mediation class towards the end of the semester, in which we sought to bring some of the threads of the preceding weeks together. In part, it was my attempt to create not so much a model as a convenient mnemonic by which to recall the key interpersonal as well as strategic elements of mediation; in part, it was just an indulgence with assonance. What was also involved was an attempt to explore something more about creating the “mediation space” in which we hope the best work can be done with and for the parties. It is, of course, difficult to do more than imagine this when working in a university classroom; but the idea in using these words was to suggest some kind resonance about mediation that went beyond strategy and the structure of mediation.

I was only informed later that the first three words were also the marketing slogan for a particular brand of English luxury motor car, so I can't claim originality. And readers familiar with the psychology and anthropology of Gregory Bateson will know that I've borrowed from his “steps to an ecology of mind”. In this blog, I want to deal with just the first of those words: “space”.

Where this stemmed from was not merely in thinking about what helps mediation to work, but also from the fact that, in recent months, I've returned to reading some of the authors whose work I found compelling earlier, though when I first read their works, it was not necessarily with a view to thinking about the relevance to mediation. The first of those authors is the now-retired professor of humanistic geography, Yi-Fu Tuan, whose work on the personal significance of “place” has emphasised the importance of the meaning that we may attach to spaces and places, whether that meaning is drawn from long historical association or simple aesthetic appreciation or the values that we might associate with particular kinds of landscape. One of his recently published, post-retirement books, *Romantic Geography: In Search of the Sublime Landscape* (2013) explores just this quest that we have for something more than the mundane, instrumental and detached account of our “place” in the landscape or of the material value that landscape has for our economies. Places and landscapes are associated with quests and infused with meaning as well as being, in mundane terms, just where we live and work.

Alongside this series of works on the meaning we attach to place was the monumental 1995 work by Simon Schama, *Landscape and Memory*, an historian's exploration of the place that landscape occupies in our imagination, art and – at times – nationalistic consciousness (think of the perennial and often bloody claims that the nation state is in some primordial way associated exclusively with

an ethnic, religious or other identity).

More recently, Cambridge historian and travel writer Robert Macfarlane's series of books – *The Old Ways: A Journey on Foot*; *The Wild Places*; and *Mountains of the Mind* – continues that same exploration of our connection with landscape and place, and through those landscapes, a connection with others who have passed this way before.

But what can this possibly have to do with mediation? First, thinking of this humanistic account of our relationship to place brings to mind some of the early – 1970s and 1980s – rethinking of disputes. Emerging from the formalist and institutional conventions of law and litigation, the reimagining of disputes began to place the disputant at the centre of the picture; and the concern was – and remains – not merely with the resolution according to legal doctrine but rather in ways that respected the disputants' interests and priorities. The humanistic turn in disputing theory – and in legal education – placed the experience of the moral and social agent at the heart of our inquiry. What this also did was to open the door to the multiplicity of people and experiences that now became the subjects of law and disputing, and no longer merely appearing as “cases”.

Secondly, one of the practical and questions strategic questions asked in relation to both negotiation and mediation has concerned location and place; and this has been an inquiry of two kinds. First, the more strategic question has been about the choice of location: your place, my place, or neutral ground? A quick Internet search will reveal number of discussions of just this question, and the strategic value in choice of venue. Second, for mediators in particular, the question has been one of the optimal design of the mediation space, as much as architectural and institutional constraints will allow. At the very least, the considerations there have included safety, proximity, physical comfort, light, and the kind of placement of parties that reflects the relationship between parties and mediator.

Put these elements concerning “space” together and I think they amount to more than the strategic questions about location and the distribution of tables and chairs. It is, without wanting to be too grandiose about it, concerned with creating the *genius loci*, the spirit or ethos of the place in which the conversation is to take place. In the same way that we know that indigenous peoples did and still do attach significance to physical location and landscape features, this humanistic emphasis turns on the idea that in a subliminal and visceral sense, we all know when places make us feel comfortable, work better, or feel at ease.

How we go about creating this *genius loci* this will, I suspect, often depend on who we are working with and what is within the comfort zone of those people. I think, for example, of the experience of working on several occasions in Sri Lanka and knowing that a workshop would and could never begin without the ceremonial lighting of candles; or in working with Maori groups in New Zealand, a *waiata* or song is an essential part of the commencement of proceedings. Other practices I have seen may involve taking a moment after arrival and being seated, to reflect on the common purpose of being together. The options are many; but the common ground seems to involve creating that sense of the significance of this space, for this purpose, for this time together. And, in the same vein as the historian Eric Hobsbawn wrote of the “invention of tradition”, it's always open to mediators to invent rituals that help create this space for the work we'll do together.

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The graphic features a black background with white text and a circular icon. The icon depicts a group of five stylized human figures, with a magnifying glass positioned over the central figure. The background is accented with horizontal lines in blue and green.

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