

Kluwer Mediation Blog

The collaborative imperative – or the existential imperatives for modern mediators

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“An action-oriented citizenship is, first and foremost, engaged with other people in the creation of shared social spaces and in the discourse that such spaces make possible. Through participation and conversation, we reproduce our social meanings through time: that is what culture is. Squares and institutions, walkways and stadiums, these are the places where the dreams of people are realised in stone and iron, glass and air. They are the sites of politics, not merely of design or style; or rather, here design and style are themselves aspects of the political.”

Mark Kingwell, *The World We Want: Restoring Citizenship in a Fractured Age*, [Rowman & Littlefield, 2000, 172]

Over the past 40 years, we can identify a wide range of ‘drivers’ for modern mediation and mediators – from critiques of formalism and legalism, through pursuit of cultural relevance in dispute processing, persistent concerns with the ‘remoteness’ of law and courts, to preferences for a ‘warmer’ way of working and dealing with disputes. . . and so on. More recently, of course, one of those concerns – with the costs of courts and litigation – seems to have become as much a concern for governments, such that it is austerity and efficiency that drives the promotion of mediation (and its online variants) as much as it is the incapacity of the impecunious litigant. Ask any mediator and you’ll probably get a similar array of reasons why this is a preferred way of working. “Imperative”, too, takes on a dual meaning: first of a social and value-oriented drive to mediation; and second in the perennial question as to whether mediation can and should be mandated, and whether doing so undermines the first interpretation.

In recent weeks, however, I’ve come across another angle on all of this – more of an existential imperative, if you will. The context is this: one of the modes of assessment and out-of-class conversation I set for my Negotiation and Mediation class involved the regular writing of a group blog or class forum. The generic rubric for all of the groups was “Access to Justice”, but beyond that there was a free choice on the topic. Each group (of 4 to 5 students) had at least a weekly obligation to report on reading and research on their topic as a work in progress (to be completed by a 600 word executive summary at the end of the semester); and all students were invited to read and engage with the blogs of other groups. At the outset, I tried to underscore this as an exercise in collaborative learning, even if I wasn’t really believed to begin with. Once the initial reservations about writing unfinished thoughts, not having to comply with style guides, adopting an informal style of writing and so on were overcome, the conversations took off – both between the members of each group on their developing topics and with other class mates who joined the conversations,

offered resources and links, raised critical questions and shared the research that they'd been doing for individual essays. At the very least, there's a revelation in the learning that takes place collaboratively as much as it does in the more private and even competitive modes of individual assessment. The pedagogical point for me and, I hope, the class is that collaboration works at this level.

But a more interesting collaboration-related theme emerged, and which prompted this blog. After reading student essays and the student class blog, it seems to me that there are three things that are uppermost in the concerns of this generation (apart from the prospect of jobs and the daily anxieties of assignments and deadlines). These are:

First: diversity. In a class population of hyphenated identities (which information tends to come out in informal writing more readily than in the usual modes of assessment); and in light of the very obvious "face" of a shifting demography, shaped by migration, international education programmes, and modern blending of cultures, the challenges and reality of living in this world give particular substance to the often more abstract and theoretical work on intercultural communication, cross-border negotiation (who needs to cross borders when there's plenty of cross-cultural work to be done at home?), and cultural relevance of formal and informal dispute processes. Given, too, the modern blending of identities and mobility of populations, any suggestion that the broad cultural styles in negotiation and mediation might be nation-based can be dispelled.

Second: climate change and environment. In the discussion on the processes of environmental negotiation, the Paris Agreement, the Kigali Agreement, there is no dissenting voice, no denial of the risk and reality – and President Trump's announcement on American withdrawal from the Paris Agreement was, at least for discussion purposes, if not for the planet, perfectly timed. For a generation which understands science and evidence and which – above all – faces the consequence of habitat degradation, diminished water quality, resource depletion, the prospects of the [Sixth Extinction](#) etc – this discussion fits squarely within the concerns with sustainability, resource management and the kind of topics addressed by the [Centre for the Study of Existential Risk](#) at Cambridge University.

Third: technology. For the groups discussing various aspects of digital justice, online dispute resolution, and the impact of technology on professional lives, their research embraced a world with which they are already familiar and in which they are 'natives'. For them, there's no fear in the prospects of a digital life, though there's the unknown impact on their world of work. Instead, there's a recognition that this is the reality that they will necessarily live through and with, whether in the form of the digitisation of professional lives or the migration of courts, tribunals, arbitration and mediation onto digital platforms.

In all three cases, the 'existential' element is a recognition that the world they face is one that is radically different from the one that appears in the text books and law cases; and they know that there's a risk that their education is about a world that has moved on. And the existential part too is knowing that there are risks:

- to social cohesion and identity separation, especially where rapid demographic changes are not matched by coherent policy initiatives;
- in the unknowns of technology's impact on human communication and sociability;
- in climate destabilisation, resource depletion, habitat degradation and so on.

One consistent point that did emerge – and maybe this is because they wrote in the context of a negotiation and mediation course – is the imperative of collaboration and dialogue. What this tells me also is that there’s another reason – in addition to the ‘imperatives’ noted in my opening paragraph – as to why this group begins to show an interest in mediation: hitherto, there have been those who have been interested as a career path, or because it looks like a preferred option to conventional legal practice; but blog conversations now suggest that negotiation and mediation are an existential necessity; collaboration is not a fringe activity or policy tool but a moral imperative. We talk – through mediation, negotiation, collaborative processes – not merely for reasons of efficiency, austerity or even personal preference, but because we have to. Mediation becomes, in these conversations, one of Ivan Illich’s anticipated “tools for conviviality”.

As David Bohm wrote:

“Dialogue, as we are choosing to use the word, is a way of exploring the roots of the many crises that face humanity today. It enables inquiry into, and understanding of, the sorts of processes that fragment and interfere with real communication between individuals, nations and even different parts of the same organization. In our modern culture men and women are able to interact with one another in many ways: they can sing dance or play together with little difficulty but their ability to talk together about subjects that matter deeply to them seems invariably to lead to dispute, division and often to violence. In our view this condition points to a deep and pervasive defect in the process of human thought.”

D Bohm, D Factor, and P Garrett, (1991) ‘Dialogue – a proposal’
http://www.infed.org/archives/etexts/bohm_dialogue.htm

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