

Kluwer Mediation Blog

Where Might Ambiguity Add Value?

Charlie Woods (Core Solutions Group / Scottish Universities Insight Institute) · Thursday, August 3rd, 2017

On the face of it clarity and certainty would always appear to be preferable to ambiguity, in order that people know where they stand and can plan and act accordingly. However, in a [recent article](#) Fintan O'Toole reflected on the position of Northern Ireland in the Brexit negotiations and concluded:

“...stopping the violence meant creating an ambiguous space that is neither quite one thing nor the other: neither simply Irish nor simply British. What the EU and Britain both need to recognise when the negotiations begin is that this ambiguity is not just a possibility. It is a necessity.”

Might ambiguity add value in addressing other questions? For example:

- How might the UK formally leave the EU but still be involved enough to support trade, research, environmental protection etc. and how long might any transition process be?
- How might the Eurozone evolve to develop the level of political unity needed to cope with asymmetric economic shocks while preserving national accountability?
- How can countries act collectively to address global issues such as climate change and tax avoidance, where the issue and associated policies have varying local impacts?
- How could the independence of a territory be recognised, providing greater room for policy manoeuvre to meet local needs, yet still benefit from and contribute to the risk sharing and solidarity provided by being part of a larger entity?
- How can the private interests of firms and individuals be most effectively integrated with the interests of society to maximise the benefits of collective endeavour and minimise social costs (such as pollution) while ensuring sufficient entrepreneurial drive, investment and innovation?

Such questions go to the heart of the need to pool sovereignty in an increasingly interdependent and uncertain world, while maintaining sufficient national/local/corporate/individual identity and agency.

The value of ambiguity would appear to lie in the furtherance of mutual and varied interests and the framing of stories to go alongside. Which is where the lessons of mediation come in.

At the core of any mediation process is the need to help parties facing difficult situations explore their own and others' interests and needs, along with options for meeting them, in a way that helps all. To do this requires moving away from fixed (and probably very clear) positions that may have been adopted sometime in the past because they appeared at the time to help promote interests, but

have since become entrenched, often at the expense of underlying interests. In doing so an acceptable outcome might be a bit blurred around the edges, or framed differently for different audiences, but if it works for all then it can provide a way forward. Part of the value comes from the role it can play in helping parties write ‘victory speeches’.

Perhaps the word ambiguity itself needs a bit of reframing to become more acceptable – one idea that has been suggested is ‘creative nuance’. Governance within the British Isles already reflects a fair degree of creative nuance, for example, with a ‘constitution’ that has evolved over centuries alongside changing circumstances and with concepts such as Crown Dependencies. The introduction to the [Wikipedia article](#) on this subject is a perfect illustration!

“The Crown dependencies are the Isle of Man in the Irish Sea, and the Bailiwicks of Jersey and Guernsey in the English Channel. They are independently administered jurisdictions, and do not form part of either the United Kingdom or the British Overseas Territories. They are self-governing possessions of the Crown (defined uniquely in each jurisdiction). Internationally, the dependencies are considered “territories for which the United Kingdom is responsible”, rather than sovereign states. As a result, they are not member states of the Commonwealth of Nations. However, they do have relationships with the Commonwealth, the European Union, and other international organisations, and are members of the British–Irish Council. They have their own teams in the Commonwealth Games. They are not part of the European Union (EU), although they are within the EU’s customs area.”

Europe is also littered with example of territories that are part in and part out of the EU or have [special status](#). These include the Aland Islands, San Marino and Andorra.

With this sort of track record surely, if there is sufficient will and imagination, we can come up with and describe some creative solutions for the challenging times ahead, which meet a wide variety of interests, even if at first sight they aren’t a model of clarity.

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

Profile Navigator and Relationship Indicator

Includes 7,300+ profiles of arbitrators, expert witnesses, counsels & 13,500+ relationships to uncover potential conflicts of interest.

Learn how **Kluwer Arbitration** can support you.

Learn more about the newly-updated *Profile Navigator and Relationship Indicator*



This entry was posted on Thursday, August 3rd, 2017 at 4:02 pm and is filed under [Brexit](#), [Conflict](#), [Creativity](#), [Dispute Resolution](#), [Europe](#), [Mediation and Society](#), [Negotiation](#)

You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can leave a response, or [trackback](#) from your own site.