

# Kluwer Mediation Blog

## Small steps towards empathy: some reflections on student learning journals

Ian Macduff (NZ Centre for ICT Law & School of Law, Auckland University) · Wednesday, June 26th, 2019

“For last year’s words belong to last year’s language;  
And next year’s words await another voice.  
And to make an end is to make a beginning.”  
T S Eliot, *The Four Quartets*, “Little Gidding”

“Perhaps the most terrible (or wonderful) thing that can happen to an imaginative youth, aside from the curse (or blessing) of imagination itself, is to be exposed without preparation to the life outside his or her own sphere – the sudden revelation that there is a there out there.”

Tom Robbins, *Jitterbug Perfume*

I write this as we approach the end of the semester and the examination period here in New Zealand. Part of the assessment for the Negotiation and Mediation course I’ve just finished teaching at Auckland Law School involves reading student journals, in which they were invited to reflect on the course, on their own learning, on key personal insights and – for my benefit – provide comments on the course. It’s a form of assessment I have used since establishing a similar course in Wellington just over a quarter century ago – which means that an awful lot of journals have passed through my hands. In the following paragraphs, I will draw on a handful of those insights that reinforce both the core value of negotiation and mediation programmes, and the benefits of personal journals.

First, and uniquely to this batch of journals, I need to offer my appreciation to my fellow authors of this Kluwer blog series: in addition to the conventional texts (and wide array of related reading on trust, empathy, culture, gender, literature, etc) I referred the class to this blog site in general and, on occasion, to specific blogs. Suffice to say that the blog featured regularly in student comments on readings that were found valuable and accessible. You, fellow authors, have struck the right balance between professional insight and personal reflection. Thank you.

Second, while the journals offered a number of insights into student responses to the class, I noted two key and repeated “aha” moments: trust and process. It will come as no surprise to any of you that these feature as central themes in a course on negotiation and mediation; and that quite a bit of time is devoted to building trust, credibility, trustworthiness (and to the reality check of not trusting naïvely), and the building blocks of a coherent process of information-gathering, issue identification and so on. I suppose I come away from the course and journals – again! – hoping that

even if nothing else sticks, these two elements will remain. I'm aware, at the same time, for reasons I'll touch on later in this blog, that this cannot be taken for granted as there are countervailing "forces" that seem to push against trust (as exposing oneself to manipulation, for example), or that represent trust as too unrealistic out there in the "real world". Again, the voices of my blog colleagues, speaking from the coalfaces of mediation practice, are important in undermining that doubt.

Thirdly, and briefly, I noted two themes of key interest to most members of the class: cross cultural communication and the emerging world of online negotiation. In both cases, it seems to me that these reflect the worlds that this generation of students lives in. If I look at the demographic composition of this year's class, they cannot but be immersed in an intercultural life: there were European New Zealanders (Pakeha); Maori NZers, Pacific Islanders (Tongan and Samoan, at least), South and South East Asian (both NZ-born and more recent arrivals), American, South African, one South American . . . and probably others I didn't identify. An informal inquiry also revealed that a significant number in the class carried two passports. And, as you'd expect, their lives were shaped by what Evgeny Morozov and others refer to as digital intermediation (reflecting the post-modernist Bourdieu on "cultural intermediation"): a digital device was never more than a hand's breadth away. But if these were two shaping elements of modern lives, what seemed of value was bringing those expressly into the world of communication and mediation, giving them empirical, theoretical and critical life, especially on enduring issues of access to justice which may still be culturally impeded but potentially also digitally enabled. The combination becomes even more interesting when we need to address ways in which digital communication and online dispute resolution can or cannot adequately deal with all of those nuances that we have learnt are central to effective cross-cultural communication.

Fourth, of the array of mediation models that were canvassed, two that seemed to appeal were the narrative and transformative modes. This might warrant further exploration to find out why that may be so, but I'd hazard a guess that what appeals in the former is the focus on the stories, the narratives of the parties; and in the latter, it's the appeal of respect and recognition. Clearly, in each case, these core elements need to be given process, structure and substance; but there seems to be an intuitive – dare I say generational? – appeal.

That said – and fifth – there's an irony here: despite the appeal of narrative and recognition, it's very hard to break out of what seems to be a default directive or evaluative style. This might be one of the perils of meeting a class in their later years in law school, after years of being ingrained with that critical and evaluative style of thinking; it's also a reminder to the rest of us as to just how hard it is to stick to an elicitive and facilitative mode.

Finally, a puzzle: there's a persistence of beliefs about competitive "real world", and the impracticality or naïvety of principled processes, despite tales from the 'front lines' (including from fellow Kluwer writers); a persistent sense that that "real world" is different and won't be dealt with by these classroom skills (even though the journal reports are of changes made in negotiations at home and at work, and of surprise that they make a difference). Without being too gloomy about this, at times I question what impact we're having after 40 years of promoting what my former colleague in Singapore, David Smith referred to as a 'warmer way' of disputing: "A Warmer Way of Disputing: Mediation and Conciliation" [*The American Journal of Comparative Law*, Volume 26, Issue suppl.1, Supplement 1978, Pages 205–216]. If my relatively youthful observers are anything to go by, the core narrative remains combative, competitive, zero-sum; and the enduring conventional version continues to be reinforced in other courses (especially economics). For all

that there are immediate and tangible spin-offs to the kind of dispute resolution we model, there's still a sense that we're seen as outliers.

For that reason, the kind of counter-narratives that we read of more widely, and that have been referred to in previous blog entries by several authors, are so important. As many of you will be aware, there's a burgeoning literature on the central and evolutionary value of collaboration and co-operation, as an empirical and epistemological response to the conventional assumptions of combat and selfishness as fundamental to evolutionary success. Indeed, while it might seem "revisionist" (not always a kind term in historical circles), we see arguments for altruism, kindness, empathy and collaboration as essential to Darwin's theory of such evolutionary success. Readers will have seen references in earlier blogs (especially from John Sturrock) to the important empirical work of Martin Nowak on *Super Co-Operators*; you will also have seen reference to the work of Jonathan Haidt on the core **foundations** of morality; and you'll find TED talks by him on the fundamental importance of collaboration in the creation and maintenance of successful communities. More recently, see Prof Jamil Zaki's intriguing new book on *The War for Kindness: Building Empathy in a Fractured World* (June 2019), in which he argues – with many others – that kindness, empathy, compassion, collaboration are not merely attitudes or belief, nor are they innate in some of us, and not in others: they are choices, actions, behaviours and, along with more conventional mediation and negotiation skills, can be learnt.

“As a single footstep will not make a path on the earth, so a single thought will not make a pathway in the mind. To make a deep physical path, we walk again and again. To make a deep mental path, we must think over and over the kind of thoughts we wish to dominate our lives.”

Henry David Thoreau, *Walking*

---

*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 Wednesday, June 26th, 2019 at 8:00 am and is filed under [Communication](#), [Conventional wisdom](#), [Cross-cultural](#), [Developing the Field](#), [mediation process](#), [Online Mediation](#), [Personal Development](#)

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