

Kluwer Mediation Blog

Co-operation and the Common Good

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Hello babies. Welcome to Earth. It's hot in the summer and cold in the winter. It's round and wet and crowded. On the outside, babies, you've got a hundred years here. There's only one rule that I know of, babies- "God damn it, you've got to be kind."

Kurt Vonnegut *God Bless You, Mr. Rosewater* [1965]

A couple of weeks ago, I anticipated that this next blog would be a reflection on the one year anniversary of the March 15th mosque shootings in Christchurch in which over 50 people lost their lives. Given the outpouring of support for the Muslim community in New Zealand at the time, and the leadership from the Prime Minister, and the widespread sentiment that "we are one", I planned a reflection on whether there has been an enduring advance in our race relations and social solidarity in New Zealand and whether we had been, in a sense, shocked into understanding the costs of division. By and large, I think that I might have been able to sustain that thread and positive tone, albeit with the sober recognition that there has been slippage.

I will confine myself here to a brief comment on the aftermath of that event. In the period leading up to the anniversary (which, incidentally, some parts of the Muslim community did not wish to mark, as it is not a convention to mark anniversaries, except those of the Prophet) there were signs of the rise of right-wing nationalism, in the darker recesses of the Internet. But we are, perhaps, fortunate that this seems nowhere near as virulent as it might be in other nations, though this is no cause for complacency. It might also have been too much to hope that the familiar and all too easy "casual racism" and demonisation of others would miraculously vanish.

That hope, too, is hardly aided when a politician and Cabinet member of the current coalition government (and member of a minority party in the coalition, I must add) uses his media megaphone to denounce, without evidence, a whole national group of migrants as having ruined the country's tertiary system (and there being too many of "them" anyway). Even when chastised by the Race Relations Commissioner for overtly racist comments, his reply was that, first, he'll not be silenced and, second, as a member of the nation's indigenous peoples he cannot be racist.

Enough said. There's still work to be done!*

My plans for that extended reflection on the anniversary were, of course, interrupted by the arrival on our shores of Covid-19. The planned commemoration was cancelled; and New Zealand had – along with much of the rest of the world – a new threat to focus on. As Greg Bond wrote in his [blog](#) immediately preceding this one, we're now learning about life under lockdown and under

conditions of necessary limitations of movement and commerce. This might have been the opportunity for me to write again on the potential of online communication and dispute resolution, especially as the conversations amongst my colleagues in the ODR networks are alive with reflections on this now being the time to showcase what the established capacity of digital resources might be – and to regret that not more progress has been made, at least in New Zealand, on creating digital strategies for the courts. However, I have discussed some of these issues in about a dozen of my earlier blogs and that seems enough. Nevertheless, mediators interested in current suggestions on working online might be interested to read this [recent piece](#) by Simon Boehme on “Observations in Online Dispute Resolution as COVID-19 Spreads”.

My more immediate concern, having both Covid-19 and social solidarity origins, is with how people can be persuaded to do the right thing, to act out of public rather than selfish interests; to think in the longer term rather than about immediate concerns. Wherever you live, you will probably have seen that one immediate response to public statements about the need for restrictions on travel, the closing down of work and business, has been panic buying – especially of toilet paper! No matter how often our PM or other spokespeople on this crisis tell us that there is no shortage of food – or toilet paper – that doesn’t seem to get through. On the one hand, there is a tone of solidarity, a sense that this can be managed; there is, too, a clear sense that neighbours are checking on each other, within the constraints of restricted contact under lockdown. On the other, there is a distressing and disappointing recognition that narrow interests prevail, food is stockpiled and – even more distressing in a country that does not have a “gun culture” – people have been lining up at gun shops. To protect what? Stocks of hoarded loo paper and tinned soup? This, too, in a nation whose Parliament responded, almost without dissent, within days to the mosque shootings by imposing severe restrictions on gun ownership.

We have also seen here widespread examples of people ignoring requirements about maintaining “social distance”, especially thronging to bars and public spaces where there’s greater chance of contact with the virus. The more common response, however, has been an immediate adoption of the constraints – no handshakes, no [hongi](#) (the traditional Maori greeting), maintaining requisite distance in supermarket queues and so on. By and large, we have gone straight to social solidarity and collaborative mode.

On a lighter, yet also serious note, many of you will have seen the now-viral [video](#) of Italian mayors literally screaming at residents to go home, not have their hair coiffed (the coffin lid will be closed and no-one will see you!), and to give their exhausted dogs a break from all of that walking. Even the time-honoured and wonderful traditions of the evening passeggiata have been suspended.

In thinking about co-operation – and the lack of it – I was reminded of a 1967 article [41 *S. Cal. L. Rev.* 590 (1967-68)] by Jerome Skolnick, “Coercion to Virtue: The Enforcement of Morals”. This article, later expanded to a book, was largely a continuation of the familiar debates from the mid-19th and mid-20th centuries on the question of the state’s role in enforcing morality. Both debates were precipitated by perceived moral crises, the challenge of social order or individual freedom and the sense that social order would crumble in the face of some individual moral choices. Leaving those larger questions of moral coercion or liberty aside, we do face the daily (and mediator) question as to how people can be persuaded to “do the right thing”, and the social question as to whether selfish interests are more likely to prevail. Indeed, we might even at this time commit the ideological heresy of asking whether our venerated “interests based” model of negotiation risks prioritising personal over social or shared concerns.

As is so often the case, I find, the right book turns up at the right time to help my thinking – and to reassure me – about the primary drive of co-operation over competition. In these blog pages you will have seen earlier references ([here](#); and [here](#); and [here](#); and [here](#), and more) to Martin Nowak and Roger Highfield’s *Super Co-operators: The Mathematics of Evolution, Altruism and Human Behaviour [Or, Why We Need Each Other to Succeed]*. These provide empirical support for the argument that, in the long run, co-operators do better for themselves and for others than those determined to win in the short term. Now, to provide further support for the collaborative imperative (not just what we might choose to do, but what we are, in a sense, driven to do) I have come across Nicholas A Christakis’, *Blueprint: The Evolutionary Origins of a Good Society* [Little Brown, Spark, 2019). Despite the frustrations of seeing those who fail or refuse to self-isolate during a pandemic; despite the publicised outbursts of racism and intolerance; despite, even, the panic buying queues, the stronger evidence is that we are, as the author suggests, on a long path to a humane society. True, we have a capacity for pursuing narrow self-interest, to foster aggression and animosity, to dismiss or attack those we regard as “other” than us, but Christakis’ argument is that we are innately inclined towards goodness and collaboration. As he writes at the start of the book:

“My vision of us as human beings, which lies at the centre of this book, holds that people are, and should be, united by our common humanity. And this commonality originates in our shared evolution. It is written in our genes. Precisely for this reason, I believe we can achieve a mutual understanding among ourselves. . . . Therefore, I am less interested in what is different among us than in what is the same. Even though people may have varied life experiences, live in different places, and perhaps look superficially different, there are significant parts of others’ experiences that we can all understand as human beings. To deny this would mean abandoning hope for empathy and surrendering to the worst kind of alienation.”

* **Postscript:** I drafted this blog on 25th March, NZT. This morning – 26th NZT – the murder accused pleaded guilty to 51 charges of murder, 40 charges of attempted murder, and one charge under terrorism legislation. This is a huge relief, especially for the families of the victims, as it means they will not have to face the ordeal of a trial, at which it was feared the accused would use the platform for his own ideological purposes. The accused – now the convicted offender – has been remanded for sentence at a time to be set, after we emerge from this Covid19 lockdown.

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