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Book review

Global Trends in Mediation

Laurence Boulle

Global Trends in Mediation,
Nadja Alexander (ed), Centrale für Mediation, Koln, Germany, 2003

This book has been published in French and English by a German publisher, with an Australian editor and with an American foreword. It contains contemporary descriptions and evaluations of dispute resolution practice in 15 countries in four continents, with an elegant introductory chapter by the editor. With such breadth and scope one can truly say that ADR has gone global, or come of age, or perhaps a little of both.

For historical, political and linguistic reasons Australians have often tended to look to the UK and the US for significant developments in the law, courts and alternative dispute resolution. How refreshing it is to have, in the convenience of a single title, a more wide ranging perspective of comparative insights than that provided by the Anglos – with English abstracts of the three French contributions.

Global Trends looks at mediation developments in common law, civil law and mixed legal systems. While the common law problems with litigation, which, in part, gave rise to the ADR movement, do not generally pertain in the civil law countries, the last decade has seen striking ADR developments in the Netherlands, Belgium, Germany, Switzerland and Italy. Indeed in some civil law countries ADR has been an integral part of the court process for many centuries. For example, in Denmark judges have performed a conciliatory role since the 18th century, whereas only in the last few years have common law countries begun to focus on the dispute resolution, as opposed to determination, role of the judge. This is a welcome source of comparative insight during a phase of Australian ADR development in which the topic of judicial dispute resolution is re-entering the debate.

The author locates the current wave of global mediation development in the context of the access to justice movement which began in the 1960s and 1970s in many countries of the world. Since the 1970s and 1980s Australia has been a leading contributor to the global trends and a contribution by Tania Sourdin on mediation in Australia shows the pioneering nature of current developments. In broad terms the mediation wave is providing a new model of justice for solving disputes, referred to by some writers as 'co-existential justice'. It is a challenging force for those steeped in more legalised and formalised models of justice.

If Australia is indeed at the cutting edge of ADR development, what can be learned from countries across the globe?

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What this text shows is that, despite the global uniformity in mediation developments, it is the structural, political and legal characteristics of nation states which determine the local developments. Thus in European countries factors such as legal fees insurance and highly efficient courts have channelled ADR in different directions to that in the common law world. In Italy, changes to the law have provided tax incentives for mediated settlements in some categories of disputes. In Germany, the negative effects of too rapid a regulation of ADR provide 'lessons learned' for others. In South Africa, there is a rich tradition of mediation in labour disputes, far beyond the levels practised in this country. From Scotland we note that, however much mediation might be 'a good thing', it has to take its place among existing social and administrative institutions and cannot impatiently demand its place as of right.

The mixed legal jurisdictions of Scotland, South Africa and Canada have produced their own evolutionary systems of dispute resolution drawing both from the common and civilian traditions. And what a good thing this is, since ADR, as we recall through the misty recesses of fading memories, was originally about providing alternatives to the legal system, and only more lately alternatives within the legal system.

This then is a great paradox of modern mediation trends: while it strives for a globalised universality it cannot altogether relinquish its domestic roots. And it is at this stage of global development that the most exciting prospects are present, where the uncontaminated roots of dispute resolution systems based on culture, tradition, religion and legal system, can be examined and synthesised for broader understanding and application. The less attractive alternative is that the whole globe succumbs to the fast food of a single dispute resolution menu based on the Anglo diet. Long live both culinary and ADR diversity.

This book invites us to take up one of the next challenging issue for modern mediators, and their Greek chorus of academic commentators: what are we really achieving in a world in which rampant forces of trade, currency movements, liberalised capital markets, hedge funds, unilateralism, war and invasion appear to dominate and threaten our gentler arts? We live in a complex world in which personal and business relations are 'mediated' through powerful and sometimes invisible structures and processes, so that what we 'mediate' in our suburban dispute resolution service is only the end-product of much wider forces. Before the mediation movement can respond to this dilemma, it needs to understand the nature of the complex global environment and then enter the debates.

In the meantime, as they say, this scholarly work, which has been well-annotated and edited and has a good bibliography and index, is a necessary feature of every ADR scholar's library. ●

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