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Book Review

Resolving Indigenous Disputes — Land Conflict and Beyond

Reviewed by Michelle Brenner

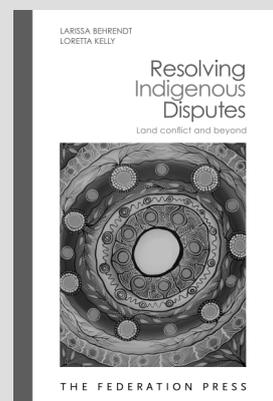
**Larissa Behrendt
and Loretta Kelly**
*Resolving Indigenous Disputes —
Land Conflict and Beyond*
Federation Press 2008

In 1788 the British declared this land, now known as Australia, to be Terra Nullus. This term means a country without sovereign, or a land which is not owned, with no legal system and no government structure. This also meant that the strong spiritual relationship that the Aboriginal people had with this land was ignored.¹

Over 220 years later is the spiritual aspect of Aboriginal people still being ignored? Does this matter? Has mediation made a difference?

Resolving Indigenous Disputes, written by Larissa Behrendt and Loretta Kelly, two Aboriginal women, lawyers, dispute resolution academics and practitioners, takes us on a journey into the minds, hearts and realities of what goes on in mediation that includes Aboriginal people.

This may seem like a specialist area and it is; however to assume the revelations and insights are only



specific to Indigenous participants is to miss the richness of meaning and the real contribution this book offers to *all* mediators for their practice, whether the disputing parties are Indigenous or not.

In the same year the book was published Australian Prime Minister Kevin Rudd said this to a very large circle of Indigenous people in Parliament, and televised throughout the world,

We apologise for the hurt, the pain and the suffering that we, the Parliament have caused you (our Indigenous People) by the laws that previous



parliaments have erected. We apologise for the indignity, the degradation, and the humiliation these laws embodied.²

Indignity, degradation and humiliation are seen as consequences of a combination of ignorance and legal conformity. We have examples all over the world where compliance to laws and standards cause suffering, yet somehow they continue. It has been said that a society can be best known by the way it treats its suffering. We all know that one of the ways out of suffering is empowerment. It is also well-known that saying sorry means little if what caused the hurt and pain is continued.

This book uses clear and concise evidence-based data to provide the key to improving the professionalisation of mediation. Will we take the challenge to transform our ignorance to insight, will we take the challenge to hear the intelligence of these women and incorporate their wisdom into our ways? Or will we continue to view their wisdom as outside our ways?

The intention of this book is to raise awareness of the practical difficulties for Aboriginal people in mediating ... particularly by improving methods for inter-cultural and intra-cultural dispute resolution.³

With the practical examples of native title claims, Loretta Kelly draws out the characteristics, the feelings, the outcomes and consequences that mediation has had in Australia over the past 15 or so years, from the perspective of both the parties in the disputes, the mediators and the co-mediators. This book is critical for any government mediation agency, whether they specialise in indigenous disputes or not. The reason it is a must is because, like no other mediation research study, this book gives a clear view of the hopes and promises that mediation brings and the background causes of frustration, dissatisfaction and disillusionment and it provides some insight into how mediation can be re-built to limit an ignorance based practice. This book makes the reader reflect on how empowerment, recognition and values are or are not part of ADR in practice.

The 150 pages comprise a

mediator's journey from slavery to freedom — slavery to a process of cultural and spiritual ignorance and freedom towards a new model that 'incorporates cultural values and practices in the dispute resolution process.'⁴

This book does not stand alone. In fact it is very timely. The mediation literature is now in abundance. It is not enough to know 'a process' of mediation. Who would go to a doctor who only knew a process for diagnosis, or a counsellor who only knew a process for listening. A process is only the how, it does not necessarily provide the why, the what for, the why not? A process-driven mediation model that does not include awareness of cultural appropriateness, or impacts and consequences that surround a dispute, is doing the field of conflict resolution an injustice because it is perpetuating a common myth, that context is irrelevant, that to resolve disputes and conflict the only skill needed is transactional know-how, meaning a negotiation is all that is required. This view sees the uniqueness of context, that uniqueness of cultural history and uniqueness of experience as irrelevant to social stability, or in other words peace. A process-driven model is no longer enough. It is not adequate to know how to make a living, we need to know the impact, the consequences and the side-effects.

We as mediators need to know what it is that creates peaceful living, not just an agreement. And peaceful living is something that relates to time and space. It relates to wisdom, traditions, emotions, and dignity. This book is therefore very timely. There are still wars being fought, there is still suffering in the public workplace and behind private doors, we have not yet mastered the art of peace-making or peace-building. Not until every person on this planet has peace can we say we have learned enough.

Larissa Behrendt and Loretta Kelly have done Australia proud. They have joined together academic research, legal discourse and spiritual values to pass on what must be one of the most difficult things to write about, the

overlay that connects the professional and the personal. The overlay that is traditionally separated by white society that has ignored the consequences of the separation and the impact it has on members of society, the very people that professional structures are created to serve. Although this book is set in the context of Aboriginal case studies, the authors are visionaries in offering a model of inter-cultural and intra-cultural dispute resolution that creates a reflective approach to mediation.

The case studies include interviews, analysis and reflective statements and are intertwined with conflict resolution literature to link up the threads, offering constructive suggestions for mediation training as well as practices.

There are many stories in traditional cultures which teach their children that wholeness is based on including all of the parts, that parts are by their very nature different from each other, that when we leave out one part because it doesn't fit with another we may have something that fits together and may even work, but will not be the whole, will not be complete. By leaving out a part, there is something missing from the whole. And we all know the feeling of peace which is related to finding missing parts. ●

Michelle Brenner is a conflict resolution consultant. She lectures at the University of Technology in Sydney in the Master of Dispute Resolution as well as practising mediation in family, workplace, government and community contexts. She can be contacted at <brennermichelle@hotmail.com>.

Endnotes

1. Larissa Behrendt *Aboriginal Dispute Resolution* Federation Press 1995.
2. Kevin Rudd <<http://news.ninemsn.com.au/article.aspx?id=379056>>.
3. Larissa Behrendt and Loretta Kelly *Resolving Indigenous Disputes — Land Conflict and Beyond* Federation Press 2008 p vii.
4. Behrendt and Kelly p 72.



ADR Diary • ADR Diary

- The **ADRA AGM** will be held on Wednesday 21 October at 5.30pm with dinner commencing at 6.30pm. It will be held at the NSW Law Society, 170 Phillip St, Sydney. Rex Butler will be the guest speaker. ADRA has a number of seminars coming up this year in Sydney: **Juvenile Conferencing** on 10 August; **Holistic Practice is an Interdisciplinary and Reflexive way of Practising a Profession** on 14 September; **Restorative Justice** on 9 November. For bookings and further information please contact <contact@adra.net.au> or 0418 965 875 during business hours. All seminars and workshops provide opportunities for you to fulfil professional development requirements for ongoing accreditation.
- The **VII International Conference, World Mediation Forum (WMF)** 'Mediation, Justice and Governance: An Opportunity for Peace' is being held in Margarita, Venezuela, 27–29 November 2009. For further information go to <www.worldmediationforum.org/newsletter_visualizacion.php?newsID=9>.
- **LEADR** is holding **Mediation Workshops** in Sydney on 3–7 August and 9–13 November; Alice Springs on 11–15 August; Adelaide on 25–29 August; Melbourne from 12–16 October; Perth from 13–17 October. For further information go to <www.leadr.com.au/training.htm>.
- **ACDC** is offering **Mediation Training** in Sydney on 10–14 August and 19–23 October; **Mediation Accreditation** in Sydney on 14 August and 28 October; **Advanced Mediation Training** on 18, 19 and 20 November. For further information, visit <www.acdcltd.com.au>.
- The **5th Asia-Pacific Mediation Forum Conference** will be held in India from 21–27 November 2010. For further information go to <www.apmec.unisa.edu.au/apmf>.
- **National Mediation Conference** will be held in Adelaide on 7–9 September 2010. For further information go to <www.mediationconference.com.au>.
- The **Bond University Dispute Resolution Centre** has upcoming courses including **Basic Mediation** 30 July–2 August 2009 and 26–29 November on the Gold Coast; and 15–18 October in Melbourne with Leo Cussen Institute; **Advanced Commercial Negotiation** 31 August–4 September in Sydney; **Assessment Course** 6–7 November in Melbourne with Leo Cussen Institute; **Family Mediation Specialisation** 30 November on the Gold Coast. For more information email <drc@bond.edu.au> or visit <www.bond.edu.au/law/centres>.
- **Mediator Style Training** is running full-day training sessions across the country. Sessions will be held in: Perth on 7 November; Sydney on 8 August and 3 October; Melbourne on 17 October; Adelaide on 22 August; Brisbane on 12 September and 31 October; Canberra on 19 September. For bookings go to <www.mediatorstyletraining.com>.

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