

Don't Stop The Fighting

Kluwer Mediation Blog

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My December blog was centred around a 15th Century occurrence. This month, I am in the final two years of the 14th Century.

Last night, I went to see Shakespeare's Richard II at the Barbican Theatre in London. The title role was played (quite brilliantly!) by David Tennant – a piece of trivia for all you “Doctor Who” fans – and I thoroughly recommend trying to get tickets, but that is not relevant to today's blog.

For the uninitiated, the play opens with two noblemen, Mowbray and Bolingbroke, each accusing the other of treason. Needless to say matters escalate and they challenge one another to a duel. The King (Richard II) tries to dissuade them, but they are adamant and so he acquiesces. However as soon as the duel starts, and after just a few clashes of their swords, he intervenes and forbids them from continuing. Instead, he pronounces sentence on them both. Bolingbroke is banished from the country for 10 years (later reduced to 6, on his father's appeal) and Mowbray for ever.

Both are furious, not just at the banishment but also at not being allowed to continue their fight. Each protests that he would have won, and each is deeply angry at the King for depriving him of the chance to prove himself.

I confess that I was not thinking about mediation during the play (thus proving, to my great relief, that I do have a life). But as I reflected on it this morning, I was drawn to some parallels and lessons for mediators.

First of all, the two noblemen *wanted* to fight. Their anger was such that all talk of peace was anathema. They wanted to prove themselves. They felt that their honour depended upon it. And the customs of the day held that they were *entitled* to fight. Hence their refusal to be swayed by the King when he tries to talk them out of it. And hence their anger when he later stops the duel after it has barely started.

Fighting is a deep instinct. We mediators need to remember that. I fear that too many mediators are not comfortable with it. That can result in an effort to “neuter” discussions, for example by insisting on “politeness” in the exchanges. Parties with intense grievances often do not want a polite discussion. They want the full force of their views, feelings, and angst to be heard – at minimum. Yes, we have a responsibility to try to keep the process on track, but not at the expense of depriving parties of what they need. We need to work *with* the tigers, not try to tame them. If teeth are bared, and claws draw blood, deal with it. There is something inherently dangerous about mediating that we must not shy away from.

Secondly, timing is critical. In the play, the King's two efforts to bring peace come when the fight is at its most intense. The first is when Bolingbroke and Mowbray have just challenged one another to a duel, and the second when the duel has just begun. Last month I cited Bill Zartman's benchmark for “ripeness” to mediate, which he defines as:

- A mutually-hurting stalemate; and
- An impending crisis.

Neither of those existed here. There was no desire or motivation for peace. The testosterone was flowing. Thus the only option the King could think of was to forbid the fight and banish the protagonists, in order to bring “peace”.

But in truth, the King's actions did not bring “peace” at all. There was no attempt to understand each noble's “case”, nothing more than a stream of invective by each against the other. The King wanted an end to violence, but he was not prepared to role up his sleeves and get stuck in to the issues (as we might say these days). He took the short cut, the easy route, and imposed his royal authority on them. It is no surprise that he ultimately failed.

Thirdly, the full consequences of the King's imposition of “peace” become clear later in the play. Mowbray is never heard of again, but Bolingbroke's anger is fuelled by his exile. He gets together an army, invades England and deposes King Richard, seizing the throne and so becoming King Henry IV. At the outset, Bolingbroke had been a loyal ally of King Richard. By the end, he is his chief enemy. And all because Richard had refused to let him settle his scores in the way he wanted, had refused to let him fight, had deprived him of what he considered to be (and indeed what was) his rightful entitlement – to deal with his conflict as he saw fit.

Happily, not many mediators will suffer the fate of King Richard this year. But the play acts as a timely reminder to us mediators that we need to work *with* the passions, anger, and desire to fight, and not merely attempt to banish them.

Of course, Shakespeare might turn in his grave at my analysis, but I'll take that risk.