Kluwer Mediation Blog

The Scottish Referendum: Torture for a Mediator

Charlie Irvine (University of Strathclyde) · Monday, September 15th, 2014

Five days from now Scotland may be on its way to becoming the world's newest country. Or it may not. Just over four million of us will vote on September 18th to determine future political arrangements on the British Isles (affecting some sixty million others). Depending on your point of view, you might say with Dickens: *"It was the best of times, it was the worst of times."*

The best of times: there is a tremendous energy about the place; the world's media (even England's) has descended; people are debating in families, pubs, cafes and street corners; there is a surge in national pride; poets, singers and artists are dreaming dreams of a better world.

The worst of times: there is huge uncertainty; every day heralds a new warning about the dire consequences of independence; we won't have a currency; banks, businesses and people will leave; pensions and economic growth will be at risk; and we'll be breaking up a successful 300-year-old political union.

I won't and can't rehearse all the arguments for and against Scottish independence. They are economic, historical, political and emotional. Some go to the nature of our identity. For many of us, none is conclusive. But the vote has triggered deep discomfort in me. While others feel it too, I believe this malaise flows in part from working as a mediator. I spend my time among people in conflict. I hear competing truth claims on a daily basis. They rarely carry the day. Each side wants to win; both can't. Where does that leave truth? Whatever else, it has an effect on the mediator. I now examine two phenomena brought into sharp relief by this distinctive historical moment:

binary thinking and motivated reasoning.

BINARY THINKING

During the months of debate I have heard passionate advocacy from both sides. They usually have a point. The 'Yes' campaign speaks of Scotland benefiting from controlling its own destiny: it's an attractive argument. The 'No' camp points to our shared history in the United Kingdom: that appeals too. 'Yes' tell us of economic opportunity; 'No' of economic hardship. 'Yes' focus on the remoteness of Westminster; 'No' on Scotland's existing share of the UK pie.

Mediators know that our clients often see the world in binary terms. It's 'either/or': either I'm right, or she's right. We can't both be right. In fact this is a false dichotomy. Often both parties are right, at least in much of what they perceive, and the mediator's task is to hold open space for those mutually exclusive perspectives to be enriched and expanded until a shared view can be formed. Then 'either/or' becomes 'both/and.'

Here is where the referendum choice is so painful for a mediator. I don't live in a binary world and yet I am being asked to make a binary choice. As blogger Peter Geoghegan puts it: *"Referendums are, by their nature, notoriously Manichean things. Only two choices: yes or no; stick or twist; black or white."* (http://www.petergeoghegan.com/?p=788) If Scotland is going to leave the UK, we can't have a trial separation. It is all or nothing.

And yet there are good strong reasons for voting either way. In his 2006 article, 'Do Cases Make Bad Law' (available from http://ssrn.com/abstract=779386) Frederick Schauer highlights a range of flaws in the kind of binary decision-making that judges have to engage in. Among them is this: during the trial, advocates make strong arguments for either side; until the final moment the decision could go either way; and yet judgments are written so as to seem as if no other decision could ever have been possible. And so it will be with the referendum. There's no room for nuance, doubt or imperfect data. Alone with my ballot paper, I have to put my cross in one box or the other. I can't be the only person in Scotland who wants to say, 'isn't it a bit of both?'

MOTIVATED REASONING

Tradition dating back to Nixon and Kennedy requires that elections are preceded by a 'live televised debate'. Following two of these this summer various Scottish commentators were asked who had won. 'Yes' supporters saw a dynamic, convincing Alex Salmond (leader of the Scottish National Party); the 'No' camp saw an authoritative, forensic Alistair Darling (leader of the 'Better Together' campaign). Whoever was right, what struck me forcefully was Mandy Rice-Davies' eloquent quip during the 1964 Profumo scandal: *"Well he would, wouldn't he?"* (http://en.wikipedia.org/wiki/Mandy_Rice-Davies). Each side saw what their beliefs and prejudices predisposed them to see.

This phenomenon is known as 'motivated reasoning' or 'selective perception'. The classic article by Albert Hastorf and Hadley Cantril ('They Saw a Game: a Case Study' Journal of Abnormal Psychology, 1954, 49(1) 129-134) describes how a rather physical American football match between two colleges was viewed differently by each team's supporters. 86% of Princeton supporters thought Dartmouth had started the violence; only 36% of Dartmouth supporters believed the same thing. Even when watching a movie of the game Dartmouth folk saw roughly the same number of fouls committed by both teams; Princeton supporters saw Dartmouth commit twice as many. The writers conclude: *"It seems clear that the "game" actually was many different*

games and that each version of the events that transpired was just as "real" to a particular person as other versions were to other people."

And so in Scotland, the torture is that it has become increasingly difficult to have faith in each side's account of the facts. This is, of course, not unlike many countries' politics. Each side accuses the other of twisting the facts to arrive at the conclusions they already hold. The net result is that no facts can be trusted. Worse than that, no politician can be trusted. And the middle falls out of our politics. There are no 'true' facts: only those which can be exploited to support each side's claims.

Where does that leave the undecided? Torn and dismayed. On 30th May Scotland's Finance Minister, a member of the Scottish National Party, claimed that an independent Scotland would be the 14th wealthiest nation in the world (http://www.theguardian.com/commentisfree/2014/may/30/scotland-wealthy-independent-scotland-fairer). Is this correct? On the same day another UK newspaper disputed the basis of the assertion (http://www.independent.co.uk/news/uk/politics/new-study-casts-doubt-on-snp-claim-that-independent-scotland-would-be-14th-richest-in-world-9460529.html) Is that accurate? It is tempting to wish a plague on all their houses, but the truth is probably even stranger: both have good reasons, in their own eyes, to see what they see and believe what they believe. And this can happen without any bad faith on either part.

My admittedly quirky perspective is forged by my work. To use some mediation and negotiation staples, I want to ask:
• What are each side's underlying interests?
• What can each side learn from the other to improve their understanding of the problem?
• How can we 'expand the pie'?
• How can we bring more data into the discussion?
• Can we invent options for mutual gain? (See Fisher, Ury and Patton, Getting to Yes: Negotiating an Agreement Without Giving In. London: Random House, 1991)

Wouldn't it be great if 'No' and 'Yes' conducted a debate in the spirit of appreciative enquiry. It would go something like this:
"Gosh. I'm really surprised that you hold a different view from me. Help me understand what leads you there. I would be honoured if you could take some time to explain your perspective." The other side might respond: *"Certainly. And when I'm done, I'd like to hear your point of view. I'm sure our understanding can be improved by speaking to people who think differently. After all, when this is over, we'll still need to live together."*

Of course this is just a fantasy. So until Thursday I'll carry on running and re-running Scotland's alternative futures in my head until I'm ready to take a wild stab at the right choice.

This entry was posted on Monday, September 15th, 2014 at 8:17 am and is filed under Causes of Conflict, Conflict, Practical Challenges for Mediators, Public Policy, Scotland, Uncategorized
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