
Kluwer Mediation Blog

Recognising Trauma: Litigation and Politics are Harming Us

John Sturrock (Core Solutions Group) · Saturday, November 28th, 2020

I write this in the aftermath of yet another mediation in which the protagonists exhibited symptoms of having been seriously traumatised by the litigation process to which they had been exposed. Depression, suicidal thoughts, anger, loathing, destroyed relationships, large amounts of money spent with no discernible value. And this was a commercial situation, not a family or neighbourhood conflict.

It came to me recently that litigation (in all its forms) is a traumatic event for many people. By that I mean it causes actual trauma, individually and collectively, to many who are caught up in it. My understanding of trauma is superficial, but I now realise that it is more extensive and deep-seated than I had once imagined. Repeatedly exposing people to past events which have caused them pain, revisiting adverse situations, is likely to exacerbate the damage. Is this not just what we do with litigation? By prioritising litigation as a problem-solving mechanism, do we not perpetuate a form of state-sponsored harm, causing untold damage at a societal level?

On the other hand, by giving people control over their present and future circumstances, it seems possible to reduce trauma. That is where mediation fits in of course. It provides, or should provide, what the experts refer to as psychological safety. An opportunity to heal. At an individual and societal level, this seems essential. Perhaps we need to take a much broader view of mediation's value and importance than seeing it merely as an "alternative". And surely this goes wider to embrace how we deal with public dialogue more generally? The adversarial, antagonistic political process we observe these days in many of our democracies seems to legitimise a form of collective trauma, repeatedly reinforcing negative messages, linguistic violence and past misery.

We must do better. Last week I was privileged to host a conversation between two of the UK's most thoughtful political thinkers, David Melding, former Deputy Presiding Officer of the Welsh Senedd, and Andrew Wilson, chair of Scotland's Growth Commission and former member of the Scottish Parliament. One committed to a reformed union and one committed to independence for Scotland. The event was characterised by courtesy, mutual respect, dignity and frank exchanges on the issues as both guests looked forward, rather than back, to what could be. Many in the audience commented on how refreshing this was. (The event can be viewed [here on You Tube](#).)

By a deft transition, this takes me to the US Presidential election. As the dust settles, perhaps it's time for a re-frame. The world's best attempt so far at democracy has been the subject of much criticism. Arguably, we may have seen the best and worst of democracy in action.

Tens of millions voted freely, in a way that would be impossible in many countries. That the result

was so divergent should not be surprising. Voters were presented with what was in effect a binary choice. Like so many decisions taken recently in Western democracies, there is little room for nuance, subtlety, paradox or complexity. It is Yes or No, In or Out, Leave or Remain, Left or Right, Trump or Biden. With such a limited range of options, and when social media and instant news breeds trivial responses and superficial understanding, it is perhaps inevitable that the arguments have become polarised and the contests more adversarial – and traumatic. At the crucial stage of decision-making, we have denied richness and, perhaps, got the outcomes we deserve. It has come to be about winners and losers whereas in fact, possibly and ironically, we could all lose in the end. A bit like litigation.

More than that, the binary system provokes our more primitive instincts, including fight or flight and the primeval protective reflex of fear. I sense that fear lies behind many of the unwelcome behaviours we see in politics and organisations more generally. Perhaps having an election during a pandemic, when our collective and individual fears have been triggered more than at any time in the recent past, accentuates this reaction. Fear of loss and the need for self-protection might, paradoxically, again lead to us all losing. A bit like litigation?

This might go further. Reflecting on recent observations by Ken Cloke, we might speculate that, even in a rights-based democracy, if adversarial debate, single truths and win/lose outcomes are commonplace, there is the risk that, when that democracy appears not to be working, some will revert to a more autocratic approach, especially if people are frightened. In that scenario, issues may be simplified, complexity ignored, unrest provoked and fascism may loom. Or anarchy.

While some political strategists and academics will be fully cognisant of these effects of the binary system in the 21st century, most of us are not. Perhaps it's a bit like litigation. Things just go on, habitually, but what damage is being done? We must continue our efforts to expand this discussion and to ask serious questions about how we make important decisions in this era, whether in politics or in dispute resolution.

The task is surely to find ways to move towards a win/win culture, with dialogue as the means to build understanding and consensus in a highly complex, volatile world. We know this is hard work, as we seek to tackle problems together, collaboratively and with humility and mutual respect. But such an approach is more likely to produce sustainable and mutually beneficial outcomes... just as the parties found in the mediation to which I referred at the start of this piece. They were given a place of safety in which they could express and then lay aside their fears. Perhaps even an opportunity to heal. And now they start new chapters, freed from the traumatising effects of the adversarial culture.

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