

Kluwer Mediation Blog

When Mediators Make Mistakes

Rosemary Howell (University of New South Wales) · Monday, August 22nd, 2022



The work of Daniel Kahneman continues to provide a powerful lens for scrutinising human behaviour – useful for our human interactions in general and our life as mediators in particular.

His work, with his late colleague Amos Tversky, gave us the field of behavioural economics and Kahneman the Nobel Prize in economics. I have a very well-thumbed copy of his text [Thinking, Fast and Slow](#) next to my desk and I revisit it often. I think of him as an influencer in my life and work.

During the worst of the Covid lockdowns the Program on Negotiation at Harvard Law School provided us a wonderful resource – making available online the [Herbert C Kelman](#) Lecture series which included Kahneman talking about his remarkable text in a session called '**Negotiation; Fast and Slow**'. This was followed soon after by the University of New South Wales in Australia also engaging him in conversation about the text and his more recent text '**Noise: A Flaw in Human Judgement**'.

Mistakes as a source of value

Along the way in these conversations Kahneman shared some unexpected ideas – the most relevant

to me his description of **‘the pleasure of finding I’m wrong’**. He talks about this as one of the joys of work – one of the only times when he thinks he has learned something. Later he gives the example of how he regrets what he has written about ‘Priming’ and not only has he admitted publicly that he ‘got it wrong’ but he has also encouraged other researchers to consider what they need to do differently and better now. It is clear that, as Kahneman connects with his former concepts that he now sees as incorrect, he is intellectually engaged, enthusiastic and curious. He is not overwhelmed with remorse and does not identify his mistake as a professional misstep.

As Kahneman presents it, making a mistake has a value.

This is not a new idea of course. In my early training in experiential learning I was encouraged to take risks and to use any mistakes that followed as a learning experience. My mentor encouraged me to adopt the approach that a very low risk appetite inhibited learning and development and was far more career-limiting than taking a risk and possibly making a mistake.

But are mistakes always valuable?

Intellectually this idea of value makes sense and is appealing.

But try as I may, there are many circumstances in my role as a mediator when I make a mistake and am overwhelmed with anxiety and remorse.

In fact, to draw on what my German friends have taught me (and isn’t the German language uniquely satisfying in providing a word for every imaginable part of human experience) I am overwhelmed by **torschlusspanik**. While the modern interpretation of this, I am told, relates to anxiety attached to FOMO (fear of missing out), what it means for me is the overwhelming anxiety that I have had the opportunity to do something valuable and not only have I missed the opportunity but it may be a fatal mistake that there will be no opportunity to rectify. The gate has shut, as a literal translation might say.

This has been occupying my mind a lot this past week as I try to make meaning and value from a mistake I made in a private session with a party in a mediation.

Encouraged by revisiting Kahneman I have been pursuing the ‘why’ question. Why do I see things so differently from someone whose ideas I have found so useful and valuable?

The ‘aha’ moment

Today I think I finally found the answer.

Kahneman is talking about ideas and concepts that are exposed as wrong via intellectual investigation and changes to research methods and protocols.

But it seems to me that there is another category of mistakes that are not part of Kahneman’s approach. These are the mistakes that cause pain and harm to others. That is what I did this week.

I failed to identify accurately the slender line between provoking an assessment (as I was encouraging a party in a caucus to identify a potential BATNA) and expressing a judgement. My intention to pursue the former was received as delivering the latter. It was very painful for the recipient.

Difficult Conversations (in which I have a lot of practice) did come to my rescue and I am relieved to say that, after following the advice in Chapter 3, my analysis is that trust and calm have been restored (the process is continuing and time will tell).

Finding balance

I am not enthusiastic and curious about having made this mistake however. Listening to Kahneman's webinars again, I realise that he is offering me the opportunity to flex a muscle that has not had nearly enough practice. I don't need to be enthusiastic or excited when I am feeling so disappointed in myself but I do need to search for the value. I have been given an opportunity to strengthen my repertoire and it is a good avenue to pursue with my coach. I have made an appointment to get started and I have resolved that this time I will channel my influencer and balance regret with learning.

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This entry was posted on Monday, August 22nd, 2022 at 4:54 am and is filed under [Apology](#), [Caucus](#), [Causes of Conflict](#), [Mediation Practice](#), [Peer Coaching](#)

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