

# Kluwer Mediation Blog

## Things might not be what they seem

Charlie Woods (Core Solutions Group / Scottish Universities Insight Institute) · Monday, April 8th, 2024

Daniel Kahneman, the psychologist who won the Nobel prize for economics, died in March. He described himself as the grandfather of behavioural economics, which provides so many insights into how people perceive the world and take decisions in practice, rather than in the more theoretical, rational world of *homo economicus*. His book 'Thinking Fast and Slow', summarises his research – much of which was carried out in partnership with Amos Tversky.

The book is a goldmine for mediators trying to help parties better understand conflict, explore options and make decisions. At the heart of this work is the idea of cognitive biases, or thinking short cuts that evolved in times when danger was around every corner and energy was at a premium – these short cuts kept our ancestors alive in this pre-historic environment. As a result we have inherited them and they are still useful, but their downside, in a safer, modern environment, is that they may lead to sub-optimal decisions compared to more considered, energy intensive thought.

Hundreds of different biases have been identified over the years – they are summarised in this [chart](#). Here are just a few which can have a significant impact on typical mediations and on life more generally.

**Priming** – we are subconsciously influenced by our environment, retailers play on this in the design and layout of stores to steer purchasing decisions. Mediators can use this to help make mediation rooms conducive to constructive negotiation and joint problem solving, for example in the layout of furniture.

**Anchoring** – where our judgement is influenced by a reference point or anchor. Again retailers play on this in the presentation of 'special offers' alongside original prices. Anchoring effects have been observed in situations where the anchor had no direct reference to the judgement being made (e.g. numbers on a roulette wheel and estimates of the number of African countries in the UN!). With this in mind great care should be taken with regard to offers in a negotiation.

**Loss aversion** – where we put a higher value on what we might lose over what we might gain – this is linked to the endowment effect where we put a higher value on something we own than we would pay for it.

**Optimism bias** – possibly an antidote to loss aversion in terms of taking action. We have a tendency to under-estimate the cost of an investment and over-estimate the benefits that will result

– e.g. in considering alternatives to a negotiated agreement the cost of a court action may be underestimated while the likelihood of success will be over-estimated.

**Attribution error** – we tend to cut ourselves a lot of slack, contextualising what we do to provide a justification for our behaviour. On the other hand we tend to judge others more harshly, interpreting what they do or say as a demonstration of who they are. As David Grann eloquently put it in his book ‘The Wager’:

*“We all impose some coherence – some meaning – on the chaotic events of our existence. We rummage through raw images of our memories, selecting, burnishing, erasing. We emerge as the heroes of our stories, allowing us to live with what we have done – or haven’t done.”*

**Confirmation bias** – we evolved the ability to quickly assemble facts and organise them into some coherent meaning, we then look for evidence to back this up while resisting anything that might cast doubt over our story. This can have a profound impact on how we understand situations we find ourselves in.

**Framing effect** – how things are described has a strong effect on how they are assessed – the classic illustration of this is the bishop who was content with the priest who wanted to pray while smoking, but was horrified at the thought of another wanting to smoke while praying! Framing links to loss aversion, a solution that can be framed as a way of recovering potential loss or sunk costs may well be more acceptable. In one study a high proportion of students registered early for an event when a penalty fee for late registration was emphasized, but a much lower number did so when this was framed as a discount for earlier registration.

**Reactive devaluation** – also linked to framing where people put different values on ideas depending on who has proposed them – in this context a mediator’s straw man might be a helpful way of surfacing proposals.

**False analogy bias** – analogies are another way of framing things which can aid understanding, but they have to be used carefully. A classic example is government debt and personal credit cards. Using this analogy may cause policy makers to be over cautious about investing for the future. As 19<sup>th</sup> century economist Lorenz von Stein argued: *“A state without public debt is either doing too little for the future or demanding too much from the present.”*

Reading ‘Thinking Fast and Slow’ is full of so many ‘ah-ha’ moments, when you suddenly begin to understand what might have been going on in your own mind or others you were interacting with. Thinking fast is still vital in many situations, but in many a more considered approach may often lead to better outcomes. Being aware of the different types of thinking and biases identified by Kahneman is an important first step in making the right choices. As Stephen Pinker put it:

*“His central message could not be more important, namely, that human reason left to its own devices is apt to engage in a number of fallacies and systematic errors, so if we want to make better decisions in our personal lives and as a society, we ought to be aware of these biases and seek workarounds.”*

Mediators can help parties to a conflict have greater awareness of what might be subconsciously influencing them and make more informed decisions. In many respects the mediation process is the embodiment of providing the opportunity for all involved to slow down and find better ways

forward.


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