

## A Game of Opposites: Negotiation is a Counter-Intuitive Discipline

By Michael Klug and Ann Taylor

When negotiating, we often run with our intuitive feelings and follow our instincts. However negotiation as a discipline is often counter-intuitive. Best practice requires us to often go against our instincts and act out behaviours which at first pass do not seem to be appropriate to the desired outcome. Yet negotiation theorists have found that by doing the opposite of what comes naturally, we are often able to achieve creative and collaborative solutions which meet the needs of each party. Below is a discussion of 10 ways that we can be induced by our instincts into adopting less than ideal negotiating styles and recommendations as to what you ought consider doing.

1. **We are more inclined to be distributive rather than integrative, focussing on positions rather than interests**

The distributive negotiating style tends to place the primary focus on positions rather than interests. It is often characterised by adversarial approaches and competitive behaviours [Sourdin T (2008) *Alternative Dispute Resolution* at 34]. When adopting this style, we have a "win/lose" perception of the negotiation's outcome where one party "beats" the other party and the outcome of the negotiation becomes more important than the relationship. Often in a distributive style negotiation we take positions and commonly put issues of price over interests. We tend not to focus on the other side's problems, thus creating a distinction between the parties: it is "us" versus "them". The main focus tends to be on our own point of view and achieving victory over the other party. Immediate solutions are favoured over long term objectives, jeopardising the quality of the relationship between the parties. As the term suggests, this style of negotiating involves the distribution of outcomes [Bazerman M and MA Neale (1992) *Negotiating Rationally* at 72]. This non-lateral approach means that each party simply ends up with a portion of the asset rather than pursuing the opportunity of creating new value (viz more for me means less for you).

Though our intuition tells us there can only be one winner and one loser, the integrative approach to negotiation or interest-based bargaining, promotes the idea that a "win/win" solution is available. In order to master this approach, we ought consider acting in an opposite way to what our instincts suggest and focus on the interests of each party and the compatible goals [Lewicki R, A Hiam and KW Olander (1996) *Think Before You Speak: A Complete Guide to Strategic Negotiation* at 65] that may come out of those interests. If we find out what the other side's interests are, we stop feeding the cycle of taking and giving up positions. In doing so, we can often validate the other party's needs [Fisher R & W Ury (1981) *Getting to Yes* at 53] and work

towards a solution where each party is responsive to the other's needs [Deutsch M "Cooperation and Competition" in Deutsch M, P.T. Coleman and E.C. Marcus (ed) (2006) *The Handbook of Conflict Resolution: Theory and Practice* at 27]. Integrative negotiation is also known as joint problem solving where "instead of attacking each other, you jointly attack the problem." [Ury W (1991) *Getting Past No: Negotiating Your Way from Confrontation to Cooperation* at 5)] The parties make a commitment to work together, have two-way communication and concentrate on the objectives. Thus a creative process is introduced where flexibility is encouraged and multiple alternative solutions are put on the table. This type of problem solving requires lateral thinking and creativity in order to achieve mutual gain. The result of integrative negotiation is often the creation of value and an end decision that cannot be mutually improved upon [Thompson L (2008) *The Truth About Negotiations* at 86] (in other words a true "win/win" outcome).

## 2. **Under stress, we are more competitive rather than compromising**

In stressful negotiations, we often naturally adopt the competitive style of negotiating. This is because most people are under the impression that they must be tough or competitive to succeed in negotiation [Thompson L (2008) *The Truth About Negotiations* at 20]. There are several behavioural approaches to negotiation. Competitive and compromise are both well-known approaches. The competitive style (also known as positional) is "where one party seeks to 'win' and adopts a 'position' without exploring needs or interests. This may be characterised by the use of coercive strategies." [Sourdin T (2008) *Alternative Dispute Resolution* at 32]. The compromising strategy "'splitting the difference' in some way between or among the parties; by not pressing for the maximum, everyone gets something." [Lewicki R, A Hiam and KW Olander (1996) *Think Before You Speak: A Complete Guide to Strategic Negotiation* at 128]. (Tests of what is fair and reasonable are usually adopted.)

The competitive style is based on power and is characteristic of distributive negotiation. It consists of a philosophy that we should take more and give less. Again, we must challenge our instincts and consider a compromise approach rather than a competitive approach. It is unrealistic to assume that compromise is unnecessary. "Negotiation cannot [satisfactorily] proceed without compromise [or concession-making]. If one or both parties cannot move at all on their stated positions, there is no negotiation [process in the accepted sense]. In reality, most conflicts are resolved by some form of realistic and acceptable compromise." [Tillett G & B French (2006) *Resolving Conflict: A Practical Approach* at 138]. Good communication is essential for compromise, where parties are willing to trade concessions and be flexible. Though characterised as different to the collaborative style, compromise can indeed coexist with the integrative approach. "Compromise is movement, flexibility, and change - without these, situations remain static and conflict

cannot be resolved." [Tillett G & B French (2006) *Resolving Conflict: A Practical Approach* at 139].

3. **We believe that raw power is the dominant element in most negotiations**

Distributive negotiations often become a power struggle with a focus on victory rather than mutual satisfaction [Ury W (1991) *Getting Past No: Negotiating Your Way from Confrontation to Cooperation* at 131]. The exercise of power can have negative relational and reputational consequences, [Korobkin R "On Bargaining Power" Schneider A and C Honeyman (ed) (2006) *The Negotiator's Fieldbook* at 255] thus damaging collaborative efforts. Our intuition often causes us to endeavour to coerce others in an attempt to gain a concession by unilaterally attacking the other side [Fisher R & S Brown (1988) *Getting Together: Building a Relationship that gets to Yes* at 138]. However, this power struggle often backfires on us:

"The power game is supposed to work as follows: You threaten or try to coerce the other side and then they back down. However, unless you have a decisive power advantage, they usually resist and fight back. They get angry and hostile, reversing your attempts to disarm them. They cling even more stubbornly to their position, frustrating your efforts to change the game. They become increasingly resistant to reaching agreement, not only because you may be asking for more but because agreement would now mean accepting defeat." [Ury W (1991) *Getting Past No: Negotiating Your Way from Confrontation to Cooperation* at 131]

Instead of being a dominant deterrent, raw power actually breaks down relationships, [Fisher R & S Brown (1988) *Getting Together: Building a Relationship that gets to Yes* at 133] causes us to overlook problems, builds resentment and inhibits the building of trust between the parties. The primary focus should always be the parties' interests and power should only be used after consulting at length.

4. **We will commonly revert to use of force, threat or bluff even though these techniques are less likely to succeed**

Force, threat and bluff are characteristics of distributive negotiation [Putnam L.L. "Communication and Interaction Patterns" Schneider A and C Honeyman (ed) (2006) *The Negotiator's Fieldbook* at 387]. Utilising these techniques is one of the least effective thing that we can do, despite the fact that it comes naturally to us in negotiation. Resorting to force, threat or bluff is often a direct result of poor preparation and planning, which makes for poor performance. As discussed further below, preparation and focussing on the starting point are some of the main pillars of integrative negotiation.

The tactics of force, threat and bluff are inherently connected to the power game (see above). Instead of listening and acknowledging we are threatening and instead of reframing the other side's position we insist on our own position [Ury W (1991) *Getting Past No: Negotiating Your Way from Confrontation to Cooperation* at 130]. We then bluff to enhance our position and undermine our opponent. "While some of these tactics may provide the individual with a short-term power advantage, in the long term this type of conduct demonstrates a lack of integrity, credibility and trustworthiness." [Brandon M & L Robertson (2007) *Conflict and Dispute Resolution: A Guide for Practice* at 177-78]. It is also damaging to relationships. The danger of using these tactics is a potential "lose/lose" outcome where neither party gets what they want. This is a direct result of the distributive process and highlights the inherent dysfunctionality of that model.

#### **5. We tend to focus on things that separate us**

Focussing on the things that divide us rather than the things that bind us is also a characteristic of distributive negotiation. Though our instincts pit "us" against "them," it is important to explore our common interests. Though it may seem counter-intuitive, sharing information [Bazerman M and MA Neale (1992) *Negotiating Rationally* at 90] is essential to reaching a common goal and a "win/win" solution. By revealing our own interests, we double the probability that the other side will do the same [Thompson L (2008) *The Truth About Negotiations* at 103] (although there is a risk of exposing our vulnerability so caution ought prevail). If we see our opponent as our partner who is giving us an opportunity to reach a mutually satisfactory agreement, [Ury W (1991) *Getting Past No: Negotiating Your Way from Confrontation to Cooperation* at 10] it will help us focus on the things that unite each side.

It is therefore essential that each party understands the objectives and underlying needs of the other party [Lewicki R, A Hiam and KW Olander (1996) *Think Before You Speak: A Complete Guide to Strategic Negotiation* at 66]. This way, we can allow integrative negotiation to take place. Identifying the interests that unite the parties facilitates lateral thinking and allows the parties to expand the number of potential solutions [Astor H & C Chinkin (2002) *Dispute Resolution in Australia* at 118].

#### **6. We think more about the end points rather than the starting points**

The natural inclination to focus on the end points is often the opposite of what we should be doing. We often focus on the end points because we have not taken the time to prepare for the negotiation. Preparation is essential for crafting a credible starting point or opening offer. "If you haven't prepared an opening offer, you shouldn't be at the bargaining table. Remember, your opening offer is a behavioural manifestation of your aspiration point. So it's imperative to prepare your opening offer." [Thompson L (2008) *The Truth About Negotiations* at 16]. Importantly, we must remember that our starting point probably has more to do with the outcome of the

negotiation than any other single factor. Therefore, the whole negotiation wraps around the starting point (provided it is credible).

By focussing on the starting point, we are able to generate a variety of possibilities [Fisher R & W Ury (1981) *Getting to Yes* at 11] and encourage lateral thinking. Perhaps most importantly a credible starting point anchors the negotiation and is directly connected to the outcome.

#### 7. **We talk more and listen less**

When we talk more, we are assailing the other side with our own ideas and cut off the opportunity to learn things we do not know about the other side [Fisher R & S Brown (1988) *Getting Together: Building a Relationship that gets to Yes* at 88]. Our intuition leads us to believe that by talking more, we are facilitating effective communication and persuading the other side. However this is only one-way communication which may diminish the quality of the relationship. We must understand that "listening is as much a persuasive technique as speaking." [Nierenberg G (1986) *The Complete Negotiator* at 145].

It is imperative that we develop active listening skills for use in negotiation. "In active listening, you let the other party know that you heard what they said. You may repeat it back to them to be sure there is no misunderstanding." [Lewicki R, A Hiam and KW Olander (1996) *Think Before You Speak: A Complete Guide to Strategic Negotiation* at 159]. This creates high quality two-way communication and is an essential element of the integrative model. Listening actively is the opposite to what comes naturally and is also the opposite to what the other side expects. When executed skilfully, active listening shows our opponents a degree of respect and that we are taking their perspective into account [Krauss R.M. and E Morsella "Communication and Conflict" in Deutsch M, P.T. Coleman and E.C. Marcus (ed) (2006) *The Handbook of Conflict Resolution: Theory and Practice* at 150]. Further, active listening gives us the chance to learn the other side's position which in turn enables us to focus on and highlight our common positions. It is important not to interrupt the other side when listening to their position so we can hear their entire position. Active listening not only allows us to assess the other side's position, but also enhances our own position through the power of silence.

#### 8. **We believe that fast negotiations are better than slow negotiations**

Often, our intuition does not provide us with a proper sense of timing for negotiation. We tend to consider speedy negotiations to be the most effective approach and are keen to seal the deal quickly. We easily forget the importance of patience and slow incremental building of trust when participating in negotiations.

The concept of forbearance in negotiation is critical. This strategy is employed when we "hold off, suspend, put off an answer instead of giving in at that moment, do not

answer a question, caucus, or take time out to decide." [Nierenberg G (1986) *The Complete Negotiator* at 157]. Forbearance and moving slowly allows us to:

- be co-operative;
- build trust with the other side;
- identify and define the issues;
- clarify the issues;
- explore alternative solutions;
- control the momentum of the negotiation;
- think before we act;
- let the negotiation mature; and
- achieve a higher probability of synchronicity with the other side.

#### 9. **We believe large teams are better than small teams**

Our automatic impulse often is to bring a large team to the negotiating table. We think that a large team is better because it is a demonstration of power to the other side. However, just as raw power can backfire on us, so can a large team. Despite our intuitive beliefs, large teams may create difficulties which the other side may exploit, [Matz D "Intra-Team Miscommunication" Schneider A and C Honeyman (ed) (2006) *The Negotiator's Fieldbook* at 559] such as an opportunity to create disagreement between team members or to talk out of turn [Nierenberg G (1986) *The Complete Negotiator* at 60].

If the team is smaller, it is easier to define and assign roles for each member. Further, a smaller team strengthens cohesion between members and facilitates better team communication. In contrast, "the greater the number of team members, the more anonymous and less accountable any one member may feel." [Sally D.F. and K.M. O'Connor "Negotiating in Teams" Schneider A and C Honeyman (ed) (2006) *The Negotiator's Fieldbook* at 551]. It becomes easier to achieve consistency from the team if the numbers are low and a specific function can be delegated to each team member. The optimal number of people on a negotiating team is usually three: [Sally D.F. and K.M. O'Connor "Negotiating in Teams" Schneider A and C Honeyman (ed) (2006) *The Negotiator's Fieldbook* at 550] a sharp end negotiator, a process observer and a scribe. It can be quite destabilising to have a non-functioning team member [Nierenberg G (1986) *The Complete Negotiator* at 60].

## 10. **Australians tend to be more informal rather than formal**

We tend to view formal atmospheres in negotiation as unfriendly. This is in line with the casual egalitarian mentality which is inherent in most Australian negotiators. This instinctual drive often fails to produce the best outcomes in negotiation. The formal negotiation setting is a useful default setting, with a low level of risks attached. The formal atmosphere is more effective for multi-issue and complex negotiations. It is especially useful when teams are involved. Formality allows for better structure, organisation and clarity in the negotiation. By allowing for greater structure, a formal atmosphere facilitates the processes. Once underway it is then easier to move towards an integrative approach and in a measured incremental way, which should give rise to better and more durable relationships.

### **Conclusion**

Our intuition can easily mislead us into adopting distributive and adversarial approaches in the way we negotiate. We therefore must learn to consider playing a game of opposites and counteract our instincts in various stages of negotiation. It is a discipline that must be developed, practised and fine-tuned in order to maximise our successes. If we are able to override our intuition at the right time and adopt styles that may at first seem unnatural, the likelihood of obtaining a result that meets the needs of all parties expands dramatically and opportunities to create true "win/win" outcomes are likely to follow.

### **The Authors:**

Michael Klug practises in the area of corporate litigation where his career has evolved from that of a commercial litigator to working as a specialist negotiator, dispute resolver and mediator. Michael's primary area of professional recognition is in the field of Alternative Dispute Resolution (ADR). Michael is a well known speaker and trainer on the topic of negotiation. [mklug@claytonutz.com](mailto:mklug@claytonutz.com)

Ann Taylor is an American who has settled in Australia. She holds a bachelor of arts and a juris doctor. Ann developed a very early interest in ADR and has worked together with Michael Klug in developing her experience and expertise in this area. Ann assisted Michael in facilitating one of the largest ADR facilitations that has occurred in Australia, known as the Medical Interest Based Bargaining Facilitation. She is also co-authoring a series of articles with Michael as part of her on-going ADR development. [amtaylor@claytonutz.com](mailto:amtaylor@claytonutz.com)

**International Focus, ACR Commercial Section**

**[www.mediate.com/acrcommercial](http://www.mediate.com/acrcommercial)**

**January 2010**