
Kluwer Mediation Blog

Mind games

Charlie Woods (Core Solutions Group / Scottish Universities Insight Institute) · Sunday, April 8th, 2018

One way of describing mediation is as a process that seeks to convert what is apparently a zero or negative sum game into a positive-sum game. This is to use the language of game theory, which analyses strategies that rational players take to secure the best outcomes in interactive, interdependent ‘games’; where the outcome for each participant depends on the actions of all and where the players know what each other could do, but not what they will do.

Games can be one off, played for a fixed number of rounds or repeated indefinitely. In computer-based experiments in which games were played repeatedly for an indefinite period, co-operative positive-sum strategies were found to be most successful in evolutionary terms. Key features that assisted these strategies were reciprocity, a concern for the future, a clear memory of the past and effective communication. When conflict arises in real life, the ‘game’ is often viewed as more of a one off. This is rarely ever completely the case (e.g. your reputation usually proceeds you) and remembering what was successful in these experiments may provide some pointers to successful conflict management.

One of the foremost exponents of game theory was John Nash, who identified the ‘Nash equilibrium’; where in non-cooperative games neither side can independently change their strategy in a game without ending up in a less desirable position. Nash’s Guardian obituary in 2015 observed that ‘there is at least one Nash equilibrium lying in wait to trap us in every situation of competition or conflict where the parties are unwilling or unable to communicate.’

In a zero sum game any gain by one party is at the expense of the other. In a non-zero sum game there is the potential for both to benefit. In a zero sum game parties are adversaries, in a non-zero sum game they have the potential to be collaborators in a problem solving exercise seeking an optimum solution to satisfy all participants. Key to achieving this (and avoiding a Nash equilibrium) is that they can communicate effectively and build trust in each other. This is where mediation comes in!

How can mediation help in achieving a positive-sum approach? Possibilities include:

- Deepening understanding of each parties underlying interests and needs in a way that gets beneath the surface of the presenting issue and associated positions.
- Generating an understanding of the utility, and hence value, of possible outcomes for each participant – recognising that while they might have the same nominal value, the real benefit (or cost) may vary considerably for each party.
- Posing hypothetical questions to help identify new sources of value that might have not seemed

feasible at the outset e.g. the potential value of an ongoing business relationship.

- Exploring fully the costs and benefits (financial and non-financial, direct and indirect) of various possible outcomes.
- Providing a framework for examining the impact of potential cognitive biases that might be getting in the way of more considered judgement.
- Providing opportunities for trust to be built incrementally.
- Exploring alternatives to a negotiated, positive sum outcome, which can often be zero sum. Interestingly in terms of societal evolution, one of the stimuli for co-operative behaviour is thought to have been the fear of loss from zero sum confrontations.

I'm looking forward to further exploring the implications of game theory for the practice of mediation in workshops along with fellow mediators who have registered for the International Academy of Mediators Conference in Edinburgh, Scotland in early May.

See also John Sturrock's early blog on Game Theory at <http://mediationblog.kluwerarbitration.com/2017/01/29/game-theory-and-mediation-adding-real-value/>)

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