

Game Playing in Negotiation: Part 1, Evolutionary Purpose and Necessity---Machiavelli's Place At the Table

by Robert Benjamin

Abstract. *While often dismissed as irrational, disingenuous, unethical or “Machiavellian,” game playing strategies and devices are a natural and necessary part of the negotiation and mediation of difficult issues and controversies.*

If acknowledged and monitored thoughtfully, gaming behavior allows participants a measure of self-protection and provides a lubricant for the constructive, creative and ethical management of complex issues.

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Games-- artfully designed and well played, allow people to negotiate the painful truths and harsh realities that interrupt their lives. By probing and circling each other in ways that might seem nonsensical to observers, those skeptical of the process of the others involved can gauge the risks of engagement. Not infrequently, the games involve measures of deception, or they will tell “noble lies” to themselves or each other to keep alive the prospect of a workable solution. It is as much by the grace of guile, as by reason and good will, that humans survive and endure.”

-- Loyal Rue, By the Grace of Guile, 1994

What’s the Matter with Game Playing?

If not the subject, then the subtext, of a good amount of what people talk about day-to-day is who is deceitful, lies and plays games, and who tells the truth and is honest and trustworthy. This goes on not only in discussions about personal matters and social relationships, but in the boardrooms of big corporations, the hallways of religious groups and charitable organizations, in politics, and over every real and proverbial back-yard fence. People are preoccupied with trying to size each other up; they circle, test and scrutinize each other to gain some sense of their motives, intentions, authenticity, and trustworthiness. And game playing is nowhere more pronounced than in the negotiation where difficult issues must be addressed and people feel most vulnerable and at risk. Throughout the process participants

test and take the measure of each other.

For the most part, the assessment of others, and especially adversaries, are made by quick and dirty intuitive judgments. A prominent example is President George W. Bush's conclusion after meeting Russian President Vladimir Putin that he could "read" him and pronounced unequivocally that, "I looked into his eyes and saw his soul," and concluded, "we (the U.S.) could do business with this man." More than a few pundits and observers were skeptical of his process, let alone his conclusion. However, few of us can deny we do much the same in our daily personal and business affairs, and claim, though we might, to being open minded, objective and reserved in our judgments of others. This is nothing new in human history; one of the primary themes of Alighieri Dante's epic poem, Divine Comedy (1308-1321), is the risks and consequences of the misjudgment of others, which some critics suggest he experienced personally. (Steinberg, Justin, Dante and the Limits of the Law, 2013) "Dante shocked his contemporary readers...by placing some of the most respected citizens of Florence in Hell..." and "...saves various souls who had been publicly condemned or excommunicated--." (Harrison, Robert Pogue, "Dante on Trial," New York Review of Books, p36-37, Feb.19, 2015)

The testing and assessment of the authenticity and motives of others is an integral part of game playing behavior, which is a basic part of our human nature in an uncertain world. It is a recurring storyline throughout literature reaching back to the Old Testament. In the Book of Genesis, God plays a dangerous game by directing Abraham to sacrifice his son Issac as a demonstration of his faith and loyalty; He rescinds his demand only at the last moment.

For negotiators, mediators, and others who are on the front lines of dealing with difficult issues and controversies, the task of "reading" people is a familiar and often troublesome one. While some claim to have the scientific and technological ability to detect liars and scoundrels, doubt remains. In the meantime, most people continue to rely---sometimes overly so---on our natural inclination toward intuitive "fast thinking" that relies on momentary quick judgments and decisions out of practical necessity, notwithstanding the risks. As cognitive psychologists have discovered, there are a whole range of biases, some conscious, and many others unwittingly in play that makes that kind of thinking "predictably irrational." However, this kind of thinking process is not an aberration or mistake that can be corrected by discipline attention, as many would like to believe. It is, rather, a "normal" part of the cognitive thinking process. Monitoring can minimize some of the bias that seeps into our decision-making, but no amount of diversity or sensitivity training will be sufficient to displace or entirely control factor of "predictable irrationality," which is always present. No one, not even educated, trained and experienced professionals or experts are immune or excepted. (Kahneman, Daniel, Thinking Fast and Slow, 2012) Since game-playing behavior is a primary means by which people hedge their bets and calculate their risks, it is always present in negotiative processes.

The erratic nature of human thinking---especially under stress—is not just a learned or

cognitive matter; there is a neurobiological basis as well. In what has been described as the functioning of our “messy” human brain, emotional processes are inextricably intertwined with the analytical processes. As Antonio Damasio, a noted neuroscientist has observed, “there is no such thing as a cool-headed reasoner.” (Descartes’ Error, 1994) We are deluding ourselves to believe that we are or could be purely rational actors who do not play games, or that we are not all susceptible to being “conned.” Some are able to fake authenticity and are trusted despite all evidence to the contrary, such as Bernie Madoff, the notorious author of a massive Ponzi scheme that defrauded investors out of billions of dollars in 2008. Conversely, others who may be paragons of integrity and honesty, are viewed as inherently suspect regardless of their actions or behavior because appearance, background, or personality quirks.

Game playing behavior evolved as a means of self-protection and survival in a socially complex world. It is a palliative measure that allows people to live with themselves and develop means to ferret out the people and plots that threaten them. As a result, game playing, notwithstanding the fact that it can include some amount of deception of others, but as well, self-deception and denial, observes noted evolutionary biologist Robert Trivers and others, are an integral part of the human behavioral repertoire. (Trivers, Robert, The Folly of Fools, 2011; Rue, Loyal, By the Grace of Guile: The Role of Deception in Natural History and Human Affairs, 1994)

Because game playing is commonly viewed as being irrational and deceptive ---especially in techno-rational cultures that trace their intellectual origins to the 17th Century Enlightenment tradition--- many people conclude such behavior is irrational, unethical, illegal, or immoral. Not only do they tend to negatively judge others for engaging in game playing, they have trouble recognizing their own propensity to play games, and as often as not, outright deny doing so. And, if and when they do acknowledge their own gaming behavior, there is a strong inclination to apply a double standard. One’s own game playing is viewed as necessary and justified, while game playing by others is taken as proof of deceit and a lack of integrity.

This is not a pessimistic vision of human nature. People are also capable of behaving reasonably and collaboratively. In fact, from an evolutionary perspective, game playing is the means by which many animal species, including humans, transmit their moral codes and cultural sense of fairness. In canine puppy play, for example, mock fighting and play is instrumental not only in establishing a social hierarchy in the pack, but also the means by which rules of acceptable behavior, effectively a moral code, is communicated and learned. Appropriate behavior is rewarded with shows of trust and pleasure and some borderline behaviors may be tolerated or forgiven; behaviors seen as too aggressive or inappropriate, however, will be met with retribution, and in some instances, even ostracism from the pack. (Bekoff, Mark, and Pearce, Jessica, Wild Justice” The Moral Lives of Animals, pps. 113-116.) Game playing, especially in the early stages of a human negotiative process, can similarly be

likened to a testing process where limits are established. If a negotiator plays extreme hardball from the start, he or she may be outright refused, but most negotiators test each other through forms of game playing.

Johan Huizinga, a highly regarded cultural historian and philosopher, in his 1938 book, Homo Ludens ("Man the Player"), observed and recognized the importance of game playing as a core element of human culture. Although frequently dismissed and disregarded, he gave it importance equivalent to the capacity for reasoned thinking, and the ability to build things-- "homo faber"—"man the maker or doer." Games allow people to play with ideas and build technical models to explore possible solutions to issues and problems. Since every negotiative process requires reasoned thinking and a pragmatic focus on producing a workable result, game playing is necessarily an essential element. For humans, every game and sport, from poker and monopoly to football, soccer, baseball, and even ice curling, is a testing ground for not only skill and competency, but of moral and ethical integrity. In this sense, thinking of negotiation as a game or sport is entirely appropriate.

The ambiguity of game playing makes it especially troublesome to people and professionals who believe in, hope for, or want to construct a rational world. Game playing may well be necessary because it is confusing. Not infrequently in a controversy, people who are too settled and certain of their position need to be shaken-up and nudged to reconsider. When logic and reasoned persuasion do not work, as paradoxical as it may seem, creating confusion can often catalyze a clarification of issues and perspectives by the participants. Game playing is not without risk; its use is invariably offset by frustration and potentially generates distrust. Depending on the circumstances and the sensitivities of the people involved, too much game playing can undermine a negotiation process.

Much of the ambiguity surrounding game playing is reflected in the deeply ingrained cultural ambivalence toward such behavior. On one hand, game playing is part of the American DNA. From the avid interest in sports and games of all kinds, to the thrill of a putting together a business deal, the allure of game playing is palpable. Both activities channel the primal human instincts of survival and competition. While many believe the United States was founded on the principles freedom and liberty, alongside those higher-minded notions is the dedication to creative and pragmatic innovation, individual responsibility, and progress. The American mythology, linked to a capitalistic economic system holds that we are or should be entrepreneurs -- business people who bear individual responsibility for their own decisions and resulting success or failure, fend for themselves, and are not afraid to take risks. The Social Darwinist notion of the survival of the fittest, as dubious as it may be, continues to have currency. In the game of business, consumers are charged with the duty of protecting themselves by the doctrine of caveat emptor, or "buyer beware," and entrepreneurs are celebrated as the ultimate game players dedicated to succeeding by any means necessary. Competitive sports are seen as a training ground to prepare people for business and business is, and has always been, as much a game as it is serious work. In this perfect libertarian

world desired by many, the freedom to contract is considered sacred, and the American legal system largely tolerates, if not encourages that view of private enterprise. Sales puffery practices and extravagant business schemes that border on being outright scams often blur the lines between swindling and selling, have frequently (Leff, Arthur, Swindling and Selling, 1976) Curiously, private negotiation and mediation processes, by providing confidentiality and often allow for a wide disparity in the available information and abilities between the parties involved, can also enable and support questionable business deals and settlements.

Given the pervasive influence of our game playing culture, it is difficult to imagine that people entering a negotiative process, regardless of context, would be prone to leave behind the ingrained propensity for game playing. And the inclination to play games is intensified many fold in the stressful circumstances where people feel vulnerable and at risk, such as, a divorce proceeding, a major business deal, a medical treatment dispute or wrongful death action, the negotiation of labor-management agreement, or in reaching an understanding regarding the policies and regulations of scarce water resources, old-growth forests, of genetically modified crops. There are, nonetheless, many practitioners and theoreticians who view game playing as an unhelpful and disingenuous form of behavior that has no place in the discussion of such serious matters.

Many people do not like to negotiate or mediate. Even if it is an eminently sensible method of managing difficult situations, it is seldom their first or preferred choice. A good part of the reason for their resistance and reluctance is the association of the process with the same kind of game playing that many identify with confidence games and swindles, which is morally and culturally distasteful. However, while the purposes of a thoughtful negotiative process and a swindle differ dramatically, there is no question but that they share in common many techniques and devices. In a con game, the first task is to gain the targeted "mark's" (victim) confidence and trust as the set up for a theft or betrayal; in a negotiation, a measure of trust is essential for a successful collaborative venture. The confusion is frequently a factor in the willingness of people to participate in a negotiative process and it becomes all the more important for a party to seek to detect the motives and intentions of the other party or parties. Such motives are hard to decipher and are frequently misconstrued or misjudged where people are hesitant to initially be forthcoming. As a result, initial discussions in a negotiation are often taken up with are often taken up with postured statements and the spinning of "facts" of the matter. In the legal system or business people are somewhat more inured and desensitized to this gaming behavior. Legal fictions and legalese is expected and many people are aware that sales promotions are designed to lure you into a purchase that very well may be a "bait and switch" game. In negotiate processes, however, because they are more direct and personal, there is less of a buffer, so that when such devices are used, they are scrutinized more careful and by stricter standards.

Negotiative behavior and the idea of compromise, although essential for humans to effectively collaborate and cooperate with each other as individuals, groups or nations, is nonetheless

*viewed as morally questionable activity by many religious faiths. In Christian theology, for example, negotiation is considered, not just unseemly, but sinful. The primary modus operandi of Satan is to tempt, persuade, manipulate, deceive, and negotiate to procure human souls. That message is not lost on many and contributes to their negative bias. There is good reason why many negotiated agreements are described as “making a deal with the Devil.” (Benjamin, R.D., “Negotiation and Evil: Moral and Religious Resistance to the Settlement of Conflicts,” *Mediation Quarterly* 15: 245-266, 1998; also in *Guerrilla Negotiation*, CD-ROM, Mediate.com, 2001)*

Acknowledging the game-playing factor in negotiative processes presents a dilemma for practitioners. If negotiation is reduced to nothing but game playing, then the necessary confidence the process requires to be accepted as viable methods of managing complex and difficult matters will be eroded. At the same time, the presence of game playing cannot be ignored or dismissed. It is a natural and necessary, if not essential, part of the negotiative process that cannot be suppressed and extinguished. To reconcile what appear to be core aspects of the negotiative process is an approach that recognizes both the value of rational analysis and reasoned persuasion and recognizes and accepts the necessity of game playing. Contrary to the thinking of many, game playing is neither inconsistent with nor incompatible with reasoned persuasion. While gaming behavior, which is as much or more reliant on appearance and affect and done indirectly, rather by direct discussion supported by assertions of factual evidence, is often viewed and dismissed as irrational and subjective, it nonetheless serves a rational purpose. Game playing helps to foster collaboration and facilitates the negotiative process. Were game playing to be accepted, then practitioners might learn to systematically anticipate, monitor, prepare, and to constructively and creatively manage and re-direct the behavior to benefit the negotiative process.

The “Negotiative Process”

The term “negotiative” process, while not yet formally recognized and accepted, is used as an overall descriptor of the way people engage each other, both formally and informally, in every context, to manage issues, controversies, and conflicts. While the term includes the formal use of negotiation and mediation processes, it is intended to include more broadly, the many and varied circumstance where people rely upon the thinking frame, strategies, techniques, and skills that have evolved to help them collaborate with each other, and deal with differences and difficulties that arise between them. The negotiative process includes every manner of interaction from an impromptu discussion between two people over marital finances, to more formal settings involving multiple parties, such as the extended proceedings that commonly occur in deliberation of policy matters or in the collective bargaining of labor-management agreement. Sometimes the negotiative process is aided by the involvement of a third party mediator, or a person designated by an organization to be an ombudsperson, who must effectively negotiate his or her authority with the participants. The working presumption is that some form of negotiative process is informally practiced daily in the

context of most home, work and professional settings. Foreign diplomacy, legal practice, political and legislative work, business and corporate management, and sales and marketing, all actively and significantly draw upon negotiative thinking and skills. Even the arts, scientific research and other professional or creative pursuits that many believe are largely individual endeavors, invariably requiring some form of negotiation at some point to bring a project to fruition. While often marginalized, negotiation is a fundamental human skill set and some amount of game playing will likely be involved.

The Spectrum of Game-Playing Strategies, Tactics and Behaviors

Game playing is generally thought to be an intentional, artificial, manipulative, and deceptive act, verbal or non-verbal, done to take advantage of others for one's own personal gain. However, game playing behavior can also be done unwittingly out of the need for personal protection and self-defense, or simply the result of cultural habit, rather than for personal gain. To presume, therefore, that all game playing behavior is intentional, deceptive, inappropriate, and unethical, is unwarranted.

Any behavior, depending on the observer, is susceptible to being labeled game playing. Behaviors associated with often-criticized 'hardball' negotiation styles, such as ultimatums or the expression of anger, or other coercive actions are, for example, commonly construed to be manipulative and controlling game playing tactics, when might only be defensive reactions, albeit clumsy. Conversely, more passive and "victimized" behaviors such as sadness, crying, or silence, can be in fact game playing, even though they appear genuine.

There is a spectrum of game playing behavior that ranges from none at all and speak only what one knows to be the "truth" without omission or exaggeration -- a relative term, to allowing some tolerance for the shading or spinning of the "truth" as most people are prone to do, and beyond, to the intentional and outright lying and deception for one's own gain. The behavior can be graphed along two dimensions, the first being whether it is done consciously and intentionally, or is unintentional and even an unconscious act done out of habit or fear. The second dimension charts the extent to which the behavior is done for the constructive purpose of obtaining a workable agreement, as opposed to being done with a more sinister purpose of "winning" at all costs. Once there is acknowledgement that some game playing is always likely to occur in the negotiative process, then the issue becomes how much and what kind is tolerable and acceptable?

*Some theorists and practitioners endorse a standard of absolute honesty in daily life and especially in negotiative settings, including a "zero tolerance" for even minimal deceptions, such as "white lies." They believe any game playing or knowing deception, regardless of the reason, threatens the trust bonds essential for human relationships and collaboration, and should be sanctioned and suppressed. (Ekman, Paul, *Telling Lies*, (2001); and Bok, Sissella, *Lying* (2d ed., 1999) Many third party mediators and ombudspersons have promoted this view as a practice standard consistent with the role of being a "neutral," "objective" and*

“impartial” agent.

Other practitioners, however, view their duty of honesty and neutrality from a more relativistic perspective and accept the need for a greater degree of practice flexibility. Their view is, by no means, to be taken as a full throated endorsement of game playing, but the mere recognition that the more severe approach would rule out some of the most commonly taught and practiced techniques of negotiation and mediation. For example, the positive and inclusive re-framing of issues in a controversy relies upon spinning and manipulating “the truth,” albeit in benign ways. Many people begin a negotiation by presenting a narrow, self-serving, position that negatively blames the other party for the problem; a negotiator or mediator’s first act is to re-frame those statements more positively and constructively. They will often begin with a “white lie,” saying out loud, “I’m sure all of us (or, both of you) want what is best for the ... (fill in the blank) ... business, children, or country.” It is an innocuous statement, and more than a few practitioners do not necessarily believe what they are saying and harbor serious doubts about the intentions of one or all of the other participants, but dare not say so. Their tactical purpose is to create a constructive working atmosphere and begin to lay a foundation for consideration of different options to be considered. If nothing else, this gaming device allows a practitioner to abide by the social conventions and expected courtesies that allow participant tensions to somewhat ease before the more difficult discussions begin.

At the other extreme, there is no question but that some people set out to intentionally deceive, connive, and manipulate the outcomes of a negotiation to their advantage at the expense of others. They will intentionally omit relevant and important information, engage in spying, try to intimidate and use coercive tactics, or outright lie, corrupting the negotiative process to bring about the result they want. Their actions are not only inappropriate, but also often unethical and sometimes illegal.

While most people engage in some forms of game-playing behavior at varying times in a negotiation, few appear to reach the pathological extreme. Even if they do, however, it does not follow that a full-tilt, disingenuous game playing negotiator, solely focused on his or her own gain, who is not acting in “good faith” and unworthy of trust, can not still be involved in negotiation and reach a workable agreement. To do so, however, requires the other participants know how to protect against such behavior, or even know how to use those game playing tactics to their own advantage. While a negotiative process may be more drawn out and difficult as a result of disingenuous game playing, the behavior can still provide a lubricant for a negotiative process to work. Becoming aware of game playing and observing the gaming tactics of others can often provide revealing clues and insights about another negotiator’s fears, needs and concerns. What is unsaid, camouflaged, and hidden from view can often be as important as what is said out loud. And, mindful of the risks, game playing can often increase the efficacy and creativity of the negotiative process.

An organizational approach to reviewing game playing strategies and devices in negotiative

processes

*Game playing reaches into every part of the negotiative process, from the overall strategic approach a practitioner adopts, to the use of specific devices, tactics, and techniques, and to the strategic use of individual behaviors. In this first part, the focus is on why, despite the antipathy often implied or openly expressed, there needs to be an acknowledgement and acceptance of the necessary place of game playing in negotiation. In **Part 2** of this series on **“Game Playing in Negotiation: An Inventory of Strategies and Devices,”** there will be a more thorough description and discussion of most commonly used strategies, tactics and devices and the circumstances and contexts in which they tend to be used. And finally, in **Part 3, “A Framework for the Assessment of Uses, Risks, and Ethical Limits,”** the discussion will focus on how game playing might be constructively used and when it is ill advised.*

For the present, to better understand the necessity and purpose of game playing strategies and devices in the negotiative process, a useful organizational aid is to correlate them with the basic approaches to negotiation and mediation. Five common approaches to negotiation are identified, however, they are not intended to be exhaustive. In addition, few practitioners are purists in their approach no matter how dedicated they might be to a particular model or style. There is invariably, a significant amount of crossover between the various approaches.

Each of the overall negotiative approaches is based on a set of assumptions about the sources of controversies or conflicts, how people do or should make decisions, and how people can, or might best be persuaded to collaborate and negotiate. Underlying the assumptions are typically cultural, personal and philosophical notions about conflict and compromise based on life experience, professional training, gender, and a myriad of other factors. The strategies, style, techniques and skills they choose are based on those assumptions. Every negotiative approach has adherents and a substantive and plausibly valid purpose. Not unlike therapy, counseling, teaching and other work where personal service is a core element, what counts as much or more than a practitioner’s theoretical or philosophical orientation, is their personal style, commitment and determination practitioner. (Saposnek, Donald, “Mediation Going Forward: What Do We Know? What Can We Expect?” Mediate.com, December, 2014)

In addition, each of the substantive negotiative approaches also has a corresponding set of game playing strategies and devices that practitioners use either intentionally or unwittingly.

1. The interests-needs, or the “reasoned persuasion” approach is one of the most prominent and favored in present day negotiative practice. It is based on the working assumption that people are rational actors who are interested in identifying their common interests and needs, and susceptible to reasoned persuasion in order to efficiently solve problems. The substantive merit of the strategy is clear and not to be denied. This reasoned approach is shadowed by

games of reason---game playing strategies and devices that draw on the allure of being and appearing reasonable. For example, a party will often seek to “occupy the middle ground” in an effort to appear more reasonable and draw the other party into the center. Similarly, many negotiators theatrically take on the “calm and reasoned” demeanor or affect in order to appear more confident, or to intimidate a less self-possessed opponent.

2. The positional bargaining approach is a longstanding bargaining strategy that can be efficient, especially when the matters involved are predominantly the buying and selling, or distribution of money or property. While often denigrated as a “cut and dried,” zero-sum approach, it is sometimes a useful means of reaching a compromise in bartering and flea market settings. The corresponding gaming strategy is “high-low” game which is premised on the working assumption is that the initial offer of a party is intentionally set high or low and that the other person will respond in kind, either too high or low, at which point both can inch toward a mid-range acceptable to both. The “circling” behavior, trading offers and counter-offers, allows both parties a means of protection.

3. The “Caucus-Style” approach is closely allied and aligned with positional bargaining approach. Characteristically used in civil and business matters, it is effectively a form of shuttle diplomacy where the participants do not meet directly with each other. An underlying assumption is that, being that they are adverse parties, minimizing or discouraging face-to-face discussion reduces the risk of unwieldy emotional engagements that are either unhelpful or a distraction from the rational discussion necessary to solve the problem at hand. Separate meetings presumably allow for greater control of the situation by a negotiator or mediator and conjure the corresponding game playing strategy of “divide and conquer.” With the principals apart, the parties communications can be more easily managed by editing each of the participants messages, altering their words, and subtly reframing the issues in a manner that makes the one party’s motives, meaning, and purported position appear more amenable to agreement by another party.

4. The competitive approach, often referred to as “hardball” negotiation, is considered the most game-ridden and disfavored by present day practitioners. It is viewed as a throwback to the more traditional understanding of negotiation as a contest for survival and dominance. From this perspective, negotiation is a form of warfare, which justifies the use of strategies, and tactics that are considered coercive, deceitful, or even illegal and immoral, in keeping with the oversimplified maxim attributed to Machiavelli, that “the ends justify the means.”

However, notwithstanding the desire of many negotiators or mediators to be reasonable and collaborative, when people negotiate difficult issues there is frequently as strong sense that their survival is at stake, if not in actual fact, then personally, socially economically, or politically. In some circumstances peoples perception of being at risk and vulnerable is realistically founded and what would otherwise be characterized as disfavored hardball tactics----an ultimatum, or other threat of consequence--- may well be strategically valid, useful and necessary as a counter action. A credible threat can often catalyze the emergence

of an agreement in harsh circumstances.

5. The relational approach *assumes that the relationship between the parties, specifically, their acknowledgement and trust of each other, is critical to reaching an agreement. The assumption is that a good measure of disagreement and controversy arises from a lack of empathy and communication. There is no question but that substantively, personal engagement is an essential factor in most negotiative processes. There are also, however, many gaming devices and strategies drawn from the appearance of intimacy and connection. Empathy with another person can be at once, genuine and strategic, and there are challenges to the definition and practice of authenticity. Negotiators have necessarily become adept at taking on the persona of being an authentic and caring person who can “feel your pain.” The negotiative process is often a theater for dramatic display of both revenge and forgiveness, which leaves the participants the difficult task of assessing authenticity.*

Many practitioners, bowing to the necessity of finding a workable settlement, will often shift from one approach to another as circumstances change -- with or without being aware they are doing so. Many experienced negotiators and mediators have become consciously and intentionally protean in their approach, shifting strategies and altering their demeanor to better conform to the party's needs and the interests of reaching an agreement. In trickster folklore and mythology this is known as shape shifting. (Benjamin, R.D., “Managing the Natural Energy of Conflict: Mediators, Tricksters, and the Constructive Uses of Deception, in Bringing Peace Into the Room, Bowling, D. and Hoffman, D., eds. 2003) Sometimes they will be purely pragmatic, other times principled and pressing to “do the right thing,” while at other times understanding and empathetic, or coldly competitive. In the end, the responsibility of negotiators and mediators is to obtain a workable and resilient agreement. (Adler, Peter, “Protean Negotiation: Rejecting Orthodoxy and Shifting Shapes,” in The Negotiators Fieldbook, Honeyman, Christopher, and Schneider, Andrea, Eds, 2006) Shifting back and forth between strategic approaches is itself a form of game playing.

Negotiative devices, techniques, and tactics *are brought to bear by a practitioner as special circumstances might require, such as an impasse or obstacle that blocks an agreement. For instance, with the “hidden hand” technique a negotiator might silently and surreptitiously use a third person to present a view or offer that might otherwise be dismissed out of hand were it to be suggested by a distrusted party. In a like fashion, forms of what are effectively ultimatums, which are often disparaged as coercive tactics, can sometimes be useful in difficult situations. Commitment devices, which are derivative forms of the ultimatum, effectively draw a line in the sand that signals a firm principle that cannot be crossed without consequence.*

There are any number of other tactics and devices that can smooth the way to an agreement. They are often designed to be essentially incremental or stopgap measures derived from the pragmatic principle of “not letting the perfect be the enemy of the good.” Along with interim cease-fire agreements that often pave the way for a final settlement, a more devious, often

unspoken and closeted device is “don’t ask - don’t tell.” While often criticized for falling short of directly addressing a difficult issue, the device allows people to engage in a modest form of self-deception in return for a workable agreement. Minority groups have used such tactics throughout history in order to survive. For example, European Jews, although detested, were moderately tolerated and allowed to survive, living apart in ghettos, because they provided essential financial services in a dominant Catholic culture that considered such work immoral. Likewise in the United States, the first Jim Crow Era, that lasted for better than a hundred years after the Civil War, provided a means for African Americans to survive as long as they effectively kept out of sight, serviced the dominant white culture, and endured the legal fiction -- a lie concocted by the legal system -- of “separate but equal.” Likewise, gays and lesbians have generally been allowed relatively free passage in return for providing entertainment, music, art, literature, and military service, as long as they remained closeted and did not disclose their sexual orientation. It may not have been fair or just, but the device allowed them to survive. And, like many games, it provided a measure of relief from the most punitive applications of “zero-tolerance” laws, policies, regulations, rules, legal precedents, and social norms, (Benjamin, R.D., “About Rules: Between ‘Zero-Tolerance’ and ‘Don’t Ask-Don’t Tell,’ Mediate.com, 2003)

*Negotiation and mediation are as much performance art and theater as they are reasoned persuasion and discussion. As the eminent American sociologist Erving Goffman observed, this dramaturgy is a cornerstone most, if not all, social interactions, but especially in strained circumstances where they feel vulnerable or threatened. “People “perform,” quite simply, when they want or need to influence others. (Goffman, Erving, *The Presentation of Self in Everyday Life*, 1959) While sometimes unedited and genuine, the feigning of emotions, which might include: a flash of anger, an exasperated look of frustration, a pained expression, confusion, and hurt; or conversely, an air of confidence, control, and superiority, can all be manufactured. Well timed and well placed, such acts can disrupt or re-direct the negotiative process. A negotiator or mediator, by acting passively or assertively, stalling or pressing ahead, can influence the pace of the process. Likewise, the use of a nudge, a feint, or even a mis-direction or distraction to hide a sensitive issue, can serve control the discussion and sense when and how an offer might be best presented and received. If such behaviors are used discreetly, and instigated by a genuine feelings, at least in part, then so much the better. However, even if their authenticity is less than genuine, they can still be effective in bringing about a workable agreement. (Benjamin, R.D., “Negotiation as Performance Art and Mediation as Theater,” Mediate.com, 2002)*

Unfortunately, many self-help negotiation books and manuals simplistically suggest using certain strategies, devices, and behaviors all the time, without much consideration of the circumstances, or reflection concerning the risks and benefits. Donald Trump, for example, encourages being abrupt and winning by intimidation. Others make it a matter of principle “to always reject the first offer,” or to find a time to “walk out” on the other side, just to let them know you are a tough negotiator. Used in such an arbitrary or formulaic manner,

beyond the ethical concerns, game playing appears to be disingenuous and silly, and can backfire and undermine the whole negotiation process.

The purpose of this article is not to endorse or encourage game playing without limits or to suggest those negotiators' and mediators' abdicate their professional responsibility and ethical duty to monitor such behavior when it threatens the integrity of the process. However, to suggest that a negotiative process can function without game playing being taken into account or that such behavior should be shut out of the process is neither a reasonable or rational proposition. Game playing, if allowed and managed thoughtfully, can aid the effectiveness and creativity of the negotiative process, as the behavior has throughout the centuries. It is not only a natural part; it is a necessary part of human behavior.

The Necessity of Game Playing

As perplexed and as troubled as humans have always been about game playing, they have, nevertheless, been fundamentally reliant on such behaviors as a means of survival. Both warfare strategies and negotiation approaches involve game playing. Most of the attention, however, has been on warfare. People first preference has always been to fight first as the means of settling their differences; negotiation occurs only after they have exhausted themselves. Historically, negotiation has seldom been used prevent and avoid wars and has never garnered much attention, let alone glory, because it is about cleaning up the mess and there are few heros in negotiation. To negotiate, has traditionally meant the losers had to subject themselves to the humiliation of admitting defeat and then having to deal with their sworn and hated enemies, and for the winners, recognizing that even victory is a costly proposition. Only in recent decades has preventive negotiation been given greater attention as warfare has become more technologically, environmentally, and economically devastating and deadly. Game playing, however, remains as much a part of negotiation as it is in warfare strategy. And the participants sense that their survival is at stake, while not to quite the same extent as in warfare, still remains vividly present in negotiation. That is why in such circumstances the approach to negotiation is primal and there is little room for the luxuries available in more refined negotiative approaches. There is no expectation of a "level playing" field, informed decision making, or transparency, and whether such a process even qualifies as "civil" or civilized is open to question. But such negotiations, as unrefined as they may be, are better than the alternative mayhem.

Even in the present day, while many might aspire to enlist thoughtful and reasoned negotiative approaches more widely as the primary means for human beings to collaborate, and settle their differences "peaceably," primal negotiation is still very much required. The United Nations often must work in managing abhorrent situations of social strife, famine, displacement and genocide, where their mediators must broker deals between often-uncooperative government authorities, without sufficient resources, in a complacent world. The Bosnian War (1992-1995), Rwanda Genocide (1994), and the ongoing war and famine in Sudan are only some of the many examples where hundreds of thousands of people have been

displaced or killed, and many more would have been but for the involvement of the United Nations. Their negotiators, however, were and are often compelled to engage in unsavory arrangements, games and deceptions to bring about any semblance of workable arrangements. (Power, Samantha, Chasing the Flame, 2008

The film, Schindler's List (1993) offers a poignant depiction of a primal negotiation based on real events that took place between the Jews of the Krakow Ghetto, and Oskar Schindler, an opportunistic German war profiteer in World War II Poland. Although some might resist calling it a negotiation, Schindler offered a "take it or leave it" deal to the Jewish leaders for people in the community to work in his factory without pay, in return for which they could avoid being sent to the death camps. This morally dubious arrangement did little more than allow them to survive. Schindler's actions were, at first, little more than his taking full advantage of the life threatening disadvantaged circumstances of others. He assumed the guise of a well-appointed "vulture capitalist" as have many who have made their fortunes throughout history. The film, however, also offers a glimpse of the ambiguity inherent in game playing. As his scam continued, his purpose migrated and morphed from being one of exploitation to one of protection and survival. Instead of continuing as a scoundrel, his con game was turned against the German occupiers to save the lives of the Jewish workers, becoming a hero instead.

Only negotiative processes offers the pragmatic flexibility necessary to manage extreme conflict terrains in a manner that allows "losers" to survive and the "victors" to cease hostilities, stabilize, and preserve resources. In primal negotiative approaches there are few rules other than survival and any means necessary is justified. Game playing strategies and tactics serve much the same purposes and needs. (Benjamin, R.D., "The Natural History of Negotiation and Mediation: The Evolution of Negotiative Behaviors and Rituals," 2012)

Many negotiation and mediation theorists and practitioners see such extreme circumstances as different and distinguishable from the kinds of matters they are professionally engaged in day to day. However, even in what appears by comparison to be a relatively "mild" and more "civil" kind of controversy, primal negotiation strategies and devices are still present. Matters that concern money, children in divorce, the use of fracking in oil exploration, will and estate disputes within families, wrongful death and negligence claims, questions of civil rights, and issues surrounding sustainable development, climate change, and environmental protection, among countless, are emotionally charged and appeals for a collaborative process and wrapped in a civil discourse continue to be met by considerable resistance.

Not unlike the more harsh circumstances that leave little room for anything but primal negotiative approaches, in most controversies there is still a palpable resentment at being compelled to negotiate with an "enemy," the likes of a betraying spouse, a deceitful business, or an unethical doctor. Even when survival is not directly or immediately at issue, it often feels as though it is and people in the negotiation of almost any matter continue to feel as though their survival -- their way of life as they have known it --hangs in the balance. Their

psychic, economic, political and social existences -- one, some or all -- feel very much at stake. Even seeming minimal issues and controversies are commonly escalated into matters of bedrock principle that justify primal negotiative approaches, including game playing, in defense.

*The invention of an enemy is itself a time-honored game-playing tactic through which adversaries posture and circle around the prospect of negotiating. The State of Israel, for example, refuses to negotiate with the Palestinian authority, as long as the Hamas, a duly elected political party, who has openly taken the extreme position of claiming to want the destruction of Israel, is involved. Such talk is of course, a common gaming tactics and nothing even in this conflict, but nonetheless, the pretext for Israel's refusal to negotiate -- at least not directly -- with the Palestinians. The masterful Italian writer and semioticist, Umberto Eco, offers a quality tour through history and literature of the many and varying ways humans have consistently used rhetorical circumlocutions to convince themselves and those around them, that the "others" in a controversy are unreasonable and inscrutable "enemies" unworthy of trust and thereby justifying their destruction. (Eco, Umberto, *Inventing the Enemy* (2012).*

The Neuroscience and Evolutionary Biology and Psychology of Game Playing

*All animal species, not just human beings, display rudimentary forms of game playing and engage in negotiative rituals and behaviors as a matter of survival and procreation of their species. Animal ethologists have documented the many ways different species stalk their prey or evade detection by predators. They camouflage themselves, send misdirecting signals, and use countless other ingenious and creative means to adapt otherwise do whatever is necessary to survive in their environment. Many species live in relatively complex social organizations, which require game playing and negotiation for mating, hunting and protection. (Aurelli, Filippo, and DeWaal, Franz, *Natural Dispute Resolution*, 2000) Many animal species, dogs for example, rely on scent and smell to sense a threat or opportunity, while humans tend to rely on visual cues and audial intonations and inflections.*

*Humans are, of course, the most sophisticated game players of all of the species, if only because they are able to abstractly devise, plan and execute ruses and schemes to avoid detection or trap an adversary. (Rue, Loyal, *By the Grace of Guile, the Place of Deception in Natural History and Human Affairs*, 1994) And, because of the complexity of human social organization, in no other species is game playing such a pervasive and preoccupying part of their focus of attention and daily interactions. Negotiative behavior and rituals have come about as part of the evolution of cooperation. Humans, not unlike other species, have learned to forge alliances and defensive pacts within their own groups and sometimes with others to aid in their survival, or to defeat others.*

Physical anthropologists have suggested that, over the centuries, the physical size of the human brain has increased, not because of the need for a greater analytical capacity to solve

technical problems, but rather, because of the increase in the social and political complexity of human society. To protect him or herself from the risk of betrayal or conquest, not only must outsiders, foreigners, and enemies be closely monitored, but those within their own families, and their friends and allies must be as well. The continuous shifts in social and political alliances demand constant attention for people to protect against potential betrayals or hostile movements and must be countered. (Dunbar, Robin, Grooming, Gossip, and the Evolution of Language, 1998).

The extent of peoples' insecurity and fear is reflected in the time and resources they have dedicated to the development of some of the most sophisticated and convoluted forms of game playing ever devised, and in the present day, with the electronic technology to match. The larger size of the human brain allows for greater vigilance and awareness of changes and potential threats in the surrounding environment. It is not clear, however, that peoples ability to deal with uncertainty and accurately distinguish between real and perceived threats has measurably improved. In negotiative processes, participants often engage in forms of spying to discover the motives and intentions of the other participants to reduce their risk of being played for a fool.

The functioning of the human brain is also "messy." Recent studies in neuroscience and cognitive psychology suggest that while people are capable of reasoned thinking and rational planning, they are also disposed to engage in "quick and dirty" understandings of the world around them. They will make up myths and stories that appear to explain "reality," who they are, and how they came to exist, sometimes with only fleeting attention to facts. Likewise, their decisions and judgments, even about impotent matters, are often the product of a "fast," intuitive form of thinking that takes less effort, and may sometimes be useful sometimes, but is often of questionable validity and does not hold up to careful analysis. Psychologists have discovered that the slower, more deliberative kind of thinking requires considerably more effort and focused attention that is not always available on demand. In effect, the idea that people can choose to be rational actors, or "cool headed reasoners," is more a product of myth, folklore, and wishful thinking, than fact. (Damasio, Antonio, Descartes' Error: Emotion, Reason and the Human Brain, 1994) The default setting for the majority of human thinking, judgment and decision making is not rational, but "predictably irrational." (Kahneman, Daniel, Thinking Fast and Slow, 2011) The human brain is, therefore, a fertile terrain for the concoction of games and schemes, especially when a person feels he or she is at risk and vulnerable, as most people do when they engage in a negotiative process. (Slovic, Paul, The Feeling of Risk, 2010).

No one ever entirely escapes predictably irrational thinking, not even scientists, trained and educated professionals, judges, lawyers, and mediators. While they might profess or aspire to being "objective, impartial and neutral" agents, they are incapable of evading how their brains work. Not surprisingly, many negotiators and mediators can see other people being "irrational" in their thinking while not being aware of their own propensity. This disconnect

allows many experienced practitioners to realize that logic and reason are often ineffective means of persuading people caught-up in mythology, overly confident, or otherwise blocked in their ability to focus, but nonetheless continue to resist accepting the notion that unconventional game playing tactics and strategies are sometimes necessary and useful. Even as they work in the midst of wars, divorces, betrayals, and other perceived wrongs and injustices, where peoples' thinking is prone to be distorted by anger, hurt, or frustration, many mediators or negotiators continue to expect that a "cost/benefit analysis" exercise, or other form of reasoned persuasion will cure their blurred vision.

The alternatively fast and slow thinking in which humans engage means that when they are faced with a stressful and difficult controversy, they will likely slip in and out of moments when they are focused and susceptible to reasoned persuasion, and many other times when they struggle with fears and concerns that encourage game playing and predictably irrational thinking and behavior. This thinking and behavior is not an aberration, as some might think, but a naturally occurring part of human thinking and decisions making and any process devised to effectively manage difficult issues and controversies must take it into account. This may be why negotiate processes are some of the most accommodating and effective forums for managing such matters. Negotiation offers greater informality, flexibility and the privacy, required for participants to directly take the measure of each other and consider unorthodox options otherwise unavailable to them in a s protected environment. Paradoxically, the informal and flexible process that offers a receptive environment to game playing, also set the stage for more deliberative and reasoned discussion to come about. However, despite the science, many practitioners and theorists remain uncomfortable with the notion that game playing is compatible or has any competent place in what they envision as the rational negotiative approach.

The Rationalist Negotiative Approach

The prevalent "rationalist" approach to negotiation that has emerged over the last 60 years came about after World War II and forged by the extreme circumstances that gave people the realistic fear that their survival was at stake and they needed an alternative to warfare. Leaving aside the discussion about whether or not the atomic bombing of Hiroshima and Nagasaki, Japan, were justified as a means of ending World War II in 1945, the event was one that horrified proponents and opponents alike, and quickly followed upon by the Cold War and Nuclear Arms Race. People were then, and remain today, fearful of the risks not just of nuclear war but unintentional mishaps. The black comedy classic film, Dr. Strangelove (1964), while a satire, ominously captured the ease with which a nuclear war could occur between laughs at the real life absurdity of the whole thing -- a mood that in many ways still persists today. Those fears, however, made clear the necessity for finding alternatives to avoid such catastrophes.

The silver lining to the fear generated by the nuclear threat and to fend off the absurdity that could bring about a catastrophe, was the emergence of an intense interest in the "scientific"

study of human decision-making. Specifically, attention turned to negotiative processes because they offered the flexibility and directness necessary to respond quickly and effectively to a fast-developing complex crisis. But for negotiation to be accepted, it had to be made-over into a more rational and reasoned process if it were to be accepted as a legitimate and valid process. Traditionally, negotiation had been a suspect activity associated with back room intrigues and viewed as war by other means, where those involved engaged in all manner of deception and manipulation. In short, it was considered an irrational, "Machiavellian" enterprise where "the ends justify the means." The task of the early theorists was to devise a "modern" and rational negotiative process that was open, transparent and reasoned.

In places like the RAND Corporation, a global policy think tank founded in 1948 and funded by the U.S. Government and a variety of private corporations, brought together scientists "dedicated to help improve policy and decision-making through research and analysis." (RAND Mission Statement, Wikipedia) Game theory principles, drawn from mathematics and computer science, were applied to hypothesize and test human behavior and decisions under varying conditions and stressors; including their negotiative behaviors. Warfare strategies continued to be studied, of course, but at least other options were given credence alongside of them. (Benjamin, R.D., "The Natural History of Negotiation and Mediation: The Evolution of Negotiative Behavior and Rituals," Mediate.com, 2012) The Doctrine of Mutually Assured Destruction (MAD), intended to deter a nuclear war, arose from this work, as did studies of the efficacy of the development of a First Strike Capacity, also seriously considered. However, at the same time, Prisoner's Dilemma, the game demonstrating the power of cooperative action, which continues to be used to the present day in many negotiation and mediation training courses, was also developed. (Axelrod, Robert, The Evolution of Cooperation, 1984) It is not without some measure of irony that the quasi-scientific models of negotiation and mediation that are so prevalent today, and often resistant to game playing, were formulated based on game theory.

That early work has become the foundation for the theory underlying the modern day rationalist approach to negotiation: that if properly structured, a negotiative process can predictably bring about agreement and understanding between people in difficult matters. What that structure is, or should be, and the investigation of evidence based "best practices" and models of negotiation and mediation remains ongoing.

Getting to Yes (1981), a short book written by Roger Fisher and William Ury of Harvard University, encapsulated many of the assumptions based on the studies at the RAND Corporation, proposed a model, now widely accepted, that is known as "principled" interest based negotiation. Their working assumptions are that by shifting the contestants in a controversy away from their preoccupation with asserted positions and demands, to instead focus on their common interests and needs, understanding and agreement could be obtained. This required, they believed, parsing the personal and emotional feelings and biases from the discussion of facts, or as they phrased it, "separating the people from the problem." Their

operating premise is, based on Rational Decision Making Theory, that people are rational actors who can and will make competent decisions based on their calculated self-interests, if given the opportunity. The structure they proposed was designed to foster civil discussion and collaborative engagement. The interest based negotiation model they envisioned emphasized a positive sum outcome mutually beneficial to all participants -- a "win-win" approach. They expressly disavowed the traditional view assumed by many, that negotiation was necessarily a competitive "zero sum" game with designated winners and losers.

This attractively packaged vision of a reasoned and rational negotiation process has since its publication seized the imagination of many people around the world and been adapted as a model of collaborative problem solving in a variety of disciplines and contexts. From Getting To Yes, many have taken the rationalist approach to negotiation, extrapolated the ideas of a civil dialogue and a collaborative frame, and extended them far beyond just the pragmatic settlement of disputes and controversies to broader visions of peacemaking, the pursuit of social justice, notions of deliberative democracy, and personal transformation. As one might expect, rationalist approach, let alone the far-reaching adaptations, are not especially hospitable to game playing.

*Since those early years, however, while the optimistic view and dedication to a rationalist vision of negotiation persists, some theorists have suggested that negotiation and decision-making involves far more complexity than first thought. It is less like a one-dimensional game of checkers, where specific actions will yield certain results, and more like a multi-dimensional chess game that is circuitous and requires constant adaptations to special circumstances. The players must continuously keep track of not only the identified issues and "facts" in a controversy, but as well, the unstated issues that lay under the surface, and the non-verbal feelings and emotions of the people involved, as well as the politics and the cultural backdrop in which the matter is being played out. That complexity breeds game playing. (Axelrod, Robert, *The Complexity of Cooperation: Agent-Based Models of Competition and Cooperation*, 1997) Even in basic scenarios, where either or both the issues and options in a controversy are relatively well defined, the matter can still be complex and difficult to manage. In "wicked" problem scenarios, where even clarifying the issues and identifying options are elusive and problematic, culturally, politically or otherwise, the controversy is all the more complex. (Adler, Peter, "Leadership, Mediation, and the Naming, Framing, and Taming of Type-II and Type-III Problems," *The Creative Problem Solvers Handbook*, ABA, 2004; Rittel, Horst, and Webber, Melvin, "Dilemmas in a General Theory of Planning," *Policy Sciences* 4:155-169, 1973) The rationalist approach does not easily account for the "affect heuristic;" the perception of risk and feelings of vulnerability people experience when matters are complicated, confused and ambiguous. (Slovic, Paul, *The Feeling of Risk*, 2010) Such ambiguity, confusion, risk and uncertainty, needless to say, intensifies the presence and necessity of game playing behavior which is especially apparent in current controversies over climate change and many other scientific and technological issues. (Ropeik, David, *Science Advice?! We Don't Need No Stinkin' Science Advice!!*,*

bigthink.com, August, 2014)

The Limits of Rationality

While the negotiative process is an eminently sensible means of managing complex and difficult matters, it is not necessarily rational, at least not in a conventional sense. As much as humans would like for it to be orderly and methodical, the matters most in need of negotiation are often complex, if not downright wicked ones, with multiple variables and layers, involving people who are confused and often frustrated. As often as not, even if the issues are clear, the options are limited and have risks and uncertainty attached to their pursuit, and there is always the specter of things going wrong, or worse, the sudden appearance of unintended consequences. Added to that is the circuitous nature of the negotiative process, which makes it especially effective, but just as often frustrating, if not infuriating, in no small part for both, because of game playing. And that game playing behavior grates against the orderly, civil, rational, reasoned, and peaceful view of the world desired and pursued by many present day conflict management practitioners and theorists. In fact, the efforts to make negotiative processes conform to rational premises and protocols risks undermining their efficacy.

*When negotiators or mediators operate by working assumptions that are too strict with regard to what is accepted as rational behavior, or who is a sufficiently reasonable person capable of negotiating in "good faith," then the creativity and efficacy of negotiation and mediation processes are likely to be seriously impaired and compromised. For example, one of the justifications given by many for the 2003 invasion of Iraq was the assertion that Iraqi President Saadam Hussein was so deceitful and irrational that any attempt by the United States to negotiate with him, beyond issuing an ultimatum for him to abdicate his office, was futile. (Elshtain, Jean, *The Just War Against Terror*, 2003) This supposedly "rational" assessment was made despite the U.S. government having been complicit in many of those "irrational" and contemptible acts, such as the use of chemical weapons against Iraqi people.*

This inclination to pre-assess the rationality, competency, and motivations of those with whom one might consider negotiation or mediation is not limited to international affairs. Many people are ruled unsuitable and precluded from mediation or negotiation because they have been identified as "bullies," "narcissists," substance abusers, terrorists, spouse, elderly, child or spouse abusers, or ideological extremists. Historically, negotiation has always been done more as a matter of practical necessity rather than a choice, and the process was notably less refined. Negotiation often meant being required to deal with a detested and distrusted enemy, without much protection beyond ones' own wits.

This becomes a marketing issue as well. Paradoxically, the rationalist approach, while intended to promote negotiation and mediation, often inhibits the use and public acceptance of those processes. Requiring people who might benefit from a negotiative process to be sufficiently rational, their issues appropriate, and their behavior conforming to the standard

of being reasonable may well be irrational. Almost by definition, one's opposing party or parties in the negotiation of a difficult issue are typically viewed as irrational, unreasonable, untrustworthy and "Machiavellian" people who are incapable of negotiating in "good faith." Just because negotiation is not warfare does not mean it does not feel as though it is. Often, even after there is a workable agreement in place there is no love lost between the negotiators involved. Rightly or wrongly, human beings are primed to invent enemies and construct double standards that are easily applied to others but not to themselves.

Machiavelli: The Patron Saint or Demon Incarnate of Negotiation?

A recent article in the Negotiation Journal, "Neutralizing Unethical Negotiation Tactics: An Empirical Investigation of Approach Selection and Effectiveness," discusses the disruption caused in negotiation and mediation by "Machiavellian" behavior and offers suggestions about how it might be suppressed. (Fleck, D., Volkema, R., Pereira, S. Levy, B., and Vacari, L., Negotiation Journal, Vol. 30, No. 1, 23-48, 2014; hereafter cited as Fleck, D., et.al.)

While the authors do not use the term 'game playing' directly, the behaviors they identify as inappropriate and "Machiavellian" are all well within the spectrum of general game playing behavior discussed above and are not limited to those consciously done with the intention to deceive or defraud. Their views reflect the beliefs and opinions of a significant number, if not a majority, of present day negotiative process theorists and practitioners, and the article has many supporting references. In their research study, they have labeled these behaviors as "ethically ambiguous negotiation tactics (EANT's)." Those behaviors range from "exaggerating demands and withholding information, to intentionally misstating facts and paying for inside information." (p. 25-26) Their research focus is on the "neutralizing" of such behaviors that they believe interfere with the parties ability to "freely exchange valid information" and their "ethical decision making."

The authors also identify "several personality variables" that they have "... found to be associated with the use of (ethically ambiguous negotiation tactics) and behaviors." Topping the list are Machiavellianism and assertiveness. Their definition of the term "Machiavellian" is "an individual's tendency to pursue personal gain through self serving means -- an assertiveness (which) has been found to be negatively associated with ethical decision making." (Fleck, et al., P31)

The authors use of the term Machiavellian is the conventional understanding and a common definition widely accepted, even if it is based on a historically inaccurate understanding of Machiavelli's views and an unfortunately miscast legacy. Even so, however, being identified as "Machiavellian" has generally been reserved for subjective assessments of peoples' behavior rather than used as a clinical, behaviorally specific descriptor of personality. Here, both assertiveness and being "Machiavellian" are labeled "ethically ambiguous" per se (Fleck, D., et.al. p25) This is troubling because any behavior, including empathy, could arguably be used in a self serving means for one's own personal gain. Whether a behavior is

“Machiavellian” is very much a matter of interpretation, as is most game playing behavior. This leaves room for considerable confusion and seems to require a negotiator or mediator delve into making personality assessments. It is not clear that two people, both of whom are avowed Machiavellians, might not be able to engage in “ethical decision making,” or that even if one person is “Machiavellian” and outright lies, and the other is not a “Machiavellian,” but knows a lie is being told, they may nonetheless be able to reach a workable agreement. There is no question but that some forms of deceit are unacceptable. However, there must be a more nuanced view of game playing that leaves room for some forms of cunning and wit and more closely and realistically tracks how human beings deal with difficult matters.

Nicolo Machiavelli is considered the demon incarnate of present day negotiation and mediation practitioners. He was the Florentine courtesan who wrote The Prince in 1513, during the social, political, and economic turbulent period of the Italian Renaissance. There were constant internecine wars between the many Italian City States, competition for trade was fierce, and the intrigues within and between them vicious. At this time in history the nature and role of government was in question just a social and political arrangements were rapidly becoming more complex. Machiavelli was among the earliest and most articulate theorists and commentators on what was necessary to be done to manage such controversies and conflicts. He was compelled to struggle with what remains a perplexing issue even in the present day: the gap between how people might ideally hope governments might function and how decisions are negotiated and made in reality. Who makes the decisions and how. He sought in his writings to assess the role, duties, and strategies of “Princes,” or those charged with the administration and preservation of the state in the chaotic environment in which they had to operate, pragmatically and realistically balancing multiple opposing interests (Butterfield, Herbert, The Statecraft of Machiavelli, 1962). These are the same tensions and issues have been in play ever since, not just in politics, but also in the negotiation and management of every complex matter and controversy. (Benjamin, R.D., “The Natural History of Negotiation and Mediation,” Mediate.com, 2012).

Many have inferred from reading, or hearing others talk about Machiavelli, that he advocated the amoral or immoral assertion that “the ends justifies the means.” As a result, through the centuries, “being Machiavellian” has come to mean being controlling, deceptive, manipulative and unethical in interactions and negotiations with others. His name has become synonymous with “hardball” or “power negotiation,” the approach that the many practitioners who espouse the ‘principled’ rationalist approach to negotiation find so offensive.

Machiavelli, however, in the view of a growing number of intellectual historians who have sought to understand his work in the cultural context in which he lived, have begun to challenge that negative rendering of his writing. In retrospect, many have come to view him as a humanist. He was not endorsing deception and other forms of game playing, but rather,

merely seeking to warn people of the prospect that people, realistically, when threatened, will engage in that behavior and a thoughtful person or practitioner would do well to anticipate and prepare to protect themselves accordingly.

Machiavelli remains relevant today but not for reasons the authors of "Neutralizing Unethical Negotiation Tactics," or many others have suggested. Machiavelli's observations about human behavior and decision-making continue to be cogent and useful, especially for negotiators and mediators. Particularly germane is the observation that what may be right in one circumstance may be disastrous in another, and most importantly, "He stresses flexibility -- to be able to think quickly and react, even in peace. (Evrigenis, Ioannis, Fear of Enemies and Collective Action, 2008) In his way, Machiavelli was merely an early observer of what has come to be termed by cognitive psychologists as the "predictable irrationality" of people. As Peter Adler, a noted public policy facilitator, observed, Machiavelli could well be considered the first game theorist. Some five centuries later, despite the Enlightenment, Rational Decision Making Theory, and the advent of the rationalist model of negotiation, game playing remains very much a part of the negotiative process and cannot be extricated without doing damage to its fundamental purpose.

Machiavelli appreciated the difficulties of dealing with an ever-shifting and ambiguous conflict terrain, and the necessity of fashioning approaches that took proper account of what was necessary to manage people in their convoluted human affairs in a complex world. While reasoned persuasion and effective communication remain essential in effectively managing difficult controversies, game-playing behavior is as well. Game playing cannot and should not be the core component, but neither can it be extricated or eliminated from a negotiative process.

In the end, of course, the truth of Machiavelli's intentions matters less than the fact that he has obligated students of human behavior -- and especially negotiators and mediators -- to carefully consider how they should act in managing difficult matters. Whether Machiavelli intended to callously justify and advocate the use of controlling and deceptive behavior in pursuit of an end result, or was merely observing the open secret of human nature, that game playing is a natural part of all human interactions, and especially likely to occur when they feel threatened, is relatively unimportant. Of greater importance is his suggestion that such behavior cannot be denied, avoided, or extinguished, and that people -- as well as Princes -- need to realistically anticipate and prepare for game playing to occur.

Conclusion: Rationally Irrational Game Playing

Game playing has much in common with being crazy like a fox. Behaving in an unexpected way can shift the flow and energy of a negotiation or mediation. At a primal level, game playing is a behavior form that allows human beings to survive and protect themselves from a perceived risk or fear, all of which comes to the fore in negotiation. Driven by those instincts, game playing figures into the design of not just warfare strategies, but negotiative strategies

as well. People will alternatively feint, stall, threaten, lie, and spy to gain an advantage, depending on how vulnerable and insecure they feel. While reasoned discussion and reassurance can minimize some amount of their anxiety, the fear of losing or being played for a fool always remains present.

For too many practitioners and theorists, however, game playing continues to be considered at best a frivolous and silly form of behavior that serves no purpose, or worse, is irrational, breeds distrust, and is fundamentally at odds with the kind of reasoned processes they want negotiation and mediation to be. For them game playing is little more than a vestige of an anachronistic and dysfunctional way of solving problems that should be discouraged and suppressed whenever possible. Some might well go further; they view game playing as deceptive, “Machiavellian” and unethical and should be eliminated accordingly.

This thinking frame and approach dismisses a whole range of human behavior, that is not only natural and ingrained and serves an important purpose, but disallows a broad range of strategic thinking and devices that are useful, constructive and creative in bringing about workable agreements in difficult and complex matters. And for many other practitioners, many of whom unwittingly engage in varying forms of game playing, albeit unwittingly, they might benefit from a more conscious, intentional and systematic use of those strategies and techniques. An ultimatum, omission, misdirection, or stalling tactic, judiciously used, can be useful, if not indispensable in breaking through blocks in the negotiation process. Stalling behavior, for example, lets people back away from an impasse that threatens the whole negotiation so that the parties can re-approach the difficulty from a different direction, after they have been excused from thinking directly about the problem. (Benjamin, R.D., “The Joy of Impasse: The Neuroscience of ‘Insight’ and Creative Problem Solving, Mediate.com, February, 2009) When logic and reasoned persuasion are insufficient, “irrational” gaming devices can be used to finesse the resistance, and allows room to re-think how to proceed.

Game playing, in effect, can work as a lubricant and catalyst for creative thinking in the negotiate process. The same games people play to protect themselves, hold tenaciously to unreasonable positions, and act in ways that are self-defeating, can be turned around and used to reach an agreement. Games that are strategically designed can insinuate different perspectives into the discussion and open up a negotiation to the consideration of other options.

By comparison to traditional standards of rational behavior, which is held to be straightforward, rational, reasoned, open, and transparent, game playing looks irrational. The behavior is circuitous, indirect, deceptive, and illogical. However, because such irrational behavior can often open the door to the non-linear “lateral” thinking that is essential for generating creative, outside the box thinking, it is quite rational. (De Bono, Edward, Lateral Thinking, 1990) More precisely, game-playing behavior is t “rationally irrational.” It takes full advantage and harnesses the predictably irrational thinking and behavior that is always present in peoples decision making, and uses it in service of the

rational purpose of constructively managing a difficult matter.

Machiavelli's observation about peoples' propensities to play games remains valid and relevant in current day negotiative practice as they were five hundred years ago. While he did not have scientific studies to rely upon to conclude, as have present day cognitive psychologists, that there is a confirmed human penchant for being predictably irrational, and his reputation has suffered as a result, his writing offered up a realistic appraisal for how people act, especially when they are under pressure. The reality of game playing in the negotiative process needs to be acknowledged so that it can be properly monitored, managed and used constructively. Accepting game playing as natural part of negotiative decision making process does not require being blind to the risks, nor displace the continuing importance of rational analysis and assessment, and the ability to effectively communicate and empathize with others. Recognizing and taking account of the game playing dynamics of a negotiative process, however, need not be at odds with those essential skills. This is appears to be the core of Machiavelli's message and why he deserves a metaphoric place at the negotiation or mediation table.

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