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Inventive negotiation: Getting beyond yes

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Mountain climbing is less about getting to the top, and more about getting to the bottom.

Thomas Edison wasn't just an inventor. He was an *inventive negotiator*. Contemplate the array of companies he created – 171 in all. Fifty were in countries ranging from Argentina to Canada, from Japan, China, and India to Italy, Germany, and France. He dabbled with partners in electric cars, batteries, cement, chemicals, and office machines. The creative teams he developed laid the foundations for today's music, movie, and telecommunications industries.

Historians list 22 inventors of incandescent lamps prior to Edison, but his team's design improved on the others in three ways: better incandescent material, a higher vacuum, and higher electrical resistance allowing power to be distributed from a centralized source. But the better bulb by itself wasn't the reason for Edison's success. He and his partners also developed the basic grid to bring the electricity from a distant generator across the wires to the bulbs. Edison's AC system had dominated the DC of Nikola Tesla, his one-time employee, and American rival Westinghouse. Now General Electric (GE) makes everything from toasters to turbo-machinery.

By the time Thomas Edison applied for patent #223,898 for his version of the light bulb, he had already formed the Edison Electric Light Company in New York City. He'd sold his vision: "We will make electricity so cheap that only the rich will burn candles," which helped him line up investors like the Vanderbilts and J. P. Morgan. Within a decade, he'd recruited dozens of the smartest engineers in the world and built the world's first industrial laboratory in Menlo Park, NJ.

He owned the American market (some 60 million people at the time), but his dreams were bigger: the entire British Empire (about 400 million). And one man stood in his way.

Joseph Swan held the British patent for pretty much the same technology, and he was suing Edison there. Where others would have seen this as an obstacle, Edison saw it as an opportunity. Soon he had persuaded Swan that partnership was a better idea than litigation – a move that would make both of them enormously wealthy.

So in 1883, the two partners created the Edison and Swan Electric Light Company (Ediswan) to manufacture and distribute the invention in Britain and its vast empire. Though famously "the sun never set on the British Empire," it apparently set every day on some portion of it. In those places they needed lighting. Thus, Edison's gamble paid off handsomely.

Edison's modern-day likeness was Steve Jobs. Most knew Jobs as a tough negotiator – "It's my way or the highway" – so the caricature went. Jobs was different from this uncomplimentary picture. It is quite true that he and Michael Eisner couldn't agree on much past the companies' original contract involving distribution of *Toy Story*. Once Eisner was replaced by Robert Iger, by all accounts an inventive negotiator himself, a world-class collaborative relationship was quickly established. Edgar Woolard, the former chairman of Apple and former chairman and chief executive officer (CEO) of Dupont, said at the time of the Pixar purchase by Iger-led Disney, "People are misreading Steve Jobs. If he has a good relationship with you, there is nobody better in the world to work with."

Indeed, Iger reported that the first congratulatory call he got upon his appointment as Disney CEO was from Jobs, "He wished me well and hoped we could work together soon." And "soon" happened very soon. Two weeks later Iger found himself on stage in San Jose with Jobs introducing Apple's new video iPod including the availability of *Lost* and *Desperate Housewives*, two of ABC's most popular shows.

Inventive negotiation doesn't just involve good personal relationships between negotiators. Jobs was also known for

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valuing diversity of views in a unique kind of “coffee house” approach to innovation at Apple. Iger demonstrated his collaborative style of leadership at Disney by restoring a good relationship not only with Jobs, but also with Roy Disney (nephew of Walt). Moreover, the Iger selection for CEO was overseen by a famously inventive negotiator himself – Disney chairman (former Senator) George Mitchell.

The key to inventive negotiation is a long-term commitment to working together. When Disney bought Pixar from Jobs, it might have just been a cash transaction, a divide-the-pie argument over price. The actual deal, however, is more than just a deal. It is a long-term relationship of invention. Jobs got Disney stock valued at \$7.4 billion (he paid \$10 million for Pixar in 1986), and that tied Jobs to Disney for the long run.¹ The arrangement also kept the Pixar creative team in charge, with co-founder John Lasseter as Disney chief creative officer and Ed Catmull as president of Disney Animation Studios, both directly reporting to Iger. Apple’s stock price has been stratospheric since, and Disney’s jumped from the \$20s to the \$40s soon after its acquisition of Pixar.

SPLITTING PIES TO BUILDING PIE FACTORIES

Consider the primordial story of human exchange. That is, two guys, one pie – what are the options?

- (1) One bludgeons the other and takes the entire pie. We call this *homicide*. Albert J. Dunlap (aka “Chainsaw Al”) is infamous for murdering companies such as Scott Paper.
- (2) The two argue over and agree about how the pie should be *divided*. We call this *competitive or zero-sum bargaining*. Think Congress and the Obama administration.
- (3) The two ask each other about why they want the pie. Luckily one prefers the crust and one prefers the fruit, and they *share* it accordingly. We call this *integrative or interest-based bargaining*. This is the approach we teach in business schools these days.
- (4) The two share the pie as they devise a plan to build a pie factory. We call this *inventive negotiation*. The focus becomes a long-term relationship, not just a deal. This last option is the key to profiting from new ideas, particularly in today’s global context. Yes, Steve and Bob built a pie factory!

Listing the bludgeon first, as the most primitive approach, is actually incorrect. We know quite clearly from the new brain science, genetics researchers, and anthropologists that people are hardwired by evolution to collaborate. That’s how our hunter-gather ancestors dominated the southern African savannahs some 200,000 years ago. The only way to compete with the herds, packs, and prides was to work together, share knowledge, combine imaginations, and invent – uses for fire, poison tipped arrows, and so on. Despite the violence reported in the press, even

¹ We, like so many, wonder what might have been, but for Steve Job’s untimely death.

today 99.9% of humans have never bludgeoned another. So humans are deeply predisposed to inventive negotiation.

The invention of farming about 10,000 years ago delivered a variety of bad things to our species: A less healthful diet, nuclear families, crowding, possessions, borders, hierarchy, rulers, weapons, and warfare. The primordial Man of the savannahs never knew any of these.

More recently we use markets – words, numbers, and relationships – to organize human activity. In 1776, Adam Smith justified market competition in his *The Wealth of Nations*. In the 1950s, Morton Deutsch and his students at Columbia documented the value of recognizing mutual interests – cooperation frequently works better than competition. This was a further improvement over violence.

The traditional dialectic of negotiation in America waffles between the competitive approach and integrative bargaining. The competitive, “splitting-the-pie” metaphor reflects a zero-sum sort of fairness that once represented a satisfactory outcome. Expanding the pie before splitting it is considered a big advancement, integrating the needs of both parties and yielding win–win solutions. The emphasis is on interests not positions. Both approaches are deal focused. Neither depends much on building trusting, long-term relationships.

Inventive negotiators, especially international ones, aren’t satisfied with just making deals. Instead, they emphasize sustainable, trusting, and personal commercial relationships that more resemble building pie factories than splitting pies: going beyond traditional, primitive approaches that divide resources toward a more civilized approach that combines them.

This thinking leads to a definition of inventive negotiations. The 20th century definitions, metaphors, and lexicon of negotiation were filled with words such as: problems, conflicts, disputes, dividing things, competitive games, positions, interests, military campaigns, even chess and poker. We use a different set of words: *Inventive negotiation is the use of innovation processes to build long-term relationships for finding and exploiting extraordinary opportunities*. Yes, problems may be solved and conflicts resolved along the way, but the primary question of inventive negotiation is “What are the opportunities here?”

Luminaries in the negotiation field, such as Roger Fisher and William Ury in *Getting to Yes*, often briefly mention creative processes in the context of describing traditional integrative bargaining. We prescribe a comprehensive shift in philosophy and processes that includes fourteen principles:

- (1) Inventive negotiation is older than history, and more advanced than the future – and it’s based on the most basic human talent: imagination.
- (2) It begins with a glimmer of opportunity, the vision that things can be better – even world-changing.
- (3) You have to find just the right partners and sell them on your vision.
- (4) Then you build relationships – with those on the other side.
- (5) You create the system that makes these relationships happen.
- (6) You add exactly the right people in specific situations, including facilitators.

- (7) You consider culture and encourage diversity.
- (8) You meet in the right places and the right spaces, at just the right pace.
- (9) You leverage emotion and overcome power and corruption.
- (10) You encourage changing roles.
- (11) You use tools of innovation, such as brainstorming and sleeping on things overnight.
- (12) And you use the tools of improvisation – flexibility and valuing the unplanned.
- (13) You keep improving the relationships in new ways.
- (14) And even when you think you've created the best outcome possible, you keep using these tools to create even better, longer-lasting, and more sustainable outcomes.

In the sections of the article to follow, we cover three of these principles of inventive negotiation in some detail – #6 facilitators, #7 diversity, and #9 potential obstacles (emotion, power, and corruption). Given our allowance of space for the article, the reader may appreciate the limitations of hearing only “the string section” of an orchestra.

Our approach to negotiations employs proven concepts and techniques gleaned from a variety of disparate sources beyond the negotiations literature:

- Silicon Valley firms
- Open innovation
- John Seely Brown's process networks and performance fabrics
- David Obstfeld's description of *tertius iungens* (the importance of the third party in innovation)
- Insights from the new brain science
- Sociolinguistics and nonverbal communication
- Virtual teams research
- Experimental economics
- Innovation processes perfected in 30 years of study and practice in advertising, creativity, and innovation

Inventive negotiations also draw on practices typical in Japan and the Netherlands. The Japanese have developed a cultural ritual of negotiation that naturally uses tools of innovative processes in ways unfamiliar to most American bargainers. The Dutch are the world's experts in foreign languages, cultures, and openness to international commercial collaboration. As an example, we present a Japanese gem.

Mitsubishi Japanese Zeroes fought air battles with Boeing B-17s during World War II. Then, in 1953, Boeing established its subsidiary in Japan. In 1960, Emperor Akihito met with William Allen, Boeing's CEO, and by 1969, they signed their first contract. Those continued collaborative efforts have produced many inventive business arrangements: today Boeing buys composite plastic wings designed and manufactured by Japanese suppliers for its new 787 Dreamliner, and then sells the completed 787s back to Japanese airlines, all with a nice subsidy from the Japanese government. Obviously, inventive thinking *after* agreements has been a standard part of the Mitsubishi/Boeing long-term relationship. The Japanese negotiation

ritual we have studied includes carefully built interpersonal relationships across all management levels (literally from Emperor to shop floor), meeting venues beyond the typical conference room, processes that emphasize questions over demands, and consensus decision making.

#6 NODES, THE IMPORTANCE OF FACILITATORS

If you're unfamiliar with the theory and methods of modern Social Networks Analyses, then “nodes” probably sounds like something you'd find on Pandora. But, nodes are simply the network nerds' term for people, although nodes can also be other entities such as germs, cows, or organizations such as companies or countries. Nodes that have “centrality” are people who connect people in the sense that bees help flowers have sex.

For more than a year, David Obstfeld observed and analyzed nodes' interaction patterns at a major auto-maker's engineering center. He concluded that third parties were crucial in the innovation processes. In his award winning *Administrative Science Quarterly* article, he dubbed them with the Latin *tertius iungens* (literally, those who join, or “nodes”). He described their function as more than mere brokers or Malcolm Gladwell's “connectors.” That is, they both introduced unconnected individuals *and* facilitated new coordination, as well. This richer role more closely resembles the Japanese *chukai-sha* or the Chinese *zhongjian ren*. Just ask any empty nester about the last kid leaving the dinner table and the loss of both a mediator and a witness. Third parties add dramatically to inventive processes.

International Energy Development Projects and Professional Facilitators

The latest thinking regarding the creative importance of neutral third-party facilitation is well illustrated in the arena of complex international energy/environmental negotiations. Energy entrepreneur William Graham, working with Lawrence Susskind at MIT, reports that the use of such professional facilitators tended to both shorten negotiation times and yield more durable agreements in three of the four “international” energy projects in the western United States he investigated. Two of the projects involved geothermal energy and two involved hydroelectricity. All four negotiations included at least 10 different parties each – agencies of the federal and local governments, politicians, commercial developers and investors, power companies, environmental non-governmental organizations (NGOs), local community groups, adjacent landowners, and Native American Tribes. The last renders the four U.S. projects “international” in both the legal and cultural senses. All four projects required multi-year negotiations and multimillion-dollar investments. Only Calpine has experienced major problems. Despite spending millions of dollars over 20 years their Medicine Lake Geothermal project in northern California languishes in litigation.

We are convinced that the professional facilitators hired in the other three cases made a huge difference. The

positive views are well represented by the comments of one participant, "Everyone had an equal voice, but not necessarily equal power. By definition, some entities with mandatory conditioning authority or the project applicant have bigger hammers. Some things were done separately. For example, the tribes met separately with PG&E [the local power company] on culturally confidential issues." Alternatively, participants in the failed Medicine Lake negotiations described their meetings as often "raucous and emotional" and they reported that many in opposition felt that the government representatives were neither neutral nor pro-geothermal. In all three successful negotiations, the third-party facilitators managed a "consensus building" approach promoting egalitarianism and trusting atmospheres that yielded inventive alternatives leading to durable agreements.

Lawrence Susskind and his associates have really set the standards for consensus building processes: Facilitators must oversee three core elements of a negotiation: substance (what underlies the conflict), relationships (who is in conflict), and process (how will stakeholders work out their differences). Professionals working in this arena include in their descriptions of their training many concepts common to both the science of innovation processes and Susskind's consensus building:

- (1) freedom and safety to explore ideas and have equal voices in process development
- (2) cross-cultural differences and customs must be considered and observed
- (3) use several forms of intervention including: work groups, plenary sessions, caucuses, and one-on-one sessions to clarify interests, foster cooperation, and generate options
- (4) separate inventing from committing
- (5) strive to invent options for mutual gain
- (6) emphasize packaging ideas together
- (7) test options by playing the "what if" game
- (8) avoid attribution and individual authorship
- (9) brainstorm without criticism
- (10) 2-day off-sites, sleeping on it
- (11) mediated subcommittee, teleconference, and face-to-face meetings

The process of selecting mediators is crucial. Participants in the successful Crane Valley Hydroelectric relicensing project in California stated, "We, the regulatory agencies, knew PG&E was serious when Jim Holeman (PG&E's project manager) asked us to participate in the vendor interview process and help select a facilitator we could all work with. This added a sense of credibility that had been missing and allowed us to move ahead as a group with greater confidence in the process."

Not surprisingly, facilitators are best if brought in at beginning. In Newberry Geothermal project (Oregon), however, the mediator was brought in after an impasse was reached. In that case, the U.S. Forest Service facilitator was able to conduct consensus process training before restarting the substantive talks. She was then able to refocus discussion on interests rather than arguments about positions. Ultimately she was

happy to report, "The strength in the consensus developed by the community is clearly what held the proposal together through the legislative process. It is also what baffled and frustrated legislators and staffers who were used to position-based bargaining and compromise."

"Consensus building" is well established as the gold standard. Virtually all of the energy/environmental executives William Graham interviewed were well aware of the concepts of consensus building (or inventive negotiation) and its advantages. Indeed, the Federal Energy Regulatory Commission (FERC), which oversees the licensing of hydroelectric projects in the U.S., since 2003 officially encourages the use of neutral facilitation and consensus building processes in new license issuances.

We commend Lawrence Susskind's seminal development of the theory and practice of consensus building and parallel informal negotiations, and their widespread application, particularly in multi-party international disputes such as those described in this section. Certainly we borrow heavily from his work. He and his colleagues do give some credit to our Pacific neighbors, "Japan has been successful at consensus building, and that success has contributed to Japan's postwar economic triumphs." But as we understand the intricacies of the Japanese approach, our Asian allies won't see much new in our descriptions of inventive negotiations. Indeed, according to anthropologist John Pfeiffer, Japanese society is the most civilized. They've lived in big cities longer than anyone else on the planet, and through the millennia they've developed social processes creating one of the safest and wealthiest countries in the world with virtually no natural resources. Indeed, the Japanese are much better at building peace than making war.

#8 ENCOURAGE THE NEW DIVERSITY

The primary driver of human progress through the millennia has always been international trade. Good ideas are passed along and even invented in the context of cross-cultural interactions. Think the ancient Silk Road or the Silicon Valley of the 21st century. Of course, the problem with diversity is the associated initial communication difficulties. But we know those can be overcome, especially as economic opportunity dictates.

The science of creativity and innovation is quite consistent about the advantages of diversity. Diverse work groups put more ideas on the table than homogeneous ones, once the diverse groups have developed relationships and learned to understand one another with the passage of time and perhaps frustrating experiences. When it comes to diversity, it's as they say in the training rooms, "No pain, no gain."

Indeed, this notion provided the foundation for General Motors' strategic plans for overtaking Toyota in the global auto race circa 2007. After winning a \$250,000 consulting contract with GM that year, we met with Dr. Lawrence Burns, then vice president of research & development and strategic planning, and his staff at his offices in Warren, Michigan. He argued that the only way to catch the Japanese was to use the diversity of the GM global workforce.

We had been hired to develop cross-cultural training programs for the firm's multinational work teams. The sociologists we worked with told us that GM work teams with American, Brazilian, German, Chinese, and Korean members lost some of their inventive potential. Why? Because the Americans and the Brazilians tended to do all the talking, while the Chinese and Koreans couldn't or wouldn't get a word in edgewise. So far, the GM folks had only been experiencing the pain. Our job was to get everyone contributing.

Philips and MyHeart

Alternatively, the Dutch have all kinds of advantages in international business negotiations vis-à-vis managers in larger countries like the United States or even neighboring Germany. They have a seminal trading heritage – think of both fish and flowers as prominent examples. Long-term inventive relationships are a necessity in negotiations about such perishables. They also enjoy the luxury of living in a small country. The Dutch know foreign languages better than most. It seems to us that the Dutch business people we run into all over the world all speak about five each!

The Netherlands also sits on the north/south divide in Europe. In the North you have Protestant, and in the South you have Catholic Europe. Going back even further in history, in the North you also had the "barbarians" unconquered by the Romans. The three rivers flowing east/west that the Romans had trouble crossing make and mark the divide – the Maas, Waals, and Rhine. Thus, it's no accident that the foremost international business scholar is Dutch – Geert Hofstede. Professor Hofstede also reports another Dutch advantage for inventive interactions – high scores for both individualism and egalitarianism.

The fundamental advantage of the Dutch is that they have always clearly recognized their international interdependence as a competitive advantage. The head of Philips R&D Laboratory in Aachen, Germany, once told us quite succinctly: "We have very smart people here at Philips, but we don't have all the smart people." Philips' corporate culture of valuing inter-organizational relationships and their corresponding strategic structure represent this realization. Thus, Philips is one of the originators of "open innovation." Thirty years ago they pioneered the concepts of partnering to develop new ideas *and* partnering to market new ideas. So, open innovation for Philips also means they buy ideas from R&D partners and they sell ideas to marketing partners, rather than developing and marketing all their own.

Philips engages in dozens of major and minor business partnerships around the world. As part of a major strategic restructuring after the 2001 recession, Philips dumped its semiconductor business in favor of stronger emphases on consumer products and services, including a focus on the demographic-based burgeoning healthcare market. Philips Research is one of the world's largest corporate research organizations, with over 1800 professionals and laboratories in North America, Europe, and Asia. It's no accident that Philips located its major MyHeart research and development (R&D) efforts in its Dutch (Eindhoven) and German (Aachen and Hamburg) research facilities. Germany is home to the

largest ischemic heart disease problem in Europe. The German diet is a heart attack waiting to happen.

Beginning in 2004, Philips Aachen led a 33-partner consortium underwritten by a \$16 million grant by the European Union to fight cardiovascular diseases through prevention and early diagnosis using the technologies of smart clothing, medical sensors, on-body electronics, software, user devices, and healthcare professionals. The diverse set of partners from ten countries includes large firms such as Medtronic Iberia, Nokia, Vodafone Foundation; Italian textile companies such as Nylstar and Smartex; major hospitals including university hospitals in Aachen, Heidelberg, and Madrid; and universities in Italy, Spain, Portugal, and Germany.

We talked with executives heading two of the three divisions of Philips involved in the program: Joerg Habetha, head of the Personal Health Solutions at Philips Research in Aachen and overall MyHeart coordinator, and Mili Docampo Rama, global director of people research) in Eindhoven. While the technology developed is both interesting and important, we were curious how they managed to get such a diverse set of partners working in one direction. The set of negotiation practices they described well represent the best of what we call inventive negotiations.

From the beginning and during several stages of the negotiations, personnel at Philips Design acted as the key third-party facilitator. The Design group, headquartered about a 90-min drive from Aachen, has eight branch studios in Europe, the U.S., and Asia Pacific. It is one of the largest and longest-established design organizations of its kind in the world. Its inventive force of some 500 professionals, representing more than 35 different nationalities, embraces disciplines as diverse as psychology, cultural sociology, anthropology, and trend research in addition to the more "conventional" design-related skills. Philips Design offers a full range of services (to clients both within and outside the Royal Philips Electronics organization) including design management, corporate identity creation, innovation design, product design, communication materials, interfaces and solutions for Internet and new media.

So Philips has an abundance of cultural diversity in both the Design Group and the MyHeart Project team. One of the initial steps in the negotiation process was an all-parties Application Workshop in Madrid that involved brainstorming sessions toward identifying central development projects. Small groups, a two-day event allowing for "sleeping on it," and volleyball were all part of the scheme. Docampa Rama described aspects of the process:

Myheart started with 33 partners developing 16 totally different concept ideas that were shaped through a people-insights-driven process. In the first phase it entails understanding the domain of personal healthcare from prevention to chronic disease management. The concept ideas that were developed had to start fitting the different contexts of all future stakeholders to be involved, and its business model had to be thought through. Through a carefully developed selection process developed by Philips Design, the 33 partners were able to unanimously decide on the directions to pursue and the concepts to start developing, merge, and reduce to core supportive modules.

Based on that event and the follow-up analyses, the 75 people from the 33 companies were divided into eight teams to focus on “work packages” such as functional clothes, on-body electronics, and business assessment.

Both Docampa Rama and Habetha emphasized the dual purposes of such meetings – (1) inventive ideas *and* (2) trust building among the participants. We asked Habetha about the very sticky topic of intellectual property (IP) associated with the good ideas developed by the consortium, and he described a surprising openness:

Actually, the way companies in Europe handle patentable ideas differs across countries. Also, the national laws give different rights to the inventors. The MyHeart consortium agreement has been written with the idea to not block the partner companies from exploiting the IP.

We note that after the publication of Henry Chesbrough’s *Open Innovation* in 2006, some of the biggest American companies began to talk about their own similar non-traditional approaches to innovation – GE and Procter & Gamble are prominent examples. *BusinessWeek* reported in this vein, “In an historic break, IBM is making radical collaboration with outside partners an essential part of its research strategy.” This Dutch style of innovation sounds much like that in Silicon Valley high-tech firms and the Hollywood movie industry. The executives at Philips are quite comfortable with mixing their own ideas with those borrowed from their American competitors. They recognize the influences of Silicon Valley old timers such as the Bell Mason Group on their thinking. Philips has also taken the American approach of buying technology in both its next-generation lighting and health-care delivery systems. For example, in 2006, Philips bought Massachusetts-based Lifeline for \$750 million.

Finally, surprising to us, Philips executives admit they might do better at their international negotiations. The company culture of inventive negotiation is most well suited to take advantage of “smart people everywhere” in the dynamic global marketplace of the 21st century.

#9 LEVERAGE EMOTION AND PREPARE FOR POWER AND CORRUPTION

Let’s discuss three potential obstacles to inventive processes in negotiation.

Emotion and Invention

A Display of Anger. The young Korean executive must have practiced it. The chair cart-wheeled through the air and – *thunk* – embedded itself in the wall. On both sides of the table, the Koreans and Americans just stared in awe as it rested, stuck in the wall, suspended above the floor. After a long moment of silence, the lead American stood, stuffed his papers into his briefcase, and announced, “We’re done.”

A little background is relevant. Cellular phone purchases in the United States were declining. Everyone who wanted a cell phone already had one, and the demand for the semiconductor chips inside the phones was falling too. Making things worse, an ongoing recession dimmed long-term prospects as well.

The Korean manufacturers demanded lower prices from the American chip makers, and at this point profit margins were already minimal. Throughout this tough negotiation, the Koreans kept pushing, even though both sides knew their long-term futures depended on the innovation only the Americans could provide.

The four members of the Korean team had done their homework. Led by an “old-school” executive in his sixties, the team included financial and technical experts in their forties and a hotshot young manager who had earned an MBA at a top American university and spoke fluent English. (He was the chair launcher.)

The American team had been hastily thrown together and included a business manager, a project technician, and the Korean-American project manager. None of them had much international experience. Being tech experts, they lacked the social skills of most business negotiators.

As the Americans walked into the room, the tension was palpable. The Koreans were worried about escalating threats from their northern neighbors. The Americans were jet-lagged from 18 h of flight and a layover. At the first point of contention, the Korean stood up and the chair went flying.

The Americans were nonplussed. This was not the behavior they expected from their brief cross-cultural training about the reserved, quiet Asians. So instead of just walking out, they hesitated as they tried to understand what had just happened. What they didn’t know was that the whole chair-tossing incident had been carefully planned. The young Korean manager knew the Americans believed the stereotypes and that they were familiar with hotheaded bar fights in their own country – knowledge he’d gathered during an internship with their company in the U.S. His team had worked together for years and had traveled many times to the United States to study U.S. negotiation techniques. They’d honed their skills in increasingly difficult negotiations. And then they’d rehearsed. And rehearsed. By the time they pulled this stunt, every gesture was perfect, the timing impeccable.

The Korean leader took advantage of the Americans’ confusion. He sent his young manager out of the room and apologized profusely for his “inexcusable anger.” He explained that the project was vital to their continuing success. But he left the chair in the wall.

The Americans, still rattled, sat back down and gave away the farm. Those tiny profit margins disappeared altogether. They had come to the table believing that they would simply reason with the Koreans, and the Koreans had outsmarted them by using emotion – dramatic irrationality.

The Koreans won this skirmish using unconventional methods. This was the exact opposite of inventive negotiation. Instead of finding common ground, trying to innovate together to create new phones and increase their joint sales, both sides lost.

It’s just one example of how emotion can drive any negotiation and how important it is to harness the power of those emotions – not to win a conflict, but to build relationships.

Neuroscience tells us that people respond to emotional triggers almost instantaneously. They feel, and then filter information through those feelings any time they interact in similar circumstances. When strong negative emotions enter the room, creativity exits – and it stays gone. University of Southern California neuroscientist Antonio Damasio explains

that our cognitive processes – reasoning, recognition, and memory – operate in hundredths of a second. We can change our minds about a fact when we learn a better one. But the emotional parts of our brains are much slower to change. Empathy, imagination, love, fidelity – all of them repair “in their own sweet time.”

Watch for the Wrinkled Brow. Corporate trainers and neuroscientists have known for a couple of decades that sharing emotions can create unbreakable bonds and loyalties. Hence the team-building activities at many corporate retreats: zip-lining, leaping off mountains, whitewater rafting, making embarrassing videos, singing badly. Any activity that evokes a strong emotion will make the moment memorable and important and increase the amplitude of your feelings for the people with whom you share it.

For an even stronger emotional bond, you can't beat the U.S. Army. You may have hated your drill sergeant, but by the end of boot camp, you would be willing to literally die for your buddies. Having a common goal, having a common enemy, sharing wretched physical conditions – all this is designed to promote group solidarity.

So how do emotions figure into inventive negotiation?

Paul Ekman is the leading authority on facial expression and emotions. In his seminar back in the late 1970s, we learned much about the fundamentals of emotions. He illustrated the muscle map of his own face through his remarkable control over them all as he demonstrated his Facial Action Coding System (FACS). Ekman argued that there are six fundamental emotions: happiness, sadness, anger, fear, disgust, and surprise. All these feelings can be directly observed by measuring movements of particular facial muscles.

We used Ekman's FACS in the study of face-to-face business negotiations. In that work, we found that frowns (indicated by FACS Action Unit 4 movements), interruptions, and facial gazing hurt negotiation outcomes, while smiles (Action Unit 12 movements) and facial expression synchrony helped. These findings have led us to focus on two aspects of emotion in business negotiations, anger and happiness. We consider the effects of anger on inventive negotiation here. Smiles and humor are subjects for another day. Generally, and as you might guess, anger is a bad thing, and happiness is a good thing.

Anger's Negative Impact. The Korean chair story aptly demonstrates the potential damage that can be done to inventive negotiation processes. When that chair hit the wall and the Americans just sat there, all opportunities for creativity were destroyed.

When anger is threatening or intimidating, it is likely to end inventiveness not only at that meeting but also in the personal relationships. If you're feeling angry, you need to take a break and sort out why. If your partners are displaying anger, you need to take a break and sort out why. Anger and invention rarely coincide.

And things often get worse fast. It is natural for humans to reflect the behaviors they witness on the other side of the table. Interactional synchrony means that smiling begets smiling, threats beget threats, raised voices beget raised voices. The anger only escalates from there.

The Opportunities of Anger. In four specific circumstances, however, anger can work in your favor. But use it with extreme caution.

First, while you may never have seen a chair thrown during a negotiation, if you're an American, you've seen folks get mad. Chester Karrass, who teaches a mix of competitive and integrative bargaining in his popular courses and books, advises that anger can be good when it's used to emphasize the importance of particular issues – that is, when you use it as a communication tool.

Second, anger can be used to shake someone out of routine thinking. Thinking outside the box is key. For example: Jim and Andrea were watching TV one night when their teenage son crawled into the room, doubled over in pain. He'd been suffering from stomach pains for months without a diagnosis, but this time the pain was acute. Andrea called the doctor immediately, sobbing and screaming. Either her anger or her fear caused him to rethink his diagnosis, consulting some other physicians. Within two days, he discovered that the boy had a tropical infection, one he'd never thought to test for. Within a few more days, the boy was finally cured with a simple round of antibiotics.

In Andrea's case we aren't sure what worked: the anger or the crying. Both affect others emotionally. Indeed, Ekman's Action Unit #4, the brow wrinkle, can indicate anger, but also, sadness or fear.

Third, everyone who takes a marketing class these days learns that consumer complaints are important information. Entire companies have been built around the notion of “complaint handling.” See www.CustomerExpressions.com, for example. Complaints become “louder” when folks accompany them with emotions like anger and sadness. Thus, when your negotiation partner blows up, take a break, calm down, and then learn why this discussion caused so much pain. The more you know about your partners, the more creatively you can work with them – perhaps.

Fourth, frustration is the first step in any creative process designed to solve problems. After all, if you weren't frustrated by a situation, you would never want to fix it. Lynda Lawrence, who has worked on different creative teams for many years, soon learned that a team's working relationships always began in the same way, a bitch session (she claims that's the technical name for it).

At her advertising agency, after the account people presented a new assignment to the creative team, the art directors and copywriters would start their complaints. “That's the stupidest assignment we've ever been given. The competition is doing it better. There's no way we can do this by Friday.” New account people were always taken aback. It's their job to bring in business, and they expected the people on the creative team to leap at the chance to show off their skills.

The curious thing about this response, however, is that it always led to very creative solutions. When the account people asked the creative team to stop complaining, the creative team just held their tongues until the account people left the room and then kept bitching. After years of participating in these sessions – and the resulting solutions – Lynda learned that there was something magical about that joint bitching. It allowed the team to discover the real problems to be solved, and it allowed team members to develop some solidarity around a perceived enemy – whether that was the time limit or the difficulty of the assignment. When scheduling for any project, she always allowed for some complaint time, told the account people

to expect it, and advised them to leave the room as quickly as possible so the team could work through the issues and go on to be brilliant.

As a thought experiment about building peace through commerce, we proposed staging the 2024 Olympic Games in Jerusalem in a *Harvard Business Review* blog. The reactions were often very negative, in some cases, even nasty. In sorting through them, though, we learned three quick lessons:

- (1) Venting emotions about the impossibility of the task can be a useful prelude to creative thinking;
- (2) Ad hominem attacks almost always damage the process of invention; and
- (3) It is essential to focus on the future, not the past, for the sake of invention.

Venting those emotions in a negotiation can lead to disclosure of more information and reveal real problems, and this in turn can lead to more constructive ideas. Even the worst comments can be the source of inventive negotiation outcomes. The trick is to distinguish complaints from anger. Once that line is crossed, immediately take a break. Cool off. Anger escalates and can ruin your current negotiation and your personal relationships. Use it rarely and very, very carefully.

Power, a Second Enemy of Invention

The most important idea about the role of power in negotiation is presented by Fisher and Ury in their book *Getting to Yes*. They define the concept of “best alternative to a negotiated agreement” or BATNA. They describe how it lets you measure your power in any negotiation: to the extent that you have lots of good alternatives to reaching an agreement with your current negotiation partners, you have power. That is, if you have the patent on a unique product, even if you’re negotiating with Walmart, Microsoft, or Donald Trump, you have the power. This is a market-based definition of power.

In physics, power is defined as the time rate at which work is done. Defining social power is a bit more difficult, but here’s one popular list of all the different kinds of power people are purported to use. The power of: perception, competition, legitimacy, risk taking, commitment, expertise, knowledge, investment, reward and punishment, precedent, persistence, attitude, and coercion.

We have a different view of the concept of power in social relations – there is no such thing! Social power is a concept that is useful only in retrospect, if you are an academic or a journalist. In particular, political scientists are fond of “power” explanations: “They won the negotiation by using their _____ power.” (You fill in the adjective.)

The nineteen terrorists on September 11th made nonsense of the idea of America as the most powerful nation in world history. The fans of power would explain that the terrorists had developed “countervailing power.” But this is a post hoc explanation.

We think there are only negotiations and human exchange. As an inventive negotiator, you will need to stay vigilant against attempts at coercion and power plays; if you spot them, work to turn things back immediately to invention. Maintaining a focus on opportunities in partnership

makes that old notion of “BATNA” inefficient and unproductive. Instead of worrying about alternative partners, consider how to build a better partnership.

Corruption, the Third Enemy of Invention

We met Miguel Alfonso Martinez at the Hotel Nacional to discuss setting up joint programs between UC Irvine and the University of Havana. Martinez had held a number of big jobs: president of the new Advisory Committee of the United Nations Human Rights Council, spokesman for the Cuban Foreign Ministry, and president of the Cuban Society of International Law. He spoke three languages fluently – English, French, and Spanish – and at the University of Havana Law School he taught international negotiations much like our courses at UCI.

In a typical non-task sounding session before discussing potential joint venture programs, Martinez suddenly asked if we ever played poker or chess. We wanted to talk about inventive negotiations, and he wanted to talk about games? Of course, he was really sounding us out about our own metaphors and therefore about our values and about our concept of negotiation. A chess metaphor signals a Machiavellian view because chess requires players to plot several moves in advance. Poker implies that lying is okay, even expected. Both games lend themselves to metaphors of competition.

His question about chess and poker, though, highlights the two key corruption and ethics issues for inventive negotiation: lying (misinformation) and withholding information. Inventive negotiation depends completely on the unfettered flow of accurate information. Misrepresentation and withholding information can do great damage to creativity.

Paul Ekman, our expert on facial expressions, is perhaps best known for his discovery of micro-expressions, which show up on our faces for fractions of a second as indicators of emotion. In his studies he found very few people could spot deception without formal training. However, he says it was easy to determine that former President Clinton was lying during the Monica Lewinsky scandal because he used “distracting language.”

Unless you’re in the tiny fraction, the 0.25% of people who can naturally detect lying or you’ve been a trained using Ekman’s system (see www.PaulEkman.com), you’re stuck with judging the veracity of your partners’ information based on your feelings. If you feel as though they’re misinforming you, there is a good chance they are. This is where poker fits in – looking for “tells” is a crucial skill in that competitive game, where it is perfectly acceptable to bluff and withhold information. If your cultural or ethnic backgrounds are different, however, then your chances of making mistakes using your “lie-dar” are very high.

Which Truth? The definition of truth varies across cultures. Consider the problem of *wa* (maintaining harmony) in Japan.

Western negotiators universally complain about the difficulties of getting feedback from Japanese negotiators. There are three explanations for this complaint. First, the Japanese value interpersonal harmony, or *wa*, over frankness. Second, the Japanese may not have come to a consensus themselves

on the offer. Third, Westerners tend to miss the subtle but clear signals given by the Japanese.

Wa is one of the central values of the Japanese culture. Negative responses to negotiation proposals are almost non-existent, and when they are given, they are given very subtly. We've all heard the classic story about the Japanese response to an American's request: "We'll think it over." Usually, this means "no" in American terms; if the Japanese really wanted to think it over, he would explain the details of the decision-making process and the reason for the delay. A Japanese negotiator would be loath, however, to use the word "no."

One Japanese scholar, Keiko Ueda, has described sixteen ways to avoid saying no in Japan. In fact, we have found that Japanese negotiators tend to use the word "no" less than two times per half-hour in bargaining simulations, while Americans use "no" five times per half-hour, Koreans seven times, and Brazilian executives 42 times!

In more ambiguous responses, Japanese negotiators follow the cultural double standard of *tatemae* and *honne*. *Tatemae* can be translated as "truthful" (or "official stance") and *honne* as "true mind" (or "real intentions"). It is important for Japanese to be polite and to communicate the *tatemae* while reserving the possibly offending, but also informative, *honne*. This difference in the Japanese value system shows up in statements by Japanese negotiators in retrospective interviews: The Japanese often describe Americans as honest and frank, to the point of discomfort for the Japanese.

Finally, eye contact is much less frequent during Japanese negotiations (13% of the time in negotiations between Japanese, 33% for both Americans and Koreans, and 52% in negotiations between Brazilian executives). Thus, in Japan, leakage of potentially offending feelings is limited, and the *honne* is kept intact. To Americans, this distinction between *tatemae* and *honne* seems hypocritical, even deceptive. Yet, this distinction is made by the Japanese in good conscience and in the interest of the all-important *wa*.

Given these cultural differences, many Americans accuse Japanese of lying. In turn, Americans can be seen as "beating around the bush" when they soften the truth to German or Israeli negotiators – both nations are noted for their brutal frankness. (The word in Hebrew is "*doogri*" and our word "frank" comes from an old German tribe called the Franks.)

Don't be a Sucker. In the United States, we usually trust people to tell the truth unless we're given evidence to the contrary. In most places around the world, the opposite is true – trust must be built up over time. Nowhere is this more the case than in Israel. A central theme of negotiations there is, "Don't be a *freier*." You might translate the Hebrew into English as "sucker." That word doesn't capture the importance of the concept in Israeli thinking. Thus, we often hear Israeli leaders warning their American counterparts about being too trusting. Of course, distrust kills invention – and this is perhaps another explanation for the endless discord in the region.

More Ethical Issues. Back to Seoul and the thrown chair. As an unplanned, visceral reaction of anger to the Americans' obstinacy, the action would have damaged the process of invention. If the histrionics were planned, however, that action was a lie – perhaps a combination of chess and poker in Miguel Alfonso's view. This multiplies the damage.

Fraud is a form of lie and is punishable by law. Fraud is not an ethical matter; it's a legal matter that can come up in the course of negotiations. Just ask the big banks about their misrepresentations in the latest financial crisis.

Another kind of corruption that occurs in negotiations is bribery. The international legal establishment is tightening its standards. The laws are becoming stronger, particularly the U.S. Foreign Corrupt Practices Act, which prohibits American firms and individuals from bribing officials of foreign governments. While we don't condone bribery, to many people around the world (and it often seems so in Washington, DC), paying tribute can be seen as a form of creative negotiation.

Information leaks can be another form of lying, particularly when information is leaked selectively. Yet, more people having more information is always good. Openness and transparency should always help inventive negotiations.

Inventive Negotiation as an Ethic. Given the better alternative of inventive negotiation, we believe it's actually unethical to take either a competitive approach or an integrative approach to negotiations. Both focus on interests, not the opportunities of collaboration. And both approaches limit what humans can accomplish when they work together.

CONCLUSIONS

In summary, the traditional American approach to negotiation is somewhere between competitive and integrative bargaining. For the last three or four decades books and courses on negotiation have emphasized a "Getting to Yes" sort of integrative bargaining. You skip bargaining positions and instead start out discussing negotiators' interests, hopefully achieving win-win solutions. In the 21st century this is not good enough.

The best negotiators in the world use a third level of sophistication in their negotiations, what we call *Inventive Negotiation*. That is, starting with positions or interests limits what can be achieved. Inventive negotiation processes emphasize combining imaginations. Think Jobs and Iger. By their own admission, they walked in the woods. They laid their cards on the table, face-up. They traded crazy ideas.

We challenge you to use all the principles of inventive negotiation in your own inter- and intra-organizational relationships. Some of your colleagues, those invested in the traditional approaches taught in the streets or in the business schools, may grouse. Then it will be your job to convince them that combining imaginations will lead to far better and longer lasting relationships.

Back to the Likes of Tesla

We can all watch and learn from how inventive approaches are affecting what many have called a classic standards battle, one that harkens back to the likes of Thomas Edison and Nikola Tesla during the last century. Elon Musk, CEO and founder of both SpaceX and Tesla Motors, is a great example of an inventive negotiator. He has partnered with both Toyota and Daimler-Benz to supply and develop electric vehicle (EV) technology and markets. In June 2014, he took the bold step of offering to share his EV patents in order to spur innovation in the arena. A parti-

cular goal of his collaboration is the development of national and international infrastructures of electric "supercharging" stations.

Meanwhile Toyota and Hyundai are making increasingly larger investments in hydrogen fuel cell vehicle (FCV) technologies that offer gasoline refueling times and ranges. With hydrogen and FCVs the problem is also fueling station infrastructure. Musk publically pans the FCV plan as impractical – but, of course, he is currently working in direct competition, EV versus FCV. Scott Samuelsen head of the National Fuel Cell Research Center at the University

of California, Irvine suggests still another collaboration wherein families keep an EV in the garage for short trips next to a FCV for longer commutes and road trips. Combining the technologies in one vehicle has also been suggested. The opportunities seem rife. Let the inventive negotiations begin!



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Executive Summary

Just getting to yes isn't good enough anymore. Inventive negotiators, especially international ones, aren't satisfied with just making deals. Instead, they emphasize sustainable, trusting, and personal commercial relationships that more resemble building pie factories than splitting pies: going beyond traditional, primitive approaches that divide resources toward a more civilized, inventive approach that combines them. Inventive negotiation borrows the best ideas from the Japanese, the Dutch, Silicon Valley, Hollywood, brain science, anthropology, and experimental economics. Rather than focusing on disputes or problems, the process begins with a search for opportunities. Next comes finding the best partners and developing trusting relationships. Those relationships allow for application of tools of invention — using a facilitator, leveraging diversity, getting the team, place, space and pace just right, changing roles, and improvisation. Inventive negotiators also that emotions, power plays, and corruption do great damage to creative personal and commercial relationships.

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