

Adversaries? Partners? How About Counterparts? On Metaphors in the Practice and Teaching of Negotiation and Dispute Resolution

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Metaphors pervade the practice of negotiation and related dispute resolution processes. The dominant metaphors are competitive ones, from games, sports, and war. A second set of cooperative metaphors, often from dance, is also used. This article argues that, since negotiation and related dispute resolution processes inherently involve both competition and cooperation, language reflecting that tension should be used. For example, negotiating parties should be called by the mixed term counterpart rather than the purely competitive adversary or the purely cooperative partner. Counterpart may also be a very useful metaphor in teaching these subjects. Language awareness can help us better understand and at times improve dispute resolution practice and teaching.

A student of negotiation—or of its cousin, the assisted negotiation called mediation—will soon find herself awash in a sea of metaphors. Has she entered the animal kingdom, a dog-eat-dog world where hawks prey on doves and lions occasionally lie down with lambs (Isaiah 11:6)? Or the kitchen, with pies to be baked and their slices cut, and oranges to be separated peel from fruit? Is she attending a music concert, where discord will be replaced by harmony, or embarking on a journey replete with speed bumps, road blocks, and detours, the negotiation “bicycle” at risk of falling if sufficient momentum is not maintained? Perhaps she is a carpenter carrying a toolbox of options, an engineer building bridges to span differences, or an architect designing a multidoor courthouse (Sander, 1976)? Maybe she is a puzzle-cracking problem solver (Menkel-Meadow, 1984), cutting through Gordian knots and climbing decision trees (Raiffa, 1982)?

If she is like most students, she will soon arrive at the competitive metaphors that dominate the field of negotiation, if not our culture (Tannen, 1998). Negotiation is a game of poker in which players must hold the cards close to the chest (White, 1980). Negotiation is a sport like football, where a “level playing field” is required; mediators are thus “umpires” or “referees.” Or like basketball, where “timeouts” are sometimes taken, or like baseball where parties sometimes play “hardball” (Thornburg, 1995; Archer and Cohen, 1998). Sometimes negotiation is a military war fought with weapons by Ramboesque soldiers and gladiators who shoot proposals out of the air and follow marching orders from their superiors.

Now she knows that “winning” in negotiation should not be defined in terms of defeating the other side, but rather in terms of achieving her own objectives. However, the competitive game/sport/war framing is a powerful one, a deep and mucky intellectual rut from which it can be difficult to get unstuck. Consider the resilience of the related competitive paradigm of the lawyer as a “zealous advocate.” Other important ideals of lawyering such as Brandeis’s “lawyer for the situation” and its progeny, including Menkel-Meadow’s “lawyer as problem solver” (1984) and Kronman’s “lawyer-statesman” (1993), have been advanced. However, the paradigm of the lawyer as zealous advocate has dominated the American legal mind-set for more than two hundred years (Hazard, 1991; Riskin, 1982; Cohen, 2001). To borrow from the title of a current leading legal negotiation text by Mnookin, Peppet, and Tulumello (2000), where will the student go—what metaphor will frame her understanding of negotiation—if she goes “beyond winning”?

The student may then realize that there is more to negotiation than competition. Although the adversarial metaphors capture an important piece of negotiation, they do not capture the whole of it. Competition is part of negotiation, but so is cooperation. Negotiation involves both give and take. As Schelling (1980, pp. 4–5) wrote, “the richness of the subject arises from the fact that . . . there is mutual dependence as well as opposition. Pure conflict, in which the interests of two antagonists are completely opposed, is a special case[.] . . . Concepts like . . . negotiation are concerned with the common interest and mutual dependence that can exist between participants in a conflict.”

The student may now switch to a second set of metaphors within our field, those of cooperation. Whether through stumble or leap, she may well arrive at the metaphor of dance. The other party in the negotiation is not one’s adversary, but one’s *partner*. The dance occurs in steps and stages

(Raiffa, 1982). As with empathy and assertiveness, skill in following one's partner is as important as skill in leading (Mnookin, Peppet, and Tulumello, 2000). It is essential to "put yourself in [the other side's] shoes" (Fisher, Ury, and Patton, 1991), but hopefully without stepping on their toes. What is needed is to be shoulder to shoulder, side by side. Movement, balance, and trust are critical. Before an impasse is reached, perhaps a "trip to the balcony" can reveal new steps to be taken (Ury, 1993). As to third-party neutrals, the mediator is no longer an umpire at a sports event, but a choreographer.

Yet using solely cooperative metaphors is also problematic. Recall that when the dance metaphor is invoked, it is usually not the waltz but the aggressive and spicy tango, as in, "It takes two to tango." Schelling's point was that *both* competition and cooperation are present in negotiation. Disclosing one's interests, preferences, and resources may help to "expand the pie" (value creation), but it can also result in one getting a sliver (value distribution). On the other hand, if one refuses to disclose any information one may end up with the lion's share of a minuscule pie, also a poor outcome. Thus, most negotiation involves a blend of competition and cooperation.

How, then, is one to proceed? What language should be used to describe negotiation? If the goal is descriptive accuracy, since most negotiation is neither pure competition nor pure cooperation, I suggest using language that reflects the inherent tensions between competition and cooperation in negotiation and other forms of dispute resolution. Consider two examples: (1) what to call the other party to the negotiation, and (2) what to call negotiation and related dispute resolution processes.

Parties to negotiations are often unsure of how to refer to one another. Those with largely competitive views of negotiation tend to label the other party as their "opponent" or "adversary." Those with largely cooperative views tend to label the other party their "partner." Yet what is needed is a word that captures the tension between these two roles. I suggest the word *counterpart*. As with competition, in negotiation the other party is against, or *counter* to, oneself. As with cooperation, the other party is in *partnership* with oneself. Negotiation involves an element of tension or paradox in one's relationship to the other party, and our language should reflect it. Using *counterpart* to describe such a mixed role has no less than biblical (though quite sexist) precedent. The second creation narrative in Genesis describes the creation of woman to be an "ezer c'negdo" to man. (Gen 2: 18) *Ezer* means "helper" and *c'negdo* means "against him." This term is sometimes

well-translated as “counterpart.” The language seems to suggest that being a good intimate partner involves both supportive and oppositional roles.

And what of negotiation and related dispute resolution processes? Should we not use labels that describe the inherent tension between competition and cooperation within them? Fortunately, history has already done this for us. “Negotiation” is derived from the Latin *neg* (not) and *otium* (leisure or ease). Hence, the word “negotiation” reflects the inherent tension—not leisure—within the activity. Other words in our field reflect similar tensions. Consider the terms “conflict” and “dispute.” *Conflict* is derived from the Latin *com* (together) and *fligere* (to strike), meaning “to strike together.” This too is a somewhat paradoxical pair, the positive association of unified togetherness juxtaposed with the negative association of violent physical striking. Similarly the more discursive *dispute* derives from the Latin *dis* (apart, two, twain, or separate) and *putare* (to reckon, consider, or think), reflecting the two opposing lines of argument present in a dispute. Consider too the positive and negative valences that attach to the word *compromise*. As Schelling (1984, p. 9) observed, “Compromising *a* principle sounds wrong. Compromising *between* principles is all right.” Here the tension lies not within the word’s linguistic construction but in its opposed, bivalent connotations.

There are many other questions to be asked once one recognizes the metaphors used within negotiation and dispute resolution. How does a party’s choice of metaphors affect the outcome? By using different metaphors, could a party gain a strategic advantage? By using different metaphors, could a neutral better effect reconciliation? What are the ethics of such metaphor manipulation? What are the ethics of the metaphors that are already used? For example, if using sports metaphors tends to disadvantage women by defining the domain as a masculine space (Thornburg, 1995; Archer and Cohen, 1998), should not this practice be changed? Do parties in negotiation who call for a “level playing field” simultaneously create a gender tilt?

Raiffa’s suggestion (1982) of following a mixed descriptive/prescriptive approach to the study of negotiation can help highlight two key questions. Under such an approach, one seeks both to positively describe behavior accurately and to normatively prescribe how parties might improve their outcomes. Accordingly, a practitioner, be she a party or a neutral, might begin by asking herself the descriptive question of linguistic awareness (“What metaphors are being used?”). Next she might ask herself the prescriptive question of linguistic change (“Should I, as a party or as a neutral, attempt to shift the linguistic frame?”).

This latter prescriptive focus bears special consideration. Often the picture we see, and *hence the outcomes that ensue*, depend not only upon what is “actually” there to view but also upon the linguistic lenses we wear. Put differently, such linguistic lenses or frames form as much a part of reality as the object viewed, and the prescriptive import of changing our frames or lenses should be recognized. An experienced mediator recently shared with me an illustrative example which went roughly as follows. A group of individuals from government and academia met informally to brainstorm possible solutions to a pressing social issue in a share-and-share-alike atmosphere. An idea emerged as particularly promising, and, much to the other members’ dismay, one member publicly claimed credit for it. A mediation ensued, which began quite smoothly, until one of the participants invoked the metaphor of divorce. The idea now became the “baby.” The business discussion was transformed quickly into a heated family dispute, specifically, a battle over “child custody.” Reaching consensus became much more difficult. Similarly, Stone, Patton, and Heen (1999) emphasize the benefit of shifting from a “blame” frame to a “contribution” frame to resolve disputes. In short, reframing a problem by casting it in different language can sometimes lead to a different outcome. Further, while demonstrating the following claim is beyond the scope of this article, I suspect that for some conflicts linguistic reshaping may be not just helpful but indeed *necessary* for their resolution.

Counterparts in Learning

A similar attention to language may benefit those teaching in these areas. Let me share from my own experience.

Soon after I began teaching negotiation and dispute resolution about six years ago, I realized that *teaching* was not, at root, the correct term to describe what I did, or at least needed to be understood in a nontraditional manner. When asked what my goal was, I would say instead, “to facilitate the students’ learning.” With time I have come to say, “to facilitate our (both the students’ and my) learning.” Rather than viewing myself as the Teacher transmitting established knowledge from on high, I increasingly recognize ways in which the metaphor of counterpart better describes the learning experience. There are three aspects to this: students as counterparts to one another, myself as a counterpart to students, and students as counterparts to me.

A central focus of my negotiation skills course is students learning from one another. Role-play exercises form the experiential basis for the course, and most classes begin with students negotiating with one another,

usually in dyads. After negotiations are completed, I ask students to give feedback to one another, sharing with their counterpart (1) something she or he did well during the negotiation and (2) something she or he might consider doing differently. As with the negotiation itself, the counterpart metaphor well describes this mixture of support and opposition. A significant amount of class time is also devoted to student presentations of their independent research projects. Here they teach one another (and me too) about a topic usually not covered in the fixed syllabus. The teacher-student dichotomy becomes blurred.

As a counterpart to my students, my role is both supportive and oppositional, to help students build upon their strengths and recognize and address their weaknesses. The oppositional aspect can be particularly rewarding for students. Consider the view of Mnookin, Peppet, and Tulumello (2000) on negotiation pedagogy:

Our teaching and consulting have shown us [that] many people tend to see negotiation [as either purely competitive or purely cooperative.] Some people see the world in zero-sum terms—as solely distributive. We work hard to demonstrate to people that there are nearly always opportunities to create value. Others believe that, with cooperation, the pie can be made so large that distributive questions will disappear. For these negotiators, we emphasize that there are always distributive issues to address. (pp. 42–43)

Raising linguistic awareness can be helpful in addressing this pedagogical challenge. At the start of a negotiation course, competitive students tend to describe their negotiation counterparts as opponents, adversaries, or even enemies, and cooperative students tend to describe them as partners. I use this linguistic divide to prompt a discussion by asking students, “Why do you use the term *opponent* (or *partner*) to describe the other party to the negotiation? What does your selection (whether conscious or unconscious) of terms say about yourself?” Though it usually does not happen instantly, over time students often recognize the interwovenness of their approaches to negotiation and their linguistic framings, thereby developing richer understandings of negotiation. To borrow Riskin’s term (2002), “mindfulness” toward one’s language can be a helpful path toward self-awareness. Further, attention to the metaphors implicit in others’ language can give one insight into their thinking too.

Increasingly, I have come to see a class of students as my counterpart too—as the large, varied, and brilliant study partner who teaches me

both about the material and about becoming a better teacher. There is a delightful Talmudic saying: “I have learned much from my teachers, more from my colleagues, but most of all I have learned from my students” (Babylonian Talmud, Tractate Tannit 7a). The students are the ones who raise the topics I overlook and the perspectives I neglect, thereby prompting revisions to next year’s syllabus. In addition to soliciting informal feedback, twice during the semester I distribute evaluation questionnaires on how to improve the course. As with the feedback the students give one another after a role-play negotiation, it is often easier for another to identify one’s weaknesses than to identify them oneself.

Conclusion

Here I have suggested that, as negotiation involves irreducible elements of competition and cooperation, at least for analytical purposes, it is best to use mixed language that reflects this tension. Most fundamentally, practitioners, both parties and neutrals, should ask themselves questions of linguistic awareness (“What metaphors are being used?”) and linguistic change (“Should I attempt to shift the linguistic frame?”).

Just as their students may benefit from increased linguistic awareness, negotiation and dispute resolution educators too may benefit by examining their own linguistic frames. For example, through such awareness, I have grown in my understanding of what it means to teach these subjects, in particular what it means to be a counterpart with students in the learning enterprise.

Because language usually reflects, if only imperfectly, an underlying reality, language awareness can be a key to better understanding and hence shaping that reality. Robert Frost once claimed that, except for the mathematical variety, “all thinking . . . is metaphorical” (Cox and Lathem, 1966, p. 37). Our behavior rests upon our thinking, so if we want to improve our dispute resolution practice and teaching we would do well to examine our metaphors.

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