



John Sturrock Podcast

(transcript)

Session 14: Neuroscience, Mediation and Negotiation – Part 2

Such was the interest in my last podcast about neuroscience and cognitive bias, that I think we can extend the topic into another session, this being the 14th podcast in the series.

My purpose is not to claim expertise in what is a diverse and growing field but to discuss how the many biases which affect our thinking can help us to be more effective negotiators and mediators. And, given that we negotiate all the time, formally and informally, it really is useful to have these ideas in mind.

One practical example for me came some time ago when my wife and I were selling our family home of many years. I had placed my own value on our house, let's call the figure x . The expert surveyor who valued the house thought differently. He valued it at say $x-20$. Our lawyer tended to agree with him. The market wasn't easy, and we received an offer of $x+5$. The lawyer advised us to take it. I still remember standing in a car park discussing it with him and pushing him to agree that we should look for a higher bid. Long story short, my preference prevailed, we turned down the offer and nine months and much heartache later, with another house ready to purchase, we were compelled to accept an offer of $x-3$.

This is what is apparently called the endowment effect. Because I owned it and placed my subjective value on it, I was blind to the objective reality about the true value of our house, confirmed by three sources in the market: the valuer, the lawyer and the bidder. This bias cost us time and money. Now, apply that to a current situation in your life or to a negotiation in which your client is demanding a certain outcome.

Let's explore a few more. The concept of anchoring has been around for a long time and remains really important as a consideration when you are engaging in offer and counter-offer. The idea is that you can manage expectations (upwards or downwards) by the figures (or other proposals) with which you start in a negotiation. They stick in the mind. However, if you go too low or too high, that can lead your counterpart to react adversely (remember reactive devaluation in the last podcast?) and go to the other extreme. That is not helpful. Again, this is where a mediator will often be able to help parties to think strategically about what proposal is likely to engage the other side because it appears rational in the context. System two thinking, again discussed last time, is much needed at this stage.

I mentioned sunk costs (or the sunk costs fallacy) in the last podcast. This seems to be the trap into which people fall when they say, "well we have already laid out such and such, so we might as well just go ahead and spend the rest". The point is: the money has gone, it won't come back, it's water under the bridge. If the project needs resolution now, do so on the best terms possible and don't allow what is already spent to influence your rational choices today. By the same token, if you have outlaid Z on a project, and you find that it will take $Z+2$ to complete it, don't let frustration about the cost overrun prevent completion if it is still objectively sensible to do so. And don't let spent money (such as legal costs to date)



undermine your approach to sensible settlement discussions. Often each side has to bite a bullet.

The sunk cost bias might sometimes link to over-optimism which, not unlike the endowment effect, is holding an overly confident view about your own position which causes you to expect more than is objectively reasonable. According to research, lawyers can get caught by this which would explain why, so often, lawyers on either side of a case will be advising their clients that they have more than a 50% prospect of success. They can't both be correct – or at least objectively. Of course, no one has a complete 360 degree perspective so, while from a particular vantage point your analysis of the outcome may appear justifiable, if you view the other side of the cheese (to take our illustration from last time), there is a different story. The key here is to adjust the optimism bias by considering all the uncertainties which attach to a case, even if your legal and factual analysis leads you to a confident view. There are so many other factors to take into account.

I mentioned group think. This is interesting. So often, when mediating, one is faced with a room of individuals who tend to act as a team. That can be a very useful thing of course in building collegiality and support but when it operates to prevent challenges to a point of view, to stop people assessing the impact of contrary facts and advice (note confirmation bias again), or disables key people from making brave decisions, it can be a serious impediment. That is why some mediators will suggest that the key decision-makers sometimes meet separately, away from the influence of others.

I might mention framing, loss aversion and system inertia briefly and in a wholly different context, that of politics. We are being fed ideas constantly and sometimes subliminally that affect the way we think and choices we make (framing). Think about that when it comes to how we vote. Apparently, we are twice as likely to adhere to the status quo than to accept change (loss aversion and system inertia seem apt) so, if you are a politician and you want change, you may well frame your message to sound like it is a return to something reassuring that went before and is therefore not as risky as something new (think Make America Great Again and Take Back Control for example). "Again" and "Back" are the important words to note. Ponder this for a moment.

As I said at the start, I don't claim expertise. I'd rather set these concepts into the ordinary day to day negotiations we all undertake and apply them practically. But it is important to be alive to these things. Others who influence our thinking are often skilled in their understanding of how we think. It seems imperative that we all educate ourselves in order that we, and those whom we may advise or guide, make decisions which are as fully informed as possible.