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A third theory: inventive negotiation

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Abstract

Purpose – This paper aims to offer a new theory of “inventive negotiation” as a useful alternative to the outdated thinking of the past century.

Design/methodology/approach – The literature is reviewed, and a series of stories is used to bolster a new understanding.

Findings – The paper is a critique of the theory of integrative bargaining, arguing that it often limits the creative processes that produce long-term relationships with customers. This paper introduces a third theory of negotiation, something the author calls inventive negotiation.

Originality/value – The primary lesson of negotiation courses in American business and law schools suggests a narrow focus on reaching agreements while paying little attention to implementation and the paramount importance of maintaining ongoing commercial relationships. This paper introduces a third theory of negotiation, something the authors call inventive negotiation. It places emphasis on long-term, trusting commercial relationships as the key outcome of negotiation. The theory also posits negotiation as a creative process wherein innovations processes can play a central role. For example, both group diversity and facilitators can aid in producing creative agreements along the way toward mutually profitable business relationships.

Keywords Relationship marketing, Negotiating

Paper type Research paper

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

- One bludgeons the other and takes the entire pie. We call this *coercion*.
- The two argue over and agree about how the pie should be divided. We call this *competitive or zero-sum bargaining*.
- 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*.
- 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.

The traditional dialectic of negotiation waffles between the competitive approach and integrative bargaining (even in China; Fang, 2006). 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 and neither depends much on building trusting, long-term relationships.

Yet inventive negotiators, especially international ones, are not 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 is not your usual approach to a theoretical paper in a marketing journal. But the purpose of the piece is to present a new theory of marketing negotiation, what we call inventive negotiation. While it is completely consistent with the notion of relationship marketing, it bears little resemblance to the main stream of negotiations research of the past 30 years. Moreover, much of the presentation is in the form of stories (little cases if you like), the first with little to do with marketing.

The biggest breach of contract ever

In the late hours of August 23, 1939, Soviet foreign minister Vyacheslav Molotov and Nazi foreign minister Joachim von Ribbentrop signed the Treaty of Non-Aggression between Germany and the USSR.

The Treaty ensured that the Soviets would stay out of the war in Europe and would be free to prosecute their battles of the time against the Japanese. An additional stipulation of the Treaty was the division of Romania, Poland, Lithuania, Latvia, Estonia and Finland into separate German and Soviet spheres of control. Needless to say, the Finns were not too happy about this agreement, so they named and used petrol bombs in his honor, the “Molotov cocktail.” I assume in Finnish it was too hard to say a “von Ribbentrop martini!”.

Actually, this so-called Nazi-Soviet Pact led directly to the largest cataclysm in human history. Really nothing to laugh about. Less than a year later, right after he pushed the British off the continent at Dunkirk, Hitler began planning his pivot to the East. Because the Soviets really had no relationship with the Nazis other than the agreement, the Germans were able to pull

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off a million-man sneak attack, Operation Barbarossa, beginning on June 22, 1941. This was a most unpleasant surprise for Stalin. Like Napoleon before him, Hitler made it to the gates of Moscow, but unlike the Frenchman, he never actually breached them. Hitler and Stalin got to “yes” in 1939, then 30 million of their countrymen died.

The best employer–employee relationship ever

John Tu and David Sun immigrated to the USA from Taiwan. They brought with them inventive engineering skills and innovative ideas about management. They founded Kingston Technology, a privately held firm in Fountain Valley, CA. Today, the company serves an international network of original equipment manufacturer customers, retailers, resellers and distributors in every continent except Antarctica. Contract manufacturing and supply chain management services are also among its offerings to its high-tech industrial customers.

Most books on the role of the chief executive officer (CEO) list five constituencies that must be served for leadership success: shareholders, customers, employees, vendors and the public (George, 2004). Tu and Sun recognize the five but emphasize the primary importance of their employees. In 1996, Japan’s SoftBank Corporation acquired 80 per cent of the company for \$1.8bn. In perhaps the single greatest expression of gratitude for employees’ contributions to a company’s value, Tu and Sun doled out \$100m to their managers and workers, an average of \$130,000 each (Moskowitz, 2007). That “investment” in their long-term labor/management relationships has paid off handsomely in the years since the founders’ buy-back of SoftBank’s 80 per cent stake. The firm’s revenues in 2014 were over \$5bn. Moreover, both Intel and Dell have awarded Kingston with their annual best supplier designation. Certain part of Kingston’s ongoing success is due to the long-term relationships with industrial customers promoted by the founders’ loyalty to their own employees.

The conclusions to be drawn from the stories are two-fold: First, agreements mean little. Second, relationships mean everything. These sentiments are affirmed by both McKay (2005), “The sale begins when the customer says yes”; and Levitt (1983) before him, “the sale merely consummates the courtship... how good the marriage is depends on how well the relationship is managed by the seller”.

Relationship marketing and negotiation theory

An important breakthrough in marketing theory during the past few decades has been the elaboration of relationship marketing (Gronoos, 2004). Its emphasis on long-term relationships vs transactions represents a fundamental shift in thinking about the determinants of profitability, one not missed by practitioners such as John Tu and David Sun. Meanwhile, mainstream negotiation theory misconstrues relationships as antecedents to negotiation processes and agreements (Lewicki et al., 2016; Al-Khatib et al., 2007; Graham et al., 1994), rather than as the paramount negotiation outcome. Even the most recent few articles on the topic of creative bargaining focus on “creative agreements” while ignoring the importance of relationship maintenance (Gelfand et al., 2015; Wilson and Thompson, 2014; Mehta, 2012). The research designs and

methods of social psychology are much to blame for this theoretical shortcoming, as we explain below.

Our elaboration of a third theory is intended to stimulate new thinking in the negotiations area (Graham et al., 2014).

The history of negotiation

The word negotiation is derived from two Latin terms, *negare otium*, literally translated as “to deny leisure.” In French and Spanish, deny leisure becomes “business.” Yet while the word is Latin-derived, the behavior predates that culture by roughly 300,000 years, ever since *homo sapiens* developed as a species.

During those millennia, humans had four basic means to resolve disputes or solve problems. We call them the four Ms – might, markets, mutual interests and imagination. For about 290,000 of those years, anthropologists think we mostly used imagination. On the southwestern African savannahs, small migrating bands of hunter-gatherers sat around camp fires and combined their imaginations to invent the best ways to survive. While they did not invent the fire that warmed them, cooked their food and protected them, they did invent an impressive list of ways to use it. Around those campfires, humans used their *collective imaginations* and their *long-term relationships* to survive and develop even better ways to live.

Yet somehow, we have lost these interaction skills that promoted our success as a species. Americans in particular are handicapped by culture when it comes to negotiating inventively. Consider your own approaches to negotiation in the twenty-first century.

Almost everything in your life depends on negotiation. Even before you could speak, you were negotiating what you would eat from your high chair tray – and tossing the losing items to the dog. From there, you graduated to bed times, TV viewing, homework, activities and curfews.

As an adult, you still spend hours negotiating what is for dinner, where to go on vacation and all those childhood issues with your own children. At work, you are negotiating which assignments you will take, what hours you will work, maybe your salary, etc.

Without realizing it, you are also negotiating all day on smaller issues: who is going to drop the kids off at school, how long you can stay at that meeting, who you want on your team, where you will meet for lunch, when to schedule the conference call, which friends you will see this weekend, which family you will see on the holidays, etc. In all these daily interactions, how often do the words *creativity* or *invention* come up?

You learned negotiation organically, mostly through unconscious imitation of your parents, siblings and other role models. These techniques you honed in your youth are probably the same ones you use today, depending on your personal style: tantrums, charm, instant acquiescence, indecisiveness, procrastination or nodding yes with no intent of doing what you have agreed to do.

Along the way, you may have had some formal training in conflict resolution or business negotiation. Chances are you have learned to “do your homework,” state what you want, listen, even look for a deal that both sides find acceptable, etc. There is some conventional wisdom that recommends you keep important information to yourself or start with an outrageous offer to “set an anchor” for the haggling. But nowhere have you

learned how inventive negotiation can make everybody more successful, what the critical steps are in the process, and how to use the many tools you will need along the way, etc. How did we lose the inventive negotiation skills delivered to us during our evolution among the scattered shade trees on that primordial plain?

Among all the animals on the African savannah, the collaborators have always dominated. You cannot see their intricate social behavior in the zoos – modern cages do not accommodate herds, prides and packs. But in a few hours on the savannah, you immediately see the dominance of *groups* of animals. There are the lions, cape buffalo, elephants, etc., often in large extended families of 30 or so, commanded by the matrons among them.

Of course, we human animals evolved in this same setting, and until relatively recent times, we were organized pretty much the same way. Collaboration was the key to our species' success. Like most of the other big animals, humans have been genetically designed to work together in groups.

But simple collaboration is not what makes us a special species. Most lists of our distinctive characteristics include observable ones such as our unusually complex and big brains (relative to body size) and our opposable thumbs. Abstract reasoning, language, introspection, problem-solving and culture are also often on the list as well. But other large animals share at least some of these characteristics. Pods of orcas, other primates and octopi all come to mind.

Scottish philosopher Adam Smith once opined: "Man is an animal that makes bargains – no other animal does this, no dog exchanges bones with another." Yes, humanness is most sharply delineated by two activities – invention and negotiation. Those most ancient Africans developed ways to collaborate among themselves and with those around them that have now evolved into the global trade of innovations that yielded the incomparable progress of our species.

Humans by nature both negotiate and invent. Only by combining our imaginations can we get beyond the limits of our individual insight. We all can use these tools of invention and negotiation every day. But inventive negotiation is also critical on the grandest and most formal stages of industrial marketing, global commerce, international relations and peacebuilding.

From might back to imagination

Only in the past 10,000 years has the dominance of imagination over might, markets and mutual interests waned. While the minds and bodies of humans have remained pretty much the same, elements of culture have conspired to shift the balance of human interaction toward unhealthy inefficiencies. We have lost our natural abilities to negotiate inventively and began to rely more heavily on might, markets and mutual interests to solve our problems.

Might

About 10,000 years ago, agriculture disrupted hunting and gathering behavior and the culture that went with it (Wells, 2010). Instead of communally picking wild grain and moving on, individual families stayed in one place for a season or two, delighting in the control they had over their future food source if they planted and nurtured crops. Of course, if they did not

want other wandering families or animals to eat that grain, they had to protect it, with walls and spears, and they had to trade for the meat they could no longer chase while they were tending fields. The first intergroup negotiations were probably over water – give me access to your stream, and I will give you part of my crop, or maybe marry my daughter to your son.

This new system led to longer life spans, steep population growth, specialties such as art and math, then cities and rulers, royalty and social hierarchy. Not to mention the inevitable disputes over boundaries and fair prices, all of which increased the need for negotiation. When it worked, it was wonderful. When it did not, it was war. Genghis Khan and his raiders did not do a lot of sitting around discussing options with their neighbors. Thus, agrarian societies adopted the sword and bludgeon and military coercion as persuasive tactics. Might prevailed over imagination.

Theory 1 – competitive negotiation processes and the market

The cradle of ancient Western civilization was Greece in 500 B. C. On a map, the prominent geographical feature is thousands of islands – and those islands are perfect breeding grounds for individualism. Indeed, the word isolation comes from the French *isola* or island. If you get mad at your neighbor, you can always move to another island, particularly when the seas are Aegean calm. You do not need his or her help to cast your net. In fact, you cannot fit many folks into your boat anyway. So personal freedom, individuality, objective thought and even democracy have deep roots in this ancient island realm (Nisbett, 2005).

When Adam Smith published *The Wealth of Nations* in 1776, the market competition concept really took hold. In it, the Scottish philosopher composed perhaps the most important sentence ever written in English: "By pursuing his own interest he frequently promotes that of the society more effectually than when he really intends to promote it." In a stroke of his pen, Smith solved the age-old conundrum of group vs individual interests. Through his associates such as Benjamin Franklin, he inseminated that philosophy into the fundamental structure of the most dynamic social system ever devised by mankind. Thus, in no other country on the planet are individualism and competitiveness more highly valued than in the USA.

Moreover, throughout its history, America has been a nation influenced by its immigrants. Certainly, the continuous mixing of ideas and perspectives brought from across the seas has enriched. Every newcomer had to work hard to succeed – thus the powerful work ethic of Americans. Another quality American immigrant was a fierce individualism and independence, characteristics necessary for the initial risk of immigration and for survival in the wide open spaces. Indeed, *The Declaration of Independence* both coincided with and defined American history and national identity. But this latter quality does Americans a disservice at the negotiation table. Negotiation is by definition a situation of *interdependence* – a situation that Americans have never handled well.

The bottom line – Adam Smith and a "cowboy culture" justified a competitive approach to negotiation. Yes, market forces are better than the bludgeons and spears of kings, autocrats and despots. Even Vladimir Putin once agreed (Bourdreaux, 2011): "The authorities should explain to people

in a clear and understandable way, not with truncheons and tear gas, but with discussion and dialogue.” Markets have conquered might, but with little emphasis on imagination and invention.

Theory 2 – mutual interests, American social psychology and integrative bargaining

Some two centuries after the epiphany of the invisible hand, we run into the second and final obstacle that prevents us from returning to the inventive negotiations of our ancestors’ campfire discussions. Before the Second World War, negotiation was mostly studied by political scientists – cases in diplomacy were their focus. This changed with the end of the war and the necessity of dealing with a powerful Soviet Union. In 1948 at MIT, Morton Deutsch wrote his landmark dissertation on comparing cooperative and competitive groups under social psychologist Kurt Lewin. Deutsch moved on to Columbia University, where he then fathered some 70 dissertations in the area of dispute resolution and social psychology.

By the mid-1970s, the bible on negotiations had been produced by two of Deutsch’s students (Rubin and Brown, 1975). One of them, Jeffrey Z. Rubin, was the most central scholar in the area, on the faculty of Tufts, and a member of the nascent Harvard Program on Negotiation. In his 1975 book with Bert Brown summarizing the literature, neither “creativity” nor “invention” was mentioned in the table of contents or index. Rubin was also the first editor of the *Negotiation Journal*. In his first editorial statement in 1985, he defined negotiation (Rubin, 1984, p. 5): “[. . .] as the settlement of differences and the waging of conflict through verbal exchange”.

Three criticisms of the field, particularly at that time, were fair. First was its reductionism – trying to study a complex process by breaking it into parts. Perhaps the most prominent example is the use of the Prisoners’ Dilemma game-theory approach invented by Deutsch. Second, and perhaps worst, has been the need to quantify negotiation outcomes, which led directly to the field’s fundamental omission of creativity and invention – how do we measure such mushy outcomes? The final flaw of the field has been its disregard for the ethnocentricity of its theories, findings and implications. People in other countries and cultures negotiate differently and often inventively. Indeed, in the index of Rubin & Brown’s bible, the word “culture” is absent and “internationalism” is given a whole two pages in the text.

Lately, however, there has been increasing interest in international negotiations, and the concept of creativity is more frequently mentioned by important scholars in the field. In *Getting to Yes*, the current bible of the field, Chapter Four is “*Invent Options for Mutual Gain*” [our italics]. We applaud Fisher *et al.* (2011) for their quick discussion of the topic and appreciate their own backgrounds in law and anthropology respectfully. But the basis of their seven-million-copy-seller is the social psychology literature that dominated their field when the book was first written in 1983. Indeed, they even pay homage to the market in their definition of negotiation power: your best alternative to a negotiated agreement (BATNA).

Other luminaries have mentioned invention, but have not elaborated on it. For example, Raiffa *et al.* (2002, p. 196) long advocated inventiveness in negotiations:

[. . .] the teams should think and plan together informally and do some joint brainstorming, which can be thought of as “dialoguing” or “prenegotiating”. The two sides make no tradeoffs, commitments, or arguments about how to divide the pie at this early stage.

Lax and Sebenius (2006) go past getting to yes and talk about “creative agreements” and “great agreements.” Susskind *et al.* (1999) recommend “parallel informal negotiations” toward building creative negotiation outcomes. But, at the end of the day, American social psychology has delivered only the concept of integrative bargaining. This is a further improvement over coercion and a step above competitive bargaining. But the integrative approach with its emphasis on mutual interests over positions still sees negotiation processes as transactions.

Theory 3 – imagination, a return to inventive negotiation

Our inventive approach to negotiations builds on the work in social psychology with proven concepts gleaned from a variety of disparate sources:

- Silicon Valley firms such as INTEL and IDEO (Kelley and Littman, 2005);
- open innovation (Chesbrough, 2006);
- process networks and performance fabrics (Hagel *et al.*, 2012);
- the concept of *tertius iungens* – the importance of the third party in innovation (Obstfeld, 2005);
- insights from the new brain science;
- virtual teams research;
- experimental economics;
- innovation processes perfected over 30 years of study and practice in advertising, creativity and innovation; and
- three decades of research on the best practices of negotiators around the world.

In particular, inventive negotiations 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 (Hodgson *et al.*, 2008). The Dutch are the world’s experts in foreign languages, cultures and openness to international commercial collaboration.

Our goal is to demonstrate how creativity and invention are keys to business negotiations. The field is still stuck in the past, talking about “making deals” and “solving problems.” Even the use of terms like “win-win” exposes the vestiges of the old competitive thinking. Yet business negotiation is not something that can be won or lost, and the competitive and problem-solving metaphors limit creativity.

Unfortunately, the social psychological approach including all its flaws (Shea, 2011; Enserink, 2012) continues to dominate American thinking on the topic, particularly in business and law schools. Inventive processes in Japan and The Netherlands are almost always ignored in favor of the transactional approaches of competitive and integrative bargaining.

Inventive negotiation defined

Our own previous use of the terms “problem-solving” and “conflict resolution” reflects an old, limiting way of thinking about negotiation processes. Inventive negotiation is not meant to solve problems or resolve conflicts. The purpose of inventive negotiation is to find and exploit opportunities. So, the first step in the process is recognizing a glimmer of opportunity.

Our thinking leads to a definition of inventive negotiations. Indeed, the twentieth-century definitions, metaphors and lexicon of negotiation are filled with words such as problems, conflicts, disputes, dividing things, competitive games and military campaigns, even chess and poker. We use a different set of words (to see how different, take a look at [Table I](#)). *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?” For a more technical definition, see the [Appendix](#).

We had to laugh when we saw the *Harvard Business Review* (*HBR*) table of contents for the March 2012 edition. We were initially excited – *HBR* was going to talk about new ideas, gracing the cover with “Reinventing America” and “Why the World Needs the US to Bounce Back.” Then we looked inside. The table of contents and the articles themselves were a glorious word fest about American *competitiveness*. “Special Report: Restoring US Competitiveness, Why US Competitiveness Matters to All of US” are the first 13 words on the inside. Thank you, Adam Smith!

In the twenty-first century, the proper approach, the inventive negotiation approach, would have used article titles such as “Where are the Opportunities?,” “Who around the World Will Make the Best Partners?” and “How Can We Best Work with the Chinese, the Russians, and the Arabs to Promote Human Progress?” Indeed, that March 2012 *HBR* cover provides us with a glimmer of opportunity – yes, the US business system does indeed need a new way to think about negotiation, which is the fundamental business activity.

Three examples of the third theory in practice

Thomas Edison was not just an inventor. He was an *inventive negotiator*. Contemplate the industries he created ([Stross, 2007](#)). Historians list 22 inventors of incandescent lamps prior to Edison’s, but his design improved on the others in three ways – better incandescent material, a higher vacuum and higher electrical resistance allowing power distributed from a centralized source. Other historians argue that the bulb itself was not 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 bulb. All this collaborative work was accomplished through what we call “inventive negotiation”.

Edison’s modern-day likeness was Steve Jobs. Most know Jobs as a tough negotiator – “it’s my way or the highway”, as the caricature goes. But the actual person was different from the uncomplimentary picture ([Isaacson, 2011](#)). It is quite true that he and Michael Eisner could not agree on much past the companies’ original contract involving distribution of *Toy Story*. But, once Eisner was replaced by Robert Iger, by all accounts an inventive negotiator himself, then a world-class collaborative relationship was quickly established. Edgar Woolard, the former chairman of Apple and former Chairman and CEO of Dupont, said at the time of the 2006 purchase of Pixar 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 reports that the first congratulatory call he got upon his appointment as Disney CEO in March 2005 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 does not just involve good personal relationships between negotiators. Jobs was also known for valuing diversity of views in a unique kind of “coffee house” approach to innovation at Apple. Also, Iger has demonstrated

Table I Negotiation terms and metaphors

Agreement, reaching	Conflict resolution	Extreme negotiation
Arbitration	Crossing rapids	Game theory
Auction	Debate	Haggling
Bargaining	Dickering	Horse trading
Barter	Diplomacy	Integrative bargaining
Battle of wits	Discussion	Intercourse
Buying/selling	Dispute resolution	Investigative negotiation
Campaign (military or political)	Dividing pies	Joint decision making
Chess	Duel	Logrolling
Competitive bargaining	Dutch auction	Mediation
Mountain climbing	Exchange	Meeting of minds
Negotiation	Problem-solving	Yes, getting to
Parley	Psychological trap	
Peace talks	Sharing pies	
Poker	Transaction	<i>Creativity</i>
Powwow	Tête-à-tête	<i>Invention</i>
Prisoners’ dilemma	Three-D Negotiation	<i>Innovation</i>
	Wheeling and dealing	<i>Relationship building</i>

his collaborative style of leadership at Disney by restoring a good relationship with not only Jobs but also Roy Disney (nephew of Walt). Moreover, Iger's selection for CEO was overseen by a famously inventive negotiator himself, Disney chairman (former Senator) George Mitchell.

But, the key to inventive negotiation is a long-term commitment to working together. That is, when Disney bought Pixar from Jobs in February 2006 (less than a year later!), it might have just been a cash transaction, a divide-the-pie argument over price. The actual deal, however, was more than just a deal. It is a long-term relationship of invention. Jobs got Disney stock valued at \$7.4bn (he paid \$10m for Pixar in 1986), and that tied Jobs to Disney for the long run. 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 \$100s since its acquisition of Pixar.

Recall that Mitsubishi Japanese Zeroes fought air battles with Boeing B-17s during the Second World War. Then, in 1953, Boeing established its subsidiary in Japan. In 1960, Emperor Akihito met 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.

Major differences in inventive negotiation

Several aspects of the traditional advice on integrative bargaining make little sense in the context of an inventive approach to negotiation. We have already described in some detail the difference between focusing on agreements vs relationships. While we admire efforts to quantify the creativity of agreements (Gelfand *et al.*, 2015), we see this as just a welcome baby step away from the reductionism of game theory and such. Rather the key focus on research in the area should be on understanding and the measurement of long-term commercial relationships.

There is a good reason why Dale Carnegie's *How to Win Friends and Influence People* is the single best-selling book in the negotiation genre – still outselling *Getting to Yes* by millions of copies. Even in the title Carnegie emphasizes the importance of good interpersonal relationships. Inventive negotiators will understand the important benefits of investments in strong, long-lasting personal relationships in commercial settings.

While many have talked about creativity and innovation processes in negotiations, almost no one has studied the topic in a systematic way. It is more than brainstorming. Other pertinent concepts are manipulations of the setting (e.g. walking in the woods), time, sleeping on it, communication

channels, improvisation, role playing, humor, storytelling, emotions, random juxtaposition, working backwards, borrowing ideas and crazy ideas. All have been found to stimulate creative thinking in non-negotiation settings. Finally, negotiation should be thought of as a kind of innovation process itself, a combination of imaginations at the very least.

While diversity can cause communication problems in negotiations, we also have evidence that once relationships have been established, diverse groups can outperform homogeneous ones (Watson *et al.*, 1993). This area of inquiry deserves additional attention, particularly with respect to international negotiations. There is a great deal of support for the idea that women are better at building and maintaining relationships than men. This is another argument for diverse negotiation teams.

Third-party facilitators are crucial in many international negotiations settings (Hodgson *et al.*, 2008; Lam and Graham, 2006) and have shown to be quite valuable in many domestic negotiation settings as well (Susskind *et al.*, 1999; Obstfeld, 2005). Unfortunately, the American cultural value for “independence” often seems to provoke an aversion to facilitation services.

Finally, when commercial relationships are long-lasting and based on trust and invention, then contracts fade in importance. During the course of almost all business relationships, there will be changes in the environment or to the partners. In the USA, conflicts arising from the changing circumstance are settled through direct and confrontational legal channels or, more often, in arbitration.

In many other countries, given the same set of changing circumstances, companies will resolve the conflicts through conferral. Thus, local contracts often include phrases such as “All items not found in this contract will be deliberated and decided upon in a spirit of honesty and trust.” When differences cannot be ironed out through conversation, the next step is to express concerns through the all-important intermediaries, often the mutual contacts who made the original introductions. Only if they cannot mediate a new understanding will they resort to confrontational and legal approaches. In relationship cultures, those tactics will destroy the harmony and trust required for continued business dealings. Furthermore, their fledgling legal systems are often plagued by favoritism and inefficiency, and even arbitration is viewed negatively in many countries.

The simplest solution is just to include an international arbitration clause in your contract for times when conflicts arise: “Any controversy or claim arising out of or relating to this contract shall be determined by arbitration in accordance with the rules of the (country x Arbitration Association)”. But even with that, we suggest a Japanese approach to conflict resolution – that is, approach the dispute from a cooperative standpoint and talk with your international client or partner. If you have maintained the harmony and trust and you have an honest mutual interest in the deal, problems can usually be resolved through simple conferral. Also, you will still have the option of personal mediation with a trusted mutual contact.

You can also use a governance model or a shock absorber clause. In a governance model, people, not just words on paper, handle problems and developments. With shock absorber clauses, you anticipate and allow changes in specific aspects of long-term relationships. These initial steps toward living agreements, however, will not be important compared to strong

personal relationships when you need to manage the inevitable shocks – positive or negative – the marketplace will deliver.

Even with a signed contract, negotiations are never really completed, and what Americans call “careful follow-up” is really just the continuing maintenance of an ever-evolving business relationship. A regularly scheduled semiannual or annual business relationship review is the best way to prevent disputes. If the business relationship is evolving and growing, you should make changes to contracts periodically. Even more important, you should add to the spirit of the relationship: “How can we make this relationship better?” and “What haven’t we thought of?” The more you invest in your ongoing relationships, the better your pie factory will become.

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Appendix. Defining inventive negotiations in technical terms

We offer a quick hypothetical example of the three approaches to negotiation: Bolter Turbines, Inc. is seeking to sell a \$3.65m gas turbine power generator system to Maverick Offshore Co. for an oil platform in the Gulf of Mexico. Please

Table AI Three types of agreements

	A Bolter turbines Price quotation with standard terms	B Maverick purchasing objectives	Agreement I Competitive negotiation (split the difference)	Agreement II Integrative negotiation (log rolling)	Agreement III Inventive negotiation (outside the box)
Options and terms					
CS2000 Generator Set	\$2,500,000	\$2,200,000	\$2,350,000	\$2,500,000	Lease machine for 5 years with full service and warranty, including labor
Product options					
Custom built	400,000	300,000	350,000	300,000	
Marine shelter					
Recuperator	500,000	400,000	450,000	500,000	
Salt spray air filter	100,000	60,000	80,000	60,000	
Service contract (normal maintenance, parts and labor)	150,000 (2 years)	90,000 (3 years)	120,000 (3 years)	150,000 (2 years)	
TOTAL PRICE	\$3,650,000	\$3,050,000	\$3,350,500	\$3,510,000	\$3,000,000
Terms and conditions					
Delivery	6 months	3 months	4.5 months	3 months	3 months
Penalty for late delivery	\$10,000/month	\$75,000/month	\$42,500/month	\$10,000/month	\$10,000/month
Cancellation charges	10% of contract price	2% of contract price	6% of contract price	2% of contract price	2% of contract price
Warranty	Parts, one year	Parts and labor, two years	Parts and labor, one year	Parts, one year	5 years, parts and labor
Terms of payment	COD	4 equal payments, first at delivery, second at start-up and third and fourth at 90-day intervals	3 equal payments, at delivery, start-up, after 30 days	4 payments	5 annual payments of \$600,000
Inflation escalator	5% per year	3% per year	4% per year	5% per year	5% per year
Third-party arbitration clause	No	Yes	Yes	Yes	Yes

see Table AI. Columns A and B represent the (ballpark) goals for each company with respect to the sale/purchase of one Bolter CS2000 Gas Turbine Generation Set suitable for offshore use. You can see that Maverick is looking for a price reduction of about 20 per cent, faster delivery, etc.

The agreement listed in Column I reflects a *competitive*, split-the-difference approach and coincides with one definition of “fair”.

The agreement in Column II represents a series of trade-offs being made by the negotiators (sometimes called logrolling) ideally based on differences in negotiators’ interests, judgments about the future, risk tolerance and time preferences as they are reflected in the negotiators’ evaluations of products and terms. Maverick might have agreed to a higher price in return for a faster delivery, for example. This *integrative* approach depends on an honest exchange of information about preferences and cost/value calculations.

Finally, the agreement listed in Column III involves thinking outside the box. Rather than a simple buy/sell transaction, this agreement involves a long-term lease relationship that may be more appropriate for both parties. Indeed, for some time, Solar Turbines, Inc. (the Caterpillar division that serves as a model for our hypothetical Bolter Turbines, Inc.) has gone beyond leasing to offering “power generation services” where customers buy kilowatts instead of machinery. Indeed, this latter definition of their business – services versus products – respects Ted Levitt’s views so eloquently expressed in his classic article in the *Harvard Business Review*, “Marketing Myopia.” The agreement in Column III also represents the result of an inventive approach to negotiations.

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