The Neuroscience of Mediation, Settlement, and Decision Making

THEODORE ROOSEVELT INN OF COURT ADR PROGRAM – OCTOBER 29, 2020

Materials prepared by Daniel Weitz, Esq.
no longer fruitful to debate whether cognition and emotion are independent or interdependent. Research on the neural systems of emotion and cognition suggests that they are both.


Raa R. Hassin, James S. Uleman, John A. Bargh editors
Do not read the words, identify the color of the words. Try to do it as fast as you can

- Reading the word is an automated task which takes little mental effort
- Naming the color requires deliberate thought
- The brain needs to turn off or ignore its automatic (system 1) response (ignore the meaning of the word) and consciously think about what color it sees (system 2)

Conscious Deliberation – The Stroop Test
Conscious and Unconscious Decision Making

Daniel Kahneman, Thinking Fast and Slow

- A bat and a ball cost $1.10 in total, the bat costs a dollar more than the ball, how much does the ball cost?

- 5 cents - Arriving at the correct answer requires a little bit of conscious deliberation
• We Need to Think *and* Feel
Fairness (Equity)
“This is a basic lesson of evolutionary psychology:

A need shaped in the wild continues to be felt subjectively even if it is no longer really necessary for survival and reproduction.”

Yuval Noah Harari, Sapiens p. 344

Fairness (Equity)
People Want to be Heard
Dopamine

The common neural currency of the mind

You’re probably 99.9% unaware of dopamine release, but you’re probably 99.9% driven by the information and emotions it conveys to other parts of the brain.

Read Montague, Baylor University
Ancient Subcortical System Involved in the Processing of Emotions

“Cognitive thought is the tip of the iceberg”


Neuroanatomy
The Brain

- Nucleus Accumbens
  - Part of the brain that generates pleasurable feelings

- Anterior Cingulate Cortex (ACC)
  - Involved in the detection of errors/motivation
“Plane crashes are much more likely to be the result of an accumulation of minor difficulties and seemingly trivial malfunctions”

Malcolm Gladwell, Outliers p. 183

Mediation Skills – Summarizing and Reflecting
What are we listening for and what do we do with it when we hear it

Gathering Information
Deconstructing Dialogue

- **Positions**: What people say they want; a unilateral and sometimes inflexible proposal of one party expressing an acceptable outcome of an issue in dispute.
- **Interests**: Why people want what they want; The underlying desires and concerns which motivate people. Interests are the silent motivators behind positions (Getting to Yes, p.41). The feelings, values, fears, needs, worries, or concerns related to a problem or issue
- **Issue**: A matter that is in dispute between two or more parties. Points of friction

**Building Blocks of Dialogue**

• Separate **Positions** from Interests (reframe) and Identify Issues

• Example: “**It is all their fault, I can’t even play with my children, I’m no fun anymore to them.**

• Try to get behind the stated position (demand) to the

**Summarizing and Reflecting**
• Separate Positions from **Interests** (reframe) and Identify Issues

• Example: “**To play with and have fun with your children**”
• Separate **Positions** from Interests (reframe) and Identify Issues

• Example: “She had cubital tunnel syndrome from playing guitar. That’s why she needed the surgery”

**Summarizing and Reflecting**
Summarizing and Reflecting

- Separate Positions from **Interests** (reframe) and Identify Issues

- Example: “**You want to discuss the reasons for the surgery**”
Dopamine
Generating Movement
Generating Movement*

> Summarize/Reframe (interests, feelings etc.)
> Highlight Common Interests
> Build Information Base
> Normalize/Validate Emotions
> Use Silence
> Slow Down
> Stroke
> Brainstorm Options
> Recognize proposals (often buried in adversarial dialogue)
> Focus on the Future (learn from the past)
> Search for Integrative Solutions
> Seek Objective Criteria
> Explore Past Practice (as a source of information)

> Partialize (break down issues into manageable pieces
> Develop Tradeoffs/Compromise
> Question Assumptions (reality test)
> Explore Costs of Not Settling (quality of life, process)
> Explore BATNA and WATNA
> Caucus
> Role-Reversal

Humans are goal directed information processors who tend to evaluate information with a directional bias toward reinforcing their pre-existing views.

Biased search process or

Individuals who receive unwelcome information may not simply resist challenges to their views. Instead, they may come to support their original opinion even more strongly.

The Backfire Effect

“It ain’t what you don’t know that gets you into trouble, its what you know for sure that ain’t so”

Mark Twain

From Brendan Nyhan and Jason Reifler: When Corrections Fail: The Persistence of Political Mispreceptions
“Tell me what you know. Then tell me what you don’t know and only then can you tell me what you think. Always keep those three separated.”

Colin Powell
“The test of a first rate intelligence is the ability to hold two opposed ideas in mind at the same time and still retain the ability to function. One should for example, be able to see things as hopeless and yet be determined to make them otherwise.”

F. Scott Fitzgerald
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