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Using Mediation Skills as a Professional

Spring School 2017

A Warm Welcome to the Course!

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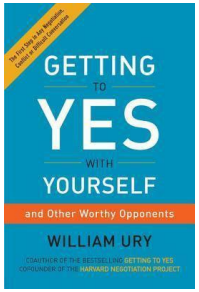
"Between stimulus and response there is a space. In that space is our power to choose our response. In our response lies our growth and our freedom."

Victor Frankl



Choices...

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Managing Relationships, Resolving Differences and Reducing Conflict

…

and Collaborating generally

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or…

Managing Risk in a changing world…

in many contexts…

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Better Conversations, Better Business Partnerships and Better Outcomes

aka

The Head, Body and Soul of Effective Mediation and Negotiation

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or…

"I wish we had had this conversation a year ago…"

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"it's a people business and we need to work together…
I now *understand* the human side and the hurt you felt"

"Just as important as the outcome is that we now understand ***where you are coming from…***"

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"Our traditional thinking methods have not changed for centuries. While these methods were powerful in dealing with a relatively stable world (where ideas and concepts tended to live longer than people), they are no longer adequate to deal with the rapidly changing world of today where ***new concepts and ideas*** are urgently needed."

Edward de Bono

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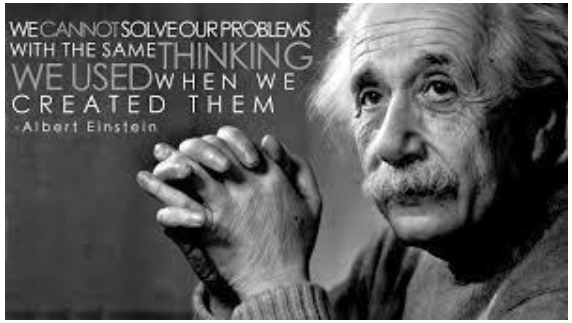
Thoughts for today:

"*We cannot solve our problems with the same thinking we used when we created them.*"

Einstein



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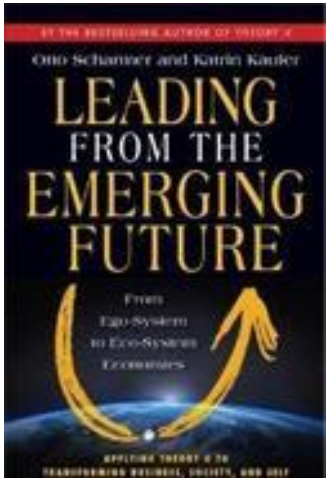
Thoughts for today:

"*The framework we use today may have been appropriate in earlier times, but it is no longer in touch with the complex challenges and demands of our time.*"



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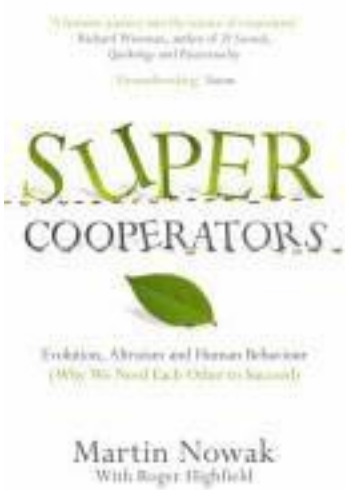
a final, initial thought…



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"If we are to continue to thrive, we have but one option. We now have to manage the planet as a whole. …

We now have to refine and to extend our ability to cooperate.

We must become familiar with the science of cooperation…we must become super-cooperators"

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Clean the filter …

- jump to conclusions
- assume that we are right
- but... can often be wrong!

- So…challenge assumptions / beliefs / intuition / “truth”
- “90% of errors of thinking are errors of perception”

- confirmation bias: tendency to reinforcement shapes response – WYSIATI – miss the obvious
- selective hearing and seeing http://www.youtube.com/watch?v=vJG698U2Mvo

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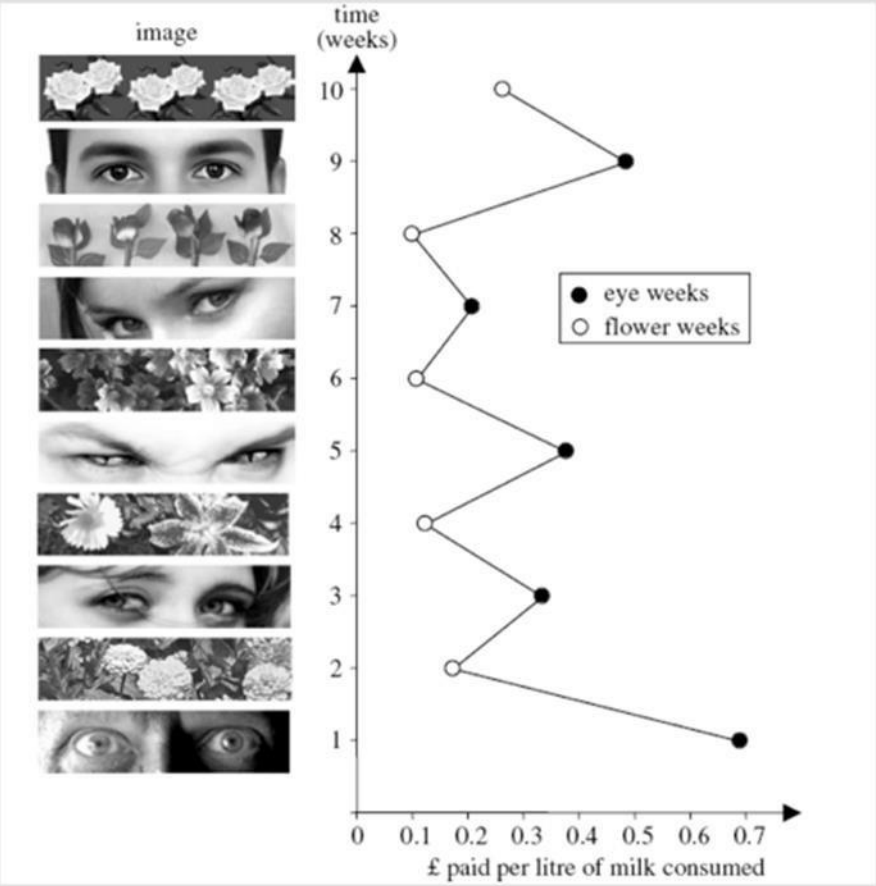
Priming.. and we don't even know it



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More…

- over-optimism
- risk/loss aversion

- thinking fast and slow
- wisdom of crowds? group think?
- reactive devaluation/overvaluation
- attribution error
- planning fallacy
- over estimating own ability
- inertia - sticking with the status quo

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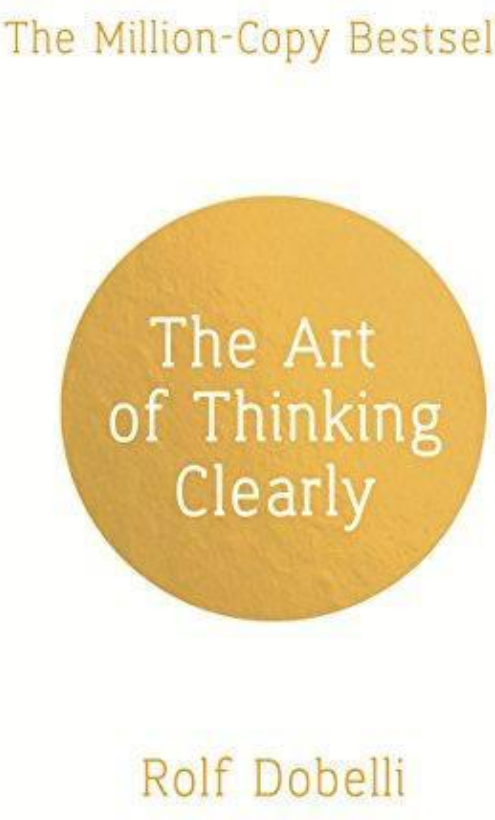
More...

- cognitive dissonance
- wrong rule of thumb
- mixing up probability and similarity
- system justification
- pursuing sunk costs
- endowment effect
- ……



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System 1 and System 2

- fight, flight or freeze – it's evolution, (wo)man
- unconscious mind: secondary characters/heroes
- energy consumption
- patterns, habits, behaviour
- slow down…pause
- "Leadership Embodiment"

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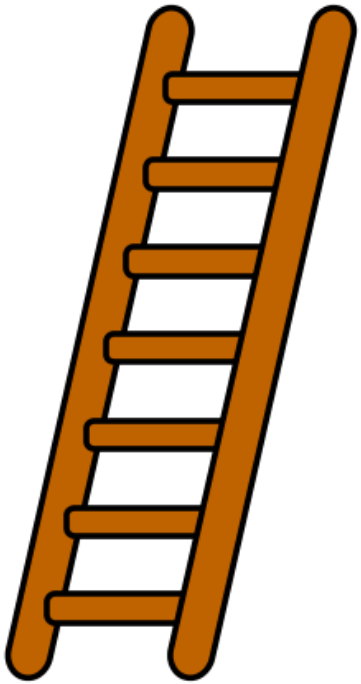
Ladder of Inference - 2+2=5

Act
Refine beliefs
Draw conclusions
Make assumptions
Add meaning
Filter observations
Observe



Chris Argyris, Peter Senge

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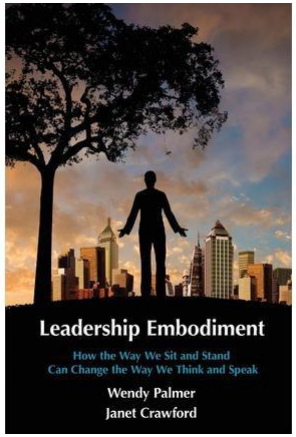
"so connected are brain and body that physical movement has the ability to release us from mental habits when we feel locked in negotiation impasse…



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Be open to new approaches and ideas

–”they” may be as right as we are…

or…

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“Everyone in retrospect is wrong…”!!

Sometimes us…

Sometimes others…

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Keep your Filters Clean!

There are two (several?) sides to most (all?) stories…

It just depends on where you are standing…..
or where you start from.....

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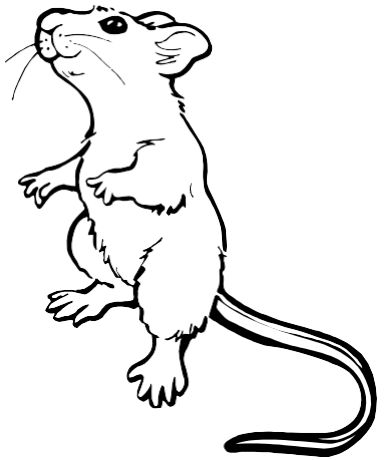
"There is my truth, your truth, and the truth."

Peter Brook, '11 and 12'



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Humility

Responsibility

Courage

Discipline

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Introductions

"...in the intersection between perspectives, real insight can be gleaned."

Margaret Heffernan, 'Wilful Blindness'

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"Everyone thinks of changing the world, but no-one thinks of changing him (her) self" Tolstoy

It's all we can ever do…

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“Be the change you want to see in the world”

Gandhi

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"One of the things I learnt when I was negotiating was that until I changed myself I could not change others"

Nelson Mandela

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Be kind to yourself…

"You don't need to justify your love, you don't need to explain your love, you just need to practice your love.
Practice creates the master"

Miguel Ruiz

"It took me a lifetime"
Picasso

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Working at the margins…

little things…

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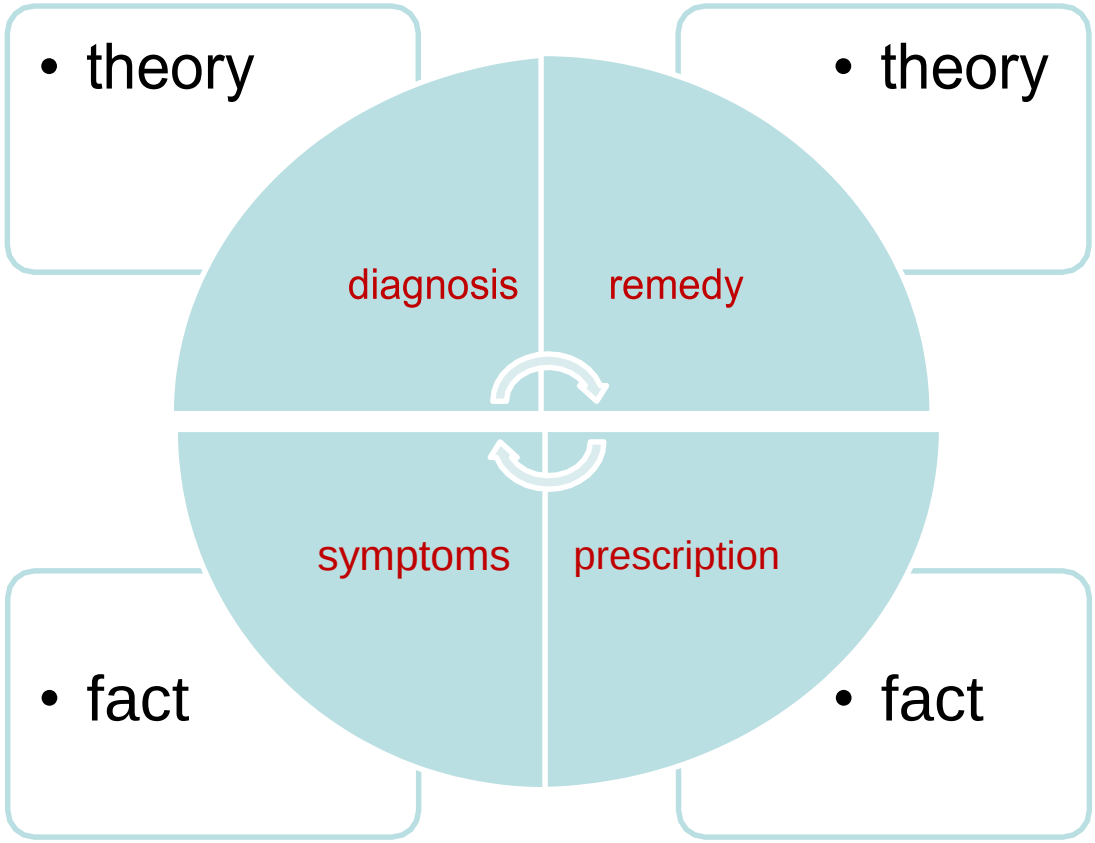
Harvard Circle Chart



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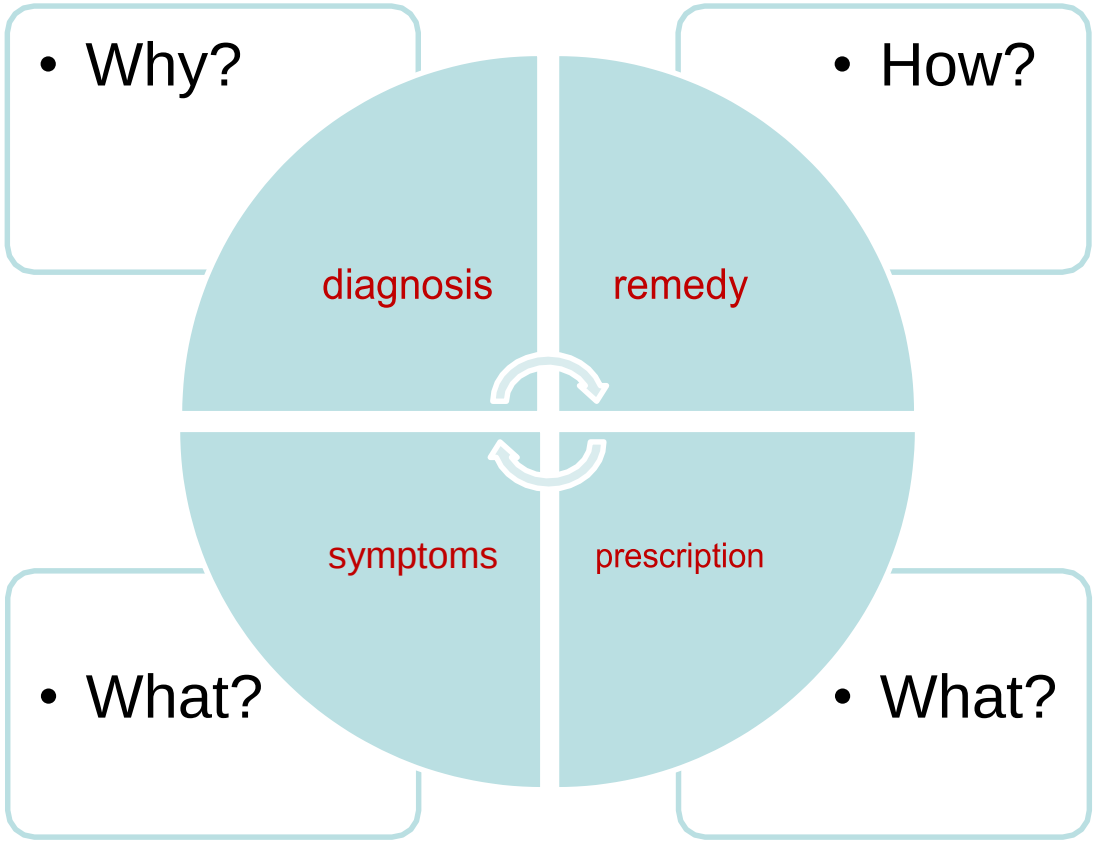
Harvard Circle Chart



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"It's not our differences that divide us. It's our judgments about each other that do."

Meg Wheatley

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"Conflict is always with us…

…it's how we resolve it that matters"

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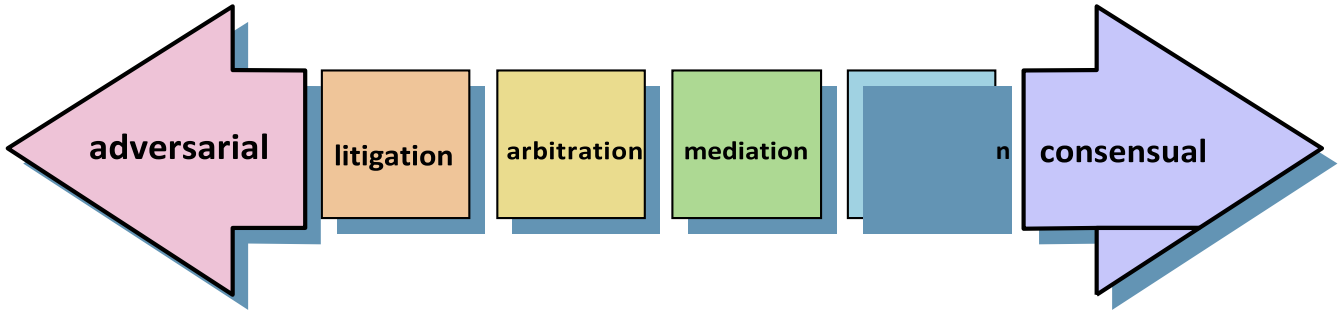
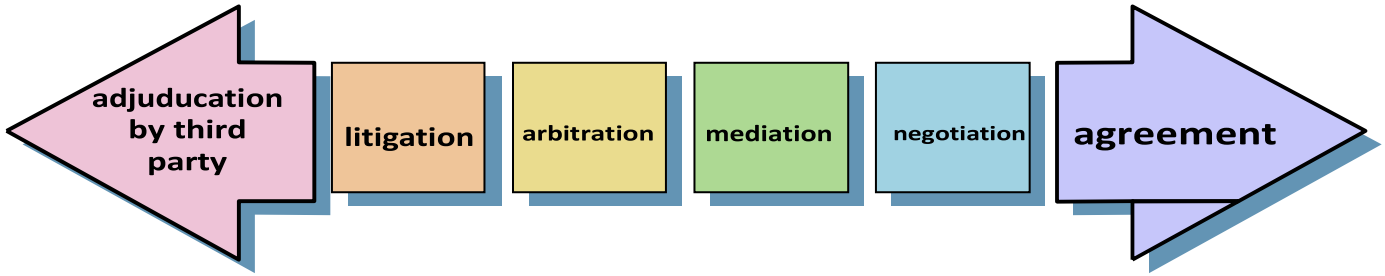
Conflict Resolution: some options





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Gain Game: what we learn

- need to know the rules / objectives / identify “value”
- different styles and perceptions
- emotion is always present
- importance of trust: “like life…” - do as you say
- balancing trust and risk: short term / long term gain
- clarification and verification helps - consistency
- need a decision-making structure
- time pressures cause difficulty – take break / PAUSE
- reputation easily lost
- desire for revenge…Tit for Two Tats

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Gain:Gain

- co-operative tends to produce best result
- aggressive tends to be ineffective
- focus on maximising gains not losses
- if you gain, not matter if other “side” gains also - enlightened self interest: “needs” not “gets”
- “do what need to satisfy the other at least cost to you”?

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Asserting

Collaborating

Cooperating

Optimising

Maximising

(no)

Compromising

Avoiding

Accommodating

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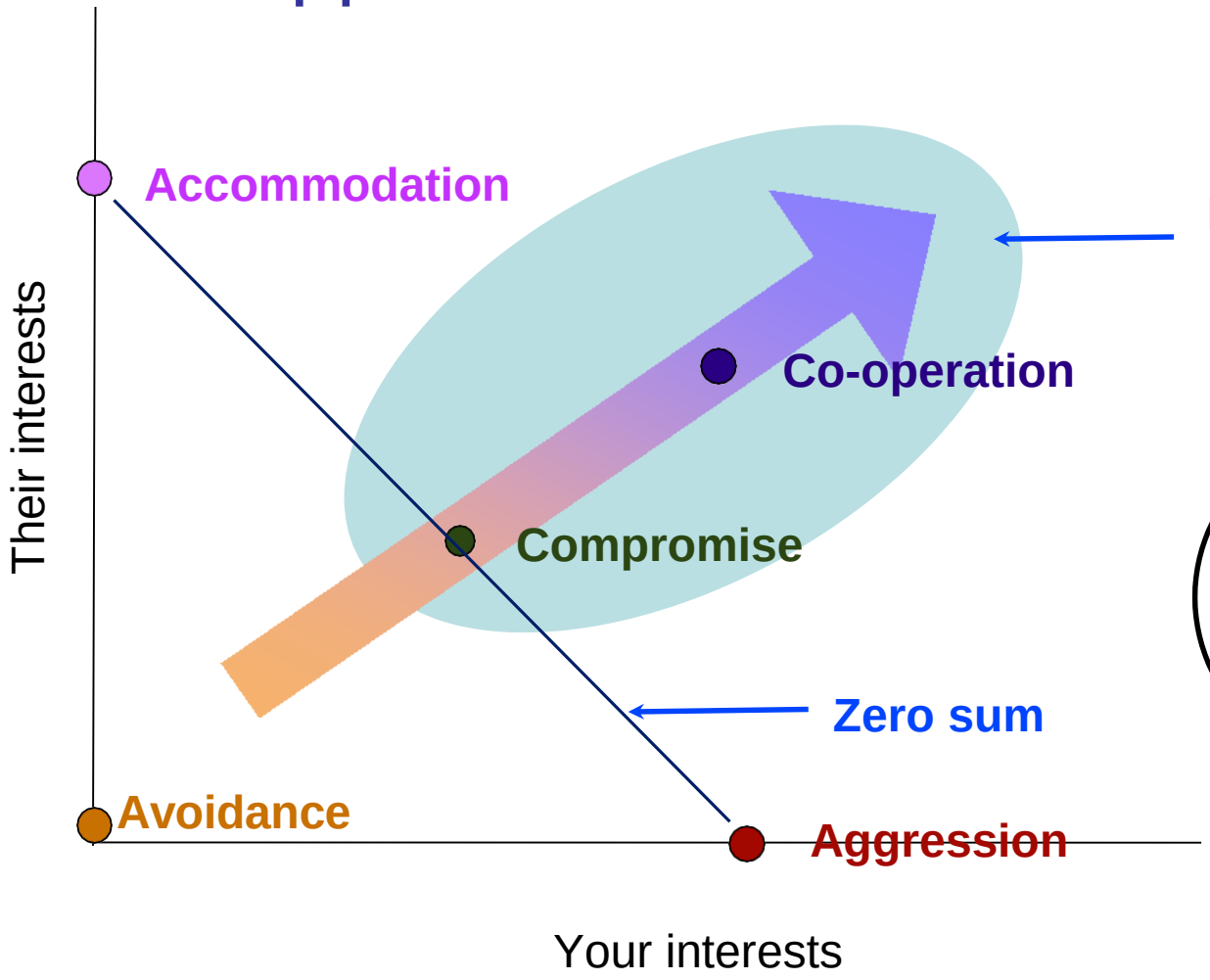
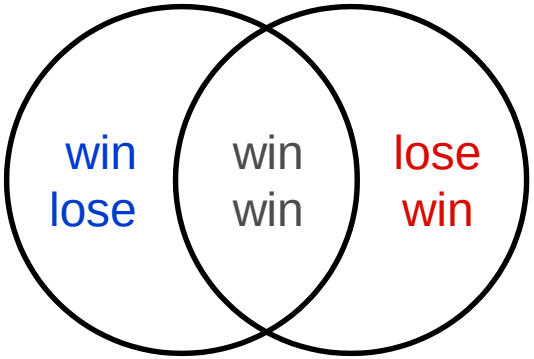
Approaches to conflict





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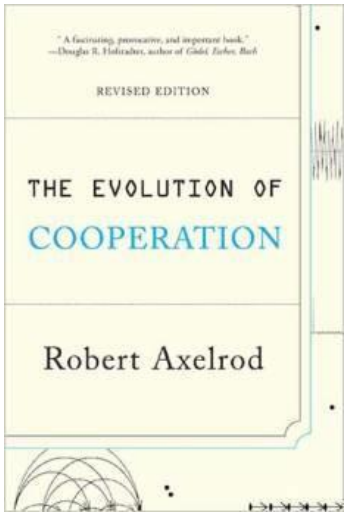

"We are used to thinking about competitions in which there is only one winner....But the world is rarely like that..

The key to doing well lies not in overcoming others, but in eliciting their co-operation."

Robert Axelrod

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Nelson Mandela

- "I never sought to undermine Mr de Klerk, for the practical reason that the weaker he was, the weaker the negotiations process.

  To make peace with an enemy one must work with that enemy, and the enemy must become one's partner."

- *Irreconcilable confrontation gave way to peaceful co-operation. Only through effective negotiation could both sides hope to meet their needs.*

  Neither side could win without the other.

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“It’s not enough for me to succeed.
My enemies must fail”

Gore Vidal

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The Prisoner's Dilemma

"…although it is a simple mathematical idea, it turns out to be an enchanted trap that has ensnared some of the brightest minds for decades…

….gave me the first critical insights into why our traditional understanding of evolution is incomplete…

….we need a third evolutionary force, that of cooperation…

…the Dilemma has played a key role in cementing the foundations for an understanding of human cooperation."

Nowak: Super Cooperators: Evolution, Altruism and Human Behaviour

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Barriers to effective negotiation

- Adversarial, competitive culture
- Posturing / taking positions / exaggeration / ego
- Pressure from / identification with client's / principal's position
- Fear, lack of trust / feelings of threat
- Personal / institutional animosity / baggage
- Different perceptions of strengths / risks
- Lack of verification / justification / authority
- Pressure of time
- ***Delay or Failure in communication***

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Principled and Positional Negotiators

- use good communication skills
- know that relationships vital
- separate people from the problem
- seek options for mutual gain
- focus on interests, future
- are open to new ideas
- make concessions to gain –rec/y
- look for creative outcome
- add value, saves time

- *threatening*
- *aggressive*
- *emotional*
- *haggle*
- *focus on positions, blame*
- *conceal information*
- *concede little*
- *achieve compromise? zero sum*
- *incur cost, delay*

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Effective Negotiation

At the heart of mediation – and managing relationships and resolving conflict - and most of life

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Adding Value:
Using the Third Side

If negotiation needs help, fails or is stuck…

or we need to find other ways to prevent or manage conflict…

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Conflict - A dynamic process

Mediation

Self help possible

Arbitration/Litigation

Conflict crystalisation point

Self help limit

Positions

Positions

Act not talk

Conflict tactics

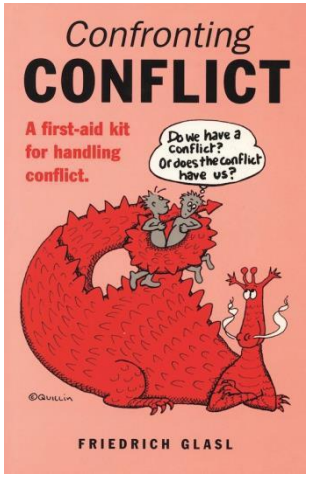
Loss of face

Threats strategy

Limited blows

Destroy enemy

Into the abyss



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A third side approach: Mediation

- prevention
- management
- containment
- resolution
- reconciliation
- restoration

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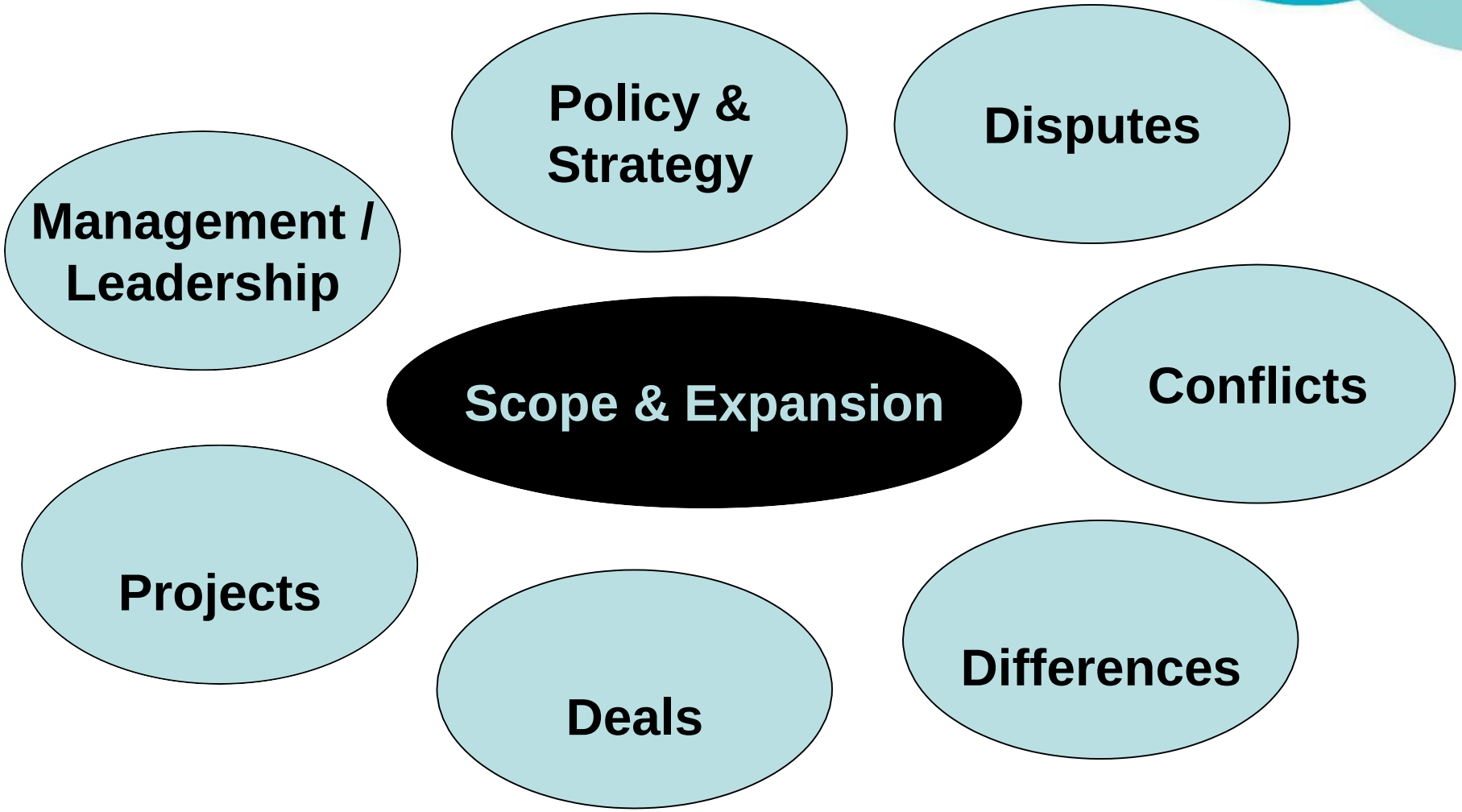

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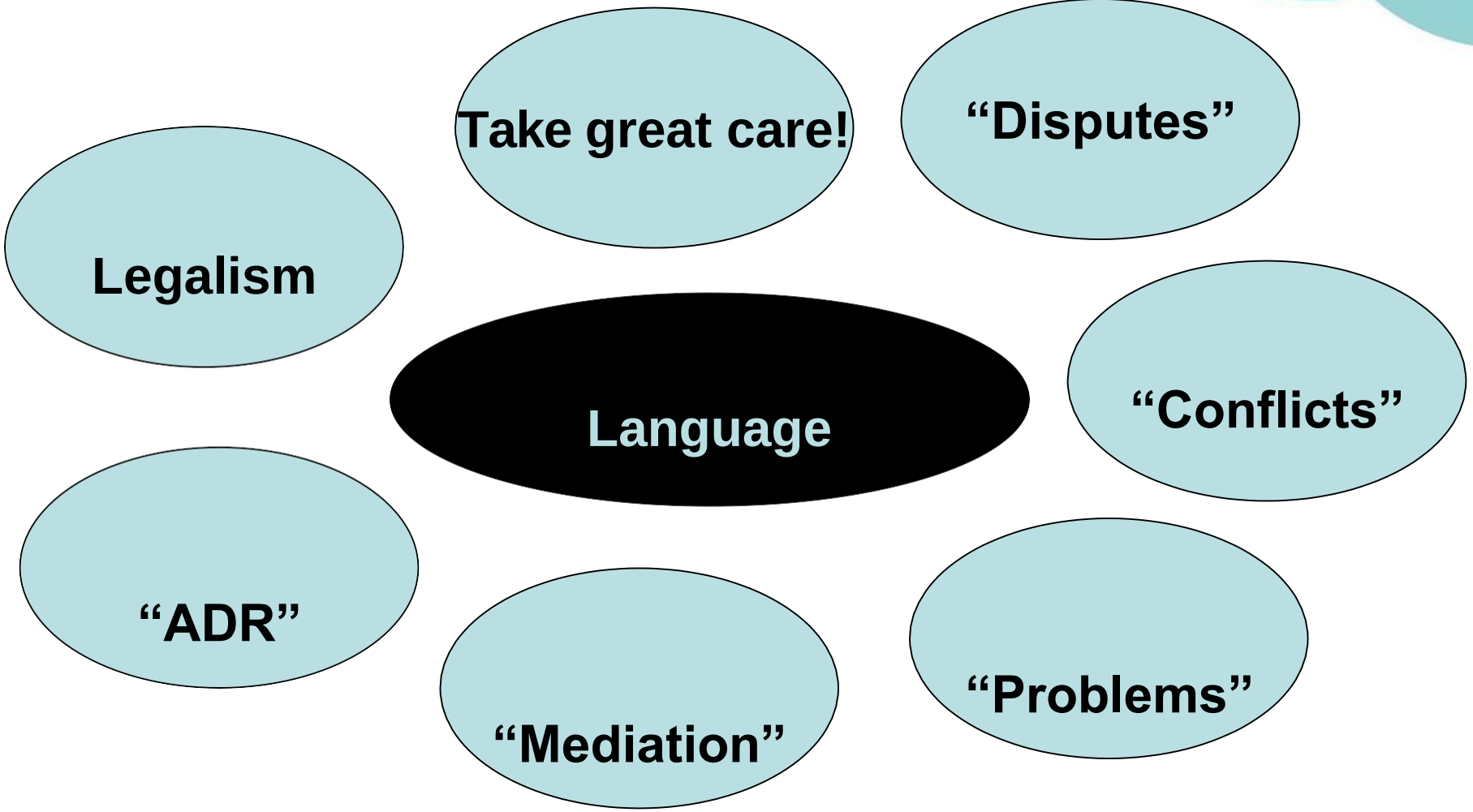

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What is Mediation?

- assisted negotiation - extends and enhances the negotiation process
- using independent third party facilitator: “good faith go-between”
- helps parties to communicate - bridge and buffer
- seeks to enable **parties** to reach a creative, forward-looking solution by consensus – interests, not just legal remedies and rights
- private and voluntary
- flexible, quick and cost effective

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When to use mediation

- ***at every stage*** in a dispute / difference / deal
- ***early*** - manage costs, monitor progress, defuse anger, avoid escalation
- ***middle*** - when going gets tough
- ***eve of*** or ***during*** litigation / formal procedure - a last opportunity to resolve
- **ASAP but preparation important**

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When to use mediation: adding value

- deadlock in negotiations
- non-legal remedy required
- costs disproportionate
- quick solution necessary
- difficult factual issues
- several parties
- publicity not desirable
- continuing relationship important

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A Structure: The Stages of Mediation

See notes…

But first…

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The Elements of Communication/Negotiation

- Preparing – planning and setting objectives
- Rapport building – the importance of good relationships; P:P
- Understanding - exploring what it's really all about, under the surface
- Developing then assessing options – finding possible ways forward – and benchmarking against alternatives
- Deciding – selecting a solution(s) which works – and sticks
- Implementing – making it work
- Evaluating - how we did? what worked? what didn't?

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The Elements of Communication/Negotiation

- Preparing – *what do we need to do in advance? and throughout?*
- Rapport building– *how do we build and maintain good relationships?*
- Understanding - *what is it really all about?*
- Developing and assessing options – *how to go forward?*
- Deciding – *what solution / outcome will work?*
- Implementing – *what needs to happen?*
- Evaluating - *how did we do?*

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The Stages of Mediation

- P
- O
- U
- N
- D

- Preparing
- Opening
- Understanding
- Negotiating
- Deciding

- Rapport throughout

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"I prepare to the nth degree so that when I am …, I appear to be winging it…"

Melvyn Bragg

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Preparation: see Guide

- referral
- discussions / information exchange
- selection of mediator / costs
- agreement to mediate
- documents / statements / summaries
- venue / rooms / catering
- date(s) / timing / who to attend
- initial and preparation calls / meetings

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Mediator preparation

- read summaries and other documents
- plan process / strategy
- contact parties?
- check venue?
- discuss what will happen?
- coach? generate rapport?
- begin to look forward?
- help parties prepare – risk analysis

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Preparation?

- *What are my objectives? / What do I need to achieve?*
- *What are my concerns?*
- *What might be their concerns?*
- *What do I need to say / do?*
- *What might they need to hear from me?*
- *Where might misunderstandings have arisen?*
- *What is the common ground?*
- *What don't I/they understand?*
- *What happens if we don't sort this?*

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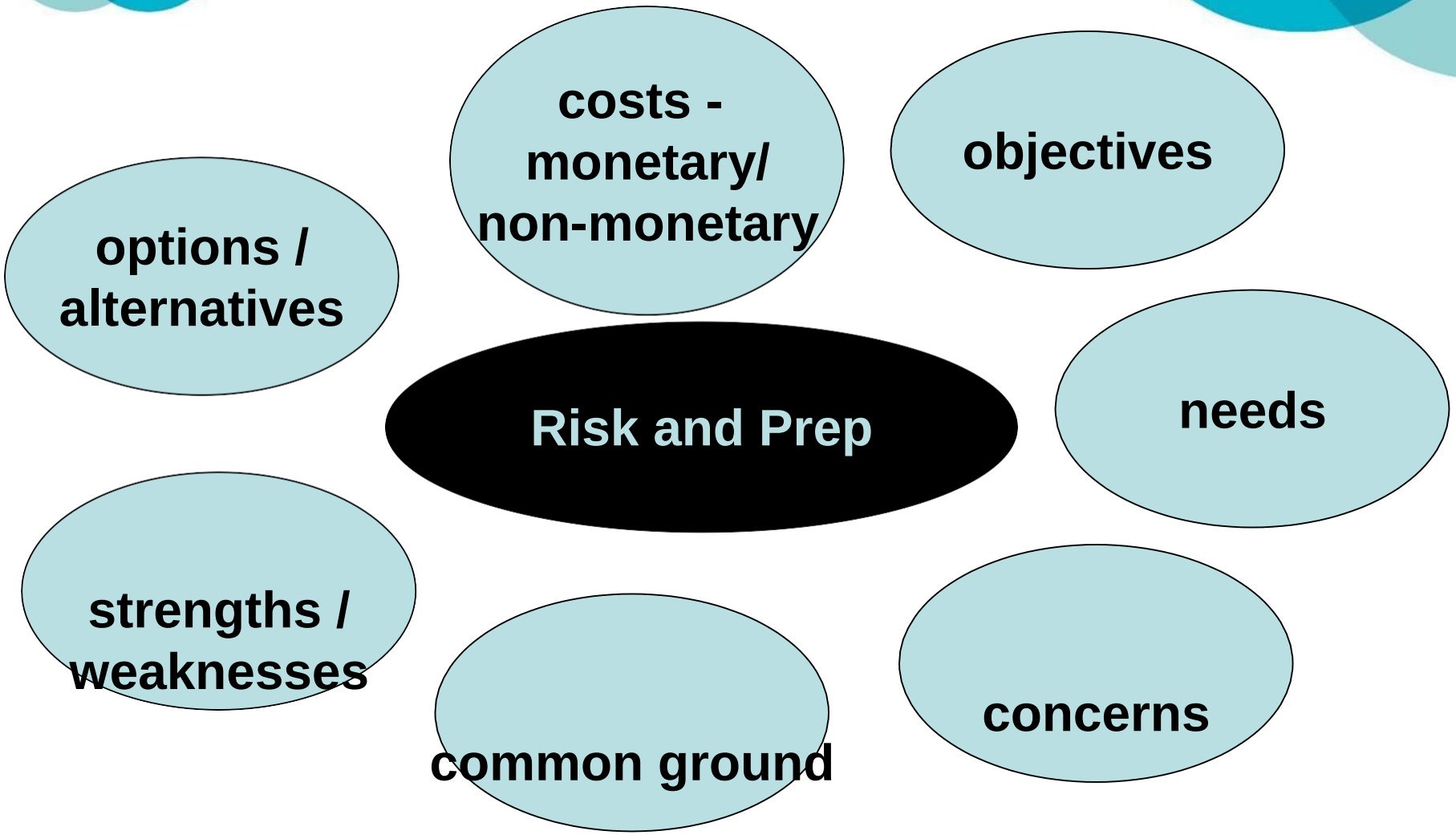

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Opening stage

- welcome: introductions – privately?
- seating / physical arrangements / names
- guidelines / ground “rules” - flexibility
- checks understanding
- “a non anxious presence”
- establishes authority / confidence / rapport / engagement / finds common ground
- joint meeting

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Guidelines

- voluntary
- confidential
- not judge
- impartial
- parties' solution
- not binding
- authority
- time

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Parties' Explanations

- Order
- Interruptions

- Who?
- To whom?
- What?
- How?

- Coaching

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Parties' Explanations

- opportunity to give it their best shot
- opportunity to hear the other "side"
- explain what the matter is about
- opportunity to express feelings / anger / hurt ("day in court")
- opportunity to acknowledge / reassure / express regret

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Building Rapport

“Rapport is the ultimate tool for producing results with other people”

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“Good relationships are key to preventing (managing) conflict”

William Ury

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Rapport?

- separate people from the problem
- respect and rigour, patience and tolerance
- location, location, time and timing
- focus on (common) interests; be interested…
- don’t judge behaviour; value the person – relationships vital
- detoxify the language – every word carefully chosen – reframe?

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But…?

"I know you believe you understand
what you think I said.

But I am not sure you realise that
what you ***heard*** is not what I meant"

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What we intend to communicate and what others take from what we say and do may be quite different...

The Communication Chasm

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How do we communicate?

- words
- delivery
- behaviour

- **verbal**
- **vocal**
- **visual**

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Applying the Theory: Verbal

- **Words** are vital

- keep it simple
- express not impress
- choose every word carefully
- contrast facts and assumptions / conclusions / inferences / opinions
- consider impact: violent or non violent?
- ***Pause…***

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The Importance of Reframing

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Vocal – How we say it

- Pace
- Volume
- Tone
- Emphasis
- Variety is the spice…
- https://www.youtube.com/watch?v=rqIaXLBk5tQ
- (25 secs, 1.35)
- Silence
- Pausing

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Visual - what we do

- posture, gesture, mannerisms
- physical appearance
- movement, use of space, proximity
- eye contact
- facial expression
- energy

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Watching: signals

- **What *we* do**

- **What *they* see**

- our posture
- our gestures
- our mannerisms
- how we move

- **What *they* do**

- **What *we* see**

- how close they are
- eye contact
- facial expression
- fidgeting

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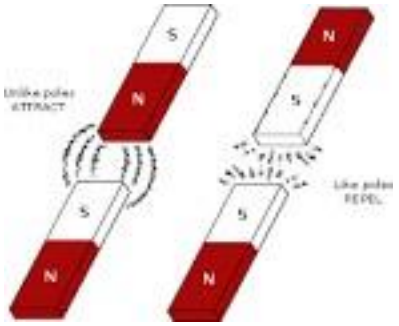
Watching: matching / pacing / leading

- helping to establish rapport
- opposites attract...!
- creating or changing the atmosphere



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Our words, delivery and behaviour affect how we and our communications are perceived - and how others react

Nothing is neutral

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Some useful ideas

- The meaning of any communication is the response it gets
- The map is not the territory
- The identity of a person is different from the behaviour they demonstrate
- It is possible to find a positive intention behind all behaviour
- People make the best choices available to them at the time
- The person with the greatest flexibility of thinking and behaviour is likely to have the greatest influence
- Change is always possible…..people have all they need to do it

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Understanding: the objective?

"When men understand what each other mean, they see, for the most part, that controversy is superfluous or hopeless"

Cardinal Newman

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Dealing with a party in conflict

- not judge behaviour but focus on the issues
- understand behaviour - emotions abnormal
- understand needs / interests cf positions
- allow him/her to express concerns and feelings
- acknowledge - AARREE
- remember learning curve….
- asking questions is critical - as is listening

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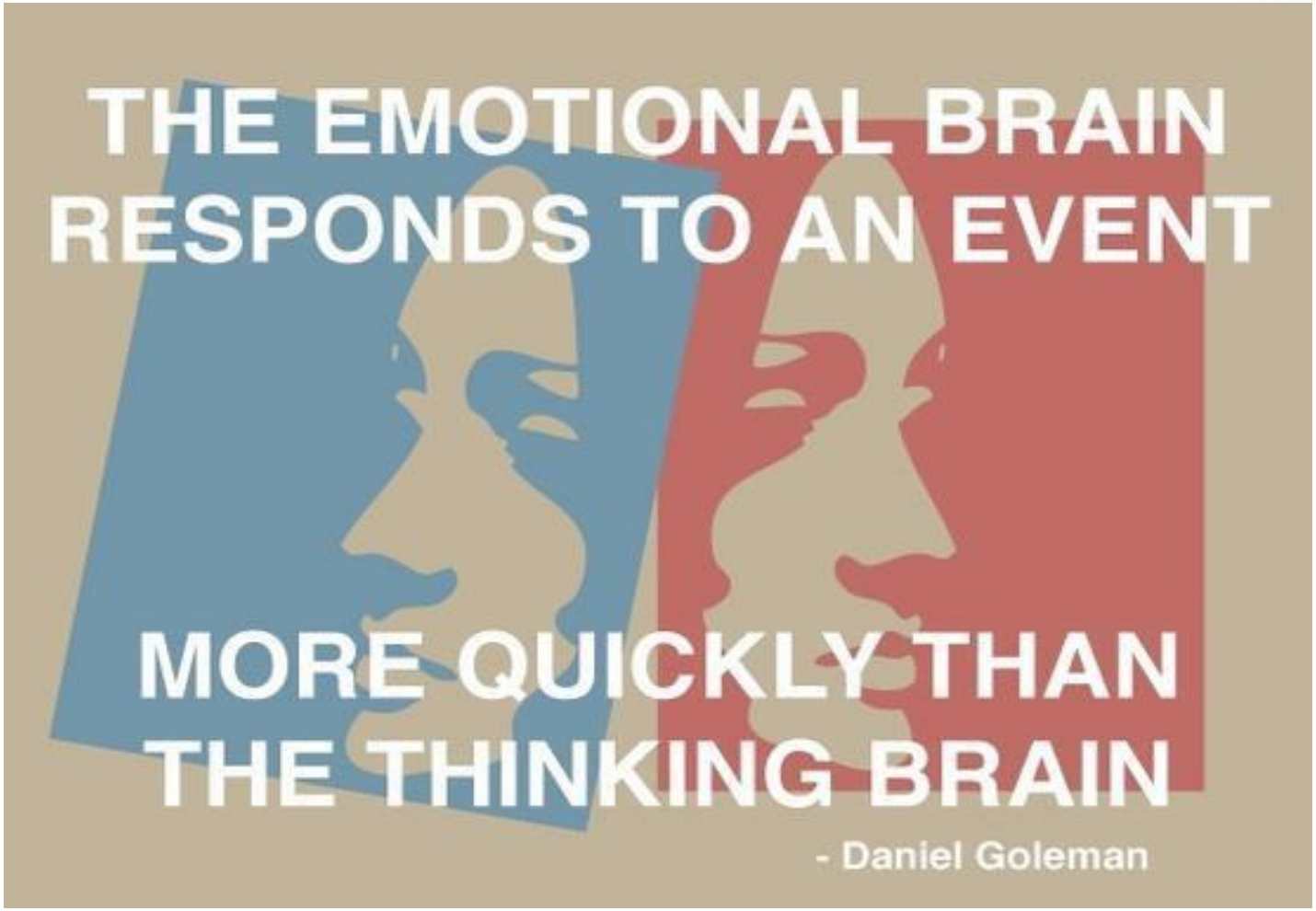

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Emotion

- Use it constructively
- Catharsis
- A real benefit
- Manage their emotions – and your own! but be prepared to give
- Live with – and enjoy - uncertainty….
- Red hat
- Manage the process

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Listening

- to what they say
- listen at the margins
- listen to it all
- search for meaning - the chasm

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Listening - barriers?

- not interested
- switched off
- heard it before - we assume
- know answer already, mind-reading
- pre-judging - baggage
- considering our position / response
- preparing to butt in

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Listening - why don't we?

- "As we have become (wo)men who do too much, we find our listening skills on the wane. We cut people off in the middle of sentences. We assume we know what the other person is going to say, and we act on that assumption. We even become enamoured with the sound of our own voice.

  We must remember that communication is more than a monologue. Good communication is a balance of speaking and sharing, listening carefully, and absorbing before we speak again"

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Being Heard….and Telling your Story

A
A
R
R
E
E

- Acknowledgement
- Acceptance
- Recognition
- Reassurance
- Engagement
- Explanation

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"He knew the precise psychological moment when to say nothing"

Oscar Wilde

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The Power of the Pause in Communication

- formulate words
- consider response
- take stock
- consider notes
- provide punctuation
- add emphasis
- enhance authority
- make impact - grabber
- control pace / timing
- breathing / adrenalin
- observe others
- make eye contact
- convey interest
- engage audience
- enable digestion by audience

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Effective Questioning

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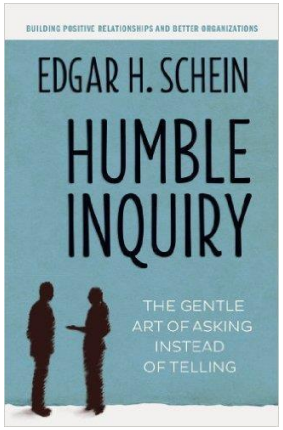
"Judge a [man] by his questions rather than by his answers"

"There are more questions than answers…"



"the important thing is not to stop questioning"

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Understanding

- *What do I need to find out?*
- *What are we missing?*
- *What questions do I need to ask?*
- *Of whom?*
- *When?*
- *How?*

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You never really understand things from another person's point of view…
until you climb into his skin and walk around in it."

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Forms of Question

- Open

- *Kipling: "I kept six honest serving men - they taught all I knew"*
  - ⌫ what
  - ⌫ how
  - ⌫ why
  - ⌫ when
  - ⌫ where
  - ⌫ who

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An example: negotiation / mediation

- What want?
- What need?
- What feel?
- What think?
- What pressures?
- What priorities?
- What alternatives?
- What concerns?
- What future?

- Why?
- Why?
- Why?
- Why?
- Why?
- Why?
- How achieve?
- How feel?
- Why important?

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Getting below the surface

- ‘Help me understand’
- ‘What will this give you?’
- ‘What is this really about?’
- ‘What do you need to tell me?’
- ‘What have I not understood?’
- ‘What else should I / do I need to know?’
- ‘Why is this so difficult for you?’
- ‘How can I help you to address this?’
- ‘What would it mean to you if……?’

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And…..

- **‘How can we do this better?’**
- **‘What would make a real difference to you?’**
- **‘How can I help you?’**

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Use questions to get your point across

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Open Questions

- keep it short
- one point per question
- keep it simple
- choose your words
- **listen to the answers… “enjoy the answer”…**
- **follow through…**

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KPQ s *(Advanced Performance Institute)*

- Start with your strategic objective and design between one and three KPQs for each objective
- Spend some time and effort to agree the final list of KPQs (try to keep only the critical few)
- Engage people and subject matter experts in the creation of your KPQs
- If possible formulate your KPQ as an open question
- Focus your question on the now and the future, and not on the past
- Create a short, focused, clear and unambiguous question.
- Refine and improve your KPQs as you use them

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Forms of Question

- “Tell me…”
- “Describe…”
- “Explain…”

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Closed questions - a warning

- often reflect assumptions
- act as a filter, filter may be dirty
- indicate pre-judgement
- limit the information elicited
- may pre-determine the answer

- ***useful when?***

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A structure for asking questions…

- **Why am I asking**
- **this question**
- **of this person**
- **at this time**
- **in this way**

- **Why**
- **What**
- **Who**
- **When**
- **How**

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Other Useful Questioning Approaches

- probing
- clarifying
- checking
- summarising
- repeating
- hypothesising
- sideburner
- looping back
- funnelling
- transitions

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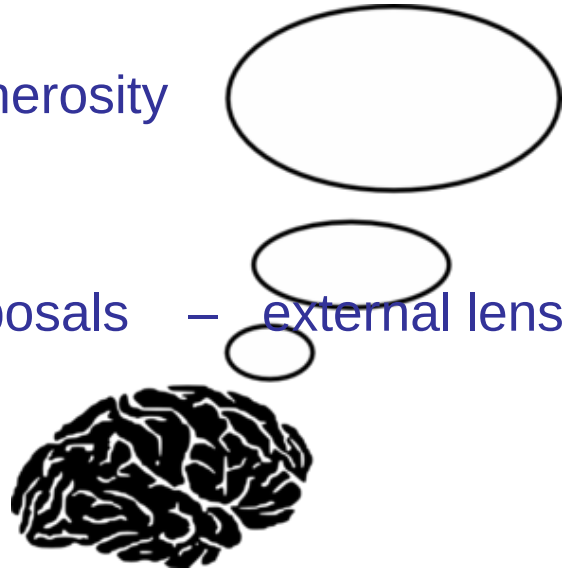
Developing Options

- brainstorming: being creative; what is possible? expand pie?
- later, evaluating strengths and weaknesses / risks / pros and cons / long v short term / perceived “fairness”
- alternatives: BATNA; WATNA; RATNAS - identify and manage risks (decision trees)
- concessions: Give to Gain? Generosity
- reality testing
- objective criteria to support proposals – external lens
- possible solutions
- ***joint gains***



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Balconies, Precipices and Crises

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Some ideas

- Shift mindsets from win/lose to mutual gains / joint objectives / common interests / common “enemy” or cause
- Keep in mind the big picture - always – don’t sweat the small stuff
- Avoid bottom line thinking - yours, theirs or anyone else’s
- Take them to the precipice but don’t push or threaten….
- Surprise them; under-promise/over-deliver
- Identify a unilateral concession – and wait for the reciprocal response - recognise different weighting and values
- Change the teams / the setting / the time - or back off
- Use wizards and straw men

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don’t put money at the front -
take your time:

expand the axes:

where is the non-monetary value?

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Expand the axes!!

- facts / logic / rights
- emotion / feelings / personalities
- publicity / reputation
- stress / morale / health
- monetary - direct and indirect costs
- time – direct and indirect costs
- other – direct and indirect costs

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Build Golden Bridges

And write victory speeches

(PR!)

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More ideas

- **Pause** - power of silence
- Break it down into bite-size chunks - **priorities**
- **Parallel lines** and **parking**
- **Test reality**: what will happen if……
- Be **creative**: what if…….
- **Summarise** progress: each summarise the other's position
- Be **honest and trustworthy** but …….
- Accept **uncertainty and discomfort –** use it

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Yet more ideas

- **Who goes first?** Make the first proposal but get in the serious range
- Be **robust** but **respectful** – acknowledge their viewpoint
- The power of **acknowledgement**: AA, EE, RR
- *Get each side to really* look at it from the other point of view - what would you do **in their shoes** – ask them to do the same
- Avoid reverting to a position: search for **underlying causes and interests**
- Give constructive **feedback** on what's happening: **HPDREE**

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Deciding

- the best option in the circumstances?
- precise terms
- detail
- testing workability, durability, reality
- checking
- authority
- acknowledging

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And that’s all for today!

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