



## Potential legitimate manipulative power to achieve goals in labor court trial

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### Abstract

This scientific article is dedicated to one of the most important act in court punishment of criminal conduct, which is the result of negotiation and compromise between two sides like Plaintiff and the Defendant. Game Theory deals with those hyperactivity situations, which each party has interests and goals. The actions of one party can influence the other and vice versa. Normally we have those conflicts and cooperation also common interests and conflicting interests. At the end we will exam the question - how could we change the incentive structure so that, a situation that could be a "prisoner's dilemma" will stop to be a "prisoner's dilemma".

**Keywords:** prisoner's dilemma, threaten, deterrent, cost savings, punishment Rational Rules, compromise, negotiator, prosecute In court, expected outcome in court, Plaintiff and the Defendant

### 1. Introduction

This article is while inspired written of 2011 teaching of the compromise Games in trial subject by Weiss Uri [6]. While many articles in law are engaged in the operation of judicial power, which means the judge must decide how worthy or decide what is right lawyer will argues in Court. The present article deals with the threat of trial operation, how to take advantage of potential legal power to achieve the goals. This leads too many non-trivial insights: The first point - the successful use of threat of force is which leading, at the end of day not turn on the power. The goal threat is the threat not to turn on the threat, but the surrender threaten person will give up and obey, thus to achieve the goal. Criminal code law creates a deterrent, but the purpose of criminal law is that people will obey the criminal law, there would be no crimes, and so we will not have to use the criminal law. We will thus also the fruit of crime of prevention, and also cost savings with the fruit of punishment.

Game theory is based on the assumption of rationality which is instructed not obvious. We assume that rational human being, are promoting their goals, they respond to incentives in promoting their goals. We do not assume that they have the critical thinking, so-called rational in philosophy. We do not assume they have no superstitions, we simply assume that they operate to promote their interests according given their information. Against the thesis of rationality there is the antithesis of behavioral economics that says - people tend to make systematic mistakes, they are optimistic for instance, and there is the synthesis which proposed by Prof. Israel Aumann [3; 4, P.6-7] which called "Rational Rules" that says that people behave according rules that they are leading Typically, results which are not always leading to rational results. They develop rules of conduct or by Evolution or by learning and wonder. There are all kinds of behavior rules which generally leading us to the best result, but are sometimes also taken to the same attitude mistake- So it is true that when we deter people, we really need it to

be in some extent rational, so there is rationality of non-rationality.

Deterrence party which is rational, accompanied by filing a claim. People want to pay as little money as possible, and it makes sense to believe that they pay to settle to compromise with the other, so they will compromise. Example: Jacob cans Sue Shara in court, and if they will go to court, Jacob will get from court of 100, but costs of 20. So Jacob agrees to any compromise that would be above 80. However, Shara will have to pay to Jacob in court 100+ 20 to Jacob, and so she will agrees to any compromise which she would pay 120 or less. Therefore, the two sides can reach a compromise gain with range of 80 -120. The best Lawyer is the lawyer who knows to deter - such Lawyer will reach a compromise in the case above. Even his deterrent is weak and he will compromise and will get from court 90 - his condition is better than Lawyer with this case, which will go to court and receive 100 minus court costs, and he will remain with 80. So if you hear that a lawyer always wins in court, so counterintuitive, rather we should stay away from him, because we want to be represent by a good lawyer, who knows earn, who will say that if you do not pay me 100 I'll go to court, so you will have to pay a total of 120. This lawyer should be a good negotiator which might even be able to get me the compromise of 110. If the force bargaining symmetrical, so Jacob will get 100 and each side will gain 20. So a good lawyer is a lawyer who knows how to make a profit. In "game theory" we present one mode that can imagine a lot of situations. We want to think about the general characteristics of the conflicts. We do not learn any dispute lonely, but we are seeking the supreme principles which dominate the several conflicts. So how exactly can threaten successful? How to create a good deterrent? Threat with influence, threat which causing the other side to believe that by willing obey paying to my threat that if he would obey the threat, will be good for him. It's a bit trivial, but nonetheless there is depth. For example, people forget

that they are threatening and give the other side the opportunity to surrender. In other words, the other side should believe that he has a possibility that he will not be punished. If the other side believes that I would prosecute him, and in any case I will not agree to compromise - so he will not compromise. For instance in labour law if it is very bad situation to punish innocent people, then actually we reduce the punishment of criminal conduct. Example - a work driver who drives too fast and then he gets fined 200, and has a 50% chance of being caught - is saying to him: I'll pay an average of 100 for driving too much. But if there is a probability of 20% that if I behave according the law, so the judge will punish me- then the punishment is not 100 because if of speeding driving penalty is 100, and if I'm driving according the law by allowed speed, then my punishment is 40, and in fact the penalty for driving over the allowed speed becomes 60. So it not true that if we want to prevent reckless driving on the roads, so we should give permission to act freely to the police. If the police making use of imprecise measures and impose punishment also for people driving legally, then they will not reduce the punishment that a person sees the situation reckless driving. In fact, through the deterrence we want to shape the behavior of the other side by making him believing that pays him to act the way I want. I want to keep him from being aggressive and thus I will make him believe that if he would be aggressive, he will pay for it. I want to make the other side pay me 100 by making him believe that if he does not pay me 100 and I will not agree to compromise with him, say of 90, then eventually he will have to pay 120. So lawyer deterrence is very important in two contexts:

A. To achieve a better compromises, so if the lawyer would not compromise with me of 90, Then I'll take him to court and then he would pay me 120.

B. In cases that I should not claim (unless there is a compromise in sight). For example: Suppose that caused me injustice which I can get according him composition of 500 in court, but the court costs are 1,000. In that case I should not sue. Therefore large corporations know they can rob me with monthly smaller bill, because that it will not pay me to go to court. So when should a person worthwhile to prosecute in court? If I could succeed to cause the other side believe that I will eventually prosecute In court, and he will agree to compromise with me and to pay me the sum of 500. If a lawyer will demand me in court, I do not want him to threaten me without reliable, it means: a lawyer will be like "wolf in sheep's clothing". This situation is bad for both sides. If someone threatens me and I do not believe him, so even eventually he will fulfill his threat, then I might lose in this situation. Example: it is true in the context of international relations, the Korean War, the threat of the United States to respond to Soviet attack, was unreliable. In fact the United States said explicitly that Korea is outside the lines of defense, and then the Communists attacked South Korea and eventually the West also responded and it was a bloody war. So both sides missed the fact that the United States was dressed with "sheep's clothing". This situation is also in the relationship Between the Plaintiff and the Defendant. The defendant does not want that the plaintiff as the "wolf" will go to the court will masquerade as "sheep"- then I will say him to prosecute me, and at the end of the day we both lose the fight. A second subject is the fact that compromises take place in the shadow of the court: Compromise is a function of the e court expected

outcome. The sides are asking themselves what happens if negotiations failed. In The legal field if negotiations failed in court, we go to court, those are our cards. In our example, the expected legal outcome expectancy is 100, so compromise will be between 80 and 120. (100 of legal costs to the plaintiff and 100 plus court costs to the defendant). On the other hand, a compromise between the employee organization and the employer organization exists in the shadow of the strike. The parties know that if negotiations will fail then it will be caused a strike. Another options that may be unused at the end of the day- they still affect, projected to the negotiations and therefore a particular case, the Court is crucial not only about the concrete conflict, but is also crucial in non-critical cases are decided for two reasons: a. In common law countries such as Israel, There is precedent binding force. b. People have a successful tendency to expect future behavior according record of past behavior. The third point is the power relations between the worker and the employer: the compromise achieved at the end is not necessarily 100. It is not necessarily expected outcome of the court, but it depends on the balance of power between the parties and it is expected to be tendency to the detriment of weaker parties. Example - Suppose a law suit between a cellular company and an ordinary citizen. He is an ordinary citizen disposable submit a claim against the cellular company. According the cellular company, the situation is repeated, because she will be suited many times against her, so her interest is to gain a reputation as a tough negotiator. So the citizen will tell the company: pay me 100 because that what that's what I would get in court. The company will say: I am ready to pay you 90. Compromise is a function of the expected outcome in court, but it does not reflect one by one the same result is expected. The claim expected result is 100, but whether the compromise will be 100? No. It is "returns game" - a cellular company does not agree to pay me to say more than 90. So maybe the company will lose and will pay 120, but in the second time she'll say I am ready to pay 90 or we are going to the court, while the same in third and fourth time. The fifth client will already believe that the threat of the company is real and then the company will have to pay only 90 and not 100, and therefore in the long run the company will be benefits. In fact already from the first time it is possible to know that the company is not profitable for compromise because the company must create her reputation. So if we are talking of a rational person without values of respect, then he will surrender to the Company and the compromise will be on 90. This is a problem that really bothers us, that compromise tends direction to the strengths because this fact hits the rule of law. By law I should get 100 but at the end I would get 90. This fact misses the purpose of the law of protection of foreigner, an orphan and a widow – that it means a transfer of wealth from strong to weak parties, while it disrupts the incentives of the law. The legislature determined payment of 100 because he sees the damage of 100 and that's what the cell phone company needs to see before her eyes, the payment of 100. But she sees before her eyes only the payment of 90. Therefore, this problem does worry us and we will try to reduce this phenomenon because the compromises that are expected are not just a fact of nature, but rather is the result of social selection. We can control it. When the court will be more uncertain so the problem will increase against the weak parties while it will be harder for them deal with the risks, they are more risk averse.

Game Theory deals with situations hyperactivity, which each party has interests and goals. The actions of one party can influence the other and vice versa. Normally we have those conflicts and cooperation also common interests and conflicting interests. In game theory, we try to think about the general principles common to the relationship between the Plaintiff and the Defendant. In fact the idea of natural selection is the idea of game theory, and it has a lot of experiments in biology.

Characterization of negotiation situations: John Nash definition of negotiation as a situation where we have an opportunity to achieve mutual benefit and with more than one way. In the simple case, no action taken by one of the individuals without the consent of the other can affect the well-being of the other one. [1, P.155] According the example from the beginning of the article: We have an opportunity here to create a mutually beneficial agreement that if we get between 80 and 120 – we will avoid the court and avoid the same court costs of 40. We can do it with more than one way, while each side wants another agreement.

Schelling defined the situation of the negotiations as such, that we have common goals such as preventing the court / the strike, etc. but there are conflicting goals, while everyone wants a separate agreement[5, P.283] (with our example the plaintiff wanted 90 and the defendant wanted 110 for example). Another example known as the "situation of sum zero" - which is an absolute conflict. The more good for me, worse for you. Party's goals are completely opposing. The parties can not improve the situation; both of them do not have a good agreement for two sides. It is a hypothetical situation in which there are no negotiations. Another situation is when there is a perfect competition: When there is a fixed price that nobody would be profitable from it, and therefore there are no negotiations. Schelling argues with the issue: How does one person make another believe something? The answer depends importantly on the factual question, "Is it true?" It is easier to prove the truth of something that is true than of something false To prove the truth about our health we can call on a reputable doctor to prove the truth about our costs or income we may let the person look at books that have been audited by a reputable firm or the Bureau of Internal Revenue. But to persuade him of something false we may have no such convincing evidence.

"Prisoner dilemma" is a game of compromise in criminal proceedings: Two workers were caught by manager in factory theft. There is enough evidence to convict them theft, when the penalty for this is imprisonment for one year. But there are not enough evidences to convict them. If there is a conviction with the theft, the sentence will take 4 years. The police are trying to rise up a state of the two when she put each inmate in a separate room and gives him an offer - In exchange for testimony against a friend -will be given a discount of one year in prison. In addition he is told that the offer will also be given to his friend. So what happens is that, if you incriminate your friend and he will not testify against you- he will go to prison for 4 years and you however going to be free instead of one year in prison. But if your friend will incriminate you, and you will not testify against him, then you will go to prison for 4 years and he will be free of prison. Another option which can be is: nobody will testify against the other and then they will go to jail for only one year. Also another option is that can be a

possibility each side will cheat on each other so both sides will get convicted in the theft, but because of their testimony - will be reduced each one year of prison and every side will go to jail for 3 years. What should you do? Schelling argued that the table as follows is the main achievement of the "Game theory":

		I actor		
		Cheat	No cheat Cooperate	
II actor	No cheat Cooperate	0, -4	-1, -1	
	cheat	-3, -3	-4, 0	

Fig 1

The question is how the game will end? We will exam how each player would behave according the numbers of years of prison punish mint of every option: The first player will think so - if my friend would cheat on me and I will not cheat on him, I will get – 4 years. However, if he is cheating on me and me also cheating on him I will get -3 years. So if my friend cheating on me – it is better for me also cheating on him. But what happens if my friends is not cheating on me - if I am not cheating on him so I get - 1, but if I am cheating on him I will get 0. So even if he is not cheating on me - it is better for me to cheat on him. A situation is created while independently of the choice of friend, I should cheat him. What will do the friend - he will think the same, assuming the game is symmetrical. What we see is that the result when both parties cheating each other. What is interesting in this game is the fact that if we come to -1; -1 which means mutual cooperate, everyone would be with benefit. At the end we are in situation of -3; 3- because mutual defection. The transition from mutual defection to cooperation yields for both sides profit. We would like very much that the game will end with mutual cooperation and not by mutual desertion, but nevertheless the game will end by mutual desertion, while everyone thinks of his own interest, each one is rational and therefore both of sides will lose from those reasons.

There is a more general conclusion from the " Game Theory " according Prof. Israel Aumann [3; 4, P.6-7] says, that there is no contribution to the fact that any option will be for the benefit of both parties, for mutual benefit, in order to achieve the contribute. The fact that both parties want any result is not enough to achieve it. We need that the incentive structure of the situation would lead us to achieve the benefit. Here we have a certain structure of incentives that leads us to the depressed outcome that neither side would want it. May be there could be provided results which we want them, for example: there would not be air pollution, but even so there is air pollution. The fact that everyone interested in a particular outcome does not mean we'll reach it, but we need the incentive structure would lead us to the results. Although it is better for both sides not to cheat each other, at the end they will arrive to a situation of mutual desertion.

When game theorists speak of "Nash's program," it is this

two-paragraph passage they have in mind. That is to say, they are talking about the program of trying to reduce cooperative games to non-cooperative games by means of suitable non-cooperative models of the bargaining process among the players. [2, P.166]

**How could we change the incentive structure so that, a situation that could be a "prisoner's dilemma" will stop to be a "prisoner's dilemma?"**

**The solution of problem.**

The first Solution is the regulation which distinguishes with 2 types: a. Regulation by the legislature - the legislature punishes anyone who is cheating. If in this situation was a traitor was punished with 10 years in prison, he would not cheating as the second side would not cheating. b. Regulation by the community which would punish the traitor by a comment, by not legal sanction such as keeping distance the second Solution is by contracts – both sides binding an agreement in court. In fact It is an I self-regulation instrument, while the two sides determine the law. The question of the existence of a contract is itself "prisoner's dilemma because the state must make the agreement enforcement.

**Conclusion**

In this paper we have made distinguish between the use of "law of force" and between the "threat of force" And we have in sighted that " The good samurai does not pull " it means that a good lawyer is not always a winner in court, and the compromises and that the functions are the court expected outcome. When the court decisive the conflict, it is also a crucial of the non-solution conflicts, and the compromise does not reflect one by one the court expected result. The Game Theory as a theory analyzes situations of conflicts and cooperation, and how individuals react to different stimuli. Characterized the negotiations, as such reactions of privet persons to a different benefits. We have described negotiation situations which have common interests and conflicts, on the other hand.

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