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**Six Habits of Merely Effective Negotiators**

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*Harvard Business Review*

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# Six Habits of Merely Effective Negotiators

by James K. Sebenius



Harvard Business Review

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LIKE MANY EXECUTIVES, YOU KNOW A LOT ABOUT NEGOTIATING. BUT STILL YOU FALL PREY TO A SET OF COMMON ERRORS. THE BEST DEFENSE IS STAYING FOCUSED ON THE RIGHT PROBLEM TO SOLVE.

# SIX HABITS OF *Merely Effective* NEGOTIATORS

by James K. Sebenius

**G**LOBAL DEAL MAKERS did a staggering \$3.3 trillion worth of M&A transactions in 1999 – and that’s only a fraction of the capital that passed through negotiators’ hands that year. Behind the deal-driven headlines, executives endlessly negotiate with customers and suppliers, with large shareholders and creditors, with prospective joint venture and alliance partners, with people inside their companies and across national borders. Indeed, wherever parties with different interests and perceptions depend on each other for results, negotiation matters. Little wonder that Bob Davis, vice chairman of Terra Lycos, has said that companies “have to make deal making a core competency.”

Luckily, whether from schoolbooks or the school of hard knocks, most executives know the basics of negotiation; some are spectacularly adept. Yet high stakes and intense pressure can result in costly mistakes. Bad habits creep in, and experience can further ingrain those habits. Indeed, when I reflect on the thousands of negotiations I have participated in and studied over the years, I’m struck by how frequently even experienced negotiators leave money on the table, deadlock, damage relationships, or allow conflict to spiral. (For more on the

rich theoretical understanding of negotiations developed by researchers over the past fifty years, see the sidebar “Academics Take a Seat at the Negotiating Table.”)

There are as many specific reasons for bad outcomes in negotiations as there are individuals and deals. Yet broad classes of errors recur. In this article, I’ll explore those mistakes, comparing good negotiating practice with bad. But first, let’s take a closer look at the right negotiation problem that your approach must solve.

## Solving the Right Negotiation Problem

In any negotiation, each side ultimately must choose between two options: accepting a deal or taking its best no-deal option—that is, the course of action it would take if the deal were not possible. As a negotiator, you seek to advance the full set of your interests by persuading the other side to say yes—and mean it—to a proposal that meets your interests better than your best no-deal option does. And why should the other side say yes? Because the deal meets its own interests better than its best no-deal option. So, while protecting your own choice, your negotiation problem is to understand and shape your counterpart’s perceived decision—deal versus no deal—so that the other side chooses *in its own interest* what you want. As Italian diplomat Daniele Vare said long ago about diplomacy, negotiation is “the art of letting them have your way.”

This approach may seem on the surface like a recipe for manipulation. But in fact, understanding your counterpart’s interests and shaping the decision so the other side agrees for its own reasons is the key to jointly creating and claiming sustainable value from a negotiation. Yet even experienced negotiators make six common mistakes that keep them from solving the right problem.

### MISTAKE 1

#### *Neglecting the Other Side’s Problem*

You can’t negotiate effectively unless you understand your own interests and your own no-deal options. So far, so good—but there’s much more to it than that. Since the other side will say yes for its reasons, not yours, agreement requires understanding and addressing your counterpart’s problem as a means to solving your own.

At a minimum, you need to understand the problem from the other side’s perspective. Consider a technology company, whose board of directors pressed hard to develop a hot new product shortly after it went public. The

company had developed a technology for detecting leaks in underground gas tanks that was both cheaper and about 100 times more accurate than existing technologies—at a time when the Environmental Protection Agency was persuading Congress to mandate that these tanks be continuously tested. Not surprisingly, the directors thought their timing was perfect and pushed employees to commercialize and market the technology in time to meet the demand. To their dismay, the company’s first sale turned out to be its only one. Quite a mystery, since the technology worked, the product was less expensive, and the regulations did come through. Imagine the sales engineers confidently negotiating with a customer for a new order: “This technology costs less and is more accurate than the competition’s.” Think for a moment, though, about how intended buyers might mull over their interests, especially given that EPA regulations per-

mitted leaks of up to 1,500 gallons while the new technology could pick up an 8-ounce leak. Potential buyer: “What a technological tour de force! This handy new device will almost certainly get me into needless, expensive regulatory trouble. And create P.R. problems too. I think I’ll pass, but my competition should definitely have it.” From the technology

company’s perspective, “faster, better, cheaper” added up to a sure deal; to the other side, it looked like a headache. No deal.

Social psychologists have documented the difficulty most people have understanding the other side’s perspective. From the trenches, successful negotiators concur that overcoming this self-centered tendency is critical. As Millennium Pharmaceuticals’ Steve Holtzman put it after a string of deals vaulted his company from a start-up in 1993 to a major player with a \$10.6 billion market cap today, “We spend a lot of time thinking about how the poor guy or woman on the other side of the table is going to have to go sell this deal to his or her boss. We spend a lot of time trying to understand how they are modeling it.” And Wayne Huizenga, veteran of more than a thousand deals building Waste Management, AutoNation, and Blockbuster, distilled his extensive experience into basic advice that is often heard but even more often forgotten.

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**YOUR NEGOTIATION PROBLEM IS TO UNDERSTAND AND SHAPE YOUR COUNTERPART’S PERCEIVED DECISION SO THAT THE OTHER SIDE CHOOSES *IN ITS OWN INTEREST* WHAT YOU WANT.**

## ACADEMICS TAKE A SEAT AT THE NEGOTIATING TABLE

Paralleling the growth in real-world negotiation, several generations of researchers have deepened our understanding of the process. In the 1950s and 1960s, elements of hard (win-lose) bargaining were isolated and refined: how to set aggressive targets, start high, concede slowly, and employ threats, bluffs, and commitments to positions without triggering an impasse or escalation. By the early 1980s, with the win-win revolution popularized by the book *Getting to Yes* (by Roger Fisher, William Ury, and Bruce Patton), the focus shifted from battling over the division of the pie to the means of expanding it by uncovering and reconciling underlying interests. More sophisticated analysis in Howard Raiffa's *Art and Science of Negotiation* soon transcended this simplistic "win-win versus win-lose" debate; the pie obviously had to be both expanded and divided. In *The Manager as Negotiator* (by David Lax and James Sebenius), new guidance emerged on productively managing the tension between the cooperative moves necessary to create value and the competitive moves involved in claiming it. As the 1990s progressed with work such as *Negotiating Rationally* (by Max Bazerman and Margaret Neale), the behavioral study of negotiation—describing how people actually negotiate—began to merge with the game theoretic approach, which prescribed how fully rational people should negotiate. This new synthesis—developing the best possible advice without assuming strictly rational behavior—is producing rich insights in negotiations ranging from simple two-party, one-shot, single-issue situations through complex coalitional dealings over multiple issues over time, where internal negotiations must be synchronized with external ones. Negotiation courses that explore these ideas have always been popular options at business schools, but reflecting the growing recognition of their importance, these courses are beginning to be required as part of MBA core programs at schools such as Harvard. Rather than a special skill for making major deals or resolving disputes, negotiation has become a way of life for effective executives.

"In all my years of doing deals, a few rules and lessons have emerged. Most important, always try to put yourself in the other person's shoes. It's vital to try to understand in depth what the other side really wants out of the deal."

Tough negotiators sometimes see the other side's concerns but dismiss them: "That's their problem and their issue. Let them handle it. We'll look after our own problems." This attitude can undercut your ability to profitably influence how your counterpart sees its problem.

Early in his deal-making career at Cisco Systems, Mike Volpi, now chief strategy officer, had trouble completing proposed deals, his "outward confidence" often mistaken for arrogance. Many acquisitions later, a colleague observed that "the most important part of [Volpi's] development is that he learned power doesn't come from telling people you are powerful. He went from being a guy driving the deal from his side of the table to the guy who understood the deal from the other side."

An associate of Rupert Murdoch remarked that, as a buyer, Murdoch "understands the seller—and, whatever the guy's trying to do, he crafts his offer that way." If you want to change someone's mind, you should first learn where that person's mind is. Then, together, you can try to build what my colleague Bill Ury calls a "golden bridge," spanning the gulf between where your counterpart is now and your desired end point. This is much more effective than trying to shove the other side from its position to yours. As an eighteenth-century pope once noted about Cardinal de Polignac's remarkable diplomatic skills, "This young man always seems to be of my opinion [at the start of a negotiation], and at the end of the conversation I find that I am of his." In short, the first mistake is to focus on your own problem, exclusively. Solve the other side's as the means to solving your own.

### MISTAKE 2

#### *Letting Price Bulldoze Other Interests*

Negotiators who pay attention exclusively to price turn potentially cooperative deals into adversarial ones. These "reverse Midas" negotiators, as I like to call them, use hard-bargaining tactics that often leave potential joint gains unrealized. That's because, while price is an important factor in most deals, it's rarely the only one. As Felix Rohatyn, former managing partner of the investment bank, Lazard Frères, observed, "Most deals are 50% emotion and 50% economics."

There's a large body of research to support Rohatyn's view. Consider, for example, a simplified negotiation, extensively studied in academic labs, involving real money. One party is given, say, \$100 to divide with another party as she likes; the second party can agree or disagree to the

arrangement. If he agrees, the \$100 is divided in line with the first side's proposal; if not, neither party gets anything. A pure price logic would suggest proposing something like \$99 for me, \$1 for you. Although this is an extreme allocation, it still represents a position in which your counterpart gets something rather than nothing. Pure price negotiators confidently predict the other side will agree to the split; after all, they've been offered free money—it's like finding a dollar on the street and putting it in your pocket. Who wouldn't pick it up?

In reality, however, most players turn down proposals that don't let them share in at least 35% to 40% of the bounty—even when much larger stakes are involved and the amount they forfeit is significant. While these rejections are "irrational" on a pure price basis and virtually incomprehensible to reverse Midas types, studies show that when a split feels too unequal to people, they reject the spoils as unfair, are offended by the process, and perhaps try to teach the "greedy" person a lesson.

An important real-world message is embedded in these lab results: people care about much more than the absolute level of their own economic outcome; competing interests include relative results, perceived fairness, self-image, reputation, and so on. Successful negotiators, acknowledging that economics aren't everything, focus on four important nonprice factors.

**The Relationship.** Less experienced negotiators often undervalue the importance of developing working relationships with the other parties, putting the relationships at risk by overly tough tactics or simple neglect. This is especially true in cross-border deals. In much of Latin America, southern Europe, and Southeast Asia, for example, relationships—rather than transactions—can be the predominant negotiating interest when working out longer term deals. Results-oriented North Americans, Northern Europeans, and Australians often come to grief by underestimating the strength of this interest and insisting prematurely that the negotiators "get down to business."

**The Social Contract.** Similarly, negotiators tend to focus on the economic contract—equity splits, cost sharing, governance, and so on—at the expense of the social contract, or the "spirit of a deal." Going well beyond a good working relationship, the social contract governs people's expectations about the nature, extent, and duration of the venture, about process, and about the way unforeseen events will be handled. Especially in new ventures and strategic alliances, where goodwill and strong

shared expectations are extremely important, negotiating a positive social contract is an important way to reinforce economic contracts. Scurrying to check founding documents when conflicts occur, which they inevitably do, can signal a badly negotiated social contract.

**The Process.** Negotiators often forget that the deal-making process can be as important as its content. The story is told of the young Tip O'Neill, who later became Speaker of the House, meeting an elderly constituent on the streets of his North Cambridge, Massachusetts, district. Surprised to learn that she was not planning to vote for him, O'Neill probed, "Haven't you known me and my family all my life?" "Yes." "Haven't I cut your grass in summer and shoveled your walk in winter?" "Yes." "Don't you agree with all my policies and positions?" "Yes." "Then why aren't you going to vote for me?" "Because you didn't ask me to." Considerable academic research confirms what O'Neill learned from this conversation: process counts. What's more, sustainable results are more often reached when all parties perceive the process as personal, respectful, straightforward, and fair.<sup>1</sup>

**The Interests of the Full Set of Players.** Less experienced negotiators sometimes become mesmerized by the aggregate economics of a deal and forget about the interests of players who are in a position to torpedo it. When the boards of pharmaceutical giants Glaxo and SmithKline Beecham publicly announced their merger in 1998, investors were thrilled, rapidly increasing the combined company's market capitalization by a stunning \$20 billion. Yet despite prior agreement on who would occupy which top executive positions in the newly combined company, internal disagreement about management control and position resurfaced and sank the announced deal, and the \$20 billion evaporated. (Overwhelming strategic logic ultimately drove the companies back together, but only after nearly two years had passed.) This episode confirms two related lessons. First, while favorable overall economics are generally necessary, they are often not sufficient. Second, keep all potentially influential internal players on your radar screen; don't lose sight of their interests or their capacity to affect the deal. What is "rational" for the whole may not be so for the parts.

It can be devilishly difficult to cure the reverse Midas touch. If you treat a potentially cooperative negotiation like a pure price deal, it will likely become one. Imagine a negotiator who expects a hardball, price-driven process. She initiates the bid by taking a tough preemptive position; the other side is likely to reciprocate. "Aha!" says the

PEOPLE CARE ABOUT MUCH MORE THAN THE ABSOLUTE LEVEL OF THEIR OWN ECONOMIC OUTCOME; COMPETING INTERESTS INCLUDE RELATIVE RESULTS, PERCEIVED FAIRNESS, SELF-IMAGE, REPUTATION, AND SO ON.

negotiator, her suspicions confirmed. “I *knew* this was just going to be a tough price deal.”

A negotiator can often influence whether price will dominate or be kept in perspective. Consider negotiations between two companies trying to establish an equity joint venture. Among other issues, they are trying to place a value on each side’s contribution to determine ownership shares. A negotiator might drive this process down two very different paths. A price-focused approach quickly isolates the valuation issue and then bangs out a resolution. Alternatively, the two sides could first flesh out a more specific shared vision for the joint venture (together envisioning the “pot of gold” they could create), probe to understand the most critical concerns of each side—including price—and craft trade-offs among the full set of issues to meet these interests. In the latter approach, price becomes a component or even an implication of a larger, longer term package, rather than the primary focus.

Some negotiations are indeed pure price deals and only about aggregate economics, but there is often much more to work with. Wise negotiators put the vital issue of price in perspective and don’t straitjacket their view of the richer interests at stake. They work with the subjective as well as the objective, with the process and the relationship, with the “social contract” or spirit of a deal as well as its letter, and with the interests of the parts as well as the whole.

### MISTAKE 3

#### *Letting Positions Drive Out Interests*

Three elements are at play in a negotiation. *Issues* are on the table for explicit agreement. *Positions* are one party’s stands on the issues. *Interests* are underlying concerns that would be affected by the resolution. Of course, positions on issues reflect underlying interests, but they need not be identical. Suppose you’re considering a job offer. The base salary will probably be an issue. Perhaps your position on that issue is that you need to earn \$100,000. The interests underlying that position include your need for a good income but may also include status, security, new opportunities, and needs that can be met in ways other than salary. Yet even very experienced deal makers may see the essence of negotiation as a dance of positions. If incompatible positions finally converge, a deal is struck; if not, the negotiation ends in an impasse. By contrast, interest-driven bargainers see the process primarily as a reconciliation of underlying interests: you have one set of interests, I have another, and through joint problem solving we should be better able to meet both sets of interests and thus create new value.

Consider a dispute over a dam project. Environmentalists and farmers opposed a U.S. power company’s plans to build a dam. The two sides had irreconcilable positions:

“absolutely yes” and “no way.” Yet these incompatible positions masked compatible interests. The farmers were worried about reduced water flow below the dam, the environmentalists were focused on the downstream habitat of the endangered whooping crane, and the power company needed new capacity and a greener image. After a costly legal stalemate, the three groups devised an interest-driven agreement that all of them considered preferable to continued court warfare. The agreement included a smaller dam built on a fast track, water flow guarantees, downstream habitat protection, and a trust fund to enhance whooping crane habitats elsewhere.

Despite the clear advantages of reconciling deeper interests, people have a built-in bias toward focusing on their own positions instead. This hardwired assumption that our interests are incompatible implies a zero-sum pie in which my gain is your loss. Research in psychology supports the mythical fixed-pie view as the norm. In a survey of 5,000 subjects in 32 negotiating studies, mostly carried out with monetary stakes, participants failed to realize compatible issues fully half of the time.<sup>2</sup> In real-world terms, this means that enormous value is unknowingly left uncreated as both sides walk away from money on the table.

Reverse Midas negotiators, for example, almost automatically fixate on price and bargaining positions to claim value. After the usual preliminaries, countless negotiations get serious when one side asks, “so, what’s your position,” or says, “here’s my position.” This positional approach often drives the process toward a ritual value-claiming dance. Great negotiators understand that the dance of bargaining positions is only the surface game; the real action takes place when they’ve probed behind positions for the full set of interests at stake. Reconciling interests to create value requires patience and a willingness to research the other side, ask many questions, and listen. It would be silly to write off either price or bargaining position; both are extremely important. And there is, of course, a limit to joint value creation. The trick is to recognize and productively manage the tension between cooperative actions needed to create value and competitive ones needed to claim it. The pie must be both expanded and divided.

### MISTAKE 4

#### *Searching Too Hard for Common Ground*

Conventional wisdom says we negotiate to overcome the differences that divide us. So, typically, we’re advised to find win-win agreements by searching for common ground. Common ground is generally a good thing. Yet many of the most frequently overlooked sources of value in negotiation arise from differences among the parties.

Recall the battle over the dam. The solution—a smaller dam, water flow guarantees, habitat conservation—did



## SOLVING TEDDY ROOSEVELT'S NEGOTIATION PROBLEM

Theodore Roosevelt, nearing the end of a hard-fought presidential election campaign in 1912, scheduled a final whistle-stop journey. At each stop, Roosevelt planned to clinch the crowd's votes by distributing an elegant pamphlet with a stern presidential portrait on the cover and a stirring speech, "Confession of Faith," inside. Some three million copies had been printed when a campaign worker noticed a small line under the photograph on each brochure that read, "Moffett Studios, Chicago." Since Moffett held the copyright, the unauthorized use of the photo could cost the

campaign one dollar per reproduction. With no time to reprint the brochure, what was the campaign to do?

Not using the pamphlets at all would damage Roosevelt's election prospects. Yet, if they went ahead, a scandal could easily erupt very close to the election, and the campaign could be liable for an unaffordable sum. Campaign workers quickly realized they would have to negotiate with Moffett. But research by their Chicago operatives turned up bad news: although early in his career as a photographer, Moffett had been taken with the potential of this new artistic

medium, he had received little recognition. Now, Moffett was financially hard up and bitterly approaching retirement with a single-minded focus on money.

Dispirited, the campaign workers approached campaign manager George Perkins, a former partner of J.P. Morgan. Perkins lost no time summoning his stenographer to dispatch the following cable to Moffett Studios: "We are planning to distribute millions of pamphlets with Roosevelt's picture on the cover. It will be great publicity for the studio whose photograph we use. How much will you pay us to use yours? Respond immediately." Shortly, Moffett replied: "We've never done this before, but under the circumstances we'd be pleased to offer you \$250." Reportedly, Perkins accepted—without dicker for more.

not result from common interests but because farmers, environmentalists, and the utility had different priorities. Similarly, when Egypt and Israel were negotiating over the Sinai, their positions on where to draw the boundary were incompatible. When negotiators went beyond the opposing positions, however, they uncovered a vital difference of underlying interest and priority: the Israelis cared more about security, while the Egyptians cared more about sovereignty. The solution was a demilitarized zone under the Egyptian flag. Differences of interest or priority can open the door to unbundling different elements and giving each party what it values the most—at the least cost to the other.

Even when an issue seems purely economic, finding differences can break open deadlocked deals. Consider a small technology company and its investors, stuck in a tough negotiation with a large strategic acquirer adamant about paying much less than the asking price. On investigation, it turned out that the acquirer was actually willing

to pay the higher price but was concerned about raising price expectations in a fast-moving sector in which it planned to make more acquisitions. The solution was for the two sides to agree on a modest, well-publicized initial cash purchase price; the deal included complex-sounding contingencies that virtually guaranteed a much higher price later.

Differences in forecasts can also fuel joint gains. Suppose an entrepreneur who is genuinely optimistic about the prospects of her fast-growing company faces a potential buyer who likes the company but is much more skeptical about the company's future cash flow. They have negotiated in good faith, but, at the end of the day, the two sides sharply disagree on the likely future of the company and so cannot find an acceptable sale price. Instead of seeing these different forecasts as a barrier, a savvy negotiator could use them to bridge the value gap by proposing a deal in which the buyer pays a fixed amount now and a contingent amount later on the basis of the company's fu-

Perkins's misleading approach raises ethical yellow flags and is anything but a model negotiation on how to enhance working relationships. Yet this case raises a very interesting question: why did the campaign workers find the prospect of this negotiation so difficult? Their inability to see what Perkins immediately perceived flowed from their anxious obsession with their own side's problem: their blunders so far, the high risk of losing the election, a potential \$3 million exposure, an urgent deadline, and no cash to meet Moffett's likely demands for something the campaign vitally needed. Had they avoided mistake 1 by pausing for a moment and thinking about how Moffett saw his problem, they would have realized that Moffett didn't

even know he had a problem. Perkins's tactical genius was to recognize the essence of the negotiator's central task: shape how your counterpart sees its problem such that it chooses what you want.

The campaign workers were paralyzed in the face of what they saw as sharply conflicting monetary interests and their pathetic BATNA. From their perspective, Moffett's only choice was how to exploit their desperation at the prospect of losing the presidency. By contrast, dodging mistake 5, Perkins immediately grasped the importance of favorably shaping Moffett's BATNA perceptions, both of the campaign's (awful) no-deal options and Moffett's (powerful) one. Perkins looked beyond price, positions, and common ground

(mistakes 2, 3, and 4) and used Moffett's different interests to frame the photographer's choice as "the value of publicity and recognition." Had he assumed this would be a standard, hard-ball price deal by offering a small amount to start, not only would this assumption have been dead wrong but, worse, it would have been self-fulfilling.

Risky and ethically problematic? Yes...but Perkins saw his options as certain disaster versus some chance of avoiding it. And was Moffett really entitled to a \$3 million windfall, avoidable had the campaign caught its oversight a week beforehand? Hard to say, but this historical footnote, which I've greatly embellished, illuminates the intersection of negotiating mistakes, tactics, and ethics.

ture performance. Properly structured with adequate incentives and monitoring mechanisms, such a contingent payment, or "earn-out," can appear quite valuable to the optimistic seller—who expects to get her higher valuation—but not very costly to the less optimistic buyer. And willingness to accept such a contingent deal may signal that the seller's confidence in the business is genuine. Both may find the deal much more attractive than walking away.

A host of other differences make up the raw material for joint gains. A less risk-averse party can "insure" a more risk-averse one. An impatient party can get most of the early money, while his more patient counterpart can get considerably more over a longer period of time. Differences in cost or revenue structure, tax status, or regulatory arrangements between two parties can be converted into gains for both. Indeed, conducting a disciplined "differences inventory" is at least as important a task as is identifying areas of common ground. After all, if we were all

clones of one another, with the same interests, beliefs, attitudes toward risk and time, assets, and so on, there would be little to negotiate. While common ground helps, differences drive deals. But negotiators who don't actively search for differences rarely find them.

## MISTAKE 5

### *Neglecting BATNAs*

BATNAs—the acronym for "best alternative to a negotiated agreement" coined years ago by Roger Fisher, Bill Ury, and Bruce Patton in their book *Getting to Yes*—reflect the course of action a party would take if the proposed deal were not possible. A BATNA may involve walking away, prolonging a stalemate, approaching another potential buyer, making something in-house rather than procuring it externally, going to court rather than settling, forming a different alliance, or going on strike. BATNAs set the threshold—in terms of the full set of interests—

that any acceptable agreement must exceed. Both parties doing better than their BATNAs is a necessary condition for an agreement. Thus BATNAs define a zone of possible agreement and determine its location.

A strong BATNA is an important negotiation tool. Many people associate the ability to inflict or withstand damage with bargaining power, but your willingness to walk away to an apparently good BATNA is often more important. The better your BATNA appears both to you and to the other party, the more credible your threat to walk away becomes, and the more it can serve as leverage to improve the deal. Roger Fisher has dramatized this point by asking which you would prefer to have in your back pocket during a compensation negotiation with your boss: a gun or a terrific job offer from a desirable employer who is also a serious competitor of your company?

Not only should you assess your own BATNA, you should also think carefully about the other side's. Doing so can alert you to surprising possibilities. In one instance, a British company hoped to sell a poorly performing division for a bit more than its depreciated asset value of \$7 million to one of two potential buyers. Realizing that these buyers were fierce rivals in other markets, the seller speculated that each party might be willing to pay an inflated price to keep the other from getting the division. So they made sure that each suitor knew the other was looking and skillfully cultivated the interest of both companies. The division sold for \$45 million.

Negotiators must also be careful not to inadvertently damage their BATNAs. I saw that happen at a Canadian chemical manufacturing company that had decided to sell a large but non-strategic division to raise urgently needed cash. The CEO charged his second-in-command with negotiating the sale of the division at the highest possible price.

The target buyer was an Australian company, whose chief executive was an old school friend of the Canadian CEO. The Australian chief executive let it be known that his company was interested in the deal but that his senior management was consumed, at the moment, with other priorities. If the Australian company could have a nine-month negotiating exclusive to "confirm their seriousness about the sale," the Australian chief executive would dedicate the top personnel to make the deal happen. A chief-to-chief agreement to that effect was struck. Pity the second-in-command, charged with urgently maximizing cash from this sale, as he jetted off to Sydney with no

meaningful alternative for nine endless months to whatever price the Australians offered.

Negotiators often become preoccupied with tactics, trying to improve the potential deal while neglecting their own BATNA and that of the other side. Yet the real negotiation problem is "deal versus BATNA," not one or the other in isolation. Your potential deal and your BATNA should work together as the two blades of the scissors do to cut a piece of paper.

## MISTAKE 6

### *Failing to Correct for Skewed Vision*

You may be crystal clear on the right negotiation problem—but you can't solve it correctly without a firm understanding of both sides' interests, BATNAs, valuations, likely actions, and so on. Yet, just as a pilot's sense of the horizon at night or in a storm can be wildly inaccurate, the psychology of perception systematically leads negotiators to major errors.<sup>3</sup>

**Self-Serving Role Bias.** People tend unconsciously to interpret information pertaining to their own side in a strongly self-serving way. The following experiment shows the process at work. Harvard researchers gave a large group of executives financial and industry information about one company negotiating to acquire another. The executive subjects were randomly assigned to the negotiating roles of buyer or seller; the information provided to each side was identical. After plenty of time for analysis, all subjects were asked for their private assessment of the target company's fair value—as distinct from how they

might portray that value in the bargaining process. Those assigned the role of seller gave median valuations more than twice those given by the executives assigned to the buyer's role. These valuation gulfs had no basis in fact; they were driven entirely by random role assignments.

Even comparatively modest role biases can blow up potential deals. Suppose a plaintiff believes he has a 70% chance of winning a million-dollar judgment, while the defense thinks the plaintiff has only a 50% chance of winning. This means that, in settlement talks, the plaintiff's expected BATNA for a court battle (to get \$700,000 minus legal fees) will exceed the defendant's assessment of his exposure (to pay \$500,000 plus fees). Without significant risk aversion, the divergent assessments would block any out-of-court settlement. This cognitive role bias helps explain why Microsoft took such a confrontational

**MANY PEOPLE ASSOCIATE THE ABILITY TO INFLICT OR WITHSTAND DAMAGE WITH BARGAINING POWER, BUT YOUR WILLINGNESS TO WALK AWAY TO AN APPARENTLY GOOD BATNA IS OFTEN MORE IMPORTANT.**

approach in its recent struggle with the U.S. Department of Justice. The company certainly appeared overoptimistic about its chances in court. Similarly, Arthur Andersen likely exhibited overconfidence in its arbitration prospects over the terms of separation from Andersen Consulting (now Accenture). Getting too committed to your point of view – “believing your own line” – is an extremely common mistake.

**Partisan Perceptions.** While we systematically err in processing information critical to our own side, we are even worse at assessing the other side – especially in an adversarial situation. Extensive research has documented an unconscious mechanism that enhances one’s own side, “portraying it as more talented, honest, and morally upright,” while simultaneously vilifying the opposition. This often leads to exaggerated perceptions of the other side’s position and overestimates of the actual substantive conflict. To an outsider, those caught up in disintegrating partnerships or marriages often appear to hold exaggerated views of each other. Such partisan perceptions can become even more virulent among people on each side of divides, such as Israelis and Palestinians, Bosnian Muslims and the Serbs, or Catholics and Protestants in Northern Ireland.

Partisan perceptions can easily become self-fulfilling prophecies. Experiments testing the effects of teachers’ expectations of students, psychiatrists’ diagnoses of mental patients, and platoon leaders’ expectations of their trainees confirm the notion that partisan perceptions often shape behavior. At the negotiating table, clinging firmly to the idea that one’s counterpart is stubborn or extreme, for example, is likely to trigger just that behavior, sharply reducing the possibility of reaching a constructive agreement.

As disagreement and conflict intensify, sophisticated negotiators should expect biased perceptions, both on their own side and the other side. Less seasoned players tend to be shocked and outraged by perceived extremism and are wholly unaware that their own views are likely colored by their roles. How to counteract these powerful biases? Just knowing that they exist helps. Seeking the views of outside, uninvolved parties is useful, too. And having people on your side prepare the strongest possible case for the other side can serve as the basis for preparatory role-playing that can generate valuable insights. A few years ago, helping a client get ready for a tough deal, I suggested that the client create a detailed “brief” for each side and have the team’s best people negotiate for the other side in a reverse role-play. The brief for my client’s side was lengthy, eloquent, and persuasive. Tellingly, the brief describing the other side’s situation was only two pages long and consisted mainly of reasons for conceding quickly to my client’s superior arguments. Not only were my client’s executives fixated on their own problem (mistake 1), their perceptions of each side were also hopelessly biased (mistake 6).

To prepare effectively, they needed to undertake significant competitive research and reality-test their views with uninvolved outsiders.

## From Merely Effective to Superior Negotiation

So you have navigated the shoals of merely effective deal making to face what is truly the right problem. You have focused on the full set of interests of all parties, rather than fixating on price and positions. You have looked beyond common ground to unearth value-creating differences. You have assessed and shaped BATNAs. You have taken steps to avoid role biases and partisan perceptions. In short, you have grasped your own problem clearly and have sought to understand and influence the other side’s such that what it chooses is what you want.

Plenty of errors still lie in wait: cultural gaffes, an irritating style, inadvertent signals of disrespect or untrustworthiness, miscommunication, bad timing, revealing too much or too little, a poorly designed agenda, sequencing mistakes, negotiating with the wrong person on the other side, personalizing issues, and so on. Even if you manage to avoid these mistakes as well, you may still run into difficulties by approaching the negotiation far too narrowly, taking too many of the elements of the “problem” as fixed.

The very best negotiators take a broader approach to setting up and solving the right problem. With a keen sense of the potential value to be created as their guiding beacon, these negotiators are game-changing entrepreneurs. They envision the most promising architecture and take action to bring it into being. These virtuoso negotiators not only play the game as given at the table, they are masters at setting it up and changing it away from the table to maximize the chances for better results.

To advance the full set of their interests, they understand and shape the other side’s choice – deal versus no deal – such that the other chooses what they want. As François de Callières, an eighteenth-century commentator, once put it, negotiation masters possess “the supreme art of making every man offer him as a gift that which it was his chief design to secure.”

1. W. Chan Kim and Renée Mauborgne, “Fair Process: Managing in the Knowledge Economy,” HBR July–August 1997.

2. This and other studies illustrating this point can be found in Leigh Thompson’s *The Mind and Heart of the Negotiator* (Prentice Hall, 1998).

3. See Robert J. Robinson, “Errors in Social Judgement: Implications for Negotiation and Conflict Resolution, Part I: Biased Assimilation of Information,” Harvard Business School, 1997 and Robert J. Robinson, “Errors in Social Judgement: Implications for Negotiation and Conflict Resolution, Part II: Partisan Perceptions,” Harvard Business School, 1997.

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# Negotiating the Spirit of the Deal

by Ron S. Fortgang, David A. Lax, and James K. Sebenius



Harvard Business Review

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You know how to hammer out the terms of an economic contract – but what about the social contract?

# Negotiating the. Spirit of the Deal

by Ron S. Fortgang,  
David A. Lax, and  
James K. Sebenius

**E**XPERIENCED NEGOTIATORS are generally comfortable working out the terms of an economic contract: They bargain for the best price, haggle over equity splits, and iron out detailed exit clauses. But these same seasoned professionals often spend so much time hammering out the letter of the deal that they pay little attention to the social contract, or the spirit of the deal. So while the parties agree to the same terms on paper, they may actually have very different expectations about how the agreement will work in practice. Without their arriving at a true meeting of the minds, the deal they've signed may sour.

Consider the fate of a joint venture launched by two chains: a national hospital organization and a regional health care provider. Executives at these organizations realized that two of their hospitals, located near each

other, were competing for doctors' practices and building redundant facilities. In response, they enthusiastically negotiated a joint venture that would manage the two hospitals and buy or build needed facilities within their shared area.

The two partners created a governance system and appointed managers to whom they offered incentives to maximize the venture's profits. Yet despite compelling economics, the arrangement didn't last – largely because the partners held clashing but unspoken assumptions about the joint venture's purpose. Moreover, the contract they actually negotiated didn't fit either organization's real objective.

Because the national chain had only one hospital in the region, it resisted economically sensible steps, like eliminating redundant departments, which were consistent

with the joint venture's formal contract and management incentives. The national chain was understandably concerned that the joint venture might one day fail and its hospital—now offering reduced services—would no longer be competitive. Executives at the regional chain, by contrast, saw the joint venture as a way to extend and rationalize their regional network. They persisted in trying to make the regional operation more efficient, but the formal contract and management incentives—to maximize only the joint venture's profits—conflicted with that mission, too. Had the parties better understood each other's views of the underlying purpose of the venture in the first place, they might have forged a more limited, but more effective, agreement. Such a deal would have ignored possible operating efficiencies and focused on gains from jointly buying practices and building shared feeder facilities. As it happened, each organization's underlying expectations clashed both with the other's and with the actual contract, transforming enthusiasm and potential profits into a swamp of recriminations.

Based on our participation in hundreds of negotiations and a growing body of academic work on implicit and "relational" contracts, we have come to believe that cultivating a shared understanding of the spirit of the deal can be every bit as important as agreeing on the letter of the deal.<sup>1</sup> This article explains what the social contract is, shows how the parties' views of the social contract can sharply diverge, explores problems that arise when the social and economic contracts are at odds, and suggests ways to negotiate both so that they are independently strong as well as mutually reinforcing.

## The Underlying Social Contract

The term "social contract" carries political connotations, bringing to mind the writings of Locke and Rousseau, but we use the concept on a radically smaller scale. In a negotiation context, we define the social contract in terms of the parties' expectations. This contract has two levels: The *underlying social contract* answers the question, What? (For instance, are we working out a series of discrete transactions or a real partnership? *What* is the real nature, extent, and duration of our agreement?) The *ongoing social contract* answers the question, How? (In practice, *how* will we make decisions, handle unforeseen events, communicate, and resolve disputes?)

We'll look at the underlying social contract first. Too many negotiators leave the underlying social contract implicit, which can cause misunderstandings and ultimately poison a relationship. Rather than discuss their expectations during negotiations, the parties project their own reasonable, but sometimes incompatible, assumptions about the fundamental nature of the deal. Some people, for instance, view a contract as a starting point for a problem-solving relationship. Dan Orum, the president

of Online Operations at Oxygen Media, is in that camp. He says, "The five words I most hate to hear in my business dealings [are], 'It's not in the contract.'" If the person he is negotiating with takes a more legalistic approach and sees the contract as an exhaustive description of mutual obligations, issues are bound to arise. That's why parties should strive for a real meeting of the minds on whether they are entering a problem-solving partnership or simply making a series of discrete transactions. Each approach is valid; the important thing is to recognize the potential for differing views and to try to align them.

Like clashing views of partnership versus transaction, divergent assumptions about autonomy versus conformity may create problems when the difference is identified late in the game. Consider what happened to an entrepreneur who failed to get clarity on this issue before she sold her boutique enterprise to a very eager corporate buyer. She decided to sell and agreed to stay on for five years because the purchaser assured her that she was "the essential player to lead the business to the next level" and because she envisioned her still-autonomous unit turbocharged by the acquirer's size, reach, and resources. The responsible corporate executive passionately shared her goal of taking the boutique concept global, but he simply assumed that only by following highly disciplined corporate procedures would the global rollout be possible.

Soon after the celebratory dinner, the unhappy reality began to dawn on the seller in the form of a legion of junior staff from HR delivering policy manuals and patronizing lectures on who bought whom. Even though the provisions of the economic contract—the letter of the deal on financial terms, governance, and the like—were acceptable to her, there had clearly been no meeting of the minds on the underlying social contract. Chances are, this will be one more failed acquisition despite its strategic logic, the skills and good intentions of both sides, and an acceptable economic contract.

Failure to make the underlying social contract explicit is by no means limited to small companies like the boutique enterprise. Take, for example, the proposed megamerger between Deutsche Bank and Dresdner, which would have produced the third-largest bank in the world

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(with \$1.25 trillion in assets), leading many people to view the planned deal as a landmark in the transformation of Europe's financial services industry. The banks planned to merge their retail operations, enabling them to close about 700 branches and concentrate on their more profitable corporate businesses.

Throughout the negotiations, Deutsche chairman Rolf Breuer implied that this was to be a "merger of equals." Although the new bank was to bear Deutsche Bank's name, the corporate color was to be Dresdner's green. Bernhard Walter, Dresdner's chairman, was particularly concerned that Deutsche would sell off Dresdner Kleinwort Benson (DrKB), which had contributed more than half of Dresdner's 1999 pretax profits. Aware of Dresdner's sensitivities, Breuer uttered words that would soon haunt him: "[DrKB] is a jewel, and we want to keep that jewel. It will be neither closed nor sold, and any reports to the contrary are 'barer Unsinn' [pure nonsense]." Satisfied, Walter declared, "A merger means you combine both parts into a new whole. I never had the slightest feeling that things would go differently."

Yet within hours of the joint announcement of the merger, Deutsche apparently decided to sell DrKB, believing that its own investment-banking arm had further global reach. And by selling the unit, Breuer wouldn't have to go through the long and expensive process of integrating DrKB's 7,500 employees. When DrKB staff members learned of this decision (from a *Financial Times* article by a source who came to be called the "torchman"), they moved to a state of alert.<sup>2</sup> The report mobilized powerful internal opponents to block the deal. In light of this clash—together with growing investor doubts about the deal's business rationale and actual terms—the merger was called off, after a month of furious negotiations, protestations of misunderstanding, and efforts at compromise. During that time, Deutsche's share price plunged 19%, and Dresdner's fell almost as much. Whether by accident or design, Deutsche's vision of the underlying social contract was at odds with Dresdner's, and those opposing assumptions helped to doom the deal.

Parties that differ in basic ways are especially likely to hold divergent views of the underlying social contract. Such differences could involve the companies' size, organizational approach, and business focus: small versus large, entrepreneurial versus bureaucratic, centrally man-

aged versus decentralized, and finance driven versus operations centered. For example, serious postalliance ownership conflict between Northwest Airlines and KLM Royal Dutch Airlines was less due to a cultural clash than it was exacerbated by a disagreement over management focus and risk tolerance. Pieter Bouw, KLM's Dutch president, stressed airline operations and conservative financial management. Gary Wilson and Al Checchi were high-profile, risk-taking financiers who had acquired Northwest in a highly leveraged buyout. Even agreement on the terms of an economic contract could not resolve those fundamentally different approaches to running an airline.

The examples given thus far illustrate some of the issues that need to be aired about whether minds have truly met on the underlying social contract. Other questions include, Is this a short- or long-term deal? Is it open-ended or task specific? Will it be learning or production oriented? Do we believe in lifetime or at-will employment? In countless deals, the tangible terms may seem fine, but the two sides realize only when it's too late that the reality doesn't match their expectations.

Although agreeing on the underlying social contract is important, a degree of what diplomats call "constructive ambiguity" is sometimes appropriate. Imagine, for example, two companies that both want control in a proposed equity joint venture. If pressed to fully resolve the issue at the outset, they would probably walk away from the deal. Yet if they could agree to launch a pilot venture with shared control, even if each side still believes that it must have total control in the ultimate venture, the deal might build their confidence in their ability to work together—even without such control. Success in the pilot could change the way they approach the social contract in the larger deal. As the French saying goes, "There could be no treaties without conflicting mental reservations." The trick, of course, is to distinguish true confidence-building steps from the papering over of fatal differences.

## The Ongoing Social Contract

Just as important as the underlying social contract is the ongoing social contract. It answers the question, How will we work together? Properly negotiated, it outlines the broad process expectations for how the parties will interact: norms for communication, consultation, and

The most common causes of  
social contract problems are  
lack of awareness and

benign neglect.



decision making; how unforeseen events will be handled; dispute resolution; conditions and means for renegotiation; and the like.

A positive ongoing social contract can foster efficient sharing of information; lower the costs of complex adaptation; permit rapid exploitation of unexpected opportunities without the parties having to write, monitor, and enforce complete contracts; and reduce transaction costs and even fears of exploitation. In fact, in a 1997 study of North American and Asian automakers and suppliers, then Wharton professor Jeffrey Dyer found that “General Motors procurement (transaction) costs were more than twice those of Chrysler’s and six times higher than Toyota’s. GM’s transaction costs are persistently higher... because suppliers view GM as a much less trustworthy organization.”

Clearly, a well-functioning ongoing social contract is beneficial, but too often, partners hold conflicting expectations. Imagine, for example, that a global manufacturer has a joint venture with a major local distributor. The relationship runs smoothly until the manufacturer approaches another distributor about selling a different product line. Since the economic contract governing their joint venture said nothing about the new line, the manufacturer may think it perfectly reasonable to use another distributor. But the first distributor may have expected to have been given the opportunity and may think that the manufacturer has acted in bad faith. Because their assumptions were never made clear, their relationship suffers, even though no actual breach of contract has occurred.

Because conscious efforts to shape the social contract can help stave off problems like this, we suggest that both sides conduct an audit of sorts. They should formally ask such straightforward questions as, How will we handle proprietary information? About what actions—inside and outside the bounds of the deal—will we inform each other? How do we properly launch a partnership? (For more on questions to ask in an audit, see the sidebar “Conducting an Audit: Sample Questions.”)

A final note on forging a productive ongoing social contract: It is often beneficial for senior executives to be involved in every stage of the deal. Ford and Mazda did an excellent job at this. In 1969, the automakers began a remarkable strategic partnership, initially driven by Ford’s

search for a low-cost production source and Mazda’s desire to break into the U.S. market. Serious disputes erupted because of U.S.–Japanese political tensions, efforts to protect proprietary technology, cultural differences, product design, and material selection. To deal with these problems, senior executives (three top managers from Ford and Mazda and six other operating heads) held a three-day summit every eight months. The first two days of these summits were devoted to strategy and operations, but the third typically functioned to repair or realign the social contract as needed.

## Risk Factors

The most common causes of social contract problems are lack of awareness and benign neglect. The parties involved inevitably form expectations about how the deal will be carried out, whether they discuss them or not. Even if initially compatible, those expectations can si-

# Conducting an Audit: Sample Questions

Discussing expectations *before* you sign a deal can greatly increase the odds of its success. To help you get that conversation started, here are some sample questions about the letter and spirit of your deal.

## Underlying Social Contract

### Real nature and purpose of the agreement

Do you envision a discrete transaction or a partnership? A merger of equals or something quite different? Are you building an institution for the long term or making a financial investment with a nearer horizon? What is the driving culture (operational, for example, or research oriented)?

### Scope and duration

Is your agreement focused on a discrete, short-term task, or is it open-ended? Is it a likely prelude to a larger or different arrangement? What kinds of actions, even outside the bounds of the deal, do you expect to be told about? And about which do you expect some say?

lently shift in response to actions taken, even though no overt negotiation takes place. Of course, if costly misunderstandings are to be avoided, it's normally in the parties' best interests to make their expectations explicit and negotiable. And red flags should go up when especially challenging conditions, such as the following, are present:

**When Cultures Clash.** Negotiators from diverse organizational, professional, or national cultures often bring clashing assumptions to the table. As Ming-Jer Chen, the former director of Wharton's Global Chinese Business Initiative, explains in *Inside Chinese Business*, "The Chinese perceive contracts as too rigid to take new circumstances into account. Hence, there is no stigma to changing the terms of an agreement after it has been signed." That approach often frustrates businesspeople who assume a signed contract is a done deal and a complete, fixed description of each side's obligations.

Consider how cultural expectations damaged relationships at NCR Japan. While the company was U.S. owned,

it had a history of stable lifetime employment and a union that enjoyed close relations with management. However, when the plant's first U.S. manager instigated downsizing to enhance returns—even though the plant was profitable—employees resisted this perceived violation of the underlying social contract. A second union was quickly organized, and it took a far more adversarial approach, demanding higher wages and insisting on job guarantees. Local suppliers saw the company as untrustworthy and refused to do business with it. A full decade after the plant manager was ousted, the second union remained in power, and the supplier boycott continued.

This example underscores not only the risk of underestimating differences between cultures but also the strength of the backlash to perceived breaches of a social contract. It's important to note here that not all breaches need be fatal; how they are handled can strengthen or rupture the social contract. If a breach is inadvertent, for example, managers normally should acknowledge it and reassure the other side that the "violation" was unintentional, not exploitative. Indeed, sincere efforts to rebuild confidence can often buttress the existing social contract.

**When the Wrong Minds Meet.**

Sometimes problems arise not because of cultural differences but instead because the right people are not involved in negotiations. For example, when two CEOs negotiate a strategic partnership—say between a retailer and a supplier—they may stress the importance of many dimensions of cooperation, the mutual need for service and quality, and the long-term time horizon of the joint effort. Yet the retail buyer, for instance—mainly compensated on the basis of quarterly numbers—refers to "our strategic partnership" primarily to beat price reductions out of the supplier. This problem will persist unless senior retail executives work to reset employees' expectations and incentives at the working level when they forge what *they* see as a strategic alliance.

There are other, less obvious, ways that key parties are inadvertently omitted from social contract negotiations. For example, in 1988, Komatsu, Japan's leader in earth-moving construction equipment, and U.S. conglomerate Dresser Industries combined their North American engi-

## Ongoing Social Contract

### Consultation

How fully, formally, and frequently do you expect to consult with the other side? How extensively will you and your partner share or protect information?

### Decision making

Beyond the formal governance mechanisms, by what process do you want to discuss and make decisions: by consensus or majority? Informally or formally? Who will be involved?

### Dispute resolution

In the case of conflict, what approach do you expect to use: informal discussion, mediation, binding arbitration, court? What if disagreement persists?

### Reevaluation and renegotiation

How will you handle unexpected challenges (such as changing economics or competitive dynamics)? What should trigger reevaluation or renegotiation, and what should you and your partner expect from each other in such a case?

## Meeting of the Minds and Fit

### Alignment

Do the economic and social contracts reinforce each other? If they don't, what should you and your partner do to align them?

### Shared perceptions

All things considered, what's your view of the social and economic contracts? What do others in your organization think? What is the other side's view, and does it mesh with yours? How do you know? How can you and your partner ensure that you have a real meeting of the minds on your perceptions? If you discover divergent perceptions, how should you resolve them?

neering, manufacturing, and marketing efforts to attain what they called a “mountain of treasure.” Dresser sought Komatsu’s design technology and a cash infusion for plant modernization and capital expenditures. Komatsu hoped to become a successful global player, so it wanted better North American market penetration. While preserving parallel brands and distributorships, Komatsu and Dresser created a 50-50 joint venture (Komatsu Dresser Corporation, or KDC), merging manufacturing, engineering, and finance operations. The joint venture maintained equal management representation on the six-person oversight committee and agreed to a \$200 million investment. Beyond the economic terms of the companies’ arrangement, they aimed to foster a strong social contract between their management teams.

Yet the implementation of their arrangement strained the emerging deal, and the separate distributors, who never subscribed to the new expectations, began competing for sales. Tensions escalated: Komatsu saw Dresser as backward and unresponsive; Dresser complained of learning about key Komatsu decisions after the fact. As the situation worsened, executives from both companies clamped down on communications, which prevented dealers from getting vital information about their counterpart’s inventory levels and warranty coverage, further exacerbating the conflict.

Despite the efforts of industrial consultants and a last-minute plan to swap employees between the two companies, the dealer conflicts intensified, KDC market share declined sharply, losses mounted, 2,000 jobs were cut, and ultimately, the venture was dissolved. Subject to more than the usual cross-cultural hazards, KDC suffered: It failed to ensure that potentially influential parties bought into the new social contract.

**When Third Parties Drive the Deal.** Failure also happens when one team, such as the business development unit, uses a heavily price-driven process to negotiate an alliance or acquisition. Once the parties agree to the terms, the team “throws it over the fence” to operational management, which is stuck with the unenviable job of forging a strong, positive social contract after the fact. Jerry Kaplan, Go Technologies’ founder, was especially critical of the negotiation process IBM used when it invested in Go. As Kaplan explains in *Startup*, “Rather than empowering the responsible party to make the deal, IBM assigns

a professional negotiator, who knows or cares little for the substance of the agreement but has absolute authority.” With a process like that, the right minds have little chance of truly meeting on the underlying social contract. It’s almost always best to get the managers who must make the deal work involved in the negotiating process, where they can begin to forge a positive social contract.

In some cases, investment bankers or other deal makers with a powerful interest in making a transaction happen—for better or worse—can divert the principals’ attention from possibly fatal differences in their views of the underlying social contract. For example, Matsushita Electric’s primary rationale for paying \$6.59 billion for MCA—owner of movie studios, record companies, and theme parks—was to ensure a steady flow of creative software for its global hardware businesses. Senior MCA management agreed to the acquisition, expecting the new, cash-rich Japanese parent to provide capital for acquiring more record companies, a television network, and so on, all of which were vital to helping the combined companies compete with rivals such as Disney and Cap Cities/ABC.

To get the deal done, however, Michael Ovitz, talent agent turned unorthodox corporate matchmaker, kept the parties mostly *apart* during the process, managing expectations separately on each side and building momentum until the deal was virtually closed. Neither side did its due diligence on their mutual perceptions of the real underlying social contract—partly because of the cultural chasms dividing old-line industrial Japan, creative Hollywood, and the New York financial community, but largely due to the deal-driving third party (Ovitz). As a result, each side had an optimistic but badly distorted view of the other’s real intentions, leading to postdeal friction and the sale of MCA a few years later to Seagram, at a substantial loss to Matsushita both in financial terms (roughly \$1.64 billion) and in prestige.

**When Too Few Parties Are Involved in the Deal.** Even a tightly aligned social and economic contract can be vulnerable if the expectations and agreements that underlie it are shared by only a select few. Senior partners in consulting firms, for instance, often depend primarily on their relationships with CEOs in their client companies. But if the CEO leaves, the consulting firm may lose the account. Consciously creating a wider web of involvements and dependencies throughout the firm would result in a more

Different parties can hold wildly  
divergent expectations about the deal,  
even when they’ve signed the

same piece of paper.

sustainable relationship—and greater commitment to implementation of agreed-upon recommendations—even when fewer participants could complete the consulting projects more efficiently.

## Dovetailing the Contracts

It can be tempting to regard the social contract as unwritten and psychological and the economic contract as written and tangible. Yet the two can be productively dovetailed, with elements of the economic contract directly tied to the social one. Sometimes, the way to arrange such a fit seems obvious: A discrete, project-oriented agreement, for instance, should have clean, workable exit and termination provisions linked to both sides' understanding of when their shared objective is accomplished (or has become impossible). By contrast, if a deal's central aim is ongoing knowledge transfer, negotiators might set terms in the economic contract that would further that goal. For instance, when Wal-Mart and Procter & Gamble formed an alliance, interface team members signed confidentiality agreements, binding them from releasing information from team discussions even to their own parent companies. This cemented the group's commitment to total discretion and unleashed greater creativity, since members could try things out without fear that proprietary data would be shared outside the alliance team. Whatever the goal of the deal, it will generally be much easier to reach if the economic and social contracts are mutually reinforcing.

Some companies have mastered this skill. Italian apparel-maker Benetton, for example, has enjoyed many successes in new markets by following a tried-and-true formula. First, it establishes a local agent to develop licenses for products from Italy; then it develops local production capability, partnering with an area business for further market development. If that is successful, it buys out its partner, which typically retains a significant role, and integrates the foreign subsidiary into Benetton's global network. This staged approach has worked repeatedly because Benetton's contracts with its local partners explicitly detail the expected trajectory of the partnership and include formal mechanisms to accomplish its stated goal.

Many companies bungle the kind of smooth transitions Benetton often achieves because they fail to fully vet expectations about how their partnerships will run. If negotiations are handled poorly, high-status local partners can end up feeling betrayed and devalued by unexpected buyout initiatives. In addition, badly handled negotiations can result in unworkable valuation formulas that lead to disagreements, impasses, and the like. No successful private equity or venture capital firm would invest without establishing clear exit expectations for when milestones have been met or when circumstances have

changed. Despite the potential awkwardness of negotiating a prenuptial agreement while heading into marriage, most companies should spell out similar provisions in their contracts.

To highlight how critical it is to dovetail the letter and spirit of a deal, we like to contrast two cases, negotiated by different experienced investors during the same year, in which subsequent attitudes toward the deal played key roles. The first involved prominent pediatricians who were looking for assistance to make a series of interactive CDs on parenting issues. A venture investor provided capital in return for a half-interest in the new company that would own all the doctors' products in this business area. The investor helped the doctors create a demo CD, wrote a business plan and marketing materials, and showed the entire package to key people at major software publishing houses. When a publisher expressed enthusiasm, the doctors surprised the investor by arguing that "he owned too much of the company," that "their ideas and reputation *were* the company," and that he should willingly reduce his stake. Needless to say, after all the time and effort he had invested in developing the company, he felt stung. When efforts at resolution reached an impasse, the new company languished, and the agreement blocked the doctors from developing their ideas elsewhere. Clearly, both sides neglected to work through different scenarios to test the perceived fairness and psychological sustainability of the deal, firm up their social contract, and alter the economics if necessary. As a result, great value was left unrealized.

By contrast, consider the contract a different investor designed when he was approached by a commercial banker who financed independent filmmakers. Although filmmaking is a risky business, the banker had not lost money on any of his 41 loans—in part because he had nurtured worldwide contacts and then presold foreign rights. Unhappy with his compensation as a bank employee, he was planning to leave and start a film-finance company. To get the fledgling business off the ground, he was seeking an \$18 million investment to complement the \$2 million he would contribute, and he offered the investor 90% of the new company.

Even though the investor's analysis projected a 100% annual rate of return on this investment, he turned down the offer and counterproposed a deal that was, in fact, more lucrative for the banker and less so for himself. The investor reasoned that in two or three years he would have simply taken the place of the bank, providing little but commodity capital, and the banker-entrepreneur would end up seeking a better deal from new capital sources. Therefore, his counteroffer contained a series of results-linked options: The banker would be able to buy back some of the investor's equity at a relatively low price after the investor had received his first \$5 million, then buy back more equity after the investor had received the

next \$5 million, and so on. At each point under this deal structure, it would be in the banker's interest to stay in the relationship rather than to start out on his own again. The investor's projected rate of return on this offer was closer to 30%. But he preferred to sign a contract stipulating a 30% return that he believed he would actually receive rather than one with a 100% return on paper that would very likely spur the banker to abrogate at some point.

This investor understood that the spirit and letter of the deal needed to complement each other, whereas the investor who financed the doctors' CD development company struck an economically sensible but perhaps psychologically naive deal. The investor involved in the film-finance company structured his proposal to match predictable changes in circumstances and attitudes, and he found the right fit between the economic and social contracts.

Not only should the social contract complement the economic one, but the economic contract itself can also actually embody much of the social one. In the late 1980s, for example, Chrysler deliberately restructured both the letter and spirit of its contracts with suppliers to save its business. In 1989, the company faced a projected \$1 billion overrun on a new program, a \$4.5 billion unfunded pension liability, and a record loss of \$664 million in the fourth quarter. To stop the hemorrhage, Chrysler decided to revolutionize its supplier relationships (along with other strategic measures). The automotive giant had traditionally given its business to the qualified bidder offering the lowest price, relying on supplier competition to drive down costs. Now it looked to form long-term partnerships with a subset of its traditional suppliers. In this new model, the partner was expected not only to improve its own performance but also to enhance Chrysler's operations beyond the supply relationship.

To support this new social contract, Chrysler substantially revised its economic contract. Rather than choosing the lowest price from qualified bidders, Chrysler prequalified a group of suppliers (1,140 out of its original 2,500) based on their advanced engineering and manufacturing capabilities and on their past performance in terms of on-time delivery and the like. Within this smaller set of players, Chrysler shifted from a system in which multiple suppliers competed over separate design, prototype, and production contracts to one in which a single supplier held primary responsibility for the combined design, prototype, and production of a component or system.

Under the old system, the average supplier contract lasted 2.1 years. The new approach saw the life of an average contract grow to 4.4 years, and Chrysler gave oral guarantees to more than 90% of its suppliers that the current business would remain with them for at least the life of the relevant model if performance targets were met. Because this new social contract stressed cooperation, Chrysler sought to ensure a fair profit for all parties. In-

stead of relying on commodity pricing to squeeze its suppliers, the automaker adopted a target-costing approach that worked backward from total cost to end user in order to calculate allowable costs for systems, subsystems, and components. Further, in keeping with the spirit of cooperation, Chrysler required suppliers to look beyond their own operations and find cost-saving possibilities within Chrysler itself equal to at least 5% of contract value – and suppliers would get half of the savings.

In essence, the written terms of the new economic contract – on selection, scope, duration, renewal, pricing, and performance requirements – consciously underpinned the new social contract emphasizing longer-term, integrated partnerships. The results were impressive: Chrysler was able to cut the time needed to develop a vehicle from an average of 234 weeks during the 1980s to 160 weeks in 1997 – a 32% reduction. The cost of developing a vehicle plunged between 20% and 40% during the 1990s, and profit per vehicle jumped from an average of \$250 during the late 1980s to a record of \$2,110 in 1994. A new social contract deeply intertwined with the new economic one was largely responsible for these results.

Clearly, Chrysler saw dramatic improvements, but this particular social-economic contract combination isn't right for every company. Forging tight partnerships with a much smaller supplier base has some drawbacks. These include the difficulty of further shrinking the supplier base as relationships deepen as well as the risk of being "held up" by a critical supplier that has no real competition, especially in a tough economy. The crucial point, however, is that the underlying and ongoing social contracts consist of more than purely "psychological" expectations; they can and should be embedded in and complemented by the formal economic contract.

## Common Misperceptions

We have witnessed dozens of deals unravel or fall well short of their potential because the participants failed to achieve a meeting of the minds on the spirit of the deal. To avoid that fate, make sure you don't fall prey to the following misperceptions:


Many people believe that the social contract is primarily about the working relationship. But as we've shown, the social contract defines not just how the relationship will proceed but also exactly what the real nature of the relationship is. So while the ongoing social contract covers the working relationship – including expectations about communication, consultation, decision making, dispute resolution, and opportunities for renegotiation – the underlying social contract outlines expectations about the fundamental purpose, extent, and duration of the deal.

Another popular misconception is that the term "social contract" means a cooperative, democratic, and partici-

patory relationship. The social contract can embody those ideals, but it need not. Indeed, a productive social contract could detail an autocratic relationship or an “eat what you kill” culture. What’s key is that both parties move toward shared expectations about the deal.

Many people think that a social contract implies that the parties involved have a shared view. As we’ve shown, different parties can hold wildly divergent expectations about the deal, even when they’ve signed the same piece of paper. Reaching a shared understanding is crucial, but getting to that point takes focus and energy. A healthy social contract, mutually understood, is a goal, not a given.

Too many people set themselves up for failure because they think negotiation stops when the ink dries. However, even after the economic contract has been signed and minds have met on the underlying social contract, the parties should consider adapting the agreement to changed circumstances. And, by continuing to invest in the ongoing social contract, the people involved can help avoid costly misinterpretations and can greatly enhance the value of the economic contract, especially when they want to explore new opportunities or must tackle unexpected challenges.

A final misperception, and one that bears repeating, is that the social contract must be primarily psychological, or “soft” – not something that can be spelled out in a written agreement. But as we’ve shown, key provisions of the social contract – such as expectations about the nature and duration of the relationship – can often be made explicit in the economic contract. Negotiating complementary economic and social contracts greatly improves the odds that the deal will deliver the benefits it promises on paper. 

*The authors wish to thank Ashish Nanda, who provided invaluable insights and examples, as well as John Hammond, Rosabeth Moss Kanter, Deborah Kolb, Richard Meyer, Ken Mildwaters, Howard Raiffa, Jeff Weiss, Michael Yoshino, and members of the Harvard Negotiation Roundtable.*

1. Sources for such studies, along with a more complete set of sources for this article, can be downloaded from [http://www.people.hbs.edu/jsebenius/hbr/negotiating\\_the\\_spirit\\_of\\_the\\_deal\\_v3-41b.pdf](http://www.people.hbs.edu/jsebenius/hbr/negotiating_the_spirit_of_the_deal_v3-41b.pdf).

2. “Torch That Sent a Deal Down in Flames,” *Financial Times*, April 12, 2000.

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# The Hidden Challenge of Cross-Border Negotiations

by James K. Sebenius



Harvard Business Review

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International deal makers have  
long bowed to local traditions and etiquette.  
But new research suggests they also need  
to understand something deeper – the subtle yet potent ways  
that national culture shapes the governance  
and decision-making process.

The Hidden Challenge of  
**CROSS-BORDER**  
**NEGOTIATIONS**

by James K. Sebenius

**C**ULTURAL DIFFERENCES can influence business negotiations in significant and unexpected ways, as many a hapless deal maker has learned. In some cases, it's a matter of ignorance or blatant disrespect, as with the American salesman who presented a potential Saudi Arabian client with a multimillion-dollar proposal in a pigskin binder, considered vile in many Muslim cultures. He was unceremoniously tossed out and his company blacklisted from working with Saudi businesses. But the differences can be much more subtle, arising from deep-seated cultural tendencies that influence how people interact – everything from how people view the role of the individual versus the group



to their attitudes, say, about the importance of time or relationships. In response to these challenges, a great body of literature has emerged to help executives navigate differences not only in protocol and deportment but in deeper cultural tendencies as well.

But my research shows that there's another, equally treacherous, aspect to cross-border negotiation that's been largely overlooked in the literature: the ways that people from different regions come to agreement, or the processes involved in negotiations. Decision-making and governance processes, which determine either a "yes" or a "no," can differ widely from culture to culture, not just in terms of legal technicalities but also in terms of behaviors and core beliefs. In my experience observing and participating in scores of international negotiations, I've seen numerous promising deals fail because people ignored or underestimated the powerful differences in processes across cultures. In these pages, I will examine how systematic differences in governance and decision making can disrupt cross-border negotiations, and I will offer advice on how to anticipate and overcome possible barriers on the road to yes.

## Map the Players and the Process

In any negotiation, you are always interacting with individuals, but your real purpose is to influence a larger organization—representing a diverse set of interests—to produce a meaningful yes. In an international deal, just as at home, you need to know exactly who's involved in that larger decision process and what roles they play. But in unfamiliar territory, the answers might surprise you. Indeed, applying "home" views of corporate governance and decision making to international deals may seriously hinder the negotiation process. I find it's useful to break down the decision-making process into several constituent parts: Who are the players? Who decides what? What are the informal influences that can make or break a deal? Let's look at each of these factors, which can vary dramatically when you cross national borders.

**Who are the players?** If you're accustomed to deal making in the United States, you know that extra players beyond those representing the two companies may influence the deal: the SEC, the Federal Trade Commission, and the Justice Department, among others. In his book *Masters of the Universe*, Daniel J. Kadlec writes that when Travelers and Citicorp were contemplating a merger, the heads of both companies together visited Federal Reserve Chairman Alan Greenspan to get a reading on the Fed's likely attitude.

Abroad, you'll of course find extra players as well, but they will be different and often less obvious. For those executives experienced in North American shareholder-based corporate governance, it may come as a surprise to

discover that in Germany, labor has virtually equal representation on many supervisory boards of directors. It will probably be less surprising, though no less discomfiting, to discover that local party officials play an integral part in Chinese negotiating teams in the People's Republic, even when the Chinese company is nominally "private." In the European Union, various Brussels commissions may get involved in business negotiations. If an acquisition target has foreign subsidiaries, the skein of negotiating partners may grow even more tangled. All these constituencies bring their own interests to the table, as well as varying abilities to block or foster negotiations. Even GE, one of the most experienced acquirers, suffered a humiliating defeat in its attempted merger with Honeywell, in part because GE's management underestimated the nature and seriousness of European concerns about competitiveness and the potential for these concerns—and GE's European competitors—to obstruct the deal.

Another example is drawn from the research of my colleagues William A. Sahlman and Burton C. Hurlock: Near the time of the collapse of the Soviet Union, California-based venture capital firm Sierra Ventures was negotiating with the director of the Institute for Protein Research in Russia, hoping to get the rights to an apparently revolutionary biotechnology process. Marathon negotiations with the institute's management team—heroically bridging huge gaps between East and West, business and science, bureaucracy and venture capital—seemed as if they would finally culminate in an acceptable deal for both sides. Although the deal ultimately succeeded, nearing the finish line it suddenly became clear that several Moscow ministries, each with its own point of view and agenda, also had to approve the agreement. This posed a potentially fatal set of obstacles that could have been anticipated had the Sierra team made more than a perfunctory effort early on to learn about the real decision process.

**Who decides what?** Even if you know who's playing, a failure to understand each player's role—and who owns which decisions—can be very costly. For example, when Italian tire maker Pirelli sought to acquire its German rival, Continental Gummiwerke, Pirelli claimed control of a majority of Continental's shares and received tacit backing from Deutsche Bank and support from Gerhard Schröder, then Prime Minister of Lower Saxony, where Continental is based. In a U.S. transaction, merely owning enough equity often allows the acquirer to control the target. But not in this setting.

Unfortunately for Pirelli, German corporate governance provides a structure in which other key players can block the will of even a majority of shareholders. While the management board in most large German companies has day-to-day management responsibilities, it is only one of four sets of players—along with shareholders, a supervisory board, and labor—that can play a significant role in

any major decision. What's more, under union codetermination, labor elects fully half of the members of the supervisory board, which in turn elects the management board. And the management board can prevent any single shareholder, no matter how large his or her holdings, from voting more than 5% of the total company shares. Thus, having failed to gain real buy-in from all the players, especially labor and key managers, Pirelli couldn't complete the transaction, even though it claimed effective control over Continental's shares and had powerful allies—a humiliating defeat that cost the Italian company nearly half a billion dollars.<sup>1</sup>

There are some impressive stories of executives deftly navigating these potential barriers—U.K.-based Vodafone's successful acquisition of Germany's Mannesmann is a notable recent example—and such cases might seem to herald major changes in German law and governance. But the circumstances and tactics in Vodafone's case were highly specific to the deal, and the general implications

Yet while Honda's prized relationship was at the level of the *operating* company (Rover), the Japanese company had not taken seriously enough the fact that the decision rights over a Rover sale are vested at the *parent* (BAe) level. From a financial standpoint, the move made sense for BAe, and it was perfectly legal. Yet Honda's cultural blinders made the sale seem inconceivable, and its disproportionate investments in Rover in effect created a major economic opportunity for BAe. The bottom line: Understanding both formal decision rights and cultural assumptions in less familiar settings can be vital. (For more on how cultural assumptions can influence negotiating behavior, see the sidebar "Cross-Cultural Etiquette and Behavior: The Basics.")

A final note on identifying decision rights: Even the experts may stumble over their assumptions. U.S. attorneys apparently told Bernard Arnault's French luxury conglomerate LVMH that companies traded on the New York Stock Exchange could not increase their share base by a significant amount without shareholder approval. With this understanding, LVMH acquired almost 35% of Gucci in a takeover bid.<sup>2</sup> However, it turns out that different stock rules apply to companies based outside the United States—Gucci, for instance, traded in New York but was chartered in the Netherlands and is headquartered in Florence. Gucci's defense team discovered this loophole and used it

**EVEN IF YOU KNOW** who's playing,  
a failure to understand each  
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which decisions—can be very costly.

for Euro-governance seem limited. Deeply entrenched structures continue to blindside many a corporate suitor—and not just in Germany. In fact, versions of this cautionary tale could be repeated in locales as distinct as Switzerland and Japan, where boards of directors representing constituencies other than shareholders may exert powers unfamiliar to those accustomed to Anglo Saxon-style governance, including voting caps and the power to block share registration or voting of outside equity holders.

Cultural assumptions can sometimes make it very difficult to recognize or acknowledge who has formal decision rights. For example, when Honda invested heavily in an extensive relationship with British automaker Rover, workers and managers at the two companies developed very positive working relationships for more than a decade. The partnership intensified after the government sold Rover to British Aerospace (BAe), but as Rover continued to lose money, BAe decided to discard the relationship, abruptly selling Rover to BMW through a secretive deal that caught Honda completely unawares. The Japanese automaker considered its connection with Rover a long-term one, much like a marriage, and it had shared advanced product and process technology with Rover well beyond its effective contractual ability to protect these assets. Honda's leaders were dumbfounded and outraged that BAe could sell—and to a competitor, no less.

to shut down the deal. The company first issued 20% new shares to its employees in an ESOP-like transaction and then offered 42% additional new shares to a group controlled by François Pinault, Arnault's French rival. LVMH's massively diluted position in effect handed ultimate control to Pinault, leaving LVMH trapped as a relatively powerless minority shareholder in Gucci.

**What are the informal influences that can make or break a deal?** It's important to understand which people must sign the contract to finalize a deal, but that's often not enough. Many countries have webs of influence that are more powerful than the actual parties making the deal, even though those webs don't have the formal standing of, say, government agencies. In Japan, it may be the *keiretsu*—industrial groups that are linked by a web of business ties, lending, and cross-shareholdings. In Germany's financial sector, it might be the insurance giant Allianz. In Italy, it may be a set of powerful families. In Russia, it can be the Russian mafia and other protection rackets. Outsiders need to understand these webs and

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factor them into their negotiating approach. It's a lesson many companies have learned the hard way.

And influence on negotiations need not be driven by an informal, underlying power structure, as U.S. Stone Container Corporation learned. While negotiating the terms of a major forest project in Honduras, Stone Container's executives assumed that the Honduran president and his relevant ministries had the power to decide whether to allow the project and therefore dealt primarily with the president. But while the president did have the legal authority to make the deal and ultimately approved it, the company's proposal and negotiating strategy seemed to signal a possibly corrupt deal among elites. This inadvertently triggered the involvement of the Honduran Congress, labor unions, political parties, potential business competitors, indigenous people in the affected region, and domestic and international environmental groups. Had Stone taken into account the history of strained relationships between Honduras and the U.S. government and multinationals, as well as the fragile status of the presidency in this fledgling democracy, it could have developed a strategy that accommodated this informal web of potential influences. Instead, Stone's lack of foresight caused it to become enmeshed in an adversarial, multi-party process that ultimately failed. When interviewed for a Harvard Business School case, Stone executive Jerry Freeman likened the experience to being "caught in a drive-by shooting with no place to hide."

U.S. companies like Stone—and others from cultures with strong legal systems—frequently underestimate the power of informal influences because they assume that foreign legal systems will enforce formal contracts just as they are expected to at home. What they may ultimately learn is that dispute resolution can look very different in different cultures. In Japan, which has a relatively small legal system and few lawyers, companies rely on relationships and negotiation to sort through most commercial disputes. Present-day Russia has practically no functioning judiciary. Many countries' legal systems are corrupt or controlled by local political powers.

The fact is, there can be a great gulf between the laws on the books and how things really work, as one U.S. electrical goods manufacturer learned after it entered a joint venture with a Chinese company and hired a local manager to run the Chinese operation. As described in Charles Olivier's 1996 *WorldLink* article, "Investing in China: 12 Hard Lessons," the company tried to expand its product line, but the Chinese manager balked, insisting there was no demand for the additional products. The U.S. management team tried to resolve the dispute through negotiations, and when the Chinese manager wouldn't budge, the team fired him—but he wouldn't leave. The local labor bureau refused to back the U.S. team, and when the U.S. executives tried to dissolve the venture, they discovered they couldn't recover their capi-

tal because Chinese law dictates that both sides need to approve a dissolution. A foreign law firm, hired at great expense, made no headway. It took some behind-the-scenes negotiation on the part of a local law firm to finally overcome the need for dual approval—an outcome that demanded local counsel well versed in the intricacies of Chinese culture.

In short, successful cross-border negotiators begin by discarding home-market presumptions and developing a clear map of the players who are likely to influence the formal and informal decision process. Only when you know exactly who these players are can you develop a strategy that targets their interests.

## Adapt Your Approach

Unfortunately, however, knowing who's involved in the process is only half the battle. While you negotiate with people, you are typically seeking to influence the outcome of an organizational *process*. That process can look different in different cultures, and different processes may call for radically different negotiation strategies and tactics. Even seasoned executives often fail to adapt their approaches to those different processes, with costly consequences. While it's difficult to generalize, such processes tend to take one of several forms: top down, consensus, and multistage coalition building.

**Top Down.** In some cases, you will deal with a "real boss," a top-down authority who won't delegate in any meaningful way and will ultimately make the decision unilaterally. When there is the local equivalent of a very much in charge Admiral Rickover, Harold Geneen, or Robert Moses, revealing key information or making premature concessions to those not genuinely in the decision loop can work to your disadvantage. The most effective negotiators avoid making deals with relatively powerless agents who function as important messengers or emissaries but not as powers in their own right. Instead, these negotiators find ways to interact directly with the boss—or, if that's not possible, to connect with people outside the process who have close ties to or influence over the boss.

In some cultures, even if the boss delegates authority, going directly to the top can sometimes be more effective. For example, when one Italian industrial products firm wished to acquire a large division of a French conglomerate, it first made friendly overtures to the target unit. But as it became clear that unit management wouldn't even consider discussions about a possible sale, the Italian chief went quietly to the top. He eventually closed the deal with the boss, who—consistent with that company's top-down culture and, in fact, much of French corporate governance—simply "crammed it down" on the division, softening the blow somewhat by offering any reluctant managers a chance to be absorbed into the

## CROSS-CULTURAL ETIQUETTE AND BEHAVIOR: THE BASICS

Lapses in etiquette can trip up negotiations on two levels: the visible manifestations of protocol and deportment, and the deeper cultural characteristics that influence how people interact in subtle yet powerful ways.

**PROTOCOL AND DEPORTMENT.** Books on regional protocol and deportment offer a stew of dos and don'ts that attempt to generalize about the specifics of surface behavior. To quote a handful of rules from Dean Allen Foster's *Bargaining Across Borders*: Never show the sole of your shoe to an Arab, for it is dirty and represents the bottom of the body. Look directly and intently into a French associate's eye when making an important point, but avoid direct eye contact in Southeast Asia until the relationship is firmly established. In Italy, don't touch the side of your nose; it is a sign of distrust. The lists go on and on and can certainly help you avoid mistakes. But the rules are so complex and detailed that it's difficult to keep them straight, and the likelihood of regional variation further complicates matters.

Nonetheless, negotiators would do well to consider a range of questions about these behaviors when preparing for international negotiations, either by consulting the literature or by engaging in conversations with people who have experienced the culture at hand. I've outlined the categories of surface behaviors most likely to affect the tenor of negotiations. While the list at right is not exhaustive and must be read in light of obvious caveats about regional, professional, and national variation, seeking answers to these questions will at least provide a degree of familiarity with the basic dos and don'ts in any given culture.

Sensitivity to these basics allows you to avoid giving offense, demonstrate respect, enhance camaraderie, and strengthen communications. But cultural codes of protocol and deportment are not likely to interfere dramatically in your negotiations, absent blatant disrespect.

### Dos and Don'ts

<b>Greetings</b>	How do people greet and address one another? What role do business cards play?
<b>Degree of Formality</b>	Will my counterparts expect me to dress and interact formally or informally?
<b>Gift Giving</b>	Do businesspeople exchange gifts? What gifts are appropriate? Are there taboos associated with gift giving?
<b>Touching</b>	What are the attitudes toward body contact?
<b>Eye Contact</b>	Is direct eye contact polite? Is it expected?
<b>Deportment</b>	How should I carry myself? Formally? Casually?
<b>Emotions</b>	Is it rude, embarrassing, or usual to display emotions?
<b>Silence</b>	Is silence awkward? Expected? Insulting? Respectful?
<b>Eating</b>	What are the proper manners for dining? Are certain foods taboo?
<b>Body Language</b>	Are certain gestures or forms of body language rude?
<b>Punctuality</b>	Should I be punctual and expect my counterparts to be as well? Or are schedules and agendas fluid?

**DEEPER CULTURAL CHARACTERISTICS.** Somewhat more difficult to see are the underlying cultural tendencies affecting how people interact, such as the relative emphasis on the individual versus the group and on the deal versus the relationship. Indeed, some compare culture to an iceberg: The danger of collision is not so much with the part you see but with what's below.

The idea that such deeper cultural traits can profoundly affect negotiation is not new. In an influential 1960 *Harvard Business Review* article "The Silent Language in Overseas Business" (May–June), anthropologist Edward T. Hall, along with collaborator Mildred Reed Hall, developed four categories of underlying cultural variables that may drive surface behavior, summarized below.

### Edward T. Hall's "Silent Language"

#### Relationships

*Is the culture deal-focused or relationship-focused?*

In deal-focused cultures, relationships grow out of deals; in relationship-focused cultures, deals arise from already developed relationships.

#### Communication

*Are communications indirect and "high context" or direct and "low context"?*

Do contextual, nonverbal cues play a significant role in negotiations, or is there little reliance on contextual cues?

*Do communications require detailed or concise information?*

Many North Americans prize concise, to-the-point communications. Many Chinese, by contrast, seem to have an insatiable appetite for detailed data.

#### Time

*Is the culture generally considered to be "monochronic" or "polychronic"?*

In Anglo-Saxon cultures, punctuality and schedules are often strictly considered. This monochronic orientation contrasts with a polychronic attitude, in which time is more fluid, deadlines are more flexible, interruptions are common, and interpersonal relationships take precedence over schedules. For example, in contrast to the Western preference for efficient deal making, Chinese managers are usually less concerned with time.

#### Space

*Do people prefer a lot of personal space or not much?*

In many formal cultures, moving too close to a person can produce extreme discomfort. By contrast, a Swiss negotiator who instinctively backs away from his up-close Brazilian counterpart may inadvertently convey disdain.

Complementing Hall's work, academic Geert Hofstede conducted surveys, beginning in 1980, of more than 60,000 IBM employees in more than 40 countries to develop four dimensions of cultural differences (shown below). I have renamed some of Hofstede's categories in order to communicate their essence more clearly in the context of negotiation.

### Hofstede's Cultural Dimensions

#### Distribution of Power

Are significant power disparities accepted? Are organizations run mostly from the top down, or is power more widely and more horizontally distributed?

#### Tolerance for Uncertainty

How comfortable are people with uncertainty or unstructured situations, processes, or agreements?

#### Individualism Versus Collectivism

Does the culture emphasize the individual or the group?

#### Harmony Versus Assertiveness

Does the culture emphasize interpersonal harmony or assertiveness?

In addition to those characteristics raised by Hall and Hofstede, there are other cultural issues to consider, such as a society's views on fairness and justice or how a culture accords status (by accomplishment, knowledge, social position, age, and so forth).

French parent. This strategy must be used cautiously, however. It can easily backfire when subordinate players have opportunities to sabotage the deal or erode its effectiveness.

What's more, it can be risky to impute omnipotence even to apparently powerful bosses. U.S. executives almost reflexively ask, "Who is the real decision maker?" But the answer can be misleading, as Stone Container learned in its negotiations with the Honduran president. This is not a problem limited to less-developed countries. Even in negotiating with U.S. presidents, parties such as the Shah of Iran or South Vietnamese leaders have made deals or reached critical understandings, only to learn later that limits on presidential power would prevent the deal from transpiring as expected. And even in one-party, relatively authoritarian countries, deals at the top may not translate into action on the ground.

The case of Armand Hammer's protracted negotiations to form, and later manage, a joint venture between Hammer's Occidental Petroleum (Oxy) and the state-run China National Coal Development Corporation (CNCDC) reveals how even the highest-level backing can be insufficient. Hammer and China's then-paramount leader Deng

team; at other times, it requires agreement from the broader enterprise and can include external stakeholders and governments.

When a consortium of U.S. companies submitted a proposal to assist in building a dam in the Three Gorges section of China's Yangtze River—a project debated by the Chinese for more than 70 years—they were blindsided by the consensus process. The consortium's negotiating team largely directed its efforts at a single agency, the Yangtze Valley Planning Office (YVPO). But in China, bureaucratic units like the YVPO are explicitly ranked, and no one unit has authority over another of the same rank; permission from above is required if there is disagreement. As a result, decisions are pushed up to the highest authority possible, overloading the top levels of bureaucracy. The only practical solution is consensus, which has become a cornerstone of the modern Chinese bureaucracy.

To move a process along, each affected unit must engage in a complex bargaining system to establish compatible goals and to protect interests. By failing to appreciate the involvement of these other units, the U.S. team didn't anticipate enemies or, even more important, help potential allies back its plan. (Hampered by U.S. govern-

ment opposition to the project—driven by environmental and human rights concerns—the U.S. team also made some classic negotiation errors, such as failing to understand the other side's interests. For example, the team's proposal emphasized efficient machinery and a lean labor force, while maximum employment is one of China's top priorities. With a little more thought, the U.S.

group might have placed greater stress on elements such as technology transfer, training, and foreign investment, rather than cost cutting and speed.)

The need for consensus among players on the other side will affect your negotiating strategy in other ways as well. First, since consensus cultures often focus on relationships rather than deals, the parties involved will often want to take substantial amounts of time to learn about you and forge a deeper relationship before talking about the deal. In consensus cultures, relationship building is critical not only to reaching an agreement but also to making it work. The lengthy timetable may be very frustrating to teams from decisive, top-down cultures; unfortunately, there's usually little they can do to speed up the process unless the other side is desperate for a deal—which generally means the consensus is already there—or the other side wants a deal and you're credibly engaged in parallel conversations with one of their serious rivals.

Second, since consensus processes often go hand-in-hand with near-inexhaustible demands for information, you should be prepared to provide it—in many different forms, in great detail, and repeatedly. Third, to the extent

## SINCE CONSENSUS PROCESSES

often go hand-in-hand with near-inexhaustible demands for information, you should be prepared to provide it.

Xiaoping, who met in person about the project, both expressed their serious commitment to making the venture work, despite signals during preliminary negotiations that the deal would not succeed. As Roderick MacLeod recounts in his book, *China, Inc.: How to Do Business with the Chinese*, Hammer saw the project as the crowning achievement of his career: the largest-scale foreign investment in China in history. Deng, for his part, was anxious to show the world that his market reforms were transforming China into an economy ripe for investment. The two ordered their subordinates to reach an agreement, and the Oxy-CNCDC project became a highly visible test case. Yet because of bureaucratic conflicts, clashing expectations and interpretations, and escalating antagonisms, the formal negotiations dragged on for years, and Oxy ultimately pulled out after more than a decade of frustration.

**Consensus.** If top-down authority is at one end of the decision-making spectrum, then consensus is at the other. The consensus process can have many variations and is especially common in Asia. It sometimes requires agreement among the members of the other side's negotiating

that you can pinpoint the source of delay—usually the doubts of specific people or units—you can and should design your approach to help your proponents on the other side convert the doubters, giving them the data they need and supplying them with arguments they can use internally to address specific concerns.

Fourth, you may need to shift your focus away from the bargaining table and instead interact extensively and informally with the other side as it tries to reach a position internally. With some bitterness, U.S. trade negotiators dealing with seemingly immovable Japanese counterparts have puzzled, “Before the Japanese have reached a consensus, they can’t negotiate; after consensus is attained on the other side, there is nothing to negotiate.” Your objective is to get your interests, point of view, and plans incorporated into *their* consensus process. If you wait to do this until you are at the bargaining table, you will have to pry open their now-fixed position, reached before the players officially sit down to negotiate. As John Graham and Yoshihiro Sano, authors of *Doing Business with the New Japan*, explain, “In Japan, what goes on at the negotiation table is really a ritual approval of what has already been decided through numerous individual conversations in restaurants, bathhouses, and offices. In Japan, the negotiating table is not a place for changing minds. Persuasive appeals are not appropriate or effectual.” Often, breaking apart a previously settled mind-set requires near-collusion between you and their bargaining team, in which you make such a public fuss that their team returns home with a powerful argument to reopen the process.

And finally, you’ll need to adjust your own expectations—and your organization’s—of how long the deal will take. Failure to do so can put you into a bargaining vise, with your home management team pressuring you for quick results and the relaxed other side exploiting your own side’s impatience. Caught in the middle, you may feel as though your choices are limited: You can walk away (and undermine your effectiveness and waste resources), or you can make major concessions (and dilute the value of the deal). In general, if you think your side cannot handle a lengthy negotiation, you may be better off avoiding the negotiation altogether.

As frustrating as the need for consensus may be to those from fast-moving cultures, there can be offsetting advantages. A slow and painstaking negotiation process may lead to a decision that has more staying power. What’s more, actual implementation may occur more quickly than with a top-down agreement. People may also be more attached to the deal after investing so much in it. In one case, a U.S. firm negotiated for two years with a major Japanese company to create a large-scale joint venture under Japanese control. During this excruciatingly detailed process, the negotiations were halted several times due to what the Japanese team described as a break-

## HOW NEGOTIATION-SPECIFIC EXPECTATIONS SHAPE THE PROCESS

In addition to the general cultural differences that influence negotiations, different cultures will influence expectations as to what the specific process and outcome will look like. The expectations revolve around four key areas:

**Underlying View of the Process.** People may view the negotiation process as cooperative (win-win) or competitive (win-lose). Some people will seek mutual advantage; others won’t. Making assumptions about which view the other side will take can be misleading and even dangerous.

**Approach to Building Agreement.** U.S. negotiators often seek agreement on specifics first, building up toward an overall deal. Their Chinese counterparts often focus first on what seems to many Americans to be a very general historical and national frame for discussion. Then, as many French negotiators do, they seek agreement on general principles, later working through the details. This tendency also manifests itself in thought processes: Many Chinese tend to reason about the whole while Westerners often proceed by breaking the whole into parts and reasoning incrementally.

**Form of Agreement.** What level of detail is required? In many parts of East Asia, negotiators are content with a fairly broad agreement that focuses on general principles rather than detailed rules. By contrast, North American and European executives often insist on a detailed contract in which as many contingencies as possible are foreseen.

**Implementation of Agreement.** Is adherence to an agreement expected or contingent? U.S. negotiators generally expect to stick with the letter of the contract, treating renegotiation as a very unusual, even aberrant, event. In many other cultures, an agreement is merely a starting point in what is expected to be an evolving relationship; renegotiation may occur as warranted under the assumption that all contingencies cannot possibly be foreseen. The precise terms are expected to unfold as the process does. Moreover, while a U.S. negotiator can rely on its court system to serve as a fairly reliable enforcer of contracts, there is little such expectation in many parts of the world.

down in its consensus process. Each time, however, the Japanese company resumed negotiations with a stronger consensus on the central role of the deal to its long-term global strategy.


When a European firm unexpectedly made a tender offer for the entire U.S. business, the Japanese company had to decide whether to drop out of the process or seek to acquire the whole firm. After years of negotiations and mentally integrating the U.S. operations into its long-term strategy during its exhaustive consensus process, the Japanese company had essentially fallen in love with its target. Rather than face the internal organizational costs of “losing,” it was willing to pay an extraordinarily high price for the U.S. firm—far more than it would have paid had it not been part of the frustratingly long consensus process.

In short, you should not be blindsided by the need for consensus. It may require more time, relationship building, and information than expected. Dealing with a consensus process effectively requires facilitating it while doing what you can—with real external deadlines and competitors—to speed it up, but also recognizing what you can’t do and setting realistic expectations.

**Coalition Building.** Decision processes don’t always come in pure forms such as top down or consensus. Sometimes, they’re less defined and don’t require the agreement of every player but rather the support of a sufficient subset of players—a “winning coalition” that can effectively pressure, sidestep, or override dissenters. At other times, a “blocking coalition” that has interests no one can ultimately overrule can bring a proposal to a halt. Pirelli’s fail-

ure to win over Continental Gummiwerke’s all-important management board and labor force in its failed takeover foray into Germany left a blocking entity in control. Stone Container in its negotiations with the Honduran president, and Armand Hammer in his attempts at an agreement with Deng Xiaoping both fell victim to ad-hoc blocking coalitions. Navigating such coalitions requires an understanding of the likely interests and options of the players who will be needed as allies in a winning coalition or who may seek to form a blocking entity.

Governance processes often drive these considerations, so taking a close look at the key players and how they work together can help you anticipate opportunities and obstacles as well as appropriately sequence your approach. For example, one foreign would-be acquirer of a German company first approached the supervisory board and obtained agreement in principle to go forward. Then, to the surprise of the board, the acquirer suddenly put the deal on hold. The acquirer had delayed the negotiations in order to approach the German company’s management board, lay out the terms it had proposed, and offer it total veto power over the transaction. In reality, the management board already had the ability to obstruct the deal, but the move felt like a concession because the board was not accustomed to being incorporated into the process in this way. Finally, after spending a great deal of time working out the strategy with the management board, the acquirer went back to the shareholders on the supervisory board to conclude what became a very successful transaction.

In closing, it’s worth noting that cultural allegiances are often not as simple as they appear. While national culture can tell you a lot about the person sitting across the table from you, every individual represents a number of cultures, each of which can affect negotiation style. Beyond her French citizenship, an ABB executive may well be from Alsace, have a Danish parent, feel staunchly European, have studied electrical engineering, and earned an MBA from the University of Chicago. Gender, ethnicity, and profession all play a role. But along with assessing the person across the table is figuring out the intricacies of the larger organization behind her. And to do that, you need to diligently map the governance and decision-making processes, which can take devilishly unexpected forms across borders. Then, you must design your strategy and tactics so that you’re reaching the right people, with the right arguments, in a way that allows you maximum impact on the process to yield a sustainable deal. 

## FURTHER READING

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# Breakthrough Bargaining

by Deborah M. Kolb and Judith Williams



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# Breakthrough Bargaining

*Sometimes the hardest part of an informal negotiation is persuading the other side to deal with the issues. Understanding the dynamics of the “shadow negotiation” can help get things rolling.*

**by Deborah M. Kolb and Judith Williams**

**N**EGOTIATION WAS ONCE CONSIDERED AN ART practiced by the naturally gifted. To some extent it still is, but increasingly we in the business world have come to regard negotiation as a science—built on creative approaches to deal making that allow everyone to walk away winners of sorts. Executives have become experts at “getting to yes,” as the now-familiar terminology goes.

Nevertheless, some negotiations stall or, worse, never get off the ground. Why? Our recent research suggests that the answers lie in a dynamic we have come to call the “shadow negotiation”—the complex and subtle game people play before they get to the table and continue to play after they arrive. The shadow negotiation doesn’t determine the “what” of the discussion, but the “how.” Which

interests will hold sway? Will the conversation's tone be adversarial or cooperative? Whose opinions will be heard? In short, how will bargainers deal with each other?

The shadow negotiation is most obvious when the participants hold unequal power – say, subordinates asking bosses for more resources or new employees engaging with veterans about well-established company policies. Similarly, managers who, because of their race, age, or gender, are in the minority in their companies may be at a disadvantage in the shadow negotiation. Excluded from important networks, they may not have the personal clout, experience, or organizational standing to influence other parties. Even when the bargainers are peers, a negotiation can be blocked or stalled – undermined by hidden assumptions, unrealistic expectations, or personal histories. An unexamined shadow negotiation can lead to silence, not satisfaction.

It doesn't have to be that way. Our research identified strategic levers – we call them power moves, process moves, and appreciative moves – that executives can use to guide the shadow negotiation. In situations in which the other person sees no compelling need to negotiate,

*power moves* can help bring him or her to the table. When the dynamics of decision making threaten to overpower a negotiator's voice, *process moves* can reshape the negotiation's structure. And when talks stall because the other party feels pushed or misunderstandings cloud the real issues, *appreciative moves* can alter the tone or atmosphere so that a more collaborative exchange is possible. These strategic moves don't guarantee that bargainers will walk away winners, but they help to get stalled negotiations out of the dark of unspoken power plays and into the light of true dialogue.

## Power Moves

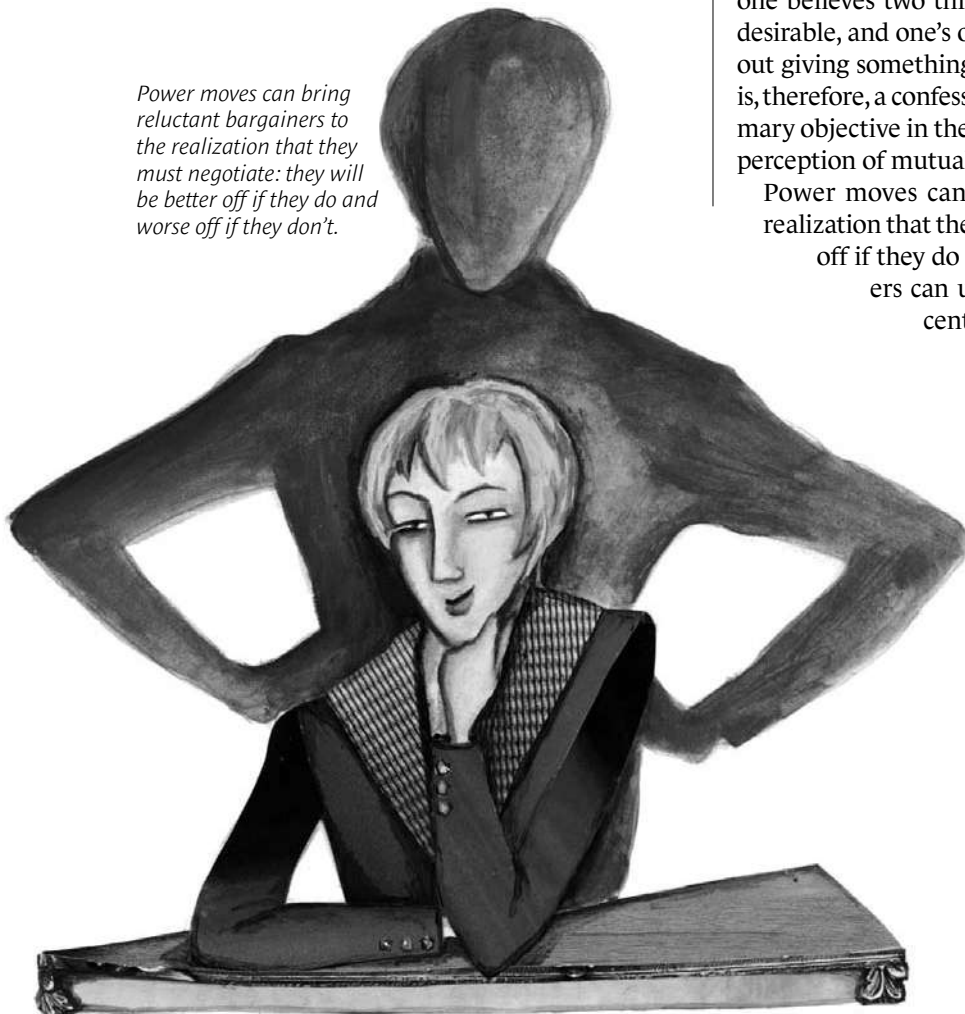
In the informal negotiations common in the workplace, one of the parties can be operating from a one-down position. The other bargainer, seeing no apparent advantage in negotiating, stalls. Phone calls go unanswered. The meeting keeps being postponed or, if it does take place, a two-way conversation never gets going. Ideas are ignored or overruled, demands dismissed. Such resistance is a natural part of the informal negotiation process. A concern will generally be accorded a fair hearing only when someone believes two things: the other party has something desirable, and one's own objectives will not be met without giving something in return. Willingness to negotiate is, therefore, a confession of mutual need. As a result, a primary objective in the shadow negotiation is fostering the perception of mutual need.

Power moves can bring reluctant bargainers to the realization that they must negotiate: they will be better off if they do and worse off if they don't. Bargainers

can use three kinds of power moves. Incentives emphasize the proposed value to the other person and the advantage to be gained from negotiating. Pressure levers underscore the consequences to the other side if stalling continues. And the third power move, enlisting allies, turns up the volume on the incentives or on the pressure. Here's how these strategies work.

**Offer incentives.** In any negotiation, the other party controls something the bargainer needs: money, time, cooperation, communication, and so on. But the bargainer's needs alone aren't enough to bring anyone else to the table. The other side must recognize that benefits will accrue from the negotiation. These benefits

*Power moves can bring reluctant bargainers to the realization that they must negotiate: they will be better off if they do and worse off if they don't.*



## About the Research

We became aware of the shadow negotiation as we interviewed, over a five-year period, more than 300 executive women to probe their work experiences in formal and informal negotiations. We spoke with lawyers and bankers, accountants and entrepreneurs, consultants and marketers, project managers and account executives across a range of industries and organizational types. In each interview, we asked about the executive's best

and worst negotiation experience. After describing these scenarios, the women wanted to talk with us not only about what worked and why but also about how they might have better handled challenging situations.

During this interviewing and the subsequent writing of *The Shadow Negotiation*, we came to believe that these dialogues and the study's findings have implications for both men and women. The shadow negotiation is where issues of parity, or the equivalence of power, get settled. And parity—its presence or absence—determines to a great extent whether a negotiation takes place at all and on what terms.

both of the divisions. Second, realizing that sales would be more reluctant than production to negotiate any changes in the organization's decision-making processes, she worked with billing to speed up processing the expense-account checks so that salespeople were reimbursed more quickly, a move that immediately got the attention of everyone in sales. By demonstrating her value to sales and production, Sweeney encouraged the two division managers to work with her on improving their joint decision-making process. (For the complete story of Fiona Sweeney's campaign to revamp operations, see the sidebar "The Shadow Campaign.")

Creating value and making it visible are key power moves in the

must not only be visible – that is, right there on the table – but they must also resonate with the other side's needs. High-tech executive Fiona Sweeney quickly recognized this dynamic when she tried to initiate informal talks about a mission-critical organizational change.

Shortly after being promoted to head operations at an international systems company, Sweeney realized that the organization's decision-making processes required fundamental revamping. The company operated through a collection of fiefdoms, with little coordination even on major accounts. Sales managers, whose bonuses were tied to gross sales, pursued any opportunity with minimal regard for the company's ability to deliver. Production scrambled to meet unrealistic schedules; budgets and quality suffered. Sweeney had neither the authority nor the inclination to order sales and production to cooperate. And as a newcomer to corporate headquarters, her visibility and credibility were low.

Sweeney needed a sweetener to bring sales and production together. First, she made adjustments to the billing process, reducing errors from 7.1% to 2.4% over a three-month period, thereby cutting back on customer complaints. Almost immediately, her stock shot up with

shadow negotiation. A bargainer can't leave it up to the other party to puzzle through the possibilities. The benefits must be made explicit if they are to have any impact on the shadow negotiation. When value disappears, so do influence and bargaining power.

**Put a price on the status quo.** Abba Eban, Israel's former foreign minister, once observed that diplomats have "a passionate love affair with the status quo" that blocks any forward movement. The same love affair carries over into ordinary negotiations in the workplace. When people believe that a negotiation has the potential to produce

*Creating value and making it visible are key power moves in the shadow negotiation. A bargainer can't leave it up to the other party to puzzle through the possibilities.*

bad results for them, they are naturally reluctant to engage on the issues. Until the costs of *not* negotiating are made explicit, ducking the problem will be the easier or safer course.

To unlock the situation, the status quo must be perceived as less attractive. By exerting pressure, the bargainer can raise the cost of business-as-usual until the other side begins to see that things will get worse unless both sides get down to talking.

That is exactly what Karen Hartig, one of the women in our study, did when her boss dragged his heels about giving her a raise. Not only had she been promoted without additional pay, but she was now doing two jobs because

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## The Shadow Campaign

A single strategic move seldom carries the day. In combination, however, such moves can jump-start workplace negotiations and keep them moving toward resolution.

Consider the case of Fiona Sweeney, the new operations chief introduced earlier in this article. She had neither the authority nor the personal inclination to order the sales and production divisions of her company to cooperate. Instead, she fashioned a series of strategic moves designed to influence the negotiations.

**Power Moves.** Having established her credibility with sales by increasing the turnaround time on expense-account reimbursements, Sweeney knew she needed to up the ante for maintaining the status quo, which created hardships for production and was frustrating customers. It was particularly important to bring pressure to bear on the sales division, since the informal reward systems, and many of the formal ones, currently worked to its benefit. To disturb the equilibrium, Sweeney began to talk in management meetings about a bonus system that

would penalize the sales division whenever it promised more than production could deliver. Rather than immediately acting on this threat, however, she suggested creating a cross-divisional task force to explore the issues. Not surprisingly, sales was eager to be included. Moreover, the CEO let key people know that he backed Sweeney's proposal to base bonuses on profits, not revenues.

**Process Moves.** Sweeney then moved to exert control over the agenda and build support for the changes she and the CEO envisioned. She started an operations subgroup with the heads of quality control and production, mobilizing allies in the two areas most directly affected by the sales division's behavior. Soon they developed a common agenda and began working in concert to stem the influence of sales in senior staff meetings. On one occasion, for example, Sweeney proposed assigning a low priority to orders that had not been cleared by the operations subgroup. Quality control and production roundly supported the suggestion, which was soon implemented. Through these process moves, Sweeney built a coalition that shaped the subsequent negotiations. But she did something more.

Power and process moves often provoke resistance from the other side.

Sweeney prevented resistance from becoming entrenched within the sales division through a series of appreciative moves.

**Appreciative Moves.** To deepen her understanding of the issues sales confronted, Sweeney volunteered her operations expertise to the division's planning team. By helping sales develop a new pricing-and-profit model, she not only increased understanding and trust on both sides of the table, but she also paved the way for dialogue on other issues—specifically the need for change in the company's decision-making processes.

Most important, Sweeney never forced any of the players into positions where they would lose face. By using a combination of strategic moves, she helped the sales division realize that change was coming and that it would be better off helping to shape the change than blocking it. In the end, improved communication and cooperation among divisions resulted in increases in both the company's top-line revenues and its profit margins. With better product quality and delivery times, sales actually made more money, and production no longer had the burden of delivering on unrealistic promises generated by sales. Customers—and the CEO—were all happy.

the first position had never been filled. Although her boss continued to assure her of his support, nothing changed. Finally, Hartig was so exasperated that she returned a headhunter's call. The resulting job offer provided her with enough leverage to unfreeze the talks with her boss. No longer could he afford to maintain the status quo. By demonstrating that she had another alternative, she gave him the push—and the justification—he needed to argue forcefully on her behalf with his boss and with human resources.

**Enlist support.** Solo power moves won't always do the job. Another party may not see sufficient benefits to negotiating, or the potential costs may not be high enough

to compel a change of mind. When incentives and pressure levers fail to move the negotiation forward, a bargainer can enlist the help of allies.

Allies are important resources in shadow negotiations. They can be crucial in establishing credibility, and they lend tangible support to incentives already proposed. By providing guidance or running interference, they can favorably position a bargainer's proposals before talks even begin. At a minimum, their confidence primes the other party to listen and raises the costs of not negotiating seriously.

When a member of Dan Riley's squadron faced a prolonged family emergency, the air force captain needed to renegotiate his squadron's flight-rotation orders. The

matter was particularly sensitive, however, because it required the consent of the wing commander, two levels up the chain of command. If Riley approached the commander directly, he risked making his immediate superior look bad since his responsibilities covered readiness planning. To bridge that difficulty, Riley presented a draft proposal to his immediate superior. Once aware of the problem, Riley and his superior anticipated some of the objections the commander might raise and then alerted the wing commander to the general difficulties posed by such situations. When Riley finally presented his proposal to the commander, it carried his immediate superior's blessing, and so his credibility was never questioned; only the merits of his solution were discussed.

## Process Moves

Rather than attempt to influence the shadow negotiation directly through power moves, a bargainer can exercise another kind of strategic move, the process move. Designed to influence the negotiation process itself, such moves can be particularly effective when bargainers are caught in a dynamic of silencing – when decisions are being made without their input or when colleagues interrupt them during meetings, dismiss their comments, or appropriate their ideas.

While process moves do not address the substantive issues in a negotiation, they directly affect the hearing those issues receive. The agenda, the prenegotiation groundwork, and the sequence in which ideas and people are heard – all these structural elements influence others' receptivity to opinions and demands. Working behind the scenes, a bargainer can plant the seeds of ideas or can marshal support before a position becomes fixed in anyone's mind. Consensus can even be engineered so that the bargainer's agenda frames the subsequent discussion.

**Seed ideas early.** Sometimes parties to a negotiation simply shut down and don't listen; for whatever reason, they screen out particular comments or people. Being ignored in a negotiation

doesn't necessarily result from saying too little or saying it too hesitantly. When ideas catch people off guard, they can produce negative, defensive reactions, as can ideas presented too forcefully. Negotiators also screen out the

*The agenda, the prenegotiation groundwork, and the sequence in which ideas and people are heard – all these structural elements influence others' receptivity to opinions and demands.*

familiar: if they've already heard the speech, or a close variant, they stop paying attention.

Joe Lopez faced this dilemma. Lopez, a fast-track engineer who tended to promote his ideas vigorously in planning meetings, began to notice that his peers were tuning him out – a serious problem since departmental resources were allocated in these sessions. To remedy the situation, Lopez scheduled one-on-one lunch meetings with his colleagues. On each occasion, he mentioned how a particular project would benefit the other manager's department and how they could work together to ensure its



*A bargainer can use process moves to build receptivity where a direct or aggressive approach might encounter resistance.*

completion. As a result of this informal lobbying, Lopez found he no longer needed to oversell his case in the meetings. He could make his ideas heard with fewer words and at a lower decibel level.

Preliminary work like this allows a bargainer to build receptivity where a direct or aggressive approach might encounter resistance. Once the seeds of an idea have been planted, they will influence how others view a situation, regardless of how firmly attached they are to their own beliefs and ideas.

**Reframe the process.** Negotiators are not equally adept in all settings. Highly competitive approaches to problem solving favor participants who can bluff and play the game, talk the loudest, hold out the longest, and think fastest on their feet. Bargainers who are uncomfortable

*Appreciative moves allow opportunities for additional information to surface and afford the other side more time to rethink ideas and adjust initial predilections.*

with this kind of gamesmanship can reframe the process, shifting the dynamic away from personal competition. That's what Marcia Philbin decided to do about the way in which space was allocated in her company. Extra room and equipment typically went to those who pushed the hardest, and Philbin never fared well in the negotiations. She also believed that significant organizational costs always accompanied the process since group leaders routinely presented the building administrator with inflated figures, making it impossible to assess the company's actual requirements.

Positioning herself as an advocate not only for her department but also for the company, Philbin proposed changing the process. Rather than allocating space in a series of discrete negotiations with the space administrator, she suggested, why not collaborate as a group in developing objective criteria for assessing need? Management agreed, and Philbin soon found herself chairing the committee created to produce the new guidelines. Heated arguments took place over the criteria, but Philbin was now positioned to direct the discussions away from vested and parochial interests toward a greater focus on organizational needs.

Within organizations or groups, negotiations can fall into patterns. If a bargainer's voice is consistently shut out of discussions, something about the way negotiations are structured is working against his or her active participation. A process move may provide a remedy because it will influence how the discussion unfolds and how issues emerge.

**Build consensus.** Regardless of how high a bargainer is on the organizational ladder, it is not always possible—or wise—to impose change on a group by fiat. By lob-

bying behind the scenes, a bargainer can start to build consensus before formal decision making begins. Unlike the first process move, which aims at gaining a hearing for ideas, building consensus creates momentum behind an agenda by bringing others on board. The growing support isolates the blockers, making continued opposition harder and harder. Moreover, once agreement has been secured privately, it becomes difficult (although never impossible) for a supporter to defect publicly.

As CEO of a rapidly growing biotechnology company, Mark Chapin gradually built consensus for his ideas on integrating a newly acquired research boutique into the existing company. Chapin had two goals: to retain the acquired firm's scientific talent and to rationalize the research funding process. The second goal was at odds with

the first and threatened to alienate the new scientists. To mitigate this potential conflict, Chapin focused his attention on the shadow negotiation. First, he met one-on-one with key leaders of the board and the research staffs of both companies. These private talks provided him with a strategic map that showed where he would find support and where he was likely to meet challenges. Second, in another round of talks, Chapin paid particular attention to the order in which he approached people. Beginning with the most supportive person, he got the key players to commit, one by one, to his agenda before opposing factions could coalesce. These preliminary meetings positioned him as a collaborator – and, equally important, as a source of expanding research budgets. Having privately built commitment, Chapin found that he didn't need to use his position to dictate terms when the principal players finally sat down to negotiate the integration plan.

## Appreciative Moves

Power moves exert influence on the other party so that talks get off the ground. Process moves seek to change the ground rules under which negotiations play out. But still, talks may stall. Two strong advocates may have backed themselves into respective corners. Or one side, put on the defensive, even inadvertently, may continue to resist or raise obstacles. Communication may deteriorate, turn acrimonious, or simply stop as participants focus solely on their own demands. Wariness stifles any candid exchange. And without candor, the two sides cannot address the issues together or uncover the real conflict.

Appreciative moves break these cycles. They explicitly build trust and encourage the other side to participate in a dialogue. Not only do appreciative moves shift the dynamics of the shadow negotiation away from the adversarial, but they also hold out a hidden promise. When bargainers demonstrate appreciation for another's concerns, situation, or "face," they open the negotiation to the dif-



ferent perspectives held by that person and to the opinions, ideas, and feelings shaping those perspectives. Appreciative moves foster open communication so that differences in needs and views can come to the surface without personal discord. Frequently the participants then discover that the problem they were worrying about is not the root conflict, but a symptom of it. And at times, before a negotiation can move toward a common solution, the participants must first experience mutuality, recognizing where their interests and needs intersect. A shared problem can then become the basis for creative problem solving.

**Help others save face.** Image is a concern for everyone. How negotiators look to themselves and to others who matter to them often counts as much as the particulars of an agreement. In fact, these are seldom separate. "Face" captures what people value in themselves and the qualities they want others to see in them. Negotiators go to great lengths to preserve face. They stick to their guns against poor odds simply to avoid losing face with those who are counting on them. If a bargainer treads on another's self-image—in front of a boss or colleague, or even privately—his or her demands are likely to be rejected.

Sensitivity to the other side's face does more than head off resistance: it lays the groundwork for trust. It conveys that the bargainer respects what the other is trying to accomplish and will not do anything to embarrass or undermine that person. This appreciation concedes nothing, yet as Sam Newton discovered, it can turn out to be the only way to break a stalemate.

Newton's new boss, transferred from finance, lacked experience on the operations side of the business. During departmental meetings to negotiate project schedules and funding, he always rejected Newton's ideas. Soon it was routine: Newton would make a suggestion and before he got the last sentence out, his boss was issuing a categorical veto.

*Appreciative moves foster open communication so that differences in needs and views can come to the surface without personal discord.*

Frustrated, Newton pushed harder, only to meet increased resistance. Finally, he took a step back and looked at the situation from his boss's perspective. Rubber-stamping Newton's proposals could have appeared as a sign of weakness at a time when his boss was still establishing his credentials. From then on, Newton took a different tack. Rather than present a single idea, he offered an array of options and acknowledged that the final decision rested with his boss. Gradually, his boss felt less need to assert his authority and could respond positively in their dealings.

Bosses aren't the only ones who need to save face; colleagues and subordinates do, too. Team members avoid peers who bump a problem upstairs at the first sign of trouble, making everyone appear incapable of producing a solution. Subordinates muzzle their real opinions once they have been belittled or treated dismissively by superiors. In the workplace, attention to face is a show of respect for another person, whatever one's corporate role. That respect carries over to the shadow negotiation.



**Keep the dialogue going.** Sometimes, talks don't get off the ground because the timing is not right for a participant to make a decision; information may be insufficient, or he or she is simply not ready. People have good reasons – at least, reasons that make sense to them – for thinking it's not yet time to negotiate. Appreciating this disposition doesn't mean abandoning or postponing a negotiation. Instead, it requires that a bargainer keep the dialogue going without pushing for immediate agreement. This appreciative move allows an opportunity for additional information to come to the surface and affords the other side more time to rethink ideas and adjust initial predilections.

Francesca Rossi knew instinctively that unless she kept the communication lines open, discussions would derail about the best way for her software firm to grow. The company had recently decided to expand by acquiring promising applications rather than developing them in-house from scratch. As head of strategic development,

*By creating opportunities to discover something new and unexpected, appreciative moves can break a stalemate. As understanding deepens on both sides, reaching a mutual resolution becomes increasingly possible.*

Rossi targeted a small start-up that designed state-of-the-art software for office computers to control home appliances. The director of research, however, was less than enthusiastic about acquiring the firm. He questioned the product's commercial viability and argued that its market would never justify the acquisition cost.

Needing his cooperation, Rossi pulled back. Instead of actively promoting the acquisition, she began to work behind the scenes with the start-up's software designers and industry analysts. As Rossi gathered more data in support of the application's potential, she gradually drew the director of research back into the discussions. He dropped his opposition once the analysis convinced him that the acquisition, far from shrinking his department's authority, would actually enlarge it. Rossi's appreciative move had given him the additional information and time he needed to reevaluate his original position.

Not everyone makes decisions quickly. Sometimes people can't see beyond their initial ideas or biases. Given time to mull over the issues, they may eventually reverse course and be more amenable to negotiating. As long as the issue isn't forced or brought to a preemptive conclusion – as long as the participants keep talking – there's a chance that the resistance will fade. What seems unreasonable at one point in a negotiation can become more acceptable at another. Appreciative moves that keep the dialogue going allow the other side to progress at a comfortable speed.

**Solicit new perspectives.** One of the biggest barriers to effective negotiation and a major cause of stalemate is the tendency for bargainers to get trapped in their own perspectives. It's simply too easy for people to become overly enamored of their opinions. Operating in a closed world of their making, they tell themselves they are right and the other person is wrong. They consider the merits of their own positions but neglect the other party's valid objections. They push their agendas, merely reiterating the same argument, and may not pick up on cues that their words aren't being heard.

It's safe to assume that the other party is just as convinced that his or her own demands are justified. Moreover, bargainers can only speculate what another's agenda might be – hidden or otherwise. Appreciative moves to draw out another's perspectives help negotiators understand why the other party feels a certain way. But these moves serve more than an instrumental purpose, doing more than add information to a bargainer's arsenal. They signal to the other side that differing opinions and perspectives are important. By creating opportunities to discover something new and unexpected, appreciative moves can break a stalemate. As understanding deepens on both sides of the table, reaching a mutual resolution becomes increasingly possible.

Everyone agreed that a joint venture negotiated by HMO executive Donna Hitchcock between her organization and an insurance company dovetailed with corporate objectives on both sides. The HMO could expand its patient base and the insurance carrier its enrollment.

Although the deal looked good on paper, implementation stalled. Hitchcock couldn't understand where the resistance was coming from or why. In an attempt to unfreeze the situation, she arranged a meeting with her counterpart from the insurance company. After a brief update, Hitchcock asked about any unexpected effects the joint venture was exerting on the insurance carrier's organization and on her counterpart's work life. That appreciative move ultimately broke the logjam. From the carrier's perspective, she learned, the new arrangement stretched already overworked departments and had not yet produced additional revenues to hire more staff. Even more important, her counterpart was personally bearing the burden of the increased work.

Hitchcock was genuinely sympathetic to these concerns. The extra work was a legitimate obstacle to the joint venture's successful implementation. Once she understood the reason behind her counterpart's resistance, the two were able to strategize on ways to alleviate the overload until the additional revenues kicked in.

Through these appreciative moves – actively soliciting the other side's ideas and perspectives, acknowledging their importance, and demonstrating that they are taken

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seriously – negotiators can encourage the other person to work with them rather than against them.

There's more to negotiation than haggling over issues and working out solutions. The shadow negotiation, though often overlooked, is a critical component. Whether a bargainer uses power, process, or appreciative moves in the shadow negotiation depends on the demands of the situation. Power moves encourage another party to recognize the need to negotiate in the first place. They help bring a reluctant bargainer to the table. Process moves create a context in which a bargainer can shape the negotiation's agenda and dynamic so that he or she can be a more effective advocate. Appreciative moves engage the other party in a collaborative exchange by fostering trust

and candor in the shadow negotiation. While power and process moves can ensure that a negotiation gets started on the right foot, appreciative moves can break a stalemate once a negotiation is under way. By broadening the discourse, appreciative moves can also lead to creative solutions. Used alone or in combination, strategic moves in the shadow negotiation can determine the outcome of the negotiation on the issues.

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Most of the negotiating stories used in this article have been adapted from *The Shadow Negotiation: How Women Can Master the Hidden Agendas That Determine Bargaining Success* (Simon & Schuster, 2000) and the authors' interviews with businesspeople. To respect interviewees' candor and to protect their privacy, their identities and situations have been disguised, sometimes radically.

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HARVARD

# Management Update

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## **How to Negotiate with a Hard-Nosed Adversary**

by Anne Field

# How to Negotiate with a Hard-Nosed Adversary

*If you go into a negotiation expecting the worst, you're likely to get it. But with careful preparation and the right game plan, you can turn the tables on an aggressive opponent.*

BY ANNE FIELD

**Y**OU'RE ABOUT TO negotiate a new contract with a major supplier, a guy with a take-no-prisoners approach who's been known to make grown men cry. But you're no wimp, so you enter the discussion ready to go *mano a mano* with your opponent, your resolve to win every bit as firm as his—and you come out with a better deal than you'd expected.

Sound like a realistic scenario? It's actually wishful thinking, according to a recent series of six studies. Researchers found that negotiators who believed they were going up against a tough opponent entered the proceedings with reduced expectations and wound up with a lower outcome than they'd predicted. In one mock 30-minute negotiation over a bonus, for example, participants who anticipated tough going wound up with \$13,130, while those expecting a less competitive opponent came away with \$15,540.

"People think they will be very competitive when faced with a competitive opponent," says Kristina Diekmann, a management professor at the University of Utah's David Eccles School of Business (Salt Lake City) and a coauthor of the studies. "But when faced with the actual situation, they back down."

Why is it that a person entering a difficult negotiation doesn't rise to the occasion? Much of it has to do with motivations. People have a desire to reach agreement and avoid impasse in negotiations.

Thus, when faced with a seemingly competitive opponent, they back down to ensure agreement. Could people capitalize on this?

Yes, suggests research conducted by Diekmann and her colleagues—Ann Tenbrunsel of the University of Notre Dame's Mendoza College of Business (Notre Dame, Ind.) and Adam Galinsky of Northwestern University's Kellogg School of Management (Evanston, Ill.). Being perceived as competitive often works to your advantage. Conversely, if you assume

***When you're up against a steamroller, it's crucial to anticipate any arguments or situations that would put you in a defensive position.***

your adversary is going to be formidable, you may respond to her in a way that encourages aggressive behavior. "It becomes a self-fulfilling prophecy," Diekmann explains.

But just being aware that your natural tendency in a tough situation may be to retreat is half the battle. Armed with that knowledge, you can take special steps to minimize the effect of your hard-nosed adversary's approach.

## **Get to know your opponent**

For starters, don't take your adversary's tough-guy reputation at face value. "The general tendency," says Diekmann, "is for people to overestimate how competitive their opponent is going to be." Try to engage your adversary in some preliminary negoti-

ating over a relatively minor element of the process, such as where to hold the discussion. That way, you can get a feel for how flexible and friendly the individual really is.

You'd be surprised at the number of paper tigers cowering behind a scary growl. Blaine McCormick, a professor of management at Baylor University in Waco, Tex., recalls the story of a small-business owner who was trying to win parking concessions from his landlord. Not only did he want more spaces, he also wanted the landlord to stop towing unauthorized cars. When he asked other landlords in the area about their policies, he found that not only were they generally willing to make such concessions, they were also deathly afraid of legal action by business tenants. Playing a hunch, the entrepreneur started a new round of negotiations with his landlord by indicating that he was ready to go to small claims court. Lo and behold, the landlord quickly backed down.

If you've dealt with your adversary before, it's sometimes best to address his hard-nosed behavior head-on. "Usually, once you call a bully on his behavior, he stops," says Mark Gordon, a senior adviser to the Harvard Negotiation Project and director of the Boston consulting firm Vantage Partners. A misunderstanding may be the source of your opponent's aggressive style. For example, a vendor who stonewalls new contract discussions because he believes, mistakenly, that his counterpart at the manufacturing company has complained about him to his boss. Speaking directly about the perceived difficulty clears the air, in turn freeing up the negotiation process.

## **Reduce the one-on-one time**

If you know your opponent is a real killer, consider reducing the time you spend with her. "You want to deny them the power of in-person intimidation," says G. Richard Shell, Thomas Gerrity Professor at the Wharton School of the University of Pennsylvania (Philadelphia) and author of

*Bargaining for Advantage.* Try to conduct as much business as possible through another channel—for example, e-mail or the telephone.

And don't be afraid to bring in reinforcements. "There's nothing to be gained by going in alone if you don't think you can deal with the situation," says Baylor's McCormick. Ask your boss or a colleague to join you, and suggest that the other side bring more people to the table as well. (But first do some research to determine who on the other side might best dilute your opponent's usual demeanor.)

### Plan comebacks and strategic moves ahead of time

When you're up against a steamroller, it's crucial to anticipate any arguments or situations that might put you in a defensive position. "You need comebacks that shift the opponent's perception," says Deborah M. Kolb, professor of management at the Simmons School of Management in Boston and coauthor of *Everyday Negotiation*. She points to the background research the president of a small headhunting firm did prior to negotiating a new contract with a longtime client. During the actual negotiation, the client contended that he wasn't getting enough value for his money. But the headhunter had already researched the market to see what competitors were charging for similar services, so she confidently stood by her pricing. "Tough negotiations can take on their own momentum," Kolb says. "You need to plan ways to break it."

Decide in advance how you'll buy yourself more time if things aren't going well. That means arming yourself with credible suggestions to draw on. A few examples: "I have to go back to my office for those figures," "I'll need to check with my boss first," or "I think we ought to take a break."

Another way to prevent your adversary from bullying you about time issues, especially if you're working under a

tighter deadline than the other side, is to establish a longer time frame for the negotiations without revealing that you're really under the gun. (Example: "I think we'll need about a week. What do you think?") Then, if your opponent needs more time after the agreed-upon date passes, he will be at a disadvantage. After all, you both agreed to the timetable; you kept your end of the bargain. "You turn the tables on them," says Vantage Partners' Gordon.

### Research the options

It's best to avoid a situation "in which you go head-to-head on a single issue, where you dig a line in the sand and can't go any further," says Judith

**Knowing your BATNA will help you avoid being browbeaten into an agreement you'll later regret.**

White, assistant professor of management at the Tuck School of Business at Dartmouth College (Hanover, N.H.).

One way to avoid such an impasse is to come prepared with various proposals—for example, a one-time agreement to supply a manufacturer with machine parts for \$100,000 versus a three-year contract that grants the manufacturer a 15% discount on each shipment. By tossing out alternatives, you'll get a feel for just what your opponent's priorities are—price is rarely the only consideration. In the process of discussing alternatives, you may discover that your opponent can be more flexible than you thought.

### Identify your BATNA

When you're desperate to make a deal, that weakens your bargaining position. To strengthen your hand, think through what would happen if you were unable to strike a deal. In other words, what's your BATNA? (That is, your Best Alternative to a Negotiated Agreement.) The key here is to remember that you may not be the only one who needs the deal. Do some research beforehand to see what would happen to the other side if you were to back out.

As an entertainment company executive was about to enter into negotiations with a key supplier, he learned that the vendor was going to ask for a significant increase, Gordon relates. The executive told one of his engineering teams to approach competitors about the possibility of switching the company's business. When the supplier got wind of it, they "went from feeling they had the upper hand to fearing their second-largest customer was at risk," says Gordon. In the end, the supplier asked for only a modest increase.

Knowing your BATNA makes it easy to determine the worst-case terms you'll accept, which means that you're much less likely to be browbeaten into an agreement that you'll later regret. Plus, when your opponent digs in her heels, you'll know it's time to do the same.

Bobbie Little, leader of the CEO executive coaching division of the outplacement firm DBM (New York City), recalls a recent negotiation with a prospective client. When he refused to budge on price, says Little, "I stuck to what I knew the appropriate price should be and explained I just couldn't go below it."

When the client realized that Little was willing to end the negotiation then and there, he agreed to a higher figure. "I called his bluff," she says. ❖

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*Anne Field, based in Pelham, N.Y., writes for a number of major business publications. She can be reached at MUOpinion@hbsp.harvard.edu*

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### RESOURCES

*Everyday Negotiation: Navigating the Hidden Agendas in Bargaining*  
by Deborah M. Kolb and Judith Williams  
Jossey-Bass • 2003

*Bargaining for Advantage*  
by G. Richard Shell  
Penguin • 1999

HARVARD  
*Management*



# Update

ARTICLE REPRINT

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The Only Four-Page  
Guide to Negotiating  
You'll Ever Need



# The Only Four-Page Guide to Negotiating You'll Ever Need

**B**ooks on how to negotiate almost invariably begin with the same observation: That the reader, whether he or she realizes it, is constantly engaged in the N-activity—when buying or selling a house, of course, or dickering with the boss for a raise, but also, if less obviously, when trying to reach terms with the local ten-year-old on how much TV she may watch. While one might question some aspects of this assertion—do you really want to approach little Jessica exactly the same way you do plaid-pants Phil at the used car lot?—basically it's true, and in the workplace growing more so.

As employee expectations chip away at hierarchy, old notions of “Just tell 'em what to do” increasingly get supplanted by negotiation in deciding what a so-called subordinate will undertake, how, and by when. These days what enlightened businessperson would say to an important customer or supplier, “Here's the price—take it or leave it”? No, you're supposed to build a relationship, explore the other party's interests, and try to figure out where these may overlap with your own. To negotiate, in other words.

With the increased importance of the subject in mind, *Management Update* has surveyed a half-dozen of the guides to negotiating available at your local bookstore. We deliberately sought a wide variety of approaches, expecting, for example, to find collections of nasty tricks for clobbering the other guy that we could compare and contrast to more judicious counsel. Maybe it's just our bookstore, but

what we turned up was a remarkable degree of consensus across books ranging from the Ur-text *Getting to Yes*—authors from the Harvard Negotiation Project, over two million copies in print—to *The Complete Idiot's Guide to Winning Through Negotiation*. What follows is a distillation of the best advice.

## **Before you sit down with the other party...**

While preparing yourself beforehand is a good idea in most endeavors, in negotiating it's critical, lest you be immediately overwhelmed by the other side. You will need to prepare on two fronts: getting the right attitude, and gathering information on what your interests are and what the other party's might be.

The recommended attitude for negotiating is a bit clinical, detached, even selfless in a Zen sense. As *Getting to Yes* co-authors Roger Fisher and William Ury stress, you want to separate the people from the problem, and the first person to separate is yourself. Letting your feelings hang out over the bargaining table is like wearing a sign saying “Hey, it's okay to do weird emotional judo on me.”

The imperative to plumb interests lies at the heart of what distinguishes enlightened negotiating from the other kind. What you want to avoid, the experts agree, is bargaining over, or from, positions. You know: “I'll give you a hundred bucks for it.” “I wouldn't take less than \$50.” And so on, tiresomely and unimaginatively, offer and counteroffer, each side trying to arrive at a final number closer to its initial proposal. More effort

goes into asserting and defending successive positions than arriving at a solution that's optimal for both parties.

In negotiating based on interests, by contrast, the point is to get beyond positions to uncover the desires, needs, and hopes that have given rise to those positions. Once the two parties have explored their respective interests together, they may well be able to arrive at an outcome not contemplated in either's initial offer but that satisfies each far better than the result of a long haggle.

In his book *Win-Win Negotiating*, Fred E. Jandt offers a nifty real-world example. A friend, a lawyer in solo practice, was approached by his secretary asking for a raise. She came armed with all sorts of objective data indicating that most legal secretaries in the area made 30% to 50% more than she did, and that it would cost him three years of the raise just to hire and train a replacement if she left. The trouble was, with a practice skewed toward public interest work—read “not that lucrative”—the lawyer couldn't afford the increased outlay.

But instead of countering with his own position (“The money just isn't there”), the enlightened lawyer asked her questions—the key technique in negotiating from interests—to get at what was behind her request. It turned out that she really did need more money to get by. He also found out that she liked working for him, didn't particularly want to go somewhere else, and would be happy to put in some extra time.

Which presented the opening for a win-win solution: The lawyer arranged for her to do part-time work for another attorney, and, to sweeten the bargain, offered her the free use of the word processor in their office. So equipped, as a free-lancer in her spare time she was able to earn an hourly rate five times what he was paying



## Negotiating . . .

her, and three times the rate at other law firms. Working every other Saturday, she grossed more than she would have received from the raise, and kept the full-time job that she enjoyed.

In understanding your own interests, and in calculating what the books call your “negotiating power,” the key is determining your best alternative to a negotiated agreement, usually abbreviated as BATNA (also BATANA). Where will you be left if you can’t strike a deal? How can you satisfy your interests without the cooperation of the other party? Think hard about this. In negotiating to buy a car, for example, the better BATNA is probably not “Gee, I won’t have the joy of owning this snazzy little roadster that I’ve had my heart set on,” but rather something like “Well, my current car still runs fine, I’ll save a ton of money, and maybe I can find a vehicle that’s even more fun.”

The stronger your BATNA, the greater your negotiating power. A standard illustration of the point: Who’s better situated to ask the boss for a promotion, the woman with job offers from two other employers in her attaché case, or the woman without clear prospects elsewhere? Which suggests an important, if easy to overlook, step in preparing to bargain: Go out and improve your BATNA. Scrounge up the two job offers.

Once you’ve determined your BATNA, you can use it to help sharpen the guidelines you set for yourself in the negotiation and the proposals you may want to make in starting the discussions. Particularly for dealing with a party who’s not inclined to interest-based bargaining, Jandt recommends a strategy called mini-max. (Fair warning: Some partisans of getting to you-know-what might consider this strategy too positional.) Ask yourself four questions:

- (1) What’s the minimum you’re prepared to accept? Consult your BATNA. How ready are you to fall back on it?
- (2) What’s the maximum you can ask for without getting laughed out of the room?
- (3) What’s the maximum you can give away, the limit beyond which you will not go?
- (4) What’s the least you can offer without getting laughed out of the room? Here, ruminates over the other party’s BATNA, then make sure your worst offer to them is at least some improvement over it.

One final detail before sitting down: Where to conduct the proceedings? John Ilich, author of *The Complete Idiot’s Guide*, says preferably on your own home field; failing that, at a neutral location; but never at their place if you can avoid it. Fisher and Bruce Patton, Fisher’s co-author for the second edition of *Getting to Yes*, are more flexible. Where would the other party feel most comfortable, if that would serve your purposes? Where are the files, flip charts, white boards, or experts you both will need?

### Starting off . . .

You walk in, shake hands, sit down, and you smile. From the first face-to-face contact with the people on the other side, and indeed, in any conversations that may precede the formal negotiation, try to establish as good a person-to-person relationship as possible. You want everybody’s energies to go into analyzing the issues and arriving at an imaginative, mutually beneficial solution, not into posturing, bullying, feeling offended, or any other state of high dudgeon that may get in the way of a reasonable outcome.

You can’t banish emotions from the proceeding. Rather, the point is to get feelings out into the open, acknowledge them, and, at the least, minimize

them as obstacles. At best, you can hope to use them to forge an alliance to speed the work along and, at the end of the negotiation, leave people wanting to do business together again. Without being totally Esalen about it, talk a little about your own feelings, and—carefully—perhaps essay a few words on how the others might be feeling. (“I can imagine that you, too, would like to see a good result from our discussions.”) Be polite, respectful, friendly. Show it by not just listening, but hanging on their every word.

To the age-old question, “Do you wait for them to make the first offer, or should you push yours out there first?”, Fisher and Patton offer a novel answer: What’s the hurry? Putting a number down too soon may foreclose the exploration of interests that both sides should pursue at first. It might even happen that a potential agreement emerges without anybody having to make a “first offer.”

If somebody does have to, though, let it be the other guy or gal, advises Ilich. Their first offer immediately sets the upper or lower limit for the negotiation, he argues, the highest you’ll have to pay or the lowest you’ll be forced to accept.

But why shouldn’t you set the limit, other experts retort, particularly since the first offer may well “anchor” the rest of the negotiation, skewing the final result in its direction. In *Negotiating Rationally*, Max H. Bazerman and Margaret A. Neale recount a study they performed asking real estate agents to estimate the right price for a particular house. They divided the realtors into four groups, and gave members of each group packets of information on the house that were identical except for one detail, the price at which the house was supposedly listed for market. Sure enough, the group given the

## Negotiating . . .

highest listing price set the highest “right price” on it, with the prices estimated by the other groups anchored at successively lower levels by the listing prices provided them.

Setting the anchor yourself works best when the other side hasn’t bothered to gather the necessary facts or to think through its interests. To avoid being anchored, counsel Bazerman and Neale, don’t make a counteroffer to a ridiculous initial proposal. Better to say, “No thanks; let me know when you’re prepared to negotiate seriously.”

### Moving the process along. . .

Much of the emerging wisdom on how to proceed through a negotiation can be distilled into a four-sentence, only semifacetious injunction: To move matters along, ask a question, even in response to a question. If you can’t ask a question, fall silent and wait for the other side to step in to end the awkward pause. Only rarely, perhaps to keep up the human side of things, should you make an observation or an assertion. And then immediately tag on a question.

Dig, dig, dig for those interests. Clarify your understanding of what the other side says, this for their edification as well as yours—“How did you arrive at that offer?” Brainstorm together to devise the proverbial “outside the box” solution. Fisher and his colleagues are big proponents of bringing independent, objective standards to bear—benchmarks like market value, costs, past settlements, or scientific judgment—and of using questions to try to get the other side to see the value of such standards. Jandt counters that objectivity flies out the window when the bargaining gets serious.

If both parties are willing to submit to the facts, but can’t agree on what the facts are, perhaps a neutral observer

can determine both them and the deal they should give rise to. The experts almost all agree that, particularly if you seem headed for an impasse, you should consider submitting your differences to a mediator.

But what if it’s only you and them, and they get nasty or tricky? By now you probably can guess the answer—separate the people from the problem, dig for underlying interests, ask a question. A couple of our favorite exemplary responses from *Getting to Yes*, the second edition: “Is there a theory behind having me sit in the low chair with my back to the open door?” And “Shall we alternate spilling coffee on one another day by day?”

Or kick the discussion up one level from a negotiation on the issues to a negotiation on how both sides will negotiate. That is, recognize the other side’s gambit for what it is, call it, and suggest getting back to business: “Wow, I haven’t seen that classic an example of good cop/bad cop for years. Shall we go back to looking at prices the market has been setting in situations comparable to ours?”

### Getting to finished. . .

As soon as the framework for a possible agreement emerges, ever so gently begin herding the doggies in that direction. Ilich recommends a technique he calls funneling: Remind the other side that this particular issue has been settled, refresh their recollection of what you agreed on, refuse to reopen it, and move on to what’s still open.

Especially in a complicated negotiation—say, when there’s more than two parties involved—it may help to write down a draft agreement after every major meeting of the minds: “I know we still have a way to go, but I thought I’d set down the terms we appear to have settled on so far? Have I misunderstood anything?

What changes would you make?” The mere prospect of having to read the draft over one more time may encourage assent.

Don’t hurry them or yourself, Ury counsels. If they feel pressured, they may blow up over a small point. In your haste, you may forget to consult your interests one last time in considering the final terms proposed.

Then, when you think you’re in accord at last, ask one more question. Ilich suggests “Have we got a deal?” If they say yes, shake hands, and stop lobbing interrogatories. Should you find yourself at a loss for something to say, talk about the weather. ■

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### If you want to learn more . . .

*The Complete Idiot’s Guide to Winning Through Negotiation* by John Ilich (1996, Alpha books, 245 pp., \$16.95, Tel. 800-957-3529)

*Getting Past No* by William Ury (1993, Bantam Books, 189 pp., \$10.95, Tel. 800-323-9872)

*Getting to Yes* by Roger Fisher and William Ury (1991, Penguin Books, 200 pp., \$12.95, Tel. 800-337-4624)

*Negotiating Rationally* by Max H. Bazerman and Margaret A. Neale (1992, The Free Press, 196 pp., \$16.95, Tel. 800-223-2336)

*Win-Win Negotiating* by Fred E. Jandt (1985, John Wiley & Sons, 300 pp., \$17.95, Tel. 800-225-5945)

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#### Editor’s note:

When this article was originally published, its length was four pages. All original content is included in this new format.

# Turning Negotiation into a Corporate Capability

by Danny Ertel

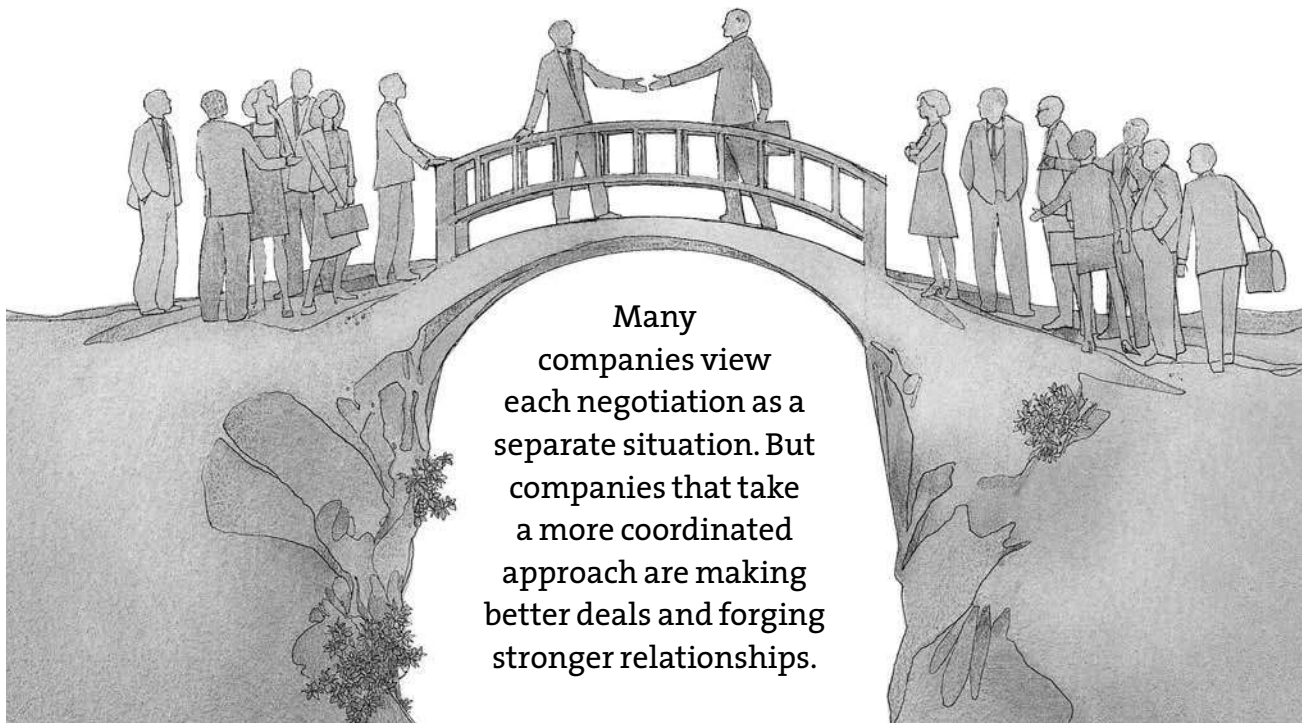


Harvard Business Review

Reprint 99304

# TURNING **Negotiation** INTO A CORPORATE CAPABILITY

by Danny Ertel



Many companies view each negotiation as a separate situation. But companies that take a more coordinated approach are making better deals and forging stronger relationships.

**E**VERY COMPANY TODAY exists in a complex web of relationships, and the shape of that web is formed, one thread at a time, through negotiations. Purchasing and outsourcing contracts are negotiated with suppliers. Marketing arrangements are negotiated with domestic and foreign distributors. The contents of product and service bundles are negotiated with customers. Product development pacts are negotiated with joint-venture part-

ners. It's difficult to think of any business initiative that does not require some form of negotiation.

Although the outcome of any single negotiation may not have much effect on a business's fortunes, the thousands of negotiations a typical company undertakes have, in combination, an enormous impact on its strategy and its bottom line. In my years of consulting on negotiations, however, I have found that companies rarely think systematically

***Danny Ertel** is a founder and director of Vantage Partners, a consulting firm in Cambridge, Massachusetts. He is the coauthor, with Roger Fisher, of *Getting Ready to Negotiate: The Getting to Yes Workbook* (Penguin, 1995).*



about their negotiating activities as a whole. Rather, they take a situational view, seeing each negotiation as a separate event, with its own goals, its own tactics, and its own measures of success. That approach can produce good results in particular instances, but it can turn out to be counterproductive when viewed from a higher, more strategic plane. Hammering out advantageous terms on a procurement contract may, for example, torpedo an important long-term relationship with a supplier. Or coming up with a creative response to one customer's unusual needs may undermine a broad market or product strategy.

It's easy to understand why companies take a piecemeal view of negotiation. Each negotiating situation tends to be highly complicated in its own right. A negotiator has to balance a welter of contending factors relating to both the substance and the tactics of the negotiation. How much can I bend on price to gain a larger order? Should I strive to establish a long-term relationship, or should I concentrate on closing a short-term deal? Should I make the first offer, or should I wait for the other side to show its hand? Can I salvage this deal, or should I walk away now? It's so hard to make wise trade-offs in any one negotiation that trying to think about coordinating all your negotiations can seem overwhelming.

But as partnerships, alliances, and other agreements become more important in business, the pressure to treat negotiation as an institutional capability, rather than as a series of discrete events, grows stronger. In response, a number of companies have begun to take a fresh look at the way they negotiate. They have found that building a strong negotiation capability is not a matter of creating a set of hard-and-fast rules for all negotiations—putting negotiators in bureaucratic straitjackets won't work. Rather, it requires a different, more coordinated approach to organizing and managing negotiations. Executives have to move away from the situational view of negotiation—they have to see that negotiation can be managed at a corporate level.

In my experience, the companies that have successfully built a negotiation capability have done so through four broad changes in practice and perspective. First, they have put a companywide negotiation infrastructure in place, ensuring that negotiators' priorities remain tightly linked to the company's priorities. Second, they have broadened the measures used to evaluate negotia-

## **Executives have to move away from the situational view of negotiation to see that it can be managed at the corporate level.**

tors' performance beyond matters of cost and price. Third, they draw a clear distinction between individual deals and ongoing relationships. And, finally, they make their negotiators feel comfortable walking away from a deal that is not in the company's overall best interest.

### **Creating a Negotiation Infrastructure**

Negotiation is one of the few functions in the modern corporation that has resisted the trend toward standardizing processes and streamlining work. While companies have reengineered customer service, manufacturing, and even research and development, they have allowed negotiation to remain the realm of the individual. Each negotiation is viewed as a separate event, and its outcome is thought to depend on the negotiator's personal judgment, timing, and experience.

Negotiators, of course, have a vested interest in the notion that every negotiation is unique. It isolates them from interference and criticism. If the negotiation is a success, they reap all the praise. If it's a failure, they can shrug and say,

"You had to be there." And when a manager, trying to be supportive, pats the negotiator on the back and says, "Put it behind you; you'll get them next time," the manager becomes an unwitting coconspirator in perpetuating the situational view.

In fact, the outcome of a negotiation does not hinge solely on the negotiator's individual skills. Negotiation can be coordinated and supported like any other function. Grupo Financiero Serfin, one of Mexico's largest banks, recently found that out during a time of extreme hardship. Like most other Mexican banks, Serfin faced a large number of loan defaults in the wake of the country's 1994 currency crisis. In response, Serfin's negotiating teams followed the pattern typical of loan workouts: They sat down with each debtor and traded concessions over what percentage of the loan would be repaid, when, and with what conditions. They backed up their positions with occasional threats of legal action. But despite the bank's considerable investments in hiring additional staff and providing some basic training, the negotiations did not succeed in improving the overall health of the bank's loan portfolio.

Desperate to improve the performance of the negotiators, the bank decided to take a new tack. It looked for opportunities to standardize and codify its negotiation processes, to impose some management controls, and to change the negotiators' concession-oriented culture. In short, it set about to build a corporate infrastructure for negotiations.

As a first step, Serfin developed and rolled out an improved negotiation-training curriculum that focused on putting trainees into real-world situations. But then the bank went much further. It required that negotiation considerations be incorporated into the initial financial analysis of each workout case. Collaborating closely with the responsible negotiating team, Serfin's analysts defined the bank's various interests in the case, put them in order of priority, developed an understanding of each of the debtor's interests, laid out a set of creative options for resolving the case, and

assessed the debtor's and the bank's alternatives to reaching a negotiated settlement. The entire analysis of the case became a blueprint for its eventual negotiation.

To aid in the analysis, the bank also created a categorization scheme, rating each debtor according to four criteria: the debtor's ability to repay its loans over both the short and the long term, the quality of its relationship with the bank, the quality of its collateral, and the quality of the bank's best alternative to reaching a settlement. The category into which a debtor falls suggests an appropriate negotiation strategy. For example, a debtor who has a good relationship with the bank and whose ability to repay stands to improve over time, but whose collateral is weak, would warrant a highly collaborative, creative approach. A debtor whose relationship with the bank is strained but whose collateral and ability to repay are strong would require an approach that focuses on strengthening the underlying relationship. A debtor whose ability to repay is weak and who has a poor relationship with the bank would warrant a more confrontational approach, with a strong threat of foreclosure.

To help the negotiating teams carry out their strategies, the company set up a system for sharing successful practices. Negotiators in each of the bank's five workout divisions were asked to identify their 20 toughest cases. The team responsible for each case then gathered with negotiators from the other divisions, and, together with a negotiation coach, they reviewed the case in depth, analyzing what had happened to date and what they might do next. The sessions produced a set of lessons that was shared with all the bank's negotiators and was also used to refine the categorization scheme. This exercise not only helped the negotiators conduct subsequent negotiations but also reinforced the idea that negotiation is an institutional process that can be evaluated and fine-tuned systematically.

Serfin's efforts to establish a negotiation infrastructure dramatically changed the way its negotiators viewed their roles and did their jobs.

Far from being a straitjacket, the infrastructure led to a burst of creativity. Guided by the bank's overall interests, Serfin's workout teams became innovative problem solvers, working in partnership with debtors. One exemplary case involved a large loan to a manufacturer that had long been a major borrower. The negotiating team worked with the debtor's managers to find a third-party investor who was willing to take an equity stake in the company. By shoring up the company's finances, the negotiators were able to help it back to health, not only saving the loan but reinvigorating the lending relationship. In the past, the negotiating team would simply have bought time by restructuring the debt, knowing that the company would soon be in default again. As a result of its innovative practices, Serfin's workout division is today considered the best in the country, a model for other institutions.

There are many other equally straightforward ways to begin building a negotiation infrastructure. One prominent professional-services

## **In reality, the outcome of a negotiation does not hinge solely on the negotiator's individual skills.**

firm is developing a centralized database to help its project managers negotiate scope-and-fee agreements with clients. Every time a manager negotiates with a client, he or she will now be expected to fill out a brief questionnaire that captures the approaches taken, the results achieved, and the lessons learned. The answers will be entered into the database, which other project managers can then tap into when preparing for their own negotiations. Rather than acting as lone wolves, project managers will be able to in-

form their own strategies and actions with the collective wisdom of their colleagues. They will also be able to use the database as a "negotiation yellow pages," identifying colleagues with useful experience and expertise. As an added benefit, the database will generate periodic reports for management highlighting the tactics and outcomes of negotiations, and these reports will enable the firm to further refine its understanding of what works and what doesn't in bargaining with clients.

The management tools don't have to be high tech. At another professional-services firm—one of the Big Five accountancies—every partner is expected to engage at least one other partner in a pricing consultation before negotiating fees on any major new engagement. The partners help each other get ready for the negotiation, and they share experiences about the success or failure of prior negotiations conducted under similar circumstances.

At one highly successful software company, the senior vice president of sales has established a set of negotiation protocols for all sales representatives. The protocols lay out steps to be taken in preparing for and conducting negotiations, and they require that the reps be debriefed after each negotiation, ensuring that the company captures important information. The protocols include establishing both sides' options in order of priority, considering multiple options in the course of the negotiation, and using a set of objective criteria to shape the discussion.

The actions these companies have taken are for the most part modest—providing more and better information to negotiators, drawing lessons from past negotiations, setting up categorization and prioritization schemes to guide negotiators in selecting their strategies, conducting regular evaluations using standard criteria. But by creating a broadly supportive infrastructure, they produce powerful results. They don't just improve the outcomes of individual negotiations; they break down the assumption that every negotiation is unique and immune to coordination and control. They form the

basis for more collaboration, creativity, and efficiency – not to mention more accountability – throughout a company's negotiation activities.

### Broadening the Measures of Success

The way a company measures the success of a negotiation guides the way a negotiator approaches and conducts the negotiation. Although many companies have begun to stress the importance of forging partnerships with key suppliers and customers, in most cases this goal remains a high-level aspiration that has not been translated into clear performance measures for negotiations. Most measures still center on gaining the best price or achieving the lowest cost. Dollars and cents, after all, are the easiest things to measure, and they form a concrete basis for setting budget goals and for linking negotiators' pay to their performance.

Emphasizing financial measures naturally leads negotiators to focus on cost issues. Consider what happens in most procurement departments. Each year, budget goals are established that assume certain (usually fairly aggressive) price targets will be met for goods purchased. Knowing that they'll be judged according to how well they meet or beat these targets, department managers instruct the purchasing agents to get the best possible prices from suppliers, and they evaluate each deal according to some measure of price – the discount from the list or the prevailing market price, for instance. Knowing they'll be judged on the price breaks they achieve, the purchasers view negotiation as a zero-sum game – for them to win, the other side has to lose. Even if the company espouses a win-win approach in dealing with vendors, the purchasers know that their managers will be amply satisfied if they can bring home a big discount.

Focusing on discounts has an insidious effect on purchasing agents' behavior. It leads them to ignore opportunities to be innovative in working with suppliers to create new value by, for example, reducing inventories, developing higher-quality

## A New Set of Measures

One large engineering and architectural-services company has gotten more out of its negotiations by broadening the way it defines success. Rather than aiming simply to book more business at higher hourly rates, the company uses seven criteria in reviewing negotiations:

**Relationship:** Does the negotiation process help build the kind of relationship that will enable us and our clients to work effectively together over the project's life cycle?

**Communication:** Do our negotiations help create an environment in which both parties can engage in constructive conversations aimed at solving problems?

**Interests:** Have we crafted a deal that satisfies our interests well at the same time that it satisfies our client's interests to at least an acceptable level and the interests of any relevant third parties (government regulators, environmental groups, and so on) to at least a tolerable level?

**Options:** As part of the negotiation process, have we searched for innovative, elegant, and efficient solutions that might offer joint gains?

**Legitimacy:** After brainstorming a variety of options, have we used objective criteria to evaluate and choose an option that could be justified by both sides?

**BATNA:** Have we measured the proposed deal against our Best Alternative to Negotiated Agreement, and are we confident that it satisfies our interests better than our BATNA does?

**Commitment:** Have we generated a set of well-planned, realistic, and workable commitments that both sides understand and are prepared to implement?

Taken together, these criteria serve not only as standards for evaluating the success of any negotiation but also as a checklist that the company's deal makers can use in preparing for negotiations.

components, or communicating electronically. That can hamstring a company's attempts to make strategic changes that require new, more collaborative relationships with suppliers, such as moving to a build-to-order manufacturing system. Furthermore, it undermines the parties' ability to deal effectively with unexpected problems. If a supplier feels that it lost out in a negotiation with a customer—that it was squeezed by the customer—then when the customer has a problem later on, the supplier is likely to respond with indifference at best and downright hostility at worst.

One large engineering and architectural-services company—I'll call it Acme Engineering—has adopted a broader way of measuring success in negotiations. It evaluates a negotiation according to seven diverse standards that focus as much on process as on outcome. (See the insert "A New Set of Measures.") To be judged successful, negotiators have to show, for example, that they established a climate of open communication with the other party, that they explicitly discussed several creative alternatives, that they used objective criteria to choose among the alternatives, and that the final deal fulfills not only the company's interests but the other parties' as well.

It might be argued that these kinds of measures are soft and difficult to quantify—but that's just the point. Because they're not cut-and-dried, they force negotiators and their managers to think more broadly and creatively about negotiations, both when strategies are initially established and as the bargaining unfolds. When negotiations become complicated or difficult, negotiators can't simply fall back to trading concessions. They have to balance a host of considerations, which leads them to explore more options and to hold wider-ranging discussions.

Of course, establishing the right measures is only half the challenge. You also have to link those measures to the incentives that will actually govern negotiators' behavior. To encourage broader, more creative negotiations, a number of companies are expanding the criteria they use to de-

termine purchasing agents' and salespeople's bonuses and commissions. On the procurement side, they are seeking to tie incentives not to the price discounts achieved but to the total cost of ownership of the purchased good, taking into account the operating efficiencies gained through using the supplier, the reductions in defects achieved by the supplier, and even the supplier's role in developing product or service innovations. On the sales side, they are exploring ways to base a significant portion of

## **Without realizing it, many companies have systematically taught their customers the art of blackmail.**

sales reps' compensation on the longevity of their customer relationships, the innovations that have resulted from their interactions with customers, customers' own evaluations of those relationships, and the referral business that can be traced to those customers.

Motivation can come from non-financial rewards as well. In recent years, many companies have set up programs to capture and share knowledge. To encourage employees to participate, they frequently give out various kinds of prizes—even something as simple as a mousepad—to anyone who contributes to or draws on the knowledge banks. Such tokens of appreciation signal the importance management places on the effort and, in time, help build a culture in which sharing knowledge is the norm. Companies may want to think about giving similar awards to those whose day-to-day negotiations with customers, suppliers, and others generate new ideas or otherwise create unusual value. Anything that can jar people out of the concession-bargaining mind-set should be viewed as useful.

## **Distinguishing Between the Deal and the Relationship**

Broader performance measures can get negotiators to look beyond the immediate deal to the larger relationship. But if they don't draw a clear distinction between the components of the deal and the components of the relationship, they can still run into trouble. It's common for negotiators to confuse the deal and the relationship. They fear that if they push too hard to get the best deal possible today, they may jeopardize their company's ability to do business with the other party in the future. Or they fear that if they pay too much attention to the relationship, they'll end up giving away too much and make a lousy deal. Though natural, such confusion is dangerous. It leaves the negotiator open to manipulation by the other side.

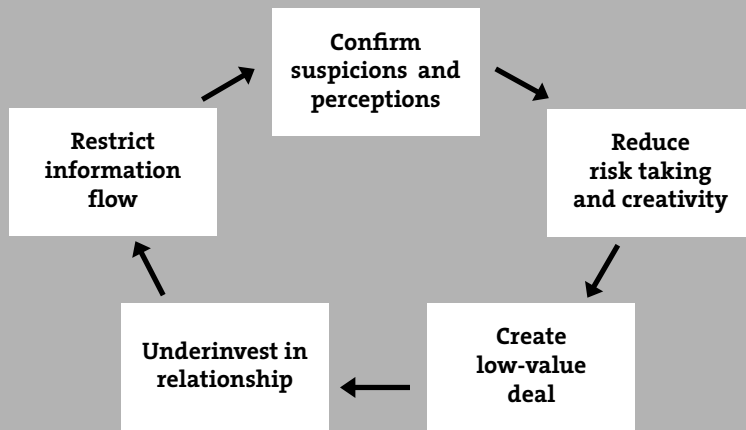
Look at what routinely happens to accounting firms. A big client will tell its accountant that the firm has to cut its fees or else the work will be put out to bid. In the face of such a threat, the accountant, after defending the quality of the firm's services and pointing out the cost of switching auditors, will offer up at least a small price break for the sake of the relationship. The discount may be enough to enable the firm to hang onto the account in the short run, but that's rarely the end of the story. In another year or two, the client will be demanding another price cut in exchange for its continued business. And, having established a precedent, the accountant will once again give in.

Over the years, I have asked hundreds of executives to reflect on their business relationships and to ask themselves which kinds of customers they make more concessions to, do more costly favors for, and generally give away more value to. Is it their good customers or their difficult customers? The vast majority respond, with some chagrin, "The difficult ones, of course. I'm hoping to improve the relationship." But that hope is almost always in vain: once customers find that they can get discounts and favors by holding a relationship hostage, why should



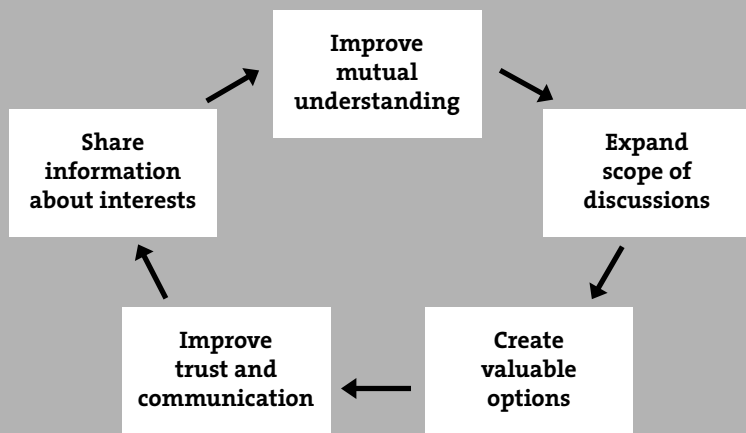
## The Deal-Relationship Cycle

### The Usual Way



Many negotiators make the mistake of confusing the deal with the broader relationship. To improve a strained relationship, for example, they may offer a concession on price. Or to gain a price concession, they may threaten to terminate the relationship. But such an approach almost always backfires. It creates an adversarial dynamic: Negotiators withhold information to protect their bargaining positions. That leads to greater suspicion and less creativity, which in turn undermines both the immediate deal and the long-term relationship.

### A Better Approach



A better approach is to separate the deal from the relationship. When negotiators don't feel as though they need to trade the quality of the relationship for the terms of each individual deal, they exchange information more freely and become more creative and collaborative in their discussions. That leads to more valuable deals and to stronger, more trusting relationships.

they change? Without realizing it, many companies have systematically taught their customers the art of blackmail.

The source of the problem lies in the notion that the relationship and the deal function like a seesaw: to improve one, you have to be willing to sacrifice the other. The reality is that while relationships and deals are indeed linked, they are more likely to move up or down in tandem. A strong relationship creates trust, which allows the parties to share information more freely, which in turn leads to more creative and valuable agreements and to a greater willingness to continue working together. But when a deal is struck that is not very attractive to one or both parties, chances are that they will invest less time and effort in working together, they will become more wary in communicating with each other, and their relationship will grow strained or unravel; as a result, they will be less able to take chances that would create more value. (See the exhibit "The Deal-Relationship Cycle.")

To build strong working relationships and negotiate good deals, companies need to break the pattern of trading off one for the other and begin to pay attention to each separately. They need to get their negotiators to see that a problem with a relationship cannot be resolved through concessions and that a problem with a deal should not be considered a test of the relationship. By drawing a clear line between the immediate deal and the longer-term relationship, two companies can start to create a virtuous cycle. Building a strong relationship will help them through the rough spots in a particular deal, and the value created by closing the deal will further enhance and broaden their relationship.<sup>1</sup>

When Eastman Kodak transferred its data center operations to IBM, the two companies struggled to balance the deal and the relationship. A lot of money was at stake, and both sides wanted the terms of the deal to be in their best interest. Kodak wanted to reduce its costs; IBM wanted to increase its revenues. But the companies also knew that the ultimate suc-

cess of the outsourcing arrangement would hinge on the health and openness of their long-term relationship.

Rather than treat the deal and the relationship as intertwined, the companies separated the two explicitly. Key managers from each side sat down and first laid out what particular benefits they hoped to achieve through the terms of the immediate agreement. They then articulated as precisely as possible what would constitute a successful relationship over the long haul. On the basis of those discussions, they developed two discrete lists of issues, one relating to the terms of the deal and one relating to the nature of the relationship. (See the exhibit "Kodak and IBM: A Good Deal and a Strong Relationship.") They agreed that any problem arising from the issues on one list could not be resolved by exacting concessions on issues from the other list. Trouble with a lack of trust or poor communication—relationship issues—could not, for example, be solved through changes in pricing, software-licensing terms, or other deal-related issues. This clear distinction between the deal and the relationship guided Kodak and IBM through the initial negotiation and has continued to define their interactions. It's no coincidence that their relationship has come to be viewed as a model of effective partnering in business.

Negotiation strategies that make trade-offs between the value you can obtain in a deal and the quality of your relationship with the other party are flawed from the start. Managers who accept explanations like "To maintain the relationship, I gave in on price" from their negotiators are condoning both poor deals and weak relationships.

### Learning to Walk Away from a Deal

Negotiators, like salespeople, believe that their success hinges on their ability to close deals. If a negotiation falls apart, they see it as a failure—for themselves and for their companies. Their reasoning is easy to understand. By the time most negotiators sit down at the bargaining table, their organizations have already

## Kodak and IBM: A Good Deal and a Strong Relationship

When Eastman Kodak and IBM negotiated an outsourcing agreement for the operation of Kodak's data centers, they carefully distinguished between the terms of the deal and the nature of the long-term relationship they hoped to engender. They developed two lists of issues—one relating to the deal, the other to the relationship—and agreed to keep the two sets of issues separate at all times. Following are illustrative excerpts from the two lists.

### Deal Issues

- Retirement and replacement of hardware
- Use of third-party software
- Service levels
- Ease of communication
- Record storage, maintenance, and security
- Pricing
- Terms of employee transfers
- Termination and return of data center operations to Kodak or transfer to another party

### Relationship Issues

- Reliability
- Giving each other the benefit of the doubt
- Absence of coercion
- Understanding each other's objectives
- Timeliness of consultations
- Mutual respect

invested a lot of time and money in preparation. They've analyzed their own needs, evaluated potential suppliers or partners, created and reviewed a shortlist, selected a finalist, and charted out a bargaining strategy. As the negotiators see it, failing to conclude the deal would waste all that effort, not to mention disrupt what has likely become a well-established schedule. Once a negotiation has begun, going back to the drawing board no longer seems a viable option.

While understandable, that kind of thinking often puts a company's negotiators in a box. They become stuck in a cycle of concessions, allowing the other side to dictate the

details of the deal. At one respected South American metropolitan newspaper, for example, the advertising sales force has developed a deeply ingrained never-lose-a-client culture. The salespeople routinely offer steep discounts from their standard ad rates just to keep advertisers from walking away. Their *average* discount rate, across a \$300 million advertising space, is 45%. Asked to justify the discounts, they point to the small marginal cost of producing an extra page of print. As long as the ad revenue exceeds the marginal cost, they argue, the paper is coming out ahead. What they don't consider, though, is how their behavior has led advertisers to expect ever greater

## Making Negotiation an Institutional Capability

To move from a situational view of negotiation to one that recognizes negotiation as an institutional process does not require radical organizational change. It does require putting in place new tools and procedures that will enable executives to better manage and support negotiators.

Steps in the Negotiation Process	Situational View	Institutional View	Examples of Tools and Procedures
Determining objectives	Goals are set on a case-by-case basis; negotiators seek to maximize personal compensation.	Objectives for each negotiation are tied to larger corporate goals; separate goals are established for the deal and the relationship.	<ul style="list-style-type: none"> <li>• deal and relationship scorecards</li> <li>• negotiation instructions template</li> </ul>
Preparing for the negotiation	Preparations proceed in an ad hoc manner; often there's no time for any preparation.	Preparations are well structured; negotiators draw on prior corporate experience.	<ul style="list-style-type: none"> <li>• database of past negotiations</li> <li>• worksheet for understanding counterpart's choice</li> <li>• manager's checklist for BATNA review</li> </ul>
Conducting the negotiation	Negotiators act as lone wolves with little supervision; success or failure is seen to depend on personal ability.	Managers play an active coaching role; colleagues share a negotiation approach and vocabulary.	<ul style="list-style-type: none"> <li>• negotiation playbook that links strategies to categories of negotiations</li> <li>• training programs for negotiators and their managers</li> <li>• "Yellow Pages" that enable efficient consultation with experienced colleagues</li> </ul>
Reviewing the negotiation	Reviews are done sporadically; focus is on cost reductions and percentage of deals closed.	Reviews are performed systematically to capture information so it can be applied to future negotiations; focus is not only on the results of each negotiation but on the way it was conducted; reviews extract lessons rather than apportion blame or praise.	<ul style="list-style-type: none"> <li>• structured review questions that focus not only on outcomes but also on process</li> <li>• debriefing forms that feed into best-practices database</li> <li>• Training in constructive debriefing</li> </ul>

discounts. The advertisers, knowing the paper will do anything to keep them, have all the leverage. Each heavily discounted ad may indeed be marginally profitable, but in combination they reduce the paper's overall revenue and profits dramatically.

To get out of this box, managers need to make sure negotiators understand that they always have alternatives to closing a deal. Nearly 20 years ago, Roger Fisher and William Ury introduced into the negotiation lexicon the term "BATNA," an acronym for "Best Alternative to Negotiated Agreement." They showed that negotiation results can be greatly improved by identifying the best alternative to completing the deal and then carefully evaluating the negotiated agreement against that alternative. If the negotiated agreement is better, close the deal. If the alternative is better, walk away.<sup>2</sup>

The BATNA approach changes the ground rules of negotiation. Negotiators no longer see their role as producing agreements but rather as making good choices. And if they don't reach an agreement, they don't see that as a failure. If they reject a deal because it falls short of their company's BATNA, they have succeeded, not failed.

Negotiators should always think through their alternatives before they even start to negotiate. By identifying a BATNA at the outset, they establish an objective hurdle that any negotiated agreement has to clear. They don't have to rely on subjective judgments that an offer seems too low or unreasonable. As the negotiation proceeds, they should constantly think about ways to improve their BATNA—by doing further research, by considering alternative investments, or by identifying other potential allies. And they should never accept an agreement that is not at least as good as their BATNA.

Sometimes, there is no obvious alternative to a deal. In such cases, the company needs to think about creating a BATNA for itself; it shouldn't just sit back and negotiate from a position of weakness. Consider the example of Colbún SA, the third largest producer of electric power in Chile. Much smaller than its two

biggest competitors, both of which are vertically integrated, Colbún has often found itself at a substantial disadvantage in terms of scale and negotiating leverage. It had to bargain for transmission capacity, for example, with the transmission arm of the largest power company. If it had gone into those negotiations without an alternative, it would have been at the mercy of the other side, and it would have ended up paying dearly for the capacity. But Colbún had an express corporate policy requiring the establishment of a BATNA in any negotiation. Be-

## **Executives can't just proclaim that it's okay to walk away from a deal; they need to back their rhetoric with action.**

cause there were no other existing options for purchasing transmission capacity, Colbún had to create one—developing its own transmission line.

While negotiations with the dominant producer continued, Colbún developed conceptual plans for its own transmission line, conducted feasibility studies, and even put construction contracts out to bid. As development of Colbún's BATNA progressed, the other side steadily reduced its price quote—though Colbún ultimately decided it would be best served by going ahead and building its own line.

Colbún has used a similar BATNA-based strategy in many other important deals, including negotiating the purchase of turbines for a new gas-fired power plant and the transportation of natural gas to the plant. As it did in the transmission-line decision, it has in a number of instances broken off negotiations and pursued its BATNA instead.

Adopting the BATNA approach involves overturning long-held assumptions. Senior executives can't

just proclaim that it's now okay to walk away from a deal; they have to make sure that the message is reinforced all the way down the chain of command. Consider what happened to one company that decided to pursue a new market strategy. From now on, the company's senior executives announced, the company would concentrate on selling only to customers to whom it could deliver high-value-added services at premium prices. Before closing a sale, salespeople should consider whether the prospective customer would meet the new criterion; if not, they should reject the deal and devote the company's resources elsewhere. In the field, however, managers continued to encourage their negotiators to discount heavily if necessary to win or maintain large accounts. The negotiators were still hearing the message "Don't let any big deal get away," and they did not change their behavior at the bargaining table. The new strategy never got off the ground.

Executives need to back up their rhetoric with actions that have an impact in the field. They need to seek out examples in which the company's negotiators decided the organization would be better served by walking away from the deal to pursue their BATNA—and then they have to praise those negotiators and use their approaches as models. If negotiators are not made aware that their colleagues are turning away some deals to pursue other opportunities, they will not believe they truly have that alternative. Companies should also consider making a BATNA evaluation an explicit step in the negotiation process, requiring, for example, that negotiators discuss with their managers how each proposed deal stacks up against a clearly defined BATNA. If negotiators are not required to assess their deals with reference to their BATNA, they may not believe the choice between the two is real.

Not only do executives have to send the right messages internally, they need to be aware of how their external communications may affect negotiators. In an interview published in a widely read magazine, the CEO of a large computer com-

pany once stated that back when he was a sales representative, he never lost a customer. He was trying to counter criticism that the company had gotten so big that it had lost sight of the customer. But imagine how the statement was interpreted by the company's sales force. The CEO was in effect telling the sales reps that they could never say no—and signaling customers that they held all the leverage. The negotiators' BATNAs were instantly rendered inconsequential with one simple public statement.

Companies routinely review public statements for their effect on stock valuation or regulatory compliance. And while I know of no company that has put in place a formal mechanism to review public statements for their effect on negotiations, it may not be such a bad idea. At the very least, those with responsibility for negotiations should alert senior executives and public relations departments to the fact that even the best-intentioned statements can subtly undermine negotiating strategies.

### Little Steps to Big Changes

Shifting from a situational to an institutional view of negotiation may represent a radical change for many companies. It certainly represents a

radical change for many negotiators. But it doesn't require radical actions. It requires carefully planned, often subtle, changes in practice, in emphasis, and in communication. In fact, trying to ram the new way of working down negotiators' throats, without adequate explanation or support, will just backfire, leaving negotiators confused and alienated. If, for example, management suddenly announces that all negotiators must follow a set of rigid procedures or fill out a set of forms after every meeting, negotiators will simply complain that the bureaucracy is keeping them from doing real work. They may fulfill the new requirements in a perfunctory manner, but they won't change their perspective or their behavior.

The key to success is putting the negotiation infrastructure in place that makes the lives of negotiators easier and makes their jobs more rewarding. Supplying negotiators with practical information makes it simpler for them to prepare for negotiations while also exposing them to a larger set of proven strategies so they can do more than merely trade concessions. Showing them how the BATNA approach can be used in real-world situations gives them a new source of leverage in their negotiations. Broadening the measures

used to judge their performance allows them greater—not less—freedom in crafting agreements. Establishing categorization and prioritization schemes can increase their productivity and free them to think more creatively. (See the exhibit "Making Negotiation an Institutional Capability.")

Some negotiators will not be able to adapt to the new, more standardized and coordinated approaches—they'll chafe under even the lightest managerial yoke. Most, though, will thrive in the new environment. They will come to find that they have actually gained more power, more prestige, and—not least—more satisfaction. And their companies will reap the benefits of closer, more creative relationships with suppliers, customers, and other partners.

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1. For further discussion on separating the deal from the relationship, see Roger Fisher and Scott Brown, *Getting Together: Building a Relationship That Gets to Yes* (Houghton Mifflin, 1988).

2. The concept of BATNA was introduced by Roger Fisher and William L. Ury in *Getting to Yes: Negotiating Agreement Without Giving In* (Houghton Mifflin, 1981). Its successful application has been extensively documented by the negotiation scholar Howard Raiffa, among others. See, for example, Raiffa's classic *The Art and Science of Negotiation* (Belknap Press, 1982).

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# Negotiating Without a Net: A Conversation with the NYPD's Dominick J. Misino



Harvard Business Review

Reprint R0210C

*What's the best way to handle a crisis negotiation? Know your hot buttons, says an expert hostage negotiator, and help the other guy save face.*

# NEGOTIATING WITHOUT A NET

A Conversation with the NYPD's  
Dominick J. Misino

**N**EGOTIATION informs all aspects of business life. Every interaction—with customers, with suppliers, and even with partners and investors—involves some kind of negotiation. In fact, in some languages the same term is used for both “business” and “negotiation.” But the costs of failure can be high. The breakdown of negotiations between Hewlett-Packard’s management and its founding families, for example, put the company’s future in doubt and led to an expensive proxy fight.

Perhaps it’s not surprising, then, that the last 20 years have seen an endless stream of handbooks on business negotiation, many of them best-sellers. Or that most of the country’s top business schools have entire academic departments devoted to the subject. The advice is often helpful, even insightful. Who could argue with the recommendation that negotiators look for mutual gain and know their best alternative to a negotiated agreement? But you can’t help feeling that the scholarly ink and classroom

simulations of Negotiation 101 don’t do enough to prepare businesspeople for the really tough negotiations—the ones where failure is not an option.

So where can you look for guidance? For the last three decades, the New York Police Department has been training officers in hostage negotiation, arguably the highest-stake situation of all. Founded in 1972, in the year after the Attica State Prison riot, the NYPD program was the country’s first such training program. Another year later, in the wake of the Munich Olympics hostage crisis, the FBI established its own program, which was modeled on the NYPD’s. Today, most law enforcement agencies in this country and others provide some kind of negotiation training, as local and national law enforcement officials face bargaining with armed criminals, terrorists, and psychopaths as part of their daily reality.

To find out what businesspeople can learn about handling tough negotiations from the experience of law enforcement,

HBR senior editor Diane L. Coutu visited former NYPD detective and hostage negotiator Dominick Misino at his home on Long Island, New York (where he can be reached at [negotiate1@aol.com](mailto:negotiate1@aol.com)). A member of the force for 22 years, Misino received international acclaim in 1993 when he successfully persuaded the hijacker of Lufthansa Flight 592 to lay down his gun and turn himself in at Kennedy Airport. Misino spent the last six years of his career as a primary negotiator, handling more than 200 incidents and never losing a single life.

Since retiring in 1995, he has taught negotiating skills to law enforcement officials, military personnel, and business executives (for more details, see his Web site, [hostagenegotiation.com](http://hostagenegotiation.com)). Misino modestly describes hostage negotiation as “applied common sense.” In the following interview, edited for clarity and length, he explores what he means by that innocuous-sounding term, painting a vivid picture of the blood, sweat, and tears of hostage negotiation.

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**What special skills** does it take to be a crisis negotiator?

I don’t think it requires special skills. Anyone can do it, man or woman, uniformed or civilian. What crisis negotiation does take is what I call applied common sense. When I’m negotiating, I’m constantly asking myself, “What is the simplest thing I can do to solve the problem?” When I’m dealing with an armed criminal, for example, my first rule of thumb is simply to be polite. This sounds trite, I know, but it is very important.

A lot of times, the people I’m dealing with are extremely nasty. And the reason for this is that their anxiety level is so high: A guy armed and barricaded in a bank is in a fight-or-flight mode. To defuse the situation, I’ve got to try to understand what’s going on in his head. The first step to getting there is to show him respect, which shows my sincerity and reliability. So before the bad guy demands anything, I always ask him if he needs something. Obviously I’m not going to get him a car. I’m not going to let him go. But it makes excellent sense

to be sensitive to the other guy’s needs. When you give somebody a little something, he feels obligated to give you something back. That’s just good common sense.

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**Don’t you find it difficult** to be polite to a murderer or a rapist?

I’ll go even further. How do you show respect to a convicted child molester? Believe me, in my line of work we routinely deal with people who have moved out of society and done things that are just horrific. Obviously, it isn’t easy to negotiate with someone you dislike—but if you’re a professional you keep your feelings separate from your work.

In crisis negotiation, you have the advantage that your goal is constantly right in front of your face: Get everybody out alive. And you’re also under incredible time pressure. When an Ethiopian national hijacked that Lufthansa plane, I had less than 45 minutes to build a relationship with him and bring the plane down. There were 104 people on board, and the hijacker had a gun aimed at the pilot’s head. That’s all the motivation I needed to stay focused on my task. Of course, there are people—whole countries, even—who say that we should never negotiate with certain individuals—terrorists, for instance. But I think that’s extreme. In reality, we’re always ready to negotiate as hard as we can with anyone to show him that there is an alternative to violence. Of course, we’re also ready to come in with a tactical solution—to deploy the SWAT teams—if we have to. But, ideally, force is a last resort.

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**Can you give** other examples of what you mean by applied common sense?

Another very commonsense technique is to ask the bad guy very early on in a negotiation if he wants you to tell him the truth. I stumbled on this tactic when I first started negotiating. My backup team found out that the bad guy had been part of a street gang. So I said, “Look, you grew up on the streets. So

did I. Do you want me to lie to you or tell the truth?” And he said he wanted the truth, which, of course, is exactly what I expected him to say. His situation was desperate; there were snipers all over the place. Who in his right mind would have wanted to be lied to?

The critical thing you get by asking the other guy if he wants the truth is that he enters into an agreement with you right at the start. This is important because a successful negotiation is really a series of small agreements. You use every possible opportunity to agree with your adversary—and to get him to agree with you. Because all the while you’re agreeing, the other guy is learning that he can trust you, that nobody’s going to hurt him. So I try right away to get to the first yes, and then immediately I go for the second. I tell the bad guy that if he wants me to tell him the truth, then he might hear things he doesn’t want to hear and, if that happens, he’s got to agree not to hurt anybody. In my day, I’ve negotiated with hostage-takers, hijackers, and murderers; the majority of them have given me their word they won’t hurt anyone. These people may be the outcasts of society, but they do have a code of honor. In fact, I would say that over 90% of the times that a criminal has given me his promise, he has kept it.

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**If you don’t have to** learn special skills, do you need certain personal qualities to be a successful high-stakes negotiator?

On the most basic level, you have to be a good listener. Unfortunately, like most people, negotiators want to talk and be heard, and so they’ve got to learn how to let the other person express himself without interruption. That’s terribly important because the individuals with whom we are dealing are often the very people who have never been listened to, and they are desperate to be heard. They just don’t have the patience for you to butt in and make a mistake. To get around this, I try to be a very active listener. For example, I typically ask the other guy to tell me his side of



things. And then I sit back and get an earful. I hear every instance of when the other guy has ever been wronged. I find out how often he's been framed. I discover how no one has ever cared for him. And a lot of this is true. But the way I look at it is that all of it is true—to him. And that's what matters.

So top negotiators are excellent listeners. But they also need to be aware of the noise inside their own heads. Believe me, even if you don't know what's going on inside you, the other guy will. Their sensitivity to your own biases is extraordinary. You need to know your hot buttons and your limitations.

Personally, I've got a lot of trouble dealing with pederasts and other people who harm children. But nevertheless I

emotions, identifying them, and helping the other guy to work them through. One of the most effective ways of doing this is by a technique we call mirroring. We echo the other guy's remarks to try and build a bridge between us. For example, I'll say, "So, you have a gun."

And typically the bad guy says, "Yeah, I have a gun."

"A gun?" I repeat.

"Yeah," he says, "a nine-millimeter gun."

And so I echo him again: "nine-millimeter?"

"Yeah, nine-millimeter with two magazines, 18 rounds."

In this exchange, of course, I'm getting critical data. But at the same time I'm telling the bad guy that there is no

try to reinforce the empathy by using a lot of "we" statements: "We're in this together" or "We can work this out." This is the kind of language that can alleviate the bad guy's isolation and paranoia.

**It sounds as if** you're trying to put yourself in the other guy's shoes. Is that right?

Up to a point, but you've got to be careful about telling a hijacker or a rapist that you know exactly what he's going through, because usually you don't. In fact, you can really infuriate people by trying to identify with them, because they know that you know very little about what they've been through in their lives. One time, one of our guys tried to commiserate with a bad guy, and the guy just went ballistic. He started cursing and screaming: "When was the last time *you* ever held up a bank and took five hostages?" So putting yourself in the other guy's shoes isn't always as helpful as it sounds. In fact, I've often been struck in my own negotiations by how impossible it is for me to imagine the amount of stress a bad guy feels when he's holed up in a building with 100 heavily armed SWAT team officers focused on him, watching his every move. Truthfully, I have probably never felt as scared or angry or lonely in my entire life as that guy does at that moment.

**You've talked about** good negotiators; what makes a bad one?

The worst negotiators are the people who hate rejection. Of course, nobody likes rejection – it hurts your feelings. But bad negotiators can't accept the fact that all the negative stuff coming at them is not personal. They think the other guy is angry at them when the other guy doesn't even know them. I used to get yelled at all the time in my job, but as I tell my students, you just have to let the other person vent. Because if you do, there's an incredible payoff.

First of all, the other guy usually feels better. But even more important, in the process of letting off steam, the bad

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*"You can really infuriate people by trying to identify with them, because they know that you know very little about what they've been through."*

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can negotiate with these people because I'm aware of my feelings. I would even say my feelings push me to become a better negotiator because when I know that something is going to affect me, I work harder to achieve a level of objectivity. That's all part of being comfortable with who you are, which is essential for being able to negotiate. Take police negotiations: They are impromptu and can go on for 50 minutes or ten hours; nobody knows. The only thing for certain is that no one can sustain a facade under that kind of pressure for very long. So the best preparation in the world for a successful negotiation is just to be comfortable with yourself.

**Your reference to** active listening sounds very reminiscent of what psychoanalysts call empathic listening. Can you say more?

Almost by definition, crisis negotiation is a roller coaster of emotions, both yours and the other guy's. To me, active listening means being attuned to those

longer a gun separating him and me; instead, there is some vital piece of information that the two of us share. In this way, mirroring is the beginning of a real conversation.

Another active-listening technique is to be constantly on the alert for the feelings being expressed behind the words. This is not as obvious as it sounds. My former partner once had an elderly woman who had barricaded herself in a house with a ten-inch butcher knife, and she was cursing at him at the top of her lungs. Despite her profanity, my partner was able to detect something else. He said to her, "Martha, I can hear your pain. I hear it in your voice." And she went from ranting and raving to absolute silence. No one before had ever picked up on the fact that she was hurting so much. When my partner acknowledged her pain, she put down the butcher knife, and he could begin to treat her like the elderly grandmother she was.

It sounds hokey until you've experienced it, but the very act of listening is empathetic. And when we do talk, we

guy is likely to tell you his problem – and the solution to his problem. For instance, I once heard a bad guy ranting and raving because a negotiator was Italian. That helped us figure out pretty quickly that the negotiator had to go. But generally speaking, bad negotiators lack this perspective. They get their feelings hurt, which makes them soft – or defensive. Both are bad positions from which to negotiate.

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**So the other guy needs** to vent. What about you?

Certainly you experience a lot of negative emotions in this job. You feel rage and frustration; you are almost always scared. I once participated in a negotiation that went on for 12 hours, though I wasn't the prime negotiator all that time. The most frustrating part was that the guy refused to talk. He just wouldn't talk. I have a tape recording of the negotiation, and whenever I hear it again, I realize how totally pent up I was feeling. I think if I could have reached out and strangled that guy, I probably would have.

There's nothing wrong with having strong emotions during a negotiation, but you need to acknowledge them so you don't act them out. That's the rule of thumb. But even here there are some exceptions. The most aggressive thing I've ever said in a negotiation situation was to a burglar who was threatening to kill his hostage, an 84-year-old lady named Ruth. As his threats grew more intense, I felt rage coming up inside me. And I said to the guy, "If you touch a hair on her head, I will personally ID your body in the morgue." Now, threatening your hostage-taker is not a suggested negotiation tactic. But in this situation, my gut told me that if I sat there all day listening to this particular guy threaten this particular lady, he was going to kill her. So I had to intervene. I did, and instantly the criminal backed down.

That was the only time I ever threatened a criminal in this way, but at the same time I must admit that I do not believe the best negotiators *never* act on their feelings. I think if you don't

find yourself taking some risks in this job – if you don't find yourself going someplace you never intended on going – then you probably aren't being the best negotiator you can be.

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**It seems that** you have to put a lid on some strong feelings. What helps you do that?

Having a team behind you is essential. Back in the early days, there were no negotiation teams. Negotiators worked one-on-one, and the stress was extraordinary. The longest consecutive negotiation I ever did was nine hours, and that was like running the New York City marathon. I just can't imagine how anyone could survive an ordeal like that without team support.

Nowadays, most police negotiation teams consist of five people. There is the primary negotiator, who actually talks to the bad guy. Then there is the commander, who makes all the decisions, and the coach who provides moral support and backup. These are the primary players. There's also a gopher or float, who runs around gathering vital information, and a guy we call a scribe. He keeps a chronological log of all the important stuff that's going on during the negotiation. It sounds crazy, but one of the things you often forget in the heat of a hostage situation is the other guy's name. So the scribe writes that down in big black letters on a piece of paper, which he tapes to the wall of the house or apartment we're negotiating out of.

An important point about these teams is that they're deliberately set up to separate negotiation from decision making, which gives the primary negotiator both terrific relief and enormous power to negotiate. Imagine for a moment that you're negotiating, and you tell the bad guy that you're in charge. He responds by demanding a car in 30 minutes or he'll take out a hostage. If, on the other hand, you can say, "Look, my commander is in charge, and I have to consult him," you've bought yourself time to maneuver.

This is the way diplomats operate all the time. They work out a proposal and

then bring it back to the national leaders for approval. Of course, in a crisis situation you don't have days and months to discuss a proposal. You don't even have minutes. You come to a fork in the road, and you have fractions of seconds to decide whether to go right or left. This kind of pressure would be unendurable without a team's direction.

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**I guess that a lot** of the time you didn't meet the people you were dealing with face-to-face. Was that a problem?

I hate to say it, but face-to-face communication is very old-fashioned. We rarely do that nowadays. Originally, the NYPD agreed with the communication gurus who said that face-to-face negotiation creates more intimacy and trust. But we quickly found out that face-to-face communication with a psychopath or an armed criminal is highly dangerous. In fact, the only police negotiators who have ever been killed in a negotiation situation were those who had face-to-face contact. So we dropped the approach altogether except for those situations in which there is absolutely no other way.

Normally, we prefer to work with the other guy by phone. Either we tap a phone line or drop a phone into the barricaded zone. However we manage it, phone contact is extremely effective. Americans are totally comfortable with the phone. We argue on the phone; we drive and talk on the phone; I've even heard of people who do therapy on the phone. Ironically, in my experience, the bad guys are often more comfortable on the phone than in face-to-face contact because they feel safer being at some distance from the police. If they're standing in the same room with you, they feel more exposed.

There is another reason we don't communicate face-to-face. We don't want to have the other guy see the inner machinations of our team. Think about what the scribe does, for example. If by some chance the bad guy would even surmise that someone is writing down information about him, he might not just feel

insulted; he might feel threatened. After all, if you have someone who's barricaded or holding hostages, he's going to be highly paranoid about his safety.

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### What's the most dangerous negotiation situation?

Generally speaking, suicide is the most dangerous situation because it's the most volatile. There's no suffering for people who are threatening suicide. By the time they get this far, they have finished suffering. So unlike criminals who are facing a jail term, suicidal people fear nothing. They're not worried that they might be punished for what they're doing to themselves—or to you. They're just not thinking. And, as we've seen with the suicide bombers in Israel, that makes them some of the most dangerous people we could ever deal with.

Once I had a suicidal ex-police officer who had climbed to the top of the Whitestone Bridge. A lot of people who saw her said, "Aw, she's up there just because she wants the publicity." But I never believed that. It was clear to me that she had emotional problems. Her therapist came to the scene after I had talked her down, and he told the team that we had handled her perfectly because we understood intuitively how

dangerous she was. In fact, he told us, she was not only suicidal; she was homicidal. "She wouldn't have hesitated, if you made her mad, to grab one of you and take you over the bridge with her." Incidentally, suicide is the main reason we never allow a priest or a rabbi to talk to a bad guy. We have learned over and over that when people ask for clergy, they are virtually always looking for closure on their lives. It's a prelude to suicide.


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### What's the biggest lesson you have learned from your work as a crisis negotiator?

I don't know if it's the biggest lesson, but one very important thing you learn as a negotiator is that if you want to win, you have to help the other guy to save face. Look at the people I deal with. They're criminals. They're not book-learned. Yet they're very smart in the sense that they can survive in an environment where most of us cannot, and they also have their own kind of dignity. If you can show these guys a way to maintain their pride while facing a defeat they know is inevitable, they'll go along with what you want.

I learned that lesson early in my negotiation career when I was called in to

deal with a situation in Spanish Harlem. It was a hot summer night, and there were 300 or 400 people out on the streets at three o'clock in the morning. A young man with a loaded shotgun had blockaded himself inside a crowded tenement building. He told me he wanted to surrender but couldn't because he'd look weak.

Now this guy was a parole violator, not a murderer, and so I told him that if he calmed down and let me cuff him, I would make it look as if I had to use force. He put down his gun and behaved like a perfect gentleman until we got to the street, where he started screaming like crazy and raising hell, as we had agreed. While he was doing this, the crowd was chanting "José! José!" in wild approval, and we threw him into the back of the car, jumped on the gas, and sped off. Two blocks later, José sat up, broke into a huge grin, and said to me, "Hey man, thank you. I really appreciated that." He recognized that I had given him a way out that didn't involve killing people and being killed in turn. I've never forgotten that. 

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