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Negotiation Analysis: An Introduction

"If you don't know where you're going, any road will take you there."

People often ask the wrong questions when they prepare for negotiation. "Should I put the first number on the table or wait for them to make the first offer?" "Should I negotiate on their turf, or insist that they appear on mine?" "Should I tell them what we really need, or should I include some bargaining chips that I can give away later?"

These are merely tactical questions, however. None of them can be intelligently answered without first developing a coherent strategic framework. In fact, mapping negotiation involves analysis of a very different set of issues. The resulting insights can spell the difference between deadlock and agreement, or between good deals and great ones.

This note sets out seven basic questions that any negotiator should ask before he or she goes to the bargaining table, whether to buy a new car, sell a prosperous business, settle a lawsuit, or avoid a strike or a lock-out. Different circumstances may well call for different strategies, but the core elements of negotiation analysis are universal. Moreover, negotiation analysis is equally useful for those who are in the midst of the bargaining process and for observers on the outside seeking to draw valuable lessons from other people's experience. The questions that negotiators and analysts must ask are:

1. BATNAs: What will the respective parties do if they don't come to agreement?
2. Parties: Who are the real parties in the negotiation?
3. Interests: What are their fundamental needs and priorities?
4. Value: How can value be created and who is likely to get it?
5. Barriers: What obstacles might prevent agreement (or maximization of joint value) and how can they be overcome?
6. Power: How can the various parties influence the negotiation process and its outcome?
7. Ethics: What is the right thing to do?

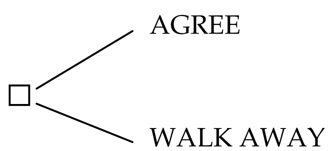
Professor Michael Wheeler prepared this note as the basis for class discussion.

1. BATNAs

What will the respective parties do if they don't come to agreement? Negotiation is a consensual process. Agreement takes place when—and only when—the parties believe that all things considered, the deal that they have reached makes them better off than they would be by walking away from the bargaining table.

The authors of the classic text *Getting to Yes*[1] use the term BATNA to describe what one will do if agreement is not reached. The acronym stands for **B**est **A**lternative **T**o a **N**egotiated **A**greement. It captures the notion that at some point in a negotiation, one ultimately has to choose between accepting a deal or pursuing more attractive alternatives. The idea has its roots in formal decision analysis and thus can be represented graphically:

Figure A



Although the BATNA concept seems simple, its actual application can be difficult. Consider the following case. Frank Park is the sole owner of ParkNet, a cable television system in a small municipality. Park has decided to sell his business. Gulf Cable, a regional company, has already offered him $10,000,000 in cash, but he is also negotiating with C-Com, the national telecommunications giant. Its representative seems interested in closing a deal very soon.

What is the owner's BATNA in his negotiation with C-Com? A naïve answer would be to accept the $10,000,000 offer from Gulf Cable, the regional company. While that certainly is *one* alternative, it is not necessarily the best. Given the apparent strength of the cable market, at least locally, the wisest thing for Park might be seeking out other potential bidders. Or, if he is in a hurry, he could still consider responding to Gulf Cable with a counter-offer (say, $11,500,000). Depending on the pros and cons of pursuing such options, Park thus might rationally demand much more than $10,000,000 from C-Com (the national firm).

On the other hand, it might also be perfectly sensible for Park to accept a lower figure from C-Com. For example, if he would be required to take some shares in the acquiring company as part of the deal, he might have more confidence in the financial performance of the national company than in that of the regional one. Likewise, he might accept less than $10,000,000 if he were able to stop working immediately instead of having to remain on the job for several years to ease the transition.

Your BATNA, in short, is your preferred course of action, what you would do if there is no agreement. It is *not* your bottom line. Once you have identified your best alternative, you have to put a value on it. That value, in turn, is your "walkaway" when you negotiate. The dollar price that you could get from a competing bidder is an important benchmark, but other factors like ease of consummating the deal, time pressure, relationships (both good and bad), and risk tolerance may significantly influence calculation of what is acceptable and what is not. Walkaways thus should take into account all of your various interests—tangible and otherwise.

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[1] Fisher, Ury, and Patton, *Getting to Yes*, 2d. ed. (New York: Penguin, 1991).

By contrast, a rigid bottom line can be dangerous in two different ways. It can become a self-fulfilling prophecy, one that leads you to get a result close to your minimum. More important, a hard dollars-and-cents hurdle can blind you to creative solutions. For example, a bidder in the cable case might propose some sort of financing package at a generous interest rate. With favorable terms, the nominal price might turn out to be less important.

Sometimes you may be lucky and have an excellent BATNA. That would be true if you were negotiating with a prospective employer after already getting an outstanding offer from another firm. Then again, sometimes your BATNA can be terrible. If you were trying to get a hotel room on a busy holiday weekend, with your kids carsick from too much fast-food and your over-heated engine spewing radiator coolant, your walkaway would be grim. In that situation, you wouldn't demand that the desk clerk give you the corporate room rate (although that's not to say that you shouldn't ask.)

Assessing BATNAs and walkaways—your own and those of other parties—involves both science and art. The former lies in specifying the plausible alternative agreements and rating which, on balance, would be best. The tools of decision analysis and micro-economics are well suited to this task.[2] But art is involved, too, particularly in imagining creative alternatives and weighing their relative value. Research shows that most people are not very good at evaluating BATNAs. Common failings include over-optimism, particularly in lawsuits where both plaintiffs and defendants convince themselves that they are in the right and will win.

Only by considering the perceived BATNAs of both the potential buyer and seller can one see if agreement is really possible—and, if so, whether there is a lot of room to bargain or just a little. Take our first example, involving Frank Park's possible sale of his local cable television system to the national firm, C-Com. To keep things simple at the start, assume that the parties are interested only in a straight cash transaction. Specifically, assume that Park is prepared to accept the other existing offer ($10,000,000 from Gulf Cable) unless C-Com is willing to do better. In turn, C-Com has done financial analysis that justifies its paying up to $13,000,000. Any amount above that figure could be better invested in alternative acquisitions.

In familiar terms, there thus would be a bargaining range from $10,000,000 to $13,000,000. For reasons that are explained later, it is more useful to call this range a "zone of possible agreement" (or ZOPA). Any price between those two figures obviously leaves both parties better off than they would be if they fail to make a deal. On the other hand, there is no "correct" figure or equilibrium. If each party knew the other's walkaway price, social ritual might lead them to split the difference, though actually any number within the ZOPA would be preferable to no deal for both of them.

Even negotiation experts disagree about whether such situations are "zero-sum." In one sense, they are in that any added dollar that the seller gains is a corresponding loss to the buyer. As a result, single-issue negotiations (such as those over price) are often called "distributive" in that a unit of value is distributed to one party or the other, but it cannot go to both. On the other hand, it is important to remember that by coming to agreement, the parties do generate gain. In this instance, a surplus of $3,000,000 is created (the difference between the walkaway prices of the buyer and the seller). Whatever price they settle on leaves them both better off than accepting impasse.

In practice, of course, it is hard for negotiators to have an accurate picture of the ZOPA. Even if they have rigorously analyzed their own BATNA and calculated a present value equivalent, their reading of the other side's walkaway is usually imperfect at best. General market conditions may provide some clues. Likewise, the behavior of the other party, their apparent interest in making a

[2] See, for example, Hammond, Kenney, and Raiffa, *Smart Choices* (Boston: Harvard Business School Press, 1999).

deal, and the pattern of offers and concessions should be taken into account, but such information is almost always incomplete and subject to interpretation.

Indeed, one of the early tasks in negotiation, once the process has begun, is to understand better how the other party views its alternatives—as well as how it perceives your own. This can be a time-consuming and frustrating process, if each party is guarded about revealing information about its own situation.

The familiar dance of offers and counteroffers is a way of simultaneously testing the true dimensions of the ZOPA (the zone of possible agreement) and shaping the perceptions of the other side. There are real risks in playing such a game, however. If the parties are too coy, they may fail to come to agreement, not realizing that a ZOPA exists. And even if they finally bargain their way to a resolution, their single-minded focus on price may blind them to opportunities for value creation.

Determining BATNAs and walkaways is a cornerstone of negotiation analysis. Ideally, you should carefully evaluate your nonagreement options before negotiation begins. In practice, of course, circumstances change, for better and worse, during the bargaining process, so these assessments must be regularly updated.

Judging how other parties see their alternatives is much trickier. It is easy to fall into the trap of deciding how they *should* see their BATNA, instead of how they really do. This is particularly true in disputes where self-serving biases can come into play. A plaintiff may bring a lawsuit, for example, in the belief that the defendant will want to avoid the costs of a trial, hence have an added incentive to settle. The defendant, however, may deeply resent being dragged into court, hence now see the issue as a matter of principle. Demands can escalate and positions harden when each side misreads how the other perceives its nonagreement alternatives.

2. Parties

Who are the real parties in the negotiation? The answer to this question may seem self-evident, but often it is not. Even in seemingly simple cases, there may be influential players who are not immediately visible at the bargaining table. Negotiators who fail to identify them operate at considerable peril.

Take, for example, the familiar case of buying a new car. If customers negotiate with the salesman (and most are men), they are probably talking to the wrong person. After thinking that they have hammered out a price, customers may be surprised when the salesman says that he has to get the deal approved by the manager. Typically after a few minutes, the salesman reappears with a disappointed expression on his face. The manager can't let the car go so cheaply, he'll explain. It has to be $750 more. The monthly payments will change by less than $20 a month, he'll hasten to add, and besides that, the manager has agreed to throw in the floor mats at no extra charge.

Car dealerships use this old gambit regularly. The salesman on the floor is supposed to build a relationship of sorts with the customer, get him or her softened up and psychologically committed to buying a particular car. Then the manager—distant and intimidating—can squeeze the last dollars out of the bargain. Some dealers actually don't let their salesmen know their rock-bottom price. They want their people to focus instead on discovering the top dollar that a customer will pay. The resulting asymmetry is very much in the dealer's favor: the customer can get pressured into committing to a specific price, but the salesman has no corresponding authority. A savvy customer, who knows the importance of identifying the real parties in the negotiation, should ask right at the outset to speak with the manager.

Identifying the real parties is equally important in sophisticated business transactions. Frank Park, the owner of the small cable television system, should likewise confirm the authority of the people who are negotiating with him. In the case of C-Com, the national company, can its representatives at the table really make a binding commitment, or will a provisional deal have to go through endless levels of corporate review? If that will be a long process, Park might think twice about passing up the other offer he already has. At the least, he might want to negotiate a cancellation fee in the provisional agreement. On the same principle, when negotiating with Gulf Cable, the smaller regional company, Park should discover if it is depending on outside financing to do the deal. If so, he would have to weigh whether having their lender at the table would help or hinder the process.

Identifying all the influential parties to the negotiation can redefine the whole endeavor. In fact, that's exactly what Frank Park did. Specifically, he decided to bolster his hand by pursuing a parallel roll-up strategy in which he would acquire other small cable systems in his part of the state. Putting a cluster of systems together would spread operating and advertising overhead, and give him greater purchasing power with program providers. If he could pull off this plan, Park then would have something much more valuable to sell to the regional or national cable companies. Even getting one or two other systems would add significant value.

This meant expanding his list of negotiating parties to include owners of other systems in his area. It also meant lining up possible financing. Getting specific lender commitments would provide important discipline. The caps that lenders imposed would help keep him from becoming intoxicated by a particular deal. Deadlines in the lending commitments would also protect him from sinking too much time into endless negotiations. If the lender had particular expertise, it might be a valuable ally in dealing with potential acquisitions. Before that could occur, however, Park would have to bargain with the lender over specific financing terms and its role in deal approval.

Identifying the current and potential parties in negotiation thus may raise a host of other important questions and can expose potential pitfalls and opportunities. Are we talking to the right person, for example? And would getting the support of Party A increase or decrease the subsequent chances of getting Party B on board?

This kind of thinking, in turn, reveals ways in which negotiators may be able to favorably change the basic game. Instead of passively reacting to whatever deals happen to arise, they can instead shape the environment in order to foster opportunities that best serve their needs. Park essentially did this by seeking a second bidder, and then by exploring the possible purchase of neighboring systems.

3. Interests

What are the interests and priorities of the key parties? Again, this may seem like a self-evident question, but it is one that many negotiators fail to ask, even of themselves. As a result, they may forfeit enormous opportunities.

Someone in Frank Park's situation might say that his interest is simply to maximize the price he gets for his company. Even if his sole concern were financial, however, getting the highest nominal price might not net him the most money. Careful deal structuring might legitimately reduce his tax obligations, for example. Likewise, he might want to balance his near-term needs for liquidity against long-term capital appreciation. Park should also think about how much risk he should take on and in what form, particularly if part of the payment might be in shares in the acquiring company.

The other parties, in turn, would have to assess their own interests. Timing might be important to the buyer, for example. If it were quietly moving to acquire other systems, it might want to delay an announcement. Or depending on other investment decisions, it might want to book this particular transaction in this year or the next. The buyer also might have a set of management concerns that could either make it important to retain Park for a transition period or to ensure that he leave immediately.

Failure to probe for underlying interests sometimes reflects a lack of insight, an unwillingness to test one's own assumptions, or to question "company policy." It also can be a consequence of the bargaining process. Negotiators also are often cautious about revealing their interests, fearful of being exploited if they expose their real needs. On the other hand, if negotiators lose sight of their interests or misstate them, they have little chance of maximizing the potential value of their deals. Indeed, they may foreclose agreement entirely.

This was almost the case with Frank Park, the cable television operator. As part of his roll-up effort, he approached the head of Aurora Partners, which owned the cable system in the neighboring city, hoping to merge it with his own company before ultimately selling himself. Depending on how the Aurora acquisition would be structured, Park calculated that he could pay a maximum of 10 or 11 million dollars.

Months of due diligence and arduous bargaining got him nowhere, however. Finally, the head of the other system said:

> Face it. We're wasting our time. It's obvious you're not prepared to pay anything close to what our business is worth. If you offered $15,000,000 cash on the table, right now, take-it-or-leave-it, I don't know what I'd recommend to my partners. I'd be tempted to take it, I'll admit. But if I did, I'd kick myself four ways to Sunday because I don't think this business has anywhere to go but up. Offer us a dollar less than that, and you don't even give us anything to think about.

Given how long the negotiations had dragged on, Park interpreted that $15,000,000 figure to be a true walk-away for Aurora. Their price was several million dollars above his upper limit.

Not everything is negotiable, of course, so Park thanked his counterpart for his candor and said that $15,000,000 was far too rich for his blood. He said good-bye, headed for the elevator, and was on the front steps of the building when, as he later put it, a light bulb clicked on in his mind: "focus on interest, not positions."

Park turned around, went back upstairs, and surprised Aurora's president by reappearing to ask one more question. "If you think your system is worth $15,000,000, how much would you be willing to pay for ours?"

"Oh," said the other man. "Yours is a little smaller. Say, $14,000,000."

After a bit of bargaining, they settled on the sale of Park's system at $14,500,000 which was well above what Park expected from either of the other companies that had been pursuing him. Park and Aurora carefully structured their deal to maximize financial benefit for both sides. Conceivably, Park might have done better if he had been able to roll up the small network of affiliated companies he envisioned, but as he had learned from this transaction, doing so would not be easy. He felt it was a good time to get out of the cable business and into other enterprises.

To his credit, Park had done a good job initially in assessing his BATNA, identifying the potential parties, and weighing his various interests. In the heat of trying to negotiate the Aurora acquisition, however, his fundamental objectives became obscured. He temporarily lost sight of the fact that purchasing the second system was simply a means toward the larger goal of maximizing economic value.

Indeed, in the course of consummating the ultimate sale, Park discovered that he had other interests, as well. Having spent many years building his company, he was particularly concerned that his loyal employees were treated well. The deal was structured so that they got handsome bonuses. Likewise, he had a serious commitment to local access programming. The agreement included guarantees that a new studio would be built at the high school, and the old wiring in the municipal offices would be upgraded.

In sum, assessing interests is important before and during negotiation, and even at the end when agreements are being refined and implemented. Without a refined sense of one's own objectives and trade-offs, it is hard to formulate a strategy or judge its success. On the other hand, negotiation involves a process of discovery, so interests can evolve, sometimes fundamentally. As a result, strategy should adapt to changing goals and circumstances.

4. Value

How can value be created—and who will get it? Negotiators should ask both these questions when they prepare for negotiation, though answer them only tentatively. The potential for value-creation ultimately depends on how the other parties' interests compare with your own. Rarely are the interests of other stakeholders entirely clear. Even as they are revealed in negotiation, they may not be perfectly understood.

Take the negotiation between the Frank Park and his purchaser, Aurora. There were months of meetings before it became clear that the owner of that second system truly placed a much higher value on it than Park himself did. Instead of a ZOPA (zone of possible agreement), there was a significant gap between the lowest price that the seller was willing to accept and the maximum price that the buyer was prepared to pay.

Figure B

$15m Min. acceptable price for Aurora to sell

GAP (no ZOPA)

$11m Max. acceptable price for Park to buy

Only at the very end did the parties recognize that while this difference in valuation foreclosed one particular deal, it opened the opportunity for another. The fact that the parties placed different values on the Aurora system does not mean that either one of them necessarily was wrong. The Aurora owner may have had different portfolio needs and investment opportunities. Perhaps he secretly had another bidder who was offering $14,000,000. Or he may see potential synergies with other companies. Park, in turn, may have had different long-term expectations about the viability of the cable industry given the emergence of other technologies.

Figure C

$14.5m Max. acceptable price for Aurora to buy

ZOPA

$11m Min. acceptable price for Park to sell

Differences are the core material for value creation in negotiation. After all, if these two parties completely agreed on the economic worth of their cable systems, they would have little incentive to buy or sell. A deal wouldn't be worth talking about—let alone bearing all of the costs involved in executing a transaction. By agreeing to the sale of the system, the parties essentially created $3.5 million of surplus value that reflected their differing expectations about the future of the cable business, as well as other investment opportunities. Depending on whether their agreed price ended up closer to $11,000,000 or $14,500,000, the greater share of that value might go to one party or the other.

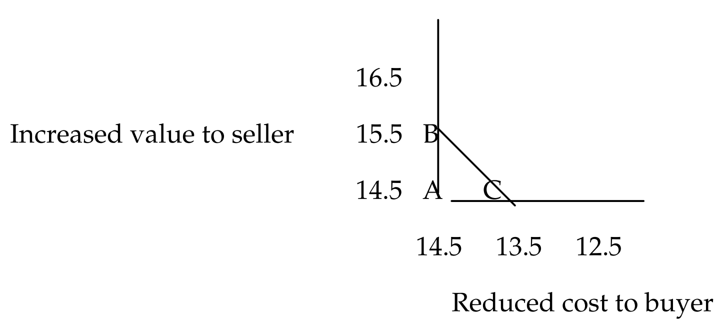
In most cases—including this one—there are more issues at stake than simply price. That means more dimensions on which the parties can differ, and hence, enhance value. But having more issues also requires a new way of visualizing how much value is generated and who gets what share.

Here is a simple illustration. Imagine that the parties in our cable television case have tentatively agreed to a cash price of $14,500,000. Any price adjustment would benefit one side at the expense of the other, so there would be no room to move—unless they could bring other issues into play. What if they discovered, for example, that the deal could be structured to result in $1,000,000 in net tax savings? If so, the buyer might agree to increase the nominal price, if some of those savings would actually bring the net cost down.

If the buyer got all of these savings, then he would effectively pay only $13,500,000 while leaving the seller no worse off than in the original deal. Alternatively, the seller might get all the tax savings and increase his profit without making the deal any more expensive for the buyer. Most likely, they would split the tax savings in some way, hence both would be better off than with a straight cash transaction.

This kind of value creation can be represented in the two-dimensional ZOPA diagram in **Figure D**. Here, the seller's interests are represented on the vertical line: values further north (up) are better for him. The buyer's interests, in turn, are represented on the horizontal line: points to the east (right) are better for him.

Figure D



Point A in **Figure D** locates the $14,500,000 cash deal that the parties provisionally reached. The line BC represents alternative deal structures that would yield $1,000,000 in tax savings. At point B, the seller would get all the savings, while at point C, they would go entirely to the buyer. This simple diagram illustrates key negotiation lessons:

1. It is possible to reach agreements that create gain for both parties. All of the points on the BC line are superior to the original deal at point A.

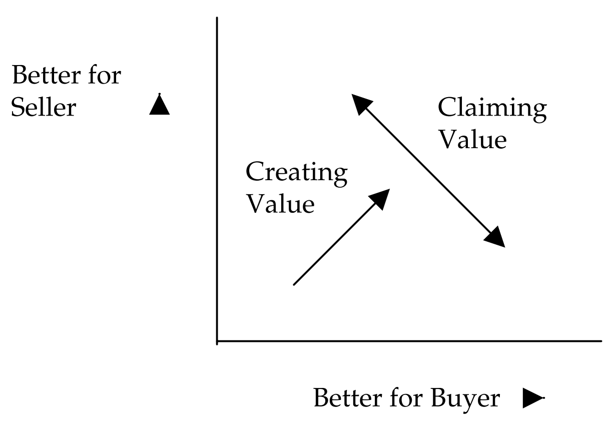
2. The creation of mutual gains does not necessarily mean that they will be evenly divided. Most or all of the gain may go to one party.

3. Expanding the pie and dividing it are part of the same process.[3]

It is a serious mistake to assume that negotiation has to be win-lose, that your welfare only can be advanced at someone else's expense. In **Figure E** any deals to the north and east represent tangible joint gain. But it is wrong to see negotiation simply in win-win terms. The parties may bargain hard on the value-claiming line over who will get what share of the tax savings. If they are too stubborn, they may forfeit potential gain and even jeopardize the entire agreement. Being naïve or meek is not the answer either, as that allows the other party to capture all the value.

Negotiators thus must "manage the tension between creating and claiming value." Creating value usually requires revelation of information and brainstorming, yet such disclosure can sometimes be exploited, particularly if it is about one's critical needs or the lack of good alternatives. In our example, that might mean that Park might be cautious about revealing his desire to continue local programming. If Aurora shared that priority, Park might be able to get guarantees in this regard without sacrificing much on price or other issues. On the other hand, if he were to mask his true interests, it would be unreasonable to expect the other side to meet them.

Figure E



By establishing the right problem-solving atmosphere, parties can identify a range of items and issues that can be crafted into a package that maximizes benefit. In the cable example, that might involve the financial structure of the deal (such as an upside bonus if the new owner resells in the near future, a transitional role for the former owner, job security for his old employees, etc.) This

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[3] See Lax and Sebenius, Ch. 2, "The Negotiator's Dilemma" in *The Manager as Negotiator: Bargaining for Cooperation and Competitive Gain* (New York: The Free Press, 1986).

process should continue until a point is reached where one party's well-being cannot be further improved without hurting the other's. Such a point is called "Pareto optimal." Some trades may add great value, of course, while others may be too complex or contentious to be feasible. Winnowing out the best ideas will succeed only if the parties have good intuition about each other's priorities.

In sum, value is generated in negotiation by capitalizing on differences, *not* necessarily by finding common ground. Differences may be in valuation, expectations, discount rates, or attitudes toward risk. Unless they are creatively exploited, the parties will squander opportunities that could benefit them both.

5. Barriers

What obstacles might prevent agreement (or the maximization of value) and how can they be overcome? The existence of a ZOPA (zone of possible agreement) and opportunities for joint gain do not guarantee agreement. Several formidable barriers may stand in the way.[4] Identifying such obstacles—and the means for overcoming them—is a key component of negotiation analysis.

Strategic behavior is the first barrier. Parties overplay their hands. A car salesman may be privately willing to accept an $18,000 offer, but hold out, hoping the customer will increase his bid. In fact, that figure may be the buyer's upper limit. When the customer walks out of the showroom, frustrated by the salesman's hard bargaining, both parties lose a potentially desirable deal.

The same dynamic can also occur when there are value-creating opportunities. In the deal between Frank Park and Aurora, each may demand the bulk of the tax savings. If they paint themselves into corners, it may be hard for either of them to concede. If they haggle too much, they may forfeit mutual gains. On the other hand, if one concedes too readily to the other, he will see little of the benefit. Well-formulated strategies must weigh the benefits and risks of specific bargaining tactics. Drawing a firm line on what is acceptable may increase your chances of getting a fair share of value, but involves the risk that your demand will exceed what the other party is willing to accept. As noted earlier, this is an inherent aspect of creating and claiming value.

Both these examples also illustrate a second kind of barrier, psychological or interpersonal. Parties can lack trust or have trouble communicating, for example. Each may harbor suspicions that stem from earlier experiences or social stereotypes. Maybe this particular car salesman is really honest and fair, yet the customer may assume that "he's like all the rest." If so, he will likely misread sincere offers of good service. When the salesman legitimately says that the price he is offering is the best that he can do, the customer may believe that it is only a bargaining ploy.

Emotions can run high in negotiation, as well. Issues of perceived power and status often come into play. It is the nature of negotiation that you never completely control your own destiny. This can be unsettling, particularly when the stakes are large. It is thus easy to regard other parties as opponents, people who are standing in the way of something that you need and deserve. Such attitudes can breed defensiveness, even hostility. Feelings can easily escalate to a point where

[4] See Mnookin, "Why Negotiations Fail: An Exploration of Barriers to the Resolution of Conflict," *Ohio State Journal of Dispute Resolution*, vol. 8, p. 235 (1993), for a somewhat different categorization of barriers.

everyone loses sight of their substantive objectives. Interpersonal obstacles are largely addressed through skillful management of the negotiation process itself.[5]

A third kind of obstacle is institutional. When Frank Park was negotiating with C-Com, the parties actually at the table might have seen imaginative ways of tailoring the deal to the particular circumstances, but their ideas might run afoul of policy back at corporate headquarters. Legal constraints may inhibit value creation, as well. A developer seeking to build more densely on one parcel might agree to donate another piece of land for conservation purposes, for example, but even if such a deal were widely supported, the trade might be illegal. Overcoming institutional barriers may require crafting new policies (in this example, enactment of a new transferable development rights ordinance). Sometimes a specific transaction can be the catalyst for broader innovations in deal making and dispute resolution.

6. Power

How can the various parties influence the negotiation process and its outcomes? It may seem odd that in a note on negotiation analysis, there has been little mention of bargaining power. Although it is a familiar term, even negotiation scholars disagree about what it really means.

Bargaining power is sometimes assumed to be simply the strength or weakness of your BATNA—your nonagreement alternative—but this is not a very helpful notion. Having a wonderful job offer in your pocket is great, but it won't make other prospective employers pay you more than they believe you are worth. A good BATNA simply insures you against having to accept too little. By the same token, having a poor walkaway doesn't necessarily mean that you are in a weak bargaining position. The other side may not know that you have few options, and in any event, it may prize what you have to offer. How it perceives its own BATNA may have more bearing on your power than how you see your own.

Indeed, power sometimes turns upside down in negotiation. Consider the adage, "Owe the bank $10,000, and you've got a problem. Owe the bank $10,000,000, and they have a problem." No one wants to be teetering on the edge of bankruptcy, of course, but people in that position have little to lose, hence can be hard to negotiate with.

Consider the Iranian hostage negotiations between President Jimmy Carter's administration and the revolutionary students who seized the U.S. embassy in Tehran in 1979. The U.S. State Department was well organized and staffed by sophisticated analysts. By contrast, the Iranian students were disorganized and involved in an ever-changing web of relationships with the new government, which itself was beset with internal conflict. Here again, apparent strength was weakness, and weakness actually was strength. Specifically, the Iranians could threaten the United States, knowing that its demands would be rationally considered; by contrast, the United States was constantly frustrated by not knowing where to aim its efforts.

Instead of thinking of power in the abstract, it is more useful to identify ways in which you can favorably change the basic architecture of a negotiation. That can involve redefining the set of parties. In buying a car, this might mean talking with the manager, not the salesman on the floor.

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[5] For helpful advice on managing the negotiation process see Fisher, Ury, and Patton, *Getting to Yes,* 2d. ed. (New York: Penguin, 1991); Ury, *Getting Past No (*New York: Bantam, 1991); and Shell, *Bargaining for Advantage: Negotiating Strategies for Reasonable People* (New York: Viking, 1999).

For Frank Park, our cable television owner, it meant exploring several different transactions simultaneously.

Another architectural feature is time. Setting deadlines can constructively force people to reach agreement. Some employers use the ethically questionable tactic of "exploding offers" to try to keep their prospective recruits from shopping their offers to see if the competition will bid higher. Schools, in turn, try to create favorable negotiating environments for their students by establishing rules governing when and where job interviews take place.

Still another way to "exert power" is to attack the other party's BATNA: instead of sweetening your offer, you try to worsen the consequences of refusing it. This can be a dangerous and dubious approach, but it is not unusual. People file lawsuits believing that it will bring the other parties to the bargaining table. Likewise, unions call strikes in hopes of forcing their employers to raise wages; in turn, employers lock out their workers hoping that will lower their demands. Even war is seldom an end in itself. Rather, as von Clauswitz noted, it often is "politics by other means."

Whatever the context, such attacks invite retaliation. People seldom take kindly to being threatened, particularly if they would lose face by backing down publicly. When threats get volleyed back and forth, simple misunderstandings can easily degenerate into perceived battles of principle. Most strikes are ultimately settled, and the great majority of lawsuits are resolved before going to trial, but often only after all the parties have incurred sizeable costs.

Bargaining power, in short, is a manifestation of complex situational factors, but it also is a matter of perception. Having an attractive BATNA will give you little advantage at the bargaining table unless other parties are convinced that you really are prepared to walkaway. Conversely, there is power in convincing the other parties that you will wait forever to get the terms that you want. In the Paris Peace talks to resolve the Vietnam War, the North Vietnamese delegation demonstrated its resolve by renting headquarters for two years.

Bargaining power is also a reflection of both knowledge and skill. People who have mastery over the substance are more able to enhance value and craft favorable terms. They also may know of other parties who can be brought into a deal to add value or provide leverage. Negotiation skill, in turn, includes a whole range of talents, from strategic vision and creativity to persuasiveness and self-confidence. Unsophisticated negotiators bungle opportunities without ever knowing it. Skillful negotiators make the very best of whatever hands they are dealt.

7. Ethics

What is the right thing to do? Negotiation inevitably involves other people or organizations. As a result, negotiators must identify the principles that guide their strategy and tactics. Specifically, there are five sets of questions that negotiators should ask themselves if they are to act responsibly.

First, what—if anything—do they owe other parties in the way of candor? For example, if a car salesman were to ask, "Now honestly, what's the absolute top dollar you are willing to pay for this fabulous vehicle?" are you really obliged to disclose your walkaway price? Most people would say that you are not, though they might not be able to articulate why. Sisela Bok's book, *Lying*, provides practical ways of thinking about such issues that involve, among other things, considering what the other party will do with disclosure, whether that person is likely to reciprocate your honesty, or even if a truthful answer is expected.

In those particular circumstances, there may be sound moral reasons to evade answering such a question directly. According to Bok and others, there also may be valid distinctions between overt misstatements and mere silence. Situational factors may come into play, as well. When dealing with professional salespeople, you may reasonably rely on their ability to protect their own interests. By contrast, when you resell the same car five years later to some inexperienced neighborhood teenager, you might well want to honor a higher standard of disclosure.

A second set of moral questions relates to the equity of agreements that are reached. Specifically, should you be concerned with the fairness of the agreement; that is, does it matter who gets what share of the pie? Here again philosophers have written at length about distributional fairness. In some situations, there is a valid argument to be made for *caveat emptor* or "buyer beware." Some free market economists would contend that the greatest good is achieved if everyone has an incentive to look after his or her own wellbeing.

Others would contend that this is a short-sighted viewpoint, specifically that it ignores long-term reputational impacts. (Expressed less elegantly, it is the notion that "pigs get fat; hogs get slaughtered.") That is still a utilitarian outlook, even though it takes a broader view of self-interest. Some philosophers would go further and say that none of us should get rich at other people's expense. A communitarian view would say that something is lost for us all if we simply regard each other as economic actors, instead of humans bound up in relationships that give life meaning. That begs the questions, of course, of "how rich" and at "what expense."

A third set of moral issues involves the potential use of force in negotiation. It is illegal to demand money by putting a gun to a person's head, but if using physical force is wrong, is the same true of applying economic pressure? Research shows that many people believe that it would be wrong for a hardware store to increase the price of snow shovels right after a blizzard, yet few have qualms about restaurants that jack up the cost of "early bird" specials at 6 p.m., just as demand starts to build. Popular opinion is very inconsistent on such issues. Where people stand may be influenced by where people sit, quite literally. Travelers who have to take trips at the last minute resent having to pay top dollar for their seats. By contrast, airline executives see differential pricing as a way of smoothing out demand and thus making operations more efficient. What looks like price-gouging to the customer is, in the eyes of the airlines, merely rational allocation of a scarce resource.

Philosophers debate this set of issues, too. Helpful considerations include whether the parties have plausible alternatives. It is one thing to demand $1,000,000 for a yacht. It might well be another to insist on the same price for a life-saving operation. For some, another factor may be what responsibility a person bears for putting himself or herself in a position of need. (That may explain why airlines don't demand full fare in cases of grave illness or death in the family.)

A fourth domain of moral issues involves the impact of negotiation on bystanders. Even if the parties themselves are content with their agreement, are they obliged to think about how it will affect people who are not at the bargaining table? An economic development agency may entice a manufacturer to locate a new plant in its city. Overall, the project will be good for the community, as it will bring jobs and add to the tax base. The immediate abutters will suffer somewhat, however, as their once quiet neighborhood is transformed into an industrial area. Beyond losing their tranquility, they may suffer financial harm if the value of their homes drops. Even if they do not have the legal or political clout to block the deal, should their concerns be ignored?

In one sense, this is another version of the fairness issue raised earlier, though with the twist that not all of the impacted parties are at the table. While the political process might grant the abutters in this example some protection, there are certainly other situations in which people have a stake but no voice. Apparently Frank Park, the owner of the cable system, recognized this as an issue when he sold his company. Some set of personal values prompted him to ensure that his long-term employees were well rewarded and that the community would continue to get good local service.

Finally, there can be difficult moral issues when one is negotiating on behalf of others. In theory, conflicts of interest between an agent (say, a lawyer) and his or her principal might be resolved by looking at the terms under which the agent was retained or perhaps by consulting professional norms. Tricky problems arise in practice, however. What should happen, for example, if a lawyer sincerely believes that a settlement offer is far better than what the client is likely to win in court, but the client refuses it? Or should a mediator be blind to power imbalances that will lead to unfair deals? More fundamentally, must individuals abandon their own personal values and standards when they accept corporate jobs? Arthur Applebaum's *Ethics for Adversaries*[6] rejects the view that bargaining tactics that would be improper if we did them ourselves, somehow become permissible if they are done on behalf of our employer.

None of these moral questions are easy, whether they involve candor, fairness, force, impact on bystanders, or principal-agent conflicts. But their difficulty actually is all the more reason for not improvising one's moral standards at the bargaining table. In negotiation, your words and deeds define your relationship with others. Negotiation strategy and tactics must thus be based on carefully considered principles. Acting first, then constructing a rationale after the fact to justify your behavior, can be dangerous for others – and for yourself.

Summary

Effective negotiation requires a coherent framework linking means and ends. The framework presented here requires clear-eyed assessment of all the parties' non-agreement alternatives (BATNAs). Identifying their fundamental interests as the source of potential value-creating trades is equally important. Careful negotiation analysis also means recognizing possible barriers to agreement, as well as structural elements that might be advantageously rearranged. All of these tasks may can reveal important moral and ethical issues, as well.

The concepts presented in this note have been drawn from a range of examples—from the sale of cars and businesses to hostage negotiations and international conflict. Negotiation analysis can extract practical lessons from all such cases. The lessons, in turn, can be illuminated and extended by a host of rigorous academic disciplines from game theory and decision analysis to cognitive and social psychology. Through formal study and reflection on your own experience and that of others, you can develop a conceptual framework that will allow you to craft negotiation strategy, rather than just improvising it.

Rigorous negotiation analysis is necessary for success, but it alone is not sufficient. Strategy must be implemented with skill and insight. The ability to listen and persuade is highly valuable. So is patience (and sometimes even humor). Moreover, because negotiation is interactive, success is also contingent on your counterparts' attitudes and creativity ability. Thus your own negotiation strategy should encourage constructive behavior from the people with whom you will deal.

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[6] Applebaum, *Ethics for Adversaries*: *The Morality of Roles in Public and Professional Life* (Princeton: Princeton University Press, 1999).