THREE ETHICAL ISSUES IN NEGOTIATION

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The agent for a small grain seller reported the following telephone conversation, concerning a disagreement over grain contracted to be sold to General Mills:

We're General Mills, and if you don't deliver this grain to us, why we'll have a battery of lawyers in there tomorrow morning to visit you, and then we are going to the North Dakota Public Service [Commission]; we're going to the Minneapolis Grain Exchange and we're going to the people in Montana and there will be no more Muschler Grain Company. We're going to take your license.1

Tactics mainly intended to permit one party claim value at another's expense inescapably raise hard ethical issues. How should one evaluate moves that stake out positions, threaten another with walkout or worse, misrepresent values or beliefs, hold another person's wants hostage to claim value at that person's expense, or offer an "elegant" solution of undeniable joint benefit but constructed so that one side will get the lion's share?

One approach to these questions is denial, to believe, pretend, or wish that conflict and questions of dividing the pie have no part in negotiation and hence such tactical choices are falsely posed: "If one really understood that the whole process was effective communication and joint problem solving, one could dispense with any unpleasant-seeming tactics, except to think about responding to their use by nasty opponents." However, denying that conflict over process and results is an essential part of negotiation is badly flawed conceptually.2 Or, one can admit that there are hard ethical questions but deny they are relevant, as suggested by the following advice (Beckman, 1977) from a handbook on business negotiation:

Many negotiators fail to understand the nature of negotiation and so find themselves attempting to reconcile conflicts between the requirements of negotiation and their own senses of personal integrity. An individual who confuses private ethics with business morality does not make an effective negotiator. A negotiator must learn to be objective in his negotiations and to subordinate his own personal sense of ethics to the prime purpose of securing the best deal possible for his principals.

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Just as we are uncomfortable denying the reality of conflict in bargaining in order to evade ethical issues, it is scarcely more satisfying to admit that ethical issues exist but, following the author of the above remark, simply to assert that they are irrelevant. Instead, we find at least two kinds of reasons to be concerned with ethical issues in negotiation.  

Many people want to be "ethical" for intrinsic reasons—apart from the effect of such choices on future encounters. Why? Variously, because it simply feels better, because one ascribes an independent value to acting "ethically," because it may be psychologically healthier, because certain principles of good behavior are taken as moral or religious absolutes, or for other reasons. Yet it is often hard in negotiation to decide what actions fit these criteria, especially when values or principles appear to conflict.

Ethical behavior may also have instrumental value. One hears that "it pays to be ethical" or "sound ethics is good business," meaning that if a negotiator calculates correctly, taking into account the current and long-run costs of overly shrewd behavior, profits and benefits will be higher. The eighteenth century diplomat François de Callières (1716) made a more expansive version of this point:

It is a capital error, which prevails widely, that a clever negotiator must be a master of the art of deceit... No doubt the art of lying has been practised with success in diplomacy; but unlike that honesty which here as elsewhere is the best policy, a lie always leaves a drop of poison behind, and even the most dazzling diplomatic success gained by dishonesty stands on an insecure foundation, for it awakes in the defeated party a sense of aggravation, a desire for vengeance, and a hatred which must always be a menace to his foe... the negotiator will perhaps bear in mind that he will be engaged throughout life upon affairs of diplomacy and that it is therefore his interest to establish a reputation for plain and fair dealing...[which] will give him a great advantage in other enterprises on which he embarks in the future.

Of course, such justifications of ethics in terms of prudence rely on the calculation of its benefits turning out the right way: "Cast thy bread upon the waters," the Bible says, "and it shall return to thee after many days." The harder case, however, is when ethical behavior does not seem to pay—even after correctly factoring in the long-term costs of reputation, credibility, how others may react, and any ill social effects. Then one is back to intrinsic justifications.

Assuming, however, that ethical issues are relevant to bargaining, for whatever reasons, three characteristic areas strike us as especially useful to discuss: the appropriateness of certain tactics, the distribution among the bargainers of value created by agreement, and the possible effects of negotiation on those not at the table (externalities). Without elaborating the philosophical frameworks within which such questions can be more fully addressed, we offer some thoughts on making these kinds of inescapable ethical choices.

1. Tactical Choice
The essence of much bargaining involves changing another's perceptions of where in fact one would settle. Several kinds of tactics can lead to impressions that are at variance with the truth about one's actual position: persuasive ration-
ales, commitments, references to other no-agreement alternatives, calculated patterns of concessions, failures to correct misperceptions, and the like. These tactics are tempting for obvious reasons: one side may claim value by causing the other to misperceive the range of potentially acceptable agreements. And both sides are generally in this same boat.

Such misrepresentations about each side's real interests and the set of possible bargaining outcomes should be distinguished from misrepresentations about certain aspects of the substance of the negotiation (e.g., whether the car has known difficulties that will require repair, whether the firm being acquired has important undiscovered liabilities, and so on). This latter category of tactics, which we might dub "malign persuasion," more frequently fails tests of ethical appropriateness. Consider two such tests.

**Are the "Rules" Known and Accepted by All Sides?**

Some people take the symmetry of the bargaining situation to ease the difficulty of ethical choice. The British statesman, Henry Taylor, is reported to have said that "falsehood ceases to be falsehood when it is understood on all sides that the truth is not expected to be spoken." In other words, if these tactics are mutually accepted as within the "rules of the game," there is no problem. A good analogy can be found in a game of poker: Bluffing is expected and thus permissible, while drawing a gun or kicking over the table are not. Yet often, the line is harder to draw.

For instance, a foreigner in Hong Kong may be aware that at least some tailors bargain routinely, but still be unsure whether a particular one—who insists he has fixed prices—is "just bargaining." Yet that tailor may reap considerable advantage if in fact he bargains but is persuasive that he does not. It is often self-servingly easy for the deceiver to assume that others know and accept the rules. And a worse problem is posed if many situations are often not even recognized as negotiation, when in fact they exhibit its essential characteristics (interdependence, some perceived conflict, opportunistic potential, the possibility of explicit or tacit agreement on joint action). When, as is often the case in organizational life, such less acknowledged negotiation occurs, then how can any "rules" of the game meet the mutual "awareness and acceptance of the rules" test?

**Can the Situation Be Freely Entered and Left?**

Ethicist Sissela Bok (1978, pp. 137-140) adds another criterion: For lying to be appropriate, not only must the rules be well-understood, but the participants must be able freely to enter and leave the situation. Thus to the extent that mutually expected, ritual flattery or a work of fiction involve "lying," there is little problem. To make an analogy between deception and violence: though a boxing match, which can involve rough moves, meets this criterion, a duel, from which exit may be impossible, does not.

Yet this standard may be too high. Bargaining situations—formal and informal, tacit and explicit—are far more widespread than many people realize. In fact, a good case can be made that bargaining pervades life inside and outside of organizations, making continual free entry and exit impractical. So if bargaining will go on and people will necessarily be involved in it, something else is required.
Other Helpful Questions
When it is unclear whether a particular tactic is ethically appropriate, we find that a number of other questions—beyond whether others know and accept it or may leave—can illuminate the choice. Consider several such questions:

Self-image. Peter Drucker (1981) asks a basic question: When you look at yourself in the mirror the next morning, will you like the person you see? And there are many such useful queries about self-image, which are intended to clarify the appropriateness of the choice itself and not to ask about the possible consequences (firing, ostracism, etc.) to you of different parties being aware of your actions. Would you be comfortable if your co-workers, colleagues, and friends were aware that you had used a particular tactic? Your spouse, children, or parents? If it came out on the front page of the New York Times or the Wall Street Journal? If it became known in ten years? Twenty? In the history books?

Reciprocity. Does it accord with the Golden Rule? How would you feel if someone did it to you? To a younger colleague? A respected mentor? A member of your family? (Of course, saying that you would mind very much if it were done to another need not imply that the tactic is unethical; that person may not be in your situation or have your experience—but figuring out the reason you would be bothered can give a clue to the ethics of the choice.)

Advising Others. Would you be comfortable advising another to use this tactic? Instructing your agent to use it? How about if such advice became known?

Designing the System. Imagine that you were completely outside the setting in which the tactic might be used, but that you were responsible for designing the situation itself: the number of people present, their stakes, the conventions governing their encounters, the range of permissible actions, and so on. The wrinkle is that you would be assigned a role in that setting, but you would not know in advance the identity of the person whose role you would assume. Would you build in the possibility for the kind of tactics you are now trying to evaluate? A simpler version of this test is to ask how you would rule on this tactic if you were an arbitrator, or perhaps an elder, in a small society.

Social Result. What if everybody bargained this way? Would the resulting society be desirable? These questions may not have obvious answers. For example, hard, individual competition may seem dehumanizing. Yet many argue that, precisely because competition is encouraged, standards of living rise in free-market societies and some forms of excellence flourish.

Alternative Tactics. Are there alternative tactics available that have fewer ethical ambiguities or costs? Can the whole issue be avoided by following a different tack, even at a small cost elsewhere?

Taking a Broader View. In agonizing over a tactic—for instance, whether to shade values—it is often worth stepping back to take a broader perspective.

First, there is a powerful tendency for people to focus on conflict, see a "zero sum" world, and primarily aim to enlarge their individual shares. Such an emphasis on "claiming" is common yet it can stunt creativity and often cause significant joint gains to go unrealized. In such cases, does the real problem lie in the ethical judgment call about a tactic intended to claim value, or is it a disproportionate focus on claiming itself? If it is the latter, the more fruitful question may be how to make the other face of negotiation—moves jointly to "create value"—more salient.
Second, does the type of situation itself generate powerful tendencies toward the questionable tactics involved? Is it an industry in which “favors” to public officials are an “expected” means for winning good contracts? If so, evaluating the acceptability of a given move may be less important than deciding (1) whether to leave the situation that inherently poses such choices, or (2) which actions could alter, even slightly, the prevalence of the questionable practices.

2. Distributional Fairness

One reason that a tactical choice can be uncomfortable is its potential effect on the distribution of value created by agreement. If a “shrewd” move allows a large firm to squeeze a small merchant unmercifully or an experienced negotiator to walk away with all the profit in dealings with a novice, something may seem wrong. Even when the nature of the tactics is not in question, the “fairness” of the outcome may be.

This difficulty is inherent in negotiation: Since there is a bargaining set of many potential agreements that are better for each person than his or her respective alternatives to agreement, the value created by agreement must necessarily be apportioned. Ultimately, when all joint gains have been discovered and common value created, more value for one party means less for another. But just where should the value split be? This, of course, is the age-old problem of “distributive justice,” of what a just distribution of rewards and risks in a society should be. In the same way that this is a thorny, unresolved problem at the social level, so it is for individual negotiators—even when less well-recognized.10 And this is why the problem is so hard, and does not admit easy answers.

A classic problem among game theorists involves trying to develop fair criteria to arbitrate the division of $200 between two people.11 An obvious norm involves an even split, $100 for each. But what if one is rich and the other poor? More for the poor man, right? “Not at all!” protests the rich woman, “you must look at after-tax revenue, even if you want a little more to end up going to the poor man. Moreover, you should really try to equalize the amount of good done for each of us—in which case $20 to him will improve his life much more than $180 will mine. Or look at it the other way: Ask who can better afford to lose what amounts—and he can afford to lose $5 about as much as I can $195. Besides, he is a wino and completely on his own. I will sign this pledge to give the money to Mother Teresa, who will use it to help dozens of poor people in India. After all, that poor man was rich just two weeks ago, when he was convicted of fraud and had all his money confiscated to pay back his victims.”

Who “should” get what in a negotiated agreement? The preceding tongue-in-cheek discussion should not obscure the importance of distributional questions; certainly negotiators argue for this solution or that on the basis of “fairness” all the time. But the rich woman’s objections should underscore how fragile and divisive conceptions of equity may be. One person’s fairness may be another’s outrage.

And fairness not only applies to the process of bargaining but also to its underlying structure. Think of the wage “bargaining” between an illegal alien and her work supervisor who can have her deported at a moment’s notice. Is such a situation so loaded against one of the participants that the results are virtually certain to be “unfairly” distributed?
Many times, by contrast, we will be comfortable answering that we do not care about the actual result, only that the process was within normal bounds, that the participants intelligent and well-informed enough, and that no one outside the negotiation was harmed by the accord.

3. Externalities
A third broad question involving others who are not at the bargaining table deserves some mention. If the Teamsters Union, major trucking firms, and a “captive” Interstate Commerce Commission informally bargained and agreed on higher rates, what about the interests of the unrepresented public? How do the childrens’ interests figure into a divorce settlement hammered out by two adversarial lawyers who only know that each parent wants custody? Or, suppose that a commission negotiates and decides to raise current Social Security benefits dramatically but pay for them by issuing very long-term bonds, the bulk of whose burden will fall on the next two generations?

It is often easy to “solve” the negotiation problem for those in the room at the expense of those who are not. If such parties cannot take part directly, one way to “internalize” this “extraneousness” is to keep their interests in mind or to invite the participation or observation of those who can represent their interests, if only indirectly.12 Deciding that the process could be improved this way may not be too hard, though the mechanics of representation can be trickier. Yet, even with “proper” representation, what about the actual outcome? We are back to questions akin to those in the last section on distribution.

There is another, more subtle, external effect of the way in which ethical questions in bargaining are resolved. It involves the spillover of the way one person bargains into the pattern of dealings of others. Over time, each of us comes to hold assumptions about what is likely and appropriate in bargaining interactions. Each tactical choice shapes these expectations and reverberates throughout the circles we inhabit. And many people lament that the state of dealings in business and government is such that behavior we might prefer to avoid becomes almost irresistible, since others are doing it and overly idealistic actions could be very costly.

Conclusion
The overall choice of how to negotiate, whether to emphasize moves that create value or claim it, has implications beyond single encounters. The dynamic that leads individual bargainers to poor agreements, impasses, and conflict spirals also has a larger social counterpart. Without choices that keep creative actions from being driven out, this larger social game tends toward an equilibrium in which everyone claims, engages constantly in behavior that distorts information, and worse.

Most people are willing to sacrifice something to avoid such outcomes, and to improve the way people relate to each other in negotiation and beyond. The wider echo of ethical choices made in negotiation can be forces for positive change. Each person must decide if individual risks are worth general improvement, even if such improvement seems small, uncertain, and not likely to be visible. Yet a widespread choice to disregard ethics in negotiation would mark a long step down the road to a more cynical, Hobbesian world.
NOTES

This article is adapted from a section in the authors' forthcoming book, *The Manager as Negotiator* (New York: Free Press, 1986). The authors are particularly indebted to Howard Raiffa and to the discussion of ethics in his book *The Art and Science of Negotiation* (Cambridge, Mass.: Harvard University Press, 1982).

2. In Chapters 2, 6, and 7 of our book, *The Manager as Negotiator* (1986), we elaborate this point.
3. For an insightful, common sense discussion of the reasons for being "moral," see Hspers (1961).
4. If certain precepts are taken as Kantian categorical imperatives or as otherwise correct in an absolute sense, regardless of the consequences (the strong deontological position), the decision problem may be easy—unless more than one such principle appears to conflict.
5. Of course, there are many ethical issues involved in bargaining beyond those treated here (e.g., How should an attorney bargain on behalf of a client that she believes is guilty? Should a bargaining agent be solely guided by his principal's conception of her own interests? Even where the agent thinks he "knows better" or is more "expert"? Where one party psychologically "dominates" the other? How can one party "properly" represent a constituent group, especially where the interests of the group members diverge? And so on.)
6. For a good informal discussion of these questions, especially the first, see Raiffa (1982: 344-355).
7. For an extended discussion, see Chapter 1 of *The Manager as Negotiator*.
8. This discussion draws from John Rawls (1971).
9. But, the welfare theorems of economics—that prove that competitive equilibria are Pareto-optimal and that Pareto-optimal allocations of goods and services are competitive equilibria—assume that bargaining is Pareto-efficient. The thrust of our argument about the "Negotiator's Dilemma" (see Lax and Sebenius, 1986) and the work on bargaining with incomplete information (see, for example, Chatterjee, 1982; Rubinstein, 1983; Cramton, 1983, 1984A and 1984B; and Myerson, 1985) is that bargained outcomes will tend to be inefficient since bargainers act on the temptation to misrepresent.
10. In fact, bargaining is a time-honored way of resolving this dilemma, just as pure markets, legislative action, and judicial ruling are in other spheres where distributive issues must be settled. See Lindblom (1977).
11. For a very clear look at how analysts have approached this kind of problem, see Raiffa (1982: 235-255).
12. For a discussion of this problem in the context of public disputes, see Susskind and Ozawa (1985).

REFERENCES

------. "The Role of Time and Information in Bargaining." Stanford Graduate School of Business Research Paper No. 729, 1984B.

