DEALMAKING ESSENTIALS:
CREATING AND CLAIMING VALUE FOR THE LONG TERM

Most important managerial problems involve people whose interests and perceptions are in some conflict. Effective management and leadership often depend on the capacity to envision and bring about sustainable agreements among these parties. This is true with respect to discrete transactions such as mergers, labor contracts, and out-of-court settlements. It is true when working out new supplier and customer relationships, dealing with large shareholders and creditors, as well as initiating and managing cross-border strategic alliances. It is true inside the firm where people from different functional areas and divisions need to reach and implement new cooperative arrangements in response to change. It is true with respect to conflicts arising from the interaction of businesses with governments as well as with environmental and other nongovernmental organizations. It is true as workforces become more diverse and business increasingly crosses borders and cultures. And it is endlessly true for entrepreneurs who must come to productive terms with investors, potential employees and board members, technology partners, distributors, possible acquisitions as well as would-be acquirers. As Bob Davis, CEO of Lycos, a high-profile internet portal company bluntly emphasized: “You have to make dealmaking a core competency.”

Rarely has this been more true than at present: with deals across virtually the entire business landscape worldwide, 1998 smashed M&A records both in numbers of transactions and their nearly $1.9 trillion valuation—only to set the stage for new records in 1999 totaling over $3.3 trillion. Yet beyond such formal deals, negotiation is increasingly a way of life for effective managers for at least three sets of reasons.

First, formal authority, hierarchy, and command are less and less able by themselves to ensure productive cooperation and genuine commitment. This is the case internally where cross-functional and inter-unit coordination is crucial and where greater professionalization means that key employees and colleagues both have and value more autonomy. It is also true externally with an increasing number of influential stakeholders outside the traditional chain of command. Newer and flatter organizational forms—strategic alliances, joint ventures, tightly knit supply chains across different firms, virtual corporations, network entities, as well as team-based processes—generally require almost continuous negotiation to function effectively.

Second, the sheer pace of change in markets, technologies, and competition puts a sharply increased premium on the capacity of organizations to flexibly respond by devising new arrangements and renegotiating the old ones. Salient examples requiring some truly complex negotiations include the convergence of computing, telecommunications, and information/entertainment sectors as well as the flood of early 1990s restructurings, especially in the heavily leveraged corporate, financial, and real estate sectors. Operationally, “flexibility” in the face of a faster pace of change—combined with an increasing number of influential stakeholders—means that yesterday’s arrangements must be reworked into today’s, and that today’s will have to be altered to meet the needs of tomorrow. Persuading key stakeholders to abandon familiar practices and perceived entitlements can severely test a manager’s negotiation skills.

Third, increasing demographic diversity of the work force and genuine globalization of business raise the risks of unproductive cultural misunderstandings and costly conflict. These outcomes can often be prevented or mitigated by effective negotiation.


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In short, negotiation has always been a useful skill for managers to deal with disputes and to make deals. But with more influential stakeholders, with authority and hierarchy necessary but decreasingly sufficient, with looser organizational forms, with an increased pace of change, and with greater diversity and global reach, negotiation assumes greater importance. For effective managers, it is a way of life, a new core competence, not merely an important skill to be wheeled out for special occasions.

PART I: THE FUNDAMENTAL PRINCIPLE—SOLVING EACH SIDE’S “BASIC NEGOTIATION PROBLEM”

“Negotiation,” as I use the term, extends far beyond formally trading price proposals across a table. When your success depends on part in the decisions and actions of other people who have at least some different interests and viewpoints, negotiation or negotiation-like processes may be inevitable. The processes of interaction range widely: from formal to informal, and from explicit to tacit. They may be aimed at reaching a legally binding contract or merely arriving at a temporary mutual understanding subject to renegotiation. Broadly speaking, negotiation is best understood as a process of potentially opportunistic interaction aimed at advancing the full set of one’s interests by jointly decided action. At bottom, each negotiator is trying to solve his or her “Basic Negotiation Problem” as to how best to advance one’s full interests, either by improving and accepting the available deal or opting for its best no-deal alternative.

Three core elements make up each side’s Basic Negotiation Problem: (1) the importance of underlying interests as the raw material for negotiation; (2) the implication that negotiation is a means for advancing interests, rather than an end in itself, implying that other noncooperative means compete with negotiated possibilities; and (3) the fact that negotiation seeks jointly-decided action and thus inherently is a process of joint problem-solving. Here is essence: to advance my real interests, I must assess precisely what “yes” I want from you and why you might say it rather than opt for no deal. Then my approach should influence how you see your Basic Negotiation Problem such that what you choose—for your reasons—is precisely what serves my interests. The Fundamental Principle of effective negotiation, paraphrasing the words of an Italian diplomat, is “the art of letting them have your way.” The first part of this article explores the three core elements of the Basic Negotiation Problem for each relevant party; then, building on these elements, I offer a strategic framework for assessing negotiations and carrying them out in line with the Fundamental Principle.

INTERESTS: THE RAW MATERIAL FOR NEGOTIATION

The concept of “interests” is foundational to effective negotiation. Your interests in a negotiation are whatever you care about that is at stake in the process. Socrates’ admonition to “know thyself” lies at the core of effective dealmaking along with its worthy twin, to “know thy counterpart.”

Basic advice: Know your interests and the priorities among them.

To achieve your negotiating interests, you need to know your interests in depth. If your real purpose in job negotiations with three potential new employers is to broaden your experience and learn new skills, those aspects should be your focus; you should take care that the talks aren’t primarily an exercise in maximizing near-term compensation. In seeking a marketing arrangement, your team might initially be focused on winning an exclusive, but realize during the process that a broader territory would be more valuable in terms of sales potential. The best negotiators are very clear on their ultimate interests but know their tradeoffs among lesser interests and are remarkably flexible and creative on the means.

Basic advice: Assess the full set of interests at stake.

Negotiations generally address tangible and objective factors such as price, cost, profit, timing, and performance specifications. While such interests are important, it is often a mistake to implicitly assume individual, short-term, and economic in front of “interests.” Your real concerns may subordinate the immediate to the long-term and strategic. Crucial interests may be intangible and subjective: the relationship, the character of the negotiating process, the precedent it sets, its fairness to both parties and their constituencies, its sustainability, the effect on your reputation and self-image, whether trust is enhanced or eroded, and the like. You may also care about the welfare of your group and organization, and you may be motivated by genuinely altruistic concerns. But whatever you care about at a fundamental level that is potentially affected by the negotiation is an “interest” of yours. And your focus should be on the full set of interests at stake; this set constitutes the raw material for negotiation.

The relationship and the broader “social contract.” A too-narrow conception of negotiating interests can become painfully obvious in some cross-cultural settings. At the risk of overgeneralizing, a “great divide” looms between deal-focused cultures, in which dominant interests involve substance, and relationship-focused cultures, where the depth of the relationship is the driving interest. In deal-focused cultures, relationships grow more from deals while, in relationship-focused cultures, deals are the implications of already-developed relationships. In relatively deal-focused locales (much of North America, Northern Europe, and Australia), relationships matter, of course, but the threshold for doing a deal can be far
lower than in relationship-focused locales (much of Latin America, Southern Europe, South and Southeast Asia). Inexperienced negotiators often err by letting “hard interests,” such as the economics of a deal, drive out critical “soft interests,” such as relationships.

Less tangible interests are hardly limited to international deals. In setting up a new venture or a strategic alliance, for example, negotiators tend to focus on important provisions of the “economic contract”: equity splits, allocation of decision rights, governance provisions, etc. Yet, often implicitly, the parties also negotiate an all-important “social contract.” More than trust and a good working relationship, the social contract also includes expectations about the nature, extent, and duration of the venture, about the informal process for consultation and decision-making, about the way unforeseen events will be handled, and so on. Some negotiators fail to develop positive social contracts that reinforce valuable economic contracts; as with other interests, the “hard” can drive out the “soft.”

Indeed, the essence of new ventures involves a fast-moving panorama of unforeseen crises and opportunities as well as unexpected technical, market, and competitor developments. While the economic contract sets up the skeleton of the venture—whether it is a bird or mammal or fish, whether it has two legs or four or none—the social contract puts flesh on those bones and embodies the spirit of the enterprise especially in the face of unanticipated developments. Whether in strategic alliances, major outsourcing agreements, partnerships, new ventures, or similar arrangements intended to have long lives, negotiating and renegotiating a strong social contract can be as or more important than a good economic contract. Negotiating the “spirit of a deal” should not take a backseat to negotiating its letter, even given the vital importance of well-crafted setup and termination provisions. Successful ventures generally work through problems and issues on the basis of a strong social contract; when people scurry to check the founding documents, it usually means trouble.

The process. In taking into account the full set of interests, the process itself can be an important interest as well as the substance. The story is told of the young Tip O’Neill, later Speaker of the House, meeting an elderly constituent on the streets of his North Cambridge 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 we always gotten along beautifully? 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.” O’Neill learned an invaluable lesson for his next fifty years: people value process along with substance. Considerable academic research confirms the commonsense intuition that better, more sustainable results are generally reached the more the process seems straightforward, fair, and genuinely to engage the parties. Moreover, the dealmaking process itself can trigger powerful interests that might be often neglected in a more “objective” analysis. As Felix Rohatyn, former managing partner of Lazard Freres, and a lifetime veteran of countless business and public sector deals, observed: “Most deals are fifty percent emotion and fifty percent economics.”

When pharmaceutical giants Glaxo and SmithKline Beecham (SKB) announced their merger in 1998, investors applauded and increased the combined firm’s market capitalization by over $20 billion. Yet despite prior agreement on the executive lineup of the combined company, later internal disagreement on the issues of management control and position flared. Incredibly, these interests scuttled the deal and the $20+ billion of increased market cap simply evaporated. (The compelling strategic and economic logic of the deal ultimately drove the two firms back together, but only after almost two wasted years—a competitive eternity.) This episode confirms two interest-related lessons: (1) while the overall economics of a deal are generally necessary for success, they are often not sufficient, and (2) in thinking about the aggregate interests of an entity such as Glaxo or SKB, don’t lose sight of the sometimes conflicting interests of internal units, groups, and executives that can influence the decision process. What is “rational” for the whole may not be for the parts; to assess the “full set of interests at stake” in a negotiation, you must often understand the interests of the key players in the internal decision process.

Many deals are indeed price deals, but there is often much more to work with than near-term economics. Wise negotiators don’t straightjacket their view of the interests at stake; they work with the subjective as well as the objective; with the process and relationship as well as the substance; 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. Central advice: focus on the full set of interests potentially at stake.

Basic Advice: Probe negotiating positions to understand deeper interests.

To sharpen the concept of interests, you should distinguish among interests, issues, and positions. The issues in a negotiation are those items that are on the table for explicit agreement. Positions are your stands on the various issues. Interests are the underlying concerns or deeper dimensions of value that would be affected by different resolutions of the issues under negotiation. Positions on issues obviously affect underlying interests but need not be identical to them. For example, in a job negotiation an issue may be the salary on which your position may be a demand for $80,000. Yet while your underlying interests reflected in that salary demand obviously include its purchasing power, they may also involve internal organizational status, external signals, and educational opportunity or leisure you may hope to purchase by this income but that could be met in ways other than pure salary.
Consider a second example involving a consortium of midwestern power companies that proposed to build a significant dam to bring electricity at lower rates to the area’s consumers and demonstrate to the financial community that it could actually get large projects completed (something on which it had been repeatedly stymied). Predictably, environmentalists opposed this plan, claiming that it would damage the downstream habitat of the endangered whooping crane. Farm groups also lined up against the project, fearing that the dam would reduce water flow in the area. The mentalists opposed this plan, claiming that it would damage the downstream habitat of the endangered whooping crane.

Farm groups also lined up against the project, fearing that the dam would reduce water flow in the area. The environmentalists opposed this plan, claiming that it would damage the downstream habitat of the endangered whooping crane. Rather than a convergence of positions, this agreement represented a reconciliation of interests.

**Positional v. interest-driven negotiation.** The distinctions among interests, issues, and positions have an important implication for the character of the negotiation process. Positional bargaining envisions a dance of positions which, if negotiation is successful, ultimately converge to an agreement—without convergence, there is an impasse. Interest-driven bargaining sees the process primarily as a reconciliation of underlying interests and concerns: you have one set of interests, I have another, and we should engage in a joint problem-solving process to reconcile them. Although there is an important role for positional bargaining, especially in one-off pure price deals, a frequent way to move stalled negotiations forward is to look behind conflicting positions to understand deeper interests. Compatible interests often underlie incompatible positions. In a homely example, two siblings may quarrel over where to cut an orange (the issue), with each demanding three-quarters of it (their incompatible positions). Yet if one turns out to be hungry while the other needs flavoring for a recipe (their underlying interests), a creative solution can be devised that meets both interests: the orange can be peeled with the fruit going to the hungry one and the rind to the cook.

It is often unwise to reflexively demand, “What’s your position?” and to assert, “Here is my position.”—natural as this formulation may sound in bargaining. Instead you should try to learn “What’s behind your position? Why do you really care about that and what would it achieve?” You may want to ask others, look historically, and do research to uncover the other sides’ interests. Overemphasis on positions often pushes negotiation toward a ritual dance of positions that does not really serve the parties’ fundamental concerns.

**Basic advice: Assess their interests as well as yours.**

Since negotiation requires at least two parties to say “yes” for a deal, you should probe the full set of the other side’s interests as well as your own. Consider the case of Arizona Instruments whose board of directors pressed hard to develop a hot new product shortly after the firm went public in 1989. The firm had a technology for detecting underground gas tank storage leaks that was about 100 times more accurate than existing technologies—precisely at a time when the EPA was getting Congress to pass legislation mandating that these tanks be continuously tested. Yet after an urgent push to commercialize and market this technology in time for the demand, Arizona Instrument’s first sale, turned out to be its only sale. Quite a mystery, especially given that the technology worked and the regulations in fact came through. Imagine the confident sales pitch: “This new technology is faster, better, cheaper, and infinitely more accurate than the competition. It can detect a leak the size of a glass of water from a 90,000 gallon storage tank.” Think for a moment, though, about how intended buyers might mull over their interests in Arizona Instruments’s proposed deal, especially given that EPA regulations permitted leaks, not just of drinking glass volumes, but of 1,500 gallons in storage tanks of that size. Potential buyer: “What a technological tour de force! So this handy dandy new device will almost certainly get me in needless, expensive, regulatory trouble. P.R. problems too. No thanks, I think I’ll pass . . . but I think my competition should definitely have it. Why don’t you try Texaco or Conoco?”

One error is not thinking through the perspective of the other side. A related problem is simply to assume that their interests simply are the opposite of yours. Psychologists who have extensively studied negotiating behavior have discovered this to be a pervasive tendency and dub it the “mythical fixed pie.” If the pie is fixed, of course, the enterprise is “zero-sum” or “win-lose” in which any gains to one side are offset by losses to the other. While both the laboratory and reality offer endless examples of creating value or expanding the pie through negotiation nearly hard-wired perceptions lead many of us to assume that your gain is my loss. In one survey of over 5000 subjects in 32 negotiating studies, participants failed to realize compatible issues about 50% of the time.” Roger Fisher wisely advises us to counter this instinct: “Don’t deduce their intentions from your fears.”

From the trenches, consider the advice of H. Wayne Huizenga:

Our business team has been fortunate to be involved in more than one thousand deals, both buying and selling companies over the last forty years. During one nine-month period while we were building Waste Management, we bought one hundred companies.... While we were building Blockbuster Entertainment we were acquiring companies rapidly and growing internally. For six years, we opened a new Blockbuster store every seventeen hours. And today at AutoNation USA, …we have
purchased more than four hundred new car dealerships, acquired National and Alamo car rental companies, and opened forty AutoNation USA superstores.\textsuperscript{16}

In all my years of doing deals a few rules and lessons have emerged. \textit{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...} It has to be a win-win situation for both sides. The other players can't feel they've lost. This is especially critical if the two parties are going to continue to work together. [emphasis added]  \textbf{Beyond common interests, seek differences.}

If two parties want exactly the same thing, positions will be in conflict, and the pie will in fact be fixed. Yet in looking for a richer set of interests of all sides behind their incompatible positions, it is precisely the \textit{differences} of interest that point the way to mutual advantage. By discovering that one sister was hungry while the other needed flavoring, both could be made better off, precisely because of the difference in their underlying interests.

In a seemingly intractable dispute, when Egypt and Israel were negotiating over the Sinai, their positions were wholly incompatible. Deeply probing behind those positions, however, negotiators exploited a vital difference of underlying interest: the Israelis cared more about security, while the Egyptians were more concerned about their sovereignty over territory that had been under the dominion of other countries and empires over the centuries. The solution was to establish a demilitarized buffer zone under the Egyptian flag rather than continue a vain zero-sum search over where to draw the boundary line in the sand. This solution “gave” to each side more of the (different) interest that it valued most: security to the Israelis, sovereignty to the Egyptians.

Even where the issue is purely economic, a relentless search for differences can unlock deadlocked deals. A small technology company and its investors, demanding a very high price, was stuck in a very tough negotiation with a large strategic acquirer that was adamant about paying much less. Ironically, the large firm was ultimately willing to meet its counterpart’s stiff price demands, but was more concerned about sharply raising price expectations in this industry sector where it planned to make many more acquisitions. The solution: the two sides agreed to a modest cash purchase price now, which was widely publicized, with complex contingencies that virtually guaranteed an effectively higher price down the road when the spotlight was off this transaction. In short, even though price was the focus of the negotiation, there was a vital difference between price, the overriding concern of the small firm, and setting a costly, visible precedent (the prime concern of the other side).

Parties typically have many shared interests in a negotiation: in trust, clear communication, finding a mutually beneficial agreement. Sometimes, a little probing turns up the fact that they want exactly the same outcome: three too-small operations may all want to combine to realize large-scale economies. Yet just as economists for centuries have found that gains from trade derive from differences in comparative advantage, joint gains most frequently derive from differences, ultimately complementary, of interest.

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In short, \textit{interests} constitute the raw material for negotiation. You should assess and attach priorities to the \textit{full set} of your interests, not a narrow subset. You should not only assess your interests but also the full set of the interests of the \textit{other side(s)}, including relevant internal parties. Further, you should distinguish underlying interests of each side from the issues on the table for negotiation and the \textit{positions}, pro and con, the parties take on those issues. You should not so much ask, “What’s your position?” and assert “Here’s my position,” but instead seek, directly and indirectly, to understand what real interests lie behind those positions. And your search should not stop with shared interests, but actively seek complementary \textit{differences} that can be dovetailed into \textit{joint gains}.

\textbf{NEGOTIATION IS A MEANS OF ADVANCING INTERESTS}

Apart from what different tactics and approaches may yield at the bargaining table, a crucial question involves what Roger Fisher and Bill Ury have dubbed each side’s BATNA, an acronym for \textit{Best Alternative To Negotiated Agreement}. The BATNA, or no-agreement alternative, reflects the course of action you would take if the proposed deal were not possible. Depending on the situation, your BATNA may involve simply walking away and doing without any agreement, going to another supplier or potential buyer, making something in-house rather than procuring it externally, going to court rather than settling, forming a different coalition or alliance, taking a strike, invading Kuwait, or bombing Serbia. If asked whether you should agree to a particular deal, assessing your BATNA sharpens the decision by asking “as compared to what?”

\textbf{Basic Advice:} Assess each side’s BATNA to determine the existence and location of a zone of possible agreement.
The value of your BATNA to you sets the threshold—in terms of the full set of your interests—that any acceptable agreement must exceed. Doing “better” in terms of each party’s interests than the BATNA is a necessary condition for an agreement. As such, BATNAs imply the existence or absence of a Zone Of Possible Agreement (ZOPA).

To be more concrete, assume a simple buy-sell situation in which both parties care solely about money. “Reservation prices” are merely the value each side places on an agreement just better than its BATNA (the best course of action vis-a-vis one’s negotiating counterpart in the event of no agreement). The seller’s BATNA is to sell to a third party; the buyer’s BATNA is to buy elsewhere. More specifically, suppose the seller already has an acceptable outside offer. Similarly, suppose the buyer can procure an equal item elsewhere. Finally, suppose that the seller’s minimum is well below the buyer’s maximum. Then a potentially profitable ZOPA exists—agreement can be better for each side than its reservation price, which is the value just preferable to its BATNA—and the process will determine whether, how, and where the parties will end up within it.

By contrast, if price is the sole interest of the parties and if the seller’s minimum exceeds the buyer’s maximum, then no set of tactics will bridge the gap. In short, there is no ZOPA. Of course, each side typically knows only its own limits, and must continually assess and update its assessment of the other side’s. (And many negotiators have only a hazy sense of their BATNAs.)

Basic Advice: Consider expending effort to improve your BATNA; be careful not to worsen it.

Not only do BATNAs define the minimum, necessary conditions for a deal to exist—that each side’s interests must be served at least as well in a deal as by its BATNA—evident ability and willingness to “walk away from the table” often is associated with negotiating influence. The better your BATNA appears both to you and to the other party, the more credible your threat generally is to walk away unless the deal is improved. As WebTV founder Steve Perlman succinctly observed with respect to tough bargains: “if you can’t walk away, you can’t negotiate” and “he who cares least, wins.”

Of course, you cannot always walk away, but your apparent willingness to do so generally confers advantage.

To raise urgently needed cash, the chief executive of a Canadian chemical manufacturer decided to sell a large but “non-strategic” division and assigned his second-in-command to negotiate the sale at the best possible price. A logical buyer was an Australian firm, the canny chairman of which knew the Canadian chemicals chairman from days together in a British prep school. During a chairman to chairman conversation, the Australian said that his firm was indeed potentially interested, though consumed at the moment with other priorities. However, if the Canadian firm would grant him nine-month exclusive negotiating rights to confirm its seriousness about the sale, the Australian would “divert the necessary management resources” to making it happen. The chairman-to-chairman exclusive agreement was struck. Pity the poor second-in-command, charged with disposing with this division for a high price on an urgent basis, as he jetted off to Sydney, with no meaningful alternative to whatever the Australians offered.

Although many people associate the ability to inflict or absorb damage with bargaining power, a good BATNA is often more important. Roger Fisher has dramatized this point by asking which you would prefer to have in your back pocket during a negotiation over compensation: (1) a gun, or (2) a terrific competing job offer from another very desirable employer?

Negotiators often get caught up in the intense tactical interplay “at the table.” Yet you face a choice in negotiation whether to concentrate on moves that will improve potential agreements at the table; alternatively, you could expend scarce time, energy, and resources on improving your BATNA. In some cases, the same energy is far better expended away from the table than at the table. A sophisticated negotiator always weighs these classes of moves. A naive negotiator often draws the analytic circle too narrowly—on interpersonal tactics at the table—and neglects the possibility of acting to change no-agreement alternatives. Steve Holtzman, chief business officer for Millenium Pharmaceuticals, observed after doing a string of deals from the firm’s founding in 1993 to a $1.4 billion company scarcely five years later:

Whenever we feel there’s a possibility of a deal with someone, we immediately call six other people. It drive you nuts, trying to juggle them all, but it will change the perception on the other side of the table, number one. Number two, it will change your self-perception. If you believe that there are other people who are interested, your bluff is no longer a bluff; it’s real. It will come across with a whole other level of conviction.

Indeed, transforming a two-party negotiation into an active auction with many bidders vying for your deal can be a potent strategy. By the same token, inadvertently worsening your BATNA can be a disastrous negotiating move. Advising a technologically savvy manufacturing firm on joint venture negotiations in Mexico a few years ago, I discovered that the firm had methodically ranked its three potential Mexican partners in terms of their relative desirability. Approaching the negotiations in what had seemed a very logical sequence, they had come to an unpleasant impasse with the most attractive partner. They were just about to do the same with the second most desirable candidate. Imagine subse-
quent negotiations with the third, barely acceptable partner if the second set of talks had also floundered—in a place where the results of earlier negotiations would be quickly known to all.

In the jargon of negotiation, the U.S. firm’s BATNA—a joint venture with another Mexican firm or not to enter that market at all—was becoming progressively worse with successive partners. Fortunately, they reconsidered their approach and opened exploratory discussions with the third firm in parallel with the second. This both helped the U.S. firm to discover what combination genuinely made most business sense, to avoid prematurely closing options, and to take advantage of the competition between the two Mexican firms for a link with a desirable foreign partner. If the U.S. firm were starting these negotiations again, it would arrange the process so that the prospect of a deal with the most desirable partner would function as its BATNA in talks with the second potential partner, and so on.

Many years ago, the eminent British economist, Alfred Marshall, developed a theory that neatly addressed a longstanding controversy in economics, whether prices were determined by the cost of production or the value to ultimate users. In explaining his theory, Marshall used an analogy: it is as useless to argue about whether costs of production or use-value determine price as it is to argue over which blade of a pair of scissors actually cuts the paper. In negotiation, an analogous phenomenon operates. Moves at the table to improve the possible agreement and moves away from the table to improve one’s own BATNA or change those of the other side can both influence the outcome. You should carefully assess whether energy is best spent on moves away from the table to improve one’s own BATNA or affect that of the other side, or in efforts at the table to improve what is jointly possible through agreement.

Finally, notice that the concept of BATNAs helps to distinguish those situations in which negotiation has a major potential role from those in which it will likely play no role. Imagine for a moment that one utterly dominant player can costlessly achieve its objectives vis-à-vis another player; then negotiation has virtually no role since the dominant player has a terrific BATNA and the other player a non-existent one. To see another situation in which negotiation has little role, imagine an economist’s perfectly competitive market with a large number of buyers, a large number of sellers, and a pure commodity product. Should one party try to negotiate a better price with another, the second party’s BATNA would simply be a deal at the market price. In short, a meaningful role for negotiation vanishes the closer the situation becomes to costless dominance or a perfect market. By contrast, the negotiation potential increases (1) the less any given player can fully achieve its objectives at no cost by unilateral action or (2) the less perfect the market, meaning smaller numbers and different kinds of buyers and sellers, more avenues for product differentiation, and so on. In either case, a BATNA assessment suggests the extent of negotiation’s potential role in a given situation, from nil to vast.

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BATNAs can range from walking away and doing without, to seeking an alternative negotiating partner, to self-help, to aggressive action. A necessary condition for each side to do a deal is that, measured by each side’s interests, the deal be better than its BATNA. As such, BATNAs determine whether a zone of possible agreement exists, and if so, its location. Improving your BATNA or worsening that of the other side often greatly influences the outcome of the negotiation. An analysis of BATNAs furnishes an important guide to the potential role for negotiation as well as the extent to which scarce resources should be spent at the table trying to improve a potential deal or away from the table seeking a better one.

**Negotiation is a Joint Problem-Solving Process**

Many problems are best understood as single decision-maker situations. An individual’s choice of which investment to make or whether or not to drill for oil in a particular location need not be affected by the judgments or actions of others. Yet negotiation distinguishes itself from such problems by the interdependence of the parties. The actions of each side leading to agreement have the potential at least to affect the outcome; thus their interaction leads to a joint decision-making process.

Building on the language of the previous two sections, your Basic Negotiation Problem is a simple one: by the choice of agreement or no agreement, how can you best advance the full set of your interests relative to your best no-agreement alternative (BATNA)? Their Basic Negotiation Problem is a mirror image of yours: by the choice of agreement or no agreement, how can they best advance the full set of their interests relative to their BATNA?

Notice that if agreement is reached, it represents a simultaneous solution to each side’s Basic Negotiation Problem in the terms just described. Thus, in an agreement, the solution to their problem directly affects the quality of the solution to your problem: whether it is barely better than your BATNA, somewhat better, or spectacularly better. The implication is simple, solving their problem is a means to solving your problem.

**Basic Advice:** Understand how they see the elements of their Basic Negotiation Problem.
“Put yourself in the other party’s shoes” is good advice to generate empathy and foster communication. It is also useful in negotiation for selfish reasons. To influence their decision most effectively you need to understand their problem as they see it. What counts is their perception of their real interests, not what you think their interests should be but theirs as they now and may later come to see them, their perceptions of their BATNAs, their notions of fairness, their constituency pressures, and so on. While you have a view of value to your side, so do they. The critical question turns on how the players on the other side, given their decision process, will come to see things. As Millennium Pharmaceuticals’s Steve Holtzman put it, “There’s also the value to the other side. So 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…”

**Basic Advice: Remember that negotiation is the “art of letting them have your way;” try to shape how they see their problem such that they choose what you want.**

To change the other side’s mind, you need to know “where their mind now is.” Then you can build what classic Chinese strategist Sun Tzu calls a “golden bridge”—from where they are to where you want them to be. In these terms, your essential task is getting them to see the basic elements of their problem such that your preferred agreement is what they choose for their own reasons. In the words of Daniele Vare, “diplomacy is the art of letting someone else have your way.” In this sense, negotiation is a form of “selfish altruism,” or using the solution to their problem as the route to solving your own. An associate of Rupert Murdoch who observed his negotiating style for many years remarked that, as a buyer, Murdoch “understands the seller—and, whatever the guy’s trying to do, he crafts his offer that way. He is able to see what the person most wants out of the deal.”

**Basic Advice: Avoid the self-defeating mistake of “letting them solve their problem” while we solve ours.**

A classic error is to focus mainly on your own position and your Basic Negotiation Problem. In the manner of adversarial legal combatants, this attitude says, “That’s their position and their problem. Let them handle it.” Such a forceful assertion may sound tough but, if taken too literally, undercuts your central capacity to influence their problem as they see it—in your interest. Mike Volpi, Vice President of Business Development at Cisco Systems, was at the forefront of a frenzy of strategic dealmaking as Cisco made dozens of acquisitions. When Barry Eggers headed Cisco’s acquisition effort, he hired Volpi and observed his development into a first-class dealmaker from the early days when [Volpi’s] “outrward confidence” was mistaken for arrogance and he had trouble completing proposed deals. “The most important part of his 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.”

**The Roosevelt Campaign and Moffett Studios.** An historical example illustrates the broader points thus far. In the year 1912, Theodore Roosevelt was nearing the end of a hard-fought and very close Presidential election campaign. Critical to his success was a final whistle-stop journey through the American heartland. At each stop Roosevelt planned to inspire the citizens with oratory and leave each with a small pamphlet, three million of which had been printed and packed away in boxcars. On the cover was a stern, “presidential” portrait; inside was a stirring speech, “Confession of Faith.” With luck, this strategy would clinch the critical votes. The whistle-stop campaign was about to begin when a campaign worker discovered a small line on each photograph that read, “Moffett Studios, Chicago.” Since Moffett held the copyright, the unauthorized use of each photo could each cost the campaign one dollar. The three million dollar cost of distributing all the pamphlets greatly exceeded the campaign’s resources and certainly any interest it had in paying such a large sum. The campaign workers were in a tizzy. What to do?

Not using the pamphlets at all would badly damage reelection prospects. Yet, if they went ahead and used the pamphlets without Moffett’s authorization and were found out, they could be branded as lawbreakers, a scandal would occur very close to the election, and the campaign could be liable for an unaffordable amount. Quickly the campaign workers reached a consensus: they would have to negotiate something with Moffett. Equally, they concluded that they had no idea how to approach this negotiation. Research by their Chicago operatives turned up bad news: while Moffett many years ago had been entranced by the artistic and esthetic potential of the new medium of photography, he had achieved little critical success, virtually no financial success, and was now bitterly and cynically approaching retirement with a single-minded focus on money.

It is not hard for us to imagine the queasy feelings of the campaign workers as they tried to plot negotiating strategy. It must have seemed a hopelessly weak position: approaching a small photographic studio whose owner had a keen interest in money, a pressing time deadline, three million pamphlets already packed in boxcars with no time to redo them, a potential $3,000,000 price tag, and nowhere near the resources that might be demanded for something they absolutely needed.
Dispirited, the campaign workers approached George Perkins, noted financier and campaign manager, who had built many railroads in California. Perkins lost no time summoning his stenographer to dispatch the following cable to Moffett Studios in Chicago: “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 he received this reply from Moffett: “We’ve never done this before, but under the circumstances we’d be pleased to offer you $250.” Reportedly, Perkins accepted—without asking for more.

The misleading tactics at the core of Perkins’ negotiating strategy plainly do not suggest a model process for crafting sustainable agreements that enhance working relationships. Yet there are intriguing observations from this story.

First, many people readily assume that the zone of possible agreement (ZOPA) in this case ran from the campaign paying nothing all the way up to its paying $3,000,000, or at least its total resources. That the ZOPA could also include Moffett’s paying something to the campaign—a logical possibility that in fact became the result—often does not occur to people. Yet there is nothing in the story save the limits of our own frequently unwarranted assumptions that prevents the bargaining range from being “negative,” that is, Moffett paying an amount of money to the campaign. Moreover, the value to Moffett of this exposure and potential association with a President would probably greatly exceed $250. Arguably, Moffett got a good deal relative to the outcome in which the photograph went unused. More generally, people have a powerful tendency to underestimate the extent of a negotiation’s ZOPA. And by acting on the basis of an incorrect assumption—for example if the campaign had started the negotiation by offering to pay Moffett something—one can create the very outcomes one assumed to be inevitable. Bad assumptions can be self-fulfilling.

Second, this episode underlines the crucial role of information about each side’s perceptions of its own and others’ BATNAs. If no agreement could be reached with Moffett, the campaign would be in an awful bind—yet Perkins worded the cable carefully to imply no problems if there were no deal; seemingly, the campaign would merely use another photo. Further, Perkins’ deliberate omissions and suggestions masked Moffett’s likely alternatives to agreement; and seemed to permit little time for Moffett to investigate them. The studio was left with the impression that, without a deal, life would continue as usual—not the fact that if the campaign went ahead and used the already printed photos, Moffett could certainly win a huge settlement in court. Moffett’s mere awareness of either party’s alternative to agreement could have dramatically improved his position in dealing with the campaign.

Third, and perhaps most interestingly, for purposes of this discussion, the question must be asked why the campaign workers found this negotiation to be so difficult. Clearly there were delicate tactical aspects, yet their inability to see what Perkins immediately perceived has to do with the fact that they were focused virtually entirely on negative aspects of their own side’s problem. They had made a mistake and any misstep in the negotiation could lead to disastrous political and economic consequences. They saw the risk clearly and it loomed very large in their thinking. Yet had they paused for a moment and asked how Moffett saw his “problem” they would immediately have realized that Moffett didn’t even know he had a “problem.” And Perkins’ entire approach was calculated to shape Moffett’s perceptions of the situation such that Moffett would see the positive value of the publicity to him and be induced to offer a commensurate amount of money. By their frantic obsession with their own problem, the campaign workers missed the intersection of Moffett’s problem with their own and, with it, the existence of an obvious solution, at least in purely economic, short-run terms.

Fourth, note that Perkins could have sought to influence how Moffett saw his problem in two very distinct ways. He might have framed the problem in the form that terrified the campaign workers: how much could a greedy Moffett squeeze the desperate Roosevelt camp threatened with losing the election? In fact, Perkins framed Moffett’s problem altogether differently: how much would Moffett be willing to pay for something of great potential value? In taking the second route, Perkins recognized the essence of the negotiator’s central task: to shape their problem such that the solution they choose is in your interest. In short, framing can be a key element of “the art of letting them have your way.”

Perkins initially faced structural barriers—an apparently poor BATNA and no deal that was good for him that would also attract Moffett. He also faced the pervasive cognitive tendency for people—here, the campaign workers—to focus on their own problem and neglect the perspective of others. Ironically, his advantageous framing of Moffett’s problem together with a tight deadline exploited Moffett’s tendency toward the same cognitive myopia. Here, an assessment of the structure and the people, together with an open mind and some creativity, surmounted the barriers that stymied the campaign workers.

Finally, however, this story should leave us with a feeling—ethical unease—often experienced when deceptive or manipulative tactics are used in bargaining. In this case, a deal almost certainly depended for its very existence and terms on Moffett’s unawareness of a highly material fact. Perkins’ tactics intimated, though they did not explicitly say, that the campaign had a good BATNA. Does the “passive” nature of his actions make an ethical difference relative to a brazen lie? However, one sorts out this kind of question, ethical considerations should matter in negotiation, both as intrinsic interests in and of themselves, and instrumentally, since, over time unethical behavior tends to be counterproductive. But before one sides too strongly with the poor hornswoggled Moffett, remember that it was a simple oversight that the
campaign did not seek Moffett’s original permission. Had Moffett sought to extract a huge price earlier on, the campaign simply would have found another photograph. It may not be clear how to assess the actual outcome in a larger ethical sense. But here, as in most negotiating situations, ethical considerations should be part of our thinking.

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In sum, the fact that negotiation is inherently a joint problem-solving exercise should always remind us that solving their problem—as they see it or can be induced to see it—is very much a part of solving your problem. That joint problem can be solved in very different ways. It can be solved in a highly adversarial manner with each side scrambling for advantage with a range of sometimes subtle and sometimes crude hardball tactics. It can be solved in a highly collaborative mode that engages mutual interests. It may be solved with a mixture of motives where the participants are seeking to manage productively the tension between the individual and the collective aspects. It can be solved interpersonally at the table or by “architectural and entrepreneurial” actions away from the table. But the essence of negotiation is solving individual problems favorably by solving the joint problem. Having assessed the full set of each side’s interests, as distinct from their positions, and having estimated their BATNAs, the Fundamental Principle of effective negotiation points to the essential strategy: shape how they see their Basic Problem such that, for their reasons, they choose what you want. Today’s superb dealmakers instinctively understand this just as Francois de Callières, an eighteenth century commentator, did when he described a past negotiation master as possessing “the supreme art of making every man offer him as a gift that which it was his chief design to secure.”

PART II: A 3-D STRATEGY FOR RESOLVING THE JOINT PROBLEM

The core concepts—interests, BATNAs, and joint problem-solving—play roles within a larger framework for negotiation analysis. Think of the broader objective: the right people negotiating around the right table, dealing with the right issues by the right process, facing the right set of no-deal alternatives, productively working out the right agreement that best furthers their real interests over time. At bottom the joint problem is resolved by the parties both creating and claiming value on a sustainable basis. By “creating value,” I mean “expanding the pie” or increasing the worth of the agreement to each side beyond what was otherwise available. By “claiming value,” I mean distributing or apportioning that value among the parties. By “on a sustainable basis,” I emphasize that an agreement is normally more valuable to the extent it endures and remains healthy over time. Moreover, the bargaining techniques employed should not damage your reputation and undercut your capacity to negotiate in the future.

To attain this goal, you should design what David Lax and I call a 3-D negotiating strategy, and which I will later describe in more detail. In a nutshell, sophisticated and effective 3-D negotiators act in a mutually reinforcing way among three core dimensions of the joint problem: (1) during the interpersonal process “at the table,” (2) with respect to the substance of value creation, and (3) “away from the table” to change the game itself so it is most likely to yield optimum results. This is not a recipe or a sequential approach whose “dimensions” are independent of one another. Instead, you should cycle through these factors on a provisional basis to determine the most relevant and promising elements. Then as your analysis deepens and the process unfolds, you should update your assessments and negotiating approach. A framework leading to an effective 3-D strategy starts with an overview of the relevant context, and then assesses both the opportunities for and barriers to creating and claiming value. Barriers and opportunities arise as a function of the structural, people, and process aspects of the situation.

1. Assess the relevant context

As you approach a negotiation, you should quickly assess its relevant context: economic, competitive, historical, political, institutional, organizational, etc. A good assessment of the setting is neither complete nor exhaustive but gives a useful sense of the involved and potentially involved parties, perceptions of their interests, and the nature of the process by which they are interacting, and so on. It suggests the broader negotiating “universe” into which efforts to reshape the structure or psychology of the process might reach.

Analysis of most business negotiations would be empty without an good understanding of the firm’s industry context—its cost structure, profit drivers, dominant players and strategies, competitive dynamics, technological and competitive trends, legal and regulatory framework, and so on. As a further part of the relevant context, it is important to have a concise description of how the current negotiating challenge arose. Public sector negotiations involve analogous assessments of relevant aspects of the political environment—executive and legislative players, interest groups, media, etc.—and the origin of the negotiation in question.

Context can also shape expectations about the “game” that is being played. For example, the national or organizational culture of the participants can strongly influence whether the negotiation is understood mainly to involve working out the terms of a discrete transaction versus the basis of a long-term working relationship. The players in a public-private
negotiation may see the process as very different than if it were a purely private affair. Negotiation between organizational peers may not be identical to superior-subordinate dealings. Parties trying to settle a bitter dispute generally expect the process to differ sharply from a joint effort to craft a mutually advantageous business deal. Budget negotiations can be expected to be very different during a recession than in the midst of a booming economy. History can matter a great deal. A larger firm that has just taken over a small one should expect considerable apprehension as the discussions over integration commence. Negotiations across national borders or between companies in radically different industries carry special risks. And it is important to assess whether the different sides share expectations about the negotiation or whether there is likely to be a clash. Across these examples, context can shape structure and expectations, which in turn can affect both behavior and outcomes.

The most important process expectation often shaped by the context involves whether the negotiation is expected by one or all of the parties to be cooperative or adversarial. Many other process qualities may be similarly influenced: the level of formality, the role of authority, whether communication is direct or indirect, the nature of persuasive argument, whether certain tactics such as extreme demands or threats are in- or out-of-bounds, whether the emotional level is high or low, whether concessions are expected to be reciprocated immediately, whether issues are expected to be dealt with individually or linked to each other, how the time frame and pace of the process will play out, and so forth.

In short, assessing a negotiation’s relevant context entails a look at the setting to see its implications for structure and psychology as well as the elements potentially available for efforts to change the game.

2. Assess opportunities and barriers: structure, people, and process.

Before and during the process, you should relentlessly focus on the fundamental decisions to be made in the negotiation by each party. Your Basic Negotiation Problem involves how well the full set of your real interests would be served by choosing a potential deal versus opting for your BATNA. Similarly, the other side is seeking to best advance its interest by the choice of a deal versus no-deal. Opportunities and barriers to productively resolve this joint problem take a number of forms, but it is diagnostically useful to focus on three types of potential opportunities and barriers involving the structure, the people, and the process for dealing.

Roughly speaking, “structure” corresponds to the economics of the situation and “people” to the psychology. Yet it would be misleading to view these twin perspectives as separate and independent. For example, the concept of interests—a key “structural” element—is inescapably subjective: whether I think you care mainly about net present value or revenge will depend on a “people” judgment. Similarly, how attractive you assess your BATNA to be, and hence your minimum deal requirements, may be driven less by “objective” factors and more by cognitive aspects of how you view the uncertainties and risks of no deal.

A. Structural opportunities and barriers

The structure of a negotiation involves an expansive view of the elements of the situation described in Part I of this article: the parties, their interests, and the no-deal options. Together these elements give rise to potentially available agreements. To assess structural opportunities and barriers, it is first necessary to map these central elements:

**Parties**, both actually and potentially involved and their relationship to each other. Essential questions include the number of parties and whether they are monolithic. In the simplest negotiation, two principals negotiate with each other. When more than two parties are involved, coalitional possibilities open up that can vastly alter the process. In legal and organizational dealings, agents with some of their own interests often negotiate on behalf of their principals. Further, there may be internal divisions with quite different interests and perceptions that must be synchronized with external negotiations. Multiparty, multilevel negotiations tend toward the greatest complexity.

**Basic Advice:** Draw a “deal diagram” of actually and potentially involved parties and the relationships among them.

**Interests** at stake in the process. As discussed above, the full set of whatever you and they care about that might be affected by the negotiation process can be thought of as “interests,” which should be distinguished from issues and positions. Where a single issue is at stake in which the parties have opposite interests, the negotiation tends to be distributive; where multiple interests are present on which the parties have different tradeoffs, there is generally the possibility of joint gain. A negotiation that is repeated will tend to induce different interests than a one-shot game just as an independent bargain will entail different interests than one in which there are linkages to other negotiations, issues, and parties. In general, different structural configurations give rise to different interests. And keep in mind that differences of interest between the parties offers the raw material for joint gain.

**No-agreement alternatives.** If no deal were to result from the negotiation, each party would face a choice of what to do: its BATNA. Walking away may leave the status quo intact; it may involve going to court or starting a price war; and it
may involve a complex sequence of moves and countermoves. How well its anticipated no-agreement course of action promises to serve each sides’ interests implies each side’s minimum requirements from a deal (its reservation price). As with interests, time plays a central role with respect to BATNAs as does the possibility or expectation of repeated dealings.

- **Basic Advice:** With respect to each party and the issues at stake, tabulate their interests, BATNAs, and likely positions.

**Assessment of structural opportunities and barriers: does a mutually beneficial deal exist?**

Most fundamentally, given this structural assessment of parties, interests, positions, and BATNAs, does the potential for a deal appear to exist? Many structural opportunities and barriers exist but two in particular are critical: (1) no zone of agreement as a result of incompatible perceptions of BATNAs and (2) joint potential from complementary interests and capabilities.

- **Structural barrier:** incompatible BATNAs. The threshold feasibility assessment, of course, is whether any acceptable deal appears possible. Or does one or more parties see its BATNA as more attractive than any potentially available deals? Suppose the baseball owners early in the process are convinced that they can crush the players’ union while the players are utterly certain they will prevail in a contract dispute. At this stage in the process, no basis for a deal may exist. To surmount the barrier that incompatibly optimistic views of BATNAs can pose, an effective strategy needs two fundamental thrusts: (1) reduce one or both sides’ assessments of the attractiveness of their BATNAs, and (2) enhance one or both side’s views of the potential for a deal.

- **Structural opportunities: complementary interests and capabilities.** The potential for mutual advantage from a deal is often glaring: a boutique firm seeks to capitalize on a hot new fragrance it has developed while a global cosmetics and perfume company needs new products for its many distribution channels. In other cases, the joint potential may not be obvious and must be very carefully developed. Ultimately, the parties may derive great value from complex, staged, multi-issue deals, laden with contingencies, risk-sharing mechanisms, as well as enforcement and exit provisions.

- **Time-related opportunities and barriers.** Though not broken out as a separate structural factor in the above scheme, different roles of time are embedded in each of these categories. Time often plays a defining role in which parties become involved, whether the negotiations are one-shot or repeated, whether and how working relationships affect and are affected by the process, as well as the changing attractiveness of no-agreement alternatives as the negotiation unfolds or an impasse persists. Many roles of time are familiar: deadlines, fading or emerging opportunities, discount rates, and differential costs of delay. For example, an upcoming trial may be a forcing event for settlement negotiations. As your return flight from Tokyo to New York looms after two weeks of fruitless negotiations, you may feel great pressure to make concessions to your Japanese hosts to close the deal—or you may, in a quietly confident manner, use that flight to offer your hosts the “last clear chance” to come to terms that will enable a deal.

- **Basic Advice:** Analyze and incorporate the role of time in assessing the structural barriers and opportunities.

- **Other structural barriers and opportunities.** Beyond these most basic structural barriers and opportunities, there are many others. For example, the “wrong” parties may be at the table (e.g., you are negotiating with a powerless counterpart when the real decision-makers are outside the process). Divergencies may exist between the incentives of principals and their negotiating agents such as lawyers or investment bankers. Vital information may be asymmetrically distributed and very difficult to unlock. There may be a rigid focus on positions with a consequent failure to uncover and work with real interests. Institutional factors (laws, regulations, policies, etc.) may keep otherwise desirable options off the table or make it difficult for one “side” to credibly commit to implement an agreement. And so on.

**B. “People” opportunities and barriers**

Negotiation rarely takes place among hyper-rational, emotionally neutral beings with fixed values, crystal clear perceptions, and flawless information processing routines. Thus a complementary stream of analysis to the structural elements discussed above involves behavioral assessments. Two related levels are consistently important, the individual and the social:

- **Individual barriers and opportunities.** As negotiators, people have different histories, personalities, motivations, and styles. Accurately “reading” people, in the manner of an insightful novelist, can be vital to uncover real motivations and opportunities to create value. At the same time, systematic characteristics of the individual cognitive
processes can both help and hinder the process of reaching agreement. For example, negotiators may be anchored by irrelevant information, subject to inconsistencies in the way they deal with uncertainty, hampered by selective perception, obsessed by sunk costs and past actions, prone to stereotyping and labeling, unlikely to think through the others’ perspectives, susceptible to influence tactics and manipulation by the way in which equivalent situations are framed, and use a variety of potentially misleading heuristics to deal with complexity, ambiguity, and conflict.

- **Social barriers and opportunities** In groups of two or more, especially where there is some perceived conflict, a variety of social psychological dynamics come into play that may enable or block negotiated outcomes. For example, a powerful norm toward reciprocity operates in most groups and cultures. Tentative cooperative actions by one side can engender positive reactions by the others in a cycle that builds trust over time. By contrast, social barriers can involve aspects of the interactive process that often lead to bad communication, misattribution, polarization, and escalation of conflict, as well as group dynamics that work against constructive agreements. Such dynamics may be especially pronounced when negotiations involve players of different genders, races, or cultures. Group dynamics can involve pressures for conformity, a hardening of approach by a representative before an “audience” of constituents, bandwagon effects, and the individual taking cues from the behavior of others to decide on appropriate actions in the negotiation. Such barriers are often heightened in situations that are inherently personal as well as substantive: partnerships on the rocks, family businesses, and the like. When former U.S. Senate Majority Leader George Mitchell sought to mediate the long-standing, bitter dispute that had riven Northern Ireland for decades, he heard from one of the negotiators soon after his arrival that “these were people who would drive 100 miles out of their way to receive an insult.” And to push the process forward, Mitchell had to overcome a pervasive social attitude: “forget the future, let’s get on with the past.”

People factors, both individual and social, often are driven by context: from differences in national or organizational culture or clashing expectations of what “game” in fact is being played. They can lead to damaging misinterpretations and the use of negotiating tactics that interact unproductively. By contrast, if the parties see each other in a long-term partnership, drawing on the powerful shared expectations may enable the parties to reach an otherwise unavailable deal. A positive “social contract” can greatly facilitate otherwise difficult substantive issues.

- **Basic advice:** Assess individual and social opportunities and barriers to agreement.

**C. “Process” opportunities and barriers**

Some process barriers are mechanical: too little time allotted to too complex an agenda, an too-public setting for confidential discussions, frequent interruptions, inability to connect by phone or e-mail, the lack of an orderly means to track the results of the ongoing negotiation process. Sometimes fortiuitous process opportunities can be exploited: an unexpected meeting at a trade association, the absence of an obstructionist member of the other side, and so on.

The negotiation may be organized in a manner that either fosters or impedes agreement. For example, the presence of hot-headed constituents at all meetings of the principals may make frank exploration of priorities and interests impossible. Another common process barrier, especially in multiparty deals, results from starting the negotiation by asking each party to set out its position. Or, the parties may try to settle the deal on a rigid, issue-by-issue basis, when a vastly preferable solution might only be found through tradeoffs embedded in whole packages. Process choices of these kinds are important and should be diagnosed for their positive or negative effects on potential agreements. However, there is a more basic process obstacle at work in most negotiations.

**A fundamental process barrier: the “negotiator’s dilemma.”** At bottom, negotiation processes involve both 1) actions to enhance what is jointly possible through agreement, and 2) actions to allocate the value of agreement. Put otherwise, the structure and people in a negotiation open possibilities for joint gains to be crafted (“value created”) and divided (“value claimed”).

Normally, moves to claim value are associated with “win-lose” or hard bargaining. These include tactics to advantageously shape perceptions of the zone of possible agreement, stake out credible commitments to desirable positions, concede slowly, conceal sensitive information, threaten to walk away, and so forth. By contrast, moves mainly intended to create value are associated with “win-win” or cooperative bargaining and involve communication, sharing information, building trust, and inventing options. However, since the “pie” must both be expanded (to whatever degree, if at all) and divided (in whatever proportions), joint moves to create value and individual moves to claim it generally interact in negotiation. This interaction gives rise to a fundamental process barrier, the “negotiators’ dilemma,” or tendency for value-claiming moves to drive out value-creating ones. Common results from this dynamic include inferior agreements, impasses, and conflict escalation.
Here’s the source of the dilemma. If one side is open, cooperative, and puts its cards on the table, the other side may reciprocate, but frequently does not. Instead, there is a powerful temptation for the other side to exploit that openness by pocketing concessions, ratcheting up demands, and generally playing a tough, value-claiming game. However, if the first side opens by playing hardball, the second side may see little choice but to play hardball in return, if only to protect itself. Notice that either way—whether the first side is a value-creator or valueclaimer—there is an incentive for the second side to play a predominantly value-claiming game. If both sides play hardball or mainly seek to claim rather than create value, mutual gains may be impossible to find. Worse, the relationship may sour and the results can easily go beyond foregone opportunity to include strikes, court battles, and other forms of destructive conflict.

Because the tendency toward unproductive hardball deriving from the Negotiators’ Dilemma is pervasive, it is especially important to diagnose and address. For example, a large retailer and vendor may have a bruising negotiation each year over the size of the margins to go to the retailer. They experience this process as a classic win-lose situation in which a higher margin means more for the retailer and less for the vendor. Each side may come to stake out even tougher positions to gain advantage and the overall relationship may become less and less productive. This tendency toward mutual value-claiming—reflected here in a focus on positions rather than deeper interests and will a too-narrow view of the interests at stake—needs be addressed to escape the Negotiators’ Dilemma. For example, with effort to get behind incompatable positions and focus on a richer set of interests, the two sides may see that investing the contested increment in promotion and special events that draw traffic, for example, could well increase the basic business and leave both sides much better off even with the same percentage margins.

The broader point is this: when the value of potential cooperation seems to be driven out by unproductive competition and conflict, one of the many forms of the classic process barrier—the Negotiators’ Dilemma—may well be operating. The trick is find means of constructively managing the inherent tension between the cooperative moves necessary to create value and the competitive moves involved in claiming it.

* * *

Your negotiating approach should surmount the barriers and exploit the opportunities you have identified in the areas of structure, people, and process. If the diagnosis is structural—for example, no apparent zone of agreement due to incompatibly optimistic BATNA assessments—your approach should focus on changing those assessments. If it is a people barrier—poor communication or lack of trust—your approach should address these factors. If positional bargaining has eclipsed interest-driven joint problem-solving, you need to reconsider your process choices, or, for example, consider involving a third party.

A barriers/opportunities perspective often sheds light on common and vexing negotiation problems. For example, the problem of dealing with hard bargainers is often treated mainly as an interpersonal issue with interpersonal responses designed to avoid unproductive escalation (e.g., the highly useful advice in Getting Past No). Yet a barriers analysis might alternatively suggest structural causes (e.g., that this really is a one-shot, single issue negotiation in which pure value claiming will likely predominate); appropriate responses might then be structural rather than interpersonal (e.g., be a more effective value claimer through a non-provocative commitment strategy, or to build an effective counter-coalition). A different structural barrier might also be causing the other side to behave in obstructionist and aggressive manner; for example, hard bargaining in a NIMBY (Not In My Backyard) situation of locating a noxious facility may be much more a signal to search for creative and legitimate compensation mechanisms than to respond primarily with a better interpersonal style. Or clashing but unspoken process expectations may suggest that what looks like hard bargaining is merely another cultural approach (e.g., prolonged silence by the other side after you have made a concession may be a sign of respect before responding rather than a wily ploy to pocket your concession and wait for more). The larger point here is not to develop a repertoire for dealing with hard bargainers, but instead to suggest the potential value of this barriers/opportunities framework.

Craft a 3-D negotiation strategy: a value-driven approach for actions both at and away from the table

Having assessed the relevant context, explored the Basic Negotiation Problems of all sides, and diagnosed the barriers to be surmounted and opportunities to be exploited, you should design the approach most likely to produce optimum results. Superior negotiating strategies typically involve actions in three key dimensions.

Dimension #1. Sophisticated interpersonal tactics and process “at the table.” Good negotiators ensure effective interpersonal interaction “at the table” (whether literally, on the phone, by e-mail, or otherwise connected). This involves many aspects: choosing the most appropriate bargaining style, setting a constructive atmosphere, building trust, ensuring effective listening and communication dynamics, framing issues attractively, packaging or separating them skillfully, using the most effective devices for persuasion, deciphering body language, on accurately reading personalities, and bridging cultural differences. Effective “at the table choices” entail thinking through offers, likely counter-offers, commitments to positions, creating or evading deadlines, and anticipating the unfolding process. These aspects of a negotiating approach
reflect a fundamentally *interpersonal and tactical* view of playing a *given* negotiation “game” well—at the table. (Much, if not most, academic study of study by game theorists or psychologists plumbs this one-dimensional view for insights. And most popular advice on negotiation focuses almost entirely on interpersonal process.)

**Dimension #2. Value-driven and informed by substance.** Sorting out the process choices for a negotiation can be challenging: where should we meet? How should we allocate roles? Should we seek to control the agenda or let the discussion be more free-form? What if they stonewall on a key point? Should we try to get them to make the first offer? And so on. In working through these aspects, it is easy to forget that the negotiation *process* should be the servant of your *substantive* purposes: that which you are fundamentally trying to accomplish by joint action. What business, professional, personal, or political objectives are you (and they) seeking to further? Indeed, negotiation is but a means of advancing underlying interests by solving a joint problem. As such, a deep understanding of the underlying value at stake and the interests involved should at all points provide a compass for process and tactical choices. A wise negotiation strategy should be relentlessly value-driven; when process choices drive substance, the strategy has lost its bearings.

Just as a pure process approach to negotiation can be empty, of course, substance by itself is rarely sufficient. In an absurdly limited view, some negotiators and analysts concentrate entirely on substance as if the outcome would be wholly independent of the process. For example, inexperienced investment bankers prepare for deals entirely by exhaustive spreadsheet exercises in valuation and deal-structuring. In this cramped vision, negotiation fundamentally consists of cerebral labor to figure out the “right” agreement, which you will plop in front of the parties, who are supposed to instantly perceive its worth (and inevitability), and accept it on the spot. Clearly, process and substance both underpin effective negotiation. A “brilliant plop” approach, innocent of process savvy, is just as unlikely to produce a good agreement as a flip-chart driven, substance-free, 1-D process.

**Dimension #3. Entrepreneurial actions “away from the table” to change the game advantageously.** Once the bargaining table has been set, however, a great deal of the game has already been played. When the parties are engaged at the table in a face-to-face process of creating and claiming value over a given agenda, much of the die is cast. Therefore, the most effective negotiators also seek to change the game advantageously by focusing on the process *away from the table*, often before it is set up at all. The phrase “away from the table” is metaphorical and need not mean physically removed; instead it complements the process of interaction “at the table.” Rather than focusing directly on the interpersonal or the substance of cooperation, more effective negotiators instead think hard about how to set up and often re-set the table: Who should be there? What is the best means to get them there? In what sequence should they be approached? Separately or together? Publicly or privately? Dealing with what set of issues? Separated or combined? By what process? Under what set of expectations? Facing what set of no-deal alternatives? More basically, at what table? Or should there be a series of tables, possibly linked, possibly separated, possibly sequenced, or possibly arranged in parallel? Not only do such negotiators skillfully play the game as given, they also act to change the game advantageously in order that it is most likely to produce optimum results.

These elements comprise the *architecture* of a negotiation. The best negotiators are fundamentally entrepreneurs, envisioning the most promising potential architecture of a negotiation, and deliberately crafting actions away from the table aimed at bringing it into being. They seek to maximize the expectation of success by getting the right parties to the table, to deal with the right set of issues, at the right time, by the right process, under the right set of expectations, and facing the right set of no-agreement alternatives. They are masters at designing and changing the game most amenable to success once at the table. And their substantive analysis of the value latent in the situation is the beacon that guides their entrepreneurial actions.

**An example: Kennecott in Chile.** In the 1960s, relationships between multinational companies and developing countries were being sharply revised. In particular, renegotiation of the long-term, low royalty contract governing Kennecott’s huge El Teniente copper mine in Chile seemed increasingly likely. A structural barrier loomed very large between Kennecott and a positive deal for the corporation: simply put, Chile had what appeared to be a very attractive BATNA in terms of its perceived financial and political interests—to radically change the financial terms or simply to expropriate the mine. Kennecott’s BATNA was correspondingly unattractive: to submit to new terms or be expropriated.

Imagine that Kennecott thought primarily in terms of a negotiating strategy that focused primarily on actions “at the table.” Management would think hard about the personalities of the ministers with whom it would be negotiating. It would sensibly seek not to come across as an arrogant U.S. multinational. It would seek to be culturally sensitive. It might choose prestigious restaurants in which to meet. And so on. Indeed, Kennecott took such actions. But this kind of “at the table” approach—reflecting a conception of negotiation primarily as an interpersonal, tactical enterprise—would hold out very little promise given the threatening realities of the underlying situation.

Consider an entrepreneurial strategy away from the table that would seek to change the game favorably from Kennecott’s point of view. In preparing to negotiate the terms of a possible expropriation, such as the timing, compensation, and any continued management involvement with the mine, Kennecott sought early on to involve a variety of other par-
ties and to change the nature of Chile’s alternative to agreement on Kennecott’s preferred terms. It is worth enumerating the steps taken by the firm.

First, somewhat surprisingly to the government, the company offered to sell a majority equity interest in the mine to Chile. Of course, Chile had no interest in that money ending up in a New York bank. Thus, second, Kennecott proposed using the proceeds from this sale of equity, along with money from the US Export-Import Bank, to finance a large expansion of the mine. Third, it induced the Chilean government to guarantee this loan and make the guarantee subject to New York state law. Fourth, the company then insured as much as possible of its assets under a US guarantee against expropriation. Fifth, the mine’s output was to be sold under long-term contracts with North American and European customers. Finally, the collection rights to these contracts were sold to a consortium of European, U.S., and Japanese financial institutions.

In short, Kennecott seized the initiative to change the game. How did the negotiation change as a result of these machinations?

First, a larger mine with Chile as the majority owner meant a bigger and more valuable pie, both economically and politically. The proposal would offer more revenue and would address an important Chilean symbolic interest in providing at least nominal sovereignty over “its” natural resources. Thus, there was the potential of a mutually beneficial partnership between the company and the country in the event of an agreement. In this way, the broader interests of both sides would be served and a stronger incentive for partnership created.

Second, a broad array of customers, governments, and creditors now shared Kennecott’s concerns about future changes in Chile and were highly skeptical of Chile’s capacity to run the mine efficiently over time. Instead of the original bilateral “divorce” negotiation with Kennecott alone, Chile now faced a multilateral negotiation with parties who would have future dealings with that country, not only in the mining sector, but also across the range of financial, industrial, legal, and public sectors. Thus, Chile’s original BATNA—to unceremoniously eject Kennecott—was now far less attractive than at the outset.

Third, the guarantees, insurance, and other contracts improved Kennecott’s BATNA if no deal could be worked out with the host country. If agreement were not reached and Chile acted to expropriate the operation, Kennecott would be able to call in this host of parties on its side. Though the mine was ultimately nationalized some years later, Chile’s worsened alternatives to Kennecott’s preferred outcome gave the firm a better position and results than those of similar companies such as Anaconda that did not take such actions.

In sum, Kennecott took actions away from the negotiating table that (1) greatly improved its BATNA, and (2) worsened Chile’s BATNA, while (3) developing a potential agreement that advanced a fuller set of each side’s interests. Not only did Kennecott avoid imminent expropriation, but it created value by offering the lure of an expanded pie and a potential partner relationship, and claimed much of this added value by improving its BATNA and worsening Chile's. Relative to similar firms in the region such as Anaconda that took far less initiative, Kennecott did quite well.

Most people faced with negotiations, as well as academics who study the process, think of the process primarily in terms of tactical and interpersonal actions at the table. Kennecott’s actions illustrate the potential power of architectural and entrepreneurial strategies away from the table to affect the core elements of the process (parties, interests, BATNAs). Kennecott took extensive initiatives away from the table to systematically change the perceived game itself in a favorable manner. This strategy was far more promising than simply refining its tactics at the table in the original negotiation with Chile.

**Prescriptive Summary**

The logic and psychology of negotiation comes into play whenever people who depend on one another for results have different interests or perceptions. No longer a special skill limited to important occasions, negotiation has become a way of life for effective managers.

- Keep the Fundamental Principle in mind: assess the elements of each side’s Basic Negotiation Problem and shape their problem such that they choose what you want.
- Interests are whatever you care about that is at stake in the process; interests constitute the raw material for negotiation
  - Know your interests and the priorities among them.
  - Assess the full set of interests at stake: tangible and intangible, objective and subjective, in process and relationships; develop the social contract along with the economic one.
  - Probe for a deep understanding of the full set of the other side’s interests
- Sharply distinguish underlying interests from bargaining *positions*; strive for interest-based rather than positional negotiation.

- Beyond shared interests, look for *differences* of interest to create joint gains.

- Each side’s **BATNA**, or **Best Alternative To Negotiated Agreement**, is the course of action each would take absent agreement; it sets the threshold of value for each side that any acceptable agreement must exceed.

  - Assess each side’s BATNA to determine the existence and location of a zone of possible agreement.

  - Since perceptions of BATNAs, and each side’s willingness to “walk” are associated with bargaining “power”, consider expending effort to improve your BATNA or worsen theirs; be careful not to diminish your BATNA.

  - An assessment of BATNAs can determine the potential for negotiation.

- Relentlessly focus on **jointly solving** each side’s **Basic Negotiation Problem**.

  - Each side constantly weighs its Basic Negotiation Problem: the choice between perceptions of the available deal and its BATNA in terms of how its interests are served.

  - Since agreement represents the simultaneous solution of all sides’ problems, solving their problem is part of solving your problem.

  - Avoid the self-defeating mistake of “letting them solve their problem” while we solve ours.

  - Effective negotiation shapes how they see their problem such that the solution they choose is also in your interest; “negotiation is the art of letting them have your way.”

- **Craft a 3-D strategy to create and claim value on a sustainable basis**—by actions both at and away from the table.

  - **First**, assess the relevant context.

    - **Second**, assess opportunities and barriers: structure, people, and process.

      - **Structural opportunities and barriers**: does a mutually beneficial deal appear to exist? Check for incompatible BATNAs, joint potential from complementary interests and capabilities, as well as time-related and other structural barriers and opportunities

      - **“People” opportunities and barriers**: both from individual characteristics as well as social interaction

      - **Process barriers and opportunities**: mechanical as well as the “Negotiators’ Dilemma” which results in competitive moves to claim value driving out cooperative ones needed to create it.

  - **Third**, **craft a 3-D approach to surmount the barriers and seize the opportunities**

    - **Dimension #1**: Develop an effective interpersonal process “at the table” dealing with the “game” as given

    - **Dimension #2**: Ensure that your process choices are deeply informed by the substance and that you structure value-creating agreements

    - **Dimension #3**: Look for entrepreneurial possibilities “away from the table” to change the game favorably


3 Cited in William Ury, Getting Past No, p. 5. ??


6 The New Yorker, October 4, 1993, p. 80


8 See, for example, Chapter 3 of Max Bazerman and Margaret Neale, Negotiating Rationally, New York: Free Press, 1992.

9 This and number of related other studies illustrating this point can be found in Leigh Thompson, The Mind and Heart of the Negotiator, Upper Saddle River, New Jersey: Prentice Hall, 1998. p. 49.


16 The Vare quote is from William Ury, Getting Past No, New York: Bantam, 1993. p. 3. See also Chapter 4 of this book for an extended discussion of building a “golden bridge.”


20 This is an embellished version of an example from pages 117-118 of The Manager as Negotiator and is originally drawn from Larry Bacow and Mike Wheeler’s Environmental Dispute Resolution, (New York: Plenum Press, 1984), pp. 73-74.

21 Cited in Zartman, p. 20.

