

NOTE: This is a early, longer draft version of the forthcoming HBR article: "3-D Negotiation: Are You Playing the Whole Game?", to appear in November 2003. It contains a much fuller set of references for the curious reader.

**Negotiating Away from the Table:
A 3-D Approach to Changing the Game**

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Many experienced negotiators and their academic counterparts unconsciously limit themselves to a one- or two-dimensional approach to a three-dimensional challenge. At the table, they skillfully play the negotiating "game" that presents itself, yet fail to profitably *change* the game by steps "away from the table." Their results needlessly suffer. In this article, we sketch a richer, "3-D," view of negotiation that can dramatically expand the possibilities for overcoming barriers and seizing opportunities to forge valuable agreements.

Dimension One: Interpersonal Process and Tactics, "At the Table." "One-dimensional (1-D) negotiators" appreciate the obvious truth that negotiation is an interpersonal and tactical *process*. As such, they mainly focus on the *interaction* with the other side at the physical or electronic "table:" setting the atmosphere, choosing the most effective bargaining style, building trust, listening and shaping communication dynamics, framing arguments, persuading, deciphering body language, accurately reading personalities, and bridging cultural differences. One-dimensional negotiation entails thinking through offers, likely counter-offers, commitments to positions, creating or evading deadlines, and anticipating the unfolding process. Much, if not most, academic study by game theorists and psychologists plumbs this vital 1-D process for tactical and interpersonal insights.

Dimension Two: Substantive Deal Design, "On the Drawing Board." "Two-dimensional (2-D) negotiators" relentlessly look beyond interpersonal process and tactics to the underlying *substance* of the problem, seeking to figure out where potential value exists and how to craft agreements that could realize this value for those involved. Once the parties to a negotiation, their interests, and the situation is sufficiently well-described, one could – at least, in principle--figure out, structure, and write down the set of agreements that could create more value for the parties than they could realize through their best no-deal alternatives. Does some sort of trade or exchange make sense and, if so, on what terms? A staged agreement? A contingent deal such as an earnout? A risk-sharing arrangement? An option or swap? In answering such questions, 2-D negotiators function as deal designers, working "on the drawing board."¹ Economists and other analysts who study gains from trade, comparative advantage, financial engineering, and the principles of optimal contracting have fleshed out this second dimension of negotiation. Effective 2-D negotiators grasp

the important truth that substance and value should drive interpersonal process, not the reverse.

Dimensions one and two--process *and* substance--clearly underpin effective negotiation. Many experienced negotiators concentrate their preparation crafting the best deal to explore and the most promising tactics to adopt once they are "at the table," facing the other side. Their academic counterparts take a compatible view: to do good social science, one must fully specify the elements of a negotiation and rigorously analyze the dynamics within this fixed game. Yet something is still missing from this two-dimensional conception focused on a fixed situation at the bargaining table.

The (Missing) Third Dimension: Acting "Away from the Table," to Set up the Game Itself. Who sets up the negotiating "table" in the first place or specifies the "game" within which the process and substance are to be played? The game itself is not simply a given, but arises from conscious efforts to shape it. Actions by one or both players in effect determine the third dimension: *which* game is to be played, or, more basically, its *scope and sequence*.

The great insight of 3-D negotiators is that, once the bargaining table has been set, a great deal of the game has already been played. Thus, rather than focusing on the direct interpersonal or substantive aspects, 3-D negotiators instead think hard about scope and sequence, how to set and often re-set the table: Who should (or should not) be there? What is the best means to get them there (or keep them out)? In what order should potential parties be approached? Separately or together? Publicly or privately? Dealing with what set of issues? Separated or combined? In what order? Framed to evoke what set of interests? By what "rules" of interaction? Under what set of expectations? Facing what 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?

These elements comprise the architecture of the game itself, the "scope and sequence" of a negotiation. With the potential value to be created as their guiding beacon, the best negotiators are entrepreneurs, playing a wider, 3-D game. They envision the most promising potential architecture, and deliberately craft 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 prospects. Not only do 3-D negotiators skillfully play the game as given, they are masters at designing and changing it to be most amenable to success.

Example: Kennecott in Chile. During 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. Chile had what appeared to be a very attractive BATNA – negotiation jargon for **B**est **A**lternative **t**o **N**egotiated **A**greement--in terms of its perceived financial and political interests. By

unilateral action, Chile could radically change the financial terms or simply to expropriate the mine. Kennecott's BATNA appeared poor: to submit to new terms or be expropriated.

Imagine that Kennecott thought primarily about a 1-D process strategy that focused primarily on its interpersonal actions "at the table." Management would assess the personalities of the ministers with whom it would be negotiating. It would seek not to come across as an arrogant U.S. multinational and would try to be culturally sensitive. It might choose prestigious restaurants in which to meet. And so on. Indeed, Kennecott took such sensible actions. But this kind of "at the table" approach—reflecting a 1-D conception of negotiation primarily as an interpersonal, tactical enterprise—wasn't promising at all given the threatening realities of the situation. Pause, put yourself in Kennecott's shoes at the time faced with this nasty, expensive "divorce"—in which Chile seemed to hold all the cards and has powerful political incentives to brutally renegotiate the financial terms or simply kick out the U.S. firm. After all, experienced Chilean engineers and managers were available; Kennecott couldn't move the giant mine, didn't have a lock on downstream processing or marketing, and had no realistic prospect, as in a prior era, of calling for the U.S. fleet.

Consider instead Kennecott's entrepreneurial, 3-D strategy to change the game. First, somewhat to the government's surprise, the company offered to sell a majority equity interest in the mine to Chile. Of course, Chile had no interest in that money simply ending up in a New York bank. Thus, second, Kennecott proposed using the proceeds from this sale of equity, along with money from an Export-Import Bank loan, 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 expanded 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, rather than refine its interpersonal tactics, Kennecott seized the initiative away from the table to change the game favorably. These actions fundamentally changed the negotiation in at least three ways.

First, a larger mine with Chile as the majority owner meant a larger and more valuable pie, both economically and politically. The proposal would offer more revenue and address a highly important Chilean symbolic interest in 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.

Second, as a result of the company's initiatives, 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 facing the original bilateral “divorce” negotiation with Kennecott alone, Chile now effectively faced a multiparty 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. Hurting Kennecott thus risked damaging a wider set of Chile’s present and future interests. 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 additional years of cash flow relative to those of similar companies like Anaconda that did not take such actions.

It is unlikely that tactical or interpersonal brilliance “at the table” could have saved Kennecott from a fundamentally adverse situation. Yet a 3-D approach to consciously change the negotiation’s scope – the parties involved, the interests they saw at stake, their BATNAs--held real promise – once Kennecott escaped from the mental prison of a fixed game and focused its energies away from the table. Not only did Kennecott avoid imminent expropriation, but it *created value* – expanded the pie--by offering the lure a potential partner relationship. Moreover, Kennecott *claimed* much of this added value by improving its BATNA and worsening Chile’s.

In our experience, such a 3-D orientation is fundamental to great negotiators across a wide array of contexts. After a successful private sector career mainly negotiating on behalf of U.S. firms, U.S. Special Trade Representative Charlene Barshefsky negotiated with literally hundreds of global and national companies; most governments and cultures worldwide; interest groups and non-governmental organizations concerned with environment, human rights, and labor; as well as diverse factions within the U.S. government and the Congress. After spearheading dozens of agreements on trade in goods, services, and intellectual property, she characterized the essence of negotiating success in 3-D terms:

...tactics at the table are only the clean-up work. Many people mistake tactics for the underlying substance and the relentless efforts away from the table that are needed in order to set up the most promising possible situation once you actually face your counterpart. When you know what you need and you have put a broader strategy in place, then negotiating tactics will flow.²

Our central message flows from these examples and observations: *seek not only to play the given game well at the table, but also act away from the table to change it favorably.* 3-D moves inevitably require creativity, yet we will offer and illustrate a set of general principles that underlie success in this dimension.

Representing the Basic “Game” and 3-D Moves to Change It

While a virtually infinite array of 3-D actions is conceivable across the full range of private and public negotiating contexts, the Chilean case suggests that scope-changing moves can be usefully organized according to their underlying purposes. Broadly speaking, these include actions mainly intended 1) to *claim value* for one side or protect their situation, or 2) to *create value* for all sides, though both purposes are normally present. We will shortly offer a number of 3-D examples with these two deeper purposes. Yet, such cases could appear almost bewildering in their variety without relating them to a basic reference “game.” It is useful to briefly offer a simple graphical representation of such a game as a baseline against which standard classes of 3-D moves can be highlighted. (The term, “game,” comes from “game theory,” the study of cooperative and competitive situations, and, despite some of its connotations, is not intended to sound frivolous or manipulative.)

Imagine that two negotiators have thought hard about their underlying interests in different possible settlements of the apparent issues. Further, suppose that they have a relatively clear, if possibly changing, assessment of their tradeoffs on the issues, have compared them to the value of their best no-agreement alternatives. Each has a sense of any “rules of engagement” that govern their interaction. From the viewpoint of each party a set of possible agreements has been envisioned. Assume that an outside party were privy to the results of these evaluations by each side, along with the distribution of information about interests, beliefs, no-agreement options, and possible actions; these evaluations neither likely to be the same for each party nor common knowledge to them.

This situation can be represented as in Figure 1 in which moves “east” are improvements for Party 1 and moves “north” are gains for Party 2; “northeast” moves are simultaneously good for both sides and can be said to create value. (In the Chilean case, relative to simply increasing one side’s financial “take” at the expense of the other side, one value-creating set of moves would consist of crafting a more secure partnership over a much larger mine on more politically attractive and sustainable terms for the government.)

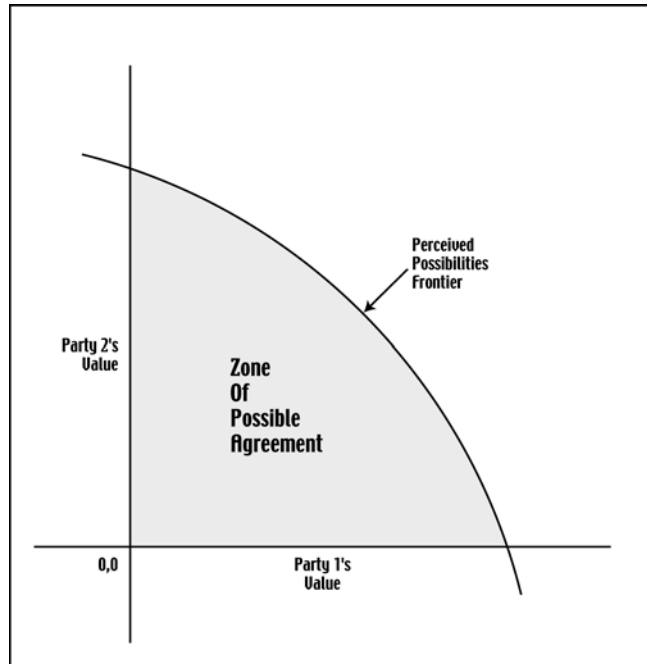


Figure 1: Representation of a Fixed “Game”

The origin represents the value to each side of failing to reach agreement; each side’s best alternative to agreement implies the location of this point. (At the beginning of the Chilean case, this would simply be expropriation – and might, to the Chileans, appear superior to other possible agreements.) The “perceived possibilities frontier” in the northeast part of the graph represents the evaluations of the set of those possible agreements on the issues that could not be improved on from the standpoint of either party without harming the other. In general, neither side knows the location of the frontier, only theoretically that it is there. The entire shaded region--bounded by the two axes and the frontier--is the “zone of possible agreement (ZOPA).” It represents the full set of agreements that are better for both sides, in terms of their interests, than no deal (point O). In general, each party has its own perceptions of the ZOPA. (In a pure price, “win-lose,” or “value-claiming, negotiation, with no room for joint gains beyond the fact of agreement, the shaded region would collapse to a diagonal frontier.)

Within this “fixed” game, the familiar 1-D (interpersonal influence) and 2-D (substantive deal design) moves take place. Admitting 3-D actions to change the perceived game means that the parties need not limit themselves to creating and claiming value within the fixed scope of Figure 1. Indeed, each side typically seeks to favorably change the elements of the game in characteristic ways. After giving a few examples, we will return to this picture to show how apparently disparate tactics have the same underlying effects on the negotiations.

3-D Moves Mainly Intended to Claim Value.

Value-claiming moves improve one side's results while worsening those of the other side(s). Invoking the "manager in the back room" and other "bad-guy" gambits in effect link outside parties to the main negotiation. Beyond these garden variety tactics aimed at increasing leverage, the most familiar scope-changing moves seek to tap the power of competition by improving one side's BATNA – and, perhaps worsening that of the other. This can be done soliciting outside offers or by bringing new players into the game. The importance of adding parties to a formerly bilateral process is virtually an article of faith among many negotiators; as a senior AOL executive remarked, "You would never do a deal without talking to anyone else. Never."³ After leading a string of alliances and acquisition negotiations that vaulted Millennium Pharmaceuticals from a 1993 startup to a multibillion-dollar firm less than a decade later, then-chief business officer Steve Holtzman explained the rationale for adding parties:

Whenever we feel there's a possibility of a deal with someone, we immediately call six other people. It drives 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.⁴

Transforming a two-party negotiation into an active auction with many bidders vying for a deal can be a potent strategy.⁵ By the same token, inadvertently worsening one's BATNA can be disastrous. Advising a technologically savvy U.S. manufacturing firm on joint venture negotiations in Mexico a few years ago, we discovered that the firm had first actively researched possible cultural barriers, then methodically ranked its three potential Mexican partners in terms of their relative business desirability. Approaching the negotiations in a culturally sensitive spirit in what had seemed a very logical sequence, they had nevertheless come to an unpleasant impasse with the most attractive partner. Now deep into a later process with the second most desirable candidate, things were again going very badly. Imagine subsequent negotiations with the third, barely acceptable partner if the second set of talks had also foundered – in an industry where all would quickly know the results of earlier negotiations.

As each negotiation failed, 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 its successive potential partners. Fortunately, the U.S. company reconsidered its approach and opened active 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 should 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. In short, it would

create a *de facto simultaneous*, four-party deal (the U.S. and three Mexican firms) rather than three, two-party *sequential* games. This far most promising 3-D approach would greatly enhance whatever cultural insight and tactical ingenuity the U.S. firm could muster.

Analogous 3-D actions can sometimes transform seeming weakness in two-party negotiations into strength by systematically adding parties and issues to worsen the other side's BATNA. Near the beginning of efforts to obtain agreement from Swiss banks to compensate Holocaust survivors who claimed that these banks had unjustly held their families' assets since World War II, former Seagrams head, Edgar Bronfman, met with a virtual stonewall from top Swiss banking executives in Zurich. Believing that these restitution issues had been settled years ago and that they were on strong legal ground, the bankers were not forthcoming; Bronfman and his colleagues felt arrogantly dismissed. Yet eight months later, entrepreneurial action by Bronfman, the World Jewish Conference, and others, the negotiations had expanded dramatically to the detriment of the Swiss. Now the bankers faced a *de facto* coalition of interests that credibly threatened 1) the lucrative Swiss share of the public finance business in states such as California and New York; 2) the divestiture by huge U.S. pension funds of stock not only in Swiss banks, but in all Swiss-based companies; 3) a major merger between Swiss Bank Corporation and UBS over a "character fitness" license vital to doing business in New York; 4) expensive and intrusive class-action suits brought by some of the most formidable U.S. class action lawyers; and 5) the wider displeasure of the U.S. government, which had become active in brokering a settlement.

Without detailing the steps leading to such a dramatically worsened Swiss BATNA, it should not be surprising that an agreement resulted, including a Swiss commitment to pay \$1.25 billion to survivors. This was an almost unimaginable outcome at the outset of the small, initially private negotiations, but easily understandable in the context of the radically reshaped game that came to include a large coalition of parties, with various sources of leverage, pressing the bankers for a deal.⁶

These apparently varied moves – to add parties who generate competition or exert influence or to resequence linked negotiations – share two characteristics. First, they go beyond tactics "at the table" to change the game favorably. Second, they operate through a common mechanism: each alters perceived or actual BATNAs in ways that can dramatically shift the balance in a negotiation. Visually, recall the basic reference game from Figure 1. In the value-claiming examples we just described, an improvement in Party One's no-agreement alternative shifts the vertical axis to the right, leaving the ZOPA generally more favorable to that side; think of Millennium Pharmaceuticals generating more bidders for a potential agreement or the joint-venture-seeking firm in Mexico negotiating in parallel rather than sequentially. If Party Two's no-agreement alternative worsens, the horizontal axis shifts down, worsening its prospects; think of the Swiss bankers after Bronfman's initiatives. Figure 2 illustrates both sets of these changes – improving one's own BATNA and worsening that of the

other side; both generally favor Party One, which would prefer to bargain in the region CPD rather than OAB.

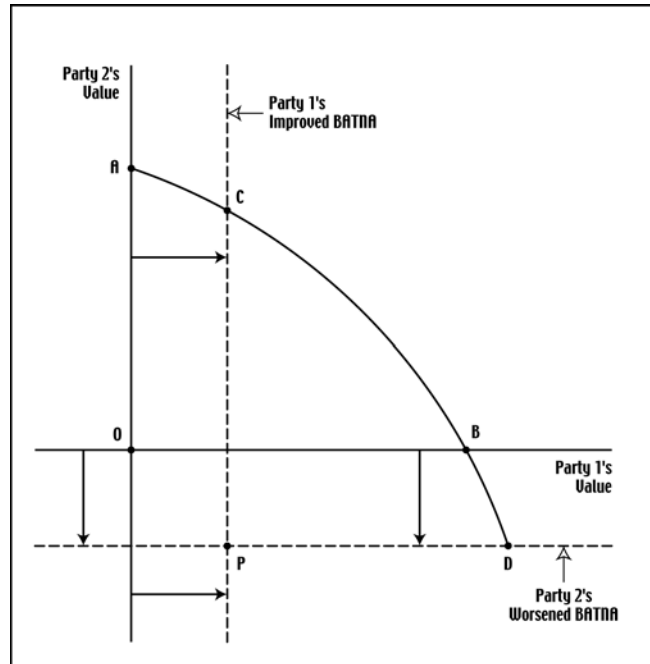


Figure 2: Party One’s Moves to Improve Its BATNA and Worsen Party Two’s BATNA Shifts the original ZOPA (OAB) to a More Favorable ZOPA (CPD)

More 3-D Moves to Claim Value: From BATNA-Boosting to Issue-Shifting. The preceding examples have mainly focused on adding parties or resequencing linked negotiations to improve one side’s BATNA and/or worsen the other side’s. Of course, as in the Swiss Bank example, some of the new parties also brought new issues with them and worsened BATNAs through adverse linkages. Yet the issues and interests, themselves, can be shifted in a negotiation to claim value. For example, AOL was in dire need of a cutting edge internet browser in 1996. In a brutally competitive process, Netscape and Microsoft negotiated with AOL over which browser it would adopt.⁷ The technically superior, market-dominant Netscape Navigator vied with the buggier Microsoft Explorer, then struggling for a market foothold, but a critical strategic priority for Bill Gates. A confident, even arrogant, Netscape held out for a high per-copy fee from AOL, in effect defining a technically-based, “browser-for-dollars” deal. From the perspective of Steve Case, AOL’s CEO, “They [Netscape] were very aggressive about selling the browser, but they wanted a very high per-copy fee. The attitude was, ‘We’re so hot, we’ll license to everyone, so you better take it.’”⁸ When the negotiation finished, however, Microsoft’s Explorer would be provided to AOL for free, in contrast with the fee-based Navigator arrangement, with Microsoft also promising AOL a series of technical adaptations in a multiyear context.

Most remarkably to outside observers, Microsoft agreed that AOL client software would be bundled with the new Windows operating system. Microsoft as a direct competitor to AOL would position the AOL icon on the Windows desktop right next to the icon for the Microsoft Network (MSN) – the online service created. This positioning on “the most valuable desktop real estate in the world” would permit AOL to reach an additional 50 million people per year at effectively zero cost, compared to its \$40-80 per customer acquisition cost incurred by “carpet bombing” the country with AOL disks. The value to AOL of having its icon on the Windows desktop was immense for marketing, distribution, and competitive reasons, in effect, blunting the threat from MSN. In effect, Bill Gates sacrificed the medium-term position of MSN to his larger goal of winning the browser wars.

Microsoft’s technically inferior browser meant that its prospects of winning on that battleground were poor regardless of its negotiating skills and tactics “at the table.” Yet while Netscape was confidently playing a waiting game to bring AOL around, Microsoft undertook a 3-D effort to favorably shift the negotiating ground from Netscape’s technical “browser-for-dollars” deal toward wider business issues that keenly interested AOL and on which Microsoft held a decisive edge. Moreover, rather than focus on the technologists, Microsoft concentrated on AOL’s more business-oriented people. As AOL’s lead negotiator and Business Development head, David Colburn, stated, “The willingness of Microsoft to bundle AOL . . . with the Windows operating system was a critically important competitive factor that was impossible for Netscape to match.”⁹ In effect, Microsoft found itself in a weak position dealing with person X on issues A and B. Rather than trying to play this poor hand well, Microsoft consciously changed the game toward a more compatible counterpart Y, emphasizing issues C, D, and E, on which it was strong.

Whether to shore up weakness or enhance competition, these 3-D moves mainly focus on boosting leverage to claim value or get a better outcome for one side, generally at the other’s expense. While they have tactical implications, they are not primarily about interpersonal process, but rather the scope and sequence of the negotiation itself. These moves – to add parties or issues or resequence linked negotiations--underscore the sharp limits of a tactical conception of negotiation “at the table” relative to a more expansive 3-D view that looks away from the table.

3-D Moves Mainly Intended to Create Value.

3-D moves are hardly limited to the competitive sphere of value-claiming; they can also be used to expand the pie, or to create value. For instance, two parties may negotiate skillfully and in good faith, but be unable to realize the full value latent in their potential deal. A 3-D move to add parties with complementary interests or capabilities can create value for all sides.

Creating Value by Adding Complementary Parties and/or Issues. Sometimes this is as simple as creating the “right” negotiation rather than excelling tactically in the

“wrong” one. For example, along with its advisors, a medium-sized packaging company that had developed some remarkably innovative (patented) technology and packaging concepts, was searching for a potential industry buyer. While the usual suspects quickly turned up on an industry screen, disciplined analysis suggested to the firm that one of its major customers, a very large consumer-goods company, might value owning the packaging firm far more than industry buyers. If the consumer goods firm could make *exclusive* use of the packaging innovations, it could offer its retail consumers a real point of difference vis-à-vis its cutthroat competitors. (It would be very difficult for packaging industry buyers, whose customers included the full range of consumer products companies, to offer exclusivity to one such firm.) In combination with a standard cash flow value for the packaging firm, the value of this exclusivity could well make the consumer goods firm the natural buyer (or the stimulus to an auction among its rivals).

In the diplomatic realm, potentially valuable bilateral deals can be impossible unless a third party with complementary differences of interest can be included. Janice Stein describes Henry Kissinger’s architectural role in an important Middle East negotiation:

. . .the circular structure of payment was essential to promoting agreement among the parties: Egypt improved the image of the United States in the Arab world, especially among the oil-producing states; the United States gave Israel large amounts of military and financial aid; and Israel supplied Egypt with territory. Indeed a bilateral exchange between Egypt and Israel would not have succeeded since each did not want what the other could supply.¹⁰

In *Co-opetition*, their influential book on business strategy, Adam Brandenburger and Barry Nalebuff explored the concept of the “value net” or the collection of players whose potential combination and agreement can create value.¹¹ Actions of 3-D negotiators can often be understood as “weaving” the possible value net by scanning beyond their specific transaction for compatible players with complementary capabilities or valuations and crafting agreements that profitably incorporate these additional players.

The potential elements of a value net may not be at all obvious when undertaking a negotiation. For example, a U.S.-European conservation group wished to preserve the maximum amount of rainforest habitat in South American country. From membership contributions and foundation support, the conservation group had U.S. dollars with which it wished to buy development rights from South American owner after converting dollars to local currency at officially set exchange rate. The owner and conservation group negotiated hard and tentatively agreed on an amount of rainforest to be protected and a price per hectare. The group was persuaded that the agreement would be honored. Before finalizing the transaction, the question arose as to whether 3-D thinking could improve the deal from all sides’ viewpoints.

To do so, it was useful to consider a wider set of potential interests and parties. The host country was deeply indebted in dollar-denominated bonds, which were trading at a 45% discount to their face value. The country had to use scarce dollar export earnings, needed for many pressing domestic purposes, to keep its debt service obligations current; of course, interest payments were determined by the face value of the debt, not the bond discount. Putting these facts together suggested that value could be created by involving two other sets of players in the negotiation between the landowner and the conservation group.

In a green variant of a debt-for-equity swap, the conservation group bought country debt from foreign holders at the prevailing 45% discount. It then brought this debt to the country's Central Bank and negotiated its redemption for local currency at premium between discounted value of debt and full dollar face value of debt (up to an 82% premium over the discounted value). Thus the conservation group then used this local currency from the Central Bank to buy more development rights and/or pay a higher price to the landowner.

This expanded four-party negotiation--sequentially involving the group, international bondholders, the Central Bank, and the landowner--left all sides better off than the best result possible in the initial two-party landowner-conservation group negotiation. The Central Bank was able to retire debt and cancel dollar interest obligations, which were very costly to the country, with "cheaper" (to it) local currency without exporting more or diverting scarce export earnings. The conservation group was able to save more rainforest at the same dollar cost while the landowner got a higher price in a currency it was better positioned to use. While the money creation from such a "debt-for-nature" swap might in some cases add to inflation, this example illustrates how 3-D negotiators can increment the value of a deal well beyond what might be possible by thinking of negotiation primarily in interpersonal, tactical terms.

Parties outside the immediate negotiations can often add value if they can bear part of the risk of the deal more cheaply or if their expectations are more optimistic about an element of the possible agreement that can be unbundled. For example, the payment risk between a buyer and seller may seem unacceptably large to the buyer, but much smaller to a factoring company that could be "added" to the deal for mutual benefit.

More generally, an uninvolved party that can accomplish an aspect of the deal more cheaply than the main protagonists should be considered for inclusion. Pushing this logic further suggests seeking parties who may value elements of deal more highly than the immediate negotiators. Consider a case of this in which Rhône-Poulenc (RP) negotiated to acquire a controlling interest the Rorer Group. To do so, it planned to create a "Newco" consisting of Rorer and RP's human pharmaceutical business; Rorer's consideration for the deal would significantly consist of Newco shares. While RP argued that Newco would be a hit, Rorer was skeptical of value of the pharma assets to be contributed by RP and, therefore, of the value of Newco shares. To assuage these

concerns, RP also contributed one “Contingent Value Right” (CVR) for each share of Newco not owned by RP. These CVRs would last for three years and guarantee the cash difference between Newco stock’s price and the target forecast by RP. So far, this was simply a version of RP’s “putting its money where its mouth is” via CVRs. Yet, because CVRs were designed as securities to trade on the Amex, they effectively *expanded* a two-party deal to include investors more broadly; in particular this device would select for those investors that were even more optimistic about Newco’s prospects than Rorer shareholders, thus adding net value to the deal. (These CVRs traded on Amex and were extinguished as an obligation to RP given the satisfactory performance of Newco shares.)

Unlike familiar moves that add parties to generate competition or other forms of leverage, the 3-D actions in these examples serve to create value. Unifying these disparate examples – from involving a large customer in selling a packaging company, doing a debt-for-nature swap, or issuing tradable contingent value rights--is a the a search for parties and issues that profitably complement those in the original negotiation. The right questions leading to these kinds of 3-D moves focus on *relative valuation*. Which uninvolved parties might more highly value elements of the present negotiation? What outside issues might be more highly valued if incorporated into the process?

Creating Value by Reducing Transactions Costs and Separating Out Potential Deal-breakers. In some cases, however, the costs and complications of complexity often suggest *shrinking* the set of involved issues, interests, and parties in order to create value. Most commonly, this approach reduces process costs and risk of impasse by reducing or staging the number of parties over time. For example, rather than entering into a full multiparty process at the outset, a technical standard-setting negotiation in an industry association may benefit from first seeking agreement between a few dominant players as the basis for a later deal among the wider group.

Perhaps less obviously, the form chosen for a transaction can dramatically affect the complexity of negotiations. When Bell Atlantic and NYNEX planned a “merger of equals” involving ownership changes on each side, they discovered that this structure would have required separate negotiations with regulatory authorities in each of the *thirteen* states served by the two companies. To avoid these potentially politically-laden negotiations in the seven Bell Atlantic States plus the District of Columbia, a functionally equivalent structure was created in which Bell Atlantic was the nominal acquirer.¹² Notice again how a 1-D interpersonal, “at the table” orientation would miss such decisive choices.

Similarly, suppose that the contract under negotiation between independent upstream and downstream parties in a value chain proves too laden with complex issue conflicts and difficult-to-align interests to achieve mutually desired cooperation. In such cases, the parties should often consider a completely different kind of transaction--

an outright acquisition of one by the other--to internalize the conflicts and better achieve the underlying objective by way of what can be a simpler process.

And, removing or deferring deal-breakers can permit value-creating subsidiary agreements to go forward, perhaps laying the basis for a more comprehensive deal later. For example, insisting on resolving the ultimate status of Jerusalem in a Middle East accord arguably could prevent earlier resolution of a more tractable subset of questions. Similarly, suppose that negotiating control of an ambitious new joint venture seems unresolvable between two parent entities that have little experience working together. Rather than continuing to beaver away at the table, seeking to improve communication and enhance persuasive appeals, the scope of the deal may be profitably shifted. Perhaps the two sides should shift their focus toward crafting a smaller scale, project-oriented venture on which the two sides can gain experience and confidence in each other. This may well detoxify the control issue for larger ventures undertaken later.

Figure 3 returns to the basic reference game and shows how a new, mutually beneficial option causes the frontier to bulge both upward (better for Party 2) and to the right (better for Part 1). When issues vary or other basic aspects of the game change in a manner that creates value, each side's (implicit) understanding of the basic picture in Figure 1, the zone of possible agreement, will be transformed in a manner potentially better for all sides.

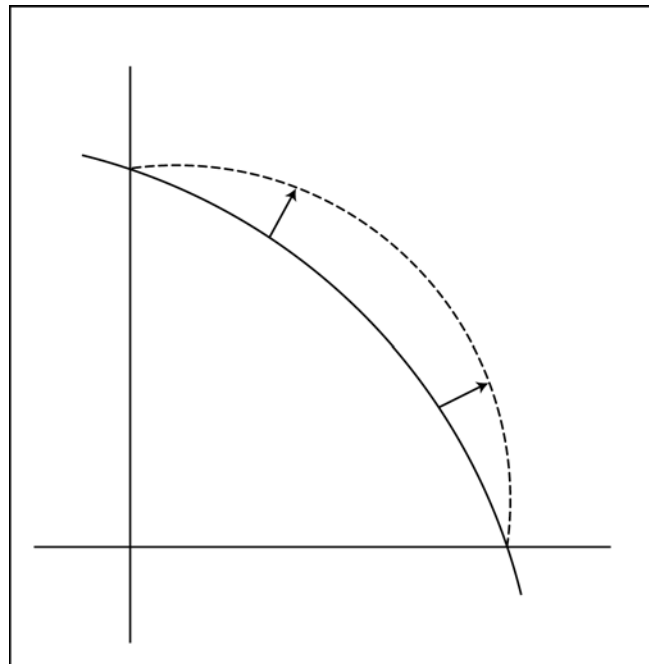


Figure 3: Finding Joint Gains Relative to the Original Negotiation

Creating Value by Introducing Third Parties and Other Dispute Resolution Mechanisms. Face-to-face negotiations sometimes run up against show-stopping

barriers: communication problems, interpersonal friction, emotional escalation, ego clash. Being too close to the problem may blind the parties to potential solutions. One or both parties may overoptimistically assess its BATNA (e.g., its chances in court, how well it would fare in a strike, etc.) and stubbornly hold out for more than is possible. Or the right agreement may be evident, but the two sides may have painted themselves into a positional impasse, with no face-saving way to make the necessary concessions to get there. A standard 1-D response to such barriers is redoubled efforts at more effective negotiation techniques and better interpersonal process. Often, however, changing the game by bringing in a skilled third-party mediator offers a value-creating alternative.¹³ For example, deep frozen negotiations between Microsoft and the Department of Justice finally broke through with the help of two intensive mediation efforts by outside parties.

While the parties may not be able to reach an agreement on the substance of their dispute, they may agree on a game-changing *process*, such as binding arbitration, to render a decision. In seeking to wind up a partnership, the two sides may be unable to negotiate a specific deal on who gets what, but may agree to a special mechanism such as a “Texas shootout” in which one side names a price at which it would be either a buyer (of the other’s shares) or seller (of its own) and the other side must respond. This is closely related to the childhood device, “I-cut-you-choose,” for carving up a cake. Many fundamentally different variants of mediation, arbitration, and other special mechanisms exist, but all are options change the game itself rather than intensified efforts to negotiate more effectively.

Implementing a 3-D Negotiation Strategy.

As the many examples above suggest, negotiators act in all three dimensions to create and claim value. 1-D negotiators concentrate on interpersonal process and tactical challenges at the table, within a given game. 2-D players focus on substance, going to the drawing board to design feasible agreements and enhance their value. While 3-D negotiators are full participants in the first two dimensions, seeking to play the given game well, they also act as entrepreneurs, seeking to change it favorably by actions away from the table. Facing an apparently fixed situation, as in Figure 1, they envision and act to bring about a more promising “target” game with improved BATNAs and enhanced joint gains, as in Figures 2 and 3.

In some cases, the new target game will incorporate a special procedure such as mediation. More commonly, conceptualizing and implementing 3-D strategy has several elements: 1) scanning widely, 2) “mapping backward” from the target (more promising) game to the current (less promising) situation, 3) carefully sequencing the process of getting there, 4) combining or separating elements of the process, and 5) deciding how public or private each stage should be. Running through these choices is a vital focus on *information*: who knows about what when and how that information is framed.

Scanning Widely. To act outside the box, one must first look outside the box. This step is more art than science, though the negotiating artist should be guided by general principles. In particular, creatively scanning beyond the immediate negotiation for elements of a potential value net most usefully focuses on complementary capabilities and valuations; recall the above cases of seeking a customer as acquirer rather than a competitor, bringing in a factoring company, or looking outside the country for the potential participants in a debt-for nature swap. Useful game-changing questions include: who, outside the immediate deal, might value an aspect of it the most? Who might minimize the costs of production, distribution, risk-bearing, finance, and so on? Who might supply a piece or pieces missing from the current process? What issues promise mutual advantage? What devices might bring such potential value-creating parties and issues into the deal? And when does complexity, (as in the Bell-Nynex combination) or conflict of interest in potential deal-breakers (Jerusalem) suggest “shrinking” the negotiation in the interest of joint gain?

Scanning beyond the current game to claim value (Kennecott, Microsoft with AOL, Millennium, Edgar Bronfman with the Swiss banks) normally focuses on a parallel set of questions: Are there potential additional “bidders” or parties who could favorably alter BATNAs in other ways? How about issues that can be linked for leverage? What outside possibilities could enable a credible commitment to an advantageous position?

Those building new ventures almost always face the problem of scanning widely in order to construct the most promising sequence of deals that lead to a self-sustaining company. For example, consider WebTV founder Steve Perlman’s situation after obtaining seed funding, developing the technology to bring the web to ordinary television sets, creating a prototype, and hiring the core technical and management team members. Running desperately low on cash, he faced the something like the “cloud” of potential deal partners depicted in Figure 4.



Figure 4: “Cloud” of Possible Deals to be Pursued by WebTV

In no meaningful sense could Perlman have been said to face a “fixed” negotiation to be approached tactically “at the table.” Instead, the essence of his problem was how to draw on the elements of this cloud to bring into being the most promising set of deals to build his company.

“Mapping Backwards” and Sequencing. The first step in a negotiation can sometimes be obvious. In developing a sequence in more complex situations like WebTV, it is often more promising to focus on a final or interim “target” negotiation and “map backwards” from the target to the current situation. With Perlman’s promising new venture running on “fumes,” an obvious next negotiations might have been with venture capital firms, which, unfortunately for the nascent WebTV, were then quite skeptical of consumer electronics plays. Instead of a direct approach, however, Perlman mapped backward from his VC target, reasoning that the value of WebTV would be greatly enhanced by first getting a prominent consumer electronics firm on board, then seeking venture funding. Willing to take the risk, he embarked on a sequential strategy. After his optimal choice, Sony, turned him down, Perlman kept reasoning “backwards” from his target. Finally, he was able to get Phillips on board, and then use Phillips to re-open and forge a complementary deal with Sony. Then he negotiated new venture money – at a far higher valuation – since both Sony and Phillips were now on board.

With new money in the tank, it was fairly straightforward to thread a path of supporting agreements through manufacturers, wholesale and retail distribution channels, content providers, ISPs, and alliance partners abroad – with an ultimate sale to Microsoft of his young but thriving business.

A common problem for a would-be coalition-builder is that approaching the most difficult – and perhaps most critical – party offers slim chances for a deal. One approach to improve the odds of an ultimate “yes” is to discern who influences or tends to defer to whom with respect to the target player. Consider the successful sequencing tactics of Bill Daley, President Clinton's key strategist for securing Congressional approval of the then-controversial North American Free Trade Agreement (and later Secretary of Commerce):

News might arrive that a representative who had been leaning toward yes had come out as a no. "Weenie," [Daley would] say. When he heard the bad news, he did not take it personally . . . He'd take more calls. "Can we find the guy who can deliver the guy? We have to call the guy who calls the guy who calls the guy."¹⁴

These examples suggest the essential logic steps for effective sequencing in negotiations, which we have called “backward mapping.”

First, draw a “map” of the full set of the actually and potentially involved parties (including internal factions, if necessary).

Second, estimate the difficulty and cost of gaining agreement with each party as well as the value of having it on board.

Third, identify the key relationships among the parties: who influences whom, who tends to defer to whom, who “owes something” to whom, etc.

Fourth, focus on the most difficult-to-persuade player who is either the ultimate target or is otherwise critical to the deal. Ask a series of questions of the following kind: with respect to the target player, which *prior agreement or agreements* among which set of the other players would maximize the chances of the target saying yes? Put otherwise, whom would you ideally like to have on board when you initiate negotiations with the target? As the answer to this question becomes clear, you have identified the penultimate stage.

Fifth, ask analogous questions about the player(s) at this next-to-final stage: whom would you ideally like to have on board already that would maximize the chances of the most difficult penultimate player saying “yes?”

Finally, continue mapping backward in this fashion until you have found the most promising path through the cloud of possibilities.

It is sometimes helpful to think of backward mapping logic as similar to the logic of project management. In deciding how to undertake a complex project, you start with the endpoint and work back to the present to develop a timeline and critical path. In negotiation, however, a completed “project” should be a set of value-creating, sustainable agreements among a supportive “coalition” of parties.

Public or Private? Framing and Informational Spillover? Beyond the sequence of 3-D moves to set up or change the game, it can matter a great deal whether stages of the process are public or private as well as how information from one stage spills into or is framed at other stages. Some negotiations are best approached by gathering all affected parties together, sharing all information, and brainstorming a solution to the shared problem. In other cases, for purposes of at least one player, it is far more promising to carefully separate and sequence the stages of the process, while actively managing the information flow.

A wry story illustrates these the potential of such choices to set up a linked series of negotiations.¹⁵ Anecdote has it that prominent U.S. statesman once decided to help a charming and capable young man of very modest background from an Eastern European country. Approaching the Chairman of the state bank, the statesman indicated that “a very gifted and ambitious young man, soon to be the son-in-law of Baron Rothschild,” was seeking a fast-track position in banking. Shortly thereafter, in a separate conversation with the Baron, whom he knew to be searching for a suitable match for his daughter, the statesman enthusiastically described a “handsome, very capable young man who was making a stellar ascent at the state bank.” When later introduced to the young swain, the dutiful daughter found him charming, with enviable talents and prospects, as well as acceptable to her father. When she said “yes,” the three-way “deal” allegedly went through--to all parties’ ultimate satisfaction.

Without judging the factual base or ethics of this “negotiation” – both problematic – notice how the U.S. statesman’s 3-D actions set up the most promising game for his purposes. By separating and sequencing the stages of the process, as well as opportunistically framing his message at each juncture, the statesman created a “game” that supported an otherwise most unlikely outcome. Of course, had the bank Chairman, the Baron, the daughter, and the young man been initially thrown together in a face-to-face meeting, it is doubtful that even the statesman’s suave approach could have closed the deal.

While less fanciful, business and financial negotiations often exhibit a version of this 3-D staging and information manipulation. For example, when a private equity firm approaches a major institutional investor, the potential investor will often make its capital commitment informally conditional on the commitments of others who have reputations for toughness and savvy. Potential investors should be wary of the common tactic of getting investor A to commit funds *given* the supposed commitment of B, when B has indeed committed, but *only* on the informal (and wrong)

understanding that A has unconditionally agreed to do so. By keeping the two deals separate, both may go through and a problematic “circle” closed; the antidote for the duped investors, of course, is directly checking before committing, in effect combining the deals. [Most parents quickly wise up to a household version of this gambit: getting Dad to say yes (“since Mom said OK” – *untrue*) and then scurrying to Mom in the *other* room asking for permission (“since it is OK with Dad” – *also untrue: Dad’s OK depended on Mom’s*). And by the time the parents have compared stories, Junior has already left.].

Negotiations to assemble land for a real estate project offer a more straightforward version of these classes of 3-D moves. Early knowledge of a developer’s plans can be quite valuable to landowners in the target area. Since landowners may use this knowledge as a lever to extract maximum price concessions in later stages of assembly, the need for secrecy and separation of the individual negotiations is usually obvious. Indeed, the choice of which parcel to buy first, second, and so on, may depend on the relative odds that a given purchase will leak the developer’s intentions. In coming up with a sequence, the developer may also consider the physical relationship of the purchased parcels acquired to those remaining. Whether the parcels already obtained would permit some version of the project to go ahead, or whether they are useless without a later acquisition, can greatly shape subsequent negotiations.¹⁶

Influencing whether a related negotiation happens before or after one’s own negotiation, as well as whether its results become public, can greatly matter to the outcome. For example, while the United States was in separate talks with Japan, Hong Kong, and Korea over textiles (the “multifiber agreements”), a Korean negotiator said “we’ll ask Hong Kong to go first, then see what they get.” The Koreans apparently regarded Hong Kong officials as highly skilled negotiators, in particular, without language problems in dealing with the Americans. An observer reports that, “After waiting for Hong Kong and Japan to go first, Seoul asked for the features they had secured and then also held out for a bit more.”¹⁷ In essence, the order chosen by the Americans (as encouraged by the Koreans) revealed information about the U.S. approach that was of great value to the Koreans. One wonders whether the Americans should have rethought the sequence and started with Seoul.

* * *

Conceptualizing and implementing a 3-D strategy, then, can go well beyond our initial discussion of adding parties to change BATNAs or bringing in complementary issues to yield joint gains. It is easy for more sophisticated versions of such actions to blur into the unethical and unacceptably manipulative. Yet “elaborate” need not mean manipulative: without 3-D actions supportive coalitions vital to many worthy new enterprises and international initiatives could never have been built. To unearth the 3-D potential of a negotiation, however, requires actively looking for it. In our experience, even otherwise good negotiators often neglect this rich, game-changing potential.

It is a commonplace that effective negotiators should be good listeners, persuaders, and tacticians. Beyond this 1-D skill, they should certainly be innovative, 2-D deal designers who have mastered the principles for crafting value-creating agreements. Yet, the third, often-missing dimension--moves to advantageously set or reset the scope and sequence of the game itself--can be the key to a truly promising negotiation that would otherwise be completely out of tactical reach. To create and claim value on a sustainable basis, great negotiators should be at home in all three dimensions: *at the table* with effective interpersonal process, *on the drawing board* with value-creating substance, and *away from the table* with entrepreneurial actions to realize a better game. Anything less is to risk a one- or two-dimensional strategy in a 3-D world.

¹ We have elsewhere elaborated this second dimension: See Lax, D. A. and J. K. Sebenius (2002). "Dealcrafting: The substance of three-dimensional negotiations." *Negotiation Journal* 18(1): 5-28.

² Hulse, R. G. and J. K. Sebenius (2001). "Charlene Barshefsky (B)," Case No. 801-422. Boston, MA: Harvard Business School Publishing, p. 11.

³ Gary Rivlin, "AOL's Rough Riders," *The Standard*, October 20, 2000. <http://www.thestandard.com/article/display/0.1151.19461.00.htm>.

⁴ Watkins, Michael, "Strategic Deal-making at Millennium Pharmaceuticals," Harvard Business School case 899-242, Boston: Harvard Business School Publishing, 1999, p. 12.

⁵ Jeremy Bulow and Paul Klemperer, "Auctions versus Negotiations," *American Economic Review*, vol. 86, no. 1, March 1996, pp. 180-194.

⁶ This example is summarized from information in John Authers, William Hall, and Richard Wolffe, "Banks Pay a High Price for Putting the Past Behind Them," *Financial Times* (London Edition), September 9, 1998, p. 4.

⁷ The account of the AOL-Netscape-Microsoft negotiations that follows is adapted from a much fuller analysis in Sebenius, J. K. (2002). "Negotiating Lessons from the Browser Wars." *Sloan Management Review* 43(4): 43-50.

⁸ Kara Swisher (1998), *AOL.com*, New York: Times Business, p.114.

⁹ David Colburn, "Deposition in Civil Action 98-1232: United States of America vs. Microsoft Corporation," p. 8.

¹⁰ J. G. Stein (1985). "Structure, Strategies, and Tactics of Mediation: Kissinger and Carter in the Middle East," *Negotiation Journal* 1(3), 334.

¹¹ Adam Brandenburger and Barry Nalebuff, *Co-opetition*, New York: Doubleday, 1996.

¹² Bruce Wasserstein, *Big Deal: 2000 and Beyond*, New York: Warner Books, 2000, pp. 622-3.

¹³ See, for example, Folberg, J. and A. Taylor (1984). *Mediation: A Comprehensive Guide to Resolving Conflicts Without Litigation*. San Francisco, Jossey-Bass.

¹⁴ S. Blumenthal, "The Making of a Machine," *New Yorker*, November 29, 1993, p. 93.

¹⁵ Mike Moldoveanu related this amusing story to me, for which I am grateful.

¹⁶A rich example of sequencing to assemble the block for New York's Citicorp Center can be found in Robert C. Ellickson and A. Dan Tarlock, Land-Use Controls (Boston: Little Brown, 1981), pp. 1014-1023. Analogous phenomena can be found when investors seek to purchase blocks of stock for a possible takeover or take positions in various debt securities to improve their position in a bankruptcy negotiation – or damage that of rivals.

¹⁷ John S. Odell, "The Outcomes of International Trade Conflicts: The U.S. and South Korea, 1960-1981," International Studies Quarterly 29 (1985): 281-282.