

CONFLICT, POWER, AND PERSUASION:

NEGOTIATING EFFECTIVELY

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Introduction

Let's start at the centre of every negotiation, at its heart. It is there that we find the crucial element—you! Your approach to negotiation and your success in it, and how you will feel afterwards about what you have achieved are essentials that cannot be overlooked. Every negotiation you are involved in begins with you. Whether you are negotiating something on your own and for yourself, or whether you are a professional negotiator, the whole process starts with you.

It is also true that while each of us negotiates all the time, many of us haven't thought much about what it is we do when we negotiate. We get by on a style or approach that we have developed based on our particular experience and many of us just fly by the seat of our pants. Actually, most negotiators fall into one of two types; those who measure success by winning, and those who measure success by not losing. Negotiators in the first group do everything they can to break the other side's bottom line, to get the last dollar they can extract from the other party. They believe the other person must move, not them. The second type of negotiator is preoccupied with avoiding losing. They try to resist moving too much or making too many concessions. Success for this type of negotiator means not losing; it means getting out with a deal that is, at the very least, just a little better than one's bottom line.

This book presents you with an approach to negotiation that improves upon either of these two main styles. There is an alternative to believing that success means winning, in the sense of winning that we have just outlined, or when success means having been able to avoid losing.

This book attempts to give the reader a fairly comprehensive view of the big picture, offering an overall framework for conducting negotiations. It also raises and answers some of the tough and commonly asked questions in a style that hopefully is easy and enjoyable to read. What I mean by the "big picture" is a type of overview that lets you see the whole forest, including the conflict and a path to get through it, even though we will have paused to take a pretty close look at some of the trees. You are presented with an overall framework and we also discuss certain critical points in detail. This is a negotiator's handbook; your companion to effective negotiation.

HOW THIS BOOK IS ORGANIZED

There Are Seven Parts

- Part One Negotiate For Success
- Part Two A Negotiation Framework
- Part Three Putting It All Together
- Part Four Tough Questions
- Part Five Tools And Charts
- Part Six An Afterword To Mediators
- Part Seven An Invitation To Move Forward

We Follow A Framework

A framework for negotiation is presented. It is depicted by concentric and intersecting circles—all to show that negotiating itself is a living thing; it has patterns and its own internal system or logic. The framework could have been represented in a more linear way, with headings and subtitles and so on. A similar one is shown in the "Tools and Charts" section for those who prefer ideas ordered in that way.

We Develop A List Of Key Points

These appear in *italics* in the text and they are listed on pages 57 and 58.

You Have To Work At This Too

At points in the book you are asked to stop and reflect, or to complete a self-evaluation. Since this book is both personal and theoretical, you have to put yourself in it by working on some ideas as we discuss them. The book itself is a bit like a private seminar you have decided to enrol in. When it is done, like most learning experiences, you are also left with the job of applying your new insights.

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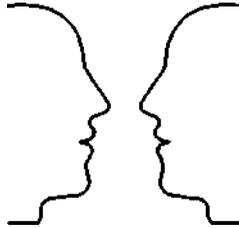
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PART ONE

Negotiate for Success



EVERYONE WANTS TO BE A WINNER

We all want to win. Our society's definition of winning, however, sets us up for disappointment most of the time. We designate winners and losers in the games we play as kids and as adults—in sports, in business and in politics. There are the rich and the poor—the winners and the losers. Sometimes victories are won fairly and other times losers feel the cards are stacked against them.

Yet we all want to be winners—which means we all have to be able to win and frequently enough to keep up our sense that we are a winner. Sometimes being perceived as a winner is more important than what was won.

But to be a winner in a win or lose world is very difficult for anyone. Even the world's greatest victors are usually on top in one area only until the next winner surpasses their achievements. So we have a choice—either we adjust our thinking and our expectations—"You win some and you lose some"—or we begin thinking differently about winning.

Negotiation is an opportunity to win, but it is winning of a different kind. It is hardly a negotiation if the other side gets everything, unless you wanted them to, where giving them everything makes you somehow feel happy as though you too have won. Negotiation is a "give and take" process. Trade-offs are made. Negotiation can be a very dynamic exchange and the winnings can be great. Negotiation is a way of getting what we want or of persuading the other side to give it to us.

Our survival as a human race shows that we are able to live in a world of give and take and trade-offs. We enrich each other by negotiating, by settling differences in a way that both sides experience some sense of victory. There's room for both participants to come away winners. This book is about improving your chances of success in negotiation and consequently of winning more often.

BEYOND COERCION AND COMPROMISE

Mao Tse Tung, the Chinese revolutionary, said that anything can grow out of the barrel of a gun. Growth from the barrel of a gun, however, cannot be sustained for long. We have seen over and over again that oppressed people will not abide oppression forever. So getting what you want from others by using the barrel of a gun, from brute force and coercion, has only the appearance of working. That way is the way of those obsessed with winning by forcing others to be losers. Force and coercion make it impossible for everyone to be winners. And losers everywhere want to be winners. Coercion is not the answer.

On the other hand, everyone who has compromised has realized that it is a half measure. A compromise "gets us by". It isn't what we wanted. It really isn't winning, especially when we realize later that a better outcome was possible. If only we had waited a bit longer or had got some advice or a fresh perspective on the problem, or had been more honest about our real interest. Compromise, like coercion, appears to produce a winner. In fact, it appears to produce two winners and must therefore leave us much better off than coercion does. But many compromise solutions are really unsatisfactory and the sense of winning is short lived. Even when the agreement feels like a reasonable one, given the circumstances, compromise solutions don't hold up for very long without ongoing sacrifices of some kind. In a personal relationship where for some reason many of us compromise on the specifics to keep the relationship intact, a resentment often grows. It may get projected onto our partner or the person with whom we have been reaching compromises. The resentment, in part, is anger at ourselves turned outward and we no longer feel like a winner. We tend, under these circumstances, to settle for what we've got by learning to "grin and bear it".

It is not a perfect world, however. Very rarely do we have full information, endless amounts of time, and the conditions under which we can deal rationally and intelligently with others. Life often becomes more difficult when we are speaking about matters that are important to us. So we do compromise. And it is obvious that we coerce even in the most subtle ways, despite our best intentions and our best communication skills. Unfortunately that makes us all losers. It puts us far from our goal of being winners.

So to be real winners, it is necessary to go beyond coercion and compromise. When we negotiate it is when we reach that realm or area, the region beyond coercion and compromise, that we can say we are better negotiators. We have achieved more success than we might have originally thought we were capable of. Is this possible?

The answer is "yes". But it takes self-knowledge, skill, and hard work. Aren't these the basic ingredients necessary to be a winner?

NEGOTIATION DEFINED

There are many definitions of negotiation. One of the simplest that I know of is given by Roger Fisher and Bill Ury: "It is a back and forth communication designed to reach an agreement when you and the other side have interests that are shared and others that are opposed." (*Getting to Yes: Reaching Agreement Without Giving In*, 1981)

What are the key elements of negotiation defined in this way?

First, negotiation is not just communication, but rather a specific kind of communication. It is:

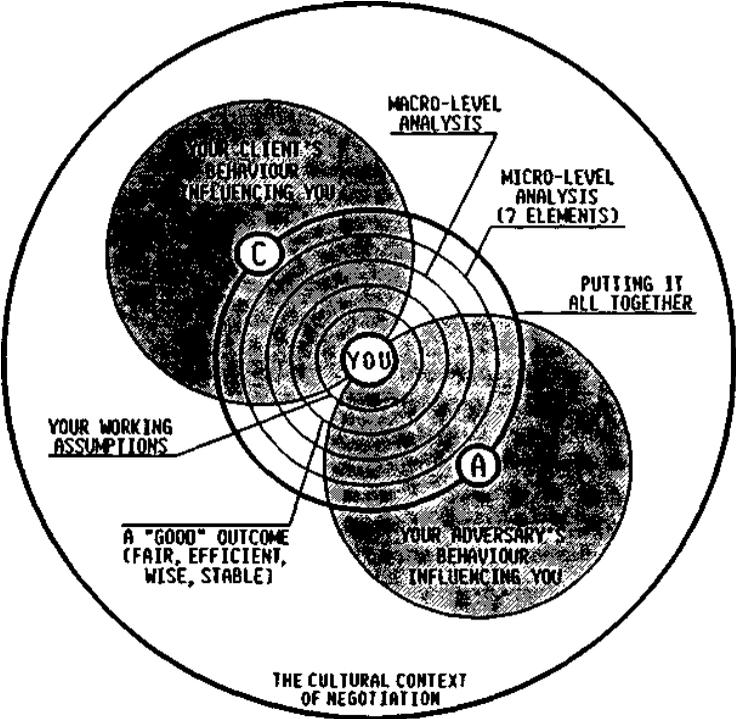
- Communication that is explicit.
- Communication that is reciprocal.
- Communication that takes place directly between the parties.
- Communication designed to reach an agreement.

Second, negotiation takes place when:

- Both sides have interests that are shared.
- Both sides have interests that are opposed.

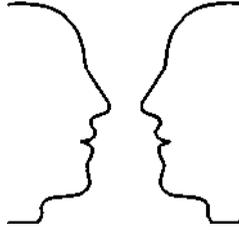
Negotiation thus has cooperation and conflict built right into it. Yet it is neither purely one nor the other. Conflict is the perception of incompatible interests, and negotiation is unique as a means of managing conflict. In negotiation, the tension between the need to assert your own interests and to satisfy the interests of your adversary is always present. This book offers you an approach that helps you manage the essential elements of cooperation and conflict in a way that will give you results that are better than what you could achieve by either compromise or coercion.

Figure 1: An Ecological Framework Of Negotiation



PART TWO

A Negotiation Framework



AN ECOLOGICAL VIEW

At the centre of every negotiation is the crucial element—you.

Figure 1 presents an Ecological Framework of negotiation. It is called an Ecological Framework because it takes an organic view of negotiation, starting with you at the centre. It shows several rings radiating outward from you at the central point, some of them intersecting to depict the interaction between you and the other negotiator, and between you and your client if you are acting for someone else. Around all the inner circles is one more to show that the entire negotiation takes place within, and is influenced by, a cultural context.

YOU AND YOUR WORKING ASSUMPTIONS

Why do we begin with you as the central element? First, there are the working assumptions that you have about negotiation. Before you enter any negotiation you should have a fairly clear sense of where you stand on the following sorts of questions:

What do you consider to be a good outcome of a negotiation?

What is success? Is it winning the negotiation?

If so, what does winning really mean? Does it mean getting as much as you can from the other side and giving as little as possible? Or does it depend? And on what does it depend?

Does winning mean protecting the relationship? That is, you measure success by coming away without hurting the other party's feelings, or by at least keeping hurt feelings down to a minimum.

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Does success mean that you have been able to establish a reputation, or that you have been able to maintain one?

Some people believe that success is winning, when winning is clearly understood as more for me and less for you. The pie is only so large and it can be sweetened only so much. But the bigger and the sweeter my slice the better. That's success!

This seems to be a reasonable enough way to view the world we live in and what negotiation is really all about: There really are resources that are nonrenewable, available in limited supply, and some are scarce. And it is possible that both you and the other side will want those same limited resources. Most conflicts that we deal with every day, however, are not over scarce resources. And if there is no provision for sharing a certain amount of truly scarce resources, we can predict that conflict and most likely violence will ensue.

Furthermore, many "hard business deals" are made with people with whom we will do business again. Extracting the last penny from the other side in this negotiation may not build the kind of relationship that is going to ensure that business will go easily with that party the next time you meet. This really is a relatively small world and it is quite probable that you will deal with them again.

It is also true that price is not the only factor in many negotiations. What looks on the surface like a straightforward dollar and cents business deal often has other things in it that enter into the negotiations. The terms and conditions of sale (or rent), a request by one side and agreement from the other for alterations in the product, or some leeway on the time of delivery, can all come into play.

It is now generally recognized that almost any conflict you are involved in has within it the elements that make possible the opportunity for "joint gain". You and the other negotiator can improve upon a situation that looks like a win for one side so it will not necessarily mean a loss for the other. This has been called the "win-win" approach to negotiation. *Success, or winning in negotiation, comes in trades or exchanges, or in creative solutions to your problems that are much better than a simple, "I take, you lose", or vice versa, "You win, I lose". Both parties get something in negotiation. That's what it's all about.*

Nevertheless, whether we are talking about win-win outcomes, or about a particular negotiation technique, we are really talking about working assumptions. Our working assumptions about conflict and negotiation guide us as we approach each negotiation. They are powerful filters and screens through which we see the world, including the other party. We operate on the assumption that they will do, or did, a certain thing because they see the world a certain way and have certain expectations, and so on. And we set our own goals and expectations based upon our particular working assumptions, changing or maintaining a course in the negotiation to the extent to which our assumptions are being confirmed. We tend not to change our working assumptions very readily, but we

change our perceptions and our behaviour instead to conform to them. And after all is said and done, we measure our success against the set of assumptions we hold.

But our working assumptions, even if we were aware of them and were able to keep them at our fingertips throughout a negotiation, reflect only a small amount of a huge iceberg of values, beliefs and biases that a negotiator has and brings to all the negotiations he or she is involved in.

So it becomes essential that you examine what your working assumptions are. These are your assumptions about yourself, about others, and about life in general. You may believe that it is a dog eat dog world, or that people are generally cooperative and helpful. You may believe that a tough exterior is the best way for you to get through life, using it as a shield or a sword. You may believe that conflict itself is undesirable, unhealthy, and to be avoided. Or you may assume that conflict produces change and that it is constructive and even desirable for that reason. You may believe that coercion and violence are acceptable responses to conflict, especially when particularly important things are at stake.

Your working assumptions are not easily discovered because they lie below the surface of your everyday life. Whatever your working assumptions actually are, they do influence your behaviour. That is why we have placed you at the centre of the negotiation framework. *You are at the centre of all the negotiations you are engaged in.*

It might be asked: But can't my working assumptions change from negotiation to negotiation? For example, I might not think that it is a dog eat dog world, but I may assume that the party I am about to meet operates on the basis of survival of the fittest, judging by their reputation. I had, therefore, better change my working assumption when it comes to these characters and I had better act accordingly!

Clearly, our overall working assumptions are subject to change. If they weren't it doesn't leave us much hope for learning and personal development. New evidence should change our opinions and our behaviour if the new evidence sheds new light on a subject. More to the point, it is an advantage to know what the other side's working assumptions are likely to be if you are able to determine them. It is a real advantage knowing if they are really driven by a view that life is a case of survival of the fittest. But this doesn't mean that you must change your own assumptions: rather, you want to employ proper tactics that will get you the best results when dealing with someone who holds that view. As a practical matter that may mean you should be more assertive with that party than you may typically be, or it may mean that when you get into the negotiation you should concentrate on other strengths you have that will effectively neutralize their aggression. As it turns out, many "tough" negotiators who use emotional tactics to intimidate are often not that prepared on the facts and they have a strong need to save face. (This particular case will be discussed more fully in the Tough Questions section in our answer on how to deal with the aggressive bargainer.)

Some of the working assumptions that can influence our negotiating behaviour, if we hold them, are listed here for your immediate consideration. It is important that you as a negotiator examine them now, and from time to time, to see where you stand on them. I recommend that you take the time now to consider each of these.

What makes you tick as a negotiator? Complete the checklist on page 9 and begin to find out.

WHAT'S A "GOOD" OUTCOME?

What road you take depends on where you want to go.

The only reason to negotiate with another party is if you can obtain something by negotiating that you could not obtain in any other way. But what is it we seek in negotiation? Obviously, almost "everything under the sun" as it pertains to goods and services that are traded and exchanged between people. We can also establish, build and enjoy a relationship with the other people with whom we negotiate.

So we negotiate to get something which, in turn, produces an agreement of some sort. It should be fairly obvious how we would determine whether the outcome of our negotiation is good or not. Did we get a good price for our goods or service? Did we pay too much? Did they throw in extras that make the deal a really good one? Did I get the raise in pay I was after?

Most negotiations, however, are not as simple as these questions suggest. There are many elements that go into a deal, even an apparently simple one like buying a car. And it is unlikely that we can treat any negotiation as a one-time event or a single meeting between two parties to strike a deal. We live in a world that is really quite small when it comes to our relationships and our work. We meet the same parties over and over again, and the opportunities to negotiate keep arising. Yesterday it was salary and benefits, today it is the amount of work that needs to be completed, and tomorrow it's holidays, or who will cover the phones at noon, and so on. Even a simple deal like buying a car includes the concerns about warranty, ability of the dealership to service the car, and the feeling of trust and confidence that does or doesn't develop during the negotiations.

As well as finding that a single bottom line is seldom the only issue to think about when we negotiate, because life's more complicated than that, and beyond recognizing that we negotiate many times with the same party because it's a small world, there are other considerations in measuring a good outcome.

Will our agreement "stand-up" outside the room in which it was negotiated? Will it be seen by others to be well thought out and considerate of them should they have a legitimate stake in it?

WORKING ASSUMPTIONS

	Agree	Disagree	Undecided
• Time is scarce and it should not be squandered away.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Life is a matter of survival of the fittest.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• There's a sucker born every minute.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Conflict is bad.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• People are smart.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Life would be impossible without cooperation.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• People are basically self-serving.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Power is the "bottom line".	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• I have very little influence on the people I meet.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• It is important to establish and protect relationships with others, even at personal expense.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• We have free will and can make choices.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Conflict can be healthy.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• People are capable of changing and reacting differently.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• I handle conflict well.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• It's best to approach things with lowered expectations.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• I'm a good negotiator.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Men are easier to negotiate with.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Women are easier to negotiate with.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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We seldom negotiate in a closed system. There are usually third parties who must be considered, be they children, in-laws, colleagues, clients, or constituencies such as the membership, the alliance, the sisterhood or brotherhood with whom we are involved.

Then there is always the question, whether expressed or not; Will they keep their end of the bargain?

Negotiated agreements break down for any number of reasons. Was there really an agreement? Was the agreement that you thought you had the same one the other side thought it had? Did the other side have the authority to commit to an agreement, or was it only an agreement in principle that required ratification? Was the other side able to carry the agreement back to its constituency and mobilize the resources to execute their end of the bargain? Sometimes the players change and old ground has to be covered once again, or the ground itself may shift. Sometimes we have to re-open negotiations to get the other party to honour what they previously committed to.

It can be seen that what constitutes a good outcome in negotiation is really a much more complicated question than a simple determination of whether you got what you wanted, and especially if getting what you wanted means some simple bottom line. Bottom line thinking about negotiation is actually too simple, or shallow. More is at stake in most negotiations and therefore a better measure of success is necessary. Four criteria have been identified to measure a good outcome. They cut across all of the specific measures that are generally used to determine whether the agreement you reached was a good one. That is, they are more general and encompass the typical details of a negotiated deal, such as price and terms.

A negotiated agreement is considered good if it is fair, wise, was reached efficiently, and is stable.

This set of criteria for measuring an outcome is placed on the second circle outward from the centre of the diagram on page 4, from you and your assumptions. There is no question that if you negotiate an agreement with someone and you ask yourself, "Is this a fair, wise, efficient, and stable agreement?", you will have put the negotiation to a strong test. But the four "tests" are really placed closer to the centre of the framework because they serve to remind us of what it is in an overall sense, that we want to achieve in negotiation. As has been said before, "If you don't know where you want to go, any road will take you there!"

When it comes to negotiating we need to know where we want to go. We need a sense of what would be a good overall outcome. Having four general standards to measure the negotiation gives us a sense of which road to follow to get an outcome that is the best one possible. This includes what precisely it is that we believe would be a fair deal, i.e., the best price, terms and conditions of the purchase of a new home, or having your say in what you will do on your vacation when everyone in the family wants their fair share of input too.

Earlier, I tried to show that getting "locked in" to approaching each negotiation with a "bottom line" mentality may actually hinder us and that the bottom line in fact is not the only thing that most negotiations actually hinge on. Fair, wise, efficient and stable measures provide a goal and suggest a road to follow to achieve a successful outcome. No single measure should be sought at the expense of the other three. A level of success on all four measures is necessary to achieve a good outcome.

Fairness A very inefficient, dragged-out, and costly negotiation that finally reaches a fair agreement may not have been worth the effort. You have to think of the cost in human and economic terms.

Sometimes we get stuck on the most noble ground. But we are stuck nevertheless. Furthermore, what constitutes fairness is itself a pretty subjective measure that we can calculate in a number of ways. We may compare our deal with other similar ones that we know about. We might consider the special circumstances of our particular deal such as knowing that the other party has given as much as it reasonably can, even though a slightly better deal may be "more" fair. Only at this stage do I think that we come up with some "gut level" sense of justice.

Efficiency To insist on fairness as the only measure of a good outcome is to place too much emphasis on one point. But to sacrifice fairness for efficiency—that is ramming all deals through as fast as possible, or for wisdom such as delaying until everything under the sun has been weighed and measured, is not the answer either.

Being aware that we want to say, after a negotiation, that the agreement was arrived at efficiently, however, influences our approach and it reminds us that it may not be worth-while getting bogged down on one, or other, aspects.

The important thing to remember is that we are aiming for an agreement that meets the whole test, as best as possible, and with varying degrees of success on each of the measures of fairness, efficiency, wisdom and stability.

Wisdom But how do we know if an agreement is wise? Who's to say if it is wise or not, especially when it hasn't stood the test of time, and when the advice of others is not immediately available to you as you negotiate the specific details of an agreement? And who cares if it's wise as long as I get what I want?

When you negotiate and you strive for a wise agreement you are already conscious from the outset of things you may have totally ignored otherwise. You may now think of the implications of this agreement for other negotiations that you will be involved in. Or you may consider the implications of this agreement for other people, such as your children, your colleagues, less powerful third parties you care about, and you will be guided by these things. That kind of guidance gives you strength in your

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negotiation and it may slow you down when you would otherwise have rushed in.

Nothing short of perfect hindsight at some future time, maybe in weeks, months, or even the years ahead, will really answer the question of whether it was a wise agreement. But starting out with that in mind will help make it so.

Stability If you strive for an agreement that is fair and wise it will most likely be stable. Fair in this case is meant to mean fair to you—and to the other side. There will be a stronger commitment to maintaining a fair agreement. That commitment should ensure stability, which means it will be honoured and it will hold up over time. Unless it was made with a party that lacked authority, was unable to deliver for some reason beyond his or her control, or who was unscrupulous.

But I want any deal I make to stand up. I want to be able to count on the agreement, on every part that was negotiated and agreed to.

Being aware from the beginning that I'm interested in getting a stable outcome, I'm guided in my behaviour. I'm clear about the actual authority I have: Can I commit to this or that? Can I deliver? I think about taking a little more time if it is necessary to let the other side feel comfortable with a proposal I've placed on the table, or to get more information for myself. I yield on some points that I can give on and are important "pluses" to the other side. I know that the other side must feel it was a fair deal and that I must feel that too. We make it as fair as possible under the circumstances, knowing that fairness is an investment in the future, in stability and all that it brings with it.

These four outcome goals—that the agreement be fair, wise, efficient and stable—guide me as I move to the next level of macro-analysis in our Ecological Framework. I've considered my working assumptions and I review them from time to time. I've identified a set of outcome goals that give a type of quality or tone to my approach. Next, I do a "macro" analysis of the negotiation which I'm about to begin. I set out to determine who it is that I'm negotiating with, and what their approach and style is likely to be.

MACRO-LEVEL STRUCTURAL ANALYSIS

Professor Howard Raiffa at Harvard Business School has developed a set of organizing questions to consider before entering a negotiation. Our framework will follow Professor Raiffa's lead, as we place the macro-analysis next on the concentric circles. The macro-level analysis is thus done before you enter negotiations. It's a combination of intelligence work, where you assess and weigh the other side, and a type of diagnosis, where you determine the specific outlines or structure of the negotiation.

This is when the homework and hands-on preparation for a negotiation begin. After everything is said and done, we will see that there is no substitute for good preparation in negotiation. Some people say they like to "wing it"; but experience and studies on negotiation and expert opinion all show the wisdom of preparation. It is important to know as much as possible about the other side, about yourself and about the type of negotiation you are entering.

Who Are They? What is their typical negotiating style? Are they likely to come prepared, strong on facts and figures? Are they more interested in keeping our relationship a comfortable and unruffled one? Or do they go for the jugular? Can I expect them to use threats in the negotiation and how will I deal with threats? Can they actually execute any threats they make? Will they send a top dog, or will I be meeting a junior person who has no authority? Will the person that I'll be meeting with be the only player on the other side or is the other side really made up of a whole group, i.e. organization, union, department, company, or a membership or coalition? How do they like to communicate? Proposals in writing? Informal atmosphere and approach? Who is the other side? Do I know as much as I can know about them?

What Kind Of Negotiation Is This? Is this a one time event or will I meet this party again to negotiate this type of agreement again? Is this negotiation "nested" in a larger context, such as an overarching collective agreement or bigger dispute that is going on, perhaps in the office, in the whole industry, or in the country? Is this a negotiation that typically has several stages or phases of offer and counter-offer? Is there a time limit imposed on this negotiation? Are the specific agreements of this negotiation likely to be tied to other events or business deals, or does the agreement stand alone? Is a binding agreement a required outcome of this negotiation? Can it be signed on the spot or is ratification necessary? Is it possible to call in an outside third party to settle this if the negotiation gets stuck? Are we actually required to call in a third party if things get stuck or break down? What kind of a negotiation is this? Do I know as much as I can about this negotiation before going in?

Armed with this "macro level" insight into the other party and a clear understanding of the structure of the negotiation you are entering, a detailed micro-level analysis is now necessary.

MICRO-LEVEL SEVEN ELEMENTS ANALYSIS

Seven elements have been identified as common in each and every negotiation. These are: **alternatives** that are available away from the table; the **interests** of the parties; **standards of legitimacy** that are used to persuade the other side of our case; **options** that are invented in the negotiation to

satisfy each party's interests so that agreement may be reached; **communication** in all its aspects as it plays a role in negotiation; the **relationship** with the other party and relationship issues generally; and **commitment**, both in terms of commitment expressed during negotiations in respect to a particular proposal or course of action, and commitment to honour the final agreement. The micro-level analysis of negotiation involves listing these elements before you ever enter the negotiation and determining what they are for you, and what they are likely to be for the other party. Then anticipate how they will play a role in the negotiations. Let's consider each of the seven elements.

Alternatives We negotiate with someone else when we believe we can achieve an outcome, by negotiating, that will be better than what we could achieve otherwise. We do not negotiate for the fun of it, although negotiation can be a lot of fun. There are even some people who I call negotiation junkies. I meet many of them in the negotiation training sessions I conduct. They simply love bargaining. Each of us has probably also encountered the chronic haggler who, in some countries like Canada, is considered annoying to many people, always "nickel and diming you to death!" In Canada I don't know too many people who like the haggler approach to negotiation, but in other countries there are cultures where haggling is a very respectable way of negotiating. It's a basic way of communicating and doing everyday business.

So there are people who really enjoy negotiating for reasons much different than being able to say that they "beat" the other side. They simply enjoy the communication, the back and forth dynamic exchange. They like to "mix it up" in the market place. And when you consider how much time we actually spend negotiating with others, over prices and things to do, over what we'll have for dinner, and who'll do this and who'll do that, it really does make sense that we should enjoy it.

Nevertheless, we negotiate because negotiation promises to be the best way to get what we want. But we have alternatives to negotiating. Our first task is to consider our alternatives. What are our alternatives to a negotiated agreement? List them and then select the best of those alternatives that you have listed. Identify the best alternative that is available to you without ever having entered negotiation.

This best alternative to a negotiated agreement, often called a BATNA, is a deceptively simple concept, yet one of the most critical elements in every negotiation strategy. It tells you whether you should negotiate if only because you think you can do better than this best alternative by negotiating. It gives you power when you are negotiating because the better your alternative the less you need what you are trying to get in the negotiation. It tells you whether you should accept the offer, deal, or proposal in front of you or whether you should walk away.

Your best alternative to a negotiated agreement isn't just some bottom line figure. For example, if you are looking to buy a home, you have

an alternative to the nice one you are looking at that is listed at \$125,000. First, there may be other similar, nice houses, listed at \$125,000 in a number of other places in town. They are alternatives. But you may also be able to buy a completely different house, smaller than the first one, but quaint, with a nice yard and on the river. And because it's smaller the listing is \$115,000. That is another alternative that is slightly different than the previous choices. You can also sell the house you already have, move into a rental townhouse and put your down payment money, and the income from the sale of your house, into long-term investments. You really do have alternatives to buying the house you are looking at and these alternatives are more than a simple matter of an equivalent house at an equivalent or better price. In fact, your alternative may be to make some changes to the house you are in such as new skylights, new landscaping, kitchen and bathroom renovations, and enjoy more features than the house has that you are considering purchasing, for a fraction of the cost. Also, you don't have to move!

The point is that you have alternatives and your best alternative is likely very different than buying another house listed at the same amount. More than \$125,000 is at issue here. More is at stake. You are talking about your home, a place you will be happy in. With a list of alternatives and a clear understanding of your best alternative you can now see that a price of \$115,000 for the house you are considering may not be acceptable. Perhaps it isn't even worth \$100,000 to you because you have such a good alternative elsewhere. Maybe it's that place on the water; smaller, quaint and with privacy.

Some deals are about money, and many aren't. The ones that are about money will require that you take your best alternative and give it some kind of a monetary value. You will need a reference point when you decide whether or not to purchase the house. That means you'll have to give some dollar value to those aspects of your best alternative that really are not money matters. So, in our example, if staying where you are is the best alternative, you will have to factor in an amount for the enjoyment you get from the neighbourhood you are in, the cost it will take to move from where you are, the value to you of a special feature of your home such as a favourite nook. As you consider these things and give them some kind of a monetary value, you will see how fast you gain some real strength in deciding to accept or reject an offer that is put to you in negotiation. You will have a measure of what to accept, which could mean that the **price** is right, but your alternative is even better!

Interests

Union: "We want a 6% raise in pay! That's our bottom line!"

Management: "All we're offering is 4%—take it or leave it!"

Conflict, Power, and Persuasion

Resident: "I don't know what your position is, but I'm not moving on this. There will be no toxic waste storage in my back yard!"

Group Spokesperson: "I think we've got to make our position clear and find out their's. We've got nothing to say to them if they refuse to recognize our position."

Every day we read and hear statements like these. Individuals and groups about to enter negotiations or already engaged in them assert their position. We also detect in these statements the basics of an adversarial stance. Declarations are made. Turf is being staked out. The pronouncements are presented as both a sword and a shield. "This is our position, take it or leave it."

It is true that we do take positions on issues and matters of concern to us. People want to know our position and if we don't have one we run the risk of being thought of as wishy-washy. But what is more useful when it comes to negotiation, both in the preparation stage and when you are actually engaged in discussion with the other party, is to determine what the interests are that lie behind the positions that are being presented.

In the first statement given above, for example, we can conclude that some union is being very clear in what it wants. Unless they get a 6% raise, the negotiation is off. And we can imagine where things will go from there. But is the 6% being requested because each year the union sets its goal based on the agreements negotiated in other collective bargaining settlements and since "the others" got 6%, so must we? Or is 6% being demanded because the union has calculated a straightforward cost of living increase from last year and that's what must be gained in this negotiation just to keep up with costs? Or is the 6% tied to something behind the scenes that the public will never really know, so that the 6% figure becomes a symbol of a fair and just agreement given recent company profits, increased production quotas on the plant floor, or personality clashes at senior union and management levels. Is that 6% is now part of a power struggle?

We hear the demand for 6% and we assume that it must be tied to some reasonable, defensible argument. Why, otherwise, not ask for 3% or

But the position is stated and it is presented with a challenge or threat in it. "6% — that's our bottom line."

What, we must ask ourselves, are the interests that the union really has when it states it wants 6%? From management's side, it may simply be a financial fact that a 6% raise cannot be given to the union, at least not across the board, especially this year when costs have risen for management just as they have for everyone.

Behind declared positions are the real interests. What are those interests? This is the question each negotiator must ask of himself and of the other party. What are my interests? What are their interests?

"They want 6%, but why?", we ask as Management. Some answers might be that they want to be kept at a level with others in the industry doing similar work; or, so we have heard, they have felt a growing lack of appreciation for the labour force in this factory and 6% which is higher than today's inflation rate, would be a real sign that they are important to us.

"They won't give us 6% and are offering 4%, but why?", we ask as Union. Some answers might be that their costs for material and other overhead, especially energy, have in fact really risen this year and they aren't as flush; or they are not pleased with the production output in the molding shop and don't want to reward that shop along with the rest of us; or the new vice president in charge of operations has been trying to establish a name for himself and ran into a real clash with our lawyer over a disciplinary case three months ago. Now he's going to do everything he can to save face with the boss, including drive us down to a lower figure.

If we can determine what interests lie behind their position we will be better prepared to meet with them, to keep the communication on a constructive path, and be able perhaps to offer them a package that will meet their interests and ours as well.

The challenge is to come up with creative solutions that will meet the interests, be they the need for raises that keep up with costs, the need for reassurance that you are a valued part of the team, or a need to save face. We want to avoid the extreme costs that are associated with positional bargaining and to get the best agreement with the resources that we have between us.

Sometimes, however, the opening positions are very close and it is conceivable that both sides can meet and conclude a quick settlement. This makes sense when there really aren't that many players in a negotiation and when there are relatively few issues. Nevertheless, it is wise to avoid the tendency to get locked "on to a position" and "into a positional mentality" when approaching any negotiation.

Most negotiations actually involve a number of players, even when there may only be two people at the negotiating table. For example, there are often third parties who are indirectly affected by our negotiations and we generally have someone right behind us, or waiting in the wings, who have a lot at stake when we negotiate. Most negotiations aren't that simple and straightforward, either. There are more issues at stake. At the very least there always seem to be questions of terms and conditions, implementation and follow-up.

Furthermore, and perhaps this is the most subtle point and cause for greatest concern, I don't think we do particularly well at expressing our interests. We often fail to consider them beforehand, and our typical style, especially in the business world, is to get to the point, to our position.

It is true that we should know ourselves. Recall the parable, "Beware of what you ask for; you may get it." It will, as well, take discipline, insight and some basic investigation to determine what the other party's interests are. This gets more difficult when negotiations are public and claims are

being made that really do anger us. In cases where ego's and personalities are involved we may find it almost impossible to step back and approach things coolly.

Our micro-analysis therefore calls for a listing of their interests and ours. Use a simple chart like this:

INTERESTS		
	Ours	Theirs
Union's version	To keep up with the cost of living	To make profits
Management's version	To remain competitive	To make more money

Take a moment to think about a negotiation you are involved in at present, or expect to be involved in the near future. It needn't be a complicated negotiation. Now prepare a chart of your interests and the other party's. Can you distinguish between your "position" and their "position" and the underlying "interests"?

Next, we must consider the role "options" play in negotiations. Keeping your own example in mind, hopefully you will be able to move toward developing options that you would never have considered if you hadn't thought seriously about the interests that lie behind positions.

Options By now our ecological view of negotiation should be starting to take shape. We have attempted to outline an approach that works organically, providing a comprehensive view of negotiation and offering clear guidelines to the negotiator. On the road to this point we have tried to illustrate the value of preparation, starting with our own assumptions and goals and then moving to consider the other party's, both on a more general level such as their typical negotiating style and, more specifically, in terms of their interests.

We have looked at alternatives available to us before we even enter a negotiation and we have underlined the value, to us, of having a clear fix on our best alternative to a negotiated agreement.

The alternatives we have, including our BATNA, are available to us away from the table. We are able to achieve our alternatives under our own steam; not through negotiation with the party we are about to face.

The options we develop are proposals put forward in the negotiation. They may be changed somewhat or some may be discarded altogether the moment we learn something critical at the negotiating table. Options are thought about before we enter the face-to-face negotiations but they really gel at the table. They typically include ideas of what one side will do in exchange for what the other side will commit to. Options follow a clear "fleshing-out" of the interests of both parties during negotiations. They are best seen as creative solutions that are developed jointly by the negotiating parties. An option must be something that is

only achievable through the negotiation, or otherwise it is an alternative that can be achieved away from the table.

Alternatives, Interests, Options. These are the building blocks of successful agreements. *An option that responds to the interests that lie behind declared positions is the nub of success.* This does not mean that either party will or can state clearly what its interests are. Sometimes we aren't as aware of our interests or we may be unwilling to state them as such. For example, if saving face is an interest I have, I'm hardly likely to tell you that my interest is saving face! That would put me in an extremely vulnerable position when I'm already feeling vulnerable. I'd be adding insult to my own injury.

By the same token, the other party may never be willing to tell you explicitly what some of its interests are, but it would likely warm to an option that meets those unexpressed interests.

In the example we've been considering a good number of possible options come to mind in response to the interests that lie behind the position: "6%, that's our bottom line" and behind the position "4%, take it or leave it." For example, consider the following chart:

INTERESTS		OPTIONS
Union	Management	
Getting an agreement that meets real costs of living	Getting an agreement that keeps labour costs down (until market improves)	Spread increase over two years to enable management to meet its legitimate interest, based on: 1. Actual cost of living increases. 2. Projected costs/profits in year two
Getting agreement that shows membership that its leaders do as well as other union leaders	Getting union to stop protecting the molding shop	Form a joint union-management team charged with developing a bonus plan
	Save vice-president's face	Issue a joint statement

This simple example doesn't do justice to the real world complexity of collective bargaining which typically has so many issues on the table, from overtime pay to disability pensions, not to mention the attention that is paid to schemes for participatory management and innovative ways of organizing the work. It does help us realize just how much of a difference

there is between stated positions and interests, and how it is possible to develop creative options to meet interests. What options are you able to think of in your own example?

One major word of caution. Invent these options without committing to any one of them. Commitments are necessary but they should be avoided at the option development stage. It helps to be specific and says, "Without making any commitment, how about this option?"

It is also critical to be sure you are correct when you assume a commitment is being made at the option development stage. Many people nod their head enthusiastically in agreement to the idea being presented. But they are not committing themselves at all. Don't be mistaken either way.

The option inventing stage as it is presented here implies that the negotiation we are talking about involves much more than the back and forth presentation of an offer or counter-offer. All stiff and formal. It may be that that style of negotiation is in fact the one you are most familiar with. Some negotiations have long histories of formality, although most get to a point where you can roll up your sleeves and get down to the nitty gritty.

The negotiation we are talking about here is the one that has both parties joining in a problem-solving type of exercise. Options are jointly created, or jointly reviewed if one party happens to have come up with a bright idea intended to get an agreement.

Quality communication is the hallmark of this kind of negotiation, and quality communication is not easy to achieve. Communication is, therefore, the next element we must consider in our micro-level analysis.

Communication In preparing for negotiation we noted in the macro-level analysis that we had to do some "intelligence" work regarding the other party. We want to know ahead of time who they are, what their typical style of negotiating is, whether they'll send someone with authority to negotiate an agreement, or whether it will be a person who has to report back to head office. We would also like to determine whether this party is likely to use threats in the negotiation, and we need to know if they have the will and ability to execute any threats. Since we have armed ourselves with a very good "best" alternative to a negotiated agreement, however, we have weakened the power of any threats they might make.

In respect to communication, our macro-level analysis should have determined whether the communication with the other party is likely to be quite formal, mainly in written proposals and counter-offers, or to what extent it will be less formal.

Nevertheless, we must determine our own information needs and be on top of these throughout the negotiation, which may very well be a fairly complex thing in itself. Before we enter face to face negotiations, and during them, we need to ask for information, seek clarification, re-state in our own words what we believed we have heard. We need to be certain that we are operating with the correct information and that we have the same interpretation of that information as the other party.

We need as well to communicate our interests clearly and to tell the other party that we are not persuaded by their argument when we aren't. We should always acknowledge their legitimate interests and thereby let them know that we are paying attention and are willing to reinforce behaviour that we consider worthy.

Even though we hope to have the negotiation develop into a problem-solving session in order to invent options, *communication probably will not be easy, precisely because we have interests in common with the other party, and we also have interests that are opposed.*

The best communication will not change the objective fact that there is only so much money to go around, or only so much time before a certain event must take place. There are only so many windows with a beautiful view, and so forth.

The problem solving approach to negotiation, no matter how enthusiastically it is entered into and no matter how creative the negotiators, will not remove the competitive aspects of negotiation. Good communication will go a long way to keeping the spirit of cooperation foremost even when the interests are most opposed. Therefore, good communication requires good communication skills.

What are good communication skills? Consider the following questions:

How do you appear when you present your case? Do you make demands, or requests, or suggestions? Do you distinguish clearly among these so that the other side knows where you stand? Do you suggest and present some options you have already developed that might help the other side meet your needs? Do you ridicule or ignore the other side? Do you ask for clarification or pretend when in fact you don't understand? Do you present a fighting image all the time, or stand firm only when that stand is necessary? Do you look weak because of your body language; slumped in the chair, withdrawn? If there are two or more negotiators on our side do you present your case as though you are in agreement? Do you take time out to get agreement among yourselves and return to present a unified and clear message?

Do you use some of the communication tools available to us? The written document, the flip chart to record and work out options under consideration? Audio visual or other materials can be presented to strengthen your case by having communicated accurately, to the other side, what it is you are concerned about or believe is valid?

Do you try to make the distinction on any "sticky" points, that it is the point in question that is troubling you, and not the person? If the person is bothering you, do you encourage

behaviour you appreciate and avoid rewarding actions you don't appreciate?

Do you clarify the ground rules about communication with others outside the face to face negotiations such as your constituents, be they the membership, the boss, the others back home? How will you handle communications with the press and the public?

Does any proposal you put forward contain some opening remarks followed by adequate time to clarify interests? Do you communicate in a way that will build confidence and trust?

Negotiation is communication of a very specific type. But it is not correct to say that all that negotiation is, is simply communication. Communication may usefully be broken down, for our purposes, into information exchange and relationship building. Figure 2 shows this.

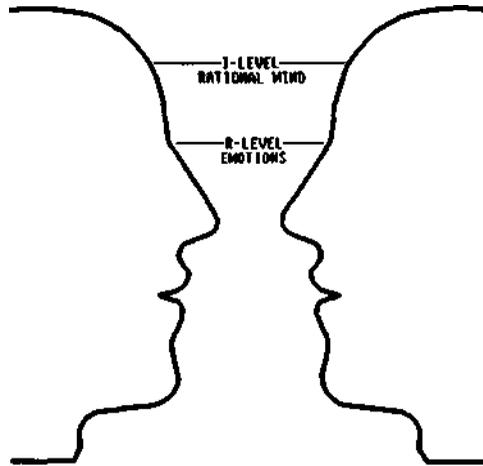


Figure 2: I-Level = Information R-Level = Relationship

I-Level Communication: Giving Information, facts, using logic and reasoning skills (verbal and written).

R-level Communication: Listening, validating other, supportive statements, personal disclosure (verbal, non-verbal and written).

Both levels of communication are essential to full communication, especially in conflict situations. Negotiation takes place in a conflict situation of a sort, for even in the least serious type of negotiation, over a relatively trivial matter, there are conflicting, as well as cooperating, elements and tensions.

R-level or relationship-building communication must accompany I-level or information-sharing communication. Communication addressed at the I-Level only can inhibit negotiations when needs related to R-Level

issues, such as personal validation, are not recognized and acknowledged. We need to know that the other person respects our essential dignity. It is helpful to show the other party that you are listening, that you care about their concerns, and that you are able to deal with both the "people" side of the negotiation and the "problem" side.

Some people, however, will be quick to point out that "people are the problem", and especially in those cases, we believe it is even more important that you bring a full range of communication skills to negotiations. This does not mean, however, that difficult or obnoxious people should be supported in their destructive behaviour. There are ways of dealing with tough and/or obnoxious people. Even then, you have to be able to get the information across, combining I-level with appropriate R-level communication. Sometimes you must be more passive and supportive; sometimes you must assert yourself very clearly and with strength.

Negotiation is the art of persuasion. What we communicate and how we communicate must be persuasive. We need to know when to "go first" and "how much to disclose" about our interests and needs and our willingness to yield. *We need to know "what would be persuasive" to the other side*, either to shore up our case or weaken their claim. And we need to know when and how to present that argument.

A big part of the answer to these questions hinges on trust. This in turn hinges on relationship, yet another element that we must attend to in our micro-analysis.

But first, let's consider the problem of "what would be persuasive?"

Standards Of Legitimacy What is going to convince the other side of our case? So often when we fail to persuade them, we go away thinking they are obstructive sons-of-guns or just plain stupid! "*Can't they see my point?*", we ask ourselves, "*what's wrong with them anyway!*". And we all seem to think that it is quite natural that good standards, some objective evidence (be it an account of a similar past case), statistics that are available to anyone and therefore "*plain to see*", or the opinion of some expert on the topic, should be persuasive.

But **our** evidence often fails to persuade.

Does this mean that evidence isn't important? Not at all.

It is critical, with objective evidence, that some standards are presented that make our argument or claim legitimate. These standards help us elevate the negotiation beyond the "position-taking" approach with all the traps that go with it. We want to minimize personality conflicts. It's easy enough to have a relatively simple concern about the other person's style or appearance, let alone a personality clash that really messes things up! *Standards of legitimacy help us to focus on the problem at hand and not on the personalities.* They give us a sword and a shield to deal with the personalities and their argument. They cut our case out for us and they defend ourselves from theirs.

Conflict, Power, and Persuasion

Standards are an honourable tool in the art of persuasion. We recognize that they help disentangle the opinions and beliefs, the personal "stuff from the realities of the problem at hand. That's a useful function for standards. Standards also contribute greatly to our sense of fairness when the standard is seen by both parties as legitimate. It is because we have such a strong commitment to fairness in our culture, that standards, the introduction of evidence and the way of presenting it, has so prominent a role in most negotiations.

One of the cornerstones of most western-style negotiation and a means of settling disputes, has been evidence, legal precedent, and sound argument. These are ingredients in a recipe for fairness. Lawyers are hired to present the best case. What is the evidence? Does it support our side? How strong is it? What is the best possible way of presenting it? Just think of fictional lawyers and detectives who build their cases carefully, based on the evidence they believe will be persuasive, presenting their evidence with the perfect timing that only movies or books will permit!

Evidence is argument.

We actually do base many of our requests, even the little ones that come up in everyday negotiations at home and at work, on some kind of evidence. We want to strengthen our request with some standard of legitimacy. "After all, it really was a reasonable request!", we say to ourselves if we fail to persuade.

But standards of legitimacy must be relevant to the other party, and they must be introduced at the right time, in the right way. How persuaded are you when a request is stated as a demand? And especially when the demand is tied to some standard that's supposed to make the demand a legitimate request? Take this scenario as an example, "You had better submit that in writing to me; we don't do things like that here." Or, "we're not going to your parents' place, they're table manners are horrible and their conversation is weird." Or, "Your idea should be re-thought, no one would accept that view."

If I were on the receiving end of any of those statements I would **not** be persuaded, I'd be angry! None of those standards persuade me and I don't like the tone of the other person's voice. At the very least I'm going to question their standards of legitimacy, and I'm probably going to dig into my position. But even in less frustrating cases *whenever someone tries to persuade us by presenting a standard, we will naturally question it unless we are a trusting fool.*

And it's fairly certain that almost any negotiation will call for the introduction of a number of standards on different points throughout the negotiation. We can be fairly certain that there will be debate about whether certain evidence is a standard, and if it is, whether it applies in this particular case.

We want to know the facts. And most of us want to argue them when we have a stake in what they may or may not mean. The union negotiator who points out that a similar union of sheet metal workers got a benefits

package in their negotiated agreement that included dental coverage, wants the management negotiator to be impressed by this. "The negotiations were completed just last month, for an identical sized operation with the same type of unionized employee!"

This has got to be persuasive evidence! It is objective, and is outside the present discussions and personal involvement of both the union and management negotiator. It's a legitimate standard because it comes in such a similar case and was developed in a collective bargaining agreement just like the one here.

But we can expect an argument from the management negotiator.

This might all be fact, he or she says, but it may or may not be persuasive. There may be differences when you really get down to comparing the two situations and the standard doesn't apply; there may be another hundred cases where sheet metal workers do not receive dental coverage and this evidence can hardly be called a standard.

You or I may not care one way or the other about whether sheet metal workers who are unionized get their dental work paid for by their company. But it means a great deal to the two people in our example. The union negotiator is attempting to be persuasive by establishing it as a standard, and one that applies in this specific case. The management negotiator is not prepared to accept it as a standard, let alone agree that it applies in this specific case.

Nevertheless, this shows the importance of standards of legitimacy in negotiations of all kinds. Standards of legitimacy are one of the central elements in our micro analysis. We have to come to the negotiation with standards that we believe will be persuasive to the other side and we have to examine the ones presented to us. We must be prepared to agree on those that are acceptable. Furthermore, we must move forward in the negotiation even where no prior standards exist, perhaps building on precedents, or developing new ones that we agree should apply in this case. *Each negotiated agreement is the creative product of the people at the table. Today's agreement may be tomorrow's standard.*

Relationship Getting to know the other sides's interests, developing options together, agreeing or disagreeing on standards that are presented, communicating to persuade and develop trust and confidence enough to close the deal, are essentials of negotiation and point out clearly that *when we speak about negotiation we are speaking about relationship.*

We consider our alternatives to see if we even wish to or need to do business with the other side. Do we want to or do we have to deal with them at all? If we have a better alternative to a negotiated agreement we simply don't negotiate. When we decide to negotiate we are entering into a relationship with them. It really is a small world and we likely will have other dealings with them at some time or other, especially if this negotiation is anything other than a simple transaction.

Conflict, Power, and Persuasion

Even when buying a house, we get involved with a real estate agent, with lawyers, and we have a lifetime sense of the sellers, who we may meet at the shopping mall, the school, or some community event. *Even the most simple negotiation is full of relationship issues. Probing for interests, dealing back and forth, building some trust, making a commitment and living with the other party after the deal has been struck* are all important aspects of negotiation.

When we shop for a simple item we may not think about it unless the clerk really puts us off, or was particularly pleasant, but relationship is important. We do, or don't want to go back there again. "I like doing business with them", we might say. When we are involved in a more complex negotiation, or one that may repeat itself routinely, like negotiating each year for a raise or better working conditions, relationship matters.

We noted that negotiation is built upon communication that is designed to exchange information and to build relationship, to establish a confidence and a trust. Facts and standards, statistics and precedents are arguments that must be presented. There is, as they say in the secret service, "a need to know". But there is also a need to trust. I need to know and I need to feel confident that what we build together will be carried out. You need to know that I'll do my part, as agreed, and I need to be just as assured that you'll do yours.

When we don't trust the other side, negotiation is most difficult. We are reluctant to accept their standards and we aren't sure they are really telling us the truth about their interests, and the proposals they put forth are suspect, no matter how sound and straightforward they may seem. Maybe they really aren't at the table in the spirit of seeking an agreement at all, we think to ourselves. Will they cheat? Will they deliver on their commitment?

We are talking about a relationship here. We need to have a certain level of trust established.

It should be no surprise that many of us need to take our time when we are negotiating something important to us. We need the "space" for trust building. If we are negotiating a partnership or any long-term arrangement, we need to do more than feel comfortable with the facts. We need to trust the other party. There is a "marriage" of a sort happening here.

Time away from the negotiating table may be necessary just to get some understanding of the agreement that is being developed. It might make perfect sense on paper, perfect business sense. But the relationship hasn't been nourished enough. We need some time to reflect and to feel confident. In a very intense or long negotiation it may be best to schedule breaks that even provide an opportunity to meet informally. The wisdom of eating together, or going for a walk is evident.

Many people find that negotiating is a powerful kind of experience that can actually suck them in, like a centripetal force, drawing them into agreements that they would rather not have made. The excitement and

dynamics of making a deal, of problem-solving and creating a brilliant agreement compels them despite themselves. For strong positive reasons some of us are caught up at the negotiating table to our later regret.

Other people find they cannot tolerate the tension of negotiating. They don't like presenting proposals and counter-proposals. They don't like to haggle. They are uncomfortable in competitive situations or wish to avoid any conflict as much as possible. Some people can't stand even the thought of being offensive. They work very hard to preserve a relationship, sacrificing their personal interests and needs, building a one-sided agreement. For strong negative reasons some of us are caught up at the negotiating table to our later regret.

In either case, the facts and the substance of the negotiation, including the final agreement, whether it was to make a simple purchase or to commit to a long-term partnership or joint venture, were not at issue. Relationship issues were. We ignore relationship in favour of the ideas and the excitement of the event, or we sacrifice ideas and points of principle because we have a great need to avoid conflict at any cost. We may crave relationship to a fault.

Our relationship with the other party is the basis of the negotiation. It is like a playing field we set up as we work toward this particular agreement. It serves as the rudder for steering the negotiation to an agreement, and it provides the momentum upon which the agreement is kept. That relationship then becomes a basis for other agreements, giving us more or less confidence in the other party as it withstands the test of time.

But while relationship runs through all negotiation, it must be established on individual strength, mutual respect and the honouring of commitments. We see again the value of a good best alternative to a negotiated agreement. I may want an agreement because I am excited about what we have just created at the table. But I will regret that I have lost sight of my best alternative to a negotiated agreement. Was what we created really better than my BATNA? If so, only then can I enjoy the outcome long after I have taken pleasure in creating it at the table.

I may be interested in the relationship more than the substance of this particular agreement. But if I am that dependent on the relationship, on what the other party sees as a negotiated way of meeting its needs quite easily, I am weak and vulnerable. It will occur to me one day that I have given away too much, too easily. We don't want to have sacrificed fairness, wisdom, and stability for efficiency. *Trust is critical to negotiating and it is especially important in as small a world as ours where we will likely do business over and over again with certain parties.* When we negotiate we want to have a relationship that permits me to trust you and you to trust me. The more I know about you going into the negotiation and at the table, the more I am able to have confidence in you. At the very least I should have a sense of trust that means I have some confidence that you will behave a certain way. I need some degree of predictability, whether I like or dislike what it is I can predict.

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But don't overload trust. This means we should not be naive, and be trusting fools. I want to be trustworthy. When I say something, I want you to know I mean it. And I want to say what I mean. But that does not mean that I automatically and instantly disclose everything to the other party I am negotiating with. I do not want to be used. I do not want to create an opportunity for the other side to exploit me. I am prepared to share my interests if they don't make me vulnerable, or if they are likely to be interpreted correctly.

I know that I have interests that are in opposition to the other side. I will want a bigger piece of the pie than they are willing to give. I may know that the least my union members will accept in this negotiation is 4.5% but that is only if management will give us more say in how the work is managed. If I disclose immediately that I am prepared to take 4.5% what have I got left to bargain with? My reputation? The fact that I'm an honest and open person? Unlikely!

We want to make some trade-offs. The package has got to be better than what I can get away from the table, i.e., by striking or by working for another company or buy setting up our own employee-owned company. I must know what it is I can trade, what's of lesser importance to me and ideally, of more importance to them. We need to share information and both sides need to have a sense of trust that at the very least means that they can proceed step by step with a confidence that comes with the ability to predict certain behaviour. *Sometimes our rock bottom notion of trust is predictability. "I can count on them to do this."*

Even that bare bones notion of trust or confidence level is an aspect of the relationship. *Hopefully, we can improve on it to include "good will". We want to be able to feel and say, "I have their trust and good will."*

Our task as negotiator has now expanded well beyond fact finder, master of argument, or any of the more simple notions we may have begun with. We have gone as well beyond treating negotiation as merely communication. *A good negotiator is a builder of relationship. A good relationship is comprised of strong individual players bringing something unique to the table that the other side wants, and where the players are capable of making and keeping commitments.*

Commitment From the very outset we have touched upon the idea of commitment a number of times, although commitment itself is not given much attention in most discussions of negotiation. It seems that we recognize implicitly that commitment is a central element and we therefore often use the term quite casually. Obviously, we are naturally concerned from the first encounter with the other side about the extent to which they are committed to their position, and to what extent they are committed to the negotiation. We consider in our macro-analysis whether they are likely to use a threat, and whether they have the will or commitment to carry it out. We watch for signs of commitment throughout the negotiation, trying to determine what they will and won't commit to. We also want them to

know that we have a commitment to whatever it is that we hold valuable and important. And we want to have the assurance that they will honour any commitments they make.

So commitment is extremely important and it runs through the negotiation and it is "in play" at every turn. But we need to think about commitment in other ways, in terms of its strategic value in negotiation. While the notion of commitment generally has high value in our culture, as seen by the respect that is meant when we say she or he is a person with "commitment", commitment is an extremely critical element in negotiations. It can be a source of power and a beacon that guides and secures our outcome. It can also be misused, misunderstood, a source of weakness, and bad relations.

Our approach to negotiation has been to clarify first for ourselves what our best alternative to a negotiated agreement would be and to try to determine what the other side's best alternative is. We do not want to commit ourselves to any agreement that is not better than what our best alternative is.

We also have said that our approach to negotiation includes a conscious effort to identify the interests that we and they have, as distinct from the positions that are stated or raised in the negotiations. This means that we want to probe behind positions and not take the lead from positions, no matter how strongly we or they seem to be committed to them. When a position is stated in hard and clear terms, we may be able to acknowledge the interest that lies behind it, if we believe it is a legitimate one. And we may be able to come up with a very creative proposal that meets the unstated interests when otherwise we would have got stuck and frustrated by positional stances. When strong commitments to positions are stated we are being challenged to identify the interests and create solutions that move the negotiation forward. That is a sign of our commitment to the process and it helps build the relationship. It assumes that we believe that a negotiated outcome can be better than the best one we could obtain without dealing with these people.

Because we have interests and needs that we believe can be better met in negotiating than by other means, we are tempted to accept proposals that appear to meet those needs as soon as they are presented. The stronger our need or interest the more likely we are to grab onto such a proposal. But committing to the first proposal may be far less satisfactory than what we would have got if we had delayed. And it is very important that we understand the relationship between commitment and power. For quite often we assume there is a direct and obvious relationship between them. We think, "If I show them my commitment to this they will feel and respect the power of my commitment."

Consider this example. We are negotiating the way in which we will finance a new computer software and desktop publishing shop that we are planning to start under a partnership arrangement with another party. Let's assume that one of our positions is making sure that we own fifty per cent of the business, although they clearly appear to have more money to

put into the project they also have less expertise than we do. We have our expertise in computers and printing and a knowledge of the publishing industry. The ideal arrangement for us would include some kind of an agreement that gave us equal ownership without investing as much money up front. We are prepared to contribute our skill and knowledge and have that factored in as a contribution which would ensure some of our equal ownership in lieu of cash layout.

Nevertheless, in order to be certain that we don't have to give up 50% ownership, if pressed, we have determined that we can put the required money in to hold our share. Our expertise would then have to be compensated for in some other way, for example, by wages or a "director's fee".

But we would like them to put more money up front and we therefore decide that our best strategy is to not mention our willingness to put the money in, but to bargain for equal ownership on the basis of our contribution of expertise to the project. We really want the 50% ownership. In preparing for the eventual encounter over our claim to 50% ownership we have prepared to show our degree of commitment to that by bargaining from a position of strength. We make the assumption that the best position of strength we can demonstrate is to show that we are able to make the financial commitment of equal contribution to the new business.

Early in the negotiation they acknowledge that we are experts in desktop publishing and that an arrangement with us would be great. They make it clear that they have several things to offer the new enterprise, including some accounting support which they happen to have through their work in other businesses, and the influence they will have in referring people to the new shop. They ask up front, "How will this new business be capitalized?", knowing our claim to 50% ownership. They propose, in the same breath, that a loan be taken out jointly guaranteed by both parties.

Now, we know we can guarantee the loan. And we were prepared for that question but thought it would come up later, when we thought they would begin to haggle over the equal ownership proposal. What do we say?

Remember, we are very interested in maintaining a 50% share of ownership in this new business, especially because we have so much expertise in the field and a personal interest in it. We want them, as well, to know just how strongly we are committed to that 50% target.

Do we say?

"Sure, that's a reasonable proposal which we are prepared to do", not mentioning the 50% ownership interest; or

"Sure, that's a reasonable proposal which we are prepared to do, especially because we are committed to owning 50% of the business, even though we are putting expertise in", thereby committing to the specific proposal and declaring our chief interest; or

"No, we can't accept that proposal because we are prepared to put our expertise into the venture in exchange for some of the financial costs and we would like to suggest the following....", thereby showing that we are committed to reaching an agreement but only under certain conditions; *or*

"That's one approach that may be the best but we'd like to suggest the following...", thereby revealing a willingness to work to an agreement but not revealing any readiness to commit to anything unacceptable to us.

Now there are a number of easily recognized reasons why we would likely find the first couple of answers in our example to be the least helpful to us. We've jumped right to a commitment in the first case which gives up any negotiating power that may have come from holding back on sharing the financial costs. We have undervalued our expertise card, virtually acknowledging that it can't be used as credit in exchange for ownership. And we have no assurance whatsoever that the 50% ownership has been secured. They might reasonably be thinking at this point, "if they have committed to that, what else will they commit to?"

In the second case, we commit to the 50-50 financial obligation as a direct means of securing the 50% ownership but we have still weakened the bargaining power value of our expertise. We have also signaled how important to us 50% ownership is, but have left ourselves open to being pressed for more concessions to keep that.

In both of the first responses we have done ourselves another disservice. We have been unable to determine what their interest is and to what extent our expertise was of value to them. They may have been prepared to contribute more cash up front, and that was just their opening position. They may have been prepared to give considerable value to our expertise. They may have even settled for less than 50% ownership, fearing that the whole thing won't go without our involvement!

Answers three and four give us more room to move. The third one may be more limiting because it flatly rejects the proposal they have suggested, whereas the last answer shouldn't put them on the defensive. In it, we say: "Yeah, that's an idea, but let's consider some others." This one gives us a chance to regroup, to take a lead in offering proposals and it conveys no commitment to anything at this point.

But let's look at some of the other things that were happening in this scenario. They illustrate the problems that come with confusing our interests with our position, and of equating positional bargaining with commitments. We often say, "This is our position", meaning that to be seen as a commitment. Since it's a commitment we assume it has power, and it may. But that kind of formula, or logic, can put us at a great disadvantage in negotiation as this example shows.

Recall that we were committed to 50% ownership. But under any circumstance? Surely not. We wanted our expertise to be factored in. And

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we probably wanted a number of other things as well, all of which would come out as the bargaining proceeded.

We wanted to get 50% ownership so badly that we confused our commitment to 4t as a position of strength from which we would bargain. Knowing that we were that committed to 50% ownership we had already begun to figure out ways we could argue for and secure it. If push came to shove, we had figured, we would show that we were strong in our position, that we could defend it. How? By arguing the value of our expertise? By developing options for securing 50% over time in exchange for our "consulting services" to the business, or other creative ideas such as folding our share of the profits into the purchase of a full 50% of the ownership? No.

We assumed that showing our ability to guarantee one-half of the loan up front would underscore for the other side that we were ready and able to claim our fifty per cent interest. We didn't bargain for 50%, throwing in any number of our assets to secure it. We were committed to fifty per cent and began to develop proposals, meaning concessions, that we were prepared to make to secure it. Not only that, but when we got into the negotiation itself, and gave in right away on the loan issue we would have weakened our other bargaining advantages had we chosen either the first or second response in our example.

I have a position. I am committed to it. But how far will I go or what will I give to get that position? I believe my commitment to my position makes me strong. I invent a variety of concessions I am prepared to make to secure my position. But what am I asking them to give up? And if they know I'm committed to my position don't I run the risk that they will put me on the run the moment they see me concede something of value that I had hoped to use as a bargaining strength?

We respect people of commitment. And it is clear that commitment can convey power. But *do not confuse staking out a position as a sign of commitment which guarantees you automatic bargaining strength. In fact, our strength is very often reduced because we commit to a position.*

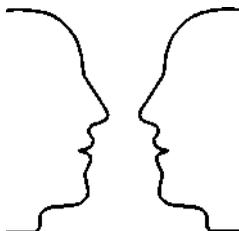
We confuse a position, ie 50% ownership, with interests. In this scenario, 50% ownership may have implied that we would have executive authority, the ability to significantly influence the business plan, and so forth. These things were our real interests but they need not be equated with the position of 50% ownership.

Furthermore, *commit very carefully. And commit late.*

And finally, *honour any commitments you make.*

PART THREE

Congruent Behaviour : Putting it All Together



INGREDIENTS FOR SUCCESS

We've covered a lot of ground so far, having considered, in relatively abstract terms, how to approach negotiation in a way that works. Now we need to discuss some of the ways in which we can put this all together, so that we display congruent negotiating behaviour. We want to integrate, to our best ability, all of the concepts, working assumptions and practical guides that we have considered. And we want that integration to be effective.

On our diagram of the ecological framework of negotiation we show the ring that represents our behaviour cutting right through the centre of two other parties, our adversary and our client. If we were to look more closely at them, we would have to recognize that they each have rings about them that correspond to ours and that their behaviour is designed to influence us. But it is our job as effective negotiators to intersect them in a precise and meaningful way. In this way I show our behaviour cutting right through the centre of our negotiating opponent or other party and our client. Our job is to put it all together so that we literally intersect them at levels that ensure that we are persuasive. That means we have to penetrate or communicate in a significant way, touching them at different points and with differing degrees of emphasis, depending on the problem and the person we are dealing with.

But how do you put it all together? How are you to remember all these details about alternatives, and positions, and communication and commitment? How do you know when you should make an offer, or wait for them to open? How do you know when to withdraw from the table, perhaps to get more information or to demonstrate that you are not prepared to accept what is being presented? How do you present yourself when your best alternative to negotiating with these people is terribly

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weak and they would have you over a barrel if only they knew? How much do you tell them about your interests? And how do you get the discussion on that kind of a track, anyway, especially when most people start off and often proceed through all negotiations with only their "position" on the table?

Since there are many different approaches to negotiation, and flexibility is an essential skill in itself, here is a recipe of sorts to which you must bring your own style and personal touch. Like any recipe it only hangs together on the page, somewhat cut and dried, and lifeless. The baker must put a lot of her or himself into it, and only practice makes perfect.

RECIPE FOR EFFECTIVE NEGOTIATING

The Stages Most negotiations go through four stages. As you proceed it is helpful to identify where you are in the process. The stages are: Introduction; Questions and information; Issues reduction; and End-play.

During the introduction, credentials are established as well as a clarification of the negotiator's authority, and the opening proposals are presented. Stage two involves requests for information, questions and answers, and perhaps the establishment of working groups or sub-committees if several parties are involved, or if there are several players on a given side. In stage three, the issues are reduced and some packaging and repackaging of the options that could form the final agreement takes place. Stage four, the end-play, functions to close the gaps between the negotiating sides. It may involve smaller "side-bar" meetings if more than two parties are negotiating, and as we note elsewhere, often 90% of the negotiation, it seems, takes place in the last 10% of the time.

These four stages give a framework so that you are able to pace yourself and have a sense of what, in a general sense, comes next. By knowing the four stages, you can answer the question: "Where are we in this negotiation?".

Ingredients For Success

1. Know what you want.
2. Recognize that you are going to negotiate to get what you want because you assume that you can get whatever it is you want at less cost and with more benefit by negotiating than by any other means.
3. Have a framework and be well prepared. Do your checklist exercises, clarifying your BATNA and theirs, list both your and their interests, and be prepared for the approach they are likely to take based on your intelligence work.

4. If you think you are well prepared, and this is a fairly important and/or complex negotiation, *review* your preparations.
5. Then think about these three things:
 - Power:** Use it correctly.
 - Information:** Take care of your information needs.
 - Time:** Keep time on your side. "It's all in the timing".

Power *Power is critical in negotiations.* But do not confuse the inappropriate use of force with the central role and importance that power has in negotiations. Bargaining from a position of strength or a base of power is important. The words evoke misgivings for many of us these days when we are so aware of the destructive potential of power that is misused.

Our point is to understand one's power in terms of the interests we have, the goals we seek, and the alternative courses of action or routes we may follow to achieve those goals. If we come to life without alternatives, and if we fail to develop alternatives, bases of strength combined with knowledge of self (which may include a deep understanding of just how few material things we actually need to have healthy and enjoyable lives), then we are vulnerable.

Recognize that power is more than possessing a battery of military might, or having the ear of influential people, or riches. Power is not to be measured in absolute terms or quanta as in the more resources you have in absolute terms, the more powerful you are. Many potentially powerful people and powerful nations are often constrained by legal, moral and practical factors in exercising what might be called their raw power. There is a difference between potential power and actual power. I may have lots of military or physical power but cannot apply it in a particular situation: I may have the potential to be a powerful person, but without alternatives, genuine influence, creativity and commitment my potential for power is just that; potential. Power is resources mobilized.

If I have power that means in this situation and in relation to the party that I am trying to persuade, I am perceived to have power. They know I have alternatives, or believe I do. They know I can engage the support or influence of other relevant parties. They know I am a man with commitment. They know I can be creative and have power to persuade by developing options that meet their needs better than other measures could.

You need to have power when you negotiate. You need to recognize the role of power and play your hand in such a way that shows you understand power and that you are prepared and capable of using, but not abusing, it.

If you really have a terrible BATNA, if you really do feel powerless, and you are simply unable to do anything in fact to change that, you may still negotiate and do well. In that case, however, you do not let on that you have no power, and it would appear that any options/agreement proposed will be better than your best alternative. Although I do believe we

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always have an alternative, even if it means being resolute. I know of few people who don't respect and admire the person who has genuine commitment to a cause. With that commitment comes a power even when other sources of-power are absent.

Information *Consider your information needs.* Ask yourself: what additional information do I need and how much information will I disclose in the negotiations? If you don't know something that you believe you should, and you have time beforehand, find it out or have someone working on it as you enter negotiations. Get that information as soon as possible.

If you don't think it will weaken your case, or the personal power you have, ask the other side for the information you need. It may very well be the case that by asking the other side for something you actually improve your "position" with them. They may take it as a sign of team building, of developing options together, or of confidence on your part in that you are prepared to present information needs without worrying that doing so will make you appear weak.

It may be, that they should share certain facts and figures but won't unless directly asked. You may need them to disclose certain things to you, in part, as a sign of their commitment to reaching an agreement. For example, you might ask them for their cost estimates or sales projections. They may be quite prepared to let you work in the dark. Don't!

Time "It's all in the timing!" How often have we heard this true and tested phrase! When it comes to negotiation timing is once again of utmost importance. We have already considered the role of timing in the art of persuasion when we spoke about standards of legitimacy. Recall our comments about introducing standards or objective criteria into the discussion. If the other side isn't prepared to hear them, they are of little use. The best evidence, the best argument, if not presented correctly and at the right time, is of no use.

So we have touched upon the issue of timing. And in thinking about time in the sense of "timing", we are really underlining the skill aspect of negotiation. Thinking about timing is a way of reinforcing, for us, the technique aspect of negotiation. Think of tennis or hockey. In tennis we learn to grip the racket correctly, we study and practice new shots and techniques, we analyze the strategies of the game, getting a clear sense in our own mind about when we should use a lob ball, a two handed return, or how to draw an opponent into no-man's land and then place a long shot. On the court we have to put it all together and it takes practice! Anyone who has played and who has some basic skill will know what it's like on those days when despite the best technique, "our timing is off!"

In hockey we get an even more intricate sense of the role of timing. For here we have a high speed, physically intense, skill-based sport that is played by a team. Timing becomes so important because of the high degree of cooperation, instant judgement, reflex action and finesse it

takes to execute a play. Any hockey fan will appreciate the beauty of that three-on-two rush that miraculously gels in a split second to move the puck around or through the defense and past a vigilant goaltender in "tick, tack, toe" fashion. What timing!

Your timing will come. It isn't a static thing; it is a dynamic element that you must get a "feel" for and develop as you become more expert as a negotiator. Your timing will be a function of your ability to attend to all the elements we have said are factors in negotiation, and of your sense of what goes where and when.

Before you enter the negotiation and during it, you must attend to time in more ways than thinking about your own presentation of your case. Time must be thought about in absolute terms, also. For example, you must ask yourself, How much time do I have to prepare? If I need more time can I get it? Can I manage the negotiations to be sure that I have enough time? Perhaps I should plan a break in the face-to-face negotiations to get more information, or to slow things down if I feel they are going too fast.

Time also plays a big role in the sense that everybody at the table has some deadline or a sense of when the negotiation must end. One party may feel that it has all the time in the world, really having a long-term deadline. Many negotiations in the commercial and international arenas can be extended over years. But other parties, perhaps yourself, have closer deadlines. You may need to complete this negotiation by a specific time because you need what you hope to get in this negotiation to go on to another business deal. It may be that your backers, be they your investors or your union membership, have given you a time limit. They may have told you, "Settle by then or we fold, we sue, we strike".

How much time do you have? How much time does the other side have? Is the amount of time you have likely to be source of strength or weakness for you. Generally, the party that negotiates without a time pressure is better off.

If you have a deadline that is in the near future and tighter than you'd like it to be, you may want to be certain to present yourself as though you have no such pressure. You may need to take extra pains to appear to be free to explore all avenues and to go at their pace, if they are proceeding slowly. On the other hand, having considered your alternatives and having already determined your sense of power that comes with your best alternative, you may be more liberated when you deal with the time factor. If you have a pressing deadline and a strong and attractive alternative, it is in your favour to inform the other side, "I do have an alternative which I must address next week. I hope we can reach an agreement by then."

This doesn't mean that you are to use the time that is to your advantage as a form of muscling the other party. You want to warn them that you may have to go elsewhere, take alternative courses available to you if an agreement cannot be reached by a certain time. But a hastily derived agreement on almost any negotiation of importance may end up

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being a very unstable agreement that also lacks wisdom. Don't sacrifice fairness, wisdom and stability for efficiency.

Another thing that we must keep in mind concerning the role of time in negotiation is the fact that most concessions come at the end of the negotiation. It's also true that deadlines can usually be extended a bit and they tend to be extended to bring a conclusion to the negotiation that includes the best package that each side can extract from the negotiation.

There is a whole psychology and academic study of what is called the "endgame". There is no question that many negotiations entail a great amount of back and forth noncommittal negotiation before the approaching deadline structures the parties to begin to make serious concessions, laying out the trades they are prepared to make. This is the time when people start saying things like, "Let's settle this smaller item here so we can move on; I'm prepared to give this up if you'll do that", and, "how about we split the difference on this item", and, "I absolutely must have this to get an agreement". It is also the time when you can expect, or when you may choose to say, "Listen, I'm certain my client won't accept that", or, "I'll need to go back to my membership before I can commit to that proposal."

Time is extremely important. It is a factor that has the power to shape our behaviour at the table, making us look tense when we don't want to be, or allowing us to appear pressed by "outside" factors when we want to give that impression to strengthen our case and prompt concession-making behaviour from the other side. Time comes into play in the "timing" of our presentation, influencing how and when we ask a question or offer a suggestion. But the fact is that the negotiation has an end, sometimes a very clearly identified and mutually recognized one, as in the case of labour-management contract negotiations, or a privately known one as in the case of business negotiations.

THE CULTURAL CONTEXT

Let's return to our diagram showing the ecological framework (p. 4) to negotiation. It's time to consider the outermost ring—the cultural context.

There have been a number of books written on the role of culture in negotiation. And there are also books that describe national negotiating styles, for example, explaining how Chinese, Russians or Americans typically negotiate (although there isn't one about Canadian negotiating behaviour to the best of my knowledge). Unfortunately these books tend to lead to stereotypes of negotiators from cultures different to ours but they do underscore the fact that culture has a role in negotiation.

Our view is that culture is very important, shaping our personality as we develop from childhood, as well as playing a major role in cross cultural negotiations. That is, our personalities, our sense of what is to be valued, our perceptions of what constitutes conflict, and our way of going

about settling disputes, is profoundly influenced by our culture. *Our* culture and *their* culture are important when we do business with strangers. Some of the questions that arise when you think about the influence of culture have to do with issues such as the degree of formality preferred in a given culture, the sense of time and the pacing of negotiations, the role and importance of authority, the role of women and the form and style of communication a given culture prefers.

If we are negotiating with an individual or even an entire delegation from another culture, we might ask: Do they place more importance on formality than we do? Do they prefer to get down to business and work toward a signed agreement? Are they more relationship oriented? Do they prefer to take the negotiation problem in bits and pieces or do they prefer to take it as a whole package? Are they likely to be uncomfortable with either men or women representing us? Is it typical for them to talk a little, or a lot?—Are they from a verbal or nonverbal culture? Is the person I'm meeting likely to have the authority to sign an agreement or is it likely they must go back to get the approval of their group?

Our own culture's influence on ourselves, and the role of culture in cross-cultural relations is a complex, important consideration of which scholars are only now gaining a better understanding. It does appear from the research that the process of negotiation is fairly consistent from one culture to another. The role of interests, the opportunity to exchange proposals, offers and counter-offers, and the concerns about relationship, trust, commitment, and time, are all at play in every negotiation.

We have included the broad circle of culture as an outer ring in the diagram because it is an influential context that shapes our behaviour and plays a role in negotiation. It can be argued that we have referred to it out of sequence in terms of where it appears on the diagram. We could have looked at culture as a ring much closer to the centre of the diagram by recognizing that culture shapes our very personal working assumptions. Culture combines with other environmental and genetic factors to form our sense of self and gives a definite quality to our notion of relationship with others. But we show it as an outer ring to emphasize the idea that negotiations, all negotiations, take place within a number of contexts, culture, perhaps, being the broadest one. And if we are negotiating on behalf of someone else, be it our firm or our client, they too represent something of a contextual framework because they fall within a culture, be it similar, or different, to ours.

A SUMMARY OF PUTTING IT ALL TOGETHER

Negotiation has both cooperative and competitive dimensions. We have outlined an approach that encourages a climate of negotiation that helps the parties identify the opportunity to meet the interests of the other party

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so that more can be achieved than by sticking to a strictly positional approach. In fact, we have shown how positions really mask deeper interests and the challenge is, in part, to determine what those interests are so that you can offer good proposals and even jointly, with the other party, come up with agreements that are richer than you might have ever expected, had you taken a concession/counter-concession approach.

Nevertheless, our vested interests and our competitive nature means that we look out for ourselves and always try to get the best we can, unless we assume a completely altruistic approach. That means that we protect our side, and look for gains from the deal we are making. Some of our gains are clearly a cost to the other side. There's a give and take. The amount of give and take that is actually going to take place to complete an agreement very often is unclear until the last hours or moments of a negotiation. Time begins to run out. We won't be reaching an agreement unless there is the right mix of give and take.

A negotiation that has been approached as I have tried to outline will have lead to the generation of fairly well-developed proposals and options that have been produced with the other party along the way. But as the "endgame" approaches, whatever the time limits mean to each party, considered in the light of the alternatives available, they will play heavily on the interchange.

After a short while, most negotiators have developed a relationship with the other party. Sometimes we really like the other negotiator, more often than not we do get along and think fairly highly of them. Occasionally, there is a personality clash and we will never really like that other person, although we may respect them for a number of reasons. But in most cases, be it a two party negotiation over the most simple matter, or a complex, drawn-out negotiation between a team of negotiators on one side and another group on the other side, a relationship develops.

Along with relationship, which is a bonding aspect of negotiation, there is also the enjoyment of problem solving. We become attached to the negotiation and possibly to the goal of reaching an agreement because of relationship and the anticipated pleasure of having solved a problem, the more creatively the better. We also have a personal investment in negotiations that touch the nitty gritty of our sense of self, our sense of worth. We become ego-involved, which is yet another factor that can propel us toward agreement.

These forces that may turn to our best interest when a fair, wise, efficient and stable agreement has been reached, may also work against us. As time runs out, and the compulsion to reach an agreement drives us and the good negotiator must learn now to resist, be patient, and stay cool. The agreement reached must be better than your best alternative to a negotiated agreement.

Remember, keep time on your side.

SOME REFLECTIONS ON THE ECOLOGICAL VIEW OF NEGOTIATION

Many of the participants in the seminars that I have given on negotiation want a framework to work from. They want the material to be organized so that they can have an overview, a concept of negotiation and an understanding of the important elements. They also want negotiation skills.

The need for a framework is a pretty standard requirement, whether you are about to approach a plumbing or electrical wiring problem, make a dress, conduct a play or do marriage counselling. Some people seem more comfortable with a sequential framework, a linear account that logically sets forth the steps to take. Step one, step two and so forth. For a certain type of task that is fine, but my belief is that kind of framework and approach to negotiation is too cut and dried. It fails to give you a feeling for the complicated and often very subtle dimensions of negotiation. That is why I have presented an ecological view that brings together issues of power, timing, information, and technique all set against basic considerations such as your own personal values and working assumptions. As stated earlier, I believe that you are the central player, the crucial element in every negotiation you enter.

I hope the reader has come to appreciate that negotiation, as old and as universal a practice as it is, will never conform to a cut and dried formula. Negotiation reaches from deep inside our individual personalities and values to engage the other party we are dealing with, and all of this within a broad and often vaguely felt cultural context.

Building on the work that many people have put into negotiation, both its theory and practice, we are able to offer an approach that we think is the best to-date. Consequently, I offer you the ecological framework, recognizing that it too is only a framework, a type of map of all the things that get rolled into negotiation. The ecological framework does give you some sense of sequence, of what you need to do first and how you go about doing it. It also shows my bias in that we need to start with our own assumptions and a broader notion of what a good outcome is. If life were an inconsequential thing, where negotiation was merely a matter of trades and narrow self-interest, of business as usual, a less social-psychological-organic view would be adequate. But life is not that way and we negotiate the very nature of our life with others. We negotiate all the time, sorting through and expressing what is of value and importance to us. We negotiate on behalf of others, needing to respect, plan for, and attend to their interests and we also negotiate when others, perhaps our children, or other unrepresented third parties have their interests in the balance, even though they are not at the table.

The ecological framework therefore does not concentrate on a strategy to win at negotiation, where a win for "our" side necessarily means a corresponding loss for "their" side. It does offer an approach, however, that strives to achieve the greatest amount of gain possible in a world that is made up of individuals, groups and nations that have self-interest and

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who must live together in some degree of cooperation so that any gains can be achieved.

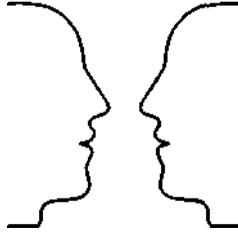
But there is no negotiation "pill" that any of us can take that will make us good negotiators. There is no substitute for informed practice and critical review of what we did "at the table."

One of the advantages of conducting seminars for people is that it gives them the chance to practice negotiation in the safety of a learning environment. Some people who want to be more assertive can thus practice that technique during the negotiation exercises and case simulations. Others who wish to practice different techniques or approaches can try those out too, without fear of being stuck with a bad deal, of losing anything real, or of losing face.

Despite the best model or theory of negotiation, and there are many, it is inevitable that people will ask questions that are very tough to answer. And sometimes there are no answers except what the individual believes to be true. This is especially so in questions of ethics. For example, Should I tell the whole truth about a certain thing if I am asked directly? What do I do if my client is willing to accept something less than what I believe the other party is prepared to give? Do I go for more or get just what my client wants? Other tough questions may only be answered by the person who has asked them and these questions may have to do with personal technique. Some people simply cannot live with themselves if they think that they have acted in a way or said something that offends the other person. While we may be able to offer them some specific training to phrase things more assertively, or to use body language that will have a particular effect, the answer will lie within them.

PART FOUR

Tough Questions



Tough questions must be asked. Some tough questions are directed at the specific model, approach, or theory being presented. It is to be expected that tough questions will challenge and improve upon the ecological view. The view itself grew from many of the questions I had asked about negotiation during the training I had received and the ideas which I had been exposed to at the Program on Negotiation at Harvard Law School.

Some tough questions are simply questions that people have that come from their own unique experience and they have nothing to do with a reaction to any particular model. So much the better if the approach we have taken helps to answer them, passing the test of individual experience. In the next section I look at some of these tough questions and offer the best advice I can.

Q: "It's fine to say that it's not accurate to think of power in absolute terms because not all power can be brought to bear by a more powerful party in each and every case. But what about raw power? Isn't it a fact that in many cases 'they' simply have more power than 'we' do? Isn't 'power' the bottom line?"

Yes, there are many cases when it is easy for anyone to see that one party has more power than the other. Our argument has been that a weaker party has power, first, by virtue of the fact that the stronger party perceives the weaker party to have something that the stronger party wants and is prepared to negotiate with the weaker party to get.

We have also said that the weaker party can in fact enhance its power by a number of techniques and through a number of virtues. There is power in having a very good alternative to a negotiated agreement; there is power in a creative solution, in commitment, and in having a legitimate case, as supported by objective criteria such as industry standards.

In extreme cases, however, such as when the police take action against someone on behalf of the state or when someone uses physical

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force against you, raw power is being exercised and will prevail. In the case of police or state action the "raw" power may be said to be "refined" since we who live in democracies "give" the state that power, mainly for our own protection. In the case of a man beating up his wife after failing to negotiate whatever it was that he wanted, it is simply brute raw power. But this is not negotiation. It is managing conflict with violence.

It is many of these types of abuse of power that actually generate resentment and aggravate greater resistance on the part of the dominated party. The conflict, which might have been negotiable, has been escalated through the use of power tactics by the "stronger" party. Often third party interventions to help stabilize and de-escalate the conflict are necessary.

Less overt uses of raw power, but the use of power in a conflict situation, include the deliberate manipulation of a negotiation by one party when it gets someone else to work against you, applying influence and pressure from other points. This includes cases when it may be that you are of relatively equal power with the party you are dealing with, and that a negotiated agreement would have been possible with reasonable trade offs and some joint gains realized, but the other party brings outside influences to bear on you. While power tactics like that may make a difference in the other side's favour, they usually worsen the climate at the table and they will not be appreciated or forgotten.

If you really feel overwhelmed by the power of the other side, you must do everything you can to improve your alternatives to negotiating with them; if you are able to negotiate at all. If you cannot negotiate on a point that should, in your opinion, be negotiable. You will have to dig very deep within yourself, find the appropriate allies, and take the necessary action to strengthen yourself. The fundamental question will remain whether in those cases you should use force to achieve your objective. We have a long list of examples from history and in our personal lives that show how negative the consequences can be when we use force and violence. We also have examples of the tremendous power that some people have in taking non-violent action, including protest and non-violent resistance.

Q: "Building a relationship, trying to get people to talk about their interests and not their positions, and taking a problem solving approach sounds really good. It probably will work in most negotiations. But what do you do about the obnoxious, hard-nosed negotiator who is an aggressive adversary?"

The best advice here is to show firmness in resisting coercion and demonstrate some conciliation so as not to escalate the confrontation.

Those kind of people do not think better of you if you act meek and mild, failing to assert yourself or offering concessions at the start of negotiations. They perceive open, cooperative, trust-building, and concession-giving behaviour as a sign of weakness. They then expect more concessions.

It is best to stick to the facts, be firm, and offer a conciliatory move only after you believe they have got the message that you are prepared to stand your ground.

Of course, that's easier said than done. Most people who have a problem with obnoxious adversaries also tend to be less assertive and conflict averse. It is unlikely, however, that you will always be able to avoid this type of person, no matter how hard you try. And it may well be that you are actually stuck in a job or a situation that puts you face to face with somebody like this on a frequent basis. So while avoiding conflict is one legitimate response to it, as is withdrawing from it, you can only do that so often. Furthermore, avoiding and withdrawing may lead to very serious negative results for you.

Conflict is inevitable. You may lack the skill to deal with certain conflict situations. Skill yourself. Respect yourself. Once you are certain you are acting ethically and responsibly in a negotiation situation with a difficult, aggressive and/or obnoxious person, be firm, tolerate no personally abusive behaviour, and offer a concession only after you have established yourself.

It is necessary to take some self-improvement action if this kind of problem is particularly pertinent to you. Get some assertiveness training; practice little by little to be more assertive, building on your little successes, gaining confidence.

Q: "The problem I have is about culture. Unfortunately, the work I do puts me in contact with people from another race quite often, and I must admit that I really dislike something about them. I know it's not popular to admit it, but I have reached a point where I don't like their style of communication, their values—I don't trust them. So how do you negotiate with someone you both dislike and don't trust?"

It is very difficult to like someone you distrust. So while we are all faced from time to time with working with or dealing with people that we dislike, the deeper issue in this case is that of trust.

Sometimes we simply distrust the other side because they are not familiar to us. They represent the unknown and that alone can be threatening. They also represent change—they are different—and that can be threatening. When we are feeling threatened it means we don't trust. We have little confidence in them, in the sense that we believe they will behave in a way that respects our needs and interests. When we don't trust we develop a sense of fear and dislike.

In the case of cross cultural negotiations and relations it is a fact that different cultures value things differently. Some put more emphasis on material goods, others on relationships, others on spiritual concerns and so on. Some like to show great deference for authority and others like to be informal and easy-going. The list of dimensions along which cultures differ includes: freedom, pace, gender roles, communication (verbal/non-verbal), collectivism versus individualism, cooperation versus competition, future

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orientation versus past orientation; and the importance placed on "who you are" versus "what you do".

Our styles and our values can clash with theirs. In that way, we begin to understand how it is that people from different cultures do dislike and distrust one another. In fact, people from different cultures can actually perceive identical events differently, including what they would call conflict and how that conflict should be dealt with.

When relating to someone from a different culture it is important to be aware of the differences and the room for disagreements and value clashes. These make trust difficult. And it is virtually impossible to like someone you distrust. Yet there is a way of viewing trust that may be of help when dealing with people from other cultures, or with people you simply don't trust.

I think of trust in a "bare bones" way, as predictability. This is a rather scientific, rational way of looking at it, but it gives me some confidence in even the most psychologically uneasy circumstances particularly in situations when I might naturally feel threatened and when I might naturally dislike the other party.

What this means is that I look at trust less in "touchy-feely" terms, and I think of it as the level of confidence I can have that they will behave in a certain way. A worse case scenario is that I can "trust" the other side to try to harm me. I can predict they will behave in a way that furthers their best interest at my total expense. This knowledge, or foresight, helps me when I have to deal with them.

Until I can become comfortable with people who effect me like that, be they of a different race, I try very hard to think about how they see the world, what makes them tick and behave the way they do. It is no fun disliking someone and distrusting them. It is very stressful and a real strain on us to be in conflict for long periods. I want to get along with these other people as best I can because at the very least, that makes my life easier. So I need to build some sense of who they are and what it is they value, in order to be able to predict their behaviour more accurately and to thus be prepared to deal with them. I place my trust in my own ability to anticipate problems and respond to them.

By taking this minimum position some might even say, cynical view of trust, I begin to change my expectations of the other side and I stop imposing my view of the world onto them, and onto our relationship. It also helps to think about how they must see me. What do I represent to them? What can I do to improve the communication? And just as I may need assistance from time to time in my other relationships and negotiations, perhaps I need some help here. A third party might help us get along better.

Getting to know each other takes a long time. As the world continues to shrink we will be put closer in contact with people from different cultures. Even in close relationships, which can also be extremely intense, the general rules of separating the problem from the people, looking for

the interests that lie behind stated positions and building trust based upon commitments made and honored still apply.

Most of us have interests in common and interests that compete. Most of us spend a large part of our time looking for that common ground so that we can get along without coercion. We negotiate life.

Q: My problem is I never know when to make the first offer and when to wait for them to put something on the table. Who should go first?

Going first is a very real concern for most negotiators who I have met. In most cases it boils down to a concern with something called "anchoring". No one wants to offer the other side more than they would have been willing to accept, "anchoring" the negotiation too high. And no one wants to offer the other side a figure or option that is so low that they lose the other side, literally triggering the other side into an adversarial role.

By making an offer that is too high, we mean that it either is very close to, or is actually better than, their BATNA. So you have put yourself in the difficult position of likely having to give even more because it is unlikely that you can retract an offer and keep the negotiation on an even keel. On the other hand, an offer that is far too low can, in fact, be perceived as an insult. The other party may decide to stiffen its back and come back at you quite strongly, or they may simply throw their hands up in the air and walk away. You don't want either to happen.

The rule of thumb is that if you have a strong BATNA and you believe it is better than their BATNA, feel confident in going first. Depending on the circumstances, that means you may decide to offer low or ask high. Your BATNA gives you latitude because you know you have a very good alternative and you can take some risk at the table. They need you for this agreement more than you need them.

As it happens, however, many negotiations are not single issue negotiations and the discussion doesn't call for "going first", at least in some categorical and finite sense of the term. A variety of issues are presented and often not in any predictable way, or at least not in the order you would have predicted them! In fact, one of your concerns will be to avoid getting into a discussion of an issue that you believe should be left until later. This underlines once again the importance of being well prepared. You should be able to anticipate most of the issues and you want to have a reasonable amount of control over when they get addressed and how. So "going first" is often considerably more complex than simply placing an offer on the table.

Most negotiations in business and commerce, in government relations, and at the international level are more complex and proposals are not presented as neat packages. Proposals are likely to evolve as the parties feel each other out and the issues become clear.

In labour-management negotiations it is more likely that proposals and counter-proposals will be put on the table as fairly specific packages.

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But even then a certain amount of "institutionalization" of the negotiation process (collective bargaining) takes away from the uncertainty that surrounds first offers, although either side may feel a very real anxiety with the prospect of facing a poor first offer. The ongoing relationship between a unionized work force and management also adds another dimension that generally raises confidence levels, in the sense that each side has some foreknowledge of the issues and the range of values on each and either side can usually predict relatively accurately what might be requested, or what the other side is likely to offer.

Furthermore, in most collective bargaining situations, provisions exist for mediation and/or arbitration, and there is an added sense of confidence that comes with knowing that regardless of how far apart the two sides may be, mechanisms for settling outstanding differences do exist. These give both parties some added degree of confidence that a fair agreement might be possible even if things don't go well between the two parties in their face to face negotiations at the table.

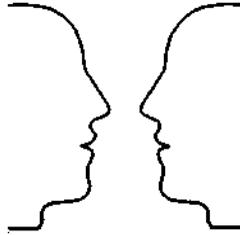
But when it comes to individual negotiators and the issue of "going first" I have found that each has developed some personal style or technique to deal with it in one way or another. Some "fly-by-the seat of their pants", choosing to take each negotiation as it comes, feeling their way along, trying to use intuition about whether they should go first and what they should offer or request.

These people generally lack a clear negotiation framework but usually have a highly developed personal style. Some people bluff as a deliberate and well-honed negotiation style. They want to look more powerful than they are, less in need of an agreement, and less persuaded by the other side's arguments. These negotiators may choose to "challenge" the other side, calling for a first offer and doing so early, or they may hold back, conveying a nonchalance while trying to avoid "anchoring" too low by starting with a weak opening request.

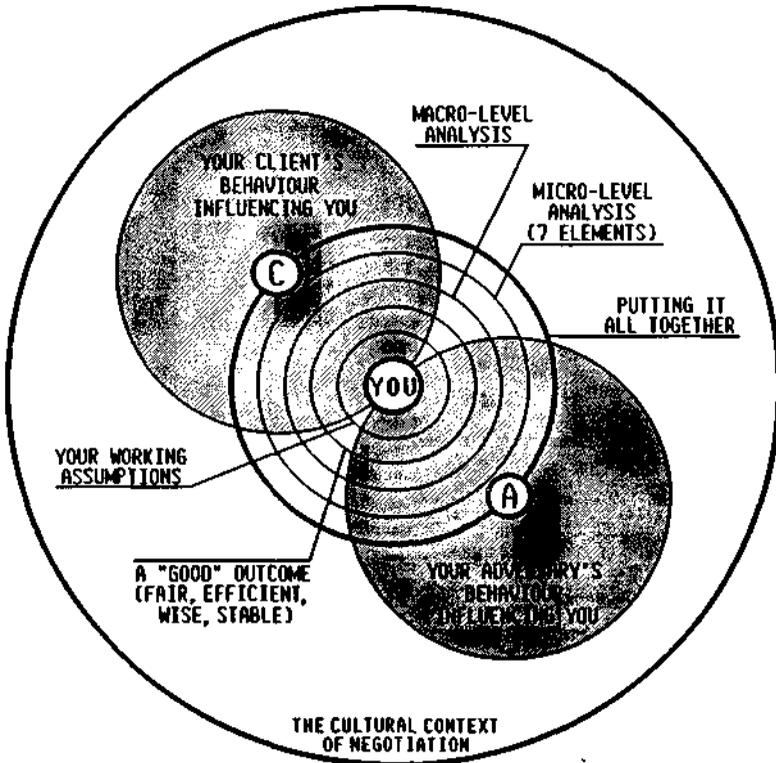
In most strategies the fundamental consideration is the estimate of power, and each person applies some personal formula that is directly tied to their assessment of the relative power of the two parties. Therefore, it is important to respect our rule of thumb. Determine what your BATNA is and estimate theirs, and only then act accordingly are with confidence.

PART FIVE

Tools And Charts



An Ecological Framework Of Negotiation



WORKING ASSUMPTIONS REVISITED

	Agree	Disagree	Undecided
• Time is scarce and it should not be squandered away.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Life is a matter of survival of the fittest.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• There's a sucker born every minute.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Conflict is bad.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• People are smart.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Life would be impossible without cooperation.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• People are basically self-serving.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Power is the "bottom line".	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• I have very little influence on the people I meet.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• It is very important to establish and protect relationships with others, even at personal expense.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• We have free will and can make choices.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Conflict can be healthy.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• People are capable of changing and reacting differently.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• I handle conflict well.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• It's best to approach things with lowered expectations.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• I'm a good negotiator.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Men are easier to negotiate with.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Women are easier to negotiate with.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Criteria Of A Good Outcome

Fair

Wise

Efficient

Stable

A LINEAR FRAMEWORK

Identify And Rank Goals

- What are the interests and needs you want met through negotiation?
- Rank them so you can trade them off.
- Use them to influence your negotiation strategy.
- Use them to measure a proposed agreement.

Consider Alternatives To A Negotiated Agreement

- Know your BATNA.
- Calculate it as a reservation price (the minimum you must get).

Analyze The Structure Of The Negotiation

- Macro-Level—Use organizing questions to frame a strategy—i.e. is party monolithic, are there more than two parties, are there linkages, will this negotiation be repeated, who has authority to make decision?
- Find out what their typical negotiating style is.
- Micro-Level—Do "Seven Elements" analysis (i.e. what are interests, relationships issues, possible options, their BATNA).

Formulate A Strategy

- Where will we meet?
- Who will attend?
- How do we communicate out interests (written proposals)?
- Possibly go first and/or take easier items first.

Negotiate

- Clarify interests, create options, commit carefully and late.
- Keep a record.

Draft An Agreement

Consider Any Ratification And/Or Enforcement Issues

Honour Commitments

SOME ORGANIZING QUESTIONS

- Are the parties monolithic?—Not usually.
- Is the game repetitive?—It often is.
- Are the negotiations private or public? It's hard to keep secrets nowadays.
- Is there more than one issue? There often is and one issue may be to determine the issues.
- Is this negotiation linked to another one? Consider timing, and the usefulness of linkages to break impasses.
- Threats—be prepared should they arise: Consider the cost/benefits of using them yourself.
- Is an agreement required? Contract may specify it.
- Are there time constraints? The party that negotiates in haste is often at a disadvantage and feel pressure to commit versus delay as a tactic.
- Is ratification required?
- Are the contracts binding? Any agreement has risks but so has no agreement.
- Is third party intervention possible? Mandatory?

(adapted from: *The Art and Science of Negotiation*, H. Raiffa)

SEVEN ELEMENTS

Alternatives (BATNA)

Interests

Objective Criteria (Legitimacy)

Options

Communication

Relationship

Commitment

Power, Information And Timing Checklist

	Yes	No
<i>I know what my best alternative to this negotiated agreement is.</i>	<input type="checkbox"/>	<input type="checkbox"/>
If Yes, it is: _____		
<i>I can improve on this prior to negotiating.</i>	<input type="checkbox"/>	<input type="checkbox"/>
If No, I need to know it and I will know it before I negotiate.		
I have work to do.	<input type="checkbox"/>	
<i>I have an estimate of their BANTA.</i>	<input type="checkbox"/>	<input type="checkbox"/>
If Yes, it is: _____		
If No, I need to know it and I will know it before I negotiate. I have work to do.	<input type="checkbox"/>	
<i>I have enough information to proceed.</i>	<input type="checkbox"/>	<input type="checkbox"/>
If No, I need to know more about: _____		
I have work to do.	<input type="checkbox"/>	
<i>I am prepared to "go first" with an offer.</i>	<input type="checkbox"/>	<input type="checkbox"/>
If Yes, my first offer is: _____		
If No, I expect them to offer: _____		
I plan to counter offer: _____		
or		
Propose that we consider the following: _____		
<i>I am able to represent myself with confidence in this negotiation.</i>	<input type="checkbox"/>	<input type="checkbox"/>
If No,		
I need more information.	<input type="checkbox"/>	
I need more preparation time.	<input type="checkbox"/>	
I need on-site or backup support.	<input type="checkbox"/>	
I should have someone else represent me.	<input type="checkbox"/>	
If Yes,		
I realize I have an alternative.	<input type="checkbox"/>	
I realize I can influence the pacing.	<input type="checkbox"/>	
<i>I am ready to negotiate.</i>	<input type="checkbox"/>	<input type="checkbox"/>

Self-Evaluation

I have a fairly clear idea of what my working assumptions about conflict and negotiation are. Yes No

If no, I need to review them and know them.
Agree

If yes, they **were** or **were not** challenged in this negotiation (circle choice).

If challenged, how? _____

I have changed my working assumptions about conflict and negotiation as a result of this negotiation. Yes No

Of the seven elements in negotiation, I tended to pay attention to these the most in this negotiation:

- Alternatives
- Interests
- Standards
- Options
- Communication
- Relationship
- Commitment

I need to pay more attention to: _____

I was well prepared for this negotiation. Yes No

If poorly—what was wrong in my preparation?

If well, what was right in my preparation?

I communicated effectively. Yes No

If no, I could improve by: _____

I have work to do.

THE KEY POINTS

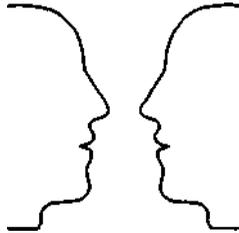
- Success, or winning in negotiation, comes in trades or exchanges, or in creative solutions to your problems that are much better than a simple "I take, you lose", or vice versa "You win, I lose". Both parties get something in negotiation. That's what it's all about.
- You are at the centre of all the negotiations you are engaged in.
- The only reason to negotiate with another party is if you can obtain something by negotiating that you could not obtain as well in any other way.
- A negotiated agreement is considered good if it is fair, wise, was reached efficiently, and is stable.
- Behind declared positions are the real interests.
- An option that responds to the interests that lie behind declared positions is the nub of success.
- One major word of caution. Invent these options without committing to any one of them.
- Communication probably will not be easy precisely because we have interests in common with the other party and we also have interests that are opposed.
- Negotiation is communication of a very specific type. But it is not correct to say that all that negotiation is, is simply communication.
- Negotiation is the art of persuasion.
- We need to know "what would be persuasive" to the other side.
- It is critical that objective evidence determines some standards that are presented that make our argument or claim legitimate.
- Standards of legitimacy help us to focus on the problem at hand and not on the personalities.
- But standards of legitimacy must be relevant to the other party and they must be introduced at the right time, in the right way.
- Whenever someone tries to persuade us by presenting a standard we will naturally question it unless we are a trusting fool.
- Each negotiated agreement is the creative product of the people at the table. Today's agreement may be tomorrow's standard.
- When we speak about negotiation we are speaking about relationship.

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- Even the most simple negotiation is full of relationship issues. Probing for interests, dealing back and forth, building some trust, making a commitment, living with the other party after the deal has been struck.
- Our relationship with the other party is the ground of the negotiation.
- But while relationship runs through all negotiation, it must be established on individual strength, mutual respect, and the honouring of commitments.
- Trust is critical to negotiating and it is especially important in as small world as ours where we will likely do business over and over again with certain parties.
- But don't overload trust.
- Sometimes our rock bottom notion of trust is predictability. "I can count on them to do this."
- Hopefully, we can improve on it to include "good will". We want to be able to feel and say, "I have their trust and good will."
- A good negotiator is a builder of relationship. A good relationship is comprised of strong individual players, bringing something unique to the table that the other side wants, and where the players are capable of making and keeping commitments.
- Do not confuse "staking-out" a position as a sign of commitment which guarantees you automatic bargaining strength. In fact, our strength is very often reduced because we commit to a position.
- Commit very carefully. And commit late.
- Honour any commitments you make.

PART SIX

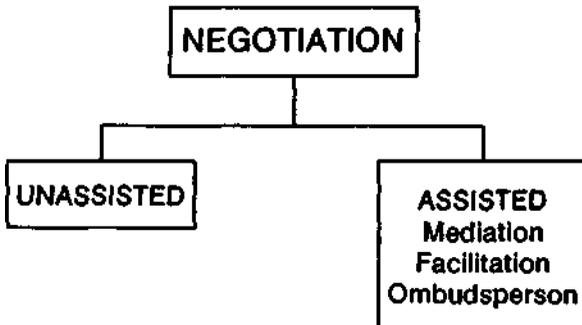
An Afterword To Mediators



APPLYING THE GENERAL ELEMENTS OF NEGOTIATION TO MEDIATION

Assumptions

1. Mediation is a form of assisted negotiation (see chart below).
2. Mediators help parties negotiate, drawing on the full range of negotiation theory, skills, and techniques. Mediators are to help, but not to negotiate for either party.
3. Parties being assisted need support by modelling appropriate behaviour to take advantage of the generic elements in negotiation that apply in all negotiation, both unassisted and assisted (mediation).
4. The criteria of a "good" outcome apply to both unassisted and assisted negotiation (mediation).



MEDIATOR'S VIEW OF THE 7 ELEMENTS OF NEGOTIATION

Alternatives

- Each party has alternatives to a negotiated agreement, including the agreement which may be reached with the assistance of a mediator.
- Each party has a "best alternative to a negotiated agreement" (BATNA). It is unlikely anyone other than the party itself will know what its BATNA is.
- Both parties are in mediation (at the table) on the assumption that they can achieve better than their BATNA by negotiating with the help of a mediator.
- As a mediator you must respect their option to walk away from the table if they choose to. They may be walking because they recognize that they cannot do better than their BATNA.
- Expect each side to raise its alternatives as a power tactic. Within limits, that's O.K.
- However, don't tolerate threats to walk. Remind them that they are here voluntarily, in the spirit of seeking and reaching an agreement.
- Don't tolerate threats by one party to take action designed to worsen the other side's alternatives ("I know you have other suppliers but we can change that... You had better deal with us.").

Interests

- One of the most challenging and important tasks of the mediator is to identify the interests each party has that lie behind their stated positions.
- The mediator will have to probe for interests, re-state "positional statements" or reframe comments to get interests out and clarified.
- It is of no use for a mediator alone to "hear" or "recognize" or "acknowledge" one or the other side's interests. It is the two parties who also and most importantly must have this insight.
- If one side is not receptive to an interest that has been raised—it may mean they have not perceived it or they may not think it is legitimate. Tactfully raise this whenever this occurs (i.e. "I take it you don't feel/believe it is an appropriate concern for party A to have... Could you explain why?")
- As a mediator, you want to further a greater sharing of interests.
- List interests on your own work paper or on a flip chart. Track them, returning to them if the discussion seems to be ignoring them. They are the bases of agreements.

Objective Criteria—Standards Of Legitimacy

- The idea of persuading someone by using precedent and "industry standards" is not new. It is an attempt to establish one's claim as a "fair" claim.
- **Sometimes standards of legitimacy apply to a particular case; sometimes they don't. It is common to argue over whether they apply and to "haggle" over fine details about any specific standard.**
- Expect standards to be raised in introductory opening statements and later in the negotiations (i.e., "They got a 10% hike in Toronto last week—we deserve the same here.").
- Help both parties get their standards of legitimacy on the table—whether they are accepted or rejected.
- **You may be asked to add an "objective" view or voice. You may know of a precedent that applies or of certain industry standards. Offer your input matter-of-factly: you are not trying to be persuasive, only to help.**
- Steer the discussion away from "haggling" over standards once they have been adequately addressed. Say, "Well, we've noted this evidence and it appears that a range of things need to be kept in mind, but let's move on to consider..."

Options

- Options are developed at the table, unlike alternatives that the parties have available away from the table.
- Options are the elements of an agreement created from the proposals exchanged.
- Help the parties by offering some creative combinations or suggestions that tap their interests.
- Help the parties to create or invent packages without the fear of being bound to anything. Say, "Let's keep the inventing of options separated from any commitments" or "Let's keep an open mind on this idea, are there other options?"
- A pause in the process may be appropriate if a party looks as though they need some time to reflect or to consult. Suggest a caucus, but do not break up the natural flow of developing options.
- Write the options developed in point form on a flip chart or piece of paper that is kept in front of the parties for their information. Help the parties to keep track of the emerging package—the agreement.
- Encourage and guide exercises to select elements from a number of ideas that have been presented.
- Use the agreed upon options to build up a final agreement.

Communication

- Listen. Re-state things being said. Ask for clarification.
- Use any tools available to help improve the communication between the parties. They may have a very natural problem perceiving what is being stated and offered. Besides your own communication interventions, other tools include documents, use of flip charts, overhead projectors to display charts and statistics.
- Help the parties talk to each other. They will start by addressing you. Slowly encourage face-to-face "assisted" negotiation.
- Do not reward destructive behaviour.
- Develop a written agreement.

Relationship

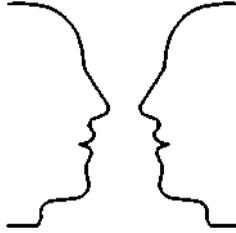
- It is a small world. We will likely do business with the same people again or with someone they know. Relationships and reputations are very important.
- You are helping the parties draw upon any strengths of their relationship. You are helping the parties build a better relationship to some extent—although it is a substantive agreement that you are facilitating.
- You must intervene to help separate any nasty and destructive people/relationship issues from the problems at hand.
- You must model and encourage constructive communication and problem-solving behaviour.

Commitment

- Separate inventing and discussion of options from committing to anything.
- Commitment in any negotiation should be given carefully and late.
- Slow any acceleration to commitment when you see it is premature. Be sure interests have been considered in the responses and proposals and that a number of options have been considered. Encourage that any necessary caucuses when parties look like they need a private moment to discuss matters. You want to help the parties reach an agreement that will be seen by them to be fair, wise, reached efficiently, and one that will be stable.
- Get a signed agreement if an agreement is reached.

PART SEVEN

An Invitation To Move Forward



WHICH ROAD YOU WILL TAKE

Where you want to go determines which road you will take. This is a working assumption. Do you agree with it?

Know What You Want To Do I wanted to have the skills to settle my disputes better and to assist others in conflict. I wanted to be able to function without being coercive, because I really object to coercive action being taken against me. I assume others dislike being coerced as well. I also wanted to minimize the amount of compromise in my life. I wanted to have ways of working with others, of dealing with conflicts and of reaching agreements that weren't based on compromise. I often compromised because I didn't want to offend or hurt the other person.

I was caught between compromise and coercion. What else was there? Either I gave in or I was over-powered.

Was there another way?

Yes. Negotiation. Which is all about conflict, power and persuasion. It is the nexus of our competitive and cooperative drives.

I wanted to learn more, and be an expert in negotiation and dispute resolution.

I set out to be an expert.

What do you want?

Empower Yourself To Do It No one is above challenging their own working assumptions, of learning more, of improving themselves.

Knowing what you want, determine which road will take you there.

Take self-help.

Look for allies along the way; build relationships, supportive networks and don't neglect them.

How will you get what it is you want? What road will you take?

Take it.

Self Actualize Practice your new skills. Test your new assumptions and the old ones you still have. Enjoy your discipline.

Pass It Along The ability to settle conflicts' through successful negotiation that produces good outcomes is a great personal asset. Our world needs people skilled in non-violent conflict resolution, especially as we come to recognize just how vulnerable we are. We cannot afford the outmoded and destructive rule of force. The rule of law is insufficient if that means long delays, high costs and less than satisfactory settlements imposed on the parties in dispute. We have entered a period, worldwide, when more people are demanding full franchise in matters that concern them and their natural environment. We must make room for the rule of legitimacy for negotiated outcomes. Your commitment to be a negotiator and a model of constructive dispute resolution will add to our collective good will and the fortune of future generations.