

## II THE METHOD

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2. Separate the **People** from the Problem
3. Focus on **Interests**, Not Positions
4. Invent **Options** for Mutual Gain
5. Insist on Using Objective **Criteria**

## 2 Separate the People from the Problem

Everyone knows how hard it is to deal with a problem without people misunderstanding each other, getting angry or upset, and taking things personally.

A union leader says to his crew, "All right, who called the walkout?"

Jones steps forward. "I did. It was that bum foreman Campbell again. That was the fifth time in two weeks he sent me out of our group as a replacement. He's got it in for me, and I'm tired of it. Why should I get all the dirty work?"

Later the union leader confronts Campbell. "Why do you keep picking on Jones? He says you've put him on replacement detail five times in two weeks. What's going on?"

Campbell replies, "I pick Jones because he's the best. I know I can trust him to keep things from fouling up in a group without its point person. I send him on replacement only when it's a key person missing, otherwise I send Smith or someone else. It's just that with the flu going around there've been a lot of point people out. I never knew Jones objected. I thought he liked the responsibility."

In another real-life situation, an insurance company lawyer says to the state insurance commissioner:

"I appreciate your time, Commissioner Thompson. What I'd like to talk to you about is some of the problems we've been having with the presumption clause of the strict-liability regulations. Basically, we think the way the clause was written causes it to have an unfair impact on those insurers whose existing pol-

icies contain rate adjustment limitations, and we would like to consider ways it might be revised—”

The Commissioner, interrupting: “Ms. Monteiro, your company had ample opportunity to voice any objection it had during the hearings my department held on those regulations before they were issued. I ran those hearings, Ms. Monteiro. I listened to every word of testimony, and I wrote the final version of the strict-liability provisions personally. Are you saying I made a mistake?”

“No, but—”

“Are you saying I’m unfair?”

“Certainly not, sir, but I think this provision has had consequences none of us foresaw, and—”

“Listen, Monteiro, I promised the public when I campaigned for this position that I would put an end to killer hair dryers and \$10,000 bombs disguised as cars. And these regulations have done that.

“Your company made a \$50 million profit on its strict-liability policies last year. What kind of fool do you think you can play me for, coming in here talking about ‘unfair’ regulations and ‘unforeseen consequences’? I don’t want to hear another word of that. Good day, Ms. Monteiro.”

Now what? Does the insurance company lawyer press the Commissioner on this point, making him angry and probably not getting anywhere? Her company does a lot of business in this state. A good relationship with the Commissioner is important. Should she let the matter rest, then, even though she is convinced that this regulation really is unfair, that its long-term effects are likely to be against the public interest, and that not even the experts foresaw this problem at the time of the original hearings?

What is going on in these cases?

### **Negotiators are people first**

A basic fact about negotiation, easy to forget in corporate and international transactions, is that you are dealing not with abstract representatives of the “other side,” but with human beings. They

have emotions, deeply held values, and different backgrounds and viewpoints; and they are unpredictable. They are prone to cognitive biases, partisan perceptions, blind spots, and leaps of illogic. So are we.

This human aspect of negotiation can be either helpful or disastrous. The process of working out an agreement may produce a psychological commitment to a mutually satisfactory outcome. A working relationship where trust, understanding, respect, and friendship are built up over time can make each new negotiation smoother and more efficient. And people’s desire to feel good about themselves, and their concern for what others will think of them, can often make them more sensitive to another negotiator’s interests.

On the other hand, people get angry, depressed, fearful, hostile, frustrated, and offended. They have egos that are easily threatened. They see the world from their own personal vantage point, and they frequently confuse their perceptions with reality. Routinely, they fail to interpret what you say in the way you intend and do not mean what you understand them to say. Misunderstanding can reinforce prejudice and lead to reactions that produce counterreactions in a vicious circle; rational exploration of possible solutions becomes impossible and a negotiation fails. The purpose of the game becomes scoring points, confirming negative impressions, and apportioning blame at the expense of the substantive interests of both parties.

Failing to deal with others sensitively as human beings prone to human reactions can be disastrous for a negotiation. Whatever else you are doing at any point during a negotiation, from preparation to follow-up, it is worth asking yourself, “Am I paying enough attention to the people problem?”

### **Every negotiator has two kinds of interests: in the substance and in the relationship**

Every negotiator wants to reach an agreement that satisfies his substantive interests. That is why one negotiates. Beyond that,

a negotiator also has an interest in his relationship with the other side. An antiques dealer wants both to make a profit on the sale and to turn the customer into a regular one. At a minimum, a negotiator wants to maintain a working relationship good enough to produce an acceptable agreement (and effective implementation) if one is possible given each side's interests. Usually, more is at stake. Most negotiations take place in the context of an ongoing relationship where it is important to carry on each negotiation in a way that will help rather than hinder future relations and future negotiations. In fact, with many long-term clients, business partners, family members, fellow professionals, government officials, or foreign nations, the ongoing relationship is far more important than the outcome of any particular negotiation.

**The relationship tends to become entangled with the problem.**

A major consequence of the "people problem" in negotiation is that the parties' relationship tends to become entangled with their discussions of substance. On both the giving and receiving end, we are likely to treat people and problem as one. Within the family, a statement such as "The kitchen is a mess" or "Our bank account is *low*" may be intended simply to identify a problem, but it is likely to be heard as a personal attack. Anger over a situation may lead you to express anger toward some human being associated with it in your mind. Egos tend to become involved in substantive positions.

Another reason that substantive issues become entangled with psychological ones is that people draw from comments on substance unfounded inferences, which they then treat as facts about that person's intentions and attitudes toward them. Unless we are careful, this process is almost automatic; we are seldom aware that other explanations may be equally valid. Thus in the union example, Jones was sure that Campbell, the foreman, had it in for him, while Campbell thought it obvious that he was complimenting Jones and doing him a favor by giving him responsible assignments.

**Positional bargaining puts relationship and substance in**

**conflict.** Framing a negotiation as a contest of will over positions aggravates the entangling process. I see your position as a statement of how you would like the negotiation to end; from my point of view it demonstrates how little you care about our relationship. If I take a firm position that you consider unreasonable, you assume that I also think of it as an extreme position; it is easy to conclude that I do not value our relationship—or you—very highly.

Positional bargaining deals with a negotiator's interests both in substance and in a good relationship by trading one off against the other. If what counts in the long run for your company is its relationship with the insurance commissioner, then you will probably let this matter drop. Yet giving in on a substantive point may buy no friendship; it may do nothing more than convince the other side that you can be taken for a ride. Or, if you care more about a favorable solution than being respected or liked by the other side, you can try to extract concessions by holding the relationship hostage. "If you won't go along with me on this point, then so much for you. This will be the last time we meet." While you *may* extract a concession this way, this strategy often results in lousy substance *and* a damaged relationship.

**Disentangle the relationship from the substance;  
deal directly with the people problem**

Dealing with a substantive problem and maintaining a good working relationship need not be conflicting goals if the parties are committed and psychologically prepared to treat each separately on its own legitimate merits. Base the relationship on mutually understood perceptions, clear two-way communication, expressing emotions without blame, and a forward-looking, purposive outlook. Deal with people problems by changing how you treat people; don't try to solve them with substantive concessions.

To deal with psychological problems, use psychological techniques. Where perceptions differ, look for ways to test assump-

tions and to educate. If emotions run high, you can find ways for each person involved to let off steam and feel heard. Where misunderstanding exists, you can work to improve communication.

To find your way through the jungle of people problems, it is useful to think in terms of three basic categories: perception, emotion, and communication. The various people problems all fall into one of these three baskets.

In negotiating it is easy to forget that you must deal not only with their people problems, but also with your own. Your anger and frustration may obstruct an agreement beneficial to you. Your perceptions are likely to be one-sided, and you may not be listening or communicating adequately. The techniques that follow apply equally well to your people problems as to those of the other side.

### Perception

Understanding the other side's thinking is not simply a useful activity that will help you solve your problem. Their thinking *is* the problem. Whether you are making a deal or settling a dispute, differences are defined by the difference between your thinking and theirs. When two people quarrel, they usually quarrel over an object—both may claim a watch—or over an event—each may contend that the other was at fault in causing an automobile accident. The same goes for nations. Morocco and Algeria quarrel over a section of the Western Sahara; India and Pakistan quarrel over each other's development of nuclear bombs. In such circumstances people tend to assume that what they need to know more about is the object or the event. They study the watch or they measure the skid marks at the scene of the accident. They study the Western Sahara or the detailed history of nuclear weapons development in India and Pakistan.

Ultimately, however, conflict lies not in objective reality, but in people's heads. Truth is simply one more argument—perhaps a good one, perhaps not—for dealing with the difference. The difference itself exists because it exists in their thinking. Fears, even

if ill-founded, are real fears and need to be dealt with. Hopes, even if unrealistic, may cause a war. Facts, even if established, may do nothing to solve the problem. Both parties may agree that one lost the watch and the other found it, but still disagree over who should get it. It may finally be established that the auto accident was caused by the blowout of a tire that had been driven 31,402 miles, but the parties may dispute who should pay for the damage. The detailed history and geography of the Western Sahara, no matter how carefully studied and documented, is not the stuff with which one puts to rest that kind of territorial dispute. No study of who developed what nuclear devices when will put to rest the conflict between India and Pakistan.

As useful as looking for objective reality can be, it is ultimately the reality as each side sees it that constitutes the problem in a negotiation and opens the way to a solution.

**Put yourself in their shoes.** How you see the world depends on where you sit. People tend to see what they want to see. Out of a mass of detailed information, they tend to pick out and focus on those facts that confirm their prior perceptions and to disregard or misinterpret those that call their perceptions into question. Each side in a negotiation may see only the merits of its case, and only the faults of the other side's.

The ability to see the situation as the other side sees it, as difficult as it may be, is one of the most important skills a negotiator can possess. It is not enough to know that they see things differently. If you want to influence them, you also need to understand empathetically the power of their point of view and to feel the emotional force with which they believe in it. It is not enough to study them like beetles under a microscope; you need to know what it feels like to be a beetle. To accomplish this task you should be prepared to withhold judgment for a while as you "try on" their views. They may well believe that their views are "right" as strongly as you believe yours are. You may see on the table a glass half full of cool water. Your spouse may see a dirty, half-empty glass about to cause a ring on the mahogany finish.

Tenant's perceptions	Landlady's perceptions
The rent is already too high.	The rent has not been increased for a long time.
With other costs going up, I can't afford to pay more for housing.	With other costs going up, I need more rental income.
The apartment needs painting.	He has given that apartment heavy wear and tear.
I know people who pay less for a comparable apartment.	I know people who pay more for a comparable apartment.
Young people like me can't afford to pay high rents.	Young people like him tend to make noise and to be hard on an apartment.
The rent ought to be low because the neighborhood is rundown.	We landlords should raise rents to improve the quality of the neighborhood.
I am a desirable tenant with no dogs or cats.	His loud music drives me crazy.
I always pay the rent whenever she asks for it.	He never pays the rent until I ask for it.
She is cold and distant; she never asks me how things are.	I am a considerate person who never intrudes on a tenant's privacy.

Consider the contrasting perceptions of a tenant and a landlady negotiating the renewal of a lease:

Understanding their point of view is not the same as agreeing with it. It is true that a better understanding of their thinking may lead you to revise your own views about the merits of a situation. But that is not a *cost* of understanding their point of view, it is a *benefit*. It allows you to reduce the area of conflict, and it also helps you advance your newly enlightened self-interest.

**Don't deduce their intentions from your fears.** People tend to assume that whatever they fear, the other side intends to do. Consider this story from the *New York Times*: "They met in a bar, where he offered her a ride home. He took her down unfamiliar

streets. He said it was a shortcut. He got her home so fast she caught the ten o'clock news." Why is the ending so surprising? We made an assumption based on our fears.

It is all too easy to fall into the habit of putting the worst interpretation on what the other side says or does. A suspicious interpretation often follows naturally from one's existing perceptions. Moreover, it seems the "safe" thing to do, and it shows spectators how bad the other side really is. But the cost of interpreting whatever they say or do in its most dismal light is that fresh ideas in the direction of agreement are spurned, and subtle changes of position are ignored or rejected.

**Don't blame them for your problem.** It is tempting to hold the other side responsible for your problem. "Your company is totally unreliable. Every time you service our rotary generator here at the factory, you do a lousy job and it breaks down again." Blaming is an easy mode to fall into, particularly when you feel that the other side is indeed responsible. But even if blaming is justified, it is usually counterproductive. Under attack, the other side will become defensive and will resist what you have to say. They will cease to listen, or they will strike back with an attack of their own. Assessing blame firmly entangles the people with the problem.

When you talk about the problem, distinguish the symptoms from the person with whom you are talking. "Our rotary generator that you service has broken down again. That is three times in the last month. The first time it was out of order for an entire week. This factory needs a functioning generator. I need your advice on how we can minimize our risk of generator breakdown. Should we change service companies, sue the manufacturer, or what?"

**Discuss each other's perceptions.** One way to deal with differing perceptions is to make them explicit and discuss them with the other side. As long as you do this in a frank, honest manner without either side blaming the other for the problem as each sees it, such a discussion may provide the understanding they need to take what you say seriously, and vice versa.

It is common in a negotiation to treat as “unimportant” those concerns of the other side perceived as not standing in the way of an agreement. To the contrary, communicating loudly and convincingly things you are willing to say that they would like to hear can be one of the best investments you as a negotiator can make.

Consider the negotiation over the transfer of technology that arose at the multinational Law of the Sea Conference. From 1974 to 1981 representatives of some 150 nations gathered in New York and Geneva to formulate rules to govern uses of the ocean from fishing rights to mining manganese in the deep seabed. At one point, representatives of the developing countries expressed keen interest in an exchange of technology; their countries wanted to be able to acquire from the highly industrialized nations advanced technical knowledge and equipment for deep-seabed mining.

The United States and other developed countries saw no difficulty in satisfying that desire—and therefore saw the issue of technology transfer as unimportant. In one sense it was unimportant to them, but it was a great mistake for them to *treat* the subject as unimportant. By devoting substantial time to working out the practical arrangements for transferring technology, they might have made their offer far more credible and far more attractive to the developing countries. By dismissing the issue as a matter of lesser importance to be dealt with later, the industrialized states gave up a low-cost opportunity to provide the developing countries with an impressive achievement and a real incentive to reach agreement on other issues.

**Look for opportunities to act inconsistently with their perceptions.** Perhaps the best way to change someone’s perceptions is to send them a message different from what they expect. The visit of Egypt’s President Anwar Sadat to Jerusalem in November 1977 provides an outstanding example of such an action. At the time, Israelis saw Sadat and Egypt as their enemy, the man and country that had launched a surprise attack on them four years before. To alter that perception, to help persuade the Israelis that he too

desired peace, Sadat flew to the capital of his enemies, a disputed capital that not even the United States, Israel’s best friend, had recognized as the capital of Israel. Instead of acting as an enemy, Sadat acted as a partner. Without this dramatic move, it is hard to imagine the signing of an Egyptian-Israeli peace treaty in 1979.

**Give them a stake in the outcome by making sure they participate in the process.** If they are not involved in the process, they are unlikely to approve the product. It is that simple. If you go to the state insurance commissioner prepared for battle after a long investigation, it is not surprising that he is going to feel threatened and resist your conclusions. If you fail to ask an employee whether he wants an assignment with responsibility, don’t be surprised to find out that he resents it. If you want the other side to accept a disagreeable conclusion, it is crucial that you involve them in the process of reaching that conclusion.

This is precisely what people tend not to do. When you have a difficult issue to handle, your instinct is to leave the hard part until last. “Let’s be sure we have the whole thing worked out before we approach the Commissioner.” The Commissioner, however, is much more likely to agree to a revision of the regulations if he feels that he has had a part in drafting it. This way the revision becomes just one more small step in the long drafting process that produced his original regulation rather than someone’s attempt to butcher his completed product.

During the nearly fifty-year struggle against apartheid (legalized racial segregation) in South Africa that ended only with the multiparty elections of 1994, white moderates at one point were trying to abolish the discriminatory pass laws. How? By meeting in an all-white parliamentary committee to discuss proposals. Yet however meritorious those proposals might prove, they would be insufficient, not necessarily because of their substance, but because they would be the product of a process in which no blacks were included. Blacks would hear, “We superior whites are going to figure out how to solve your problems.” It would be the “white man’s burden” all over again, which was the problem to start with.

Even if the terms of an agreement seem favorable, the other side may reject them simply out of a suspicion born of their exclusion from the drafting process. Agreement becomes much easier if both parties feel ownership of the ideas. The whole process of negotiation becomes stronger as each side puts their imprimatur bit by bit on a developing solution. Each criticism of the terms and consequent change, each compromise, is a personal mark that the negotiator leaves on a proposal. A proposal evolves that bears enough of the suggestions of both sides for each to feel it is theirs.

To give the other side a feeling of participation, get them involved early. Ask their advice. Giving credit generously for ideas wherever possible will give them a personal stake in defending those ideas to others. It may be hard to resist the temptation to take credit for yourself, but forbearance pays off handsomely. Apart from the substantive merits, the feeling of participation in the process is perhaps the single most important factor in determining whether a negotiator accepts a proposal. In a sense, the process *is* the product.

**Face-saving: Make your proposals consistent with their values.** In the English language, “face-saving” carries a derogatory flavor. People say, “We are doing that just to let them save face,” implying that a little pretense has been created to allow someone to go along without feeling badly. The tone implies ridicule.

This is a grave misunderstanding of the role and importance of face-saving. Face-saving reflects people’s need to reconcile the stand taken in a negotiation or an agreement with their existing principles and with their past words and deeds.

The judicial process concerns itself with the same subject. When a judge writes an opinion on a court ruling, she is saving face, not only for herself and for the judicial system, but for the parties. Instead of just telling one party, “You win,” and telling the other, “You lose,” she explains how her decision is consistent with principle, law, and precedent. She wants to appear not as arbitrary, but as behaving in a proper fashion. A negotiator is no different.

Often in a negotiation people will continue to hold out not because the proposal on the table is inherently unacceptable, but simply because they want to avoid the feeling or the appearance of backing down to the other side. If the substance can be phrased or conceptualized differently so that it seems a fair outcome, they will then accept it. Terms negotiated between a major city and its Hispanic community on access to municipal jobs were unacceptable to the mayor—until the agreement was withdrawn and the mayor was allowed to announce the same terms as his own decision, carrying out a campaign promise.

Face-saving involves reconciling an agreement with principle and with the self-image of the negotiators. Its importance should not be underestimated.

### Emotion

In a negotiation, particularly in a bitter dispute, feelings may be more important than talk. The parties may be more ready for battle than for cooperatively working out a solution to a common problem. People often come to a negotiation realizing that the stakes are high and feeling threatened. Emotions on one side will generate emotions on the other. Fear may breed anger, and anger, fear. Emotions may quickly bring a negotiation to an impasse or an end.

**First recognize and understand emotions, theirs and yours.** Look at yourself during the negotiation. Are you feeling nervous? Is your stomach upset? Are you angry at the other side? Listen to them and get a sense of what their emotions are. You may find it useful to write down what you feel—perhaps fearful, worried, angry—and then how you might like to feel—confident, relaxed. Do the same for them.

In dealing with negotiators who represent their organizations, it is easy to treat them as mere mouthpieces without emotions. It is important to remember that they too, like you, have personal feelings, fears, hopes, and dreams. Their careers may be at stake. There may be issues on which they are particularly sensitive and



others on which they are particularly proud. Nor are the problems of emotion limited to the negotiators. Constituents have emotions too. A constituent may have an even more simplistic and adversarial view of the situation.

Ask yourself what is producing the emotions. Why are you angry? Why are they angry? Are they responding to past grievances and looking for revenge? Are emotions spilling over from one issue to another? Are personal problems at home interfering with business? In the Middle East negotiation, Israelis and Palestinians alike feel a threat to their existence as peoples and have developed powerful emotions that now permeate even the most concrete practical issue, like distribution of water in the West Bank, so that it becomes almost impossible to discuss and resolve. Because in the larger picture both peoples feel that their own survival is at stake, they see every other issue in terms of survival.

**Pay attention to “core concerns.”** Many emotions in negotiation are driven by a core set of five interests: *autonomy*, the desire to make your own choices and control your own fate; *appreciation*, the desire to be recognized and valued; *affiliation*, the desire to belong as an accepted member of some peer group; *role*, the desire to have a meaningful purpose; and *status*, the desire to feel fairly seen and acknowledged. Trampling on these interests tends to generate strong negative emotions. Attending to them can build rapport and a positive climate for problem-solving negotiation.\*

**Consider the role of identity.** Another surefire driver of strong negative emotion is a perceived threat to identity—one’s self-image or self-respect. As human beings, we apply our general tendency toward either-or thinking to our self-perception: “I am a kind person.” “I’m a good manager.” This sets us up to feel threatened by people pointing out our inevitable failings and inconsistencies. No

\* For more on the core concerns and how to manage them in negotiation, see Roger Fisher and Daniel Shapiro, *Beyond Reason: Using Emotions As You Negotiate* (Penguin, 2006).

one is perfect or entirely consistent about anything, but unconsciously that can be painful and uncomfortable to accept. As a result, when confronted, we may get scared or angry as an internal debate rages about whether we “are” or “aren’t” competent, lovable, fair, or whatever matters to us.

If you find a counterpart’s behavior oddly out of character or feel as if you have unexpectedly stepped on a land mine in your conversation, think about whether they might be experiencing a threat to their identity from something you have said or might say. Similarly, if you find yourself feeling off-balance and emotional, ask yourself if your sense of identity feels threatened.\*

**Make emotions explicit and acknowledge them as legitimate.** Talk with the people on the other side about their emotions. Talk about your own. It does not hurt to say, “You know, the people on our side feel we have been mistreated and are very upset. We’re afraid an agreement will not be kept even if one is reached. Rational or not, that is our concern. Personally, I think we may be wrong in fearing this, but that’s a feeling others have. Do the people on your side feel the same way?” Making your feelings or theirs an explicit focus of discussion will not only underscore the seriousness of the problem, it will also make the negotiations less reactive and more “pro-active.” Freed from the burden of unexpressed emotions, people will become more likely to work on the problem.

**Allow the other side to let off steam.** Often, one effective way to deal with people’s anger, frustration, and other negative emotions is to help them release those feelings. People obtain psychological release through the simple process of recounting their grievances to an attentive audience. If you come home wanting to tell your husband about everything that went wrong at the office, you will become even more frustrated if he says, “Don’t

\* For more on identity and other human factors that can get in the way of problem-solving negotiation, see Douglas Stone, Bruce Patton, and Sheila Heen, *Difficult Conversations: How to Discuss What Matters Most* (Viking/Penguin, 1999; 2nd Edition, 2010).

your viewpoint to them. Once you have made their case for them, then come back with the problems you find in their proposal. If you can put their case better than they can, and then refute it, you maximize the chance of initiating a constructive dialogue on the merits and minimize the chance of their believing you have misunderstood them.

**Speak to be understood.** Talk to the other side. It is easy to forget sometimes that a negotiation is not a debate. Nor is it a trial. You are not trying to persuade some third party. The person you are trying to persuade is seated at the table with you. If a negotiation is to be compared with a legal proceeding, the situation resembles that of two judges trying to reach agreement on how to decide a case. Try putting yourself in that role, treating your opposite number as a fellow judge with whom you are attempting to work out a joint opinion. In this context it is clearly unpersuasive to blame the other party for the problem, to engage in name-calling, or to raise your voice. On the contrary, it will help to recognize explicitly that they see the situation differently and to try to go forward as people with a joint problem.

To reduce the dominating and distracting effect that the press, home audiences, and third parties may have, it is useful to establish private and confidential means of communicating with the other side. You can also improve communication by limiting the size of the group meeting. In the negotiations over the city of Trieste in 1954, for example, little progress was made in the talks among Yugoslavia, Britain, and the United States until the three principal negotiators abandoned their large delegations and started meeting alone and informally in a private house. A good case can be made for changing President Woodrow Wilson's appealing slogan "Open covenants openly arrived at" to "Open covenants privately arrived at." No matter how many people are involved in a negotiation, important decisions are typically made when no more than two people are in the room.

**Speak about yourself, not about them.** In many negotiations, each side explains and condemns at great length the motivations and intentions of the other side. It is more persuasive, however,

to describe a problem in terms of its impact on you than in terms of what they did or why: "I feel let down" instead of "You broke your word." "We feel discriminated against" rather than "You're a racist." If you make a statement about them that they believe is untrue, they will ignore you or get angry; they will not focus on your concern. But a statement about how you feel is difficult to challenge. You convey the same information without provoking a defensive reaction that will prevent them from taking it in.

**Speak for a purpose.** Sometimes the problem is not too little communication, but too much. When anger and misperception are high, some thoughts are best left unsaid. At other times, full disclosure of how flexible you are may make it harder to reach agreement rather than easier. If you let me know that you would be willing to sell your car for \$15,000, after I have said that I would be willing to pay as much as \$20,000, we may have more trouble striking a deal than if you had just kept quiet. The moral is: Before making a significant statement, know what you want to communicate or find out, and know what purpose this information will serve.

### **Prevention works best**

The techniques just described for dealing with problems of perception, emotion, and communication usually work well. However, the best time for handling people problems is before they become people problems. This means building a personal and organizational relationship with the other side that can cushion the people on each side against the knocks of negotiation. It also means structuring the negotiating game in ways that disentangle the substantive problem from the relationship and protect people's egos from getting involved in substantive discussions.

**Build a working relationship.** Knowing the other side personally really does help. It is much easier to attribute diabolical intentions to an unknown abstraction called the "other side" than to someone you know personally. Dealing with a classmate, a colleague, a friend, or even a friend of a friend is quite different

from dealing with a stranger. The more quickly you can turn a stranger into someone you know, the easier a negotiation is likely to become. You have less difficulty understanding where they are coming from. You have a foundation of trust to build upon in a difficult negotiation. You have smooth, familiar communication routines. It is easier to defuse tension with a joke or an informal aside.

The time to develop such a relationship is before the negotiation begins. Get to know them and find out about their likes and dislikes. Find ways to meet them informally. Try arriving early to chat before the negotiation is scheduled to start, and linger after it ends. Benjamin Franklin's favorite technique was to ask an adversary if he could borrow a certain book. This would flatter the person and give him the comfortable feeling of knowing that Franklin owed him a favor.

**Face the problem, not the people.** If negotiators view themselves as adversaries in a personal face-to-face confrontation, it is difficult to disentangle their relationship from the substantive problem. In that context, anything one negotiator says about the problem seems to be directed personally at the other and is received that way. Each side tends to become defensive and reactive and to ignore the other side's legitimate interests altogether.

A more effective way for the parties to think of themselves is as partners in a hardheaded, side-by-side search for a fair agreement advantageous to each.

Like two shipwrecked sailors in a lifeboat at sea quarreling over limited rations and supplies, negotiators may begin by seeing each other as adversaries. Each may view the other as a hindrance. To survive, however, those two sailors will want to disentangle the objective problems from the people. They will want to identify the needs of each, whether for shade, medicine, water, or food. They will want to go further and treat the meeting of those needs as a shared problem, along with other shared problems like keeping watch, catching rainwater, and getting the lifeboat to shore. Seeing themselves as engaged in side-by-side efforts to solve a mutual problem, the sailors will become better

able to reconcile their conflicting interests as well as to advance their shared interests. Similarly with two negotiators. However difficult personal relations may be between us, you and I become better able to reach an amicable reconciliation of our various interests when we accept that task as a shared problem and face it jointly.

To help the other side change from a face-to-face orientation to side-by-side, you might raise the issue with them explicitly. "Look, we're both lawyers [diplomats, businessmen, family, etc.]. Unless we try to satisfy your interests, we are hardly likely to reach an agreement that satisfies mine, and vice versa. Let's look together at the problem of how to satisfy our collective interests." Alternatively, you could start treating the negotiation as a side-by-side process and by your actions make it desirable for them to join in.

It helps to sit literally on the same side of a table and to have in front of you the contract, the map, the blank pad of paper, or whatever else depicts the problem. If you have established a basis for mutual trust, so much the better. But however precarious your relationship may be, try to structure the negotiation as a side-by-side activity in which the two of you—with your different interests and perceptions, and your emotional involvement—jointly face a common task.

Separating the people from the problem is not something you can do once and forget about; you have to keep working at it. The basic approach is to deal with the people as human beings and with the problem on its merits. How to do the latter is the subject of the next three chapters.

### 3 Focus on Interests, Not Positions

Consider Mary Parker Follett's story of two men quarreling in a library. One wants the window open and the other wants it closed. They bicker back and forth about how much to leave it open: a crack, halfway, three-quarters of the way. No solution satisfies them both.

Enter the librarian. She asks one why he wants the window open: "To get some fresh air." She asks the other why he wants it closed: "To avoid the draft." After thinking a minute, she opens wide a window in the next room, bringing in fresh air without a draft.

#### **For a wise solution reconcile interests, not positions**

This story is typical of many negotiations. Since the parties' problem appears to be a conflict of positions, and since their goal is to agree on a position, they naturally tend to think and talk about positions—and in the process often reach an impasse.

The librarian could not have invented the solution she did if she had focused only on the two men's stated positions of wanting the window open or closed. Instead she looked to their underlying interests of fresh air and no draft. This difference between positions and interests is crucial.

**Interests define the problem.** The basic problem in a negotiation lies not in conflicting positions, but in the conflict between each side's needs, desires, concerns, and fears. The parties may say:

"I am trying to get him to stop that real estate development next door."

Or "We disagree. He wants \$300,000 for the house. I won't pay a penny more than \$250,000."

But on a more basic level the problem is:

"He needs the cash; I want peace and quiet."

Or "He needs at least \$300,000 to pay off the mortgage and put 20 percent down on his new house. I told my family that I wouldn't pay more than \$250,000 for a house."

Such desires and concerns are *interests*. Interests motivate people; they are the silent movers behind the hubbub of positions. Your position is something you have decided upon. Your interests are what caused you to so decide.

The Egyptian-Israeli peace treaty blocked out at the Camp David summit in 1978 demonstrates the usefulness of looking behind positions. Israel had occupied the Egyptian Sinai Peninsula since the Six Day War of 1967. When Egypt and Israel sat down together in 1978 to negotiate a peace, their positions were incompatible. Israel insisted on keeping some of the Sinai. Egypt, on the other hand, insisted that every inch of the Sinai be returned to Egyptian sovereignty. Time and again, people drew maps showing possible boundary lines that would divide the Sinai between Egypt and Israel. Compromising in this way was wholly unacceptable to Egypt. To go back to the situation as it was in 1967 was equally unacceptable to Israel.

Looking to their interests instead of their positions made it possible to develop a solution. Israel's interest lay in security; they did not want Egyptian tanks poised on their border ready to roll across at any time. Egypt's interest lay in sovereignty; the Sinai had been part of Egypt since the time of the Pharaohs. After centuries of domination by Greeks, Romans, Turks, French, and British, Egypt had only recently regained full sovereignty and was not about to cede territory to another foreign conqueror.

At Camp David, President Sadat of Egypt and Prime Minister Begin of Israel agreed to a plan that would return the Sinai to complete Egyptian sovereignty and, by demilitarizing large areas, would still assure Israeli security. The Egyptian flag would fly everywhere, but Egyptian tanks would be nowhere near Israel.

Reconciling interests rather than positions works for two reasons. First, for every interest there usually exist several possible positions that could satisfy it. All too often people simply adopt the most obvious position, as Israel did, for example, in announcing that they intended to keep part of the Sinai. When you do look behind opposed positions for the motivating interests, you can often find an alternative position that meets not only your interests but theirs as well. In the Sinai, demilitarization was one such alternative.

Reconciling interests rather than compromising between positions also works because behind opposed positions lie many more interests than conflicting ones.

**Behind opposed positions lie shared and compatible interests, as well as conflicting ones.** We tend to assume that because the other side's positions are opposed to ours, their interests must also be opposed. If we have an interest in defending ourselves, then they must want to attack us. If we have an interest in minimizing the rent, then their interest must be to maximize it. In many negotiations, however, a close examination of the underlying interests will reveal the existence of many more interests that are shared or compatible than ones that are opposed.

For example, look at the interests a tenant shares with a prospective landlord:

1. Both want stability. The landlord wants a stable tenant; the tenant wants a permanent address.
2. Both would like to see the apartment well maintained. The tenant is going to live there; the landlord wants to increase the value of the apartment as well as the reputation of the building.
3. Both are interested in a good relationship with each other. The landlord wants a tenant who pays the rent regularly; the tenant wants a responsive landlord who will carry out the necessary repairs.

They may also have interests that do not conflict but simply differ. For example:

1. The tenant may not want to deal with fresh paint, to which he is allergic. The landlord will not want to pay the costs of repainting all the other apartments.
2. The landlord would like the security of a down payment of the first month's rent, and he may want it by tomorrow. The tenant, knowing that this is a good apartment, may be indifferent on the question of paying tomorrow or later.

When weighed against these shared and divergent interests, the opposed interests in minimizing the rent and maximizing the return seem more manageable. The shared interests will likely result in a long lease, an agreement to share the cost of improving the apartment, and efforts by both parties to accommodate each other in the interest of a good relationship. The divergent interests may perhaps be reconciled by a down payment tomorrow and an agreement by the landlord to paint the apartment provided the tenant buys the paint. The precise amount of the rent is all that remains to be settled, and the market for rental apartments may define that fairly well.

Agreement is often made possible precisely because interests differ. You and a shoe-seller may both like money and shoes. Relatively, his interest in the fifty dollars exceeds his interest in a pair of shoes. For you, the situation is reversed: you like the shoes better than the fifty dollars. Hence the deal. Shared interests and differing but complementary interests can both serve as the building blocks for a wise agreement.

### **How do you identify interests?**

The benefit of looking behind positions for interests is clear. How to go about it is less clear. A position is likely to be concrete and explicit; the interests underlying it may well be unexpressed, intangible, and perhaps inconsistent. How do you go about understanding the interests involved in a negotiation, remembering that figuring out *their* interests will be at least as important as figuring out *yours*?

Ask "Why?" One basic technique is to put yourself in their shoes. Examine each position they take, and ask yourself "Why?" Why, for instance, does your landlord prefer to fix the rent—in a five-year lease—year by year? The answer you may come up with, to be protected against increasing costs, is probably one of his interests. You can also ask the landlord himself why he takes a particular position. If you do, make clear that you are asking not for justification of this position, but for an understanding of the needs, hopes, fears, or desires that it serves. "What's your basic concern, Mr. Peters, in wanting the lease to run for no more than three years?"

Ask "Why not?" Think about their choice. One of the most useful ways to uncover interests is first to identify the basic decision that those on the other side probably see you asking them for, and then to ask yourself why they have not made that decision. What interests of theirs stand in the way? If you are trying to change their minds, the starting point is to figure out where their minds are now.

Consider, for example, the negotiations between the United States and Iran in 1980 (shortly after the Islamic Revolution) over the release of the fifty-two U.S. diplomats and embassy personnel taken hostage in Tehran by student militants when the deposed Shah of Iran entered the United States for cancer treatment. The hostage-taking provoked international outrage, and the United States soon imposed sanctions, froze Iranian bank accounts, and allowed private lawsuits to target those assets. Within Iran, however, the students were seen as heroes by some and as politically useful by conservatives, who were seeking to displace more moderate elected officials.

While there were a host of serious obstacles to a resolution of this dispute, the problem is illuminated simply by looking at the choice of a typical student leader. The demand of the United States was clear: "Release the hostages." During much of 1980 each student leader's choice must have looked something like that illustrated by the balance sheet below.

AS OF: Spring 1980

**Currently Perceived Choice of:** An Iranian student leader

**Question Faced:** "Shall I press for immediate release of the American hostages?"

**If I say yes**

- I sell out the Revolution.
- I will be criticized as pro-American.
- The others will probably not agree with me (and I may lose power); if they do and we release the hostages, then:
- Iran looks weak.
- We back down to the U.S.
- We get nothing (no Shah, no money).
- We do not know what the U.S. will do.
- I may have to go back to class.

**But:**

- + There is a chance that economic sanctions might end.
- + Our relations with other nations, especially in Europe, may improve.

**If I say no**

- + I uphold the Revolution.
- + I will be praised for defending Islam.
- + We will probably all stick together.
- + We get fantastic TV coverage to tell the world about our grievances.
- + Iran looks strong.
- + We stand up to the U.S.
- + We have a chance of getting something (at least our money back).
- + The hostages provide some protection against U.S. intervention.
- + I remain an increasingly important political player.

**But:**

- Economic sanctions will no doubt continue.
- Our relations with other nations, especially in Europe, will suffer.
- Inflation and economic problems will continue.
- There is a risk that the U.S. might take military action (but a martyr's death is the most glorious).

**However:**

- + The U.S. may make further commitments about our money, nonintervention, ending sanctions, etc.
- + We can always release the hostages later.

If a typical student leader's choice did look even approximately like this, it is understandable why the militant students held the hostages so long: As outrageous and illegal as the original seizure was, once the hostages had been seized it was not irrational for the students to *keep* holding them from one day to the next, waiting for a more promising time to release them.

In constructing the other side's currently perceived choice the first question to ask is "Whose decision do I want to affect?" The second question is what decision people on the other side now see you asking them to make. If *you* have no idea what they think they are being called on to do, *they* may not either. That alone may explain why they are not deciding as you would like.

Now analyze the consequences, as the other side would probably see them, of agreeing or refusing to make the decision you are asking for. You may find a checklist of consequences such as the following helpful in this task:

*Impact on my interests*

- Will I lose or gain political support?
- Will colleagues criticize or praise me?

*Impact on the group's interests*

- What will be the short-term consequences? The long-term consequences?
- What will be the economic [political, legal, psychological, military, etc.] consequences?

- What will be the effect on outside supporters and public opinion?
- Will the precedent be good or bad?
- Will making this decision prevent doing something better?
- Is the action consistent with our principles? Is it "right"?
- Can I do it later if I want?

In this entire process it would be a mistake to try for great precision. Only rarely will you deal with a decision-maker who writes down and weighs the pros and cons. You are trying to understand a very human choice, not making a mathematical calculation.

**Realize that each side has multiple interests.** In almost every negotiation each side will have many interests, not just one. As a tenant negotiating a lease, for example, you may want to obtain a favorable rental agreement, to reach it quickly with little effort, and to maintain a good working relationship with your landlord. You will have not only a strong interest in *affecting* any agreement you reach, but also one in *effecting* an agreement. You will be simultaneously pursuing both your independent and your shared interests.

A common error in diagnosing a negotiating situation is to assume that each person on the other side has the same interests. This is almost never the case. In the 1960s during the Vietnam war, President Lyndon Johnson was in the habit of lumping together all the different members of the government of North Vietnam, the Vietcong resistance in the south, and their various Soviet and Chinese advisers and calling them all collectively "he." "The enemy has to learn that *he* can't cross the United States with impunity. *He* is going to have to learn that aggression doesn't pay." It will be difficult to influence any such "him" (or even "them") to agree to anything if you fail to appreciate the differing interests of the various people and factions involved.

Thinking of negotiation as a two-person, two-sided affair can be illuminating, but it should not blind you to the usual presence of other persons, other sides, and other influences. In one base-

ball salary negotiation the general manager kept insisting that \$500,000 was simply too much for a particular player, although other teams were paying at least that much to similarly talented players. In fact the manager felt his position was unjustifiable, but he had strict instructions from the club's owners to hold firm without explaining why, because they were in financial difficulties that they did not want the public to hear about.

Whether it is their employer, client, employees, colleagues, family, or spouse, all negotiators have a constituency to whose interests they are sensitive. To understand a negotiator's interests means to understand the variety of somewhat differing interests that they need to take into account.

**The most powerful interests are basic human needs.** In searching for the basic interests behind a declared position, look particularly for those bedrock concerns that motivate all people. If you can take care of such basic needs, you increase the chance both of reaching agreement and, if an agreement is reached, of the other side's keeping to it. Basic human needs include:

- security
- economic well-being
- a sense of belonging
- recognition
- control over one's life

As fundamental as they are, basic human needs are easy to overlook. In many negotiations, we tend to think that the only interest involved is money. Yet even in a negotiation over a monetary figure, such as the amount of alimony to be specified in a separation agreement, much more can be involved. What does a spouse really want in asking for \$1,000 a week in alimony? Certainly they are interested in economic well-being, but what else? Possibly they want the money in order to feel psychologically secure. They may also want it for recognition: to feel treated fairly and as an equal. Perhaps their partner can ill afford to pay

\$1,000 a week, and perhaps that is more than is actually needed, yet the spouse will likely accept less only if their need for security and recognition are met in other ways.

What is true for individuals remains equally true for groups and nations. Negotiations are not likely to make much progress as long as one side believes that the fulfillment of their basic human needs is being threatened by the other. In negotiations between the United States and Mexico, the United States wanted a low price for Mexican natural gas. Assuming that this was a negotiation over money, the U.S. Secretary of Energy refused to approve a price increase negotiated with the Mexicans by a U.S. oil consortium. Since the Mexicans had no other potential buyer at the time, he assumed that they would then lower their asking price. But the Mexicans had a strong interest not only in getting a good price for their gas but also in being treated with respect and a sense of equality. The U.S. action seemed like one more attempt to bully Mexico; it produced enormous anger. Rather than sell their gas, the Mexican government began to burn it off, and any chance of agreement on a lower price became politically impossible.

To take another example, in negotiations over the future of Northern Ireland, Protestant leaders long tended to ignore the Catholics' need for both belonging and recognition, for being accepted and treated as equals. In turn, Catholic leaders often appeared to give too little weight to the Protestants' need to feel secure. Treating Protestant fears as "their problem" rather than as a legitimate concern needing attention made it even more difficult to negotiate a solution.

**Make a list.** To sort out the various interests of each side, it helps to write them down as they occur to you. This will not only help you remember them; it will also enable you to improve the quality of your assessment as you learn new information and to place interests in their estimated order of importance. Furthermore, it may stimulate ideas for how to meet these interests.



### Talking about interests

The purpose of negotiating is to serve your interests. The chance of that happening increases when you communicate them. The other side may not know what your interests are, and you may not know theirs. One or both of you may be focusing on past grievances instead of on future concerns. Or you may not even be listening to each other. How do you discuss interests constructively without getting locked into rigid positions?

If you want the other side to take your interests into account, explain to them what those interests are. A member of a concerned citizens' group complaining about a construction project in the neighborhood should talk explicitly about such issues as ensuring children's safety and getting a good night's sleep. An author who wants to be able to give a great many of his books away should discuss the matter with his publisher. The publisher has a shared interest in promotion and may be willing to offer the author a low price.

**Make your interests come alive.** If you go with a raging ulcer to see a doctor, you should not hope for much relief if you describe it as a mild stomachache. It is your job to have the other side understand exactly how important and legitimate your interests are.

One guideline is *be specific*. Concrete details not only make your description credible, they add impact. For example: "Three times in the last week, a child was almost run over by one of your trucks. About eight-thirty Tuesday morning that huge red gravel truck of yours, going north at almost forty miles an hour, had to swerve and barely missed hitting seven-year-old Loretta Johnson."

As long as you do not seem to imply that the other side's interests are unimportant or illegitimate, you can afford to take a strong stance in setting forth the seriousness of your concerns. Inviting the other side to "correct me if I'm wrong" shows your openness, and if they do not correct you, it implies that they accept your description of the situation.

Part of the task of impressing the other side with your interests lies in establishing the legitimacy of those interests. You want them to feel not that you are attacking them personally, but rather that the problem you face legitimately demands attention. You need to convince them that they might well feel the same way if they were in your shoes. "Do you have children? How would you feel if trucks were hurtling at forty miles per hour down the street where you live?"

**Acknowledge their interests as part of the problem.** Each of us tends to be so concerned with his or her own interests that we pay too little heed to the interests of others.

People listen better if they feel that you have understood them. They tend to think that those who understand them are intelligent and sympathetic people whose own opinions may be worth listening to. So if you want the other side to appreciate *your* interests, begin by demonstrating that you appreciate *theirs*.

"As I understand it, your interests as a construction company are basically to get the job done quickly at minimum cost and to preserve your reputation for safety and responsibility in the city. Have I understood you correctly? Do you have other important interests?"

In addition to demonstrating that you have understood their interests, it helps to acknowledge that their interests are part of the overall problem you are trying to solve. This is especially easy to do if you have shared interests: "It would be terrible for all of us if one of your trucks hit a child."

**Put the problem before your answer.** In talking to someone who represents a construction company, you might say, "We believe you should build a fence around the project within forty-eight hours and beginning immediately should restrict the speed of your trucks on Oak Street to fifteen miles per hour. Now let me tell you why. . . ." If you do, you can be quite certain that the representatives will not be listening to the reasons. They have heard your position and are no doubt busy preparing arguments against it. They probably were disturbed by your tone or by the suggestion itself. As a result, your justification will slip by them altogether.

If you want someone to listen and understand your reasoning, give your interests and reasoning first and your conclusions or proposals later. Tell the company first about the dangers they are creating for young children and about your sleepless nights. Then they will be listening carefully, if only to try to figure out where you will end up on this question. And when you tell them, they will understand why.

**Look forward, not back.** It is surprising how often we simply react to what someone else has said or done. Two people will often fall into a pattern of discourse that resembles a negotiation, but really has no such purpose whatsoever. They disagree with each other over some issue, and the talk goes back and forth as though they were seeking agreement. In fact, the argument is being carried on as a ritual, or simply a pastime. Each is engaged in scoring points against the other or in gathering evidence to confirm views about the other that have long been held and are not about to change. Neither party is seeking agreement or is even trying to influence the other.

If you ask two people why they are arguing, the answer will typically identify a cause, not a purpose. Caught up in a quarrel, whether between husband and wife, between company and union, or between two businesses, people are more likely to respond to what the other side has said or done than to act in pursuit of their own long-term interests. "They can't treat me like that. If they think they're going to get away with that, they will have to think again. I'll show them."

The question "Why?" has two quite different meanings. One looks backward for a cause and treats our behavior as determined by prior events. The other looks forward for a purpose and treats our behavior as subject to our free will. We need not enter into a philosophical debate between free will and determinism in order to decide how to act. Either we have free will or it is determined that we behave as if we do. In either case, we make choices. We can *choose* to look back or to look forward.

You will satisfy your interests better if you talk about where you would like to go rather than about where you have come

from. Instead of arguing with the other side about the past—about last quarter's costs (which were too high), last week's action (taken without adequate authority), or yesterday's performance (which was less than expected)—talk about what you want to have happen in the future. Instead of asking them to justify what they did yesterday, ask, "Who should do what tomorrow?"

**Be concrete but flexible.** In a negotiation you want to know where you are going and yet be open to fresh ideas. To avoid having to make a difficult decision on what to settle for, people will often go into a negotiation with no plan other than to sit down with the other side and see what they offer or demand.

How can you move from identifying interests to developing specific options and still remain flexible with regard to those options? To convert your interests into concrete options, ask yourself, "If tomorrow the other side agrees to go along with me, what do I now think I would like them to go along with?" To keep your flexibility, treat each option you formulate as simply illustrative. Think in terms of more than one option that meets your interests. "Illustrative specificity" is the key concept.

Much of what positional bargainers hope to achieve with an opening position can be accomplished equally well with an illustrative suggestion that generously takes care of your interest. For example, in a sports contract negotiation, an agent might say that "\$5,000,000 a year would be the kind of figure that should satisfy Henderson's interest in receiving the salary he feels he is worth. Something on the order of a five-year contract should meet his need for job security."

Having thought about your interests, you should go into a meeting not only with one or more specific options that would meet your legitimate interests but also with an open mind. An open mind is not an empty one.

**Be hard on the problem, soft on the people.** You can be just as hard in talking about your interests as any negotiator can be in talking about their position. In fact, it is usually advisable to be hard. It may not be wise to commit yourself to your position, but it is wise to commit yourself to your interests. This is

the place in a negotiation to spend your aggressive energies. The other side, being concerned with their own interests, will tend to have overly optimistic expectations of the range of possible agreements. Often the wisest solutions, those that produce the maximum gain for you at the minimum cost to the other side, are produced only by strongly advocating your interests. Two negotiators, each pushing hard for their interests, will often stimulate each other's creativity in thinking up mutually advantageous solutions.

The construction company, concerned with inflation, may place a high value on its interest in keeping costs down and in getting the job done on time. You may have to shake them up. Some honest emotion may help restore a better balance between profits and children's lives. Do not let your desire to be conciliatory stop you from doing justice to your problem. "Surely you're not saying that my son's life is worth less than the price of a fence. You wouldn't say that about your son. I don't believe you're an insensitive person, Mr. Jenkins. Let's figure out how to solve this problem."

If they feel personally threatened by an attack on the problem, they may grow defensive and may cease to listen. This is why it is important to separate the people from the problem. Attack the problem without blaming the people. Go even further and be personally supportive: Listen to them with respect, show them courtesy, express your appreciation for their time and effort, emphasize your concern with meeting their basic needs, and so on. Show them that you are attacking the *problem*, not them.

One useful rule of thumb is to give positive support to the human beings on the other side equal in strength to the vigor with which you emphasize the problem. This combination of support and attack may seem inconsistent. Psychologically, it is; the inconsistency helps make it work. A well-known theory of psychology, the theory of cognitive dissonance, holds that people dislike inconsistency and will act to eliminate it. By attacking a problem, such as speeding trucks on a neighborhood street, and at the same time giving the company representative, Mr. Jenkins, positive support, you create cognitive dissonance for him. To overcome this

dissonance, he will be tempted to dissociate himself from the problem in order to join you in doing something about it.

Fighting hard on the substantive issues increases the pressure for an effective solution; giving support to the human beings on the other side tends to improve your relationship and to increase the likelihood of reaching agreement. It is the combination of support and attack that works; either alone is likely to be insufficient.

Negotiating hard for your interests does not mean being closed to the other side's point of view. Quite the contrary. You can hardly expect the other side to listen to your interests and discuss the options you suggest if you don't take their interests into account and show yourself to be open to their suggestions. Successful negotiation requires being both firm *and* open.

## 4 Invent Options for Mutual Gain

The case of Israel and Egypt negotiating over who should keep how much of the Sinai Peninsula illustrates both a major problem in negotiation and a key opportunity.

The problem is a common one. There seems to be no way to split the pie that leaves both parties satisfied. Often you are negotiating along a single dimension, such as the amount of territory, the price of a car, the length of a lease on an apartment, or the size of a commission on a sale. At other times you face what appears to be an either/or choice that is either markedly favorable to you or to the other side. In a divorce settlement, who gets the house? Who gets custody of the children? You may see the choice as one between winning and losing—and neither side will agree to lose. Even if you do win and get the car for \$15,000, the lease for five years, or the house and kids, you have a sinking feeling that they will not let you forget it. Whatever the situation, your choices seem limited.

The Sinai example also makes clear the opportunity. A creative option like a demilitarized Sinai can often make the difference between deadlock and agreement. One lawyer we know attributes his success directly to his ability to invent solutions advantageous to both his client and the other side. He expands the pie before dividing it. Skill at inventing options is one of the most useful assets a negotiator can have.

Yet all too often negotiators end up like the proverbial children who quarreled over an orange. After they finally agreed to

divide the orange in half, the first child took one half, ate the fruit, and threw away the peel, while the other threw away the fruit and used the peel from the second half in baking a cake. All too often negotiators “leave money on the table”—they fail to reach agreement when they might have, or the agreement they do reach could have been better for each side. Too many negotiations end up with half an orange for each side instead of the whole fruit for one and the whole peel for the other. Why?

### DIAGNOSIS

As valuable as it is to have many options, people involved in a negotiation rarely sense a need for them. In a dispute, people usually believe that they know the right answer—their view should prevail. In a contract negotiation they are equally likely to believe that their offer is reasonable and should be adopted, perhaps with some adjustment in the price. All available answers appear to lie along a straight line between their position and yours. Often the only creative thinking shown is to suggest splitting the difference.

In most negotiations there are four major obstacles that inhibit the inventing of an abundance of options: (1) premature judgment; (2) searching for the single answer; (3) the assumption of a fixed pie; and (4) thinking that “solving their problem is their problem.” To overcome these constraints, you need to understand them.

#### Premature judgment

Inventing options does not come naturally. *Not* inventing is the normal state of affairs, even when you are outside a stressful negotiation. If you were asked to name the one person in the world most deserving of the Nobel Peace Prize, any answer you might start to propose would immediately encounter your reservations and doubts. How could you be sure that that person was the *most* deserving? Your mind might well go blank, or you

goal becomes to advance an idea that no one will shoot down. If, on the other hand, wild ideas are encouraged, even those that in fact lie well outside the realm of the possible, the group may generate from these ideas other options that *are* possible and that no one would previously have considered.

Other ground rules you may want to adopt are to make the entire session off the record and to refrain from attributing ideas to any participant.

3. *Brainstorm.* Once the purpose of the meeting is clear, let your imaginations go. Try to come up with a long list of ideas, approaching the question from every conceivable angle.

4. *Record the ideas in full view.* Recording ideas either on a whiteboard or flipcharts gives the group a tangible sense of collective achievement; it reinforces the no-criticism rule; it reduces the tendency to repeat; and it helps stimulate other ideas.

#### After brainstorming:

1. *Star the most promising ideas.* After brainstorming, relax the no-criticism rule to begin winnowing out the most promising ideas. You are still not at the stage of deciding; you are merely nominating ideas worth developing further. Mark those ideas that members of the group think are best.

2. *Invent improvements for promising ideas.* Take one promising idea and invent ways to make it better and more realistic, as well as ways to carry it out. The task at this stage is to make the idea as attractive as you can. Preface constructive criticism with: "What I like best about that idea is . . . . Might it be even better if . . . ?"

3. *Set up a time to evaluate ideas and decide.* Before you break, draw up a selective and improved list of ideas from the session and set up a time for deciding which of these ideas to advance in your negotiation and how.

Consider brainstorming with the other side. Although more difficult than brainstorming with your own side, brainstorming with people from the other side can also prove extremely valu-

able. It is more difficult because of the increased risk that you will say something that prejudices your interests despite the rules established for a brainstorming session. You may disclose confidential information inadvertently or lead the other side to mistake an option you devise for an offer. Nevertheless, joint brainstorming sessions have the great advantages of producing ideas that take into account the interests of all those involved, of creating a climate of joint problem-solving, and of educating each side about the concerns of the other.

To protect yourself when brainstorming with the other side, distinguish the brainstorming session explicitly from a negotiating session where people state official views and speak on the record. People are so accustomed to meeting for the purpose of reaching agreement that any other purpose needs to be clearly stated.

To reduce the risk of appearing committed to any given idea, you can make a habit of advancing at least two alternatives at the same time. You can also put on the table options with which you obviously disagree. "I could give you the house for nothing, or you could pay me a million dollars in cash for it, or . . ." Since you are plainly not proposing either of these ideas, the ones that follow are labeled as mere possibilities, not proposals.

To get the flavor of a joint brainstorming session, let us suppose the leaders of a local union are meeting with the management of a coal mine to brainstorm on ways to reduce unauthorized one- or two-day strikes. Ten people—five from each side—are present, sitting around a table facing a whiteboard. A neutral facilitator asks the participants for their ideas, and writes them up on the whiteboard.

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**Facilitator:** OK, now let's see what ideas you have for dealing with this problem of unauthorized work stoppages. Let's try to get ten ideas on the whiteboard in five minutes. OK, let's start. Tom?

**Tom (Union):** Foremen ought to be able to settle a union member's grievance on the spot.

**Facilitator:** Good, I've got it down. Jim, you've got your hand up.

**Jim (Management):** A union member ought to talk to his foreman about a problem before taking any action that—

**Tom (Union):** They do, but the foremen don't listen.

**Facilitator:** Tom, please, no criticizing yet. We agreed to postpone that until later, OK? How about you, Jerry? You look like you've got an idea.

**Jerry (Union):** When a strike issue comes up, the union members should be allowed to meet in the bathhouse immediately.

**Roger (Management):** Management could agree to let the bathhouse be used for union meetings and could assure the employees' privacy by shutting the doors and keeping the foremen out.

**Carol (Management):** How about adopting the rule that there will be no strike without giving the union leaders and management a chance to work it out on the spot?

**Jerry (Union):** How about speeding up the grievance procedure and having a meeting within twenty-four hours if the foreman and union member don't settle it between themselves?

**Karen (Union):** Yeah. And how about organizing some joint training for the union members and the foremen on how to handle their problems together?

**Phil (Union):** If a person does a good job, let him know it.

**John (Management):** Establish friendly relations between union people and management people.

**Facilitator:** That sounds promising, John, but could you be more specific?

**John (Management):** Well, how about organizing a union-management softball team?

**Tom (Union):** And a bowling team too.

**Roger (Management):** How about an annual picnic get-together for all the families?

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And on it goes, as the participants brainstorm lots of ideas. Many of the ideas might never have come up except in such a brainstorming session, and some of them may prove effective in

reducing unauthorized strikes. Time spent brainstorming together is surely among the best-spent time in negotiation.

But whether you brainstorm together or not, separating the act of developing options from the act of deciding on them is extremely useful in any negotiation. Discussing options differs radically from taking positions. Whereas one side's position will conflict with another's, options invite other options. The very language you use differs. It consists of questions, not assertions; it is open, not closed: "One option is . . . . What other options have you thought of?" "What if we agreed to this?" "How about doing it this way?" "How would this work?" "What would be wrong with that?" Invent before you decide.

### Broaden your options

Even with the best of intentions, participants in a brainstorming session are likely to operate on the assumption that they are really looking for the *one* best answer, trying to find a needle in a haystack by picking up every blade of hay.

At this stage in a negotiation, however, you should not be looking for the right path. You are developing room within which to negotiate. Room can be made only by having a substantial number of markedly different ideas—ideas on which you and the other side can build later in the negotiation, and among which you can then jointly choose.

A vintner making a fine wine chooses his grapes from a number of varieties. A sports team looking for star players will send talent scouts to scour the local leagues and college teams all over the nation. The same principle applies to negotiation. The key to wise decision-making, whether in wine-making, sports, or negotiation, lies in selecting from a great number and variety of options.

If you were asked who should receive the Nobel Peace Prize this year, you would do well to answer "Well, let's think about it" and generate a list of about a hundred names from diplomacy, business, journalism, religion, law, agriculture, politics, academia,

tive editor for your book, you might suggest: "How about editing the first chapter for \$300, and we'll see how it goes?" Agreements may be partial, involve fewer parties, cover only selected subject matters, apply only to a certain geographical area, or remain in effect for only a limited period of time.

It is also provocative to ask how the subject matter might be enlarged so as to "sweeten the pot" and make agreement more attractive. The dispute between India and Pakistan over the waters of the Indus River became more amenable to settlement when the World Bank entered the discussions; the parties were challenged to invent new irrigation projects, new storage dams, and other engineering works for the benefit of both nations, all to be funded with the assistance of the Bank.

### Look for mutual gain

The third major block to creative problem-solving lies in the assumption of a fixed pie: the less for you, the more for me. Rarely if ever is this assumption true. First of all, both sides can always be worse off than they are now. Chess looks like a zero-sum game; if one loses, the other wins—until a dog trots by and knocks over the table, spills the beer, and leaves you both worse off than before.

Even apart from a shared interest in averting joint loss, there almost always exists the possibility of joint gain. This may take the form of developing a mutually advantageous relationship, or of satisfying the interests of each side with a creative solution.

**Identify shared interests.** In theory it is obvious that shared interests help produce agreement. By definition, inventing an idea that meets shared interests is good for you and good for them. In practice, however, the picture seems less clear. In the middle of a negotiation over price, shared interests may not appear obvious or relevant. How then can looking for shared interests help?

Let's take an example. Suppose you are the manager of an oil refinery. Call it Townsend Oil. The mayor of Pageville, the city

where the refinery is located, has told you he wants to raise the taxes Townsend Oil pays to Pageville from two million dollars a year to four million. You have told him that you think two million a year is quite sufficient. The negotiation stands there: he wants more, you want to pay what you have been paying. In this negotiation, a typical one in many ways, where do shared interests come into play?

Let's take a closer look at what the mayor wants. He wants money—money undoubtedly to pay for city services, a new civic center, perhaps, and to relieve the ordinary taxpayers. But the city cannot obtain all the money it needs for now and for the future just from Townsend Oil. They will look for money from the petrochemical plant across the street, for example, and, for the future, from new businesses and from the expansion of existing businesses. The mayor, a businessman himself, would also like to encourage industrial expansion and attract new businesses that will provide new jobs and strengthen Pageville's economy.

What are your company's interests? Given the rapid changes in the technology of refining oil, and the antiquated condition of your refinery, you are presently considering a major refurbishment and expansion of the plant. You are concerned that the city may later increase its assessment of the value of the expanded refinery, thus making taxes even higher. Consider also that you have been encouraging a plastics plant to locate itself nearby to make convenient use of your product. Naturally, you worry that the plastics plant will have second thoughts once they see the city increasing taxes.

The shared interests between the mayor and you now become more apparent. You both agree on the goals of fostering industrial expansion and encouraging new industries. If you did some inventing to meet these shared goals, you might come up with several ideas: a tax holiday of seven years for new industries, a joint publicity campaign with the Chamber of Commerce to attract new companies, a reduction in taxes for existing industries that choose to expand. Such ideas might save you money while still

filling the city's coffers. If on the other hand the negotiation soured the relationship between company and town, both would lose. You might cut back on your corporate contributions to city charities and school athletics. The city might become unreasonably tough in enforcing the building code and other ordinances. Your personal relationship with the city's political and business leaders might grow unpleasant. The relationship between the sides, often taken for granted and overlooked, frequently outweighs in importance the outcome of any particular issue.

As a negotiator, you will almost always want to look for solutions that will leave the other side satisfied as well. If the customer feels cheated in a purchase, the store owner has also failed; he may lose a customer and his reputation may suffer. An outcome in which the other side gets absolutely nothing is worse for you than one that leaves them mollified. In almost every case, your satisfaction depends to a degree on making the other side sufficiently content with an agreement to want to live up to it.

Three points about shared interests are worth remembering. First, shared interests lie latent in every negotiation. They may not be immediately obvious. Ask yourself: Do we have a shared interest in preserving our relationship? What opportunities lie ahead for cooperation and mutual benefit? What costs would we bear if negotiations broke off? Are there common principles, like a fair price, that we both can respect?

Second, shared interests are opportunities, not godsend. To be of use, you need to make something out of them. It helps to make a shared interest explicit and to formulate it as a shared *goal*. In other words, make it concrete and future-oriented. As manager of Townsend Oil, for example, you could set a joint goal with the mayor of bringing five new industries into Pageville within three years. The tax holiday for new industries would then represent not a concession by the mayor to you but an action in pursuit of your shared goal.

Third, stressing your shared interests can make the negotiation smoother and more amicable. Passengers in a lifeboat afloat

in the middle of the ocean with limited rations will subordinate their differences over food in pursuit of their shared interest in getting to shore.

**Dovetail differing interests.** Consider once again the two children quarreling over an orange. Each child wanted the orange, so they split it, failing to realize that one wanted only the fruit to eat and the other only the peel for baking. In this case as in many others, a satisfactory agreement is made possible because each side wants *different* things. This is genuinely startling if you think about it. People generally assume that differences between two parties create the problem. Yet differences can also lead to a solution.

Agreement is often based on disagreement. It is as absurd to think, for example, that you should always begin by reaching agreement on the facts as it is for a buyer of stock to try to convince the seller that the stock is likely to go up. If they did agree that the stock would go up, the seller would probably not sell. What makes a deal likely is that the buyer believes the price will go up and the seller believes it will go down. The difference in belief provides the basis for a deal.

Many creative agreements reflect this principle of reaching agreement through differences. Differences in interests and belief make it possible for an item to be of high benefit to you, yet low cost to the other side. Consider the nursery rhyme:

Jack Sprat could eat no fat  
His wife could eat no lean,  
And so betwixt them both  
They licked the platter clean.

The kinds of differences that best lend themselves to dovetailing are differences in interests, in beliefs, in the value placed on time, in forecasts, and in aversion to risk.

*Any difference in interests?* The following brief checklist suggests common variations in interest to look for:



**One party  
cares more about:**

Form  
Economic considerations  
Internal considerations  
Symbolic considerations  
Immediate future  
Ad hoc results  
Hardware  
Progress  
Precedent  
Prestige, reputation  
Political points

**The other party  
cares more about:**

Substance  
Political considerations  
External considerations  
Practical considerations  
More distant future  
The relationship  
Ideology  
Respect for tradition  
This case  
Results  
Group welfare

*Different beliefs?* If I believe I'm right, and you believe you're right, we can take advantage of this difference in beliefs. We may both agree to have an impartial arbitrator settle the issue, each confident of victory. If two factions of the union leadership cannot agree on a certain wage proposal, they can agree to submit the issue to a membership vote.

*Different values placed on time?* You may care more about the present while the other side cares more about the future. In the language of business, you discount future value at different rates. An installment plan works on this principle. The buyer is willing to pay a higher price for a car if it is possible to pay over time; the seller is willing to accept payment later for a higher price.

*Different forecasts?* In a salary negotiation between an aging football star and a major team, the player may expect to win a lot of games while the team owner has the opposite expectation. Taking advantage of these different expectations, they might both agree on a modest base salary plus a big bonus if the team makes the playoffs.

*Differences in aversion to risk?* One last kind of difference that you may capitalize on is aversion to risk. Take, for example,

the issue of deep-seabed mining that arose in international Law of the Sea negotiations. How much should mining companies pay the international community for the privilege of mining minerals from the seabed in international waters? The mining companies care more about avoiding big losses than they do about making big gains. For them deep-seabed mining is a major investment. They want to reduce the risk. The international community, on the other hand, is concerned with revenue. If some company is going to make a lot of money out of "the common heritage of mankind," the rest of the world wants a generous share.

In this difference lies the potential for a bargain advantageous to both sides. Risk can be traded for revenue. Exploiting this difference in aversion to risk, the resulting treaty provides for charging the companies low rates until they recover their investment—in other words, while their risk is high—and much higher rates thereafter, when their risk is low.

*Ask for their preferences.* One way to dovetail interests is to invent several options all equally acceptable to you and ask the other side which one they prefer. You want to know what is preferable, not necessarily what is acceptable. You can then take that option, work with it some more, and again present two or more variants, asking which one they prefer. In this way, without anyone's making a decision, you can improve a plan until you can find no more joint gains. For example, the agent for the sports star might ask the team owner: "What meets your interests better, a salary of \$8.75 million a year for four years, or \$10 million a year for three years? The latter? OK, how about between that and \$7.5 million a year for three years with a \$10 million bonus in each year that Fernando is voted MVP or the team wins the championship?"

If dovetailing had to be summed up in one sentence, it would be: Look for items that are of low cost to you and high benefit to them, and vice versa. Differences in interests, priorities, beliefs, forecasts, and attitudes toward risk all make dovetailing possible. A negotiator's motto could be "*Vive la différence!*"

### Make their decision easy

Since success for you in a negotiation depends upon the other side's making a decision you want, you should do what you can to make that decision an easy one. Rather than make things difficult for the other side, you want to confront them with a choice that is as painless as possible. Impressed with the merits of their own case, people usually pay too little attention to ways of advancing their case by taking care of interests on the other side. To overcome the shortsightedness that results from looking too narrowly at one's immediate self-interest, you will want to put yourself in their shoes. Without some option that appeals to them, there is likely to be no agreement at all.

**Whose shoes?** Are you trying to influence a single negotiator, an absent boss, or some committee or other collective decision-making body? You cannot negotiate successfully with an abstraction like "Houston" or "the University of California." Instead of trying to persuade "the insurance company" to make a decision, it is wiser to focus your efforts on getting one claims agent to make a recommendation. However complex the other side's decisional process may seem, you will understand it better if you pick one person—probably the person with whom you are dealing—and see how the problem looks from his or her point of view.

By focusing on one person you are not ignoring complexities. Rather, you are handling them by understanding how they impinge on the person with whom you are negotiating. You may come to appreciate your negotiating role in a new light, and see your job, for example, as strengthening that person's hand or giving her arguments that she will need to persuade others to go along. One British ambassador described his job as "helping my opposite number get new instructions." If you place yourself firmly in the shoes of your opposite number, you will understand his problem and what kind of options might solve it.

**What decision?** In Chapter 2 we discussed how one can understand the other side's interests by analyzing their currently perceived choice. Now you are trying to generate options that

will so change their choice that they might then decide in a way satisfactory to you. Your task is to give them not a problem but an answer, to give them not a tough decision but an easy one. It is crucial in that process to focus your attention on the content of the decision itself. That decision is often impeded by uncertainty.

Frequently you want as much as you can get, but you yourself do not know how much that is. You are likely to say, in effect, "Come up with something and I will tell you if it is enough." That may seem reasonable to you, but when you look at it from the other's point of view, you will understand the need to invent a more appealing request. For whatever they do or say, you are likely to consider that merely a floor—and ask for more. Requesting the other side to be "more forthcoming" will probably not produce a decision you want.

Many negotiators are uncertain whether they are asking for words or for performance. Yet the distinction is critical. If it is performance you want, do not add something for "negotiating room." If you want a horse to jump a fence, don't raise the fence. If you want to sell a soft drink from a vending machine for \$2.00, don't mark the price at \$2.50 to give yourself room to negotiate.

Most of the time you will want a promise—an agreement. Take a pencil and paper in hand and try drafting a few possible agreements. It is never too early in a negotiation to start drafting as an aid to clear thinking. Prepare multiple versions, starting with the simplest possible. What are some terms that the other party could sign, terms that would be attractive to them as well as to you? Can you reduce the number of people whose approval would be required? Can you formulate an agreement that will be easy for them to implement? The other side will take into account difficulties in carrying out an agreement; you should too.

It is usually easier, for example, to refrain from doing something not being done than to stop action already underway. And it is easier to cease doing something than to undertake an entirely new course of action. If workers want music on the job, it will be easier for the company to agree not to interfere for a few weeks

with an experimental employee-run program than for the company to agree to run such a program.

Because most people are strongly influenced by their notions of legitimacy, one effective way to develop solutions easy for the other side to accept is to shape them so that they will appear legitimate. The other side is more likely to accept a solution if it seems the right thing to do—right in terms of being fair, legal, honorable, and so forth.

Few things facilitate a decision as much as precedent. Search for it. Look for a decision or statement that the other side may have made in a similar situation, and try to base a proposed agreement on it. This provides an objective standard for your request and makes it easier for them to go along. Recognizing their probable desire to be consistent, thinking about what they have already done or said will help you generate options acceptable to you that also take their point of view into account.

**Making threats is not enough.** In addition to the content of the decision you would like them to make, you will want to consider from their point of view the consequences of following that decision. If you were they, what results would you most fear? What would you hope for?

We often try to influence others by threats and warnings of what will happen if they do not decide as we would like. Offers are usually more effective. Concentrate both on making them aware of the consequences they can expect if they do decide as you wish and on improving those consequences from their point of view. How can you make your offers more credible? What are some specific things that they might like? Would they like to be given credit for having made the final proposal? Would they like to make the announcement? What can you invent that might be attractive to them but low in cost to yourself?

To evaluate an option from the other side's point of view, consider how they might be criticized if they adopted it. Write out a sentence or two illustrating what the other side's most powerful critic might say about the decision you are thinking of asking for. Then write out a couple of sentences with which the other

side might reply in defense. Such an exercise will help you appreciate the restraints within which the other side is negotiating. It should help you generate options that will adequately meet their interests so that they can make a decision that meets yours.

A final test of an option is to write it out in the form of a "yesable proposition." Try to draft a proposal to which their responding with the single word "yes" would be sufficient, realistic, and operational. When you can do so, you will have reduced the risk that your immediate self-interest has blinded you to the necessity of meeting concerns of the other side.

In a complex situation, creative inventing is an absolute necessity. In any negotiation it may open doors and produce a range of potential agreements satisfactory to each side. Therefore, generate many options before selecting among them. Invent first; decide later. Look for shared interests and differing interests to dovetail. And seek to make their decision easy.

## 5 Insist on Using Objective Criteria

However well you understand the interests of the other side, however ingeniously you invent ways of reconciling interests, however highly you value an ongoing relationship, you will almost always face the harsh reality of interests that conflict. No talk of “win-win” strategies can conceal that fact. You want the rent to be lower; the landlord wants it to be higher. You want the goods delivered tomorrow; the supplier would rather deliver them next week. You definitely prefer the large office with the view; so does your partner. Such differences cannot be swept under the rug.

### Deciding on the basis of will is costly

Typically, negotiators try to resolve such conflicts by positional bargaining—in other words, by talking about what they are willing and unwilling to accept. One negotiator may demand substantive concessions simply because he insists upon them: “The price is \$5,000 and that’s that.” Another may make a generous offer, hoping to gain approval or friendship. Whether the situation becomes a contest over who can be the most stubborn or a contest over who can be the most generous, this negotiating process focuses on what each side is willing to agree to. The outcome results from the interaction of two human wills—almost as if the negotiators were living on a desert island, with no history, no customs, and no moral standards.

As discussed in Chapter 1, trying to reconcile differences on the basis of will has serious costs. No negotiation is likely to be

efficient or amicable if you pit your will against theirs, and either you have to back down or they do. And whether you are choosing a place to eat, organizing a business, or negotiating custody of a child, you are unlikely to reach a wise agreement as judged by any objective standard if you take no such standard into account.

If trying to settle differences of interest on the basis of will has such high costs, the solution is to negotiate on some basis *independent* of the will of either side—that is, on the basis of objective criteria.

### The case for using objective criteria

Suppose you have entered into a fixed-price construction contract for your house that calls for reinforced concrete foundations but fails to specify how deep they should be. The contractor suggests two feet. You think five feet is closer to the usual depth for your type of house.

Now suppose the contractor says: “I went along with you on steel girders for the roof. It’s your turn to go along with me on shallower foundations.” No owner in his right mind would yield. Rather than horse-trade, you would insist on deciding the issue in terms of objective safety standards. “Look, maybe I’m wrong. Maybe two feet is enough. What I want are foundations strong and deep enough to hold up the building safely. Does the government have standard specifications for these soil conditions? How deep are the foundations of other buildings in this area? What is the earthquake risk here? Where do you suggest we look for standards to resolve this question?”

It is no easier to build a good contract than it is to build strong foundations. If relying on objective standards applies so clearly to a negotiation between the house owner and a contractor, why not to business deals, collective bargaining, legal settlements, and international negotiations? Why not insist that a negotiated price, for example, be based on some standard such as market value, replacement cost, depreciated book value, or competitive prices, instead of whatever the seller demands?

In short, the approach is to commit yourself to reaching a solution based on principle, not pressure. Concentrate on the merits of the problem, not the mettle of the parties. Be open to reason, but closed to threats.

**Principled negotiation produces wise agreements amicably and efficiently.** The more you bring standards of fairness, efficiency, or scientific merit to bear on your particular problem, the more likely you are to produce a final package that is wise and fair. The more you and the other side refer to precedent and community practice, the greater your chance of benefiting from past experience. And an agreement consistent with precedent is less vulnerable to attack. If a lease contains standard terms or if a sales contract conforms to practice in the industry, there is less risk that either negotiator will feel that he was harshly treated or will later try to repudiate the agreement.

A constant battle for dominance threatens a relationship; principled negotiation protects it. It is far easier to deal with people when both of you are discussing objective standards for settling a problem instead of trying to force each other to back down.

Approaching agreement through discussion of objective criteria also reduces the number of commitments that each side must make and then unmake as they move toward agreement. In positional bargaining, negotiators spend much of the time defending their position and attacking the other side's. People using objective criteria tend to use time more efficiently talking about possible standards and solutions.

Independent standards are even more important to efficiency when more parties are involved. In such cases positional bargaining is difficult at best. It requires coalitions among parties; and the more parties who have agreed on a position, the more difficult it becomes to change that position. Similarly, if each negotiator has a constituency or has to clear a position with a higher authority, the task of adopting positions and then changing them becomes time-consuming and difficult.

An episode during the Law of the Sea negotiations illustrates the merits of using objective criteria. At one point, India, repre-

senting the Third World bloc, proposed an initial fee for companies mining in the deep seabed of \$60 million per site. The United States rejected the proposal, suggesting there be no initial fee. Both sides dug in; the matter became a contest of will.

Then someone discovered that the Massachusetts Institute of Technology (MIT) had developed a model for the economics of deep-seabed mining. This model, gradually accepted by the parties as objective, provided a way of evaluating the impact of any fee proposal on the economics of mining. When the Indian representative asked about the effect of his proposal, he was shown how the tremendous fee he proposed—payable five years before the mine would generate any revenue—would make it virtually impossible for a company to mine. Impressed, he announced that he would reconsider his position. On the other side, the MIT model helped educate the American representatives, whose information on the subject had been mostly limited to that provided by the mining companies. The model indicated that some initial fee was economically feasible. As a result, the United States also changed its position.

No one backed down; no one appeared weak—just reasonable. After a lengthy negotiation, the parties reached a tentative agreement that was mutually satisfactory.

The MIT model increased the chance of agreement and decreased costly posturing. It led to a better solution, one that would both attract companies to do mining *and* generate considerable revenue for the nations of the world. The existence of an objective model able to forecast the consequences of any proposal helped convince the parties that the tentative agreement they reached was fair. This in turn strengthened relationships among the negotiators and made it more likely an agreement would endure.\*

\* For more interesting examples from the Law of the Sea negotiations, see James K. Sebenius, *Negotiating the Law of the Sea: Lessons in the Art and Science of Reaching Agreement* (Harvard University Press, 1984).

### Developing objective criteria

Carrying on a principled negotiation involves two questions: How do you develop objective criteria, and how do you use them in negotiating?

Whatever method of negotiation you use, you will do better if you prepare in advance. This certainly holds true of principled negotiation. So develop some alternative standards beforehand and think through their application to your case.

**Fair standards.** You will usually find more than one objective criterion available as a basis for agreement. Suppose, for example, your car is demolished and you file a claim with an insurance company. In your discussion with the adjuster, you might take into account such measures of the car's value as (1) the original cost of the car less depreciation; (2) what the car could have been sold for; (3) the standard "blue book" value for a car of that year and model; (4) what it would cost to replace that car with a comparable one; and (5) what a court might award as the value of the car.

In other cases, depending on the issue, you may wish to propose that an agreement be based upon:

Market value	What a court would decide
Precedent	Moral standards
Scientific judgment	Equal treatment
Professional standards	Tradition
Efficiency	Reciprocity
Costs	Etc.

At a minimum, objective criteria need to be independent of each side's will. Ideally, to assure a wise agreement, objective criteria should be not only independent of will but also both legitimate and practical. In a boundary dispute, for example, you may find it easier to agree on a physically salient feature such as a river than on a line three yards to the east of the riverbank.

Objective criteria should apply, at least in theory, to both

sides. You can thus use the test of reciprocal application to tell you whether a proposed criterion is fair and independent of either party's will. If a real estate agency selling you a house offers a standard form contract, you would be wise to ask if that is the same standard form they use when *they* buy a house. In the international arena, the principle of self-determination is notorious for the number of peoples who insist on it as a fundamental right but deny its applicability to those on the other side. Consider the Middle East, Kashmir, or Cyprus as just three examples.

**Fair procedures.** To produce an outcome independent of will, you can use either fair standards for the substantive question or fair procedures for resolving the conflicting interests. Consider, for example, the age-old way to divide a piece of cake between two children: one cuts and the other chooses. Neither can complain about an unfair division.

This simple procedure was used in the Law of the Sea negotiations, one of the most complex negotiations ever undertaken. At one point, the issue of how to allocate mining sites in the deep seabed deadlocked the negotiation. Under the terms of the draft agreement, half the sites were to be mined by private companies, the other half by the Enterprise, a mining organization to be owned by the United Nations. Since the private mining companies from the rich nations had the technology and the expertise to choose the best sites, the poorer nations feared the less knowledgeable Enterprise would receive a bad bargain.

The solution devised was to agree that a private company seeking to mine the seabed would present the Enterprise with *two* proposed mining sites. The Enterprise would pick one site for itself and grant the company a license to mine the other. Since the company would not know which site it would get, it would have an incentive to make both sites as promising as possible. This simple procedure thus harnessed the company's superior expertise for mutual gain.

A variation on the procedure of "one cuts, the other chooses" is for the parties to negotiate what they think is a fair arrangement before they go on to decide their respective roles in it. In a divorce

negotiation, for example, before deciding which parent will get custody of the children, the parents might agree on the visiting rights (and responsibilities) of the other parent. This gives both an incentive to agree on visitation rights each will think fair.

As you consider procedural solutions, look at other basic means of settling differences: taking turns, drawing lots, letting someone else decide, and so on.

Frequently, taking turns presents the best way for heirs to divide a large number of heirlooms left to them collectively. Afterwards, they can do some trading if they want. Or they can make the selection tentative so they see how it comes out before committing themselves to accept it. Drawing lots, flipping a coin, and other forms of chance have an inherent fairness. The results may be unequal, but each side had an equal opportunity.

Letting someone else play a key role in a joint decision is a well-established procedure with almost infinite variations. The parties can agree to submit a particular question to an expert for advice or decision. They can ask a mediator to help them reach a decision. Or they can submit the matter to an arbitrator for an authoritative and binding decision.

Professional baseball, for example, uses “last-best-offer arbitration” to settle player salary disputes. The arbitrator must choose between the last offer made by one side and the last offer made by the other. The theory is that this procedure puts pressure on the parties to make their proposals more reasonable. In baseball, and in states where this form of arbitration is compulsory for certain public employee disputes, it does seem to produce more settlements than in comparable circumstances where there is a commitment to conventional arbitration; those parties who don’t settle, however, sometimes give the arbitrator an unpleasant choice between two extreme offers.

### **Negotiating with objective criteria**

Having identified some objective criteria and procedures, how do you go about discussing them with the other side?

There are three basic points to remember:

1. Frame each issue as a joint search for objective criteria.
2. Reason and be open to reason as to which standards are most appropriate and how they should be applied.
3. Never yield to pressure, only to principle.

In short, focus on objective criteria firmly but flexibly.

**Frame each issue as a joint search for objective criteria.** If you are negotiating to buy a house, you might start off by saying: “Look, you want a high price and I want a low one. Let’s figure out what a *fair* price would be. What objective standards might be most relevant?” You and the other side may have conflicting interests, but the two of you now have a shared goal: to determine a fair price. You might begin by suggesting one or more criteria yourself—the cost of the house adjusted for depreciation and inflation, recent sale prices of similar houses in the neighborhood, or an independent appraisal—and then invite the seller’s suggestions.

*Ask “What’s your theory?”* If the seller starts by giving you a position, such as “The price is \$255,000,” ask for the theory behind that price: “How did you arrive at that figure?” Treat the problem as though the seller too is looking for a fair price based on objective criteria.

*Agree first on principles.* Before even considering possible terms, you may want to agree on the standard or standards to apply.

Each standard the other side proposes becomes a lever you can then use to persuade them. Your case will have more impact if it is presented in terms of their criteria, and they will find it difficult to resist applying their criteria to the problem. “You say Mr. Jones sold the house next door for \$260,000. Your theory is that this house should be sold for what comparable houses in the neighborhood are going for, am I right? In that case, let’s look at what the house on the corner of Ellsworth and Oxford and the one at Broadway and Dana were sold for.” What makes

conceding particularly difficult is having to accept someone else's proposal. If they suggested the standard, their deferring to it is not an act of weakness but an act of strength, of carrying out their word.

**Reason and be open to reason.** What makes the negotiation a *joint* search is that, however much you may have prepared various objective criteria, you come to the table with an open mind. In most negotiations, people use precedent and other objective standards simply as arguments in support of a position. A police union might, for example, insist upon a raise of a certain amount and then justify their position with arguments about what police in other cities make. This use of standards usually only digs people even deeper into their position.

Going one step further, some people begin by announcing that their position is an issue of principle and refuse even to consider the other side's case. "It's a matter of principle" becomes a battle cry in a holy war over ideology. Practical differences escalate into principled ones, further locking in the negotiators rather than freeing them.

This is emphatically *not* what is meant by principled negotiation. Insisting that an agreement be based on objective criteria does not mean insisting that it be based solely on the criterion *you* advance. One standard of legitimacy does not preclude the existence of others. What the other side believes to be fair may not be what you believe to be fair. You should behave like a judge; although you may be predisposed to one side (in this case, your own), you should be willing to respond to reasons for applying another standard or for applying a standard differently. When each party is advancing a different standard, look for an objective basis for deciding between them, such as which standard has been used by the parties in the past or which standard is more widely applied. Just as the substantive issue itself should not be settled on the basis of will, neither should the question of which standard applies.

In a given case, there may be two standards (such as market

value and depreciated cost) that produce different results but that both parties agree seem equally legitimate. In that case, splitting the difference or otherwise compromising between the results suggested by the two objective standards is perfectly legitimate. The outcome is still independent of the will of the parties.

If, however, after a thorough discussion of the merits of an issue you still cannot accept their proposed criteria as the most appropriate, you might suggest putting them to a test. Agree on someone you both regard as fair and give him or her a list of the proposed criteria. Ask the person to decide which are the fairest or most appropriate for your situation. Since objective criteria are supposed to be legitimate and because legitimacy implies acceptance by a great many people, this is a fair thing to ask. You are not asking the third party to settle your substantive dispute—just to give you advice on what standard to use in settling it.

The difference between seeking agreement on the appropriate principles for deciding a matter and using principles simply as arguments to support positions is sometimes subtle, but always significant. A principled negotiator is open to reasoned persuasion on the merits; a positional bargainer is not. It is the combination of openness to reason with insistence on a solution based on objective criteria that makes principled negotiation so persuasive and so effective at getting the other side to play.

**Never yield to pressure.** Consider once again the example of negotiating with the contractor. What if he offers to hire your brother-in-law on the condition that you give in on the depth of the foundations? You would probably answer, "A job for my brother-in-law has nothing to do with whether the house will be safely supported on a foundation of that depth." What if the contractor then threatens to charge you a higher price? You would answer the same way: "We'll settle that question on the merits too. Let's see what other contractors charge for this kind of work," or "Bring me your cost figures and we'll work out a fair profit margin." If the contractor replies, "Come on, you trust me, don't you?" you would respond: "Trust is an entirely separa-



**Insurance Adjuster**

How much are you asking for?

\$19,000! That's too much!

OK, I'll offer you \$15,000. That's the highest I can go. Company policy.

Look, \$15,000 is all you'll get. Take it or leave it.

OK, Mr. Griffith, I've got an ad here in today's paper offering a car exactly the same make, model, and year as yours for \$14,800.

49,000. Why?

**Tom**

Whatever I'm entitled to under the policy. I found a secondhand car just about like it for \$17,700. Adding the sales and excise tax, it would come to about \$19,000.

I'm not asking for \$19,000 or \$18,000 or \$20,000, but for fair compensation. Do you agree that it's only fair I get enough to replace the car?

How does the company figure that?

\$15,000 may be fair. I don't know. I certainly understand your position if you're bound by company policy. But unless you can state objectively why that amount is what I'm *entitled* to, I think I'll do better in court. Why don't we study the matter and talk again? Is Wednesday at eleven a good time to talk?

I see. What does it say about the mileage?

Because mine only had 25,000 miles. How many dollars does that increase the worth in your book?

**Insurance Adjuster**

Let me see . . . \$1,650.

No.

\$1,100.

**Tom**

Assuming the \$14,800 as one possible base, that brings the figure to \$16,450. Does the ad specify the technology package?

How much extra for that in your book?

How about an autodimming mirror?

. . .

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A half hour later Tom walked out with a check for \$18,024.