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Getting To Yes

Negotiating Agreement Without Giving In

By Roger Fisher and William Ury

I. Don't Bargain Over Positions

- Any method of negotiation may be fairly judged by three criteria:
  - It should produce a wise agreement if agreement is possible
  - It should be efficient
  - And it should not damage the relationship between the parties
- A wise agreement can be defined as one that meets the legitimate interests of each side to the extent possible, resolves conflicting interests fairly, is durable and takes community interests into account.
- **Arguing over positions is inefficient**
  - Negotiators tend to lock themselves into their positions. The more they clarify their position and defend it, the more committed they are to it. Ego gets involved.
  - The more they try to convince the other side of their position, the more difficult it becomes to compromise.
  - Negotiators start by taking an extreme position and taking small concessions only to keep negotiating going. The same is true for the other side.
  - The more extreme the more drawn out the negotiation
- **Being nice is no answer**
  - Pursuing a soft and friendly form of positional bargaining makes you vulnerable to someone who plays a hard game of positional bargaining.
  - If your response to sustained, hard positional bargaining is soft positional bargaining, you will probably lose your shirt.
- **There is an alternative – principled negotiation** can be boiled down to four basic points:
  - **People –** separate the people from the problem. The participants should see themselves as working side by side, attacking the problem, not each other
  - **Interests –** focus on interests, not positions
  - **Options –** Generate a variety of possibilities for mutual gain before deciding what to do
  - **Criteria –** Insist that the result be based on some objective standard

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Problem Positional Bargaining: Which Game Should You Play?		**Solution** Change the Game—Negotiate on the Merits
Soft	**Hard**	**Principled**
Participants are friends.	Participants are adversaries.	Participants are problem-solvers.
The goal is agreement.	The goal is victory.	The goal is a wise outcome reached efficiently and amicably.
Make concessions to cultivate the relationship.	Demand concessions as a condition of the relationship.	**Separate the people from the problem.**
Be soft on the people and the problem.	Be hard on the problem and the people.	Be soft on the people, hard on the problem.
Trust others.	Distrust others.	Proceed independent of trust.
Change your position easily.	Dig in to your position.	**Focus on interests, not positions.**
Make offers.	Make threats.	Explore interests.
Disclose your bottom line.	Mislead as to your bottom line.	Avoid having a bottom line.
Accept one-sided losses to reach agreement.	Demand one-sided gains as the price of agreement.	**Invent options for mutual gain.**
Search for the single answer: the one *they* will accept.	Search for the single answer: the one *you* will accept.	Develop multiple options to choose from; decide later.
Insist on agreement.	Insist on your position.	**Insist on using objective criteria.**
Try to avoid a contest of will.	Try to win a contest of will.	Try to reach a result based on standards independent of will.
Yield to pressure.	Apply pressure.	Reason and be open to reason; yield to principle, not pressure.

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I. Separate the People from the Problem

- **Negotiators are people first –**
  - You are dealing with human beings, not abstract representatives. They have emotions, deeply held values, and different backgrounds and viewpoints.
  - Be sensitive to the people around you.
- **Put yourself in their shoes –**
  - Seeing the situation as the other side sees it, is one of the most important skills a negotiator can possess.
  - If you want to influence them, you also need to understand empathetically their point of view.
  - Understanding their point of view is not the same as agreeing with it.
- **Address the other side's concerns**
  - It is common in 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.

II. Focus on Interests, Not Positions

- **For a wise solution reconcile interests not positions.** 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.
- **Reconciling interests rather than positions works for both parties.** For every interest there usually exist several possible positions that could satisfy it.
- **How do you identify the interests of the other side?**
  - It's easy to identify *positions* but underlying *interests* may well go unexpressed and purposely hidden.
  - Ask "Why?" Ask why they take 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, or fears.
  - 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.

- Construct the other side's currently perceived choices. How do I want to affect it? What decision do they think you are asking them to make?
- Now analyze the consequences, as the other side would probably see them, of agreeing or refusing to make the decision you are asking for.

- **Make a list of interests**
  - Sort out the various interests of each side as they occur to you.
  - This will enable you to improve the quality of your assessment as you learn new information and to place interests in their order of importance.
  - Acknowledge their interests. People listen better if they feel that you understand them. So if you want the other side to appreciate your interests, begin by demonstrating that you appreciate *theirs*.

II. Invent Options for Mutual Gain

- **Expand the pie before dividing it.** Invent solutions advantageous to both sides. Skill at inventing options is one of the most useful assets a negotiator can have.
- **Obstacles that inhibit the inventing of an abundance of options:**
  - **Premature judgment** – Nothing is so harmful to inventing options as a critical sense waiting to pounce of the drawbacks of any new idea. Judgment hinders imagination.
  - **Searching for a single answer** – Most people don't agree that inventing options is part of the negotiating process. People see their job as narrowing the gap between parties, not broadening options available. By looking for the single best answer, you are likely to short-circuit a wiser decision-making process in which to select from a larger number of possible answers.
  - **The assumption of a fixed pie** – see the situation as either/or – either I get it or they do.
  - **Thinking that "solving their problem is their problem"** – for a negotiator to reach an agreement that meets his own self-interest he needs to develop a solution which also appeals to the self-interest of the other side.

- **The solution to these obstacles**
    - Separate the act of inventing options from the act of judging them. Invent first, decide later. Before brainstorming clarify the ground rules, including the no-criticism rule.
    - Broaden the options on the table rather than look for a single answer.
    - Search for mutual gains.
    - Invent ways of making their decisions easy**.** Rather than making things difficult for the other side, you want to confront them with a choice that is as painless as possible. Without some option that appeals to them, there is likely to be no agreement at all.
- **Three points about shared interests are worth remembering**
    - Shared interests lie latent in every negotiation. They may not be immediately obvious. Ask yourself: What opportunities lie ahead for cooperation and mutual benefit? What costs would we bear if negotiations broke off?
    - Shared interests are opportunities, not godsends. 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.
    - Stressing your shared interests can make the negotiation smoother and more amicable.
- **Dovetailing different interests**
    - Differences between two parties sometimes create problems, but differences can also lead to a solution.
    - Many creative agreements reflect this principle of reaching agreement through differences. Differences in interests make it possible for an item to be high benefit to you, yet low cost to the other side.
    - Ask for their preferences as a way of dovetailing interests. Invent several options all equally acceptable to you and ask the other side which one they prefer.
    - You then take the option that is most preferable, work with it some more, and again present two or more variants, asking which one they prefer. In this way, without anyone making a decision, you can improve a plan until there are no more joint gains.
    - In summary, dovetailing is the process of looking for items that are low cost to you and high benefit to them, and vice versa.

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III. Insist on Using Objective Criteria

- **The case for using objective criteria –** Commit yourself to reaching agreement based on principle, not pressure. Be open to reason, but closed to threats.
    - The more you and the other side refer to established standards, to precedent or community practice, the greater your chance of producing a wise and fair agreement.
    - A constant battle for dominance threatens the chance of agreement; principled negotiation protects it.
    - It is far easier to deal with people when both sides are discussing objective standards for settling a problem instead of trying to force each other to back down.
- **Carrying on a principled negotiation involves two questions**:
    - How do you develop objective criteria?
    - How do you use them in negotiating?
    - Objective criteria need to be independent of each side's will and also need to be legitimate and practical.
- **Negotiating with objective criteria –** three points to remember:
    - **Frame each issue as a joint search for objective criteria.** For example let's figure out what a fair price would be.
        - What objective standard might be most relevant? Before even considering possible terms, you may want to agree on the standards to apply.
        - If the other side starts by giving you a position, ask for the theory behind the price.
        - Each standard the other side proposes becomes a lever you can use to persuade them.
    - **Reason and be open to reason as to which standards are most appropriate.**
        - 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 negotiation so persuasive.
    - **Never yield to pressure, only to principle** –
        - If the other side truly will not budge and will not advance a persuasive basis for their position, then there is no further negotiation.

- If there is no principled basis for accepting it, you should assess what you might gain by accepting their unjustified position rather than accepting your next best alternative or the benefit of just walking away.

IV. What If They Are More Powerful?

- **Develop Your BATNA – Best Alternative To A Negotiated Agreement**
  - Of what benefit is talking about interests, options, and standards if the other side has a stronger bargaining position? What if the other side is richer, better connected or more powerful?
  - In response to power, the most any method can do is to meet two objectives:
    - First, to protect you against making an agreement you should reject.
    - Second, to help make the most of the assets you do have so that any agreement you reach will satisfy your interests as well as possible.
- **Protecting yourself**
  - A major danger is that you will be too accommodating to the views of the other side. The argument, "Let's all agree and put an end to this" becomes persuasive. You may end up with a deal you should have rejected.
  - **The costs of using a bottom line.** To protect themselves, some negotiators establish their bottom line – the worst acceptable outcome. A bottom line makes it easier to resist pressure but it comes with costs:
    - It limits your ability to benefit from what you learn during negotiation. By definition, a bottom line is a position that is not to be changed. Therefore nothing the other party says could cause you to raise or lower that bottom line.
    - It also inhibits imagination. It reduces the incentive to invent a tailor-made solution which would reconcile differing interests in a way more advantageous to both parties.
    - In short, while adopting a bottom line may protect you from accepting a bad agreement, it may keep you both from inventing and from agreeing to a solution that would be wise to accept.

- **Knowing your BATNA –** protects you against accepting an agreement you should reject and rejecting an agreement you should accept.
- **What is your BATNA?** – it is your Best Alternative To a Negotiated Agreement. *That* is the standard against which any proposed agreement should be measured.
- **Your BATNA has the advantage of being more flexible –** Instead of ruling out any solution which does not meet your bottom line, you can compare a proposal with your BATNA to see if it better satisfies your interests.
- **The insecurity of an unknown BATNA –**
  - If you have not thought carefully about what you will do if you fail to reach an agreement, you are negotiating with your eyes closed.
  - Whether you should agree on something in a negotiation depends entirely upon the attractiveness to you of the best available alternative.

- **Making the most of your assets**
  - **The better your BATNA, the greater your power –**
    - People think of negotiating power as being determined by resources like wealth, political connections, friends, or power over subordinates.
    - In fact, the relative negotiating power of two parties depends primarily upon how attractive to each is the option of not reaching agreement.
    - For example, how would you feel walking into a job interview with no other job offers? Think how the talk about salary would go. Now contrast that with how would you feel walking in with two other job offers. The difference is power.
  - **The results of knowing your BATNAs**
    - Knowing what you are going to do if the negotiation does not lead to agreement will give you additional confidence in the negotiating process.
    - The greater your willingness to break off negotiations, the more forcefully you can present your interests and the basis on which you believe an agreement should be reached.
  - **Should you disclose your BATNA to the other side?**
    - This depends upon your assessment of the other side's thinking. If your BATNA is extremely attractive – if you have

another customer waiting in the next room – it is in your best interest to let the other side know.
        - If they think you lack a good alternative when in fact you have one, then you should almost certainly let them know.
        - However if your best alternative to a negotiated agreement is worse than they think, disclosing it will weaken rather than strengthen your hand.
    - **Consider the other side's BATNA.**
        - The more you can learn of their alternatives, the better prepared you are for negotiations.
        - Knowing their alternatives, you can realistically estimate what you can expect from the negotiation. If they appear to overestimate their BATNA, you will want to lower their expectations.
        - If both sides have attractive BATNAs, the best outcome of the negotiation – for both parties – may well be not to reach agreement.
    - **When the other side is powerful**
        - Developing you BATNA thus not only enables you to determine what is a minimally acceptable agreement, it will probably raise that minimum.
        - Developing your BATNA is perhaps the most effective course of action you can take in dealing with a seemingly more powerful negotiator.

V. What If They Won't Play (Use Negotiation Jujitsu)

- If they continue to use positional bargaining, you can resort to a second strategy, **negotiation jujitsu**, which focuses on what they may do. It counters the basic moves of positional bargaining in ways that direct their attention to the merits.
- How negotiation jujitsu works.
    - **Don't attack their position, look behind it.**
        - Neither accept nor reject their position.
        - Look for ways to improve it.
        - Assume every position they take is a genuine attempt to address the basic concerns of each side.
        - Ask them how they think it addresses the problems at hand.
    - **Don't defend your ideas, invite criticism and advice.**

- Instead of asking them to accept or reject an idea, ask them what's wrong with it.
- Examine their negative judgments to find out their underlying interests and to improve your ideas from their point of view.
- Rework your ideas in light of what you learn from them.

- **Recast an attack on you as an attack on the problem.**
  - Don't defend yourself when attacked.
  - Listen to what they are saying and when they have finished, you recast their attack on you as an attack on the problem.
- **Ask questions and pause.**
  - Those engaged in negotiation jujitsu use two tools:
    - They use **questions** instead of statements, which allows the other side to get their points across and lets you understand them.
    - **Silence**. If they make an unreasonable proposal or an attack you regard as unjustified, the best thing is not to say anything. Silence creates an uncomfortable situation especially if they have doubts about the merits of what they just said.

VI. What If They Use Dirty Tricks? (Taming the Hard Bargainer)

- Tricky bargaining tactics are in effect one-sided proposals about negotiating procedure, about the negotiating game that the parties are going to play. To counter them, you will want to engage in principled negotiation about the negotiating process.
- How do you negotiate about the rules of the game? There are three steps in negotiating the rules of the negotiating game:
  - **Recognize the tactic –** Learn to spot particular ploys that make you feel uncomfortable or indicate deception.
  - **Raise the issue explicitly –** Discussing the tactic not only makes it less effective, it also may cause the other side to worry about alienating you. Simply raising a question about a tactic may be enough to get them to stop using it.
  - **Question the tactic's legitimacy and desirability –** bringing it up gives you the opportunity to negotiate about the rules of the game. This negotiation focuses on the procedure (or how the two sides will negotiate) instead of the substance of the negotiation.

- Some Common Tricky Tactics
    - **Phony facts –** knowingly making false statements
    - **Ambiguous authority –** the other side may allow you to believe they have full authority to compromise when they don't. After theyhave pressed you as hard as they can and you have worked out a firm agreement, they announce that they must take it to someone else for approval. To counter, insist on reciprocity. "All right. We will treat it as a joint draft to which neither side is committed. Youcheck with your boss and I'll sleep on it and see if I come up with any changes I want to suggest tomorrow."
    - **Stressful situations –** Be aware that the setting might have been deliberately manipulated to make you want to conclude the negotiations promptly or to yield points in order to do so.
    - **Personal attacks –** use of both verbal and non-verbal communication to make you feel uncomfortable.
    - **The good-guy/bad-guy routine**
    - **Threats**
    - **Heardhearted partner –** the other side justifies not yielding to your request by saying that he personally would have no objectionbut his hardhearted partner will not let him. Recognize the tactic.
    - **A calculated delay –** frequently one side will try to postpone coming to a decision until a time they think favorable to them and disadvantageous to you.
    - **"Take it or leave it."** – As an alternative to explicitly recognizingthe "Take it or leave it" tactic, consider ignoring it at first. Keep talking as if you didn't hear it, or change the subject, perhaps by introducing other solutions. If you do bring up the tactic specifically, let them know what they have to lose if no agreementis reached and look for a face-saving way to get them out of the situation.
- **Don't be a victim –** Whatever you do, be prepared to fight dirty bargaining tactics. You can be just as firm as they can, even firmer. It iseasier to defend principle than an illegitimate tactic. Don't be a victim.