

NEGOTIATION: A SKILLFUL MANAGEMENT OF CONFLICTS

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I had the privilege to read this marvelous book during my graduate studies at Georgetown Law. Little did I know at the time of reading, that this slender book would become a reference point in my life, helping me change the way I make decisions, both, personal and professional. Roger Fisher and William Ury, two Harvard Professors, wrote ‘Getting to Yes’ in 1981¹.

Fisher and Ury, began the process of re-inventing negotiation by dressing the process in the familiar intellectual frame of reason and rational decision making theory and civil discourse. In doing so, negotiation and mediation practitioners could trade in their historic reputation for being deceptive and manipulative agents and present themselves instead as ‘neutral’ and ‘impartial’ problem solvers.

A generation ago, the prevailing view of decision making in most places was hierarchical. The people at the top of the pyramids of power- at work, in the family and in politics- were supposed to make the decisions and the people at the bottom of the

pyramid, to follow orders. In today’s world, characterized by flatter organizations, it is clearer than ever that to accomplish our work and meet our needs and to get what we want, we are compelled to negotiate. This quiet revolution could well be called the ‘negotiation revolution’.

Introduction

Since the end of World War II, in which the specter of nuclear war impelled the development of more “scientific” methods of conflict management, negotiation and mediation were re-invented into a more “rational” and acceptable form. However, the history of negotiation, a process that has always been and continues to be suspect, began to be further minimized or disregarded as irrelevant. The awareness of the evolutionary development and natural history of negotiating behaviors, however, offers an important and more complete perspective that allows practice style orthodoxies and heuristic biases to be exposed.

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Neglecting this history limits the future development of new negotiation approaches, which are critical for the management of conflict in a world where the complexity of human decision making and collaboration are being ever more quickly revealed by advances in neuroscience and cognitive psychology. Like it or not, you are a negotiator. Negotiation is the basic means of getting what you want from others. Every human being negotiates at some point in his or her life, on some matter or another, some more effectively than others. And, of all the modes of conflict management,

negotiation processes are the most flexible, efficient, economical and eminently sensible in the human repertoire for managing issues, differences, and controversies. Negotiation is both an analytic ‘science’ of considering what issues are at stake, who the parties are and what solutions are legally and creatively possible and a human ‘art’ in the sense that actually negotiating involves talking with and doing things with other people. You need conceptual behavioral and affective competencies in order to become a good negotiator.

FOUR PRIMARY SOURCES OF RESISTANCE TO NEGOTIATION: NEUROBIOLOGICAL, CULTURAL, PSYCHOLOGICAL AND MORAL

Biologically, the human brain is not the neatly ordered computer like organ of popular imagination. When threatened by others or a difficult situation, negotiation is seldom people’s first choice and not considered until all other modes of conflict management have been exhausted, namely the ‘fight-flight’ syndrome. Neuroscientists have confirmed, there is a neurochemical release in the brain, triggered by a perceived threatening circumstance, to either withdraw and avoid the situation, or fight back. *There is no neurochemical trigger to negotiate.* Negotiation is typically a secondary response.

Psychologically, a person in conflict must overcome their initial impulse or gut reaction, against dealing face-to-face with a person or persons with whom they are at odds. The effort necessary to overcome such initial reactions and consider a negotiated compromise often takes more time and effort than most people realize.

Culturally, especially in dominant cultures, the willingness to negotiate is considered a sign of weakness. Negotiation is considered by many to also be an immoral and sinful act. Even if none of the people involved in a dispute are religious and the issue seems relatively minor, the matter still has a moral dimension.

The deeply ingrained historic resistance and ambivalence towards negotiation processes has contributed to the slow pace of acceptance and study of negotiation behaviors to the present day.

THE REINCARNATION OF NEGOTIATION

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we are compelled to negotiate. This quiet revolution, could well be called the *'negotiation revolution'*.

CONFLICT THEORY

A conflict can be experienced as a simple disagreement, a feeling of discomfort or opposition and a perception of difference from others or a competition or incompatibility with others. Conflicts can be perceptual, emotional or behavioral. In order for a conflict to fully develop into a dispute, we have to experience some sense of wrong to ourselves, someone else to blame for that wrong and some way to take action against those we think caused our difficulty- what one set of scholars have called the game of *'naming, blaming and claiming'*.

What makes conflict processes so complex are the strategic interactions that occur when more than one party must interact to start, maintain, interrupt and resolve the conflict. These different conflict management strategies interact with each other and can produce reactive and unproductive responses. Thus, much recent empirical work in conflict processes have been to study the conditions under which parties in conflicts can alter their behavioral or strategy choices and open themselves up to new ways of communicating or testing the possibilities with other parties.

The key word of psychology today is desire. A conflict basically is the interaction of desires which has both, a destructive and a constructive way of dealing with. Mary Parker Follet in her book, the *Prophet of Management* defines the three main ways of dealing with conflicts, as: *domination, compromise and integration*. 'Integration', is a constructive solution in which desires of both the parties find a place, and neither side has to sacrifice anything.

Authors, Roger Fisher and William Ury, in the book 'Getting to Yes' establish an innovative and integrative way to negotiate. The method of *'principled negotiation'* advanced at the Harvard Negotiation Project is to decide issues on their merits rather than through a haggling process focused on what each side says it will and won't do. It suggests that you look for mutual gains wherever possible and that where your interests conflict, you should insist that the result be based on some fair standards independent of the will of either side. The process of principled negotiation is hard on the merits and soft on the people.

INTEGRATIVE NEGOTIATION

The theory of principled negotiation, an integrative form of negotiation focusing on a 'problem solving' and 'win-win' approach was established at the Harvard Negotiation Project. It outlines the following four basic points.

- **People:** Separate the people from the problem;
- **Interests:** Focus on interests, not positions;
- **Options:** Invent multiple options looking for mutual gains before deciding what to do;
- **Criteria:** Insist that the result be based on some objective standard

'Separate the people from the problem'

Negotiation involves dealing with human beings. Human beings are creatures of strong emotions having radically different perceptions and a difficulty in communicating those clearly. Emotions typically become entangled with the objective merits of the problem. Even before working on the substantive problem, the 'people problem' should be disentangled from it and addressed on its own.

'Focus on interests, not positions'

The object of a negotiation is to satisfy the interests of the parties. While compromising positions are not likely to produce an agreement effective of taking care of human needs, focusing on the underlying interests of the parties can prove to be highly rewarding.

'Invent multiple options looking for mutual gains before deciding what to do'

Trying to decide in the pressure of an adversary narrows your vision. Having a lot at stake inhibits creativity. You can offset these constraints by setting aside a desired time within which to think up a wide range of possible solutions that advance shared interests and creatively reconcile differing interest.

‘Insist that the result be based on some objective standard’

Having conflicts of interests, a negotiator must adopt a fair, objective standard to obtain a favorable result satisfying interests of both the parties.

These four propositions of principled negotiation aid in focusing on basic interests, mutually satisfying options and fair standards typically resulting in a wise agreement. Separating the people from the problem allows you to deal directly and empathetically with the other negotiator as a human being regardless of any substantive differences, thus making possible an amicable outcome.

THE ‘PEOPLE PROBLEM’

Every negotiator wants to reach an agreement satisfying his/her client’s interests which is why there arises a need to negotiate. While the negotiator has an ongoing relationship with the client, he also has an existing relationship with the other side. Satisfying interests of the client

as well as reaching an outcome satisfying both the parties usually tends to entangle the relationships with the problem.

Such substantive positions bring in ego thereby hampering the process of negotiation. Positional bargaining proves how little each party cares about their relationship further leading to an unsatisfactory and imbalanced negotiable result along with a damaged relationship.

To find a way through the jungle of ‘people problems’, negotiators should think in terms of three basic categories: *perception, emotion and communication*.

Perception

“We don’t see things as they are, we see things as we are”

- *Anais Nin*

The ability to see a situation as the other side sees it, is one of the most important skills a negotiator can possess. To influence them, the negotiator needs to understand empathetically the power of their point of view and the force with which to believe in it.

Understanding the other side’s point of view doesn’t necessarily mean agreeing to it. However, a better understanding of their thinking may lead you to revise your own

views, reduce the area of conflict and advance newly enlightened self-interests.

One way to deal with opposing perceptions is to put them all on the table. Make them explicit and discuss them with the other side. Communicating loudly and expressing yourself to the other side convincingly can be one of the best investments, you, as a negotiator can make.

When listened to by others, individuals tend to listen to themselves more carefully and evaluate and clarify their own thoughts and feelings. In addition, they become better problem solvers. By applying active listening skills, negotiators demonstrate that they are not a threat to the subject and that their goal is to help rather than harm.

Emotions

No matter how good your analysis and legal arguments, negotiation is a process wherein you engage with other people. Describing an emotion to someone incapable of feelings would be as futile as explaining the color "blue" to someone born without sight. The art of negotiation lies in discerning and working out differences between the parties.

At times, the differences may provoke substantial conflict, leading to emotional outbursts and heated discussions. In fact, we

believe that emotions play a variety of roles, some at times overwhelming and some often quite subtle.

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 to an accepted member of a peer group; *role*, the desire to have a meaningful purpose; and *status*, the desire to feel fairly seen and acknowledged.

"When emotions run amok, negotiators lose perspective and make serious mistakes or perform poorly. The authors describe emotions, explore their origins, detail their physiology, demonstrate their key role in human behavior (particularly in negotiation), and propose a series of recommendations for dealing with fear and anger, two critical emotions in negotiations" Robert S. Adler, Benson Rosen, and Elliot M. Silverstein, *Emotions in Negotiation: How to manage Fear and Anger*.

Communication

Negotiation is a process of communicating back and forth, for the purpose of reaching a joint decision.

Misunderstandings and Miscommunications can be major problems if ego issues of parties meddle with the negotiation process. Therefore, the need to listen arises, and a need

to listen well. Listening enables parties to understand the other side's perceptions well, feel their emotions and hear what they want you to hear. Inquiry, paraphrasing and acknowledgement are the three skills of active listening which aid a negotiation to transpire smoothly and in accordance with the parties interests.

THE NEGOTIATION MANTRA

A successful negotiator is someone who experiments with silencing, validates and considers the other parties thoughts, arguments, interests and concerns. The only indication of a successful negotiation is when both the parties walk out of the negotiation feeling happy.

Mantra: 3 P's

Prepare: One of the most important practices for an effective negotiator begins before the negotiation takes place- *preparation*. Without adequate preparation, a negotiator is limiting his abilities as a negotiator and doing disservice to his client. Sociologists have found that the privileges of professionalism are earned only by those groups that effectively demonstrate their position of three attributes: (1) the unique, abstract body of knowledge; (2) skilful application of this knowledge base; and (3) application that assists those who have encountered physical or moral problems.

In planning for any negotiation, it is important to analyze what the case or matter is about before deciding on a particular behavioral approach or style. This can be solely achieved if the negotiator uses his listening skills and grasps as much information as possible from the client. The process of listening and asking questions to know more helps fill the gaps and receive detailed and complete information required to further structure the negotiation to the client's best advantage.

Based on the information received from the client, the next step would be to know the client's objective criteria based on the facts in hand, set an achievable aspiration point and define a negotiable reservation range. Any outcome within the marked reservation range is considered a favorable one.

Probe: During a negotiation, every single statement made by a party and every conversation engaged in by the parties can prove to enhance either parties' chances of a better negotiation. In a negotiation, statements generate resistance while questions generate answers.

The following key steps can help any negotiator rule a negotiation:

1. Ask questions
2. Get Information
3. Use the information

Propose:

“Those who have higher goals, do better”

- Professor Kondi Kleinman

Psychologists Sidney Seigel and Lawrence Fouraker in 1960 demonstrated a proposition that negotiators should establish optimistic aspirations because empirical evidence has shown that negotiators with higher aspirations tend to achieve better bargaining results. These aspiration points should be backed with substantial reasons possible to achieve a modest goal. Setting a high realistic goal helps one settle with an acceptable offer.

While making an offer, it is always better to give a brief reasoning/justification behind the proposal made. If a party throws a random number in the air, ask for validations supporting the offer made.

While there is a chance that every negotiation ends with a fruitful and fulfilling outcome for both the parties, the risk of not reaching a favorable outcome is also a possibility.

Hence, each party should figure out their BATNA (Best Alternative to a Negotiation Agreement) along with that of the other party. This helps strategize the ‘game plan’ whenever required and design it in a way beneficial to your client.

Vigorous explorations of what you will do if you do not reach an agreement can greatly strengthen your hand. Generating possible BATNA’s requires three distinct operations: (1) inventing a list of actions you might conceivably take if no agreement is reached; (2) improving some of the more promising ideas and converting them into practical alternatives; and (3) selecting, tentatively, the alternative that seems best.

**RELATING TO YOUR
COUNTERPART**

“You got to know when to hold ‘em, know when to fold ‘em, know when to walk away and know when to run”

- Kenny Rogers, *The Gambler*

As previously mentioned, negotiation is an emotional interaction between the parties. The win-win approach of ‘principled negotiation’ concentrates on reaching a mutually satisfying outcome. To achieve this, the parties in the negotiation require to develop an understanding and rapport to further aid in attaining a fulfilling and satiating result.

The most effective negotiators try to both empathize and assert in their interactions with others. Empathy is defined as the process of demonstrating an accurate, nonjudgmental understanding of the other side’s interests,

needs and perspectives. The first involves a skill of perspective taking- trying to see the world through the other negotiator's eyes. The second is the nonjudgmental expression of the other person's viewpoint in a way that is open to correction.

Empathy and assertiveness are aspects of good communication. When people communicate well, problem solving is easier.

There is a Russian saying that everyone looks at the world from the bell tower of his own village. Perception differs because our experiences differ and because we select from among our experiences. Each of us observes different data in part and interprets differently as we are all interested in different things. Depending on our perspectives, our perceptions vary.

A HAPPY ENDING

Application of the modernized theory of 'principled negotiation' helps both the parties walk out of the negotiation with a feeling of content and victory. The theory focuses on 'joint gain' rather than a selfish and self-seeking approach. Principled negotiation can be used

whether there is one issue or several, two parties or many, hard or a soft bargainer. Principled negotiation is an all-purpose strategy. It is hard on the merits and soft on the people. By concentrating on the merits, the method looks for mutual gains wherever possible.

CONCLUSION

Negotiation offers a straightforward, universally applicable method for reaching mutually satisfying agreements by helping you connect with the parties at hand. With further developments and the introduction of the integrative method of 'principled negotiation' at the Harvard Negotiation Project, the world has established a rather mature outlook towards dealing with disputes. The age old 'win-lose' theory has been replaced by the new 'win-win' theory wherein the focus placed is on the interests of the parties which further helps them derive their positions. This method is in consonance with the value base of social work because it strives for the just and mutually beneficial resolution of conflicts while acknowledging the value and importance of the ongoing relationships.

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