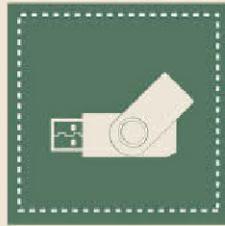


NEGOTIATING LIFE

SECRETS FOR EVERYDAY DIPLOMACY AND DEAL MAKING



JESWALD W. SALACUSE



Negotiating Life

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Negotiating Life
Secrets for Everyday
Diplomacy and Deal Making

Jeswald W. Salacuse

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In memory of
Bessie Buzzelli Salacuse

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Preface

Negotiation is a fundamental process that all humans use to interact with each other—whether in their business dealings, in their personal relationships, or in the wider world. Life is ultimately a series of negotiations. The aim of this book is to guide you in the many negotiations that you conduct every day in order to lead your life. Drawing on the strategies and tactics used by skilled dealmakers in high stakes diplomatic and financial negotiations, each of the following chapters offers advice on how to conduct to your advantage the many negotiations that confront you each day. Although the context of particular negotiations may vary, many common principles and techniques are at work in every negotiation, regardless of whether the negotiation is with your spouse or your country's international trade partners.

In writing this book, I have drawn on my teaching, research, consulting, and practical negotiating experience in some forty countries over nearly thirty years. I have previously written books on specialized aspects of the subject, including international negotiation (*The Global Negotiator: Making, Managing, and Mending Deals around the World in the Twenty-First Century*), negotiating with governments (*Seven Secrets for Negotiating with Government*), and organizational leadership (*Leading Leaders: How to Manage Smart, Talented, Rich, and Powerful People*). The present volume looks at the process of negotiation more broadly as a common activity that each of us engages in day after day, and it seeks to set down some general principles and techniques to enable the average person to engage in that process more productively.

Many of the ideas discussed in this book had their origins in my short articles and columns written during the past decade in two publications intended for the general reader: the *Negotiation Newsletter* published by the Harvard Program on Negotiation and my quarterly column, "Negotiating Life," in *Tufts Magazine*. I thank the editors of those two publications, Katie Shonk of the *Negotiation Newsletter* and David Brittan of *Tufts Magazine*, for giving me an opportunity to write about negotiating life for

the general audience and for their helpful editorial suggestions. I am also grateful to Melanie Reed for her skilled assistance in editing the final manuscript of this book.

Jeswald W. Salacuse
The Fletcher School of Law and Diplomacy
Tufts University
Medford, Massachusetts
March 1, 2013

Negotiated Lives

None of us just leads or even makes a life. It's far more accurate to say that we *negotiate* our lives. For each of us, whether housed in a condo on the East Side of New York City or sheltered in a hut on the African savannah, living is a constant negotiation, a continual process of daily deal making in an effort to navigate whatever existence we have been given. From our birth until our final moments, we negotiate our lives as best we can, making trade-offs and compromises for stakes big and small. If you were to track your daily activities from the time you get out of bed in the morning until you get back into it at night, you would be astonished at the number, complexity, and diversity of the deals you are constantly making in so short a time. Each of us engages in deal making and diplomacy every day. We are all daily deal makers and diplomats. Sometimes we negotiate our own deals; sometimes we have others do it for us. Often we negotiate for other people.

Like the international deal maker or the diplomat, we each use our own special negotiating strategies and tactics throughout our lives, whether we are bargaining with parents for a long-desired toy or a later curfew, with bosses for a bigger salary or a larger office, with clients and customers for contracts or increased payments, or with family members for love or at least a little cooperation. And let's not even talk about the deals we attempt to make with God for more time or less pain and the bargains we make with ourselves about losing weight, quitting smoking, or not making the same old mistake "next time."

Many of our everyday activities, while called by different names, require or have embedded in them the need to negotiate. Bargaining, haggling, diplomacy, and horse trading are all forms of negotiation. Virtually all organizational and cooperative actions are based on negotiations of some sort. Leading, managing, regulating, rule making, and consulting, to name just a few, all demand that individuals negotiate in order to achieve their goals. Every team leader, committee head, board chairman, and company

CEO knows that presiding over a meeting to make an organizational decision is to manage and participate in a multilateral negotiation—and every spouse, parent, sibling, and friend knows that relationships require constant negotiation. Any rule that emerges from a regulatory agency, a town council, or the US Congress is the product of numerous negotiations. When we examine cases of failed leadership or dysfunctional management in organizations, we usually find that their leaders or managers were ineffective at negotiating with the people they were supposed to lead or manage. In essence, negotiation is a tool of influence that we all use every day in order to achieve our personal and professional goals.

In a real sense, then, our lives are the sum total of our negotiations. The concept of negotiation is a useful lens to examine a life, a means to make sense of the seemingly chaotic events and circumstances that we experience from day to day, year in and year out. The seventeenth-century philosopher René Descartes said famously, *cogito ergo sum*, “I think therefore I am,” in order to prove his existence. When Descartes made that statement, he was trying to establish his existence as a solitary, not a social, being. If a less self-centered Descartes had wanted to show that we exist as social beings in the world, as people whose lives truly have meaning *because of* our interactions and connections with other people, he might have more fully affirmed human existence by saying, *negotio ergo sum*, “I negotiate therefore I am.” Descartes didn’t say that, but he should have, for it is through negotiation that we make and maintain, change and end, the transactions and relationships that are so fundamental to the lives we lead. Those relationships and transactions with other people don’t just happen. They are almost always the product of negotiation. Sometimes they are easily done. And sometimes they demand considerable material, human, and emotional resources.

The word *negotiation* usually conjures up images of high-stakes international diplomacy or multimillion-dollar business deals. But if you’ve ever haggled with a teenager who wants to use the family car, argued with your spouse over where to go on vacation, or tried to figure out who will pick up the kids from school, you’ve negotiated. Simply put, negotiation is *a process of communication by which two or more people seek to advance their individual interests by agreeing on a desired course of action.*

The context in which a negotiation happens certainly affects both the way the negotiation is conducted and the results achieved by the parties. The negotiations among warlords at the end of a civil war and those between corporations over a merger may seem on the surface to have nothing to do with one another, let alone with the deals and agreements you negotiate every day with spouses, children, business associates, clients, customers, and trades people. Yet an examination of the dynamics of those

very different types of interactions reveals that participants rely on similar approaches and techniques to achieve their goals. So whether you are sitting at polished conference table in London, trying to secure a loan from a group of bankers, or at your kitchen table seeking to convince your kids to focus on their school work, there are common principles, strategies, and tactics on which you can rely to make the deals and build the productive relationships that you need.

The English word *negotiation* is derived from two Latin roots, *neg* and *otium*, which together literally mean “not leisure.” For most people, a negotiation is anything but a leisure activity. They usually see it as a time of stress, tension, and anxiety. People engage in a negotiation because they have decided they can improve their situations in some way through an agreement, whether that agreement is a peace treaty between countries, a strategic joint venture between companies, or a contract with a salesman to buy a used car. Achieving an improvement in the situation necessitates desired actions from the other side. The cause of the stress, tension, and anxiety for a negotiator is the fear that he or she will not be able to persuade the other side to make an agreement on desired terms and that in the end, after much effort, the situation will not be improved and may in fact be worse than before the negotiations started.

Some people think success in a negotiation is just a matter of power: The strongest party wins. The lion always eats the lamb. Others believe that a successful negotiation depends on the personality or some other human, innate quality of the negotiator. Still others will say, “Good negotiators are made, not born.” For nearly everybody, however, negotiation is a mysterious black box that may result in agreements and decisions but seems to follow no known rules or principles.

The purpose of this book is to reveal the secrets of that black box. It will explain the principles, strategies, and tactics governing negotiation and show you how best to use them as you negotiate your life. Drawing on the experience of skilled, professional negotiators in a wide variety of settings from diplomacy to international business, from national politics to local community action, this book illustrates how you can apply those strategies and tactics in the day-to-day deal making and diplomacy that we all engage in, whether trying to convince a contractor redoing our kitchen to lower his price or a difficult office mate to cooperate more willingly on an important project.

The following chapters examine the secrets to negotiating life more effectively from four dimensions: strategies, contexts, tactics, and deal implementation. A negotiation is a process, a progressive movement toward an end. This book analyzes that process from beginning to end, from the parties’ initial decision to negotiate to their actions for implementing their

deal. Along the way, you will learn not only how each phase of the process unfolds but also how best to manage the process to achieve maximum gain with minimum cost.

Part I of the book focuses on the strategies of daily deal making. Consciously or unconsciously, parties in a negotiation always negotiate on the basis of some strategy—that is, some general plan of action to achieve a particular goal. Indeed the decision an individual makes about whether or not to negotiate at all is a key strategic choice. In this first part of the book, you will learn about the nature of negotiating strategies, including whether or not and in what circumstances you should negotiate, the best way to formulate strategies in specific situations, the factors (such as negotiation goals and power) that influence the way we negotiate in particular situations, and the best way to deal with a more powerful adversary.

All negotiations take place within a particular context. The nature of that context influences the negotiation process. Part II examines specific contexts in which negotiations can take place, such as negotiating as leaders, negotiating for other people, negotiating with local and national government departments, and negotiating with persons from other cultures and countries. In this part of the book, you will learn how such contexts influence the process of reaching productive agreements and how you can manage these contexts.

Part III considers negotiating tactics, for example, the things that you should actually do or say in a negotiation in order to achieve your goals. You will learn how best to prepare for a negotiation, choose a negotiation site, make appropriate opening moves, persuade the other side, and close deals.

The purpose of any negotiation is not simply to reach a favorable agreement but rather to secure a desired behavior from the party with whom you are negotiating—for example, the contractor actually does renovate the kitchen without flaws at the agreed-upon price, your supplier really does deliver the contracted components on time, and your teenager does indeed complete his promised program of study to raise his grades. The satisfactory implementation of a negotiated deal is therefore a key factor for the success of any negotiation. It is the subject of the fourth and final part of the book, which also considers how to renegotiate a deal that has gone bad.

Let's now turn first to the primary driver of any negotiation: strategy.

Part I

Strategies

Strategies for Conflict

Negotiations are all about interests. Individuals, organizations, and nations almost always pursue their perceived interests in interactions with other individuals, corporations, and nations. What is an *interest*? It's what a person cares about; it's what people consider important to attain their goals. Within the realm of diplomacy, the importance of interests is underscored by the often quoted view that "nations don't have friends, they have interests." Like nations, individuals also pursue their interests, although for some people, friendship is an important interest in itself. Individuals, organizations, and nations negotiate to secure desired benefits or advantages from other individuals, organizations, and nations so as to be in a better place than before negotiations began. On the other hand, whenever an improvement in your situation is impossible, the option of negotiation is pointless. To know whether you have reached that point, you must fully understand the interests at stake.

The Nature of Interests

Sometimes, as negotiators, we pursue a single interest, like the stereotypical used car salesperson trying to make a sale to a potential buyer at the highest possible price. More frequently, our interests are multiple and more complex. For example, a recent college graduate negotiating for a first job with a potential manager may be concerned not only with securing a good salary but also with career advancement opportunities, good working conditions, and adequate time to pursue a satisfactory social life. Similarly, the manager has an interest not only in hiring a qualified person to fill a vacancy but also in preserving compensation equity among company employees and staying within the expense limitations of the company's annual budget. And that used car salesperson whose only interest you assumed was to sell cars at the highest possible price may also have a multiplicity of interests in dealing with you, including making the monthly

quota of cars sold and getting rid of a vehicle that has been on the lot too long. Those interests may influence the final deal he or she makes with you.

The interests we pursue also have a temporal dimension. We all have short-term, medium-term, and long-term interests. The recent college graduate may have a short-term interest in getting a steady job with this company but a long-term interest in attending graduate school or pursuing other career options. The potential manager may have a short-term interest in staffing immediate projects with available personnel but a long-term interest in growing the company abroad by hiring personnel with specific skills.

Parties' interests are at the heart of any negotiation. Consequently, effective negotiation requires negotiators to understand their own interests as well as those of the people with whom they negotiate. That task is not as easy as it seems since people often misconceive or refuse to reveal their true interests. The first rule of negotiation is therefore to understand interests, both your own and the other person's. Although people negotiate to get what they want, they often fail or refuse to reveal what that is. Instead they make demands and stake out positions and then try to impose their demands on the other person, an approach that often prevents agreement. The following true story illustrates the problem.

The Story of the Ring

A wealthy man died in New York City and left his entire estate to be divided equally between his two daughters, Janet and Claire. The division of his property went smoothly until the two women faced the problem of deciding who would get their father's large diamond ring, which he had worn all his adult life. Both daughters wanted it. Compromise by cutting the ring in half was, of course, not a feasible solution. Following the pattern of many negotiations, each sister sought to establish her right to the ring by asserting a norm or principle. Janet pointed out that she had cared for their father in his old age and therefore should rightfully have the ring. Claire countered by claiming that years earlier their father had promised it to her. Relations between the two sisters became tense as each insisted on having the ring. Finally, in frustration Janet asked Claire a key question: "*Why* do you want the ring?" The question was key because its purpose was to determine her sister's interests in the ring, a fundamental first step for a successful negotiation. Claire replied, "Because it has a beautiful diamond and I would like the diamond. I thought I would make a pendant from it." Startled, Janet responded by saying, "That's not why I want the ring. I want it because it reminds me of our father."

The daughters' interests had now become clear. Claire's interest was in owning the diamond. Janet's interest was the ring's sentimental value.

When the two sisters recognized that their interests were different but not necessarily incompatible, they began to explore mutually acceptable solutions to the problem of who should receive the ring. Finally, Janet proposed that Claire take the ring to a jeweler, have the diamond replaced with Janet's birthstone, pay for the conversion, return the ring to Janet, and keep the diamond. Claire immediately accepted the offer. Janet's solution allowed both sisters to achieve their interests.¹

The story of the ring offers some useful lessons about negotiating:

1. *Make your negotiations problem-solving exercises.* A negotiation is most productive when both people see it as a way to solve a common problem rather than as a contest of wills or a debate over positions.
2. *Uncover and discuss interests.* Like Janet and Claire, many negotiators state their positions forthrightly but don't reveal the interests and needs behind those positions. This causes the other person to make false assumptions and see the process as a battle of wills.
3. *Ask the right questions.* Janet broke the stalemate by asking the question, "Why do you want the ring?" If the other person in your negotiation doesn't reveal why he or she wants what he or she demands, probe deeper by asking questions that begin with the word *why*. If this doesn't work, speculate. To deal with a reticent Claire, Janet might have said, "I guess you want the ring so you can give it to your husband." That might have provoked Claire to correct her by saying, "No, I want the ring because I like the diamond."
4. *Reveal your own interests.* Problem-solving negotiation is a *mutual* process. An effective way to encourage the other person to talk about his or her interests is to talk about yours. Psychological research has shown that negotiators are more likely to share information when their counterparts both share and request information, a phenomenon attributable to the norm of reciprocity—the powerful human urge to respond in kind to the behavior of others—that exists in most societies.²
5. *Create options together.* Once interests are out in the open, suggest options that will satisfy those interests. Unlike a position, which can be satisfied only by its acceptance, an interest can often be advanced in several different ways.

Interests and Conflict

As the story of the ring illustrates, contact between people pursuing their individual interests often leads to conflict. Two roommates return to their

college dormitory room after dinner. One has an exam tomorrow and therefore wants to study. The other has no classes the next day and wants to watch television. The coming together of these two students with differing and perhaps incompatible interests in the same place at the same time creates the potential for conflict. You can define a conflict as “a perceived divergence of interest[s]” between two or more parties.³ That divergence may be minor or substantial. It may be dealt with easily; for example, two spouses with differing restaurant preferences for dinner may decide to have Thai food this week and Mexican the next. Or it may be seemingly irresolvable, like the longstanding, violent conflict between Israelis and Palestinians.

Conflict, of course, does not always have to end in destruction and loss. Many conflicts, like those over civil rights in the United States or the creation of the European Union, were negotiated in a way that resulted in gains both for individuals and for societies as a whole. The challenge for people engaged in a conflict is to find the right process to resolve it. Like a competitive diver, a first step toward that end is to make the right approach. Once you recognize that there is a conflict between you and someone else, you must decide on an approach to deal with it. The approach that you choose is determined by your *strategy*.

Games and Strategies

Sixty years ago, John von Neumann and Oskar Morgenstern, in their seminal work *Theory of Games and Economic Behavior*, laid the theoretical foundations of strategy when they developed what came to be known as *game theory*, a body of learning that seeks to explain competitive situations whose outcomes depend not only on one’s own choices but also on the choices made by other people.⁴ Their ideas have had profound implications for understanding a variety of activities, from auctions to zoning regulation. They are also useful for understanding and conducting negotiations.

Like games, negotiations are competitive in the sense that each person is seeking to advance his or her interests, but doing so requires some desired action by the other party. One person alone can’t determine the result of a negotiation. Accordingly, you won’t be able to solve the disagreement with your spouse on where to have dinner unless he or she actually agrees to go someplace that is mutually acceptable; you won’t take that job offer unless your prospective manager really does agree to the career development program that is so important to you. Thus, for a negotiation to be successful, participants must take account of and anticipate the choices the other party is likely to make.

An initial problem in trying to resolve a conflict through negotiation is that, as in many competitive games, you can never know the other person's goals, intentions, and interests as well as you know your own. You have to infer them from circumstantial evidence, particularly from what the other side says and how they behave. Therefore, a key skill for any negotiator is the ability to "read" the other side, to know as much as possible about his or her goals, interests, and intentions. To do that, you have to elicit as much relevant information as possible from the other person and from other sources of intelligence. Then you must interpret that information accurately.

With that understanding, when faced with a conflict, you will normally proceed (either consciously or subconsciously) to determine an approach or a strategy to deal with the problem. Two of the most important determinants in adopting a strategy are (1) the degree to which you will take account of your interests and (2) the degree to which you will take account of the other person's interests.

Your concern for the other side's interests may be prompted by some altruistic motivation, some belief that those interests are morally superior to yours and therefore deserve to be recognized. But in most cases, that concern will be driven by a judgment on your part that an existing relationship with the other side is valuable and must be preserved or that it is only by accommodating the other person's interests that you will advance your interests. For example, if you want to hire a superstar for your firm, your negotiations will lean toward finding a way to satisfy most, if not all of that person's interests. Similarly, Claire and Janet's willingness to resolve their conflict over the ring may have been influenced by their desire to preserve their cordial relations as sisters. To think about applying these ideas, let's take a look at the case of Hans Brandt.

The Case of Hans Brandt

You are the leader of a software development team that has been successful in creating new products. You believe that your team's success has been due to your efforts to develop a sense of cohesion and teamwork among your team members, a dynamic group of software engineers in their twenties and thirties. An important element of your leadership style is holding staff meetings twice a week, at 9 a.m. on Mondays and Thursdays, during which team members share ideas, report on their projects, and resolve problems.

Six months ago, your company acquired the US subsidiary of a German software manufacturer. As part of the integration of the two companies, Hans Brandt, a German software engineer in his late fifties, was assigned to

your team. Although Brandt attends staff meetings irregularly and says little or nothing when he does attend, he is technically brilliant, and his work is excellent. More important, he has recently proposed an innovative project idea that your company's executive committee has just agreed to fund.

When you tell Hans during a conversation in your office of the company's decision to fund his project, he thanks you for your support and assures you of his complete dedication to the project. As he is about to leave your office, he says, "By the way, I have decided *not* to go to staff meetings anymore. Staff meetings just waste my time. People talk, but they have nothing to say. They are all very young. In my old company, we never had so many meetings. Please excuse me. I have to get back to work." He rises to leave your office. As leader of the software development team, how will you respond?⁵

The Five Conflict Strategies

In order to answer that question, you must first understand the situation that confronts you. If you perceive Hans's statement as presenting you with a conflict—that is, a perceived divergence of his and your interests—you need to decide on a strategy for handling the conflict.

To start with, you need to understand your interests in this conflict. As you think about the matter, you come to realize that you have several interests: (1) your desire to preserve your team's cohesion and unity that you have worked so hard to create; (2) your need to maintain your authority as leader of the team; (3) your interest in having Hans develop his new program successfully; and (4) your concern to develop and maintain a strong working relationship with Hans, an important member of your team. As you think about your interests, you may realize that some are more important than others. The way you prioritize them may affect how you approach the conflict.

And what about Hans's interests? He really didn't tell you much except that he seems eager to work on the new project and that he finds team meetings useless. Perhaps you need a conversation with him to find what has prompted this sudden decision not to attend any more staff meetings. In the meantime, you've got to decide what to do before Hans escapes from your office. Five possible approaches to the situation come to mind:

1. *Assert* the priority of your own interests and tell Hans that he has to attend all staff meetings just like any other member of the team.
2. *Accommodate* Hans by giving priority to his interests while yielding your own interests. Let him miss the meetings so that he can devote

all his energies to the successful completion of a potentially important project.

3. *Avoid* dealing with the conflict by telling him that you will think about his request and get back to him.
4. *Compromise* with Hans by telling him he may miss only one meeting a week. That way, both your interests will be partially satisfied.
5. *Collaborate* with Hans by entering into a discussion about how you can satisfy his interests in a way that might lead him to attend and participate at all staff meetings.

The five options you identified represent the five basic strategies that people use to deal with conflict: (1) *assertion*, sometimes referred to as competing, in which you give priority to your interests with little or no concern for the interests of the other person; (2) *accommodation*, a strategy that leads you to give priority to Hans's interests with little regard for your interests; (3) *avoidance*, a strategy by which you simply do not address the conflict; (4) *compromise*, which partially satisfies both sides' interests; and (5) *collaboration* (sometimes called "integration") a strategy that seeks to more fully satisfy both sides' interests usually through a process of negotiation. What differentiates these five strategies is the degree to which they take into account the interests of each of the people engaged in the conflict.

The precise strategy that you use to deal with a particular problem will usually depend on a variety of factors: the nature of the conflict, the importance you and the other person attach to the interests at stake, and your individual skill, experience, and temperament. For example, you may accommodate your spouse's choice of the seashore as a spot for a vacation in order to advance an overriding interest in marital harmony. On the other hand, in a conflict with a business partner over the division of income in a partnership transaction, you may choose assertion as a strategy, particularly if you've learned from past experience that strategies of accommodation or compromise only encourage your partner's intransigence.

There are three reasons that understanding these five strategies is important for negotiating life. First, they form a useful framework for understanding and thinking about your options in a negotiation. They thus enable you to recognize the full range of strategies at your command in dealing with a difficult business partner or an insistent spouse. Second, each of us tends to have an instinctive approach to dealing with a conflict no matter what the issue. Some of us are instinctual conflict avoiders; others are habitual asserters.⁶ As you think about this five-point framework, you may be able to identify your dominant approach. Once you do this, you will recognize that your instinctual way of negotiating may not result in a satisfactory solution to every conflict and that one of the four

other options may work better in a particular situation. Third, you need to remember that your counterparts in any negotiation will also choose their own strategies and tactics. Their strategic choices are influenced not only by their perception of their interests but also by the strategies that you adopt. For example, being particularly assertive about your interests in a conflict with your teenage daughter may likely cause her to dig in her heels on her position, while a more compromising or collaborative approach may induce more flexibility on her part. Knowledge of the various strategies people use in dealing with conflicts may help you identify and understand the strategies applied by the other party, and that knowledge may enable you to find ways of responding to them.

Changing Strategies Midconflict

The strategies we adopt initially to deal with conflicts sometimes prove unsuccessful. As a result, at some point we may consider changing to strategies that may more effectively enable us to achieve our interests. For example, at the beginning of the 1979 Camp David peace talks between Israel and Egypt, Israel adopted a strategy of assertion and insisted on holding on to parts of Egypt's Sinai Peninsula that it was occupying as a result of war. Egypt was equally assertive in demanding the return of every inch of territory over which it had claimed sovereignty for thousands of years. Finally, under the mediating efforts of President Jimmy Carter, both countries focused on their primary interests and adopted a more collaborative stance. When Israel understood that its first priority—security on its border with Egypt—could be obtained only by allowing Egypt to regain all the Sinai in return for demilitarization of the area, international guarantees, and a peace treaty, Israel gave the territory back to Egypt, albeit reluctantly. This result only came about because both sides changed their strategy for dealing with their conflict and with each other. One can see the same dynamic at work in the case of the dispute between the two sisters over their father's ring. Both began their interaction by asserting their individual interests with little regard for the other sister's interests and then shifted to a more collaborative stance once they fully understood the nature of their two interests.

Similarly, in dealing with Hans, you may find that adopting a strategy of assertion by demanding that he attend all staff meetings will prompt equally assertive behavior from him, such as a deliberate failure to attend, passivity at the meetings he does attend, resentment toward you, and a general refusal to cooperate with the team. That experience may lead you to try a more collaborative strategy in your dealings with Hans. The effective

application of that strategy requires you to understand Hans's interests, but to do that, you first have to engage him in some serious conversation. In the course of that conversation, you may come to realize that Hans has a strong interest in having his senior professional status recognized within the organization, something that has failed to happen since his arrival. Through those conversations, you may come to realize that as an experienced software engineer, Hans has valuable knowledge to share with your team, many of whom are just beginning their careers. Your team also needs to stay aware of and contribute to the development of Hans's new project, and his regular attendance at staff meetings is an important way of achieving that objective. You therefore propose to strike a bargain with him that he will attend staff meetings to keep the others aware of his exciting new project and that he will be given a special role, as a senior engineer, in those meetings. Like the deal struck at Camp David between Israel and Egypt, you adopt a collaborative strategy that seeks to satisfy both your and Hans's interests. On the other hand, as we will see in Chapter 12, the way you begin a negotiation can have a lasting impact on the negotiation and your future relations with the other side, despite a later change of strategy. For example, an immediate and abrupt refusal to consider Hans's request to miss staff meetings may convey a powerful message to him that you are an unreasonable, rigid manager who is not concerned with the welfare of team members. Your later change of strategy to a more accommodating posture may not erase Hans's initial impression of you. You therefore need to think carefully about your strategy from the very start of your interaction. As Texas trial lawyers like to say, "Once you've rung a bell, you can't unring it."

The Art of Strategic Choice

Making strategic choices in conflict situations can be a complex process. A decision to go to war is probably the most serious of all strategic decisions for dealing with a conflict. It has been said that one of the most common strategic errors in warfare is to fail to take into account what the enemy may do.⁷ An equally serious mistake in any negotiation is not to consider the various actions other people might take in reaction to your initiatives for dealing with the conflict. US politicians often urge the government to adopt actions against US adversaries without fully considering the actions that such adversaries will take in response. For example, in the 2012 presidential campaign, the Republican candidate Mitt Romney said that on "Day One" of his presidency he would declare China a "currency manipulator" and proceed to impose a tariff on a variety of Chinese products

entering the United States.⁸ Romney seemed to assume that such action would cause China to immediately change its monetary policy. But rarely do adversaries—whether they are countries, corporations, or persons—docilely accept orders that may adversely affect their interests. Rarely will US government actions cause other countries to lose sight of their interests. Rarely will they be unable to take some action in response. Thus China, as one of the largest creditors of the United States and a vital trading partner, has a variety of options that it could take in response to new tariffs imposed by the US government, including imposing its own higher tariffs on US products, setting new, onerous conditions on US companies operating in the country, and reducing its purchases of US treasury obligations.

As a result, before taking any initiative in a negotiation, you should always ask three questions:

1. In light of their interests, how will the other side interpret my actions and statements?
2. What strategies, tactics, and actions will the other side take in response to my statements and actions?
3. What should I then be prepared to do in response to the other side's reactions?

In their book *Thinking Strategically*, Avinash Dixit and Barry Nalebuff state that the first rule of strategic behavior is “Look ahead and reason back.”⁹ As the authors advise, you should anticipate where your actions will lead and use that information in making decisions on how to deal with strategic problems, whether that problem concerns the harmful actions of another country or the uncooperative behavior of a dissatisfied employee. A basic technique for anticipating the reaction of others is to put yourself in their shoes, examine your statements and actions from their point of view, and then from that point of view, anticipate what they will say and do. If you do that and think hard about it, you will come to realize that the other person has lots of options in dealing with you and your efforts to lead them in a certain direction. Lyndon Johnson, who—as majority leader of the US Senate—dominated that body by leading its members in one-on-one meetings, actually rehearsed his negotiations out loud with other senators beforehand. Behind the closed door of his office, his aides would hear Johnson “playing out a conversation: what he would say; what the other senator would say in response; what *he* should then say.”¹⁰

In making strategic decisions in negotiations, we often must make assumptions. Although we know our own intentions, we can never know for sure the intentions of the person with whom we are talking. Similarly, although we know the impact of others' statements on us, we can never

know with certainty the impact that we are making on others. We are forced to make assumptions about the *intentions* of others and about our *impact* on others.¹¹

For example, if you are a company CEO conducting a negotiation to gain the support of one of your vice presidents for a company reorganization that will entail significant personnel changes in that vice president's division, you may receive nods as you speak and receive no apparent objections. As a result, you could believe that you have convinced him to participate in the process. You are of course making an assumption about his intentions and the impact of your statement on him. While he may indeed be convinced by your logic, he may also have concluded that arguing with you is pointless and that he knows of other ways to minimize the effect of your restructuring plans on his division. Your evaluation of his conduct may reflect your self-interest rather than a hardheaded appraisal of the signals you are receiving from him. The point is that we should recognize the assumptions we make, be open to receiving signals that challenge those assumptions, test the assumptions continually, and be ready to change assumptions when the evidence warrants.

Making strategic choices in a conflict situation can be a complex process. The next chapter seeks to help you make the right choice.

To Negotiate or Not?

Politicians and pundits like to give simplistic, definitive advice about negotiating. They tell us things such as “Always negotiate from strength” and “Never negotiate with terrorists.” Unfortunately, their advice is of little use in answering the two most important strategic questions for dealing with the conflicts we face in our lives. First, when should we negotiate with the other side? Second, if we do negotiate, when should we agree to settle for a deal that the other side is willing to accept?

The reason questions about whether to negotiate and when to settle are so difficult is that they require complex evaluations of competing interests and uncertain predictions about the future. What’s more, they usually have to be addressed when emotions are high. In both instances, the people involved in the conflict must ask themselves an important question: Can I do better? Can I do better if I refuse to negotiate with a deceitful former business partner who stole my product ideas and customers? A vindictive ex-spouse who refuses to let me see my kids? A brutal Taliban faction that has wiped out my village? And if I do negotiate, can I do better if I reject my former partner’s offer of settlement, my ex-spouse’s compromise on child custody rights, or the Taliban’s proposal for a ceasefire?

The Winner’s Curse and the Enemy of the Good

In making these two vital decisions, negotiators face two opposing dangers: the winner’s curse and the enemy of the good. The winner’s curse occurs if a negotiator agrees to something too quickly when a little more thought, time, and effort might have yielded a better result. The concept of the enemy of the good, the opposite of the winner’s curse, is derived from Voltaire’s declaration *Le mieux est l’ennemi du bien*—the best is the enemy of the good. Thus unrealistic hopes of doing better often cause a person to reject an offer on the table or refuse to negotiate at all. In some situations, a refusal may indeed lead to better results, but in others it may only produce

protracted conflict, escalated hostilities, additional costs, and in the end, a worse deal. In that kind of situation, the desire for the best possible outcome is the enemy of a good deal—or at least one that is good enough.

In plying their trade, all negotiators, like ancient seafarers passing through the dangerous Straits of Messina, must therefore navigate carefully between the Scylla, the enemy of the good, and the Charybdis, the winner's curse. In order to make that passage safely, they must rigorously analyze the conflict using five navigational guiding stars: (1) priorities, (2) alternatives, (3) benefits, (4) costs, and (5) prospects for implementation. You should apply the same five-point formula in making everyday decisions on when to negotiate and when to settle. Let's consider each point.

Priorities

In any conflict, it is vital to clearly determine your priority interests. Although you may gain some emotional satisfaction in driving a deceitful partner out of business, humiliating a vindictive ex-spouse, or crushing the Taliban, your real priorities may lie elsewhere—restoring your business to health, getting on with your life, and bringing peace to your village. It is possible that those interests will be best secured if you sit down to negotiate with the other side and eventually agree to a deal, even if it is not the best deal you could possibly conceive. For example, as we saw in the previous chapter, at the beginning of the 1979 Camp David negotiations, Israel had a strong interest in holding parts of the Sinai Peninsula that it was occupying as a result of the October War of 1973. However, Israel came to understand that its first priority, security on its border with Egypt, could be obtained only by allowing Egypt to regain all the Sinai Peninsula in return for demilitarization of the area, international guarantees, and a peace treaty. Israel therefore reluctantly gave the territory back to Egypt in order to secure its first-priority interest.

In approaching your own negotiations, think hard about all the goals and interests you are trying to achieve. List them on a sheet of paper. That's the easy part. The hard part is prioritizing those goals and interests in rank order—determining which goals are more important and which are less so. This knowledge of your priorities will help you shape your strategy for the negotiation.

Alternatives

In order to assess the wisdom of not negotiating or rejecting a settlement offer, you need to understand and evaluate your alternatives for each one.

What are your other options if you choose not to negotiate with a deceitful former business partner or not to accept your ex-spouse's proposal on child custody? In this regard, you must answer a fundamental question: How well will any of those alternatives satisfy my interests?

More specifically, after listing your alternatives, determine which alternative is the *best* among them, the one that some negotiation scholars have called the Best Alternative to a Negotiated Agreement (BATNA).¹ Your BATNA is an important negotiating tool. It is the standard against which you can measure the value of any proposal put forward by the other side. You certainly wouldn't want to accept a proposed deal that is worse than a better option you already have elsewhere.

Your best alternative to accepting your business partner's proposed settlement is probably a lawsuit. If you are convinced you will win it or at least use it to squeeze out a better deal, then starting a lawsuit may be a preferable alternative to accepting his paltry offer. On the other hand, the costs, delays, and uncertain results of a lawsuit may lead you to negotiate or accept a settlement.

For example, the decisions to negotiate peace by the African National Congress and the South African government in 1990 and by the Palestinians and the Israeli government in 1993—in both cases parties that had steadfastly refused to talk to one another for many years—were driven, in each case, by the recognition of both sides that the alternative of military force would not achieve their goals.² In each case, both parties ultimately concluded that their best option for advancing their own interests was to negotiate with their sworn enemies. Similarly, a clear, realistic evaluation of your alternatives will serve as a measuring rod against which you can evaluate the proposals advanced by the other side, thereby helping to avoid both the winner's curse and the enemy of the good.

Benefits

Before deciding to sit down to negotiate with an adversary, you must realistically estimate the nature and amount of benefits you are likely to gain from the encounter. A problem in making such an evaluation is that you may need information only gained by actually engaging in negotiations. The very act of negotiating is always a process of education both for you and for the other side. It is only by talking with the other side that you will know whether or not there is real potential to make a deal that will satisfy your interests. Therefore, it is sometimes wise to start negotiations with the intention of stopping if you discover that the other side cannot or will not give you the benefits you are looking for. In order

to protect against the risks posed by providing information to the other side, a negotiating party will often require the other side in a business negotiation to sign a nondisclosure agreement in which they promise not to divulge to others information they receive during the course of the negotiation.

Sometimes we underestimate the benefits to be had through negotiation. That underestimation may be caused by assumptions we make about the other side, our relationship with that person, or the context in which we find ourselves. For example, in a Third World market or a US auto showroom, we usually assume we can do better if we refuse the offered price and start negotiating with the seller. In other places, such as an expensive clothing store in New York City or a high-end jewelry store in Boston, we tend to assume that negotiation is not allowed by the rules of the game, and so we either pay the asking price or turn away. In negotiating life, you may want to test the strength of the assumed no-negotiation rule when it is to your advantage. For example, in shopping for a birthday gift for my wife on a wintry day just before a major snow was to hit the city, I walked into an expensive but empty jewelry store and happily found what I considered an ideal bracelet. When the salesman laid out the bracelet with a flourish on a piece of velvet and told me the recently lowered "sale price," I asked, "What's the best deal you can make me?" He eventually took 35 percent off the sale price. The empty store, the impending snow storm, and the fact that I asked were factors that influenced the salesman's decision to negotiate.

On the other hand, there are also situations where we overestimate, to our detriment, the benefits to be had by engaging in negotiation. For example, one couple, after arriving at what seemed a satisfactory price with a contractor for building an addition to their home, decided to call him the next day to wring another 3 percent off the price. They got their 3 percent reduction, but in the process, they also permanently soured their relationship with the contractor, who completed their addition late, over budget, and with shoddy workmanship while arguing with them constantly about their slightest suggestions or requests. Similarly, an American professor visiting in Thailand, who took pride in his ability to negotiate low prices with cab drivers in Bangkok, tried to demonstrate his skill to his wife in the midday sun. As cab after cab refused his lowball offers and drove off, his wife finally said she would give him the forty cents that he hoped to save if they could take the next cab without a negotiation. Sometimes the stakes we hope to win through negotiation have significant costs in currency other than money, and those costs may not be worth any potential gain. So it's important to weigh all the costs when we decide whether or not to negotiate.

Costs

What do you stand to lose by negotiating? All negotiations and settlements have costs. Those costs are not just economic. The very act of negotiating may legitimize an adversary you perceive as illegitimate, delay achievement of your goals, enable the other side to gather valuable information, and cause conflicts between you and your supporters who oppose negotiations. Similarly, any settlement also has costs because it will always entail giving up something you feel you deserve, for instance, accepting an offer from a deceitful former partner that is less than the full value of the intellectual property he stole from you. Once you have carefully evaluated the costs, you need to weigh them against the benefits you expect to derive from negotiating and achieving a deal. For example, while the decision by President Nixon to negotiate a new diplomatic relationship with China in 1972 seems, in retrospect, obvious, at the time it required Nixon to make a careful cost-benefit evaluation since the People's Republic of China and the United States had history of severe hostility since the Republic's founding in 1948, and groups within each country viewed the other as an implacable enemy. The failure of those talks would have had significant costs both for the United States diplomatically and for Nixon politically.

Implementation

The goal of any negotiation is not just an agreement but also a desired change in the other side's behavior. Thus a key question you must ask when deciding when to negotiate or when to settle is whether the other side will actually do what it agrees to do. For example, even if your former partner agrees to compensate you, will he actually be in a financial position to make the promised payments given his current business obligations? And if your teenage son agrees to clean his room if you let him stay out late tonight, will he actually do it tomorrow without further efforts at negotiation on your part?

The problem of implementing arms control agreements was what prompted President Reagan to famously quote the Russian proverb "trust but verify." It was only when US and Soviet negotiators solved the implementation problems with adequate verification mechanisms that he agreed to sign the 1987 Intermediate-Range Nuclear Forces Treaty.

Unfortunately, negotiators sometimes tend to downplay or ignore the problems of implementing their agreements. Various reasons may explain this tendency. Sometimes negotiators fail to make a careful evaluation of the capabilities and intentions of the other side to actually do what they

promise. Or they may be so emotionally committed to achieving an agreement that they make overly optimistic judgments about the other side's prospects of actually delivering on their commitments. For example, you may be so excited about the prospect of a newly remodeled kitchen that you don't check a contractor's references thoroughly or take a look at his previous jobs. Then too, if someone is negotiating on your behalf, that person may have more of an incentive to make the deal than to implement it. For example, the bonuses of corporate executives will usually depend on the contracts they land in the current year, not on whether their deals will lead to corporate profits the following year. Therefore, good negotiators must make hardheaded evaluations about the prospect of implementing any deal that is put on the table. And if someone else is negotiating on your behalf, you need to be equally hardheaded in evaluating that person's assurances for deal implementation and in building incentives into your relationship with that person to encourage effective implementation of the deals he or she makes for you.

Unripe Stalemates and Ripe Conflicts

No matter how penetrating their analysis of the conflict, negotiating parties may nevertheless come to the conclusion that they can make no further progress toward resolving their differences at an acceptable cost; consequently, they may refuse to negotiate or, if they have tried talking to one another, may break off contact. One recent and notable example was the negotiation in the summer of 2011 between President Obama and Speaker of the House John Boehner over the national budget. After weeks of trying to reach a "grand bargain" that would both increase government revenues (the primary goal of the president) and cut expenditures (the principal interest of the speaker of the House), Boehner ended negotiations because he judged that the two men were not making progress toward a solution. "It ain't going to happen. I'm done with it," he told the president in a phone call.³ Their conflict had become a stalemate.

The resolution of a conflict becomes even more complex when the dispute, as in the budgetary negotiations conducted by Obama and Boehner, is between groups rather than individuals. The members of the group—whether a political party, company, town, or nation—and the group's leadership may have radically differing and competing views on dealing with the other side and the precise nature of an acceptable settlement. Any decision to negotiate or settle will often require intense, lengthy internal negotiations among numerous individuals and groups before the leader can sit down to talk with the other side let alone make a deal. Thus the failure of

talks between the president and the speaker had as much to do with the internal dynamics of the two parties they represented as with the attitudes and interests of the two men themselves.

The world has seen numerous cases of stalemated, destructive disputes: the conflicts between Catholics and Protestants in Northern Ireland, which raged for thirty years; the state of war between Egypt and Israel, which began in 1948 and was not resolved until 1979; and the long-standing, violent conflict between white and black South Africans over apartheid and racial equality. It was often said at one time or another in the history of each of those conflicts that nothing could be done to resolve them, that they were simply not “ripe” for resolution.

Yet all those conflicts eventually did become ripe, and the parties were ultimately able to settle their differences by negotiating a peaceful end to their disputes. Catholics and Protestants, through the mediation efforts of George Mitchell, eventually signed the Good Friday Agreement in 1998 to resolve their long-standing differences and lay the foundation for a new political order in Northern Ireland. Egypt and Israel, thanks to the mediation of President Carter, negotiated a peace treaty in 1979 that ended a state of war begun in 1948. And black and white South Africans negotiated a peaceful transition from apartheid to a black majority government in 1994, ending decades of violent racial conflict. What made those conflicts ripe? How did they change from unripe stalemates to conflicts ripe for resolution? Precisely what brought about this seemingly magical transformation?

Professor I. William Zartman, a leading scholar of ripeness theory, has argued that conflicts become ripe when two conditions are present: (1) the parties are experiencing a “mutually hurting stalemate” and (2) both parties perceive a way out of the conflict.⁴ Thus the ripeness of a conflict that was previously an unripe stalemate is heavily dependent on a change in the parties’ perceptions of their conflict and of each other. That change in parties’ perceptions also leads to a different evaluation of the five elements for navigating conflict discussed earlier in this chapter. The Northern Ireland, Egypt–Israel, and South African cases show that strongly held perceptions and beliefs about conflicts and adversaries can change with time and experience. In each of these conflicts, the parties, who had originally refused to talk to one another, ultimately decided to engage in negotiations and eventually to settle their dispute because they slowly changed the evaluation of their conflict and their adversary due to four important factors.

First, the parties came to realize that they could not achieve their desired ends through the use of military force alone. Prior to that time, each party had assumed that sufficient force would allow it to prevail. Years of fighting had shown that was not to be the case. Despite strenuous military efforts, Egypt could not destroy Israel, the United Kingdom government could not

eliminate the Irish Republican Army (IRA), and the white apartheid government in South Africa could not crush the African National Congress (ANC). But neither could Israel, the IRA, nor the ANC compel their adversaries to surrender.

Second, the parties ultimately determined that the costs of maintaining the status quo in their relations with the other side were unacceptably high. Thus the persistent state of violent conflict over many years (combined with international sanctions in the case of South Africa) eventually proved to impose unsustainable costs on the economies and people of Egypt, South Africa, and Northern Ireland, as well as proving costly to Israel, the IRA, and the ANC.

Third, as a result of a series of often unofficial meetings and contacts between members of the two sides, leaders within each party came to believe that a negotiated settlement was a viable and preferable alternative to a continued state of violent conflict. That recognition led all sides to agree to try negotiation as a means of resolving their conflicts. They therefore saw their conflict as ripe for resolution.

Finally, a fourth important factor was also at work in all three cases: a change in leadership of at least one of the parties. Established leaders who have taken hard positions against negotiating with adversaries usually resist changing that view, not only out of principle, but also because doing so might weaken their followers' support. Indeed many leaders gain power by mobilizing their followers against the group's enemies. On the other hand, groups are often led to change old perceptions of their conflict as a result of a change in leadership. New leaders often have new views about old conflicts and also have the power and willingness to try new solutions. Thus the arrival of Tony Blair as prime minister of the United Kingdom, of Anwar Sadat as president of Egypt, and of F. W. De Klerk as president of South Africa led their followers to perceive the enhanced possibilities of negotiation as a solution to those long-standing conflicts. A further contributing factor in at least two of the cases was the presence of a mediator to help the parties negotiate their differences.

Lessons from the Three Cases

These three cases from international relations teach important lessons for all of us as we try to decide when and how to negotiate the conflicts in our lives:

1. *The nature of your and the other side's perceptions of your conflict and of each other are key elements in deciding whether to negotiate and*

how to arrive at a successful settlement. It is therefore important to continually verify that your perceptions and theirs agree with reality and to take steps to rectify incorrect perceptions. For example, your neighbor's strong opposition to your plans to renovate your house may be based on an erroneous belief that your renovated home will obstruct his view of the surrounding countryside. Understanding the full nature of his concerns and then demonstrating that his view will be undisturbed are important steps in changing your neighbor's perception and therefore in resolving your conflict.

2. *Your perceptions may change over time as a result of your experience in dealing with the conflict and with the other side.* Thus the long-standing disputes that you have in your life are not necessarily permanently intractable and may instead be resolved if the right conditions exist. Your commitment never to deal again with your ex-spouse may soften over time as you come to see the importance of your kids having continuing contact with their father.
3. *The prospects for negotiating your conflicts are enhanced when you and your adversaries come to realize three things:* (1) that your existing approaches to the conflict are not working to bring about desired results; (2) that the status quo in your relationship with the other side is too costly to maintain; and (3) that the prospect of negotiation does at least offer some hope of achieving gains. In pursuing strategies to persuade the other side, as well as your own group, to embark on negotiation, try to focus on those three elements. Thus it pays to remain in contact with the other side, either directly or through a third person, to encourage them to consider each of these three vital elements in conflict resolution.
4. *A change of leadership of one of the parties often offers an opportunity to end an unripe stalemate.* If that happens, take advantage of it, for example, by advancing a new offer to negotiate or making a new settlement proposal.
5. *A third party acting as a mediator or facilitator can often help resolve a conflict or at least ripen it to the point that the parties become willing to negotiate their differences directly.* If you are facing a stalemated conflict, find a third party to help. For example, if your neighbor won't speak to you as a result of your renovation plans, ask another neighbor to explain to him that your plans will not have a negative impact on his property. Chapter 13 will discuss in detail how a third party, such as a mediator, can facilitate negotiations between you and your adversary and help construct a settlement of your conflict.

Conclusion

The correct answer to the questions of whether to negotiate and when to settle is almost always “It depends.” It depends on your priorities, your alternatives, the benefits to be gained, the costs to be incurred, and the prospects for implementation of a deal. Your evaluation of them in your own everyday negotiations will shape the strategies you adopt to achieve your goals. Your experience with the conflict and your history with your adversary may change your perceptions of the conflict. Rather than resist that knowledge, use it to guide your strategies for conflict resolution.

The Power Problem

A Tale of Lions and Lambs

Several years ago in France, at an international conference of university presidents, a colleague and I gave a talk on the importance of teaching negotiation as an academic subject. We argued, among other things, that a mastery of negotiation techniques would help Third World officials and executives improve their dealings with industrialized countries and multinational corporations. The head of one of India's largest universities dismissed our argument with a wave of his hand, saying, "A negotiation between the weak and the strong is a dialogue between the lamb and the lion—the lamb always gets eaten."

Our exchange highlighted a fundamental issue underlying any discussion of negotiation: the problem of power. Aren't the results of any negotiation determined by the two sides' relative resources? Doesn't the lion always eat the lamb, and doesn't the industrialized nation invariably trump the developing country? And if that is true, does a command of negotiation techniques and tactics really matter in the end? The answer to those questions is "not necessarily."

The Nature of Power

To address those questions, we first need to ask, "What is power, anyway?" In particular, what is negotiating power? In essence, power is the means by which an individual, organization, or even a country attains a desired end in its relations with other individuals, organizations, or countries. Social scientists often define power as the ability of one party to move another party in an intended direction.¹ Many people consider that power refers to the *physical* resources—the money, manpower, or arms—that an individual, organization, or country commands. In a negotiation between General Motors and a small, insolvent auto dealership in Fargo, North Dakota, over

unpaid invoices for cars, General Motors is powerful because of its vast resources, huge organization, and numerous legal tools. However, when it comes to negotiating, this emphasis on *physical* resources as the only sources of power distorts the nature and role of power. The Fargo auto dealership is not necessarily a lamb waiting to be slaughtered. As will be seen, it may have a few power tools to work out a better deal with GM than you might have at first expected.

Your goal in any negotiation is to convince the other side to agree to an action that is in *your* interest. From this perspective, negotiating power means *the ability to influence or move the decisions of the other side in a desired way*. In some situations, your physical resources, such as capital, technology, or organization, may indeed influence your adversary's decisions. But in other cases, less tangible factors, such as an original idea, a strong relationship, or a reputation for honesty, may also be sources of influence and therefore of power at the negotiating table. These nonmaterial factors are a negotiator's important power tools.

Because power in a negotiation is the ability to move the other side's decisions in a desired way, perceptions of a party's power, rather than its reality, are often what count. In any negotiation, it's therefore important to understand how the other side perceives and evaluates what you bring to the table and to think carefully about whether your perceptions of the other side are based on reality. Misperceptions of the two sides' relative power can lead to disastrous results. For example, in 1963 as the United States began to seriously contemplate a military buildup to stop a communist takeover of Vietnam, President Lyndon Johnson viewed the Vietnamese as a "damn little pissant country."² In the end, the Vietnamese communists had the power to force the United States from the country in 1975. Similarly, at the outset of the Korean War, the American government, and particularly General Douglas MacArthur, perceiving China through the lens of conventional military assessment, underestimated the power of that country and especially China's will to defeat what it perceived as a threat to Chinese sovereignty. The Chinese would fight US forces to a draw.

Each party in a negotiation brings its own set of lenses—its prejudices, cultures, assumptions, and desires—to the negotiating table. Those lenses may prevent it from objectively evaluating the extent of its own and the other side's power. For example, Americans tend to view youth as an indication of power, but other cultures sometimes see it as weakness. Thus while Americans perceived President John Kennedy as a young, vigorous, and therefore powerful leader, Soviet leader Nikita Khrushchev, in his famous confrontation with Kennedy over Berlin in 1961, viewed the young American president through a Ukrainian cultural lens: he saw Kennedy as a rich, spoiled, inexperienced, womanizing young man who had been

politically wounded by the Bay of Pigs fiasco. In short, Khrushchev saw Kennedy as weak and treated him accordingly at their summit meeting in Vienna in 1961.³ In your own negotiations, don't jump to the conclusion that the banker in a three-thousand-dollar suit standing in an elegant conference room is a titan of power while the plumber in soiled overalls sitting at your kitchen table is a pushover. Instead, think carefully about the specific sources of influence that each has to affect your decisions and what resources you may have to counter that influence.

Initial evaluations of the relative power of parties at the negotiating table are also often wrong because they focus on each party's *aggregate*, or total, power. Thus in any negotiation between the United States and virtually any other country, Americans often assume that the world's "only super power" should emerge with everything it wants, and they are disappointed when it doesn't. But a negotiation is about specific issues and interests. Each side must answer a crucial power question: What resources and devices do I have that will influence the other side on the specific issues under discussion? While the American public often assumes that the United States' superior military force and enormous wealth should cause any small country to agree to its bidding, in many international negotiations, military might and wealth have limited effect. For example, in the negotiations between the United States and Panama over the reversion of the Panama Canal to Panama in the 1970s, the US nuclear arsenal and its military might were largely irrelevant to the issues under discussion. Negotiation is a learning experience for all sides. As the talks progress, the parties learn what specific resources will influence the other side on a given issue—something that they might have tried to foresee through better analysis at the outset of their talks.

Experience shows that two factors are more important than a party's aggregate physical resources in influencing negotiation outcomes: (1) the resources that a particular party brings to bear on the *specific issues* in a given negotiation and (2) the skill and will with which a party applies its resources to the negotiating process. The perceived "weaker" party in a negotiation can augment its power by the use of wise strategies and tactics—which are in and of themselves resources and skills that it brings to the table. Strategies and tactics are a negotiator's power tools. Let's consider some of the strategies and tactics that lambs can use in negotiating with lions.

Four Grand Power Strategies

Strategy refers to the grand plan by which a party hopes to carry out its goals. *Tactics*, on the other hand, are the moves and actions taken to

implement that strategy. A party in a negotiation cannot determine a strategy until it has formulated a basic goal. And it is often at this point that lambs show an initial lack of strength. They can't decide what they want. Since they are unable to determine a goal, they fail to develop appropriate strategies. The causes of that inability may be indecision, lack of confidence, fear, or uncertainty. For organizations and countries, it may also stem from disunity or disorganization. For any negotiator, setting clear goals is an act of empowerment, an initial step toward strengthening its position at the bargaining table.

Once your goals are set, you need to find a strategy that will enable you to attain them. In this respect, you must ask an initial question: What is the range of strategies available to you? In his book *Power: The Inner Experience*, the late David C. McClelland, a Harvard University psychology professor, examined the individual's drive for power and determined that people throughout the world seek power in one of four ways:

1. By obtaining support from others, often through a supportive relationship (I feel strong because another supports me);
2. By establishing one's autonomy and independence from others (I feel strong because I strengthen myself);
3. By assertively acting upon, influencing, and dominating others (I feel strong because I have an impact on others); and
4. By becoming part of an organization or group (I feel strong because of my group).

McClelland labeled these four orientations support, autonomy, assertion, and togetherness.⁴ As we saw in Chapter 2, just as we have ingrained approaches to dealing with conflict, each of us, by reason of personality or experience or both, also has a favorite approach to attaining the power we need to accomplish our goals in particular contexts. Our orientation in seeking power strongly influences the strategies we adopt in specific negotiations.

The four ways of experiencing power identified by McClelland can be translated into four grand strategies that individuals, organizations, and even countries use to seek power and achieve goals in negotiating with other people. Let's examine each of them.

Support

One strategy often used by lambs is to seek support from more powerful countries, companies, or people by creating an agreed upon supportive

relationship with them. For example, the grand strategy of many French-speaking African countries has been to maintain a support relationship with France, their former colonial master, in order to obtain the financial, military, and technical means needed to develop or even survive. While one may argue that Senegal and Ivory Coast are weak because of their dependence on France, that dependence also gives them the power to attain fundamental goals of national security and economic well-being. Similarly, a small company, such as an auto parts manufacturer, may consider forming a support or client relationship with a larger company, such as a major auto company, as its best means of attaining economic benefits. And a young, junior corporate executive may seek out senior, experienced people in the corporation to serve as her mentors and thereby gain the knowledge and means of influencing corporate decisions affecting her career.

Parties following a support strategy make it clear in their interactions with the more powerful party on whom they depend that they are prepared to do that party's bidding. At the same time, they also indicate in direct and indirect ways that they expect the more powerful party to behave toward them in particular ways, hoping that the strength of this expectation will lead the more powerful party to feel that it has certain obligations toward the weaker party. The weaker party thus operates on the assumption that its expectations about a stronger party's behavior will create a sense of obligation in the stronger party to behave accordingly.

A relationship of support cannot, after all, be established unilaterally. The patron in the relationship must be convinced that it will gain advantages from its beneficiary's dependence on it or that it has an obligation to maintain the relationship for other reasons; however, as the patron's situation changes, its view of the desirability of the relationship may also change. Thus when the US auto manufacturer finds a less expensive Mexican auto parts supplier, it will terminate the relationship with its small American supplier. And while the US "lion" during the Cold War was quite willing to enter into support relationships with many developing countries and provide them with substantial amounts of financial aid each year, the end of the Cold War and the dissolution of the Soviet Union led the US government to reevaluate those support relationships and ultimately reduce aid to certain countries, like Congo, that were no longer important to America's strategic interests. Similarly, the early retirement from the company of a junior executive's mentor will usually mean a reduction in power of that junior executive unless she is able to build a support relationship with another mentor.

Autonomy

Fearful of the costs of a support strategy, individuals, organizations, and countries often choose its reverse—autonomy—in many of their dealings with lions. Some companies, for example, have a definite policy of undertaking foreign investments only in the form of a wholly owned subsidiary because this form gives them greater control over their foreign activities than would a joint venture or a strategic alliance with another firm. In the 1960s and 1970s, policies of self-reliance prompted many developing countries to restrict their economic interactions with powerful developed nations. They therefore strictly controlled the entry of foreign investment and imposed high tariffs to limit imports. (Ultimately, the failure of those policies to yield tangible benefits caused many countries to abandon autonomy strategies in the economic domain.) More recently, North Korea, by developing its own nuclear weapons program, has also pursued a strategy of autonomy as a means to protect its regime from perceived external threats. Bringing the issue of autonomy closer to home, your ailing, elderly neighbor may refuse your offers of assistance, not out of hostility or ingratitude to you, but because she feels it is only by maintaining her autonomy that she will preserve the power to control the way she lives, her primary goal in negotiating life.

Autonomy as a strategy does not necessarily mean an avoidance of all interactions. In order to preserve autonomy successfully, a person, company, or country ordinarily has to engage in constant negotiations toward that end. For example, a small publicly held corporation threatened by a hostile takeover will engage in significant negotiations with banks and others in order to obtain the financing to keep itself private and maintain its autonomy.

Assertion

Of course, assertion is the traditional grand strategy of the powerful. Through coercion, threats, and unilateral action, powerful individuals, organizations, and countries seek to compel others to give them what they want. But sometimes seemingly weak parties can and do use this strategy as well. For example, developing countries in arrears on their international loans use the implicit or explicit threat of debt default to renegotiate their debt obligations. Threatened by a hostile takeover, some small companies will mount aggressive public relations campaigns against the attacker and change its procedures for electing directors in an effort to thwart the takeover. And your teenager, preferring to go out with friends, may utterly refuse to participate in the family reunion.

Just as we saw in Chapter 2 that assertion is a fundamental approach for dealing with conflict, it is also a grand strategy that many persons follow in negotiating life. For example, suppose that on your next plane trip the airline seats you next to an extremely obese man who flows over the armrest and takes up about a quarter of your space. You can either sit there, feeling angry and disempowered for the whole trip, or you can adopt a strategy of assertion and demand that the flight attendant give you the seat that you paid for—one that you can fully occupy by yourself.

Togetherness

A final grand strategy is to negotiate alliances, coalitions, and associations that enhance a party's power and ability to achieve its goals by sharing the resources of others. In the domain of global business, the drive by companies to create strategic alliances with other firms around the world is clearly a reflection of the togetherness strategy since firms believe they will gain more economic benefits at reduced risk through alliances than they would by asserting themselves individually, by remaining aloof, or by becoming dependent on others. Similarly, a female employee seeking to have her company adopt a more liberal policy on maternity leave can increase her power in that negotiation by forming coalitions with other employees to effect change rather than simply making an individual request to management. Or a group of dissatisfied parents may band together to insist on changes to the elementary school curriculum.

Lambs in the international system often pursue the strategy of togetherness by becoming members of an organization or association that includes a lion. The lamb thereby benefits from the lion's strength, and at the same time, the organization's structures constrain the lion's ability to exercise its power abusively against the lamb. For example, the lambs of Europe have clearly perceived that the best way to tame the German lion and at the same time benefit from its economic strength is to enclose it within the European Union. One may contrast Europe's current community strategy with the assertion strategies, balance of power politics, and wars that prevailed on that continent before the end of World War II. Similarly, after pursuing a strategy that vacillated between assertion and autonomy in its relations with the United States, Mexico appears to have shifted to a togetherness strategy by concluding the North American Free Trade Agreement in 1994. While negotiations based on togetherness are often filled with assertive actions and statements by both weak and strong, they are merely tactics designed to maximize a party's interests within the organization or community to which both lion and lamb belong.

Power Tools for Lambs

Stirred by the debate at the conference, my colleague and I later participated in a research project to learn how small countries negotiated with large ones. Our goal was to answer a fundamental question: How should the lamb negotiate with the lion? After examining numerous cases, we saw that some small countries did surprisingly well in their negotiations with much larger nations. We then studied their negotiating strategies and tactics. Based on that research, here are some of the lambs' more common power tools—all equally applicable to your own daily deal making and diplomacy.⁵

Build Relationships with Appropriate Third Parties

As every politician knows, power is who your friends are. That same principle holds true both in international diplomacy and in negotiating life. It is for this reason that the United States and other powerful countries spend billions of dollars each year making and retaining friends throughout the world. One of the most effective ways to increase your own power in a negotiation is to build supportive relationships with a strong third party who may be willing to intervene on your side. Egypt's president Anwar Sadat—unlike his predecessor, President Nasser—consistently built relations with the United States as a way to influence Israel, a strategy that led to the 1979 Egypt–Israel Peace Treaty. Similarly, small countries form coalitions with like-minded countries to increase their influence in multi-lateral forums like the United Nations and the World Trade Organization.

Too often in our everyday negotiations, we tend to see ourselves negotiating alone with the other side and fail to consider the possibility of involving other people to help us. Instead in all our negotiations, we should constantly ask ourselves, “Who can help me influence the other side?”

Who is an appropriate third party? In choosing a third party, the weaker side has three basic options: an adversary of the other side, a friend of the other side, or an independent (preferably strong) neutral. Depending on the situation, each has its advantages and disadvantages.

Probably the option with the greatest risk is choosing an ally who is an adversary of the other side. This choice may indeed wring concession from the stronger side. But it may also provoke the stronger party's hostility and increase its determination to dominate the other side because it now faces what it considers a threat to its vital interests. Thus when Cuba formed an alliance with the Soviet Union in the late 1950s, it made an implacable enemy of the United States. Similarly, if you and your supplier

are in a conflict over pricing, making a supply contract with your supplier's chief competitor may yield a concession or it may generate retaliatory actions, including a cut-off in supplies and an expensive lawsuit. On the other hand, merely raising the specter of an alliance with an adversary, without actually making one, could be an effective way of influencing the other side, as many developing countries did during the Cold War in their negotiations with the United States and the Soviet Union.

A friend of the other side is usually the most effective ally, provided the friend does not merely and automatically side with the stronger side. Getting an adversary's friend involved in the process harnesses that friend's interest in a settlement that can then be used to extract concessions from your adversary as the price of an agreement. In its conflict with Israel, President Sadat borrowed Israel's friend, the United States, with the promise of a peace agreement and got the United States to help win concessions from Israel in 1979. More recently, the United States has sought China's good graces to help move North Korea in a desired direction with regard to its nuclear program. In your own everyday diplomacy, for example, in dealing with an uncooperative employee or a negligent contractor, you may try to mobilize a friend of the employee or contractor in an effort to influence the other person to take the actions you are seeking.

The third option for increasing power, the involvement of an independent neutral, can also be helpful, particularly where the dispute centers on an issue of fact or a decision on the principle or rule to be applied. In the 1979 Camp David negotiations, Israel agreed to return virtually all the Sinai Peninsula to Egypt, *except* for a small border area called Taba, which Israel claimed had never belonged to Egypt. Egypt denied Israel's claim. Rather than let this issue obstruct or indefinitely delay their peace treaty, the two sides agreed to submit the territorial claim to an arbitration panel of international lawyers and to accept their decision—a decision that ultimately awarded the area to Egypt a few years later. You can employ the same technique to increase your influence with the other side. For example, if you and your contractor are in conflict over the quality of work in paving your driveway, you might try hiring an independent expert to give a written technical opinion on work quality and use the expert's report to move the contractor toward a desired solution of the problem.

Find Other Options

One of the most effective ways to increase your power at the negotiating table is to develop alternative courses of action away from it. You may ultimately decide to use that alternative instead of creating a relationship with

your negotiating counterpart, or you may simply apply it as leverage to persuade your counterpart to accept your offer or improve the terms of his. Thus the fact that the chairman of Daimler Benz told the chairman of Chrysler that he had conducted exploratory discussions with Ford about a possible merger strengthened the German company in its successful negotiations to acquire Chrysler in 1998.⁶ Throughout the Cold War, small states negotiating with one of the superpowers often developed or threatened to develop alternative deals with another superpower. For example, Egypt's president Nasser, when faced with the United States' reluctance to finance the Aswan Dam in the 1950s, found an alternative sponsor in the Soviet Union. Nasser got his dam but also made an adversary of the United States.

Similarly, if you are seeking a promotion or a salary increase at work, one of the best ways to increase your power in the negotiation with your boss is to obtain an offer of higher pay from another organization. And if you're planning to renovate your kitchen, be sure to obtain detailed proposals from more than one contractor. As many experienced investment bankers know, one of the best ways to maximize value in selling certain assets is to create an auction among potential buyers, rather than sit down prematurely to negotiate with only one of them.⁷ Think about how you can apply the auction technique in your own negotiations.

A related power tactic is to reduce your counterpart's ability to develop his or her own alternatives away from the negotiating table. For example, in merger negotiations, one party may buy up another company in order to prevent its merger counterpart from acquiring that company itself and thereby gain an alternative to a merger with the first company. Similarly, if you are entering negotiations to buy a business, you should try to achieve a preliminary agreement that the seller will deal exclusively with you for a specified period of time.

Link Issues

Linkage is the joining together of seemingly isolated issues into a single negotiation so as to increase a party's influence with the other side. For example, when the United States seeks military basing rights in other countries, foreign government sometimes tries to take advantage of the situation by linking demands for increased trade advantages in the American market with the seemingly unrelated subject of the right of the United States to maintain military bases in those countries. Often the linkage is unstated but clearly understood. In negotiating with the Chinese in April 2001 to gain the return of the crew of a spy plane that had made an

emergency landing in China, the United States exerted its influence with China on this issue by hinting at the detrimental effects that the dispute was having on China's highly profitable trade relations with the United States. China returned the crew. Similarly, in your own daily deal making and diplomacy, you should look for opportunities to link issues when it is to your advantage. For instance, if your daughter asks for a later curfew, try to link the issue of her curfew time with her obligation to more rigorously attend to her Saturday chores, a topic that you have been discussing with her for months with little effect.

Take Initiatives

Often weak parties are paralyzed by their own sense of impotence. They assume that because of their small size or limited resources there is really nothing they can do to improve their situation with a much stronger adversary. Our research revealed that small countries that took initiatives in their negotiations with large states did better than those that waited for the stronger side to name its terms. By making proposals to which the other side has to respond, the weaker party can influence the course of negotiations. Research evidence shows that people who take initiatives in their relations with others achieve better results than those who do not. For example, in the negotiation of the Canada–US Free Trade Agreement (the precursor of NAFTA), Canada took the initiative from the very beginning of the talks, and this approach contributed significantly to its success. So rather than meekly sign off on or offer minor revisions to a form contract given to you by the other side, present the other party with a fully drafted annex or addendum of your desired terms to be incorporated into the agreement. This tactic will give you the initiative and put the other side on the defensive by forcing it to respond to your proposals.

Divide and Conquer

Strong individuals, companies, and countries gain power from the magnitude and diversity of their resources; however, that usually means they have many interests, relationships, and constituencies to manage. The multiplicity of those interests, relationships, and constituencies can create opportunities for the weaker side to augment its power at the bargaining table by using tactics that seek to find and exploit divisions within the other side. Small countries with large ethnic representation in the United States follow that approach to their advantage in negotiating with the US government. They mobilize their ethnic ties in Congress, business, and civil

society to pressure the US Department of State on their behalf for favorable treatment.

In all your negotiations, remember that the other side, no matter how small, is rarely a monolith. Consequently, you should search constantly for divisions on the other side of the table and then seek to use them to your advantage. A homeowner did precisely that to resolve a dispute with a company that had installed custom-made cabinets in her kitchen. Ray, a hard-driving, aggressive manager, owned the company. Brett, the company's top cabinetmaker, was responsible for building and installing the cabinets. The homeowner got to know Brett during the course of the job and learned that he was a skilled craftsman who took great pride in the quality of his work. At one point, she even gave him first aid when he cut his hand ripping out the old cabinets. She also noted that relations between Ray and Brett were not especially cordial. When the job was complete, the homeowner found that some of the drawers didn't close properly and asked Ray, who had already been paid, to fix them. Ray replied with a curt email, saying that it sometimes took six months for drawers to "settle in" and that she should wait. Not satisfied with that answer, she called Brett to ask about the drawers. He showed up at her door the next day and spent the morning fixing the problem.

Build Bridges

A gulf usually exists between the weak and the strong. The strong may hardly recognize the weaker party and see no reason to deal with them. One way that a weak party may increase its influence with the other side is to build a bridge across that gulf, to create a connection between the lamb and the lion. This tactic involves the search for a common element—a historical connection, a mutual friend, a common language, or a similar culture—upon which to build that bridge.

In his memoir *Turmoil and Triumph*, former US secretary of state George Shultz gives a graphic example of how a Soviet counterpart used American culture to build a bridge to the Americans during the 1986 Reykjavik summit, the first meeting between the Reagan and the Gorbachev administrations. In an initial contact with Shultz, Marshal Sergei Akhromeyev, then the Soviet deputy minister of defense, remarked that he was one of the "last of the Mohicans," meaning that he was the last of the Soviet World War II commanders still in service. When Shultz asked Akhromeyev where he learned the expression "last of the Mohicans," Akhromeyev replied that he had been raised on the novels of the American writer James Fennimore Cooper, the author of *The Last of the Mohicans*. The answer had

an immediate impact of Shultz. It led him to conclude that Akhromeyev was more open and ready for conversation than previous Soviet negotiators, that he was a man with a sense of history and an awareness of the American way, and that he was a person with whom the Americans could deal. "Literature can build bridges," Shultz wrote.⁸

In influencing Shultz, Akhromeyev was using literature as a power tool. Business and diplomatic negotiators engage in similar bridge building as they seek to learn of and relate to the special interests, backgrounds, and activities of their counterparts. You should do the same in your everyday dealings. Bridge building begins when you start to see the person you are negotiating with not as a faceless counterpart or rigid stereotype but as a complex individual with distinct interests, concerns, and origins. Try to learn as much as you can about the people with whom you negotiate and then, like Akhromeyev at Reykjavik, use that knowledge to build a bridge to them.

Get Attention

In order to influence the stronger side, the lamb must first get the lion's attention at the highest level. The stronger side's lack of attention, often an indication that it does not consider the other side particularly powerful or significant, may take many forms, but it is almost always demonstrated by entrusting negotiations to a relatively low-level person with limited authority and access to the organization's leadership. The tactics of attention getting may include stalling or walking out of the negotiations. In the Canada-US Free Trade Agreement talks, the Canadians walked out when they felt that the United States was not taking the negotiations seriously. That action provoked a diplomatic crisis between the two longtime allies and succeeded in getting the US president's attention, which in turn led to high-level American participation in the negotiations. Similarly, stalemated business negotiations can sometimes be unblocked by having the leader of one company go over the heads of the negotiators to deal directly with the president of the other company. So if you are getting nowhere with a low-level clerk in negotiating a solution to an improper charge on your bill, ask to talk to the manager, or better yet, write a letter with a return receipt request, which according to most office procedures will require an answer from somebody in charge.

Find the Right Frame

Framing is the use of analogies and metaphors to characterize a problem or issue in a way that is favorable to the negotiator. Effective negotiators often rely on framing as a power tool to influence the other side. As we will see in Chapter 14, framing is a key communication device, an influential technique that can mean success or failure in a negotiation. For example, framing your negotiation with your boss as a “performance review” is more likely to get a sympathetic hearing than if you label it as a “demand for a raise.” When the Indian university president characterized negotiations between the weak and the strong as “a dialogue between the lamb and the lion,” he was framing the issue in a way that was clearly to his advantage. Of course, most negotiations between the weak and the strong are not really dialogues between a lamb and a lion. They are between human beings with differing resources. But if, like the university president, you succeed in having the other side adopt that analogy, then you have effectively set one of the terms of the debate. Indeed, you actually skew the discussion in a particular direction. The fact that my colleague and I did not challenge the appropriateness of the analogy, but instead talked about how the lamb really did have tools to deal with the lion gave our Indian adversary a clear advantage in the discussion.

Conclusion: How Should the Lion Negotiate with the Lamb?

If you happen to be the strong party in a negotiation, you should be equally concerned about how you use your power. Rather than simply applying it to exploit your weaker counterpart, you should focus your attention on making the best agreement possible. An exploitative agreement may not necessarily fit that description. Here are a few rules to remember.

Carefully Study the Power Sources

Many negotiation cases demonstrate that the stronger side should not take its power for granted but rather should analyze it carefully. In particular, the stronger party should identify its sources of power in the *specific* negotiation or dispute in question rather than merely calculating its total resources. Had the United States objectively examined this question at the outset of the conflict in Vietnam and had France asked the same question at the beginning of its long bloody war in Algeria, neither country might have squandered the men and resources that it did. In both international politics and neighborhood relationships, the failure of the strong to

understand their power may also lead them to behave unwisely in a negotiation. Through words and actions, a strong party may communicate its power in provocative and arrogant ways that antagonize the other side, make it defensive, and in the end, impede negotiation.

Appearances May Deceive

The weaker party is often stronger than the stronger party first assumes. If the cases discussed previously teach nothing else, they demonstrate that the weaker party often has devices and tactics at its command to augment its power, devices that the stronger party may not fully understand or appreciate at the outset of a negotiation. For example, foreign mining companies that at first dismissed local indigenous groups as “primitive” and “backward” have learned at significant cost that those groups have substantial power to protect their interests affected by mining operations. In individual cases around the world, such indigenous groups have proven effective at building alliances with appropriate third parties, including the media and international nongovernmental organizations, taking initiatives, getting attention, and using the other power tools that we have discussed. Blinded by the disparity in the two side’s power, the perceived stronger party often does not fully examine the other side’s power potential and fails to grasp the degree of commitment and priority that the supposed weaker side has placed on achieving a particular end.

Use Power Sparingly

The strong who seek to achieve stable, advantageous agreements should avoid trying to overpower the weaker side through domineering words or actions. Such an approach creates two risks for the stronger party. First, the lion’s exploitative actions will often lead the lamb to become defensive and cautious or indeed to avoid making any commitments until the last possible minute, an attitude that slows the progress of negotiations and may stop it dead in its tracks.

Second, while the coercive use of power may indeed result in an agreement, that agreement may prove unstable in the long run. Inevitably, weak individuals and organizations tied to agreements that they consider unfair will seek to escape them in the future. In the international system and indeed in all of life, the strong are in a constant process of negotiation with the weak; consequently, in any specific negotiation, the strong must weigh the short-term advantage to be gained through the overt application of power against the long-term benefits to be derived from a productive,

enduring relationship brought about through wise restraint. Similarly, if you look closely at your network of relationships, you will see that any long-term agreement that you enter—whether it be a lease on a store, an agreement for the provision of supplies, or a promise from your daughter to keep her room clean—is in effect, a *continuing negotiation*, as the parties seek to adjust their relationship to changing circumstances. If a weaker party believes that it was forced to enter an exploitative relationship due to the overwhelming power of the other side, then the stronger side can expect that the continuing negotiation inherent in any long-term relationship will be a time consuming and ultimately a very costly process indeed. Similarly, you might assert your power as leader of your organization to require all employees to attend a weekly staff meeting. Because of your power over their salaries and promotions, your employees will attend but may spend all their time checking emails, catching up on business reading, and drafting letters to customers rather than engaging productively in meeting discussions.

Negotiation Goals

Transactions and Relationships

Before you can begin negotiations, you have to determine your negotiating goals. Identifying goals may seem simple: You want your boss to give you the time off you asked for. You want your ex-spouse to accept your desired visitation schedule with your kids. You want your neighbor to agree to stop playing loud music at all hours of the night. A desired agreement is thus the goal of every negotiator. That agreement may be embodied in a lengthy contract prepared by lawyers or in a silent head nod by your harried boss in response to your request for time off.

So What's the Deal, Anyway?

In contemplating any negotiation, we need to probe beneath the form of the agreement we seek in order to understand the agreement's essence and determine the goals the agreement represents. Basically, you may divide negotiated agreements into two categories: transactions and relationships. A transaction, as its name implies, seeks merely to secure a desired action from the other side. Thus most of the time when we buy a used car or an appliance, our negotiation goal is a transaction, pure and simple, to secure the desired car or appliance at a favorable price. A relationship, on the other hand, implies a *connection* between the parties, a complex set of continuing interactions characterized by a degree of cooperation and, in many cases, trust. Countries that negotiate defense alliances, companies that make joint venture agreements, and individuals who form business partnerships are each negotiating relationships, not just transactions.

Just as nations are connected to one another by a welter of international relations, each of us is connected to other people through a complex network of personal, professional, and business relationships. And just as

international relationships can be based on formal treaties as well as on less formal understandings among governments, our relationships can be founded on formal contracts as well as tacit arrangements and accepted customs and practices. Relationships, whether personal, business, or diplomatic, do not suddenly and mysteriously come into existence. They are almost always the product of some kind of negotiation, either explicit or implicit. Indeed you may also say that relations are essentially a continuing negotiation as we seek to adjust them to changing circumstances over time. Thus our relations with coworkers in our organizations, neighbors in our communities, and relatives in our families have been shaped by numerous negotiations, large and small, acknowledged and unacknowledged, over long periods of time. We also manage those relationships through negotiations, and in doing so, we change them, sometimes ever so slightly, sometimes profoundly. While you and your neighbor may have had cordial relations for many years, his teenage son's sudden passion for loud nocturnal music and the way you attempt to negotiate an end to it may destroy cordial relations, cool them, or conceivably even strengthen them. But in any event, the experience of engaging in a negotiation about the music will almost certainly change your relationship in some way.

Transactions and relationships as negotiating goals are not mutually exclusive. In many of our negotiations, we pursue both goals. For example, if you and your former college roommate decide to go into business together and begin negotiating a partnership contract to cover your new venture, you are doing much more than negotiating a transaction or a contract; you are negotiating a relationship or at least the basis of a relationship that will hopefully evolve over time. Although a formal contract may be a necessary condition for a partnership, it is never a sufficient condition for a business relationship. Just as a map is not a country, a signed contract is not a relationship. To be effective and achieve the parties' goals, partnerships and other forms of long-term arrangements must be undergirded by a social contract. Thus while you and your former roommate are negotiating many business issues, such as your respective capital contributions to the enterprise and the division of profits, which will be documented in your partnership contract, you are also (consciously or subconsciously) working out various other elements of your relationship that may never appear in any document; for example, whose opinion matters on what subjects, what sensitive subjects to avoid, how to communicate with one another in the office, and how you relate to one another after work and on the weekends.

A relationship is essentially a sense of connection between the two sides, a connection characterized by the needed cooperation and flow of information to get the job done. That sense of connection is essential for

people to work together or engage in any common endeavor. Lawyers tend to place great store in the contracts they write, but contracts themselves do not create or maintain that necessary sense of connection. In twenty years of training and advising executives involved in long-term transactions, I have heard a constant message: “Once the contract is signed, we put it in the drawer. After that what matters most is the relationship between us and our partner, and we are negotiating that relationship all the time.”

The conceptual distinction between transactions and relationships, which seems fairly clear in theory, is usually much less clear in practice. Often when we are negotiating a transaction, we are also consciously or unconsciously negotiating a relationship.¹ For example, while a negotiation with your boss for time off could be seen as a transaction between the both of you, this negotiation takes place within the framework of your existing and continually developing relationship. How you negotiate for time off can influence the quality of that relationship either positively or negatively, and the extent to which you value that relationship will influence the way you negotiate the transaction for time off. You are in effect not only negotiating the transaction for time off, but you are also negotiating the relationship with your boss. That relationship may constrain the way you communicate with her and the degree to which you insist on your demands. Moreover, the degree to which your boss values her relationship with you will influence how she reacts to your request. Thus how both negotiators treat a transaction under discussion sends a powerful signal about how they view the relationship between them or between their two organizations. On the other hand, when you negotiate to buy a used car with a salesperson you may never see again, you are not constrained by an existing relationship, but then neither is the salesperson. For both of you, the goal of your negotiation is purely a transaction with little or no relationship dimensions. On the other hand, if that used car dealer happens to be your brother-in-law or a childhood friend, the relationship you have with him may indeed influence how you negotiate to buy a car.

Deal Attitudes

Whether negotiators emphasize the transactional or the relationship goals of their negotiation depends on a host of contextual factors including the nature of the substantive issues under discussion, their history of interactions, and the prevailing political and economic situation in which their negotiations take place. But certain factors internal to the negotiators, such as culture, professional background, and gender, also influence their attitudes toward negotiation goals. For example, for many executives and

lawyers in North America, the goal of a business negotiation, first and foremost, is achieving a transaction in the form of a signed contract between the parties. For them, the contract is a definitive set of rights and duties that strictly binds the two sides, controls their behavior in the future, and determines who does what, when, and how. According to this view, the essence of their deal is a transaction.

A different approach, often seen in Asia, considers the goal of negotiation as the creation of a business relationship. Although the contract that results from a negotiation may describe the relationship, the essence of the deal between the parties is their relationship, not their contract. This difference in attitude was borne out by a survey that I conducted among people from 12 different countries on whether they viewed the goal of a negotiation as a contract (i.e., a transaction) or a relationship.² The respondents, as a group, were fairly evenly divided, with 54 percent viewing a contract as the negotiation goal and 46 percent viewing a relationship as the goal; however, the survey results revealed significant differences among both cultures and professions on this question. With respect to national cultures, only 26 percent of my respondents from Spain claimed that their primary goal in a negotiation was a relationship compared to 67 percent of respondents from India, who opted for relationship building as the negotiation goal. An analysis of responses on the basis of occupational background also revealed significant variations. For example, while 71 percent of lawyers favored a contract as the goal of negotiation, 61 percent of those with management or marketing experience preferred a relationship.

Certain scholars of gender in the United States have concluded that in negotiations women tend to put a higher priority on relationships than do American men.³ My own survey confirmed this insight. I found that, although for the group as a whole the responses from males and females did not reveal significant differences, there were substantial variations between genders *within* certain cultures. Thus whereas 66.7 percent of US male respondents chose contract as the negotiation goal, 71.4 percent of US female respondents opted for relationship as the negotiation goal.

What the survey seems to indicate is that some people are more sensitive to and concerned about the relationship dimensions of negotiations and interactions than are others. It is therefore important to recognize that difference in attitude within ourselves as well as within the people with whom we negotiate. It is also important to recognize that our failure to reach an agreement in a negotiation or make a good agreement may be caused by our failure to attend to the relationship dimensions of our negotiations. For example, if the individual with whom you are negotiating a sales contract not only is seeking a high quality product at a favorable price but is also seeking a business relationship to ensure a stable and reliable

flow of products in the future, your neglect of relationship concerns in your discussions with him or her may cause you to lose the contract. Similarly, in your negotiations for hiring a promising scientist for your biotech start-up, your failure to satisfy his or her concern about working relations with other scientists in your organization may cause him or her to find another employer, despite the fact that you are offering a salary that none of your competitors can meet. Thus in any negotiation, you should constantly ask, “What are the relationship concerns of my counterpart, and how can I satisfy them?”

Relationships are not static like clauses in a contract. They are organic and fluid, evolving over time in response to changing circumstances and the action of the parties. Once you have signed the contract, you will need to work to maintain and strengthen the relationships that you have negotiated. Nearly three hundred years ago, François de Callières, a distinguished French diplomat, gave similar advice in one of the first practical manuals of modern diplomacy, *On the Manner of Negotiating with Princes*,⁴ in which he stressed “the necessity of continual negotiation”⁵ between states through their permanent representatives as the basis of modern diplomacy. It was a novel idea in its time but one that modern diplomats take for granted today. Twenty-first-century negotiators must also recognize that a deal of any significant duration requires a constant process of negotiation. Just as negotiations do not stop when two countries seal a treaty, negotiations do not end when two companies sign a contract or two individuals make an agreement. Negotiators therefore need to give constant thought to strategies for negotiating and maintaining relationships as well as transactions. Similarly in a marriage, the preoccupation of the spouses with the transactional aspects of life, such as the daily demands of jobs, children, and household finances, without sufficient attention to their relationship can lead to a breakdown of the marriage contract.

Three Simple Rules for Negotiating Relationships

If the creation and maintenance of relationships is important in so many negotiations, a natural question comes to mind: What should a negotiator do to create and maintain them? The following rules may prove helpful.

Do Ask, Do Tell

First and foremost, relationship building requires mutual knowledge of the parties. Thus in any negotiation, the negotiators need to get to know

each other. That also applies to relationships between organizations since organizational relationships depend on personal relationships. A genuine relationship cannot exist between two corporations, two government departments, or two charitable agencies unless some of their executives have a relationship with one another. Moreover, if the individual negotiators establish a positive relationship with each other, the negotiations are likely to proceed more smoothly and effectively than if no such relationship exists. The hard-and-fast rule that some negotiators have of telling the other side as little as possible is not conducive to relationship building or ultimately to deal making. A policy of “don’t ask, don’t tell” is not an effective rule for negotiating a relationship. Indeed negotiators should do just the reverse: ask and tell. For example, as we saw in the Chapter 4, former US secretary of state George Shultz and the Soviet Union’s Marshal Sergei Akhromeyev laid the foundation for their relationship when Akhromeyev *told* Shultz that he was the “last of the Mohicans” and Shultz *asked* Akhromeyev where he had learned that expression. Their exchange of information led to a relationship that continued even after both men had left government service.

Other kinds of shared human experience, both happy and tragic, can facilitate relationship building and ultimately deal making. Several years ago, in the midst of a particularly tense negotiation between Americans and Israelis, Prime Minister Golda Meir expressed deep sympathy toward one of the US negotiators whose wife had recently died. Meir referred to the pain she had suffered upon the death of one of her own family members. That brief conversation between the two negotiators improved the negotiating atmosphere dramatically. Meir’s expression of sympathy and her reference to a shared tragic experience served to build a relationship that led to more productive talks between the American and the Israeli negotiators.⁶

In addition to gathering and sharing information to facilitate negotiation, asking and telling sends an important positive signal to the other side: “You—and therefore your group, your company, or your country—are interesting and important.” Invariably, sincere questions will elicit sincere responses and lead to a connection between negotiators. On the other hand, perfunctory questions can send just the opposite, negative message: “You’re not really important or worth talking to.” The wife of an international representative underscored the difference between sincere and perfunctory questions when she described the many tedious business and diplomatic dinners that she had to sit through: “Most of the time my dinner partners could only think of two questions to ask me while giving me what they felt was their obligatory two minutes of attention: *Did I have any children?* and *Did I like it here?*”

Invest Time

Building a relationship takes time. It requires you to not only learn about your counterpart as a person but also make that person feel understood and appreciated. That understanding is derived from information that goes far beyond the specific issues that are under discussion in the contract or transaction that you are trying to negotiate. As a result, you should be prepared to invest sufficient time in both the negotiation process and the task of managing and maintaining that relationship afterward.

Dealmakers should resist the temptation to rush through the negotiation preliminaries and start talking about the deal as soon as possible. Instead they should use the preliminaries of deal making to learn as much about the background, interests, and organizational culture of the other side as possible and inform the other side of their own background, interests, and organization. This phase is vital if the parties are to know one another well. Knowing each other well is an important part of any foundation for a good relationship. In deals that will require substantial investments and close working relationships, the parties may even want to hire consultants or knowledgeable third parties to facilitate the process of getting to know one another thoroughly.

Executives often resist spending sufficient time on preliminaries and relationship building on the grounds that “time is money.” Time is indeed money in the sense that it is a form of capital that must be invested to make any transaction profitable. To invest less time than is needed in a negotiation is like investing less money than is required in a business. Underinvestment increases the risk of failure. Consequently, you may save some time at the front of the deal by rushing through the preliminaries, but it usually means you will have to spend more time later to sort out the problems and misunderstandings that arise between you and the other party. In the mid-1990s when Enron’s business still focused on the production of energy, the company was very proud of the fact that it signed a memorandum of understanding with the Maharashtra state government to build a \$2 billion power plant in India just five days after the Enron negotiating team first entered the country. To justify its approach, a top Enron executive could not resist reminding the press that for Americans time was money.⁷ When a new state government came to power, it cancelled the contract because of alleged irregularities, pointing to the short negotiation period as evidence of that fact. Enron executives spent nearly two years renegotiating the deal to get it back on track.⁸

Involve Appropriate Third Parties

Third parties—whether called mediators, conciliators, advisers, or something else—can often assist in building and preserving relations. For example, when some companies contemplate long-term relationships, such as strategic alliances requiring a high degree of cooperation, they may hire a facilitator or consultant to develop and guide a program of relationship building that might include joint workshops, get-acquainted sessions, and retreats, all of which take place before the parties actually sit down to negotiate the terms of their contract. The consultant will facilitate and perhaps chair these meetings, conduct discussions of the negotiating process, point out potential pitfalls, and discuss with the parties ways to avoid possible problems. Once negotiations start, the consultant may continue to observe the process and be ready to intervene when the deal-making process encounters difficulties.⁹

After the deal has been signed, consultants, lawyers, and advisers may continue their association with one or both parties and informally assist as mediators in managing conflicts that may arise in the execution of the transaction. In some cases, parties to a complex or long-term transaction may include specific provisions in their contract stipulating a process to manage conflict and prevent it from causing a total breakdown of the deal. For example, the contract may state that if a dispute between the parties cannot be settled at the operational level, the two sides' senior management will engage in negotiations to resolve it. Generally, top management officials not directly embroiled in the particular conflict will have a broad view of the transaction and its relationship to their firms' overall strategies. As a result, they may be in a better position to settle a dispute than people at the operating level, who often come to feel as if they have a personal stake in "winning" the dispute. Within families, the role of third-party peacemaker is often taken by a parent or respected relative in conflicts among family members. Usually, their concern is not only to settle the dispute but to preserve family relationships and tranquility. Once a family matriarch or influential uncle has worked out a settlement between warring brothers over the division of a family business, it may be a good idea to ask her or him to monitor the implementation of the deal.

In your own efforts at relationship building and maintenance, in both your business and private life, always think about how you may use third parties to help. Chapter 13 will consider the use of third parties in negotiations in greater depth.

Part II

Contexts

Real Leaders Negotiate

Many managers view negotiation as a tool to use *outside* the organization to deal with customers, suppliers, and creditors. By contrast, inside the organization, “It’s my way or the highway.” According to conventional wisdom, managing people requires the tried and true leadership qualities of charisma, vision, and presence—not negotiation skills. Real leaders just don’t negotiate.

Leadership and Negotiation

This common perception misconceives the nature of leadership. Leadership is the ability to cause individuals to willingly act in desired ways for the benefit of a group. As a result, leadership almost always involves negotiation, since negotiation, as we have discussed in previous chapters, is a fundamental means for securing desired action from other people. Good leaders are invariably effective negotiators. Experienced managers know that, when it comes to leading people, authority has its limits. After all, some of the people you are supposed to lead will inevitably be smarter, more talented, and in some situations, more powerful than you are. In addition, when you are asked to chair an interdepartmental committee, a community board, or a professional commission, you are in effect being given the task of leading people over whom you have no real authority. And even without a title or specific authority, you may assume leadership of a group to achieve a particular task or goal, for instance, your neighbors who want to persuade the town government to stop high-speed road traffic from barreling through your neighborhood or your female colleagues at work who are fed up with the sexual harassment from the jerks in the office and want management to do something about it. In order to gain and exercise leadership of both groups, you’ll have to negotiate.

To persuade people to follow your lead, you need to appeal to their interests, communicate with them effectively, build relationships, and sell them

a vision of the future. A negotiator making any deal must do exactly the same. Let's look at these four vital elements of negotiation—interests, relationships, communication, and visions—within the context of leadership.

Practice Interest-Based Leadership

Leaders always need to ask themselves a fundamental question: Why should the people I'm supposed to lead follow me? If you believe that your charisma, your exalted office, or your vision is reason enough, you're in trouble. While these qualities may affect how others relate to you, the truth is that other people will follow you when they judge it's in their best interest to do so. Whether they're acting as individuals or team members, people almost always give first priority to their own interests. Just as wise negotiators work to understand and focus on the other side's interests rather than their positions, effective leaders seek to understand the interests of the people they lead and find ways of satisfying those interests. By doing so, they can better achieve organizational goals.

The failure of leaders to fully comprehend the interests of those they lead can sometimes have disastrous results. In 1985, Joe Foran, then a young Texas lawyer, established Matador Petroleum Corporation to find and develop oil and gas deposits in the American Southwest. Starting in a one-room office with a single part-time employee, Foran, through a series of shrewd acquisitions, built Matador into one of the larger privately held petroleum firms in Texas. To raise capital, he gave wealthy investors seats on Matador's board of directors in return for their investment in the company. However, with a 10 percent interest in the company, chairman and CEO Foran remained Matador's largest individual investor.

In spring 2003, Tom Brown Inc., a publicly traded oil company, offered to buy Matador for \$388 million. Foran opposed the offer because he felt it did not take account of Matador's growth potential. At the board meeting to discuss the bid, Foran was astounded when the other directors voted to approve the sale. Too late, Foran realized that he had mistakenly believed that the other directors' interests were the same as his own. Foran, then in his early fifties, had the energy, talent, and time to build a company that would give him financial security in his retirement, still many years away. But most of the other directors were retired individuals who had been hurt by a falling stock market and declining investment returns. Their interest was not to build the company but to take the money and run—and that's exactly what they did. Had Foran understood those interests earlier, he might have been able to structure an arrangement that would have given the directors the cash they needed yet still allowed him to keep control of his company.

Effective leaders realize that it's only by knowing people as individuals that you can truly understand their interests. In the workplace, individuals attach differing priorities to a variety of interests, including compensation, professional recognition, and the potential for career development. Some of the people you lead care more about shoring up their power in the short run than they do about their unit's long-term health. Others are more concerned about career development than they are about this year's annual salary raise. When you understand where each individual's true interests lie, you can then shape your messages and your actions to meet those interests in ways that will achieve your leadership goals.

Negotiate Relationships

Relationships are as important to effective leadership as they are to successful negotiation. Indeed the very essence of leadership is not a quality at all but a relationship. That relationship is the perceived connection between leader and follower. The nature of that connection may be psychological, economic, political, or personal; whatever its basis, wise leaders, like skilled negotiators, work to foster a strong connection with their followers because effective leadership depends on it. The reason relationships are important is not because they engender nice warm feelings. Positive relationships, whether between negotiators or between leaders and followers, engender *trust*, and trust is vital in securing desired actions from other people. Any proposed action—whether suggested by a negotiator at the bargaining table, a team leader at a business strategy meeting, a participant in a condo association meeting, or a parent in a family council—entails risk. People see a course of action as less risky and therefore more acceptable when it is suggested by someone they trust than when the same action is advanced by someone they don't trust. Chapter 5 discussed the important role of relationships in negotiation and offered a few simple rules for relationship building. These same principles apply to creating effective working relationships with the people you lead.

Effective working relationships, whether between negotiators or between leaders and followers, rest on four basic building blocks:

1. *Two-way communication.* Just as negotiation is fundamentally a process of communication that allows parties to satisfy their interests, leadership is a process of communication that allows organizations or groups to achieve their goals. A good working relationship requires that information flow easily in *both* directions.

2. *Strong commitment.* Effective leadership relationships entail a strong sense that the leader is committed to the interests of the people that he or she is to lead. Genuine commitment engenders trust, a vital basis of leadership. Lack of commitment, on the other hand, leads to distrust, an insurmountable obstacle to leadership.
3. *Reliability.* An important basis for trust, reliability has two dimensions. First, a leader's conduct, like a negotiator's, should be predictable. Second, leaders should honor their promises and commitments to their followers. Failure to do either can hinder the ability to lead.
4. *Respect.* Effective leadership requires leaders to have respect for their followers as individuals and for the contributions they make to the organization.

Find the Right Leadership Voice

When the poet Walt Whitman wrote "Surely, whoever speaks to me in the right voice, him or her I shall follow,"¹ he conveyed the notion that persuasive communication is fundamental to effective leadership. Whitman's words also underscore the importance of shaping leadership communications to meet individual concerns, interests, and styles.

Leadership communications can be divided into two basic types: mass-produced and tailor-made. Mass-produced communications, including speeches and company-wide memorandums, are designed to reach and affect large numbers of people at a time. Tailor-made communications, such as one-on-one meetings and phone calls, are aimed at influencing specific individuals.

"The medium is the message," communication theorist Marshall McLuhan famously stated.² When deciding how to communicate, recognize that the medium you choose reveals something about you and your relationship with those with whom you are speaking. Suppose that you're a company CEO trying to persuade your board of directors to support an acquisition. What if you sent each board member a detailed memorandum stating the terms and consequences of the deal? Intentionally or unintentionally, a generic memo could signal that you take the members' support for granted, that you place little value on their opinions, and that you, not they, are running the show.

Instead you might personally visit each director to explain the acquisition's importance and seek advice. A face-to-face meeting shows the individual director that her support is important, that you respect her autonomy and judgment, and that she plays a vital role in the organization. Although a memo or a group meeting may be an efficient way to

deliver information, one-on-one meetings with your directors, like a negotiation, will enable you to get to know their individual interests and views, to identify their concerns, and to structure arrangements that satisfy those interests and concerns yet still allow you to make the acquisition that you feel is important for the company's future.

"As chairman, I thought I had been leading the other directors in the boardroom at our quarterly meetings," says Foran, the Texas CEO who was outvoted by his board. "I should have been trying to lead them one-on-one outside the boardroom a lot more frequently."³

Leadership is essentially the ability to cause others to act in desired ways for the benefit of a group.⁴ Communication is a means to achieve that goal and is therefore a powerful leadership tool, whether you are in a formal leadership position or simply a single participant on a team. An individual can "lead" in an informal sense by communicating in a way that commands respect and attention. For example, a team member who offers carefully considered, appropriately timed ideas in a group setting may earn the respect of her colleagues and gain the ability to influence and therefore lead the group, whereas a designated team "leader" who talks incessantly while not offering new or useful ideas may lose respect and therefore have little leadership influence.

Negotiate a Vision for the Organization

Organizations, large and small, look to their leaders to establish an organizational vision. Popular commentary on corporate leadership presupposes that a company's vision comes from its CEO and that without a strong CEO, the company has no vision. But that's not necessarily the case. Members located throughout the organization have ideas, thoughts, images, and visions of what the organization is and should be. Thus the challenge of setting a group's course lies in forging a single vision out of the multiplicity of visions held by its members.

This is true of any group. Neighbors attend community meetings because they have an idea of what they want their community to become. Employees who protest sexual harassment have a vision of what their workplace should be. Instead of handing down an organizational vision from on high, the process of articulating a vision is one of negotiation—in particular, multilateral negotiation.

The essence of multilateral negotiation is *coalition building*. A coalition is an alliance, often temporary, of people, parties, or nations to achieve a specific purpose. Like a skilled diplomat, a leader, whether a corporate CEO, department head, or parent, creates a common vision by forging a

coalition among its members to support that vision. Building a coalition in support of an organizational vision demands a skilled use of negotiation principles, including understanding members' interests, creating effective working relationships, and communicating in the right voice and medium. It is a labor-intensive, time-consuming process that requires you to connect with all key players.

Three Cases of Negotiating Leadership

To understand the complex interaction of interests, relationships, communication, and visions—the four factors for negotiating leadership—let's look at three situations where leaders had to build coalitions through negotiation to achieve their goals: first, the multiyear negotiations that resulted in the transformation of Goldman Sachs; second, the negotiations by President George H. W. Bush in 1991 to form an international coalition of states to drive Iraq from Kuwait, a country it had invaded and occupied; and third, the efforts of his son, President George W. Bush, to put together a similar coalition to invade Iraq in 2003 and oust Saddam Hussein from power.

Negotiating a Vision for Goldman Sachs

In the rapidly changing world of international finance at the end of the twentieth century, the leaders at Goldman Sachs, the venerable investment banking partnership, faced the challenge of negotiating a vision for the bank's role in the twenty-first century among its partners, a task that would require more than a decade of discussions, carefully orchestrated by firm leaders, to negotiate its transformation into a publicly traded corporation.

In 1986, investment bank Goldman Sachs was a \$38 billion business owned by more than one hundred active and retired partners. While the partnership structure had insulated the company from the vicissitudes of the stock market and given it a strong culture of teamwork, it had some significant disadvantages, particularly an unstable capital base and an inability to grow by making acquisitions with stock. Because of these factors, the firm's nine-person management committee recommended that Goldman Sachs become a corporation and sell its shares to the public. Over a weekend in December 1986, all the partners met to consider this new vision. Rather than presenting a *fait accompli*, Goldman's leadership stayed faithful to the firm's ingrained teamwork culture during the two-day retreat. The partners debated the proposal at length and with high emotion, but the meeting ended with no decision. Goldman Sachs remained a partnership.

Ten years later, the Goldman Sachs partners once again considered a proposal to become a publicly traded corporation. This time, a special committee prepared an exhaustively detailed proposal for an initial public offering (IPO), and the firm leaders actively lobbied partners to support it. Once again, a weekend partnership meeting was held to consider the firm's future. When it became clear to the executive committee that the partners did not want to change the firm, the IPO proposal was withdrawn.

Two years later, in 1998, the firm's leadership established a subcommittee to plot the firm's strategy in a rapidly changing global financial environment. Ultimately, the committee recommended a five-year program of aggressive growth that included going public, and the firm's two cochairmen then engaged in one-on-one conversations with nearly all the firm's 190 partners to persuade them to accept the recommendation. In June 1998, for yet a third time, the partners of Goldman Sachs met in a weekend retreat. This time, the partners voted to sell the firm's shares to the public. After 12 years of meetings and discussions, the leadership of Goldman Sachs finally succeeded in negotiating a multilateral vision to carry the firm into the twenty-first century.

Why did Goldman Sachs succeed in going public in 1998 when the proposal had died twice before? You may ask these questions: Did it have to take so long? Could other leaders have achieved the same result in less time? Would a prototypical, dynamic corporate CEO—like Jack Welch, Louis Gerstner, or Sandy Weill—have done a more effective job of leading Goldman Sachs to a new strategic vision than the Goldman leadership? The answer to that question is almost certainly not. The Goldman Sachs partners, because they owned the firm, had the power to say no to any proposal, remove from leadership anyone who they felt threatened their interests, and replace that person with someone who better served their needs. In the Goldman Sachs situation, it was not vision and charisma that would lead leaders but an understanding of the partners' interests and an ability to convince them that a needed new direction advanced those interests. The strategic change at Goldman Sachs is an example of interest-based leadership of the highest order. Adopting a new vision required Goldman's leadership to painstakingly forge a coalition among the partners they led.⁵

Some Basic Lessons on Negotiating Leadership

Although the Goldman Sachs case is special, in many ways it does illustrate some basic principles about the way leaders may help groups and organizations negotiate a new direction. Here are a few of these principles:

1. *Determine a direction for the group by structuring and conducting a strategic conversation.* For Goldman Sachs, determining a new direction for the firm was the product of a conversation that took 13 years. For most organizations, finding a strategic direction is also the product of a conversation. The basic task of the leadership is to structure and conduct that conversation rather than trying to impose a new vision from the top. While few organizations will require 13 years to find their way as Goldman did, it is important to realize that conducting a strategic conversation about organizational direction can be time consuming and often frustrating.
2. *Develop a fair process for conducting the conversation about direction.* If you as the leader have a clear vision of the organization's future and a distinct sense of the best direction to follow, resist the temptation to try to impose it on your organization. As Machiavelli noted six hundred years ago, the dangers for a leader in trying to impose a new order is that he or she will make enemies of those who benefited from the old order and gain only lukewarm support from those who stand to benefit from the new order. In the end, your enemies may prevent you from imposing your new order, and even if you overcome them, they will remain opponents as you go about the process of implementing it.⁶ This does not mean, of course, that you abandon any hope of moving the organization in a more productive direction. Rather, it means that you need to find and develop a process that will enable the organization's members to participate in determining new directions. In the Goldman Sachs case, the firm worked out a definite process of meetings and consultations to help the partners arrive at a new strategic direction.
3. *Establish a fair process that includes the opportunity for followers' genuine participation and decisions based on acceptable principles and standards.* The process by which Goldman Sachs arrived at a decision to adopt a new strategic direction was based first on the full participation of all the partners in the deliberations. All partners had the right to speak, and all were sincerely encouraged to do so. They exercised that right throughout the 13 years that the decision was under consideration. The goal of conversation is not merely to determine a direction but to cause the members of the organization to adopt, believe in, and work enthusiastically toward the direction that is decided. Ownership of the decision by members of the group is a key to success. Ownership is more likely to result if the members play a part in making the decision on direction than if the organization's leaders arrived at *their* desired result by manipulating, short-circuiting, or dominating the process.

4. *Once you have established a process, use it genuinely to help determine a direction for your organization.* Sometimes leaders put in place a process of consultation that is merely a charade, a means to justify what they wanted to do in the first place. People usually come to know when they are engaged in meaningless activity. Once they do realize that they are involved in a purely formal process that has little or no significance, they will also participate in a purely formal way, if at all.

During the Soviet era, Russian workers jokingly explained their less than diligent work habits by saying, “They pretend to pay us, so we pretend to work.” Similarly, followers asked to participate in a process that will have no influence on the organization’s direction are likely to say, referring to their leaders, “They pretend to have an interest in our ideas, so we pretend to tell them.”

5. *Your primary function as a leader is to ask the right questions.* Traditionally, leaders have seen their function as pointing the way, as indicating, if not formally *ordering*, a definite path for the organization to follow. In leading leaders, however, the most effective instrument is not an order but the right question. The leadership of Goldman Sachs, after two failed attempts at convincing the partners to go public, reframed the question they were to answer from “Should the firm go public?” to “What should be the firm’s strategy in the radically changed financial environment at the end of the twenty-first century?” This was a question that affected the vital interests of the firm and all its partners. It was a question designed to elicit the strong and positive participation of all. Once the firm had answered the basic questions by deciding to be a world class financial firm, it then had to face the question of finding the resources to compete with much larger competitors. This question, in turn, led the partners to decide on going public. In negotiating leadership of a group, your most effective instrument is not an order but the right question.

Negotiating Leadership for War

Two significant and instructive efforts to negotiate leadership occurred in 1990–1991 and again in 2003, when the United States went to war against Iraq. The first was a success, the second a failure. When Iraq invaded and occupied Kuwait in 1991, George H. W. Bush, the forty-first president of the United States, skillfully organized and led a broad international coalition of nations that drove Iraq from Kuwait with United Nations approval.

That coalition did not automatically and spontaneously spring into existence. To create it, President Bush negotiated with the leaders of the world's most important countries. Twelve years later, his son George W. Bush, the forty-third president of the United States, believing that the removal of Saddam Hussein from power in Iraq was in the United States' vital interests, also sought to put together a broad international coalition and secure United Nation authorization for military action against Iraq. He failed to achieve either.

While the two situations are different with respect to the historical moments involved, the international dynamics of the day, and the problems the two men faced, the fact remains that Bush the father was successful in negotiating international leadership for war, but Bush the son was not. In comparing the two situations, a natural and important question is *why* the father succeeded, while the son failed.

For many supporters of George W. Bush, the answer to that question is easy: the French. France, displaying its traditional anti-Americanism and thinking only of its own short-term, selfish interests, not only refused to join the American coalition against Iraq in 2003 but also mobilized other countries in their opposition to American efforts. As a result, US politicians and talk radio hosts thundered against the cowardly, perfidious, and ungrateful French. After all, hadn't the United States liberated them from Nazi Germany in World War II? So wasn't it natural for Americans to show displeasure by boycotting French wines and even changing the name of French fries to "freedom fries," as was done on certain menus, including one in a restaurant at the Capitol building in Washington, DC?

But before accepting that facile explanation, we should look more closely at the way in which each president sought to negotiate the creation of an international coalition. As we will discuss further, a closer examination of the conduct of George H. W. Bush in 1990–1991 and of his son in 2003 leads us to conclude that the father's success was as much attributable to his leadership qualities and negotiation skills as to the situation and that the inability of his son to lead leaders into a broad coalition against Iraq was as much attributable to his ineffective leadership qualities and negotiation actions as it was to the intractable French, who by the way, had actively participated in the coalition George H. W. Bush negotiated in the early 1990s.

Contrasts in Leadership Negotiation

A comparison of the two Bush administrations illustrates some important lessons about the challenges of and the useful approaches to negotiating leadership. First, President George H. W. Bush strongly believed that if

other nations were to join the coalition to drive Iraq from Kuwait, the United States had to take an active, energetic leadership role in convincing them to join. He truly believed their participation was essential for the success of any effort against Iraq. Leadership, in his view, required diplomacy across a broad front, and he proceeded to orchestrate a complex diplomatic negotiating campaign at many levels—through direct contacts with the leaders themselves, through diplomatic missions by his deputies, through action at the United Nations and other international organizations, through foreign embassies in the United States, and through American ambassadors abroad—to build and maintain a coalition of nations united in their efforts to drive Iraq from Kuwait. All this preceded his initiation of military action. George H. W. Bush’s leadership was based on persuasion before action.⁷

In contrast, 12 years later, the prevailing attitude in many parts of his son’s administration was that other countries had no choice but to follow the United States. For George W. Bush and his associates in 2003, US leadership seemed to flow automatically from its status as the world’s only superpower. Moreover, if other countries did not follow the United States into war against Iraq, the Bush administration declared publicly that the United States would go to war alone—not a strong message signaling the importance of creating a coalition.

Thus from 2002 to 2003, President George W. Bush and members of his administration talked about “a coalition of the willing,” as if that coalition would come into existence simply through the desire of other countries to join it and without the need for the United States to actively work to create a coalition through international leadership. The prevailing attitude of the second Bush administration was that unilateral action by the United States would lead to multilateral action by other countries, not that multilateral diplomacy and negotiation should come first. If the United States acted decisively, others would follow, a view summed up by two authors as the “if you build it, they will come” doctrine, which expressed the belief that the United States was a unique country not just in terms of its power but also in terms of its moral authority for using that power.⁸

As things turned out, of course, many countries—including France, Germany, Turkey, and Egypt (who had all participated in the war to liberate Kuwait in 1991) and longtime allies such as Canada and Mexico—refused to go to war against Iraq in 2003. One lesson to be drawn from comparing the two Bush administrations is that others (including other world leaders) always have the option not to follow you. Leadership is not an automatic process that happens because of your status or resources. Rather leadership, particularly of other leaders, is a willful, deliberate activity to which even the strongest leaders must devote assiduous effort. In short, if you want to lead other people, especially other leaders, you have to negotiate it.

A second important difference between the two situations is that Bush the father had long-standing relationships with the foreign leaders of the day—relationships he developed through broad experience in international diplomacy. As vice president for eight years, US ambassador to the United Nations, director of the CIA, and ambassador to China, the forty-first president of the United States was on a first-name basis with national leaders throughout the world. In addition, he intimately understood the importance of those relationships in international diplomacy. In putting together his successful coalition, he relied on his vast experience and contacts, and he energetically and personally contacted the leaders involved by telephone, often daily, an approach that caused some members of his staff to call him “the mad dialer.”⁹

Bush the son, on the other hand, whose only previous government position was as governor of Texas, had no diplomatic experience and did not personally know the leaders that he was seeking to lead into the coalition. Rather than deal personally with foreign leaders, as his father had done, he often delegated that task to other members of his administration, notably to Secretary of State Colin Powell and later to UK Prime Minister Tony Blair. Instead of communicating one-on-one, as his father had done, to persuade reluctant European leaders to follow him, George W. Bush often conveyed his messages through the media, an action that tended to annoy the leaders he was seeking to lead.

Even Bush’s deputies did not actively undertake energetic efforts to lead other countries into the coalition. For example, whereas President George H. W. Bush’s secretary of state James Baker visited 41 countries on five continents to help forge a coalition of the Gulf War and even convinced many of the oil-rich states to pay for the war, Colin Powell hardly traveled anywhere in the months prior to the Iraq war. Two scholars summed up the situation:

Powell would later claim that modern technology like e-mail and telephones rendered personal diplomacy less important than it used to be, and that he saw his European counterparts frequently at UN meetings in New York during this period. But that view understates both the symbolic and practical importance of personal engagement on the ground in the foreign countries themselves. By limiting contacts with key allies in Europe, the Bush administration only reinforced the impression that they had little interest in or respect for the views of others, and that matters of war and peace were for Washington to decide.¹⁰

From this dimension of comparison between the two Bush administrations, we draw further important lessons about negotiating leadership.

First, leadership is not a matter of position but of relationships. To be a leader you need followers, and followers choose to follow a particular leader because of their relationship with him or her. Second, one-on-one personal encounters are vital in building the relationships needed to lead.

As noted earlier in this chapter, positive relationships engender trust, and trust in a leader is vital in securing desired action from followers. Any proposed action by a leader entails risk. World leaders, because of their personal relationship with and resulting trust in President George H. W. Bush, were more disposed to follow him than his son, with whom they did not have a personal relationship.

A third important factor in comparing the two presidents is the importance of understanding and giving deference to the interests of the people you lead. People will follow you if they believe it is in their interests to do so. They will not follow you just because you claim to be a leader, because others have designated you as leader, or because you have the resources and position of leadership. In the early 1990s, George H. W. Bush understood the interests of the world leaders he was seeking to lead and sought to accommodate those interests as he forged a coalition to drive Iraq from Kuwait. The world leaders of the day wanted the United Nations to be heavily involved and believed United Nations authorization was vital. They believed it was in their interests to seek multilateral solutions to serious international problems. They also needed a clear rationale for going to war against Iraq. A further interest for many European and Arab countries was a solution to the long-standing Israeli–Palestinian conflict that was seen as a serious destabilizing factor for the entire Middle East. All these elements were important if the leaders of coalition countries were to convince their citizens of the rightness of being part of a coalition in a war against Iraq.¹¹ Accordingly, President George H. W. Bush accommodated these interests in his strategy of coalition formation by pursuing diplomatic processes before embarking on military action. In his diplomatic discussions, he emphasized the importance of the United Nations and explained that the single overriding reason for war was the clear violation of an independent nation's sovereignty, the Charter of the United Nations, and basic principles of international law. He also promised to launch a new diplomatic initiative to solve the Palestinian problem once Iraq was driven from Kuwait. Furthermore, he promised certain leaders substantial aid packages in return for their participation in the coalition. Thus throughout the buildup to the Gulf War, George H. W. Bush constantly sought to engage other leaders, understand their driving interests, listen to their objections and concerns, and seek a means to accommodate their interests while pursuing his own overriding goal of building a coalition.

President George W. Bush in 2003, on the other hand, seemed to have little concern for the interests of potential coalition partners and did little to accommodate those interests. While seeking their support, he showed little regard for the United Nations, an institution that most countries felt was important for their diplomatic interests. Moreover, he was openly contemptuous of a multilateral approach to international diplomacy, having previously withdrawn the United States from the Kyoto Protocol and the 1972 Anti-Ballistic Missile Treaty, as well as rejecting outright the new International Criminal Court—treaties and institutions that nearly all other countries strongly supported. Bush administration officials often made public statements that seemed to indicate that the interests of other nations were not important: “Either you are with us or you are with the terrorists.”¹² Moreover, in a speech to the United Nations General Assembly, President Bush made it clear that if the United Nations did not act to remove Saddam Hussein, the United States would act alone.¹³

Similarly, the United States’ constantly changing rationales for the war—the removal of weapons of mass destruction, the elimination of Iraq as a base for Al Qaeda terrorists, or the liberation of the Iraqi people from tyranny—made it difficult for leaders of other nations to “sell” the war to their own people. Moreover, the United States’ active support of Israeli Prime Minister Sharon’s aggressive policies toward the Palestinians gave little deference to European interests on that particular subject.

Unlike his father, George W. Bush did not actively engage other world leaders, did not take their interests seriously, and did not seek to accommodate them. Indeed he tended to view the objections of France, Germany, and other skeptics of American policy as ingratitude and disloyalty, as self-serving actions that could only be explained by base motives. Rather than engage these skeptics as his father had done, he chose to ignore them, isolate them, and ultimately ostracize them diplomatically.

The Coalition: A Basic Tool of Organizational Leadership

Coalitions not only are basic instruments of diplomacy and politics but are also fundamental tools for leading any organization. Like George H. W. Bush, the leadership of Goldman Sachs had to build a coalition causing the organization to take the critical step of converting itself into a corporation and then selling its shares to the public. In virtually any organization, large or small, a similar process of coalition building is necessary for organizational decision making.

In any negotiation involving more than two parties, parties with similar interests always have a tendency to form coalitions so as to increase their

influence in the negotiation process. Coalitions generally fall into one of two types: *winning coalitions*, whose purpose is to bring about a desired organizational action, and *blocking coalitions*, whose purpose is to prevent an undesired organizational action. George H. W. Bush created a winning coalition to wage war against Iraq; similarly, significant numbers of Goldman partners created a blocking coalition for several years that prevented the firm's transformation into a publicly traded corporation. If you look hard at your organization, you will see the same dynamic at work as leaders seek to form coalitions to create support for new policies while people opposed to those policies build coalitions to thwart them.

So how do you build a coalition? These are some basic ideas to bear in mind.

Identify the Parties and Their Interests

As a first step in building a winning coalition, you need to identify three basic groups of people within your group: (1) individuals who will support your desired action at the outset, (2) individuals who may be persuaded to join with you, and (3) individuals who will probably oppose you. In order to make that analysis, you first have to understand the various interests of the people within the organization—that is, what they truly care about. The interests of the people in your coalition do not need to be identical. In the Gulf War, the many nations that joined the coalition to go to war had many different interests. The United Kingdom was concerned about energy security and the dangerous threat to international stability created by Iraq's invasion of Kuwait. France wanted to preserve its influence in the Middle East and play the role of a great power. Egypt was concerned with continuing and perhaps increasing its financial aid from the United States and asserting its role as a leader in the region. Syria wanted to weaken Iraq, a country that it considered a threat to its security. Similarly, your colleagues may have many different reasons for joining your coalition to perhaps change a corporate policy or lobby for a curriculum change in your child's school.

Plan a Campaign of Persuasion

Having analyzed these interests, you next have to plan a campaign to secure the support of enough people to enable you to achieve your desired result. Here determining the right sequence of actions is very important. For example, will you talk to supporters first and then contact those who might be persuaded to join you? Will you bring everyone together at once to try to

convince them to support your ideas? Or will you start with a brainstorming session that will allow you to work with others to simultaneously decide on a group goal? The first might be called a linchpin approach as you build relations with key constituents, while the latter approaches are bandwagon approaches that seek to generate general organizational enthusiasm for the change you are proposing. Thus if you want to build a coalition for the town to take action to reduce the traffic problem in your neighborhood, will you start by talking to the more influential neighbors to build support for approaching the town council or will you first invite all your neighbors to your house for coffee to get the ball rolling? Calling a general meeting has the advantage of generating lots of new ideas and creating broad-based community enthusiasm, but it risks causing the group to lose focus as certain neighbors use the meeting to advance other interests, such as the need to repave the streets or build a new school playground, that are peripheral to your central concern—the reduction of traffic passing through the neighborhood. So if you start with a bandwagon approach, you will need to develop processes to keep the discussion focused on the traffic problem.

If you decide on a linchpin approach, you must determine who exactly can serve as the linchpins of your coalition. In building the a coalition to go to war to against Iraq in the early 1990s, the United Kingdom was a key linchpin of George H. W. Bush's strategy, for it was one of the first allies that the United States approached in seeking support for war. As US representative to the United Nations, Thomas Pickering later explained, "The essence of our strategy in winning in New York [at the United Nations] depended first on getting Britain and France with us, and then the Soviets—and the Soviets were really critical, because without them we had no chance of China."¹⁴

Understand Patterns of Deference

In developing your coalition strategy, it is important to understand the patterns of deference and influence within your group, a factor that may have very little to do with organizational titles and formal authority individuals may have. In this regard, consider a few key questions: Who influences whom? Who listens to whom? The answers to these questions will lead you to people who will be particularly important for you to mobilize in support of your coalition.

Find a Convincing Frame

Having the agreement of supporters to join your coalition, you next need to turn your attention to those who have not committed but may be persuaded

to join. In dealing with them, you may need to employ an array of negotiation techniques including offering incentives, increasing the costs of alternatives to not joining, and employing social influence of third parties. In particular, the key to building a coalition is framing the coalition goals in ways that accord with the interests and values of the individuals you are seeking to persuade. For example, George H. W. Bush framed the goal of the war against Iraq as a defense of the United Nations charter and the territorial integrity of its members, not as a means to protect the energy security of the United States and its Western allies. Similarly, after several years of trying different approaches, the leadership of Goldman Sachs framed the issue facing their partners as a decision as to how best to position the firm to grow in the twenty-first century, not simply whether or not Goldman should go public. In building your own coalitions, you should give careful thought to how you frame its goal. In general, that frame should reflect the interests and values of the diverse people you are seeking to influence to join the coalition.¹⁵ Thus your individual neighbors' interests in traffic reduction in the neighborhood may be noise reduction, pollution abatement, or the protection of children. You need to ask what frame will accommodate those interests and which frame will be particularly convincing to the members of the town council when your group presents its demands to them.

Conclusion: Principles for Negotiating Leadership

As you negotiate leadership in your organizations and communities as part of your own everyday deal making and diplomacy, bear in mind the following principles:

1. Your ability to lead other people arises not just from your position, resources, or charisma but also from your will and skill. If you want to lead other people, you have to work at the job. You have to negotiate leadership.
2. The basis of effective leadership is your relationship with the people you lead. Trust in the leader is a necessary element of leadership. People are more disposed to follow a leader whom they trust than one they do not trust.
3. Communication is your fundamental tool in building those relationships.
4. The key process of negotiating leadership is communication through one-on-one interactions and negotiations with the people you would lead. To lead others, you have to engage them and personally connect with them.

5. In developing your leadership strategies and tactics, you need to take account of the interests of the people you would lead. Negotiating leadership is above all interest-based leadership. People will follow you not because of your position or charisma but because they consider it in their interest. Your job as a leader is to convince them that their interests lie with you.

Negotiating with Governments

All of us have to negotiate with a government sooner or later. Whether you're seeking a building permit from the town to put an addition on your house, a reduced tax penalty at the end of an IRS audit, permission from the state to open a charter school, or a contract to sell software to the US Department of Defense, you need to negotiate to get what you want. Although you may not think of these interactions as negotiations, and the bureaucrats on the other side of the desk rarely will call them that, virtually anytime you deal with a local, state, federal, or foreign government you are negotiating.

The Feel of Government

"Governments feel different," an experienced corporate deal maker once told me. What he meant was that governments as negotiators are not like private parties. They approach, prepare for, conduct, and conclude negotiations in ways different from those used by individuals and companies. For him, negotiations with governments took place within a special context. In order to deal with governments effectively, private individuals and companies must understand the differences created by that context and develop strategies and tactics to cope with them.

Governments may play many different roles in a negotiation. They may be parties to transactions as buyers, suppliers, financiers, or partners whose representatives are active participants at the bargaining table. In other transactions, their role is that of regulators whose permission is necessary if a deal is to go forward, necessitating negotiations with one or more government departments or agencies to obtain the authorizations needed. In still other cases, even when a government entity is not physically present at the negotiating table and has no specific authority to regulate the deal, it may be lurking in the wings as a ghost negotiator exerting a powerful influence on parties to assure that government interests are protected. In

other words, even if you are not negotiating directly with a government in those situations, you may still eventually have to deal indirectly with one or more government units if you hope to make the transaction you want. And finally, if the public becomes concerned about a deal that you are trying to negotiate, be prepared for the government to make its presence felt at the negotiating table.

The Name of the Game

At the outset, it's important to realize that many government officials don't consider their interactions with you as negotiations. As one bureaucrat from Mexico's central bank told me, "For government officials, negotiation is not proper. Law is not a negotiable thing when you are in charge of applying it." Bureaucrats at all levels take comfort in this fiction for two reasons. First, the claim that their decisions are made according to rigid rules automatically applied shields them from criticism. If you don't like the decision, blame the rule not the decision maker. Second, in the eyes of the public, the word *negotiation* conjures up images of compromises and trade-offs. For government officials to acknowledge that their decisions are made in this way opens them to the risk of public criticism that they are not applying the law uniformly and are not treating all persons equally. To respect government sensitivities on this point, it's usually best to call your negotiations discussions, conversations, or communications.

In reality, all government systems require that officials exercise some discretion in making decisions, whether in issuing a building permit, authorizing a charter school, or buying software. Discretion in this context means the ability to make a decision involving a choice among various options. Your goal as a negotiator is to convince an official to exercise that discretion in your favor. One of your first tasks is therefore to determine how much discretion an official has. Remember, an official's discretion may concern both the *substantive* application of a rule, for example whether the house addition you want to build is considered a permitted "incidental structure use" under the zoning law, and its *procedural* aspects, for example whether a bureaucrat chooses to deal quickly with your request or let it rest in the bottom her inbox for months.

These considerations have certain important implications for conducting negotiations with governments. First, it is important to find a justification for the result you seek in the law, regulations, or objective standards. The justification should be defensible not only to the government agency or official with whom you are dealing but also to the

public, civic groups, and the government's political opponents. Second, the process by which you negotiate must also be defensible. For example, openness and transparency may be more important than confidentiality. In a business setting, this may require some negotiators to abandon certain cherished precepts of business deal making. And third, you should be sensitive to the fact that the government agency or official with whom you are dealing may not view your interaction as a negotiation at all. Therefore, as mentioned previously, referring to your interactions as discussions, conversations, requests, or interactions will help create an environment where you can discuss your issues without disturbing sensitivities.

Government Powers and Constraints

Governments as negotiating counterparts feel different from private parties because of two factors: the special *powers* that governments wield and the special *constraints* to which they are subject at the bargaining table. The nature and extent of government powers and constraints will of course vary from country to country and from government department to government department. But in preparing to negotiate with any government unit, you should seek to understand its special powers as well as the special constraints affecting its ability to use those powers.

Government Powers

As we saw in Chapter 4, within the context of a negotiation, power means the ability to influence the decisions of another party in a desired way. In addition to the power gained as a result of such natural attributes as wealth, resources, and physical location, all governments derive special negotiating powers from (1) their monopoly positions, (2) their special government privileges and immunities, (3) their role as defenders of the public interest and welfare, and (4) their special protocols and forms. Let's examine each one.

The Power of Monopoly

Most of the time, when you are negotiating with other individuals and companies, you have alternative courses of action if the negotiations fail. If you are negotiating to rent an apartment, you can usually find a different landlord if you can't reach agreement. If you are negotiating to buy a car,

you can normally find another car dealership if this one proves resistant to your best offer. Your alternatives may be good or bad, but other options do exist.

The nature and extent of your other options affect your bargaining power in a negotiation. If you have other good options, you have a position of strength in negotiation. If your alternatives are poor, you have less power. So if there is strong market demand for your product or service, you have many options and will therefore be able to play a strong hand at the negotiating table. If market demand is weak, your negotiating power will be proportionately reduced.

Most of the time when we negotiate with governments, we are negotiating with an entity that has a monopoly over what we are seeking. As a result, we often feel that we have few other options, if any, to satisfy our interests. That realization has the effect of giving us a sense that we are in a weak bargaining position when we negotiate with a government department because our alternatives for making a deal are usually not very good. For instance, if you want to put that addition on your house, you have only one option: negotiate with the town building department. You can't go to another town office or the building department in a neighboring town. Your town building office is therefore in a position of power in its negotiations with you.

Sometimes you may have to negotiate with another company that has a dominant position in the market, like Microsoft or Walmart, a position that seems close to a monopoly. The difference between negotiating with a Microsoft or a Walmart on the one hand and a government on the other is that a government usually has a *legal* monopoly over what you are seeking. That legal monopoly makes the government impervious to various market factors, such as share price or technological change, that strongly influence a Walmart or a Microsoft, no matter how dominant it may be for the time being.

Governments' legal monopolies make them impervious to market forces and give them a sense of permanence that few companies in the private sector enjoy. Also, unlike a company that has a dominant market position, a government department has the ability to use force to maintain its legal monopoly. For example, if you try to sell a drug in the United States without Food and Drug Administration approval, US federal authorities will close down your plant and charge you with a crime.

A further complicating factor is that government budgets typically are determined by annual appropriations of tax revenues—and not by the outcome of their negotiations. When you approach a government agency, it may have no financial incentive to do business with you. Its operations will continue whether or not you reach a deal.

On the other hand, a government's monopoly rarely extends beyond its territory. One way of countering the power of a government monopoly is to develop other options in other territories beyond its reach and make the government aware of your efforts. Thus for example, Japanese auto manufacturers seeking to establish car plants in the United States engage in a process of simultaneously negotiating benefits from several different state and local governments before making a decision on the precise locality in which to build a plant.¹

The Power of Privilege and Immunity

Governments also feel different from other negotiators because they enjoy many legal privileges and immunities that private companies and people do not. Not only do they have the power to regulate how individuals and businesses act, they also have the ability to seize property, cancel contracts, threaten force, and, if needed, actually use it against you to obtain their objectives. Moreover, in many countries, you can't sue the government in a court of law no matter how arbitrary its actions nor can you force it to respect the contracts they have signed no matter how detailed the contract. Even if a suit is legally possible, governments nonetheless often benefit from judicial bias in their favor. National legal systems give governments an array of privileges and immunities to allow them to perform their basic task of governing.

These extensive privileges and immunities also give governments special power at the negotiating table. The implicit or explicit threat by a government to exercise its special powers against a counterpart has influenced the results of many negotiations between government units and private corporations. Multinational corporations, while having a vast pool of capital and technology at their command, don't have these kinds of powers. The result, as a senior executive at a giant global pharmaceutical company once told me, is that even "the smallest governments can jerk you around."

Many times, a government's explicit or implicit threat to use this power causes private negotiators to make concessions they would not normally make in a negotiation with another private company. It is the exercise of this power that often forces companies with advantageous government contracts to renegotiate them and thereby give a government more favorable terms.

One way to reduce this power differential is for a private party to enlist the assistance of another government or organization as an equalizer. For example, to avoid the problems of a judicial partiality toward the government, your transaction might provide for all disputes to be settled in

arbitration a by a neutral body. And if you are having a problem with a local government, you might seek help from provincial or national authorities. For example, if you are unhappy with your local government's unreasonably high appraisal of your property for tax purposes, you may be able to appeal the decision in the state courts or seek the intervention of the state and local government departments. The risk inherent in such an approach is that other governments and organizations have their own interests, and you may not be able to control their actions once you involve them in your negotiation.

The Power of Representing the Public Interest

Governments cloak all their actions, legal or not, on grounds that they are acting in the public interest rather than for private gain. They normally justify their actions as being for "national security," "public welfare," or "the good of the people." In many negotiations, government officials take the moral high ground in order to justify their demands and obtain concessions from the other side. After all, they are altruistically seeking to achieve the public good in the negotiation, while you, as the representative of a private company, are merely looking to make a selfish profit. For example, in a negotiation with an African tax official, I asserted that the country's "development tax" did not apply to the charitable organization I represented, and the official responded with a pained look, "Don't you want to help us develop our country?" He ultimately agreed to grant the exemption, but not before he had made me feel as if I were selfishly putting in jeopardy his country's future through my self-seeking and unreasonable demands.

Away from the bargaining table, the government's role as representative of the public interest also gives it the ability to mobilize popular support for its negotiating positions and use political influence to gain advantages that no private corporation ever could. For example, during its financial crisis in 2001, the Argentine government refused to pay its international debts declaring that to do so would threaten the basic welfare of the Argentine people. It portrayed foreign creditors and investors as imperiling the very survival of the country, a tactic that garnered great popular support for the government and widespread hostility for foreign banks. African governments have used a similar tactic in their negotiations with international pharmaceutical companies to obtain low prices on HIV drugs and other medicines essential to public health.

Because of the power of governments to represent the public interest, companies engaged in negotiations with governments often find they must conduct two related but separate negotiations to achieve their objectives:

one inside the negotiating room with government representatives and the other outside in the media and in public relations. You therefore should keep in mind that almost any negotiation with a government has the potential to become a public issue in which civic organizations, nongovernmental organizations, and the public in general take an active, vocal part, thus turning what you thought was a bilateral negotiation into a multilateral negotiation. As a result, you should plan for this eventuality in shaping your negotiating strategy with any government.

The Power of Protocol and Form

Governments and their representatives are usually acutely sensitive to matters concerning their status, prestige, and dignity since these elements are essential to carrying out their primary task: governing. All other things being equal, a government that is respected by its people and by other nations will find it easier to govern than a government that does not command respect.

One of the ways governments seek to preserve and enhance their status and power is through their use of various forms and protocols, particularly those that relate to how private persons and companies communicate and interact with the government and its officials. Governments usually have express or implicit rules about the way private citizens are to approach them, what forms of address they are to use, and where they are to sit or stand in relation to government representatives. Officials consider the failure to respect these forms as a sign of disrespect or, worse, a challenge to their authority.

Governments also use these forms in order to enhance their power in a negotiation, and their officials therefore frequently bring to the negotiating table attitudes and approaches that seem to introduce rigidity into the deal-making process. By virtue of their government status, negotiators for government departments, ministries, and state corporations often behave differently in negotiations from the way private company executives and lawyers would. For one thing, government officials resist being considered as equals to the private businesspeople on the other side of the table. Indeed any suggestion that the two sides are equals may be considered an insult. Government officials represent the “the state,” “the nation,” and “the people,” and a sovereign country, no matter how small, is not the equal of a private business firm, no matter how large. Any slight to a government official may be considered an affront to the dignity of the nation.

In one instance, an African minister asked for a meeting with the head of a foreign mining company that had operations in his country. The

meeting took place in the office of the minister of mines and was attended by nine other government ministers. The minister of mines said the government wanted to renegotiate its concession agreement with the company to obtain a greater share of mineral revenues, and then he listed the points that needed to be discussed. In response, the chairman of the mining company reviewed each item, but at one point he flatly said, "We cannot entertain that." To emphasize his position, he struck the table with his hand. The minister immediately adjourned the meeting and refused to continue the discussions.

While the response of the mining company chairman might have been acceptable in a negotiation between two private companies, it was inappropriate in a discussion with what amounted to nearly the entire government of a sovereign state. Instead of an outright rebuff, the chairman should have shown a willingness to listen and discuss all the government's concerns. Such flexibility, of course, does not mean that a company has to give in on every point. In this case, it took nearly nine months to get the negotiations going again, and during that time, the government made operations difficult for the company. Ultimately, the two sides did renegotiate the mining concession.

This sensitivity is not unique to the governments of any particular region of the world. US bureaucrats can be equally sensitive and reactive. For example, in 2001, the US Food and Drug Administration (FDA) was dissatisfied with certain aspects of Shering-Plough's manufacturing operations of its asthma inhalers and threatened to withhold approval of the company's new blockbuster allergy medicine Clarinex until the manufacturing problems were solved. A tense meeting between Shering-Plough's top management and FDA officials was held to discuss the matter. When the meeting seemed to have the two sides deadlocked, Shering-Plough's president, Raul Cesan, a hard-driving executive with an assertive style, who had become frustrated with developments in the talks, asked his subordinates to leave the room so he could talk to the FDA regulators alone. Cesan apparently thought he could override them with the strength of his personality and words. It didn't work. As one of his associates would later report, "Raul is an extremely aggressive guy, but that kind of behavior doesn't go over well with regulators. I don't know what he said, but next week we had inspectors crawling all over every one of our plants."²²

Indeed we can find similar examples of such sensitivities throughout all governments. The lesson they teach is very clear: in your negotiations with government officials, avoid challenging their authority. As one experienced government affairs professional told me, "You need to give people the respect due their office." A government department's basic capital is its authority, and it is authority that enables it to function. If you challenge

its authority, either directly or indirectly, you are in effect challenging the ability of that department to perform its basic tasks. When their authority is challenged, the instinct of government officials is to show you in the clearest possible and most forceful terms that you are wrong. Moreover, having been challenged once by your organization, they will continue to remember that challenge in future dealings for a long time to come. In the theology of government, challenging a government official's authority is a bureaucratic mortal sin. You should bear in mind the wisdom of Admiral Hyman Rickover, the developer of the US nuclear submarine and a redoubtable bureaucratic infighter in his own right: "If you're going to sin, sin against God, not the bureaucracy. God will forgive you, but the bureaucracy won't."³

Wise negotiators learn the established protocols and forms for dealing with a particular government, and they respect them scrupulously. They also avoid actions that might be considered a challenge to individual officials and thereby to the government itself. By virtue of their culture, American negotiators in particular tend to disregard formalities and seek to develop informal relationships with their counterparts on the other side of the table. For example, in a survey I conducted among 310 negotiators from 12 different countries, Americans showed the greatest tendency to value and use an informal negotiating style in business dealings.⁴ Unfortunately, that tendency may in some cases be interpreted as a lack of respect. General Electric's inability to secure approval of its Honeywell acquisition from the European Union competition authorities in 2001 is one example. Considering approval a "done deal," GE executives showed little deference to European officials. Early in the discussions, Jack Welch, GE's legendary CEO, said to Mario Monti, EU competition commissioner, "Call me Jack," as if they were in a private business negotiation. Monti, keenly aware that he represented the European public interest, replied, "I'll only call you Jack when this deal is over."⁵ The talks went downhill from there.

Governments' Special Negotiating Constraints

A government's monopoly position, array of privileges and immunities, role as defender of the public interest, and its forms and protocols give it a clear position of power in its negotiations with private parties. A government in a negotiation with a private company would therefore seem like an eight-hundred-pound gorilla sitting across the table. On the other hand, few governments are free to use that power in any way they wish. In one respect or another, they all are subject to constraints on its use. An understanding of those constraints may allow you to mobilize them to

your advantage and thereby reduce the power differential between you and government officials with whom you are negotiating.

Negotiating Rules

Government bureaucracies exist to apply laws, regulations, and rules. Rules govern all their operations, including their negotiations with private individuals and companies. As a result, negotiating with governments is very much a rule-driven process, not the freewheeling interaction that usually characterizes deal making between purely private parties. Rules and regulations affect not only the kinds of deals governments make but also the way they make them.

The rules incorporated in these laws and regulations will tell you how you are to engage the concerned government office, what kind of documentation you must present to it, the precise terms that will need to appear in any agreement you make, and much, much more. These rules effectively limit the ways in which government departments, agencies, and state-owned corporations may interact with you. Government officials may be required to use standard form contracts that include mandatory clauses on payment terms, insurance, and guarantees, to mention just a few. They may also be required to favor certain kinds of business over others, for example, giving preference to national companies over foreign companies.

Like an elaborate ballet, the entire negotiation process may follow a strict rule-driven choreography to its completion. Thus making a deal to sell your products to the government often requires you to engage in distinct, intricate phases—tendering, evaluating, selecting, and challenging—each governed by detailed rules. The first phase is tendering whereby the government announces its needs and requests interested and qualified people to make an offer of the services or goods to be procured. Often the tendering phase provides for a sealed bidding process. Next, the bids are subjected to evaluation using criteria that have been decided upon and made public. Once the evaluation is complete, the government agency makes a selection and proceeds to enter into a formal agreement. But before such agreement is finalized, a process of challenge is possible, whereby disappointed bidders are given an opportunity to contest the selection decision. The whole process is time-consuming, costly, and complicated, often requiring the services of specialists in this domain.

Few companies in the private sector would conduct negotiations in this fashion, for the simple reason that it would not be efficient in achieving the maximum output for a given input. Here then is a further major difference between negotiations with governments and negotiations between private

parties. Whereas ostensible *efficiency* is the highest goal sought by private negotiators, ostensible *fairness* is the goal sought by government negotiations. One reason why purely private negotiations value efficiency so highly is that the participants' organizations will directly benefit from any savings or gains achieved in the negotiations. A win-win solution that allows both companies to save money or create new wealth in a particular transaction will yield the result that both companies have increased earnings for investment in other projects and for possible distribution to shareholders.

A gain secured for a government in a negotiation, on the other hand, does not benefit the department concerned but passes directly to the state budget without having a positive impact on the department's own resources. The inability of a government department to capture gains may influence the government negotiator's reluctance to try innovative solutions to problems, particularly if those innovative solutions are not specifically authorized by the rules and might be challenged by third parties as unfair.

To say that the purpose of such rules and regulations is to ensure that negotiations are fair does not just mean they are fair to the government or to the private party that gets the contract; rather they must also be fair to those who did not succeed in making a contract with the government as well as to the public. In order to protect itself from accusations of unfairness, arbitrariness, or corruption, the government department must show that it has followed the rules in all respects, not by demonstrating that the deal is economically efficient. As a result, the process of conducting a negotiation according to the rules often becomes an end in itself. Because the rules on negotiations have such a central place in negotiations with governments, it is important for negotiators representing private individuals and companies to understand them. In any negotiation with a government, the power to convince an official will almost always depend on your ability to find a rule to justify your position.

The fact that no rule prohibits what you are asking may not be enough to convince the officials sitting across the table. If a government department is presented with two possible courses of action, one clearly authorized by the prevailing law or regulation and the other only vaguely permitted, that department will almost always favor the first option and look dubiously on the second.

Constituents

Just because a particular government department or agency has a monopoly over what you are seeking in your negotiation does not mean that

department or agency is omnipotent. Inevitably, any government unit relies on some constituency for resources and support, and that constituency can therefore influence the way that particular unit behaves. Depending on the country, state, or locality, government departments and officials rely on a wide variety of constituents and supporters—political parties, labor unions, the military, the media, and civic organizations—from which they derive power and authority. So in negotiating with any government department, you need to understand its particular constituents and the levers they command to influence government action.

The key constituents of a government department are not always readily apparent. Like cultures, each of the world's government systems is distinct and different. The French government does not make policy the way the German government does. And an executive from Massachusetts ought not to assume that the state government of Mississippi works the way government does at home. The differences among governments may tempt us to think that government and bureaucratic decision making is some kind of a mysterious black box whose workings are impossible for an outsider to fathom. One way of beginning to understand government decision making is to look to the influence of constituents and opponents of the unit making the decision.

Raytheon, a major US defense contractor, learned this lesson several years ago when it tried to put together a consortium of European companies to produce a weapons system for NATO that it had already built successfully for the US military. Knowing the capabilities of various European firms, Raytheon selected those it thought would do the best job and began negotiating with them. These conversations were abruptly cut short when individual NATO governments told Raytheon that they, not the American manufacturer, would choose the European participants in the consortium. Recognizing political realities, Raytheon ended discussions with the firms it had selected, began negotiations with those chosen by individual governments, and ultimately put together a consortium that successfully produced the weapons systems for NATO.

A few years later, at the urging of the American government, Raytheon sought to produce a version of the same weapons system for Japan. Having learned what it thought was a useful lesson from its earlier experience in Europe, it opened talks directly with the Japanese government, expecting the government to indicate the Japanese companies with which the US manufacturer was to work. No such indication was forthcoming. Japanese officials studiously avoided suggesting appropriate Japanese partners. Finally, in a private conversation with a Raytheon senior executive, the Japanese deputy minister of defense made it clear that Raytheon, not the Japanese government, should decide on the Japanese companies to participate

in producing the weapons system. The reason was that two very powerful Japanese electronics firms were the primary contenders for participation, and the Japanese government did not want to incur the wrath and political antagonism of either one by choosing the other.⁶ The Japanese Ministry of Defense needed the continuing support of both of these constituents if it was to preserve its influence, budget, and status.

In both the European and Japanese cases, the black box of government processed a political decision, but each came out with a different result. In Europe, in matters of national defense and the allocation of contracts among companies in different countries, there was a dominant supplier, often a government or government-financed entity itself, in each country, which had significant influence over the government departments concerned with the production of weapons systems. In Japan, the government, when faced with two competing Japanese electronics giants, recognized that if it favored one over the other, the losing company through its political and financial clout could make life difficult for the government.

Chrysler used its knowledge of government constituents to good advantage several years ago in negotiations to sell its money-losing plants in the United Kingdom to the British government. It reacted to the government's low initial offer by threatening to liquidate its factories one by one beginning with a plant located in an important electoral district in Scotland. The British Labour government at the time had a very slim majority and depended on Scotland to maintain its hold on power. In response to Chrysler's threat, Labour leaders in Scotland put strong pressure on the government to keep the plant open. In the end, the government increased its offer significantly and made a deal with Chrysler.⁷

The Political Imperative

An understanding of interests, both yours and the other side's, is fundamental to success in any negotiation. Interests drive all negotiators, government or private. Those interests are often multiple and complex; consequently, you cannot assume that the interests of the people across the table are the same as yours or of other people you have negotiated with in the past. You have to dig deeper to uncover them if you hope to succeed.

Because of their special interests, government officials and politicians perceive problems and act on issues in ways different from how private parties would behave in similar situations. Part of the reason for this is that, while private and corporate deal makers usually respond to economic incentives—the need to make a profit, increase share price, or ensure a fat bonus for the year—government officials respond to political

imperatives—the need to protect departmental budgets, preserve areas of authority, defend themselves against political opponents, support the interests of constituents, enhance departmental prestige, and ward off competition from other government agencies.

All government officials are agents—that is, they are negotiating not for themselves but on behalf of the state or its subdivisions. In practice, agents also have personal and bureaucratic interests to advance, and they will certainly do so in their dealings with private organizations and individuals. An understanding of these undeclared interests is vital in dealing with any government department. Remember, a constant question is in the mind of any government official with whom you are dealing: How will this interaction affect my career?

Concerned about “career-enhancing activities” and “career-destroying activities,” bureaucrats eagerly seek the former and assiduously avoid the latter. The question weighs more heavily on some officials than on others, but it is always there. Generally speaking, the power of political imperatives in a given interaction with the government will vary inversely to the sense of security that government officials feel in their bureaucratic position. Politically insecure officials are usually more influenced by political imperatives than are politically secure officials.

One strategy officials often use to defend their career interests is to follow the rules assiduously. The rules, which have usually been set down by some higher authority, serve to protect that official from career-damaging criticism and censure. If in your dealings with the government you are seeking to achieve an innovative transaction not specifically authorized by the rules, you are likely to encounter an attitude characterized by the old bureaucratic maxim “Never do anything for the first time.” You will therefore need to find a tactic to blunt bureaucratic aversion to innovation.

Several years ago in Khartoum, Sudan, I negotiated an agreement with an official of the Ministry of Foreign Affairs to allow the Ford Foundation to establish an office and operate in that country. My counterpart was a bright, polished, and extremely cordial Sudanese diplomat who seemed eager for the Foundation to expand its activities in the country. As a result, our discussions went smoothly as we discussed the various issues to be included in the country agreement. However, when I asked for complete tax and customs exemptions for the foundation and its personnel, the agreeable smile on his face was replaced with a look of consternation. Tax and customs exemptions for a purely private organization? The foreign ministry had never done that before. The Sudanese diplomat wasn’t sure whether the ministry even had the power to grant such an exemption. Even if it did, he didn’t know whether the government would be prepared to grant those exemptions to a wealthy foreign organization. The Sudanese

government had no definite rules on this topic, and that presented a problem to my counterpart and, by extension, to his superiors in the ministry. We found a solution to the problem when I mentioned that the Ford Foundation country agreement with Egypt did provide for such a complete tax exemption. At the Sudanese diplomat's request, I produced a copy of the Egyptian agreement. Within a week after that, we had agreed on the complete text of a country agreement for Sudan with provisions on tax and customs exemptions mirroring the Egyptian country agreement word for word.

In any interaction with a government official, it is important to understand the political and bureaucratic interests at work and find ways to satisfy them. It is also important to make deals that are politically defensible for the government making them. The use of an appropriate precedent, as happened in my Sudan negotiation, is one way of doing that.

Operational Norms

Government departments normally operate according to norms that you rarely find in private business.⁸ In particular, these norms affect a government department's revenues, resources, and objectives. They influence not only how government departments act but also how they negotiate.

Revenue Norms

The first important norm concerns departmental revenues. Part of the reason governments are not influenced by commercial incentives to the same extent as private sector companies is that the government departments negotiating deals usually cannot retain the commercial and financial benefits of the deals they make. Whereas a company negotiating with a supplier will increase its earnings by a dollar for every dollar it saves at the negotiating table, a government department that saves a dollar in negotiating with a supplier will not increase its budget by an equal amount. Rather, that dollar goes to the general state budget. In fact, the government department may be penalized next year when its budget is reduced because of the savings it made the preceding year in its negotiations with you. This may have some perverse effects. For one thing, it often leads to a flurry of negotiating activity as the end of a particular fiscal year approaches when government departments seek to spend all their annual budgets, a factor private negotiators sometimes use to their advantage in order to close a deal. Understanding the budgetary cycle of bureaucracies can work to the advantage of private negotiators as deadlines approach.

Resource Allocation Norms

The second important operational norm is that most government departments are not free to allocate their resources—including capital, personnel, and technology—in the way they judge best. Whereas a private company can decide whom to hire or fire and what equipment to buy or not buy according to its view of that decision's impact on profitability, government departments often have to make similar decisions according to politically imposed rules. Even government entities that engage in business activities are usually subsidized by the public treasury and controlled by government officials; thus their principal goal may not be the maximization of profit, as is the case with private firms, but the advancement of social and political ends. For example, if a manufacturing joint venture between a US company and a foreign, state-owned corporation were faced with a decline in product demand, the reaction of the US partner might be to lay off workers; however, the state corporation, despite reduced profitability, might reject that solution in order to prevent an increase in unemployment in the country. In negotiating a transaction, it is often important to recognize and discuss divergences in goals rather than be surprised by them later. For example, if your parent-teacher association (PTA) is negotiating with the local school board to hire more teachers to reduce class size, the board may be very sympathetic but unable to act because state law requires school districts to spend a fixed percentage of the budget on classroom computers, the only part of the budget with surplus funds. To overcome this obstacle, your PTA and the school board should brainstorm together to find creative ways for giving children more individual attention, the PTA's primary interest, while complying with state law, the board's overriding concern. Perhaps additional student teachers, more parent volunteers, or augmented computerized instruction would increase learning while respecting mandated resource allocation norms.

Objective Norms

The third normative constraint is that government agencies and departments must pursue the objectives that a lawmaker has specified for them. They generally may not seek the goals they judge important. Companies change products and strategies in accordance with the market demands. Government departments and agencies cannot change objectives as easily. When Ford Motor Company realized that the Edsel automobile, which it introduced in 1957, was a loser in the marketplace, it stopped making it in 1959. Had Ford been a government department, it would probably still be manufacturing Edsels today.⁹

A Government Deal Is Never Done

One of the risks of government negotiations is that governments tend to see any deal they make as always being open to reconsideration and renegotiation, even after the contract has been signed, when it suits that government's interests. In this regard, it is well to remember the British Prime Minister Benjamin Disraeli's remark to the House of Commons: "Finality is not the language of politics."¹⁰

Despite lengthy negotiations, skilled drafting, and strict enforcement mechanisms, parties who solemnly sign and seal agreements with governments often find themselves later returning to the bargaining table to renegotiate their agreements. So a key challenge in negotiating with governments is not just reaching an agreement but also staying there. The risk of renegotiation of apparently definitive agreements is particularly present in dealings with governments for a variety of reasons. Governments often reserve the right to unilaterally change contracts on grounds of protecting national sovereignty, national security, or the public welfare. Moreover, the usual in-court remedies for breach of contract may be unavailable or ineffectual against governments who take such actions. As we have seen, governments are particularly susceptible to political forces in their negotiations with people and companies. The changing nature of the political imperatives under which governments labor can cause them to change their position on agreements they have previously made. Throughout the world, from Albania to Zambia, when political opposition develops toward agreements that governments have made, at some point, when the pressure becomes too great to resist, governments, including the United States, will look for ways to cancel or redo those agreements in order to satisfy their political constituents. As a result, it is important to incorporate, into your strategy tactics, mechanisms to deal with this risk. Because of the prevalent need to revisit deals with governments, negotiators need to understand the forces that give rise to renegotiation, the nature of the renegotiation process, and the best ways to renegotiate deals that they thought were definitively in the bag.

Conclusion: Power Tools for Dealing with Governments

Although government power can be daunting, the peculiarities of government negotiations also offer unique opportunities for you to expand your power. Here are a few of the power tools you may use to influence the decisions of government officials in your favor:

Learn the Rules

Negotiating with governments is a rule-driven process, so spend time and effort learning the rules. Don't limit yourself to just the text. Talk to people about how they have been applied. Remember that when you are dealing with the government, the rules may include not only the substantive principles that guide behavior but also any number of procedural norms ranging from the font size and margins on the documents you submit to the specific official you are allowed to call if you have questions.

Find Favorable Precedents

When you can't cite a specific rule that supports your position, find a precedent. As my case from Sudan shows, a favorable precedent in the form of a relevant previous government action has a powerful influence on the decisions of the officials with whom you negotiate. Therefore, you need to work hard to find them. In some cases, they are not documented but are nonetheless known many years after they occurred. How can you identify the right precedent? Try asking lower-level government staff for informal advice on precedents to follow as you formulate your proposal or application. Longtime staff may prove to be better information sources than higher-level officials who tend to serve shorter terms.

No Surprises

During a luncheon with active and retired government officials, I asked one of them to share the most important element for a successful government negotiation. "No surprises!" said the official. The others nodded in agreement. Why do government officials have such an aversion to being surprised? Because surprises—such as unexpected community opposition to a proposed shopping mall or a lawsuit from the developer's competitors—can threaten their political power and authority.

You therefore do not want to surprise the government officials you are negotiating with or do things to make them fear a surprise. As a result, before you begin negotiating with particular government officials or agencies, it is a good idea to talk to them informally and let them know what you are planning to do. These initial talks will also give you vital information about how to present your application in a way that will maximize your chances of approval.

They may also provide you important perspectives on the political situation you may be facing and the various politicians and citizen groups you

may have to include in the process. In my own negotiation in Sudan, my preliminary, informal discussions with aid agencies, Sudanese friends, and foreign diplomats *before* actually sitting down to negotiate the country agreement were indispensable in devising an effective negotiating strategy and in setting the stage for a successful negotiation.

Once you have actually begun negotiations, it is important to alert the officials with whom you are dealing of any factors, positive or negative, that may have a bearing on your proposal. So if you know about potential community opposition to the shopping center you are planning, let your government counterparts know about and prepare for it rather than allow them to be taken by surprise when a delegation of angry neighbors marches into city hall and demands a meeting. If you are lobbying a congressional representative for new legislation, it is best to acknowledge possible negative consequences rather than pretend they don't exist. Many negotiators like to play "hide the ball" in their business dealings by telling their counterparts as little as possible. Playing "hide the ball" in a government negotiation, by denying government officials important information that can later cause unpleasant surprises, may get you thrown out of the game for good.

Show Respect

All governments and their officials jealously guard their authority because authority is what allows them to govern. Never challenge the authority of a government department or agency and avoid any action that might be interpreted as a challenge. Respect and deference should guide all your interactions with any government.

Always Search for the Prevailing Political Imperatives

Always search for the political imperatives driving your government counterparts in a negotiation and find ways to satisfy them while attaining your interests. Remember that a "good deal" to a government official is a deal that is defensible to his superiors, political opponents, and the public.

Work on the Relationship

Although government officials sometimes like to give the impression that they are not influenced by personal relationships with the people they deal with, the existence of a strong relationship is a tool of influence that may

help you achieve your goals. The existence of a good relationship between you and your government counterparts may signal to them a positive message about your reliability, sense of commitment, and honesty—all important but unquantifiable qualities for making a decision on your request. Equally important, once you have signed the contract and received the sought after authorization, you should have a strategy for maintaining and strengthening that relationship.

Negotiating for Other People

In 2004, the Japanese financial authorities discovered that Citigroup's private bank in Japan had engaged in several improper and illegal transactions over a period of time. It therefore took the draconian step of closing all Citigroup's private banking operations in the country, an action that would reduce the revenues of the world's largest bank by \$100 million a year. Coming on the heels of other scandals in Citigroup's far-flung operations, the closure of its private banking business in Japan was a particularly harsh blow that needed a serious response from the bank's leadership.

An Agent's Bow

In response, Charles Prince, who had been appointed CEO the previous year and had taken on the task of trying to change the bank's culture, fired three of the bank's top executives in New York as well as several employees in Japan. In the hopes of negotiating a reopening of the bank's businesses in Japan, he then flew to Tokyo to meet with Japanese authorities, apologize for Citigroup's behavior, and explain the steps it would take to clean up its act. At a large press conference, he took responsibility for Citigroup's actions, apologized for the bank's behavior, and then in a traditional Japanese act of contrition, bowed deeply from the waist, eyes fixed on the ground. News photographers captured this unique moment of Prince's bow of contrition, and it immediately appeared on television and in the press throughout the world. The *New York Times* called it "a bow seen round the world, an unusually public *mea culpa* by the top executive of a financial giant that has typically circled its wagons when criticized or preferred closed door resolutions of problems."¹

Prince, of course, was neither negotiating nor apologizing for himself. He was doing so on behalf of Citigroup. Charles Prince was the bank's *agent* in his negotiations in Japan.

Negotiating Agents Are Everywhere

The use of agents is pervasive in negotiations.² One can say that every significant negotiation in politics, international relations, and business is conducted by agents, not by principals themselves. Negotiating agents have many names: employees, representatives, delegates, ambassadors, and contractors, to name a few. Thus employees like you are agents of their companies; executives like Charles Prince are agents for their corporations; bureaucrats like your town manager are agents for their governments; and international officials like the United Nations secretary general are agents of their organizations. One thing that all these people have in common is that their jobs include negotiating agreements on behalf of the people or organizations for which they work.

In our work lives, most of us act as negotiating agents for the organizations that employ us, whether we negotiate sales contracts, hire new employees, or deal with suppliers. Our jobs may also require us to select and monitor other agents who negotiate for our organizations. In our personal lives, we may resort to the use of agents in various situations when we think it will be to our advantage. Thus we may engage a real estate agent to negotiate the sale of our homes, a CPA to negotiate the settlement of an IRS tax claim against us, a favored uncle to talk to a cousin about repaying a long overdue loan, or a lawyer to arrange a plea bargain for a child caught driving without a license. In these situations, our role is that of a *principal* rather than an agent.

The Nature of Agency

The relationship between a principal and the agent who negotiates for the principal is known as agency. It is both a social and a legal relationship and consists of four elements.³

Consent

The agency relationship between the principal and the agent is created by the consent of the two parties. It is usually the result of negotiation between the principal and agent, a negotiation that may deal with a wide variety of

related matters including the agent's authority, resources, compensation, and all other conditions shaping the agency relationship. The principal selects the agent, but the person selected must consent to accept the agency relationship. That relationship may be embodied in a detailed contract like that of Charles Prince with Citigroup or an informal oral agreement between two friends. Thus the principal selects the agent, and the agent consents to that selection. The relationship between agent and principal is considered personal; therefore, its continuing existence depends on the continued consent of both parties. Despite the existence of an agreement, an agent may stop serving as such at any time, and the principal may withdraw or modify consent at any time thus terminating the agency relationship (although there may be financial consequences for doing so).

Principal Control

The agent works under the control of the principal who has the right to determine what the agent may or may not do during the negotiations. The reason for this controlling power is that the agent has been engaged to further the interests of the principal; therefore, the principal should have the right to control how those interests are achieved. As we shall see, the problem is that although the principal has a legal right to control, the principal's actual control of the agent's actions can be difficult to achieve in practice. For one thing, much of what the agent does takes place outside the presence and direct supervision of the principal. Thus most principals have the difficult task of trying to control their agents from a distance.

Agent's Acts Are Principal's Acts

The agent is authorized to act on behalf of the principal. Therefore, the agent's acts, when done in the scope of his or her authority, become the acts of the principal. Thus the bow of apology given by Charles Prince was Citigroup's apology for breaking Japanese banking rules, and Prince's promises to change operating procedures and not break the rules again were Citigroup's promises.

An agent's acts can also be attributed to the principal when the agent, as a result of something the principal has said or done, reasonably *appears* to be acting within the principal's authority. For example, suppose that you are working abroad and write a letter to your brother authorizing him to sell your sports car that is sitting unused in his garage. A week later, upon reflection, you call him to say that he should not make any deal until you approve the price. Finding a buyer that he thinks is offering a good price,

he shows the buyer your letter to establish his authority and signs a deal to sell the car without contacting you. You don't like the price and want to get out of the deal. You are stuck. While your brother may not have had real authority to sell the car, he had apparent authority because of the letter you wrote.⁴ For this reason, it's important to choose an agent who will represent you well.

Agent Loyalty

The purpose of the agency relationship is to carry out the principal's business, not the agent's business. This means the agent has a duty to advance the principal's interests to the maximum extent and subordinate his or her personal interests to those of the principal. This duty is a "duty of loyalty" to the principal, an obligation that is legally considered a "fiduciary duty" in the United States and in many other countries. Accordingly, the law requires the agent to inform the principal of all relevant information about the negotiation, such as the receipt of any offers, and forbids the agent from profiting from the transaction without the principal's consent. A fiduciary duty, in the words of the common law, is "a relationship of trust and confidence," and the courts impose a variety of sanctions to enforce it and punish any agent who violates it. Accordingly, a court can force an agent who makes an unauthorized profit from his or her agency to "disgorge" it and turn it over to the principal. For example, a corporate officer who learns of a business opportunity during the course of a negotiation for the corporation and invests in it personally instead of informing his employer can be forced to transfer the investment to the principal. The fiduciary duty, of course, seems to run counter to human nature in that it seeks to constrain the self-interest of the agent. It is for this reason that a constant tension exists in many agency relations between the interests of the principal and the interests of the agent. Many agency agreements contain a variety of devices whose fundamental purpose is to constrain the agent's natural self-interest.

The Benefits of Agency

Individuals and organizations choose to use agents to conduct their negotiations for a variety of reasons. Let's consider them briefly.

Expertise

Principals, whether they are organizations or individuals, use agents because they believe the agent has special expertise and will enhance the likelihood of a favorable result in the negotiation. That expertise may concern both the substance of the issues to be negotiated as well as skill in managing the negotiation process. Thus you may engage a real estate agent in selling your house because of the agent's special knowledge of the housing market and his expertise in conducting negotiations with potential buyers. You may hire a lawyer to secure a government authorization to develop a piece of land not only because of her knowledge of zoning and land planning law but also because of her skill in negotiating with the city planning commission.

Reputation, Contacts, and Relationships

Agents often have a reputation, contacts, or relationships that principals believe can be used to their advantage in a negotiation. Thus the reputation and contacts of literary agents within the publishing world are important to an unknown author seeking to secure a contract from a publisher for her first book. Similarly, the reputation of Charles Prince and his contacts within US business and government circles were certainly seen as important to successfully negotiating a reopening of Citigroup's private banking business in Japan. On the other hand, if your boss doesn't like an important customer with whom your company regularly does business, that bad relationship may lead him to ask you to negotiate on his behalf whenever it comes time to renew the customer's contract.

Efficiency

In many situations, principals choose to use agents in negotiations to save time and effort. Thus a home owner, busy with his professional life as an architect, will select a real estate agent to sell his home rather than sell it himself, for reasons of efficiency and because he judges the time and effort it would require for him to find a buyer and negotiate a sale could be more profitably devoted to his own business. Similarly, your brother, who is returning home in a month after a two-year work assignment in Singapore, may ask you to find an apartment that will be ready for him and his family when they arrive back in the United States because

using you as his agent is more efficient for him than trying to lease an apartment from Singapore.

Objectivity and Distance

For many people, certain types of negotiations are emotionally demanding, uncomfortable experiences they would prefer to avoid or for which they are temperamentally unsuited. An opera star, for example, may be unwilling to engage in self-promotion with an opera company in order to land a leading role; therefore, she prefers to leave that task to her agent. An impatient athlete, who in the past yielded to the winner's curse by signing a contract with a major league team too quickly, may decide to use a sports agent and have the benefit of the agent's greater objectivity and patience in negotiating a deal for next season. For both of these individuals, agents bring them desired objectivity and distance from the negotiation process, which they hope will end in a better result.

Tactics

The use of an agent may give a principal a tactical advantage in certain negotiations. For example, a celebrity or known wealthy person who wants to buy a house may use an agent to negotiate a sale in the hopes of avoiding an exaggerated price the seller may demand if he or she knows the identity of the buyer. Similarly, principals who want to slow down the negotiation process may use an agent to achieve this result by denying the agent any authority to make commitments at the bargaining table and requiring the agent to refer any and all proposals to the principal for consideration.

Organizational Necessity

In the case of organizations, such as corporations, governments, and other institutions, some particular physical person or persons must conduct the negotiations on the organization's behalf. How else could Citigroup, an organization with more than 200,000 employees, undertake negotiations with the Japanese government except through a human agent? Similarly, how else could the Japanese government engage Citigroup in the negotiation except through designated Japanese officials? The effectiveness of a chosen agent in the negotiation depends on much more than the fact that a particular organization has authorized the agent to negotiate on its behalf.

That agent must also possess the necessary personal and professional attributes to negotiate successfully.

The Costs and Risks of Agency

The use of agents in a negotiation has potential costs as well as benefits. Here we discuss some of the principal costs.

Compensation

Agents are not free. They must be paid for their services. If you choose to use an agent, you therefore need to take account of agency compensation costs in planning your negotiation strategies.

Time

The use of an agent also requires you to commit time to the agency relationship. For one thing, no agent understands your interests, goals, and limitations as well as you do. That information is vital if the agent is to be effective; consequently, you need to fully brief your agents on these matters and be ready to devote time to counseling and consulting with them throughout the course of the negotiation. And of course, the process of selecting and instructing an agent and agreeing on his or her terms of service is in itself a separate negotiation that in many cases requires considerable time and effort from the principal. In the end, the use of an agent may not only increase demands on your time, but it may also lengthen the time necessary to complete the negotiation.

Risk of Undesired Acts

The use of an agent always presents risks that he or she will engage in undesirable actions, through mistake or incompetence, that will yield less than optimal results in the negotiation. No matter how experienced, an agent may not fully understand the principal's interests or may unintentionally offend a negotiating counterpart to the principal's detriment. For example, executives with greater international negotiating experience might have shown the appropriate deference to European Union competition authorities that GE executives lacked when they unsuccessfully sought approval for its merger with Honeywell (an incident we discussed in Chapter 7).

Risk of Self-Interested Actions

Probably the most significant agency risk is that agents will take advantage of their positions to advance their own interests instead of those of their principals. Thus a real estate agent may encourage the seller to accept a price lower than expected, not out of a genuine belief that the price offered is the best that can be obtained from the market but rather to secure a commission on the sale in as short a time as possible and with little effort. Similarly, a purchasing agent for a wholesaler may be less exacting in applying the specifications required by his employer because the selling agent has given him tickets to the World Series. Known as the “agency problem” or the “principal-and-agent problem,” this tendency of agents to place their individual interests ahead of their principals’ interests (to whom they owe a “duty of loyalty”) has been the subject of much discussion in economic, political science, and business management literature.⁵ The problem exists in all principal–agent relationships because of two conflicting imperatives: (1) the need for principals, especially organizations, to use agents to carry out a multitude of transactions in the contemporary world and (2) the human tendency of agents to pursue their own interests. This literature has struggled with a basic question: How can a principal be sure the agent will act in the principal’s interest? The simple answer is that the principal can’t be 100 percent sure. Nonetheless, scholars and practitioners have considered a variety of devices to reduce the risks of the agency problem and find ways to increase the likelihood that agents will conduct negotiations, and other agency transactions, with the principal’s interests foremost in their minds and actions.

Methods to Ensure Agent Loyalty and Effectiveness

Principals employ a variety of techniques and devices to control agent behavior so as to assure agent loyalty and effectiveness. Basically, these methods fall into three general functions: (1) agent selection, (2) agent management and monitoring, and (3) agent incentives. Let’s examine each one briefly.

Agent Selection

Agents are not interchangeable. Each individual you could choose to represent your interests has strengths and weaknesses as well as a perceived degree of loyalty to a particular principal. The selection of an agent for a particular negotiation is therefore crucial. With regard to effectiveness, you

as a principal have to consider not only the candidate's knowledge, skill, and competence but also his or her ability to actually influence the other side in the negotiation. In the case of Citigroup's negotiation to repair relations with the Japanese banking regulators, the choice of a particular agent sent a signal to the other side. It was imperative for Citigroup to signal the Japanese that they took very seriously the regulatory violations by its employees and that the bank as an institution would commit itself strongly to reform. The sincerity of that intent was underscored by the fact that the CEO and chairman of Citigroup flew to Tokyo to apologize and repair the damaged relationships. Selecting anyone of a lesser rank within the organization, for example a vice president or a general counsel, as a negotiating agent would not have sent the same message. Indeed it might very well have doomed the negotiations. Thus the identity of the particular person you select as your negotiating agent conveys your degree of respect for the other side and how important you consider the negotiation.

Ascertaining and assuring the loyalty of the agent you select is in many ways a more difficult decision because it can be hard to find objective data on which you can base an evaluation of the candidate. It is for this reason, for example, that US presidents often rely on old friends to carry out particularly sensitive negotiations on their behalf. Thus President George H. W. Bush chose his old friend and tennis partner Secretary of State James Baker to lead particularly sensitive foreign policy negotiations, and President Jimmy Carter asked Robert Strauss, a longtime political advisor and confidante, to serve as US trade representative to complete the delicate Tokyo Round of Multilateral Trade Negotiations. Both men were highly competent negotiators, but equally important, their loyalty to their principals was beyond question. President Richard Nixon, on the other hand, did not have the same kind of close relationship with his secretary of state, William Rogers, and he therefore used his national security advisor, Henry Kissinger, as his agent in particularly important negotiations, including the preparations for his historic opening of diplomatic relations with China in 1972.⁶

Agent Management and Monitoring

A second important process for agent control is effective managing and monitoring by the principal. This can take place through intensive briefing of the agent as to the principal's expectations, preparing talking points and negotiating instructions to be followed by the agent, and the preliminary preparation of draft agreements that the agent is to seek to obtain in the negotiations.

When an organization selects an agent, it is faced not only with the task of managing the agent's negotiating goals but also with managing its own. Before setting forth guidelines for the agent, an organization first must negotiate internally to arrive at a common negotiating position, since different organizational subunits may have different interests and positions on specific issues. The US government relies on "the interagency process" to arrive at negotiating positions for impending international negotiations, a process that may be long and conflicted. Thus in arriving at a draft treaty for use in bilateral investment negotiations, the concerned US government departments engaged in an interagency process that lasted four years. Corporations also prepare draft contracts both to inform the parties with whom they negotiate and to control the behavior of their own negotiators by preventing them from agreeing to terms that conflict with the draft. Other means of control include requiring negotiating agents to report regularly on developments in the negotiation and to stipulate that no deal may be finalized until the principal approves all its terms. So if you are trying to sell your house, you might require your real estate agent to report to you on each prospect to whom she has shown the house and give you a full briefing on all the prospects who show up for an open house.

The dilemma in designing a system to manage negotiating agents is that imposing strict controls on the agent may not lead to the best deal since the controls may inhibit creative problem solving and integrative bargaining at the bargaining table. In effect, you are drafting instructions for a process about which you can only speculate and may therefore provide controls on the agent that lead to dysfunctional agreements. The challenge in managing your agent is how to balance the rigidity of instructions with the flexibility needed for effective negotiation.

Incentives

Yet a third way to try to assure loyal behavior in negotiating agents is to create proper incentives that will encourage such behavior. It is a question of aligning your agent's interests with your own interests. How do you do that? One way is by linking the agent's compensation to his or her success in the negotiation or more generally to the fortunes of the principal. Why did Charles Prince rush to Tokyo to negotiate with the Japanese? One reason was certainly that a significant portion of his salary as CEO was paid in stock options, and Citigroup's permanent loss of \$100 million revenues from its Japanese operations would surely have had a negative impact on the bank's stock price.

The Challenges of Managing Agents

None of the devices mentioned above allow the principal perfect control of the agent. Their efficacy may be blunted by various factors. First, an information asymmetry exists between principal and agent. The agent generally knows much more about the negotiation than does the principal. Moreover, principals usually have to rely on the agent for what information they receive. It is for this reason governments in diplomatic negotiations will sometimes create back channels to the other side in order to gain an information flow not controlled or manipulated by the agent.

Second, agents have their own interests that may consciously or unconsciously influence their actions. No contractual device in an agency agreement can remove them entirely. Thus a literary agent representing a new author may be less demanding in a negotiation with a publisher because he or she wants to maintain good relations with that publisher so that the publisher will be receptive to other projects the agent may present in the future.

Third, the incentives the principal may grant to the agent may prove dysfunctional. For example, General Motors (GM), like many other international companies, created special teams to negotiate joint ventures with foreign partners. Once a team signed a deal, it would move on to another negotiation, leaving other executives the difficult task of figuring out how to carry out the new joint venture—a process that some managers called “throwing the deal over the wall.” This practice contributed to implementation problems in two ways. First, it gave negotiators, whose bonuses hinged on the number of deals they closed, a strong incentive to ignore or downplay potential implementation problems that might delay or obstruct a deal. Second, it effectively denied implementing executives the beneficial knowledge of the relationships gained and built with foreign partners by the negotiating team. GM’s experience is a lesson for us all: when agents or employees negotiate on your behalf, make sure they have strong incentives to assure effective implementation of the deals they make.

Finally, the agent’s personality, experience, status, and social networks may complicate the principal’s ability to control the agent. For example, the US government has used former Presidents Jimmy Carter and Bill Clinton to conduct negotiations with the North Korean government. Their reputations and experiences gave them clear advantages in those negotiations, but those attributes also caused the White House to worry about its ability to control these two negotiating agents.

The Challenges of Being a Negotiating Agent

Thus far this chapter has examined the use of negotiating agents primarily from the perspective of the principal. In our everyday lives, virtually all of us are sometimes principals and sometimes agents. So how can you best function as an agent? What are the challenges of being an agent, and how can you overcome them?

In order to negotiate on behalf of another individual or organization, you need a *mandate*, that is, an authorization—general or specific, formal or informal—from the organization or person on whose behalf you are empowered to act. You also need some means of assuring the people with whom you are dealing that you are indeed acting for another and not just for yourself. For example, if you are engaged in merger negotiations, you need some assurance that your organization will approve the agreements you make. If like Charles Prince, you are seeking to reenter the Japanese private banking market, you must be able to assure the Japanese authorities that the reforms you promise will in fact be executed by the organization you represent. Similarly, if your brother asks you to rent an apartment for him or your elderly, infirm neighbor requests your help in hiring a plumber to fix a clogged drain, you need to persuade the prospective landlord and the plumber that you indeed have a mandate to represent your brother and your neighbor.

Your mandate is crucial to your ability to negotiate for two important reasons. First, the other side's belief that you have a mandate means that they will take you seriously as a representative of the individual or organization. Both the Japanese authorities and the public took Prince seriously because they assumed that he had Citigroup's mandate—that he was indeed speaking for Citigroup and not just for himself. Second, the existence of a mandate gives assurance that you will be able to induce your principals to act in conformity with what you have communicated to others they would do.

In dealing with you as an agent, a question is always in the back of the other side's mind: Will you be able to deliver? Prince could speak with confidence to the Japanese, knowing that he had the power and authority within Citigroup to implement what he and the Japanese authorities had agreed to with respect to Citigroup's operations in Japan. The Japanese were therefore fairly confident that he would deliver what he promised. Similarly, your brother's prospective landlord and your neighbor's potential plumber will want to be sure that any agreement you make with them will be honored by your brother and your neighbor.

On the other hand, history is filled with examples of negotiators with apparently strong mandates who made promises and agreements with

others only to find that their principals rejected them later on. Woodrow Wilson attended the Paris Peace Conference in 1919 as a strong president of a victorious country in World War I and played a dominant role in shaping the Treaty of Versailles and the Covenant of the League of Nations; however, the changed political climate in postwar United States caused the Senate to refuse to ratify these two international agreements.⁷ The reason for Wilson's failure was that he had either lost his mandate or exceeded the one granted to him.

In view of the importance of a mandate to your ability to represent others, an obvious question is how you can get a mandate.

The existence of a mandate does not automatically come with the position you hold. For example, some leaders assume that by virtue of their position and title they are fully empowered to act on behalf of the organization or group that they lead. Your position may give you a mandate to deal with minor matters, such as making a speech on behalf of the organization, but in matters that affect the vital interests of the people you represent, you will ordinarily have to obtain that mandate from them and then work hard to preserve it. Thus the managing partner of an investment bank, by virtue of his position, may have a mandate to make speeches about the bank's activities but may need to obtain a specific mandate from his partners to engage in merger discussions with another bank. Indeed leaders often assume to their sorrow that their positions give them broader mandates for representation than they in fact have. This is particularly true in the case of many principals who believe they have the ability to defend their own interests and are reluctant to turn that task over to others unless they are sure those others will carry out the task in a way that will satisfy those interests. Their trust in their agents to protect their interests is an important factor in influencing them to grant or withhold the necessary mandate to negotiate.

A mandate to represent another is different from legal authority to carry out a specific task. A negotiator with a mandate may not have specific legal authority to carry out the action being discussed with an external organization. Nonetheless, both the other side and the negotiator know that the mandate will be sufficiently strong to secure the necessary legal authorizations when the time comes. A powerful CEO who is conducting merger negotiations with another firm may not have specific authorization to carry out a merger, and indeed the law and corporate charter will certainly require approval from both the corporate board of directors and the shareholders; however, by virtue of the CEO's relationships with the people he or she leads, both the CEO and the negotiators on the other side know that he or she can obtain the necessary legal authorization if a deal is made.

Good Soldiers, Architects, and Tribal Chiefs

To a large extent, your mandate depends not only on your position and title but also on the nature of your relationships with the people you represent. In this respect, negotiating agents may play a variety of roles. Some agents are good soldiers who merely carry out the orders of their principals and rarely go beyond them without first checking with their principals. Other agents are more like architects who, after gaining a basic idea of the interests and aspirations of their principals, set out to design a future through their negotiations with other individuals and organizations, confident that they will be able to convince their principals to accept that future when it is revealed to them. And still others are tribal chiefs who make arrangements and deal with other individuals and organizations knowing that they have the power to convince or threaten their followers to approve. We can find examples of all three styles of representation among successful negotiators, both at home and in the wider world. For example, in negotiating an assisted living facility for your recently widowed, strong willed mother with definite ideas about acceptable conditions in which to live, you will probably act as the good soldier negotiator, following all her desires to the letter and only agreeing to things that meet all her requirements completely. On the other hand, in the search for a retirement facility for your elderly, easy-going father who has entrusted you to handle all his affairs, you may play the role of an architect negotiator who has carefully discussed with your father his particular needs and is confident you can convince him to accept any apartment you judge meets those needs. And if your brothers, sisters, and cousins have asked you, as the oldest member of your extended family, to find a hotel for a family reunion, you will probably negotiate that particular deal as a tribal chief, confident in your ability to persuade and cajole every family member to show up at whatever place you choose.

Gaining a mandate to represent others requires you first to understand their interests and second to convince them that you will work hard in your negotiations to advance those interests. For example, as managing partner of a law firm, you may strongly believe that acquiring a smaller firm specializing in intellectual property is essential to building your client base, but unless you understand how that acquisition will impact the interests of your partners, you cannot begin to establish a mandate. Once you understand their interests, you need to engage them, often on a one-on-one basis, to think about the future competitive position of the firm, the strategies for facing that competition, and how best to protect their individual interests.

No mandate is permanent. A negotiating agent may have a strong mandate to represent others but can lose it in an instant. Those who grant a

leader a mandate can take it away just as quickly as they gave it. In the euphoria of victory, President Woodrow Wilson may have had a broad and strong mandate from the American public when he entered the Paris Peace Conference. Within a year, however, the euphoria diminished as the United States considered the postwar world, reconsidered, and ultimately reduced Wilson's mandate to commit the United States to the League of Nations. Similarly, three years after his negotiations with the Japanese, Charles Prince lost his mandate entirely when he resigned as CEO under pressure from Citigroup's board due to the bank's mounting losses. A challenge for any negotiating agent is not only to obtain a mandate but to maintain it. You can lose your mandate through your own actions or through the actions and events attributable to others. To maintain your mandate, you must keep your principals informed of what you are doing outside the organization and continue to maintain their trust and confidence.

The “Principal Problem”

Just as principals are concerned about the “agency problem” when they conduct their activities through agents, agents often face the “principal problem” in their negotiations. The principal problem has several dimensions. First, the principal may not provide the agent with all the information necessary to carry out an effective negotiation. The failure to provide sufficient information may be due to various factors, including the principal's ignorance, neglect, lack of confidence in the agent, or preoccupation with other matters. Second, if the principal is an organization or institution, its own lack of unity or clarity of policy may inhibit the agent from obtaining clear directives or securing necessary decisions from the principal about issues relating to the negotiation. Third, the principal may simply distrust the agent. Fourth, the principal may be inflexible or unwilling to change or adjust positions in light of developments in the negotiation. Fifth, the principal, because of other activities and preoccupations, may be inaccessible to the agent for consultation and making decisions about issues vital to the progress of the negotiation. And finally, the principal may simply have an inability or unwillingness to make the necessary decisions to allow the negotiation to progress or conclude. In each of these situations, the agent, to succeed in the negotiation, must develop strategies and take necessary affirmative steps to cope with an uncommunicative, disorganized, distrustful, inflexible, inaccessible, or indecisive principal. To achieve this, the negotiating agent will need some of the same skills and resources required to deal with parties sitting on the other side of the bargaining table.

Agents on the Other Side of the Table

Whether or not the person on the other side of the negotiating table is a principal or a negotiating agent has important implications for your strategies and tactics in the negotiation. In particular, if you are facing an agent of the other side, instead of a principal, you should try to determine with as much specificity as possible at least three vital factors: (1) the agent's mandate, (2) the agent's relationship to his or her principal, and (3) the agent's own interests. Let's consider each briefly.

The Agent's Mandate

Just as your mandate determines what you can and cannot do on behalf of your principal in the negotiation, the agent on the other side of the table is similarly constrained or empowered by his or her mandate. It is therefore important to find out what that mandate is. Sometimes the other side's agent may willingly disclose the full extent of the mandate; in other situations, the agent, for tactical reasons, will not be forthcoming. Through questioning and observing behavior, you may be able to discover the limits of your counterpart's authority. For example, within a short time after the negotiation begins, you may gain a fairly accurate idea of how often the other side's agent has to refer back to the principal for decisions and how much latitude the agent has to explore new ideas and possible solutions for negotiating problems.

The Agent's Relationship with the Principal

It is also important to determine the nature of the relationship between the other side's agent and the principal. For example, is the relationship a close and personal connection imbued with significant trust and confidence between the two? Or is it formal and impersonal? Does the person negotiating on behalf of an organizational principal hold a high position within the organization, like Charles Prince, or is he or she a low-level employee without significant influence? The answers to these questions will tell you about the flexibility of the agent in the negotiation to persuade the principal to accept new ideas and be able to actually implement what the two of you have negotiated at the bargaining table. Moreover, the willingness of an agent with a close relationship to the principal to accept ideas, justifications, and arguments may be indications that the same ideas, justifications, and arguments will be acceptable to that agent's principal.

The Agent's Individual Interests

In addition to determining the interests of the principal on the other side of the table, you should also consider the agent's individual interests and how those interests may affect the negotiation. For example, if you are across the table from a corrupt official seeking a bribe from your company in order to grant you a government contract, you will have serious ethical and legal issues that in the end might force you to abandon the negotiation. But not all personal interests of agents are illegitimate or illegal. The official's desire for the respect due his office, not to be embarrassed in front of his superiors or colleagues, or to be acknowledged for his contributions to the negotiation process are legitimate individual interests you should try to satisfy during the course of the negotiation.

International and Cross-Cultural Negotiations

Globalization makes us all international negotiators at one time or another as our jobs and our lives increasingly bring us into contact with people and organizations from abroad. More than ever before our work requires us to communicate by telephone, email, video teleconferencing, and personal visits with individuals located throughout the world, whether they are clients, customers, business partners, suppliers, creditors, or debtors. Our increased ability and need to travel the globe for personal or business reasons brings us into contact with foreigners in growing numbers. Those communications and contacts are in many cases international negotiations.

International negotiations take place in a particular context. That context creates special challenges that negotiators have to manage to achieve their goals. What's special about international negotiations? Basically, when you negotiate abroad, you encounter barriers to agreement that you don't meet when you negotiate at home. The challenge in negotiating abroad is to understand and find ways of overcoming those special barriers. Charles Prince's bow during his negotiations in Tokyo was an attempt to overcome one of them.

Special Barriers in International Negotiations

Any negotiation risks hitting barriers. One side gets locked into a position and refuses to look at other options. The negotiators come to dislike each other and let their personal feelings interfere with the talks. One team thinks the other is hiding information or lying. Members of both teams start bickering among themselves. Negotiators meet these kinds of obstacles whether they are making a deal to build a factory in their hometown or create a timbering joint venture in Indonesia. But when deal makers

negotiate international transactions, they also face other, special barriers they do not usually encounter in purely domestic negotiations.

To illustrate the point, let us take a simple example. Houston Glue Company, a manufacturer located in Houston, Texas, makes and distributes a powerful adhesive under the trademark MegaGlue. The basic component of MegaGlue is a chemical known as cyanoacrylate. One of Houston Glue's suppliers of cyanoacrylate is Dallas Adhesive Company, a family-owned business located in Dallas, Texas. Last year, Houston Glue negotiated a five-year contract with Dallas Adhesive for the supply of cyanoacrylate at one dollar a pound. The market demand for MegaGlue has expanded rapidly, so Houston Glue is looking for an additional cyanoacrylate supplier and has identified Budapest Adhesive, a recently privatized enterprise in Budapest, Hungary. Budapest Adhesive has proposed to sell cyanoacrylate to Houston Glue for 250 forints a pound at a time when one US dollar equals 250 forints. Here we have two similar business deals involving the same product at roughly the same price, but the process of negotiating and making these two transactions raises distinctly different problems.

Put yourself in the place of the Houston Glue executive who had successfully negotiated the deal with Dallas last year and is now contemplating the negotiation of a similar long-term supply agreement with Budapest. In preparing for your new negotiation with Budapest Adhesive, you'll need to prepare effectively to understand the other side's interests, develop creative options, and apply the other principles we discuss elsewhere in this book. But in addition, you'll need to know how to cope with special barriers that you didn't face in negotiating the Dallas deal.

Eight barriers in particular will need your attention as you plan your negotiation in Budapest:

1. The first and most obvious barrier is the potential for *language differences*. Negotiators need a medium of communication. How will you and your Hungarian counterpart negotiate if you don't have a common language?
2. The second and perhaps equally obvious barrier is the *negotiating environment*. The parties negotiating an international deal are usually located at a great distance from each other in different countries. Even in this age of instant global communication and high-speed travel, distance and geographic unfamiliarity still complicate the planning and execution of negotiations. One side usually has to travel to the other side's turf to negotiate. For the visitor, whether a Hungarian in Dallas or a Texan in Budapest, that turf is a foreign environment, and that foreignness is a potential barrier to deal making. In contrast, the negotiating environment for the deal between

Houston Glue and Dallas Adhesive would not have created significant problems since negotiators on both sides would have understood and felt comfortable in the environment where discussions took place, whether in Dallas or in Houston.

3. *Culture* is a third barrier to making deals. International business transactions not only cross national boundaries, but they also cross cultures. Culture is a powerful factor shaping how people think, communicate, and behave. It also affects the way they negotiate. Cultural differences between negotiators can create barriers that can block agreement. Negotiators for Houston Glue and Dallas Adhesive likely did not encounter the same obstacles as the negotiators of the Dallas Glue–Budapest Adhesive deal since they shared a common culture. In countries like the United States, where people from many different cultures live and work, you may engage in cross-cultural negotiations without ever leaving home. So if you work with a Pakistani engineer, a Brazilian computer expert, and a British marketing specialist, you may find that negotiating staff meetings requires cross-cultural skills.
4. Even the most bland and self-effacing negotiator has an *ideology*. In the international arena, international negotiators encounter and must be prepared to deal with ideologies vastly different from their own. Whereas Dallas and Houston negotiators probably share a common ideology, the Dallas and Budapest deal makers may face ideological differences, particularly in view of Hungary's history as a communist country. Ideology, then, is a fourth barrier to negotiating global deals.
5. The fifth barrier to international business negotiations is *foreign organizations and bureaucracies*. In virtually all international negotiations, negotiators are seeking to make deals with organizations. To do that successfully, they must understand how those organizations function and know how to work with them effectively. Whereas the Dallas and Houston negotiators will fairly quickly and easily come to understand how each other's organization makes decisions, the Dallas and Budapest deal makers will probably have to devote significant time and attention to this issue.
6. By engaging in international business, a company enters into a world of many laws and political systems. In this age of globalization, borders still matter. Despite the growth of global markets and international communications, the world is still made up of sovereign, independent countries each with its own legal and political system. At last count, there were more than two hundred of those systems, not to mention many national subdivisions—like

states, provinces, and autonomous regions—with their own sets of laws and government agencies. What this means, of course, is that international negotiators must be prepared to confront and deal with a bewildering array of foreign governments and laws. That can mean the difference between success and failure in a negotiation. *Foreign laws and governments* are a sixth barrier in global deal making. The deal between Dallas and Houston will involve only Texas law and potentially only Texas courts. On the other hand, a transaction between Dallas and Budapest will bring the parties into contact with at least two foreign legal and governmental systems. Although many of the principles set forth in Chapter 7 regarding negotiating with governments apply equally to domestic and foreign governmental negotiations, international negotiations are special because negotiators are forced to cope with *foreign* governments and *foreign* laws.

7. Unlike purely domestic deals, international transactions take place in a world of many currencies and monetary systems. Global deals cross monetary boundaries just as they cross political, cultural, and ideological lines. So although the transaction between Dallas and Houston will involve only dollars, a Dallas–Budapest deal will raise issues of dollars and forints, the currencies of the two countries concerned. *Multiple money*, the seventh barrier in international business negotiations, is always present in global deal making, and it has proven insurmountable on several occasions.
8. A final barrier in international negotiations is the risk of *instability and sudden change* so common to the international system itself. Change, of course, is a fact of life, and sudden changes in circumstances are found in both domestic and international business. Still, the type and magnitude of change in the international arena may have far greater consequences for negotiations than in the US domestic setting. The war in Afghanistan, the end of communism in Eastern Europe, the fall of the shah of Iran, and the closing of the Suez Canal are just a few examples of events that had wide and serious consequences for international business deals.¹

For most international negotiators, two barriers in particular seem most troubling: differences in language and differences in culture. Let's examine them in detail and consider ways of dealing with them.

Language

All negotiations require communication, and all communications in turn require a language. Thus the fact that the native language of Houston Glue's representative is English, while the native language of Budapest Adhesive's representative is Hungarian raises an immediate and potentially complex problem: How will the two negotiators communicate with each other? To what extent is their difference in language a serious barrier to their negotiations? The same questions certainly confronted Charles Prince when he sought to negotiate the reopening of Citigroup's private banking operations in Japan. You will also have to confront the barrier of language whenever you negotiate with people from abroad.

"The language of international business," a British executive once told me, "is broken English." Fortunately for many American negotiators, who usually don't speak a foreign language well if at all, much international business and diplomacy *is* conducted in English—an English with a rich profusion of different accents, cadences, and syntaxes but mutually understandable English nonetheless, at least most of the time. But don't let that fact and the British executive's flippant remark make you believe that language differences will never complicate your negotiations with foreign partners and customers. Remember, for one of the parties, negotiations often take place in a language that is foreign.

Language is, of course, a crucial factor in any negotiation, and how you use it can mean the difference between making a deal and walking away empty-handed. Because of the widespread use of English in global business, American executives in many cases will be negotiating with people who speak their language. Often an American enters the negotiation with a linguistic advantage in that English is his or her native tongue, while for the other side it is a second or third language.

When negotiations are conducted in English, the degree of fluency of the two sides can influence the pace and progress of the talks. Negotiations between an American educated at Harvard Business School and a Nigerian trained at the London School of Economics will ordinarily proceed smoothly from a linguistic point of view. On the other hand, business discussions with foreign executives who have not been educated in English but have "picked it up" can be tedious, laborious affairs. Regardless of a counterpart's degree of fluency in your language, experienced negotiators know that English is by no means uniform throughout the world and that they must remain alert to differences in English meaning and usage from country to country. Thus in the United Kingdom, a *company* and a *corporation* are two distinctly different things, and a *solicitor* has nothing to do

with telemarketing. As George Bernard Shaw pointed out, England and America are two countries separated by the same language.

Sometimes the other side may not have a strong command of English, a fact that can have a direct impact on the talks. For one thing, it slows the pace of discussion as each side seeks through repetition and rephrasing to clarify its own and the other side's meaning. Even more important, language difficulties in negotiations can lead to misunderstandings about the nature of the transaction under discussion and ultimately to severe conflict between the parties. For example, during a negotiation between an English company and the Sudanese government to build new villages for Nubians forced from their traditional homes by the rising Nile waters following the construction of the Aswan Dam, the Sudanese side said that "time [is] of the essence in the contract," and the English negotiator replied that his company "expected" to meet the deadline. The Sudanese negotiator claimed to have heard that the English company "accepted" to meet the deadline. The difference between "expected" (which would merely require the English company to make a good faith effort to finish the work on time) and "accepted" (which legally bound them to do so) may not have sounded like much to the untrained ear, but of course it affected the very nature of the deal. When the English company failed to finish the job on time, a serious dispute arose over the company's obligation to pay damages to the Sudanese government, a dispute that in the end was only settled after time-consuming and expensive international arbitration.

Using your linguistic superiority to overwhelm a negotiator who does not speak English well is usually not an effective tactic in international deal making. It may cause the other side either to become cautious, thereby slowing or stopping the progress of negotiations, or to agree to a deal it does not fully understand, a situation that almost always leads to costly conflicts and demands for renegotiation later. In a situation in which the other side's grasp of English is questionable, it is a wise precaution to keep asking questions that invite the other side to explain how they understand the point under discussion.

Despite the widespread use of English in global business, you will often encounter foreign executives and officials who either cannot or will not negotiate in English. Even if they know the language, they may refuse to negotiate in it because to do so would give you a tactical advantage. In this case, you have only two options: to negotiate in the other side's language, if you or some member of your team knows it, or to hire an interpreter.

Speaking the other side's language can be extremely useful in building a relationship. It signals to your counterparts across the table that you have respect for their culture and therefore for them personally. It can also offer

you a window into your foreign partners' value system, thought processes, and business practices. But as a general rule, you should not negotiate an important transaction in a foreign language unless you know it well. Otherwise, not only do you risk misunderstanding the deal's terms, but you will also be focusing your attention on the technicalities of the language rather than on the substance of the deal you are trying to make. Using an interpreter, even if you have a fairly good knowledge of the language, allows you to devote your full concentration to the deal under consideration and also gives you additional time to think about your responses to the other side's statements.

When one of the negotiators does not speak the other side's language well, the parties have no choice but to use one or more interpreters to carry out their negotiation. Linguistic differences and the presence of interpreters change the negotiating environment significantly from what exists when the two sides speak the same language and can communicate directly to one another. For one thing, using an interpreter increases the costs and time needed to conduct the negotiation. For another, instead of coming to know each other directly, the parties have to rely on the interpreter for that knowledge. Depending on his or her degree of skill and integrity, the interpreter can be a clear lens or a murky filter between the parties. But in all cases, the need for an interpreter constrains the development of a close working relationship between the two sides. According to one experienced executive, involving an interpreter in negotiating a joint venture is a lot like trying to kiss your future spouse through a screen door.

There are two types of foreign language interpretation: simultaneous and consecutive. Simultaneous interpretation, frequently used in international organizations and at diplomatic conferences, takes place while the speakers are talking. Their interpreted statements are relayed to the listeners through special electronic equipment involving microphones and earphones. Simultaneous interpretation is rarely used in international business negotiations because of its greater expense and the need for elaborate equipment and specially trained interpreters. In consecutive interpretation, which does not require special equipment, speakers divide their statements into short segments and pause while each segmented is translated. Although consecutive interpretation essentially doubles the time needed to complete a negotiation, it is by far the more common method in international deal making. It also has the added advantage of enabling you to study the speaker's voice inflection and facial expressions while the speaker is talking. These insights are far more difficult with simultaneous translation because you must concentrate on listening to the interpreter,

Seven Rules for Using Interpreters

The need for interpretation complicates a negotiation. Negotiators should manage and plan for it as they would any other tactical element in deal making. The following seven simple rules can help you negotiate more effectively in interpretation.

1. *Hire your own interpreter and choose carefully.* Except in cases where special reasons for trust exist, do not rely on the other side's interpreter unless someone on your team understands the language and can check the interpretation. Before hiring an interpreter, try to determine his or her skill and experience from independent sources like the US consulate or the local branch of a multinational bank. The linguistic ability of people who call themselves "professional interpreters" varies considerably in many countries. Hiring a mediocre interpreter may cause problems between the parties that neither may understand. For example, several years ago one American negotiating team in China was astounded when its simple request to bring three typewriters into the country was rejected by government officials on the other side of the table, until it became clear, after an hour of wrangling, that the interpreter had mistranslated the English word "typewriter" as the Chinese word "stenographer."
2. *Brief your interpreter before negotiations start.* Even if your interpreter is an expert in the languages of the two sides, he or she is rarely also an expert on the subject under discussion. The context of words is important in giving them meaning, and interpreters may not be knowledgeable about the relevant business context for your deal. To give the necessary background you should brief your interpreter on the nature of your organization, its activities, and the proposed transaction or relationship you hope to negotiate. You should also explain what you want in the nature of interpretation and how you want it. For example, if you want a word-for-word interpretation rather than a summary, make that requirement clear. You may also want to provide background documents, relevant diagrams, and PowerPoint presentations to the interpreter in advance to enable him or her to understand the subject matter and ask you questions relating to the matters to be discussed. If the negotiation concerns technical matters, for example the processes for testing pharmaceutical products, it may also be a good idea to give the interpreter a glossary of those terms before the talks begin.
3. *Stay on guard.* Guard against interpreters, who because of personal interests or ego, try to take control of the negotiations or slant them

in a particular way. This risk may be particularly present if the interpreter also works as a middleman, agent, or business consultant and is hoping for future business opportunities from the deal you are trying to negotiate.

4. *Remember to chunk it.* When you negotiate using consecutive interpretation, remember to speak in short, bite-sized chunks, pausing after each one to give the interpreter a chance to translate your words. Inexperienced negotiators who become engrossed in delivering their message often forget to pause or do so only after making a very long statement, thereby confusing the interpreter and contributing to inaccuracies in the interpretation. In planning your presentation at the negotiating table, take account of the need to pause frequently.
5. *Slow down and focus on clarity.* Plan each of your statements carefully so that they are clear and devoid of slang, abbreviations, and business jargon. Slow down your delivery to help the interpreter make an accurate and complete interpretation of your words. Constantly ask one question: How can my statements be misunderstood? One inexperienced American executive forgot this rule when he proudly told his Saudi counterparts that he represented a “blue chip company.” This remark drew quizzical looks from both the Saudi executives and the interpreter. The American then launched into a long explanation that the term “blue chip” originated from the various colored chips used in casinos and that blue chips were the most valuable—in the end only to be told that Saudi Arabia did not permit gambling.
6. *Give your interpreter a break.* Interpretation is difficult and extremely tiring work, so give your interpreter ample opportunity to take periodic breaks during the negotiations.
7. *Respect your interpreter.* Treat interpreters, both yours and the other side’s, with respect due professionals. In addition to interpreting language, your interpreter may often provide you with useful insights into the culture and business practice of the other company. Because the other side’s interpreters speak your language and presumably also have insights into your culture, behavior, and even psyche that the other party may not possess, the other party may also seek advice about you from its interpreters—whether you are trustworthy (telling the truth) or seem reliable. If you have slighted or offended the other side’s interpreter in some way during the negotiations, he or she may not give them the kind of advice you would like them to hear. On the other hand, if you develop a friendly relationship with the interpreter, he or she may provide you with useful information about the other side, as one Japanese interpreter did when he let

slip that the head of his delegation believed he would lose face if he returned to Tokyo without a contract.

A final linguistic decision for most negotiations conducted through interpretation is to determine the language of the agreement being negotiated. US companies almost always insist on English alone as the language of the agreement, but the other side may push just as hard to have the contract written in their language. A compromise is to make both an English and foreign-language translation of the contract and provide that both versions are equally authoritative. If you choose this option, be very sure that the two versions are exact translations. Unless the translation is done extremely skillfully, the parties may later find differences in the two texts that will ultimately require more negotiations in order to settle.

Culture

International negotiations not only cross borders, but they also cross cultures. On the other hand, as noted, in a multicultural country like the United States, negotiating life may be a constant cross-cultural exercise. Culture profoundly influences how people think, communicate, and behave. It also affects the kinds of agreements they make and the way they make them. Differences in culture between business executives—for example, between a Chinese public sector plant manager in Shanghai and an American division head of a family company in Cleveland—can therefore create barriers that impede or completely stymie the negotiating process. It was for this reason that Charles Prince chose to bow to express Citigroup's apology for violating Japanese banking regulations. He hoped to overcome the barrier of cultural differences between him and his Japanese counterparts by adopting a mode of expressing regret that the Japanese understood well because of their culture.

The Meaning of Culture

What do we mean by culture? Culture consists of the socially transmitted behavior patterns, attitudes, norms, and values of a given community. People from that community use the elements of their culture to interpret their surroundings and guide their interactions with other people. When executives from Houston Glue and Dallas Adhesive negotiate their transaction, they rely on their common culture to interpret each other's statements and actions. But when people from two different cultures—for example, executives from Houston Glue and Budapest Adhesive—meet for the first

time, they do not share a common pool of information and assumptions to interpret each other's statements, actions, and intentions.

In many cases, words are just a code that you cannot understand unless you know the context and the background. Culture is an important part of the background and context of any deal. Culture can therefore be seen as a kind of language, a "silent language" that parties need in addition to the language they are speaking if they are to arrive at a genuine understanding.² Culture also serves as a type of social adhesive that binds a group of people together and gives them a distinct identity as a community. It may also give them a sense that they are a community different from other communities.

Culture and nationality are not always the same thing. Within Nigeria, for example, the cultures of the Ibos in the largely Christian southeastern part of the country and of the Hausas in the mainly Muslim north are different and distinct. Similarly, individual corporations and professions may have their own organizational or professional cultures whose norms and behavior patterns may predominate in certain respects over the ethnic or national cultures of their members. For example, a continuing concern in both domestic and cross-border mergers is the problem of blending the cultures of two companies after the deal has been signed, a difficult challenge even for firms from the same culture. While cultural values, attitudes, and behavior patterns may appear permanently embedded in a group, particularly in the context of an encounter between two different cultures, culture is in fact dynamic. It is constantly changing.

The Elements of Culture

You can think of the four cultural elements in the aforementioned definition—behavior, attitudes, norms, and values—as forming a series of concentric circles, like the layers of an onion. The process of understanding the culture of a counterpart in a negotiation is similar to peeling an onion. The outermost layer is behavior, the words and actions of your counterpart. This is the layer that a deal maker first perceives in an intercultural negotiation. A second, inner layer consists of the attitudes of people from that culture toward specific events and phenomena—for example, attitudes about beginning meetings punctually or the appropriate format of presentations. Attitudes may become evident to a counterpart in an intercultural negotiation only after protracted discussions. Next are norms, the rules to be followed in specific situations. Here a negotiator may come to realize that a counterpart's seemingly rigid insistence on punctuality is not merely a personal idiosyncrasy but is based on a firm rule derived from that person's culture.

The innermost layer—the core—consists of values. One of the essential characteristics of a value is the individual or group's belief that a specific conduct is personally or socially preferable to an opposite conduct.³ The way meetings are conducted, representatives chosen, and people rewarded are usually based on certain values important to the culture of the individuals involved. Differences in values are often difficult for negotiators to detect and understand. Indeed the parties to an international negotiation may discover their value differences only after they have signed the contract and have begun to work together. Once discovered, differences in cultural values between partners in an international joint venture may lead to severe conflict and ultimately the failure of their enterprise, a factor that may explain why many international ventures have a short life.

Culture's Impact on Deal Making

Differences in culture between negotiators can obstruct negotiations in many ways. First, they can create misunderstandings in communication. If one American executive responds to another American's proposal by saying, "That's difficult," the response, interpreted against American culture and business practice, probably means that the door is still open for further discussion, that perhaps the other side should sweeten its offer. However, in some other cultures, for example, many in Asia, people may be reluctant to say a direct and emphatic no even when that is their intention. For example, when a Japanese negotiator says, "That is difficult" in response to a proposal, he is clearly indicating that the proposal is unacceptable. "It is difficult," means "no" to the Japanese but "maybe" to the Americans.

Second, cultural differences create difficulties not only in understanding words but also in interpreting actions. While Americans and Canadians may find it perfectly appropriate to conduct business discussions at lunch, Brazilian and Mexican executives may consider serious business negotiations totally out of place in that setting. Thus there can be sharp cultural differences as to when and where deal making is appropriate.

Most westerners expect a prompt answer when they make a statement or ask a question. The Japanese, on the other hand, tend to take longer to respond. As a result, negotiations with Japanese representatives are sometimes punctuated with periods of silence that seem excruciating to an American. For the Japanese, the period of silence is normal, an appropriate time to reflect on what has been said. The fact that they may not be speaking in their native language lengthens even more the time needed to respond.

From their own cultural perspective, Americans may interpret the Japanese silence as rudeness, lack of understanding, or a cunning tactic to get the Americans to reveal themselves. Rather than wait for a response, the American tendency is to fill the void with words by asking questions, offering further explanations, or merely repeating what they have already said. This response to silence may confuse the Japanese who feel they are being bombarded by questions and proposals without being given adequate time to respond to any of them.

On the other hand, Latin Americans, who place a high value on verbal agility, have a tendency to respond quickly. Indeed they may answer a point once they have understood it even though the other side has not finished speaking. While inexperienced American negotiators are sometimes confused by Japanese delays in responding, they can become equally agitated in negotiations with Brazilians by what Americans consider constant interruptions.

Third, cultural considerations also influence the form and substance of the agreement you are trying to make. For example, when McDonald's began to franchise its operations in Asia, it considered itself to be selling not only hamburgers but, as one of its senior executives told me, "an American experience." It was therefore reluctant to change its traditional American menu. One franchisee in Thailand pressed hard for permission to sell noodles, a dish traditionally served on auspicious occasions like birthdays. McDonald's finally relented, and sales increased at its Thai restaurants as a result.

And finally, culture can influence negotiating style—the way people from different cultures make deals and conduct themselves in a negotiation. Research indicates fairly clearly that negotiation practices differ from culture to culture. In short, culture influences a person's negotiating style.

An Intercultural Framework for Negotiating Style

Culture tends to influence ten particular elements of a person's negotiation style: (1) goal perceptions, (2) negotiating attitudes, (3) personal style, (4) communications, (5) time sensitivity, (6) emotionalism, (7) desired agreement forms, (8) agreement building, (9) team organization, and (10) risk perception. Using these ten elements as a framework, I conducted a survey among 310 individuals from 12 nationalities and asked them to rate themselves with respect to each.⁴ Here is a summary of the results:

1. *Negotiating goal: transaction or relationship?* Negotiators from different cultures often tend to view the goal of a negotiation differently.

For some, the goal is a specific transaction usually in the form of a signed contract. For others, the goal is to create a relationship between the parties. In my survey, 74 percent of the Spanish respondents claimed their goal was a contract, while only 37 percent of those from India had the same view. Americans were almost evenly divided on the question.

2. *Negotiating attitude: win-win or win-lose?* People tend to approach negotiations with one of two basic attitudes: that negotiation is a collaborative process in which both sides can gain (win-win) or that it's a struggle in which one side wins and the other side loses (win-lose). While 100 percent of the Japanese and 82 percent of the Chinese claimed to approach negotiations as a win-win process, only 33 percent of the Spaniards and 44 percent of the Brazilians took that view.
3. *Personal style: informal or formal?* Personal style concerns the way a negotiator interacts with other negotiators. Some have a formal style, for example by addressing counterparts by their titles or avoiding personal anecdotes; others interact informally. The survey revealed that 83 percent of the Americans preferred informal methods of communications, while only 45 percent of the Nigerians, 53 percent of the Spanish, and 54 percent of the Chinese did.
4. *Communications: direct or indirect?* Methods of communication vary among cultures. Some use direct and simple forms, while others rely on indirect methods, emphasizing circumlocutions, figures of speech, and subtle gestures. A majority of all groups surveyed claimed to favor direct forms of communication; however, the strength of this preference varied, with the Japanese the least in favor of direct methods and the Nigerians and Mexicans most in favor.
5. *Time sensitivity: high or low?* Cultures vary on attitudes toward time, always a factor in any negotiation. It is said that Germans value punctuality and that Latin Americans don't, while Japanese negotiate slowly and Americans are quick to make a deal. Although a majority of all respondents claimed to have a high sensitivity to time, a substantial minority of Indians and French did not.
6. *Emotionalism: high or low?* Accounts of negotiating behavior in other cultures always point to a particular group's tendency to express emotions. While individual personality is obviously a factor, particular cultures have different rules about displaying emotions. In the survey, Latin Americans, following the stereotype, rated themselves highest with respect to emotionalism while Germans ranked least.
7. *Agreement form: general or specific?* A negotiated agreement is usually embodied in a written form. Certain cultures appear to prefer

highly detailed agreements, while others favor general statements of principles. Although power relationships can certainly affect this tendency and a majority of all groups surveyed preferred detailed agreements, the strength of the minority view (favoring more general agreements) varied significantly: 46 percent of the Japanese and Germans favored general agreements, but only 10 percent of the UK respondents found them desirable.

8. *Agreement building: bottom up or top down?* For some negotiators, arriving at agreement is a top-down approach that begins with an understanding of general principles and then proceeds to specific details. For others, negotiation is a bottom-up process that entails agreements on many specifics that ultimately form the deal. The survey revealed significant variations among cultures with 74 percent of the Indians, 70 percent of the Argentines, and 67 percent of the French favoring the top-down approach, while only 33 percent of the Mexicans and 42 percent of Brazilians having a similar view.
9. *Team organization: one leader or group consensus?* Culture can also influence the organization of a negotiating team. Some emphasize group consensus in decision making, while others stress the importance of a single leader. In the survey, 100 percent of the Brazilians and 91 percent of the Chinese favored a single leader, while 60 percent of the Indians and French preferred consensus.
10. *Risk taking: high or low?* Research finds that certain cultures are more risk averse than others. In the survey, 90 percent of the French claimed to be risk takers, while 82 percent of the Japanese judged themselves risk averse, a conclusion supported by reports characterizing Japanese negotiating behavior as requiring large amounts of information and a slow group decision-making process.

While personality and context also strongly influence negotiating behavior, this framework of negotiating traits may help you better understand negotiators from other cultures. Equally important, it may give you clues about how your negotiating style appears to those same people.

Rules for Coping with Cultural Differences in Negotiation

In view of the importance of cultural differences in international negotiations and transactions, how should negotiators cope with them? Here we offer a few simple rules.

Rule 1: Learn the Other Side's Culture

In any negotiation, it is important to learn something about the other side's culture. Ideally, learning a culture other than your own requires several years of study, mastery of the local language, and prolonged residence in the country of that culture. An American faced with the task of negotiating a strategic alliance with a Thai company in Bangkok in two weeks' time cannot, of course, master Thai culture that fast. At best, the negotiator can learn enough to cope with some of the principal effects that Thai culture may have on making the deal.

History is an important window into a country's culture. So at the very least, the American should read a history of modern Thailand. If time permits, an executive might consult anthropological studies, reports on the current political situation, and accounts, if any, on negotiating with Thais.

Consulting with people who have had significant business experience in Thailand can also be helpful. International banks and transnational corporations may be excellent sources of advice on the impact of Thai culture on business. The US Department of State and the American embassy or consulate in Thailand may also advise you on negotiating business deals in that country. Another source of advice may be a university with a Southeast Asian studies program. Finally, if you have hired a Thai lawyer, business consultant, or interpreter to work on the deal with you, that person can also explain how the local culture affects the negotiation process, communications between the parties, structure of the proposed transaction, and the execution of the deal itself. On the other hand, it is important to recognize that a complete understanding of any culture not your own without years of study and immersion is probably impossible; therefore, you should go about the task of cultural learning with humility.

Rule 2: Don't Stereotype

If rule number one in an international negotiation is to know the other side's culture, rule number two is to avoid overreliance on that knowledge. Not all Japanese evade giving a direct negative answer. Not all Germans tell you specifically what they think of a proposal. In short, negotiators who enter foreign cultures should be careful not to allow cultural stereotypes to determine their relations with counterparts from other cultures. Foreign negotiators will be offended if they feel you are not treating them as individuals but rather as cultural robots of a particular national or ethnic group. In addition to giving offense, cultural stereotypes can be misleading. Many times the other side simply does not run true to the negotiating form suggested by books, articles, and consultants. The reason, of course, is that other forces besides culture may influence a person's negotiating behavior. Specifically, these forces may include the negotiator's personality

and experience, the organization represented, and the context of the particular negotiation in question.

Rule 3: Be Aware of Your Own Culture and How Others May Perceive It

Using the negotiating style framework and other guides, you should become aware of the basic elements of your negotiating style and how your cultural values influence your approach to deal making and conflict resolution. For example, if you are highly sensitive to the passage of time during a negotiation and consider time as money, you should be aware of that tendency and of the fact that it may cause friction with negotiators from cultures where time does not have the same importance.

Rule 4: Find Ways to Bridge the Culture Gap

Generally, executives and lawyers who confront a culture different from their own tend to view it in one of three ways: an obstacle, a weapon, or a fortress. At the operational level, cultural differences are hardly ever seen as a positive.

The conventional view among many American executives is that cultural differences are an obstacle to agreement and effective joint action. They therefore search for ways to overcome the obstacle. But a different culture in a business setting can become more than an obstacle; it can be seen as a weapon, particularly when a dominant party tries to impose its culture on the other side. For example, foreign counterparts may consider American lawyers' insistence on structuring a transaction "the way we do it in the United States" as the use of American culture as a weapon.

Faced with a culture that it perceives as a weapon, a negotiator from another culture may become defensive and try to use its own culture as a fortress to protect itself from what it perceives as a cultural onslaught. The Japanese have often adopted this approach when confronted with American demands to open their markets. Quebec's drive to limit the use of English in advertising is a defensive response to what it considered to be the weapon of Anglo-Saxon culture. Groups fearful of globalization often raise their culture as a fortress to prevent incursion of foreign businesses whose practices are culturally threatening.

It may be helpful to think of cultural differences in yet another way. Differences in cultures tend to isolate individuals and groups from each other. In short, cultural differences create a gap between individuals and organizations. Effective negotiators should seek to find ways to bridge that gap. Negotiators need to think of themselves as bridge builders. Often the action that people take when confronted with cultural differences serves only to widen the gap. In China, for example, an expatriate manager whose company was having problems with the customs department

sent a midlevel employee to handle the matter, as he would have done if faced with the same problem in the United States. This approach failed. To save face, high-level Chinese officials in the customs department refused to meet with the company representative and instead delegated an officer at a correspondingly low level to meet with him. As a result, the problem became the subject of interminable meetings but was never solved.

In the words of the English poet Philip Larkin, "Always it is by bridges that we live."⁵ Accordingly, effective joint action among people and organizations of differing cultures requires a bridge over the culture gulf. One way to build that bridge is by using culture itself. If culture is indeed the glue that binds together a particular group of people, the creative use of culture between people of different backgrounds is often a way to link those on opposite sides of the gap. The essence of the technique is to create community with the other side. Basically, there are four types of cultural bridge building that a negotiator should consider when confronted with a culture gap in a negotiation.

BRIDGE THE GAP USING THE OTHER SIDE'S CULTURE

International negotiators often try to use or identify with the other side's culture to build a relationship. For example, when President Anwar Sadat of Egypt negotiated with Sudanese officials, he always made a point of telling them that his mother had been born in the Sudan. He was thus using a common cultural thread to build a relationship with his counterparts. In effect, he was saying, "Like you, I am Sudanese, so we have common cultural ties. I understand you, and I value your culture. Therefore, you can trust me." Similarly, an African American managing a joint venture in Nigeria stressed his African heritage to build relationships with his Nigerian counterparts. And an Italian American negotiating a sales contract in Rome emphasized his Italian background as a way of bridging the cultural gap that he perceived. So if there is something in your background that relates to the foreign culture with which you are dealing, make your counterpart aware of that fact as a way to bridge the cultural gap between you. Even if there is nothing in your background to build a connection, search for some symbol or manifestation from that culture to use as a bridge. Charles Prince did precisely that by bowing in the Japanese cultural fashion to apologize to the Japanese public and its government. Marshal Sergei Akhromeyev did the same thing when he told George Shultz that he was the "last of the Mohicans." As Shultz would later write in his memoir, "Literature can build bridges."⁶

BRIDGE THE GAP USING YOUR OWN CULTURE

You also can persuade the other side to adopt elements of your culture. Successful implementation of this approach requires time and education.

For example, in order to develop a common culture in a joint venture, an American partner incurred significant costs by sending its foreign partner's executives to schools and training programs in the United States and then assigning them for short periods to the US partner's own operations. The danger in this technique is that your foreign counterpart will view your culture as a weapon and therefore use his or her own culture as a fortress thereby creating the potential for heightened conflict.

BRIDGE THE GAP WITH A COMBINATION OF BOTH CULTURES

A third approach to dealing with the culture gap is to build a bridge using elements from the cultures of both sides. In effect, culture bridging takes place on both sides of the gap and hopefully results in the construction of a solid integrated structure. The phenomenon often takes place in international organizations that have employees from many countries. They tend to develop an organizational culture drawn from many parts of the world. The challenge in this approach is to identify the most important elements of each culture and find ways of blending them into a consistent, harmonious whole that will allow business to be done effectively.

BRIDGE THE GAP WITH A THIRD CULTURE

A final method of dealing with the culture gap is to build a bridge relying on a third culture that belongs to neither of the parties. Thus for example, in a difficult negotiation between an American executive and a Chinese manager, both discovered that they had a great appreciation for French culture since they had both studied in France in their youth. They began to converse in French, and their common love of France enabled them to build a strong personal relationship. They used a third culture to bridge the gap between China and America.

A variation of this approach is to use a common professional culture to overcome national cultural differences. The results of my survey indicated that sometimes the professional cultures of negotiators on certain issues appear stronger than their national cultures. This finding suggests that when companies from two different cultures face strong cultural differences at the negotiating table, they should seek a common culture in the professional backgrounds of the negotiators on both sides of the table. Thus lawyers may be able to build relationships with other lawyers and engineers with other engineers. If an engineer on the other team seems to be creating an obstacle and is resistant to an agreement, it may be wise to select one of your engineers, rather than one of your lawyers, to deal with him and build a bridge over the cultural divide between the two companies.

And finally, in considering culture's role in international negotiations and relationships, it is important to remember that the world has a

staggering diversity of cultures. While executives sometimes speak of Asian culture as if it were homogeneous, in reality, Asia has many different and distinct cultures from India to Laos, from Korea to Indonesia. Each has its own values and practices that differ markedly from those prevailing in another Asian country—or indeed, in another part of the same country. The negotiating style of Koreans, for example, is not the same as that of the Lao. And even within countries that from outward appearances seem to have a fairly uniform cultural identity, significant regional differences may exist, such as in France between the business communities of Paris and the *Midi* and in the United States between New York City and Dallas, Texas.

Part III

Tactics

The Power of Preparation

The difference between a successful and unsuccessful negotiation lies all too often in the quality of the parties' preparation. Negotiators often fail to make an agreement or derive maximum benefit from their negotiation because one or both sides did not prepare effectively for the encounter. Probably the worst approach to a negotiation is the attitude "Let's hear what the other side has to say and *then* we'll decide how to deal with them." That attitude is like that of a general who leads an army onto the battlefield declaring, "Let's see what they throw at us and then we'll decide how to get organized." While flexibility is certainly useful in a negotiation and while your talks with the other side may reveal new information requiring you to adjust your approach, it is also important to prepare for any negotiation in a systematic and structured way. Proper preparation is a source of negotiating power because it enhances your ability to persuade the other side to agree to what you are asking for.

Two Dimensions of Preparation

Preparing for a negotiation has two important dimensions, and you must attend to both to give yourself a maximum opportunity for success at the negotiating table. The first dimension is to *prepare yourself*—to give yourself the knowledge, skills, and attitudes to achieve the goals that you are seeking in a particular negotiation. The second dimension is to *prepare the ground*—to take the actions before you actually negotiate that will increase the likelihood of success once you sit down at the negotiating table. Let's first examine how to prepare yourself to negotiate and then consider how to prepare the ground.

Seven Steps for Preparing Yourself to Negotiate

To prepare yourself for any negotiation, you need to think about seven things: (1) your goals and mandates, (2) the relevant parties, (3) your and their interests, (4) your and the other side's options, (5) the specific issues at stake, (6) research you need to conduct, and (7) proposals you can make. Let's examine each of them in step-by-step fashion.

Step 1: Determine Your Goals and Secure Your Mandate

Determining Personal Goals

In preparing for any negotiation, you must first of all determine your goals. What do you want from the negotiation? A clear definition of your negotiating goals will influence to a large extent your strategies and tactics in the negotiation. When you are negotiating for yourself, you usually have a fairly firm idea of what you want to achieve. For instance, in looking for an apartment to live in, you usually know the size of apartment you want to rent, the location you prefer, and the monthly rental you are willing to pay.

On the other hand, we sometimes undertake negotiations without a clear and detailed idea of our goals, or at least without as clear and detailed an idea as possible. For example, suppose you want to buy a car. You may know that you want a new car and might even have an idea of the model you would like to buy. But if you don't go to the dealership armed with a clear and detailed idea of what you want, you could walk away not only with a less-than-satisfactory deal but also with a car bought on impulse that will not suit your real needs. It would be better, before going to the dealership, to sit down and think hard about how you use a car and what your priorities are. Do you intend to use it primarily for commuting on well-maintained roads? Do you drive a lot? Then perhaps a small sedan would be better than an SUV. On the other hand, if you drive in hazardous conditions and go to the mountains to mountain bike or kayak each weekend taking along a large dog, perhaps an SUV makes the most sense. And how will you finance the purchase? Which brands will give you the best insurance rates and have the best record for reliability. Taking the time to really understand your goals will avoid your being swept off your feet by an offer on a vehicle that doesn't really meet your needs. So as you prepare for any negotiation, whether to purchase a house or resolve a dispute with your neighbor about the responsibility for maintaining a common road, spend extra preparation time thinking long and hard about what you want your negotiation to achieve. At the same time, it's important to recognize that goal setting is not purely a matter of intense introspection. It also requires

research into the realities of the world. Thus in order to set goals for your negotiation, you will need to gather enough information to know what is a realistic possibility and then adjust your priorities and goals accordingly.

Determining Agency Goals

When you negotiate for someone else as an agent, determining your negotiating goals can be more complicated. For example, suppose your brother and his family are moving back to the United States from a five-year assignment in Asia and he sends you an email asking you to rent an apartment for him and his family that will be ready to move into upon their arrival. In that negotiation, you will be your brother's agent. Before you can negotiate a lease with a landlord, you will have to talk in detail with your brother about what he and his family want in terms of apartment size, rental, location, and services (to mention just a few). You are thus determining his goals and, consequently, your negotiating goals. If you are negotiating on behalf of an organization rather for a single person, determining the organization's goals can be even more complicated.

Your ability as an agent to make a deal for somebody else depends first on understanding as clearly as possible your principal's goals and interests. If you are negotiating on behalf of a group or organization, you will probably want to get answers to a long list of questions and consult extensively with many people in the group or organization you represent. For example, suppose your company wants to buy the site of an abandoned public school so that it can build a new factory. Your boss asks you to conduct the negotiations with the city government. Before you can sit down with the representatives of the city, you'll have to have lengthy conversations with various departments within your company to determine their interests in the deal. Why does your company want to make this deal? Is outright purchase the only option? What about a long-term lease? What price is your company willing to pay? What are the various financing mechanisms that are acceptable? What side payments and benefits to the community is the company willing to offer the city to sweeten the deal? What continuing access to the land is the company prepared to allow the city after the deal? How does this deal relate to the company's existing businesses? What kind of services, roads, and other infrastructure will you have to obtain from the city? After you close the deal, what kind of relationship does your company want with the city and the surrounding community?

These are just a few of the questions you will have to ask in order to know your company's goals and interests. You need to go through the same process of goal exploration whether you are negotiating for a group of parents to obtain authorization from the board of education to open a charter school or you are negotiating for a consortium of banks to gain

government approval to set up operations in a foreign country. As you conduct these internal explorations, you'll see that different departments, individuals, and units within the group or organization may perceive the ideal agreement in different ways. Their individual bureaucratic interests will have to be accommodated to make the deal happen. For example, in your negotiation to buy city land, your company's finance department may go along with the deal only if the city will provide part of the financing for the purchase, and the engineering group may accept it only if there are no environmental problems at the site. Even if certain departments don't have the clout to kill the deal, if you ignore their concerns, they can make implementation of the transaction difficult after you sign the contract.

Securing Your Mandate

To negotiate on behalf of other individuals, groups, or organizations, you need a *mandate* from them—that is, authorization to act on their behalf. If you are negotiating on behalf of an informal group, such as a group of parents, your mandate may simply be their verbal request for you to represent their interests. If you are negotiating on behalf of a more formal group, such as a company or organization, the mandate could be a written agreement, which could even include the legal authority to sign a contract. Whether formal or informal, your mandate sets forth what you are allowed to do—that is, what kinds of deals you may explore and perhaps tentatively agree to at the negotiating table. An agent may have very limited or no legal authority to bind a principal but may have a broad mandate to explore a wide variety of possibilities. For example, in negotiating many major transactions, such as mergers, joint ventures, or direct foreign investments, both sides understand at the start that anything agreed at the negotiating table will have no binding effect until approved by their respective companies. On the other hand, the negotiators' instructions in those same negotiations may be sufficiently broad and clear to give assurance to all sides that whatever the negotiators agree to has a strong likelihood of acceptance back home.

Your mandate is crucial to your ability to negotiate for two important reasons. First, the other side's belief that you have a mandate means that they will negotiate with you seriously as a representative of your principal. Remember, throughout their dealings with you, an unspoken question is always on their minds: Will you be able to deliver? In many types of negotiations with governments, you may have to present documentary proof of your mandate before government officials will talk to you seriously. Second, the existence of a mandate gives you assurance of being able to cause your principal to accept any agreement that you *do* negotiate within your mandate.

A negotiator's mandate is not simply handed down from on high like the stone tablets bearing the Ten Commandments. Nor does it automatically come with your position or title. In most organizations, a mandate to conduct important external negotiations is the product of an often lengthy *internal* negotiation. For example, to develop a mandate for its executives to negotiate with an Indian state government to construct a power plant in India, a US energy company needed to conduct negotiations among its internal departments—including finance, engineering, and legal, among others—in order to arrive at a common position on such important factors like the minimum acceptable rate of return on the project, the nature of required legal guarantees, and the types of technology the company would be willing to transfer to India. So just because your boss asks you to negotiate the purchase of city land doesn't mean that you have a strong mandate to do the deal. You will secure a strong mandate only after conducting internal negotiations with all necessary departments within your organization.

In determining an agent's negotiating authority and instructions, agents often play a key role as advisors to their principals. As we saw in Chapter 8, one of the reasons principals use agents in a negotiation is because of the agent's expertise. Agents can also use that expertise to influence the terms of their mandates. For example, in trying to determine a maximum amount to be obtained from the sale of a house, a homeowner may ask an agent's advice: "How much do you think we can get?" In other cases, when a principal's stated demands are extreme, an agent may have to deflate them by referring to the prevailing standards in a specific area of business as not justifying the principal's expectations. So if your brother, who has been living outside the United States for the last five years, tells you to rent a three-bedroom apartment in a new luxury building for under \$1,000 a month, you will use your knowledge of the current state of the rental market in your city to persuade him to increase the amount that you are authorized to pay—or settle for a two-bedroom flat in an older building.

The strength of your mandate also depends on the nature of your relationship with the principal. The more your principal trusts you the more latitude you will have to negotiate. In this respect, negotiating agents may play a variety of roles. As we saw in Chapter 8, a negotiating agent may play the role of a good soldier, who merely carries out the orders of the people he or she represents and rarely goes beyond those orders without first checking with the principal, or an architect, who, based on an understanding of the principal's interests and aspirations, sets out to design the best deal possible with the other side, confident that he or she will be able to convince the principals to accept it. Which of these roles you play will often depend on the strength of your relationship with your principal as

well as the degree to which your principal trusts you and has confidence in your abilities.

No mandate is permanent. A negotiator may gain a mandate to represent an individual, group, or organization but lose it later on. You can lose your mandate through your actions, for example your delay in scheduling meetings with the other side, or through the actions of others, such as criticism from your principal's colleagues about your weaknesses as a negotiator. To maintain your mandate, you must recognize that the primary factor that can damage it is a deterioration of trust between you and your principal, a situation that often develops because of inadequate communication about what you are doing on behalf of the principal and whether these actions are meeting the principal's needs. Thus to maintain your mandate, it is critical to keep your principal informed about what is happening in your negotiations.

Your principal's willingness to grant and allow you to retain a mandate also depends to a large extent on the principal's understanding of the special context in which you operate as a negotiator. As a negotiator, it is therefore important to see one of your permanent functions as continually keeping your principal as well as key individuals in your organization informed about the progress of your negotiation and the special needs and challenges you are facing. So it might be a good idea to make periodic reports to your brother about apartments you have seen, the rentals that landlords are demanding, and the types of security and guarantee arrangements that seem common in the market.

Step 2: Determine the Relevant Parties

Determining the people, groups, or organizations to negotiate with to secure your interests can seem simple. To stop the loud music coming from your neighbor's house, you need to talk to your neighbor. To rent that apartment for your brother, you need to negotiate with the manager of the building. To buy the land with the abandoned school, you have to sit down and negotiate with the city. Upon further reflection, however, you may come to realize that identifying all the *relevant* parties—that is, all the individuals, groups, or organizations that may influence the achievement of your goals—may not be so simple. In fact there are three categories of relevant people that you need to think about: (1) those you have to talk to in order to negotiate an agreement, (2) those who have to approve the agreement that you may eventually negotiate, and (3) those who have to participate in or at least not obstruct the implementation of an agreement that has been negotiated and approved.

For example, although you and the owner of the house next door have been friends for years, will he really be able to persuade his teenage son, who has developed a sudden love of heavy metal music, to turn down his amplifier? And will he get much help from his wife whom you have watched spoil the kid rotten since he was born? In negotiating to rent an apartment for your brother, will the building manager have full authority to close the deal or will he have to refer the lease to the corporate owner across the country for approval? And if that happens, which corporate departments will have to be involved in making a final decision? When it comes to negotiating with the city to buy the land, just who exactly is “the city”? Is the city manager the person you have to negotiate with? Will the deal then have to be approved by the city council, a body rife with political conflict? And what about the owners of the neighboring properties? Will they need to be consulted? If they don’t like the idea of your company buying the land, can they kill the deal?

These are some of the questions you need to ask as part of your preparation. Once you have identified all the relevant parties, you then have to develop a strategy for dealing with each of them, including how you will approach them, in what sequence you will talk to them, and what kinds of conversations you need to have with each one to accomplish your goals. For example, in solving the problem of the loud music coming from the house next door, your ultimate goal is for the son to turn down or (preferably) turn off the volume on his speakers at night. You therefore need to ask who has the most influence to achieve this result. You have three basic choices in developing an appropriate tactic. Should you talk to the father since he’s the one who disciplines in the family? Or does it make more sense to talk to the mother (or have your wife talk with the mother) since she is home more often? You might even start by talking to the teenager yourself next time he is outside washing his car and then turning to the parents if that doesn’t work. Your decision on the appropriate party to approach will depend on the strength of your relationship with that party and the ability of that person to influence the music-loving teenager.

*Step 3: Define Your Interests and Think
Hard about the Other Parties’ Interests*

Individuals, organizations, and governments engage in negotiations in order to satisfy their interests. It is therefore important to define your interests clearly before you arrive at the negotiating table. We sometimes formulate positions without thinking hard about the interests that shape and drive those positions. For example, before beginning negotiations with

the city to buy the site of the old school, you and your company colleagues should explore in depth the company interests that will be advanced through buying the site and whether there are other means of satisfying the company's underlying interests driving its decision to purchase the land. You might start with asking a key question: Why does your company want this specific site? Is it the expected low cost that will not put an additional burden on the company's already overstretched debt structure? Is it the unique location that will facilitate the distribution of your products? Is it the hope of preventing a competitor from buying the land and thus gaining a competitive advantage? The nature of those interests will determine the proposals you put forward and the ultimate deal you are willing to accept. An examination of these interests may reveal that your company is hoping to satisfy several interests. In that case, it would be useful to prioritize those interests. Thus as we saw in Chapter 3, in the 1979 Camp David negotiations, Israel had hoped to hold onto a portion of the Sinai that it had occupied as a result of the 1973 war with Egypt. In the face of Egypt's adamant demand for its return, however, the Israeli government ultimately decided that its fundamental priority was security, something that it could obtain only through a peace treaty with Egypt. As a result, Israel gave back the land in return for a treaty that gave it the security guarantees it needed.

Sometimes, no matter how much we prepare, a full realization of our interests does not take place until we are actually in negotiations with the other side. Thus in the case discussed in Chapter 2 about the two daughters fighting over ownership of their dead father's ring, neither sister fully understood the nature and priority of each other's interests until they were actually engaged in negotiations, a fact that finally led to a resolution of their dispute.

In addition to clarifying your interests as part of preparing to negotiate, you should also think about the other side's interests. Obviously, you will learn more about their interests at the negotiating table, but you ought also to try to estimate the interests that will be driving your counterpart once you sit down to negotiate. For example, if you are planning to negotiate to buy that abandoned school from the city, you should think about the interests of the city government and the local school board. The city's interests will certainly include obtaining as much money as possible for the property, relieving the financial obligations of maintaining property it is not using, assuring that your company's ultimate use of the land will not have negative effects on the community and will not cause an adverse public reaction, and creating new jobs and new taxes that your company's new factory will provide. Having identified possible interests, one of your goals at the negotiating table should be to determine how the city prioritizes those interests. If new jobs and new taxes are their top priority, then

perhaps the city negotiators will be less insistent on a high price for the property than they would otherwise.

Step 4: Determine the Options

A critical step in preparing to negotiate is to determine both your and their options. In addition to conceiving the various options on which to base an agreement, you should also consider two others: (1) options that you have in the event that negotiations fail and (2) the options that other side has if they fail to make a deal with you.

Best Option in Case of Failure

While determining what you will do if you do not make a deal may seem defeatist, it is nonetheless an important part of your preparation. Referred to by some authors as the Best Alternative to a Negotiated Agreement (BATNA)¹ and by others as the “no-deal option,”² determining your best alternative to a deal has several benefits. First, it gives you a standard against which to measure any proposal that the other side puts forward. Obviously, you do not want to accept any option at the negotiating table that is worse than what you can obtain elsewhere. Second, knowing your best alternative to the transaction will often help build your confidence at the negotiating table. Sometimes it may be possible to improve your best alternative to the deal thereby increasing your confidence and negotiating power even more. Indeed the power that negotiators feel at the negotiating table is often directly proportional to how good they judge their best alternative to the deal is. Third, if your alternative is particularly good, you may want to let the other side know it in the hopes that it will persuade them to make a deal with you.

An example of the importance of a BATNA, or no-deal option, from high-stakes big business was the negotiation between Daimler-Benz and Chrysler over their proposed merger in 1998. Jergen Schrempp (chairman of Daimler-Benz) told Robert Eaton (chairman of Chrysler) that Daimler-Benz had also held talks with the Ford Motor Company about a possible merger. Although Schrempp was not particularly attracted to this option, since it meant Daimler-Benz would be dominated by Ford, he nonetheless revealed it to Eaton as a way of saying that if Chrysler, which had no other potential merger partner, did not make a deal with Daimler-Benz, Daimler-Benz would merge with Ford, leaving Chrysler with no one—a situation that Chrysler feared because at that time only the large automakers could survive. By revealing Daimler-Benz’s BATNA, Schrempp moved Eaton toward the Daimler-Chrysler merger.³

Closer to home, a few years ago, one of my research assistants applied to two law schools, and both accepted her. One was a state school that offered her a full-tuition scholarship. The second offered a scholarship that covered about 60 percent of tuition costs. She was more interested in going to the second school. When the second school's dean of admissions called her to extend his congratulations, my assistant told him she was very excited about being accepted but that she was not sure she would be able to accept because another school had offered her a full-tuition scholarship. The dean responded with, "That's interesting. Let me get back to you." Within a couple of days, the school had called her again to offer a full-tuition scholarship minus \$500, an offer she gladly accepted.

So before you close a deal on that apartment for your brother, follow Schrempp's and my assistant's example: explore and develop options for your brother in other buildings. If you find one that is particularly good, use it as your BATNA, or no-deal option, when you talk to the business manager of the building that you feel your brother would particularly like.

The Other Side's Options

In your preparation, you should also try to estimate the options available to the other side, an exercise that requires you to imagine yourself in their place. Sometimes, when faced with adversaries that seem overwhelmingly powerful, a careful analysis of their options, particularly their BATNAs, may reveal that they are not as powerful as they first appear. In the preparation phase, you can only estimate the other side's options. Later, at the negotiating table, you may learn much more about their available options.

Step 5: Identify the Issues

Your preparation should determine the precise issues that will arise during the course of the negotiations. An *issue* in this context means a subject of discussion about which the other side may have questions or over which there may be differences in viewpoint between the two sides. For example, in preparing for your negotiation with the building manager, issues like the rental rate, payment guarantees, length of the lease, and the amount of the security deposit should certainly be on your agenda.

Some issues, such as those relating to price, closing date, methods of payment, and performance specifications, will be obvious. Others may be less apparent. For example, you may discover in your negotiation over the purchase of the old school that the local high school is interested in leasing the playing field attached to the site as a practice field for its school football team. To understand the issues that may be important to the other side, it

is helpful to put yourself in the other side's place or ask a friend or work colleague to play the role of a negotiator for the other side. Just as a devil's advocate helps a lawyer prepare for litigation, a devil's negotiator can help you get ready for a negotiation.

From the perspective of your devil's negotiator, issues may be apparent that were not evident when you looked at the deal only from your vantage point. For example, in preparing to negotiate the purchase of the old school, you may feel that the city is in a powerful position. It doesn't really need to sell, whereas your company really needs to buy the school to build a new plant that is so important to its economic future. However, upon further reflection and investigation, you may discover that the city manager is under strong, growing pressure from the city council to sell the land in order to reduce the costs of maintaining a site that has been an expensive sinkhole for ten years as well as to increase the city's tax revenues by transferring the building and land to private corporate hands. In addition, whenever you negotiate with a government, it is important to put yourself in the place of the unseen but ever present potential party to the negotiations: the public. What issues will the public raise about your proposed factory construction on the site of the old school? For example, when the St. Lawrence Cement Company proposed to build a \$300 million coal-fired cement plant in the Hudson Valley, it assumed securing permission would be a matter of satisfying some 17 local, state, and federal government agencies by showing the plant's economic advantages to the region. It was totally surprised by the public opposition to its plan because of environmental concerns, a clear indication that in its preparation to negotiate with the 17 agencies, it did not fully consider the public's interest and the issues that various groups would raise about the plant's impact on the natural environment. Ultimately, in spite of St. Lawrence's efforts to work with the 17 government agencies, the public opposition stopped the plant dead in its tracks.⁴

Once you have identified the issues that may be raised in the negotiations, you should prepare yourself to answer them. For example, knowing that the city council will be concerned about public reaction to your company's purchase of the land, you should have a plan for public relations and consultations that will assure the council of your ability to handle any adverse public reaction that may develop.

Step 6: Research the Other Side and the Deal

Effective preparation requires knowing as much as possible about the deal you hope to make and parties you hope to make it with *before* you get

to the negotiating table. To do this, you need to engage in some intensive research. For example, before sitting down with the city manager to negotiate the purchase of the old school site, you should try to learn as much as possible about the city government and individuals you will be talking to, any previous attempts to sell the school site, and the people and organizations who own the neighboring land. Similarly, before you begin discussions with the building manager to rent an apartment for your brother, you should gather information about the condition of the building, the quality of its services, and its reputation for noise, building maintenance, and responding to the needs of tenants as well as the nature of amenities available in the surrounding neighborhood. This vital knowledge will come not only from published and online sources but also from talking to people who have dealt with the city government or the building manager. In this regard, depending on the size of the deal, you may want to engage a consultant, advisor, or lawyer to assist in your preparations.

Step 7: Formulate Mutually Beneficial Proposals in Advance

Before arriving at the negotiating table, you should prepare proposals that seem to meet the interests of both sides and could be a basis for an agreement. For example, in negotiating with the US Federal Trade Commission and the European Union Competition Directorate General in 2000 to obtain approval of their merger, AOL and Time Warner formulated possible options as to what businesses they would divest in order to win the blessing of the two governmental agencies. After any divestment, the merged entity would still have to yield revenues that would make the merger advantageous—that is, the value of the merged entity had to be worth more than the value of AOL and Time Warner separately. In its discussions with the European authorities, AOL–Time Warner agreed to drop Time Warner’s proposed acquisition of EMI (a large British music company) to prove to the European Commission that it had no intention of dominating online music distribution. Because AOL–Time Warner anticipated the interests and concerns of the authorities on both continents and developed proposals in advance to meet them, it succeeded in securing approval for the merger from both the US government and the European Union.

Similarly, as you approach your negotiations with the city about the purchase of the old school site, think about what you can offer the city in addition to money that might sweeten the deal. For example, your company may be willing to devote a portion of the land to a small park that would be open to the public and provide a number of summer jobs to high school

students. You would not, of course, offer all your proposals all at once at the opening of negotiation. Instead be prepared to introduce them at the appropriate time in order to close the deal.

Having carefully considered your and the other side's interests, as well as your options and theirs, you may want to prepare a written draft of the agreement that you hope to achieve for use in the negotiation. Both governments and major corporations use the same tactic in high-stakes negotiations by preparing standard form contracts or model treaties, particularly when they contemplate negotiating similar transactions with several different parties. The preparation of a written draft has several advantages. First, obtaining agreement to your draft by your organization or principal can be a way of strengthening your mandate. Second, its preparation is an opportunity to think concretely through the issues that your agreement should cover, many of which may be technical. Third, a standard form agreement prepared by a skilled drafter will provide contractual language that may help avoid future misunderstandings with counterparts. Fourth, it may also save some time during negotiations, since it is a means to communicate clearly and comprehensively to the other side the issues that are important to you. If you are negotiating several similar deals, it eliminates the need to draft every contractual clause for every deal from scratch. Fifth, a standard form agreement helps to ensure consistency among the agreements your organization makes (an issue that may or may not be important to you) and also serves as a means to control employees and agents who negotiate on your behalf. Finally, following the old rule that "the person who controls the draft controls the negotiation," the document may increase your influence in negotiations because it allows you effectively to set the agenda for the talks.

Even in informal negotiations, it may be helpful to outline what you expect to achieve through the negotiation. For example, if you are negotiating a rental apartment on behalf of your brother, you may want to at a minimum send him an email outlining what you expect to agree to in the lease and what obligations you expect the landlord to undertake. If you are negotiating with the school board on behalf of a group of parents, you may want to create and distribute talking points to other members of the group to ensure agreement on the key points for which you will advocate.

The most important question with regard to any draft agreement, either formal or informal, is not whether to prepare one in advance but how you should *use* it. On this score, there are several pitfalls to avoid. First, the terms of your standard form contract may be inappropriate for particular transactions. The very nature of the services or products you offer may require your agreements to be tailored to client conditions.

Since your lawyer doesn't have perfect foresight, he or she can't draft clauses to meet all the conditions and cultures in which your firm will have to work. Insisting on the application of your standard form in inappropriate circumstances may lose you deals or result in dysfunctional transactions. For example, one US franchisor demanded that a franchisee in temperate Melbourne, Australia, accept a standard clause in its master franchise agreement requiring the franchisee to construct a top-quality snow-proof building, a needless cost burden that contributed to eventual financial failure. Second, putting a standard form contract on the table at an early stage in the negotiations may lock parties into hard bargaining positions thereby obstructing a search for common interests and creative options. It is far better to spend the early part of negotiations on understanding the other side's interests and concerns and in building a solid business relationship than to lecture them on standard form clauses. Third, since the party introducing the draft is often in a superior bargaining position, the other side may view the presentation of the draft as an act of arrogance and a not-too-subtle signal of an unequal relationship between the parties, yet another obstacle to agreement and the development of effective working relations. As a general rule, then, use your standard form contract as a flexible guide to negotiations, not a rigid template to be imposed on every deal you make.

The technique of arriving at a negotiation with a written draft is not just for high-stakes negotiations. When you are in the often seemingly weak position of negotiating a favor from a government or powerful bureaucracy, presenting a draft authorizing or approving your request can often strengthen your cause. Bureaucrats are busy and may not have a technical grasp of all the details of the issue, so they will often seize on your text as a way of saving time. It is for this reason that a favorite technique of lobbyists for influencing legislation is to put a draft of the desired law or regulation, usually written by high-priced Washington law firms, in the hands of legislative staff. You can use the same technique in your daily encounters with the bureaucracies that affect your life. A British friend of mine whose son was in a Belgian school but was applying to universities in the United Kingdom, needed to obtain an explanation in English of how the school's grading system related to the one used by British private schools. He scheduled a meeting with the Belgian school's head mistress to ask her to prepare the needed explanation. I suggested that he go to the meeting with a desired draft letter for her signature. He did. The headmistress immediately took the draft, put it on her school's letterhead, and sent it off to England the same day. Without the draft, there would have been a delay of several weeks and no assurance that the letter would have been comprehensive enough to satisfy UK universities.

Five Steps for Preparing the Ground

In addition to preparing yourself, you need to “prepare the ground” by taking these five important steps: (1) secure and organize the resources you will need for the negotiation, (2) start building relationships with the other side, (3) form alliances with third parties that can help, (4) consult appropriate people, and (5) prepare the negotiating environment. Let’s look at each step individually.

Step 1: Secure and Organize Your Needed Resources

In addition to their own skills and knowledge, experienced negotiators rely on a variety of resources to enhance their effectiveness at the bargaining table. As part of your preparation, you should identify the resources you will need and take steps to assure that they will be available to you when you sit down to negotiate. The precise nature of those resources will depend on the negotiation you intend to undertake, but, generally speaking, they fall into three categories: (1) documentary resources, (2) communication resources, and (3) human resources.

The parties in any negotiation are invariably asserting the existence of important facts whose existence or nonexistence has a direct consequence on the results of the talks. For example, when you negotiate a salary raise with your boss, one fact that you will assert is that you are underpaid in relation to other people doing a job similar to yours. In trying to negotiate the sale of your five-year-old car, you will probably claim that it is in good shape and that you have taken good care of it. But documentary evidence is more persuasive than bare assertions. So if you have an industry study showing that the average worker in your job is paid more than you are, a written offer of a job from another employer at a higher salary, or the complete file of maintenance receipts on your car since you bought it, you should bring those documents with you to your negotiation for a higher salary or to sell your car and be prepared to offer them to your boss or prospective buyer at the appropriate time.

Communication is central to the negotiation process. Yet communication often depends on more than mere words. A well-drawn diagram or photo can often help convey an idea or image more powerfully than spoken words. The use of a PowerPoint presentation or an appropriate Internet website can do the same. In complex negotiations, the parties may even create a common platform where documents and data may be stored for review by the negotiators. Consider then what communication resources can help you connect with the other side and have them available for you to use in the negotiation.

Finally, make sure that you have the right human resources—the right people—with you when you negotiate. People at the negotiating table can help you in many ways. They provide you with technical expertise that you do not have; they can help build relationships that you will need; and their very presence may communicate positive or negative messages to the other side. Thus when you negotiate to buy the old school you may want to at some point include an engineer to interpret and evaluate the data on environmental risks, a work colleague who was a childhood friend of the city manager, or (especially at the initial meeting) the company's top executive who can signal to the city the importance that your company attaches to buying the land. When you are negotiating to buy a used car, you may want to bring along your uncle who is an auto mechanic and will recognize a potential “lemon” more easily than you might.

The negotiation of a major transaction is usually the work of a team rather than one individual. Some members of the team sit at the negotiating table. Others remain in the background but nevertheless support the negotiators at the table. Preparation for the negotiation requires that you create a team having the skills and knowledge necessary to succeed in the talks. You need to consider carefully the size and composition of your team, which will depend on the nature of the transaction and the parties on the other side of the table. For example, in any significant negotiations with a government, your teams should include people who can understand the politics of government negotiations and know how to communicate with the public. To smooth the negotiation, specific team members should be given definite tasks relating to the negotiation process, including note-taking, arranging transportation, communicating with the home office, and hiring an interpreter when negotiations will be conducted in more than one language.

Step 2: Start Building Productive Relationships with the Other Side

Relationships matter in any negotiation. When you walk into a car dealership, the way you treat the salesman at the outset—that is, the relationship you build—will greatly influence his or her attitude toward you as a customer and whether, when you buy a car, he or she will give you the floor mats and license plate bracket for free. Likewise, when you are negotiating in a business setting, you begin to develop a relationship with your counterparts during your first phone calls and meetings where you agree on an agenda and the timing of the talks. In those preliminary discussions, the parties will begin to understand each other's backgrounds and capabilities, and a belief may hopefully emerge that they can trust one another. For

example, in your negotiation to buy the abandoned school from the city, you will want to form a personal connection with your counterparts from the city. Similarly, your negotiations with the building manager of your brother's apartment will go more smoothly if you have first connected with the manager as a person.

Setting the right agenda for your negotiations is another important means of preparing the ground for fruitful negotiations. The subjects that are and are not on the agenda to be discussed, the sequence in which topics on the agenda will be discussed, and the timing allotted for discussions are all important factors that can either favor or impede the attainment of your goals. It is therefore important that you think hard about the kind of agenda you want and how to get it during your initial contacts with the parties on the other side of the table.

Step 3: Form Helpful Alliances

Your counterparts in the negotiation are subject to a variety of influences. As we noted in Chapter 7, governmental units have constituents and supporters. If you can develop supporting alliances with these constituents and mobilize them in your cause, they may help influence your government negotiating counterparts in your favor. For example, in the mid-1970s, I was responsible for negotiating an agreement with the Sudanese government that would allow the Ford Foundation to operate a program to assist in that country's development. Before starting talks with the Sudanese Ministry of Foreign Affairs, I asked the heads of various institutions the Ford Foundation had been working with, such as the University of Khartoum and the Ministry of Agriculture, to endorse the establishment of a foundation office by personally contacting officials in the Ministry of Foreign Affairs. In your negotiation to purchase that abandoned school, you might try to have the labor union representing your workers or the contractor who will be constructing your new plant endorse your plans with the mayor, the city council, and the city manager. And if you know someone in the building where you are hoping to rent an apartment for your brother, ask that person to put in a good word for you with the manager.

Step 4: Consult Appropriate People

No negotiation takes place in isolation from society. Every negotiation is embedded in a dense network of social relationships. In most negotiations, there are key people and groups on the sidelines who can either hurt or help you. In order to obtain their acquiescence to if not their outright

support for your plans and in hopes of preventing them from becoming opponents, you should consult with them about the proposed negotiation before actually sitting down at the bargaining table. If you are planning to put an addition on your house, you are well advised to inform and consult your neighbors about what you are proposing to do. And if you are planning to seek the approval of the city planning board to build a hotel, you would be wise to pay a courtesy visit to the city's mayor to explain your plans. For every government negotiation you undertake, you need to identify the key political and civic leaders whom you should consult in order to prepare the ground. In your efforts to obtain a promotion at work, think carefully about coworkers you may need to talk to first.

In government negotiations that affect the public interest and therefore raise the possibility that the public and civic groups may become involved, it is often useful to prepare the ground for negotiation by informing and consulting with the public about your plans. Not only will this direct contact allow you to give them your views on the project and hopefully dispel damaging rumors and unsubstantiated charges, but you may learn about their concerns and thus be in a position to take account of their issues by altering the nature of your project. The St. Lawrence Cement Company did not engage in any meaningful consultation with people in the Hudson Valley before it began its negotiations to obtain government approvals. If it had, it might have been able to reduce the level of opposition to its proposed new plant. This recommendation to consult with the public seems to run counter to the instinct for confidentiality of most business executives. They often hope that by keeping their plans and negotiations confidential they will obtain government approvals before opposition materializes and thus be able to face protestors with a "done deal." This perspective has two flaws. First, no negotiation with a government will stay confidential for very long. Second, even if you obtain government approval, public opposition that develops *after* you receive it may be strong enough to prevent you from undertaking your project, and in that situation, you are likely to find the government unwilling to help you.

Step 5: Prepare the Negotiating Environment

Negotiations do not happen in a vacuum. They take place in a specific environment, and the elements of that environment—place, time, surroundings, and people—can profoundly influence the course of discussions. You should think carefully about how these elements may affect your negotiation and how you can manage them to maximize your likelihood of success. For example, if you are trying to persuade a colleague to cooperate

more positively with other people within the organization, lunch in a quiet restaurant may be a better environment for securing an agreement on cooperation than a half-hour meeting in your office at the end of a busy workday.

One of the reasons Chief Justice John Marshall was able to lead the other US Supreme Court justices to unanimous opinions on key constitutional principles that laid the foundation for the American republic was the fact that he arranged for them all to live together in the same Washington boardinghouse, where they shared meals together, often over a bottle of claret provided by Marshall, and discussed their cases, the politics of the day, and life itself.⁵ What Marshall did through that process was create an environment for negotiations that allowed him to build strong working relations with and among his colleagues, relationships that would enable him to lead the Supreme Court as one of the most effective chief justices in the history of the United States. Similarly, in 1992–1993, Northwest Airlines effectively prepared the environment in its negotiations with the KLM, the Dutch airline, over an alliance of the two firms. Northwest knew that KLM, a much smaller airline, was sensitive about its status both during the negotiation and in any eventual alliance. To alleviate these fears, Northwest structured every aspect of the negotiation—from the prenegotiation dinner to the meeting of delegations with designated chairmen—as a summit meeting between two equal states. According to one Northwest executive participating in the negotiation, “We used every symbol we could think of—including our two national flags—to recognize their sovereignty.” The lesson learned from these two cases is not to take the negotiating environment for granted and to consider ways to structure it to your advantage.

Your Place or Mine?

Deciding Where to Negotiate

Everyone knows the three rules of real estate: “Location! Location! Location!” When it comes to making deals, choosing the right place to negotiate can be just as important. The location you select can dramatically affect the process and, ultimately, the end result. Site selection is therefore an important tactical decision that you will need to make in many negotiations.

Negotiations at Sea

An example of the importance of place in a negotiation was the 1989 summit meeting between US President George H. W. Bush and the Soviet leader Mikhail Gorbachev. That meeting did not take place in the United States, the Soviet Union, or the territory of any other country. Rather, the two leaders planned to meet alternately on two ships, the Soviet cruiser *Slava* and the *USS Belknap*, both anchored in the Mediterranean off the coast of Malta. The shipboard meetings were perhaps unconventional, but the choice of that setting was certainly not a casual response to the question, “Your place, or mine?” Instead it was a deliberate choice influenced by both practical and symbolic diplomatic considerations.

In negotiations, the answer to the question “Your place or mine?” is never automatic. It requires careful study of the negotiation in which you are about to engage. Parties sometimes negotiate long and hard about *where* they will meet long before they sit down to discuss *what* they will negotiate. Negotiating partners located in the same town must decide whose office is most appropriate for their talks. Because of the significant costs involved, the question of where to meet becomes even more critical for negotiators from different cities, regions, or nations.

When deciding on a site, you have four basic options: your place, their place, some other place, or no place. Let's consider the advantages and disadvantages of each option.

Negotiating at Your Place

Like athletes seeking the home field advantage, most people prefer to negotiate on their own territory. Meeting at your office or in your home offers many potential benefits. First, you gain the advantage of familiarity with the negotiating environment. You know where everything is located, from telephones and restrooms to reliable secretarial services and secure areas for private consultation. Your opponents, on the other hand, run the risk of unfamiliarity and even culture shock. If they are visiting from abroad, they may even have to cope with unfamiliar foods, strange customs, and a foreign language.

Negotiating at home also allows you to control the environment, including the selection and arrangement of the meeting room, seating of participants at the bargaining table, and the nature and timing of hospitality and social events. Negotiators with the home field advantage often make use of this power. As noted in Chapter 10, Northwest Airlines, for example, structured various elements of its 1992 negotiations with KLM—from the prenegotiation dinner to the shape of the negotiating table—to give the Dutch airline equal status and allay its sensitivities about being a much smaller partner in any alliance.

Playing host gives you the opportunity to impress the other team with your or your organization's resources. It also allows you easy access to your experts for advice and to superiors for authorization and consultation. For example, if the other side asks for special payment terms in a business negotiation, you can obtain a quick yes or no from your financial vice president down the hall. If the quote on reflooring your kitchen seems high, you can go into the other room to consult with your spouse. And if you need to persuade someone to accept the terms of the deal—whether your finance department or your significant other—you are in a much better position to twist arms in person than you would be via telephone or email.

Negotiating at home is usually cheaper, eliminating travel costs and saving time. Whereas host negotiators can usually continue to handle other job demands while participating in talks, a visiting negotiator cannot do the same. For negotiations that take time, such as closing a business deal, negotiating at home also spares you the pressures of being away from your family, friends, and daily routines. The longer you're away, after all, the stronger your desire to reach an agreement and return home. For these

reasons, visiting executives may tend to make a deal or break off talks more quickly than if they were negotiating in their own turf—often to their disadvantage.

Finally, negotiations at home are sometimes like a dramatic production in which the host is the director. The host is in a position to control the timing of the negotiating sessions, interruptions, formalities and protocol, and of course, hospitality and social events. More than one visiting international negotiator has had to labor under the debilitating effects of a long airplane ride compounded on arrival by elaborate, late-night entertainment orchestrated by his or her host.

On the other hand, negotiating on your own turf also has certain disadvantages. First, being the host may impose on you certain obligations. For one thing, playing the role of a host may make you feel that you have an obligation to be generous, which may lead you to make concessions you would not make if you were negotiating elsewhere. A host's traditional obligations also entail looking after the needs of your guests and taking responsibility for making needed resources available to them.

As a host, a negotiator cannot simply close up his or her briefcase and declare that it's time to leave. A party host normally goes to bed only after the last guest leaves, and a negotiator as host similarly may feel a social obligation to allow the guest to end the discussions. In short, it's usually more difficult for the host to walk out than for the visitor to walk out, a potentially important tactic in a confrontational negotiation.

Finally, negotiating at home can also place you under greater pressure and scrutiny from your supporters, opponents, and (in certain situations) local media than would be the case if the meeting were held elsewhere. Thus one advantage of meeting on two ships anchored in the Mediterranean was to enable Bush and Gorbachev to control media access and preserve confidentiality. Similarly, if you are negotiating to sell your company to a foreign buyer, you may not want to hold those meetings in your office building under the anxious gaze of your employees. If you are a negotiating agent, you may even prefer to conduct talks on the other side's turf and away from the potential interference of a nervous principal.

Negotiating at Their Place

At first blush, negotiating on the other side's turf seems to offer only disadvantages: travel can be costly; the environment is unfamiliar and uncontrollable; lines of communication to your home office may be slow, uncertain, and insecure; and when traveling a great distance, you face the psychological pressures of being away from home.

On the other hand, when you're the seller, often the only way to bring your product or service to the other side's attention is to show up at their office. The choice of a negotiating site also has symbolic value. By entering your counterpart's territory, you show your serious intent and strong desire to make a deal—factors that can be invaluable in persuading the other side to sign a contract. Charles Prince's flight to Tokyo to apologize for Citigroup's legal violations was essential to showing the Japanese regulators that he was serious about cleaning up Citigroup's act. On the other hand, a request from Prince that the Japanese come to New York instead to discuss reopening the bank's operations in Japan not only would have been rejected by the regulators in Tokyo but also would have communicated a message that Citigroup did not take the issue seriously, a message that certainly would have led to strong punitive actions by the Japanese government. The location of the Bush–Gorbachev summit off the coast of Malta also had symbolic value. Its message was to lower public expectations about the importance of the meeting and place it in the category (according to some Bush advisers) of a “non-summit summit.”

Similarly, as in the case of Richard Nixon's journey to China in 1972 and Anwar Sadat's visit to Jerusalem in 1977, the willingness of an adversary to go to the other side's territory for discussions can be interpreted as a magnanimous gesture evidencing a genuine interest in better relations and requiring a similarly generous gesture from the other side. So if you have been locked in a bitter dispute with your neighbor about nightly noise and music coming from his house, it may be better to follow the examples of Nixon and Sadat and ask politely if you might pay a visit to your neighbor to discuss the matter, instead of arguing with him over the phone.

In some cases, a deal may only happen if you take the steps to travel to the other party's turf. For example, in many developing countries, executives and government officials may not be permitted to travel abroad without completing lengthy procedures, and even then they may lack funds to pay for the trip. If you want a deal any time soon, you'll need to get on a plane. There's also the problem created by the negotiator who has more authority at home than abroad. If the other party is in that position, you may need to make the trip yourself. For example, in one negotiation between an American oil company and a Congolese government corporation, then-President Mobutu Sese Seko insisted on being informed of all developments and making all decisions. At the end of each day's negotiating session, the Congolese negotiators briefed the president's advisers who then briefed the president. By the next morning, the Congolese negotiators received instructions for the day. Within a relatively short time, the two sides signed a contract. Had the negotiations been held in New York

instead of Kinshasa, they would not have reached an agreement as quickly as they did.

However, the most important reason of all for negotiating on the other side's territory is that it gives you opportunities to learn. When making deals, negotiators are often laying the foundation for a continuing relationship—which depends crucially on how well parties know each other. A vital purpose of any negotiation is to allow both sides to learn about each other, their organizations, their activities, and the conditions in which they operate. In this respect, the home field *doesn't* hold an advantage. When you are negotiating with a contractor to modernize your kitchen, you may want to be sure that some of your discussions take place at his office so you can get an idea of the resources and people that his company has to offer, knowledge that may help you decide if he's the right guy to deal with.

How do you approach negotiating on the other guy's turf? Whenever you are negotiating in new and unfamiliar territory—whether it is a shop down the street or an office in another country—be sure to arrive early enough before meetings begin to get to know the environment. This may be simply taking the time to look around the shop and see how business is organized or the time to learn about the culture of the foreign city where you are staying. Often even when you're a visitor, you can still play host by holding negotiations in a place that you select and control, such as a hotel conference room.

Many executives have had the experience of arriving for negotiations in a foreign country or distant city only to be told that a key manager or official was called away at the last minute; the visitor is then asked to be patient for a few days until that person returns. Hosts may not appreciate the significance of delays, either because they are unaware of a visiting negotiator's tight deadlines or because their cultural background leads them to attach less importance to time. To avoid such difficulties, experienced negotiators make their travel plans clear to their hosts, and may even *understate* the length of time they are prepared to stay away from home. As a general rule, if visiting negotiators, after encountering delays, feel increased pressure to make concessions so that they may return home or go on to other business, it's best to cut off talks and continue negotiations at another time and place.

When talks are ongoing and when relationship building is an important consideration, it may make sense to alternate rounds of negotiation between the two parties' home bases. This approach is particularly appropriate if the negotiations are expected to stretch over a long period of time and if the parties are hoping for a lasting relationship. For example, when a US manufacturer and Egyptian investors were negotiating a joint venture

to build a dry-cell battery plant in Cairo, the two parties—recognizing that the discussions would require several sessions—agreed to alternate their talks between New York and Cairo. This plan allowed the Egyptians and the Americans to share the costs and burdens of being host and guest. It also reduced the incentive to take unfair advantage of their position as host since the other side would have the chance to retaliate in the next session. Most important, moving talks back and forth gave both sides the opportunity to learn about each other's business and home environment, essential knowledge for both deal making and relationship building. Similarly, the original plan for the Bush–Gorbachev meetings off the coast of Malta was for the talks to take place first on the Soviet cruiser *Slava* and then move to the *USS Belknap*; however, gale force winds and 16-foot waves forced the meetings to move to the larger and more stable *SS Maxim Gorki*, a Soviet cruise liner that had transported the Gorbachev team. Known informally as “the sea sick summit,” the meeting between Bush and Gorbachev offers an important lesson for negotiators: when you choose a site for negotiations be sure you understand how its environment—including its weather—may have an impact on your talks.

Negotiating at Another Place

Choosing a neutral, third place for negotiation has a certain superficial attraction: the location gives neither side a special advantage or disadvantage. But neutral territory can be the worst of both worlds because it limits the ability of each side to learn much about each other and may offer fewer conveniences and useful resources than either your own or the other side's turf. The fact that neither you nor the other side is familiar with the local environment may complicate negotiations for both sides, as the Americans and the Soviets learned as they tried to negotiate in the hazardous and unpredictable December weather conditions in the waters off Malta. Certainly weather of equal intensity in either Washington or Moscow would have had much less effect on the talks than it did in Malta.

When negotiators come from different countries, the choice of a third country for talks may be useful if additional learning is not necessary to advance the transaction and if other advantages, such as reduced cost or shortened time, can be gained. Negotiating in a third country also removes both teams from their daily preoccupations and allows them to focus on the task at hand. Suppose that a US manufacturer and a Nigerian distributor engage in several negotiating sessions in each other's countries. They may then find it convenient to meet in London to put the finishing touches on the deal.

If parties are attempting to settle a serious dispute, a neutral location may be the best place to hold discussions. In conflict situations, negotiating on either side's territory may make visitors feel they are under pressure or even duress. Indeed for many negotiations, particularly if relations between the parties are tense or hostile, a third location may be the *only* place where productive negotiation can realistically occur. Thus if you and your sister are locked in bitter conflict over ownership of your late father's ring, it may be better to hold discussions at a neutral restaurant rather than in either of your homes.

If two sides are engaged in active hostilities or warfare, negotiating on the territory of either one may create a climate in which one side feels under duress or even in danger. Then too, one side's visit to the other's territory may be interpreted as an unacceptable symbol of weakness or surrender to a superior force. It was for these reasons, for example, that Lebanese legislators during the fall of 1989 chose to meet in Taif, Saudi Arabia, rather than anywhere in Lebanon, to negotiate a new political order and an end to that country's long civil war.

The choice of a specific third location involves numerous considerations: ease of access, availability of communications to the negotiators' home territories, personal security of the parties, adequate accommodations and facilities, and, of course, the willingness of the governing authorities or others in charge of that third location to host the meeting. The choice of a third site complicates the process by introducing into the negotiation, either directly indirectly, a third party—those people, organizations, or governments who are the hosts. While such third parties may not be present at the negotiating table, the disputants may have to negotiate with them about arrangements, and those negotiations may become complex if the third party seeks to use the presence of the negotiations on its territory to extract some advantage from one or both of the disputants. Thus choosing a third place for negotiations has the potential to change a strictly bilateral negotiation into a trilateral situation. So if you accept your uncle's invitation to meet at his house to discuss the conflict with your sister, he may take advantage of your presence to ask you to program his new computer.

On the other hand, if a third party is acting as a mediator or is helping to facilitate a settlement of a dispute, that intervention will often influence the selection of a site. Indeed one of the most important contributions that third parties can make to resolve a dispute is to offer an acceptable place to negotiate. For example, President Carter brought Israel's Prime Minister Begin and Egypt's President Sadat to Camp David to negotiate a peace treaty. Similarly, a kindly uncle might invite the two sisters warring over their late father's ring to have a drink at his house in order to settle the matter.

Negotiating No Place

With increasing frequency, negotiators are avoiding face-to-face meetings entirely and instead relying on communication technologies. Email, telephone, fax, and videoconferencing offer a low-cost and convenient means of making deals. Some negotiators facing particularly important talks have created secure websites where documents and other information can be stored for easy consultation by both sides. Email in particular has vastly improved the ease and ability of negotiators to consult with their home offices in other time zones for advice and instruction.

Communication technologies are important supports for deal making but are not always a satisfactory substitute for face-to-face negotiations. Their principal defect being that they prevent parties from learning as much about each other as they would normally at the bargaining table. Videoconferencing, emails, and telephone calls convey nonverbal cues poorly, if at all. Moreover, there is evidence that telecommunications, when used alone, may encourage lying and the delivery of impetuous and insensitive messages. They also limit opportunities for productive socializing and relationship building that are so important to negotiation success, such as a drink before dinner or a game of tennis at the end of the day.

Equally important, valuable information about the other side is not conveyed at all in electronic negotiations. You can't fully learn what motivates your neighbor unless you visit his home and see his family pictures and bowling trophies displayed. Likewise you cannot learn about a potential partner's business environment without making office visits and direct contact. In addition, email and even videoconferencing can produce stilted communications, as the true personality of the other person does not always show through. How often have each of us misunderstood the tone of an email we have received because we did not personally know the person who sent it? On the other hand, there may be situations in which electronic communications are advantageous precisely because they allow you to avoid personal contact with the other side. When a young lawyer in New England went shopping for a car, she purposefully avoided visiting any dealerships until she had obtained the best quotes via the Internet from each Subaru dealership between New Hampshire and Connecticut and then engaged in follow-up email conversations with the most promising one. She chose this approach in order to avoid putting herself in the position of having to fend off pushy salespeople until she knew what each dealership had to offer. Her tactic ultimately allowed her to buy the car she wanted at a good price without as much haggling as would have otherwise been required.

That said, electronic negotiation can work well in two circumstances: (1) relatively simple transactions, such as the sale of a standard commodity,

in which two sides gain sufficient knowledge via computer, telephone, or video; and (2) negotiations in which parties already know each other well and have agreed upon rules for the role of electronic communications in their negotiation.

Until communication technologies become more accurate, comprehensive, and sensitive, serious negotiation requires a physical meeting place for at least part of the deal-making process. Just as Archimedes needed a place to stand to lift the world, negotiators still need a table where they can meet to do serious business.

Opening Moves

“You never get a second chance to make a first impression” is an old admonition that underscores the importance of first impressions in interactions between people. Just as first impressions in a job interview may mean the difference between being hired and being rejected, opening moves in a negotiation can influence the course of the discussion positively or negatively for a long time afterward. Opening moves may even be the difference between making the deal and walking away empty-handed. How a negotiation begins can profoundly affect how it ends. So deciding on the right opening move is an important tactical question. As a result, you should carefully plan your opening moves in any negotiation.

In planning your opening move, you should consider and evaluate three critical elements: (1) your range of opening options, (2) the intended and unintended messages embedded in each option, and (3) the likely reaction of the other side to the opening move you might make.

The Range of Opening Options

The array of possible opening moves in a negotiation is often broader and more varied than one might assume at first glance. It is important to consider carefully the whole range of ways of starting a particular negotiation before deciding on the one to use. For example, suppose that you and your old college roommate, Hank, established a successful trucking and earth moving business about 15 years ago. You both agreed to devote your full-time efforts to the business and divide the profits equally. Three years ago, the US government called up your National Guard unit for a six-month tour of duty, so you had to leave the business in your partner’s hands while you went off to Iraq. You returned to find the business in good shape, and you and your partner have continued to work together effectively. Last week, you learned to your surprise that while you were away your partner discovered a piece of land with a valuable gravel deposit, bought for it

himself, and developed his own separate, profitable business selling gravel. He may even have used partnership trucks and equipment to launch his gravel business in its early stages. You believe that the business opportunity to buy the gravel pit rightfully belonged to the partnership, not to Hank individually, and that the gravel business should be transferred to the partnership. You feel that Hank has betrayed you, and you are angry. So what are you going to do about it? In particular, what should be your opening move in dealing with Hank?

Strategy should always drive tactics in a negotiation, so you first need to decide on a strategy for resolving this potential conflict with your partner. As we saw in Chapter 2, people confronted with a conflict may adopt one of five basic strategies in an effort to resolve it: (1) assertion, (2) accommodation, (3) avoidance, (4) compromise, and (5) collaboration. Let's assume you have decided that your interests demand that the gravel pit be transferred to the partnership and that you have decided on an assertive strategy to secure that goal. How then should you start that conversation with Hank?

As you think about the issue, you realize there are several possibilities. You could simply march into his office, confront him with his act of betrayal, and demand that he transfer the gravel pit to the partnership. Or, you could consult your lawyer and ask him or her to write Hank a letter on your behalf, alleging breach of your partnership agreement and demanding the transfer of the gravel pit under threat of a lawsuit. Still another possible opening move is to raise the issue of the gravel pit during a regular partnership meeting and ask Hank how he came to own it and how it relates to the partnership business. Yet a further approach would be to wait for your monthly golf game with Hank, tell him that you were surprised to hear he had gone into the gravel business, and wait to see his reaction.

Having surveyed the range of possible opening moves, you then have to decide on the one that will best enable you to attain your goal of getting the gravel pit for the partnership. The choice of a specific opening move in this case, and in any potential deal-making situation for that matter, will depend on your ultimate goal in the negotiation. If your goal is to secure the gravel pit for the partnership at all costs, then perhaps a confrontation with Hank or even the threat of a lawsuit may be an appropriate opening move. On the other hand, your existing partnership is profitable, and your relationship with Hank is valuable to you. You therefore have to consider whether a confrontation over the gravel pit will damage that relationship and ultimately lead to the end of a profitable business. If you are unsure of your goal because you do not know enough about the circumstances surrounding Hank's purchase of the gravel pit, it may be wise to shape your opening move as one of learning and of trying to understand fully what

happened while you were in Iraq on military duty without committing yourself to one particular strategy or another.

Intended and Unintended Messages

Too often negotiators approach the negotiating table with the attitude “I’ll be tough at the start. If that doesn’t work, I can always take a softer approach.” The flaw in this tactic is that it assumes that your opening move will have no continuing effect on your counterpart once you have decided to adopt a softer approach. Of course an overly tough opening move not only communicates the nature of your demand, but it also sends a message about you as a person and your company as a future customer or partner. Thus your counterpart may interpret your overly aggressive opening move as an indication that you and the group or company that you are representing are unreasonable, arbitrary, rigid, and perhaps untrustworthy. Once the other side has formed that impression, it may be very difficult to persuade your counterpart to change that evaluation no matter how gentle you become in subsequent negotiating sessions. On the other hand, starting too gently may also send a negative message that you are a pushover in some situations. If you don’t stand up for yourself in negotiating an appropriate starting salary for a job, you could find it more difficult to demand the respect necessary to get a raise when the time comes. So always examine your opening moves carefully to see what messages they may contain.

Consider the ill-starred bargaining process that unfolded between Frank, an acquaintance of mine who owned a trademark, and John, the president of a start-up beverage company. At John’s request, Frank traveled from a distant city for a meeting, which John opened by asking, “Frank, we’d like to buy the trademark, and we want to know how much you want for it.” Frank replied, “How much are you offering?” John insisted on knowing how much Frank wanted for the mark, and Frank persisted in demanding an offer. Finally, as their conversation came to resemble a buyer and a seller haggling over the price of a mango in a tropical market, John and his two associates retreated into the hallway to confer. Returning after ten minutes, John said, “Frank, we’ll give you \$100,000 for the trademark.” Frank reacted angrily. “That’s ridiculous. It’s worth a lot more than that, and you know it.” Frank slammed shut his briefcase and stormed out. It took more than a year for the two sides to resume discussions.

“With that offer,” Frank told me later, “John was telling me I was stupid. That made me mad enough to walk.” Had John chosen another option to open negotiations—say, by presenting a written proposal based on industry standards for comparable trademark sales—Frank would not have felt

that John was belittling his intelligence. More important, the two sides would then have had a factual basis for serious discussions.

The postscript to the drama of John and Frank happened about ten years later when I wrote about their negotiation in a magazine article that John happened to see. He immediately sent Frank an email referring to the article and apologizing. “Frank,” he wrote, “if I insulted you, I sincerely apologize.” Like so many of us, John did not fully perceive all the messages that his opening move conveyed to the other side.

Care in developing opening moves is particularly important in negotiations among people and organizations from different cultures. Culture profoundly influences how people think, communicate, perceive, and behave. It also affects the kinds of deals they make and the way they make them. As a result, an opening move that might be completely acceptable between two American executives may be highly offensive when an American uses it in a negotiation with a Chinese, Japanese, or German executive. For example, an American effort to talk about the substance of the deal at the very start of discussions may be seen as premature by Japanese negotiators who believe it is essential that the two companies first get to know one another before considering the specific terms of any proposed transaction.

Business executives constantly stress the importance of relationships with counterparts as a condition for successful transactions. It is always important to plan for opening moves that will lay the foundation for a relationship between you and the other side. As discussed in earlier chapters, whereas American executives often see the goal of negotiation as securing a contract, negotiators from many other countries view the purpose of a business negotiation as laying the foundation for a relationship. As a result, in negotiating a transaction of any significant duration, such as a joint venture or a long-term sales arrangement, it is usually wise to approach the negotiation as an exercise in relationship building and plan your opening moves accordingly. Even if you do not expect to deal with the other party again, cultivating relationships as part of your negotiating is likely to leave you both feeling better about the deal—and you never know when the other party will cross your path in later negotiations in your life. Toward this end, you should fashion opening moves that show your willingness to learn about the other side and build rapport with it. Thus instead of putting specific proposals forward as your opening move, you may want to wait until you and your counterpart have come to know one another and feel that a positive rapport exists between the two of you.

The Other Side's Likely Reactions

Your choice of a particular opening should depend not only on the interests you are pursuing but also on how you anticipate the other side will respond. To do this you need to try to envision yourself in the place of your counterpart and ask how he or she will respond to a proposed opening move. Knowledge of local culture and customs may help in that mental exercise. Wise negotiators shape their opening moves to align with local formalities and customs. Some Americans encounter pitfalls when they disregard formalities and too quickly seek to develop informal relationships with their counterparts. In my survey of the negotiating styles of 12 different countries, I found that Americans had the greatest tendency to use informal negotiating styles in business dealings. The problem with informality as an opening move is that some cultures view it as a sign of disrespect.

General Electric's attempt to secure European Union approval for its acquisition of Honeywell in 2001 is one example. As noted earlier, GE executives showed little deference in their approach to EU officials. Early in the discussions, Jack Welch, the company's CEO, told Professor Mario Monti, then the EU competition commissioner, as if he were addressing a fellow business exec, "Call me Jack." Monti, keenly aware that he represented the European public interest, replied, "I'll only call you Jack when this deal is over."¹ The talks went downhill from there, and the EU eventually denied approval for the merger. On the other hand, as was seen in the case of Northwest Airlines negotiations with KLM over an alliance, Northwest used formalities from the very start of the talks to assure KLM, a much smaller airline, of its status as an equal in any eventual alliance.

However, at the same time, to build a relationship with your counterparts on the other side, you need to engage them, to *connect* with them as early as possible in the negotiation. A human connection between you and the other side not only distinguishes you from other people they have to deal with but is also a crucial first step toward building trust, a key element for a successful negotiation. To engage with the other side effectively, you need to take into account not only the need to build a human connection with your counterparts across the table but also the need to observe the formalities that will make them feel comfortable in the negotiation. These two aspects of building your relationship with the other side may seem in conflict at times. Thus Jack Welch might have built a human connection with Mario Monti had he respected the formalities that Monti expected, formalities that demonstrated Welch's respect for Monti as a high official of the European Union.

A sense of connection between negotiators arises out of a belief that the two sides have something in common. Effective negotiators constantly

look for ways to create that sense of commonality as early as possible in the negotiation, often stressing a common relationship or experience with the other side, such as having attended the same school, come from the same region, or known the same people. Connecting with people across the table therefore often begins with some judicious self-revelation. Often that approach is part of one side's opening move.

Earlier in this book, we saw how Marshall Sergei Akhromeyev's self-revelatory opening move, that he was the "last of the Mohicans" and loved the novels of James Fennimore Cooper, enabled him to build a lasting relationship with George Shultz, the US Secretary of State. On the other hand, the wrong kind of self-revelation can alienate rather than connect, as J. Robert Oppenheimer, who led the development of the atomic bomb in World War II, learned in a crucial White House meeting with President Harry S. Truman in 1945. Alarmed at the destructive power of nuclear weapons, Oppenheimer hoped to persuade Truman to accept a regime of international cooperation to prevent a nuclear arms race. As Kai Bird and Martin Sherwin recount in *American Prometheus: The Triumph and Tragedy of J. Robert Oppenheimer*, when Truman proved resistant, a desperate Oppenheimer blurted out, "Mr. President, I feel I have blood on my hands." That bit of self-revelation antagonized Truman who had ordered the atom bombing of Japan. Telling his aides later that he wanted nothing more to do with "that cry-baby scientist," he said, "Blood on his hands! Dammit, he hasn't half as much blood on his hands as I have on mine."²² A little reflection by Oppenheimer on Truman's possible reaction to Oppenheimer's lament about the blood on his hands might have led him to avoid that metaphor.

Akhromeyev's statements convinced Shultz early in their relationship that they had something in common and so they connected. Oppenheimer's statement led Truman to believe they had little in common and so they didn't connect. In your negotiations, always look for elements of commonality that will allow you to connect with the other side but first make sure they interpret those elements the same way you do.

What Happens after You Open?

The aim of most opening moves is to engage the other side and hopefully begin to establish a basis for an effective working relationship with them. Having achieved that connection, many negotiators are tempted to immediately move the discussion to the substance of the deal they want to make. As we saw in our consideration of international and cross-cultural negotiations, that approach may be unwelcome in cultures that view negotiation

as a process of relationship building, cultures that seek to establish a relationship before considering the particulars of a deal. In those cultures, and even in the United States, you should therefore engage in the kind of relationship building that we discussed in Chapter 5 since a deal that is based on a strong relationship is likely to be more stable and meet the parties' interests than one that is not.

But even if you have made a positive connection with the other side and seem to have developed a good relationship, it is usually wiser to put off discussions of the substance of your deal until you have agreed on the *process* that you and the other side will follow in conducting your negotiations, especially in complex transactions. Thus you and your counterparts may want to agree first on who is to participate in the negotiations, where negotiations will be held, what issues will be discussed and in what order, what deadlines need to be respected, and how any eventual agreement will be finalized. The discussion of process may also determine certain rules of the game, for example, that “nothing is decided until everything is decided” or that “no agreement is effective until it has been ratified by the home office.” Achieving agreement on key process issues at the outset will generally make for a more productive, substantive negotiation later on.

Getting a Little Help from Your Friends

A few years ago, Reebok, the international sports shoe manufacturer, wanted to renegotiate the terms of its contract with one of its major distributors. When the distributor refused, Reebok approached a noncompeting manufacturer whose products were also handled by the same distributor and asked it to help persuade the distributor to listen to reason. Fearful that a festering conflict between Reebok and the distributor would have negative consequences for the distribution of its own products, the noncompeting manufacturer decided to intervene and ultimately helped Reebok and the distributor arrive at a satisfactory solution to their problem. By involving the noncompeting manufacturer, Reebok increased its ability to influence the distributor's decisions in a desired way in order to negotiate a satisfactory agreement. Reebok succeeded because it used a tested negotiation tactic. It got a little help from a friend.

The Values of Friendship

Most of us tend to view the negotiations in which we are involved purely as matters between ourselves and our counterparts across the table. Worse, when we face a powerful adversary in a negotiation, we often see ourselves as alone and helpless. You may be able to change what you perceive as an unfavorable power equation by involving another person in the process, just as Reebok did. In developing your tactical plan for any negotiation, you need to ask five fundamental questions: (1) Will the involvement of another person help me achieve my goals? (2) How particularly could that person help? (3) Who specifically could help me in this way? (4) What role should that person play in the negotiation? (5) What costs will involving that third person entail? This chapter tries to answer those questions.

At the outset, we need to recognize that the involvement of another person, whether friend or foe, in our negotiations is not always desirable. So long as we think that we can achieve our goals on our own, we may prefer to negotiate deals and settle our conflicts without the help of others. Involving other people complicates the process and always entails costs. No matter how well meaning they are, other people have their own interests, and they may pursue them, consciously or unconsciously, once they become involved in our negotiations.

Indeed, in negotiations where we have the upper hand, we not only do not seek the help of others but we also try to prevent the other side from involving third parties on its behalf. In those kinds of negotiations, we consider that three is very definitely a crowd. For example, governments and other powerful parties often seek to preserve their power by limiting third-party participation. So when you apply to obtain a permit from a government agency, its rules may specify the people you can bring to the negotiation to help you. If you are a passenger in a car stopped for speeding on the highway, the state trooper will make it very clear that your participation is not wanted if you try to involve yourself in the discussion between the driver and the trooper. Closer to home, when your teenage son, who has now missed his Saturday-night curfew three times in row, faces a tough conversation with you that may lead to his grounding for a month, he may try to involve a benevolent older sister in the conversation to soften your demands and hopefully ward off a grounding. You, on the other hand, may view the intervention of your daughter as an unwelcome impediment to persuading your rebellious son to change his behavior.

On the other hand, if you decide that a little help from a friend might be useful from your end, you then have to figure out the role your friend should play in your negotiation. Basically, you can divide the numerous roles that a friend may play into two big categories: (1) a friend as a party and (2) a friend as a nonparty.

Friends as Parties in the Negotiation

A *party* to a negotiation is someone who not only participates in the discussions but whose interests are at stake and whose consent is necessary for any agreement. International diplomacy has traditionally distinguished between *bilateral*—two-sided—negotiations and meetings on the one hand and *multilateral*—more than two sides—on the other.¹ In a bilateral negotiation, there are only two parties; in a multilateral negotiation, there are more than two. The reason for this distinction lies not just in the differing number of parties but rather in the consequences that the

number of parties has on the negotiation process. Essentially a multilateral negotiation differs from a bilateral negotiation in two important respects: complexity and power dynamics.

First, the inclusion of more parties in a negotiation complicates the process because it introduces increased issues and interests that have to be accommodated to reach an agreement. For example, a bilateral trade negotiation between the United States and Mexico, while not simple, only needs to accommodate the interests and issues of the two countries. On the other hand, a multilateral negotiation among the countries of the world to create a global trade regime would have to deal with the countless interests and concerns of nearly 150 nations, a process that actually took place during the Uruguay Round of trade negotiations, which lasted eight years, from 1986 to 1994. Similarly, a conversation between you and your spouse about where to eat dinner is usually a pretty simple bilateral negotiation that can be completed fairly quickly. A discussion on the same topic at a family reunion among you, your spouse, your three sisters and their spouses—a group that includes a vegan, a person on a weight-loss regime, another worried about his high cholesterol, and yet another on a tight budget—will rapidly develop into a multilateral negotiation whose complexity approaches that of the Uruguay Round.

The second major difference is in the power dynamic that takes place in multilateral negotiations because of the ability of parties to form coalitions and alliances as mechanisms to influence a desired result. In a strictly bilateral negotiation with the United States, Mexico is alone in facing its northern neighbor. In a multilateral negotiation, such as the Uruguay Round, Mexico is able to build coalitions with countries having similar interests and use those coalitions to influence the results of the negotiation in desired ways. A similar dynamic takes place in the decision-making process of any group, whether it be a company, local government, civic organization, or set of individuals. Generally, parties engaged in such efforts have one of two purposes: (1) to create a “winning coalition” that will lead to the adoption of a decision in their favor or (2) to create a “blocking coalition” to prevent the adoption of a decision that is against their interests. It is through coalition building that a country, organization, or individual can increase its power in a multilateral negotiation, something that is impossible in a strictly bilateral negotiation since there is no other party to build a coalition with. For example, developing countries often build coalitions in multilateral conferences in order to block decisions favored by developed countries and to push for the adoption of decisions that favors the interests of the developing world. Similarly, you may find that in choosing a restaurant for dinner at your family reunion, the vegan, the weight-loss guy, and the low-cholesterol maniac will build an effective blocking coalition to stop

any move toward that great steak house you remember from your youth. They may even succeed in constructing a winning coalition forcing you to spend the evening in a vegetarian restaurant.

If you believe you are in the dominant position in a negotiation, a bilateral, one-to-one process allows you to apply your power without restrictions. A multilateral negotiation, on the other hand, may dilute your power and reduce your influence. It is for this reason that in international diplomacy a country's preference for a bilateral or multilateral setting in which to negotiate depends largely on that country's perception of how a particular setting will affect its negotiating power—that is, its ability to influence the decisions of another country with which it is concerned. For this reason, the United States and other powerful countries prefer to conduct important diplomatic issues on a bilateral basis with other countries individually, while small developing countries prefer to hold discussions on those same issues in multilateral meetings and conferences that enable them to form coalitions and alliances with governments having similar interests so as to increase their influence. Thus the US government has been successful in signing many bilateral investment treaties with developing countries, while multilateral efforts to achieve a global treaty on investment have failed. It is only when a powerful country cannot obtain what it wants from bilateral discussions that it turns to multilateral efforts. For example, the United States' perceived inability to persuade Iraq to evacuate Kuwait through bilateral negotiations led it to build a coalition for war through a series of multilateral negotiations discussed earlier in this book.

There may be times when it will be advantageous to try to convert a bilateral negotiation in which you are involved into multilateral talks by including one or more other people as parties in the conversation. For example, if you and your spouse are trying to decide where to go on vacation in the summer and your spouse is once again pushing to go to his uncle's decrepit lake house in the boring north woods (a place he has insisted on going for the past three summers), it may be a good idea to suggest that your two teenage children, who don't like the lake house any more than you do, get in on the conversation. Similarly, if your department head is insisting on launching a project you think will be a disaster, try to convert the conversation into a multilateral negotiation by involving your top technical folks in the decision-making process. In both instances, you *multilateralize* what began as a bilateral negotiation. On the other hand, there may be instances when *bilateralizing* a multilateral conversation may help achieve a solution. For example, suppose you are chairing a staff meeting to decide on a new strategic initiative and the group discussion is going in 12 different directions and approaching a state of chaos. You might consider selecting two

people who represent dominant but differing views within the group and ask them to meet together and negotiate a solution to present to the group.

Friends as Nonparties in the Negotiation

Third persons become involved in many negotiations without actually becoming parties. The noncompeting manufacturer who became involved in Reebok's dispute with its distributor was not a party to those negotiations although it did play an important role. Its consent was not necessary for an agreement to happen between Reebok and Reebok's distributor. Moreover, the manufacturer's interest was not the direct subject of that negotiation. People who intervene in negotiations or conflicts of other people carry various names: mediator, facilitator, ally, conciliator, arbitrator, and even officious intermeddler.

Diplomacy is filled with examples where other individuals, organizations, and countries became involved in negotiations or disputes between other countries and groups in order help them reach agreement and settle their conflicts. Thus Jimmy Carter mediated the dispute between Egypt and Israel leading to their peace treaty of 1979. Former senator George Mitchell spent two years brokering a settlement between Catholics and Protestants in Northern Ireland in 1999, thereby ending thirty years of a bloody and destructive civil war. And the late Richard Holbrooke, as US assistant secretary of state, engineered a settlement among the warring parties in Bosnia to end the Balkan war resulting in the Dayton Peace Accords of 1995. Each of these men operated in different ways to achieve the results they did. Each also received significant public acclaim for resolving disputes that seemed intractable at the time.

Closer to home, we witness all sorts of third-party interventions to resolve conflict. At our jobs, a worker or supervisor may intervene to settle a dispute between two colleagues quarreling over budgets or office space. In our town, a local government official may mediate a solution between two neighborhoods over the location of a new waste dump. And in our families, an aging parent may settle a quarrel between two of her adult children over the business they inherited from her late husband.

The Mediation Puzzle

Each of these examples of successful third-person interventions raises a fundamental question: What is it that a third person does through intervention that two sovereign states or two fully competent adults cannot do by themselves to resolve their disputes? What is the "magic" ingredient

that Jimmy Carter, George Mitchell, and Richard Holbrooke brought to the conflicts they mediated that led to their settlement? This is, in effect, the mediation puzzle. The simple answer is that Carter, Mitchell, and Holbrooke had a *resource* necessary for conflict settlement that the parties themselves did not possess. But possession of a negotiation resource is not sufficient to allow for settlement. Equally important are an *acceptance of third-person* intervention by the parties to the conflict and the third person's *willingness* to intervene. Let's examine these three critical elements and their role in negotiating life.

Negotiation Resources

As you approach any negotiation, you should always ask yourself two preliminary but important questions: Do I have all the resources I need to achieve my goals? If not, who can give me what I lack at a price I am willing to pay?

To answer these questions, understand first that negotiation is all about influence. Anything that might be used to wield influence forms part of a negotiator's arsenal of resources. Social psychologists have identified six important bases for influencing other people's behavior: (1) ability to promise rewards, (2) ability to coerce, (3) information and expertise, (4) credibility, (5) relationships, and (6) coalitions and networks.² Together, these are a negotiator's resources. In any particular negotiation, the lack of one or more of these assets may prevent you from reaching the agreement that you want. In that case, you need to see if a third person can provide what you lack at a cost you are willing to pay.

Let's consider how other parties can help you fortify your bases of influence and make your negotiations more effective.

Ability to Promise Rewards

The promise of desired rewards or benefits to be gained from an agreement is usually what causes the other side in a negotiation to agree to your proposals. In some negotiations, you may discover that you don't have sufficient resources to give the other side the reward it is seeking. In those cases, look for a third person who may help you provide what is lacking. Thus Jimmy Carter, as president of the United States, was able to offer both Israel and Egypt massive amounts of aid, a factor that became a powerful incentive for them to agree to a peace treaty. A third person may be able to provide needed rewards in your own negotiation. For example, perhaps a skilled painter is demanding an amount that you cannot afford to paint

your house. Instead of simply looking for a cheaper and probably inferior painter, you may be able to reduce the cost of your paint job if you can persuade two of your neighbors to join in using the same painter.

Ability to Coerce

The threat of loss or punishment can be a powerful negotiating tool and often introduces another player that can lend clout to such a threat. For example, the reason countries join military alliances, like NATO, is to increase their coercive influence with potential enemies. You can use the same tactic in dealing with your adversaries. Let's say a company has broken its contract with you. Your threat to sue gains increased credence if a noted law firm sends the company a claim letter formally acknowledging that you have engaged its services. Similarly, your threat to ground your son for missing three curfews takes on an increased coercive effect if your spouse lets him know in no uncertain terms that he supports that decision completely.

Information and Expertise

Information and expertise are vital assets in any negotiation. Your lack of information and expertise, for example, about regulations, precedents, and procedures, may prevent you from obtaining a government permit to build a shopping center or an extension on your house. One of the assets that lobbyists and Washington lawyers give their clients is the expertise necessary to win the approval of government departments. Whether you are negotiating to buy a car or put an addition on your home, your lack of relevant expertise can make it hard to achieve a good deal. So ask a knowledgeable friend to come with you to the auto showroom or the building contractor's office. Or maybe you need expertise on the process of negotiation itself. If that's the situation—for instance, you are locked in a conflict with a neighbor who insists on playing loud music or a merchant who has sold you a defective appliance—you might propose using a professional mediator.

Relationships

A third party's relationships can provide access to begin a negotiation, and they can also serve as a means of influence. One of the most effective ways to increase your power in a negotiation is to build supportive relationships

with strong third parties who may be willing to intervene on your side in the negotiation. Thus one of Egyptian president Anwar Sadat's tactics for achieving peace with Israel was to develop a close relationship with Israel's friend, the United States, and seek its assistance in influencing Israel to make a peace treaty.

Reebok adopted a similar tactic in the renegotiations with its distributor. When Reebok enlisted the help of the other manufacturer in negotiating a new contract with its distributor, the strategy worked because the distributor had highly profitable dealings with that manufacturer—dealings it didn't want to jeopardize. As you prepare for any negotiation, consider who among your friends may have a relationship with the other side that you can use to your advantage. As a rule, one of the best ways to increase your power in a negotiation is to build supportive relationships with those who can influence the other side.

Credibility and Legitimacy

In any negotiation, the credibility of the negotiators is an important asset. Whether the other side believes or disbelieves your statements and commitments can mean the difference between making a deal and losing it. Similarly, when you are negotiating on behalf of others, the fact that you have legitimacy as the proper representative of the group is also an important asset. In situations where the other side does not believe that you have credibility or legitimacy, the introduction of an appropriate third party can help you gain these important assets. Sometimes the other side just won't take your word. When that happens, you might enlist a respected individual to vouch for you. Say you're negotiating for a professional position or a freelance contract. A telephone call or letter from a person who knows the quality of your work could help back up your claims that you can do the job better than your competitors.

Coalitions and Networks

In many situations, we select a third party to assist us not only because of the relationship that person may have with counterparts on the other side of the table but also because of that person's relationships with groups that may have the ability to influence the people with whom we are dealing. In short, a third party by its presence brings those alliance and coalitions to the table. For example, using a lobbyist who is a Republican to work the Republican side of the state legislature and another who is a Democrat to work the Democratic side, as one

Minnesota public institution routinely does to secure its annual budget, is mobilizing those alliances and networks on its behalf in its budgetary negotiations. Each lobbyist uses those party alliances and affiliations as instruments of influence in its negotiations with the legislators concerned. Similarly, in your own negotiations and conflicts, think about people with networks and alliances that might influence the other side. For example, the president of the parent-teacher association at your child's school might help you negotiate with the school's principal to gain a special accommodation for your child with special needs, and a longtime resident and community leader in your neighborhood might help settle your conflict with your neighbor who insists on playing loud music late into the night. In both instances, their networks with other parents and other neighbors may serve as helpful influences on the people with whom you are negotiating.

Intervention Acceptance by the Parties

Intervening third persons generally have no power to impose themselves on parties in a dispute. Rather, the parties must accept that intervention. George Mitchell had no power to force the representatives of Catholic and Protestant warring groups to sit down with him to engage in a mediation of their conflict. Jimmy Carter could not force Egypt's President Anwar Sadat and Israel's Prime Minister Menachem Begin to fly to Camp David to negotiate a peace treaty in the seclusion of the Maryland woods. In both cases, the parties had to agree to that intervention. Moreover, they also had the power to reject that intervention and walk away from mediation at any time. Similarly, your two quarrelsome work colleagues have no obligation to accept your offer to help them resolve their conflict over the allocation of laboratory space. And while your bickering kids can't walk away from your efforts to get them to share toys, the way Sadat or Begin could walk out of Camp David, you really have little power to force them to actively engage in working on a settlement. Thus to be effective, the parties need to accept (1) the person seeking to intervene and (2) the nature of the proposed intervention. Normally, the parties must see some advantage to accepting the intervention of that third person and the way in which that person proposes to become involved in the negotiation. Thus while Reebok's distributor could have refused to talk to the noncompeting manufacturer, Reebok's distributor did not do this out of a desire to maintain its relationship with that manufacturer. Likewise, in selecting any friend to help in your negotiation, you need to ask whether the other side will accept that person and the intervention he or she is proposing.

Third persons may intervene in conflicts and negotiations in a variety of ways depending on the willingness of the parties. There are basically three broad contributions that an intervener may make to settle a conflict: (1) procedural contributions, (2) communication contributions, and (3) substantive contributions. Procedural contributions relate to helping the parties establish a process or procedure that will be conducive to productive negotiation. In this respect, some may limit their intervention merely to arranging a meeting in conditions that may be conducive to arriving at an agreement. Thus in 1993, the Norwegian government arranged for confidential meetings in Oslo between Israeli and Palestinian representatives, a process that resulted in a historic agreement between the two sides later in the year. Similarly, when two cousins are locked in a dispute over an inherited business, a family friend might invite them to his or her house to let them talk through their differences.

Effective communication is, of course, essential to fruitful negotiation. Unfortunately, parties in conflict engage in emotional exchanges that impede rather than advance agreement. An effective mediator can help the parties communicate productively with one another about the issues in dispute, for example, by helping them to avoid name calling, insults, accusations, and other emotional outbursts. Indeed often the very presence of a respected person may serve to dampen somewhat the parties' inclination to engage in these kinds of verbal exchanges.

Finally, a third person may suggest substantive solutions to the problems that the parties are trying to resolve through negotiation. A parent dealing with two children bickering over a toy will propose a way to share the toy that they may eventually accept. A family friend may come up with an equitable plan for the two warring cousins to divide the contested business. In each case, the parent or the friend may thereafter serve as a monitor to see that the agreements made are actually carried out by the parties.

The most intrusive form of third-person intervention is *arbitration*, an ancient process by which the parties agree to submit their dispute to a third person for a decision according to agreed-upon rules or norms and to carry out that decision. For example, instead negotiating a settlement of their dispute, your children may agree to let you decide how, for how long, and when they may each use the computer game they jointly received for Christmas from their uncle. Or the two cousins may agree to allow their family friend to decide on how the business should be divided between them and to drop their lawsuits against each other.

Third-Person Willingness to Intervene

Just because you have identified someone who has the resources to help you in your negotiation doesn't mean that person will actually agree to intervene. The other manufacturer could have politely told Reebok that it did not want to get involved in Reebok's dispute with its distributor. In fact, most people shy away from intervening in other people's conflicts. Most people quite naturally ask, "What's in it for me?" Research seems to show that third persons get involved in other people's conflicts in order to protect or advance their own interests.³ For example, the United States intervened in the Egypt–Israeli dispute because it believed that peace between the two warring states was in the best interests of the United States. A parent has motivation to intervene in a dispute between two of her children in order to advance the desirable interests of peace in the family. And as we saw, the other manufacturer chose to talk to Reebok's intractable distributor because it feared that a protracted conflict would weaken the distributor's ability to distribute the manufacturer's own products. So even though you have identified a friend who can help you in your negotiation, make sure that your friend has a real interest in helping.

Caveat

In negotiations, as in life, it's important to choose your friends carefully and remember that there's no free lunch. When a third party enters into your negotiations, you incur a cost, which may have to be paid in a variety of currencies, including money, time, autonomy, and future obligations. For example, the neighbor who helped you in your conflict over the loud music from next door may begin to make demands on you to work on neighborhood projects or contribute to favored charities. Always evaluate that cost and make sure the benefits you hope to gain from the negotiation are worth it. But if they are, then go ahead. Get a little help from your friends because it just might seal the deal.

Finding the Right Voice

Effective Communication at the Table

“Surely, whoever speaks to me in the right voice, him or her I shall follow.”¹ With this line from *Leaves of Grass*, Walt Whitman offers negotiators an important lesson about persuading others. By stressing the need to speak to a particular individual in the *right* voice, Whitman underscored the importance of shaping communications to meet the interests and concerns of the specific people we seek to persuade.

Convincing Conviction

The aim of negotiation is persuasion. How then do you persuade people to agree to willingly do what they may at first resist? Your ability to persuade other negotiators begins with your own strong belief in the goal you are trying to achieve. As leader of the Senate, Lyndon Johnson was fond of saying, “What convinces is conviction.” As a result, before seeking to convince other people of the rightness of a particular position, he first worked hard to convince himself.² It’s important for any negotiator to find the right voice to achieve a level of “convincing conviction,” whether it is to build a coalition to go to war or start a risky new practice group in a consulting company. The very fact that you demonstrate an energetic and enthusiastic drive toward a particular goal will have the effect of motivating others toward that goal—or at least cause them to think seriously about it. On the other hand, your failure to demonstrate convincing conviction will be interpreted by others as your having serious reservations about a proposed course of action—and they will think that perhaps they should, too.

Before seeking to convince other people of the rightness of your position, first work hard to convince yourself.

The Tools of Persuasion

The real challenge in any negotiation is not persuading yourself but persuading other people. Even though you may have a command of all the facts and figures of the negotiation subject, you still have to convey your goals and interests to the other side in a persuasive way. Six communication tools, in particular, can help give you the right “negotiator voice” to achieve your goals: (1) frames, (2) questions, (3) metaphors, (4) shared experiences, (5) analogies and precedents, and (6) standards and objective criteria. Let’s look at each one and how you can use them.

Find the Right Frame

In 2002, the leadership of a large New Jersey hospital became concerned about ethnic tensions between patients and staff. The patients, mainly Hispanic, were complaining about insensitive, rude, and sometimes discriminatory treatment by the doctors. Nearly 80 percent of the doctors were immigrants to the United States, primarily from India, Pakistan, Russia, and Africa, so they often found it hard to communicate with Hispanic patients, many of whom didn’t speak English. Indeed an outside consultant study indicated that the doctors lacked the skills to deliver care in a multicultural environment.

In response, hospital administrators hired a firm to develop and run a series of intensive and costly training seminars and workshops. None of the doctors attended. They were too busy taking care of patients, they said. But then the administration tried another tack. It persuaded a doctor to work with a communications expert to prepare a presentation of a medical case in which a physician who didn’t speak Spanish had to diagnose a Hispanic patient who didn’t speak English. The presentation was then offered at grand rounds, the time when doctors gathered to discuss interesting cases. The session marked a breakthrough. Engaged by the problem, the assembled doctors began to learn about communicating with ethnically diverse patients. They even asked that future grand rounds include similar material.

The hospital succeeded in educating its doctors because it changed the frame it was using to communicate with them. Effective negotiators know that *framing*—the particular way in which a situation is characterized—can orient people’s thinking in either productive or unfruitful ways, and the frames that work best take into account the interests of those who will be influenced. Three kinds of frames are particularly important: (1) substantive frames, (2) process frames, and (3) behavioral frames.

Substantive Frames

The hospital's use of grand rounds reframed the topic of its educational efforts from ethnic and racial relations, which the doctors had little interest in, to a medical problem, which was central to their professional lives. Similarly, President George H. W. Bush succeeded in building a broad international coalition for war against Iraq in 1991 by framing that country's occupation of Kuwait as a threat to the sovereignty of states, the international rule of law, and the UN Charter—vital interests of all countries large and small. On the other hand, Bush's son never found a frame to convince many nations to join the US invasion of Iraq in 2003.

The next time you want to introduce a new program or strategy to your organization think hard about how you will frame it and whether that frame coincides with the interests of the people involved. For example, if you want to institute a new in-house training program at your company, you might seek to frame it as an effort at staff career development and skill building rather than as one more attempt to wring additional efficiency out of an already overworked department. Similarly, if you are seeking a raise from your boss, it might be more persuasive to frame your approach as a request for a performance review rather than a demand for more money. Remember that the frame you use with a negotiating counterpart will probably be the same frame that person uses in discussing your issue with his or her superior. So if you have convinced your boss to support a raise, he or she will have a more persuasive case to present to the company's chief financial officer if he or she can show that he or she arrived at the recommendation after a careful review of your performance rather than giving in to your demands for more money.

Process Frames

By using grand rounds instead of a traditional training seminar, the hospital also reframed the process of educating its doctors in a way that respected their status as physicians. A lecture from an outside expert who was not a doctor could do neither. In your own negotiations, spend some time considering how you want to frame your interactions with the other side. Say your local town planning board has decided against letting you expand your house. Its members are more likely to reconsider if you seek an explanation than if you lodge a protest. Similarly, a status-conscious government official may be more willing to sit down with a permit applicant for "discussions" than to meet for "negotiations."

Behavioral Frames

When the other side engages in emotional, unproductive, or hostile behavior, it often helps to reframe that behavior rather than respond in kind.

Suppose the person across the table says an idea of yours is “really dumb.” Rather than becoming incensed, you might reply, “Maybe, but how would you improve it?” Or if your spouse is spending money wastefully, you might refrain from yelling and instead initiate a conversation about ways that you both could control costs. In a long negotiation between China and the United States over intellectual property rights, the Chinese representative, offering a new proposal, said, “It’s take it or leave it!” Charlene Barshefsky, the US representative, stared at him silently for a long time and then gave a reframing reply: “If you really mean take it or leave it, I’m going to have to leave it. But I don’t think you mean that. What I think you mean is that you have given us a serious proposal that you want us to consider. And we will.” She made her disapproval clear but at the same time reframed his intentions. In this way, she also gave her Chinese counterpart a way to back down and avoid an unproductive confrontation. They eventually struck a deal.

Recognize the Power of Questions

A Boston doctor who had unsuccessfully lectured his patients for years on the need to stop smoking and control their weight decided to try another approach. He began to ask them questions: “What will it take to get you to stop smoking?” “What can we do to help you lose weight?” His change in tactic caused patients to make greater efforts to give up cigarettes and stick to their diets. Three reasons explain this result. First, his questions led patients to think seriously about their problem rather concentrate on fending off the doctor’s unwelcome advice. Second, they often generated options that doctor and patient could develop into action programs suited to patients’ specific lifestyles. Third, patients undertook these programs with a sense of commitment since they considered them their own programs, not the doctor’s.

Negotiators often overlook the power of questions in achieving their goals. Instead they sometimes feel that asking questions makes them look weak to the other side. After all, isn’t a question a sign of ignorance or weakness? Shouldn’t an effective negotiator have all the answers? And what if, in response to questions, the other side gives you information that you don’t want to hear or don’t know how to answer?

Used correctly, questions are powerful negotiating tools that can help you in three ways: (1) information gathering, (2) relationship building, and (3) persuading. Let’s look briefly at each.

Questions That Inform

Recall the case of the two daughters fighting over ownership of their late father's ring. What broke their stalemate and ended the crisis was the key question: "Why do you want the ring?" It was a key question because it led the daughters to understand each other's underlying interests, knowledge that ultimately allowed them to craft a creative solution to achieve those interests through a negotiated agreement.

A fundamental principle of negotiation is to understand the parties' interests. Questions are essential tools in understanding interests. Important questions for discovering interests are "What are the key elements you need in this agreement?" and "Why are they important to you?" Effective negotiation also requires the parties to engage in creating options. The right questions are also vital here: "What if . . . ?" "How have other people solved this problem?" "Should we think about . . . ?" Remember, negotiation when done right is not a debate but an educational process for both sides. Education always begins with a question.

Questions That Connect

Questions are not only means to gain information but also ways to send important messages to other people. For one thing, through sincere questions you communicate that the other side is important to you and that you care about their concerns, ideas, and feelings. In short, asking the right questions in the right way allows you to connect with other people. After Marshal Sergei Akhromeyev opened the door to a relationship by stating that he was the "last of the Mohicans," it was Secretary of State George Shultz's questions that helped him understand Akhromeyev and build the relationship that developed between the two men. To be an effective negotiator you need to connect with your counterpart. The right questions will help you make a productive connection. For example, in your discussion with your partner about his ownership of a disputed gravel pit, you might start out by asking how he came to find and buy the pit rather than accusing him of violating your partnership agreement when he made the purchase.

Questions That Persuade

When the Boston doctor used questions to persuade patients to change behavior, he was in effect asking *them* to advise *him*. Most people like to give advice, an inclination that you can put to work for you in your negotiations. Vice President Joe Biden did just that in the waning days of the Cold War when, as a member of the Senate Foreign Relations Committee, he tried to persuade Soviet foreign minister Andrey Gromyko to accept modifications in a proposed arms control treaty. Detecting Gromyko's resistance, Biden, instead of insisting on changes, asked Gromyko's advice

on how to explain some of the treaty's more problematic provisions to his Senate colleagues. A dialogue ensued, and at one point Gromyko said, "I see what you mean. Perhaps we can modify the language in this way to take care of that concern."³

Questions also proved to be a key instrument of power for Ronald Reagan. At the end of the final presidential debate in the 1980 election campaign, as the US economy tanked and the Iranian hostage crisis smoldered, Ronald Reagan used his concluding statement to ask the country key questions: "Are you better off than you were four years ago? Is there more or less employment than there was four years ago?"⁴ Reagan went on to triumph in the election a week later. His questions were important factors in bringing about that result.

Like the Boston doctor, George Shultz, Ronald Reagan, and Joe Biden, the next time you get ready to negotiate with your employees, associates, customers, or teenagers don't prepare a speech to overpower them. Instead think about the key questions you need to ask to get the agreement you want. For example, rather than giving a direct order to Hans Brandt to attend both staff meetings twice a week, why not frame the discussion by asking Hans how the team can benefit from his vast experience and expertise? And instead of berating your son about his poor grades, you might consider opening the conversation with a question: What can we do to help you do better in school?

Search for the Metaphor

"We are a yam between two boulders," a deputy minister of Laos once told me to make me understand his small country's precarious location between Thailand and Vietnam. Like the Lao deputy minister, we often use metaphors—figures of speech that compare one object or idea to another in order to express a point—in our efforts to persuade or connect with other people. For instance, in trying to ward off an increase in price from a contractor upgrading your kitchen, you might protest that you are already paying an "arm and a leg," or in seeking additional resources for your harried staff, you might tell your boss that your team is "drowning" in work. Just as an effective metaphor in poetry stimulates the imagination, a negotiator's use of an apt metaphor can help persuade or build a relationship with other people. Some 15 years after my meeting with the Lao deputy minister, I still remember the predicament of his country that his vivid metaphor conveyed so well.

We have already seen earlier in this book how other metaphors affected relations between negotiators. Soviet marshal Sergei Ahkromeyev's

statement that he was the “last of the Mohicans” laid the foundation for an important professional and personal relationship with US secretary of state George Shultz, while J. Robert Oppenheimer’s unfortunate choice of the metaphor that he felt he had “blood on his hands” alienated Harry Truman. The American executive’s declaration that his was “a blue chip company” caused confusion and suspicion with his Saudi counterparts.

These stories suggest a few principles about the use of metaphors in your negotiations. First, metaphors can either be tired clichés or fresh images that capture the imagination, like the Lao minister’s comment on yams and geopolitics, which remains vivid in my mind. Second, beware of metaphors so tied to your culture that your counterparts may not understand them. For example, telling Nigerians in a negotiation that your company is ready “to step up to the plate” may create confusion rather than the reassurance you hope for. With metaphors, as with any expressions during a negotiation, you should constantly ask yourself, “How can I be misunderstood?” Third, put yourself in the place of the person with whom you are trying to connect in order to gauge the possible effect of the metaphor you are using. Had Oppenheimer done that, he might not have repelled Truman.

In the charming Italian film *Il Postino*, a mailman asks the great Chilean poet Pablo Neruda how he too can become a poet. Neruda answers, “Search for the metaphor.” Persuasive negotiators do no less.

Share the Experience

A sense of connection between negotiators often arises out of a belief that the two sides have something in common. Effective negotiators constantly look for ways to create that sense of commonality often stressing a shared relationship or experience with the other side, such as having attended the same school, come from the same region, or known the same people. Connecting with other people therefore often begins with some judicious self-revelation, as Sergei Ahkromeyev did in his first conversation with Shultz.

At the Camp David negotiations between Egypt and Israel in 1979, President Jimmy Carter worked hard to develop strong personal relationships with Egyptian president Anwar Sadat and Israeli prime minister Menachem Begin. At one point, the negotiations reached an impasse, and Begin decided to leave Camp David and return to Israel with his delegation. On the morning of his departure, President Carter went to Begin’s cabin and, as a parting gift, gave him photographs personally autographed to each of Begin’s grandchildren. When Begin saw the children’s names written in Carter’s hand, he became emotional, perhaps as he thought

about their future in a country that would still be at war. Moved, Begin, under Carter's urging, decided to stay and continue negotiations toward what became a peace treaty with Egypt. Carter's gift had made Begin think of the long-term interests of his grandchildren and, by extension, future generations of Israelis. As a result, Carter motivated him to persevere in the search for peace.⁵ Carter's ability to motivate another leader came from his relationship with Begin and his knowledge of Begin not just as an Israeli politician but also as a person.

In your efforts at negotiating life, you should always look for experiences that you share with your counterparts across the table. Such shared experiences can have two powerful effects. First, they can help you build a relationship, a connection, with that person. The fact that you and another person have a friend in common, went to the same school, or lived in the same town may predispose that person to listen to you more carefully, seek ways to reach agreement, and even trust you more than a complete stranger. Second, a reference to a shared experience can convey more graphically an idea that you want to convey to your counterpart. For example, if you are planning to talk to your neighbor about the loud music played by his or her son late at night, you might start out the conversation talking about the challenges you faced in raising your own children.

Rely on Analogies and Precedents

Negotiators often want to persuade people to do things they have never done or go places they have never been before. Doing new things and going to new places may offer some people potential benefits but often appears to others to hold great dangers. In order to allay these fears and encourage action in a desired direction, negotiators often use precedent or analogies in communicating to their followers. In effect, they are saying, "Others have done this or something like it and benefited, we can, too." The use of analogies in leadership communications is based on the logical inference that if two things are known to be alike in some respects they must be alike in other respects as well. Thus in advocating for his health legislation, President Obama pointed to the successful national health care systems in other countries, such as Canada and Switzerland.

The right precedent or analogy can give force to an idea in at least two ways: legitimacy and efficacy. It says that a proposed course of action is morally and ethically correct, not merely arbitrary or capricious. Thus the example of the Swiss and Canadian national health care systems in a presidential communication says that a national health care system is a legitimate function of government. Using the experiences of Canada and

Switzerland as examples also demonstrates that, in practice, a health care system can bring a country benefits at a cost it can afford.

Precedent can have persuasive force at levels far below the White House, as a story from my own experience illustrates. As I noted earlier, my negotiations on behalf of the Ford Foundation with the Sudanese government to secure an agreement to operate in that country reached a satisfactory solution only when I was able to show my counterparts the precedent of the foundation's similar country agreement with Egypt.

A precedent is an act or example from the past that may be used to justify or guide actions in similar cases in the future. All of us are influenced by past examples. When faced with a new situation that calls for a decision, we instinctively ask how we or others have dealt with similar situations in the past. That reaction is based on a belief that knowledge gained from the past can help us decide on a course of action for a future that we cannot possibly know.

It was the precedent of the foundation's Egyptian country agreement that put these questions to rest. If Egypt, Sudan's northern neighbor that had exerted significant political and economic influence in the Sudan for many years—indeed centuries—could grant exemptions for taxes and customs duties to a private foundation with no apparent negative results, why couldn't Sudan do the same thing? After all, Egypt was just as concerned with protecting its national interests as Sudan.

Not only did the Egyptian experience reassure the Sudanese diplomat that he was doing the right thing, but it also gave him a power tool to persuade the foreign minister to approve and sign the agreement we had negotiated. In addition, it gave the foreign ministry a means to defend its action with other Sudanese government departments that might want to challenge it. Finding the right precedent was the key to achieving a successful negotiation in Sudan.

In your own negotiations, search for precedent and similar cases on which to base your demands and ask the other side to do the same for its own positions. For example, if you are negotiating a contract for redoing your kitchen, it may be helpful to find out the practice in your area regarding whether you or the contractor pays for the required permits. If you are trying to convince your husband to go with you to the theatre, it might be worth mentioning that your neighbor's husband (a good friend of your husband) actually enjoyed the experience.

Stress Standards and Objective Criteria

This book has stressed the importance of understanding the parties' interests as a first step toward a successful negotiation. But what if your two interests conflict? What should you do then? You want to sell your car for \$20,000, but the potential buyer is only offering \$10,000. You want a salary that will give you a lifestyle you feel you need, but your employer is offering a lot less. How do you resolve these kinds of interest conflicts? One answer lies in finding and applying an agreed-upon objective standard. In one negotiation over my own salary, I failed to do that, and I paid the price.

After spending two years in the Peace Corps teaching law in Nigeria as a recent law school graduate, I arrived in New York City in the middle of a hot July and began looking for a job only to find that most law firms had already done their hiring for the year. One firm did have an opening, however, and after a series of interviews, I found myself in the office of the managing partner who told me the firm was prepared to make me an offer. "How much do you want?" he asked. How much did I want? I thought he was supposed to tell me how much they were going to pay me. With a gulp and a quick calculation, I gave him a figure that I thought would allow me to live comfortably in the city. He accepted the number and shook my hand.

As I settled into New York and began catching up with law school classmates, I came to realize that my firm was paying me almost 10 percent less than my classmates at other firms were making. How had I gotten myself into that situation? Had I been too timid in my salary negotiation with the managing partner? Had the managing partner exploited my ignorance? No. The basic cause of my predicament was that I had failed to develop and use an appropriate standard in my salary negotiation. Rather than blurt out how much I wanted, I should have first tried to reach agreement on a fair salary standard—that is, the prevailing wage for new associates or the current salary level for corporate lawyers two years out of law school—and then negotiated a specific figure.

Whether you are negotiating a salary, the sale of a car, or your share of partnership profits, linking your proposals to an agreed-upon objective standard, criteria, norm, or principle has several advantages. First, it makes you more persuasive. Asking for a raise so you can make payments on your Ferrari, your Park Avenue condo, or your annual two weeks in St. Bart's is much less convincing than justifying your request based on the salary level of your predecessor or other people with your qualifications in the same industry. Second, the use of a standard helps avoid turning a negotiation into an emotional battle of wills, a battle that each side will want to win but from which one of you will emerge feeling exploited—certainly not a

good basis for any working relationship. Third, using standards not only facilitates agreement at the table but also helps the other side convince his or her superiors and associates that the deal struck with you is fair and in the best interests of the organization.

The story of my own botched salary negotiation offers some lessons you may want to consider.

1. Make the development of an appropriate standard part of your preparation for any negotiation. That means that you have to do some research before sitting down with the other side. I didn't, and you see what happened.
2. A standard used in a negotiation may have its basis in a variety of sources: precedent, prevailing industry practice, a legal or moral principle, an independent expert opinion, custom, market value, a cost-of-living index, or the prime rate, to name just a few. Choose the standard that best advances your interests.
3. Insist that the other side use objective standards, too. If your boss puts a number on the table, before you accept it, reject it or argue with it, ask what objective standard was used to arrive at it. If he justifies it on grounds of "company policy" or "the way we do things around here," ask him frankly to state the objective basis of that policy or precedent.
4. If you and the other side propose two different standards, discuss an objective basis for choosing one or agree to seek the opinion of a respected third party.
5. If in the course of the negotiation you find yourself in a situation where you realize that you don't know an appropriate standard for an issue that has come up, consider stepping back briefly to conduct that research. For example, I could have responded to the managing partner of the firm by saying, "I really appreciate the offer. Could I call you later tomorrow to discuss the specific salary?" Thinking back today on our interchange of many years ago, I'm sorry that I didn't do that.

Winning the Endgame

Ways to Close the Deal

You've been negotiating for months to buy out your partner, but the two of you just can't seem to close the deal. The sticking point is a festering disagreement over the value of a vacant lot that you bought together six years ago just before the real estate market collapsed. On top of that, your spouse has been haggling for weeks with a contractor about remodeling the kitchen, but he simply won't commit on a firm date to begin work. In our businesses and in our homes, from angry negotiations between Republicans and Democrats in Congress over taxes to tense talks in the National Hockey League between owners and players over compensation, the ability to close a deal successfully too often seems to elude negotiators.

Just as finding the right opening is key to launching a fruitful negotiation, effective negotiators should also think hard about tactics to bring their talks to a satisfying end. Based on experience from international diplomacy, here are four methods that may help you deal with a stubborn partner or a skittish contractor.

Set a Deadline

Many of the negotiations we undertake are open-ended in that we begin them without specifying either to the other side or to ourselves the amount of time we are prepared to devote to the process. As a result, we often become trapped. Even when a successful end appears remote, we nevertheless plod on, often justifying our persistence on the grounds that we have "invested" too much time so far to end talks with nothing to show for it. To avoid being mired in such a negotiation morass, wise negotiators set limits on the amount of time devoted to negotiations by fixing deadlines after which their talks are to end. A fixed time limit focuses negotiators'

efforts and attention toward reaching a deal and forces them to evaluate their alternatives realistically. As the deadline approaches, the negotiators weigh the benefits and costs of existing proposals on the table against the benefits and costs of no deal. Without a deadline, the parties are tempted to use delay to pressure the other side and avoid making the hard choices needed to reach an agreement.

Negotiation deadlines may come about in one of three ways. First, the parties may mutually agree on a deadline. For example, the CEOs of two companies may decide to conduct merger discussions for a specific period of time and end the talks if they do not reach an agreement by a specified date. To give heightened importance to the deadline, they may agree to hold their negotiations in some remote location away from their respective headquarters and normal schedules, an environment that clearly indicates that talks cannot go on indefinitely. Similarly, you and your partner might agree to meet at a resort hotel over the weekend to close the sales deal. Of course, having set a deadline by mutual agreement, the parties always have it within their power to extend the deadline if the talks appear promising to both. However, if you yield too easily to changing deadlines, deadlines lose their potency as deal closers.

Second, one side may unilaterally declare a deadline after which time it will cease to negotiate. Thus visiting business negotiators will often inform the other side of their travel schedules and the dates when they will have to leave the country to catch their scheduled flight home. Some negotiators, like car salespeople, often use delays as a way to wear you down in hopes that your desire to get on with your life will cause you to accept a less than favorable deal. One way to counter this tactic is with a self-imposed deadline. For instance, the next time you set out to buy a new car, tell the salesperson at the outset that you only have an hour before you have to get back to work. That tactic may get you to the price you want a lot quicker than usual. In order to give a unilaterally imposed deadline greater force, one party often couples it with a sanction. For example, professional sports team owners may link a declared deadline with the threat of a lockout for the players if no contract is signed—a tactic that may result not only in the loss of the season, which means no ticket sales for the owners, but also (and perhaps more painfully for the players) in no salaries for a whole year.

Finally, an external party or force, over which the negotiators appear to have no control, may impose a negotiation deadline or create a condition that makes a continuation of negotiation difficult or impossible. The power of this type of deadline is that the parties are presumed to have no ability to alter it. For example, the Uruguay Round of international trade negotiations among nearly 150 nations, which ultimately led to a radical change in the world's trade regime, began in 1986 and dragged on for seven

years without result. Ultimately, in 1993, because the US government's negotiating authority from Congress was about to expire, the conference leadership set deadlines to drive through agreements, constantly reminding the delegates that the opportunity to negotiate new international trade rules would soon vanish, perhaps forever. The trade negotiators ultimately struck a deal that led to the creation of the World Trade Organization. Without the deadline, in effect set by the US Congress, they would probably still be talking today. You might consider engaging in a similar type of deadline setting in order to close deals that are important to you. For example, suppose that you are chairing a community task force to formulate planning recommendations for submission to the town council by the end of the month. Rather than meeting in your home one last time in an effort to finalize your report, make arrangements to hold your meeting in one of the town buildings that closes at 9 p.m. and make everybody who attends know that a cop will throw you all out of the building at nine on the dot.

On the other hand, the deadline you set for negotiations should provide for a reasonable amount of time to allow the negotiators to accomplish their task. Research has revealed that although deadlines can be useful in relatively straightforward talks, time limits on more complex negotiations may prevent negotiators from achieving stable, long-lasting agreements that satisfy the parties' interests.¹

Kick the Can down the Road

In some negotiations, not all issues have to be decided immediately in order to reach agreement. If you want to close the deal before the end of the tax year, you and your partner might agree on the purchase of all partnership assets except for the vacant lot, which will be the subject of a separate negotiation to be completed by a specific date. Similarly, if your town planning task force at its final meeting is still divided on how to upgrade the small park in front of the courthouse but has reached agreement on all other issues, you might bring closure to the exercise by proposing that the group's report say that plans for the park will be the subject of a separate recommendation to be prepared by a special task force subcommittee and submitted to the town council at a specified later date.

Generally, it's better to kick marginal, rather than essential, issues down the road. Making an agreement that merely defers a decision on key issues between parties is an illusory deal, merely an agreement to negotiate, not closure in any real sense. For example, the 1993 Oslo Accords between the Israelis and the Palestinians, while recognizing the Palestinian right

to self-govern, left undecided all the principal issues in dispute, including boundaries, the status of Jerusalem, and the right of Palestinians to return to their previous homes. Twenty years later, the two sides are still chasing those issues down the road.

Invite a Friend

The intervention of an influential third person in the negotiation can often help the parties arrive at an agreement. As we saw in Chapter 13, a mediator can assist disputing parties to resolve their differences when they are unable to do so alone. George Mitchell's mediation in the talks between Catholic and Protestant warring parties in Northern Ireland was crucial in bringing peace to that troubled land. A third person often has important resources, skills, and networks that can help the parties close their deal; however, that person does not need to participate throughout the entire negotiation the way Mitchell did in Northern Ireland. If the parties are stuck on an issue that prevents complete agreement, the intervention, even late in the negotiations, of the right person with the right skills and relations with the parties may help them overcome final obstacles to agreement. So if you and your partner have a trusted lawyer, business consultant, or friend, ask your partner whether that person's presence in the negotiation would be helpful at the meeting you have scheduled to talk about valuing that vacant lot. And if your planning task force is hung up about what to do with that small park in front of the courthouse, you might ask a skilled professional facilitator to design and conduct your final meeting at the town hall.

Ask an Expert

Negotiators stymied over a difficult technical issue can sometimes reach closure by agreeing to refer the issue to another person for a decision or recommendation. For example, in the 1979 Camp David negotiations between Egypt and Israel, a final stumbling block to a settlement was the status of Taba, a piece of land in the Sinai Peninsula to which both countries made historical claims. Instead of trying to thrash out the issue at the negotiating table, an exercise that would have delayed a peace treaty indefinitely, both sides agreed to sign the treaty but to refer the Taba matter to an arbitration tribunal of international lawyers for a decision on which country had legal rights to the land. That tribunal ultimately decided that Taba belonged to Egypt, and both countries accepted this decision as per their arbitration agreement. The 1995 Dayton Accords ending the Balkan War adopted a similar solution to settle a disputed area's boundaries.

In a similar vein, you and your partner might agree to submit the valuation of the vacant lot to one or more expert appraisers. The two of you may agree to abide by the appraiser's decision or merely consider it a recommendation to use as a basis for your final negotiation. If nothing else, an expert valuation report may serve to deflate extreme positions by the parties. In the same vein, you might try to settle the division within your task force over what to do with the small courthouse park by inviting an experienced landscape architect to give his or her opinion on the matter at the group's final meeting.

Closing Is Not the End

Although closing a deal may give you momentary satisfaction, remember that the purpose of your negotiation is not just reaching agreement but, more important, securing desired behavior from the other side. Closing a deal is only Phase I of the endgame. Phase II, often the more difficult part, is implementing what you have agreed. Implementation is the subject of this book's final two chapters.

Part IV

After You Close the Deal

Implementing Your Deals

At last, the deal is done! After 18 months of negotiation, eight trips across the country, and countless meetings, you've finally signed a contract creating a joint venture for your small start-up firm with a Silicon Valley outfit to manufacture imaging devices using your technology and their engineering. The contract is clear and precise. It covers all the contingencies and has strong enforcement mechanisms. You've given your little company a solid foundation for a profitable new business. As you put the contract in your filing cabinet, a question dawns on you: Now what? It will take more than a well-written contract to produce those devices on time, under budget, and up to specifications. To do that, your two companies will need to develop an effective working relationship. So how do you how to turn that contract you just signed into a relationship that works?

The ultimate challenge in any negotiation is not just "getting to yes" but actually making the deal happen. Too often, negotiators focus all their efforts on closing the deal but give short shrift to Phase II of the negotiation endgame: implementation. As a result, from high-level diplomacy to neighborhood relations, the landscape is littered with deals that somehow never get implemented. To mention just one, the world is still waiting for the permanent state of peace between Israel and the Palestinians promised by the Oslo Accords signed in 1993. For another, you may still be hoping for repayment of the thousand dollars you lent to your cousin five years ago. An important question for all negotiators is therefore how to increase the chances that the deals they make will actually get implemented. This chapter tries to answer that question.

Reasons for Implementation Failure

Before you can answer the implementation question, however, it's important to understand why the deals we make sometimes never get implemented. There are five common causes of implementation failure.

Flawed Agreements

One factor that complicates and sometimes thwarts implementation is the imperfect nature of the agreements people negotiate. For example, you lend your needy cousin a thousand dollars that he agrees to pay back within a year “when he gets back in his feet.” Does that agreement require him to pay you back in a year no matter what, or does it merely require him to pay you back in a year if he is financially able? And what does “gets back on his feet” mean, anyway? Is there a specific standard or metric you can use to determine when he has actually gotten back on his feet? The agreement with your cousin is imperfect because its meaning is not clear. It can be interpreted by each party in different ways to advance each one’s own particular interests. So maybe you should have spent more time discussing all the conditions governing your loan. Even better, you should have embodied your agreement in a written document. If that is not enough to achieve a clear agreement, perhaps you should have hired a lawyer to write one for you. Each of those steps might help, but each one requires you and your cousin to devote additional resources to the task. In the end, achieving a “perfect agreement,” in the sense that it will be understood by everyone who sees it in exactly the same way, is probably a fruitless endeavor.

The goal of any agreement is to express the full meaning of the parties’ understanding concerning their proposed transaction; however, the parties are inherently incapable of attaining this goal since, without perfect foresight, they cannot predict all the events that may affect their transaction in the future, and, in any case, the transaction costs of making agreements limit the resources they are willing to devote to the contracting process. In many transactions, the problem of accurately negotiating and articulating the parties’ intent is particularly difficult because of their differing cultures, business practices, ideologies, backgrounds, and histories—factors that often impede a true common understanding and inhibit the development of a working relationship. Even if the parties had perfect foresight and unlimited resources to draft a perfect contract, they have no assurance that people charged with its implementation will interpret their contract agreement exactly as they intended. But just because a perfect agreement is probably not attainable doesn’t mean that you shouldn’t try to express the agreements you negotiate in as clear and understandable a way as possible.

Changing Circumstances

An agreement is a prediction about the future. Embedded in that loan you made to your cousin was a prediction that he would pay you back in one

year, the date you both agreed on. Change, of course, is the one constant in life. Deal makers' predictions at a negotiating table inevitably confront the realities of change later on. Changes in circumstances may make the parties unable or unwilling to act as their contract had predicted they would. So the fact that your cousin lost his job six months ago is a change in circumstances that may make him feel justified in not repaying the loan on the date promised. After all, didn't you condition repayment on his getting "back on his feet"?

The Parties' Distrust and Deception

Implementing an agreement requires a party to have a certain amount of trust that the other side will do what it agreed. Lending your cousin a thousand dollars meant that you had a degree of trust in your cousin's willingness to pay you back when the time came. Paying an advance to the contractor renovating your kitchen meant that you had a degree of trust that he would do the work and not simply run off with the money. In many cases, however, agreements don't get implemented because the parties don't trust one another to do what they had agreed. Thus you may make an agreement with a contractor to renovate your kitchen but refuse to pay an advance because you don't trust him to do the job. The contractor in turn won't get around to actually doing the work because he doesn't trust you to pay him. The failure of the Israelis and the Palestinians to implement the Oslo agreement is attributable largely to each side's lack of trust that the other will do what it had agreed. The same dynamic between warring parties explains the failure of countless painfully negotiated peace agreements to actually end ethnic and civil wars around the world.

Beyond distrust, parties may enter into negotiations or even make agreements they do not intend to keep. For them, negotiation is merely a means to deceive another party in order to achieve an end. Thus your competitor may begin negotiations to buy your business with intentions of learning your business secrets but with no intention of ever making a purchase, and one side in a civil war may enter into peace negotiations in order to gain time to rest its troops and rearm. And what about that Silicon Valley firm you just made a deal with? Once they learn your technology, will they want to keep you as a joint venture partner? Your cousin could also have been engaged in deception. When he asked for that "loan" of a thousand dollars five years ago, did he really intend to pay you back?

Lack of Resources

The implementation of negotiated agreements usually requires resources: the right people, enough money, sufficient time, and adequate technology. Despite the parties' best intentions, sufficient resources may not be available to them when the time comes to implement their negotiated agreement. Thus your contractor may not be able to finish your kitchen on time because his cabinet maker quit in the middle of the job, and your cousin can't pay you back as promised because he lost his job. The same phenomenon also holds true in international geopolitics. In the arena of armed conflict, one study found that the principal reason for failure to implement agreements ending ethnic and civil wars was the lack of resources, which often had been promised by foreign countries in order to encourage the warring parties to make peace.¹

Failure by the Parties to Plan for Implementation

In their quest for an agreement, negotiators sometimes neglect to plan adequately and systematically for the implementation of the agreements they negotiate. Deal implementation doesn't just happen magically. The negotiators have to discuss and plan for implementation in a systematic way. Surprisingly, many negotiators fail to push hard on implementation questions, either because they haven't thought carefully about them or because the organizations they work for inadvertently encourage them not to. For example, General Motors, like many other companies, created special teams to negotiate joint ventures with foreign partners. Once it landed a deal, the team would move on to another negotiation leaving other executives the task of figuring out, often with great difficulty, how to implement the new joint venture—a process that some managers called “throwing the deal over the wall.” GM's negotiation methods contributed to the problem in two ways. First, it gave negotiators a strong incentive to ignore or downplay potential implementation problems that might delay or obstruct a deal. Second, it effectively denied those teams responsible for implementing the deal the benefit of the knowledge gained about and relationships built with foreign partners during negotiations.

Steps to Effective Deal Implementation

An understanding of the reasons why parties fail to implement the deals they make suggests the following steps that you should consider to increase the chances that the agreements you negotiate will actually happen.

Plan Methodically

It is essential for the negotiation to address implementation problems in a methodical way. As part of your preparation, develop a list of questions about how the deal will be done and prepare a tentative implementation plan specifying who does what, when, and how. Then be sure to address them with your counterparts at the negotiating table in a systematic way. If you are fearful that pressing too hard on implementation issues may cause the other side to walk away from the deal, then perhaps you should let that happen since the failure to implement a negotiated agreement is usually more costly than ending negotiations without a deal. If agents or employees are negotiating on your behalf, make sure they have strong incentives to plan for effective implementation of the deals they make for you. Thus employees who negotiate for your company should be paid a bonus not on the number of deals they sign but on the successful implementation of the deals they make.

Build Relationships

Previous chapters have spoken of the importance of relationships in negotiation. They are also vital in deal implementation. A relationship is a connection that usually implies a degree of trust between the parties. Such trust is vital in making a deal work since, as the Oslo Accords experience has shown, implementation always involves risks for somebody. Trust in the other side, based on a sound relationship, helps reduce perceived risks.

Relationship building as part of the implementation process is founded on five important building blocks: (1) mutual knowledge, (2) two-way communication, (3) strong commitment, (4) reliability, and (5) mutual respect.

Mutual knowledge. One essential step in relationship building is to ensure that the parties are well acquainted. For companies planning a joint venture or a merger, a retreat in a relaxed setting might allow the two sides' executives to discuss their respective organizational visions and cultures. Joint training can also be effective. When the African National Congress and the South African government sought détente, the leaders of the former combatants came together for seminars on negotiation and peace building.

Two-way communication. Establishing good communication is crucial for deal implementation. Too often negotiators assume that communication between the two sides will happen naturally once they begin working together. Instead they should set up a schedule of regular meetings to

review progress. Although a working relationship is organic and evolves over time, this does not mean that the two sides should not consciously shape it. In order to guide that evolution, the two companies should set a regular meeting schedule and adhere to it rigorously rather than just meet “from time to time” or “when the need arises.”

And in international arrangements, it is crucial to minimize any language barrier that may exist between the parties. In one joint venture between an American and a French company, the two sides, which had some knowledge of the other’s language, nevertheless agreed that they would use interpreters. Meetings were twice as long as normal, but the investment paid off in better communication.

Strong commitment. A good working relationship is one in which the two sides are committed to each other and to their relationship. Commitment requires more than just signatures and handshakes, however. Your partner will judge whether your commitment is genuine based on your behavior over the course of the relationship. To test the other side’s degree of commitment, try structuring your transactions to require increasing levels of effort, capital, and cooperation. For example, your deal to manufacture imaging devices might require the other side to increase its capital in the venture once the first batch of devices is successful in the market.

Reliability. An important basis for trust, reliability has two dimensions. First, a partner’s conduct should be predictable. Second, the partner should honor promises and commitments to the other side. A business partner who submits reports two months late, fails to show up for meetings on time, and responds slowly to emails will soon be viewed as unreliable. That judgment will inevitably become an obstacle to developing a good working relationship and may eventually lead to the abandonment of the deal. On the other hand, if your Silicon Valley partner judges you to be reliable, it will quite naturally turn to you to develop other business ideas.

Mutual respect. Creating respect in a relationship begins with the principle of equality between parties—the sense that each side recognizes that the other brings something valuable to their common enterprise and that both sides deserve to be heard. Like communication, respect is a two-way street. Too often the partner with superior technology in a joint venture will attempt to dominate the relationship by lauding its superior knowledge and belittling the other side’s ability and experience. To say—as one US executive did to a partner from a developing country—“Let me do the thinking for both of us” only undermines relations. Such statements hardly signal respect. One concrete way of showing respect is to genuinely consult your contractual partners. Even though you think you may know more about the deal than they do, they may surprise you with valuable information and insights to improve it.

Closely Involve Negotiators in Implementation

Too often companies signing a long-term contract assume that a solid working relationship will develop automatically. During negotiations, both sides gain an enormous amount of information about each other and the deal. In the process, they may very well form a positive relationship. To mobilize these valuable assets, the negotiators themselves should play a role in implementing the transaction, at least at the start.

Work to Keep Leaders Involved and Interested in the Relationship

Many deals are formed with the active involvement of the organizations' leaders whose personal relationship becomes a foundation for the relationship between the two organizations. After the contract is signed, it's important to find ways to maintain management's visible interest. Try scheduling periodic meetings for leaders to review together the evolution of the relationship between their companies. For example, your deal to produce imaging devices might call for semiannual meetings between the heads of your two firms, alternating between San Jose, California, and your hometown of Cambridge, Massachusetts.

Educate Your Organization about the Deal

Don't assume that others in your organization will become as enthusiastic and knowledgeable about the deal as the negotiators are. Indeed others may view involvement with another company—whose culture and business practices they may not understand—as a burden, even a threat. Inevitably, the implementation of any deal will encounter difficulties, such as delivery delays, failed technologies, and miscommunications. Both sides will be better able to overcome these problems if their employees know and trust one another than if they view the other side with suspicion and hostility. To overcome resistance within your organization, deal advocates should plan and participate in educational efforts. These might include arranging meetings, retreats, seminars, site visits, internal memoranda, and newsletters between employees of the two firms. Remember—organizational relationships begin with personal relationships.

Meticulously Plan and Oversee Initial Joint Activities

Just as opening moves in a negotiation can either facilitate or hinder the steps that follow, initial joint activities between contractual partners can either ease or obstruct the creation of a productive working relationship. Consequently, the two sides should carefully define and supervise the first moves in their relationship. Don't assume that everything will flow smoothly from the contract terms. It may be better to start small, with actions that are sure to succeed, before moving on to more ambitious projects. So before beginning full-scale production of the imaging devices, you will certainly first want to make and test a prototype. In the settlement of armed conflict between nations and warring groups, such actions are known as "confidence-building measures." They are seen as key factors in developing trust between former adversaries. Confidence-building measures are equally important in creating effective working relations between people, a necessary element for the implementation of the agreements they negotiate.

Involve a Third Person

Third persons can help parties implement the agreements they make. As we saw in Chapter 13, third persons may help resolve conflicts, provide needed resources, and verify that both sides are holding up their end of the bargain. For example, the United States, which helped broker a treaty between Israel and Egypt in 1979, has been vital to maintaining peace between the two countries ever since. So think about involving an appropriate outsider in the next tough deal you negotiate. For example, that thousand-dollar loan you made to your cousin might have been repaid by now if a respected uncle had been called in to witness your agreement.

Consider Renegotiation

When a deal implementation fails because of a flawed agreement, changed circumstances, lack of resources, or any of the other reasons that prevent negotiated agreements from becoming a reality, the parties have three basic choices: to abandon the deal, to sue in the courts or in arbitration, or to renegotiate their agreement. In many instances, the parties choose renegotiation, a subject that we consider in the next chapter.

On Second Thought

Redoing the Deal

Remember that big sales contract you negotiated last fall, the one that got you a fat year-end bonus? Well, your manufacturing department has just told you that delivery will be two months late. It's your job to persuade your customer to accept a new date without canceling the deal. And that's not all. That contract to put a new roof on your house? Halfway through the job, the roofer is asking for a meeting to revise the price due to a sudden large increase in the cost of building supplies.

Life Struggling against Form

A major challenge in negotiating any agreement is not just "getting to yes" but also staying there. Despite lengthy discussions, skilled drafting, and strict enforcement mechanisms, parties to solemnly signed and sealed contracts often find themselves later returning to the bargaining table to renegotiate their agreements. The renegotiation of existing agreements seems a constant in all areas of life. Economic recessions, natural disasters, or significant changes in prices invariably lead to "revisions," "restructurings," and "workouts" of thousands of business arrangements made in better times. Illness, job loss, divorces, and other personal tragedies often force us to renegotiate existing agreements we have made with creditors, neighbors, and relatives. In today's world characterized by constant change, we all seem to be in the position, at one time or another, of seeking to either alleviate a bargain that has become onerous or hold on to a good deal that the other side wants to change. The examples are so numerous that renegotiating existing agreements seems as basic to human relations as is negotiating new agreements for the first time.

More than seventy years ago, Karl Llewellyn, a noted American legal scholar, captured the tension between negotiated agreements and subsequent reality in the conclusion of his thoughtful essay on the way contracts actually work in practice: “One turns from the contemplation of the work of contract as from the experience of Greek tragedy. Life struggling against form . . .”¹ Renegotiation is one of the most important theaters in which parties to existing agreements play out the continuing tragic struggle of life against form.

Negotiations with a Difference

A renegotiation is a negotiation in that the parties are communicating with each other in an effort to reach an agreement on a desired course of action that will advance their individual interests. However, you also need to be aware that renegotiations are negotiations with key differences. As a result, the dynamics and techniques of renegotiating an existing agreement differ significantly from hammering out a new deal from scratch for several reasons.

First, in a renegotiation, you and your counterpart know much more about each other and about your transaction than you did when you negotiated your original agreement. That knowledge is bound to influence your strategies and tactics in a renegotiation. For instance, your company’s failure to deliver on time will likely make a new customer question everything that comes out of your mouth when you’re renegotiating your sales contract. On the other hand, a similar renegotiation with an old, satisfied customer will likely go more smoothly because years of on-time deliveries will probably overshadow this first failed delivery date.

Second, in many cases, it’s more costly to abandon a renegotiation than to walk away from an initial negotiation. Where are you going to find another roofer on short notice to replace the guy asking for a price increase? Do you really want to go through the time-consuming process of searching for another roofer with comparable qualifications and recommendations? And as for starting a lawsuit with its attendant costs, delays, and uncertainties—forget about it!

Third, renegotiations often happen against a backdrop of threats and counterthreats of lawsuits, contract cancellations, and the loss of future business. Unlike talks surrounding a new deal, which are often full of optimism and goodwill, renegotiations usually begin with both parties’ disappointed expectations. If negotiation is about sharing expected benefits, renegotiation is almost always about allocating a loss. Because of the psychological consequences of a request to renegotiate an existing deal,

renegotiations, when handled poorly, are likely to exacerbate bad feelings and mistrust and may be the last step before a lawsuit. This final chapter on negotiating life will show you how to reduce the risk of renegotiation and how to prepare for and manage such talks when they can't be avoided.

Renegotiations generally are triggered for the same reasons, discussed in the previous chapter, that prevent the implementation of agreements: (1) a flawed contract, (2) changed circumstances, (3) the parties' distrust or deception, (4) lack of resources, and (5) inadequate provision for implementation. Rather than abandon their negotiated agreement or seek legal redress in the courts, the parties have decided instead to try to salvage their deal by renegotiating its provisions, usually because renegotiation appears to outweigh, at least for the time being, the relative costs and benefits of the other two options. For example, changes in circumstances are a major cause for renegotiations. A sudden fall in commodity prices, the development of a new technology, or unexpected increases in energy costs can force everyone back to the negotiating table. A change in circumstances usually increases the deal's costs or reduces its benefits for one side. When that party concludes that the cost of complying with a contract is greater than the cost of abandonment, they usually reject the deal or demand renegotiation. That is precisely what your roofer is doing when he asks for a price revision because of unexpected increases in the price of building materials.

The risk of renegotiation is always present in any deal you make. In thinking about ways to minimize that risk, you need to ask two basic questions. First, what should I do during the initial negotiation to reduce the risk of renegotiations later on? Second, how should I minimize renegotiation costs once I'm actually engaged in it? Here are some suggestions on how to handle both situations.

What to Do before the Deal Breaks Down

Foster a Relationship with the Other Side

Whenever one side fails to meet its contractual obligations, renegotiation is more likely to succeed if the parties have a strong relationship. Ideally, the aggrieved party will value long-term relations more than speculative gains from a claim or lawsuit for breach of contract. It's for that reason that your longtime satisfied customer will be more willing to renegotiate contract changes, while a new customer may be more skittish about redoing your deal. Similarly, a bank will be more willing to renegotiate its loan to a business that has fallen on hard times when the prospect of future

business activity with the debtor is likely. An individual note holder of the same debtor, on the other hand, will generally be more resistant to renegotiation, as he or she tends to lack opportunities for a profitable future business relationship.

Take the Necessary Time

Experienced negotiators know that building a strong relationship takes time. While speedy deal making may seem efficient, remember that any time saved during contract negotiation may be more than offset by the time you'll spend redoing the deal later on. For example, in one case that attracted significant media attention in the mid-1990s, the fact that Enron, a major American energy company, negotiated a memorandum of understanding with the Maharashtra state government in India to build a \$2 billion power plant after just three days of discussions during Enron's first visit to the Indian state made the subsequent power purchase agreement vulnerable to challenges from many quarters. Ultimately, the two sides were only able to resolve their conflict through a lengthy and expensive renegotiation that changed important terms in the twenty-year contract by which Enron's project was to sell electricity to the Maharashtra State public utility.² In effect, Enron had made a contract with India but had no real relationship with that country. Similarly, when you negotiate contracts in your job, always ask, "What kind of relationship have I established with the other side?" Remember, a signed contract is not the same as a working relationship, something that is essential to most deals.

Provide for a Revision or Review Process

Traditionally, negotiators have dealt with the risk of change by writing detailed contracts that attempt to foresee all possible eventualities. Rather than viewing a long-term transaction as frozen in the detailed provisions of a lengthy document, try viewing the deal *organically*, as a *continuing negotiation* in which you seek to adjust your relationship with the other side to your rapidly changing work environment. Accordingly, your long-term contract might provide that, at specified times or upon specified events, you will renegotiate or at least review certain provisions. Through this approach, you confront the problem of contract violations in advance and establish a clear framework for renegotiation. So your long-term supply contract might provide that every six months you and the other side will meet to review how things are going.

Consider a Role for Mediation in the Deal

Whether they're called mediators, conciliators, or advisers, third parties can assist in renegotiation by building and preserving working relations and resolving disputes without the need for litigation. Consequently, negotiators should consider stipulating in their contract that parties must attempt mediation for a period of time before filing a lawsuit. For example, your partnership agreement establishing a business with your old college roommate might require you both to engage in mediation for a minimum period of time concerning any disputes that might arise in your relationship before either of you can begin a lawsuit against the other.

What to Do after the Deal Breaks Down

Even with these precautions in place, there will be times when one side demands a renegotiation of a deal. Here are some guidelines on how to proceed.

Avoid Hostility

It's tempting to respond to a demand for renegotiations with hostile, belligerent, or moralistic objections. Such responses are rarely effective, however, since the other side typically already will have determined that its vital interests require changes to the deal, and they will have equally moralistic reasons to justify redoing your original agreement. Only by dealing with those interests can the parties resolve their conflict. Remember, what you communicate in any renegotiation should serve the purpose of helping you attain your goals. Calling your cousin who has failed to repay your loan a "deadbeat" is hardly likely to achieve that end. In your cousin's view, the fact that he has lost his job and is having a hard time providing for his family is ample justification for not paying as originally agreed. Your hostile words or moral lectures will merely make finding a solution to your mutual problem more difficult than it already is.

Weigh Your Claim against the Value of the Relationship

Willingness to renegotiate a contract typically corresponds to the value one side attaches to a potential future relationship with the other side. If you feel the relationship is worth more than your claim for breach of contract, you will ordinarily be willing to engage in renegotiation. If, on the other

hand, you conclude that your claim is worth more than the benefits from a continuing relationship, you may insist on your contractual rights to the point of resorting to litigation.

You may not be able to accurately evaluate the worth of a claim or the value of a renegotiated contract without first engaging in discussions with the other side. Moreover, satisfaction of a claim through litigation is almost always a lengthy and expensive process, further motivation for choosing to renegotiate.

Create Value in the Renegotiation

When your counterparts demand renegotiation, you may expect that any advantage they gain will guarantee a loss for you. An unwilling participant in a renegotiation is likely to be intransigent, quibbling over the smallest issues, voicing recriminations, and generally blocking proposed changes. Naturally, such talks are unlikely to lead to joint gains. The challenge for both sides is to create an atmosphere in which problem solving can take place. Even if you feel forced into a corner, approach the renegotiation as an opportunity to raise new issues that may bring you some advantage. For example, you might use the renegotiations with the roofer to get him to give you a cut-rate deal for putting a new roof on your garage or stretch out the period for payment under the original contract.

Fully Evaluate the Costs of Failure

In many cases, the alternative to a successful renegotiation is litigation. As you approach the renegotiation process, you and your counterpart must carefully evaluate the risks of later facing each other as defendant and plaintiff in a law suit. Doing so will allow you to accurately evaluate the worth of various proposals. Notably, the side demanding renegotiation is likely to undervalue the risks and costs of litigation, while the party facing the demand will probably overvalue a lawsuit's benefits. Therefore, it's important for each side to ensure that the other has a realistic evaluation of alternatives to a successful renegotiation. So if the other side meets your request to renegotiate with threats of a lawsuit, you should be prepared to calmly remind them of the costs, delays, and uncertainties that such a course of action entails.

Involve All Necessary Parties

A successful renegotiation may require the participation of not only those who signed the original agreement but those who later gained an interest in the transaction, such as labor unions, creditors, suppliers, and government agencies. If, in troubled times, you and your partner want to renegotiate your bank loan for building a new office that is still only partially completed, you'll never reach a new agreement without input from the unpaid construction contractor whose lien on the property could block refinancing. Similarly, say that you and your sister bought a vacation cabin in the north woods years ago to which each of you would retreat whenever you wished, and, now that you both have families, you want to agree on a definite schedule for when each of you would have exclusive use of the place. It may be a good idea to involve your spouses, and perhaps even your kids, in the renegotiation of your original deal with your sister so that you can find a solution both families can live with.

Choose the Right Frame, Forum, or Process

Renegotiations often emerge from a crisis suffused with threats and high emotions. Choosing the appropriate frame, forum, or process may help mollify aggrieved parties in an appropriate way. An earlier chapter spoke about the importance of frames in reaching agreement. Sometimes the frame or the terminology used to describe or characterize renegotiation may influence its success. Rather than using the label "renegotiation," which conjures up negative images of a drastically rewritten contract, parties might call the process a "review," "restructuring," "rescheduling," or merely a "contract clarification." Calling a renegotiation a "request for waiver" is yet another means of respecting the agreement while giving the burdened party relief, if only temporarily, from contractual obligations.

A case of renegotiation from India illustrates the importance of creating the right forum and process. In 1995, a new government came into power in the Indian state of Maharashtra and cancelled its twenty-year power purchase agreement with the Dabhol Power Company, a joint venture formed by Enron, GE, and Bechtel. Claiming that the deal was improper and even illegal, the government declared publicly that it would not renegotiate. As the government came to recognize the costs of its actions and its lack of other options to secure power, it began to soften its position. But if renegotiations were to take place, the parties would need a process that would preserve the government's dignity and prestige. Ultimately, the government chose to appoint a "review panel" consisting of disinterested energy

experts to reexamine the project. The panel met with Dabhol representatives and project critics and then submitted a proposal to the government containing the terms of a renegotiated electricity supply agreement that both sides accepted. The use of an expert panel to conduct what amounted to a renegotiation, in lieu of face-to-face discussions between the two sides, served to protect governmental dignity. The panel's independent status also assured the public that the renegotiated agreement protected Indian interests.³

Closer to home, rather than call your sister on the phone to hammer out a schedule for the use of that vacation cabin, why don't you and your spouse take your sister and her husband out to dinner to talk about the matter?

Use a Mediator

Amid the stress and ill will often generated by a renegotiation, a mediator, or other neutral third person, may help the parties overcome obstacles to a satisfactory renegotiated agreement. A mediator might contribute by designing and managing the process in a way that creates maximum opportunity to create value, by assisting with communications in a way that facilitates positive results, and by suggesting substantive solutions to the problems parties encounter during the course of their renegotiation.

Renegotiating Life

Many people view a contract renegotiation negatively. For them, it is an aberration, a disreputable practice that evokes images of broken promises, disappointed expectations, and bargains made but not kept. From the viewpoint of anyone facing demands for an unwanted renegotiation, such a reaction is normal and understandable. But from the vantage of society, renegotiation plays a constructive role in human relations at all levels. If Karl Llewellyn is correct that the work of agreements in society is a struggle of life against form, the function of renegotiation in the social order is to mediate that struggle, to allow life and form to adjust to one another over the long term at the least cost.

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