

15

R. Fisher & W. Ury, Getting to Yes
Negotiating Agreement Without Giving In
pp. 3-14 (1981)

1 | Don't Bargain Over Positions

Whether a negotiation concerns a contract, a family quarrel, or a peace settlement among nations, people routinely engage in positional bargaining. Each side takes a position, argues for it, and makes concessions to reach a compromise. The classic example of this negotiating minuet is the haggling that takes place between a customer and the proprietor of a secondhand store:

CUSTOMER

How much do you want for this brass dish?

Oh come on, it's dented. I'll give you \$15.

Well, I could go to \$20, but I would never pay anything like \$75. Quote me a realistic price.

SHOPKEEPER

That is a beautiful antique, isn't it? I guess I could let it go for \$75.

Really! I might consider a serious offer, but \$15 certainly isn't serious.

You drive a hard bargain, young lady. \$60 cash, right now.

202

4

The Problem

CUSTOMER
\$25.

SHOPKEEPER

It cost me a great deal more than that. Make me a *serious* offer.

\$37.50. That's the highest I will go.

Have you noticed the engraving on that dish? Next year pieces like that will be worth twice what you pay today.

And so it goes, on and on. Perhaps they will reach agreement; perhaps not.

Any method of negotiation may be fairly judged by three criteria: It should produce a wise agreement if agreement is possible. It should be efficient. And it should improve or at least not damage the relationship between the parties. (A wise agreement can be defined as one which meets the legitimate interests of each side to the extent possible, resolves conflicting interests fairly, is durable, and takes community interests into account.)

The most common form of negotiation, illustrated by the above example, depends upon successively taking — and then giving up — a sequence of positions.

Taking positions, as the customer and storekeeper do, serves some useful purposes in a negotiation. It tells the other side what you want; it provides an anchor in an uncertain and pressured situation; and it can eventually produce the terms of an acceptable agreement. But those purposes can be served in other ways. And positional bargaining fails to meet the basic criteria of producing a wise agreement, efficiently and amicably.

Don't Bargain Over Positions

5

Arguing over positions produces unwise agreements

When negotiators bargain over positions, they tend to lock themselves into those positions. The more you clarify your position and defend it against attack, the more committed you become to it. The more you try to convince the other side of the impossibility of changing your opening position, the more difficult it becomes to do so. Your ego becomes identified with your position. You now have a new interest in "saving face" — in reconciling future action with past positions — making it less and less likely that any agreement will wisely reconcile the parties' original interests.

The danger that positional bargaining will impede a negotiation was well illustrated by the breakdown of the talks under President Kennedy for a comprehensive ban on nuclear testing. A critical question arose: How many on-site inspections per year should the Soviet Union and the United States be permitted to make within the other's territory to investigate suspicious seismic events? The Soviet Union finally agreed to three inspections. The United States insisted on no less than ten. And there the talks broke down — over positions — despite the fact that no one understood whether an "inspection" would involve one person looking around for one day, or a hundred people prying indiscriminately for a month.¹ The parties had made little attempt to design an inspection procedure that would reconcile the United States's interest in verification with the desire of both countries for minimal intrusion.

¹As more attention is paid to positions, less attention is devoted to meeting the underlying concerns of the parties. Agreement becomes less likely. Any agreement reached may reflect a mechanical splitting of the difference between final positions rather than a solution carefully crafted to meet the legitimate interests of the parties. The result is frequently an agreement less satisfactory to each side than it could have been.

Arguing over positions is inefficient

The standard method of negotiation may produce either agreement, as with the price of a brass dish, or breakdown, as with the number of on-site inspections. In either event, the process takes a lot of time.

Bargaining over positions creates incentives that stall settlement. In positional bargaining you try to improve the chance that any settlement reached is favorable to you by starting with an extreme position, by stubbornly holding to it, by deceiving the other party as to your true views, and by making small concessions only as necessary to keep the negotiation going. The same is true for the other side. Each of those factors tends to interfere with reaching a settlement promptly. The more extreme the opening positions and the smaller the concessions, the more time and effort it will take to discover whether or not agreement is possible.

The standard minuet also requires a large number of individual decisions as each negotiator decides what to offer, what to reject, and how much of a concession to make. Decision-making is difficult and time-consuming at best. Where each decision not only involves yielding to the other side but will likely produce pressure to yield further, a negotiator has little incentive to move quickly. Dragging one's feet, threatening to walk out, stonewalling, and other such tactics become commonplace. They all increase the time and costs of reaching agreement as well as the risk that no agreement will be reached at all.

Arguing over positions endangers an ongoing relationship

Positional bargaining becomes a contest of will. Each negotiator asserts what he will and won't do. The task of jointly devising an acceptable solution tends to become a battle. Each side tries through sheer will power to force the other to change its position. "I'm not going to give in. If you want to go to

Don't Bargain Over Positions

7

the movies with me, it's *The Maltese Falcon* or nothing." Anger and resentment often result as one side sees itself bending to the rigid will of the other while its own legitimate concerns go unaddressed. Positional bargaining thus strains and sometimes shatters the relationship between the parties. Commercial enterprises that have been doing business together for years may part company. Neighbors may stop speaking to each other. Bitter feelings generated by one such encounter may last a lifetime.

When there are many parties, positional bargaining is even worse

Although it is convenient to discuss negotiation in terms of two persons, you and "the other side," in fact, almost every negotiation involves more than two persons. Several different parties may sit at the table, or each side may have constituents, higher-ups, boards of directors, or committees with whom they must deal. The more people involved in a negotiation, the more serious the drawbacks to positional bargaining.

If some 150 countries are negotiating, as in various United Nations conferences, positional bargaining is next to impossible. It may take all to say yes, but only one to say no. Reciprocal concessions are difficult: to whom do you make a concession? Yet even thousands of bilateral deals would still fall short of a multilateral agreement. In such situations, positional bargaining leads to the formation of coalitions among parties whose shared interests are often more symbolic than substantive. At the United Nations, such coalitions produce negotiations between "the" North and "the" South, or between "the" East and "the" West. Because there are many members in a group, it becomes more difficult to develop a common position. What is worse, once they have painfully developed and agreed upon a position, it becomes much harder to change it. Altering a position proves equally difficult when additional

participants are higher authorities who, while absent from the table, must nevertheless give their approval.

Being nice is no answer

Many people recognize the high costs of hard positional bargaining, particularly on the parties and their relationship. They hope to avoid them by following a more gentle style of negotiation. Instead of seeing the other side as adversaries, they prefer to see them as friends. Rather than emphasizing a goal of victory, they emphasize the necessity of reaching agreement. In a soft negotiating game the standard moves are to make offers and concessions, to trust the other side, to be friendly, and to yield as necessary to avoid confrontation.

The following table illustrates two styles of positional bargaining, soft and hard. Most people see their choice of negotiating strategies as between these two styles. Looking at the table as presenting a choice, should you be a soft or a hard positional bargainer? Or should you perhaps follow a strategy somewhere in between?

The soft negotiating game emphasizes the importance of building and maintaining a relationship. Within families and among friends much negotiation takes place in this way. The process tends to be efficient, at least to the extent of producing results quickly. As each party competes with the other in being more generous and more forthcoming, an agreement becomes highly likely. But it may not be a wise one. The results may not be as tragic as in the O. Henry story about an impoverished couple in which the loving wife sells her hair in order to buy a handsome chain for her husband's watch, and the unknowing husband sells his watch in order to buy beautiful combs for his wife's hair. However, any negotiation primarily concerned with the relationship runs the risk of producing a sloppy agreement.

More seriously, pursuing a soft and friendly form of posi-

Don't Bargain Over Positions

9

PROBLEM**Positional Bargaining: Which Game Should You Play?****SOFT**

Participants are friends.
 The goal is agreement.
 Make concessions to cultivate the relationship.
 Be soft on the people and the problem.
 Trust others.
 Change your position easily.
 Make offers.
 Disclose your bottom line.
 Accept one-sided losses to reach agreement.
 Search for the single answer: the one *they* will accept.
 Insist on agreement.
 Try to avoid a contest of will.
 Yield to pressure.

HARD

Participants are adversaries.
 The goal is victory.
 Demand concessions as a condition of the relationship.
 Be hard on the problem and the people.
 Distrust others.
 Dig in to your position.
 Make threats.
 Mislead as to your bottom line.
 Demand one-sided gains as the price of agreement.
 Search for the single answer: the one *you* will accept.
 Insist on your position.
 Try to win a contest of will.
 Apply pressure.

tional bargaining makes you vulnerable to someone who plays a hard game of positional bargaining. In positional bargaining, a hard game dominates a soft one. If the hard bargainer insists on concessions and makes threats while the soft bargainer yields in order to avoid confrontation and insists on agreement, the negotiating game is biased in favor of the hard player. The process will produce an agreement, although it may not be a wise one. It will certainly be more favorable to the hard positional bargainer than to the soft one. If your re-

response to sustained, hard positional bargaining is soft positional bargaining, you will probably lose your shirt.

There is an alternative

If you do not like the choice between hard and soft positional bargaining, you can change the game.

The game of negotiation takes place at two levels. At one level, negotiation addresses the substance; at another, it focuses — usually implicitly — on the procedure for dealing with the substance. The first negotiation may concern your salary, the terms of a lease, or a price to be paid. The second negotiation concerns how you will negotiate the substantive question: by soft positional bargaining, by hard positional bargaining, or by some other method. This second negotiation is a game about a game — a "meta-game." Each move you make within a negotiation is not only a move that deals with rent, salary, or other substantive questions; it also helps structure the rules of the game you are playing. Your move may serve to keep the negotiations within an ongoing mode, or it may constitute a game-changing move.

This second negotiation by and large escapes notice because it seems to occur without conscious decision. Only when dealing with someone from another country, particularly someone with a markedly different cultural background, are you likely to see the necessity of establishing some accepted process for the substantive negotiations. But whether consciously or not, you are negotiating procedural rules with every move you make; even if those moves appear exclusively concerned with substance.

The answer to the question of whether to use soft positional bargaining or hard is "neither." Change the game. At the Harvard Negotiation Project we have been developing an alternative to positional bargaining: a method of negotiation explicitly designed to produce wise outcomes efficiently and

Don't Bargain Over Positions

11

amicably. This method, called *principled negotiation* or *negotiation on the merits*, can be boiled down to four basic points.

These four points define a straightforward method of negotiation that can be used under almost any circumstance. Each point deals with a basic element of negotiation, and suggests what you should do about it.

- People: Separate the people from the problem.
- Interests: Focus on interests, not positions.
- Options: Generate a variety of possibilities before deciding what to do.
- Criteria: Insist that the result be based on some objective standard.

The first point responds to the fact that human beings are not computers. We are creatures of strong emotions who often have radically different perceptions and have difficulty communicating clearly. Emotions typically become entangled with the objective merits of the problem. Taking positions just makes this worse because people's egos become identified with their positions. Hence, before working on the substantive problem, the "people problem" should be disentangled from it and dealt with separately. Figuratively if not literally, the participants should come to see themselves as working side by side, attacking the problem, not each other. Hence the first proposition: *Separate the people from the problem*.

The second point is designed to overcome the drawback of focusing on people's stated positions when the object of a negotiation is to satisfy their underlying interests. A negotiating position often obscures what you really want. Compromising between positions is not likely to produce an agreement which will effectively take care of the human needs that led people to adopt those positions. The second basic element of the method is: *Focus on interests, not positions*.

The third point responds to the difficulty of designing optimal solutions while under pressure. Trying to decide in the presence of an adversary narrows your vision. Having a lot at stake inhibits creativity. So does searching for the one right solution. You can offset these constraints by setting aside a designated time within which to think up a wide range of possible solutions that advance shared interests and creatively reconcile differing interests. Hence the third basic point: Before trying to reach agreement, *Invent options for mutual gain.*

Where interests are directly opposed, a negotiator may be able to obtain a favorable result simply by being stubborn. That method tends to reward intransigence and produce arbitrary results. However, you can counter such a negotiator by insisting that his single say-so is not enough and that the agreement must reflect some fair standard independent of the naked will of either side. This does not mean insisting that the terms be based on the standard you select, but only that some fair standard such as market value, expert opinion, custom, or law determine the outcome. By discussing such criteria rather than what the parties are willing or unwilling to do, neither party need give in to the other; both can defer to a fair solution. Hence the fourth basic point: *Insist on objective criteria.*

The method of principled negotiation is contrasted with hard and soft positional bargaining in the table below, which shows the four basic points of the method in boldface type.

The four basic propositions of principled negotiation are relevant from the time you begin to think about negotiating until the time either an agreement is reached or you decide to break off the effort. That period can be divided into three stages: analysis, planning, and discussion.

During the *analysis* stage you are simply trying to diagnose the situation — to gather information, organize it, and think about it. You will want to consider the people problems of partisan perceptions, hostile emotions, and unclear communication, as well as to identify your interests and those of

Don't Bargain Over Positions

13

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

the other side. You will want to note options already on the table and identify any criteria already suggested as a basis for agreement.

During the *planning* stage you deal with the same four elements a second time, both generating ideas and deciding what to do. How do you propose to handle the people problems? Of your interests, which are most important? And what are some realistic objectives? You will want to generate additional options and additional criteria for deciding among them.

Again during the *discussion* stage, when the parties communicate back and forth, looking toward agreement, the same four elements are the best subjects to discuss. Differences in perception, feelings of frustration and anger, and difficulties in communication can be acknowledged and addressed. Each side should come to understand the interests of the other. Both can then jointly generate options that are mutually advantageous and seek agreement on objective standards for resolving opposed interests.

To sum up, in contrast to positional bargaining, the principled negotiation method of focusing on basic interests, mutually satisfying options, and fair standards typically results in a *wise* agreement. The method permits you to reach a gradual consensus on a joint decision *efficiently* without all the transactional costs of digging in to positions only to have to dig yourself out of them. And separating the people from the problem allows you to deal directly and empathetically with the other negotiator as a human being, thus making possible an *amicable* agreement.

Each of the next four chapters expands on one of these four basic points. If at any point you become skeptical, you may want to skip ahead briefly and browse in the final three chapters, which respond to questions commonly raised about the method.