

GETTING TO YES

Negotiating Agreement Without Giving In

By Roger Fisher and William Ury
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Introduction: Negotiation is a fact of life, a basic means of getting what you want from others, a way of handling differences. Negotiation is hard to do well.

Soft negotiators í want to avoid personal conflict, make concessions readily and reach an amicable resolution. They are often exploited and feel bitter afterwards.

Hard negotiators í see it a contest of wills, the side taking the more extreme position and holding out longer fares better. He wants to win, finds negotiating expensive and exhausting, and hurts his relationship with the other side.

The Harvard Negotiation Project found a third way í *principled negotiation*.

- (1) Decide issues based on merits, not haggling between the opposing sides.
- (2) Look for mutual gains wherever possible.
- (3) Where interests conflict, insist that results be based on fair standards independent of either side's will.

Every negotiation is different, but the basic elements do not change. Principled negotiation is an all-purpose strategy í hard on merits, soft on people. If the other side learns it too, principled negotiation does not become more difficult. It becomes easier!

CHAPTER #1: Don't Bargain Over Positions

Arguing over positions:

(1) Produces *unwise* decisions: The more you clarify and defend your position, the more committed you are to it. Your ego gets involved, and "saving face" becomes a new factor. Agreements become a mechanical splitting-the-difference between final positions.

(2) Is *inefficient*: It takes time. The more extreme the opening positions and the smaller the concessions, the more time and effort it will take to find if agreement is possible. Stonewalling and threatening to walk out are common, time-consuming tactics.

(3) Endangers an *ongoing relationship*: Anger/resentment result as one side bends to the rigid will of the other, while its own legitimate concerns are unaddressed.

People routinely engage in <i>positional bargaining</i> í take a position, argue for it, make concessions to reach a compromise. <i>Positional bargaining fails</i> to produce optimal results.

**When there are many parties, positional bargaining is even worse.
Coalitions form, common positions are harder to develop,
and agreed-upon positions are much harder to change.**

Being nice is no answer: Soft and friendly positional bargaining is vulnerable to the hard bargainer. If the hard bargainer insists on concessions and makes threats while the soft bargainer yields to avoid confrontation, the hard player has the advantage.

The hard game dominates the soft game.

There is an alternative: Negotiations take place at two levels:

- (1) substance í the issue, the topic, *what* the negotiation is about.
- (2) procedure í *how* you will negotiate, seems to escape notice and happen without conscious decision. It's a *game about a game*. Each move structures and refines the rules of the game.

Principled Negotiation boils down to four basic points:

- (1) PEOPLE í separate the people from the problem. Remove the emotions, perceptions and human communications difficulties.
- (2) INTERESTS í focus on interests, not positions. A position often obscures what you *really* want.
- (3) OPTIONS í generate possibilities before making the final decision. Pressure and adversity narrow your vision, inhibit creativity.
- (4) CRITERIA í insist that the result be based on an objective standard. One side's *õsay soö* is not sufficient.

The *negotiation period* can be broken down into three stages:

- (1) Analysis í diagnose the situation, collect data, organize it, think about it.
- (2) Planning í deal with the 4 basic points above, generate ideas and options.
- (3) Discussion í back-and-forth between the parties, covering the same 4 basic points above. Each side should come to understand the interests of the other.

The next four chapters covers each of the 4 basic points.

CHAPTER #2: Separate the People From the Problem

Often, the ongoing relationship is far more important than the outcome of any particular negotiation.

- (1) Relationships become entangled with the problem í inferences on substantive facts are interpreted to be personal attacks on attitudes and intentions.
- (2) Positional bargaining puts relationships and substance in conflict í it aggravates the entangling process.

Negotiators are *people*. Failing to deal with others sensitively as human beings can be disastrous in negotiations.

Dealing with a substantive problem and maintaining a good work relationship need not be conflicting goals ... if parties are committed and prepared to treat them separately and on their own merits.

To find your way through the jungle of people problems, think of these 3 categories:

- (1) **Perceptions** í the reality, as each side sees it, constitutes *the* problem.
 - (a) Put yourself in their shoes í people tend to see what they want to see. It's not enough to study them like beetles under a microscope. You need to know what it *feels* like to be a beetle. Withhold judgment for a while.
 - (b) Don't deduce their intentions from your fears í people assume that whatever they fear, that's what the other side intends to do. It's an easy habit to assign the worst interpretation on what the other side says or does.
 - (c) Don't blame them for your problem í counter-productive (even if true). The other side becomes defensive, resists you, ceases to listen and they may plan to strike back. Assessing blame firmly entangles the people with the problem.
 - (d) Discuss each other's perceptions í it is *wrong* to treat as unimportant those concerns of the other side perceived as not standing in the way of an agreement.
 - (e) Act inconsistently with their perceptions í send them a message different from what they expect. It's the best way to change their perceptions.
 - (f) Make sure they participate in the process í if they are not involved, they are hardly likely to approve. Suspicion is raised by exclusion from the process.
 - (g) Make your proposals consistent with their values í "face-saving" allows a person to reconcile the stand he takes with his principles and past words/deeds. The importance of "face-saving" should not be underestimated.
- (2) **Emotions** í strong feelings on 1 side generate strong feelings on the other.
 - (a) Recognize and understand emotions, theirs and yours í listen to yourself, and listen to them. Determine *what* is producing the emotions.
 - (b) Make emotions explicit, acknowledge them as legitimate í free from the burden of unexpressed emotion, people become more likely to work on the problem.
 - (c) Allow them to let off steam í give them psychological release. Listen quietly w/o responding, let him speak his last word. Leave no residue to fester.
 - (d) Don't react to emotional outbursts í adopt a *rule* that only one person can get angry at a time. The rule helps others control their emotions. Breaking the rule implies loss of self-control, and losing face.
 - (e) Use symbolic gestures í a note, gift, shaking hands, etc. An apology can be the least costly and most rewarding investments you can make.
- (3) **Communications** í the heart of negotiations. Three basic problems:
 - (a) Parties are not talking to *each other*, but are talking only to impress 3rd parties or their own constituency. So, listen actively and acknowledge what is said. Show them you understand. Understanding is not agreeing. Maximum leverage is to state their case better than they can, then refute it.
 - (b) Parties do not hear *each other*, but are thinking about what they will say next, or listening more attentively to their constituency. A negotiation is not a debate or a trial í there is no 3rd party judge. Find private/confidential ways to communicate.
 - (c) Parties misunderstand *each other*, sending smoke signals in high wind. Speak about yourself, not about them. Statements about how you feel are difficult to challenge. Speak for a purpose, don't just fill the air with words.

Handle people problems *before* they become people problems. Knowing the other side personally really does help. Face the problem, not the people.

CHAPTER #3: Focus on interests, not positions

Your *position* is something you have decided upon. Your *interests* are what caused you to so decide.

The basic problem in negotiations is not conflicting positions – it is the conflict between each side's needs, desires, concerns, etc.

Reconcile interests, not positions:

- (1) For every interest there usually exist several possible positions that could satisfy it. All too often people simply adopt the most obvious positions, ignoring others.
- (2) Behind opposed positions often lie shared and compatible interests.

How do you identify interests? A position is likely to be concrete and explicit. Interests may be unexpressed, intangible and even inconsistent. Precision is rare.

- (1) Ask "Why?": Put yourself in their shoes, examine each position they take.
- (2) Ask "Why Not?": Think about their choices. What decision do you want the other side to make – and why have they not made it? Analyze the consequences, as the other side would see them, of agreeing or refusing to make the decision you want.
- (3) Realize each side has multiple interests: Every negotiator has a constituency to whose interest he is sensitive.
- (4) Most powerful interests are basic human needs: Security, control, recognition – bedrock concerns that motivate all people.

Talking about interests: If you want the other side to take your interests into account, explain to them what those interests are.

- (1) Make your interests known: Be specific, details add credibility and impact.
- (2) Acknowledge their interests as part of the problem: Appreciate theirs and they will appreciate yours.
- (3) Put the problem before your answer: Give your interests and reasoning first and your conclusions/proposals later.
- (4) Look forward, not back: Where you want to go, not where you have been.

**One looks *backwards* for a cause and treats behavior as determined by prior events.
One looks *forward* for a purpose and treats behavior as subject to free will.**

- (5) Be concrete but flexible: Consider multiple options that meet your interests.

Be hard on the problem, soft on the people.

Commit yourself to your interests, not your positions.

- (1) Two negotiators, each pushing hard for their own interests, will often stimulate each other's creativity in deriving mutually advantageous solutions.
- (2) Give positive support to the human beings on the other side in equal strength to the vigor with which you emphasize the problem. Does support-and-attack seem inconsistent? "Cognitive dissonance" holds that people dislike inconsistency and will act to eliminate it. The combination of support and attack work – either alone is likely to be insufficient.

CHAPTER #4: Invent Options for Mutual Gain

People involved in negotiations rarely sense a need for multiple options. All available answers appear to lie on a straight line between their position and yours.

Four major obstacles that inhibit the inventing of multiple options:

(1) Premature judgment: It is very harmful to pounce on the drawbacks of a new idea. Judgment hinders imagination.

(2) Searching for a single answer: Resist the temptation to narrow the gap between positions. Instead, broaden the options available.

The 1st impediment to creative thinking is premature criticism.

The 2nd is premature closure.

(3) Assuming a fixed pie: Each side may see the situation as either/or.

(4) Thinking that solving their problem is their problem: For a negotiator to reach an agreement that meets his own self-interests he needs to develop a solution which also appeals to the self-interest of the other side.

To invent creative options, you will need to:

(1) Separate inventing options and judging options: Invent first, decide later. Conduct a brainstorming session with key groundrule that all criticism and evaluation is postponed. Wild ideas are encouraged. OK to brainstorm *with* the other side.

Before brainstorming: Define your purpose, choose a few participants, change the environment, design an informal atmosphere, and choose a facilitator.

During brainstorming: Face blackboard/flipchart, not each other, clarify groundrules, let your imaginations go, record ideas in full view.

After brainstorming: Star promising ideas, invent ways to make them better, set up a time to evaluate and decide.

(2) Broaden your options: Negotiating room is developed by having a large number of widely different ideas.

(a) Shuttle between specific and general

(b) Look thru eyes of different experts í other professions/disciplines

(c) Invent agreements of different strengths í weaker and stronger versions of solutions, reach 2nd-order agreement (agree where you disagree)

(d) Change the scope of the proposed agreement í fractionate into manageable units, or enlarge to sweeten the pot and appear more attractive.

(3) Look for mutual gain: Both sides can always be *worse* off than they are now.

(a) Identify shared interests.

(b) Dovetail differing interests í satisfactory agreements are made possible because each side wants *different* things. Look for items that are low cost for you and high benefit to them, and vice versa.

(4) Make their decision easy: Advance your case can be by taking care of theirs. Put yourself in their shoes. If you were they, what would you fear? Hope for? How would they be criticized?

Few things facilitate a decision as much as precedent ... search for it.

CHAPTER #5: Insist on Using Objective Criteria

No negotiations will be efficient or amicable if you pit your will against theirs, and either you have to back down or they do.

Negotiate on some basis independent of the will of the other side — that is, on the basis of *objective criteria*.

Commit yourself to:

- (1) Reaching a solution based on principle, not pressure.
- (2) Concentrating on the merits of the problem, not the mettle of the parties.
- (3) Being open to reason, closed to threats.

**Constant battles for dominance threaten a relationship.
Principled negotiation protects it.**

Developing Objective Criteria: Prepare in advance.

- (1) Fair standards: independent of each side's will, legitimate and practical
- (2) Fair procedures: Divide a piece of cake between two children. One cuts and the other chooses. Neither can complain about an unfair division.

Negotiating with Objective Criteria: How to discuss?

- (1) Frame each issue as a joint search: What's a "fair" solution? What objective standards are most relevant? What's the theory behind a position?

**If one side suggests a standard, deferring to it is not an act of weakness,
but an act of strength ... carrying out their word.**

- (2) Reason and be open to reason: Behave like a judge — although you may predisposed to one side, you should be willing to respond to reasons for applying another standard, or for applying a standard differently.

A principled negotiator is open to reasoned persuasion on the merits.

A positional bargainer is not.

- (3) Never yield to pressure:
 - (a) Ask for their reasoning, suggest objective criteria and refuse to budge except on this basis. Yield only to principle.
 - (b) Refusal to yield except to sound reasoning is an easier position to defend, publicly and privately, than is refusal to advance sound reasons.
 - (c) If the other side truly will not budge and will not advance a persuasive basis for their position, then there is no further negotiation.

When faced with a take-it-or-leave-it proposition:

- (1) See if you have overlooked some objective standard that makes their offer a fair one. If you find one — decide whether you would prefer to reach agreement on that basis, or have no agreement.
- (2) Assess what you might gain by accepting their unjustified position rather than moving to your best alternative (no agreement).

CHAPTER #6: What if They Are More Powerful?

In any negotiation, there are realities that are hard to change í sometimes leverage lies on the other side.

Develop your BATNA í **B**est **A**lternative **T**o a **N**egotiated **A**greement. That is the standard against which any proposed agreement should be measured.

The reason you negotiate is to produce something better than the results you can obtain without negotiating. That is your BATNA. It is the only standard that will protect you from:

- (1) accepting terms that are too unfavorable**
- (2) rejecting terms that are in your interests to accept**

Why a BATNA?

- (1) Agreement depends on the attractiveness of the best available alternative.
- (2) Without one, you are unduly pessimistic about negotiations breaking off.

How to develop your BATNA:

- (1) Draw up a list of actions you might take if no agreement is reached.
- (2) Improve on the more promising ones, convert them to practical alternatives.
- (3) Tentatively select the one that seems the best.

The better your BATNA, the greater your power. How do you feel walking into a job interview with no other job offers? Contrast that with how you would feel walking in with two good offers. The difference is *power*.

Formulate a õtrip-wireö: early-warning system, providing a margin in reserve.

- (1) Identify a far-from-perfect agreement that is better than your BATNA.
- (2) Before accepting an agreement worse than the trip-wire, call a time-out and re-examine the situation.
- (3) If faced with accepting the trip-wire, call in a mediator knowing you have some room to maneuver.

Considering the BATNA:

- (1) If your BATNA is extremely attractive í it is in your best interest to let the other side know.
- (2) If your BATNA is worse for you than they think í disclosing it will weaken your hand
- (3) If both sides have attractive BATNAs í the best outcome for both parties may well be not to reach agreement.

If the other side has big guns, you do not want to turn the negotiations into a gunfight.

**CHAPTER #7: What if
They Won't Play?**

- (1) Focus on what *you* can do: principled negotiation.
- (2) Focus on what *they* can do: negotiation jujitsu.
- (3) Focus on what *3rd party* can do: one-text mediation.

Negotiation Jujitsu: If they push hard, you will tend to push back $\dot{\text{I}}$ DONØT. If you push back, you will end up playing the positional bargaining game.

Rejecting their position only locks *them* in.
Defending your proposal only locks *you* in.

Avoid the vicious cycle of attack and defense. *Do not push back!* Break the vicious cycles by refusing to react. Sidestep their attack and deflect it against the problem. Their ö attackö will consist of three maneuvers:

- (1) Asserting their position forcefully. DonØ attack their position $\dot{\text{I}}$ look for the interests behind it, and the principles it reflects.
- (2) Attacking your ideas. DonØ defend your ideas $\dot{\text{I}}$ invite criticism and advice. Ask them what is wrong with it.
- (3) Attacking you. Sit back and allow them to let off steam. Recast a personal attack as an attack on the problem.

Two key tools in negotiation jujitsu:

- (1) Ask questions and pause. Questions generate answers, not resistance. Questions allow the other side to get their points across, offer them no target to strike at, no position to attack, and they do not criticize $\dot{\text{I}}$ they educate.
- (2) Silence. If your honest question draws an insufficient answer $\dot{\text{I}}$ just wait. Some of the most effective negotiating you will ever do is when you are not talking.

The One-Text Procedure: Call on a 3rd-party to handle negotiations. A mediator can separate the people from the problem, direct the discussion to interests and options and separate the inventing from the decision-making

Prepare draft, ask for criticism! Camp David 1978. Israel, Egypt and US. US prepared bland draft, asked for criticism, and improved the draft 23 times until feeling it could not be improved. US then recommended it. Israel and Egypt accepted it.

- Nuggets:
- (1) Remain open to persuasion by objective facts and principles.
 - (2) Supporting the other side is crucial for separating people from problem.
 - (3) Deflect attacks by taking responsibility for mistaken perceptions.
 - (4) Statements of fact can be threatening $\dot{\text{I}}$ ask a question instead.
 - (5) Neither accept nor reject the other side's position.
 - (6) Rarely decide on-the-spot $\dot{\text{I}}$ resist pressure to be nice and give in.
 - (7) Present all your reasons first before offering a proposal.
 - (8) It's not *your* proposal $\dot{\text{I}}$ it's a fair option deserving joint consideration.

Neither party is cheated/angry. A working relationship is preserved for the future.

CHAPTER # 8: What if They Use Dirty Tricks?

They may be illegal, unethical or simply unpleasant. Their purpose is to help the user win some substantive gain in an unprincipled contest of will.

Most common responses:

- (1) Put up with it: Most often it fails.
- (2) Respond in kind: Either one party yields, or negotiations break off.

Tricky bargaining tactics are one-sided proposals about negotiating procedures. To counter them, engage in principled negotiation *about the negotiating process*.

3 Steps to negotiating the rules of the negotiating game:

- (1) Recognize the tactic í recognition is sometimes enough to neutralize it.
- (2) Raise the issue explicitly í discussing it makes it less effective, and it may cause the other side to worry about alienating you completely.
- (3) Negotiate í about procedure instead of substance. Methods are the same:
 - (a) *Separate people, problem* í question tactics, not personal integrity
 - (b) *Focus on interests, not positions* í why commit to extreme positions?
 - (c) *Invent options for mutual gain* í alternative games to play?
 - (d) *Insist on objective criteria* í be hard on principle

Common tricky tactics:

- (1) Deliberate deception í misrepresentations
 - (a) *Phony facts* í Don't trust. Verify assertions to reduce deception.
 - (b) *Ambiguous authority* í they may allow you to believe they have full authority to make decisions, when they don't. Find this out first!
 - (c) *Dubious intentions* í use contingencies to guarantee certain actions.
 - (d) *Less-than-full-disclosure* í not a deception! Good faith negotiating does not require full-disclosure of one's present thinking.
- (2) Psychological warfare í creates desire to end negotiations ASAP.
 - (a) *Stressful situations* í physical circumstances (noise, temperature, privacy, etc.) If prejudicial, raise the issue and negotiate it.
 - (b) *Personal attacks* í criticisms, making you wait for them, interrupting, refusal to listen, no eye contact, etc. Recognize it, and bring it up.
 - (c) *Good-guy, Bad-guy* í ask good-guy same questions as the bad-guy.
 - (d) *Threats* í rare, because they build up pressure on the other side.

Warnings are better since they are not vulnerable to counter-threats.

- (3) Positional Pressure Tactics í recognize, discuss, invent, use principles. These include *refusal to negotiate, extreme demands, escalating demands, lock-in tactics, calculated delay* and "take it or leave it".

It is easier to defend principle than an illegitimate tactic.

“Who’s winning the negotiation” is like asking who’s winning the marriage. What you are trying to *win* is a better way to negotiate ... so that you can get what you deserve and be decent.

TEN QUESTIONS FREQUENTLY ASKED:

- (1) Does positional bargaining ever make sense? Is the alternative worth the effort?
How important is it to avoid an arbitrary outcome?
How complex are the issues?
How important is it to maintain a good working relationship?
How far along in the negotiation process are you?
- (2) What if the other side defines fairness differently? Agreement on the *best* standard is unnecessary. The tool helps parties reach a settlement better for both than none.
- (3) Should I take more than what would be fair, if I can? Not without careful thought.
How much is the difference worth to you?
Will the unfair result last (or will courts find it unconscionable)?
What damage will result to this and other relationships? A good reputation for fair-dealing is an extraordinary asset!
Will your conscience bother you?
- (4) What if people ARE the problem? Pursuing a good outcome and a good relationship is not zero-sum. You can have both. Discuss and negotiate the other side’s behavior. Responding in kind reinforces the behavior we dislike. Deal rationally at all times.
- (5) When does it make sense NOT to negotiate (like with terrorists)? However unsavory the other side, unless you have a better BATNA, you *must* negotiate. Negotiating does not mean giving-in. War offers no guarantee of results better than could be achieved by other means.
- (6) How do I adjust my negotiating approach to account for personality, gender, culture? Adapt as you feel necessary, be sensitive to those you are dealing with. Pay attention to differences, but avoid stereotypes. Question your assumptions. Listen actively.
- (7) How do I decide things like “Where do we meet?”, “Who should make the first offer?” and “How high should I start?” Before a doctor implements a remedy, he learns about the patient’s symptoms and considers possible causes.
Where to meet? There is much to consider. Is seclusion important? Does one side need security? Does one side want to be free to walk away?
Who makes first offer? The better prepared both parties are, the less difference it makes who makes the first offer.
How high to start? It is better to know the terrain (be prepared) than to plan on taking one particular path through the woods. Start with the highest figure you could justify without embarrassment. Then adapt, generalize.

(8) How do I move from inventing options to making commitments? Envision what a successful agreement would look like, then work it backwards.

Move gradually, and draft possible terms-of-agreement as you go.

Know that the process is seldom linear.

Be persistent but not rigid í separate your interests from the ways to meet them.

Once an issue is well-explored, be prepared to make an offer.

Be generous at the end í they should leave feeling fairly treated.

(9) How do I try out these ideas without taking too much risk? Practice.

Start small with a good BATNA.

Expect saw-tooth improvements in performance as new techniques are applied.

(10) Can negotiating technique make a difference if the other side is more powerful?

It makes an *enormous* difference. Many things are worth trying for even if you will probably not succeed. Let your reach exceed your grasp. How do I enhance my negotiating power? There is POWER in the following:

Having a good BATNA, provided they believe you.

Having a good working relationship between negotiators.

Having good communications and listening skills.

Understanding interests í the more you understand their concerns, the better you can satisfy them at minimum cost to yourself.

Making a carefully crafted commitment clarifying what you will do, what you will not do and what you would like the other side to do.

Inventing an elegant option í increases your influence on others.

Example: In a regular sealed-bid auction, buyers do not want to pay more than necessary. Each bidder offers slightly more than his estimate of what other bidders will bid, which is often less than what the bidder would be *willing* to pay.

But in a stamp auction, the highest bidder gets the stamps at the price of the *second* highest bid.

(a) Buyers safely bid exactly what they *would* be willing to pay, because the auctioneer guarantees they will not have to pay it!

(b) No bidder is left wishing he or she had bid more.

(c) The high bidder is happy to pay less than was offered.

How to use the ideas in this book:

You will be more effective if you believe what you are saying and doing.

Don't use the ideas in this book as if you were wearing someone *else's* clothes.

Cut and fit them until you find an approach that makes sense and is comfortable.