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Refresh Your Ideas of Power and Negotiation

By Adrienne Keith

Quick: What do you think makes a powerful negotiator? Is it someone who conveys dominance, whether it's physical dominance, social dominance or economic dominance? Or is it someone who can negotiate agreement without giving in?

I'm persuaded that the idea of threat-based power is outmoded in our modern world. Prompted by the updated edition, I recently re-read the negotiation primer *Getting To Yes: Negotiating Agreement Without Giving In*.

In concise fashion, authors Fisher, Ury and Patton identify the limits of positional bargaining and explain their "principled negotiation" strategy. In principled negotiation, parties resolve issues on their merits rather than by staking out positions and posturing their way to a deal. I commend the book to you to enhance, or refresh, your ideas about power in negotiation, whether you're advising a client, negotiating on a client's behalf or acting as a third-party neutral to resolve a dispute.

The principles of negotiation identified and explained in Getting To Yes are the kind that are easy to understand and yet potentially difficult to practice. It takes conscious effort to shift from labeling the other side's point of view as the problem and, instead, coming to understand the power their perspective holds for them and the emotional force they associate with it; however, this is the starting point for influencing the other side.[1]

Similarly, tuning in to the interests that are motivating the other side - their needs, desires, concerns and fears - takes more curiosity and attention to elicit than a simple list of demands. The promise of this approach is an agreement that better fits the needs of the individuals in the negotiation.

It's a very lawyerly impulse to feel that if you're talking, you're moving the other side toward agreement. After all, much of legal training focuses on making arguments to persuade another.

However, the opposite approach can hold power of its own: using silence, pauses and questions can achieve a lot in negotiation because they can prompt the other party to disclosures to fill the silence and can generate answers to problems rather than triggering resistance in the other party.[2] Another principled negotiation practice that runs counter to legal training is to shift the message you deliver so that you first present your reasons and then offer a proposal.

As an attorney, it may take a concerted effort to use the skill of attacking the problem without blaming individuals, described by the authors as being "hard on the problem" and "soft on the person."[3] A way we can begin implementing this is to affirm a principle in negotiation (for example, fairness), while also affirming an aspect of the pre-existing relationship (your appreciation of past efforts), and still seeking a reasonable agreement.[4] Likewise, it may well take special effort to practice building rapport and working with emotion.

As a negotiator, the amount of power you hold depends on what your best alternative to a negotiated agreement ("BATNA") is. Put simply, the better your BATNA, the greater your power because you don't have to reach an agreement to be better off.[5] (Be careful, as the authors caution, that you do not make the psychological mistake of seeing your alternatives to the negotiated agreement in the aggregate, leading you to falsely appraise one particular option as being better than it is because all of your other options exist.)

You can protect your BATNA by formulating a "trip wire," a point of comparison to give you an early warning that the possible agreement is becoming unattractive. A trip wire prevents against making a bad deal in the moment, and it can also provide you with a margin in reserve for further negotiations or third-party resolution.[6]

When negotiating your position or when evaluating negotiation communication, it is critical to avoid being enticed by shortsighted self-concern. Such an approach favors the development of partisan positions, partisan agreements and one-sided solutions.[7] This is unlikely to lead to a deal, and thus is not a part of an effective negotiator's toolbox. It also makes it impossible to reach the authors' benchmark for wise decision-making: selecting from a great number and variety of options.[8]

What if the other side plays dirty? Getting To Yes addresses this head-on and in a manner consistent with the principles of negotiation the authors outline. Rather than summarize them here, I encourage you to read the topics under "Taming the Hard Bargainer" so that you'll have the opportunity to imagine yourself using the techniques should you seek to become a more powerful negotiator yourself.

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1 Roger Fisher, Bruce Patton & William Ury, Getting To Yes: Negotiating Agreement Without Giving In. Penguin Books: New York, NY (2011), at 25.

2 Id. at 113.

3 Id. at 56.

4 Id. at 123.

5 Id. at 104.

6 Id. at 103.

7 Id. at 61.

8 Id. at 67.

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