Contract Negotiations—
Systems and Strategies

by Jonathan Hughes, Stuart Kliman
and David Chapnick*

Jonathan Hughes and Stuart Kliman are partners at Vantage Partners, a strategy and
management consulting firm. David Chapnick is a Principal. The articulation of the joint
problem-solving approach to negotiation in this chapter owes a heavy debt to the seminal
work, Getting to YES: Negotiating Agreement Without Giving In. (See Fisher, R., and Ury,
W. with Patton, B., Editor. Getting to YES: Negotiating Agreement Without Giving In. New
York: Houghton Mifflin, 1981). A number of the ideas in this article appear, in somewhat
different form, in our former (now retired) partner Bruce Patton’s chapter on negotiation in
The Handbook of Dispute Resolution. (Patton, B. Chapter on Negotiation in The Handbook of
Dispute Resolution. Michael L. Moffitt and Robert C. Bordone, eds. Program on Negotiation
/Jossey-Bass, 2005.).

This chapter is excerpted from the
International Contract Manual
Copyright © 2019, Thomson Reuters.
Reproduced with permission. All rights reserved.
Chapter 26

Contract Negotiations—Systems and Strategies

Jonathan Hughes, Stuart Kliman, and David Chapnick*

26:2 What is negotiation?
26:3 Seven elements of negotiation
26:4 The seven-element model
26:12 Defining success in negotiations: common and inadequate criteria for a “good deal”
26:15 Defining success in negotiations using the seven-element model
26:16 Getting ready; effective preparation
26:19 Common systems or styles of negotiation
26:29 The joint problem-solving approach to negotiation
26:30 Strategic guidelines for joint problem-solving negotiation
26:38 Critiques of the joint problem-solving approach
26:43 Cross-cultural and international negotiations
26:49 A note on agents, principals, team negotiations, and the role of lawyers
26:50 Final thoughts on negotiation as an organizational competency

KeyCite®: Cases and other legal materials listed in KeyCite Scope can be researched through the KeyCite service on Westlaw®. Use KeyCite to check citations for form, parallel references, prior and later history, and comprehensive citator information, including citations to other decisions and secondary materials.
26:2 What is negotiation?

Negotiation can be defined as the process by which two or more parties seek to satisfy certain of their respective objectives (interests) through a mutual agreement. Such interests may be shared (two companies both want to enter a new market, and each wants to minimize their investment and exposure to risk in doing so), or they may be in conflict (a customer wants to procure goods at the lowest possible price, whereas the supplier wants to sell goods at the highest possible price), or the interests of the parties may simply be different—and perhaps complimentary (one company wants to monetize excess manufacturing capacity, while another company wants to increase manufacturing capacity with minimal capital investment).

Negotiation is one of the most basic forms of interaction, intrinsic to any kind of joint action, as well as to problem-solving and dispute resolution. It can be verbal or non-verbal; explicit or implicit; direct or conducted through intermediaries; oral or written; face-to-face; or conducted by phone, letter, e-mail, or more recently, through software such as e-sourcing or e-auction platforms.

Negotiation is the process by which contracts are developed and agreed to, and hence of critical importance to contracting and contract management executives and professionals. It should also be noted that negotiation, as defined above, is often an intra-organizational as well as cross-organizational activity. Contract management professionals typically negotiate, albeit informally, on a daily basis with colleagues in Sales, Procurement, Finance, and Legal, and with their superiors and subordinates. In fact, these internal negotiations (say, with Sales, over whether to compromise on indemnification language in order to close a large deal with a new customer) have a critical impact on what happens in external negotiations with customers, suppliers, licensees, distributors, and other business partners.

This chapter begins by laying out the fundamental elements of negotiation. We then use these elements to analyze common measures of negotiation success, and to develop a normative framework for defining negotiation objectives. Next, we explore the critical role of planning and preparation in negotiation effectiveness, and provide guidelines for effective preparation. We also examine some of the most common negotiation styles and tactics, including their strengths and weaknesses, challenges to effective implementation, and guidelines for use. We take a particularly close look at the joint problem-solving approach to negotiation that has been proposed to deal with the complexities of shared, differing, and conflicting interests, including the critiques of that approach that have emerged since the publication of the seminal work “Getting to YES” in 1981.1

[Section 26:2]

26:3 Seven elements of negotiation

Negotiation is a complex activity that occurs in a broad range of situations. Useful insights may be drawn from game theory, psychology, economics, theories of organizational behavior, and the law. As anyone who negotiates regularly knows, there is no one right way to negotiate. On the other hand, given the virtually infinite variation in situations a negotiator may confront (including the broad and somewhat unpredictable range of tactics and behaviors one may encounter from “the other side”), there is a fundamental need for a systematic framework to analyze any negotiation context; develop an appropriate strategy; and anticipate, analyze, and optimally respond to those with whom one is negotiating.

Trying to memorize hundreds of tactics and thousands of rules about when to do what is unrealistic and impractical. Instead, negotiators need a general framework which they can use to define specific goals appropriate to myriad different contexts and to prepare effectively to minimize surprises and identify and take advantage of opportunities. An effective framework should also help negotiators wisely evaluate the likely consequences of available negotiation process choices (and appreciate the full range of such choices, rather than being constrained by a limited repertoire of techniques, or assuming false limits on choices available to them). It should be simple enough to remember, but robust enough to guide systematic and effective choice-making about strategies and tactics in any situation.

The seven-element framework was developed by our colleagues at the Harvard Negotiation Project to meet these objectives. It is a way to analyze the terrain of negotiations; hence, it is more useful to think of it as a map, rather than as a specific set of directions. Later in this chapter, we will use this framework to analyze a number of common negotiation styles and tactics, noting some of their advantages and limitations. We will also use the seven-element framework to derive a generally effective approach to negotiation in a wide range of contexts, explaining how and why it is effective in the face of a range of different styles and tactics that negotiators may encounter.

26:4 The seven-element model

The seven key elements of negotiation are interests, legitimacy, relationships, alternatives, options, commitments, and communication. Below, we consider each briefly in turn.

26:5 The seven-element model—Interests

A party’s needs, goals, and motivations are commonly referred to as their interests. For example, a salesperson seeking to negotiate a deal with a customer might care
about meeting her quota, ensuring the deal is profitable, preventing a competitor from getting the business, protecting her company from risk if there are quality or delivery issues, and not setting a bad precedent with that customer or others. Interests are the fundamental drivers of negotiation. Parties negotiate because they are hoping to satisfy their interests better through an agreement than they could otherwise. The fundamental measure of success in negotiation is how well one’s interests are met, which is (or should be) also the criterion one uses to compare and choose among different possible outcomes.

It is essential to distinguish between interests and the positions or demands that parties typically stake out and argue for in negotiation. A position is a proposed solution or agreement that represents merely one way among many that issues might be resolved and interests met. For example, consider a large aerospace company facing a financial crisis. It demanded that one of its key suppliers reduce its prices by 10% on all parts it supplied (a position), but the aerospace company’s underlying interest was to reduce costs and thereby improve its financial situation. After initial haggling over price produced a stalemate, the supplier offered to share ideas for redesigning certain key parts so that they could be manufactured at a fraction of the current cost and proposed that prices on other (less expensive) parts be increased by 5% in order to cover rising raw material costs. Ultimately, the supplier’s offer was accepted, because it delivered greater overall savings and hence met the aerospace company’s interests better than their own position.

Interests can be tangible (money, deadlines, guarantees) or intangible (respect, recognition, feeling fairly treated). Parties frequently have multiple interests at stake in a negotiation, some of which may be inconsistent and require setting priorities. For example, we may want to be honest and fair, but also to avoid having to admit error. More generally, we want certain things in the short term, but also to maintain leverage for future negotiations (by not expending all of our bargaining chips now), and, at the same time, not to upset the rules of the game that we rely on (such as no one pulling a gun), even if breaking the rules might improve our immediate return. Much of the challenge of negotiation is in figuring out how best to reconcile such conflicts or determining whether there are creative solutions that obviate the need to make (at least some) difficult trade-offs.

Between or among negotiating parties, interests can be shared (don’t waste time on an inefficient negotiation process, avoid ending up in litigation), differing (I care about maximizing future revenue and return on investment, you care about cash flow), or conflicting (price, ownership, who gets the corner office). While negotiation is often assumed to be adversarial, with the main focus on conflicting interests (an assumption that often becomes a self-fulfilling prophecy), the potential value inherent in shared or differing interests may be as large or larger than the value in dispute. In one commercial
lawsuit, for example, the parties’ anger about something that had happened in the past caused them not to realize that, as circumstances had developed, the potential value of a continuing relationship was more than 10 times greater than the amount in dispute. When this was pointed out, they suddenly became motivated to find a settlement.

26:6 The seven-element model—Legitimacy

Legitimacy (the desire to be fairly treated, and to be seen by others as reasonable and fair-dealing) is one of the most powerful of human motivations. It routinely plays a major role in negotiation and is too often (and unwisely) overlooked. It is not uncommon for negotiations to fail, for example, not because the option on the table is unacceptable, but because it doesn’t feel fair to one or both parties. In effect, people pay not to accept a solution that feels illegitimate. In experiments, for example, one person is told that they have $10 to split with another (unknown) person and that they can specify who gets how much, but that they will only get the money if the other person agrees to accept the split (otherwise neither person gets any money). Logically, the second person should be willing to accept any split of the $10, even $9.99 to the splitter and $.01 for them, but in fact, most people would rather get nothing than approve a split that feels too unfair.1

We frequently observe negotiators who are given instructions to obtain a certain outcome which they do not believe is wholly legitimate. Common cases include buyers who are instructed to negotiate large (often seemingly arbitrary) percentage discounts, and contract managers who are instructed to negotiate various indemnification, warranty, or intellectual property ownership terms (which often appear one-sided). In many cases, such outcomes may indeed be wholly legitimate, but management has failed to fully articulate why. Negotiators aiming at an outcome the legitimacy of which they do not fully understand or accept are generally less effective, not only because they are less persuasive to their counterparts, but also because they are also more susceptible to arguments and pressure from their counterparts. Outcomes that are not perceived as legitimate by all parties are harder to reach, and more difficult to implement or enforce.

26:7 The seven-element model—Relationships

A third important variable in negotiation is the relationship a negotiator has or wants to have with other parties—from those across the table, to anyone else who might affect the outcome of the negotiation or the implementation of any agreement, to relationships with third parties that might be affected (for good or ill) by the negotiation’s impact on

[Section 26:6]

the negotiator’s reputation. As an example of this third category, a company like Eli Lilly has built a well-known reputation as a partner of choice within the pharmaceutical industry. In part, this reputation has been earned because negotiators are trained and instructed to focus not only on deal terms, but also on fair dealing, flexibility, and responsiveness (not always a strength of large companies) in their negotiations with smaller biotech companies. This, in turn, provides Lilly with a significant advantage in competitive negotiations over the licensing of promising drug candidates or technologies.

Moreover, a strong existing relationship, especially one characterized by a high level of trust and mutual respect, often makes reaching agreement easier, while mistrust and hostility can make it much more difficult. Equally important, the conduct and outcome of a negotiation has the potential either to damage or strengthen a relationship. In the case of an important relationship (such as that between two alliance partners, or a customer and a strategic supplier), the long-term costs of an adversarial negotiation process are high and should motivate extra attention to the manner in which negotiations are conducted, and how this will affect the ongoing relationship between the parties.

Sometimes, as with an important business partner, maintaining a positive relationship may be a much more important interest than the particular substantive issues in question at a particular point in time. In other contexts, parties negotiating with one another may simply face the prospect of ongoing dealings, including occasional disputes, where they desire a relationship that will enable resolution of issues with lower rather than higher transaction costs (an afternoon’s tough negotiation rather than a year’s litigation). However, even when there is neither a prior nor an expected future relationship with the other side, a negotiator still has to weigh the impact of different negotiation strategies and tactics on the relationship between the parties during the negotiation. If that relationship becomes heated and hostile, the chances of agreement decline, and the chances of a value-maximizing agreement decline precipitously.

Finally, a negotiator also has an ongoing relationship with himself/herself that can influence the conduct of negotiation. Psychological drives to avoid inconsistency (“cognitive dissonance”), preserve key values that define one’s identity,2 or “do the right thing” (conscience) may shape a negotiator’s choices. For example, a highly competitive person who believes “I’m someone who wins, no matter what it takes” is likely to negotiate quite differently than someone deeply committed to fairness who believes “I am someone who acts with integrity and treats others the way I would like to be treated.”

[Section 26:7]


26:8 The seven-element model—Alternatives and BATNA

When we turn to thinking about how a negotiator can satisfy their interests, a critical question is what the negotiator could do in the absence of a negotiated agreement. That is, if the negotiation fails, what will each negotiator do; what are the alternatives to agreement or possible “walk-away” courses of action? By definition, an alternative to agreement must be a course of action that the negotiator can implement without the consent of the other party or parties with whom they are negotiating. In trying to negotiate the resolution of a business dispute, for example, a party’s alternatives might include doing nothing, suing the other party, trying to sell out to a third party, and so on. Since a negotiator unable to reach agreement will have to choose one of their various alternatives to pursue, a key question is which one? Among the various alternative courses of action a negotiator could pursue, which would best satisfy that negotiator’s interests? This alternative is commonly referred to as the negotiator’s Best Alternative To a Negotiated Agreement, or BATNA.¹

A negotiator always has some BATNA, even if they have not figured out what it is. For example, in negotiating with a mugger who puts a gun to your head and says, “Your money or your life,” your BATNA might be to try to fight, or to run, or perhaps to do nothing—all courses of action available to you that do not require the assent or cooperation of your mugger. In many cases, there will be uncertainty involved in evaluating various alternatives to agreement (such as the outcome of litigation, for example) that may require probabilistic assessment to calculate expected values and thereby determine your likely BATNA, but this doesn’t change the concept. Your counterpart also has a BATNA, as well as perceptions of its relative attractiveness, one or the other of which you may be able to affect.

We often work with procurement and contracting groups to develop and implement negotiation strategies in single and sole source negotiation contexts. The common lament is, “but we have no alternatives, much less a best one.” While understandable, such a perception is false. For example, one manufacturing company was essentially being held hostage by a supplier that had shut down a production line and was demanding an enormous price increase to restart production. Unfortunately, the contract in place seemed to offer no legal recourse. However, there were alternatives. The company was in conversations with a Chinese supplier, the goal of which was to eventually develop them as a secondary source. One alternative was to spend money to send engineers and equipment to China to radically accelerate their ramp-up. Attractive? Not particularly.

Better than agreeing to a 100% price increase? Perhaps—analysis needed to be done to evaluate the respective hard and soft costs of agreement (to a 100% price increase, or to some other number), versus this alternative.

There were other alternatives as well. The company had some inventory on hand. They didn’t need agreement with or permission from their supplier to explain the situation to their customers and put them on allocation. Attractive? Again, not especially, but it was a way, completely under their control (that is, not requiring agreement or permission from their supplier), to meet some of their interests and minimize damage. It also began to look more viable once analysis of the supplier’s BATNA indicated that 15% of their revenue came from this single customer. Despite fears that maybe the supplier wanted to walk away from the business because it was not as profitable as some of their other product lines, financial analysis indicated that the impact on their cash flow and ability to cover fixed overhead expenses would make loss of this business for more than a couple months extremely painful. If nothing else, such a course of action would buy time, perhaps to repurpose existing internal manufacturing assets to produce the needed components (another alternative).

26:9 The seven-element model—Options

A major reason to negotiate, of course, is to seek an outcome that offers more value than one’s BATNA, enough to justify the investment of time and effort in negotiating. Options are possible agreements or pieces of a potential agreement upon which negotiators might possibly agree. Options can include substantive terms and conditions, procedures, contingencies, even deliberate omissions or ambiguities—anything parties might agree on that might help to satisfy their respective interests.

The most basic form of option is a trade. We pay you money, you provide us with machine tools. We create value by an exchange of something that I have, which I value less than you, for something you have, that I value more than you. In general, options create value in negotiation by meeting shared interests (for example, by pooling our efforts and exploiting economies of scale) or by exploiting differences in the parties’ interests (such as different capabilities, resources, valuations, risk preferences, time horizons, or predictions about the future).

26:10 The seven-element model—Commitments

Possible options for agreement are one thing. Actual decisions and agreements, even offers and demands, are quite another. A commitment is an agreement, demand, offer, or promise of agreement by one or more parties, and any formalization of that agreement. Commitment is commonly signaled by words such as “I will offer,” “I demand,” “We agree,” or “I promise not to...”
26:11 The seven-element model—Communication

Finally, there is the process by which parties exchange information and discuss and deal with the preceding six elements of negotiation. For example, do they begin by trading commitments or information about interests, approach the process as adversaries or colleagues, beseech or threaten, trade concessions, or brainstorm without commitment? There are myriad ways to approach the process of negotiation, and many have predictable effects on the likely outcomes.

Collectively, these seven elements are one (proven and useful) way to organize the terrain of negotiation, but not the only way. “Parties,” for example, is a concept some might include.¹ In the seven-element model, the question of who are the parties is subsumed under interests and left open. We look at our interests and those of others whose interests might enable development of the most attractive options with, and for, us. Indeed, in our experience, it is often critical not to presume at the outset of a negotiation who the negotiation parties are, and to continue to revisit the question throughout a complex negotiation. Meeting our interests may specifically require altering the structure and dynamics of the negotiation by changing the players. In a recent joint-venture negotiation, contention over resource contributions threatened to derail the deal. The solution was to jointly search out, and ultimately to bring in, a third partner. Similarly, in many procurement negotiations, conflicts or difficulties between a customer and a tier one supplier often have roots in that supplier’s relationships with its own suppliers.

“Issues” is another concept that can be helpful, but in this model, can be understood as derivative of the parties’ interests rather than an independent element. Issues are often a useful way to organize discussion during negotiations and essentially function as categories of related interests. However, thinking primarily in terms of issues, especially early on, often leads negotiators to fail to adequately explore and articulate the full range of interests they need to, or could, satisfy during a negotiation.

While these and other concepts (e.g., emotions, perceptions, time) are potentially useful, we are looking for a core list of variables that is no longer than it needs to be and short enough to remember. We want, in a model of negotiation, as with any model, robustness (the model helps us deal with the complexity of the real world) and parsimony (good models are elegant; they are as simple as they can be, which makes them useful in managing complexity that would otherwise be overwhelming.) As long as additional useful concepts can fit within the core framework, we can meet our objectives without

¹The importance of parties as a variable has been emphasized especially by Professors James Laue, Lawrence Susskind, and others who tend to focus on multiparty negotiations and public contexts in which “parties” are often not well-defined.
losing power of a simple framework.

26:12 Defining success in negotiations: common and inadequate criteria for a “good deal”

It is hard to do anything well if one is unclear on the goal or how to measure progress toward it.

So what is the goal of negotiation? A common response is “to get an agreement.” While reasonable on its face, negotiators who proceed, consciously or unconsciously, into negotiations with agreement as the objective are unlikely to realize an optimal outcome. Why? Because such an orientation is likely to be perceived by the other side, who will then realize that they have virtually all the leverage in the negotiation. Once I know your boss told you to close this deal no matter what, I can proceed to name my price. (Moreover, as we will discuss in more detail later, the goal of most negotiations is not simply an agreement or signed contract, but ultimately the successful implementation of an agreement, such that expected value is realized. That difference in framing of the objective of negotiating carries profound implications for how negotiations are conducted.)

Suppose both sides have (equally) as their primary goal to reach agreement. Now the dynamics of the problem differ, but again, an optimal outcome is unlikely to be realized. After all, in most negotiations, a wide range of possible outcomes are conceivable. To achieve the best outcome, negotiators need to be able to evaluate various deals or outcomes systematically to determine which is best. Every negotiator we know (including ourselves) has at some point signed a deal they regretted signing. It felt great to close that sales deal, but we lost money on it and tarnished our reputation in the marketplace because we couldn’t deliver. Or we negotiated a 25% price reduction by signing an agreement with a new supplier, but quality and delivery issues ended up costing us five times the value of the savings in lost sales and warrantee work for our customers—and that was before the supplier went out of business and we had to go find and certify a new one.

Other common measures of success in negotiation are equally unsatisfactory. How about the common “we got a deal that was better than our ‘bottom-line?’ ” Such a definition of success simply begs the question, “how did we calculate our bottom line?” All too often, the answer is that we arrived at it somewhat arbitrarily (the last similar deal we heard about, or a bit more—say 5%—than the last contract with this customer). Unless we systematically calculated our “bottom line,” it may have been too high (and we’ll fail to reach an agreement we should have) or too low, and we’ll leave value on the table.
Frequently too, we observe disconnects between negotiators’ bottom lines and their interests and the interests of their companies. For example, we have often encountered companies who instruct their negotiators to expend significant time and effort negotiating aggressive termination clauses in their contracts with suppliers, along the lines of “we have the right, with no notice, and for no reason, to stop doing business with you, whereas all manner of penalties apply if you for any reason halt or delay shipments to us.” This term is non-negotiable, part of the bottom line. The irony is, in many cases, the buy-side company pushing for such terms could not possibly walk away (without notice) from the suppliers on whom they are seeking to impose such onerous and one-sided contract language. They will continue to depend on such suppliers for replacement parts, transition to another source would need to be jointly managed with the supplier, and so on. Such negotiators are focused on a bottom line that is disconnected from their company’s interests.

Close cousins to getting a deal “better than our bottom line” are “breaking their bottom line” and “gaining more concessions from them than we gave up.” While often not explicit or consciously held, such notions of success are very common. Somewhat obviously, these criteria for success suffer from a profound flaw—they are easily gamed. In fact, negotiators who regularly negotiate with such ends in mind invariably “teach” their counterparts lessons about how to negotiate with them over time. For example, counterparties learn to stake out more extreme opening positions (thus creating more room to make concessions), and to send misleading cues about what is important to them and what their bottom line in fact is.

So, why do many negotiators measure success based on such criteria? For the most part, because they (the criteria, not the negotiators!) are simple and place little if any demand on negotiators for preparation or analysis—and most negotiators, like most people in business, are time-pressed. I don’t need to know, or spend time finding out, about competitors, market rates, alternate sources, cost structures, or anything else to measure my success “at the table” by counting the concessions I extract, measuring movement from my or the other side’s initial offer, or inferring from various cues whether I indeed have broken, or at least reached, their bottom line. In addition, in business negotiations, negotiators take instructions from and must explain the results they achieve to management. Managers too are pressed for time. They want easy ways to quickly evaluate the quality of deals, ideally using quantitative measures that are (seemingly) objective. Consequently, in many negotiations, measures of success are reduced to a primary focus on price and other simplistic financial metrics. Buyers are evaluated on the basis of the discounts they achieve—often from something as arbitrary as list price—while sellers are evaluated on the number and size of deals closed, and in some cases, how few price concessions they made. Witness the kabuki
dance of negotiations over software license fees or list processes for many pharmaceuticals. In both cases, suppliers set arbitrarily high list prices, knowing that their negotiating counterparts will be evaluated based on the discounts they are able to negotiate. High-percentage discounts off list prices are standard in both industries, as are significant, and often-arbitrary variations in pricing from one deal to the next. One other common measure of success worth noting is avoiding conflict during a negotiation. While there are likely to be legitimate interests underneath such an objective (e.g., preserving an important business relationship, getting a deal done quickly), once conflict avoidance becomes, in itself, a driving objective in a negotiation, significant problems are likely to ensue. Negotiators are likely to avoid or gloss over areas of disagreement and leave commitments at a high level of generality, characterized by ambiguity sufficient to ensure that an agreement can be reached and quickly. Those charged with implementing such deals are left to address these issues after the contract is signed, often with unhappy consequences for all parties to the transaction. One of the most common manifestations of this dynamic is the pervasive problem of salespeople negotiating with the objectives of closing deals and avoiding conflict and signing agreements that delivery and implementation teams (and customers) do not fully understand. Both supplier and customer often pay a high price in terms of unmet expectations, delays, unexpected costs, frustration, and damaged relationships.

26:13 Defining success in negotiations: common and inadequate criteria for a “good deal”—The role of management in defining measures of negotiation success.¹

Many companies have begun to stress the importance of forging closer, more collaborative relationships (“partnerships”) with key customers and suppliers, but in most cases, this goal remains more aspiration than reality. In particular, such collaborative aspirations rarely translate into changed behavior, and nowhere is this more evident than at the negotiation table. Salespeople continue to push products and focus on closing deals, rather than crafting optimal customer solutions and laying a foundation to ensure effective deal implementation. Procurement professionals continue to focus on price discounts, rather than on developing creative solutions with key suppliers to increase the efficiency and effectiveness of the supply chain, thereby reducing real costs in a sustainable way.

[Section 26:13]

Why is this? To a significant degree, it is because lofty aspirations for collaborative relationships have not been translated into clear performance measures for negotiators. Most metrics still focus on deal size, price reductions, and other simple, narrow, and often misleading indicators of deal value and negotiator effectiveness. Of course, from a sales perspective, the number of deals closed and revenue are certainly important measures of negotiation success. However, if a company wants to form collaborative partnerships with key customers, and to be perceived as something more than just a vendor, then management needs to back up that ambition with some attention to admittedly more complex and less objective measures of negotiation success (e.g., how much value will we add to the customer through this deal, how well have implementation risks for us and them been mitigated, how much have we learned about this customer, and to what extent have we increased trust and improved mutual understanding through the negotiation process).

Similar work is needed on the buy-side. Few companies would admit to selecting preferred suppliers or awarding competitive bids solely on the basis of price. Talk to almost any procurement executive and he or she will emphasize that price is only one measure of cost, and cost is only one element of assessing the attractiveness of a supplier or evaluating the value of supply agreements and hence of negotiator performance. Nonetheless, the reality is that price related metrics (discounts off list, year-on-year price, or expenditure reductions) dominate the way most companies provide direction to, and evaluate, their buyers. Given that most procurement organizations are still evaluated primarily on their ability to deliver measurable cost savings on an annualized basis, it is not surprising that management in turn applies the same narrow span of measurement to their negotiators.

Such limited notions and means of evaluating success foster the take-no-prisoners attitude common in many procurement organizations. The aim: squeeze your counterpart for the best possible deal you can get. We regularly encounter companies who have, and continue to, put suppliers out of business through such relentless pressure, pursued in the absence of any collaborative effort to help supplier meet savings targets in a sustainable fashion. Surprisingly, many managers and executives at these companies are aware that the costs of searching out and certifying new suppliers, of disruptions to supply, and of quality issues commonly associated with moving to a new supplier generally outweigh the short-term cost savings their buyers negotiate—and that is before any attempt to calculate intangible costs such as discouraging supplier innovation, or damaging goodwill that might be called upon in moments of need (say, when demand outstrips supply, and customers are put on allocation). Nonetheless, such dysfunctional behavior persists.

Rarely in our experience is the gap between rhetoric and reality a matter of hypocrisy.
Most companies (understandably) measure what they can most easily and accurately measure. Price data (like revenue data) is relatively easy to come by and is, on its face, unambiguous. Moreover, the simplest (though in many cases most misleading) indicators of cost and cost competitiveness are price and spend. So, it is no surprise that this is where significant emphasis remains in customer-supplier negotiations.

Focusing solely or primarily on the straightforward, concrete, but limited metrics above has a profound and generally deleterious impact on negotiators’ behavior. It leads both buy and sell-side negotiators to spend far too little time engaging in creative joint problem-solving with counterparts (e.g., exploring ways to reduce inventory levels, streamline supply chain activities, collaborate on new product development, or structure long-term agreements that increase predictability for both sides, and make possible value-producing investments while at the same time mitigating the risks of complacency or opportunistic behavior that pose real risks to longer term, more interdependent business relationships). Traditional buy-sell metrics focused on price, revenue, and simplistic cost measures accentuate the zero-sum dimension of customer-supplier negotiations (while obscuring opportunities for joint gain) and, hence, often contribute to adversarial negotiation dynamics which can make deal implementation more difficult, even as they reinforce a self-sealing loop where joint gain opportunities are less likely to be identified or explored.

Of course, defining more robust metrics (that is, measuring what is most important, even imperfectly, rather than measuring what is easy to measure, and doing so with great precision) to evaluate negotiator effectiveness and the value of negotiated outcomes is difficult. It is outside the scope of this chapter to provide concrete guidance on how to do so in various contexts. Our objective here is simply to highlight the fact that if a different kind of relationship (one that delivers greater value) is desired with customers, suppliers, or other business partners, then that in turn requires a different way of negotiating. Changing the way a company’s agents (be they salespeople, buyers, contract managers, or others) negotiate further requires that management does the hard work of defining new metrics and, equally important, links those metrics to the incentives that directly shape negotiators’ behavior. Short of action at the level of policy, measurement, and incentives, attempts by organizations to implement the advice in this chapter are unlikely to translate into improved results.

26:14 Defining success in negotiations: common and inadequate criteria for a “good deal”—Common (and inadequate) measures of success in negotiations

“Winning”:
- Get the most concessions
Break their bottom line
Make them back down
Get the last possible dollar (euro, yen, etc.)
Make sure they hurt more

Not “Losing”:
Ensure the deal is above our bottom line
Avoid criticism (from colleagues, boss, etc.)
Avoid being taken advantage of; ensure both sides are equally unhappy

Maintaining the Relationship:
Don’t lose opportunities for future business
Ensure they are happy (even if we are not)

Avoiding confrontation

26:15 Defining success in negotiations using the seven-element model

Using the seven-element framework articulated above, it is possible to derive a much more robust set of criteria for defining success, and hence, for articulating the goals of any negotiation. In general terms, the goal of any negotiation should be to meet your interests as well as possible, but in any event, at least as well as they would be met by your BATNA. (This is an important point, because it means that the goal of negotiation is not necessarily agreement. An agreement makes sense only if it is better for you than your BATNA.) For an agreement to be possible and sustainable, it should also meet the other side’s interests at least as well as their BATNA, and any potential spoilers’ interests well enough for them not to interfere.

Beyond this core, everything else being equal, the following criteria constitute means by which to evaluate any potential agreement, and hence, comprise a general articulation of negotiation objectives:

- Reach an agreement that is a creative, elegant, no-waste solution that captures as much available value as possible—among the best of possible options;¹
- Reach an agreement that is legitimate—no one feels taken advantage of;
- Reach an agreement that is embodied in clear, realistic, and operational commitments;

¹Technically this called a pareto optimal outcome (after the Italian economist Vilfredo Pareto) and defined as a solution where neither party can be made better off without making the other party worse off.
Reach an agreement through an efficient process characterized by effective communication;
Reach through a process that helps to build the kind of relationship desired with other parties.

In any given context, there are likely to be trade-offs that need to be made among these criteria. Furthermore, the above criteria should be parsed and weighted differently in different negotiation contexts. For example, negotiation of a strategic alliance, where parties are entering into a complex agreement to work closely together for many years should place significant emphasis on building a strong relationship between their companies, the key individuals involved during the negotiation process, and the key individuals who will involved in managing the alliance. On the other hand, a company negotiating a one-time transaction, say, the sale of certain assets to another company with whom they are unlikely to do any future business, would be wise to place little emphasis on building a good relationship with the buyer. (Of course, the transaction itself is likely to be more efficiently reached, and potentially be better substantively for both sides, if the negotiators themselves build an adequate working relationship with one another during the negotiation process. Furthermore, it would be prudent for negotiators on both sides not to disregard entirely the impact of the negotiation on the relationship between their respective companies. A negotiation process and outcome that breeds active antagonism and leaves one or both parties feeling disrespected and taken advantage of may well lead to a damaged reputation in the marketplace.)

26:16 Getting ready; effective preparation

Successful negotiations begin with effective preparation. Conversely, as noted above, many negotiation difficulties are the fruit borne of inadequate or ineffective preparation. The way people negotiate is driven by the way they define success and the way they prepare (or fail to). Furthermore, especially when confronted with unexpected or difficult behavior from the other side (a reasonably common occurrence in negotiations), the human tendency is to become reactive, which generally leads to poor tactical decisions during negotiations, and hence to worse outcomes. Reactivity in negotiations can be significantly tempered by systematic preparation. Without it, negotiators are left to improvise at the table, often with unpredictable and undesirable results.

Given that preparation is the only part of the entire negotiation process that can be controlled unilaterally, it is unwise, and potentially a failure to exercise due care, to enter into a complex negotiation without adequate preparation. Unlike other aspects of the negotiation process, where perceptions of effectiveness or quality are inherently variable and subjective, effective preparation can be measured by consistent and relatively objective standards, and there are few good excuses for not getting it right.
26:17 Getting ready; effective preparation—We negotiate like we prepare

Negotiators and negotiation teams prepare in many ways: they may focus on crafting an opening position, planning a sequence of concessions, and honing confrontational tactics to put pressure on the other side; or they may carefully evaluate the full range of interests they might satisfy through a negotiation, brainstorm a number of possible solutions, and research relevant benchmarks and precedents to guide decision-making; they may think only about what they would like to see happen, or about a broad range of scenarios, from the highly desirable to the less so. They may focus only on the substantive issues, or they may think about the kind of relationship they want to have with their business partners and how to go about building it during the negotiation process.

A negotiator who prepares by developing an opening position, planning a series of concessions, and defining a “bottom line” is prepared to engage in the traditional haggle of positional bargaining. This approach may be perfectly appropriate for some kinds of negotiations, notably those where the issues are relatively few and uncomplicated, where more for one side likely entails less for the other, where implementation is simple and straightforward, and the costs of defecting from the agreement are high and well-understood by all. However, many negotiations require negotiators to deal with multiple issues and interdependencies among those issues, with uncertainties about how the future will develop, and with myriad other forms of complexity. Should their counterparts take the conversation away from the handful of variables along which a negotiator has prepared positions and concessions, and into a broader exploration of interconnected issues and possibilities, the negotiator who prepared to haggle over positions and concessions will have to improvise, potentially at a significant disadvantage.

26:18 Getting ready; effective preparation—Using the seven-element framework to guide planning and preparation

Because differences in context, personalities, knowledge, and skills make every negotiation to some extent unique, there is no one “right” way to proceed. Moreover, because negotiation is an interactive process not wholly within the control of any one party (hence somewhat unpredictable), good preparation should not focus on just one target “script,” but should enable a negotiator to anticipate and deal with any variety of eventualities. Rather like paratroopers jumping from a plane and unsure exactly where they will land, negotiators need to have a good knowledge of the entire negotiation landscape, so that they can readily assess at any given time where they are and the best route toward where they would like to be.

The seven elements of negotiation offer a roadmap for getting prepared in this way. While there may be no one best way to deploy the elements during negotiations, as core variables in the negotiation process, there is a standard set of questions one can ask about each of them, the answers to which will help a negotiator assess how best to proceed in any given context. A basic list of such questions is set forth in Table 1.
Table 1: A Systematic Seven-Element Checklist for Preparation

<table>
<thead>
<tr>
<th>Interests</th>
</tr>
</thead>
<tbody>
<tr>
<td>▪ What are ours? What might theirs be?</td>
</tr>
<tr>
<td>▪ Are there third parties to consider?</td>
</tr>
<tr>
<td>▪ Which interests are shared, which are just different, and which conflict?</td>
</tr>
<tr>
<td>▪ How do we weight and prioritize our various interests?</td>
</tr>
<tr>
<td>▪ How are they likely to prioritize their interests?</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Alternatives</th>
</tr>
</thead>
<tbody>
<tr>
<td>▪ What’s our BATNA? What might theirs be?</td>
</tr>
<tr>
<td>▪ Can we improve ours? Worsen theirs?</td>
</tr>
<tr>
<td>▪ How could potentially unrealistic perceptions about alternatives be tested?</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Options</th>
</tr>
</thead>
<tbody>
<tr>
<td>▪ What possible agreements or pieces of an agreement might satisfy each of our interests?</td>
</tr>
<tr>
<td>▪ What are some ways to use differing interests to create value?</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Legitimacy</th>
</tr>
</thead>
<tbody>
<tr>
<td>▪ What would constitute a fair and reasonable agreement for all parties would?</td>
</tr>
<tr>
<td>▪ What external criteria might plausibly be relevant to resolving differences?</td>
</tr>
<tr>
<td>▪ What will they argue? Our best response? How can we fit their arguments into our case?</td>
</tr>
<tr>
<td>▪ What will each of us need to justify an outcome to our constituents?</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Commitments</th>
</tr>
</thead>
<tbody>
<tr>
<td>▪ What is our level of authority to make commitments? theirs?</td>
</tr>
<tr>
<td>▪ What level and form of commitment should we aim for from any particular meeting, or at any other juncture during the negotiation process?</td>
</tr>
<tr>
<td>▪ What are mechanisms for changing commitments over time? For resolving disputes?</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Relationships</th>
</tr>
</thead>
<tbody>
<tr>
<td>▪ What kind of relationship do we want? What does the other side (other parties) want?</td>
</tr>
<tr>
<td>▪ Specifically, what kind of substantive relationship do we want? That is, what is the scope of the business arrangement we want now and over time?</td>
</tr>
<tr>
<td>▪ What kind of procedural relationship do we want? How do we want to interact (share information, communicate, make decisions, resolve conflicts) with one another?</td>
</tr>
<tr>
<td>▪ How should we manage the negotiation process to build, or create a foundation for, the kind of relationship we want to have?</td>
</tr>
</tbody>
</table>
Communication

- What do we want to learn from them?
- What do we want to communicate? How can we do so most persuasively?
- What do we want to avoid disclosing or communicating?
- What’s our timeline and game plan for the negotiation?
- What negotiation process should we use?

By offering a standard of relevance and importance, the seven elements help negotiators use limited preparation time efficiently and effectively. Negotiators are often advised, for example, to “know the facts cold.” Which facts? There are a limitless number that might potentially be useful, but it is the facts that help us answer the seven-element checklist of questions that are most likely to be relevant. The seven-element checklist also helps us implement other common preparation advice, such as “understand the other side” (think through what their interests might be), “identify weaknesses” (analyze their alternatives and possible standards of legitimacy upon which they may base their arguments), “avoid signaling desperation or neediness” (think through and improve your own alternatives, and analyze what theirs might be).

26:19 Common systems or styles of negotiation

While the ability to clearly articulate goals for any negotiation and a systematic checklist to guide efficient and effective preparation are essential to achieving success, they are not in and of themselves sufficient. Once goals are defined and preparation complete, negotiators need to interact with each other to reach agreement. These interactions can be handled in many ways. Unlike setting goals or preparing to negotiate, negotiation itself is a bilateral (or multilateral) activity. What one does or doesn’t do is necessarily constrained and needs to be informed by what the other side does or doesn’t do. Consequently, before offering our own advice for how to negotiate, we describe below a number of common styles of negotiating. We analyze each briefly in terms of the seven elements in our model of negotiation and also highlight some of their limitations, while also acknowledging what makes them attractive and when they may in fact be appropriate.

26:20 Common systems or styles of negotiation—Positional bargaining

The simplest and most common approach to negotiation is haggling or “positional bargaining.”¹ One party stakes out a high (or low) opening position (demand or offer),

---

and the other a correspondingly low (or high) one. Then a series of (usually reciprocal) concessions are made until an agreement is reached somewhere in the middle of the opening positions, or no agreement is reached and the parties walk away to pursue their respective BATNAs. “If you want us to renew our contract with you, you need to cut your prices in half. $500,000 for the same volume as last year.” “That’s ridiculous, but as a favor to you, we’d consider an agreement at $900,000. We’re not trying to put you out of business, but do you know what your competitors are offering us? We could live with $600,000.” “Perhaps $800,000.” “$700,000.” “$750,000 is the best we can offer.” “Done.”

26:21 Common systems or styles of negotiation—Why positional bargaining is so pervasive

One explanation for the prevalence of positional bargaining is its simplicity. The focus is primarily on gaining commitment from the other side. One can understand why that might be; since the goal of negotiation is generally presumed to be a mutual commitment, it is natural for each party to suggest what they would like that commitment to be. The inevitable gap between the initial proposals focuses the process on whether and where in the middle the parties might agree. Since negotiation is generally not a subject taught in schools and negotiation analysis is a comparatively recent field of study, it is hardly surprising that a relatively simple and manageable approach to negotiation is widespread. In addition to its simplicity, positional bargaining has the advantages that it is universally understood and frequently expected.

This style of negotiation is inextricably linked to a number of the negotiation goals or measures of success noted above. If this is your picture of negotiation, measuring success in terms of concessions made or extracted is not only sensible, it is somewhat difficult to imagine how else success might be measured.

Moreover, such notions of success drive the very behaviors which constitute this system of negotiation. Thus, much of the lore of bargaining focuses on how to achieve effective anchoring through, for example, lock-in tactics (“My hands are tied,” “It’s company policy”), stubbornness and stonewalling, apparent sincerity, bullying (outbursts, guilt, psychological pressure), repetition, logic (real or contrived), and misdirection (changing the subject, counterattacks, non sequiturs). Finally, focusing on positions avoids the risk that by revealing information about your interests you invite the other side to hold them hostage. (“Oh, too bad you’re interested in that. That will cost you.”)

26:22 Common systems or styles of negotiation—The limitations of positional bargaining

Positional bargaining suffers from a number of critical limitations that make it partic-
ularly ill-suited to complex negotiations, especially where there is, or will be, an ongo-
ing business relationship between or among parties. Most fundamentally, this model of negotiation (with its focus on trading commitments, i.e., offers and counter-offers) leads to systematic inattention to, or underutilization of, many of the key elements of negotiation. By discouraging the exploration of interests, it makes it difficult for negotiators to find creative, value-maximizing options for agreement. A process focused on trading commitments also discourages creativity and brainstorming—it’s hard to think expansively if you are worried that you’ll be committed to any idea you put forward. Moreover, the bilateral dynamic of trading offers means that the potential for parties to work together to maximize value through creative joint problem-solving or option generation is severely constrained.

Second, positional bargaining, despite its simplicity, can often be slow and inefficient. This system of negotiation creates powerful incentives for each party to try to make the smallest concessions possible, and to do so only when it seems necessary to keep the other side from walking away. One way to convince the other party that you are near the limits of your authority or ability to move is to take longer and longer to make smaller and smaller concessions. Because reaching agreement is often perceived un-palatably as “giving in” or “backing down” to the other side, negotiators want to “hold out” as long as possible before doing so.

Third, positional bargaining tends to produce arbitrary “split-the-difference” outcomes that poorly satisfy an interest in fairness are hard to explain to constituents and do little to set effective precedents that reduce the need for additional (time-consuming) negotiation in the future. The problem is exacerbated in multi-party negotiations. The number of bilateral bargains required increases geometrically with the number of parties, and because each bilateral result tends to be arbitrary, it becomes exceedingly difficult to find a common solution. The usual response is to form coalitions to make the number of parties manageable, but coalitions by their nature find it hard to make the myriad decisions needed to pursue an extended concession strategy.

Fourth, positional bargaining tends to promote an adversarial relationship. It tends to focus parties’ attention on areas of conflict and encourages a distributive “win-lose” mindset—who has given up (or in) more? The entire process of moving toward

[Section 26:22]

agreement is focused primarily on concessions (giving things up, giving in)—which is far more likely to build feelings of resentment than goodwill. Moreover, inevitable perceptual bias leads people to see their own intentions and moves more positively and others’ more negatively, often promoting an escalating cycle of hostility. While such biases exist in all negotiations, they are exacerbated by the incentives to dissemble in positional bargaining—about interests, your BATNA, your authority to commit, and so on. Parties routinely leave negotiations conducted through positional bargaining wondering what they don’t know—whether they were “taken” or at least could have gotten “more.” Such feelings can lead to resentment and a determination to exact revenge, or at least “make it up next time.”

Finally, even when used with an explicit intent to build or preserve a good relationship (and avoid the relationship-damaging dynamics noted above), positional bargaining suffers from significant liabilities. Efforts to build or preserve an important relationship or avert conflict typically lead one or both (or all) negotiators to adopt a “soft” style of positional bargaining. This entails the espousal of reasonable positions, making generous concessions, and focusing on offers (versus threats). This can produce agreement quickly, though the agreement will likely not be a good one, because neither interests nor options have been thoroughly explored. Moreover, adopting the soft approach to positional bargaining often encourages the other side to take advantage. If you try to appease the other side and preserve the relationship by making a concession when they get upset, they may indeed calm down, for a while, but they will also learn to get upset if they want a concession. Over time, this can produce a toxic dynamic with resentment on one side and disrespect on the other, thereby damaging the very relationship it was intended to preserve.

In the end, relationships bought with substantive concessions are rarely worth the price. Inevitably, the reward for making such concessions is the continuation of a relationship in which substantive value today is sacrificed for future opportunities to give up even more tomorrow. Moreover, attempts to buy good relationships are ultimately unsuccessful because they rest on overly simplistic and misguided notions about what a good relationship is. An effective business relationship is not one where there is little or no disagreement or conflict. Not only is such a relationship a fantasy unlikely to be encountered in the real world, but it is also unlikely to be an engine

[Section 26:22]

of creativity, innovation, or significant value creation. A good relationship is one in which differences (in everything from knowledge, to expertise, to business models, to operating procedures) are well managed so that differences become an asset—a source of innovation and learning—rather than a liability. At the least, a good relationship should enable inevitable differences to be efficiently negotiated and resolved at low cost. Such relationships require a foundation of trust, mutual understanding, and respect. Such a foundation is built not by making concessions during negotiations, but through effective communication, and a commitment to engage in efforts at mutual persuasion, and to talk about what parties ought to do, rather than rely on coercion or arbitrary compromise, to resolve disagreements and guide decision-making.

Nonetheless, there is a time and place for the positional style of negotiation; simple transactions, and situations when the costs of “changing game” with counterparts who know only this style of negotiation outweigh the potential benefits of doing so. Moreover, the drawbacks noted above can, to some extent, be overcome with more sophisticated and skillful implementation. Indeed, experienced and competent bargainers tend to temper the usual focus on commitments by identifying external standards to justify their positions, employing empathetic listening to buttress the relationship against the effects of tough positioning, and utilizing brainstorming interludes (with commitment taken explicitly, and temporarily, off the table) to explore a wider range of potential options for agreement. Depending on the skill and purpose with which this is done, this can either make the negotiation process more like the alternative archetype of “joint problem-solving negotiation” described later in this chapter, or exacerbate the relationship costs of positional bargaining and breed cynicism about the possibility of alternative approaches.

Positional bargaining tends to make the most sense as an approach for two parties with relatively simple, low-stakes issues and little commitment to the relationship, where there is a strong market context limiting the arbitrariness of outcomes (or where there are no independent measures of fairness), or where bargaining is well-established. Stock markets, for example, are a context where simple bargaining is efficient and effective. Traditional bazaars are a context where bargaining is expected, stakes are typically low, and market standards may be limited.

26:23 Common systems or styles of negotiation—Other systems of negotiation
In addition to positional bargaining, there are a number of other fairly common systems of negotiations. While describing all of them would take an entire book, there are a handful that are worth noting—both for understanding in cases where you confront such styles, and for choosing in case you decide you want to employ one of them. Each system is easy to spot, and each system is relatively easy to employ, but requires a careful balancing of pros and cons before use.
26:24  Common systems or styles of negotiation—“Artichoke” and “Salami”

Artichoke and Salami are two different, but related, systems of negotiation. Both involve carefully planned concessions games. In Artichoke, the negotiator decides what he or she most needs (the heart of the artichoke) and then places around it a series of things he or she professes he or she needs (the prickly leaves) but is actually willing to give up to protect the “heart.” So, for example, if a salesperson wanted to ensure that he or she would not have to give up closing a deal by the end of the quarter, he or she might surround that core position with various positions on contractual terms, payment schedule, and the like. Throughout the negotiation process, our salesperson is prepared to make various concessions on those issues (all the while expressing great pain). If he or she does this well, he or she makes whatever concessions are necessary for the other party to be happy, while staying firm on (in fact, trying to completely keep off the table) the issue of closing the deal by the end of the quarter. Naturally, such an approach works well with counterparts who measure success by the number of concessions they extract, and especially those who rely on their assessment of whether they broke the other side’s bottom line. Using Artichoke effectively also enables a negotiator to deflect attention from core interests so that they are not perceived and held hostage by the other side.

In Salami, the negotiator decides that he or she is going to have to concede a certain amount, but makes those concessions slowly and in small increments (cutting thin slices off of the whole salami), and makes every effort to convince the other party that what they are getting is of great value. For example, consider a procurement category manager who has concluded that, in the face of rising commodity prices, he or she is going to have to agree to a 20% price increase from a supplier. Using Salami, he or she would begin with agreeing to a 3% increase, then get to 6%, then perhaps to 8%, and so on. In the end, the whole 20% is given up, but the process of slow and small concessions is likely to leave the other party believing they got more than if the category manager had simply offered a 20% increase from the beginning, and also conveys an impression that his or her “bottom line” has been reached. Furthermore, the procurement manager, if he or she has been skillful, will have extracted concessions in return for each small slice of the salami that he or she has given up (each concession he or she has made). Used with (or against) a poorly informed or prepared counterpart, significant value may be gained through a series of reciprocal concessions that cost you much less than you gain in return.

While Artichoke works best when negotiating with someone who measures success by whether they have reached or breached your bottom-line (as indicated by how much pain you exhibit), Salami works with someone measuring success by primarily by how many concessions that have extracted. With a little bit of preparation, both systems are easy to employ, and, although there are slight differences, each has essentially the same advantages and disadvantages as positional bargaining.
26:25 Common systems or styles of negotiation—“Favors and ledgers”

Another important negotiation system also involves trading commitments, but takes advantage of an ongoing relationship between the parties to produce more creative and value-maximizing outcomes. The basic idea is to agree to a one-sided outcome now—a “favor”—in exchange for a reciprocal favor in the future. Negotiators then keep a “ledger” of who owes whom what. The result is a creative way to “expand the pie” by relaxing the timeframe for trades, which often permits deals and resolution of conflicts that otherwise seem impossible.

With varying degrees of formality, favors and ledgers (“logrolling” with a “bank”) is common in many ongoing relationships, and ubiquitous in legislative bodies. It is operative, for example, when a supplier says to a customer, “We’ve given you price decreases the last several years to help you out when you were under financial pressure. Now it’s your turn. Our material costs are up and we’re losing money—we need you to give us a price increase to help us out.” Or your boss says, “I know this is a nasty assignment, but someone’s got to do it. We’ll make it up to you.”

While favors and ledgers has benefits, it also has drawbacks. First, parties need to ensure that they have a shared perception of the size of a favor and a reliable means of recording it, or they risk a serious rupture in the relationship when the creditor party seeks “repayment.” The procurement manager who asks the account manager to do him or her a favor and extend the time from invoice to payment for another 30 days for the next few shipments is unlikely to expect that the sales manager is going to come back a few weeks later and ask for a favor that involves increasing prices on all units by 50% for the next three years. More importantly, there is always a risk that one’s counterpart will no longer be in power when repayment is desired, and their successor may disclaim knowledge or obligation to repay. (“What favor? The deal struck on last year’s contract set a precedent.”) Finally, like regular positional bargaining, favors and ledgers tends to result in arbitrary outcomes. While these may feel fair overall to the negotiators, they may be very difficult to explain to constituents, and they tend to set no useful precedent. Indeed, one common legislative measure of the “size” of a favor is how far it goes against the interests of the legislator’s constituents.

Particularly in situations that feel zero-sum or where a negotiator really needs something, but does not have standards by which to justify the request as legitimate, or the means to offer commensurate value in return, employing favors and ledgers is worth considering. The danger of being drawn into this system of negotiation is that it will turn into a game of favors and favors, where favors are requested and done but never paid back. This is where the “ledgers” piece becomes important. Agreeing to do a favor needs to be coupled with explicit discussion and likely some kind of documentation.
(even if informal) of the favor done and favor expected back, and perhaps even a ground rule that no more favors will be done until the first one is paid back.

26:26 Common systems or styles of negotiation—“Asymptotic bargaining”

Asymptotic bargaining is, again, a style of negotiation that focuses on commitments, but the person or team utilizing this style consciously aims to make the process one-sided to their benefit. The name derives from the mathematical function wherein values get closer and closer to, but never reach, a limiting boundary. In essence, negotiators using this style hold out an intangible promise of agreement and make escalating requests for more and more additional commitments from their counterpart/s.

In practice, it sounds something like this:

**Sell-side Account Manager:** We’ve thought hard about this and want to propose that we charge you $10,000 per unit, deliver at the end of each month, and split the shipping costs 50-50.

**Buy-side Procurement Manager:** That sounds in the ballpark, but we really need you to do a little bit better. Can you give it a little more thought?

**Account Manager:** We’ve spent a couple of days working the numbers and think we could make it $9,500 per unit.

**Procurement Manager:** That sounds better. We’re getting closer, but we still need a little better deal.

**Account Manager:** We could go to $9,000, but no lower.

**Procurement Manager:** This is looking better and better, but can we do anything about the shipping costs? Could you check within your company and see there is anything else you could do?

**Account Manager:** I spent the last day or two checking, and I guess we could split the shipping costs 25-75.

**Procurement Manager:** That does sound better, but how about we also look at...

And so, it goes. The Procurement Manager keeps asking the Account Manager to “go sharpen his pencil” a little bit more, and see if he can sweeten the deal.

While this might sound odd (who would ever fall prey to this style of negotiation?), it happens frequently. Why? Because so many negotiators are instructed to, or otherwise assume their objective is, to reach agreement. So, they are susceptible to a negotiation strategy that essentially keeps moving the finish line. This system is most effectively employed, and easiest to fall prey to, when a party is skillful in continuing to imply or send signals that their counterparts are getting “closer” to agreement at each step in the process. Furthermore, when each incremental commitment is small, it often
feels reasonable to offer a marginal, additional unilateral concession to try to close the deal that seems so close. Finally, this style leverages a basic psychological reality. Who wants to feel like they wasted significant time and effort trying to negotiate an agreement, when just one more smaller offer or concession may be all that stands in the way of (finally) getting a signed deal?

There are some obvious advantages to employing this style of negotiation—there is little need for anything but basic initial preparation (to know what you want), it is reasonably easy to conduct, it can be done through efficient media (e-mail, over the phone), it can be fun, and you may well be able to negotiate additional value for yourself or your company. At the same time, however, there are serious disadvantages. Asymptotic bargaining is inherently manipulative and therefore tends to damage working relationships. In turn, those subjected to it often enter agreements looking to “even the score” during implementation, when they may have greater leverage. Asymptotic bargaining also runs the risk of driving the other party to walk away, or to decide not to negotiate or do business with you in the future. Finally, this style of negotiation is poorly suited to complex negotiations where an optimal outcome is only likely to be reached through a process where negotiators exchange information about the full range of their interests and objectives, and work jointly together to develop solutions. Like any permutation of positional bargaining, asymptotic bargaining significantly constrains (or even precludes) joint problem-solving, and hence, the value of any outcome is circumscribed by the limits of what either side knows and can imagine.

26:27 Common systems or styles of negotiation—Brinkmanship

Another common system of negotiation revolves around alternatives—whose is better, and who can worsen the other’s (by means of credible threats). “Our walk-away is better than yours, and furthermore, we will make yours worse by ....” This is commonly called brinkmanship; “Give in to my demands, or I will kill us both. There will be more mourners at my funeral than yours and more flowers on my grave.” A labor strike or lockout, much litigation, and certain kinds of military action are common examples of this approach in action.

Brinkmanship is often the unintended end result of an escalation process that begins with frustration perceived by each side to be the result of the other side’s stubbornness and unreasonableness. Someone issues an ultimatum or makes a threat (or says or does something that is so perceived by their counterpart). However, the other side, with reciprocal perceptions of unfairness and an equal desire not to “back down” to bullying, responds with a counter-ultimatum or counter-threat rather than a concession, starting a cycle of escalation.

Brinkmanship tends to be extremely costly with a great deal of resources poured into
the battle instead of trying to craft a potentially beneficial agreement. In the end, as with the proverbial game of chicken in which teenagers drive their cars straight at each other, both sides may die. In practice, brinkmanship sounds something like this:

**Sell-side Account Manager:** Our companies have worked together for a long time. I have always tried to get you the best price possible. I think the very best we can do here is $1.5 million per unit.

**Buy-side Procurement Manager:** Well, that just isn’t good enough. We can get a similar product for under one million from your competitor.

**Account Manager:** You’re threatening to go to our competitor, and throw a 10-year relationship out the window? Fine, but then we’ll have no choice but to shut down production lines immediately. How are you going to meet your customer commitments in the meantime?

**Procurement Managers:** Don’t threaten me. You’ll be in court so fast it will make your head spin. And don’t worry, we have plenty of inventory and can make the equipment in our own manufacturing facilities if we need to.

**Account Manager:** Sure you can. If that was such a good idea, I’ll bet you would have done it already. Quit bluffing. By the way, if you don’t renew this contract, we can’t afford to continue manufacturing replacement parts and doing field service on the two prior product generations. Good luck finding a way to cover that! None of your engineers even understand the specs on those units anymore.

**Procurement Manager:** Watch yourself. Not only will you be in court, you’ll be hit with so many penalties and damages you’ll be out of business. But long before that, you’re going to be out of a job. We’re a $100 million dollar annual account. I’ll be on the phone with your boss this afternoon. Better start packing your desk right now.

**Account Manager:** #$@%$## you! And what are you going to do when you do drive us out of business? Trust me, before you talk to my boss I will, and I’ll be sure to relay your threat to put us out of business. And I’m sure the heads of Product Development and Sales at your company will be very interested in how you are acting to undermine them and their ability to build and sell products.

**Procurement Managers:** Oh really?! Well...

The picture is clear. Threats escalate, with each one getting more significant (and putting both parties at greater risk). In the end, occasionally someone flinches and gives in, but far too often both parties go down the road of hurting each other and themselves, badly. Brinkmanship sometimes pays off, but it is among the riskiest negotiation strategies that exist.

If one party believes they truly have a better BATNA, they may consciously choose to
adopt this approach. Once the other party feels backed into the corner, it is very nat-
ural (if not particularly wise) to react in kind. Perhaps more commonly, brinkmanship
occurs because of a perceived (often misperceived) threat and a belief that it is better
to fight a battle now (when there is some chance of getting the other side to back down)
than later (when one will have even less leverage). For the most part, brinkmanship
represents a failure of skill and perspective on the part of negotiators. This is not to
say, however, that a negotiator should never hold firm or refuse to concede. As always,
agreement makes sense only if it satisfies a negotiator’s interests better than the ne-
gotiator’s BATNA. If the issue in dispute is a matter of principle about which you feel
strongly, such as, for example, abiding by laws that prohibit bribery, it may be wise
not to agree no matter the immediate cost (even, say, the loss of a $100 million dollar
contract). Moreover, in a negotiation which is part of an ongoing relationship, yielding
to threats carries significant, deleterious long-term consequences. Even if yielding to
a threat from a business partner today yields an outcome that is better than my best
walk-away alternative, I risk teaching them that I will yield to threats in the future.

At this juncture, it is worth noting the difference between a threat and a warning. A
threat, as in brinkmanship, is not something you intrinsically want to do, but some-
thing you might do (or at least, assert your ability and willingness to do) to coerce
another party to do something you want. The focus and intent is generally on causing
them harm. A major downside of issuing threats is that virtually no one likes to give
into pressure, especially pressure without any legitimate basis. A threat invites one
of two responses (or both)—counter-threats, and defensive arguments and rebuttals
about the whether the threat is indeed threatening. Neither is quite what the party
issuing the threat had in mind, namely, convincing their counterpart(s) that the best
thing would be to yield to the demand (final offer, etc.) on the table.

In contrast, a warning is a statement offered to educate the other side that your BATNA
is better than their current offer (and may involve less pleasant consequences for them
than they have anticipated). While a warning may influence the other side to change
their offer, its immediate purpose is to ensure that they do not make an unwise choice
based on inaccurate assumptions. The focus and intent of a warning is typically on
what you will do to protect yourself and meet your own interests—which may indeed
cause the other side harm, but as a by-product, not as your primary objective. The
advantage of a warning is that, if effectively framed, it is much less likely to trigger
a fight response and reciprocal counter-threats. Because it is less likely to trigger an
angry emotional response, it is also somewhat more likely to be absorbed, and thus more
likely to influence the other side’s thinking, rather than simply (and often unhelpfully)
influence or shape their behavior by triggering an ill-considered reactive response.

Consider a simple example to highlight the difference between threats and warning.
This is a threat: “If you don’t meet our demand to increase the number of people you have staffed to the application development project you are doing for us, we’re going to delay payment of a huge outstanding invoice, and put your loan repayment at risk. Plus we’re going to take you off our approved supplier list and prevent you from getting any future business with us.” Imagine how you would feel if subjected to such a threat. How would you respond? What are the likely long-term consequences of relying on such tactics? Is such a tactic even the best way to persuade the other side on the issue at hand today? By contrast, this is a warning: “We need to accelerate completion of this project; it is significantly behind schedule. If we can’t reach agreement on adding staff or perhaps replacing current team members with more experienced ones, we will need to assign some of our in-house software engineers to this project and/or hire independent contractors. If we do this, it will likely make economic sense for us to do most or all future upgrade and maintenance work ourselves, rather than outsourcing it to your company…”

Of course, there are certain advantages to employing brinksmanship. It is easy to prepare, easy (in the sense that it does not require a great deal of skill) to conduct—especially if one has the stomach for it—and a negotiator can look tough to his or her constituents and at least avoid criticism for giving in, or giving too much away. Brinksmanship can also be psychologically satisfying, especially when pursued in the face of perceived aggression or unreasonableness from the other side. On the downside, it almost always damages (or destroys) the relationship between the negotiators (and often the relationship between the companies they are representing), it is high risk, it frequently leads to no deal, leaves little room for value creation, guarantees that someone will ultimately lose face, and it can be disastrous in the near-term (for example, brinksmanship played between unions and management often leads to devastating strikes and lock-outs) and in the long-term (we might win today, but have an extremely difficult time in the next negotiation when the other party will be sure to come in with bigger and better threats).

26:28 Common systems or styles of negotiation—Refusing to negotiate

One final system of “negotiating” worth noting is the refusal to negotiate at all. Rather than engage in any form of bargaining with counterparts, parties who employ this method craft an agreement or offer to which they are willing to commit, and essentially say—“Here it is—take it or leave it.” There are two ways in which this system can be employed.

The first is the more typical. It is born of a mindset that says: “I have the power, you don’t, so either accept my offer/demand on my terms, or we have nothing else to talk about.” Implicit or explicit in this approach is the belief that the negotiator need
not explain or justify anything about his or her demands. The element of legitimacy is presumed irrelevant and ignored. This approach to “negotiating” contracts has historically been employed by many U.S. health insurance carriers with health care providers (hospitals, clinics, physician practices) in decades past. Renewal contracts were sent out, without discussion or explanation, accompanied by letters noting that the providers could sign the contracts, or be out of the carrier’s network.

Needless to say, this approach tends to be extremely hard on working relationships between or among parties. It also ignores any opportunity to develop better solutions based on information from counterparts about what they need or might bring to the table, or by engaging them as fellow problem-solvers. That said, if a negotiator has a strong BATNA, knows that his or her counterpart does not, is clear about what he or she wants, and is able to lock-in and stand firm, this approach works well. Its overwhelming benefit is its efficiency. Negotiation is, in general, a high transaction-cost activity—it takes significant time and effort to conduct. Part of the attractiveness of this approach to insurance carriers was the fact that they had hundreds or thousands of physicians, clinics, and hospitals with which to contract (and equally, with whom they then had to administer contract terms). Given that insurance carriers had all the leverage, there was little downside, and significant upside, to employing this approach—at least in the short term. In the long term, providers realized that they needed to change the game. A huge driver of consolidation among health care providers over the past 15 years has been the desire to level the playing field for contract negotiations (specifically with respect to reimbursement rates) with insurance carriers.

Today, U.S.-based health insurance carriers frequently face negotiations with hospital systems, large multi-specialty clinics, and integrated delivery networks that have tremendous leverage. Negotiations between payers and providers are often highly adversarial (not infrequently opened by providers who send a letter providing notice of their intent to terminate or fail to renew a contract.) Thus, many insurance carriers continue to reap a bitter harvest because of the negotiation seeds they sowed when they had all the leverage. Damaged relationships take a long time to heal and act to constrain value creation in future negotiations. Attempts to implement innovative “pay for performance” contract language in healthcare (common in other industries) still have not gained significant traction. There is no disputing that there are daunting challenges to finding effective solutions to measuring true performance in healthcare. Nor can there be any disputing that a history of adversarial negotiations and mistrust has created relationships that greatly impair the ability of payers and providers to develop creative solutions together, or accept the inevitable risks of innovating and trying to implement new approaches.

There is a very different way to implement this system of negotiation. While there is
still a similar upfront message of “we are not going to negotiate,” it is coupled with an explanation, or even discussion, about why this is the case, and how the proposed agreement was developed and why it is legitimate. “We don’t negotiate price. We have built in what we believe to be a reasonable margin of 8%, and are happy to share (certain) details. We treat every customer the same (or perhaps, similar customers in like fashion). We’d rather put forward an open and honest price and sell our customers on the value of our product than waste time playing negotiating games with our customers, leaving each one feeling like someone might have gotten a better deal than they did.” Employed consistently and with attention to how the messages are delivered and to developing the relationship with the other party, this can be a very effective system of negotiation. For long-term success, it does require reasonable and defensible prices and terms, the ability to stick firmly to the “we do not negotiate and here’s why” approach, and ideally, a competitively differentiated product.

Some health insurance carriers have adopted this latter approach with the large numbers of individual physicians or small physician groups with whom they contract. They spend significant time explaining contract terms and conditions, including reimbursement rates, and make a significant effort to develop and then justify rates based on legitimate standards. Further, they take the time to listen to concerns and complaints from physicians about specific contract terms. In and of itself, such listening is not likely to be terribly effective. (I’d probably rather have the opportunity to vent my grievances to you than not, especially if you can convey credible empathy with my plight, but if I know you’ll never do anything about them, I’m left with pretty cold comfort, and I’ll likely begin to doubt the sincerity of your empathy and come to see it as a mere tactic—and a manipulative one at that.)

However, this is a tractable challenge. Negotiators may be required to come back and report on the most significant and common complaints they hear from physicians about contract terms. Patterns and trends across hundreds of negotiations conducted by dozens of negotiators are regularly analyzed and evaluated. Over time, changes are made to standard “non-negotiable” contract terms in response to feedback from physicians. So, when negotiators take the time to listen and ask probing questions to ensure they have a deep understanding of physicians’ interests and concerns, they can credibly say: “As you know, we do need to maintain consistent terms across all of our physician contracts, so we can’t do anything about this issue this year. I am sorry this creates difficulties for your office. I will, however, convey these concerns to management, and we’ll evaluate how we might be able to adjust these terms in the future.” This works even better when coupled with mechanisms such as provider (or, in other contexts, customer, or channel partner, etc.) advisory councils who are regularly consulted for input on standard contract terms. A significant lesson implied by this entire discussion
is that negotiation success depends on more than the individual skills of negotiators. Companies need to align their policies and business processes so that they are congruent with the kinds of negotiations they want to engage in; the outcomes they want to achieve; and the relationships they desire with customers, suppliers, and partners. The advantages of both of these forms of refusing to negotiate are efficiency of the negotiation process, and standardization of terms such that contract administration is also much more efficient than it otherwise would be with a more diverse universe of negotiated outcomes. The disadvantages are that some counterparts will “leave it” (walk away) rather than “take it” (agree to the standard offer), and those that do agree may feel bullied into a price, certain terms, or the like. Obviously, executed skillfully, the second form of this system entails significantly less risk, though it is still likely to leave those who like to negotiate or are measured on bringing back concessions feeling less than successful. Because it is so rare, it may take a great deal of persistence to “educate” counterparts that if they want to do business with you, this is how it will work. In the meantime, you may encounter a lot of walking away, while parties test (or mistakenly misread) your willingness to stand firm.

26:29 The joint problem-solving approach to negotiation

As discussed above, all these common systems of negotiation suffer from significant limitations, if not outright liabilities, and none of these systems, in and of themselves, provide a useful theory to guide thinking about when to apply them or not. Nor do any enable systematic thinking about how to respond to a different style than the one you are using. Nonetheless, all can be understood in terms of the seven elements model of negotiation, and by doing so, certain guidelines for whether or when to use one style versus another can be adduced.

Through our research at the Harvard Negotiation Project, and through our consulting practice, we and our colleagues have developed and refined a further alternative—a principled, interest-based, joint problem-solving approach to negotiation. The essence of this approach was first succinctly articulated in Getting to YES and has been elaborated in various ways since. In essence, it argues that: (1) negotiators should work together as colleagues to determine whether an agreement is possible that is better for both than no agreement; (2) in doing so, they should postpone commitments while exploring how best to maximize and fairly distribute the value of any agreement; and (3) it makes sense for one party to take this approach even if the other is not.

This approach is intended to overcome the drawbacks of traditional positional bargaining:

- Rather than focusing on positions, which represent each party’s uninformed first thoughts about possible solutions, the problem-solving approach focuses on the
parties’ underlying interests, looking for ways to maximize the satisfaction of shared interests and create value by “dovetailing” divergent interests.

- Rather than making early commitments and then concessions, which limits creativity and can slow progress, the problem-solving approach explicitly postpones formal commitments to the end. It is governed by the general principle that “Nothing is agreed until everything is agreed.” Demands and offers are avoided or sidelined in favor of brainstorming and improving multiple options to create and distribute value. In practice, commitments form tentatively and strengthen gradually, as negotiators become more confident about what options make the most sense, and are confirmed quickly at the end.

- Rather than arbitrary, split-the-difference results, the problem-solving approach encourages explainable, well-reasoned outcomes that set sustainable precedents by changing the question from what the parties are willing to do to what they should do based on independent standards and principles of fairness.

- Rather than put relationships at risk through an adversarial process, the problem-solving approach allows parties to maintain and build their relationship even as they disagree by uncoupling the quality of the relationship from the degree of agreement. Like two scientists who may disagree about the explanation for a problem neither fully understands, the relationship is maintained by remaining both forcefully candid and respectful—explicitly aware of the possibility that it may be your own view (however obvious it may seem and however strongly felt it may be) that is incomplete or even in error, and prepared to put it to a fair test.

The problem-solving approach is also intended to manage two fundamental negotiation tensions identified by analysts—the tension between creating and distributing value and that between substantive and relational interests. The first of these is sometimes called the negotiator’s dilemma,¹ because to create value requires that negotiators disclose their interests, but disclosing first can sometimes put you at a strategic disadvantage in terms of capturing the resulting value. For example, if I reveal a preference for some immediate cash flow in negotiating a distribution contract, you may be motivated to prolong the negotiation and increase my desperation in hopes that I will accept less. The problem-solving approach manages this tension by fostering a collaborative working relationship, permitting gradual and reciprocal disclosure of interests while brainstorming options without commitment, and addressing distributional questions

---

¹See Lax, D., and Sebenius, J. The Manager as Negotiator. New York:
side-by-side by appealing to objective standards, rather than through adversarial “claiming” and reliance on coercion.

The second tension is widely perceived, but not inescapable—it is generally an artifact of insufficient skill. It is felt most recognizably as a need to choose in a negotiation whether you care more about maintaining your relationship with the other side or about achieving a favorable substantive outcome. The perception is that there is an inevitable tradeoff between the two. As discussed above, the problem-solving approach overcomes this tension by separating substance and relationship (described as “separating the people from the problem” in Getting to YES) and dealing with each on its own merits. The joint problem-solving approach to negotiation is most useful for situations where the stakes are high, where relationships and/or the precedential value of the outcome are important, where issues are multiple or complex, and/or where there are many parties—factors that characterize many, and arguably most, business negotiations.

26:30 Strategic guidelines for joint problem-solving negotiation

Below we summarize useful guidelines for employing this system of negotiation, organized by the elements of our seven-element framework. These guidelines are by no means exhaustive, but are intended to convey a richer sense of this approach to negotiation, as well as to provide advice useful in its own right, however incomplete.

26:31 Strategic guidelines for joint problem-solving negotiation—Communication

Effective communication is essential to effective negotiation. In general, it is useful to try to achieve a balance between clearly and strongly advocating your own views (and the reasoning behind them), while also genuinely and energetically inquiring into the other side’s perspective. Not only will you be more persuasive if your counterparts believe you understand and care about their needs and point of view, you are far more likely to learn useful information (about their interests, their alternatives, their perceptions of your alternatives, and the like) than if you focus primarily on putting forth your own views. It is important to note that seeking to understand the other side’s perspective, indeed to empathize with it, does not in any way require that you agree with it (though the distinction is often difficult to put into practice). Finally, consider communicating explicitly about the negotiation process itself (timelines, milestones, ground rules, meeting agendas) and not only over substantive issues.

26:32 Strategic guidelines for joint problem-solving negotiation—Relationships

Relationships, both preexisting as well as new ones to be created through the process of negotiation and the execution of a new agreement, are a critical variable in the analysis of most negotiations. Think hard about what kind of relationship you will need with other parties to successfully implement any agreements, and choose your negotiation strategy and tactics with an eye to build (or maintain) such a relationship while you negotiate. Avoid holding a relationship hostage to extract or extort substantive gains, and likewise, avoid attempts to “buy” a good relationship by making arbitrary substantive concessions.

Be unconditionally constructive on relational issues. That is, avoid reactive “tit for tat” actions (which may be emotionally satisfying in the moment, but will rarely serve to achieve long-term interests), but be prudent in how you respond to difficult behavior from business partners and negotiating counterparts. For example, be reliable and trustworthy, even if the other side is not (or appears, from your perspective, not to have been). On the other hand, do not be wholly trusting, especially if you have reason to doubt the other side’s sincerity or ability to deliver on promises (“Trust, but verify.”). Similarly, avoid responding to threats or coercion with counter-threats, and, equally important, avoid yielding to threats and coercion. Try to persuade others based on what makes sense and seems reasonable according to independent standards, and be open to persuasion in turn. Teach your business partners that persuasion works better when negotiating with you then pressure. (It may take time for them to learn this lesson; they have likely learned the opposite in many negotiations with others.)

26:33 Strategic guidelines for joint problem-solving negotiation—Interests

As described earlier, many common systems of negotiation revolve around, and a great deal of negotiation advice presupposes, a process in which parties’ stake out and bargain over (between) positions. At the heart of the joint problem-solving approach to negotiation lies an ability to share and explore interests and, therefore, enable the generation of multiple possible solutions that satisfy each party’s interests. In many situations, other parties’ interests may be obscure (even to them), they may be unwilling to disclose their interests, or they may simply negotiate with a traditional

[Section 26:32]

emphasis on positions. Regardless, seek to uncover the interests that inevitably (by definition) lie behind their stated positions. Ask why the other side has staked out or locked into the position they have and explore their objectives and what are they trying to achieve. Share your own hypotheses about what interests might be motivating them and ask for their feedback on what you have missed or gotten wrong. Consider also putting forth possible options (remember to emphasize that you are not asking for their commitment) and ask the other side to criticize them. Most will be only too happy to explain why your proposal is unrealistic, unreasonable, or otherwise something to which they could never possibly agree. If you listen carefully to their criticism, you will hear about their interests, specifically those interests which they believe will not be met by whatever option you articulated.

Consider when and how to best share your own interests with your counterparts. Weigh the benefits of disclosure (it will be hard to develop options which optimally meet your interests unless you share them) with the risks of doing so (namely, that the other side will use that information to extort concessions as the price of meeting your interests). Specifically, consider gradual, reciprocal disclosure of interests, such that you have the opportunity to see if the other side reciprocates by sharing information about their interests before you incur significant risk by disclosing a great deal of information. Be sure to carefully analyze the true risks of disclosure, neither overestimating nor underestimating the likelihood and consequences of extortionary behavior by the other side.

26:34 Strategic guidelines for joint problem-solving negotiation—Options

In employing the joint problem-solving approach to negotiation, the aim is to use information about the interests of the parties to inform joint brainstorming of many possible options for mutual gain. To maximize creativity, clearly and explicitly separate the process of inventing options, from the process of evaluating them, from that of deciding on (committing to) any options. Encourage sharing of ideas which may themselves be unworkable; they may be the catalyst that stimulates other novel ideas which might in fact be feasible.

Operate on the assumption that the pie is rarely (if ever) truly fixed. Explore ways that differences in interests might be leveraged to create options for joint gain. For example, different expectations about the future (rapid market growth versus slow or no growth) might be accommodated through contingency agreements, different risk profiles might be reconciled through terms that provide extra downside protection for one party in exchange for a greater share of potential upside for the other, and so on.

26:35 Strategic guidelines for joint problem-solving negotiation—Legitimacy

Particularly in complex negotiations, appealing to standards (criteria) that all parties
recognize as legitimate tends to be the most efficient way to resolve disagreements and helps further produce wise, durable agreements while strengthening the working relationship between (or among) parties. By contrast, reliance on willpower or pressure tactics tends to reward intransigence, produce arbitrary outcomes, damage working relationships, and set poor precedents.

Use legitimacy as a sword; avoid threats and focus on explaining why/what you are asking for or recommending is fair and reasonable. Conversely, use legitimacy as a shield; avoid yielding to pressure, but be willing to yield to principle. If the other side applies illegitimate pressure and you give in, you reward their bullying and encourage them to repeat it. If, however, you respond to arguments based on objective standards, you demonstrate to your counterparts that legitimacy works and encourage them to continue its use. Ask why the other side believes what they are asking for or recommending is fair and makes sense. Consider applying the test of reciprocity—“If you were in my shoes, would you accept the proposal you have put on the table? Why?” Finally, use the element of legitimacy to combine assertiveness and empathy in negotiations (“I can understand why you would want these terms; help me understand why you think what you’re asking for is fair. How would you suggest I explain and justify it to my management team?”).

26:36 Strategic guidelines for joint problem-solving negotiation—Alternatives

As noted above, the goal of negotiation should not be framed as reaching agreement. Instead, negotiation is better understood as an exercise aimed at creating the best possible deal with the party or parties with whom one is negotiating, and then making a wise choice about whether committing to that agreement better meets your interests than your BATNA. It is essential, both prior to and during negotiations, not only to research and evaluate your own BATNA and the other side’s, but also to take actions to strengthen your own walk-away alternatives. Resources expended on making your BATNA more attractive will pay off one way or another, either by raising the bar to any agreement you ultimately reach, or by improving the satisfaction of your interests if you or the other side decides to walk away. In those situations where both you and your counterparts have attractive BATNAs, reconsider whether negotiations are worth the time and effort.

When employing the joint problem-solving approach to negotiation, acknowledge that you both have alternatives, and, as much as possible, use conversations about alternatives as an opportunity to learn more about interests, and jointly seek options better than each of your respective BATNAs. If the other side threatens to walk-away, ask them how and why they believe doing so will meet their interests. If they seem to be overestimating the amount of leverage they possess, educate them on your alternatives.
to an agreement with them (a warning, not a threat), and consider coupling such a warning with an expression of your desire to explore together whether you might be able to construct an agreement that is better for you and better for them than their best walk-away alternative. If they seem to be bluffing about their willingness or ability to walk-away, consider revealing what you know or surmise about their BATNA, thereby creating additional motivation for them to negotiate reasonably.

26:37 Strategic guidelines for joint problem-solving negotiation—Commitments

A unique and important aspect of the joint problem-solving approach to negotiation is the way it separates the process of developing options for possible agreement from committing to any such options. The optimal time for crafting substantive commitments is after the interests of the parties are well understood, and many options have been generated and evaluated. Consequently, commitments are best deferred until late in the negotiation process. If, early in the process, some form of commitment seems necessary or desirable, consider preliminary or conditional agreements. A nuanced, graduated view of commitments is far less limiting than a binary choice between formal, binding commitment and nothing at all. In general, avoid agreeing on particular issues or to specific terms before everything is agreed.

At the same time, early commitments to procedural issues (negotiation timelines, ground rules, confidentiality provisions governing information disclosed during negotiations, right of final response to competing bids, and so forth) are often helpful. Consider developing and committing to an agreement framework early on, the details of which will be developed and filled in through the negotiation process. Seek commitments that are clear (understood by all parties), realistic (explicitly testing whether the parties will be able to implement them), and operational (ensuring that any commitments reached do not depend on further, unspecified or unagreed to resources, actions, and that they can be enforced). Explicitly discuss what potential future circumstances might necessitate reconsideration of, or even render void, prior commitments. Build a process for review, revision, and conflict management into complex or long-term agreements.

26:38 Critiques of the joint problem-solving approach

A variety of critiques of the problem-solving approach to negotiation have been put forward. Four of the most common are discussed here.

26:39 Critiques of the joint problem-solving approach—It glosses over the distributive dimension of negotiation

The earliest critique of this style of negotiation is that it is useful for finding creative,
value-enhancing options, but ultimately offers little help in coping with the reality of distributive conflict where interests are opposed. Or, put another way, using a traditional dichotomy (inspired by labor negotiations) that divides negotiation into integrative and distributive contexts.\(^1\) Problem-solving is helpful with the former, but generally not the latter.\(^2\)

Several answers to this critique have been proposed. One is that distributive negotiation has no objective reality. Negotiators always have at least some shared interests, including minimizing the transaction costs of negotiation and finding such value-creating opportunities as may exist, opportunities which analysts believe are often significant, even when parties believe there are none.\(^3\) Adversarial negotiations between pharmaceutical companies and healthcare providers are an example. The parties may see the key issues (drug prices) as strictly distributive, but: (1) fail to consider their shared interest in providing high-quality care to patients, expanding access to healthcare, and ensuring that government regulations or interventions in the healthcare marketplace are well-informed, predictable, and effective; and (2) overlook the highly negative impact on such interests effected by adversarial negotiations.

A second answer is that even distribution need not be an adversarial process. Sometimes this is because the precedent that is set may cut both ways over time. Even when the parties across the table have no ongoing relationship, each party always has an ongoing relationship with themselves and a desire to maintain their identity and self-image. If that identity is someone who wins at any cost and by any means in a Hobbesean “every person for themselves” universe, distribution will indeed be adversarial. If a person chooses to define themselves as someone who is fundamentally fair and a good citizen in a community, there may still be disagreement about what is fair, but the opportunity to address that problem collaboratively and systematically arises.

A third answer is that the problem-solving approach offers very specific and effective advice for achieving a favorable distribution of value. Legitimacy is a very powerful

\[\text{[Section 26:39]}\]


tool for motivating the human psyche, and it is much easier to accede to than coercion. Reaching a negotiated outcome (contractual or otherwise), ultimately requires that parties agree, and seeking to persuade the other side with good arguments can be among the most expeditious routes to that end (often more expeditious, and less risky, than the use of threats). Of course, there are likely to be multiple, conflicting, but nonetheless (at least partially) legitimate arguments about what the outcome should be, and the parties may well not agree on which are the most relevant or otherwise appropriate to guide decision-making. Parties may (and often do) become positional over principles. As with judges analyzing a difficult case, conflicting standards need not be a dead end. First, the parties can search for (meta) standards and principles with which to distinguish among competing standards and/or to understand how different views and approaches might be reconciled or balanced. (For example, in a debate over conflicting precedents for structuring licensing terms, the parties might agree that those terms that are most commonly used or have been implemented with greatest success, ought to be given more weight). Such a process will favor a party that is better prepared, more articulate, and sincere, all of which are good systemic incentives.

An illustrative and interesting example involved a company locked in a multi-hundred million dollar dispute with a foreign government over the renewal of its contract. The contract, negotiated years ago in a notoriously corrupt era, was renewable for an identical term “at the company’s sole option.” The current government, believing the contract a product of corruption, refused to renew it, leading to expensive and prolonged litigation (Interestingly, the company negotiators also assumed the contract was corrupt, fueling a willingness to make concessions.). Over most of a decade, multiple tentative settlements were reached through haggling, and every one was scuttled by political opposition from one group or another. Indeed, it is likely that no settlement bargained under these conditions could survive the necessary political and regulatory scrutiny needed for approval.

Successful settlement required two fundamental changes: First, it was necessary to show negotiators on both sides that the original contract was actually not the result of corruption. Fortunately, credible records were available explaining the contract as a creative solution proposed by the government to a simple regulatory dilemma (the company needed a contract longer than that allowed by law, except through renewal). It was also possible to show that similar contracts today are as long or longer around the world. Second, a new contract had to be negotiated on the merits, so that each term could be explained and justified in terms of current industry standards. Arbitrary haggling would not do. Only in this way could the result withstand scrutiny and garner the full lobbying support of the negotiators on both sides.

Of course, many terms were still contentious and many options were explored, de-
bated, and weighed. Especially on the government side, there also remained many negotiators with entrenched demands and expectations that were not justifiable on the merits. In each case, patient inquiry (“Where does that number come from? How would we explain that?”), combined with a firm resolve not to agree to anything arbitrary, eventually produced a coherent and defensible outcome with very substantial financial gains for each side.

Ultimately, this critique may be more about the willingness (or ability) of some negotiators to work in a collaborative, problem-solving way than about the ability of that approach to produce good results.

26:40 Critiques of the joint problem-solving approach—It only works if the other side plays along

A second common critique of the problem-solving approach is that it only works if both sides employ it. It is certainly true that the joint problem-solving approach is easiest to employ if the other side takes the same approach, and if both (or all) sides do, optimal outcomes (measured as defined above, per the seven-element framework) are perhaps more likely to be achieved than if one or more parties employ some alternate strategy. It is worth noting that, in marked contradistinction to most other systems of negotiation, joint problem-solving does in fact work well if both/all parties employ it. The same is manifestly not true for brinkmanship. Various styles of positional bargaining also tend to break down when employed by more than one party—negotiations where both sides employ one of the various styles of positional bargaining described are likely to be inefficient and may often end in deadlock. Even when employed in a spirit of collaboration, simple positional bargaining is apt to produce sloppy agreements that leave potential value unrealized and that fail to set useful precedents (for future negotiations with the same party(ies) or with others). This is a critical consideration when negotiating with a party with whom future negotiations are likely.

Moreover, there are three additional good reasons to pursue the problem-solving approach whether or not the other side is like-minded. First, given good preparation and thoughtful prudence, there is no downside. A prepared negotiator knows what can be shared about their interests without inviting or enabling extortion, and a prudent one insists on incremental and reciprocal disclosure, as well as on not rewarding pressure or agreeing to anything without a good reason. A skillful negotiator can also frame the other side’s proposals or demands (i.e., commitments) as options to consider, reinforce the lack of commitment by putting multiple options on the table, and at the same time, counteract any possible anchoring effects of the other’s commitments by mentioning reciprocally “extreme” options as other possibilities.

Second, there are many benefits to the problem-solving approach, whether or not the
other side is in the same mindset. Looking for shared interests and creative options and postponing commitments makes it more likely that value-creating opportunities will not be overlooked. Offering and asking about principles and standards of fairness not only helps you protect yourself, it ensures that the outcome is informed by the wisdom and experience of those who have negotiated similar issues before.

Finally, in the face of disagreement or conflict with parties employing alternate styles of negotiation, the problem-solving approach will tend to trump by force of logic and legitimacy. Because legitimacy is a basic human driver to which only sociopaths by definition are indifferent, it is easier to remain firm on principle than mere will, and more likely to be persuasive. After all, the other side also wants a successful outcome and will tend to follow the path of least resistance to get it.

Recent empirical research also contradicts this critique, suggesting that “enlightened” or educated negotiators do better on average, even when negotiating with traditional negotiators with a win-lose mindset.1

26:41 Critiques of the joint problem-solving approach—Sometimes the people are the problem

This persistent critique questions the ability of a negotiator to take a collaborative, “side-by-side” stance when the other negotiator’s behavior and role in the relationship is itself the issue. The response given in Getting to YES is that you can separate the behavior from the person’s character and address the behavior side-by-side, which has the advantage of assuming in a potentially self-fulfilling way that the person is capable of changing their behavior.1 By maintaining a respectful stance, you create the psychological safety to change (the other is a good person who was simply unaware of their impact) and the incentive to do so (keeping your respect).2

This response is helpful as far as it goes, but is perhaps inadequate in two ways. First, it doesn’t address the fact that behavioral change can also be brought about with a forcefully judgmental stance that is not at all collaborative. Military organizations

[Section 26:40]

[Section 26:41]
1See Fisher, Ury, and Patton, Getting to YES, 1991, Chapter Two and p.159.
regularly employ such an approach often with success; for example, getting recruits to master skills they believed were beyond them through pressure, intimidation and repetition. However, the judgmental approach is most likely to work when your respect is important to the other party (more than their autonomy or identity), their BATNA is weak, and they accept at some psychological level your moral authority—conditions that are uncommon in business negotiations.

Secondly, while it may be true that there is a difference between a person’s behavior and their essential character, because they could choose to be different, the behavior at issue was chosen and likely is reflective of the person’s chosen identity and personality (at the least, by their unawareness or lack of concern about its impact). So, in that sense, you are criticizing who they are, or more precisely, who they have chosen to be, and some defensive reaction should be expected. That said, there is a meaningful difference between taking a judgmental (and broad) stance on a counterpart’s identity (“You are disrespectful”), versus forcefully articulating the impact someone’s specific behavior has on you (“When you raise your voice and pound the table, I feel attacked and disrespected”). Of course, even this alternate framing may trigger defensiveness or be interpreted as an affront to face, but it significantly less likely to have as large a negative impact as a statement about the other person’s character.

Yet another framing is to convey descriptively the impact a counterpart’s undesirable behavior is likely to have on the negotiation—to try to educate them on the consequences of their behavior—while actively trying to avoid any larger judgment (“I think it will be difficult to come to agreement if you continue to insist on your position, and refuse to explain why the terms you propose make sense and are fair. I suspect with many other negotiators such an approach is effective, but it is not how I negotiate. Unless we can have a conversation about what we ought to do, rather than simply trade statements about what we each will or won’t do, it probably does not make sense to continue negotiations.”). This framing is inherently respectful; it implicitly acknowledges their autonomy and acknowledges their right and competence to choose their behavior and, therefore, may mitigate the probability of triggering a strong defensive reaction.

In any case, when assessing the liabilities of the joint problem-solving approach, it is important to compare it to other available approaches. The other major alternatives to dealing with adversarial or other problematic behavior, namely tit-for-tat responses, or simply ignoring such behavior are, in our experience, on net, far less effective. The respectful, side-by-side approach seems to be the most viable, but no one should expect it to eliminate all difficulty.³

³See Stone, Patton, and Heen, Difficult Conversations, 1999, for more detailed and realistic advice for managing such conversations.
26:42  Critiques of the joint problem-solving approach—It sounds simpler than it is (and is especially dangerous if not executed perfectly)

The last critique of the problem-solving approach is that it is presented as much easier to pull off and much safer to try than it really is. This critique has some validity. First of all, a masterful effort can require a great deal of skill and technical expertise within the substantive domain. Even the concept of “interests” is much more slippery than it first appears. People actually have bundles of interests that are routinely inconsistent and whose relative salience at any given time may change depending on context. Nor do people find it easy to figure out what their interests really are. We have all had the experience of asking for something, getting exactly what we asked for, and then realizing it wasn’t really what we wanted after all. Interests also can be understood at different levels. On the surface, for example, I may want my view to prevail because I think it is most likely to work, but underneath there is a strong desire for vindication, and underneath that, a need for recognition and acceptance. Moreover, finding the most value-maximizing options by which to dovetail divergent interests may require sophisticated analytic tools and substantial creativity. Likewise, evaluating and comparing both options and alternatives typically requires the ability to think rigorously about how to assign expected values under conditions of significant uncertainty.

Second, on the interpersonal level, the ability to remain respectful when you strongly disagree with another’s view (and perhaps even doubt whether they believe, or even could believe, what they are asserting) requires a level of maturity and cognitive development greater than many people possess. You have to be comfortable with a certain amount of relativism and have some awareness and acceptance of the fact that your own views are less objective than they seem. The subjective nature of our perceived “reality” is well-established by social psychologists, but an equally strong finding is people’s failure to appreciate that subjectivity.

Finally, it has been observed that people learning the problem-solving approach are prone to a number of characteristic errors, mostly related to the skills of combining empathy and assertiveness (or genuine inquiry into another’s views along with advocacy of one’s own), that are quite likely to negatively impact the value of the outcomes they achieve. For example, when told to be firm on substantive issues but also friendly, many negotiators in fact become more accommodating on the substance of the deal.

[Section 26:42]


agreeing to things in essence “for the sake of the relationship.”\textsuperscript{3} Others, when told to insist on using objective criteria, use positional lock-in tactics to promote favorable, but relatively unpersuasive, criteria leading to deadlock, wasted time, and mutual frustration. Still others, working hard to make arguments in good faith, tend to interpret a lack of acquiescence by the other side as a lack of reciprocal good faith, leading to resentment that they do not know how to surface or test constructively. The tragic result is sometimes mutual good intentions that lead to an escalating cycle of hostility.\textsuperscript{4}

These potential costs should be weighed against the expected value of employing more common approaches, as well as the likelihood of greater benefits over time as the problem-solving approach is pursued more skillfully (with practice, supported by investments in tools and training to enable its effective execution). For now, this calculation is largely a matter of intuition, though the potential benefits of the problem-solving approach are clearly substantial: for individual negotiators; for companies with a long-term relationship characterized by a series of ongoing formal and informal negotiations; and even for society, especially as this approach becomes more prevalent. If nothing else, this suggests the value to parties involved in significant relationships characterized by ongoing or repeat negotiations of investing in systematic negotiation education (including, potentially, joint training) and creating incentives for the use of the problem-solving approach by their agents.

26:43 Cross-cultural and international negotiations

There is a significant body of literature on the topic of cross-cultural negotiation. Much of it focuses on differences among cultures and specifically on alleged differences in negotiation styles across different cultures, along with advice for how to negotiate differently, say, with Japanese, versus American, versus Russian, versus Indian counterparts. Certainly, there are real differences among national cultures, and such differences play a role in negotiations as in any other mode of interpersonal interaction. Our experience suggests that while certain negotiation styles and behaviors are somewhat more and less common in different cultures, it is extremely dangerous to rely on what are often overly simplistic assumptions about how different nationalities negotiate. In fact, every negotiation style can be found represented in every national culture, though the relative distribution of different negotiation styles does indeed seem to vary somewhat across cultures.

\textsuperscript{3}This is the phenomenon that underlies Jim Camp’s critique of collaborative negotiation in Camp, Start with No, 2002.

Few commentators are precise about the scope of their assessment or advice when they talk about cultural differences in the context of negotiations. Below are five distinct levels at which cultural and stylistic differences can be assessed:

- **Pan-Regional Culture.** There are some identifiable patterns of norms and behavior that vary predictably at this level (e.g., East Asian, Middle Eastern, European), but generalizations tend to be so broad that they are not particularly useful, except as illustrative examples. At worst, generalizations at this level that are used to adduce prescriptive advice are dangerous, because they mask the profound diversity of customs, expectations, and styles within such broadly demarcated geographic regions.

- **National Culture.** Somewhat more useful than talking about negotiations with Asians or Europeans is to consider cultural differences, say, between Germany and France, between China and Japan, and how such differences may shape certain behavioral or stylistic tendencies of negotiators from those countries, and/or otherwise affect cross-cultural negotiations.

- **Regional Culture.** It is worth noting that culture is not solely, or even in many cases primarily, a national phenomenon. Significant, and often profound cultural differences are common within many countries. For example, cultural norms and customs, both in general and in business specifically, are different in the northeastern region of the U.S. versus the South, versus the West Coast, as they are between Northern and Southern China, and between coastal regions of China and the Chinese interior.

- **Organizational Culture.** A robust literature exists on organizational culture and its impact on the operations of companies and their employees/agents, though this dimension of culture is rarely mentioned in the negotiation context. Organizational culture at the company level is likely to have some correlation to national culture (e.g., a non-hierarchical, entrepreneurial corporate culture that values unconventional thinking and is comfortable with explicit conflict and direct confrontation is more likely to be found in the U.S.—and Silicon Valley at that—than it is in Japan). Nonetheless, pretty much every kind of organizational culture can be found represented in any country, and such differences can play a major role in negotiation. For example, a formerly state-owned enterprise in China is likely to have a markedly different organizational culture from a recent start-up, and agents of such companies are quite likely to negotiate differently as a result.

- **Individual Values, Beliefs, and Personality.** In the end, as much as national and organizational culture shape and constrain individual behavior, they do not
dictate it. Individual behavior is also shaped and motivated by a variety of other factors. For example, introverts and extroverts are well-represented in every culture, as are conflict avoiders and those who relish confrontation. The same is true of individuals who see the world as governed by zero-sum, win-lose dynamics, and those who believe the world is full of joint-gain opportunities.

With the forgoing commentary in mind, the following variables comprise a useful checklist for anticipating, diagnosing, and determining how to address differences that are especially likely to arise in cross-cultural negotiations and likely to have a significant impact on the negotiation process. (In reality, all the factors below are worth keeping in mind in any negotiation—even with counterparts of the same nationality—given the pervasiveness of significant variation in regional and organizational cultures and individual personalities.) It is useful to think of these differences as shaped by, and operating at, each of the five levels noted above:

- **Degree of Formality:** Different national cultures are often characterized by notable differences in norms governing the formality (or lack thereof) in both business and social interactions. For example, American business culture tends to espouse a non-hierarchical ethos, which in part is manifested by the custom of using first or given names without titles or honorifics—even in interactions where no previous relationship exists. Australian culture tends to be similarly informal. By contrast, German culture is somewhat more formal and tends toward fairly extensive use of titles.

- **Physical Proximity:** Do people sit or stand close to one other, or farther apart? Are greetings more or less physically intimate: bow, versus handshake (by now something close to an international standard in business), versus hug or exchange of a kiss on the cheek? Is touching (e.g., on the arm to get someone’s attention, on the shoulder to direct them to a chair, on the wrist to signal agreement or engagement when they are speaking) appropriate or inappropriate? Note that in certain cultures (notably Islamic cultures) different norms may apply when interacting with persons who are not of the same gender.

- **Eye contact:** In many cultures, direct eye contact indicates confidence and conveys honesty and forthrightness. In other cultures, however, protracted eye contact is seen as aggressive or rude. As with physical proximity, norms within a culture may vary significantly depending upon the respective genders of the individuals.

- **Perspectives on Time:** Different national cultures tend to embody somewhat different attitudes toward time. North American and Northern European business culture tends to place a premium on punctuality—being late to a meeting is
likely to be viewed as unprofessional, and to raise questions about the reliability or even competence of a potential business partner. In Japan, punctuality is also valued, and being late is likely to be viewed as disrespectful. By contrast, Latin American and Southern European business cultures are much more likely to treat meeting times as approximations and to afford, and expect, significant latitude.

- **Relationship Scope and Dynamics:** Some cultures tend to emphasize fairly stark divisions between the personal and professional. This is born of a belief that such a separation leads to more impartial, fair, and thus more rational and productive business dealings. In other cultures, the personal and professional are viewed as inseparable: it is difficult to imagine doing business with people in the absence of strong personal relationships. Mutual understanding and trust are (necessarily) built in the personal or social domain, and are a required foundation for business interactions. On a related note, in many cultures, it is customary to spend time getting to know one another, or engaging in social conversation, before getting down to business during a meeting or conference call. Americans in particular are more likely to jump right to the business at hand.

- **Purpose and Nature of Negotiation:** How do the parties view negotiation? Is the point of negotiation a deal, or is it to build a relationship? In either case, what are the fundamental assumptions about how negotiations work? Is negotiation seen as an adversarial contest? A game? A collaborative, problem-solving endeavor?

- **Directness of Communication:** Is direct or indirect communication favored? Cultures (and individuals) who favor direct communication may find indirect communication inefficient, suspicious, and even dishonest. Cultures (and individuals) who favor indirect communication may find the behavior of more direct counterparts rude and disrespectful. Somewhat similarly, is the open display (communication) of strong emotions perceived as appropriate or inappropriate? Is the withholding of emotional reactions seen as professional (as evidence of confidence, rationality, self-control and other desirable attributes), or is it viewed with suspicion (as evidence of a lack of candor or an absence of passionate commitment)?

- **Pacing of Negotiations:** In some business cultures (notably the US, and to a somewhat lesser extent, many Western European countries) the goal of negotiation is primarily to get the deal closed and the contract signed. Consistent with this transactional perspective on the negotiation process, the preference is generally to close the deal more quickly rather than more slowly. Lack of urgency or deliberate attempts to slow down or delay the process may be viewed as (some-
what unscrupulous) tactics to gain advantage, or as evidence of lack of interest, or indicative of an inability to conduct business efficiently. On the other hand, in many cultures, learning about one’s counterparts, evaluating whether or not the parties are likely to be able to work well together over the long term, as well as developing trust, are critical aspects of the negotiation process—as or more important than the development and execution of a contract. Ironically, efforts to defer formal commitment in order to spend more time getting to know each other, so that trust can be built, can often backfire with American counterparts who may view such behavior with suspicion.

**Form and Nature of Agreements:** In North America and much of Western Europe, there is a strong emphasis placed on contractualizing business arrangements and commitments, and doing so in significant detail. Moreover, contracts are viewed as binding. In many other cultures, greater emphasis is placed on personal relationships and trust between or among parties, and contracts are often less specific and treated more as an articulation of general guidelines and principles. Furthermore, there is often an assumption that if circumstances change significantly after the contract is signed, the terms of the contract are no longer binding. The attitude is one of “how can we be bound by terms that we agreed to under very different circumstances?” The countervailing perspective is likely to be “we specifically signed a contract in order to provide greater certainty about what we would each do even as conditions change.”

In light of the complexity associated with understanding cultural differences, below we offer some basic, but generally applicable, guidelines for approaching international negotiations.

26:44 Cross-cultural and international negotiations—Research the culture and business context of your negotiating counterparts

The most common frame for generating advice on international negotiations is something along the lines of “how do the Chinese negotiate, and how should we negotiate with them?” A far more nuanced and practical frame is “as we approach negotiations with a Chinese company, what might we be able to infer about their interests based on the business environment they operate within? What standards of legitimacy might be persuasive to them? What norms and customs govern business interactions in China, which, by being conversant in, we can both communicate respect for them (hence begin to build a good working relationship) and also signal our own sophistication (such that they are less likely to focus on taking advantage of us, and more likely to focus on working as partners with us to develop an optimal agreement). Rather than assuming that national culture determines negotiation style, this latter frame recog-
nizes that national culture impacts the negotiation process in subtle and multifaceted ways, not only in terms of interpersonal norms of interactions, but also in terms of the different macroeconomic, competitive, and regulatory environments in which different companies operate.

An important implication of this frame is a recognition that such factors in international negotiations can change rapidly. Even norms of etiquette governing interpersonal interactions in business are subject to rapid change as a result of globalization. While the variables above are a useful checklist for identifying common cultural differences, the seven-element framework provides an interpretive lens through which to analyze specifically how such differences may impact the negotiation process.

26:45 Cross-cultural and international negotiations—Treat your negotiating counterparts with respect

As noted above, treating your negotiation counterparts with respect is a generally useful way to build the kind of relationship with them that will enable you to be more creative and efficient in your negotiations and to maximize your ability to effectively implement any agreement over time. Use your knowledge of your counterpart’s culture to educate yourself about what you can do to show respect and how to avoid inadvertently conveying disrespect.

A good example is the somewhat unique set of norms governing exchange of business cards in Japan. Business cards should be proffered and received with both hands, not just one. When receiving a business card, it is also respectful to look carefully at it before stowing it in a briefcase or wallet. There is nothing particularly mysterious at work here. In fact, a cavalier disregard for, and obvious disinterest in, someone’s business card (e.g., shoving it roughly into one’s pocket without even glancing at it) is likely to be perceived as disrespectful in any culture. Japanese business culture is just a bit more formal and precise in its customs in this arena. Similarly, learning the respectful form of address (first name, last name, use of honorifics) is a good idea when entering into international negotiations.

In our experience, the most important thing is not whether you have mastered every nuance and intricacy of your counterparts’ culture (you are unlikely, in a short period of time, to master the many subtleties of Japanese bowing, for example)—it is the universal demonstration of respect conveyed by curiosity and a genuine desire to learn about the culture of those with whom you are negotiating, and hence, presumably, with whom you desire to do business.

At the same time, remember that your counterparts are individuals, not walking avatars of their national culture. Be wary of making assumptions about your counterparts and avoid stereotyping. Seek to understand your counterparts at each of the levels of
culture noted above and use the seven elements throughout the negotiation process to evaluate and decide how to respond to their tactics and behavior.

26:46 Cross-cultural and international negotiations—Explicitly discuss cultural differences with your negotiating counterparts

Beyond the advice noted above, it is also very useful to spend some time at the outset of any significant negotiation discussing cultural differences. Has the other side negotiated or worked with other companies from your country before? Do you have extensive experience negotiating and working with companies from their country? Consider exchanging observations about what has worked well, and what has created difficulty in past cross-cultural negotiations you have each been involved in. Refer to the checklist above to clarify mutual expectations of one another and to minimize the likelihood of mistrust or frustration arising from unexpected or misinterpreted behavior. Avoid making assumptions about your counterparts and their motivations based on behavior that seems strange, inappropriate, or even adversarial. Look for ways to test your assumptions, including explicitly raising and discussing any dynamics or behaviors that concern you.

26:47 Cross-cultural and international negotiations—Before you begin to negotiate over the substance of a potential agreement, negotiate and align around the process you will use

Beyond a general discussion of cultural differences and clarification of basic norms of communications and interaction, it is often particularly useful to discuss and jointly agree on key parameters for the negotiation process itself. How long do we expect this negotiation to take? Who will attend meetings from each side? Where will meetings occur? What interactions will we conduct over phone or e-mail versus in person? If we want to take the joint problem-solving approach to negotiation, we probably want to discuss that style of negotiating explicitly with our counterparts and explain why we think it will inure to each of our benefit. Implementing such an approach will work better if we each prepare in similar ways (e.g., by reflecting on and prioritizing each of our interests, rather than formulating opening positions). Early meetings or interactions similarly might focus on iterative, reciprocal exchange of information about each side’s respective interests, followed by joint brainstorming, without commitment, of possible options (deal structures, terms, etc.)—as opposed to trading offers and counter-offers.

26:48 Cross-cultural and international negotiations—Diagnose the specific negotiation style and tactics of your counterparts

Many commentators focus on certain aspects of negotiation style and associate them with different national cultures. For example, negotiators from Russia, India, and
Arab countries are often reputed to be tough and sophisticated positional bargainers. Japanese and other East Asian cultures are often characterized as relying on the negotiation style we term “Favors and Ledgers” (described above). In our experience, it is rather pointless to spend much time debating or trying to figure out whether Russians are statistically more or less likely to make unreasonable demands, or dissemble in order to test and assess the competence of their counterparts, than are Arabs, Germans, or Americans, or whether individuals from Japan are more likely to focus on a reciprocal exchange of favors over the course or a relationship than negotiators from Brazil or India. Instead, use the seven-element framework and the basic variables and dimensions of culture noted above to make sense of your counterparts and their behavior, and to choose your actions with conscious awareness of their likely impact.

26:49 A note on agents, principals, team negotiations, and the role of lawyers

For simplicity’s sake, we have framed our advice in this chapter largely as if negotiation were an interaction between two (and sometimes more than two) unitary actors. The reality, in most business negotiations, is somewhat more complex. Negotiations are often conducted by teams, and those negotiating, whether individuals or teams, are agents acting on behalf of companies, which themselves are not unitary actors. In our experience, the advice we have laid out in this article is not only relevant when considered up against this complex reality, it is all the more relevant because the environment in which most business negotiations occur is so complex. The wealth of negotiation advice that arises from a positional bargaining paradigm is useful when negotiating at the bazaar; it is limited at best, and counterproductive at worst in many business negotiating contexts. All that said, the specific issues and challenges posed by team negotiations (including, specifically the role of lawyers in contractual negotiations) and agent-principal dynamics warrant at least a few words.

If we start with a recognition that companies are not monolithic, but instead are heterogeneous entities that comprise multiple stakeholders, then we can apply the seven elements as an interpretive lens to analyze (at least, given space, highlight) the negotiation implications of this state of affairs. First, we might note that the various stakeholders in a company (we can confine ourselves to those with sufficient management authority to impact whether or not a deal gets signed, and whether or not, or how effectively, it is implemented) each have their own interests—some the same, some different but complimentary, and some conflicting. So, analyzing a customer’s or supplier’s interests before and during a negotiation needs to encompass consideration of different interests that exist across different business units or functional areas. Furthermore, one’s negotiation counterparts have their own individual (read: personal)
interests that may affect their behavior in a negotiation, and thus should be considered (e.g., looking good to their superiors, hitting their quota, and so on).

In general, one would expect that a company would construct incentives so as to align the interests of its agents with its organizational interests, but such alignment is never perfect (too often it is far from perfect), and thinking in terms of the personal interests (needs, fears, motivations) of individual counterparts is often helpful.

Similarly, considering the different interests of, say, R&D, versus plant management, versus procurement, can be very useful. We have often worked with sales teams negotiating with procurement organizations who (unfortunately) did not fully understand the range and relative prioritization of their end-users’ and internal customers’ interests. Additional work to uncover and clarify such interests not only leads to more optimal deals, it may highlight opportunities to change unhelpful negotiation dynamics by changing the players involved. The same is true for buy-side, business development, and other kinds of negotiation teams as well. (For example, a common challenge in alliance negotiations is that some group at one of the potential partners is already working to develop, say, the new technology that the alliance is being negotiated to license or jointly develop.)

Inverting this way of thinking about negotiations also underscores the importance of building and maintaining alignment among internal stakeholders during negotiations. Procurement, Sales, Business Development and other negotiation teams (and the overall negotiation process) should be constructed such that all relevant competencies (legal, financial, operational, strategic, and so on) are drawn upon, and also such that stakeholders who will be affected by, or relied upon to implement, an eventual deal are at least consulted so that their needs and concerns can be taken into account. The common fear about approaching negotiations in a more consultative and inclusive way is that the internal spoilers will have greater opportunities to derail a deal if they are consulted or otherwise involved. Such concerns are real and must be weighed on a case-by-case basis. That said, our overwhelming experience is that pushing a deal through before internal critics or dissenters can disrupt it usually represents a Pyrrhic victory—eventually such stakeholders will find out, and when they do, they will be all the more motivated to undermine deal implementation. People are far more likely to support a deal (or any other decision) if they have been consulted and believe their input has been genuinely considered, even if they don’t like the substance of the deal. As with external negotiations, so with internal alignment (a process usefully thought of as an internal negotiation), process matters.

A few closing pieces of advice. Think broadly about how to involve stakeholders (including lawyers) throughout the negotiation process. Involving key players earlier rather than later generally makes sense. Be clear about different roles—giving input
and being consulted should be carefully distinguished from being a decision-maker with a right to approve or reject any tactical decisions during the negotiation process, or any terms of the eventual agreement.

Depending on the context, legal advice is often essential to identifying relevant standards of legitimacy (e.g., precedents, common contract terms), exploring and clarifying interests (e.g., the whys and wherefores behind contractual terms and conditions), analyzing alternatives (e.g., assessing the odds of potential litigated outcomes), and crafting wise commitments (in the form of contracts and other legal documents). In our experience, the role of the lawyer is most helpfully understood as one of advisor to deal architects, lead negotiators, and other business stakeholders. Effective lawyers generally do not tell their colleagues what they should or shouldn’t do or seek to eliminate risk entirely. Instead, they help negotiation teams understand potential risks, employ legal tools to mitigate those risks and ensure that the upside of any agreement is sufficient to justify whatever downside risks remain.

Think creatively about how negotiation team membership people can be consulted and involved in the process without being on the actual negotiation team, and direct interactions with counterparts may involve only certain negotiating team members, and/or they may involve others as well at various junctures. Regardless, be sure that roles are clearly defined and understood by all members of the negotiation team prior to engaging in any discussion with the other side. Remember the importance of preparation; it is in many ways even more critical when negotiating in teams. Anticipate likely questions, objections, tactics, and the like and jointly determine who will respond to what and how. Finally, consider designating a primary point of contact to ensure consistency of messages to counterparts throughout the process (especially for the inevitable emails, phone calls, and other unstructured communications that often occur during complex negotiations).

26:50 Final thoughts on negotiation as an organizational competency

In this chapter, we have endeavored to share pragmatic advice aimed primarily at those who spend a great deal of their time negotiating. Nonetheless, negotiation is not simply an individual skill. As alluded to earlier, the behavior of negotiators (the actions they can imagine taking or are willing, or able, to take) is significantly shaped and constrained by their organizational context (as is any and all other individual behavior in organizations). Factors such as formal and informal incentives, the availability or lack of tools, job definitions, and organizational policies, all impact, for better or worse, the effectiveness of a company’s negotiators, and hence, the value an enterprise creates and captures through its negotiations and external relationships.

In order to ensure consistently strong results from negotiations, executives and senior managers should enable their negotiators through the following means.
26:51 Final thoughts on negotiation as an organizational competency—
Segment relationships, and align negotiation goals with relationship objectives

Determining the substantive scope of negotiations (e.g., do we only negotiate over price with a supplier, or expand negotiations to also encompass how we might jointly eliminate redundant steps in the supply chain) and defining and prioritizing objectives (e.g., how important is it to maximize the full potential value of a deal versus to get a deal in place as quickly and efficiently as possible; do we care only minimally about satisfying the other side’s interests such we can get a deal with a reasonable expectation of successful implementation, or do we care deeply about the value they will realize because we have an important long-term relationship) is a complex task. Rather than leaving negotiators to do so on their own, or attempting to provide guidance on a case-by-case basis, senior management should ensure that customers, suppliers, and other business partners are effectively segmented, and articulate guidelines that clarify the scope and objectives for negotiations with different parties, based on, and aligned with, overarching relationship objectives.1

26:52 Final thoughts on negotiation as an organizational competency—
Align negotiator incentives with negotiation objectives

As discussed earlier, the way management defines goals and measures success in negotiations, and connects (or fails to) such metrics to the incentives of negotiators, has a profound impact on the way individuals negotiate, and hence of the results they achieve. To the extent senior managers in an organization want negotiators to employ the joint problem-solving approach described in this chapter, they must ensure alignment between negotiation objectives and individual incentives. While we do not recommend eliminating traditional metrics for those who negotiate, we believe such metrics are usually inadequate, and on their own, often perverse, in the actions and consequences they engender in a significant subset of (though by no means all) negotiations.

In most situations, the signing of a deal does not, in of itself, create value (rather, value is realized over time through the implementation of negotiated agreements); consequently, the construction of effective incentives is a nontrivial endeavor. The time lag between negotiator actions and manifestation of the consequences of those actions poses an unavoidable, though not intractable, challenge. Managers need to balance delayed or downstream incentives (e.g., salespeople who receive a portion of

[Section 26:51]  
their variable pay as a lagging consequence of metrics such as account retention and customer satisfaction, which are impacted, in part, by negotiation conduct) with the inescapable reality that individual incentives shape behavior most powerfully when they create consequences that are unambiguously and directly tied to the actions and results that those individuals can control.

Incentives that are aligned with the true value realized over time from negotiations are likely to be somewhat more subjective and somewhat more opaque to negotiators than traditional incentives. Evaluating buyers by percentage discounts negotiated has, if nothing else, the merit of being easy to understand; evaluating them on the basis of total cost of ownership calculated over the lifecycle of a purchase, whatever its other merits, requires significant communication and explanation if it is to be understood well enough to guide negotiator behavior as intended. If management wants people to negotiate differently, they need to align incentives to support effective negotiation behavior aimed at maximizing true deal value. This in turn requires a willingness to invest additional time and energy in explaining such incentives and how they are applied.

Finally, while more meaningful incentives tied directly to negotiated outcomes are often difficult to define, the joint problem-solving approach to negotiation provides a framework in which the actions of negotiators can be much more objectively, systematically, and effectively assessed. Various forms of positional bargaining, relying as they do on inherently unverifiable suppositions about whether the other side’s bottom line was reached, and meaningless (because gameable) measures like the number or size of concessions extracted are intrinsically resistant to rigorous evaluation. In a wide range of important negotiations, the joint problem-solving guidelines in this chapter can be used to formulate a normative definition of effective negotiation behavior. Such behavior can then be evaluated through a variety of means (including solicitation of feedback from external negotiation counterparts, direct “field” observation by management, after-action debriefs of negotiators by management, and the like). Over time, such measurement can be correlated with outcomes to validate (if desired) the efficacy of the joint problem-solving approach in general, to guide investment in its deployment in certain arena versus others, and so on.

26:53 Final thoughts on negotiation as an organizational competency—Create a negotiation playbook

Defining guidelines that clarify the scope of, and objectives for, negotiations with different categories of business partners is useful in and of itself. Given the vast array of strategic and tactical choices confronted by negotiators (all of whom have different experiences, and different levels of experience), a further opportunity exists to codify
standard advice for how to approach different negotiation scenarios. Decisions about whether and how to employ RFIs, RFPs, RFQs, reverse auctions, and the like need not be left to individual negotiators in procurement to analyze and answer in every negotiation they confront.

Codifying guidance for such decisions improves efficiency, enables individual negotiators to benefit from the collective experience and wisdom of the organization, and also maximizes consistency in dealing with suppliers. Likewise, guidelines around other significant choices like how much information to share, when and how to try to “change the game” by seeking to change the players involved on the other side, how to respond to difficult tactics, and so on can be documented and refined over time, not only within procurement, but also in sales, business development, or any other function that negotiates regularly.

**26:54 Final thoughts on negotiation as an organizational competency—Establish guidelines for negotiating team formation**

Ensuring that the right skills, expertise, and perspectives are included in complex negotiations is not a simple task. Moreover, negotiation is a complicated, high-transaction cost activity to begin with. Leaving individual negotiators to figure out for themselves not only who should be involved in negotiations, but also to negotiate internally with various other stakeholders over questions of roles, responsibilities, and levels of decision-making authority, on a case-by-case basis, is unwise. At the very least, such activities will be far less efficient and more time-consuming than they need to be. More likely, negotiators will simply not incur the delays, hassle, and frustration associated with getting the right people involved in the right ways. The result will be lower-quality deals and diminished likelihood of successful deal implementation. Senior management can and should play an instrumental role in defining the criteria for composition of negotiation teams in common negotiation contexts and defining the roles and responsibilities of those who need to be involved.

**26:55 Final thoughts on negotiation as an organizational competency—Implement negotiation analysis and planning tools**

Effective planning and preparation is essential to effective negotiating. Yet our research and experience overwhelmingly confirm that the vast majority of negotiators spend far too little time in preparation. Most in fact are aware that they should spend more time preparing. However, most are pressed for time and operate in triage mode. Since, in most companies, there are no clear requirements for negotiation preparation, no formal check points to review preparation with management prior to engaging with external parties, and no incentives that encourage preparation or penalize the lack
thereof, most negotiators rationally spend time on those activities that are more visible to management and for which they are specifically held accountable. Something as simple as requiring negotiators to complete a simple online negotiation preparation template and submit it for even cursory review (or audit after the fact) by management has the potential to transform the choice negotiators perceive about whether to invest time in preparation or not.

Moreover, negotiation preparation can be quite time-consuming, and few companies have put tools in place to make preparation more efficient and less onerous. Relatively simple tools like a database of contracts and/or contract terms (indexed by relevant negotiation variables like customer or supplier category, contract type, deal size, and so on) can be very helpful. Ideally, legal language should be annotated with explanations of the interests that underlie it; options for alternative language; guidelines for what is negotiable under what circumstances, what is not and why; guidance about common objections from counterparts and advice for how to explain the legitimacy of particular terms or conditions, and so on.

26:56 Final thoughts on negotiation as an organizational competency—Invest in negotiation training

As noted earlier, the skills that lead to success in complex negotiations are quite different than those that most people, including experienced businesspeople, possess. Such skills often need to be developed or enhanced, not just in salespeople, buyers, and business development professionals (three functional domains rightly associated with extensive negotiating), but often in the much larger number of individuals in an organization who have significant interactions with customers, suppliers, or other external business partners.

For example, project managers in charge of the implementation of complex services solutions may not see themselves as “negotiators,” but almost invariably, such individuals find themselves negotiating regularly (albeit often informally) with customer counterparts over myriad delivery issues, questions of what is in or out of scope, and the like. A great deal of value for both sides is at stake, not only in the substantive outcomes of such interactions, but also in how efficiently and effectively such negotiations are handled. Similarly, engineers, product managers, designers, and logistics managers have parallel conversations with suppliers over how to resolve quality or delivery problems (and who bears what responsibility to do what to resolve such issues), over questions of scope, and so forth. Such individuals are also at the front line of the commonly felt tension between getting the most favorable resolution of the issue at hand, and the need to preserve positive relationships with business partners.

It is worth underscoring our earlier advice that companies who have important relation-
ships and do a significant amount of business with one another would be well-served by equipping their respective agents with a common vocabulary and set of skills for joint-problem solving negotiation. Another typically underutilized skill development opportunity is to cross-train sales and procurement staff within a company. Salespeople have great insights to offer their colleagues in Procurement about what their suppliers care about and why they do the things they do. Procurement staff is similarly well-positioned to provide parallel insights to their colleagues in Sales about negotiating with customers. Training simulations in which procurement and sales staff negotiate with each other (both in their traditional roles, and also with roles reversed) can be a powerful vehicle for learning. Finally, in many cases where the commitments salespeople make have a very direct impact on suppliers and hence on what procurement needs to negotiate and how, such cross-training is essential for building awareness of, and alignment around how to deal with, the negotiation interdependencies that exist across the value chain.

26:57 Final thoughts on negotiation as an organizational competency—Embed negotiation best practices within relevant business processes

Most negotiations occur as part of other-defined business processes: Sales; Sourcing and Procurement; Licensing; Business Development. Consequently, while negotiation (given its complexity, the number of people involved, and the value at stake) should be managed as a defined and measurable business process, this cannot be done in isolation. Rather, negotiation insights and best practices need to be systematically embedded in those pre-existing processes in which negotiation plays a pivotal role.

Consider strategic sourcing. At many companies, a well-defined process governs activities including internal needs analysis, market research, use of RFIs (Requests for Information) and RFPs (Requests for Proposals) and other aspects of sourcing. “Negotiation” is often thought to be a discrete activity that occurs at the end of the process and is narrowly focused on formalizing contract terms and conditions. Consequently, critical interactions with suppliers are undertaken without considering their impact on relationships with those suppliers, and the problem-solving dimension of negotiation (exploring what ought we to do together and how) is divorced from bargaining over the distribution of value (typically addressed during contracting and presumed to be exhaustive of what “negotiation” is) to the detriment of both creating and claiming value, and often to ongoing relationships. In fact, many of these interactions with suppliers (and internally in preparation for engaging suppliers) ought to be thought of and approached as negotiations, or as preparation for negotiation. Moreover, virtually all such interactions will impact (for good or ill) eventual negotiation dynamics, and so should be analyzed and addressed as part and parcel of negotiation strategy.

Similarly, many companies design sales processes that involve significant planning
for, and interaction with, customers and then seek to train or otherwise equip their salespeople to “negotiate” effectively in the terminal box of their sales process flowchart. As with procurement, such an approach is misguided. Negotiation occurs throughout the entire sales process. Indeed, the lens of negotiation strategy should be applied to the definition and conduct of account management activities as well, inasmuch as the way the ongoing relationship with a customer is managed will have significant impact (for better or worse) on negotiations over the next sale.

Redesign of business processes to improve negotiation effectiveness should also ensure tighter linkages between those who negotiate agreements and those who implement them than is commonly the case. Management should define and implement a standard practice whereby negotiators review agreements, and the negotiation process itself, with delivery teams, relationship managers, and other deal implementers. Such reviews might cover the original objectives for the agreement, the intent (interests) behind key terms and conditions, explanation of contentious issues that arose and why they were resolved as they were, as well as any important lessons captured about working with counterparts (the transmission of which can help ensure the value created in the negotiation is realized in implementation).

Finally, business processes to which negotiation is intrinsic should include some requirement for at least periodic review of critical negotiations to extract important lessons about business partners, the external marketplace, common challenges, and effective strategies and tactics. Contract negotiations are a commonly overlooked window into rich data about what customers and suppliers care about, and what competitors are doing with and offering (or not offering) to their own customers, suppliers, and partners.