In Theory

Reverse Bargaining: Some Oddities that Illustrate the "Rules"

James Wallihan

Unions striking for lower wages? Buyers seeking higher prices? Such cases of counter-intuitive or paradoxical bargaining strategy and behavior prove useful in refining the concepts and statement of negotiation theory. Examination of four such instances of apparently nonsensical negotiation reveals the underlying soundness of the distinction between position and interest, once these concepts are specified appropriately. The resulting enrichment of theory, in turn, leads to improved practice, underlining the importance of exploring interests. The argument emphasizes the value of examining the unexpected.

Exceptions do not "prove rules," but they often illustrate both the applications and the limits of a rule, enriching theory in the process. Indeed, the benefits of learning from the unexpected in some case analyses are well established in the literature on empirical research (Kuhn 1970; Kazancigil 1994). Seeming anomalies, paradoxes, ironies, and oddities that appear to defy both established theory and standard prescriptions for practitioners may, under scrutiny, conform to a reframed and refined understanding of the theory and lead to the incorporation of new variables. Even in cases where the analysis supports "the rule," we often gain, in addition to better theory, improved practice and memorable teaching examples.

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This brief article examines four negotiation oddities. I call these cases "odd" because the behavior of the negotiators appears contrary to the conventional wisdom which leads us to expect that rational negotiators will strive always to act in their own interests and seek to maximize their gains (or joint gains). Buyers seek lower prices and sellers higher prices. While the theory allows important exceptions — for example, yielding where time or relationship benefits are more important than the terms of agreement[1] — we ordinarily do not expect sellers to negotiate for less, nor buyers for more. In everyday transactions, there is little room for self-denial.

Yet this is exactly what happened in two of these cases. Self-interested, apparently well-informed, sellers negotiated in reverse. Why? The major part of the answer lies in the widely addressed distinction between interests and positions, and in establishing a more nuanced hierarchy of interests. In a third case — actually a category of cases — "negotiators" actively pursue disagreement. The better part of the explanation for the apparently bizarre behavior is found in the literature. A final case qualifies the general assertion that "new money" eases the path to agreement.

I present brief factual descriptions of the four cases, followed by analytical sketches of how the situations "fit" or do not fit negotiation theory.

Striking for Lower Wages

In 1984, Local 32 of the International Association of Heat and Frost Insulators and Asbestos Workers in Newark, N.J. engaged in negotiations with the contractors association. The contractors proposed that the current hourly rate of $15.30 be increased over two years by $2.50 to $17.80. Union representatives argued that the employer offer was just too high. They countered by proposing an increase of only 90 cents ($0.90) over the same period. The positions held and the union went on strike — until it won its demand for a lower wage! (Associated Press 1984).

Each side in this unusual negotiation appears to have acted rationally in defying the conventional rule that sellers negotiate for more and buyers for less. The union explained that it felt the contractors were attempting to drive up wages so work could be shifted to lower paid non-union crews. As the union's leader put it, "The employer was trying to price us out of the market. In my opinion, they would like to throw all kinds of money at us."

The apparent irrationality in this case is explained by the distinction between *nominal* wage rates and real income, or compensation. A nominal wage increase helps no one if there is no work. The union believed that a higher nominal wage would, due the resulting loss of work, produce lower total compensation for its members, i.e. a higher hourly rate would result in lower total earnings for union workers. Thus the union's expressed *interest* in this case is not, *per se*, higher wage rates. Wages are an *issue*, and unions typically take *positions* favoring higher wages while employers typically take positions favoring lower wage increases. But the *interest* of the union is to maximize compensation for its members, *consistent with* maintaining cer-

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tain working conditions and other values. Conversely, the employer wants to minimize total compensation consistent with maintaining a certain level of quality, completion assurance, and other values.

There are other exceptions to conventional positional directions in negotiating compensation. The employer that negotiates an extremely low wage may lose employees to competitors offering higher pay. And parties defeated by more powerful negotiators may resent the outcome to the point of seeking to retaliate through sabotage. The term "consistent with," as used above, is often essential to keeping negotiators and theorists alike from confusing positions with interests. It reminds us that interests fall into hierarchies, in which, for example, wage rates rank somewhere below total compensation. "Consistent with" precedes a number of goals and considerations that must be kept in mind if a party is to pursue its real interests.

Buyer Wants A Higher Price

Pizza chains, like other mass market businesses, use image continuity to build brand identification and loyalty. Yet, to avoid stale images, they also invest in occasional makeovers of store design and décor.

Several years ago, a small-scale contractor acquaintance of mine bid on a job to remodel a pizza store owned by a national chain. In order to minimize the shutdown and the attendant loss of sales, the remodeling work was to be completed during the slowest time of the week, from the close of business Sunday evening to the opening on Tuesday, during one of the slowest weeks of the year, which was several months away. Longer shutdowns were to be avoided since they would provide more customers with "opportunities" to acquire a taste for a competitor's pizza.

The contractor bid about $22,000, calculating that with a small crew he could return a slight profit and possibly get additional jobs from the company. Following receipt of the bid, pizza company representatives met with the contractor and explained, to his surprise, that they wanted to award him the job but had a problem with his bid. It was too low! They suggested a "more acceptable" bid in the neighborhood of $30,000.[2]

The contractor considered the possibility that he was being drawn into a kickback scheme. But there was no indication of a solicitation and the pizza company had a clean reputation. Subsequent discussions and investigation convinced the contractor of a different and arguably quite rational explanation. The pizza company had been "burned" in the past by committing to low bidders. A small contractor would squeeze out a bid allowing for little or no profit. Then, lacking zeal or even commitment to complete the job, the contractor might find something better and attempt to back out of the pizza store makeover. Or the contractor might proceed with the job, cutting corners where possible, underpaying workers who would then lack a commitment to show up, and finish a week later with a poor quality job. Meanwhile, existing customers might discover that a rival's pizza was better than expected, never to return to the "old favorite." In addition, the original

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bid in this case appeared to fall well below the chain's pattern for similar work. Accepting it might confuse "the market" and raise questions about the representatives within their own organization.

Rather than lose tens of thousands through shoddy performance and late completion, why not put some of this money into assuring a committed contractor who would complete a quality job in a timely manner? And to whom, as a result, the pizza chain could return time and again with some confidence of achieving comparable results? The essential concepts here are *commitment* and *relationship*. The buyer, like the parties to the wage agreement noted in the first case, cannot serve its own interests by focusing only on price. The pizza purveyor maximizes its return to goals and builds a profitable relationship by ensuring that the other party makes out — and is also committed to the relationship and the outcome.

If we take as the rule that rational negotiators seek to maximize material returns at face value, there are clear exceptions. If we understand *rational* and *returns* more broadly, it is easy to see that commitment and joint gains become integral to the notion of maximization. Given this broadened understanding, which is supported in the negotiation literature generally, the "rule" stands as illustrated.

Getting to No!

An established definitional rule holds that the goal of all negotiation is agreement. Yet in some exchanges, the clear objective of one or both parties is to avoid agreement. One form of this behavior, termed *demand avoidance*, occurs when a party believes its away-from-the-table returns are greater than anything it can gain through negotiation, but important constituencies or norms require that it appear to be negotiating in good faith. Avoidance also occurs where the parties have other primary goals such as gathering intelligence, delaying, or disseminating propaganda (Wallihan 1998: 259-62).

We know that ill-considered asking prices may sometimes be set so high as to inadvertently discourage offers. But what of the intentional "offer that must be refused," the purposeful discouragement of negotiation and agreement through *deterrent pricing*? A property might be overpriced because the agent is obligated to offer it for sale, but prefers to "fail" and buy it cheaply herself. A political party, desiring to preserve its issue, establishes a position it believes unacceptable to the opposition. In a related example, following the assassination of Archduke Franz Ferdinand in 1914, Austria issued a humiliating ultimatum to Serbia. Nevertheless, the Austrian foreign minister lost a night's sleep fearing that somehow Serbia might accept, thus removing the pretext for the Austrian invasion (Lebow 1996: 22). Agreement avoidance through deterrent pricing has even inspired a popular cartoonist (see Figure One).

In similar fashion, ongoing negotiations can be manipulated to avoid agreement. Offers are advanced, then changed or withdrawn entirely when acceptance seems at hand; barriers of time and place are erected; meetings

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are scheduled only to be cancelled; parties show up for a meeting only to learn the other side "thought" they were to meet elsewhere. In conjunction, these can be markers for bad faith bargaining. The goal, of course, is for the target party to become discouraged and give up (or give in).

Figure One
Avoiding Agreement through Deterrent Pricing

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One possible resolution to this puzzle is to define the problem away by invoking the definition of negotiation as necessarily agreement-directed. Accordingly, efforts to avoid agreement would fall outside the realm of negotiation and thus pose no issue for negotiation theory. More fruitfully, however, we can seek explanation in those elements of theory, as well as prescriptions for practice, which address alternatives to negotiated agreements. Fisher and Ury (1981) and Lax and Sebenius (1986: Ch. 3), among many others, have explored the implications of alternatives to agreement. Whether we refer simply to alternatives or use Fisher and Ury's "BATNA" (Best Alternative To a Negotiated Agreement), the concept is well established in the negotiation literature.

The consideration of this particular anomaly brings an understanding that simply having a better alternative to agreement does not necessarily suspend negotiation. Where external forces expect a party to negotiate, that party may adopt a variety of artifices to appear to comply with these expectations. Recognizing agreement avoidance behavior and situations may be critical to the party facing them at the table as well as to a mediator seeking to construct a working theory to test for interests and explain the failure of parties to settle a dispute.[3]

The Windfall Problem

Conventional wisdom often holds that certain disputes can only be resolved by the addition of "new money." Accordingly, a mediator or other party who adds "new resources" (and perhaps some leverage) can induce agreement between or among parties incapable of settling a conflict on their own. In

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effect, the mediator is attempting to reduce the intractability of the dispute by increasing the joint gains available to the disputants.

While this conventional wisdom often applies, exceptions abound. "New money" can muddy the road to agreement. In a recent federal budget negotiation, for instance, just as agreement seemed imminent, the discovery of a windfall almost shredded the prospects for settlement (Calmes 1997). In 1997, congressional and White House negotiators had cobbled together a fragile budget agreement when the Congressional Budget Office discovered a "miscalculation" in the five-year deficit projection that, when corrected, would make available an additional $45 billion per year. Republican negotiators kept quiet about the news, fearing that the unexpected "new money" would cause the agreement to unravel, but Clinton Administration officials learned of the windfall anyway. Suspecting a Republican trick to use the newly available dollars to expand tax cuts and fearing the excess would be a deal breaker, they, too, kept quiet about it.

At the last minute, wise heads prevailed and the potential for integrative adjustments was realized. The "new" money was used to eliminate several controversial provisions, including legislated reduction of the consumer price index and a cap on Medicare spending per beneficiary.

The easy generalization about new money appears to be related to the concept of "expanding the pie" associated with the integrative bargaining approach (Walton and McKersie 1965). This generalization often ignores the accompanying distinction between creating and claiming value, the latter often associated with distributive negotiation over what has been jointly created through integrative efforts (Lax and Sebenius 1986: Chaps. 2, 5, 6).

Indeed, in a variety of settings "new money" appears to present new conflicts at least as often as it furthers agreement. This has certainly been the experience in most states that have received tobacco settlement windfalls. Accordingly, the conventional wisdom is best restricted to those circumstances in which the third party can add to the available resources without thereby obstructing the negotiation.

Implications

This brief and informal analysis finds existing theory generally adequate to the task of explaining these four negotiating oddities, with some elaboration of interests and specification of conditions required. The explanation of avoidance bargaining suggests some extensions and formalization of theory to solidify the account, albeit extensions consistent with what is generally found in the negotiation literature. The "new money" exception, once conditions are specified, turns out to be more a mainstream phenomenon than an anomaly.

The major substantive implication of the analysis is clearest in the collective bargaining and the pizza store remodeling cases. Distinguishing interests from positions takes us much of the way in these cases. Both feature negotiators who carefully assessed their interests and in the face of

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powerful norms supporting typical positional directions — sellers wanting more and buyers offering less – opted for the unconventional. Many (perhaps most) negotiators would probably miss this possibility or, if they did not, would balk at pursuing it.

Missing the possibility that an unconventional or counter-intuitive strategy best serves one's interests arguably results from a faulty assessment, specifically from failing to conceptualize interests at an *appropriate level of generality*. Conceiving of one's interest as a wage rate or a price is, as noted earlier, too specific. Projecting the consequences of a given wage or price, as the negotiators did, reveals possible counterproductive outcomes. As suggested earlier, it then becomes necessary to frame one's interests as a set of goals and contingencies or conditions, as in: "maximizing total compensation *consistent with* maintaining long-run market position, working conditions, etc." in the collective bargaining case or, for the pizza chain, "achieving a price at which the contractor will produce acceptable work, on schedule, and remain interested in bidding subsequent jobs."

Given the emphasis of the literature on the multi-issue nature of most negotiations, even those where price at first seems to be the only variable, these observations may seem obvious. But the notion of interests is a spongy one. While there are a number of efforts in the academic and popular negotiation literature to clarify the dimensions of the concept (e.g., Fisher and Ury 1981; Lax and Sebenius 1986; and Moore 1996), it remains ill defined.

Standard dictionaries afford little help. The closest option in my *Random House College Dictionary, Revised* defines interest as "benefit; advantage," certainly too general a take to be helpful in negotiation analysis.

The presence of deviant cases shows that widely accepted "rules" are not absolute. Inspecting such cases brings to light conditions under which other acknowledged rules trump the general rules. In the buyer-seller reversals, for instance, the trumps were market conditions and commitment and serving one's own interests by "enabling the other side to make out." By introducing additional variables, this type of analysis can help develop a more complete and nuanced theory of negotiation, theory that goes beyond relatively superficial understanding of such concepts as *interest* and *gain*.

The explication of negotiation theory along these lines has clear implications for negotiation practice. Above all, it suggests the importance of diligent analysis of one's own interests as well as those of one's opponent, whether this is accomplished separately or jointly. In the collective bargaining case, the full realizations apparently came separately. But in the pizza store case joint discussions seems to play a role in revealing the theoretical wisdom underlying unorthodox practice. And joint exploration in the windfall case clearly broke the silence surrounding the budget deal and resulted in an improved agreement.

In addition to their role in theory building and clarification, oddities and paradoxes provide excellent vehicles for teaching about negotiation, challenging intuitive and widely accepted views (see Bacharach and Lawler 1986).

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NOTES

1. Pruitt and Carnevale (1993: Chap. 4-7) address several exceptions involving yielding behavior in cooperative negotiation in connection with the "dual concerns" model.

2. Comparable dollar amounts in today's market would be considerably higher.

3. This analysis is consistent with the approach of Moore (1996: Chap. 10) and others who urge mediators to develop and test theories and hypotheses about negotiations.

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