
In Practice

Sharks, Saints, and Samurai: The Power of Ethics in Negotiations

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In this article, I explore the notion that ethics, far from being a check or drag on negotiator power, can actually help to enhance it. As the example of Nelson Mandela negotiating with the South African government showed, ethics (or at least the perception of being ethical) can be a major source of power, diminishing or even neutralizing many other weaknesses. I explore some of the principal ethical dilemmas facing negotiators and illustrate the sometimes surprising ways that “right” ethical choices can actually increase negotiator power. This occurs not only in the more superficial case of instrumental or even prudential ethics, (the province of “saints” and “sharks”), where “right” behavior is employed to gain short-term advantage or to improve long-term negotiator reputation, but even more so in the case of intrinsic “principled” negotiation, where the “right” thing is done for its own sake. As in the case of the medieval Japanese samurai, ethics can be a major source of power. This thesis is then illustrated anecdotally in three practical examples, leading to a proposal for how to deepen and apply this lesson to negotiation analysis and practice.

Key words: negotiation, ethics, power, principle, Nelson Mandela, self-interest, samurai.

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Introduction

All men, even the most seemingly cold-blooded, have a core of decency, and if their hearts are touched, they are capable of changing. . . . (Mandela 1995: 247)

These remarkable words, spoken by Nelson Mandela, one of the twentieth century's greatest figures at the iconic moment of his release from prison after twenty-six years, speak of a generosity of spirit and an inner strength that silences the cynics and rebuts the political theorists. It is a testimony to his decency and ethics, even in the face of immense adversity, and even when holding to a lower moral standard might have helped to correct injustice, if by questionable means. It is a statement of principle adhered to on its own merits irrespective of the consequences.

But Nelson Mandela was not just a prisoner and later a statesman. He was also a quintessential negotiator. And to those of us who analyze negotiations, he presents a phenomenon that is simultaneously puzzling and illuminating. Just how did Mandela, against all odds, manage to topple the monolith of apartheid and peacefully negotiate a just arrangement with an infinitely stronger adversary? How did he gain agreement to virtually every concession demanded? What made the system crack, after so many years, without the final conflagration of civil war and chaos that many had feared?

Mandela was indeed, by most standards, not in a particularly powerful position in his negotiations with the South African government. A brief inventory of the traditional sources of leverage shows him wanting by almost all measures. He had no particular political power, as the titular head of the African National Congress (ANC), a banned party with no representation in government. He certainly commanded no significant military forces; the sporadic guerrilla activities of the ANC had proved woefully inadequate against the disciplined might of the South African Armed Forces. Financially, he was no match either for the South African government, rich from the proceeds of gold and diamond mines. His own constituency was hopelessly splintered among the ANC, Communists, and hard- and soft-liners, not to mention the "spoiler," the Inkatha Freedom Party, a rival antiapartheid party. And finally, he had no realistic alternative to negotiating a deal with his oppressors.

What Mandela did have and used brilliantly to his advantage was a power source often overlooked by the analysts: the power of ethics. Rightly or wrongly, he was perceived through it all — not just by his negotiation partners but by much of the outside world — as a man of unquestioned integrity. In the face of much unfairness and indignity, he stood by his principles and refused to play tit-for-tat. And so his mighty opponents, humbled by the strength Mandela gained by standing on "the high ground," found themselves offering concession after concession, and finally ceding power completely to the new president of South Africa (Sparks 1995;

Waldmeir 1997; Sampson 1999). Far from being a drag on power, ethics *was* a source of power in this negotiation. The story of how Mandela used ethics to achieve negotiation success offers, I believe, some powerful lessons for negotiators.

The Relationship between Power and Ethics

Loosely speaking, most contemporary negotiation “schools” fall into one of two camps: I will call them, borrowing from Michael Wheeler, the “sharks” and the “saints” (Wheeler 2004).¹ The “shark” school, inspired by Herb Cohen (1982) in his book *You Can Negotiate Anything*, places its emphasis on negotiation power, providing a “toolbox” of techniques for tough negotiators to help them always gain the advantage and ensure victory at the table (or on the battlefield), often at their unschooled opponents’ expense. The now more prevalent “saints” take their cue instead from Roger Fisher and William Ury’s (1981) *Getting to Yes* and take a different approach, always seeking some kind of constructive “integrative” arrangement, one that satisfies the interests of both sides while at the same time setting the groundwork for a healthy relationship that goes beyond the one-time negotiation result.

Ethics, predictably, plays a far greater role for the saints than it does for the sharks. While the sharks only grudgingly acknowledge the occasional need for ethical considerations in order to ensure that a deal gets done, the saints enjoin us to always take the high road, eschewing “dirty tricks” and devious “win-lose” tactics, even when our power position is such that these could easily be employed. Forgoing these potential gains, say the saints, is part of the price of a sustainable result and a healthy longer-term relationship, which may even allow for future negotiations on other deals (Fisher and Ury 1981; Wheeler 2004).

But I would argue that both schools are agreed that *ethics is in principle weakness*, to be accommodated in the service of a larger objective and often at the cost of relinquishing some actual or potential negotiation power, thus resulting in a lesser payoff than could have been reached without this sort of constraint. While the two schools differ in their interpretation of the balance between ethics and power, it seems to me that according to both, the balance must be achieved. Willingly or unwillingly, consciously or unconsciously, we must find the right trade-off between these two poles, sacrificing just enough of the one to do justice to the requirements of the other.

The fairly minimalist shark recipe for this management of the power-ethics trade-off is purely *tactical* and falls under the rubric of “gamesmanship” (Shell 1999). Negotiation scholar Richard Shell argues that unlike those whom he refers to as idealists and pragmatists, the “more tactical” negotiator takes delight in skillfully playing power games (Shell 2004). Shark negotiators have learned that ethics can be a good tactic, playing on

opponents' fears and values, and in the end lulling them into submission. It is far more clever to choose a subtle fairness-oriented approach than to engage in naked power displays. As the saying goes, "You catch more flies with honey than with vinegar."

Shell tells us that a clever shark negotiator, therefore, will use ethical tactics to gain advantage. Like any good salesman, she will at least pay lip service to the softer relationship aspects of the interaction, exhibiting interest in the other party as a person or as people, and "chatting them up" to foster collegiality. She may appeal to fairness standards, especially when faced with an unattractive and unexpectedly tough proposal from the other side. She will do all she can to make the opponent trust her, realizing pragmatically that without trust she is unlikely to get a sustainable sign-off on the deal no matter how weak the other side may be (Shell 2004).

For the saints, all this is not enough. In their eyes, tactical use of ethics is nothing more than manipulation, a cynical and ingratiating ploy to gain an unfair upper hand. Psychological leverage achieved this way in the short term is doomed to fail, for the opponent is bound to wake up sooner or later and realize that he has been duped. The relationship will be correspondingly damaged, and, if we ever meet again at another negotiating table, I will be made to pay a price for my deviousness (Fisher and Ury 1981).

The saints, Fisher and Ury (1981) tell us, also enjoin us to employ ethics but to go beyond the tactical to the *prudential*. While it may feel good to exercise power in the short term in pursuit of immediate interests at the expense of the other side, we are bound to pay a price for this later on. The hot fudge sundae that looks so tantalizing this evening will give me heartburn that will keep me awake at night, and then extra pounds I will carry for years. And so a smart negotiator will do more than pay lip service to ethics: he will truly honor its precepts and so ensure the sustainability of his deals and protect his general reputation. Philosophically, he will follow the rules of enlightened self-interest and be smart in the long term as well as the short term.

According to the thinking of the saints, prudentially ethical negotiators will genuinely take an interest in the opponent as an individual, tending the relationship as well as the content of the discussion. They will sincerely search jointly for ethical standards or criteria by which to measure negotiation results and ensure that they are deemed fair by both sides. And even at the cost of forgoing real negotiation gains, they will never betray a trust or engage in cheap and shoddy tricks. They are too farsighted for that, too aware that in the long run these tactics never truly pay.

The important point here, however, is that this essentially remains a consequentialist argument, one that finds its justification in the outcome it generates rather than in any intrinsic value in the means employed. Fisher and Ury (1981) never themselves actually referred to their integrative

model of negotiations as “win-win,”² but many who have followed it have, focusing on the value of the negotiation payoff for both parties as the major criterion of success. For saints, the ultimate justification of their negotiation principles and tactics is *results* for *both* sides. We follow these rules, this thinking goes, because it makes both of us better off in the end.

But, I would like to offer a third approach to ethics in negotiations, one that goes beyond the tactical and the prudential goals of both the sharks and the saints, and one that, I argue, harks back to Fisher and Ury’s (1981) original intentions. This is the *principled* approach to negotiation, of doing the right thing for its own sake without regard to consequences. This kind of negotiator makes a moral argument, not just a utilitarian one. She plays by the rules because she feels bound by the rules and does not even stop to measure the net effect of this on her payoffs and results.

Quite fortunately, this type of negotiator — I call them the samurai — does not need to engage in messy trade-offs between power and ethics. For them, there is no tension between the two; rather, they derive power from ethics, even if only as a side effect. As they go about doing the right thing, traveling the “high road,” they also become, perhaps surprisingly, more powerful. The very principles that define their character are perceived by the other side as signs of strength. They are trusted, liked — and feared.³

Like the samurai of preindustrial Japan, these warriors are trained not only in the shark-like martial arts — these armed emissaries of the emperor also enjoyed considerable political influence. While the samurai were certainly proud of and made ample use of their swords and other weapons, their main source of power emanated from their strict adherence to the *bushido* code of honor. They were cultured and educated warriors, bound by a higher ethical code and therefore much respected by all, friend and foe alike (Yamamoto, Stone, and Tanaka 2001).

The *bushido* code, far more demanding than that of Western “chivalry,” bound its members to strict adherence to the values of self-sacrifice, loyalty, piety, respect, honesty, compassion for those of a lower station, calmness, fairness, and justice, to name just a few. The samurai practiced all of these simply because he realized the value of others and knew that they were essential to society: he, in his gift of service, recognized and valued theirs. And by following these precepts, the samurai found their social and military standing rising steadily over the centuries until it outstripped even that of the emperor himself, ushering in the eighteenth- and nineteenth-century age of the warrior state (Kore 2002).

While one could certainly argue whether all the traditional virtues of *bushido* (especially the honorable death of *seppuku*, a form of suicide) provide a good prescription for principled negotiations, my point is that this code did not impede power but rather was its foundation. Far from playing the classic negotiation game more cleverly or in a more enlightened way, the samurai negotiators would instead change the rules of the game

entirely, valuing ethics for their own sakes, enjoying the power they bring as a by-product.

Respect is the foundation of this kind of ethical negotiation. The negotiator would do the right thing, even interpreting more ambivalent ethical questions conservatively not because of the attractiveness of potential short- or long-term payoffs, but simply because the other party *deserves* to be treated with respect and not instrumentalized as a means to one's own (enlightened) better negotiation result.⁴ In a sense, regardless of her own negotiation behavior, I *owe* her ethical treatment simply because of her status as an equal human being. As a samurai, I honor the value of the other for her own sake.

Three Practical Examples

But where might we observe such samurai in action? What sorts of ethical dilemmas might profitably be examined for insights into the characteristics and benefits of this sort of principled negotiation? The topic of negotiation ethics in general is broad and complex and far beyond the scope of this article. Thus, I will focus here on three smaller scope specific ethical dilemmas that negotiators often confront: the legitimacy of breaking agreements, the temptation to maximize unexpected power, and the difficult question of when and how to reveal information.

Although what might constitute ethical samurai behavior along all three of these dimensions varies greatly and is open to interpretation, perhaps a few practical examples will help to make the power of ethics in negotiation apparent. I offer three: one from Nelson Mandela's long "negotiation" in South Africa, one from a commercial business negotiation, and finally, one from my own negotiation experiences.

In one particularly poignant example of Mandela's unswerving commitment to always do the right thing, he found himself in an unexpected and even disturbing physical situation. It offered a tantalizing opportunity for a quick win in his ongoing informal "negotiations" with his jailers, an opportunity that he, however, immediately and firmly rejected as outside the bounds of the ethical.

It was 1986, twenty-two years into his interminable incarceration and a full four years before his release. By this point, his "good behavior" in prison (as well as international notoriety) had won him significantly improved living conditions, including a move from the infamous Robben Island prison to the more humane Pollsmoor in Cape Town and the privilege of occasional excursions, always accompanied, outside prison grounds on special occasions (Sparks 1995).

On one such outing, however, his jailers showed an inexplicable negligence. One fine spring afternoon, the deputy commander of the prison, Lieutenant Colonel Gawie Marx, offered to take Mandela on a driving tour of Cape Town. Dressed casually and without any sort of physical restraint,

Mandela joined his jailer for several hours touring the sights. Returning home to the prison, Marx pulled up at a shopping center, asked his prisoner if he wanted a Coke, then jumped out of the car and disappeared into a grocery shop (Sparks 1995).

Mandela was left, as he later related it, “in the car with the keys in the ignition” (Sparks 1995: 27). Escape would have been child’s play, and once contact was made with ANC operatives in and out of the country, Mandela’s recapture would have been extremely unlikely if not impossible. Such a dramatic move would not only have significantly increased his physical negotiating power, reshuffling all the cards for the upcoming discussions of a possible government-sanctioned release, but also would have had a real impact on subsequent negotiations for a peaceful transfer of power. Negotiating with an exile is (arguably) far more difficult than with a convict.

So why did he not seize the chance and drive away? Because that, Mandela said, would have been a violation of trust. The decision was not difficult. He had made a pact with his jailers and been honored with their confidence that he would not take unfair advantage of that agreement. And so he sat patiently in the car and then allowed himself to be driven back to the cell and locked away for another four years. And it was not only Marx who marveled, after that, at the integrity of the man who was to become the country’s first democratically elected president, then free to drive (and be driven) anywhere he liked (Sparks 1995).

A second example of what I call samurai power is related by Ronald Shapiro and M. Jankowski (1998) in their book *The Power of Nice: How to Negotiate so Everyone Wins — Especially You*. It is the story of difficult contract negotiations between Pizza Hut and supplier Hunt Wesson (HW), who supplied Pizza Hut with 30 percent of its tomato sauce. In a fairly aggressive cost-cutting move, Pizza Hut decided to flex its purchasing muscles by putting this business out to bid to all six existing tomato sauce suppliers. It was made clear to all that the two lowest bidders would win all the business, with no regard to other issues or to the existing relationships between the parties.

HW bid what it considered its lowest acceptable price — an honest estimate, with no room for tactical bargaining. They were then informed unofficially that they had come in third and that by dropping the price by two-and-a-half cents per barrel, they could secure the business even before the official bids were opened. HW consulted internally and then demurred from any price decrease, refusing to engage in what it viewed as illicit bargaining. It lost the order and was unceremoniously dropped as a supplier.

After cooperating amicably in the winding down of the relationship, HW only had to wait six weeks before it received another call from the head buyer at Pizza Hut. The caller was forced to admit, with much less bluster than before, that the new supplier arrangements had led to significant quality problems (runny pizza!) and to ask urgently for HW to name

its price for an immediate reinstatement of the contract. Power had shifted markedly, to say the least (Shapiro and Jankowski 1998).

HW's response? Perhaps surprisingly, but quite consistently in terms of ethics, they quoted the same price as before, forgoing any opportunity to punish Pizza Hut or to collect windfall profits from the change in their power position. The long-term relationship with Pizza Hut was more important to HW, even despite the apparent failure of the other side to honor that relationship in the past. And ethical business practices remained paramount, even at the cost of additional profit. HW was reinstated as supplier and now supplies 70 percent of Pizza Hut's tomato sauce.

The third samurai situation was one that I experienced personally as a negotiator. In the early 1990s, I served as lead negotiator for the privatization of the electricity distribution business in East Germany, representing the seller, the Trust Agency of Germany. On the face of it, our power position in this negotiation was strong: the buyers were committed to the transaction by contract, with most of the issues agreed before we entered the scene. The one remaining issue, price, had also been dealt with through an official auditor's valuation, with the value set at three billion German marks.

The buyers, on the other hand, had a radically different perception of the value of the business, citing a myriad of problems including outdated equipment, open property claims, potential liabilities, and possible environmental damage. They had performed their own valuation, reaching a total of only one billion German marks. The discussions around these two very different assessments had become intransigent, heated, and unpleasant, as each side refused to budge and accused the other of economic incompetence, fraud, or worse.

Our lawyers (and even some of the buyers' lawyers) agreed that if we were only to hold firm, we would win the day in court, as our valuation was the official one prescribed by the sales contract. We could, by exercising our legitimate power, force the buyers to pay. And because the East German government, the seller, was dissolving itself afterward there were no real prudential consequences to a damaged relationship.

But this was, in our view, neither a productive nor an ethical way to solve the problem. Even if we were working for the public good, coercing buyers to pay under threat of litigation seemed an inauspicious way to begin a relationship with the enterprises who would fuel the East German economy for decades to come. Surely there was a better way to come to a win-win agreement.

Instead, we chose a simple but risky path: we moved to appeal to objective standards of fairness. In a surprising proposal to the buyers, we offered to shelve both valuations and instead to do it ourselves. In the spirit of candor and transparency, we offered to open the process, appointing experts from both sides to jointly agree on the proper way to value this business, as well as to work out the algorithms for the various issues raised

by both parties. And both sides agreed to abide by the results, whatever they might be.

Those results were, in the end, somewhat surprising. The joint valuation was for 2.8 billion German marks, very near our own position, and thus a good result for the seller during those cash-strapped times of East German privatization. For the buyers, the price was much higher than expected, but the pain seemed largely alleviated by the legitimacy of the process: various elements of the valuation had led to surprising results for both parties but results that were verifiable and therefore deemed as fair. The negotiation was amicably completed, and the result was a win-win in true samurai fashion.

One of the surprises involved the exit of the municipal utilities from the system. The utilities had won a lawsuit allowing them to claim their physical assets and to break away from the regional distributors at only nominal cost. Both buyers and sellers had assumed that this pending change in the network would depress the price of the remainder network, as it would then be forced to serve the unprofitable villages and towns. Instead, closer analysis showed that the municipal utilities took not only assets with them but also liabilities, especially the problematic real estate claims and environmentally damaged properties, most of them physically located in larger cities. Careful joint analysis showed that the change served to *raise* rather than lower the price of the regional distributors. In a sense, the municipals were creating value for both sides of this negotiation.

To this day, sixteen years later, the members of my team maintain good relations with those on the other side.

All of these situations could, of course, have ended differently: Mandela could have spent far more than four more years in prison, HW could have been permanently locked out of the Pizza Hut contract, and my electricity valuation could have come in much lower, leaving me with much explaining to do to my own rather skeptical client. But they did not. Taking the ethical way was not only the right thing to do, but it paid off as well. It was both intrinsically and prudentially powerful.

But the samurai negotiator must often be prepared to take a risk when following the precepts of his ethical code. In an environment where success is all too often measured by results (regardless of means), doing the right thing will not always necessarily lead to a better outcome. The true samurai realistically assesses the risk involved in his proposed course of action, and, in the true *bushido* spirit, faces that risk squarely.

The negotiators at HW knew full well that they might be losing their client for good. In our dealings with the electricity privatization project in East Germany, we were steeled for conversations with our client in the event that the agreed course of action in opening the process led to a less financially advantageous outcome. In both cases, these negotiators felt confirmed in their belief that virtue was its own reward, regardless of consequences.

The case of Mandela's escape opportunity is more challenging. Certainly, it would be problematic to claim that the foregone escape had a direct bearing on the final outcome of the negotiations several years later, when it was unlikely that his adversaries even knew of the incident. But I think it could well be argued that this one concrete example of Mandela's integrity served to reinforce the impression he had conveyed over twenty-five years of incarceration and helped convince Mandela's jailers and opponents that here indeed was a man to be reckoned with, one with iron ethical principles, and one who would be difficult to defeat in a win-lose negotiation encounter.

Lessons for Negotiators and Next Steps

So what might all of this mean for negotiators and their advisors facing the challenges of negotiating in the twenty-first century? How might the samurai approach be profitably applied in practice? While this short article is admittedly anecdotal and merely seeks to put forward and illustrate a personal point of view, the author is firmly convinced of the validity of its central idea. If that is so, then it seems to me there are at least three avenues for further research and application.

I would first appeal to my colleagues in the academic community to give even more time and effort to this emerging area of ethics in negotiation. While there is a substantial literature on ethics in negotiation,⁵ not enough has yet been done, especially in the empirical realm, to test the effects of ethics on power. While admitting researchers to real-time negotiation scenarios to study issues like these is famously difficult, perhaps some new and innovative game simulations could get at the issue and serve to underpin (or disprove) it in a more robust and empirically sound way. I, for one, would welcome the opportunity to work on this kind of project.

Second, practitioners should also take the samurai concept to heart and consciously seek to apply it in their negotiations, investing consciously and unilaterally in the precious asset of trust while always remaining watchful to cap that investment in the event of a failure of reciprocity. While one should perhaps not immediately choose a high-priority issue for testing the benefits and costs of ethical behavior, there will always be smaller, "safer" "throwaway" points of contention where the cost of failure is manageable. Refraining from the bluff, revealing information, or introducing an objective standard of fairness, even when one could well afford not to, may seem shortsighted and foolhardy at the time. But it does serve to build confidence in the strength of this way of thinking, a confidence rooted in personal experience. And that can be contagious, even to the most shark-like negotiation partner.

Finally, on a personal note, I increasingly find it difficult (and not always necessary) to separate negotiation behavior from life behavior. If being ethical is the thing to do in a negotiation, then perhaps it is also the right way to live in general. Thinking about these issues in a broader sense can lead to a changed

philosophy of life — and an increased consciousness of the importance of the many ethical decisions made as we live together with others in an interconnected world, always seeking to make trade-offs and to influence others to join us in finding mutually satisfactory results in an environment of pluralism. In a small way at least, we can strive to be modern samurais.

The road up this sort of mountain can seem steep and impassable. But I am convinced that it is worth the climb and that one can, indeed, grow stronger from climbing to higher ground regardless of the view.

NOTES

1. The more prevalent taxonomy, at least in the academic literature, is negotiation based on *rights, interests, and power*. But as I view the first as more the domain of litigation and arbitration/mediation, I am focusing here on the other two, redefined according to Wheeler's (2004) definitions.

2. This is perhaps one of the great misunderstandings of the negotiation literature, as the two are often used synonymously. A careful reading of *Getting to Yes* and Roger Fisher's other texts, however, turns up no mention of this ubiquitous phrase.

3. In a sense, I am building on Van Es's (1996) warrior model of negotiation here, although his fairly manipulative (Stone Age) warriors were woefully lacking in the key ethical component. Physical strength is not enough.

4. In Kantian terms, the moral justification here lies in the motive, not in the consequence. See Cohen (2002).

5. Especially around the question of fairness, as measured in the ultimatum game. See Menkel-Meadow and Wheeler (2004), Shell (1999, 2004), and Strudler (2004) for thoughtful discussions of ethics in negotiation from both a theoretical and an empirical perspective.

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