The Art and Science of Negotiation

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Ideas are incestuous. They commingle and refuse to sort themselves out so that one can say, “These ideas are his or hers and those mine.” I know, however, that many of the ideas in the chapters that follow are the ideas of others, and some of these others can be identified. To no one am I more indebted than to John Hammond.

This book would not have been written if I had not chosen to teach a course in competitive decision making at the Harvard Business School, a course that evolved over more than a decade. In the mid-1960s I taught a doctoral seminar in individual, group, and interactive decisions, and in the early seventies John Hammond incorporated some of the material from that seminar in a pioneering M.B.A. course entitled “Competitive Decision Making.” I later inherited that course from John and built on his materials. Although my course evolved into one that was substantially different from John’s, he had set the tone; and even when I departed from his work, I had a very comfortable launching pad. Occasionally, when I fell flat, I picked up again from his supporting net.

Now Elon Kohlberg is teaching that course, and his version will certainly be different from mine. Some of his ideas, too, have been incorporated into this book, without credits, because I can’t even begin to sort out which ideas are his and which are mine.

So it is with some of my former doctoral students who worked with me at various times during the last five years. Some of me is in their dissertations, and a lot of what is in their dissertations can be found here. I acknowledge the contributions of Kalyan Chatterjee, Zvi Livne, James Sebenius, Timothy Sullivan, and Jacob Ulvila. Jim Sebenius deserves special thanks. Not only did he teach me about the Law of the Sea, but he’s a wonderfully supportive and incisive critic—and it’s hard to be both.
I have also drawn liberally on ideas discussed during seminars with members of the Harvard Negotiation Workshop. In that group I interacted most closely with Roger Fisher, Bill Ury, Jim Sebenius, Frank Sanders, Larry Susskind, James Healy, and David Lax. Roger and Bill’s book, Getting to Yes, is full of important insights, and in my weaker moments I thought of such titles for my own as Before Getting to Yes or Beyond Yes.

Some of the material in this book has been used in various executive programs at Harvard’s Business School and Kennedy School of Government, and in various industrial executive training programs. I have collaborated with and observed a master of this type of pedagogy, Paul Vatter, who in innumerable ways has influenced my choice and treatment of subjects.

I have drawn copiously from Mark G. McDonough’s cases on international negotiations, which were prepared partially under my supervision. These cases provided rich background material from which I concocted several abstractions. His help was indispensable.

Whenever anyone asks me whether I prefer A or B, I almost invariably answer “Why not both?” When anyone asks me where I learned something and I can’t remember, I invariably answer “Tom Schelling,” and I think I’m right 69.4 percent of the time.

In the late 1970s I thought about writing a book on negotiation, but I kept postponing the first steps. If Wes Churchman had not invited me to give the 1980 Gaither Lectures at Berkeley on the topic of negotiation analysis, I might still be thinking of those first steps. I am indebted to Wes and his colleagues at Berkeley for focusing my thoughts.

Poornima Ram not only typed and retyped and retyped my evolving manuscript, but her readings of the text helped me tremendously. Whenever she does not understand what I’ve written, I know that I’m in trouble. It’s a pleasure to work with her.

I deeply appreciate the superb quality of the editing of this book; Maria Kawecki’s precision imprint is on each paragraph. All remaining grammatical errors are hers, all errors in the symbols are the typesetter’s, and my wife agrees to share with me responsibility for the rest.

This book is an elaboration of the H. Rowan Gaither Lectures in Systems Science, delivered November 1980 at the University of California, Berkeley. These lectures are named in memory of one of the founders, and first chairman of the board, of the RAND Corporation. They were established by a gift from the System Development Corporation, formerly a division of the RAND Corporation, and are held under the aegis of the School of Business Administration and the Center for Research in Management of the University of California, Berkeley. The past lecturers were Charles J. Hitch, Charles L. Schultze, Alice M. Rivlin, John W. Macy, Jr., Sir Geoffrey Vickers, Erich Jantsch, and Herbert A. Simon.
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In the late 1940s I was a graduate student in mathematics at the University of Michigan, partially supported by a contract enabling me to do work in the theory of games. There was an amazing burst of research activity in this speciality at that time, especially at the RAND Corporation and at Princeton University, where in 1944 John von Neumann and Oskar Morgenstern wrote their classic tome, *Theory of Games and Economic Behavior*. Very rapidly the easier research topics were being appropriated and a fresh crop of Ph.D. students were looking for new fertile ground to explore. I was in a cohort that was beginning to study two-person games where the protagonists did not have strictly opposing interests (the so-called non-zero-sum games). My thinking was very much influenced by a lecture given by William Haber, professor of economics at the University of Michigan, who talked about the role of arbitration in labor disputes. The lecture set me to wondering: If two players of a non-zero-sum, abstract game asked me to act as arbitrator and to determine a joint outcome for their dispute, what would I do? And thus I began some highly abstract mathematical research into this problem—research in the genre of game theory. I was interested in mathematical elegance, and the peers whose opinions I valued were the mathematical community. I certainly was not driven to do empirical work, to see how arbitration actually functioned in the real world; nothing could have appealed to me less.

Receiving my doctorate in 1951, I drifted back and forth between game theory and mathematical statistics for the next six years. After *Games and Decisions*, written with Duncan Luce, was published in 1957, I accepted a joint appointment at Harvard: I was to teach statistics in the newly created Department of Statistics and perhaps game theory in the Graduate School of Business Administration. I
didn't know very much about business (a vast understatement) and I began by studying loads of case studies of real-world problems. Practically every case I looked at included an interactive, competitive decision component, but I was at a loss to know how to use my expertise as a game theorist. The theory of games focuses its attention on problems where the protagonists in a dispute are super-rational, where the "rules of the game" are so well understood by the "players" that each can think about what the others are thinking about what he is thinking, ad infinitum. The real business cases I was introduced to were of another variety: Mr. X, the vice-president for operations of Firm A, knows he has a problem, but he's not quite sure of the decision alternatives he has and he's not sure that his adversaries (Firms B and C) even recognize that a problem exists. If Firms A, B, and C behave in this-and-such a way, he cannot predict what the payoffs will be to each and he doesn't know how he should evaluate his own payoffs, to say nothing about his adversaries' payoffs. There are uncertainties all around besides those that relate to the choices of Firms B and C; no objective probability distributions for those ancillary uncertainties are available. Mr. X has a hard time sorting out what he thinks about the uncertainties and about the value tradeoffs he confronts, and he is in no frame of mind to assess what Mr. Y of Firm B and Mr. Z of Firm C are thinking about what he's thinking. Indeed, Mr. X is mainly thinking about idiosyncratic issues that would be viewed by Y and Z as completely extraneous to their problems. Game theory, however, deals only with the way in which ultrasmart, all-knowing people *should* behave in competitive situations, and has little to say to Mr. X as he confronts the "mass of his problem."

For the next ten years I stayed away from game theory and concentrated on a much simpler class of problems: decisions under uncertainty in noninteractive, noncompetitive situations. I worked in a field that has been dubbed "decision analysis."

Between 1968 and 1972, competitive, interactive problems gradually reclaimed my attention, and I became convinced that there should be a marriage between what I was then doing in decision analysis and what I had previously done in game theory. My main preoccupation was with real people in real situations: How could analysis be used to help one party in a competitive conflict situation without assuming excessive rationality on the part of the "others"? My efforts were still marginal.

In 1967 President Lyndon Johnson asked McGeorge Bundy, then president of the Ford Foundation, to explore with the Soviets ways in which science could promote international cooperation. Perhaps a joint scientific undertaking—keeping away from arms control and space exploration—would be appropriate. They weren't sure whether the effort should be bilateral or multilateral, but multilateral seemed more appropriate; if multilateral, it should involve only the advanced industrialized nations. Bundy asked me to be one of his advisers, and for four years I had a taste of international diplomacy and negotiations, continuing in my advisory capacity even after Philip Handler, president of the National Academy of Sciences, took over the leadership of the project in 1970. In 1972 twelve academies of sciences, including five from Eastern Europe—and among these one from the German Democratic Republic, which the United States did not recognize at the time—signed a charter creating the International Institute for Applied Systems Analysis (IIASA), now located outside Vienna. From 1972 to 1975 I was the first director of that scientific institute.

I recount all this because it is relevant to the chapters that follow. I was trained as a decision analyst and game theorist. Did those disciplines help me in my negotiations? Was I properly trained for my role as negotiator or as scientific administrator? Perhaps, because of my training and profession, I thought more conceptually about the problems I was engaged in than I would have without that training, but I never really used the techniques of game theory—concepts and ideas, yes, but techniques, no—in my roles as negotiator and director. And what was frustrating about this was that I was constantly involved in problems that could be loosely classified as competitive and interactive. The concepts of decision analysis seemed to me much more applicable than those of game theory, but not in the way I had taught them. The qualitative framework of thought was repeatedly helpful—not its detailed, esoteric, quantitative aspects. Simple, back-of-the-envelope analysis was all that seemed appropriate. I was constantly impressed with the limitations of iterative, back-and-forth, gamelike thinking. I could try to be systematic, thoughtful, and analytic, but the "others" I negotiated with
always seemed to have intricate, hidden agendas. Secretly I thought that if I could really know their true values, judgments, and political constraints, I would be doubly convinced that they were not acting in a coherent, rational way. They certainly weren’t satisfying the prescriptive ideals of “rational economic man.”

As director of IIASA, I had to balance scientific integrity with political reality. I was continually called upon to structure creative compromises. Researchers pulled in different directions, and since our budget was modest in comparison to their collective appetites, people—good people—had to be disappointed. In most of these disputes I played the role of a mediator, in some the role of an arbitrator.

My actions were subject to the approval of a council, which was made up of one distinguished member from each national member organization. The chairman of the council was Jerman Gvishiani, deputy minister of science and technology of the Soviet Union. And no matter how exalted that title may seem, in reality he was even more powerful than that. I learned about different national negotiating styles, and above all about the importance of timing: one had to keep a fluid agenda and wait for the propitious time to introduce a contentious issue. I learned that even the Soviets are not monolithic and that they occasionally change their minds. I learned how difficult it is to accomplish anything substantial in open meetings when each side has to go on record for the people back home. I learned that money comes from different pockets and that five million dollars taken from the left pocket of a country might be easier to get than five thousand dollars from the right pocket. I learned that if you wait long enough, someone on the other side will vaguely propose what you want, and that it’s easier to open negotiations that way. I learned the need of others to feel that they are part of the inner circle. I learned that “gentlemen’s agreements” that are not documented are fragile; that a party may be sincere about such an agreement when made, but that they may not be able to withstand internal pressures from objectors at home; and that because negotiators are embarrassed when they have to back away from promises made, they often become more amenable to other compromises. I learned that the boisterous atmosphere of an Austrian tavern often does far more to establish a proper ambience for negotiations than does a sedate cocktail party or dinner.

I came to know Jerman Gvishiani reasonably well, and especially enjoyed those sessions where he coached me in how to bargain with the Austrians and with people of other nationalities. Austrians, perched in a precarious position between East and West, are understandably apprehensive about the Russians. Gvishiani sometimes used his power as a Russian in talks with the Austrians on behalf of the institute, but always in a subtle fashion—the trick was to use the hint of power, rather than power itself. Austrian Chancellor Bruno Kreisky and others in his government realized that the good will engendered in one set of negotiations could spill over and affect other negotiations, and it was this linkage that could be deftly exploited by Gvishiani.

When I returned to Harvard in 1975 I decided that my primary aim was not to teach what I’d learned, but rather to learn what I should be teaching in the art and science of negotiation. I decided that above all, I needed an experimental laboratory. I wanted to learn how people actually negotiate and, knowing something about how others negotiate, to examine how the side I was advising should negotiate, to examine how the side I was advising should negotiate. Could simple analysis help? Of course, I could have gone into the field to get vicarious experiences, but that would have been slow and much anecdotal material on negotiations had already been written; also, I knew and could talk to a lot of people who had been in the front lines of negotiation. My advantage was that I was more analytical in approach than most practitioners and that I knew bits of esoteric, mathematical theories that, although not directly relevant, might be made relevant to practice.

I also had to teach, and there was no better way than to get students to learn with me. My idea was to create a quasi-laboratory where students would at the same time be willing subjects in experiments, be interpreters of the empirical findings, and be designers of modified experiments that could be tried with new groups of subjects. Collectively we could test what worked in the laboratory and we could discuss whether our heuristic insights would be applicable in the real world.

I inherited a second-year, elective course developed by John Hammond for students in the Master of Business Administration (M.B.A.) program. Entitled "Competitive Decision Making," it was a perfect launching pad for my interests. The students taking the course were primarily business generalists; most aspired to be
business entrepreneurs and negotiators; all had some familiarity with the basic concepts of decision analysis, but most had a low tolerance for theoretical acrobatics. They were eager if properly motivated. Hammond had already collected fascinating cases, many of which I use here. My innovations were to make the course into an experimental laboratory, to make the payoffs in the experiments emotionally gripping by keeping records of individual scores and partially basing grades on these scores, to spend more time on face-to-face negotiations, to emphasize the role of the intervenor, and to test a bit more systematically the potential roles of simple analysis (see appendix to Chapter 2). Hammond kept the course close to real-world cases, while I willingly drifted off into experiments with abstractions of those cases.

In this book I draw heavily on Hammond's cases and on the empirical results of experiments that I conducted in my classes. Some of the accumulated sample sizes of our experiments run into the high hundreds. Data have been collected, in addition, from student-subjects in government and law, from high-level managers and general-grade military officers enrolled in special executive training programs, and from members of the Young Presidents' Organization—an international organization made up of presidents of firms who are under the age of forty. An experimental psychologist would be very unhappy with our experimental designs. We kept systematic statistical records only for business students. Experiments were conducted outside class and we did not formally monitor whether our subjects were really obeying the rules; we operated according to an honor system, and sometimes not all are honorable under stress. Some of the observations that follow, therefore, should be understood with this in mind, although a few biased game scores would not alter the basic truth of the messages I want to convey. One may never be able to predict or to simulate in a laboratory setting all the aspects of complex real-world negotiation, but there is no question as to the value of applying decision-theoretic concepts: analysis can help.

part I

Overview

There is no shortage of disputes. There are disputes between husband and wife, between siblings, between friends, between individual and firm, between firm and firm, between developer and environmentalist, between regions within a nation, between a region or city or state and the nation, between nation and nation—and perhaps in the far future (who knows?) between planet and planet.

There are many established ways for settling disputes: traditions, regulations, courts, markets (through the laws of supply and demand), and negotiations. Even the staunchest free-market capitalist acknowledges the fact that markets may be imperfect and that governments must often modify the rules of market behavior to achieve more socially efficient outcomes. But how should the authorities change these rules? Frequently by the processes of bargaining and negotiating.

It's important for me to state at the outset that I am not against conflict per se. Progress is often achieved by engaging uninvolved individuals in a cause, and the creation of tension and conflict may be a desirable organizing strategy. Some major societal improvements have resulted from conflicts that have been resolved by destructive forces. Competitive sports, parlor games, and card games are conflicts that are designed to add zest to life. Competition for advancement in the business world and competition among firms generate incentives that help the system work more efficiently. All that granted, this book is concerned with situations in which two or more parties recognize that differences of interest and values exist among them and in which they want (or in which one or more are compelled) to seek a compromise agreement through negotiation.

There is an art and a science of negotiation. By "science" I
loosely mean systematic analysis for problem solving; and if the phrase "systematic analysis" seems a bit vague, I can only say that its meaning will become clearer as we go on. The "art" side of the ledger is equally slippery: it includes interpersonal skills, the ability to convince and be convinced, the ability to employ a basketful of bargaining plays, and the wisdom to know when and how to use them. The art of negotiation has been well documented throughout the ages; the science, on the other hand, is not well developed, and what has been developed is not very accessible to the practitioner. My aims here are to explain in relatively nonmathematical language some of the science (theory) that has been developed by others, to develop a bit more of my own, to sprinkle in a little art, and to show how art and science can interact synergistically.

Often disputes are not settled amicably, and all sides suffer: children fight each other, husband and wife separate, labor and management settle grievances through strikes, and nation-states resolve their differences through wars. Agreements often are not made when they could have been made to the advantage of all disputants. Agreements often are made that are inefficient: others could have been made that would have been preferred by all the disputants.

It is my belief that many disputes could be more efficiently reconciled if the negotiators were more skillful. Other disputes are best reconciled through the efforts of intervenors. In labor-management relations there are reasonably trained—but usually not well enough trained—mediators and arbitrators. Ideally these are impartial, highly ethical, knowledgeable intermediaries who help the disputants negotiate constructively, perhaps by suggesting compromises, and, depending on their role, perhaps by dictating compromises—a bit like a wise parent helping quarrelsome children. Such intermediaries also exist to help counsel families. It is very rare, however, to find well-trained intervenors who can help with serious societal conflicts, such as those between urban interest groups, between developers and environmentalists, between nation-states. Managers likewise seldom receive instruction in negotiating skills as part of their professional education, although they are often called upon to mediate or arbitrate in disputes that occur among their subordinates.

I believe that more training is desperately needed in the art and science of negotiating, and in the art and science of intervening. Such training would be appropriate for diplomats, military officers, lawyers, politicians, businessmen, and ordinary citizens who may expect at some time or other to be embroiled in situations with serious conflicts of interest among contending parties. It should include instruction not only in the art of interpersonal relations, but also in analytical, problem-solving skills.

This book will therefore blend discussion of the practical side of negotiating with simple mathematical analysis, both of which can be of use to disputants and intervenors alike. We'll begin with a brief look at the various types of disputes and at the ways in which researchers have chosen to explore the field.
Ethical and Moral Issues

Ethical concerns are sprinkled throughout this book; indeed, they are hard to avoid in bargaining and negotiating. Was Steve right when he implied that $300,000 was unacceptable for Elmree House, when he knew that $220,000 was the value he would be willing to settle for? Are negotiators acting appropriately when they exaggerate what they are giving up on one issue in order to squeeze out a quid pro quo compromise on another issue? Is it improper for a negotiator to imply by his actions that he desperately needs something for his side, when he knows full well that he will give that up at a later stage for something else?

A subject once said to me: "In several of the role-playing exercises I was in a quandary. I didn't know what was ethically right. I was somewhat concerned about others—but how do I know where to draw the line? I didn't want to be callous, but neither did I want to be a starry-eyed, impractical idealist. How should I think about these ethically laden choices?"

Most of the subjects in our experiments had had some education in normative ethics. They had at least read excerpts from the writings of Plato, Aristotle, Augustine, Aquinas, Hume, Kant, Bentham, Mill, and others concerning normative principles of right and wrong. But knowing the distinctions between teleological (result-oriented) and deontological (duty-oriented) frameworks or between monistic and pluralistic frameworks of normative ethics may not help a subject to decide as the City representative negotiating with AMPO whether, in the case of Daniels, to lie or to be quietly misleading or to be open and honest. Normative ethical frameworks are not designed to yield definitive decision procedures, and we should not expect answers from these philosophical teachings and reflections. Indeed, some of these frameworks imply conflicting ad-

vice in negotiation contexts. People throughout the ages have worried about these moral issues; they have worried against one another and tried to exterminate one another in defense of their own moral precepts. "My way is better than your way, so take that"—"that" being a blow of a fist, a club, a spear, a gun, germ-laden gas, a missile, an atomic bomb, a doomsday weapon. Despite the fact that libraries are filled with books that discuss these important moral and ethical concerns, I still would like to offer some observations on how to think about ethically laden choices.

Disputants often fare poorly when they each act greedily and deceptively. In those cases it's easy to coach all participants: they can all jointly gain if they would be less greedy and more open and honest with one another. It's far more difficult to know how to coach one side. Would you advise Steve to tell Wilson that he would settle for $220,000 but would very much like to get $350,000? Most negotiations are not strictly competitive: there are possibilities for joint gains. For purely selfish reasons, you as a disputant may help yourself by helping your adversaries. This is fine. But even here there is always a tension. As all parties seek joint gains, you still have a preference to favor your side. You not only would like to enlarge the pie, but you want your just share, and what you think is a "just share" may not agree with your adversaries' assessments. How far is it "right" or "appropriate" to push in favoring your own side when it may be to the disadvantage of others?

It's often said that dishonesty in the short run is a poor policy because a tarnished reputation hurts in the long run. The moral question is: Should you be open and honest in the short run because it is right to act that way, even though it might hurt you in the long run?

The hundreds of responses I have obtained to a questionnaire on ethical values are instructive. The distributions of the responses from students of business administration, government, and law are reasonable. But the students do not overwhelmingly say, "That sort of behavior may be borderline in my opinion for others, but is unac-

1. "Devon Industries, Inc. (B)," a case study written by Gerald Allan under the supervision of John Hammond. The case describes hypothetical behavior in the construction industry, some of which is borderline or morally reprehensible. The students are asked to rate anonymously on a five-point scale whether specific behaviors are: definitely ethical, ethical so long as everyone else does it, not a matter of ethics, unethical but acceptable, definitely unethical. They are also asked: If you were in such a position, what do you think you would do?
ceptable to me.” Most say, “If I were in that situation, I also probably would act in that borderline way”; and a few say, “I think that that behavior is unethical, but I probably would do the same.” That’s disturbing to me.

One student defended herself—even though the questionnaires were anonymous—by stating that most business people in their ordinary activities are not subjected to those moral dilemmas. And although she reluctantly admitted that she would act in an unethical manner if she were unlucky enough to be in the position of the contractor who is being unmercifully squeezed, she would try her utmost not to get into such situations.

Let’s abstract and simplify by looking at a simple laboratory exercise concerning an ethical choice.

A SOCIAL DILEMMA GAME

Imagine that you have to choose whether to act nobly or selfishly. If you act nobly you will be helping others at your own expense; if you act selfishly you will be helping yourself at others’ expense. Similarly, those others have similar choices. In order to highlight the tension between helping yourself and helping others, let’s specify that if all participants act nobly, all do well and the society flourishes; but regardless of how others act, you can always do better for yourself, as measured in tangible rewards (say, profits), if you act selfishly—but at the expense of others. Leaving morality aside for the moment, the best tangible reward accrues to you in this asocial game if you act selfishly and all others act nobly. But if all behave that way, all suffer greatly.

To be more concrete, suppose that you are one player in a group of 101, so that there are 100 “others.” You have two choices: act nobly or act selfishly. Your payoff depends on your choice and on the proportion of the “others” who choose to act nobly (see Figure 48). If, for example, .7 of the others act nobly, your payoff is $40 when you act nobly and $140 when you act selfishly. Notice that regardless of what the others do, if you were to switch from noble to selfish behavior, you would receive $100 more; but because of your switch, each of the others would be penalized by $2.00 and the total penalty to others would be $200—more than what you personally gain. The harm you cause to others, however, is shared: you impose a small harm on each of many.

If the others can see that you are acting selfishly, then acting unselfishly may be your prudent action from a cold, calculating, long-term-benefit point of view. Your good reputation may be a proxy for future tangible rewards. But what if the others (because of the rules of the game) cannot see how you, in particular, behave? Suppose that all anyone learns is how many of the others chose the “Act cooperatively” option.

I learned about this game from Thomas Schelling, who dubbed it the “N-Person Prisoner’s Dilemma Game,” a direct generalization of that famous two-person game. In the literature, these games are called “social dilemmas” or “social traps,” and are sometimes discussed under the heading of “the problem of the commons” or “the free-rider problem.” Whenever anyone uses “the commons,” there is a little less for everyone else. The “commons” could be a town

2. In the laboratory version of the game I use less connotative terminology: “act cooperatively” instead of “act nobly” and “act noncooperatively” instead of “act selfishly.” I’m sure that the mere labeling of these acts influences some behavior.
green, common grazing land, a common river, the ocean, or the atmosphere. Overpopulating our common planet is a prime manifestation of this problem. Whenever we enjoy a public benefit without paying our due share we are a "free rider." One variation of the free-rider problem is the noble-volunteer problem: Will a hero please step forward—and risk his or her life for the good of the many?

Subjects were asked to play this social dilemma game not for monetary payoffs, but as if there would be monetary payoffs. There might, therefore, be some distortion in the results—probably not much, but in any case the experimental results are not comforting. Roughly 85 percent of the subjects acted noncooperatively—acted to protect their own interests. Most subjects believed that only a small minority of the others would choose the cooperative (noble) act, and they saw no reason why they should be penalized; so they chose not to act cooperatively. They felt that it was not their behavior that was wrong, but the situation they were participating in. Unfortunately, many real-world games have these characteristics.

A few subjects acted cooperatively because they were simply confused; but others—the really noble ones—knew exactly what was going on and chose to sacrifice their own tangible rewards for the good of the others, even though the others did not know who was acting for their benefit. If the rules of the game were changed to make "goodness" more visible, then more subjects would opt for the noble action—some, perhaps, for long-range selfish reasons. This suggests a positive action program: we should try to identify asocial games (social dilemmas) and modify the rules, if possible (which is easier said than done).

Now let's suppose that you are in a position to influence the 100 others to act nobly by publicly appealing to their consciences. Do you need to influence all to follow your lead? No—you will get a higher monetary return for yourself by converting 50 selfish souls to the noble cause than by joining the ranks of the selfish. But balancing tangible and intangible rewards, you might still prefer to act nobly if you could get, say, 40 conversions; with fewer conversions you might be sacrificing too much. Suppose that you are wildly successful: 75 others join your coalition. Say that 17 of these would have acted nobly anyway; 3 are despicable poseurs who join the nobles but who will defect secretly; and 55 have actually been swayed by your moral pleadings. Now you not only have benefited financially, but you feel morally righteous as well. Unfortunately, your actions have also made it more profitable for the remaining 25 who have not joined your coalition. Each conversion adds $2.00 to the payoff of each of the others, including the selfish holdouts—they've been helped by your successful proselytizing. This may really bother some of the converted ones; it's unfair, they may argue, that the selfish, undeserving ones should profit from the noble actions of the majority. (A real-world analogue is the case where most of the nations of the world might agree not to catch blue whales, and because of this pact it becomes easier for one noncooperating whaling country to find its prey.) Some of your converts may be so bothered to see that the undeserving are doing better than themselves, that they may decide to defect. They may argue that the coalition is not working, when in absolute terms it may be working for them; but it may not be working in comparative terms. It rankles them that they are helping someone who is taking advantage of their noble behavior. So a few defect, and as a result the coalition can easily come apart.

A DIALOGUE

Once again, a troubled negotiator poses the basic question: "How should I think about ethically laden choices?"

"First of all," I say, "I think it's right that you should think about them. Ethical reflections should be a continuing imperative."3

"Fine—but how?"

"About 2,500 years ago, Tzu Kung allegedly asked Confucius whether the True Way could be epitomized in one word. Confucius replied: 'Reciprocity: do not to others what you do not want them to do unto you.' During the reign of Herod the Great in Palestine, Rabbi Hillel repeatedly echoed this injunction, and decades later Jesus preached this as the Golden Rule."

"That still doesn't tell me whether Steve did wrong when he intimated that he would not settle for $250,000. As a City player against

3. A paraphrase from "Basic Frameworks for Normative Ethics," a case study prepared by Kenneth E. Goodpaster, p. 1. See the bibliography, under the heading "Case Studies."
AMPO, would I do wrong if I acted as if I wanted Commissioner Daniels when I secretly desired to get rid of him?"

"Well, here's a way of thinking that probably doesn't go back to Confucius: before you act, think of facing yourself in the mirror tomorrow. Is this the person you would like to see? Would you feel comfortable discussing your actions with your spouse? Your children? Your friends? Let's refer to this cluster of concerns as self-respect."

"I'm still confused," the negotiator persists, "You're telling me to think about the Golden Rule and to think about my self-respect. You're not telling me to always obey the Golden Rule or to always honor my self-respect. How does that help Steve in his negotiations for Elmhouse?"

"I'm trying to be helpful, but it's not easy to be dogmatic about these issues," I say hesitantly. "Unfortunately, for me, there is no overarching atomistic, moral premise from which everything else flows. Unlike Kant, I recognize no categorical imperative that I think is universally applicable. I can always think of counterexamples, such as the fact that I would lie or steal or kill to save my country or to save multitudes of innocent people. The best I can do is draw upon various schools of philosophical thought and enunciate principles that are important to reflect upon when I am at a morally intricate decision node."

"But once you have several principles of moral behavior, they may conflict in a given situation. Should you lie, or break a promise? Aren't you troubled by that?"

"Certainly I am. But before we talk about coping with inconsistencies, let's formulate a few more principles that may be relevant in bargaining and negotiating."

Another negotiator asks: "Don't you think there is enough guilt in our society? Are you telling us to be ashamed to look at ourselves in the mirror if we don't live by the Golden Rule? It seems to me that the very art of negotiation involves some amount of deception and some skillful exercise of power. Should I be ashamed of the fact that in one negotiation exercise I purposely linked two issues so that I could use the threat power of one issue to get what I wanted on the other? That's done all the time. If I'm not for myself, who will be?"


"If something is done all the time, that doesn't make it right. Certainly I would agree with you that in judging the morality of one's proposed actions, one should reflect on the norms of society. But society would change for the better if each of us tried to nudge it in more righteous ways. It's a matter of degree. Before taking an action you might ask yourself: What kind of society would we be living in if everyone acted the way I'm about to act? Or: If I remove myself from involvement in the situation and if I imagine that someone else is occupying my role, how would I as a disinterested party advise that other person to behave, taking into consideration what's right for that person, what's right for other protagonists in the negotiation, and what's right for society? There's an implicit contractual understanding in our social obligations."

The negotiator is not satisfied. "But these rights—to myself, to others, and to society—might, and usually do, conflict. That's the problem. If I'm an interested party, and if I can help myself at the expense of someone else, how should I weigh my interests against my perception of the interests of others? This is what I find hard to answer."

"You're not the only one. I, too, find the line hard to draw. But we're talking about ways to think about the problem. You might imagine yourself and the other negotiators in an original position where you as yet do not know the roles each of you will assume. In this ex ante position, what would be a reasonable contract for behavior to guide the mutual actions of all? How would you agree ahead of time that in the position you now find yourself, someone—not necessarily yourself—should act? This is something you might think about."

"Thinking is easy. Acting is hard. If I did this, and tempered my actions accordingly, I would be at a competitive disadvantage if my altruistic behavior were not reciprocated. Behave unto others as you don't expect them to behave unto you. Is that it?"

"No, that's not it. I'm trying to tell you to be conscious of and to reflect about conflicting rights—to be more conscious of others and of long-run societal interests."

Another negotiator joins the discussion. "That last piece of advice cuts two ways," she says. "An employer might want to fire a worker who is incompetent but who desperately needs the money. The employer might also empathize with the worker and decide that the bit of extra profit he could gain by the dismissal is not worth
the harm that would be done to this loyal but not-too-bright worker. However, if the employer thinks of the big picture, thinks of the long-run interests of society, then perhaps he should fire the man. As a whole, society may be better off if employers were tough-minded about efficiency. If employers fire incompetents, they make places available for competent people, and with increased efficiency more jobs may be created. That's part of the free-enterprise ethic."

"I grant you the point that we sometimes have to take actions that have short-run liabilities for long-run gains—actions that appear to be hard-hearted. I agree that in thinking about society as a whole, one should think about secondary, tertiary, and long-range effects as well as immediate effects. But I would violently argue against a philosophy saying that since I can't predict what's going to happen in the long run, I might as well look after myself right now. Well-meaning people can have different assessments of long-run effects for some cases, but there are lots of other cases where the answers will be perfectly transparent. For instance, society and the free-enterprise system would be better off if people didn't tamper with the odometers of used cars before selling them, if advertisers didn't falsify information about the safety of products, if realtors informed prospective home buyers that a particular furnace or a particular roof was in poor repair."

"Wait a minute on that last one," interjects one of my interogators. "Selling and buying is a little like the legal system. Lawyers are advocates: they select the material they choose to disclose to favor their side. It's up to the other party to protect itself. Am I, as the seller of an automobile, supposed to tell the buyer that my car is not as good as another on qualities P, Q, and R? I would rather be quiet about P, Q, and R and tell him my car is much better than the other on qualities S, T, U, V, and W. And I might be stretching the point on qualities V and W. This is part of the bargaining game."

"I'm not sure I agree. We'd be better off if we were a lot more honest with each other in bargaining and negotiating. A lot of adversarial bickering should be replaced by collegial, joint-problemsolving interchanges. Remember those nineteen points of the Rule of Reason used in the National Coal Policy Project."

"That's fine for the National Coal Policy Project, but I'm a small businessman in the construction industry; and if I were to behave with my customers on a complete-disclosure basis, I'd be out of business in a flash. I don't lie in the factual assertions I make, but certainly I should be allowed, like everyone else, to choose material selectively to favor my side."

"I'll grant you the point that a competitive imperative may force you toward a norm of behavior that is a fact of life in marketing and advertising. But there are degrees. As a business leader, you should set higher ethical standards for yourself than you perceive are commonplace around you: exemplary behavior on your part can influence the behavior of others. You should strive by your own behavior to improve the standards of morality in business. Just as in the social dilemma game, it's not necessary for you to influence all the others to act cooperatively before it's worth your while to shift from noncooperative to cooperative behavior. And remember, there's a dynamic at play here: if you act in society's interest, others might not only follow suit but they in turn will influence others. People help create the society they live in. If they want to live in a more cooperative society, they can do so, though possibly at some cost to themselves. Most people, I believe, are willing to sacrifice a little for a more ethical world, but only so much. Many processes in our society do not exploit this limited altruism. We should seek ways to change the world, or small parts of it, to take advantage of people's willingness to sacrifice a little bit of their own comfort for the general good."

"You're saying that aspiring leaders should shun behavior that they would not respect in others—that they should be exemplars. But if someone followed that gospel, he or she probably would not become a leader. Do you know a political leader who can truthfully expose his full record? Compromises have to be made. Would you blame someone who acted improperly on a minor issue so that he could be in a position to stand up for his principles on really major issues? Are you saying that virtuous ends can't ever justify means that fail a morality test?"

"I'm not an absolutist. In special circumstances I might condone actions that, in general, I do not deem ethically appropriate; but a lot of harm comes from an overly cavalier attitude about 'ends justifying means.' I believe that many people who intuitively do this type of benefit-cost analysis do it poorly: they do not adequately
consider the effects of linkages and precedents. If an immoral action (means) is adopted for glorious ends, it makes it easier for others to adopt similar actions for not-so-glorious ends. We’re on a slippery slope, and it’s hard to know where to draw the line.”

“Exactly,” says yet another negotiator. “I don’t at all like your utilitarian-tradeoffs philosophy. There are certain actions that are just plain wrong in an absolute sense, and no analysis of consequences can justify them. Unless certain basic principles are inviolate, people can justify or rationalize any foul deeds.”

“You’re taking the strong deontologist position—that there are absolute rights or wrongs regardless of the consequences. Those who are religious believe that these are God-given. But, as I said before, I don’t know of any overarching deontological principle from which all other moral principles derive. At least, I don’t know of any single principle that could operationally guide my behavior, even though most of the several deontological principles that are offered seem appropriate heuristic guides for my behavior. But I must admit that I think they’re appropriate because of my utilitarian calculations. If one adopts, as I do, a broad-gauged, rules-oriented, utilitarian framework, with a little deontological and contractarian reasoning thrown in, then this viewpoint, while flexible, is not operational: it does not specify appropriate actions. One needs heuristic guidelines or auxiliary principles for ethical behavior; one cannot always go back to basic principles. So as I see it, whether one adopts a deontologist or a teleologist (result-oriented) position or a mixture of the two, one must be guided by a workable, operational set of ethical principles. And one should then realize that these principles may occasionally conflict with one another. But these principles are guidelines not to be broken lightly! As Thomas Schelling so aptly put it: ‘Compromising a principle sounds wrong; but compromising between principles sounds right.’ And compromising, after all, is what negotiation is all about.”

Another negotiator obviously thinks that we have reached the point of diminishing returns: “This conversation has meandered over a wide terrain in normative ethics. Can you summarize any insights you have from an analyst’s perspective?”

“Well, as an analyst I believe that most utilitarian calculations in situational ethics are too narrowly conceived. In a loose sense, all of us are engaged in a grandiose, many-person, social dilemma game where each of us has to decide how much we should act to benefit others. The vast majority of us would like to participate in a more cooperative society, and all of us may have to make some sacrifice in the short run for that long-run goal. We have to calculate, at least informally, the dynamic linkages between our actions now and the later actions of others. If we are more ethical, it makes it easier for others to be more ethical. And, as was the case in the multiplayer social dilemma game, we should not become excessively distraught if there are a few cynical souls who will tangibly profit by our combined beneficent acts.

“If you act to help others and hurt yourself in the short run, and if your act is visible to others, you may profit from it in the long run because of cyclical reciprocities. In that sense, your noble-appearing action may be in your selfish interest. But we should not demean visible acts of kindness, even though in part they may be self-serving, because your actions may make it easier for others to act similarly, and the dynamics reinforce behavior that is in the common interest. An action that represents a moderate sacrifice in the short run may represent only a very modest sacrifice in the long run, when dynamic linkages are properly calculated. And as I said before, many people are willing to make small (long-run) sacrifices for the good of others, all things considered. The visibility of beneficent acts thus plays a dual role: it reduces the tangible penalties to the actor, and it spurs others to act similarly; these two facets then interact cyclically. Finally, empathizing with others may be reflected in your own utility calculations: a sacrifice in long-range tangible effects to yourself, if it is compensated by ample gains for others, could be tallied as a positive contribution to your cognitive utilitarian calculations.”

“That’s wonderful,” says my first questioner. “Now tell me, how do I use all this sermonizing to decide what I, as a City player, should do about Daniels?”

“That’s left as an exercise.”
Epilogue

It's time to take stock. I could go on to analyze other examples of negotiations: international arms-limitation talks, economic trade agreements, cartels, divorce mediation, global negotiations with developing countries, corporate takeovers, and so on. Frankly, if space and time permitted, I would be sorely tempted to include such additional material in this book, since one of my pedagogic aims is to broaden the horizons of people who think narrowly about negotiations. Executives, for example, frequently assert that they're not interested in the role of the intervenor in conflicts because that's not what they do as businessmen. It always gives me special pleasure when, during seminars on negotiation, such executives realize that mediating conflict is what they do all the time in the internal management of their organizations. Executives rarely think of themselves as mediators, even while they mediate.

Many of the ideas developed and formalized in this book are well understood by men and women of experience—but understood in the world of practice, and not in the world of thought. Practitioners often act intuitively in bargaining situations in ways that are far more sophisticated than they can conceptualize and articulate. I do believe, however, that even sophisticated practitioners of the art of negotiation can profit by contrasting negotiations in their own field with those in other fields; they can profit by reflecting about what lies within the common core of most negotiation problems, and also about what lies outside this core and is somewhat special to the narrower class of their own negotiating problems; and they can profit merely by labeling recurrent key concepts in this common core, such as reservation prices, value tradeoffs, joint gains, contingency contracts, and efficient frontiers. In this way, they gain a deeper un-
derstanding of what they are actually doing and can better communicate these insights to others who have been similarly sensitized.

But my aim in writing this book goes deeper. Often, disputants fail to reach an agreement when, in fact, a compromise does exist that could be to the advantage of all concerned. And the agreements they do make are frequently inefficient: they could have made others that they all would have preferred. It is here that systematic analysis can be of service to the negotiator, facilitator, mediator, arbitrator, and rules manipulator. I am not thinking of any grandiose new kind of analysis specially devised for problems of negotiation, but of simple prosaic analysis that is part of the curriculum of most schools of business and public policy: What are your alternatives? What are your objectives? How do your objectives conflict? What are your value tradeoffs? What are the primary sources of uncertainty that you face? What objective data do you have that bear on these uncertainties? How can you tap the knowledge of relevant experts, and what are their biases? Can you defer action and accumulate further information before you commit yourself?

These questions and their action implications constitute a framework of thought that applies to most decision problems. What is often overlooked is that this framework also applies to problems of negotiation. But in the subclass of decision problems that is peculiar to the domain of negotiation, a new class of concerns arises: What are the interests, motives, concerns of the other negotiating parties? What are their alternatives to a negotiated agreement? What are the opportunities for exploiting differences in values, beliefs, constraints? How should you share information for joint problem-solving without making yourself too vulnerable when the (hopefully enlarged) pie has to be partitioned? Interpersonal skills are critically important in the negotiation exchange, but so is analysis; and too many courses in negotiation stress interpersonal bargaining skills at the expense of analysis. My intention in this book is not to minimize the importance of interpersonal skills, but to balance the ledger a bit.

This is not a book addressed primarily to analysts and academics; it neither introduces a new, nor enhances an old, theory of the negotiation process. Rather, it is addressed to practitioners of negotiation—and they are legion. It publicizes a need and an opportunity for them to think more systematically and consciously, and in a more conceptually integrated fashion, about the dynamics of negotiation.

The principal theme of the book is that analysis—mostly simple analysis—can help. It can help a single negotiating party as he thinks reflectively about what he (prescriptively) should do, given his assessment of what others, in some quasi-rational descriptive sense, might do. Thus, the book departs from the traditional game theory approach, which simultaneously analyzes highly rational behavior of all negotiating parties who are constantly thinking iteratively about one another's thoughts. In certain highly repetitive simple problems this type of equilibrium theory, so reminiscent of game theory, is highly relevant; and even in more intricate problems for which iterative interactive thinking has its limitations and is not directly relevant to a specific case, the theory could nevertheless be of practical relevance to the rules manipulator who is concerned about how actual fallible players might play after they absorb a modicum of evolutionary learning.

The approach of this book has been asymmetrically prescriptive/descriptive: prescriptive for yourself as a protagonist when pitted against the highly uncertain descriptive behavior of others. It has also been prescriptive with regard to the intervenor, whether facilitator, mediator, arbitrator, or rules manipulator. There are, of course, intervenors who do not fit very well into any of these categories. Five important points are worth reiterating.

First, in hierarchical organizations, both private and public, the executive is often cast in the role of an intervenor in disputes. So, too, is the shop foreman, the lawyer, the newspaper editor, the university department head, the military leader—even the mother who intervenes in disputes among siblings.

Second, a negotiator, representing one side of a dispute, might simultaneously play the intervenor's role as he confronts disparate, conflicting advice from others on his side of the bargaining table.

Third, a protagonist in an ongoing negotiation may wish at some stage to suggest, or may need to react to the suggestion of, the intervention of an outside party. The protagonist should therefore be able to assess the potential implications of such a move and should be creative about the many forms that this intervention can take.

Fourth, negotiation and intervention are so intimately connected conceptually that training in one can enhance performance in the
other. Thus, for example, a negotiator may suggest the adoption of a negotiation procedure that might have been suggested by an intervenor; or a negotiator might suggest a “fair” outcome that results from, and is rationalized by, an arbitration mechanism (for example, a disadvantaged player might suggest the Shapley Value outcome in a coalition-type confrontation). On the other side, an intervenor constantly has to assess the reaction of the negotiating principals to any proposal he makes; such an intervenor should understand how negotiators behave. (This is another variation of the prescriptive/descriptive dichotomy.)

Fifth, in many-party negotiations it may be desirable for one of the negotiating parties occasionally to play the role of an outside intervenor, and to move back and forth between these two roles.

In closing, let me draw an analogy. There are beautiful economic theories of the firm that explain, to a first approximation, how firms do behave or should behave. But when one gets close to the actual problems of decision makers within firms, these general theories are too vague to be operationally relevant. At the level of the firm, what is needed—among other things, to be sure—is a bag of analytical tools along with a sprinkling of specialists who know about these tools and who can interact on an ad hoc, consultative basis with decision makers. I’m thinking not only of operations researchers and decision analysts, but of analytically trained financial specialists, marketing specialists, and specialists in other functional areas of the firm.

Just so in negotiations. There are beautiful theories of the negotiation process that explain, to a first approximation, how negotiators do behave or should behave. But, as in the theory of the firm, these theories are not operational; and in spite of them, all too often no systematic analysis, or even partial analysis, is employed in practice. A certain amount of analysis can be of help to negotiators and intervenors in many different ways. The need is not for the creation of new analytical techniques specially designed for the negotiation process, but rather for the creative use of analytical thinking that exploits simple existing techniques.

Bibliography